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Senate

The Senate met at 2 p.m. and was called to order by the President pro tempore [Mr. BYRD].

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Gracious Father, replenish our energies so that we can give ourselves unreservedly to the challenges of this new week. Give us gusto to confront problems and work to apply Your solutions. Replace our fears with vibrant faith. Most important of all, give us such a clear assurance of Your guidance that we will have the courage of our convictions.

Bless the women and men of this Senate with a profound personal experience of Your grace, an infilling of Your Spirit of wisdom, and a vision of Your will in all that must be decided this week. In the name of our Lord and Saviour. Amen.

PLEDGE OF ALLEGIANCE

The PRESIDENT pro tempore led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The Senator from Nevada.

SCHEDULE

Mr. REID. Mr. President, I have been asked by the majority leader to indicate that we are to be in morning business for 2 hours today. Following that, we will return to legislative business. We will be on the Transportation appropriations bill. There will be an amendment offered at or about 4 o'clock today, with a vote to occur at about 5:45 today. We hope those who have amendments to offer to the bill will be ready to do so. We know there is at least one difficult issue. We are going to work on that.

Senator MURRAY and Senator SHELBY have spent a great deal of time on this legislation. We hope to complete this matter and one or two other appropriations bills this week.

The recess is fast approaching, a week from this Friday. We are going to have a number of things we have to do, in addition to appropriations bills, that the majority leader and the minority leader have talked about and recognize have to be done before the recess. So we have asked everyone to be cooperative. We are going to move as quickly as we can to try to satisfy the many different desires of the two caucuses.

RESERVATION OF LEADER TIME

The PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

MORNING BUSINESS

The PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business, with Senators permitted to speak therein for up to 10 minutes each, with the following exceptions: The Senator from Arizona, Mr. KYL, from 2 to 3 p.m., and the Senator from West Virginia, Mr. BYRD, from 3 to 4 p.m.

The Senator from Arizona, Mr. KYL.

Mr. KYL. Thank you, Mr. President.

When my colleague, the Senator from Idaho, arrives, I will stop my presentation and give him an opportunity to join me in our comments today. We intend to take this hour to both talk about the same general subject.

NOMINATIONS

Mr. KYL. Mr. President, when we first came back and began this Congress in January, there was a lot of talk about bipartisanship at that time due primarily to the fact that the Senate was equally divided between Republicans and Democrats, and we knew we better act in a bipartisan way or not a lot would get done.

Since that time, of course, the Democratic Party has taken the majority, by virtue of the transfer from a Republican to an independent status, and we now have 50 Democrats, 49 Republicans, and one independent in the Senate; therefore, the Senate is under the control of the Democratic Party as the majority party. But we have a Republican administration and no less of a requirement to work together in a bipartisan fashion.

The distinguished President pro tempore chairs a committee which, by its very nature, requires bipartisanship. I think I was presiding in the chair the day the distinguished President pro tempore and his counterpart, the ranking member, the Senator from Alaska, talked about the fact that without the kind of bipartisan cooperation in that committee that has characterized its work, it would be hard for the Senate to get its work done.

That is also true of some other things, some housekeeping, if you will, that the Senate has to do as part of its constitutional responsibilities and, frankly, are among the most important of its responsibilities. That includes the advice and consent that we provide with respect to nominees from the executive branch.

When a new President comes into power, there is also a certain transition that takes place because the new President nominates his own people for his executive branch department, his Cabinet officers and subcabinet officers, and also, of course, judicial nominations.

In order for those departments to be fully staffed and up and operating, it is necessary for the Senate, as quickly as possible, to hold hearings on those

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

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nominees, to act on them one way or the other, and then those that it approves—the vast majority—can join the President and begin work in the executive branch of Government. Ordinarily, that is a somewhat lengthy process but not a particularly difficult process.

Most of the nominations are relatively routine. After they finish their FBI check, there is a hearing. There is almost never any controversy and therefore it is not difficult for the Senate to confirm those nominees. In fact, for the benefit of a lot of folks who would not be aware of the process, we do not take time in this Chamber to debate each and every nominee and hold a rollcall vote on each and every nominee. Instead, most of them are not controversial, and the leader will ask that a group of them be considered in a group, at the end of the day; and if no Senator objects to the nominations, they are all approved, and they are approved unanimously.

That is the way it is done for most of the nominees. There are well over 600—I don't know the exact number—that we have to confirm. The problem is, this year, because of the election difficulties in Florida, the administration did not have as much time during the transition to get these people selected. As a result, we started out about a month behind in terms of the nominations from the Bush administration. Fortunately, the administration has worked very quickly and has actually caught up and even surpassed some previous administrations in the number of nominations that have been sent to the Senate.

But the Senate has not acted very quickly either. Part of that was due to the fact we had this change from an equally divided Senate to a Senate controlled by the Democratic Party, and there was a period when the reorganization resolution had not yet been adopted.

People might say: Why is all that important? Let's just get these nominees approved. Sometimes there are certain steps the Senate has to take before it can do things. The fact is, now we have had quite a period of time within which to act on these nominees, and we are beginning to act on some of them, but, frankly, they are not occurring as fast as I think they should occur and many of us believe should occur.

There are still far too many nominees we have not confirmed, and we are afraid will not be confirmed by the beginning of the August recess, in less than 2 weeks from now. That means it would not be until after Labor Day that the President would have his full complement of Cabinet officers in place, and subcabinet officers. That is far too long.

As of this month, over one-eighth of the Bush administration term is now gone, and many of the people he would have working for him are not even confirmed. The Senate has, so far, confirmed 210 Bush administration nominees, and that includes the 77 that we have confirmed just in the last 11 days. But even with that progress, it is just 58 percent of the nominees that President Bush has sent to us so far.

This chart represents the 58 percent of nominees confirmed by the Senate from George W. Bush. At this same time during the Bill Clinton administration, the Senate had confirmed 74 percent; and in the Reagan administration, 72 percent. These are administrations that took over from a previous party.

Ronald Reagan took over from Jimmy Carter. Bill Clinton took over from George Bush. And George Bush, of course, took over from Bill Clinton—each changing parties in the process.

So as we can see, the Bush nominees have not been approved, have not been confirmed at the same rate as the Senate confirmed previous Presidents' nominees. That is putting a real burden on this White House.

Incidentally, even though it wasn't a change from Reagan to the first George Bush in terms of party, the percentage was exactly the same as with regard to George W. Bush. Clearly, the Senate has to do a better job getting these nominations heard, getting them to the Senate floor, and getting them approved.

The same thing is true with respect to judicial nominations. We are going to need to hold hearings and confirm judges at a much faster pace, or we are going to be way behind in terms of judgeships. I will talk about that in just a little bit.

The bottom line, the first point I am trying to make is that we would literally have had to confirm about 83 nominations last week to match the nominations that we confirmed for the Clinton administration. We confirmed only 23. We were literally 50 nominations behind as of last week.

The Bush administration has nominated 365 people to date. With the 210 confirmed, that leaves 155. We have less than 2 weeks before the August recess. We would have to do about 75 per week to get these all confirmed. The fact is, 27 of those are judicial nominees. There is no way we can hold all of the hearings on them. So let's subtract the 27 judicial nominees; that still leaves 128 nonjudicial nominees. Those are the people the President needs to help run his Cabinet and his Cabinet agencies. That would mean we would have to do about 65 per week, this week and next week, in order to be done.

We are hopeful the Democratic leadership will cooperate in a bipartisan way to get these nominees confirmed. Because of what I explained earlier, it is not difficult to accomplish this. We can walk and chew gum at the same time. We can do both appropriations bills and nominations because nominations usually don't require a lot of time for debate on the Senate floor, and they don't require rollcall votes in most cases. In most cases, they are bundled together because they are not controversial. The leader asks unanimous consent at the end of the day that they be approved. That consent is given. They are approved, and it doesn't take very much time at all.

The good news is, the Senate can do both things at the same time. It can both pursue legislative business, which in the case of the next 2 weeks is going to consist mostly of appropriations bills, and at the same time we can do these nominations. That is the good news.

Let me try to give you a little bit of an idea of some of the agencies that have nominations pending and why these are important. As I said, there are 27 judicial nominations pending, 26 or 27. Everybody understands the importance of the judiciary. Tomorrow, the Judiciary Committee is going to hold a hearing on three nominees, but only one of them is a judge. The other two are nominees for the Department of Justice.

We have only confirmed three judicial nominees this entire year for President Bush. There is now a vacancy rate that is far higher than it was at the end of the last administration. In fact, there are today 108 vacancies in Federal courts. This is about 45 or so more than there were at the end of the Clinton administration.

Just to quote a couple of my colleagues to illustrate the significance of these judicial nominees, Senator LEAHY is the chairman of the Senate Judiciary Committee and has always been a very strong advocate for filling these judicial positions. When Bill Clinton was President, this is something Senator LEAHY said:

> Any week in which the Senate does not confirm three judges is a week in which the Senate is failing to address the vacancy crisis. Any fortnight in which we have gone without a judicial confirmation hearing marks 2 weeks in which the Senate is falling further behind.

Senator LEAHY is right about that. He said this in January of 1998. When he made that statement, there were fewer than 85 vacancies. Today there are 108 vacancies. As lawyers would say, a fortiori, it is important for us to begin confirming these judges. Moreover, as he pointed out, you can't confirm them until you have had hearings, and we are not having hearings on these judges.

We are supposed to have a hearing this week, but only one judge is on the panel. I remember the last three or four hearings of last year, we had five or six judges per panel. To have only 1 judge on the panel when there are 26 others on which we could have a hearing—their FBI clearances have been done; they are ready to have their hearing—is simply to slow down the process. There is no reason why we can't add more judges to the hearing calendar. We should be doing that.

I respectfully request that the chairman of the Judiciary Committee get on with the scheduling of these hearings.

Our majority leader, the distinguished Senator from South Dakota, last year said:

Today there are 76 vacancies on the Federal bench. Of those 76 vacancies, 29 have been empty so long they are officially classified as judicial emergencies. The failure to fill these vacancies is straining our Federal court system and delaying justice for people all across this country. This cannot continue.

That was in March of 2000. When he made that statement, there were 76 vacancies, 29 of which were categorized as ''judicial emergencies.'' Today there are 108 vacancies, 40 of which are classified as ''judicial emergencies.''

It is clear the Judiciary Committee needs to begin holding more hearings, that we need to get these judges to the Senate floor for confirmation, and that the Senate needs to act more quickly on these very important judicial nominations, 40 of which are classified right now as ''emergencies.'' In other words, according to the administrative office of the U.S. courts, these are the positions which need to be filled immediately or the administration of justice will suffer. It represents 12.6 percent of the judicial positions in our country today. That is the vacancy rate, and of those, just under 40 percent, are classified as ''judicial emergencies.'' Clearly, we have to get working on these nominations.

I note that my colleague, Senator CRAIG, has arrived. I was going to begin discussing some of the specific nominees who are not judicial nominees that have been pending for a long time that we want to get cleared. Before I do that, perhaps my colleague is ready to make a presentation. I am happy to wait and go into some of the specific names after a little bit.

I yield to the Senator from Idaho.

The PRESIDENT pro tempore. How much time does the Senator yield?

Mr. KYL. As much time as the Senator takes.

The PRESIDENT pro tempore. The Senator is recognized for as much time as he consumes.

Mr. CRAIG. I thank my colleague from Arizona for yielding. Most importantly, let me thank him for coming to the floor this afternoon to talk about what, without question, is a critically important issue to our country. That is that a President, once elected and sworn in by a Nation, has the right to govern the executive branch of the Government.

We all know that takes a good many hands at the tiller, talented people from all walks of life who can help a President in all of the agencies of the Government make the right determinations and decisions as they relate to how policy ultimately gets implemented into law. We have watched over the years as this has become a most cumbersome approach. It has become increasingly involved, a combination of legislative action on the part of the Congress—the Senate playing a role—executive orders on the part of the President, all coming together in a critical mass. That takes the process a very long while to work. I am talking about simply the selection of, the vetting of, the background checking of an individual whom a President is going to nominate prior to that individual getting to the Senate, and then for the committees of jurisdiction to hold the proper hearings that are necessary to look at all of the material and ultimately to pass judgment on this individual for recommendation before the full Senate.

The reason I talk about that at the outset is that we are not talking about that today. We are talking about the second step—the Senate process, the responsibility we have as Senators to review, confirm, and/or reject these nominees, based on cause, whom a President sends before us.

We are in a situation where the Senate has confirmed about 210 Bush nominees so far this year, including the 77 we have confirmed in the last 11 days. During the Fourth of July break, I was home in my State of Idaho and I was hearing from many constituents who were saying: LARRY, when are we going to get this person? Senator, when are we going to get that person?'' Or they would say: Senator, do you realize that Clinton people are still in power at the regional levels of the National Marine Fisheries—or U.S. Fish and Wildlife Service, or the EPA—and those decisions are still being made, based on, if you will, the philosophy and attitude of that administration versus the one the American public has just elected to power? When are those things going to happen or change? We elected a new President; we want a new direction. We expect that. That is why we did what we did last November.

It was during that time, in listening to my constituents and trying to explain, that I began to examine the second phase—this phase, the one we are in now as Senators, doing our responsible job and constitutionally mandated job to review and confirm or reject appointments, nominations made by a President.

Coming back from the Fourth of July break, I began to examine the numbers involved to see what the problem was, why we had not moved more. Yes, there was a time when we had a change of power and that took time. I don't argue that. But clearly, if you examine the amount of time involved with all of the nominees who are before us, there were a good many languishing before committees who had not had hearings, nor were hearings scheduled. As a result of that, I began to look at it in the context of how do we make this system work to accelerate itself, to do what it should do responsibly, but to do so in a timely fashion, so that our President can have the people he sent forth to help govern our country at the executive level.

It was at that time that my colleague from Arizona and I teamed up, using the rules of the Senate appropriately, to discuss this issue and to cause the Senate to work in a more expeditious fashion. Even with the recent progress we have made—those 11 days and 77 confirmations—that is just 58 percent of all of the nominees President Bush has sent to us so far. How does that compare with past Presidents' transitions? As of July 20, the Senate had confirmed, as I say, about 58 percent of the Bush nominees. As of July 20, 1993, the Senate had confirmed, as the chart shows, about 74 percent of President Clinton's. As of July 20, 1981, the Republican-controlled Senate had confirmed 72 percent of President Ronald Reagan's nominations. So somewhere in the seventies is probably a figure that is right and reasonable—if there is a ''right and reasonable''. Or should the Senate operate clearly in a more expeditious fashion? To keep pace with the record we have shown by the chart this afternoon, we would have had to have confirmed 83 nominees last week to match the Clinton record, instead of the 23 for whom we fought hard to get the majority to work with us on, to ultimately get before the Senate in confirmation.

The transition in power in the Senate, as I mentioned, caused some delays. I accept that, and I am willingly able to talk about that, and I should because that is right and that is fair. The uncertain outcome of a Presidential election stalled any President or President-elect out 36 days before they could begin to actually move in any fashion. Yet the Bush administration has recovered from its delays, and it had sent a record 365 nominations as of last week. I think the Senate now must step up the pace if we are going to deal with this matter in a timely fashion.

As important as all of that is, as my colleague from Arizona knows so well, to allow this President to govern, to set the course in the policy direction that is set by these key people, and also to establish the kind of relationships and esprit de corps that occurs within an agency between administrators of that agency and the rank-and-file civil servant, our goal—the goal of the Senator from Arizona and myself, working with the leadership of Republicans and Democrats in the Senate—is to get the Bush administration fully staffed with qualified people as quickly as possible.

A week and a half ago I told the majority leader, TOM DASCHLE, that our goal was, if you will, to cleanse the Senate of nominees by the August recess. Why? Because we are going to be gone for a month. If there is anyone languishing without cause simply because committee chairmen could not act or would not act, then shame on them, shame on the Senate, and shame on the leadership of the Senate for simply not moving the process along in the next 2 weeks to get the hearings done, to vet these people, to get them voted on, and get them to the floor.

As we know, it is only in a rare case that a nominee actually brings about aggressive debate on the floor of the Senate. Why? Because, in a bipartisan manner, all of us believe that a President has the right to choose, to select.

While it is our responsibility to confirm, very seldom does the Senate actually reject. So why should there be delay, as long as the process is thorough, responsible—and it should be timely. Based on the workload of the Senate today, there is really no reason for a lack of timeliness.

There are 499 positions in the executive branch requiring Senate confirmation, not counting judicial nominees. As the Senator from Arizona knows, while he was tackling the judicial nominees, I looked at all the other agencies as my target, believing that those were the ones we could get out to the administration most quickly. Of those, according to the Brookings Institution, there are 313 positions currently vacant. That is 6 out of 10 positions in Government today. In other words, 6 out of 10 people are not ''on the ground,'' not working with the President and the Vice President to govern our country.

That is what we are talking about—making critical decisions about how policy gets implemented. For those who are the victims of the lack of people being in place, it is the rank-and-file citizens out there in Arizona or in Idaho who find themselves in contests with or in conflict with a given rule or regulation and having someone outside the system make a judgment, or someone who has a given philosophical bent, instead of this administration. That is why what we do here and what the Senate does in the next 2 weeks is so absolutely critical to the American people.

Mr. KYL. Mr. President, will the Senator yield for a question?

Mr. CRAIG. Yes, I am happy to yield.

Mr. KYL. I think the Senator just hit the nail on the head. This isn't an abstract proposition, the fact that the President needs to have his team in place; I think everybody recognizes that. But it has real ''on the ground'' meaning for everyday decisions that are made affecting all Americans. Maybe we can talk for a little bit about some of the specific positions that are vacant, the people who have been nominated for those positions, why they are important for the American people, and what can happen if these positions are not filled.

Would the Senator like to initiate discussion on that? I can certainly do the same.

Mr. CRAIG. Let me give an example. I thank my colleague. I will reclaim my time and give an example. Some weeks ago, an acting regional administrator of National Marine Fisheries told the largest utility in Idaho, which is a hydro-based utility, that they had to dump their water; they could not generate with it. It just so happens that Idaho and the Pacific Northwest are in a drought at this moment. The 320,000 acre feet of water impounded for the purpose of generating power for Boise, ID, and the surrounding area was being ordered to be dumped in the name of fish and fish recovery. The power company thought it was inappropriate to do and unnecessary under the law, even recognizing the need to protect the fish.

When they refused, that acting agent sent a letter to the Federal Energy Regulatory Commission asking they order the water be dumped. At that time, I and other members of the Idaho congressional delegation got involved. We began to examine it. Frankly, we found an individual who was operating and making decisions in a manner that we thought inconsistent with the law, much more consistent with their philosophical bent than the legal responsibility and the right administration of the law. We asked for a conference. We asked that all the parties be brought to Washington to solve this problem.

Under the law, it was decided that the utility could continue to operate normally, and in so flowing the water through its pin stocks and turbines, it could not only generate power—and we know what has happened in the Pacific Northwest, with a real absence of power.

To make a long story short, but a very dramatic example for Idaho, instead of following the edicts of someone whom I felt was philosophically driven by a past administration's attitudes of how that agency ought to operate, under a negotiated settlement and within the law, this utility was allowed to operate, manage the water accordingly so there would be no blackouts in Boise, ID, and the surrounding area this year, save the fish, and solve the problem.

I do believe that if the regional director for National Marine Fisheries had been in place, the request to spill or dump water would never have occurred. That problem could have been solved at the regional level through reasonable negotiation. That is an example, and there are a myriad of others going on out there at this moment.

Let me give another example, and while this one cannot be blamed on the Senate at this moment, it is a perfect example of not having people in place at the right time. It really cannot be blamed on the administration, either. I am talking about our Ambassador to the United Nations, Negroponte, and the stalled nomination and the unwieldy system that impacts this. With no permanent Ambassador, the United States mission at the United Nations has had to rely on a career diplomat, Mr. Cunningham, who was the acting Ambassador in January when Richard Holbrooke resigned.

What happened in the meantime? The problem became a public one because of the unwillingness, in my opinion, to be aggressive in holding the Nation's position as it relates to our role in the United Nations and in the General Assembly.

The problem became public on May 3 when the United Nations lost two influential U.S. Commissioners: one for human rights and one for narcotics control.

According to a source close to the U.S. Commission, diplomats were unaware that positions on either panel were in jeopardy until the final hour. In other words, somebody was not doing their homework and somebody was not watching and dealing with it. It appeared that a last-minute campaign effort would have secured the United States one of the three open Western seats in the U.N. Commission on Human Rights. The U.S. diplomat had expected to get a 43–53 vote in favor.

They did not get it, and we know the rest of that story. For the first time since the Commission's inception in 1947, the United States has lost positions. That speaks to the problems and complications of the system.

I cannot lay the blame at the feet of the Senate on that issue, but the reason I bring it up, I tell the Senator from Arizona, is to express the dramatic consequences that can occur when we do not act timely to get the right people in the right place to make the decisions and to administer the role of Government as we would want it done.

I will be happy to yield to my colleague from Arizona.

(Mr. REED assumed the chair.)

Mr. KYL. Mr. President, if I may pursue this, it is an excellent example of one of the nominees who has been pending for a long time. John Negroponte was nominated on May 14. As the distinguished Senator from Idaho pointed out, it was very shortly thereafter that this problem in the United Nations occurred. Many people had said if John Negroponte had been there, this would not have happened. We do not know, as the Senator said.

I do know about a month ago Secretary of State Colin Powell was on national television, on one of these Sunday morning talk shows. He was asked about the nomination of John Negroponte, and Secretary Powell made an eloquent plea to the Senate to please confirm John Negroponte. He said the United States needs him at the United Nations, that we needed to get him confirmed. That was, I believe, over a month ago.

His nomination has been pending since May 14. It is now July 23. The President is going to be speaking to the United Nations this fall, I believe in September. He is going to be addressing the United Nations. For the United States not to have our Ambassador in place would be a breach of significant diplomatic protocol, as well as an important loss to U.S. interests.

I note that because the Senator from Idaho brought up the name of John Negroponte, another perfect example of someone we have had plenty of time to confirm, and we have not yet taken up his nomination for confirmation, and we need to do so.

I thank the Senator for yielding.

Mr. CRAIG. I talked about what could have happened in Idaho if, in fact, we had not been able to move the issue to Washington and those who had been left to administer at the regional level had won.

What the Senator from Arizona and I just talked about is an international problem and clearly an image problem on the part of the United States. How does it look for the United States not to be able to act in a timely and responsible manner to put key diplomats in place to do the work of our country? What does it say to the rest of the world? What does it say to the United Nations as it relates to how we prioritize the value of the U.N. and these very important commissions, the question of drugs being trafficked internationally, the question of human rights that this Senate has spent a great deal of time on over the years—human rights in this country and human rights around the world—and we have now lost key positions because we did not have people in place to lobby effectively for the position of this country, to make sure we had a voice on these key commissions.

It speaks volumes about not only our inability to operate but the cumbersome nature of the system we have allowed to be created.

Mr. KYL. Mr. President, I ask the Senator from Idaho to yield again, primarily to make a point.

Mr. CRAIG. I will be happy to respond.

Mr. KYL. The Senator from Idaho was instrumental at the end of the week in getting an agreement from the Democratic leadership to take up the nomination of Jack Crouch, sometimes known as J.D. Crouch, a distinguished expert in, among other things, missile defense. I had breakfast a couple of months ago, along with other Senators, with Secretary of Defense Rumsfeld. He pleaded with us at that time: Please send me my troops. Please confirm the people we have nominated for the Cabinet and subcabinet positions for the Department of Defense.

Now the President is busy in negotiations with the Russians, with Putin, and with others regarding missile defense, and the nomination of a distinguished member of his subcabinet, Jack Crouch, has not been taken up. He was nominated on May 7. He was nominated even before John Negroponte. Still no confirmation.

I ask the Senator from Idaho, since the Senator was instrumental in getting the agreement of the Democratic leadership to have a vote on J.D. Crouch sometime before the end of the August recess, does the Senator think it is important in this case to get this vote scheduled as soon as we possibly can so we can send Secretary Rumsfeld the team he needs to help provide for the national security of the United States?

Mr. CRAIG. Certainly, I agree with the Senator from Arizona. There is nothing more important to our country; now that these men and women have gone through their background checks and have been thoroughly vetted and sent to us, we ought to act in the most timely fashion.

Where there are objections—there happen to be a few on our side and some on the other side. Let's solve those, bring them to the floor. If a Senator objects, let he or she come to the floor and defend their position. There is nothing wrong with that. I say that for Republicans and Democrats alike. They can express their opposition; they can vote no. There is nothing wrong if you feel passionately about one of the nominees, in telling the President, who happens to be your President: Mr. President, I vote no.

Why openly and aggressively deny the President the right to select the people he thinks are necessary to work with him in the governance of this country?

I know the Senator went through the list of those key and important individuals still languishing in committee. I understand there are a total of 127 nominees who have had no hearings and no markups, as close as we can determine. There were 48 who came up this month; 46 came up in June; 27 came up in May; 6 came up in April. That is the time that these names have been before the appropriate committees.

The question is, where is that chairman? And why can't we hold hearings and give these people an opportunity to testify? Hector Barreto was nominated to head the SBA on May 1, just Friday. He was placed on the Senate's Executive Calendar. The Executive Calendar is at the desk. It is the calendar that nominations reside on before they are considered by the Senate as a whole. He was reported out of committee by a unanimous vote. This is the head of the Small Business Administration. He got a unanimous vote out of committee, but he came there May 1.

The most modern phrase I can come up with is, ''duh.'' It is kind of a ''duh'' issue to the chairman of the committee why this man has been before them since May 1, and got a unanimous vote coming out of committee. We will now, I trust, take up Hector Barreto this week. Certainly the Senate, I hope, can act timely. This is the man who will run the Small Business Administration of our country, which we rely on heavily in dealing with the small businesses of our State, those starting up, the problems they might have in trying to create start-up businesses.

The Senator from Arizona and I know first hand, as his is a border State, and border States by definition are oftentimes caught in the backlash of drug trafficking that flows across their borders and into the United States, John Walters was nominated on June 5 to be the Nation's drug czar. We know that problem. We are extremely pleased the Bush Administration is reemphasizing the drug problem as an enforcement problem for the citizens of our country. The Judiciary Committee has neither held hearings nor reported out this Cabinet-level appointee. They have had him since June 5. I don't know if it meets the ''duh'' test. I am not sure what it meets.

The Judiciary Committee does not appear to be functioning well. We have had changes in chairmanships, but the new chairman has had plenty of time. Just send out a notice, bring down the gavel, listen to this man and question this man about what he will do as the new drug czar for our country at a time when drug use is high, lives are being destroyed, and we as a country want to put special emphasis on control and detection and certainly all of the counseling, and the remediation efforts involved in helping our citizens cope.

I hope the Judiciary Committee gets the message that they need to act expeditiously to allow this man the right to begin to administer the antidrug programs of this country.

I thank my colleague from Arizona for yielding. There are other points that can be made. We will continue to make the points as we work with Democrat and Republican leadership to recognize and deal in a timely fashion with all of these nominees. My test, the test of my colleague from Arizona, is to move as many as possible before the August recess so we do not then wait clear until September to see the men and women on the ground managing and doing what they have been asked to do on behalf of this administration.

There is a lot of work to be done. But there are 2 weeks left. In 2 weeks' time, these committees can clearly convene and hold the hearings, make their recommendations, and allow the men and women nominated by President Bush to get to the floor for the purpose of our consideration and our constitutional responsibility of confirming or denying these nominations.

I thank my colleague for the effort he has put forth in the last several weeks. We have worked together as a team to assure that many of the nominees have been moved in a timely manner. In all fairness, I think part of our message and concern is getting out. I have had two chairmen this week in Agriculture and in Veterans' tell me they will attempt to move expeditiously. Hearings are being scheduled.

When I see 127 nominees who have not had hearings, and there are 2 weeks left, that says there is an awful lot of work to be done in the next 2 weeks. I hope our chairmen are up to it. I think the committees and the committee staffs have had adequate time to do the necessary work to prepare for appropriate and necessary hearings.

I thank my colleague from Arizona for securing the time and yielding to me on this issue.

Mr. KYL. Mr. President, I thank the Senator from Idaho for being instrumental in bringing this issue to this Chamber. He helped to prove we can do more than one thing at once. We can do our legislative work on the appropriations bills that come before the Senate, and at the same time have the committees meeting on the nominees and holding hearings and bringing them to the Senate floor, in most cases for a quick unanimous consent vote that does not require a lot of Senate time.

I know he and I will continue to work to see we complete this list of nominees for confirmation before we leave for the August recess. It would be a shame to leave here with that unfinished business, leaving the President without the team he needs to help in the important responsibilities he has.

The Senator from Idaho pointed out he has visited with different committee chairmen—for example, the Agriculture Committee chairman. There are 10 nominees pending before the Agriculture Committee. They need hearings and need to be acted upon. There are 9 pending before the Armed Services Committee, and in addition to that, J.D. Crouch, on whom we need to vote.

In the Banking Committee, there are 7 pending; in the Commerce Committee, there are 8; in the Energy Committee, there are 3; before the EPW Committee, there are 8; before the Finance Committee, there are 12; Foreign Relations has 41, many of whom are important nominees to Ambassadorial positions to various countries. What do these countries think when that we sit on these nominations for so long before confirming them and sending them on to serve the United States abroad?

There are 4 pending before the Governmental Affairs Committee, 6 before the health committee; as I said, before the Judiciary Committee, there are 27 judicial nominees and either 12 or 13, depending on my count of positions, to other judicial branch appointments, and 3 before the Veterans' Affairs Committee, and another before the Judiciary Committee, since the Senator from Idaho singled out the Judiciary Committee out.

I am on that committee and the Judiciary Committee has not done its job either with the executive branch nominees or the judiciary, the judges. John Gillis was nominated in April to head the Office of Victims of Crime. He would be the Director of the Office for Victims of Crime at the Department of Justice. He has had no hearing. John Gillis is an extraordinary man. He is an African American, former police officer from the Los Angeles police force. His daughter was killed, murdered.

John Gillis became a very strong advocate for victims' rights. He is a national hero in this regard. He is a man of great character, of passion for the cause of victims of crime.

President Bush has also strongly advocated the rights of victims of crime. My colleagues know that has been one of my passions, as it has been of Senator FEINSTEIN from California.

In April, John Gillis was nominated. It is critical that he join the team at the Justice Department—no hearing. He has not been approved by the Senate.

Mary Sheila Gall, this is another interesting nominee, interesting in the sense of the position she would hold. She was nominated back on May 8. Apparently there may be a hearing for her on July 25. But she would chair the Consumer Product Safety Commission. This is only the Commission that is responsible for the regulations and enforcement of regulations that protect the public against unreasonable risks of injuries and deaths associated with consumer products—a very important position for children as well as adult men and women in our country. It is an independent, Federal regulatory agency, and it has jurisdiction over about 15,000 different types of consumer products. Let me give you a couple of examples of things they have been doing:

This past month, the month of July, a Columbus, OH, firm voluntarily recalled 32,000 hand trucks with faulty tires that can explode under intense pressure and injure bystanders or users. A Los Angeles company voluntarily recalled 600 baby walkers that will fit through standard doorways but are not designed to stop at the edge of a step. A Pennsylvania firm announced a voluntary replacement program providing free parts and labor to replace faulty sprinkler heads that relate to the ability for firefighting equipment to work, and so on and so on.

I could go down a long list here.

Mr. CRAIG. Will the Senator yield? I am pleased he is mentioning this one because at times I have been at odds with the Consumer Product Safety Commission as it relates to some of the work they have done. One of the most significant findings they made, and one of the largest recall/replacement efforts was just mentioned by the Senator from Arizona and that was the sprinkler head that you see in new code buildings around the country that fire professionals will tell you is the single greatest way to put out a fire. What they found was that over a period of time a rubber gasket that controlled the release of water would simply rot away. This company that makes them, because of the Consumer Product Safety Commission's oversight and review, is voluntarily replacing these faulty sprinkler heads all across the Nation.

Why can't we hold a hearing in Judiciary to get the head of this Commission in place? How long has that person been before the committee?

Mr. KYL. Mr. President, Mary Gall was nominated as chair of the Consumer Product Safety Commission on May 8. She is pending before the Commerce Committee to this day.

Mr. CRAIG. May, June, July—3 months now—that person has languished before the committee. Both the Senator from Arizona and I have openly discussed the time we lost through the transition when we had one of our colleagues become Independent and the leadership of the Senate changed. At the same time there is no excuse, because staffs didn't change dramatically. We really just passed the gavel over and the total number of members on the committee changed. Yes, we had to wait for an administrative process that allowed a new regulation to be written—a resolution of the Senate, what we call an organizational resolution—but still, that committee could have gone on, and many did, to hold hearings. They could have voted them out immediately, then, after the hearing record was established because none of us were calling for votes on key committees. But some committees did function. And here, now, we have this critical position languishing because of failure to act.

I thank my colleague for bringing that point forward.

Mr. KYL. Mr. President, let me mention a couple more before my time is up. One would think we would want to have in place the Solicitor for the Department of Labor to ensure the Nation's labor laws are fairly and forcefully adhered to. Eugene Scalia was nominated back in April—April 30—to be Solicitor for the Department of Labor. There have been no hearings for his nomination. Yet that person is responsible, at the Department of Labor, for monitoring agency activities, providing advice and opinions to ensure Department of Labor employees and agencies fully comply with laws and regulations, and to assist in the development of regulations and standards to protect workers in this country.

This is another very important position, Eugene Scalia. We need to have a hearing on him and he needs to be brought to the Senate floor for confirmation before we leave here for our August recess.

Brian Jones, general counsel of the Department of Education: We all like to talk a good game when it comes to education. This is for the children. We need to help them. We need to staff up the Department of Education. It needs to be able to do the work we have asked it to do. Brian Jones was nominated back in April as well, April 30. He has had no hearing. Yet his responsibilities as the general counsel for the Department of Education are to help support equal access to education and education excellence around the country by providing sound, understandable, and useful legal services and effectively managing the Department on all of the ethics and legal issues that come before it as well as to serve as the principal adviser to the Secretary on all legal matters affecting the Department's programs and activities.

I mentioned another individual who was nominated more recently but whose name has really been before the Senate for a long time: Otto Reich. This is one of the key priorities for President Bush because, as everyone, I think, knows, the President has paid special attention to Mexico and the countries of Central and South America. Otto Reich would be the Assistant Secretary of State for Western Hemisphere Affairs. It is an extraordinarily important position to manage and promote U.S. interests in that region by supporting democracy, trade, and sustainable economic development in dealing with a whole range of problems from drug trafficking to crime and poverty reduction and environmental protection. Otto Reich deserves to have a

hearing and deserves to be considered by the Senate before we go out in August.

The Senator from Idaho and I could go through each of these names, well over a hundred. In every case, we are dealing with an important position and we are dealing with people whose lives have basically been held in abeyance. They do not know whether or not to move their families or to do what is necessary to prepare to serve the President. The Senator from Idaho told me of a meeting he had with people who were about ready to give up because their nominations had simply been languishing for so long. I think the Senator from Idaho said: Persevere; the Senate is going to do its work.

I might ask the Senator to recount that brief experience.

Mr. CRAIG. I thank the Senator from Arizona for mentioning that situation. I did visit with a gentleman who was slated to go to Justice, and will in time. But you know there is an image problem here. Oftentimes, or at least sometimes, the public thinks these people who serve a President and are nominated are wealthy people or people of substantial means who can do as they wish. That is not true. They come from all walks of life and all experiences. They fit the situation and/or the responsibility they are going to undertake. A lot of them are young, family people with children in school.

The question is, Are we going to be confirmed and can we bring our kids to Washington and get them into the schools here in the area because remember what happens at the end of August? Kids go back to school. I understand the other day in this city there was a breakfast of about 20 of them, trying to make up their minds whether to tough it out, wondering when the Senate might operate, or if they were going to have to pick up the phone and call the President and say: Mr. President, I am sorry; I really did want to serve you and I wanted to serve the American people, but I have to get on with my life. I have been 3 or 4 months in limbo now, and because of the risk of conflicts of interest, I cannot continue in my current job or my current capacity and I have kids to get in school this fall. I have a home I have to sell and/or a home to buy. What do I do? That is the practical, human side of this very real problem that the Senate of the United States has created.

I thank the Senator from Arizona for mentioning that.

Mr. KYL. Mr. President, let me mention one other very practical problem. The Attorney General, John Ashcroft, told me of a situation which I hope by now has been corrected. But he literally was at his farm in Missouri after he became the Attorney General and I think he was the sole executive person at the Department of Justice. An aide had to literally bring a warrant out to Missouri, fly on an airplane from Washington, DC, out to Missouri so he could sign it because he was the only one who had the authority at that point to sign this particular document.

I believe since then we have confirmed some people who also have that authority. But the point here is we have to get the executive team in place. We have 155 people who need to be confirmed; at least about 130 of them need to be confirmed before we leave for the August recess. In the name of bipartisanship, for the good of the American people, for the sake of doing the important jobs we have outlined here before, and for the sake of filling our judiciary, I urge my colleagues to work with us to get these people to the floor and to get them confirmed before we leave for the August recess.

Mr. President, might I inquire, do I have another minute or so left? What is the time?

The PRESIDING OFFICER. The Senator is informed it is 3 o'clock, when Mr. BYRD is to be recognized.

Mr. KYL. I thank the Chair.

I conclude by urging all of my colleagues to work with us so we can get these people to the Senate floor and get them confirmed before the August recess. If we do, we will feel better about doing our job and the country will feel better because we will have served the interests of the American people.

I thank the Chair.

The PRESIDING OFFICER. The Senator from West Virginia is recognized.

U.S. IMMIGRATION POLICY

Mr. BYRD. Mr. President, in his delightful work ''Democracy in America,'' Alexis de Tocqueville begins his thoughts on the origins of Anglo-Americans with these words: ''The emigrants who came at different periods to occupy the territory now covered by the American Union differed from each other in many respects; their aim was not the same, and they governed themselves on different principles. These men had, however, certain features in common, and they were all placed in an analogous situation. The tie of language is, perhaps, the strongest and the most durable that can unite mankind. All the emigrants spoke the same language; they were all children of the same people.''

For generations, the United States has had the good fortune to be able to draw upon not only the talents of native-born Americans but also upon the talents of foreign-born citizens. Immigrants from many nations built our railroads, worked in our factories, mined our coal, made our steel, advanced our scientific and technological capabilities, and added literature, art, poetry, and music to the fabric of American life.

Of course, many of these new Americans struggled with our language and customs when they first arrived, but they learned our language, they absorbed our constitutional principles, they abided by our laws, and they contributed in a mighty way to our success as a nation.

Indeed, I believe that, particularly in the case of those who came to our shores fleeing tyranny, there has existed a unique appreciation for the freedom and opportunity available in this country, an appreciation which makes those special Americans among our most patriotic citizens.

In other words, do not go to Weirton, WV, and burn the flag. No, not in Weirton. We have at least 25 or 30 different ethnic groups in that small steel town in the Northern Panhandle.

Mr. President, the United States today is in the midst of another immigration wave—the largest since the early 1900s. According to the latest numbers from the U.S. Census Bureau, immigrants now comprise about 10 percent of the total U.S. population. That is about 28.4 million immigrants living in the United States.

During the 1990s, an average of more than 1 million immigrants—legal and illegal—settled in the United States each year. Over the next 50 years, the U.S. Census Bureau projects that the U.S. population will increase from its present 284 million to more than 400 million. Immigration is projected to contribute to two-thirds of that growth.

These are unprecedented numbers. When I was born in 1917, there were about 102 million people in this country. When I graduated from high school in 1934, there were about 130 million people in this country. And today, there are 284 million people in America. This nation has never attempted to incorporate more than 28 million newcomers at one time into its society, let alone to prepare for an additional 116 million citizens over the span of the next 50 years.

Although many of the immigrants who have entered our country over the last ten years are skilled and are adjusting quickly, others have had problems. Last year, according to the Center for Immigration Studies, 41.4 percent of established immigrants lived in or near poverty, compared to 28.8 percent of natives. The situation had completely reversed itself from 30 years before, when, in 1970, established immigrants were actually less likely than natives to have low incomes, with about 25.7 percent living in or near poverty compared with 35.1 percent of the native population.

The deterioration in the position of immigrants can be explained, in part, by a significant decline in the education of immigrants relative to natives and by the needs of the U.S. economy. In 1970, 7.1 percentage points separated the high school completion rate of established immigrants versus natives. By 2000, established immigrants were more than three times as likely as natives not to have completed high school, with 34.4 percent of established immigrants and 9.6 percent of natives lacking a high school diploma.

The less skilled the immigrants, the worse their employment prospects, the