

Oklahoma for his courtesy and his leadership on so many issues.

Mr. President, I want to particularly say to my colleague from Vermont how much I appreciate his leadership on the Judiciary Committee, where I serve. Leadership is the mark of his work there. He brings together Members of both parties on so many issues, including this one involving the Federal judiciary. It is, as he has said so eloquently, one of the marvels of the world, one of the historic accomplishments of our republican democracy, that we have a truly independent judiciary that exemplifies the qualities of professionalism, scholarship, integrity, and, yes, independence.

We are here today because we have a crisis in our judiciary. It is a crisis not created by our judges but by this body. It is a judicial vacancy crisis because nearly 1 out of 10—I repeat, 1 out of 10—judgeships in this country are now vacant. The vacancies are double what they were at this point in President Bush's first term.

Every time I go back to Connecticut—as I am sure happens to the Presiding Officer in his State of West Virginia and to Senator INHOFE in Oklahoma—people ask me: Why can't you do better in Washington? Why can't you bring both parties together and avoid the waste and the acrimony and rancor and the gridlock that is the reason for this judicial vacancy crisis? We need to come together and avoid the kind of paralysis that has such lasting and damaging effects on our judiciary.

The President has done his work in recommending qualified nominees to this body. The Judiciary Committee has done its work in reporting many of these judicial nominees to the floor, in many cases with unanimous support. Despite that unanimous support, those nominations languish here.

As we speak, 19 judicial nominations are still pending on the Senate's Executive Calendar. Mr. President, 16 of those nominations were reported unanimously to the floor and all but 2 of them are consensus nominees who received strong bipartisan support in the Judiciary Committee.

They have been blocked by the Republican minority. They have been blocked from up-or-down votes. They have been denied those up-or-down votes. That is unfair not only to them but to the American people. It is damaging to this country. It undermines the independence of the judiciary, its credibility and respect. It causes delays in the decisions on cases that vitally affect ordinary men and women who come to our Federal courts for justice. The old saying "justice delayed is justice denied" holds true whether it is the great historic cases of this country or the ordinary, mundane, routine cases that involve injuries to individual plaintiffs or defendants. And it discourages qualified people from permitting their names to be placed in nomination. The uncertainty of those

delays, the need to put their lives on hold, when they are lawyers in private practice or judges serving on the bench now, causes a severe disincentive that deters qualified people from beginning this uncertain process.

Outside of Washington, there is a clear consensus that the Senate must do better. Outside of the Senate, there is a clear consensus that we need bipartisan cooperation. Not just among politically elected leaders, but the Chief Justice of the U.S. Supreme Court, members of the bar on both sides of the aisle all agree we must move these nominations. So I call on my colleagues, as the chairman of the Judiciary Committee has done, to do better. President Obama has nominated qualified members of the bar to serve on our district courts, including, most recently, Michael Shea of my State to replace Judge Droney, who has just been confirmed as a member of the court of appeals.

Judge Droney's nomination waited here on the Senate calendar for 130 days, despite the clear consensus in his favor. Eventually, he was confirmed by a vote of 88 to 0. That delay, in turn, caused a delay to the nomination of a district court judge to replace him.

I am hopeful Michael Shea will be confirmed expeditiously.

We should never minimize the importance of careful vetting and scrutiny when it comes to these nominees. But once that process is complete in the Judiciary Committee, blocking these nominees can only be bad for the American people, as well as for the 160 million Americans who live in districts and circuits with vacancies whose nominees are sitting on the Senate calendar. They should not have their ability to access justice denied or delayed. We should reduce the burdens on our courts as quickly as possible so our system of justice will continue to be—and justifiably—regarded as one of the great marvels in the history of democracy, of governance in this world, on this planet.

Our nominees deserve prompt and fair consideration by the full Senate, and I am hopeful the Senate will do better.

I yield the floor.

THE PRESIDING OFFICER. The Senator from Oklahoma.

HIGHWAY REAUTHORIZATION

Mr. INHOFE. Mr. President, we are going to be considering today—and I think the rest of this week, and probably into next week—one of the most significant things we are supposed to be doing here.

I wish to start off by saying—in endorsing and encouraging a highway reauthorization bill—I want people to know this is coming from someone who is a conservative. I think there are a lot of conservative organizations out there that have mistakenly thought of this as being a big spending bill without realizing this has been, since its in-

ception back during the Eisenhower administration, an approach to building roads, highways, infrastructure that is necessary in this country, and to have that as a top priority.

There are some problems that have come up with the highway trust fund, and I want to share that with my colleagues but, first of all, make sure everyone knows, who might be watching—and particularly some of the organizations that are conservative organizations—that these words are coming from me. I have probably been recognized as the most conservative Member of this body as much as anybody else has, maybe more. Yet, I have always said—even though I am a leading conservative—there are two areas where I am a big spender. One is in national defense and one is in our infrastructure.

For that reason, I say to the Presiding Officer, when I was first elected back in 1994, I selected two committees to be on. One was the Armed Services Committee, where I could try to keep a strong national defense. The other was the Environment and Public Works Committee. I am now the second ranking member on the Armed Services Committee and the ranking member of the Environment and Public Works Committee. Back when the Republicans were a majority, I was actually the chairman of that committee. That is when we did our last bill.

Our last highway reauthorization bill was in 2005. It was one that went through the process and was very successful. Conservatives and liberals alike joined and said this is a major function of America. This is what we are supposed to be doing here.

A strong defense and our infrastructure system are not going to be done by anybody else. It is going to have to be done by us. If we want to make sure we maintain a strong national defense, which this President has not been doing with the cuts he has made—actually, we could have as much as \$1 trillion in cuts in our defense budget over the next 10 years, all due, quite frankly, to one person. That is President Obama. So he does not care that much about defending America in putting the resources there. Here is a President who, in his own budget, has proposed a deficit each year, for four budgets, of over \$1 trillion each year.

You would think, with these huge deficits, we would not be having a problem in defense spending, as well as in our roads and highways, in coming up with a bill that would be a transportation reauthorization bill. The transportation reauthorization bill for 2005—where I was the sponsor of it because I was chairman of the committee—was a \$286.4 billion bill. It was one that even at that time barely maintained what was out there already. Certainly I do not have to tell the occupier of the chair from West Virginia that I have been through his State and there is a lot of room for improvements in the road system, and I know he is a strong supporter of this. This is certainly true

in my State of Oklahoma. It happens that my State of Oklahoma is tied, the last time I checked, with Missouri as being dead last in the quality of our bridges.

We have actually had deaths in Oklahoma. We had a lady not too long ago in Oklahoma City, the mother of three small children, who was driving and a chunk of concrete came off a bridge and killed her. This is serious stuff. This is what we are supposed to be doing here.

So we had this bill back in 2005. Since that time, we have been operating on extensions. We have done eight extensions. It is kind of complicated, but I want to explain how this works. The proceeds of the highway trust fund come from the gas tax. About 18 cents, when you buy gas at the pump, goes to maintenance of the highways and bridges in that program.

The problem has been that in recent years—it started about 10 years ago—we had surpluses in the highway trust fund, and with other people who wanted to get their deal in on the highway trust fund, we have things that have nothing to do with transportation that are there. That is one of the problems we have.

But the other problem we have is that through the efforts to encourage people to use electric cars and get better mileage and all that, we do not have the proceeds we had in years past. I think probably if we had been smart initially, we would have had the highway trust funded by a percentage as opposed to a “centage.” If it is 18 cents, it does not make any difference, it is going to be 18 cents. But if the price of fuel goes up, if it had been a percentage, then we would not be faced with the situation we have today. So that is what we have.

I applaud, I thank Senator HARRY REID, the leader of the Senate, for wanting to give it the attention, the priority in getting it on the floor so we can talk about it. In a minute, I will also be very complimentary of Senator BOXER from California.

This is something that is kind of interesting that is unique in transportation only. Here I am ranked always as one of the top three most conservative Members. Senator BOXER from California is a very proud liberal. One thing: I do not mind people being liberals if they are proud liberals and admit it. Well, she does. She is a liberal. She feels the government should have greater control of some of the things we do. Consequently, she is doing essentially the same thing as the current chairman of the Environment and Public Works Committee as I would be doing if I had still been chairman of the Environment and Public Works Committee; that is, coming up with a highway bill.

Well, we are looking at it right now. I have to share with my colleagues on the right—the Republicans, the conservatives—what we are looking at. A lot of people do not realize the bill that

is coming up is a bill of compromise. We actually passed this out of the committee unanimously. All the Republicans and all the Democrats voted for it. It is a bill where, I have to say, Senator BOXER worked very closely with us. We have reforms in here.

Going back to my comment about extensions, if we do not pass a bill, we have to operate on extending the current legislation, the current bill, the remnants, I might say, of the 2005 transportation reauthorization bill.

Now, if we do that, we do not get any reforms. So one of the things we did in this bill that gained the support of the Republicans on the committee, and most of the Republicans here, was the reforms we had.

For example, in this bill we gave—the bill that is up for consideration now—more flexibility to the States. I have long believed—and I served many years ago in the State legislature—the closer you get to home the more responsible government is. And I can tell you right now, giving the flexibility to the States to make these determinations—who are we to say that we, in our infinite wisdom and knowledge in Washington DC, are smarter than they are at the State level? We are not. Certainly, we do not know the needs like the States know the needs.

So we have the situation in this legislation where we are giving more flexibility to the States. We are reducing the number of programs. This is a big thing. I cannot tell you exactly how many programs there are because I do not have that in my notes. But I do know we have reduced the number by eliminating and consolidating programs that might be duplicative of each other by two-thirds. In other words, we only have one-third of the programs we had before. That is in this bill. That is a major improvement.

Now, looking, also, at the streamlining of project delivery, we have something called NEPA. NEPA looks after the environmental concerns when we are building roads and bridges. This bill expands the number of categorical exclusions available under NEPA and allows for steps within the lengthy NEPA process to be combined so we can get things done.

You have heard the stories—I am sure you have—of problems with everything from endangered species to other environmental concerns that cause these things to drag on and on and on, and the expense is so much greater. Well, we are eliminating a lot of those categorical exclusions. We are increasing the number so that we will be able to get that much more done.

Another thing in this law—this is very complicated—is called enhancements. I opposed it back years ago when they started putting enhancements on the highway bill. I have always said it is a moral issue. When people pay their 18.4 cents a gallon, and it goes into the highway trust fund, they are led to believe that money is going to be going to transportation, for im-

proving the roads and the bridges. That is not quite true because other deals have kind of moved in so that they are involved with it. So they passed this thing called enhancements where 2 percent of the total highway funding would have to go to what they called transportation enhancements.

A lot of people say 10 percent. It is 10 percent of the States' surface transportation funding or 2 percent of the total highway funding. I would like to do away with the enhancement program altogether. Unfortunately, that means we could not get a highway bill.

Working with Senator BOXER and with the Democrats in the committee, we came up with the perfect solution. We do not have to eliminate enhancements because the solution under this bill will allow the States to make the determination as to how they are going to spend that 2 percent of their total highway funding. Instead of using it for museums and other things that have nothing to do with transportation, we are, under the provisions of this bill that we are talking about, able to use that money for any other requirements for unfunded mandates—and there are plenty of them there, such as endangered species mitigation, storm water runoff, wetlands mitigation. They are a part of every project. So we can take that 2 percent, and instead of applying it to enhancements, we can offset the requirements that are there.

So for all practical purposes, like in my State of Oklahoma, we are not going to have any of that 2 percent for enhancements. It is not there. We have solved the problem. But we put that in the hands of States. So there will be amendments that would want to do away with enhancements. I would say we do not have to do that now because we have reformed that process.

It is a little bit complicated because we are merely saying that we have a block of money which constitutes 2 percent of the total highway funding, and instead of that going to things that we hear about that have nothing to do with transportation, we do not have to do that anymore. That will be up to the States. However, some States may feel differently. If they do, that is not their problem; that is not my problem.

So that is the type of thing we are doing in this bill that has not been there before. If we do not do it, we would be cutting highway spending down to the highway trust fund receipts. That calculates into a 34-percent cut to the States' road and bridge funding. Right now—to put this into perspective so that people will, hopefully, understand and listen—we need, and we are in the process of getting, an additional \$7.2 billion in order to be able to fund this bill as we passed it—\$7.2 billion.

Stop and think about that. If we go back to the \$800 billion stimulus bill that President Obama had—I know Senator BOXER agreed with me—more of that should have gone to highway funding. Only 3 percent of it—3 percent—went to highway funding. So we

are talking about \$800 billion which was spent. We are trying to come up with \$7.2 billion.

I have to say this and bring it up. We all remember the \$700 billion bailout. A lot of Republicans ended up voting for that, and right now we are down to—the cost is probably going to be leveling out at \$130 billion. That is the bailout that was passed.

Well, \$130 billion, when all we are looking for now is \$7.2 billion, we cannot say it is not there. As I said when I opened, this President, in his budget, has had over \$1 trillion in deficit each year for 4 years. Again, that is not the Democrats, not the Republicans, it is not the House, it is not the Senate. That is President Obama. That is his budget. That is the way it works.

I have often said when we look at the hundreds and hundreds of billions of dollars—and yet one of the prime functions we have is roads and highways, and we are just \$7.2 billion short. I think they have come up with it. I applaud the Finance Committee which has been working on this and recognized it in terms of priority that we ought to be able to do it.

They have come up with a package now that—again, this is not in my end of it; this is the Finance Committee. A lot of people think the highway bill is all in the Environment and Public Works Committee. It is not. We have the Commerce Committee, the Budget Committee, the Finance Committee, and our committee. But that end of it is in the Finance Committee. They have worked diligently. I appreciate the hard work that has come from the Democrats and the Republicans on that committee.

Now, in the event that we do not do this, we are going to go back—it will be our ninth extension. When we have an extension, none of these reforms I just talked about, none of them will end up being done. It will just be major cuts in programs.

I would only ask this: I would ask any Member of the Senate, before you draw yourself into a box where you are going to be opposed to this, what you need to do is call your State departments of transportation. Talk to them about it. Talk to the chambers. Talk to the labor unions back in your States. See what they think. This is one of the few issues where they are all in agreement—labor, chambers, all of them. They realize we have to have infrastructure in America.

I know my State is not the only State that has road problems. But I am more familiar with them because that is where I live and raise my 20 kids and grandkids. So I would hope that we look at the opportunities that we have in what is called MAP-21. That is the transportation reauthorization bill that we have under consideration at this time, and that we will do the responsible thing.

If we do rely, by the way, on extensions, our highway trust fund will be totally depleted by this next summer.

Then we are going to have to do an extension or be forced to bail out the highway trust fund. We do not want that to happen. We can preclude that from happening. All we have to do is be responsible today.

Again, this is one of the few areas where back home organized labor as well as business is all for it. Here we have the extremes, such as Senator BOXER from California and myself. We both agree this is one of the two primary functions of government. This is our opportunity to do it. I hope there will not be people on the outside looking at this and completely disregarding these hundreds of billions of dollars that, in my opinion, have been wasted and not pay attention to one of the prime functions of government; that is, doing the infrastructure for the United States of America.

I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. TESTER.) The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

The Senator from Minnesota is recognized.

Mr. FRANKEN. I thank the Chair.

(The remarks of Mr. FRANKEN pertaining to the introduction on S. 2076 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

EXTENSION OF MORNING BUSINESS

Mr. FRANKEN. Mr. President, I ask unanimous consent that morning business be extended until 6 p.m., with Senators permitted to speak therein for up to 10 minutes each with the Republicans controlling the time from 4 to 5 p.m. and the majority controlling the time from 5 to 6 p.m.; further, that the majority leader be recognized at 6 p.m.

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

Mr. FRANKEN. I yield the floor.

The PRESIDING OFFICER. The Senator from North Dakota.

KEYSTONE XL PIPELINE

Mr. HOEVEN. Mr. President, I rise today to speak about jobs, energy independence, and good environmental stewardship for our country. I rise to speak about working with our strongest ally and trading partner, Canada. I rise to speak about moving forward on behalf of the American people and not delaying, not failing to act in their best interests.

Yesterday, Canadian Prime Minister Stephen Harper left for China. He left for China with five of his top Ministers, including his Minister of Trade and his Minister of Natural Resources. He also took along 40 leading businessmen

from Canada, including many of their leading businessmen in the area of energy, oil, and gas. He left on a trade mission to China. And what is at the very top of his list? At the very top of his list in his trade mission to China is selling Canadian oil to China. Why is that?

The reason is because our current administration evidently would prefer that we buy oil from the Middle East and from Venezuela rather than buying oil from our closest friend and our No. 1 trading partner, Canada.

That seems hard to believe but, if not, how else can we explain the administration turning down the Keystone XL Pipeline project after more than 3 years of study—not 60 days but more than 3 years of study. We recently passed legislation in this Chamber and in the House that was approved by the President, and in that legislation we said the President needs to make a decision on the Keystone XL Pipeline within 60 days of the date of that legislation, but that is after 3 years of study.

The administration came back and said: Well, it cannot make a decision in 60 days but forgot to mention they have been looking at it for over 3 years. In fact, let's go through that timeline. I think it is important that the American people understand the real timeline.

The real timeline has nothing to do with 60 days. The real timeline is more than 3 years that a project has been held in limbo. On September 19, 2008, TransCanada applied for a permit to build the Keystone XL Pipeline. That is more than 3 years ago. Both the Environmental Protection Agency and the State Department said they would have an answer on the project before the end of last year. They made it very clear that after going through the full NEPA process—including the full environmental impact statement, doing all of the due diligence, all the work over more than a 3-year period—they would have an answer before the end of the year.

The administration then says: No, that is not enough time. We don't have enough time in more than 3 years to make a decision, so the decision is null. You ask: Why would that be? Is this such a unique project that we have never done this before; that after more than 3 years of study—not 60 days—this is so unique we cannot make a decision in that amount of time? So the administration says no.

On this chart we see this red line that runs from Hardisty, which is Alberta, Canada, all the way down to Patoka, IL, to refineries we have in this country. This is the Keystone Pipeline. That was approved in 2 years, roughly 2006 to 2008, and then constructed. It now moves almost 600,000 barrels of oil a day from the Canadian oil sands down to our refineries. So that project already exists. We are talking about building a sister pipeline, the Keystone XL Pipeline, that will bring it from the