

The legislative clerk proceeded to call the roll.

Mr. NELSON of Florida. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

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

MORNING BUSINESS

Mr. NELSON of Florida. Mr. President, I ask unanimous consent the Senate proceed to a period of morning business, with Senators permitted to speak therein for up to 10 minutes each.

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

JUDICIAL NOMINATIONS

Mr. LEAHY. Mr. President, as I listened yesterday to the partisan rhetoric we continue to hear from Senate Republicans on nominations, I am disappointed that the Republican leader is ignoring the majority leader's statement from last May 10.

Today is April Fools' Day. I do not think the American people are fooled or amused by continued partisan bickering over nominations. Indeed, with a massive subprime mortgage crisis that has left so many Americans in dire straights, fearful of losing their homes, the Republican efforts to create an issue over judicial nominees is misplaced. In fact, I have been working hard to make progress and have treated this President's nominees more fairly than Republicans treated those of President Clinton. Judicial nominations are not the most pressing problem facing the country. Indeed, we have worked hard to lower vacancies to the lowest levels in decades. We have cut circuit vacancies in half.

It should be no surprise that the administration would rather focus on having a partisan political fight than the news that, in February, the United States lost 63,000 jobs. To make up for those and other job losses in recent months thanks to this President's policies, this country would need to create 200,000 jobs every month. This administration is apparently more worried about the jobs of a handful of controversial nominees, many without the necessary support of their home State senators, than the loss of jobs by thousands of American workers.

Unemployment is up over 20 percent, the price of gas has more than doubled and is now at a record high average of over \$3.20, trillions of dollars in budget surplus have been turned into trillions of dollars of debt with an annual budget deficit of hundreds of millions of dollars, and the trade deficit has nearly doubled to almost \$1 trillion. Indeed, just to pay down the interest on the national debt and the massive costs generated by the disastrous war in Iraq—the fifth anniversary of which we tragically marked 2 weeks ago—costs more than \$1 billion a day. That is \$365 billion each year that would be better

spent on priorities like health care for all Americans, better schools, and fighting crime and treating diseases at home and abroad.

Perhaps the only thing that has gone down during the Bush Presidency is judicial vacancies. After the Republican Senate chose to stall consideration of circuit nominees and maintain vacancies during the Clinton administration in anticipation of a Republican Presidency, judicial vacancies rose to over 100. Circuit vacancies doubled during the Clinton years. Since I became Judiciary chairman in 2001, we have worked to cut those vacancies in half.

In the Clinton years, Senator HATCH justified the slow progress by pointing to the judicial vacancy rate. When the vacancy rate stood at 7.2 percent, Senator HATCH declared that "there is and has been no judicial vacancy crisis" and that this was a "rather low percentage of vacancies that shows the judiciary is not suffering from an overwhelming number of vacancies." Because of Republican inaction, the vacancy rate continued to rise, reaching nearly 10 percent at the end of President Clinton's term. The number of circuit court vacancies rose to 32 with retirements of Republican appointed circuit judges immediately after President Bush took office.

Then, as soon as a Republican President was elected they sought to turn the tables and take full advantage of the vacancies they prevented from being filled during the Clinton Presidency. They have been extraordinarily successful over the past dozen years. Currently, more than 60 percent of active judges on the Federal circuit courts were appointed by Republican Presidents, and more than 35 percent have been appointed by this President. The Senate has already confirmed three-quarters of this President's circuit court nominees, compared to only half of President Clinton's.

I was here in 1999 when the Republican chairman of the Judiciary Committee would not hold a hearing for a single judicial nominee until June. In contrast, we have scheduled 3 hearings on 11 nominees so far this year. We have a circuit nominee from Texas listed on the Judiciary Committee agenda this week. I wrote to the President during the last recess commending him for nominating someone for a Virginia vacancy to the Fourth Circuit who is supported by Senator WARNER and Senator WEBB, a Republican and a Democrat, and indicated that I would use my best efforts to proceed to that nomination as soon as the paperwork is submitted. I will ask that a copy of that letter be printed in the RECORD at the end of my statement. In that letter, I also informed the President that an anonymous Republican hold had prevented Senate confirmation of the President's nominees to be the Associate Attorney General, the No. 3 position at DOJ, and the Assistant Attorney General for the Civil Division.

Since the resignations of the entire top leadership at the Department of

Justice last year in the wake of the scandals of the Gonzales era, I have made restoring the leadership ranks at the Department a priority. Since September, the committee has held seven hearings on executive nominations, including a 2-day hearing for the Attorney General. The Attorney General and the new Deputy Attorney General have been confirmed. But for Republican delays in refusing to cooperate and make a quorum in February, and now the anonymous hold, the Senate would have confirmed two more high-level DOJ nominees.

The partisan rhetoric on nominations rings especially hollow in light of the progress we have made. Last year, the Senate confirmed 40 judges, including 6 circuit judges. The 40 confirmations were more than during any of the 3 preceding years with Republicans in charge. The Senate has now confirmed 140 judges in the almost 3 years it has been run by Democrats and only 158 judges in the more than 4 years it was run by Republicans.

We continue to make progress. Four district court nominations are pending on the Senate's Executive Calendar. I have mentioned the nomination to the Fifth Circuit that is pending on the Judiciary Committee's agenda this week. I have already announced and noticed another hearing this Thursday for four more judicial nominees, two from Virginia and two from Missouri, and for the nominee to be the Assistant Attorney General for the Office of Legal Policy. This will be the Judiciary Committee's fifth confirmation hearing this year.

With respect to the recent nomination of Steven Agee to a Virginia seat in the Fourth Circuit, it is regrettable that Justice Agee's nomination only comes after months of delay when the White House insisted on sending to the Senate the nomination of Duncan Getchell. That nomination did not have the support of either of the Virginia Senators and was withdrawn after the Virginia Senators objected publicly. In fact, the delay in filling that vacancy has lasted years because this President insisted on sending forward highly controversial nominations like William Haynes, Claude Allen, and Duncan Getchell.

In my letter to the President, I wrote that I expect the Judiciary Committee and the Senate to proceed promptly to consider and confirm Justice Agee's nomination with the support of Senator WARNER and Senator WEBB, just as we proceeded last year to confirm the nomination of Judge Randy Smith to the Ninth Circuit, once the President had withdrawn his nomination for a California seat and resubmitted it for a vacancy from Idaho. I urged the President to use the Agee nomination as a model for working with home State senators and Senators from both sides of the aisle. Time is running short.

Senate Democrats should not and have not acted the way Republicans did by pocket filibustering more than 60 of