

Mr. LEAHY. Mr. President, tonight we will vote on the nomination of Judge Robert Wilkins to serve on the U.S. Court of Appeals for the DC Circuit. Late last week, we were finally able to invoke cloture on his nomination, after it was unjustifiably filibustered by Senate Republicans for months.

Judge Wilkins was nominated to serve on this court last June, along with two other exceptional nominees who were both confirmed late last year, Judge Patricia Millett and Judge Nina Pillard. Once Judge Wilkins is confirmed, the DC Circuit, which is often considered to be the second most important court in the Nation, will finally be operating at full strength. The American people deserve no less.

Judge Wilkins is an outstanding nominee. He was unanimously confirmed to the U.S. District Court for the District of Columbia 3 years ago. He has presided over hundreds of cases and issued significant decisions in various areas of the law, including in the fields of administrative and constitutional law. Prior to serving on the bench, he was a partner for nearly 10 years in private practice and served more than 10 years as a public defender in the District of Columbia.

During his time at the Public Defender Service, Judge Wilkins served as the lead plaintiff in a racial profiling case, which arose out of an incident in which he and three family members were stopped and detained while returning from a funeral in Chicago. This lawsuit led to landmark settlements that required systematic statewide compilation and publication of highway traffic stop-and-search data by race. These settlements inspired an Executive Order by President Clinton, legislation in the House and Senate, and legislation in at least 28 States prohibiting racial profiling or requiring data collection.

Despite the progress made in the past several decades, the struggle to diversify our Federal bench continues. When confirmed, Judge Wilkins will be only the sixth African American to have ever served on the DC Circuit.

Judge Wilkins earned the ABA's highest possible rating of unanimously "well qualified." He also has the support of the National Bar Association, the Nation's largest professional association of African American lawyers and judges, as well as several other prominent legal organizations. I ask unanimous consent to have printed in the RECORD a list of letters in support of Judge Wilkins.

I hope my fellow Senators will join me today to confirm this good man to serve on this important court. Our Nation will be better off with Judge Robert Wilkins serving on the DC Circuit.

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

LETTERS IN SUPPORT OF THE NOMINATION OF
JUDGE ROBERT WILKINS

1. July 31, 2013—Diverse group of 97 organizations in support of Judge Wilkins. The or-

ganizations include National Bar Association, National Conference of Women's Bar Associations, Hispanic National Bar Association, American Association for Justice, National Association of Consumer Advocates, NAACP, and National Employment Lawyers Association.

2. August 28, 2013—Joseph C. Akers, Jr., Interim Executive Director, on behalf of National Organization of Black Law Enforcement Executives (NOBLE)

3. September 10, 2013—Benjamin F. Wilson, Managing Principal, Beveridge & Diamond, P.C. and John E. Page, SVP, Chief Legal Officer, Golden State Foods Corp. and Immediate Past President, National Bar Association on behalf of an "ad hoc group of African American AmLaw 100 Managing Partners and Fortune 1000 General Counsel"

4. September 10, 2013—Nancy Duff Campbell and Marcia D. Greenberger, co-Presidents, on behalf of the National Women's Law Center

5. September 10, 2013—Doreen Hartwell, President, Las Vegas Chapter of the National Bar Association

6. September 18, 2013—William Martin, Washington Bar Association

7. September 27, 2013—Douglas Kendall, President, and Judith Schaeffer, Vice President, Constitutional Accountability Center

8. October 1, 2013—National Bar Association

9. October 1, 2013—Michael Madigan, Orrick, Herrington & Sutcliffe LLP

10. September 10, 2013 and October 2, 2013—Wade Henderson, President & CEO and Nancy Zirkin, Executive Vice President on behalf of The Leadership Conference on Civil and Human Rights

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. JOHANNES. 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. Under the previous order, the question is, Will the Senate advise and consent to the nomination of Robert Leon Wilkins of the District of Columbia to be United States Circuit Judge for the District of Columbia Circuit?

Mr. JOHANNES. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. CORNYN. The following Senators are necessarily absent: the Senator from Georgia (Mr. CHAMBLISS) and the Senator from Florida (Mr. RUBIO).

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

The result was announced—yeas 55, nays 43, as follows:

[Rollcall Vote No. 7 Ex.]

YEAS—55

Baldwin	Boxer	Coons
Baucus	Brown	Donnelly
Begich	Cantwell	Durbin
Bennet	Cardin	Feinstein
Blumenthal	Carper	Franken
Booker	Casey	Gillibrand

Hagan	Markey	Schatz
Harkin	McCaskill	Schumer
Heinrich	Menendez	Shaheen
Heitkamp	Merkley	Stabenow
Hirono	Mikulski	Tester
Johnson (SD)	Murphy	Udall (CO)
Kaine	Murray	Udall (NM)
King	Nelson	Warner
Klobuchar	Pryor	Warren
Landrieu	Reed	Whitehouse
Leahy	Reid	Wyden
Levin	Rockefeller	
Manchin	Sanders	

NAYS—43

Alexander	Fischer	Moran
Ayotte	Flake	Murkowski
Barrasso	Graham	Paul
Blunt	Grassley	Portman
Boozman	Hatch	Risch
Burr	Heller	Roberts
Coats	Hoeven	Scott
Coburn	Inhofe	Sessions
Cochran	Isakson	Shelby
Collins	Johanns	Thune
Corker	Johnson (WI)	Toomey
Cornyn	Kirk	Vitter
Crapo	Lee	Wicker
Cruz	McCain	
Enzi	McConnell	

NOT VOTING—2

Chambliss	Rubio
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The nomination was confirmed.

The PRESIDING OFFICER. The majority leader.

Mr. REID. I ask unanimous consent that the motion to reconsider be considered made and laid on the table, with no intervening action or debate, and the President be immediately notified of the Senate's action.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

LEGISLATIVE SESSION

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

UNEMPLOYMENT COMPENSATION

Mr. REID. Mr. President, there is a lot of work going on around the Capitol this evening, and tomorrow morning we will see if we can figure out a way to move forward to help 1.4 million people who are unemployed to extend their unemployment benefits to them. It is something we need very much, and we will see if we can move forward.

The PRESIDING OFFICER. The Senator from Rhode Island.

ORDER OF PROCEDURE

Mr. REED. Mr. President, I ask unanimous consent that at the conclusion of my brief remarks, Senator LEE be recognized, and then after Senator LEE that Senator HARKIN be recognized.

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

Mr. REED. Mr. President, as the leader indicated, we are working to develop a response to the 1.3 million Americans who on December 28 lost their unemployment extended benefits. Since that time, the number has increased. About 70,000 Americans a week are losing their unemployment insurance benefits. This number is now approaching roughly 1.5 million Americans and will approach a significantly

higher number of Americans through-out the year.

This is an emergency. These people have worked. They are in a job market where typically there are more than two applicants for every job, and we are seeing a job market that is moving sometimes forward and sometimes sideways. The numbers last Friday were quite disappointing. It could have been the weather or it could be other factors, but it does underscore the need to move very aggressively to address the issue of these unemployed Americans. The average benefit is about \$300 to \$350 a week. The only reason they qualify for the benefit is they did work and they are still looking for work.

One of the ironies of last week's numbers is even though we had very mediocre job creation, the unemployment rate fell. Why? Because people are leaving the workforce. They are giving up. We can't let that happen. One way we keep people looking for work and we keep them able to look for work is to provide this modest benefit each week.

So we are looking very hard and we have had a great deal of collaboration and cooperation. I thank Senators HELLER, COLLINS, PORTMAN, AYOTTE, MURKOWSKI, and COATS. They voted to keep this process going forward, and I respect and thank them for that. I know, over this last weekend, particularly Senators HELLER, COLLINS, and PORTMAN have been working to try to find a way to move forward. Let me say, though, we on our side have moved very far.

Typically these benefits are not paid for. Last year's 12 month extension of unemployment insurance was unpaid for. It was an emergency. It probably created on the order of 100-plus thousand jobs, which would not have taken place without that kind of increase in demand in the economy generated by these payments to individuals looking for work.

We heard what our colleagues said, that this has to be paid for. So we went ahead and proposed a pay-for. Again, many of my colleagues in the Democratic caucus in both the House and the Senate would prefer to see these benefits as emergency unpaid for. We have repeatedly done that.

We have also changed the duration of the benefits. We eliminated some weeks in the first two tiers so we would be able to afford this benefit and still give people the opportunity to move forward.

So we have moved from what we have typically done.

Again, if we look back over the years, the exception is paying for these benefits. Many times during the Bush administration, we provided unemployment benefits unpaid for. Now some of my colleagues are asking to pay for them. We have tried to pay for them. We tried to change the duration so we could afford them but still provide help for people. We have done this because we have heard from the other side: One, they have to be paid for; but, two, we can't use revenues.

A balanced approach to any public policy solution has to at least consider revenues. But our colleagues have been staunch about saying: We will not entertain at all any revenues to offset this payment.

There is a long list of egregious tax provisions which have been highlighted by many of my colleagues—particularly Senator LEVIN in his work—with respect to corporate tax loopholes which not only should be corrected but could be applied to allow these Americans the opportunity to have some support as they go forward looking for work. But because our colleagues said no revenue, OK, we have looked for ways to pay for this without engaging in rhetoric. So I think we have made a significant step forward.

In turn, my colleagues have come back and proposed variations on some of the things we have talked about. They have done it in good faith. They have done it with great ingenuity. Again, I thank them. We haven't yet come to a sort of meeting of the minds, but we are working.

Again, let me go back to the original proposal Senator HELLER and I made. We said: Let's do this for 3 months without a pay-for. That will give us time to do a lot of the work my colleagues have suggested. They have talked about how training programs have to be changed, how skills have to be matched up with jobs, very intricate programmatic changes. That is not going to be done here on the floor within 24, 48, or 72 hours.

I would conclude by again saying: There are now approaching 1.5 million Americans who were abandoned on the 28th of December. Their benefits were cut off. They are in some cases desperate, trying to pay their mortgages, trying to keep their homes, trying to put food on their table. They are trying to put gas in their car, natural gas to heat their homes in the cold weather, and I think we have to respond.

Again, I thank my colleagues who have helped. Tomorrow we are going to get closer to a sort of point of reckoning, and I hope we can come together and move forward.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

WILKINS NOMINATION

Mr. LEE. Mr. President, I thank my colleagues from Rhode Island and Iowa for their cooperation in establishing the speaking order this evening. I would like to speak for a moment about the vote we just cast. We just confirmed Judge Wilkins to the U.S. Court of Appeals for the DC Circuit. I voted against this judge. In doing that, I joined my Republican colleagues for one simple reason. Several years ago, when President George W. Bush was in the White House, he nominated an eminently qualified lawyer named Peter Keisler who had bipartisan support.

He was not a partisan hack; he was a true craftsman in the law. He was

someone whom no one had any ideological opposition to, but he was blocked by the Senate Democrats at that time for the simple fact, based on the simple reason, that according to the Senate Democrats the DC Circuit's caseload was not sufficiently robust to justify the filling of this position.

Since that time, not very many things have changed. Since that time, if anything, the DC Circuit's caseload per judge has remained about the same or some would argue has gone down a little, depending on which metric you use. One change is that we have now a Democratic President in the White House instead of a Republican President in the White House. Suddenly my friends across the aisle have forgotten about the caseload-based arguments they used a few years ago to keep Peter Keisler off the U.S. Court of Appeals for the DC Circuit.

We have now confirmed, just in the last few weeks, three additional judges to the U.S. Court of Appeals for the DC Circuit. This has happened against substantial Republican opposition that has been based on the very analysis I have just outlined. This has been facilitated by virtue of the fact that my distinguished colleague, the senior Senator from Nevada, joined by his Democratic colleagues, chose a few weeks ago to exercise what has been referred to as the nuclear option. They broke the rules of the Senate in order to change the rules of the Senate, and they did that so they could put more people on the bench, so they could put more people into top-level positions in this administration while more or less squelching the view of the minority party within the Senate.

This is unfortunate. The most unfortunate aspect of it is that it is part of a broader strategy that is not limited to the DC Circuit; in fact, it is not even limited to the Senate's confirmation process with respect to these judges or other judges. It extends much more broadly than that. It is part of the same effort that convinced the President of the United States, on January 4, 2012, to make four appointments, three to the National Labor Relations Board and one to the Consumer Financial Protection Bureau, pursuant to the President's recess appointment power.

Citing Article II, Section 2, Clause 3 of the Constitution, the President claimed he had the power to appoint these individuals without going through the Senate advice-and-consent process because, as he asserted, the Senate was in recess. There was only one problem with this. The Senate was not in fact in recess. Under Article I, Section 5, Clause 2 of the Constitution, each Chamber of Congress, including the Senate, has the right to determine its own rules, its own procedures. According to the Senate's own rules and according to the Senate's own Journal, the Senate was in fact in session as of January 4, 2012, the moment these supposed recess appointments were made. This was a problem.