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 explain 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

of resistance to President Obama's district court judges indicates the level of obstruction we are facing.

In 3 years President Obama's nominees have received five times as many no votes as President Bush's district court nominees did over 8 years. Isn't that incredible?

The proof is in the pudding. The President's nominees for district court are not out of the mainstream. Almost all of them have logged years in public service or worked in law firms or excelled in other ways that characterized the nominees of previous Presidents. The issue is that the standard has changed. It is no longer, will this judge be good for the country and meet the standards we demand from an article III judge. Now, it is, did I personally approve of this judge; and if I didn't, what can I get by voting for him or her or I am going to block that judge and tie the Senate in a knot so judges only in my narrow viewpoint can be appointed, even though the President is of a different party and of a different philosophy, even though the majority of the Senate on both sides of the aisle are of a different philosophy. This is nothing short of tragic.

I implore my colleagues to think about what they are doing. Let's come together, as I know we can, and confirm qualified district court judges without further gamesmanship, without further obstruction, and without the further view: It is my way or the highway, and if I don't get my way, I am going to try and cripple 1 out of 10 vacancies and cripple the article III branch of government. It is getting close to that.

There are emergencies on many circuits. The future of our courts and even this body could well depend on it.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from California.

Mrs. FEINSTEIN. Mr. President, I heard the remarks of the distinguished Senator from New York, and, obviously, I agree and I guess I would like to add my 2 cents to the arguments presented.

I am a 19-year member of the Judiciary Committee, so I have had a front-row seat for judicial nominations for a long time. Over 800 judges have been confirmed since I came to the Senate.

Now, it was not so long ago that liberals and conservatives could easily win confirmation as long as they were well qualified, fair-minded, and had judicial temperament. They were confirmed. It may even surprise some that Justice Ruth Bader Ginsburg was confirmed by a vote of 96 to 3, and Justice Antonin Scalia was confirmed 98 to 0. That was a different time.

Today partisanship has stalled even the most uncontroversial judicial appointments. Senate Republicans allowed no nominees to be confirmed at the end of the last session and have allowed only five so far this year. In this environment even those reported out of committee by voice vote without any controversy are unable to receive a floor vote for many months if they ever receive one at all.

Let me give a recent example, a judge I recommended to the President. Judge Cathy Bencivengo's nomination to the Southern District of California was approved by the Judiciary Committee by voice vote. Yet she waited 4 months for a floor vote. Then she was ultimately confirmed 90 to 6, showing that there simply was no need to hold up the nomination in the first place. This level of obstruction is relatively new and has impeded the confirmation process for both judicial and executive branch nominees.

Let's do a quick comparison. Nearly 80 percent of President George W. Bush's judicial nominees during his first term were confirmed—80 percent. In contrast, less than 60 percent of President Obama's judicial nominees have been confirmed. As a result, the judicial vacancy rate stands at nearly 10 percent. That is double what it was when President Bush left office.

Similarly, during the first session of the 112th Congress, the confirmation rate of President Obama's executive branch appointments was only 51 percent. President George W. Bush and Bill Clinton each had a confirmation rate of over 70 percent during comparable periods in their Presidency.

So, clearly, there has been a change post-Bush, and I think that is what we are talking about. This is not good for the judiciary, it is not good for this body, and it is not good as standard operating practice of the Senate. It is clear we are seeing a degree of obstruction that is unprecedented and that hampers the ability of the judicial and executive branches to perform their constitutional functions. It is preventing us, the legislative branch, from fulfilling the responsibility that we owe to the two other branches of government.

In my State we have three nominees, each for positions the judicial conference has declared to be judicial emergencies, which means extraordinarily heavy caseloads. These should win confirmation without delay.

I will give you one: Judge Jacqueline Nguyen, a nominee for the Ninth Circuit. She is a remarkable jurist with an impeccable record. She was confirmed to the district court 97 to 0 in 2009. She was approved by the Judiciary Committee for the Ninth Circuit by a bipartisan voice vote. Yet her nomination has been pending on the floor for nearly 3 months. This is an easy one: unanimously passed, has served as a district court judge, could be voted for and passed if not by 100 percent, very close to it. The Ninth Circuit, which has by far more pending cases per appellate panel than any other appellate court, needs her to be confirmed without further delay.

There is a reason for this. I think Republicans don't like some of the appellate courts; therefore, what they try to do, candidly, is keep the positions vacant and hope that after the election there will be a Republican President and they will get their nominees through. Well, what is sauce for the goose is sauce for the gander, and this is not a good way to handle judicial appointments.

Let me give another one: Paul Watford should be confirmed quickly to the Ninth Circuit. He is eminently qualified. He clerked for conservative Ninth Circuit Judge Alex Kozinski and Justice Ruth Bader Ginsburg. He served as a Federal prosecutor, and he has been a distinguished practitioner of appellate law in California for many years. He is uncontroversial. He has been endorsed by the former president of the Los Angeles Chapter of the Federalist Society by conservative law professor Eugene Volokh and by the general counsels of several major corporations that he has represented in appellate cases. The Senate should confirm him without delay.

Michael Fitzgerald, a nominee to the Central District of California, should also be confirmed quickly. This is a court that ranks as the ninth busiest in the Nation in terms of filings per judgeship. Mr. Fitzgerald is an extraordinarily qualified nominee with 25 years of experience as a Federal prosecutor and as a lawyer in private practice. His nomination was also reported by the Judiciary Committee by a bipartisan voice vote. Yet his nomination has been waiting for a vote on the floor for nearly 4 months. All of this is unnecessary. They could go through by unanimous consent.

Now, I understand that some of my Republican colleagues believe President Obama's recent recess appointments are a reason to delay needed confirmations to overburdened courts around the country. I would simply remind my colleagues of a bit of history and ask them to think carefully about whether they want to go down this very dangerous path.

Many will recall that President Bush made two controversial recess appointments to the Eleventh Circuit and the Fifth Circuit in early 2004. Like Republicans now, Democrats were upset about the President's appointments. Nevertheless, in the months that followed, Democrats permitted numerous circuit court and district court nominees to be confirmed. The Senate continued to act on such nominees until September of 2004—2 months before the Presidential election.

So I say to my colleagues—and say this respectfully—take a step back. Do not obstruct every judicial nomination from this President. Our judicial system depends on a Senate willing to do its constitutional duty and provide advice and consent on judicial nominees. Most pending nominees are well-qualified, consensus choices for courts that urgently need them to begin their service. We should confirm them without delay.

Our job is to vote. Our job is not to obstruct, to delay. It is to vote. We

function on a majority system. If you do not think someone is qualified, if you do not believe they have the judicial temperament, if you do not believe they have enough experience, if you do not like them for any reason, vote no. That is entirely within the prerogative of a Senator. But to hold them up, despite judicial emergencies, despite high caseloads, is to impact the system of justice.

I think this 10-percent vacancy factor now indicates that the condition of justice is, in fact, being affected throughout our country, particularly in the Ninth Circuit and in California as well as in many other States.

I thank the Acting President pro tempore and yield the floor.

I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. COONS. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mrs. FEINSTEIN). Without objection, it is so ordered.

Mr. COONS. Madam President, I rise today to continue to address an issue which I have just had the joy of hearing the Presiding Officer and the Senators from New York and Illinois speak to, and that concern I raise today is the ongoing crisis in our courts, the nearly 10-percent vacancy rate in judicial positions all across the United States.

I rise today as the junior Senator from Delaware but also as a member of the Delaware Bar and as a former Federal court clerk, and as someone who has, I think, a personal sense, from that experience and my service on the Judiciary Committee, of the consequences of these delays—the consequences of steadily climbing caseloads, significant judicial vacancies, judicial emergencies in districts across our great country, including in the State of California, and what that means for people, for companies, for communities for whom justice is being delayed and thus denied.

Earlier this month I attended the investiture ceremony of Judge Richard Andrews who was sworn into the U.S. District Court for Delaware. This is the first time in 6 years the very busy District Court of Delaware has had a full complement of district court judges.

Although I am relieved and the people of Delaware are grateful to have a full bench, and although Judge Andrews is an extremely talented lawyer and a devoted public servant and utterly nonpartisan—just the sort of district court nominee about whom the Presiding Officer just spoke—his nomination took nearly 6 months to be confirmed by the Senate.

I am glad Judge Andrews has made it through because in the Senate the confirmation process seems to be more broken this year than last. When I joined the Senate in 2010, judicial nominations had slowed to a crawl. I watched with dismay as folks whom I viewed as highly qualified were blocked.

Goodwin Liu, for example—a brilliant and qualified legal scholar, a nominee twice to the Ninth Circuit—could not overcome a GOP filibuster, in part payback for a view, I believe, on the other side of the aisle of the rough handling of Miguel Estrada, whose nomination was defeated during the Bush Presidency.

What I have been most concerned about as a freshman Senator is how the history lying about this Chamber seems to steadily pile up session after session, and the process seems to be weighed down by this burden of history.

But next, Caitlin Halligan—an extremely competent attorney without a single partisan blemish on her record—was nominated to the DC Circuit, and her nomination, in my view, was also blocked based on a grotesque misrepresentation of her actual record. The major talking point against her nomination, if I recall right, was that the DC Circuit already had more than enough judges.

Judge Halligan would have been the 9th judge on that court. Notably, all the GOP Members who spoke against her had no qualms when the Senate confirmed the 10th and 11th judges to sit on that very same circuit during the Bush nomination period. But I think these sorts of fine points of history are lost on the people, the communities, and the companies across our Nation who go to the courthouse seeking justice and find none.

In 2012, as some of the previous Senators have stated, we have so far confirmed just five judges. Today, there are 19 nominees on the floor, 12 of whom came out of our Judiciary Committee unanimously, who are now languishing on our Executive Calendar. Republicans have not stated objection to these nominees but refuse to grant consent for a vote to be scheduled.

President Obama's nominees have waited four times longer after committee approval than did President Bush's nominees at this point in his first term, and the Senate is more than 40 confirmations behind the pace set during the Bush administration.

It is not just judges who have been the subject of this ongoing weighting down. The Executive Calendar, which I have the privilege to flip through every time I preside, is filled with nominees for vacancies in every major department and in every major independent agency in this government. It is more than a dozen pages long of nominations that have sat for months and months.

Last month, in response to the Republican obstructionism in moving this Executive Calendar and in filling these administrative vacancies, President Obama made recess appointments: the Consumer Financial Protection chief, Richard Cordray, and members of the National Labor Relations Board. Some of us on both sides of the aisle do agree that Congress, and not the President, has the right to declare when the Senate is in recess. But whatever one's view of these appointments, there is no questioning that in either case, Republicans forced the issue through their unprecedented refusal to vote the President's nominees up or down and allow him to proceed with the progress of our Nation.

As Senators, we have a responsibility to advise the President as to his nominations and, where we agree, to consent; where we do not, each of us is free to vote no. Some Senators have suggested they will oppose all nominations in opposition to the President's recess appointments. In my opinion, a pledge to oppose all nominations is a pledge not to do his or her job. In my view, we ought not to make such a pledge. In my view, while so many Americans are out of work, and so many of us are here on the public payroll, we can, we should, and we must move forward with the judicial nominees.

This morning, this session began with a very encouraging moment of harmony between the majority leader and the Republican leader on the concept of moving ahead with appropriations. It is my hope and prayer we will do the same on judicial nominations as well.

I call upon my colleagues on the other side to rethink this strategy of obstruction at all costs because it is the American people who pay the price in the end.

With that, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Texas is recognized.

ORDER OF PROCEDURE

Mrs. HUTCHISON. Mr. President, I ask unanimous consent to enter into a colloquy with my Republican colleagues for up to 30 minutes.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

DOMESTIC ENERGY

Mrs. HUTCHISON. Mr. President, I think it is obvious all around our country that Americans are struggling right now with gasoline prices. The average American family spent more than $4,000 on gasoline last year, and it will be more this year, with the additional devastating price increases we are seeing now that will wreak havoc on our economy.

The national average price of a gallon of gasoline has gone up every single day for the last 3 weeks. In many parts of our country, prices at the pump are around $4 a gallon. But instead of encouraging an ''all-of-the-above'' approach, which the administration has said it is doing, the administration, instead, has been frustrating every domestic source of energy production that does not conform to a narrow view of alternative fuels.