

For starters, let's not forget that as a candidate the President himself said he preferred what he called a "gradual adjustment" to gas prices—in other words, higher prices that went up slowly so people did not feel the pinch quite as acutely. Let's also recall that after his election the President chose an Energy Secretary who said he wanted gas prices more in line with those over in Europe, where folks pay about \$8 a gallon for gas. That is what they pay for gas over in Europe, where the Energy Secretary said we should be looking to establish gas prices. Let's not forget that the President chose as Interior Secretary a man who, as a U.S. Senator, objected to increased oil and gas drilling here at home even if the price of gas exceeded \$10 a gallon—right here on the Senate floor. So no one should be surprised at the fact that we are well on the road to European gas prices when the President and the two Cabinet officials he chose to deal with the issue are all on record supporting them.

Let's be honest, the only problem the President sees in all of this is the political blowback he is getting for it, and that is why last week he gave another speech—this time to absolve himself from any of the blame for high gas prices even as he sought to take credit for the actions of the private sector and that his predecessors took to increase energy production here at home.

It is kind of interesting—the President seems to blame his predecessor on a weekly basis for the problems we face today, but when he finds something he likes, he doesn't commend him but claims it as an achievement for himself. Yes, oil production is at an all-time high in this country, thanks to the decisions that were made before this President took office.

But let's be very clear about something: The actions of this President are driving down oil production, and here is how. This President continues to limit offshore areas of energy production and is granting fewer leases to public land for oil drilling. His administration is imposing regulations that will further drive up the cost of gasoline for the consumer. He wants to raise taxes on oil and gas—a proposal the Congressional Research Service tells us will increase the price of oil and gas and, by the way, send jobs overseas. And he alone rejected the Keystone XL Pipeline—a potentially game-changing domestic energy project that promises not only energy independence from Middle Eastern oil but tens of thousands of private sector jobs.

The President has done all of those things, all the while claiming there are not any silver bullets. The fact is this President's policies are designed and intended to drive up energy prices, reduce domestic oil production, increase our demand on foreign sources of oil, and drive high-paying American jobs overseas. Those are the direct results of the policies of this administration.

So forget the rhetoric; that is this President's record. It is in perfect keeping with the vision he set out at the beginning of his administration. This President will go to any length to drive up gas prices and pave the way for his ideological agenda. That is this President's notion of fairness, that struggling Americans pay more at the pump while their tax dollars go to prop up solar companies like Solyndra and the executives who run them into the ground.

I do not think it is particularly fair—speaking of fairness—for people who are out there trying to scrape a living together to subsidize bonuses for folks who would not even have a business without a taxpayer handout. That is not my definition of fairness, but that is the economy this President wants. That is what his policies lead to. That is his vision. So, in my view, reversing this President's wrongheaded energy policies is the silver bullet.

Look, the President can taunt his critics for suggesting that we actually use the resources we have, but I think the American people realize that a President who is out there talking about algae when they are having to choose between whether to buy groceries or fill up the tank is the one who is out of touch. Americans get this issue. They understand it fully. They get that we need to increase oil production right here at home, not simply by relying on pipedreams—pipedreams like algae—or by wasting billions of taxpayer dollars on more failed clean energy projects like Solyndra, especially at a time when we are running trillion-dollar deficits. We cannot afford it.

It is time for the President to join with Republicans and put American energy and economic security ahead of his own ideological agenda.

I yield the floor.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period of morning business until the hour of 12:30 p.m., with Senators permitted to speak therein for up to 10 minutes each, with the time equally divided and controlled by the leaders or their designees, with the majority controlling the first hour and the Republicans the second hour.

The Senator from Illinois.

JUDICIAL NOMINATIONS

Mr. DURBIN. Mr. President, I was heartened by the dialog between Senators REID and MCCONNELL this morning, talking about more bipartisan cooperation, civility, and cooperation to

try to deal with appropriations bills. I would like to commend to the Republican leader not just those important issues but the equally important issue of judicial nominations. It is no secret that the Senate's process for considering nominations has deteriorated under the Obama administration because of resistance from the Republican side of the aisle.

It is a long-honored tradition in America that a President of the United States fills vacancies on the Federal courts with the advice and consent of the Senate. That has been the process since the beginning of this Republic. Yet today we find stacked on our calendar literally 19 judicial nominees pending on the Senate floor. Fourteen of these nominees were reported from the Judiciary Committee last year, some of them as far back as October. They have been sitting here for months. Seventeen of the nominees were reported out of committee with broad bipartisan support, 12 of them unanimously. Ten nominees, incidentally, are supported by their Republican home State Senators.

The bottom line is that judicial nominees with no controversy and with widespread bipartisan approval are being held up on the Senate calendar and not approved. Why? I can tell you why. It is fairly clear. It is part of a strategy that says: If you hold up the judicial nominees as long as possible, in comes that moment of the so-called Thurmond rule or Thurmond tradition. This relates to Senator Strom Thurmond of South Carolina, who basically said when we are engaged in the depths of a Presidential campaign, the Senate should stop approval of judicial nominees.

There is nothing in the law that requires that. There is certainly nothing in the Constitution. In fact, we have in our own way found exceptions in the past. But what we are seeing now is an effort by the Republicans to hold up or stop judicial nominees in the hopes that the positions will be left vacant through the entire calendar year and then, if they have their way at the polls, a Republican President will fill the vacancies a year from now with new nominees. That is crass. It is unfair.

The men and women who submit their names to be considered as judicial nominees go through a rigorous background check at many different levels—first by the Senators who would nominate them, then by the White House, then the routine examination by the Federal Bureau of Investigation, then once reported to the Senate Judiciary Committee for further investigation and hearing. Their lives are on hold during this process. They wait on the Senate. Once they have cleared these hurdles and finally reach the calendar, many of them believe they can breathe a sigh of relief. A unanimous vote or a strong bipartisan vote in the

Judiciary Committee used to be a signal of success on the floor. Not anymore. At this point they reach the ultimate roadblock: they are stopped on the Senate floor by the Republican minority.

It is not just unfair to judicial nominees—men and women of quality, many of whom have been proposed by Republican Senators—it is fundamentally unfair to our court system. You see, many of these nominees are filling vacancies that are absolutely essential.

Last week I received a letter from the chief judge of the Northern District of Illinois, Judge Jim Holderman. His district is one that has been declared a judicial emergency, meaning the backlog of cases is stacking up and the vacancies need to be filled. He was writing to me and Senator KIRK asking that we do everything in our power to move two noncontroversial, strongly supported nominees through the Judiciary Committee. They are moved through. These two, who came through a bipartisan process, are now sitting on the Senate calendar. They are John Lee and Jay Tharp. John Lee is my nominee, and Jay Tharp is Senator KIRK's nominee. A bipartisan agreement by a bipartisan committee has led to their selection. No one has questioned their ability to serve well on the Federal court.

This is what Judge Holderman wrote:

The vacancies [that they would fill] have been declared judicial emergencies by the Administrative Office of the U.S. Courts. More than a thousand cases that would have been addressed by judges in those positions have been delayed. The other judges of the district have worked to resolve these cases as promptly as possible along with our other assigned cases, but we need help. . . .

He went on to say:

Recently, two other active judges [in the Northern District] were in the hospital and remain unable to take new assignments. New civil case filings in our district court have increased. . . .

Judge Holderman concludes by saying, “. . . the people of the northern district of Illinois need your assistance,” he writes to Senator KIRK and myself, and the full Senate should “promptly confirm the nominees Jay Tharp and John Lee.”

This is a classic illustration. Well-qualified individuals, having cleared the hurdle, receiving strong bipartisan support in the Senate Judiciary Committee, are mired down on the Senate calendar. Time after time we see when we can finally spring one of these nominations that will have 80 or 90 votes of Senators who approve it. They are noncontroversial. It is clearly a slowdown strategy, so the other side of the aisle, saying their prayers that they can replace President Obama, will literally leave these vacancies for a year or more in the hopes that another President will pick another person. That is unfair to the process. It is certainly unfair to the nominees. It is unfair to this system of government where we are shirking our responsibility to advise and consent for critical

vacancies to be filled so our Federal courts can operate in the best interests of justice across America.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from New York.

JUDICIAL NOMINATIONS

Mr. SCHUMER. Mr. President, I thank my colleague from Illinois for his usual articulate and prescient comments about our judicial crisis, and that is what we have here in the Senate and in the third branch of government.

I rise today, along with many of my colleagues, to address a serious problem for which there is an easy solution. We have a crisis in our third independent branch of government, and it is one that only we in the Senate can solve. We can solve it. We need to come together as we have in the past and confirm judges to our article III courts and dispense with petty politics and hostage-taking.

Let me give just one example of how our process has broken down. In December, for the second year in a row, my colleagues across the aisle refused to consent to confirm even a single judicial nomination before the end of the Senate session. This senseless rejection of the Senate's longstanding practice of confirming consensus nominees is starting to do real damage to our Federal courts. One out of 10 on the Federal bench, 1 out of 10 seats on the Federal bench is currently vacant. Judicial vacancies are double, two times what they were at this point in President Bush's first term. We have confirmed only 3 judicial nominees this session, only 5 in the past 2 months, and only 11 in the last 90 days. And of the three judges we have confirmed this session, we had to file cloture on two of them. This is not a responsible use of the Senate's advice and consent powers; rather, this is a handful of people—plain and simple—using the Senate's procedures to thwart the will of the majority of Americans. The vast majority of Americans want us to confirm good, moderate, pragmatic judges to the U.S. district courts. After all, judges on the district court don't make law, they follow law. They are not supposed to make law at all. Courts of appeal have a little more latitude, and, of course, the Supreme Court can make law, although they are supposed to follow tradition and precedent, and they claim they do. We can discuss that a different day.

A few outside groups are trying to accomplish in the third branch of government what they have been unable to accomplish in the other branches of government by making sure that judges with moderate, pragmatic credentials don't get confirmed in the hopes they can fill the bench with people who meet their narrow ideology at some point in the future.

Now, to be sure, my colleagues have offered a wide variety of reasons to ex-

plain their inability to consent to votes on district court judges. Some have said they are upset about the President's improper use of his recess appointment powers, powers about which five experts can give five different opinions. What that has to do with the judicial appointments is beyond me. Some have said they are upset about the ability to get floor time on something that is not even germane to judicial nominations.

To hold the third branch of government hostage because they have a different beef on a legislative issue is virtually unprecedented, at least certainly to the extent it has been done here. Some have given into terrible, misleading, and sometimes even vicious attacks on pending nominees. I have seen material circulated by outside groups that appear ready to oppose nominees using any and all tactics. Some of them—not all, not most, but some, and any one is too many—can only be described as bigoted. I have seen it. I have seen the letters to our colleagues here in an attempt to pressure them.

This behavior needs to be stopped, and it certainly needs to stop having an effect on any Member in this body. I have seen material that twists a candidate's record beyond all recognition. In fact, just before recess one group circulated patently inaccurate quotes that were supposed to be from a brief written by now Judge Jesse Furman for a client.

I have said time and time again—and I will say once more today—the Senate certainly has an obligation to take a hard look at the President's judicial nominees. My view is that ideology does matter and every Senator here has the right to make sure a President's judicial nominees are within the mainstream. I would even admit that some definitions of mainstream are different from others, but when nominee after nominee—many of whom were reported unanimously out of the Judiciary Committee, which has some very conservative as well as some very liberal members—are held up by a handful of people, we are not talking about views outside of the mainstream. We are talking about something larger and, frankly, less defensible.

There will always be nominees, especially to the courts of appeals, about whom we will disagree. There will be those whom some of us view as so extreme that we will refuse to give consent to holding an up-or-down vote. But let's be clear; that is not what is going on today.

What is going on today is obstruction, plain and simple—obstruction against anybody, any nominee, and obstruction at unprecedented levels. The total number of Federal circuit and district judges confirmed during the first 3 years of the Obama administration is far less than for previous Presidents. The Senate is more than 40 confirmations behind the pace we set confirming President Bush's nominees between 2001 and 2004. The sheer amount