I thank the Chair, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

The PRESIDING OFFICER. The Senator from Tennessee.

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 Madam President, I ask unanimous consent that the quorum call be rescinded.

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

DONALD NOMINATION

Mr. ALEXANDER. Madam President, later today the Senate will consider the nomination by the President of Judge Bernice Donald for the Sixth Circuit Court of Appeals. Judge Donald is from Memphis, TN. I know her well. I am here today to introduce her to my colleagues and to encourage them to support her confirmation.

Judge Donald has been before the Senate before. She has been a Federal district judge since 1995. Our Judiciary Committee in the Senate has looked over her qualifications again and has recommended her to us without dissent. The American Bar Association has reviewed her credentials and said she is either qualified or well qualified.

I think there is not much doubt about her fitness to serve on the court of appeals, so in my remarks I would like to talk more about Judge Donald's role in the community and her role as a pioneer in our country during her lifetime. She is the sixth of 10 children. Her parents were a domestic worker and a self-taught mechanic in DeSoto County, MS, which is just south of Memphis. As a young person, she was among the first African Americans to integrate in her high school during the period of desegregation. She obtained a bachelor's degree from the University of Memphis and graduated from its law school. She focused her career at the beginning working among the most vulnerable citizens in Memphis in the Office of Legal Defender.

Here is where the pioneer story continues, not just in desegregating her high school or working with vulnerable citizens, but only 3 years after she left law school, she began a judicial career that has spanned nearly three decades. She became the first African-American female judge in the history of our State in 1982. Six years later, the Sixth Circuit Court of Appeals, upon which she has been nominated to serve by the President, appointed her to serve as U.S. bankruptcy judge for the Western District of Tennessee. Again she made history—an African-American female judge had been appointed as a bankruptcy judge in the United States. Then, in 1995, as I mentioned earlier, President Clinton nominated her to be a Federal district judge. On December 22 of that year the Senate confirmed her by unanimous voice vote, and she became the first African-American female district court judge in the history of Tennessee. She served in that capacity for 15 years.

She has flourished in her career, not just on the court but in her profession. She has just concluded a 3-year term as Secretary of the American Bar Association, and she has previously served on its Committee on Governance and on its Board of Governors. She has been equally active in the local and Tennessee bar associations. She gives a good deal of her time to community organizations: the Memphis Literacy Council, the University of Memphis alumni board, Big Brothers, Big Sisters, Calvary Street Ministry, the YWCA, and others.

It is coincidental, but I think it is fitting that Judge Bernice Donald, a pioneer in so many ways in our State's history, will be the first nomination for the Federal bench that this body will consider after the opening of the Martin Luther King Memorial in the Nation's Capital. Her life, which is full of education and service and achievement, is a testimonial to the success of Dr. King's movement and the kind of leadership he inspired.

I commend her on all that she has accomplished both in her profession and in our State and in her community. I know Memphis is proud of her. I look forward to voting in favor of her confirmation this afternoon, and I hope my colleagues will do so as well.

I yield the floor.

Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

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

Mr. GRASSLEY. Mr. President, is there a nominee to report?

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

EXECUTIVE SESSION

NOMINATION OF BERNICE BOUIE DONALD TO BE UNITED STATES CIRCUIT JUDGE FOR THE SIXTH 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 bill clerk read the nomination of Bernice Bouie Donald, of Tennessee, to be United States Circuit Judge for the Sixth Circuit.

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

The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I wish to speak in support of the nomination of Bernice Bouie Donald as a U.S. Circuit Judge for the Sixth Circuit. With today's vote, we will have confirmed 34 article III judicial nominees during this Congress.

We continue to make great progress in processing President Obama's judicial nominees. We have taken positive action on 78 percent of the judicial nominations submitted during this Congress. The Senate has confirmed 63 percent of President Obama's nominees since the beginning of his Presidency, including two Supreme Court Justices, which everyone may recall was a lengthy process.

Despite our productive efforts, we continue to hear unsubstantiated and unfounded charges of delays and obstruction on the part of the minority party of the Senate. Over the August recess, opinion writers and bloggers parroted one another in churning out this message of obstruction on the part of the Republicans. I am not surprised to see this from outside groups. However, I was very disappointed the White House joined in publishing a distorted record on judicial nominations. I had a meeting this year with the White House Counsel's Office, and at that meeting I expressed my intent to move forward as the Republican leader of the Judiciary Committee Republicans on consensus nominees. I thought we had cooperative and productive conversations with the White House. Furthermore, I have demonstrated a record, on the part of the Republicans on the Judiciary Committee, of cooperation and action regarding judicial nominees.

But in a White House blog that was titled ''Record Judicial Diversity, Record Judicial Delays'' the White House characterized ''the delays these nominees are encountering'' as unprecedented. The White House has a short memory or a very limited definition to characterize the nominations process as ''unprecedented.''

To illustrate, the blog cites a statistic on the average wait time between the Judiciary Committee reporting out a nominee and confirmation on the Senate floor as evidence of an unprecedented delay. For example, it indicates circuit nominees of President Bush only waited 29 days, while President Obama's circuit nominees waited 151 days.

The nominations process, as everyone knows but maybe the White House needs to be informed about, is more than Senate floor action. It starts with the President actually nominating somebody. I have previously commented on the White House delay in sending nominations and have criticized some of the qualities of the nominees the White House has submitted. I will not elaborate on that today. But after a nomination is received, there is a process for hearing, for questions, and for committee debate prior to our committee vote. For whatever reason,

the White House blog fact sheet ignored the bulk of the process.

The record shows, then, that we are moving nominees through committee much faster than President Bush's nominees. For instance, President Obama's circuit court nominees have only waited, on average, 68 days for a hearing. President Bush's circuit court nominees were forced to wait over 247 days. President Obama's district court nominees have been afforded a hearing in just 78 days. President Bush's district court nominees, on the other hand, had to wait close to 120 days. So we can see how wrong the White House blog is when they just cite the waiting period between the committee reporting out and actually voting on it.

Not only are President Obama's judicial nominees receiving hearings quicker than those of President Bush, they are also being reported out of committee more quickly. Circuit court nominees have been reported to the Senate floor in just 118 days, while President Bush's circuit court nominees were held for 369 days before they saw a vote in committee. The same is true for district court nominees. President Obama's nominees have been reported in just 129 days, while President Bush's district court nominees waited 148 days. Despite the so-called obstruction, we are confirming President Obama's circuit court nominees faster than those nominated by President Bush. That is the cooperation I promised. Thus far, circuit court nominees have been confirmed, on average, in 259 days. President Bush's circuit court nominees waited, on average, 350 days.

The White House blog also stated that 21 months is the ''[l]ongest wait for one of President Obama's judicial confirmations.'' This is neither unprecedented nor uncommon. The Democrats should know; they held President Bush's circuit court nominee Raymond Kethledge for 23 months before he was confirmed by the Senate, and then when he was confirmed, he was confirmed on a consensus voice vote basis. In addition, the record will show district nominees who waited well over 1 year for confirmation, one of them as long as 441 days.

After today's vote, there will be 19 judicial nominees on the Executive Calendar. If you listened to my colleagues on the other side of the aisle, you would conclude that this, too, is ''unprecedented.'' But again, the record demonstrates otherwise.

Colleagues may recall a period in the 108th Congress when the Democrats—in the minority at that time—completely shut down the judicial nominations process. Not only were there numerous filibusters conducted by my friends on the other side of the aisle, but they would allow no votes on judicial nominees. As a result, in April and May of 2004, when George W. Bush was President, 32 highly qualified judicial nominees awaited final votes while on the Executive Calendar. Only after a compromise was reached did judicial nomination votes resume on those who were on the Executive Calendar.

I could continue to rebut this outrageous assertion that Senate Republicans are somehow paving new ground, according to the White House blog. The facts demonstrate that the current status of nominations is not—not—unprecedented. It is unfortunate that the media, the bloggers, and even this administration continue to distort the facts. I would rather use my time to speak on positive actions, such as the nominee we are about to confirm. But if my colleagues on the other side of the aisle wish to continue to live in the past, then I feel, as leader of the Republicans on the Judiciary Committee, the need to correct the record.

I support the nomination before us today, and I congratulate Judge Donald. I wish to say a few words about her before we vote.

Bernice Donald is nominated to be U.S. Circuit Judge for the Sixth Circuit. Judge Donald received her undergraduate degree and law degree from the University of Memphis. After graduating from law school, Judge Donald worked for a few months as a sole practitioner. In April of 1980, she began work as a staff attorney for the Memphis Area Legal Services Clinic. In November of 1980, she began working as an assistant public defender at the Shelby County Public Defender's Office.

In 1982, Judge Donald was elected to serve as a judge on the Court of General Sessions in Shelby County. As a general sessions judge, Judge Donald presided over trials of State misdemeanor offenses, and the preliminary hearings of State felony cases involving alleged crimes against persons as well as property.

In 1988, the U.S. Court of Appeals for the Sixth Circuit appointed Judge Donald to a 14-year term on the Bankruptcy Court.

In 1996, Judge Donald was confirmed by the Senate and appointed by President Clinton as United States District Judge for the Western District of Tennessee. She has served as a Federal judge for the past 15 years.

The American Bar Association's Standing Committee on the Federal Judiciary has given Judge Donald a rating of substantial majority ''well-qualified''; minority ''qualified.''

Mr. President, if I could, I wish to take 2 minutes to speak about the second vote we are having today.

The PRESIDING OFFICER. The Senator has 4 minutes remaining.

LEAHY-SMITH AMERICA INVENTS ACT

Mr. GRASSLEY. Mr. President, I urge my colleagues to support cloture on the motion to proceed to H.R. 1249, the Leahy-Smith America Invents Act. This bipartisan legislation will make our patent system more effective and more efficient. It will enhance transparency and patent quality and improve certainty in the patent process. It will also enhance the ability of the Patent and Trademark Office to cut its backlog and process patent applications in a more expeditious manner. Ultimately, this bill will help promote innovation and technological advancements and will provide a stimulus for American businesses and, obviously, will help generate new jobs.

My colleagues will recall the Senate passed the bill we entitled the America Invents Act earlier this year by a margin of 95 to 5. The House bill is very similar to our Senate bill, so Senators should not have a problem supporting it. In addition, the Leahy-Smith America Invents Act enjoys the widespread support of a large number of industries and other stakeholders from within the United States patent community.

I am pleased to support the Leahy-Smith America Invents Act, and I urge my colleagues to vote for cloture on the motion to proceed so we can get this bill done as soon as possible.

NATURAL DISASTER IN VERMONT

Mr. President, I am happy to yield the floor, but before I do, I wish to say to Senator LEAHY we are all sorry for the natural disasters that have happened in his State, wish him well and his State well, and, obviously, there will be some congressional action to help not only that natural disaster but the rest of the natural disaster that occurred as a result of Irene.

Mr. LEAHY. Mr. President, if the Senator would yield on that point, I would tell my good friend from Iowa how touched I was when I received his e-mail saying how the people of Iowa have stood with the people of Vermont, as we did with the people of Iowa when they faced a disaster. When I received the e-mail, the Governor of our State, Governor Shumlin, and I and the head of our Vermont National Guard, General Dubie, had just helicoptered into one of our prettiest towns, but it was totally cut off. The only way we could reach it was by helicopter. I saw people working together. Nobody knew whether they were Republicans or Democrats or cared. They were all working together to help each other.

I will tell my friend from Iowa, I took the liberty of showing his very meaningful, very heartfelt e-mail—similar, also, to ones I got from other Senators—and I thought how much that meant. If I might address the Senator from Iowa directly, I will tell you, the people of Vermont appreciate it because I know how heartfelt it was. It meant a great deal.

Mr. GRASSLEY. I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, we are on the question of the flooding in Vermont. I was born in Vermont. I have lived there all of my life. We live on a dirt road in a small town, Middlesex, up about 1,000 feet, in an 1850s farmhouse. It means a lot to us. It is a place my wife Marcelle and I spent part of our honeymoon 49 years ago. But I saw something I had never seen before in Vermont. Ten days ago, Vermont bore the full brunt of then-Tropical

Storm Irene as it dumped more than 6 inches of rain across the State in just a few hours. You have to understand, in our small State—with the Green Mountains running down the spine of it, north to south—the narrow valleys of the Green Mountains, where towns, roads, and rivers are historically intertwined, were particularly hard hit as gentle rivers and streams became rushing torrents of destruction. Whole towns were cut off from the outside world for days. You would fly over, and you could see a town completely marooned—every road going into it, every bridge going into it gone. Homes, businesses, water systems, and miles of roads were swept away. Even worse, some Vermonters lost their lives in these devastating floods.

In our State, we have had an unprecedented wave of flooding this year. We had two spring events previously declared as major disasters. Vermonters have shouldered these great burdens. We have pulled together from all parts of the State, all walks of life. We are meeting this new crisis with the same courage, cooperation, and resilience we Vermonters have always shown.

I applaud the brave first responders—the police departments, the fire departments, the EMS, and others—the National Guard members who have worked around the clock. Our National Guard in Vermont has been joined by the National Guard from Illinois and Maine, and we have had offers from our other adjoining States. I also applaud the power crews and road crews. I remember how impressed I was looking down there from the helicopter and seeing this long line of power trucks coming down the road and knowing they are going to be working around the clock. I also applaud the many others who have helped in the recovery and rebuilding process—our local Red Cross and other service organizations.

But our small State—it is only 660,000 people—is stretched to the limit right now, and we need both immediate and ongoing assistance in recovering from these enormous setbacks. Winter is fast approaching. In Vermont, snow will be flying in a matter of weeks, certainly in a matter of a couple months. We must move quickly to secure our homes and businesses, restore our roads, our bridges, our water systems, our schools, and our medical facilities. With just weeks to accomplish so much, we need the full and immediate support of FEMA and so many of our Federal agencies.

I appreciate President Obama's swift approval of Governor Shumlin's request to declare most of Vermont a Federal disaster area—something all of us in the Vermont delegation joined him in. But I am greatly concerned FEMA may not have adequate resources to meet the immediate assistance needs of the Irene victims in Vermont and all the other States. We do not consider ourselves an island here. We know a whole lot of other States were badly hurt by Irene. FEMA has less than $600 million in its disaster account for the rest of fiscal year 2011. OMB said today that FEMA needs at least $1.5 billion for recovery assistance in States affected by Hurricane Irene.

We need to act quickly to find a solution to this pressing problem. I do not think any of us wants to get into a situation where we underfund FEMA at this critical juncture, and then have FEMA run out of resources next spring, just as rebuilding efforts get going on the East Coast.

Given the breadth and depth of Irene's destruction, on top of the ongoing disasters already declared in all 50 States, I am going to continue to work with the Democratic leader, the Republican leader, the Appropriations Committee, and all of my colleagues to ensure that FEMA has the resources they need to help all of our citizens at this time of disaster—not just in Vermont but in all of our States.

IRAQ

Mr. President, as many Members know, I opposed the war in Iraq, believing it had nothing to do with 9/11. It turned out it had nothing to do with 9/11. I thought there were no weapons of mass destruction. It turned out there were no weapons of mass destruction. Iraq is a country that bore no threat to the United States. It did to Iran but not to the United States.

We have spent hundreds of billions, ultimately well over a trillion dollars, in Iraq. Year after year that money is just sent—no offset; it is put on the credit card. It is time to get out of Iraq and start thinking about people in America. It is time to take care of Americans. The needs of Americans are not just in a disaster but in the needs of Americans in their education, their medical care, our scientific research to find cures for cancer and Alzheimer's, to take care of the housing needs of America, to take care of our rivers and bridges. It is time to start worrying about this great country of ours. It is time to start paying for that which can give benefits immediately to Americans and make sure we have enough to care for the families and our returning soldiers who so bravely answered the call. Let's start thinking about the needs of 325 million Americans. Let's come home to the things we need. Because if we do that, we can then still be the force for good throughout the world. We can still fulfill commitments, legitimate commitments we have around the world. We can still be the humanitarian nation we have always been when there have been disasters in Haiti, in Indonesia, in Africa, or elsewhere. But we have neglected America too long.

Mr. President, I understand I have some time.

The PRESIDING OFFICER. The Senator has 8 minutes remaining.

Mr. LEAHY. How much?

The PRESIDING OFFICER. Eight minutes remaining.

Mr. LEAHY. I thank the Presiding Officer.

Mr. President, I was disappointed that before the August recess, the Senate was not allowed to take greater steps to address the serious judicial vacancies crisis on Federal courts around the country. As we resume consideration of pending judicial nominations, there are 20 nominees fully considered by the Senate Judiciary Committee and ready for final Senate action. Of those, 16 were approved by the Judiciary Committee unanimously, without a single Republican or Democratic Senator in opposition.

The nomination of Judge Bernice Donald of Tennessee is one such nomination. This is a nomination that has been waiting for Senate consideration, despite the support of her Republican home State Senators, since May 9. Nearly 4 months ago, the Judiciary Committee favorably reported her nomination without opposition. This is reminiscent of the nomination of Jane Stranch of Tennessee. She, too, had the support of her Republican home State Senators, but her confirmation was nonetheless stalled—inexplicably—by Senate Republicans. Judge Stranch was finally confirmed in September 2010, after an extended and unnecessary 10-month delay. These Tennessee nominations were the subject of a column by Professor Carl Tobias in early August, which I inserted in the RECORD on August 2. I, too, had hoped the Senate would be allowed to vote on this nomination last month. I am glad that we finally have agreement for a vote tonight.

At this point in the Presidency of George W. Bush, 144 Federal circuit and district court judges had been confirmed. On September 6 of the third year of President Clinton's administration, 162 Federal circuit and district court judges had been confirmed. By comparison, although there are 20 judicial nominees stalled and awaiting final consideration by the Senate—many of them stalled since May and June—even after the confirmation of Judge Donald, the total confirmations of Federal circuit and district court judges confirmed during the first 3 years of the Obama administration will only be 96.

In the 17 months I chaired the Judiciary Committee during President Bush's first term, the Senate confirmed 100 Federal circuit and district judges. By contrast, President Obama is approaching his 32nd month in office and we have yet to reach that total. The Senate has a long way to go before the end of next year to match the 205 confirmations of President Bush's judicial nominees during his first term.

To understand the strain on the Federal judiciary and the American people, it is important to note another set of comparisons. The number of judicial vacancies was reduced during the first years of the Bush and Clinton administration. The vacancies in early September in the third year of the Bush administration had been reduced to 54. The vacancies in early September in

the third year of the Clinton administration had been reduced to 55. By contrast, the judicial vacancies now in September of the third year of the Obama administration stand at 93. As the Congressional Research Service confirmed in a recent report, this is a historically high level of vacancies and this is now the longest period of historically high vacancy rates on the Federal judiciary in the last 35 years.

Even though Federal judicial vacancies have remained near or above 90 for more than 2 years, the Senate's Republican leadership continues to delay votes on many qualified, consensus nominations. After tonight, there will remain 15 unanimously reported nominees stalled on the calendar. This is not the way to make real progress. In the past, we were able to confirm consensus nominees more promptly, often within days of being reported to the full Senate. They were not forced to languish for months. The American people should not have to wait more weeks and months for the Senate to fulfill its constitutional duty and ensure the ability of our Federal courts to provide justice to Americans around the country.

It is not accurate to pretend that real progress is being made in these circumstances. Vacancies are being kept high, consensus nominees are being delayed, and it is the American people and the Federal courts that are being made to suffer. This is another area in which we must come together for the American people. There is no reason Senators cannot join together to finally bring down the excessive number of vacancies that have persisted on Federal courts throughout the Nation for far too long.

At a time when judicial vacancies remain near or above 90, these needless delays perpetuate the judicial vacancies crisis that Chief Justice Roberts wrote of last December and that the President, the Attorney General, bar associations, and chief judges around the country have urged us to join together to end. The Senate can and should be doing a better job working to ensure the ability of our Federal courts to provide justice to Americans across the country.

We were able to lower vacancies dramatically during President Bush's years in office, cutting them in half during his first term. The Senate has reversed course during the Obama administration, and with Republican objections slowing the pace of confirmations, judicial vacancies have been at crisis levels for over 2 years. As a recent report by the Constitutional Accountability Center noted, ''Never before has the number of vacancies risen so sharply and remained so high for so long during a President's term.'' I ask unanimous consent that an August 5 letter to the editor of the Washington Post from Wade Henderson, entitled ''Remiss in confirming judges,'' and an August 4 article in Politico from Andrew Blotky and Doug Kendall entitled ''It's Senate's duty to confirm judges,'' be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered. (see Exhibit 1.)

Mr. LEAHY. Over the 8 years of the Bush administration, from 2001 to 2009, we reduced judicial vacancies from 110 to a low of 34. The vacancy rate—which we reduced from 10 percent to 6 percent by this date in President Bush's third year, and ultimately to less than 4 percent in 2008—is back above 10 percent. Federal judicial vacancies now stand at 93.

Time and time again over the last 2½ years, I have urged the Senate to come together and work to address this crisis. At the beginning of this year, I called for a return to regular order in the consideration of nominations. We have seen that approach work on the Judiciary Committee. I have thanked the Judiciary Committee's ranking member, Senator GRASSLEY, many times for his cooperation with me to make sure that the committee continues to make progress in the consideration of nominations. His approach has been the right approach. Regrettably, it has not been matched on the floor, where the refusal by Republican leadership to come to regular time agreements to consider nominations has put our progress—our positive action—at risk.

I expect the committee in the weeks ahead to continue to make progress and favorably report superbly qualified, consensus judicial nominations to fill vacancies in States throughout the country, in States with Democratic and Republican Senators. Most of these nominations will, I expect, join the 15 on the calendar after tonight's vote that were reported unanimously. I hope that the Americans in those districts will not have to wait for months for the Senate to act to fill the vacancies and ensure that the Federal courts in their States have the judges they need.

Republican obstruction has led to a backlog of dozens of judicial nominations pending on the Senate's Executive Calendar. Half of the judicial nominations on the calendar would fill judicial emergency vacancies. Many were ready for final consideration and confirmation in May and June.

Republican leadership should explain to the people and Senators from South Carolina, Missouri, Louisiana, Maine, New York, Texas, Connecticut, Pennsylvania, and Florida why there continue to be vacancies on the Federal courts in their States that could easily be filled if the Senate would vote on the President's qualified, consensus nominees. Yet those nominees still wait for months on the Senate's calendar. These damaging delays leave the people of these States to bear the brunt of having too few judges available to do the work of the Federal courts.

All 20 of the judicial nominations on the calendar today have been favorably reported by the Judiciary Committee after a fair but thorough process. We review extensive background material on each nominee. All Senators on the committee, Democratic and Republican, have the opportunity to ask the nominees questions at a live hearing. Senators also have the opportunity to ask questions in writing following the hearing and to meet with the nominees. All of these nominees have a strong commitment to the rule of law and a demonstrated faithfulness to the Constitution. They should not be delayed for weeks and months needlessly after being so thoroughly and fairly considered by the Judiciary Committee.

I continue to urge the Senate to join together to end the judicial vacancies crisis that concerns Chief Justice Roberts, the President, the Attorney General, bar associations, and chief judges around the country. I hope that this month Senators will finally join together to begin to bring down the excessive number of vacancies that have persisted on Federal courts throughout the Nation for far too long. We can and must do better. Vacancies are being kept high, consensus nominees are being delayed, and it is the American people and the Federal courts that are being made to suffer.

EXHIBIT 1

[From the Washington Post, Aug. 5, 2011]

REMISS IN CONFIRMING JUDGES

(By Wade Henderson)

In Ben Pershing's close-to-complete Aug. 2 Fed Page roundup of the most important stories overshadowed by the debt-ceiling debate [''Debt debate isn't only story on Capitol Hill,'' In Session], one story that failed to make the cut was how the Senate's refusal to vote on 20 judicial nominees before recess has led to almost as many vacancies on the federal bench—111—as there were in January.

During the past two months, the Senate Judiciary Committee has steadily processed nominations, yet the Senate has voted on a mere nine judges. There is no reason to delay confirming every one of the nominees pending before the full Senate. All but one enjoyed strong bipartisan support in committee. In fact, 17 of the 20 were approved without recorded opposition.

Many of these seats have been designated as ''judicial emergencies'' by the Administrative Office of the U.S. Courts, meaning there are simply not enough judges to get the work done. More and more people seeking to protect their rights in a court of law are forced to wait, and justice delayed is all too often justice denied.

[From Politico, Aug. 3, 2011]

IT'S SENATE'S DUTY TO CONFIRM JUDGES

(By Andrew Blotky and Doug Kendall)

While Washington has been consumed by the debt ceiling crisis, another serious crisis demands the attention of President Barack Obama and the Senate: the threat to justice by our overworked federal judiciary.

There aren't enough judges to hear the cases piling up in federal courtrooms across the country—which for countless Americans means justice significantly delayed and denied.

Our federal courts, which hear cases brought by ordinary Americans to vindicate rights guaranteed by the Constitution, are overworked and understaffed. Today's federal judiciary resembles our armed forces—

stretched thin and deployed on multiple tours of duty.

There are now almost 90 empty seats on the federal bench, with 22 more retirements on the way.

Make no mistake, judges now on the bench are doing their part—and then some. Last month, federal Judge Malcolm Muir died in his chambers at age 96, while working on Social Security appeals. Muir had continued to work literally until his last breath, to reduce the case backlog caused by a judge shortage. He was the fourth oldest judge on the federal bench when he died. Last December, U.S. District Judge James F. McClure Jr. died at age 79—also while working at the courthouse.

With fewer new judges being confirmed, the third branch of government is increasingly run by judges working well into their 80s, 90s and even 100s.

''The way we are going,'' 7th U.S. Circuit Court of Appeals Judge Richard Cudahy, age 84, said, ''it looks to me as if most of the judicial work is going to be done by 80- and 90-year-olds like me . . . since they will be the only ones left to do anything.''

There have been at least 80 vacancies on the federal courts for the past 760 straight days and counting, according to a recent Constitutional Accountability Center study. At the same time, only 35 new permanent judgeships have been authorized by Congress in the past 20 years—even as the overall federal caseload has expanded by fully a third.

The third branch is deteriorating largely because of unprecedented Republican obstruction. Senate Republicans refuse to agree to votes for well-qualified nominees, who enjoy the unanimous support of their Republican and Democratic colleagues on the Senate Judiciary Committee. Today, 16 such nominees are waiting for a vote by the Senate, with four more qualified nominees approved by the Judiciary Committee, and new nominations being added regularly to the Senate calendar.

Some Republican senators are blocking—or placing holds—on judicial nominations for reasons unrelated to justice, to serve their own political interests. Republican senators are also delaying or blocking nominees who would fill seats in courtrooms so overwhelmed with cases that they are deemed by the Administrative Office of the United States Courts to be ''judicial emergencies.'' It is a level of obstruction not seen under any previous president in U.S. history.

Again, numbers tell the story. The glacial pace of judicial confirmations has seen the number of judicial vacancies explode from 55, when Obama took office, to 88 today. By this time in the Bush administration, the Senate had confirmed 40 percent more judges than it has during the Obama administration.

Astonishingly, in the past two months, the Senate has voted on just 11 nominations. The chamber could have easily confirmed judges while awaiting a final debt ceiling deal. Instead Republicans blocked, stalled and delayed.

The Senate has now recessed for a month, yet the work of the courts continues.

When judicial vacancies remain at such record levels, needless delays create a crisis that has drawn concern from all corners—including Chief Justice John Roberts, Attorney General Eric Holder, federal judges around the country and bar associations.

The Senate is failing in one of its key constitutional duties. It is preventing the third branch of government from doing its job—and making it impossible for Americans to have their cases heard in a timely fashion.

The solution is simple. With no Supreme Court nomination battle consuming Washington this fall, there are no excuses. The Senate should vote on these waiting nominees at the earliest possible moment when it returns from its August recess.

It is time for the Senate to do what the Constitution commands—advise and consent to the nomination of qualified judges. The long-term health of the third branch of government depends on it—and so do the American people.

Mr. LEAHY. I have outlined where we stand in comparison to the progress we made when the Senate moved to confirm 205 Federal circuit and district judges during President Bush's first term. Three years into President Obama's administration, we have yet to confirm 100 judges. We are going to have to move pretty quickly to catch up, especially to what a Democratic-controlled Senate did for President Bush. I wish to be able to do the same for President Obama.

AMERICA INVENTS ACT

Mr. LEAHY. Mr. President, I ask unanimous consent that I use my remaining time to speak as in morning business about the America Invents Act and the cloture vote that will be taken tonight on proceeding to that important measure.

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

Mr. LEAHY. The Senate is today turning its attention back to the America Invents Act—a measure that will help create jobs, energize the economy and promote innovation without adding a penny to the deficit. This legislation is a key component of both Democratic and Republican jobs agendas, and is a priority of the Obama administration.

Too often in recent years, good legislation has failed in the Senate because bills have become politicized. That should not be the case with patent reform. Innovation and economic development are not uniquely Democratic or Republican objectives—they are American goals. That is why so many Democratic and Republican Senators have worked closely on this legislation for years, along with a similar bipartisan coalition of House Members.

And that is why a Democratic chairman of the Senate Judiciary Committee can stand on the floor of the Senate and advocate, as I do today, that the Senate pass a House bill, H.R. 1249, sponsored by the Republican chairman of the House Judiciary Committee, LAMAR SMITH of Texas. As Chairman SMITH and I wrote earlier this year in a joint editorial, ''Patent reform unleashes American innovation, allowing patent holders to capitalize on their inventions and create products and jobs.''

This bill, which passed the House with more than 300 votes, will make crucial improvements to our outdated patent system. These improvements can be divided into three important categories that are particularly noteworthy.

First, the bill will speed the time it takes for applications on true inventions to issue as high quality patents, which can then be commercialized and used to create jobs. There are nearly 700,000 applications pending at the Patent and Trademark Office (PTO) that have yet to receive any action by the PTO. The Director of the PTO often says that the next great invention that will drive our economic growth is likely sitting in that backlog of applications.

The America Invents Act will ensure that the PTO has the resources it needs to work through its backlog of applications more quickly. The bill accomplishes this objective by authorizing the PTO to set its fees and creates a PTO reserve fund for any fees collected above the appropriated amounts in a given year—so that only the PTO will have access to these fees.

Importantly, the bill also provides immediate tools the PTO needs to fast track applications, and continues discounts for fast tracked applications requested by small business, as well as for applications involving technologies important to the Nation's economy or national competitiveness, thanks to amendments offered in the Senate by Senators BENNET AND MENENDEZ.

Second, the America Invents Act will improve the quality of both new patents issued by the PTO, as well as existing patents. High quality patents incentivize inventors and entrepreneurs by providing a limited monopoly over the invention. Low quality patents, conversely, can impede innovation if the product or process already exists.

The bill makes commonsense improvements to the system by allowing, for example, third parties to comment on pending applications so that patent examiners will have more and better information readily available. The bill also implements a National Academy of Sciences recommendation by creating a postgrant review process to weed out recently issued patents that should not have been issued in the first place.

The bill will also improve upon the current system for challenging the validity of a patent at the PTO. The current inter partes reexamination process has been criticized for being too easy to initiate and used to harass legitimate patent owners, while being too lengthy and unwieldy to actually serve as an alternative to litigation when users are confronted with patents of dubious validity.

Third, the America Invents Act will transition our patent filing system from a first-to-invent system to the more objective first-inventor-to-file system, used throughout the rest of the world, while retaining the important grace period that will protect universities and small inventors, in particular. As business competition has gone global, and inventors are increasingly filing applications in the United States and other countries for protection of their inventions, our current system puts American inventors and businesses at a disadvantage.

The differences cause confusion and inefficiencies for American companies

and innovators. These problems exist both in the application process and in determining what counts as ''prior art'' in litigation. We debated this change at some length in connection with the Feinstein amendment in March. That amendment was rejected by the Senate by a vote of 87 to 13. The Senate has come down firmly and decisively in favor or modernizing and harmonizing the American patent system with the rest of the world.

The House, to its credit, improved on the Senate bill in this area by including an expanded prior user right with the transition to a first-inventor-to-file system. Prior user rights are important for American manufacturing, in particular.

There is widespread support for the America Invents Act, and with good reason. In March, just before the Senate voted 95–5 to pass the America Invents Act, The New York Times editorialized that the America Invents Act will move America ''toward a more effective and transparent patent protection system'' that will ''encourage investment in inventions'' and ''should benefit the little guy'' by transitioning to a first-inventor-to-file system.

A few weeks ago, the Washington Post editorial board added that ''[i]n the six decades since its last overhaul, the patent system has become creaky,'' but the patent bill ''poised for final approval in the Senate would go a long way toward curing [the] problems.''

The Obama administration issued a Statement of Administration Policy in connection with the House bill, in which it argued that ''[t]he bill's muchneeded reforms to the Nation's patent system will speed deployment of innovative products to market and promote job creation, economic growth, and U.S. economic competitiveness all at no cost to American taxpayers.''

The House bill is not the exact bill I would have written. It contains provisions that were not in the Senate bill, and it omits or changes other provisions from the Senate bill that I supported. But that is the legislative process, and the core elements of the House bill are identical or nearly identical to the core elements of the Senate bill. In addition, the House bill retains amendments adopted during Senate consideration of S. 23, including amendments offered by Senator BENNET, Senator MENENDEZ, Senator KIRK, Senator STABENOW, Senator BINGAMAN, and Senator REID, among others.

The America Invents Act, as passed by the House, will not only implement an improved patent system that will grow the economy and create jobs, but it is the product of a process of which we should all be proud. Democrats and Republicans in the House and Senate have worked together with the administration and all interested stakeholders large and small to craft legislation that has near unanimous support.

I thank Senator KYL, the minority whip, for his comments early today. I agree with him that sending this House-passed bill directly to the President will begin the process of demonstrating to the American people that we can work together, Democrats and Republicans, House and Senate, on their behalf.

Those now advocating for enactment of the America Invents Act without further amendment include the United States Chamber of Commerce, the United Steelworkers, the National Association of Manufacturers, the Association of American Universities, BIO and PhRMA, Community Bankers, the Coalition for 21st Century Patent Reform, the Coalition for Patent Fairness, the Small Business & Entrepreneurship Council, and businesses representing virtually every sector of our economy.

In a recent letter from Louis Foreman, a well known independent inventor, he wrote of his support for the America Invents Act saying:

> The independent inventor has been well represented throughout this process and we are in a unique situation where there is overwhelming support for this legislation. . . . H.R. 1249 is the catalyst necessary to incentivize inventors and entrepreneurs to create the companies that will get our country back on the right path and generate the jobs we sorely need.

American ingenuity and innovation have been a cornerstone of the American economy from the time Thomas Jefferson examined the first patent application to today. A recent Department of Commerce report attributes three-quarters of America's post-World War II economic growth to innovation. It is the patent system that incentivizes that innovation when it holds true to the constitutional imperative to ''promote the progress of science and useful arts, by securing for limited times to . . . inventors the exclusive right to their respective . . . discoveries.''

The Founders recognized the importance of promoting innovation. A number were themselves inventors. The Constitution explicitly grants Congress the power to ''promote the progress of science and useful arts, by securing for limited times to . . . inventors the exclusive right to their respective . . . discoveries.'' The time for Congress to undertake this responsibility and enact patent reform legislation into law is now.

The discoveries made by American inventors and research institutions, commercialized by American companies, and protected and promoted by American patent laws have made our system the envy of the world. But we cannot stand on a 1950s patent system and expect our innovators to flourish in a 21st century world.

The America Invents Act will keep America in its longstanding position at the pinnacle of innovation. This bill will establish a more efficient and streamlined patent system that will improve patent quality and limit unnecessary and counterproductive litigation costs, while making sure no party's access to court is denied.

The President recently called on Congress to pass patent reform as soon as it returned from recess because it will create jobs and improve the economy without adding to the deficit. This bill is bipartisan, it is the product of years of thoughtful bicameral discussions, and it should be sent to the President's desk this week. There is no reason for delay.

When we proceeded to the Senate version of this legislation last February, we did so by unanimous consent. The Senate proceeded to approve patent reform legislation with 95 votes. It is disappointing that we are being delayed from completing this important legislation. Further delay does nothing for American inventors, the American economy or the creation of American jobs. It is time, time to take final action on the America Invents Act.

I see the time has arrived. Is the rollcall automatic?

I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

Is all time yielded back?

Mr. LEAHY. I yield back.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Bernice Bouie Donald, of Tennessee, to be United States Circuit Judge for the Sixth Circuit?

The yeas and nays have been ordered.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. ROCKEFELLER), is necessarily absent.

Mr. KYL. The following Senator is necessarily absent: the Senator from Florida (Mr. RUBIO).

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

The result was announced—yeas 96, nays 2, as follows:

[Rollcall Vote No. 124 Ex.]

YEAS—96

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

Udall (NM)	Webb	Wicker
Warner	Whitehouse	Wyden

NAYS—2

DeMint	Vitter

NOT VOTING—2

Rockefeller	Rubio

The nomination was confirmed.

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

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will resume legislative session.

LEAHY-SMITH AMERICA INVENTS ACT—MOTION TO PROCEED

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, the clerk will report the motion to invoke cloture.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the motion to proceed to Calendar No. 87, H.R. 1249, the Leahy-Smith America Invents Act:

Harry Reid, Patrick J. Leahy, Thomas R. Carper, Joseph I. Lieberman, Richard Blumenthal, Charles E. Schumer, Amy Klobuchar, Robert Menendez, Jeanne Shaheen, John F. Kerry, Mark Udall, Mark R. Warner, Ben Nelson, Jeff Bingaman, Max Baucus, Mark Begich, Robert P. Casey, Jr.

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

The question is, Is it the sense of the Senate that debate on the motion to proceed to H.R. 1249, an act to amend title 35, United States Code, to provide for patent reform, shall be brought to a close?

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. ROCKEFELLER) is necessarily absent.

Mr. KYL. The following Senator is necessarily absent: the Senator from Florida (Mr. RUBIO).

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

The yeas and nays resulted—yeas 93, nays 5, as follows:

[Rollcall Vote No. 125 Leg.]

YEAS—93

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

NAYS—5

Coburn	Johnson (WI)	Paul
DeMint	Lee	

NOT VOTING—2

Rockefeller	Rubio

The PRESIDING OFFICER. On this vote, the yeas are 93, the nays are 5. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

The Senator from Ohio.

Mr. BROWN of Ohio. Mr. President, I ask unanimous consent to speak as if in morning business.

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

THE ECONOMY

Mr. BROWN of Ohio. Mr. President, yesterday I was in Cincinnati, OH. Terralift has the largest Labor Day gathering in the United States of America by 15,000, 20,000, around Coney Island and just southeast of Cincinnati, not far from the Ohio River. They have a picnic every year celebrating workers, not just organized workers but workers generally.

I met a woman there by the name of Lillian Brayhound, and Ms. Brayhound was wearing a t-shirt that said ''Service Employees International Union.'' I asked her where she works, and she said she is a custodian in downtown Cincinnati. And I remember that 3 or 4 years ago I was at a dinner, and there was a group of workers, all middle-aged women, mostly minorities, mostly African American, a couple Latino women, and they had just signed their first union contract to represent the custodians in downtown Cincinnati office buildings.

I sat down at this table, and I said: What does this new union contract mean to you, to the workers there?

A 50-year-old woman turned to me and she said: This is the first time in my life I have ever had a paid week vacation.

Think about that: This is the first time in my life I have ever had a paid week vacation. That was because those workers, each of them working separately before for a building owner in a downtown Cincinnati office building, had gotten together, had voted to join a union, had the right to organize and bargain collectively. They still weren't getting rich. They still weren't making more than, I believe, if I recall, $10 or $11 an hour. But now they had a bit of a pension, now they had health care, and now they had a chance to actually earn a 1-week vacation, something many, many workers in America don't have the opportunity for. And when I hear people say: Well, unions meant something in the past, but they have outlived their usefulness, that really tells you what that is all about.

We celebrate that on Labor Day, but we also know the union movement is under attack. We look at what has happened in the Ohio Statehouse, where legislators in Columbus, most of whom were elected by talking about lost jobs in large part because of what happened in the Bush administration and the 8 years previously, but people who were very unhappy, as they have a right to be, as they should be, because of lost jobs, but what they have done is, after getting elected, they have gone after collective bargaining rights, worker rights. They have attacked voter rights. They have attacked in far too many cases women's rights.

Let's be clear. It is not teachers and firefighters and police officers who caused Ohio's budget deficit. It is not teachers and firefighters and police officers who caused this financial implosion our Nation has. Look at the history. It has been tax cuts for the wealthy; it has been reckless spending, overspending on corporate welfare, overspending on all kinds of things; it has been regulatory sleepwalking that has left our economy in ruins. As a result, we have a widening income gap, with wages generally stagnant for the last decade for middle-class and working-class voter citizens, wages stagnating or declining for most of the workforce but salaries and bonuses going up for people who are the most privileged, the bankers and wealthy executives and CEOs.

Robert Reich recently pointed out that the 5 percent of Americans with the highest incomes now account for 37 percent of all consumption. Reich points out that when income is concentrated at the top, the middle class doesn't have enough purchasing power to pull themselves out of this recession our economy suffers. The wealthiest people can only spend so much. If the middle class has their wages stagnant or actually decline, there simply isn't the purchasing power we need to create the demand to grow our economy. Our economy has been most prosperous when the middle class is thriving rather than when we have these huge gaps in income.

Today we have lost the consensus that our Nation's prosperity was tied to a thriving middle class, where opportunity was afforded to those seeking to join it.

We used to see that consensus on manufacturing, where an economy built wealth and built strong communities for millions of Americans around production. You only create wealth by mining, by agriculture—growing something—and by manufacturing. Yet we