

So if the President really wanted Congress to send him a bill that provided certainty to the taxpayers, he would make it a priority to get it done. Unfortunately, he is busy traipsing around the country raising money for his reelection. That is not leadership, and it is certainly not going to provide timely tax relief to the millions of taxpayers who need it.

I yield the floor, and 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.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. I ask unanimous consent that the order for the quorum call be rescinded.

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

EXECUTIVE SESSION

NOMINATION OF JOHN THOMAS FOWLKES, JR., TO BE UNITED STATES DISTRICT JUDGE FOR THE WESTERN DISTRICT OF TENNESSEE

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

The assistant legislative clerk read the nomination of John Thomas Fowlkes, Jr., of Tennessee, to be United States District Judge for the Western District of Tennessee.

The PRESIDING OFFICER. Under the previous order, there will be 30 minutes of debate equally divided in the usual form.

Mr. LEAHY. Mr. President, I see the distinguished senior Senator from Tennessee on the floor, and I will make sure he has plenty of time to speak. If not, I will ask unanimous consent for extra time for him.

Today we will vote on only 1 of the 16 judicial nominations reported favorably by the Judiciary Committee that have been stalled for no reason from receiving a Senate vote. Regrettably, Senate Republicans are following through on their partisan opposition to the President by seeking to slam the door on qualified, consensus judicial nominees who have bipartisan support. In doing so, they seek to take advantage of the delaying tactics that they have been employing for the last 3½ years. This is all to the detriment of the American people.

I am disappointed that Senate Republicans are choosing politics over the needs of the American people and seek to justify their actions with a warped sense of payback. This is not the time for settling imaginary scores. Their self-interested approach is what contributes to the low opinion the American people have of Congress. What the American people and the overburdened

Federal courts need are qualified judges to administer justice. They are not helped by these partisan games. Following the most extended period of historically high vacancy rates in the history of our district courts, nearly 1 in every 11 Federal judgeships remains vacant. This is more than twice the vacancy rate by this date during the first term of President Bush.

This chart, available at <http://www.leahy.senate.gov/imo/media/doc/BushObama%20-%20Judicial%20-%202010-12%20-%20Area%20-%20201st%20term.pdf>, should help people understand how far behind we remain in filling the judicial vacancies to provide the Federal judges that the American people need to get justice in our Federal courts. This compares judicial vacancies during the first terms of President Bush and President Obama. It shows the stark contrast to the way in which we moved to reduce judicial vacancies during the last Republican Presidency.

This chart shows that the Senate can do better because it has done better. 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.

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. By July 2004 we had reduced judicial vacancies to 29.

By comparison, vacancies have long remained near or above 80, while little comparative progress has been made during the 4 years of President Obama's first term. There are still 77 vacancies as of July 2012—that is more than 2½ times the number of vacancies at this point in President Bush's first term.

Each day that Senate Republicans refuse because of their political agenda to confirm these qualified judicial nominees who have been reviewed and voted on by the Judiciary Committee is another day that a judge could have been working to administer justice. Every week lost is another in which injured plaintiffs are having to wait to recover the costs of medical expenses, lost wages, or other damages from wrongdoing. Every month is another drag on the economy as small business owners have to wait to have their contract disputes resolved. Hard-working and hard-pressed Americans should not have to wait years to have their cases decided. Just as it is with the economy and with jobs, the American people do not want to hear excuses about why Republicans in Congress will not help them. More importantly, they do not want to hear that the supposed jus-

tification is partisan. This is precisely the reason why Congress's approval rating among the American people is so low.

The nonpartisan American Bar Association has been sounding the alarm for some time that we need to do better with respect to the judicial vacancy crisis. The president of the ABA wrote the Senate leaders again on June 20 urging them to work together to schedule votes for three consensus, qualified circuit court nominees awaiting Senate confirmation so that they may serve the American people. The response was more excuses from the Republican leadership rather than any positive action. In the past, the Senate has worked together to confirm consensus circuit court nominees, especially during times of high vacancies. For example, Senate Democrats confirmed 11 circuit court nominees of President George H.W. Bush in 1992. The only exception to the practice of confirming consensus circuit court nominees in Presidential elections years with high vacancies was when Senate Republicans shut down the process of a Democratic President in 1996. The Republican leadership is apparently planning to stick with its shutdown of confirmations just as it did in 1996 when they prevented the confirmation of circuit court nominees for an entire year-long session of the Senate. It was wrong then and it is wrong now.

Since May 31, Senate Republicans have consented to consideration of only five judicial nominees. That is a far cry from the 30 confirmed in the last months of 2004 at the end of President Bush's first term that brought his total of circuit and district court confirmations to 205. It is also a far cry from the 22 confirmed in the last months of 2008 at the end of President Bush's second term. They are continuing the obstruction that has unnecessarily delayed confirmation of consensus circuit and district court nominees for months and resulted in our being more than 40 confirmations behind the pace we set in President Bush's first term.

Like so many matters on which they have flip-flopped since the American people elected President Obama—everything from the individual mandate for private health insurance that they originated and used to favor to the deficit reduction commission—they now contend that they are invoking the Thurmond rule even though they denied its existence when President Bush was in office. Just 4 years ago the current Republican leader said that “there is no Thurmond rule” and the current ranking Republican on the Judiciary Committee called it “plain bunk.” The Senate Republican caucus held a forum to demonstrate that no such practice or rule existed and that judicial confirmations should continue in the last several months of a Presidential term. With President Obama, they have chosen to flip-flop and use the so-called

Thurmond rule as an excuse for shutting down Senate confirmations. Election year politics should not trump the needs of Americans seeking to obtain justice in our Federal courts. Senate Republicans' newly stated reliance on the Thurmond rule is really just another excuse for more of the stalling tactics that we have been seeing since President Obama was elected.

Nor is this the first time that they have been urged to work with us to confirm consensus judicial nominees to address the vacancy crisis. In his 2010 year-end report on the federal judiciary, Chief Justice Roberts called attention to the problem of overburdened courts across-the-country and the need to fill judicial vacancies. That followed in the tradition of Chief Justice Rehnquist who called out the obstruction of President Clinton's judicial nominees. These are not Democratic partisans. Each served in Republican administrations and was appointed by a Republican President because of their conservative credentials and each has been a deeply conservative Supreme Court Justice.

What Senate Republican leaders now contend has been "exceptionally fair treatment" of President Obama's judicial nominees has, in fact, amounted to months of unnecessary delays and their having expanded contentiousness to include judicial nominees who should be noncontentious. Their practice has been a virtual across-the-board stalling of judicial nominees. That is what has led to the backlog in confirmations and the months of delays in the consideration of consensus nominees, which has been demonstrated over and over again.

Let us take a look at how they have been stalling circuit court nominees. The nonpartisan Congressional Research Service in its recent report confirms what I have been saying. I also have prepared this chart, which is taken from the CRS report, and is available at <http://www.leahy.senate.gov/imo/media/doc/CRS%20chart%20-%20my%20version.pdf>.

They report that the median time circuit court nominees have had to wait before a Senate vote has skyrocketed from 18 days for President Bush's circuit court nominees to 132 days for President Obama's circuit court nominees. Any objective observer would concede that President Obama has made a significant effort to work with home State Senators from both parties and that his nominees have been less ideological and should be less controversial than his predecessor's. Yet the result of Republican foot dragging and obstruction is that they are nonetheless delayed and stalled. They have filibustered nominations that they then turn around and support like that of Judge Barbara Keenan of Virginia to the Fourth Circuit who was ultimately confirmed 99 to 0 and Judge Denny Chin of New York to the Second Circuit, who was filibustered for 4 months before he was confirmed 98 to 0.

Those interested in the Tennessee nominee today will remember how hard we had to work for almost 10 months, despite the support of Senator ALEXANDER and Senator CORKER, to get Senate Republicans to allow consideration of the nomination of Judge Jane Stranch to the Sixth Circuit. Despite being approved by a bipartisan majority of the Judiciary Committee, Judge Stranch's nomination nevertheless languished on the floor for nearly 10 months because of Republican obstruction. I personally had to come before the Senate to take the extraordinary step of propounding a unanimous consent request to consider her nomination, with the support of the senior Senator from Tennessee. So it is hard to see any difference between this supposed application of the Thurmond rule and how Senate Republicans have treated nearly all of President Obama's circuit court nominees since the President took office—including those with support of Republican home State senators.

Among the circuit court nominees they are blockading now are two from States with Republican home State Senators' support: William Kayatta from Maine and Judge Robert Bacharach from Oklahoma, as well as a nominee to the Federal Circuit who had the support of virtually all the Republican Senators on the Judiciary Committee.

While Senate Democrats have been willing to work with Republican Presidents to confirm circuit court nominees with bipartisan support, Senate Republicans have repeatedly obstructed the nominees of Democratic Presidents including those with the support of Republican home State Senators. During the last 20 years, only 4 circuit nominees reported with bipartisan support have been denied an up-or-down vote during a Presidential election year by the Senate. All four were nominated by President Clinton and blocked by Senate Republicans. Senate Republicans are threatening to add the current circuit nominees pending before the Senate to that list. In the previous 5 Presidential election years, a total of 13 circuit court nominees has been confirmed after May 31. It is notable that 12 of the 13 were nominees of Republican Presidents.

When Republican Senators try to take credit for the Senate having reached what they regard as their "quota" for circuit confirmations this year, they should remember that the Senate would not even have had an up-or-down vote on three of the five of them without the majority leader first having to file for cloture to overcome Republican obstruction—Adalberto Jordan of Florida to the Eleventh Circuit, Paul Watford of California to the Ninth Circuit and Andrew Hurwitz of Arizona to the Ninth Circuit. And the other two, Stephanie Dawn Thacker of West Virginia to the Fourth Circuit and Jacqueline Nguyen of California to the Ninth Circuit, were unnecessarily

stalled since last year until the leader forced the issue by filing for cloture on 17 judicial nominees, ultimately reaching a deal with the Republican leader to vote on only some of the many long-stalled nominees. That is not cooperation. That is stalling, and it is why the Senate has yet to vote on a single circuit court nominee nominated by President Obama this year.

Adalberto Jordan, Stephanie Thacker and Jacqueline Nguyen had all been reported with bipartisan support from the Judiciary Committee last year but their confirmations were stalled by Republicans into this year. In my view, they could and should have been confirmed last year. Senate Republicans broke from the longstanding tradition of confirming consensus judicial nominees at the end of last year. Indeed, Senate Republicans broke from this tradition the last 2 years. When it comes to confirming consensus judges for the benefit of the American people, they choose to ignore tradition.

The two other circuit nominees who were confirmed this year—Paul Watford and Andrew Hurwitz of the Ninth Circuit had their hearings and committee votes delayed at the request of Senate Republicans. If not for this stalling by Senate Republicans, these circuit nominees could also have been confirmed last year.

Since 1980, the only Presidential election year in which no circuit nominee who was nominated that year and confirmed that year was in 1996, when Senate Republicans shut down the process against President Clinton's circuit nominees. So when the American people hear Senate Republicans crowing about how they have cooperated to confirm five circuit court nominees this year, they should know the truth.

The fact that Republican stalling tactics have meant that circuit court nominees that should have been confirmed in the spring are still awaiting a vote after July 4 is no excuse for not moving forward this month to confirm the circuit nominees who were voted out of the Judiciary Committee with bipartisan support. That was the point of the letter to Senate leaders from the ABA last month when the Republicans' partisan plan to stall out the rest of the year was first publicly acknowledged.

We remain far behind in filling judicial vacancies to provide the Federal judges that American people need to get justice in our Federal courts, as the previous chart demonstrates. Comparisons of judicial vacancies during the first terms of President Bush and President Obama show just how far behind we really are.

Judicial vacancies during President Obama's first term long remained near or above 80, while little comparative progress was made for years. There are still 77 vacancies as of July 2012. By this time during President Bush's first term we had reduced 110 vacancies down to 29. By this time during President Bush's first term the Senate had

confirmed 44 more circuit and district court nominees than the Senate has during this Presidential term.

Despite these facts, certain Senate Republicans contend that their resistance should be excused because two Supreme Court justices, who most of them opposed, were confirmed in President Obama's first term. This is another hollow excuse and is no justification for not moving ahead with the confirmations of William Kayatta, Judge Bacharach, Judge Schwartz, and Richard Taranto to circuit vacancies or with the nearly two dozen judicial nominees that we could easily consider and confirm this year. The American people who are waiting for justice do not care about excuses. They do not care about some false sense of settling political scores. They want justice. Just as they want action on measures the President has suggested to help the economy and create jobs rather than political calculations about what will help Republican candidates in the elections in November.

Indeed, despite confirming two Supreme Court justices in President Clinton's first term, the Senate was able to confirm 200 circuit and district court judges by the end of 1996. And in 1992, at the end of President George H.W. Bush's term, the Senate was able to confirm 192 circuit and district court judges despite confirming two Supreme Court Justices. At this point, Republicans have allowed the Senate to confirm only 153 of President Obama's circuit and district court nominees. That is a far cry from what we have been able to achieve in addition to our consideration of Supreme Court nominations when the Senate was being allowed to proceed to consider judicial nominees reported with bipartisan support. This artificial ceiling on confirmations is Republicans imposing a new standard for partisan purposes.

Likewise, Republicans' newfound affection for the Thurmond rule ignores the facts. In the Presidential election year of 1992, for example, with a Republican President, the Democratic majority in the Senate proceeded to confirm 66 new judges including 11 circuit judges. Republicans have no good justification for not proceeding to confirm the judicial nominees reported with bipartisan support by the Judiciary Committee this year. We can and we should be doing more to help the American people.

The American people do not want to hear excuses from Senate Republicans about why the Senate cannot proceed to confirm judges who are well-qualified and have received significant bipartisan support. There is no good reason that the Senate should not vote on the circuit court nominees thoroughly vetted, considered and voted on by the Judiciary Committee. There is no reason the Senate cannot vote on the nomination of William Kayatta of Maine to the First Circuit, a nominee strongly supported by both of Maine's Republican Senators and reported

nearly unanimously by the committee 2 months ago. There is no reason the Senate cannot vote on the nomination of Judge Robert Bacharach of Oklahoma to the Tenth Circuit, who was supported by Senator COBURN during committee consideration, and also by the State's other Republican Senator, Senator INHOFE.

There is also no reason the Senate cannot vote on Richard Taranto's nomination to the Federal Circuit. He was reported almost unanimously by voice vote nearly 3 months ago, and is supported by conservatives such as Robert Bork and Paul Clement. He is also nominated to the Federal Circuit, which has never before been a controversial court.

The one circuit court nominee who was reported out of committee with a split rollcall vote—Judge Patty Schwartz of New Jersey—should not have been controversial. She has been a Federal magistrate judge for the last 8 years and was a Federal prosecutor for 14 years, where she rose to become chief of the Criminal Division. She also has the bipartisan support of New Jersey's Republican Governor, Chris Christie.

Each of these circuit court nominees has been rated unanimously well qualified by the nonpartisan ABA Standing Committee on the Federal Judiciary, the highest possible rating. These are not controversial nominees. Senate Republicans are blocking consent to vote on superbly qualified circuit court nominees with strong bipartisan support.

Today, the Senate will vote on the nomination of John Fowlkes to fill a judicial vacancy in the U.S. District Court for the Western District of Tennessee. Judge Fowlkes has the support of his home State Republican Senators, Senator LAMAR ALEXANDER and Senator BOB CORKER. His nomination was reported with near unanimous voice vote by the Judiciary Committee nearly 3 months ago, with the only objection coming from Senator LEE's customary protest vote. Judge Fowlkes was rated unanimously well-qualified by the ABA Standing Committee on the Federal Judiciary, the highest possible rating.

Judge Fowlkes currently serves as a criminal court judge in the 30th Judicial District at Memphis, Tennessee, where he has been a judge for approximately 5 years. He previously held several positions in public service, including as a Federal prosecutor for 13 years and as an assistant district attorney general in Shelby County for 10 years. Judge Fowlkes also served briefly as an assistant public defender at the Shelby County Public Defender's Office. His diverse range of experience makes him particularly well qualified to serve on the Federal bench.

Once we confirm Judge Fowlkes, I hope that Senate Republicans will reconsider their ill-conceived partisan strategy and work with us to meet the needs of the American people. There is

no reason the Senate cannot vote to confirm the other 15 well-qualified judicial nominees reported by the Committee. There is no good reason we cannot work together to help solve the problem of high judicial vacancies and better serve the American people.

I see the two distinguished Senators from Tennessee on the floor.

I yield the floor and reserve the remainder of my time.

The PRESIDING OFFICER (Mr. TESTER.) The senior Senator from Tennessee.

Mr. ALEXANDER. Mr. President, I thank the distinguished Chairman of the Judiciary Committee for his courtesy in allowing Senator CORKER and me a chance to speak about Judge Fowlkes from Tennessee. I do not intend to get into a lengthy dispute with the Senator from Vermont about the relative merits of the two political parties approving judges. But I do have to admire his persistence and creativity in always coming up with a way in how Democrats approve more Republican judges than Republicans approved Democratic judges.

I notice that our ranking member, Senator GRASSLEY, will put a statement in the RECORD today making a clear statement about what the record is. But if I may borrow from that: Today's vote will be the 152nd nominee of President Obama confirmed to district and circuit judges. We have also confirmed two Supreme Court nominees during President Obama's term. The last time the Senate confirmed two Supreme Court nominees was during President Bush's second term. During President Bush's entire second term, the Senate confirmed a total of only 119 district and circuit court nominees. With Judge Fowlkes' confirmation today, we will have confirmed 33 more district and circuit nominees for President Obama than we did for President Bush in similar circumstances.

That is according to Senator GRASSLEY's comments, which will be printed in the RECORD. I would have to say to my friend from Vermont, my memory is good enough that about this time 4 years ago, when we had a Republican President, I think I remember the majority leader of the Senate, Senator REID, and Senator LEAHY both suggesting it was time that we slowed things down and not confirm any more circuit judges until we saw how the election came out in November. So we are basically, in our opinion, applying, in the fairest possible way in the Senate, the Thurmond-Leahy rule that has been developed over time.

If there are excellent nominees by the President to the circuit courts, well, the election is only 4 months away. If he is reelected, they can be confirmed in November and December. If he is not, then his successor will have a chance to make those nominations.

Let me speak today about a matter that I believe we have great agreement on in the Senate, with the President,

and that is the nomination of the President of Judge John Fowlkes to fill a vacancy on the U.S. District Court for the Western District of Tennessee.

As the Governor of Tennessee, I had the responsibility of appointing about 50 judges over 8 years. I looked for good intelligence, good temperament, good understanding of the law, and respect for those who came before the court. I did not feel it was my responsibility ever to inquire how a judge might decide on a particular case before he took the position.

So I took some time to look into Judge Fowlkes' background when President Obama nominated him. I was delighted with what I found. I am pleased to recommend him to our colleagues. His performance has been praised throughout his career in the community of Memphis and Shelby County where he is best known. His leadership, his citizenship, his high professionalism, his courtesy to others are the words I often hear. I have letters from bar association members who say he has a creative and independent mind; from others in Memphis who say he is passionate about the community in which he lives, appearing at civic events repeatedly, committing over 50 hours of service annually to the Memphis Area Legal Services, and actively supporting the Boy Scouts.

So it is with great pleasure that I recommend to our colleagues today President Obama's nominee, Judge John Fowlkes, to fill a vacancy on the U.S. District Court for the Western District of Tennessee.

The PRESIDING OFFICER. The junior Senator from Tennessee.

Mr. CORKER. Mr. President, I rise to second what the great Senator from Tennessee LAMAR ALEXANDER said. I want to speak for a moment about the same nomination, with the same amount of energy, and the fact that I am very excited about this person being nominated.

When the White House began looking for someone to fill this position, I talked to numbers of people down in Shelby County about Judge Fowlkes, and people whom I respected, people who have been involved in the community for years. I can tell you, from every single person I talked to, they talked not only about his record but also the kind of person he was. He has served in many positions.

He has been a public defender, a district attorney, a U.S. Attorney, he was the chief administrative officer for the largest and most populous county in the State of Tennessee. Now he serves as a criminal court judge. At every stop, he has excelled and earned a reputation for professionalism and integrity. I think his experience certainly makes him very well-prepared for this position and the responsibilities he will carry out.

I am glad to join with Senator ALEXANDER, Senator LEAHY, and others. I hope we have an overwhelming vote today for this nominee, who I believe

will be an outstanding Federal judge. I ask all of my colleagues to join us in supporting this person, who, again, I think will be exemplary on the bench, as he has been throughout his entire life.

Mr. GRASSLEY. Mr. President, I support the nomination of John Thomas Fowlkes, to be U.S. district judge for the Western District of Tennessee.

Although it is the practice and tradition of the Senate to not confirm circuit nominees in the closing months of a Presidential election year, we continue to confirm consensus district judge nominees. Today's vote will be the 152nd nominee of this President confirmed to the district and circuit courts. We also have confirmed two Supreme Court nominees during President Obama's term.

I continue to hear some Members repeatedly ask the question, "What is different about this President that he has to be treated differently than all these other Presidents?" I won't speculate as to any inference that might be intended by that question, but I can tell you that this President is not being treated differently than previous Presidents. By any objective measure, this President has been treated fairly and consistent with past Senate practices.

For example, with regard to the number of confirmations, let me put that in perspective for my colleagues with an apples-to-apples comparison. The last time the Senate confirmed two Supreme Court nominees was during President Bush's second term. And during President Bush's entire second term the Senate confirmed a total of only 119 district and circuit court nominees. With Judge Fowlkes' confirmation today, we will have confirmed 33 more district and circuit nominees for President Obama than we did for President Bush, in similar circumstances.

During the last Presidential election year, 2008, the Senate confirmed a total of 28 judges—24 district and 4 circuit. Today, we will exceed the number of district court judges confirmed. We have already confirmed 5 circuit nominees, and this will be the 25th district judge confirmed this year. Those who say that this President is being treated differently either fail to recognize history or want to ignore the facts.

Judge Fowlkes received his B.A. from Valparaiso University in 1975 and his J.D. from University of Denver School of Law in 1977. From 1978 to 1979 he worked as an assistant public defender at the Shelby County Public Defender's Office, where he represented indigent defendants. In 1979, he joined the Shelby County District Attorney General's Office and served as an assistant district attorney for the next 10 years. There he tried nearly 150 jury trials, handling homicide, assault, sex offense, robbery, and burglary cases. In 1989, he became an assistant U.S. attorney, trying criminal cases until 2002. As an AUSA, he tried over 100 jury trials and

handled all appellate level work. During his time at the attorney's office, Judge Fowlkes was a first assistant for several years, directing day-to-day operations of the office. From 2002 to 2007, Judge Fowlkes was the chief administrative officer for Shelby County. He was not engaged in the practice of law during this period.

In 2007, then-Governor Phil Bredesen appointed Judge Fowlkes to be a criminal court judge for Division VI of the 30th Judicial District at Memphis. In November 2008, he was elected to a full, 8-year term. In 2011, he was elected by judges of the 30th Judicial District to serve as presiding judge.

The ABA Standing Committee on the Federal Judiciary unanimously rated Judge Fowlkes as "well qualified."

I support the nomination and congratulate Judge Fowlkes on his confirmation today.

I yield the floor and 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. LEAHY. 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. LEAHY. Mr. President, I ask for the yeas and nays on the nomination.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

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

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

The question is, Will the Senate advise and consent to the nomination of John Thomas Fowlkes, Jr., of Tennessee, to be United States District Judge for the Western District of Tennessee.

On this question, the yeas and nays have been ordered. The clerk will call the roll.

The bill clerk called the roll.

Mr. DURBIN. I announce that the Senator from Vermont (Mr. SANDERS) is necessarily absent.

I further announce that, if present and voting, the Senator from Vermont (Mr. SANDERS) would have voted "aye."

Mr. KYL. The following Senators are necessarily absent: the Senator from North Carolina (Mr. BURR), the Senator from Georgia (Mr. CHAMBLISS), and the Senator from Illinois (Mr. KIRK).

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

The result was announced—yeas 94, nays 2, as follows:

[Rollcall Vote No. 173 Ex.]

YEAS—94

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

NAYS—2

DeMint Lee

NOT VOTING—4

Burr Kirk
Chambliss Sanders

The nomination was confirmed.

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

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will resume legislative session.

RECESS

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until 2:15 p.m.

Thereupon, the Senate, at 12:44 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. WEBB).

SMALL BUSINESS JOBS AND TAX RELIEF ACT—MOTION TO PROCEED Continued

The PRESIDING OFFICER. Under the previous order, there will be 10 minutes of debate equally divided and controlled between the two leaders or their designees.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Mr. President, I note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

The PRESIDING OFFICER. The Senator from Oregon.

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

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

The PRESIDING OFFICER. The clerk will report the motion to invoke cloture.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the motion to proceed to Calendar No. 341, S. 2237, the Small Business Jobs and Tax Relief Act.

Harry Reid, Kent Conrad, Tom Harkin, Richard Blumenthal, Jeff Bingaman, Carl Levin, Al Franken, Daniel K. Inouye, Richard J. Durbin, Benjamin L. Cardin, Max Baucus, Charles E. Schumer, Jeff Merkley, Patty Murray, John D. Rockefeller IV, John F. Kerry.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on the motion to proceed to S. 2237, a bill to provide temporary income tax credit for increased payroll and extend bonus depreciation for an additional year, and for other purposes, shall be brought to a close?

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Maryland (Mr. CARDIN) and the Senator from West Virginia (Mr. ROCKEFELLER) are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Georgia (Mr. CHAMBLISS), the Senator from Illinois (Mr. KIRK), the Senator from Utah (Mr. LEE), and the Senator from Louisiana (Mr. VITTER).

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

The yeas and nays resulted—yeas 80, nays 14, as follows:

[Rollcall Vote No. 174 Leg.]

YEAS—80

Akaka	Franken	Moran
Alexander	Gillibrand	Murkowski
Barrasso	Grassley	Murray
Baucus	Hagan	Nelson (NE)
Begich	Harkin	Nelson (FL)
Bennet	Hatch	Paul
Bingaman	Heller	Portman
Blumenthal	Hoeven	Pryor
Blunt	Hutchison	Reed
Boozman	Inouye	Reid
Boxer	Isakson	Roberts
Brown (MA)	Johnson (SD)	Rubio
Brown (OH)	Kerry	Sanders
Burr	Klobuchar	Schumer
Cantwell	Kohl	Shaheen
Carper	Kyl	Snowe
Casey	Landrieu	Stabenow
Coats	Lautenberg	Tester
Coburn	Leahy	Thune
Cochran	Levin	Toomey
Collins	Lieberman	Udall (CO)
Conrad	Lugar	Udall (NM)
Coons	McCaskey	Warner
Corker	McConnell	Webb
Durbin	Menendez	Whitehouse
Enzi	Merkley	Wyden
Feinstein	Mikulski	

NAYS—14

Ayotte	Inhofe	Risch
Cornyn	Johanns	Sessions
Crapo	Johnson (WI)	Shelby
DeMint	Manchin	Wicker
Graham	McCain	

NOT VOTING—6

Cardin	Kirk	Rockefeller
Chambliss	Lee	Vitter

The PRESIDING OFFICER. On this vote, the yeas are 80, the nays are 14. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, today we begin debate on a bill called the Small Business Jobs and Tax Relief Act. There are some positive elements to this legislation, but I remain amazed that the Democratic majority has decided to pursue this bill to support small businesses when looming tax increases threaten to crush these very same small businesses.

Rather than address the expiration of the 2001 and 2003 tax relief, which is denying certainty to small businesses and holding back hiring and economic development, we are discussing this legislation. The President and his allies who are pursuing this legislation are patting themselves on the back for supporting small businesses, but puffing their chest as the saviors of America's job creators while doing nothing to address the coming fiscal cliff is like a person asking for the keys to the city after throwing a water balloon at a house fire.

Our small businesses and our economy face an existential threat with the coming tax hikes. Not only have Senate Democrats done nothing to bring some certainty to this situation, but President Obama actively undermined these businesses with his White House campaign event yesterday, during which he expressed his commitment to raising taxes on these small businesses.

So as we debate this bill, we need to keep that backdrop in mind. As the President proposes with this bill to give with one hand to small businesses, with the other hand he is prepared to sock those same people in the jaw. Small businesses are just one facet of our economy that will be hit with the largest tax increase in history if Congress and the President fail to act before January 1, 2013. But given that small businesses are the engine of job creation in our economy, the impact of these tax increases will reach far and wide, undermining economic growth and hampering innovation and job creation. Taxpayers are on the edge of a fiscal cliff. Yet instead of leading them to safety, the President's campaign is telling us to march forward.

The consequences will crush American taxpayers. In February, the Washington Post referred to this \$4.5 trillion tax hike as "taxmageddon." Federal Reserve Chairman Ben Bernanke described it as a "massive fiscal cliff" when testifying before Congress. If