

way toward this culmination so we don't have this situation.

We have been in touch with the White House. There has been some concern about what happens with the 2-week recess that we have, and I am confident we will work our way through that. There is a conversation as to how we proceed with the IPO bill we got from the House. I think there is general agreement that there should be an extremely limited number of amendments, and we will move this as quickly as possible. So I hope the next day or two or three brings us more success here in the Senate.

Would the Chair announce the business of the day.

#### 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 10 minutes each, with the time equally divided and controlled between the two leaders or their designees, with the Republicans controlling the first half and the majority controlling the final half.

The ACTING PRESIDENT pro tempore. The Senator from Oklahoma.

Mr. COBURN. Madam President, I rise to speak in morning business.

#### LEADERSHIP

Mr. COBURN. Madam President, I am worried about the Senate as a body today. I came down here to the floor and I listened very intently to the Chaplain's prayer. He asked that we call on the higher wisdom; not man's wisdom, but God's wisdom. And I note with lots of consternation and worry that what is a very fine institution is being put at risk basically through failed leadership.

Let me explain what I mean by that. Having lived 64 years and running an organization and running a business, the quality that is most needed in leadership is a quality called reconciliation. And when that doesn't happen by our leaders—and I'm not singling out any one leader in particular—when that effort, that reconciliation, doesn't happen, it is not just directly related to the events surrounding that lack of reconciliation, it does damage to institutions. What we are about to see carried out today is the placing of partisan principles on both sides of the aisle ahead of the principle of advice and consent and the Senate's role.

Unfortunately, our leader didn't protect the Senate's rights under the Constitution with the last four nominations in terms of recess appointments, and we can debate that. But the fact is

as an institution—whether it had been a Republican leader or Democratic leader—the No. 1 issue that needs to be protected is the rights of the Senate as related to the other branches of government. I think that is unfortunate, and I think that is part of our problem today as we fail to trust one another to do what is right.

Let me go back to leadership. The real qualities of great leaders are they bring people of disparate views together and they solve those problems; they never accept the fact that an impasse is the answer. What we have queued to set up today is going to be an impasse. Everybody knows it. It is going to be an impasse. All that does is reflect poorly on the Senate as a whole and on the leadership of the Senate as a whole on both sides. So my caution would be to return to what Chaplain Black said: There is greater wisdom than we have. That is the wisdom we ought to be drawing from as we reconcile differences in the Senate, rather than destroy the comity of the Senate and destroy the ability of us to work together in the Nation's best interest in the future.

I would also tell you that the other thing I am disappointed about is that we have the Senate focused on that small issue instead of the very great issues in front of our Nation—the very fact that we are going bankrupt; that we have not done one thing this year to actually trim the excesses of the Federal Government; that we have not addressed in any way, shape, or form the very problems that are going to create tremendous burdens not only to our children but those people who, through no fault of their own, will not have a safety net in the future because we failed to make the tough decisions today, and that is wrapped up in political expediency.

One of my favorite quotes—it is a summary of Martin Luther King, Jr.'s words. It is not his exact words, but he said the following: Cowardice asks the question, Is it safe? Expediency asks the question, Is it politic? Vanity asks the question, Is it popular? But conscience and character ask the question, Is it right?

What I put forward to the two leaders today is what we are about to let unfold today in the Senate: Is that the right thing for the Senate or does it have to do with expediency and popularity? And if it is to do with those two things—whether it is connected or not—that is called failed leadership. That is a failure to lead, to reconcile, to bring people together. We are better than that. Our leaders are better than that. We should not allow this to happen.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Illinois.

Mr. DURBIN. I ask unanimous consent to speak in morning business on majority time, and I will yield, of course, to a Republican Senator coming to the floor because I know they have some 15 minutes or so remaining.

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

#### JUDICIAL NOMINATIONS

Mr. DURBIN. Madam President, it is time to end the delays and move ahead with up-or-down votes on these judicial nominations.

Right now there are 22 judicial nominations sitting on the judicial calendar: 17 district court and 5 circuit court nominees. These are appointments to Federal judgeships. In many instances they are appointments that are long overdue and desperately needed.

Twelve of these nominees were voted out of the Judiciary Committee last year—last year—two of them as far back as last October.

One would think they must be very controversial people to have made it this far but then stalled on the calendar. It turns out 17 of these 22 nominees received strong bipartisan support on the committee. Thirteen had blue slips, which is permission to go forward, from home State Republican Senators. Eleven of them would fill vacancies deemed as judicial emergencies.

I don't understand how we can do this to the Federal judiciary and to the men and women who are involved. The American people need these nominations to be confirmed in a timely fashion, and it is only fair to these men and women who are offering their lives in public service and sometimes jeopardizing their current jobs because of the uncertainty of their future.

All Americans want our Federal courts to be there to prosecute criminals, to make certain they have their day in court in civil proceedings, as well as to maintain the integrity of our judicial process.

There are only two ways to schedule a confirmation vote in the Senate: either a unanimous consent agreement or file cloture, which basically means force the issue. Forcing the issue takes time, and time isn't on our side. We have important things to do: finishing the Transportation bill today and moving forward on other important issues. But since President Obama took office, Senate Republicans have routinely objected when we have asked for their consent to promptly schedule confirmation votes on judicial nominees.

When we take a look at the record President Obama has faced, the obstruction from the Republican side of the aisle is unprecedented. President Obama's district court nominees have been forced to wait on the floor more than four times longer on average than those confirmed under President Bush or under President Clinton. Overall, at this point in their terms, President Obama has had only 131 nominees confirmed while President George W. Bush had 172 and President Clinton had 183.

Right now there are 39 judicial nominees pending either on the Judiciary

Committee or on the Senate floor. Promptly confirming these 39 would bring the President's overall numbers close to parity with President Bush. It wouldn't give him an advantage.

It is time to stop the delay. I think it is important for us to confirm these nominees as quickly as possible. We don't have to go through this painful and embarrassing charade of calling cloture vote after cloture vote on nominees who were accepted on a strong bipartisan vote, have been approved by Republican Senators, and are simply being held up on the hope by some Republican Senators that the day will come when there is a Republican President who can fill these vacancies. That isn't fair. Taking that approach is what gives our Chamber a bad name.

Ten of these nominees were reported out of committee last year. Why continue to delay them? I know during President Bush's first term the Senate confirmed 57 district court nominees within 7 days. These nominees languished on the calendar for months—months. If there is a legitimate objection to any nominee, step forward and state the objection. If a Member opposes the nominee, when the vote comes vote no. But for, goodness' sake, to let these names and nominations languish on the calendar isn't fair to the nominees, and it isn't fair to the courts that are in many instances facing judicial emergencies because of these vacancies.

I urge my colleagues—among these nominees are two for Illinois. Senator MARK KIRK and I had an agreed-to bipartisan approach. We put together bipartisan committees, we each found our favorite nominees, and we submitted the nominee to one another. We asked for approval; we got the approval. We have two extraordinarily good people: John Lee, proposed by me, and Jay Tharp, proposed by Senator KIRK. Both came out of committee without controversy—two excellent nominees sitting on the calendar.

For goodness' sake, I ask my colleagues, why would they do this? It isn't fair to these individuals. It isn't fair to Senator KIRK, and it isn't fair to this process. Let's move these names forward as quickly as possible.

I yield the floor.

#### RECOGNITION OF THE MINORITY LEADER

The ACTING PRESIDENT pro tempore. The Republican leader is recognized.

#### JUDICIAL NOMINATIONS

Mr. MCCONNELL. Madam President, this week the average price of a gallon of gas is \$4. The national unemployment rate is 8.3 percent. If we include those who are so frustrated they have stopped looking for work altogether, of course, the unemployment rate is much higher than 8.3 percent.

With all of this, the Democratic majority is about to spend more of the

Senate's time on another heavy-handed power play that will not get them anywhere. But it will make clear yet again how out of touch they are with the needs of the American people.

First, we need to make clear what this is about and what this is not about. This is not about making sure the President's judicial nominations are being treated fairly. Despite what the majority would like us to believe, the President is doing quite well on that score, as is clear from both the facts and the admissions of our Democratic friends themselves.

As Senator ALEXANDER noted yesterday, the Senate has confirmed 76 out of 78 district court nominees whom President Obama submitted in his first 2 years. The President withdrew the other two. That is a 97-percent success rate. Not bad.

The Senate confirmed 62 of President Obama's circuit and district court nominations last year alone. If we look at President Bush's and President Obama's lower court confirmations when they both had two Supreme Court appointments for the Senate to consider, President Obama is doing much better than President Bush. President Bush had a total of 120 lower court judges confirmed in 4 years, while President Obama already has 129 lower court judgeships confirmed in just 3 years. So President Obama has had more confirmations in a much shorter period of time.

To the extent there is anyone here to blame, the Obama administration and Senate Democrats should actually look in the mirror. Of the 83 current vacancies, over half of them—44—don't even have nominees. Let me say that again: Of the 83 current vacancies, over half of them—44—don't even have nominees.

As for the minority of the vacancies for which the President has actually submitted a name, almost half of those are still in the Judiciary Committee. So nearly three-fourths of the current vacancies—61 of 83—are due either to the administration failing to nominate someone or the Democratic-controlled Judiciary Committee failing to move them out of committee.

Given what we have to work with, it is no wonder the majority leader complimented Republicans—complimented Republicans—at the end of last year, noting that the Senate had, in fact, accomplished quite a bit on judicial nominations. That was the majority leader of the Senate just last year. The senior Senator from Minnesota, a Democrat on the Judiciary Committee, acknowledged the same thing.

So this is not about making sure the President is treated fairly in his judicial nominations. In fact, this isn't even about judicial nominations at all. This is about giving the President what he wants when he wants it, and what the President wants is to distract the country from his failed policies that have led to soaring gas prices and high unemployment and instead try to write a narrative of obstruction for his cam-

paign. He doesn't care if he eviscerates the Senate's advice and consent responsibility to do so.

What the majority should do is work with us to move these lifetime appointments in an orderly manner as we did 62 times last year and as we have already done 7 times this year. As I suggested yesterday, we could get to the bipartisan jobs bill this week and process some judicial nominations as well. The jobs bill passed the House by a vote of 390 to 23—390 to 23—and the President says he supports it as well. While we are working on a bill to get people back to work, we can make progress on other judicial nominations.

So I encourage the majority to work with us on both legislation and nominations and not to go off on a partisan, unprecedented path that would not get us anywhere and would not solve the problems Americans care about.

Madam President, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Alabama.

#### WORK TO BE DONE

Mr. SESSIONS. Madam President, I thank our Republican leader, Senator MCCONNELL, for bringing some perspective to this situation. I have seen the circumstances in the Senate and how the nominations process has changed over time. When I came here, there were no filibusters. Maybe there had been one in which a nomination was delayed and the nomination was withdrawn because it had certain problems, but virtually none. It was the position of the Senate that we did not filibuster nominations, and I still believe in that.

But I would point out that in 2001 the Democrats met in conference, and they had a plan to change the ground rules of confirmations. They announced it to the New York Times. Cass Sunstein, Marcia Greenberg, and Laurence Tribe met with them, and they came out and started filibustering systematically the fabulous nominations that President Bush had sent to the Senate. He sent eight nominees early in his administration. Two of them were renominations of President Clinton's nominees. They were promptly confirmed in the Senate. But immediately filibusters of superb nominees such as Priscilla Owen, Janice Rogers Brown, and others commenced, and we had a long process with that. This was led by the Democrats. Then-Senator Obama was one of them. He filibustered Justice Alito's nomination. We had not done that before. He participated in other filibusters. Senator REID voted to block an up-or-down vote 26 times. Senator LEAHY voted to block an up-or-down vote 27 times.

What happened was there was such a controversy over this changing of the rules in the early 2000s that it resulted in a compromise. Fourteen Senators—called the Gang of 14—decided they would break the logjam and create a new rule. It was not a perfect rule. I really think filibusters are not the