able to go over and show the people what the truth was in this country.

But Andrew Revkin, just before Copenhagen, on September 23, 2009, in the New York Times, acknowledged:

> The world leaders who met at the United Nations to discuss climate change . . . are faced with an intricate challenge: building momentum for an international climate treaty at a time when global temperatures have been relatively stable for a decade and may even drop for the next few years.

I look at some of the things—incidentally, I kind of wish I had known my good friend from Vermont was going to be talking about this because I would have been delighted to join in and get a little bit better prepared. But I would say this as to the cost: When you talk about where this cost comes from, the $300 to $400 billion, the Kyoto Protocol and cap-and-trade cost—this is from the Wharton Econometrics Forecasting Associates I mentioned just a minute ago—Kyoto would cost 2.4 million U.S. jobs and reduce GDP by 3.2 percent or about $300 billion annually, an amount greater than the total expenditure on primary and secondary education.

Oh, yes, let's talk about polar bears. I am not sure my friend mentioned the polar bears, so I will skip that part. Anyway, let me just say this: It has become something that has been somewhat of a religion to talk about what is happening and the world is coming to an end. I would just suggest they are not winning that battle.

In March 2010, in a Gallup poll, Americans ranked global warming dead last—8 out of 8—on environmental issues. That was not true 10 years ago. Ten years ago, it was No. 1, and everyone thought that. The more people sit back and look at it and study it, they decide: Well, maybe it is not true after all.

In March 2010, a Rasmussen poll: 72 percent of American voters do not believe global warming is a very serious problem. In a Rasmussen poll at the same time as to the Democrat base: Only 35 percent now think climate change is manmade.

The global warmist Robert Socolow laments:

> We are losing the argument with the general public, big time . . . I think the climate change activists, myself included, have lost the American middle.

In a way, I am kind of pleased it is coming back up and surfacing now. I thank my good friend, and he is my good friend. People do not understand—they really do not understand—what the Senate is all about. The House was not that way when I was in the House. But in the Senate, you can love someone and disagree with them philosophically and come out and talk about it.

I have no doubt in my mind that my friend from Vermont is sincere in what he believes. I believe he would say he knows I am sincere with what I believe. That is what makes this a great body.

But I will just say this: It is popular to say the world is coming to an end. When we look historically, I could go back and talk about what has happened over the years—over the centuries really—and going through these periods of time, and it is always that the world is coming to an end.

Well, I am here to announce—and I feel very good being able to do it with 20 kids and grandkids; I am happy to tell them all right now—the world is not coming to an end, and global warming—we are going through a cycle. We have gone through these cycles before, and every time we go through—in part of my book I talk about the hysterical things people are saying.

Back during that period of time, I mentioned between 1895 and 1930 about how the world was coming to an end, and the same thing from 1930 to the end of the war. Then, of course, getting into the little ice age, all these things that were taking place, the little ice age from 1945—not the ice age but this cooling period—the cooling period that started in 1945 and lasted for 30 years was the time in our history where we had the greatest increase in carbon in the air, the greatest use of that. So it is inconsistent with what reality was.

So I would say to my good friend, I have no doubt in my mind that the Senator from Vermont is sincere in what he says. While he and I are ranked at the extreme sides of the philosophical pendulum, I would say I know he is sincere. But I will also say this is a tough world we are in right now. When we look at the problems we have in this country and the problems we are having in the world and the cost that it has, I am very thankful those who are trying to pass the cap and trade, all the way from the Kyoto Treaty—which was never brought to the Senate, never brought because they knew they were not going to be able to pass it—up until the time when that ended in about 2009, I would say a lot of activists were out there, but I think people have now realized: Just look at the patterns. It gets colder, it gets warmer, it gets colder, it gets warmer. God is still up there. And I think that will continue in the future.

I thank the Chair and yield the remainder of my time.

The PRESIDING OFFICER (Mr. FRANKEN). The Senator from Vermont.

Mr. SANDERS. Mr. President, I have talked for a long time on this issue, so I do not want to make a great speech and continue speaking at great length. I do want to say a few things.

First of all, I want to thank Senator INHOFE for his kind words. Let me respond in the same way. He and I philosophically and politically come from very different places. I have never doubted for one moment the honesty or the sincerity of the Senator from Oklahoma. He is saying what he believes. He has the courage to get up here and say it, and I appreciate that. So we are good friends, and I hope we will continue to be good friends.

I think, frankly, it does this Senate, and it does this country, good when people hear varied differences of opinion on an issue that I consider to be of enormous consequence. So what I would say to my friend is, I hope, in fact, this is the beginning of a resurgence of discussion about this issue, and I look forward to engaging in the discussion with my friend from Oklahoma.

With that, Mr. President, I yield the floor.

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

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

EXECUTIVE SESSION

NOMINATION OF ROBERT E. BACHARACH TO BE UNITED STATES CIRCUIT JUDGE FOR THE TENTH CIRCUIT

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 legislative clerk read the nomination of Robert E. Bacharach, of Oklahoma, to be United States Circuit Judge for the Tenth Circuit.

The PRESIDING OFFICER. Under the previous order, there will be 1 hour of debate equally divided and controlled in the usual form.

Mr. LEAHY. Today's debate and vote on the partisan filibuster of the Oklahoma judicial nominee, who has had the support of the Republican Senators from Oklahoma since President Obama nominated him 6 months ago, is another example of how extreme Senate Republicans have gone in their efforts to obstruct judicial confirmations. If they succeed in their partisan filibuster, it will be another first for them. Never before has the Senate filibustered and refused to vote on a judicial nominee with such strong bipartisan support, who was voted out of the Judiciary Committee with virtually unanimous support.

Their partisan efforts to shut down Senate confirmations of qualified judicial nominees who have bipartisan support do not help the American people. This is a shortsighted policy at a time when the judicial vacancy rate remains more than twice what it was at this point in the first term of President Bush. Judicial vacancies during the last few years have been at historically high levels. Nearly one out of every 11 Federal judgeships is currently vacant. Their shutting down confirmations for consensus and qualified circuit court nominees is not helping the overburdened Federal courts to which Americans turn for justice.

Over his 13-year career as a U.S. Magistrate Judge in the Western District of Oklahoma, Judge Robert Bacharach has handled nearly 3,000 civil and criminal matters, presided over 400 judicial settlement conferences, and issued more than 1,600 reports and recommendations. As an attorney in private practice, Judge Bacharach tried 10 cases to verdict, argued 2 cases before the Tenth Circuit Court of Appeals, and briefed scores of other cases to the tenth circuit and the Oklahoma Supreme Court. The ABA Standing Committee on the Federal Judiciary has rated Judge Bacharach unanimously well qualified, the highest possible rating from its nonpartisan peer review.

Judge Bacharach's judicial colleagues in the Western District of Oklahoma stand strongly behind his nomination. Vicki Miles-LaGrange, Chief Judge of the U.S. District Court for the Western District of Oklahoma, has said of Judge Bacharach:

He is an outstanding jurist and my colleagues and I enthusiastically and wholeheartedly recommend him for the Tenth Circuit position . . . We knew that we were lucky to have Bob as a Magistrate Judge, and he's been remarkable in this position for over 12 years. He is an absolutely great Magistrate Judge. His research and writing are excellent, his temperament is superb, his preparation is top-notch, and he is a wonderful colleague to all of the judges and in general to the entire court family. . . . All of the other judges and I—Republicans and Democrats alike—enthusiastically and wholeheartedly recommend Judge Bob Bacharach for the Tenth Circuit position. All of us believe very strongly that Judge Bacharach would be a superb choice for the position.

Throughout this very careful and deliberate process in which Judge Robert Bacharach has been thoroughly vetted, considered, and voted on by the Judiciary Committee, I have not heard a single negative word about him. There is no Senator that I know of who is opposed to his nomination on the merits. The only obstacle standing between Judge Bacharach being confirmed to serve the people of the tenth circuit is partisan obstruction.

Nor is Judge Bacharach the only victim of this abuse. In a letter dated June 20, 2012, the president of the American Bar Association urged Senator REID and Senator MCCONNELL to work together to schedule votes on the nominations of William Kayatta and Richard Taranto, as well as Judge Bacharach. These are three consensus, qualified circuit court nominees awaiting Senate confirmation so that they may serve the American people. I ask that a copy of that letter be printed in the RECORD, along with an article from the Oklahoman on this nomination.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

AMERICAN BAR ASSOCIATION,
Chicago, IL, June 20, 2012.

Hon. HARRY REID,
Majority Leader, U.S. Senate,
Washington, DC.
Hon. MITCH MCCONNELL,
Republican Leader, U.S. Senate,
Washington, DC.

DEAR MAJORITY LEADER REID AND REPUBLICAN LEADER MCCONNELL: Amid concerns that the judicial confirmation process is about to fall victim to presidential election year politics through the invocation of the ''Thurmond Rule,'' I am writing on behalf of the American Bar Association to reiterate our grave concern for the longstanding number of judicial vacancies on Article III courts and to urge you to schedule floor votes on three pending, noncontroversial circuit court nominees before July and on district court nominees who have strong bipartisan support on a weekly basis thereafter.

Three of the four circuit court nominees pending on the Senate floor are consensus nominees who have received overwhelming approval from the Senate Judiciary Committee. Both William Kayatta, Jr. of Maine, nominated to the First Circuit, and Robert Bacharach of Oklahoma, nominated to the Tenth Circuit, have the staunch support of their Republican senators. Richard Taranto, nominated to the Federal Circuit, enjoys strong bipartisan support, including the endorsement of noted conservative legal scholars. All three nominees also have stellar professional qualifications and each has been rated unanimously ''well-qualified'' by the ABA's Standing Committee on the Federal Judiciary.

As you know, the ''Thurmond Rule'' is neither a rule nor a clearly defined event. While the ABA takes no position on what invocation of the ''Thurmond Rule'' actually means or whether it represents wise policy, recent news stories have cast it as a precedent under which the Senate, after a specified date in a presidential election year, ceases to vote on nominees to the federal circuit courts of appeals. We note that there has been no consistently observed date at which this has occurred during the presidential election years from 1980 to 2008. With regard to the past three election years, the last circuit court nominees were confirmed in June during 2004 and 2008 and in July during 2000. In deference to these historical cut-off dates and because of our conviction that the Senate has a continuing constitutional duty to act with due diligence to reduce the dangerously high vacancy rate that is adversely affecting our federal judiciary, we exhort you to schedule votes on these three outstanding circuit court nominees this month.

We also urge you to continue to work together to move consensus district court nominees to the floor for a vote throughout the rest of the session, lest the vacancy crisis worsens in the waning months of the 112th Congress. With five new vacancies arising this month and an additional five announced for next month, this is not just a possibility; it is a certainty, absent your continued commitment to the federal judiciary and steady action on nominees.

Thank you for your past efforts and for your consideration of our views on this important issue.

Sincerely,

WM. T. (BILL) ROBINSON III,
President.

[From the Oklahoman, June 15, 2012]

SENATE REPUBLICANS TO BLOCK VOTE ON OKLAHOMA NOMINEE FOR FEDERAL APPEALS COURT

(By Chris Casteel)

WASHINGTON.—Senate Republicans won't allow a vote before November's presidential election to confirm U.S. Magistrate Judge Robert E. Bacharach to a federal appeals court, despite Bacharach's credentials and support from both Oklahoma senators, Sen. Tom Coburn said Thursday.

Coburn, R–Muskogee, said Senate Republican leader Mitch McConnell told him Republicans were following a tradition used by both parties to block votes on circuit court nominees a few months before a presidential election.

That means a vote on Bacharach, whose nomination to the 10th U.S. Circuit Court of Appeals cleared the Senate Judiciary Committee last week, ''is not going to happen,'' Coburn said.

Coburn said the nomination of John E. Dowdell to be a U.S. district judge in Tulsa still has a ''great chance'' of clearing the full Senate.

Bacharach is ''an awfully good candidate'' for the circuit court position, said Coburn, who praised his character and judicial temperament. Bacharach, who has been a magistrate judge in Oklahoma City since 1999, was given a rating of ''unanimously well qualified'' for the appeals court position by the American Bar Association.

Sen. Jim Inhofe, R–Tulsa, praised Bacharach during a committee hearing last month.

But the selection and confirmation process moved too slowly to fill the vacancy on the appeals court—which is a step below the U.S. Supreme Court—given the political timetable in Washington.

Though the position has been open since July 2010, the White House didn't make a nomination until January, after spending months vetting candidates that weren't going to be acceptable to Coburn and Inhofe.

Then, it took more than three months to schedule a committee hearing for Bacharach as the staff conducted a background investigation; Coburn withheld his approval for a committee hearing until the committee investigation was completed.

Ultimately, Bacharach may have just narrowly missed a full Senate vote. The Senate this week, over the objections of most Republicans, confirmed a nominee from Arizona for another circuit court. After that vote, McConnell told Republican senators no other votes on circuit judges would be held.

McConnell's office declined to comment on Thursday.

Sen. Patrick Leahy, D–Vermont, chairman of the Senate Judiciary Committee, said Thursday, ''This is really a challenge to the senators who have said that they will not support these filibusters and this kind of shutdown, and to those Republican senators who support the circuit court nominees from Maine and Oklahoma.''

But Coburn said there wasn't anything he could do about the situation.

The delaying tactic on circuit court judges, which will likely extend to district court judges later this year, has become common practice for the party that doesn't control the White House.

This year, it means Republicans will block votes on nominees for appeals courts, which can have great influence on a wide range of legal issues since the Supreme Court agrees to hear relatively few cases.

The aim of the tactic is to delay making lifetime appointments to federal courts in hopes their party will regain the White House and the power to fill judicial vacancies. Coburn said Bacharach could be cleared late this year if President Barack Obama wins re-election. If not, Coburn said, Bacharach would make a great nominee for a Republican president.

Mr. LEAHY. The ABA president wrote:

Amid concerns that the judicial confirmation process is about to fall victim to presidential election year politics through the invocation of the ''Thurmond Rule,'' I am writing on behalf of the American Bar Association to reiterate our grave concern for the longstanding number of judicial vacancies on Article III courts and to urge you to schedule floor votes on three pending, noncontroversial circuit court nominees before July and on district court nominees who have strong bipartisan support on a weekly basis thereafter.

This is the precise danger that was the reason for that letter. Including Judge Bacharach, William Kayatta of Maine, and Richard Taranto, there are currently 20 judicial nominees voted out of the Judiciary Committee and being blocked by Senate Republicans.

During the Judiciary Committee meeting approving the nomination of Judge Bacharach, Senator COBURN noted:

I believe that Judge Bacharach will uphold the highest standards and reflect the best in our American judicial tradition by coming to the bench as a well-regarded member of the community. At a time when our country seems as divided as ever, it is important that citizens respect members of the judiciary and are confident they will faithfully and impartially apply the law. . . I believe Judge Bacharach would be an excellent addition to the Tenth Circuit.

Senator INHOFE likewise has said: ''I believe that Judge Bacharach would continue the strong service Oklahomans have provided the Tenth Circuit.'' When asked last month about this effort to block a vote on Judge Bacharach's nomination, Senator COBURN told The Oklahoman: ''I think it's stupid.'' He is right. It is just obstruction.

There is no good reason that the Senate should not vote on consensus circuit court nominees thoroughly vetted, considered and voted on and approved with nearly unanimous bipartisan support 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 3 months ago and 2 months before considering Judge Bacharach's nomination. This is the same person who Chief Justice John Roberts recommended to Kenneth Starr for a position in the Justice Department. He is widely respected in Maine. Republicans cannot seriously oppose his nomination on the merits or for ideological reasons. It is just more obstruction.

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 4 months ago, and is supported by conservatives such as Robert Bork and Paul Clement. Republicans cannot seriously oppose his nomination to the Federal circuit on the merits or for ideological reasons. It is just more obstruction.

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. They are qualified and should be considered as consensus nominees and confirmed. Senate Republicans are blocking consent to vote on superbly qualified circuit court nominees with strong bipartisan support. This is a new and damaging application of the Thurmond rule.

It is hard to see how this new application of the Thurmond rule is really anything more than another name for the stalling tactics we have seen for months and years. I have yet to hear any good reason why we should not continue to vote on well-qualified, consensus nominees, just as we did up until September of the last 2 Presidential election years. I have yet to hear a good explanation why we cannot work to solve the problem of high vacancies for the American people. I will continue to work to confirm as many of President Obama's qualified judicial nominees as possible to fill the many judicial vacancies that burden our courts and the American people across the country.

Senate Republicans have become the party of no—no help for the American people, no to jobs, no to economic recovery, no help to extend tax cuts for the middle class, and no to judges to provide Americans with justice in their Federal courts. Although the public announcement that they would be blocking qualified and consensus circuit court nominees was not until June, the truth is that Senate Republicans have been obstructing President Obama's judicial nominees since the beginning of his Presidency, beginning with their filibuster of his first nominee.

Senate Republicans used to insist that filibustering of judicial nominations was unconstitutional. The Constitution has not changed but as soon as President Obama was elected they reversed course and filibustered President Obama's very first judicial nomination. Judge David Hamilton of Indiana was a widely respected 15-year veteran of the Federal bench nominated to the seventh circuit and was supported by Senator DICK LUGAR, the longest-serving Republican in the Senate. They delayed his confirmation for 5 months. Senate Republicans then proceeded to obstruct and delay just about every circuit court nominee of this President, filibustering nine of them. They delayed confirmation of Judge Albert Diaz of North Carolina to the fourth circuit for 11 months. They delayed confirmation of Judge Jane Stranch of Tennessee to the sixth circuit for 10 months. They delayed confirmation of Judge Ray Lohier of New York to the second circuit for 7 months. They delayed confirmation of Judge Scott Matheson of Utah to the tenth circuit and Judge James Wynn, Jr. of North Carolina to the fourth circuit for 6 months. They delayed confirmation of Judge Andre Davis of Maryland to the fourth circuit, Judge Henry Floyd of South Carolina to the fourth circuit, Judge Stephanie Thacker of West Virginia to the fourth circuit, and Judge Jacqueline Nguyen of California to the ninth circuit for 5 months. They delayed confirmation of Judge Adalberto Jordan of Florida to the eleventh circuit, Judge Beverly Martin of Georgia to the eleventh circuit, Judge Mary Murguia of Arizona to the ninth circuit, Judge Bernice Donald of Tennessee to the sixth circuit, Judge Barbara Keenan of Virginia to the fourth circuit, Judge Thomas Vanaskie of Pennsylvania to the third circuit, Judge Joseph Greenaway of New Jersey to the third circuit, Judge Denny Chin of New York to the second circuit, and Judge Chris Droney of Connecticut to the second circuit for 4 months. They delayed confirmation of Judge Paul Watford of California to the ninth circuit, Judge Andrew Hurwitz of Arizona to the ninth circuit, Judge Morgan Christen of Alaska to the ninth circuit, Judge Stephen Higginson of Louisiana to the fifth circuit, Judge Gerard Lynch of New York to the second circuit, Judge Susan Carney of Connecticut to the second circuit, and Judge Kathleen O'Malley of Ohio to the Federal circuit for 3 months.

As a recent report from the nonpartisan Congressional Research Service confirms, the median time circuit nominees have had to wait for a Senate vote has skyrocketed from 18 days for President Bush's nominees to 132 days for President Obama's circuit court nominees. This is the result of Republican foot dragging and obstruction. In most cases, Senate Republicans have been delaying and stalling for no good reason. How else do you explain the filibuster of the nomination of Judge Barbara Keenan of Virginia to the fourth circuit who was ultimately confirmed 99–0? And how else do you explain the needless obstruction of Judge Denny Chin of New York to the second circuit, who was filibustered for 4 months before he was confirmed 98–0?

The only change in their practices is that Senate Republicans have finally acknowledged that they are seeking to shut down the confirmation process for qualified and consensus circuit court nominees. Three of the five circuit court judges finally confirmed this year after months of unnecessary delays and a filibuster should have been confirmed last year. The other two circuit court nominees confirmed this year were both subjected to stalling and partisan filibusters, which were thankfully unsuccessful.

The American people need to understand that Senate Republicans are stalling and filibustering judicial nominees supported by their home State Republican Senators. Just consider the States I have already mentioned as having circuit nominees supported by their home State Republican Senators unnecessarily stalled—Indiana, North Carolina, Utah, South Carolina, Georgia. Just last month we needed to overcome a filibuster to confirm

Justice Andrew Hurwitz of the Arizona Supreme Court to the ninth circuit despite the strong support of Senators JON KYL and JOHN MCCAIN. Now it is nominees from Oklahoma and Maine who are being filibustered despite the support of their home State Republican Senators.

The year started with the majority leader having to file cloture to get an up-or-down vote on Judge Adalberto Jordan of Florida to the eleventh circuit even though he was strongly supported by his Republican home State Senator. And every single one of these nominees for whom the majority leader was forced to file cloture this year was rated unanimously well qualified by the nonpartisan ABA Standing Committee on the Federal Judiciary, the highest possible rating. Most were to fill a judicial emergency vacancy. So when I hear some Senate Republicans say they are now invoking the Thurmond rule and have decided they are not going to allow President Obama's judicial nominees to be considered, I wonder how the American people are supposed to be able to tell the difference from how they have been obstructing for the last 3½ years.

The minority's stalling of votes on judicial nominees with significant bipartisan support is all to the detriment of the American people. This has been a tactic that they have employed for the last 3½ years, despite repeated appeals urging them to work with us to help solve the judicial vacancy crisis. We have seen everyone from Chief Justice John Roberts, himself appointed by a Republican President, to the nonpartisan American Bar Association urging the Senate to vote on qualified judicial nominees who are available to administer justice for the American public. Sadly, Republicans insist on being the party of no.

What the American people and the overburdened Federal courts need are qualified judges to administer justice in our Federal courts, not the perpetuation of extended, numerous vacancies. Today vacancies on the Federal courts are more than 2½ times as many as they were on this date during the first term of President Bush. The Senate is more than 40 confirmations off the pace we set during President Bush's first term.

Because they cannot deny the strength of this comparison—using apples to apples by comparing first terms—Senate Republicans instead try to draw comfort by making comparisons to President Bush's second term after we had already worked hard to reduce vacancies by 75 percent. In fact, during President Bush's second term, the number of vacancies never exceeded 60 and was reduced to 34 near the end of his Presidency. In stark contrast, vacancies have long remained near or above 80, with little progress made in these last 3½ years. Today, there are still 76 vacancies. Their tactics have actually led to an increase in judicial vacancies during President Obama's first term—a development that is another sad first.

But the real point is that their selective use of numbers does nothing to help the American people. We should be doing better. I know that we can because we have done better. During President Bush's first term, notwithstanding the 9/11 attacks, the anthrax attack on the Senate, the ideologically driven selections of judicial nominees by President Bush, and his lack of outreach to home State Senators, we reduced the number of judicial vacancies down to 29 by this point during his first term and acted to confirm 205 circuit and district court nominees by the end of his first term.

Another excuse from the minority comes across more as partisan score settling than anything else. They claim that having confirmed two Supreme Court Justices, the Senate cannot be expected to reach the 205 number of confirmations in President Bush's first term.

But those Supreme Court confirmation proceedings from years ago do not excuse the Senate from taking the actions it could now on the 20 judicial nominees voted out of the Judiciary Committee and ready for final Senate action. That second Supreme Court confirmation was in August 2010. That is almost 2 years ago and it was opposed by most Senate Republicans.

Senate Republicans held down circuit and district court confirmations in President Obama's first 2 years in office to historically low numbers—12 by the end of 2009 and another 48 in 2010 for a total of only 60. They refused to act on 10 nominees ready at the end of 2009 and on 19 as 2010 drew to a close. Last year they employed the same tactic in stalling action on another 19 judicial nominees at the end of 2011. Now it is 20 judicial nominees in this summer of 2012 that they are stalling. Had Republicans not stalled 19 nominations at the end of last year and dragged those confirmations out into May of this year, we the American people and the Federal courts would be much better off. As it is, however, the fact remains that there are 20 qualified judicial nominations that the Senate could be voting on without further delay.

They refuse to acknowledge that in addition to confirming two Supreme Court Justices in President Clinton's first term, the Senate was able to confirm 200 circuit and district court judges. And in 1992, at the end of President George H.W. Bush's term, the Senate with a Democratic majority was able to confirm 192 circuit and district court judges despite confirming two Supreme Court Justices. Republicans have kept the Senate well back from those numbers by only allowing the Senate to proceed to confirm 154 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 function more fairly and to consider judicial nominees reported with bipartisan support.

Nor are the nominees about whom we are concerned recently nominated. These are not nominees dumped on the Senate in scores at the end of a Presidential term. These are, instead, nominations that date back to October of last year. Most were nominated before March. In fact the circuit court nominees who Republicans are refusing to consider date back to October and November of last year and January of this year. William Kayatta was voted on by the committee and placed before the Senate by mid-April and could have been confirmed then. Richard Taranto and Judge Patty Shwartz have been stalled before the Senate even longer, since March. The truth is that Senate Republicans have shut down confirmations of circuit court judges not just in July but, in effect, for the entire year. The Senate has yet to vote on a single circuit court nominee nominated by President Obama this year. Since 1980, the only Presidential election year in which there were no circuit nominees confirmed who was nominated that year was in 1996, when Senate Republicans shut down the process against President Clinton's circuit nominees. The fact that Republican stalling tactics have meant that circuit court nominees that should have been confirmed in the spring—like Bill Kayatta, Richard Taranto and Patty Shwartz—are still awaiting a vote after July 4th is no excuse for not moving forward this month to confirm these circuit nominees.

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.

When Republican Senators try to take credit for the Senate having reached what they regard as their ''quota'' for confirmations this year, they should acknowledge their strenuous opposition and attempts to filibuster many of the nominations for which they now take credit. As recently as 2008, Senate Republicans denied there was a Thurmond rule. They used to say that any judicial nominee reported by the Senate was entitled to an up-or-down vote and that they would never filibuster judicial nominees. Well, the majority leader has had to file 30 cloture petitions to end their filibusters of judicial nominees. Now they are flip-flopping on their own call for up-or-down votes.

What they are doing now is a first. As I have noted, in the past 5 Presidential election years, Senate Democrats have never denied an up-or-down vote to any circuit court nominee of a Republican President who received bipartisan support in the Judiciary Committee. They

are denying votes not only to Robert Bacharach, a nominee from Oklahoma supported by his conservative home State Republican Senators but also to William Kayatta, a universally respected nominee from Maine supported by his home State Republican Senators, and Richard Taranto, whose nomination to the Federal circuit received virtually unanimous support. Even Judge Patty Shwartz, whose nomination to the third circuit received a split rollcall vote, has the bipartisan support of New Jersey Governor Chris Christie.

Personal attacks on me, taking quotes out of context, trying to repackage their own actions as if following the Thurmond rule or what they seek to dub the Leahy Rule do nothing to help the American people who are seeking justice in our Federal courts. I am willing to defend my record but that is beside the point. The harm to the American people is what matters. Republicans are insisting on being the party of no even when it comes to judicial nominees who home State Republican Senators support.

As chairman and when I served as the ranking member of the Judiciary Committee, I have worked with Senate Republicans to consider judicial nominees well into Presidential election years. I have taken steps to make the confirmation process more transparent and fair. I have ensured that the President consults with home State Senators before submitting a nominee. I have opened up what had been a secretive, blue-slip process to prevent abuses. All the while I have protected the rights of the minority, of Republican Senators. If Republicans want to talk about the Leahy rules, those are the practices I have followed. And I have been consistent. I hold hearings at the same pace and under the same procedures whether the President nominating is a Democrat or a Republican. Others cannot say that.

Senate Republicans are fond of taking quotes of things I have said out of context. But look at my record as chairman. I have not filibustered nominees with bipartisan support in July of Presidential election years. As chairman of this committee, I have steadfastly protected the rights of the minority. I have done so despite criticism from Democrats. I have only proceeded with judicial nominations supported by both home State Senators. I will put my record of consistent fairness up against that of any chairman and remind Senate Republicans that it is they who blatantly disregarded even-handed practices when they were ramming through ideological nominations of President George W. Bush. They would proceed with nominations despite the objection of both home State Senators.

So those are the Leahy rules—respect for and protection of minority rights, increased transparency, consistency, and allowing for confirmations well into Presidential election years for nominees with bipartisan support.

And what were the results? In the last two Presidential election years, we were able to bring the number of judicial vacancies down to the lowest levels in the past 20 years. In 2004, at the end of President Bush's first term, vacancies were reduced to 28, not the 76 we have today. In 2008, in the last year of President Bush's second term, we again worked to fill vacancies and got them down to 34, less than half of what they are today. In 2004, 25 nominees were confirmed from June 1 to the Presidential election. In 2008, 22 nominees were confirmed between June 1 and the Presidential election. So far, since June 1 of this year, only eight judges have been confirmed and five required the majority leader to file cloture to end Republican filibusters.

In 2004, the Senate confirmed five circuit court nominees of a Republican President that had been reported by the committee that year. This year we have confirmed only two circuit court nominees that have been reported by the committee this year, and we had to overcome Republican filibusters in both cases. By this date in 2004 the Senate had already confirmed 35 of President Bush's circuit court nominees. So far, the Senate has only been allowed to consider and confirm 30 of President Obama's circuit court nominees—5 fewer, 17 percent fewer—while higher numbers of vacancies remain, and yet the Senate Republican leadership demands an artificial shutdown on confirmation of qualified, consensus nominees for no good reason.

In fact, during the last 20 years, only four 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. 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. In the previous 5 Presidential election years, a total of 13 circuit court nominees have been confirmed after May 31. Not surprisingly, 12 of the 13 were Republican nominees. Clearly, this is a one-way street in favor of Republican Presidents' nominees.

Senate Republicans, on the other hand, have repeatedly asserted that the Thurmond rule does not exist. For example, on July 14, 2008, the Senate Republican caucus held a forum and said that the Thurmond rule does not exist. At that meeting, the senior Senator from Kentucky, the Republican leader stated: ''I think it's clear that there is no Thurmond rule. And I think the facts demonstrate that.'' Similarly, the Senator from Iowa, my friend who is now serving as ranking member of the Judiciary Committee, stated that the Thurmond rule was in his view ''plain bunk.'' He said: ''The reality is that the Senate has never stopped confirming judicial nominees during the last few months of a President's term.'' We did not in 2008 when we proceeded to confirm 22 nominees over the second half of that year.

So at the end of President Bush's second term, and at the beginning of his first term as well, Senate Democrats worked to confirm consensus nominees and reduce the judicial vacancy rate. Despite the pace we set during President Bush's first term for reducing vacancies, vacancies have remained near or above 80 for most of President Obama's first term and little comparative progress has been made during the three and a half years of President Obama's first term. As contrasted to 29 vacancies in July 2004, there are still 76 vacancies in July 2012. If we could move forward to Senate votes on the 20 judicial nominees ready for final action, the Senate could reduce vacancies to less than 60 and make some progress. We were 9 months later in confirming the 150th circuit or district judge to be appointed by President Obama. Another way to look at our relative lack of progress and the burden the Republican obstruction is placing on the American people seeking justice is to note that by mid-November 2002 we had already reduced judicial vacancies to below where we are now. In fact, when on November 14, 2002, the Senate proceeded to confirm 18 judicial nominees, vacancies went down to 60 throughout the country. We effectively worked twice as efficiently and twice as fast. By that measure, the Senate is almost 20 months behind schedule. This is hardly then the time to be shutting down the process.

In a letter to Senators COBURN and INHOFE dated July 19, 2012, the American Bar Association's State Delegate for Oklahoma urged the Republican Senators to rise above politics and to end this filibuster of Judge Bacharach. I ask unanimous consent that a copy of this letter be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

AMERICAN BAR ASSOCIATION,
Oklahoma City, OK, July 19, 2012.

Senator JAMES M. INHOFE,
Russell Senate Office Building, Washington, DC.

Senator TOM COBURN,
Russell Senate Office Building, Washington, DC.

DEAR SENATORS INHOFE AND COBURN: The undersigned, Oklahoma's current delegates to the American Bar Association (ABA) (less two judge members who abstain from this letter), are writing to ask you respectfully to press the Republican Senate leadership for a floor vote, before the traditional August recess, on the nomination of Judge Robert Bacharach to the Tenth Circuit Court of Appeals vacancy.

As you probably know, the ABA wrote to the Senate leaders of both parties on June 20, 2012, after Senator McConnell announced his party's intention to invoke the so-called ''Thurmond Rule'' and block floor consideration of any more nominees to any federal circuit court vacancies, including those, like Judge Bacharach, that: (1) have passed through the Judiciary Committee; (2)

present no controversy on their qualifications; and (3) have the support of their home state senators.

We appreciate your role in the selection of Judge Bacharach and your public support for his nomination. As you know, he has been rated ''unanimously well qualified'' by the ABA panel that reviewed his qualifications.

We understand that both political parties have engaged in a variety of stalling tactics, including the threat of a filibuster, regarding judicial nominations in the past. However, this ignores the fact that this Oklahoma slot on the Tenth Circuit has now been vacant for over two years.

Therefore, we are asking you (1) to use your considerable influence within the Senate and urge the leadership of both parties to schedule a floor vote on Judge Bacharach's nomination before the August recess, and (2) to publicly announce your willingness to vote to end any filibuster preventing a vote on the merits of the nomination, if necessary.

Respectfully,

JIMMY GOODMAN,
ABA State Delegate for Oklahoma.

For himself and also for: Cathy M. Christensen, OBA (OK Bar Assoc.) President; William G. Paul, ABA Past President; Dwight L. Smith, ABA Division Delegate; James T. Stuart, OBA President-Elect; M. Joe Crosthwait, Jr., Okla. County Bar Delegate; Mark A. Robertson, ABA Section Delegate; Peggy Stockwell, OBA Vice President; Robert S. Farris, Tulsa County Bar Delegate; Jennifer Kirkpatrick, Young Lawyer Delegate.

Mr. LEAHY. Mr. President, it is time for reasonable and independent thinking Senators to end this needless and damaging filibuster on Judge Bacharach's nomination and confirm him. With judicial vacancies remaining at such high levels for so long, we need to continue confirming judicial nominees. At a time when judicial vacancies remained historically high for 3 years, with 40 more vacancies and 40 fewer confirmations than at this point in President Bush's first term, the Senate Republican leadership should reconsider its obstruction and work with us to fill these longstanding judicial vacancies in order to help the American people. We have well-qualified, consensus nominees with bipartisan support who can fill these vacancies. It is only partisan politics and continued tactics of obstruction that stand in the way.

Mr. FRANKEN. Mr. President, I ask unanimous consent that any time in a quorum call be equally divided.

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

Mr. FRANKEN. Mr. President, 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. 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, for the last few weeks, it has been routine practice here in the Senate that we vote on consensus district court nominees most Mondays. We have done so quite a number of times in this Congress. We could have done so again tonight. Instead, the majority leader has decided to pursue another course. Rather than confirm what would have been the 155th judge tonight, the majority will instead engage in a political activity. Make no mistake, it is purely and simply a political posturing situation. It is really unfortunate.

It is well known that the practice and tradition of the Senate is to stop confirming circuit nominees in the closing months of a Presidential election year. That is what we have done during the last number of Presidential election years. That started in 1980, I believe. So that would be 32 years. In fact, today is July 30. You would have to go back that number of years to find a Presidential election year when we approved a circuit court judge this late.

Of course, the rationale has been that this close to an election, whoever wins that election should be the one to pick these lifetime nominees who will run our judiciary system. It is true that there were some votes in relation to circuit nominations in July during the last two election years. The only problem, of course, is that those were cloture votes on outstanding nominees the Democrats were filibustering.

For example, in July 2004—remember, that was a Presidential election year—cloture votes were held on four outstanding circuit nominees the Democrats were filibustering. Those included Miguel Estrada, nominated for the D.C. Circuit; Richard Griffin, nominated to the sixth circuit court; David McKeagh, nominated to the sixth circuit; and Henry Saad, also nominated to the sixth circuit.

I would note that at the time the sixth circuit alone had a 25-percent vacancy rate. And every one of those vacancies was designated as judicial emergencies.

That, of course, didn't matter to the other side. Despite the fact that the sixth circuit was in dire straits, the other side filibustered every one of those nominees.

I don't recall too much concern from my friends on the other side of the aisle about the need to confirm those judges.

And now, when our side seeks to enforce the rule the other side helped create and perfect, all we hear are complaints.

Mr. President, if ever there was an example of ''crocodile tears,'' this is it.

In 2008, the other side was at it again. Once again, they closed-up shop on Circuit nominations in June. This time, it was the Fourth Circuit that was in dire straits.

Despite the fact that the Fourth Circuit was 25 percent vacant, the Democrats refused to even process four outstanding consensus nominees.

Those nominees included Judge Robert Conrad, even though he had already been confirmed unanimously as a U.S. Attorney and District Court Judge. Democrats refused to process Judge Glen Conrad even though he had strong bipartisan home state support. Steve Matthews also had strong home-state support yet the Democrats in Committee refused to give him a vote. To show you the incredible lengths the Democrats were willing to go, they even tried to justify blocking the nomination of U.S. Attorney Rod Rosenstein to the fourth circuit by claiming he was doing ''too good of a job'' as U.S. Attorney to be promoted.

By refusing to give these nominees a vote in Committee, the Democrats engaged in what amounted to a ''pocket filibuster'' of all four of these candidates to the fourth circuit.

And again, this was at a time when the fourth circuit's vacancy rate was over 25 percent, similar to the Sixth Circuit vacancy rate in 2004. But that didn't matter to the other side. In 2008, just like in 2004, they simply refused to process any more circuit nominees after June.

At the end of the day, based on any fair and objective metric, the suggestion that we today are operating any differently than Democrats did in 2004 and 2008 is simply without merit. Democrats stalled and blocked numerous highly qualified circuit nominees during those Presidential election years including even nominees with bipartisan support.

The Democratic leadership has invoked repeatedly what has been called the ''Thurmond Rule'' to justify stalling nominees—even those with bipartisan support. And now they don't want us to play by the same set of rules. The Democratic leadership doesn't want us to enforce the rule that they helped establish.

Let me quote from a CRS report on this subject:

> The Senator who most frequently has asserted the existence of a Thurmond rule has been the current chairman of the Judiciary Committee.

The CRS report noted that on March 7, 2008, the Chairman recalled:

> When President Reagan was running for President and Senator Thurmond, then in the Republican minority as ranking member of the Judiciary Committee, instituted a policy to stall President Carter's nominations. That policy, known as the ''Thurmond Rule,'' was put in when the Republicans were in the minority. It is a rule that we still follow, and it will take effect very soon here.

Again, this was in March of that Presidential election year, not June or July.

CRS went on to note the strong support the majority leader has expressed for the so-called Thurmond rule. According to CRS:

> Senator Harry Reid, the Senate majority leader, has expressed agreement with Senator Leahy about the existence of a Thurmond rule. In April 10, 2008, floor remarks, Senator Reid said, ''In a Presidential election year, it is always very tough for judges. That is the way it has been for a long time, and that is why we have the Thurmond rule and other such rules.''

Five days later, the Majority Leader said:

You know, there is a Thurmond doctrine that says: After June, we will have to take a real close look at judges in a Presidential election year.

These quotes indicate not only the expectation, but in fact a support for slowing down and cutting off the confirmation of judges in a Presidential election year.

Senate Republicans are invoking this practice in a more narrow fashion, and after more confirmations than Democrats did in the past.

Setting aside the so-called Leahy-Thurmond rule, by any objective measure, this President has been treated fairly and consistent with past Senate practices.

For example, with regard to the total number of confirmations, this President is well ahead of his predecessor. We have confirmed 154 of this President's district and circuit nominations. We have also confirmed 2 Supreme Court nominations during President Obama's first term. When Supreme Court nominations are pending in the Committee, all other nominations work is put on hold.

The last time the Senate confirmed two Supreme Court nominees was during President Bush's second term. And during that term the Senate confirmed a total of only 119 district and circuit court nominees.

Let me put it another way, under similar circumstances, we have confirmed 35 more district and circuit nominees for President Obama than we did for President Bush.

During the last Presidential election year, 2008, the Senate confirmed a total of 28 judges—24 district and 4 circuit. This Presidential election year we have already exceeded those numbers, having confirmed a total of 32 judges. So those who say that this President is being treated differently either fail to recognize history, or want to ignore the facts, or both.

While this President has not been treated differently than previous Presidents, he certainly has behaved differently with regard to nominations. He has been slow to send nominees to the Senate, and he abused his recess appointment authority. If President Obama hasn't gotten as many confirmations as he could have, it is because he has been slow to nominate and he has abused his recess appointment power.

Let me take just a moment to discuss how slow the President has been with his nominations.

When President Obama took office, there were 59 judicial vacancies. One year earlier, at the beginning of 2008, there were only 43 vacancies. So, during the last year of President Bush's second term, when the Democrats controlled the Senate, and during a time when they refused to process four nominees for the fourth circuit, they allowed the vacancy rate to increase by more than 37 percent.

By mid-March 2009, when the first Obama judicial nomination was sent up to the Senate, there were 70 judicial vacancies. Over the next 3 months, only five more circuit nominations were sent to the Senate. By the end of June, when the Senate received its first district nomination, there were 80 vacancies.

The failure or delay in submitting nominations for vacancies has been the practice of this administration and it still continues to this day.

By the end of 2009, there were 100 vacancies, with only 20 nominees. In December 2010, more than half of the 108 vacancies had no nominee. At the beginning of this year, only 36 nominees were pending for the 82 vacancies. And it continues to this day, more than half of the 76 vacancies have no nominee.

I just want to remind my colleagues that all of this begins with the White House. So if someone wants to complain about judicial vacancies, they should mail those complaints to 1600 Pennsylvania Avenue.

Now, I also mentioned that the President could have had a few more district court nominees at the end of last Congress.

Our side offered to confirm quite a number of district court nominees who were on the Executive Calendar, If the President would provide his assurances that he wouldn't bypass the Senate with recess appointments. The President refused to provide those assurances, and we found out why a couple weeks later when the President unconstitutionally bypassed the Senate.

I want everyone to understand that. At the end of last Congress we offered to confirm quite a few district court nominees. But the President wouldn't take ''Yes'' for an answer. Rather than choosing a path that led to more progress and a greater number of confirmations, the President chose the path to more confrontation and fewer confirmations.

The same thing happened last week. Once again, our side offered to confirm additional district court nominees. But, once again, the other side refused to take ''Yes'' for an answer. Rather than choosing the path that led to cooperation and additional confirmations, the other side chose more confrontation and fewer confirmations. They would rather waste precious time on a vote to nowhere, than spend the little time we have left on getting more nominations done. So here we are engaged in this political theater.

I urge my colleagues to vote ''No'' on cloture.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. MCCONNELL. Mr. President, it is almost August. We are just a few weeks away from the political parties' nominating conventions. At this point in past Presidential election years, the Senate is diligently working on things such as appropriations bills or the Defense authorization bill but not this year in the Senate.

Our Democratic colleagues refuse to do the basic work of government. Even though Chairman INOUYE has said he would like to pass some of the nine appropriations bills his committee has worked hard to complete, we haven't taken up a single one. Our Democratic colleagues will not bring the Defense authorization bill to the floor either, even though both the chairman and the ranking member of the Armed Services Committee are ready to work on this important legislation as well. And they refuse to work with us to help the economy or to prevent a looming tax hike on nearly 1 million small businesses at the end of the year.

Instead, they prefer to waste valuable time on a vote they have argued for many years shouldn't take place this close to a Presidential election. Now that there is a Democrat in the White House, they refuse to follow past practice on postponing the consideration of circuit court nominations this late in a Presidential election year so the American people can decide whom they want to make these important appointments. This practice is known as the Leahy-Thurmond rule. It is a custom they vigorously defended when there was a Republican in the White House.

So let's take a look at recent history. In 2004, the unemployment rate was only 5.4 percent. On our circuit courts, however, back in 2004, there were nine declared judicial emergencies. That didn't matter to our Democratic colleagues. The Senate stopped—stopped—circuit court nominations in June of that year, even though we had nine judicial emergencies. In 2008, the unemployment rate wasn't much higher, at 6.1 percent. In our circuit courts, there were almost as many judicial emergencies. But in the Fourth Circuit things were much worse: Fully one-fourth of the seats were empty, even though there were qualified nominees to fill them. Our Democratic colleagues didn't care then either. In the name of Senate custom and practice—by which I mean the Leahy-Thurmond rule—they pocket-filibustered several outstanding circuit court nominees in committee.

It didn't matter to our Democratic friends that these nominees enjoyed strong home State support, including bipartisan home State support, or that they had outstanding credentials or that they would fill declared emergencies on our circuit courts. The Senate couldn't process them—they told us again and again and again—because it was June and that was—to quote the chairman of the Judiciary Committee—''way past the time'' of the Leahy-Thurmond rule.

Today, it is August, not June, that is upon us. The country's unemployment

rate is, unfortunately, much higher than it was in either 2004 or 2008. It is now at 8.2 percent. But the situation on our circuit courts is much better than it was in either 2004 or 2008. There are now fewer judicial emergencies. In terms of what the Senate can do about it, as opposed to the President's failure to nominate people, we have confirmed—we have confirmed—every nominee whom the President has submitted to fill a judicial emergency on our circuit courts, save one—only one. That is right. The Senate has confirmed every nominee the President has sent to fill an emergency on our circuit courts, save one, and that one nominee isn't on the Senate floor.

In fact, the Senate has already confirmed as many or more circuit court nominees this year than it did in 2004 or 2008. It has confirmed a much higher percentage of circuit court nominations and it has confirmed those nominations faster than during the Bush administration.

On that last point, although we will not hear our Democratic friends acknowledge it, the average time from nomination to confirmation—the average time from nomination to confirmation—of a circuit court nominee for President Obama is over 1 month faster than it was for President Bush in his first term. Again, the time from nomination to confirmation for President Obama is over 1 month faster for a circuit court nominee than in President Bush's first term, and it is over 100 days faster than it was for President Bush's circuit court nominees overall.

So the situation with our economy is worse now than it was in 2004 or 2008, while the situation on our circuit courts is better. The economy is worse, but the situation on circuit courts is better. So what do you think our Democratic colleagues are going to focus on? Are they going to do the basic work of government—fund the government, for example? It doesn't look like it. Are they going to reauthorize important programs for our Nation's defense? I am told it has been 50-some-odd-years since the Defense authorization bill hasn't passed—no sign of it this year. Are they going to work with us to fix the economy or prevent a looming tax hike? I don't see any evidence of it yet.

What they want to do, instead, is violate the custom in Presidential election years that the Congressional Research Service says they have been the biggest proponents of. This is not me saying this, this is the Congressional Research Service. They want to violate the custom in Presidential election years that the CRS says they have been the biggest proponents of.

The CRS does not say the biggest proponent of the Leahy-Thurmond rule is me or Ranking Member GRASSLEY or even Senator Thurmond. Rather, the CRS says the most frequent proponent of the rule ''is the current chairman of the Senate Judiciary Committee.''

No doubt we will hear some post hoc, gerrymandered rationale from our Democratic friends as to why the rule the CRS says they have been the biggest proponents of somehow doesn't apply to them. They will ignore the pocket filibusters of people who would have filled judicial emergencies during a Republican administration. But, of course, that is par for the course.

Whether it is pro forma sessions to prevent recess appointments, or judicial filibusters, or the Leahy-Thurmond rule, our friends don't want the practices they have pioneered or been the biggest proponents of to apply to them. They don't want the practices they have been the pioneers of and the biggest proponents of to apply to them. Now it is pretty convenient for them, but that is not the way the Senate is supposed to work.

In sum, on the subject of the Leahy-Thurmond rule, we have been more responsible in deciding to invoke it in this year than our Democratic colleagues were in either 2004 or 2008. I would urge my friends to oppose this double standard and to oppose cloture.

Let me repeat. This is not about the individual who has been nominated. It wasn't, in many respects, about the individuals to be nominated in 2004 or 2008. What this is is a bipartisan timeout—bipartisan in the sense that it has been used by both sides—a timeout within, this year, 6 months of an election; in 2008, it was within 8 months of the end of a term—but within 6 months of an election to these important lifetime jobs to see who the next President may be.

Mr. INHOFE. Mr. President, will the Senator yield?

Mr. MCCONNELL. I yield to my friend from Oklahoma.

Mr. INHOFE. Let me first say it is awkward that one of the best nominees, Robert Bacharach, is the one subject to this. I regret that is the case. The problem is this would be the latest confirmation of a circuit court nominee during an election year in 20 years.

I was thinking today that I cannot vote against this guy, but I sure can vote present. If we have a 20-year precedent that was put in there by the Democrats and the Republicans alike, I wouldn't want to be the one to break that precedent. We are within 4 months of an election right now. It is very important that we do what we have done over the last 20 years and allow the new administration to come in.

The nomination of Robert Bacharach has been up there for 2 years before any action. You have to be a little suspicious as to why is he coming up right now. So I may end up voting present.

Mr. MCCONNELL. I thank my friend from Oklahoma. He confirms that this is not about the nominee, who apparently is well qualified. This is about an approach that has developed over several decades called the Leahy-Thurmond rule, under which it has been the practice to kind of call a timeout within rather close proximity to an election. In 2008, the timeout was called in June. We are going to enter August at the end of this week.

I would say also to my friend from Oklahoma, we have confirmed for the President in this election year five circuit court nominees. President Bush in 2008 got four; President Bush in 2004 got five. We have not been unfair to the administration. And it is certainly no reflection on what is apparently an outstanding nominee from your State.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, I hope the American people are witnessing this moment in the Senate. We are about to make history. We are going to make history here in a few minutes when we have a rollcall vote on U.S. Magistrate Judge Robert Bacharach to the Tenth Circuit Court of Appeals. This fine man who has been nominated to this high position in the Federal judiciary has the support of both Senators of his home State. They are both Republicans.

Listen to what Senator TOM COBURN said of Mr. Bacharach: A stellar candidate. Listen to what Senator INHOFE said about this same nominee from his State: A great guy.

I listened to these comments. Then I reflect on the fact this man was reported out of the Senate Judiciary Committee on a voice vote. There was so little controversy because of his outstanding record, he was reported out on a voice vote.

The Democratic majority leader has offered to bring to the floor of the Senate a nominee approved by both Republican Senators from Oklahoma, and now you hear Senator MCCONNELL come to the floor and explain why the Republicans will have to filibuster and stop this man from being appointed to the court. Is it something about him? No. It is all about politics and it is all about the Presidential campaign.

If the Republicans sustain this filibuster and stop this good man from his service on the circuit court, it will be the first time in the history of the Senate that an appeals court nominee with bipartisan committee support has ever been filibustered on the floor of the Senate. But how can we be surprised? This will be the 86th Republican filibuster this Congress.

It is said that if the only tool you own is a hammer, every problem looks like a nail. If you happen to be a Republican leader in the Senate, every day looks like another chance for a filibuster. Eighty-six filibusters. Now they are filibustering judicial nominees approved nearly unanimously by the committee and approved by both Republican Senators. The President is prepared to assign this man into this position—a critically important position in the judiciary—and who is stopping him? The Republicans in the Senate, the 86th Republican Senate filibuster in this Congress. No surprise that it comes from Senator MCCONNELL, who very openly and candidly, and I assume honestly, said, My biggest job in the Senate is to make sure

Barack Obama is a one-term President. That is how he welcomed President Obama to the White House.

So they have piled filibuster on top of filibuster to stop the rare possibility that this President would give this good man, this exceptional man, a chance to serve his country. Listen to the background of this man who is about to become a victim of the 86th Republican filibuster:

For 13 years he has served as a federal magistrate. He has handled an impressive caseload, including almost 3,000 civil and criminal matters, and 400 judicial settlement conferences. He is the type of consensus nominee we look for in every single State. He has been given the highest possible rating by the American Bar Association. No questions asked, this is a good man and a good candidate for this job. In the American Bar Association's nonpartisan peer review, every single reviewer said this magistrate is well qualified to serve as a circuit court judge in the Tenth Circuit Court of Appeals. And where are the politics there? The politics are that the Democratic majority leader has offered to the two Republican Senators from Oklahoma a chance for this good man to serve, and now they are going to stop him with a Republican filibuster.

If you are looking for evidence of a dysfunctional Senate, hold on tight. In just a few moments we will start a rollcall, and you will watch as Republican after Republican comes and votes to kill this man's nomination for the Tenth Circuit Court of Appeals. President Obama will be the first President in 20 years to complete his first term with more judicial vacancies than when he took office. They have dragged their feet every step of the way with filibusters and delays to stop this President from appointing the judges he was elected to appoint. And good people—good people such as U.S. Magistrate Judge Robert Bacharach—who submit their names in this process, who go through extensive background investigations, who put their lives on hold wondering if they are going to make it, end up getting caught in a political game that is being played here on the floor.

I hope there is a handful—five, six, or seven—Republican Senators who will give this man a fair break and will give him a chance to serve his country as a circuit judge for the Tenth Circuit Court of Appeals. Please, let us not make history today by stopping a highly qualified bipartisan nominee, well qualified by the American Bar Association, from serving this circuit. The Republican Senators from Oklahoma are right—he is a stellar candidate and, by every measure, a great guy. Please don't make him a victim of last-minute political campaigning in this last week before the recess we take for our Democratic national convention and the Republican national convention. He shouldn't be a victim of this Presidential campaign. He deserves a chance to serve.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, I don't like to get involved in the back and forth on this issue. It bothers me. Chairman LEAHY goes into all these numbers, and they are distorted for the most part in connection with the reality. I have said that I simply will not, however, stand by and see the record misconstrued and the picture painted as something other than it is.

President Bush's judicial nominees were filibustered extraordinarily, unlike anything we had ever seen before. And this is the way it happened. I was here, I remember it very distinctly. President Bush was elected President. In 2001, shortly after he was elected, the New York Times reported that a group of well-known liberal law professors, including Laurence Tribe, Cass Sunstein, and Marsha Greenberger, met with Democratic Senators in a retreat. They proposed to the Democratic conference, who were then in the minority in the Senate—they didn't have the majority. President Bush was going to be nominating judges, and they decided to change the ground rules of judicial confirmation. That is a fact. After that, they aggressively executed a plan of unprecedented obstruction of judicial nominees.

In a totally unprecedented use of the filibuster, the Senate confirmed only 6 of 25 of President Bush's circuit court nominees. Two of those six were prior Clinton nominees President Bush, in an act of good faith, renominated. Of course they were immediately confirmed. Yet the majority of President Bush's first nominees to the circuit court waited years for confirmation. Many were never confirmed.

Perhaps the most disturbing story was that of Miguel Estrada, which has come up recently in the confirmation of Supreme Court Justices in which some of my Democratic colleagues basically acknowledge that he was unfairly treated. He is an outstanding appellate lawyer, supremely qualified to serve on the District of Columbia Circuit Court. He waited 16 months for a hearing. They would not give him a hearing.

This was all after 2000, in their determination to change the ground rules. Before that, filibusters had not been utilized against nominees, not to any degree. Almost never, actually. We had a fight over it. I spoke on maybe half a dozen or a dozen times about Mr. Estrada. There were seven cloture votes—seven attempts—by the Republicans to get a vote on Mr. Estrada so he could be confirmed. He was a superb nominee, and he was treated very poorly. It was not the right thing, and people have acknowledged it since.

Mr. President, is there a time agreement on the vote to commence?

The PRESIDING OFFICER. The time for the minority leader just expired.

Mr. SESSIONS. Mr. President, I ask unanimous consent to have one additional minute.

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

Let me just say this: In the last 20 years, going back even before this dispute began in 2000, when Democrats changed the ground rules of confirmations and started filibustering systematically qualified nominees, not one circuit judge has been confirmed after this day. That has been the tradition of the Senate. It has been referred to as the Thurmond rule. Maybe it would be even more appropriate to say the Leahy rule.

Others have talked about the quotes that have been made from Senator REID and Senator LEAHY on the floor. This is the tradition of the Senate that when someone is up for reelection, after this day, to get their nominees confirmed, they have to win reelection. If President Obama is successful in being reelected, I am sure he will have a high likelihood of getting this nominee and others confirmed.

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

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

The assistant legislative clerk proceeded to call the roll.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, I ask unanimous consent that the quorum call be rescinded.

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

Mr. SESSIONS. Mr. President, I yield back all time prior to the vote.

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will report.

The assistant 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 nomination of Robert E. Bacharach, of Oklahoma, to be United States Circuit Judge for the 10th Circuit.

Harry Reid, Patrick J. Leahy, Thomas R. Carper, Tom Udall, Robert Menendez, Kirsten E. Gillibrand, Dianne Feinstein, Kent Conrad, Christopher A. Coons, Herb Kohl, Amy Klobuchar, Jack Reed, Ron Wyden, Richard J. Durbin, Jeff Merkley, Richard Blumenthal, Sherrod Brown.

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 nomination of Robert E. Bacharach, of Oklahoma, to be United States Circuit Judge for the Tenth Circuit, shall be brought to a close?

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. COBURN (when his name was called). Present.

Mr. HATCH (when his name was called). Present.

Mr. INHOFE (when his named was called). Present.

Mr. KYL. The following Senators are necessarily absent: the Senator from New Hampshire (Ms. AYOTTE), the Senator from South Carolina (Mr. DEMINT), the Senator from South Carolina (Mr. GRAHAM), the Senator from Illinois (Mr. KIRK), the Senator from Utah (Mr. LEE), the Senator from Arizona (Mr. MCCAIN), and the Senator from Alaska (Ms. MURKOWSKI).

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

The yeas and nays resulted—yeas 56, nays 34, as follows:

[Rollcall Vote No. 186 Ex.]

YEAS—56

Akaka	Gillibrand	Nelson (NE)
Baucus	Hagan	Nelson (FL)
Begich	Harkin	Pryor
Bennet	Inouye	Reed
Bingaman	Johnson (SD)	Reid
Blumenthal	Kerry	Rockefeller
Boxer	Klobuchar	Sanders
Brown (MA)	Kohl	Schumer
Brown (OH)	Landrieu	Shaheen
Cantwell	Lautenberg	Snowe
Cardin	Leahy	Stabenow
Carper	Levin	Tester
Casey	Lieberman	Udall (CO)
Collins	Manchin	Udall (NM)
Conrad	McCaskill	Warner
Coons	Menendez	Webb
Durbin	Merkley	Whitehouse
Feinstein	Mikulski	Wyden
Franken	Murray	

NAYS—34

Alexander	Grassley	Portman
Barrasso	Heller	Risch
Blunt	Hoeven	Roberts
Boozman	Hutchison	Rubio
Burr	Isakson	Sessions
Chambliss	Johanns	Shelby
Coats	Johnson (WI)	Thune
Cochran	Kyl	Toomey
Corker	Lugar	Vitter
Cornyn	McConnell	Wicker
Crapo	Moran	
Enzi	Paul	

ANSWERED ''PRESENT''—3

Coburn	Hatch	Inhofe

NOT VOTING—7

Ayotte	Kirk	Murkowski
DeMint	Lee	
Graham	McCain	

The PRESIDING OFFICER. On this vote, the yeas are 56, the nays are 34, 3 Senators responded ''present.'' Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

Mr. COBURN. We just disallowed one of the best candidates for the appellate court in my 8 years since I have been in the Senate. Magistrate Judge Bob Bacharach is a stellar individual rated ''very highly qualified'' by the American Bar Association. What has happened is we are in the position today because of games that are being played, political games.

Let me just put into the RECORD what is going on. There are three judges ahead of Bob Bacharach in line. We have had a Leahy-Thurmond rule for some 20 years. I have been quoted saying I think it is a stupid rule. But the background is that protecting the prerogative of the Senate is one of the most important things the majority leader can do.

What we have seen happen with the lack of agreement this last holiday season over the moving forward of judges and their approval was the unconstitutional usurpation of power by the President of the United States in the appointment, during our pro forma sessions, of four individuals, one to CFPB and three to the NLRB.

Quite frankly, if we look at what Madison wrote in Federalist 51:

> The great security against a gradual concentration of the several powers in the same branch of government consists in giving to those who administer each branch the necessary constitutional means and personal motives to resist encroachment of the others. Ambition must made to counteract ambition. The interest of the man must be connected with the constitutional rights of the place.

So started the saga in January of this past year, where the reaction of my colleagues on my side of the aisle was to shut down, in response to the President's move, all circuit court confirmations.

I stood in my caucus and fought that. I thought it was the wrong action then. I still think it would have been the wrong action. But I convinced my caucus not to go that direction. To do that, I agreed I would consent to the Leahy-Thurmond rule in this election cycle. But I hope this is the last election cycle we use the Leahy-Thurmond rule.

Because on the other side of the constitutional issues is that a duly elected President does have the right to have their nominees considered, whether I agree with them or not. To prove this, that this was a stunt rather than anything other than that, and Bob Bacharach becomes the pawn in that, is that we had an agreement on judges. Then we had cloture filed on fourteen district court judges, of which there was no real controversy.

All of those district court judges, after that cloture was filed on them and then withdrawn, have henceforth been approved. To the American public, the game is politics and not policy for our country. To me, it saddens me. It frustrates me that we are at this state because it is not a whole lot different than what we see in the playground at a kindergarten.

The person who most has spoken in favor of the Leahy-Thurmond rule is the chairman of the Judiciary Committee. Yet we find this impasse today. So what we ought to all do, every Member of the Senate and the Judiciary Committee during the break after this election, is work together to try to resolve this so this does not happen to any other President and does not do damage to the Senate and the integrity of the Senate and the game on judges. The President gets elected, with their home State Senators, they make a selection. We should not use the filibuster, unless a judge is highly questionable or biased in their viewpoint.

I regret that we are in this position. I think this was just a vote to delay Bob Bacharach's eventual confirmation. If President Obama wins the election, I fully expect Judge Bob Bacharach will be approved. If he does not win the election, I plan on standing and fighting for this judge for this same position under a Republican President because he is exactly what we want on a court, someone who is right down the middle in terms of what the law means, what the Constitution means. He has stellar intellectual capabilities, and he has the qualities we all would want, both from the right and the left, as a fair decider of the facts. That is what we want in judges. He will make an ideal appellate judge, regardless of his political affiliation.

If we cannot get there then what that says is the partisan politics of today, as everybody outside Washington recognizes, is killing our country.

LEGISLATIVE SESSION

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

CYBERSECURITY ACT OF 2012

The PRESIDING OFFICER. Under the previous order, the motion to proceed to S. 3414 is agreed to and the clerk will report the measure.

The assistant legislative clerk read as follows:

> A bill (S. 3414) to enhance the security and resiliency of the cyber and communications infrastructure of the United States.

The PRESIDING OFFICER. The majority leader.

Mr. REID. Madam President, I ask unanimous consent that there now be a period of debate only on S. 3414, and that this will go forward until 2:15 p.m. on Tuesday, July 31; further, that at 2:15 p.m. on that date, Tuesday, I be recognized.

The PRESIDING OFFICER. Is there objection?

Mr. COBURN. Madam President, reserving the right to object.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. COBURN. Just a question through the Chair to the majority leader. I had planned to make a statement on Judge Bacharach, and the Senator is saying we will have debate only. Will that preclude a unanimous consent for speaking as in morning business?

Mr. REID. The Senator can do that. It is totally appropriate.

Mr. COBURN. I thank the Senator.

I have no objection.

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

The Senator from New Hampshire.

Mrs. SHAHEEN. Madam President, if the majority leader is finished, I ask unanimous consent to speak as in morning business.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. REID addressed the Chair.