

parties. This is wrong. Let's go back and let the Senate be the conscience of the Nation, not a body that reflects some of the worst instincts of our Nation.

I ask unanimous consent that the article to which I refereed be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Sacramento Bee, Mar. 6, 2012]

JUSTICE DELAYED AS JUDGE NOMINEES WAIT

Republicans in the U.S. Senate are once again using President Barack Obama's judicial nominations as pawns in their political chess match.

There's even loose talk of putting off votes as long as possible, in hopes that Obama loses in November and the seats can be filled by a Republican president.

That's absurd.

There are too many vacancies on federal courts in California and other states, where there aren't enough judges to handle the caseloads. Too often, justice delayed really is justice denied.

Democratic leader Harry Reid of Nevada is apparently so fed up that he's willing to go to war to get confirmation votes on the Senate floor, Politico reports.

Good for him. The Republicans deserve to be called out on their obstructionism—and their hypocrisy, since they often complain about how slow the federal courts are.

The focus is on 14 qualified nominees who won bipartisan support in the Senate Judiciary Committee, including two from California who were unanimously approved but have been on hold for months.

One is Jacqueline Nguyen of Los Angeles, who was nominated by Obama last September for the 9th U.S. Circuit Court of Appeals and endorsed by the judiciary panel on Dec. 1. The first Vietnamese-American woman to serve as a federal judge, she was 10 when her family fled Vietnam at the end of the war. They started as refugees in Camp Pendleton and made their own version of the American Dream.

The second is Michael Fitzgerald, who was nominated last July for a judgeship in the Central District of California and received committee approval on Nov. 3. A Los Angeles attorney and former federal prosecutor, he would become the first openly gay federal judge in the state and the fourth nationwide.

Both those courts are in an official "judicial emergency" because cases are so backed up.

There are two more recent nominations for 9th Circuit seats that have gone through the Judiciary Committee. Paul Watford, a Los Angeles attorney and former prosecutor, was approved on a 10-6 vote on Feb. 2. Andrew Hurwitz, an Arizona Supreme Court justice, was approved on a 13-5 vote Thursday.

The San Francisco-based 9th Circuit is a particular target for Republicans, who like to rail against what they call its liberal, activist bent. Their delaying tactics succeeded in forcing Goodwin Liu, a highly regarded UC Berkeley law professor who grew up in Sacramento, to withdraw his nomination last July. (Gov. Jerry Brown then nominated him to the California Supreme Court, where Liu now serves.)

It must be said that there are also political advantages for Obama if the delays continue. It would give him more ammunition to campaign against a "do-nothing Congress." Given the ways of Washington, that may be the most likely scenario.

But for those of us in the real world—particularly those seeking justice in the federal courts—it would be far, far better if these qualified jurists could get to work.

Mr. LEAHY. I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. Will the Senator suspend?

Mr. LEAHY. Yes.

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 for 1 hour, with Senators permitted to speak therein for up to 10 minutes each, with the time equally divided and controlled between the two leaders or their designees, with the majority controlling the first half and the Republicans controlling the final half.

Mr. LEAHY. Mr. President, unless the Senator from California seeks recognition—

Mrs. BOXER. I do.

Mr. LEAHY. Mr. President, I yield for the Senator from California.

The ACTING PRESIDENT pro tempore. The Senator from California.

SURFACE TRANSPORTATION ACT

Mrs. BOXER. Mr. President, I thought I could give Senators and those who may be following this very elongated debate on the highway bill an update as to where we are. We have a managers' package we are hoping to approve momentarily. It is a bipartisan package. We continue to work across the aisle. Under the consent, we want to move forward with that. We had, I believe, a holdup yesterday. We are working to find out why. But we are very hopeful that will move forward. Then we have a series of votes on amendments, beginning at about noon. So at 11:30 or so, we will be back on the bill.

I want to say to my friends on the other side of the aisle and to my friends on this side of the aisle that we are making great progress. This is a jobs bill. This is a major jobs bill. This is the biggest jobs bill.

They passed an IPO bill over there in the House. ERIC CANTOR is saying it is a jobs bill. I do not know how many jobs it will create. It is an investor bill. It is good; I am for it. But it does not come anywhere close to the bill we are working on today. Because on March 31, if we do not act on this transportation bill, everything will come to a screeching halt, if I might use that analogy. Because there will not be a gas tax anymore going into the Federal highway trust fund, there will not be any funds going from the Federal Government to the various planning organizations in all of our States and communities.

All of us know that since the days of President Eisenhower we have had a

national system for roads, bridges, highways, and so on. So we have a lot of work to do here. I want to say, we are very close to the day when everything will stop. So I think we are making great progress.

I know the majority leader and the minority leader talked about finishing this bill today. That means a lot of cooperation because we have to get through about 20 amendments plus a managers' package. I think we can do it. I know we can do it.

Then, frankly, we can actually go home and tell our people we voted on a huge jobs bill. How huge? We are going to protect 1.8 million jobs, and a lot of construction jobs. I have often told people that the unemployment rate among construction workers is way higher than the general population. Our unemployment rate is about 8.3 percent. We have a 15-, 16-, 17-percent unemployment rate among construction workers.

And God bless this President. He has worked so hard on making sure we have set the table for job growth. We have had terrific job growth, but even with those 200,000-plus jobs created last month, construction jobs actually went down.

So we are looking at an industry that is in a great deal of trouble. It is because of the housing market. It is still not stabilized. Until we solve our housing crisis—and, again, the administration and the Congress are trying to do everything to allow people to stay in their homes so we don't keep having defaults, houses on the market, short sales, and all the rest. Once that is behind us, we will see a whole new day for construction. But that day isn't here.

It would be a dereliction of our duty if we fail to pass this bill because we will save 1.8 million jobs. That is how many people are working as a result of our ongoing transportation action. We have to save that. Then because of some very good work done in my home State, particularly in Los Angeles, we have come up with a new way to create an additional 1 million jobs by leveraging a program called the TIFIA Program, transportation infrastructure financing. It means as our State and our local areas pass, say, a sales tax to build transit or roads or highways, we, the Federal Government, can front that money at virtually zero risk and leverage these funds threefold.

In this bill we would be protecting 1.8 million jobs and creating up to 1 million new jobs because of the TIFIA Program. I want to say this bill is a bipartisan effort—hugely bipartisan.

I just talked to Senator INHOFE late last evening. We talked about the fact that we don't want to have it held up anymore. We want to move it through, and we are going to move it through. We are very pleased.

Anyone who follows politics knows Senator INHOFE is one of the most conservative Members of the Senate, and I am one of the most liberal Members of

the Senate. We are both very proud of who we are and comfortable with who we are. We know when it comes to some things we don't see eye to eye. There will be many more opportunities to see how we disagree on issues, such as clean air, clean water, safe drinking water, superfund, climate change, and all that. But we are on the highway bill. We hope this will become a template for us in the Senate and the House to find a sweet spot where we can work together. We are right there. A little bit more work and we know we have done our jobs. It could come today—I hope it will come today—but it will come late today because there are many amendments to get through.

I want to make my last comment about what is happening in the House. The House passed an IPO bill, initial public offering. I support that approach. I think it would be a great way to get more capital into the hands of businesses and enable them to hire people. It is a good bill. We are going to work on it. But the House has done nothing about the Transportation bill. Speaker BOEHNER has tried. He has had many efforts to bring people to the table. But the trouble is he has only brought to the table one political party. We have to work together. Senator INHOFE and I could never have gotten this bill to where it is if we stood in our corners and concentrated on the areas where we had disagreement. There were plenty of those, but we set those aside.

I say to the Members of the House, there is a secret to success, which is taking your hand and reaching it across the aisle and finding common ground with your colleagues. If you lose a bunch of Republicans and Democrats, you still have enough to get a bill through.

Our bill, though not perfect, does what we have to do. We protect 1.8 million jobs, mostly in construction. We create up to 1 million jobs. We took a bill that had 90 different programs and brought it down to 30 programs. We have a managers' package of very bipartisan issues that we have resolved.

I will probably be back on the floor within an hour to debate the two amendments that will be pending, the Bingaman amendment and the DeMint amendment. I will speak out on those amendments.

I thank the occupant of the chair for his support. He has been a real good friend and has helped us move this bill forward. I know this bill is important to his home State of Delaware, as it is important to Tennessee and to California. I have a list of jobs by State that we would lose if we fail to act. That is the bad news. The good news is we are going to act. I will be back in short order.

I yield the floor.

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

Mr. ALEXANDER. Mr. President, is it appropriate for me to speak as in morning business for a few minutes?

The PRESIDING OFFICER. The Senator is recognized.

JUDICIAL NOMINATIONS

Mr. ALEXANDER. Mr. President, I listened with great interest to the Senator from California. I thank her for her hard work on the Transportation bill and her work with Senator INHOFE. I listened especially to her comments that it would be good for us to work well together. It reminds me of our new Speaker of the House of Representatives in Tennessee, Beth Harwell. She does a pretty good job, and she often reminds her colleagues in the Tennessee Legislature that the first lesson they all learned in kindergarten is to work well together. That is a good lesson for us as well.

I will take 4 or 5 minutes to simply talk about a development I think interferes with that. I came to the Senate floor with a group of Republicans and Democrats not long ago. We praised the majority leader, Senator REID, and the Republican leader, Senator MCCONNELL, for their working together to try to bring the appropriations bills to the floor. We said we are going to work together to help them do that because a majority leader cannot lead if we don't follow. We complimented them for the work on the Transportation bill, which hasn't been easy, but we are having a lot of votes today. We will offer our ideas and make votes.

It was disappointing to me yesterday to see the majority leader announce that he had filed 17 cloture motions on district judges. I am here simply as one Senator to say respectfully to the majority leader that I hope he will reconsider and not do that. That is an unprecedented action. It has never happened like that before. In the history of the Senate, before 2011, a majority leader had filed cloture motions on district judges only three times.

What has happened with district judges in the history of the Senate? They come up, get a vote, and there has never been a successful filibuster of a district judge because of a cloture vote. Let me emphasize that. There has never been a successful attempt to deny an up-or-down vote to a district judge by opposing cloture in the history of the Senate.

That was proven again last year with a judge from Rhode Island, Judge McConnell, who many believed should not be a judge. There were enough Republicans did not take the opportunity to deny an up-or-down vote that he was confirmed even though many on this side didn't think he ought to be a judge. So we don't have a problem with filibustering district judges, and we have never had one with filibusters of district judges, at least given the present composition of the Senate.

What is the issue? Senator REID, the majority leader, said quite properly in his remarks yesterday that we have important work to do. We have a jobs bill coming from the House, a Postal

Service that is in debt, and we have cybersecurity—we are having long briefings on that because of the threat.

The leaders are working to bring the appropriations bills to the floor. We have only done that twice since 2000—all 12 of them. So this is a little disagreement we have between the majority leader and the Republican leader on the scheduling of votes on district judges. It is not a high constitutional matter. It is not even a high principle. It is not even a big disagreement. It is a little one. What has always happened is in the back and forth of scheduling, and they work it out. They have been working it out.

In the first 2 years of the Obama administration, he nominated 78 district judges, and 76 of those were confirmed—76 of 78 nominated in the first 2 years. He withdrew two. Last year, 61 more district judges were confirmed. What about 2012? The President has made a few nominations, but they haven't been considered yet by the Judiciary Committee. We do have 17 district court judgeships reported by the Judiciary Committee. They could be brought up by the majority leader. He has the right to do that. But of those 17, 6 of them have been reported by the Judiciary Committee for less than 30 days. They just got here. That leaves 11. How long have they been there? They came in October, November, and December of last year. Normally, they would have been included in the year-end clearing.

Everybody knows what happened. The year-end clearing was thrown off track because the President threatened to make controversial recess appointments. Ultimately, the President decided to violate the Reid rule, which used pro-forma sessions every three days to break the Senate's recesses and block recess appointments. That was invented by the majority leader, Senator REID. President Bush didn't like it, but he respected it. President Obama violated it, and it blew up the year-end clearing of a number of nominees, including district judges.

We have some district judges waiting to be confirmed, but we don't have many. We have a history of confirming 76 out of 78 nominated during the first 2 years of this President, and last year, confirming 61. This year, of the 17 the majority leader filed the cloture motions on, 6 of them just got here. So that leaves 11. What do we do about that?

The right thing to do is that the majority leader and the Republican leader should listen to what the Senator from California just said, listen to the Speaker of the House from Tennessee; that is, work well together rather than escalating this into a highly principled, big disagreement, and retire to one of their offices and sit down quietly, take a timeout and work this out. That is the way it has always been done.

We are only talking about 11 judges. They have not been around that long—