

EXECUTIVE SESSION

NOMINATION OF JACQUELINE H. NGUYEN TO BE UNITED STATES CIRCUIT JUDGE FOR THE NINTH CIRCUIT

NOMINATION OF KRISTINE GERHARD BAKER TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF ARKANSAS

NOMINATION OF JOHN Z. LEE TO BE UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF ILLINOIS

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to executive session to consider the following nominations, which the clerk will report.

The legislative clerk read the nominations of Jacqueline H. Nguyen, of California, to be United States Circuit Judge for the Ninth Circuit; Kristine Gerhard Baker, of Arkansas, to be United States District Judge for the Eastern District of Arkansas; and John Z. Lee, of Illinois, to be United States District Judge for the Northern District of Illinois.

The PRESIDING OFFICER. Under the previous order, there will be 60 minutes of debate equally divided in the usual form.

The Senator from Vermont.

Mr. LEAHY. Mr. President, for the last 4 months, the Senate has been forced to slowly work its way through the backlog created by Republican objections at the end of last year to consensus nominees. Finally, with consideration today of the long-delayed nomination of Judge Nguyen to fill a long-standing judicial emergency vacancy on the overburdened Ninth Circuit, the Senate will have completed the confirmations that could and should have taken place last year.

Today, 5 months into the year, is the first time the Senate is considering judicial nominations reported by the Judiciary Committee this year. Confirmations of the nominations of Kristine Baker to fill a judicial emergency vacancy in the Eastern District of Arkansas and John Lee to fill a judicial emergency vacancy in the Northern District of Illinois have been delayed for nearly 3 months. These nominees have the support of their home state Senators and of a bipartisan majority of the Judiciary Committee. Yet these consensus nominees have been delayed for months for no good reason.

The nominations we consider today are but three of the 22 judicial nominees available for final Senate action. Most are by any measure consensus nominees who could and should be confirmed without further delay. That would go a long way toward getting us on track to make real progress in reducing judicial vacancies that have plagued the Federal courts around the country.

I want to share with the Senate and the American people a chart comparing

vacancies during the first terms of President Bush and President Obama. This chart shows that the lack of real progress during the last 3½ years is in stark contrast to the way in which we moved to reduce judicial vacancies during the last Republican presidency.

During President Bush's first term we reduced the number of judicial vacancies by almost 75 percent. When I became Chairman in the summer of 2001, there were 110 vacancies. As Chairman, I worked with the administration and Senators from both sides of the aisle to confirm 100 judicial nominees of a conservative Republican President in 17 months. See how sharply the line slopes as we reduced vacancies in 2001 and 2002.

We continued when in the minority to work with Senate Republicans and confirm President Bush's consensus judicial nominations well into 2004, a presidential election year. At the end of that presidential term, the Senate had acted to confirm 205 circuit and district court nominees. The chart notes where we stood in May 2004, having reduced judicial vacancies under 50 on the way to 28 that August. By comparison, see how long vacancies have remained near or above 80 and how little comparative progress we have made during the 4 years of President Obama's first term. Again, if we could move forward to Senate votes on the 22 judicial nominees ready for final action, the Senate could reduce vacancies to less than 60 and make progress.

Today also marks the first Senate action this year to address the needs of the Ninth Circuit, by far the busiest Federal appeals court in the country. The Senate should have voted on the long-delayed nomination of Judge Jacqueline Nguyen of California to the Ninth Circuit over 5 months ago, after it was reported unanimously by the Judiciary Committee. Her nomination is one of three Ninth Circuit nominations currently pending and awaiting a Senate vote to fill judicial emergency vacancies plaguing that circuit. With nearly three times the number of cases pending as the next busiest circuit, we cannot afford to further delay Senate votes on the other two nominations to the Ninth Circuit, Paul Watford of California, reported favorably by the Committee over 3 months ago, or Andrew Hurwitz of Arizona, reported favorably over 2 months ago.

There is no good reason for Senate Republicans to further delay votes on these Ninth Circuit nominees. The 61 million people served by the Ninth Circuit are not served by this delay. The circuit is being forced to handle double the caseload of any other without its full complement of judges. The Senate should be expediting consideration not only of Judge Jacqueline Nguyen, but also of Paul Watford and Justice Andrew Hurwitz, not delaying them.

The Chief Judge of the Ninth Circuit, Judge Alex Kozinski, a Reagan appointee, along with the members of the Judicial Council of the Ninth Circuit, wrote to the Senate months ago emphasizing the Ninth Circuit's "des-

perate need for judges," urging the Senate to "act on judicial nominees without delay," and concluding "we fear that the public will suffer unless our vacancies are filled very promptly." The judicial emergency vacancies on the Ninth Circuit are harming litigants by creating unnecessary and costly delays. The Administrative Office of U.S. Courts reports that it takes nearly 5 months longer for the Ninth Circuit to issue an opinion after an appeal is filed, compared to all other circuits. The Ninth Circuit's backlog of pending cases far exceeds other Federal courts. As of the end of 2011, the Ninth Circuit had 13,913 cases pending before it, far more than any other circuit.

If caseloads were really a concern of Republican Senators, as they contended last year when they filibustered the nomination of Caitlin Halligan to the D.C. Circuit, they would not be delaying the nominations to fill judicial emergency vacancies in the Ninth Circuit. If caseloads were really a concern, Senate Republicans would consent to move forward with votes on Paul Watford and Justice Hurwitz and allow for up or down votes by the Senate without these months of unnecessary delays.

Given that all three are superbly qualified mainstream nominees with bipartisan support, the long delays that have plagued these nominations are hard to understand. Judge Nguyen, whose family fled to the United States in 1975 after the fall of South Vietnam, was confirmed unanimously to the district court in 2009 and the Senate Judiciary Committee unanimously supported her nomination to the Ninth Circuit last year. When confirmed, she will be the first Asian Pacific American woman to serve on a U.S. Court of Appeals in our history. She is the kind of nominee who should have been confirming in 5 days, not 5 months.

We still await Republican agreement to vote on the other two nominees, neither of whom would have been considered controversial by past Congresses. Paul Watford was rated unanimously well qualified by the ABA's Standing Committee on the Federal Judiciary, the highest rating possible. He clerked at the United States Supreme Court for Justice Ruth Bader Ginsburg and on the Ninth Circuit for now-Chief Judge Alex Kozinski. He was a Federal prosecutor in Los Angeles. He has the support of his home State Senators and bipartisan support from noted conservatives such as Daniel Collins, who served as Associate Deputy Attorney General in the Bush administration; Professors Eugene Volokh and Orin Kerr; and Jeremy Rosen, the former president of the Los Angeles chapter of the Federalist Society.

Justice Hurwitz is a respected and experience jurist on the Arizona Supreme Court. He also received the ABA's Standing Committee on the Federal Judiciary's highest rating possible, unanimously well qualified. This

nomination has the strong support of both his Republican home State Senators, Senator JOHN MCCAIN and Senator JON KYL.

We have much more work to do to help resolve the judicial vacancy crisis that has persisted for more than 3 years. Today the Senate finally votes on 3 of the 22 judicial nominations that have been reported by the Judiciary Committee after a thorough review. Despite vacancies in nearly 1 out of every 10 Federal judgeships, Senate Republicans continue to delay votes and are stalling action on nearly 20 current judicial nominations on which the Senate could be taking final action. If confirmed those judges would serve 150 million Americans.

When the majority leader and the Republican leader came to their interim understanding in March, it resulted in votes on 14 of the 22 judicial nominations then awaiting final consideration. Because the arrangement took months to implement what the Senate could have done in hours, the backlog of judicial vacancies and judicial nominees continues. Today we are right back where we started with 22 judicial nominees awaiting action. I know that the majority leader is working to continue seeking Republican agreement to debate and vote on the remaining judicial nominees. It should not require overcoming filibusters and political standoffs for the Senate to do its job of promptly considering judicial nominations, especially when so many of them have bipartisan support and are consensus nominees.

The backlog of nominations ready for final action is not necessary or typical. It is an artificial backlog created by the refusal of Senate Republicans to consider judicial nominees at the end of each of the last 2 years and their insistence of delays of months before confirmation of consensus nominees. These practices have meant that the Senate's confirmations have barely kept up with attrition on the Federal bench. When Republicans refused to consent to consider 19 judicial nominations at the end of 2010, it took us until June of last year to work through those nominations. When they did so again at the end of last year, it took us until today, a week into May, to catch up with last year's nominations. That is not how to reduce judicial vacancies.

The Senate needs to continue working and continue consideration of judicial nominees recommended by the Judiciary Committee if we are to make real progress in reducing the burden of judicial vacancies. That is what we did in the most recent presidential election years of 2004 and 2008 and what we should be doing this year. Before we hear any more talk of slowing down or shutting off judicial confirmations, we have a long way to go. We need to work to reduce the vacancies that are burdening the Federal judiciary and the millions of Americans who rely on our Federal courts to seek justice.

At this same point in the Bush administration, we had reduced judicial

vacancies around the country to under 50. Today they stand at nearly 80. And by August 2004, we reduced judicial vacancies to just 28 vacancies. Despite 2004 being a presidential election year, we were able to reduce vacancies to the lowest level in the last 20 years. At a time of great turmoil and political confrontation, despite the attack on 9/11, the anthrax letters shutting down Senate offices, and the ideologically driven judicial selections of President Bush, we worked together to promptly confirm consensus nominees and significantly reduce judicial vacancies.

In 2008, another presidential election year, we again worked to reduce judicial vacancies and by October we were able to reduce judicial vacancies back down to 34 vacancies. I accommodated Senate Republicans and continued holding expedited hearings and votes on judicial nominations into September 2008.

We lowered vacancy rates more than twice as quickly during President Bush's first term as Senate Republicans have allowed during President Obama's first term. The vacancy rate remains nearly twice what it was at this point in the first term of President Bush. The Senate is 30 behind the number of circuit and district court confirmations at this point in President Bush's fourth year in office. We are 63 confirmations from the total of 205 that we reached by the end of President Bush's fourth year.

Today's consensus nominees are examples of those who have been unnecessarily stalled for months.

Kristine Baker, nominated to fill a judicial emergency vacancy on the Eastern District of Arkansas, has spent nearly 15 years in private practice after graduating with honors from the University of Arkansas School of Law and clerking for Judge Susan Weber Wright on the court to which she has been nominated. Ms. Baker's nomination has the bipartisan support of her home State Senators. Her nomination was favorably reported by the Judiciary Committee with the support of nearly every Senator on February 16.

John Lee, nominated to fill one of three judicial emergency vacancies on the Northern District of Illinois, has worked in private practice for almost 20 years. His personal story is remarkable. Born to a coal miner and a nurse of Korean descent, Mr. Lee immigrated to the United States when he was 5 years old and went on to graduate from Harvard College and Harvard Law School. If confirmed, he will become the second Korean-American to serve as a Federal district court judge, and the second Asian-American to serve as a Federal judge in the courts encompassed by the Seventh Circuit. Mr. Lee's nomination has the bipartisan support of his home State Senators. They both also support the confirmation of John Tharp, a former nominee of President George W. Bush, to another judicial emergency vacancy in that district. With Republican consent

we could also be voting on the Tharp nomination. Both Illinois nominations were favorably reported by the Judiciary Committee with only one Senator dissenting on February 16.

Today's votes must be a starting point for considering this year's judicial nominations if we want to bring down judicial vacancies and hope to match the progress we were able to make in 2004 and 2008, both Presidential election years in which we considered the nominations of a Republican President and continued to reduce judicial vacancies. I hope that Senate Republicans will stop blocking prompt confirmation of consensus nominees. That is a destructive development and new practice that has contributed to keeping the Senate behind the curve, keeping Federal judicial vacancies unfilled, overburdening the Federal courts, and keeping Americans from securing prompt justice. The American people deserve better.

I suggest the absence of a quorum and ask unanimous consent the time be divided equally.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BOOZMAN. Mr. President, I rise today in support of Kristine Baker's nomination as United States District Judge for the Eastern District of Arkansas. Kris Baker is a great lawyer recognized by her peers as well as legal organizations for her dedication to litigation on a wide range of issues, from deceptive trade practices to first amendment matters.

I had the opportunity to introduce her during her confirmation hearing before the Senate Judiciary Committee. After reviewing her record and meeting with her personally, as well as meeting with those who know her, looking at her reputation, looking at her abilities, I am confident that Kris's experience makes her qualified to be the next eastern district judge of Arkansas.

Kris moved to Arkansas in 1994 to pursue a JD from the University of Arkansas School of Law. During law school, she established herself as a hard worker committed to success. She graduated with high honors, was articles editor for the Arkansas Law Review, a member of the board of advocates, and a member of the University of Arkansas first amendment national moot court team.

Kris began her legal career after graduation as a law clerk for Judge Susan Wright, then chief judge for the Eastern District of Arkansas. In 2000 she joined her current law firm, Quattlebaum, Grooms, Tull, and Burrow, and became a partner 2 years later.

Kris has earned the respect of the legal community across Arkansas, and I believe her litigation experience has given her the knowledge, the skills, and the temperament needed to successfully serve on the Federal bench.

I am honored to recommend that the Senate confirm Kristine Baker to serve the people of America as a judge for the Eastern District of Arkansas.

I note the absence of a quorum and yield the floor.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GRASSLEY. Mr. President, is it appropriate in the Senate schedule to start debate on the judges?

The PRESIDING OFFICER. The judges are pending.

Mr. GRASSLEY. Mr. President, today the Senate is expected to confirm three additional judicial nominees. With the confirmation of Judge Nguyen to the ninth circuit, Ms. Baker to the Eastern District of Arkansas, and Mr. Lee to the Northern District of Illinois, we will have confirmed 83 judicial nominees during this Congress.

It is somewhat ironic that today, according to press accounts, the White House is holding a forum and strategy session with administration officials and 150 supporters from across the country concerned about the judicial vacancy rate. I wonder if at this strategy session the White House took a look in the mirror when addressing the vacancy rate. Only the President can make nominations to the Senate. While we have a responsibility to advise and consent on those nominations, Senators cannot fill vacancies unless people are nominated for those positions. I would note the President has failed to do this in 47 of the 76 remaining vacancies, including 21 of 35 seats designated as judicial emergencies. That is more than 60 percent of the current vacancies with no nominee.

The White House and the Senate majority are fond of their claim that millions of Americans are living in districts with vacancies. Of course, what the other side fails to tell you is that 88 million Americans live in judicial districts where vacancies exist because the President has failed to nominate judges. Most of those seats have been vacant for more than a whole year. Once again, if the White House is serious about judicial vacancies, it holds the key to nominating and filling those vacancies. It has failed in too many instances to use that key.

Furthermore, according to the press accounts, in its invitation, the White House accused Republicans of subjecting consensus nominees to "unprecedented delays and filibusters." This is a statement without factual basis, and it ignores the record of judicial nominations.

I would note that after today's confirmation, there are 12 nominees on the Executive Calendar that might fall into the category of consensus nominees. Seven nominees on the calendar had significant opposition in the committee and clearly are not consensus nominees. The substantial majority of those 12 nominees were reported out of committee less than 10 legislative days ago. Not only is there no filibuster against any of the consensus nominees, but I am not sure how there can be accusation of delay and particularly partisan delay.

Let me remind my colleagues on the other side of the aisle of the obstructionism, delay, and filibusters which they perfected. The history of President Bush's nominees to the Ninth Circuit provides some examples. President Bush nominated nine individuals to the Ninth Circuit. Three of those nominations were filibustered. Two of those filibusters were successful. The nominations of Carolyn Kuhl and William Gerry Myers languished for years before being returned to the President. A fourth nominee, Randy Smith, waited over 14 months before finally being confirmed after his nomination was blocked and returned to the President. After being renominated, he was finally confirmed unanimously.

President Obama, on the other hand, has nominated six individuals to the Ninth Circuit. Only one of those nominees was subject to a cloture vote. After the vote failed, the nominee withdrew. Today we confirm the third nomination of this President to the Ninth Circuit. Those three confirmations took an average of about 8 months from the date of nomination. For all of President Obama's circuit nominees, the average time from nomination to confirmation is about 242 days. For President Bush's circuit nominees, the average wait for confirmation was 350 days. One might ask why President Bush was treated so differently, with so much more delay than this President has been treated or his nominees have been treated.

Another example of past Democratic obstruction and delay is in Arkansas. Today we confirm President Obama's nominee to the Eastern District of Arkansas within about 6 months of her nomination. I would note that President Bush's nominee, Jay Leon Holmes, sat on the Executive Calendar for more than 14 months awaiting confirmation. From nomination, his confirmation took over 17 months. Again, why were President Bush's nominees treated worse than this President's nominees?

I can only conclude that the White House has selective memory or different definitions when it accuses Republicans of unprecedented delay and obstructionism. I am disappointed that the President continues to blame Republicans for vacancies that have no nominee and chooses to follow the political strategy of blaming rather than working with the Senate to nominate

consensus nominees. In other words, why isn't the President, instead of having a conference on why there are judicial vacancies, taking the same amount of time to get the names up here so we can work on them?

Mr. President, Jacqueline Nguyen, presently serving as a U.S. district judge, is nominated to be a U.S. circuit judge for the Ninth Circuit. Judge Nguyen received her A.B. from Occidental College in 1987 and her J.D. from the University of California, Los Angeles School of Law, in 1991. She began her legal career as an associate in the Litigation Department at the Los Angeles law firm of Musick, Peeler & Garrett where she handled litigation matters involving commercial disputes, intellectual property, and construction defects. From 1995 until 2002, Judge Nguyen was an Assistant U.S. Attorney in the U.S. Attorney's Office for the Central District of California. There, she handled the investigation and prosecution of human trafficking, immigration fraud, mail and tax fraud, and money laundering cases. In 2000, Judge Nguyen became deputy chief of the General Crimes Section. In that position, she handled the training and supervision of all new Assistant U.S. Attorneys and various types of criminal cases involving violent crimes, drug trafficking, firearms violations, and fraud.

In 2002, Governor Gray Davis appointed Judge Nguyen to the Superior Court for the County of Los Angeles. In 2009, she was nominated by President Obama to be U.S. district judge for the Central District of California. The Senate approved her nomination on December 1, 2009 by a vote of 97-0. In her capacity as a judge, she has presided over thousands of cases.

The ABA Standing Committee on the Federal judiciary unanimously rated her as "qualified" for this position.

Kristine Gerhard Baker is nominated to be U.S. district judge for the Eastern District of Arkansas. Ms. Baker received her B.A. from St. Louis University in 1993 and her J.D. from University of Arkansas School of Law in 1996. She served as a law clerk for the Honorable Susan Webber Wright, then the chief judge of the United States District Court for the Eastern District of Arkansas. In 1998 she became an associate in the law firm Williams & Anderson, LLP, where she handled commercial litigation cases involving breach of contract and fraud. In 2000, Ms. Baker joined the law firm Quattlebaum, Grooms, Tull & Burrow, PLLC. Her focus at the firm has been devoted to complex commercial litigation cases, including cases involving employment discrimination, securities violations, unfair competition, sic products liability, Fair Housing Act claims, and Freedom of Information Act claims. She has handled in administrative proceedings and in Federal and State court claims for discrimination, harassment, and wrongful termination as well as claims arising under

the Family and Medical Leave Act, the Americans with Disabilities Act, and the Employee Retirement Income Security Act. The ABA Standing Committee on the Federal Judiciary gave her a substantial majority rating of "well qualified" and a minority "qualified."

John Z. Lee is nominated to be U.S. district judge for the Northern District of Illinois. Mr. Lee received his A.B. from Harvard College in 1989 and his J.D. from Harvard Law School in 1992. He began his legal career as a trial attorney for the United States Department of Justice, Environment & Natural Resources Division. There he represented the United States in Federal courts on issues primarily involving environmental statutes. He also served as special assistant to the counsel to former Attorney General Janet Reno.

In 1994, he left the public sector to take a job as an associate at Mayer Brown. In 1996, he joined a new firm, Grippo & Elden, as an associate. In 1999, he moved to his current firm, Freeborn & Peters. There he made income partner in 2001 and equity partner in 2004. In private practice, Mr. Lee has focused almost entirely on litigation, expanding his expertise to complex commercial disputes, including cases involving antitrust, intellectual property, employment, and business tort issues. Most of these cases were in Federal courts, particularly the Seventh and Ninth Circuits. He also represented clients in criminal investigations of antitrust and financial regulations violations. In private practice, he represents public and private companies, individual businesspersons and low-income clients pro bono. He has an ABA rating of substantial majority "qualified," minority "not qualified."

I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, I rise today to speak in support of the nominations of John Lee and Jay Tharp to serve on the District Court for the Northern District of Illinois.

I have listened carefully to the statement made by the ranking Republican on the Senate Judiciary Committee. I would note several things.

First, at this point in President George W. Bush's first term, the Democratic Senate had approved 30 more judges than have been approved under the current situation with this divided Senate. Second, it would take 60 judicial nominations to be filled by the end of the year for President Obama to have received the same treatment as President George W. Bush in his first term—60. We could get a lot of that done today. Right here are 22 nominations for the judiciary that have cleared the committee. If the Senator from Iowa would like to come to the floor and join me, we could make a joint unanimous consent request to bring up all 22 immediately—every one of them—all of whom have cleared the committee. Those Senators who want

to vote against those nominations may do so. They can vote no. But, unfortunately, as we can see from this calendar, the names of the nominees languished on this calendar for months—literally for months—and many times passed with a voice vote or a unanimous vote. It really does not speak well of this process that we have reached this point, this slowdown.

What many Republicans are waiting for is the so-called Thurmond rule. It is not a rule written in a book; it refers to Senator Strom Thurmond of South Carolina, who kind of announced at one point in his career: We are going to stop considering judges as of a certain point in an election year. I have been in the Senate a few years and have heard so many different explanations about what the Thurmond rule really means, although I am not sure anyone really knows. All we know is that in a political campaign year, politics rule, and in this situation many Republicans are holding up perfectly fine nominees approved by Democrats and Republicans in committee for no other reason but the hope that they can win back the White House in November and fill the nominees with their favorites. I don't think that is fair to the nominees who have gone through the process, many of whom have been cleared by a bipartisan vote and should be confirmed in a timely fashion.

Let me speak to a particular issue that is addressed by the nominee before us. There are two nominees from Illinois to fill vacancies: John Lee and Jay Tharp. The chief judge of the Northern District, Judge Jim Holderman, sent a letter to me and Senator KIRK in February calling for Mr. Lee and Mr. Tharp to be confirmed without delay because of the heavy caseload in this court. Senator KIRK and I decided to work together on a bipartisan basis, and we did. We had a process on which we both agreed. He picked a bipartisan group to come up with his nominee and I did the same on my side. But the understanding was that at the end of the day, neither of our nominees would move forward without the approval of the other Senator. So, in fact, they were bipartisan choices, both of them. John Lee is my choice. Jay Tharp is Senator KIRK's choice. We both support one another's choice. We believe both of these nominees have the experience, qualifications, temperament, and integrity necessary to serve in the Federal judiciary.

Mr. Lee and Mr. Tharp were both nominated on November 10, 2011—6 months ago. They appeared together in a hearing before the Judiciary Committee in January. They were both reported out of committee in February on a bipartisan voice vote.

There was an agreement reached between Senator MCCONNELL and Senator HARRY REID, the majority leader, about the nominees we brought forward for a vote. I was surprised when it was announced in March that the Lee and Tharp nominations, which had been to-

gether all through the process, were separated. The deal or arrangement called for John Lee to be scheduled for a confirmation vote by May 7, but at the insistence of the Republican leader, Senator MCCONNELL, the deal did not include all of the nominees on the Senate calendar and it did not schedule a vote for Mr. Jay Tharp, Senator KIRK's nominee. I believe they should be confirmed together, just as they were nominated together and went through the committee together.

As soon as I heard about this so-called arrangement, I went first to Senator KYL and then to Senator MCCONNELL and said: Don't do this. Don't hold up Senator KIRK's nominee. He is in the hospital—now he is home, thank goodness—recovering from a stroke. We did this together. We are working together. Don't separate these two fine men. There is no reason to do it.

But I understand that this was the arrangement and they didn't want to change it—even to help Senator KIRK under these circumstances. They wanted to do only two nominees a week over a 7-week period of time, and the cutoff—the line they drew—was, unfortunately, between Mr. Lee and Mr. Tharp.

Well, I was going to propound a unanimous consent request today to include Mr. Tharp along with Mr. Lee on the vote we are about to take. There is only one reason I am not. We have received an ironclad assurance from the Senate Republican floor staff that Mr. Tharp is going to be called on a timely basis during this work period. I am going to hold them to it. I don't want to embarrass anyone, but it bothers me that the nominee of Senator KIRK is being held up by the Republican side of the aisle when it should be voted on today. There is no reason why it should not be voted on today. We should vote for both of them. But because a word has been given to me by a staff member whom I respect very much, I won't make this unanimous consent request. However, let me say this: If something happens—I don't know what it might be, and I hope it doesn't—I am prepared to come to the floor and propound that unanimous consent request not only on behalf of Senator KIRK but on behalf of my State and on behalf of my own interests in making sure that our Federal judiciary has a complement of qualified people.

Let me say a few words about each nominee—extraordinarily good nominees.

John Lee has been nominated to fill the judicial vacancy held by Judge David Coar. Mr. Lee is currently a partner at the law firm of Freeborn & Peters in Chicago, where he practices primarily in commercial litigation.

He is the son of a coal miner and a nurse. He immigrated to this country, to Chicago, at a very young age. From humble beginnings, he attended Harvard College, where he graduated magna cum laude and then earned his

law degree cum laude from Harvard Law School.

After law school, Mr. Lee worked as a trial attorney in the Department of Justice Environment and Natural Resources Division. After his tenure at the Justice Department, he worked in private practice and eventually joined the firm at which he currently works. His law practice has focused on antitrust, intellectual property, environmental, and other complex commercial litigation matters. He has received numerous awards and recognitions, including being named a "Leading Lawyer" from 2008 through 2011 by the Leading Lawyers Network.

Mr. Lee has an outstanding record of community service, including his work as president of the board of directors of Asian Human Services of Chicago, his service on the board of directors of the CARPLS legal hotline for low-income Cook County residents, and his service on the board of the Asian American Bar Association of Greater Chicago.

This is a historic nomination for John Lee. Upon confirmation, he will be the first Korean American ever to serve as a Federal article III judge in Illinois and only the second to serve in that capacity in our entire Nation's history.

Let me say a word about Jay Tharp. Again, I am disappointed that I couldn't persuade the Republican leadership to include him today, but I have their assurance that he will be called during this work period.

Jay Tharp has been nominated to fill the Chicago district court judgeship that opened as a result of the senior status of Judge Blanche Manning. Mr. Tharp is currently a partner in the Chicago office of Mayer Brown, where he is the coleader of the firm's securities litigation and enforcement practice.

He was born into a military family as the son of a lieutenant colonel in the Marine Corps. He attended Duke University on an ROTC scholarship, received his undergraduate degree summa cum laude, and was commissioned as a second lieutenant in the Marine Corps. Jay Tharp served in Active Duty in the Marines for 6 years, achieving the rank of captain and earning the Navy Achievement Medal and the Navy Distinguished Midshipman Award.

After his military service, Mr. Tharp attended Northwestern University Law School, graduating magna cum laude, and served on the Northwestern University Law Review.

Upon graduation, he served as a judicial clerk for Judge Joel Flaum on the Seventh Circuit Court of Appeals and then worked as an assistant U.S. attorney for 6 years in Chicago.

After his tenure as a Federal prosecutor, he joined Mayer Brown, where his practice specializes in complex commercial litigation and criminal investigations. He has received numerous recognitions.

Mr. Tharp has served as an adjunct professor of trial advocacy at North-

western University Law School, and he also serves as a member of the Law Fund Board at Northwestern, which oversees fundraising efforts by law school alumni.

These are two extraordinarily good nominees who went through the bipartisan process together, were approved by Senator KIRK and approved by me, went through their investigative period in the White House together, came to the committee together, were reported out together, came to the calendar together but were separated out. That is unfair.

I hope by the end of this work period Mr. Tharp will join John Lee on the Federal bench. They are two exceptionally good nominees. On behalf of Senator KIRK, I will do everything to make sure this happens in the days ahead.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. PRYOR. Mr. President, I rise today to speak on behalf of a friend of mine who is going to be voted on by the Senate shortly to be a U.S. district court judge for the Eastern District of Arkansas. But before I do, I need to offer a few comments on what the Senator from Iowa and the Senator from Illinois said a few moments ago that I agree with.

It is taking too long to get these nominees to this point in the process. There are too many games that are being played. From my stand, both sides are at fault. I would hope my colleagues would stop playing games and stop even the blame game, but let's get to work and let's help clear up the backlog in the Federal judiciary.

Right now, it is underresourced. We do have a judicial emergency in this particular district I am about to talk about. As they say, justice delayed is justice denied. We need these judges on the bench, and I would hope the partisanship would stop.

In Arkansas we are very fortunate to have very strong Federal judges. We have a history of that. Part of the reason we do is because our judges are, for the most part, nonpolitical. Sure, they come from various backgrounds, but there is a consensus on these judges that they are going to be good judges, and that is the tradition we have in our State.

We have a total of eight district court judges in our State, and Kris Baker fits perfectly in that line. She has a true record of distinguished service in the legal community. She is well known and well respected, and she will be a great U.S. district court judge for the Eastern District of Arkansas.

The court right now, nationwide, is about 20 percent understaffed. That is why it is great to have someone who has an ABA "well-qualified" recommendation to go along with her nomination.

She came out of the Judiciary Committee on a very large bipartisan vote. The reason is she has been with a mid-sized law firm in Little Rock since

2000, she regularly has accepted prisoner and other appointment cases from the Federal courts, she has played a leadership role not just in the legal community but in other organizations in the larger community, and she is going to be a fantastic addition to the Federal bench, not just for Arkansas but nationwide.

Whenever I look at these nominees, I ask myself three questions: First, can they be fair and impartial? I think for Kris, absolutely the answer is yes.

Second, do they bring to the bench credentials that represent the best and the brightest in the legal community? In her case, the answer is yes.

Third—this is especially important for trial court judges—do they have the proper judicial temperament? For Kris Baker, the answer to all three of these questions is a resounding yes.

So I would ask my colleagues to give her a favorable voice vote, as I understand it, in a few moments. But that tells us how noncontroversial she is and what a great credit she has been to the legal community and how excited we are to have her as a member of the Federal judiciary.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Mr. President, I rise to speak in strong support of Judge Jacqueline Nguyen's nomination. She was unanimously approved by the Judiciary Committee. She is an outstanding jurist with a 10-year track record of success as a trial judge in my State.

I recommended Judge Nguyen to President Obama to the district court in 2009 after my bipartisan judicial selection committee gave her its highest recommendation. The Senate confirmed her then unanimously 97 to 0 in 2009. I have no doubt she will be an outstanding circuit court judge, and I hope my colleagues will support her nomination.

Judge Nguyen earned her bachelor's degree from Occidental College and her law degree from the UCLA School of Law.

After law school, she practiced commercial law for 4 years with the law firm of Musick, Peeler & Garrett. She then moved into public service, becoming an assistant U.S. attorney in Los Angeles. During her 7 years there, she prosecuted a broad array of crimes, including violent crimes, narcotics trafficking, organized crime, gun cases, and all kinds of fraud.

In 2000 she received a special commendation from FBI Director Louis Freeh for obtaining the first conviction ever in the United States against a defendant for providing material support to a designated terrorist organization.

The Justice Department recognized her with numerous other awards and commendations for superior performance, and she was promoted to Deputy Chief of the General Crimes Section.

In 2002 Governor Gray Davis appointed Judge Nguyen to the Los Angeles superior court, where she established a track record of success as a distinguished jurist.

In 2009 President Obama nominated her to the district court on my recommendation, and she was confirmed unanimously.

Over nearly 10 years, as a State and Federal judge, Judge Nguyen has presided over thousands of cases, including 75 jury trials and 12 bench trials. She prizes fairness and integrity, and treats all parties fairly and with respect.

Those who know Judge Nguyen—including two former U.S. attorneys appointed by President George W. Bush—have praised Judge Nguyen for her first-rate legal mind and judicial temperament.

Debra Yang, who led the U.S. Attorney's Office from 2002 to 2006, after being appointed by President George W. Bush, submitted a letter to the Judiciary Committee in support of Judge Nguyen's nomination.

Yang says that she "would make an excellent Federal . . . court judge." She also reports that her "reputation among . . . colleagues is tremendous."

Thomas O'Brien, who was appointed U.S. attorney by President Bush in 2007, has also submitted a letter endorsing Judge Nguyen's nomination. O'Brien says Judge Nguyen "handled complex and controversial cases with technical finesse and grace" and that Judge Nguyen is a "highly qualified nominee who is intelligent, skilled, and exercises sound judgment."

But she also has an inspiring life story. She was born in South Vietnam in the midst of the Vietnam war. She came to America at the age of 10. Her family lived in a tent in a San Diego refugee camp for 3 months before moving to Los Angeles, where her parents worked two or three jobs at a time.

Judge Nguyen and her five siblings helped their parents after school and on weekends. They helped to clean dental offices and to peel and cut apples. They helped run a small doughnut shop, which their parents scrimped and saved to open.

Judge Nguyen worked her way up—through school, as a lawyer and prosecutor, and as a trial judge. If she is confirmed today, she will be the first Asian-American female Federal appeals court judge, and I am proud to express my very strong support for her nomination.

I would like to conclude by expressing my view that it is absolutely critical that cooperation on judicial nominations continue.

Nearly 10 percent of judicial positions are currently vacant, Mr. President, as you well know—twice as many as when President Bush left office. This high vacancy rate is today being felt more than anywhere else by States in the Ninth Circuit. California and Arizona are home to some of the busiest Federal trial courts in the Nation. This

means businesses, individuals, and prosecutors already are struggling with severely overburdened Federal courts.

The Ninth Circuit is also the busiest Federal appellate court in the country. It has over 1,400 appeals pending per three-judge panel—the most of any circuit by a wide margin, and over twice the average of the other circuits.

The Judicial Conference of the United States has declared each Ninth Circuit vacancy a judicial emergency.

Judge Nguyen's confirmation today will help ease the burden, but it will not do enough. Paul Watford is another outstanding Ninth Circuit nominee from California. He was approved by the Judiciary Committee 3 months ago. Based on the calendar, he should be the next circuit court nominee to receive a confirmation vote in this body.

He has sterling qualifications. He has worked as a Federal prosecutor and an appellate attorney at a prestigious law firm. He clerked for Chief Judge Alex Kozinski and for Justice Ruth Bader Ginsburg. He is a moderate nominee, well schooled in the law. He has support on both sides of the aisle, including from two former presidents of the Los Angeles chapter of the Federalist Society.

So I hope the Senate will consider Mr. Watford's nomination very soon. It is a judicial emergency.

So, once again, I thank the leaders on both sides for agreeing to bring Judge Nguyen's nomination to the floor. I urge my colleagues to support this nomination. I hope we will continue to confirm highly qualified nominees to our Federal courts, which is especially important to the Ninth Circuit.

Mrs. BOXER. Mr. President, I wish to express my strong support for California District Court Judge Jacqueline Nguyen, who has been nominated for a seat on the Ninth Circuit Court of Appeals. When confirmed, Judge Nguyen will make history as the first Asian-American woman to serve on the Federal courts of appeals.

Judge Nguyen has had a distinguished career. She is a former Federal prosecutor who secured the first-ever conviction of a defendant for providing material support to a designated foreign terrorist group. She served as a California Superior Court judge from 2002 until 2009, when she was nominated for a seat on the U.S. District Court for the Central District of California. She was confirmed by a vote of 97 to 0.

I congratulate Judge Nguyen and her family on this important and historic day and urge my colleagues to vote to confirm this well-qualified nominee to the Ninth Circuit.

I thank the Chair and yield the floor. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. CASEY). Without objection, it is so ordered.

Mr. CONRAD. Mr. President, I ask for the yeas and nays on the first nomination.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is, Will the Senate advise and consent to the nomination of Jacqueline H. Nguyen, of California, to be United States Circuit Judge for the Ninth Circuit?

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Hawaii (Mr. INOUE) is necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from South Carolina (Mr. DEMINT), the Senator from South Carolina (Mr. GRAHAM), the Senator from Illinois (Mr. KIRK), the Senator from Indiana (Mr. LUGAR), and the Senator from Alaska (MS. MURKOWSKI).

Further, if present and voting, the Senator from South Carolina (Mr. DEMINT) would have voted "nay."

The PRESIDING OFFICER (Mrs. HAGAN). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 91, nays 3, as follows:

[Rollcall Vote No. 88 Ex.]

YEAS—91

Akaka	Feinstein	Moran
Alexander	Franken	Murray
Ayotte	Gillibrand	Nelson (NE)
Barrasso	Grassley	Nelson (FL)
Baucus	Hagan	Paul
Begich	Harkin	Portman
Bennet	Hatch	Pryor
Bingaman	Heller	Reed
Blumenthal	Hoeven	Reid
Blunt	Hutchison	Risch
Boozman	Inhofe	Roberts
Boxer	Isakson	Rockefeller
Brown (MA)	Johanns	Rubio
Brown (OH)	Johnson (SD)	Sanders
Burr	Johnson (WI)	Schumer
Cantwell	Kerry	Sessions
Cardin	Klobuchar	Shaheen
Carper	Kohl	Shelby
Casey	Kyl	Snowe
Chambliss	Landrieu	Stabenow
Coats	Lautenberg	Tester
Coburn	Leahy	Thune
Cochran	Levin	Udall (CO)
Collins	Lieberman	Udall (NM)
Conrad	Manchin	Warner
Coons	McCain	Webb
Corker	McCaskill	Whitehouse
Cornyn	McConnell	Wicker
Crapo	Menendez	Wyden
Durbin	Merkley	
Enzi	Mikulski	

NAYS—3

Lee	Toomey	Vitter
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NOT VOTING—6

DeMint	Inouye	Lugar
Graham	Kirk	Murkowski

The nomination was confirmed.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Kristine Gerhard Baker, of Arkansas, to be United States District Judge for the Eastern District of Arkansas.

The nomination was confirmed.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of John Z. Lee, of Illinois, to be United States District Judge for the Northern District of Illinois.

The nomination was confirmed.

The PRESIDING OFFICER. Under the previous order, the motions to reconsider are considered made and laid on the table. The President will be immediately notified of the Senate's action.

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will resume legislative session.

Mr. REID. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BROWN of Ohio. Madam President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BROWN of Ohio. I ask unanimous consent to speak as in morning business for up to 10 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

VOTING RIGHTS

Mr. BROWN of Ohio. Madam President, earlier today, Senator DURBIN and the Senate Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights held a hearing in Cleveland to examine efforts that could hinder the ability of Ohioans to exercise one of their fundamental constitutional rights, the right to vote. These efforts, in the guise of preventing fraud, are part of a cynical effort to impede access to the ballot. Specifically, H.B. 194 in Ohio repeals a number of commonsense measures that assist people with voting.

For 8 years I served as secretary of state of Ohio, charged with administering elections, so I understand what goes into ensuring the fundamental right to vote. Inherent in that responsibility is ensuring that voting is accessible, free of intimidation and roadblocks.

As a State, over a period of decades, Ohio legislators undertook a bipartisan—and I underscore that word “bipartisan”—effort to help Ohioans get access to the polls. When I was secretary of state, we had significant input and assistance from Republicans as we made voting laws work for huge numbers of people. We understood Ohioans had many priorities pulling them in many directions so we ought to make registration accessible. People could register using utility bills. The electric company included registration forms in utility bills. McDonald's, at my request, printed 1 million tray liners so people could actually fill them out to register to vote. At the Bureau

of Motor Vehicles, people could register to vote. This was bipartisan. The legislature, when acting, would expand this right to vote, make sure this right to vote was protected. It was generally bipartisan.

Today, rather than protecting the right to vote, we are seeing brazen attempts to undermine it. We are told this bill and laws similar to it will reduce costs and reduce the risk of voter fraud. The overwhelming evidence, however, indicates that voter fraud is virtually nonexistent and these new laws will make it harder and more costly for hundreds of thousands of Ohioans to exercise the right to vote and more costly for the election system, meaning taxpayer—county boards of elections and all that.

Voters are simply not going to awaken one morning in Cleveland and vote and then drive to Elyria and then vote and then drive to Norwalk and then vote, then drive to Adena and then vote and then drive to Mansfield and then vote. People are not going to defraud the system that way. Why? No. 1, they are going to get caught, probably; and second, they are going to go to jail—all to take the risk of giving Barack Obama or Mitt Romney five more votes in a State of 11 million people. That is not going to happen.

Yet the people who are attacking our voting rights are claiming individuals are going to do things such as that to defraud—college students voting in college and then voting back in their hometown. People are not going to do that because the disincentives are too strong, the penalties are too harsh. There is simply no reason, so one can vote one extra time, that someone would possibly do that.

Let me tell a little bit about this new law. The new law—and what is disappointing to me—this new law repeals what was a bipartisan effort in 2006. In 2006, in response to some election problems of 2004 in the Presidential race, where people stood in long lines to vote, and there were other problems—in 2006, the Republican House and the Republican Senate in Columbus and the Republican Governor—with support from Democrats, so it was clearly bipartisan—passed voter reforms to set up early voting, to set up 1 week where voting and voter registration and early voting overlapped so people could actually register and vote during that week in early October. We did other things that made registration and voting more accessible.

But in spite of that, in spite of the consensus in Ohio about voting, now there is an effort to undercut that consensus. First, the law significantly reduces the early voting window. It takes away Saturday, Sunday, and Monday voting before the election, when over 100,000 people voted in Ohio that year, in 2008. This reduction in early voting was made despite the fact that evidence overwhelmingly indicates that limiting early voting will actually cost the taxpayers, boards of elections,

money. Make no mistake, cutting Sunday voting was intended to suppress voting.

On the Sunday before election, Ohioans, who work long hours during the week, often go to the polls after church, fulfilling their civic and spiritual obligations on the same day. By ending early voting, the lines outside polling stations on election day will only get longer. The costs will only increase. This increases frustration and limits voting.

Another burden posed by H.R. 194 is that it bars poll workers from performing one of their most basic functions, helping voters find their right precinct. This law no longer requires that poll workers assist a confused, elderly, disabled or young voter in getting to their correct precinct. Here is how it works. We have tried to save money. As more people voted earlier, relieving some of the pressure on election day, the boards of elections have combined voting precincts. Instead, we will have fewer precincts in the same county and have to hire fewer poll workers. What that also means is sometimes they combine these precincts in these voting stations into one building so people might walk into a polling station and go to the wrong table. Under the law now, the poll worker is not required to help that person and say: No, you can't vote here, but you can vote across in the room next door, at this church or at this school. Someone today might walk in and the poll worker will simply say you are not eligible to vote in this precinct and they will walk home and not vote. This law discourages in many ways. Because these poll workers are people who live in the neighborhoods it discourages neighbors helping neighbors.

This is a solution in search of a problem. It is not something we need to do. There was consensus in Ohio that things needed to change after 2004. The laws enacted in 2006 led to shorter lines, more clarity, and less frustration for voters. While none of the changes I mention today make it impossible to vote, they build burdens to voting, burdens that have no good reason. That will mean fewer minority voters, fewer young voters, fewer elderly voters, fewer disabled voters. That may be what some politicians in this town want, but it is not what the people of Ohio want. Ohio deserves better when it comes to protecting our most fundamental constitutional rights.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER. Without objection, it is so ordered.