

down vote. The consequences are that individuals with strong opinions—and they may be liberal or conservative—and great intellect would not have an up-or-down vote.

There has been an ebb and flow in American politics.

The Bible says there is a time for every season. There are Republican Presidents. There are Democratic Presidents. There is ultimately a balance. What is happening today, what happened last year with the unprecedented filibustering of judicial nominees was an attempt to change the Constitution, to require a supermajority for Supreme Court and circuit court nominees. We are changing the flow, changing the balance. We are getting rid of and will deprive this Nation of people with great intellect and passion because they won't be able to get past the roadblock of the minority.

The caution I hope some in the minority will take to heart is, what happens when the shoe is on the other foot. How would they feel if a future Democratic President's nominees were treated in the same fashion? In this body, we have to live with the precedents we set. The whole concept of due process is about guaranteeing a set of procedures which reach a fair outcome. It is not about guaranteeing one particular outcome.

Some in the minority are so bent on defeating a few of the President's nominees that they will distort the process to achieve the outcome. They will distort precedent and tradition. They will distort what has given us a balance of great intellect and passion and great minds on the Supreme Court. We will lose that. That would be a terrible thing.

We are stewards not only of government but of the Constitution. It is our solemn oath to maintain the orderly completion of the Senate's business, specifically the fulfillment of our constitutional responsibility. Today, we are on the cusp of having to assert the constitutional option. I hope it will not come to that.

Now I hear rhetoric from some Members of the minority that they are prepared to compound their error by killing the remainder of the jobs agenda that we are ready to pass in the Senate. The National Association of Manufacturers said this week that passage of the jobs agenda items—including the highway bill, the Energy bill, the asbestos reform bill, and telecom rewrite—would be a \$1 trillion jolt to the American economy, to the U.S. manufacturing industry. Any Senator from States that don't need manufacturing jobs should feel free to object.

We need to focus not on the process but the result. I have a responsibility to advise and consent on the appellate judges the President has submitted. I will exercise that responsibility whether there be a Democratic President or a Republican President. I will look to their qualifications and then give them what they deserve: an up-or-down vote.

If need be, I support my leadership taking necessary steps to allow me to reach that constitutional decision with a simple up-or-down vote. That is all we are asking for.

I yield the floor.

The PRESIDING OFFICER. The majority whip is recognized.

VACANCIES ON THE SIXTH CIRCUIT

Mr. McCONNELL. Mr. President, for the last 4 years, I have taken to the Senate floor from time to time to decry the crushing burden under which the Sixth Circuit Court of Appeals operates. The year has changed, but one seemingly immutable fact remains: The Sixth Circuit is the slowest judicial circuit in the country by far.

The Sixth Circuit has 16 seats. It covers Michigan, Ohio, Kentucky, and Tennessee, with a population of over 30 million people. For the last 3 years, the Sixth Circuit has been trying to function with 25 percent of its seats empty. Twenty-five percent of the Sixth Circuit is vacant. The vacancy rate is, as it has been for much of this dispute, the highest of any circuit in the Nation.

Not surprisingly, the judicial conference has declared all four of these vacant seats to be judicial emergencies. According to the Administrative Office of the Courts, last year, as the year before it, the Sixth Circuit was a full 60 percent behind the national average. According to AOC, the national average for disposing of an appeal is 10½ months, but in the Sixth Circuit, it takes almost 17 months to decide an appeal, 16.8 months. That means that in other circuits, if you file your appeal at the beginning of the year, you get your decision around Halloween. But in the Sixth Circuit, if you file your appeal at the same time, you get your decision after the following Memorial Day, over a half a year later.

As the obstruction drags on year after year after year, things have gone from bad to worse. In 2001 and 2002, the Sixth Circuit was also the slowest circuit in the country. In those years, the average time for decision in the Sixth Circuit was 15.3 and 16 months respectively. In 2003, the average length of time for decision in the Sixth Circuit jumped to almost 17 months, 16.8—again, the slowest in the country.

I guess things have now hit rock bottom because the AOC reports that last year, 2004, the Sixth Circuit suffered from the same delay, almost 17 months, 16.8. Yet again, it was the slowest circuit in the Nation.

We all know the old saying that justice delayed is justice denied. The 30 million residents of the Sixth Circuit have been denied justice due to the continued obstruction of Sixth Circuit nominees by our Democratic colleagues.

What is the reason for this sorry state of affairs? An intradelegation spat from years ago when a quarter of

the current Senate wasn't even here, nor was the current President. This dispute drags on year after year after year. I don't know who started it. I do know that with respect to nominees not getting hearings, the Democrats do not have a monopoly on disappointment. I also know that the obstruction that some of my colleagues are practicing on the Sixth Circuit is out of proportion to any alleged grievance.

My Democratic colleagues continue to block four Sixth Circuit nominees from Michigan: Henry Saad, David McKeague, Richard Griffin, and Susan Neilson. They are also blocking three district court nominees: Thomas Ludington, Dan Ryan, and Sean Cox. In fact, no Federal judges from Michigan have been confirmed during the Bush administration. Of the seven vacancies the Democrats refuse to let the Senate fill, five of the seats were not even involved in this dispute. Let me repeat that. Of the seven vacancies the Democrats from Michigan will not let be filled, five of the seven were not even involved in whatever this ancient dispute was.

President Clinton never nominated anyone to the seat to which Henry Saad was nominated. The seat to which David McKeague was nominated did not even become vacant until the current Bush administration on August 15 of 2001, and the three district court seats that are being blocked are not involved in the dispute, either. So five of the seven seats had absolutely nothing to do with whatever this dispute that went back to the Clinton years.

What the Michigan Senators are doing is holding up one-fourth of an entire circuit in crisis, along with three district court seats, because of internal disputes about two seats, the genesis of which occurred years and years ago. This is an absolutely embarrassing situation.

What are our friends from Michigan demanding in order to lift the blockade? They want to pick circuit court appointments. Let's get back to first principles. As much as they would like, Democratic Senators do not get to pick circuit court judges in Republican administrations. In fact, as much as we would like on this side of the aisle, Republican Senators do not get to pick circuit court judges in Republican administrations. In short, circuit court appointments are not Senatorial picks. Article II, section 2, of the Constitution clearly provides that the President and the President alone nominates judges. It then adds that the Senate is to provide its advice and consent to the nominations the President has made. By tradition, the President may consult with Senators if he chooses, but the tradition of consultation does not transform individual Senators into co-Presidents. We have elections for that, and President Bush has won the last two.

Finally, the Democrats have recently indicated that they will afford three of the circuit nominees an up-or-down

vote along with one of the other filibustered nominees if we abandon our efforts to ensure that all nominees receive an up-or-down vote. The Democrats don't care which of the other four nominees are put on the bench because they let us pick the nominee.

Well, we are not going to toy with these people's careers. They have waited patiently for years to receive the simple dignity of an up-or-down vote, and we are working to restore the norms and traditions of the Senate that existed prior to the previous Congress so they may receive one. But the fact that our Democratic colleagues are now willing to afford one or more of the individual filibustered nominees the courtesy of an up-or-down vote but not allow the same nominees collectively to receive up-or-down votes shows that our Democratic colleagues recognize that each of these nominees is deserving of an up-or-down vote. More than that, it shows the partisan and political nature of the opposition.

Last year, our Democratic colleagues said all seven of these judicial nominees were "too extreme." Now they say only three are too extreme. So one of the following three statements is true: The nominees changed, or the Democrats' definition of what constitutes extremism has changed, or they never really meant it in the first place. Let me repeat that. One of three things is true: Either the nominees who were extreme last year are not extreme this year, the Democrats' definition of what constitutes extremism changed between last year and this year, or they never really meant it in the first place.

It is no wonder many people concluded that what is at work is really just partisan politics. Mr. President, we should not play partisan games with the nomination process. We should take our constitutional duties seriously.

I ask our Democratic colleagues to afford these nominees collectively what they are willing to afford each of them individually; that is, a simple up-or-down vote.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from New York.

TERRORISM RISK INSURANCE EXTENSION ACT OF 2005

Mr. SCHUMER. Mr. President, I ask unanimous consent that Mr. REID from Nevada be added as a cosponsor of S. 467, the Terrorism Risk Insurance Extension Act of 2005, introduced by my friend, Senator DODD of Connecticut.

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

Mr. SCHUMER. Mr. President, we still live in America, and particularly in my city of New York, in the shadow of 9/11, of the terrorism that occurred. Obviously, the thousands of families who have had a loved one taken from their midst live with it every moment of their remaining lives, but the rest of us live with it, too, not only in empathy for them but also in terms of the economic consequences of terrorism.

The bottom line is very simple, and that is, because of terrorism, the insurance industry, in terms of insuring risk of large structures in America—whether it be large buildings that make us so proud of the Manhattan skyline, or large arenas such as the football stadiums that dot America, or larger facilities such as Disneyland, Disney World, and amusement parks—all have difficulty getting insurance.

Insurers are worried that if, God forbid, another terrorist act occurs it will be so devastating that it will put them out of business. So they either provide no insurance or provide it at such a high rate because of the downside risk. Small as it may be—and we hope it is—it is still possible that an act so enormous that if, God forbid, it occurs, they do not want to be involved.

So 2 years ago, the Senate, House, and the President got together at sort of the end of the day and passed terrorism risk insurance. It has been a large success. Insurance rates have come down, terrorism insurance is available, and insurance companies know if, God forbid, the worst happens there will be a backstop, and they are willing to issue policies. In turn, that means developers, builders who want to build new large structures in America, will do so, employing thousands and thousands of people, creating profits and new businesses as well.

We now come to the fact that this legislation expires—it was passed as an experiment; those who were dubious of it said, Let's see how it works—in December. But the urgency to act is much sooner than December because policies are not written for 6 months. If right now you are a business and you want to renew your insurance against risk for 1 year or 2 years or 3 years, that policy would go beyond December.

What the insurers say to many is, "I will raise your rate dramatically", which will raise costs and shut down construction, or "I will not insure you at all", which certainly shuts down construction. It means nothing will get built. So we should move this legislation quickly.

I stress we do not need to repeat last year by delaying and delaying. Last year, we began to witness, when we delayed a great deal, a loss in economic activity in the larger cities of this country in particular, even though we were well aware that ultimately this had to be done.

There are really only two alternatives. One is going to be no terrorism insurance. The private market will not fill the gap. That will prevent tens of

billions in projects from going forward this summer and this fall, not next year but right now.

The second is that the market will fill the gap but only at such extraordinary prices and only in unique situations that the same thing would happen.

Why are we sitting in the Senate and in the House twiddling our thumbs? Our economy is squishy, oil prices are up, other economies outside of Asia are down, including Japan's actually, and, therefore, we are worried about the economy, and here we are putting another log on the tracks in the way of economic recovery.

There can be no dispute that terrorism insurance works, and there can be no dispute that if we do not renew it, there will be trouble. The ratings agencies have said in no uncertain terms that come December 31, if there is no terrorism insurance, they are not going to be able to give any kind of decent rating to any insurance offer.

These guys are insurers. They look for risk. They live with risk. They wake up in the morning thinking a risk, they go to sleep at night thinking a risk. We can say, oh, well, and have an ideological debate about how much should the Government be involved, or we can say, actually, people are not as worried about terrorism. It does not matter what you think, Mr. President, or what I think, it is what these insurers think. If the rating agencies say they are not going to give a decent rate to insurers, it is over, and we will not have it.

Moody's noted in an insurance brokers report that up to 75 percent of the policies written since January 1 have adopted a conditional endorsement that voids terrorism coverage if TRIA is not renewed. As we go through the year, the number of endorsements, they said, is expected to increase.

The report specifically stated these conditional endorsements appear to be an indication that unless terrorism insurance is renewed, premium spikes or a sharp reduction in the availability of coverage may result.

The report warns—this is very important—that Moody's is unaware of any viable private market initiative that would take the place of TRIA.

There are some who say: Let it expire and let's see what the market does. That is taking a huge risk because if the market does not come in, then we have hurt construction workers, laborers, and all those who would work in these buildings.

Alan Greenspan, the Chairman of the Federal Reserve, is a very well-respected voice around here, as he should be, in my opinion. He is a free-market guy. He does not like Government involvement. Right now, I am going toe to toe with him about Fannie Mae and Freddie Mac. He would like to curb their role because he does not like the Government involved. I think they are needed in the housing market. But on