

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

right thing for judges. But they said: We will have them only in extraordinary circumstances. That sort of became the new rule, and a number of nominees eventually, after years of waiting, were confirmed. Others were not. That is sort of the way we operate today. But that is not the problem. That is not the problem at all.

Since President Obama has been in office, he has had about the same percentage of confirmations as President Bush had during the same period of time. He has had fewer lower court nominations because he has submitted fewer nominations—about 20 percent fewer nominations than President Bush. The average time from nomination to confirmation for President Obama's nominees is within a week of the average time from nomination to confirmation for Bush nominees. The process is working here.

What is happening? I am telling you, I know what is happening. This Democratic leadership in the Senate—and make no mistake, they control this body—has been trying to create a perception that there is obstruction going on, and they are going to pretend that these 17 nominees, who would have come up for a vote in regular order, are being blocked. This is part of an obstructive tactic, and it is not accurate, and it is not correct. Nominations have been moving at the regular pace. It is a gimmick. It is a political stunt.

What ought to be done in the Senate? We need to be working on what is important. We now will have, finally, after 3 weeks, votes today—maybe—to pass the highway bill. Well, why did it take 3 weeks? We went about 2 weeks without doing anything. We have had about 2 days' worth of votes all of a sudden at the end of 3 weeks, and the bill will be up for final passage.

Why was that not done 3 weeks ago? Because Senator REID obstructed the ability of Senators to offer amendments, and he tried to move this bill forward without amendments, except the ones he picked, and that is not right. The majority leader does not get to pick amendments or how many should be offered to legislation in the greatest deliberative body in the history of the world, the U.S. Senate. He does not have that power. So he tried to move the bill forward, and Republicans said: No, we will not move to a final vote until you agree on amendments. Now he has agreed to 20 or 30 amendments. In about 2 days' time, they will have all been voted on—some of them were withdrawn—and the bill will come up for final passage.

Why didn't it happen earlier? Because this is a rope-a-dope. They do not want to talk about the things that this country needs. One of them is a budget. It has been over 1,000 days since this Congress has passed a budget. Why aren't we spending time on that? Senator REID said it is foolish to pass a budget. It is not foolish to pass a budget. We are required to pass a budget. This country has never needed a budget more than it needs it today—never.

We are heading to financial catastrophe. Erskine Bowles chaired the debt commission—President Clinton's Chief of Staff—and he said we are heading to the most predictable financial crisis in our Nation's history. Why? Because of the debt we are running up. And we need to confront that, but Senator REID did not want to talk about it. He did not want his Members to have to vote. If you bring up a budget, Members have to vote. They get to offer amendments. They will talk about the debt course of America, which is on an unsustainable path. Everybody says that. Why aren't we talking about that?

Judicial nominations are moving at a reasonable pace, as they have always moved. There is nothing unusual about President Obama's ability to get his judges confirmed. I have probably voted for 90 percent of them. What is unusual is that we are violating the statutory law of the United States of America that says you should have a budget. We are required to pass a budget. By April 1, it should be before the Senate. It should be passed by April 15. Isn't that perfectly sane, that the United States of America would have a budget? And the Senate does not want to do that.

What else should we be talking about? We should be working to have more affordable American energy. We all want to create jobs. Our colleagues on the Democratic side rammed through a big stimulus bill that spent government money, ran up \$800 billion—every penny added to the debt of the United States. We were in debt and we spent \$800 billion—all borrowed, all adding to our debt. It did not really do anything for the economy. Only 4 percent of it went to roads and bridges. What a tragedy that was. It was supposed to fix our crumbling infrastructure. At least we would have had something concrete to show for it had we built roads and bridges.

So now we are in this situation: How do you create jobs? We cannot keep borrowing money. We do not have it. Expert after expert who has testified before the Budget Committee, where I am the ranking Republican, has told us you cannot keep borrowing this kind of money. Experts have told us that the size of the debt we have now—\$15 trillion—already is slowing growth in the country. We need economic growth, we do not need it slowed, and it is being slowed because we have run up so much debt, experts tell us. So I am worried about that. We have to deal with it.

How do we create growth? One of things we need to do is produce more American energy. We do not need a Secretary of Energy—I have taken to calling it the Department of Anti-Energy—who said in 2008 that he wanted to see the price of energy go up.

He was asked I think yesterday in the committee: Do you still believe that?

He said: Well, no, I have changed my mind since 2008. You know, the econ-

omy is not doing well, and maybe now at this point I don't think energy prices should go up.

Can you imagine the Secretary of Energy fundamentally having as his guiding principle that he wants to raise the price of energy? And the President said it himself before he was elected.

This is a radical idea driven by extremists who do not understand that the cost of energy hammers the American people. The average American is spending \$4,000 a year on gasoline, at almost \$400 a month. You were spending \$200 a month on your gasoline when President Obama took office. Now you are spending twice as much: \$400—\$200 a month in the form of a basic tax on you.

We are importing oil. But we are finding more in the United States, and we have better techniques for bringing it out of the ground. We can produce a lot more. Privately owned lands are showing increases in energy production and exploration. They are doing a good job. But the government owned lands are down 14 percent because the President is blocking production on government lands, blocking offshore production. He really is.

We were projected to have issued lease sales in the Gulf of Mexico on 12 major tracts. That has been reduced to just two in the last 2 years. This is putting us behind. Production of oil and gas in the Gulf of Mexico is down. Jobs are down. When we allow drilling in the Gulf of Mexico, oil companies bid for those rights. They pay money to the U.S. Government. Not only do they create jobs in America, they pay us money to get the right to drill and then they pay us for every barrel of oil they produce. It creates wealth for America. Why do we want to loan money to Brazil to produce oil and gas offshore when we can produce it in our own gulf?

So those are things on which we need to be focused. Why aren't we talking about that, in addition to the budget?

And taxes. I was talking to a businessman the other day. He said this investment tax credit that encourages you to invest in new machinery and other equipment for his company—he examined that, and he decided he would take advantage of it and accelerate a purchase of some things for his company. He got a big tax credit, but he said the paperwork was this thick. The lawyers and accountants and effort he had to go through cost him at least a third of the advantage he was supposed to get from the government. It is not necessary for things to be that complicated.

We need simplified, progrowth tax reform. Why is that not on the floor of the Senate? Isn't that a priority for America? I think everybody can agree that if we simplified our tax procedure, if we made it more growth-oriented, we could create jobs without losing revenue to the Federal Government, create economic growth, and put our country on a path to a sound future.

We have to have economic growth, and we cannot get it by continuing to borrow from our children—really borrowing currently—to spend money to try to jump-start through a sugar high the American economy that is dragging along.

We have this major problem with governmental regulations. I am hearing it everywhere I go—from farmers who are being told they cannot have dust on their farms. When Senator ROBERTS asked an EPA witness how are we going to keep dust down, they said, well, you can have a water truck and go by and water it. Now, how silly is that? They have work rules that keep children in families from helping out on the farm. They have rules dealing with a ditch, calling it a navigable stream. This is regulatory overreach of a monumental degree, and I am hearing it from business, I am hearing it from taxpayers, I am hearing it from farmers all over.

Every regulation needs to be examined. If it produces a positive result for America in terms of health and safety and the general welfare, OK, I am for it. But if it is the kind of regulation that does not produce a benefit but adds to the cost of doing business—costs that add up for the average American consumer—then it needs to be eliminated.

It would help create jobs and help make us more productive, as we work on producing American energy, which creates jobs in itself. That additional production of energy does have the tendency to pull down prices. There is no doubt about it. It may not happen day to day. But as energy reserves are increased, as energy productions and exploration occur and more is produced, it tends to bring down prices. So we need to focus on things that bring down prices of energy. We do not need to be mandating forms of energy that cost 2, 3, 4, 8, 10 times as much as the basic energy we have today.

We cannot afford it. It adds to the cost of doing business. The consumers pay it with their pocketbooks when they go to the store, and when businesses look for a place to build a plant, they look at the rest of the world. If our energy prices are lower and reliable, then they can afford to invest here, hire American workers.

But if our energy prices are too high—and I can cite examples of investments in my State of Alabama that were determined one way or the other based on energy prices. If the price of energy is too high, they go somewhere else. They cannot afford it. They have to seek the lowest price. That creates jobs and growth.

We need to have an Energy Secretary who understands his job is to protect the health and safety of America and produce as much energy as we can at the lowest possible price, not to be engaged in some social engineering. I have to tell you, it troubles me that the Secretary of Energy does not even own a car, he rides a bike. I mean, this

is who is running this country. It is the kind of idea that is not realistic for the average American citizen. People with big salaries and so forth, when the price of energy goes up, it does not bother them. But the average guy, the high prices hit his rent payment, hit his health care, his food, and he has to pay \$100 more a month, \$150 more a month for the same amount of gasoline.

We have small business paying more. Tell me that does not hurt this economy. Tell me that does not raise unemployment. It absolutely does. It is stupid. We do not need to be doing things that do not make sense. We cannot afford it. This Senate needs to be focused not on some unprecedented, unheard of, gimmicked-up complaint that we are now going to have 17 cloture votes on judges, many of whom have been on the Senate floor less than 1 month.

Half the nominees who have made it to the Senate today are now in committee. Senator LEAHY, our Democratic chairman, has not moved them out of committee yet. They will move. He moves them very fast, frankly. How can it be Senator MCCONNELL's fault that they have not been confirmed? It is a lifetime appointment. Judges are not entitled just to be given a lifetime appointment like that. People running for Congress, they work for months and years trying to achieve the job, putting a record out there. So it does not hurt for a judge to be sitting on the floor for a while.

Maybe someone will come forward and say: Let me tell you what that judge did to me or this is what he did wrong or something. Sometimes that happens. So we need a steady process, and we are moving forward well within the traditions of this Senate.

But what has happened is this Senate is obstructing legislation that is coming out of the House that would fix energy, that helps tax reform. There are small business growth proposals that are on the floor now, they are not even being brought up. They are being obstructed by Senator REID and the Democrats. That is a fact. I am not making this up. So this is a body that is not doing its job. The House produced a budget. They produced a historic budget. That was realistic. I would like to have seen them go a little further, frankly.

We may not have agreed with everything in it. But it was a historic budget. It changed the debt trajectory of America. It began to bring our debt on a downward path instead of this surging, upward path we are on. They did it last year and they are going to do it again this year.

What is the Senate going to do? Nothing. We are not going to have a budget for the United States of America. It is a sad day. I feel strongly about this. I have seen the debates over judges. I saw fabulous judges, like Justice Alito on the Supreme Court, be filibustered. I saw Chief Justice Roberts' nomination sit for a long period of

time when he was nominated for the circuit bench.

Alabama's fabulous Justice Bill Pryor, now on the Eleventh Circuit, was blocked for months and months and months. Janice Rogers Brown, Supreme Court of California, African-American, great justice; Priscilla Owens, "unanimously well qualified," Supreme Court Justice of Texas. She was fabulous. They held them all.

The only ones they confirmed were the two judges President Bush had graciously reappointed, whom President Clinton had nominated but were not confirmed at the end of his term. I will close by saying we do need to work on this issue of what the Senate needs to be focusing on. I believe it needs to be focusing on a budget, energy, taxes, regulations, things that will make a difference for America, make our country stronger and healthier and more productive and more competitive without adding to the debt.

I yield the floor and 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.

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

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

#### JUDICIAL NOMINATIONS

Mrs. BOXER. Madam President, I was listening with interest to my good friend from Alabama, a man I work with very closely on a number of issues. But on this one, we see the world a little differently. He has made his point that Democrats held up a lot of judges and so on. I understand that. But there is no comparison. Facts are stubborn things. We need to look at the facts when it comes to voting on judges.

I just wanted to share, before I talk about the highway bill, this one chart: "Judicial Nominee Wait Times." These are the facts. This is not made up. These are the facts. With President Clinton, we see the wait time. With Bush, we see the wait time. Obama, we see the wait time—way over 100 days. So we are going from 10 to 20, to over 100 days.

This tells the story. If people want to know why our majority leader has decided to bring up all these judges today, it is because of this. We have emergencies in some of our courts where they do not have the judges. These judges are so well qualified. We have one amazing judge awaiting to be confirmed from our Central District. I think he is about third on the list. He received a great vote out of the committee. These nominees have put their lives on hold.

This may sound odd, but my favorite part of the Constitution is the preamble. I read it a lot. When I go into