fine.'' Not surprisingly, employers have done their own math. AT&T reported that its $2.4 billion cost of coverage would drop to $600 million for the penalties. Estimates reveal Caterpillar could save 70 percent on health care costs by eliminating coverage and paying the penalties. And the list goes on.

Prior to its passage, the Congressional Budget Office predicted 7 percent of employers would drop insurance coverage due to the health care law. Now studies and business logic are challenging that estimate. This may mean the CBO's projected cost of the health care law may be significantly too low.

That is right—the $2.6 trillion cost estimate for the health care law could be surprisingly too low. The President promised that this bill would lift the burden off the middle class. Not only will they see their premiums continue to increase due to out-of-control health care costs, but they will foot the cost of the new exchanges.

Unfortunately, time is confirming what we have been predicting all along. The case for repeal of the health care law grows stronger every day. I will work to overturn these negative consequences. I believe Americans deserve better. They deserve promises that we can keep.

The PRESIDING OFFICER. The Senator from Montana.

MONTANA FLOODS

Mr. TESTER. Madam President, I wish to talk a little bit about the flooding that is going on in Montana and has been going on for basically better than the last month. The picture I have is that of the Musselshell River east of Roundup. The river channel is not in this area. In fact, it is on the far side of this river.

My guess is—I have not seen this—this picture was taken about 10 days ago. But my guess is, it is still flowing like this and for a number of reasons I want to address in my speech today.

Over the past few months, we have seen severe flooding in Montana that has impacted our homes and businesses. It has devastated farmland and ranch land. It has displaced families across our State.

The flooding has tested thousands of Montanans and the basic services and infrastructure they rely on every day. But when disaster hits Montana, we rise to the occasion. When I meet the families and the community leaders affected by flooding and when I tour their towns, I do not see resignation or hopelessness. I see resilience. I see our traditions of hard work and working together. I see communities that are rebuilding and moving forward, ordinary people and local officials working diligently with local, State, and Federal partners to address urgent and ongoing needs they are unable to address alone.

Thanks to that spirit of working together, neighbor to neighbor, Montana communities are rebuilding and businesses are reopening. We are looking to account for the severe crop damage and livestock loss suffered by Montana's farmers and ranchers, and we are looking for resources to make up for the $8.6 million in damages to our State's infrastructure. Sadly, that number is only getting bigger.

Montana's resiliency is going to be tested because we are not out of it yet—not even close. Given the unusually significant snowpack in the Rocky Mountains that has yet to melt, our rivers and streams will continue to swell. The cost to Montana communities and families will continue to mount, and more and more of them will look to emergency assistance to provide timely services and assistance to those most in need, to help them get back on their feet.

That is why I am particularly alarmed by the looming shortfall in FEMA's Disaster Relief Fund, which the House left dangerously unfunded, even amid a string of weather-related disasters across this country that have led us to 45 declared disasters. We are now looking at estimates of a $2 to nearly $5 billion shortfall for fiscal year 2012 alone.

The total need is estimated to be as much as $6.6 billion. Montana is still tallying the damage. The risk of further damage is still very high. Yet we do not know right now if there will be enough money left over to meet the needs this disaster has already created in our State of Montana.

The House thinks we should pay for past disasters with funding allocated for current and future disasters and by cutting assistance to firefighters and other first responders. In Roundup, Billings, and elsewhere in Montana, the folks who are rescuing stranded residents in boats to take them to get urgent medical care are not from FEMA; they are the same men and women who fight to protect our communities every day—the cops and firefighters who are part of these communities.

Taking away the resources they need will not fly. It is irresponsible and unacceptable. I want all my colleagues to understand the importance of what we are facing, not just in Montana but across this country. There are 45 declared disasters around the country. It is time to do our part for communities all across this country that are facing unprecedented disasters from floods, tornadoes, to wildfires.

Let's make sure this Nation's emergency responders have what they need to do their jobs. They are doing their part for all of us. Tough economic times have forced us all into some very difficult decisions. There is no doubt about that. But it is critical that we do everything we can on behalf of the communities and families across our Nation who are simply looking to pick up the pieces, to rebuild their homes, their schools and businesses, and to get back on their feet.

When small businesses cannot get back on their feet and when our No. 1 industry, agriculture, gets a punch during the growing season, our entire economy will be impacted in a negative way. Montanans will continue to be resilient, and they will continue looking out for one another. But there are some burdens that are simply too big for them to bear alone. It is time for Congress to stand, do its part, and the sooner the better.

I look forward to working with Chairman LANDRIEU and Ranking Member COATS on the Homeland Security Appropriations Subcommittee to make sure that no community from Montana or anywhere else in the country is left wondering if the government will make good on a commitment to help them rebuild.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. TESTER). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. GRASSLEY. I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. GRASSLEY. I ask unanimous consent that the time during the quorum call be equally divided.

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

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

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

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

EXECUTIVE SESSION

NOMINATION OF MICHAEL H. SIMON TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF OREGON

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 assistant legislative clerk read the nomination of Michael H. Simon, of Oregon, to be United States District Judge for the District of Oregon.

The PRESIDING OFFICER. Under the previous order, there will be 1 hour of debate on the nomination, equally divided in the usual form.

Mr. LEAHY. Mr. President, today the Senate will finally consider the nomination of Michael Simon to fill a judicial emergency vacancy on the District

Court for the District of Oregon. Mr. Simon, the head of litigation at the Portland office of Perkins Coie, is one of the most highly regarded lawyers in the country. He spent 5 years as a trial attorney at the Department of Justice during the Reagan administration, including a stint as a Federal prosecutor, and 3 years as a volunteer judge pro tem on an Oregon county court. Mr. Simon's nomination has had the strong support of his home State Senators, Senator WYDEN and Senator MERKLEY, since he was nominated nearly a year ago and has twice been reported by the Judiciary Committee with significant bipartisan support. I mention that because, traditionally, someone like this would go through almost the first day after he was reported.

I thank the majority leader and the Republican leader for finally scheduling this vote. It is most unfortunate that the Republicans objected to considering this nomination when it was reported last year. That meant that we had to spend more time and taxpayer money to consider it a second time in the Judiciary Committee, and the nomination had to be reported again earlier this year. It should not have taken more than 4 months since the committee reported Mr. Simon's nomination for a second time for the Senate Republican leadership to finally consent to debate and a vote.

This is, finally, the last of the judicial nominations reported last year that could and in my view should have been considered then. Now, after 6 months of unnecessary delay, the people of the District of Oregon may finally see a longstanding judicial vacancy filled by a highly qualified nominee who has always had bipartisan support from the days he was working for the Reagan administration. The Senate may finally be able, 6 months into this year, to start to focus on nominees who had hearings and were considered by the Judiciary Committee this year. There are currently 16 judicial nominees who were reported unanimously by the Judiciary Committee over the last several months who are still awaiting final Senate consideration and confirmation. They include nominees with the support of Republican home State Senators and nominees for judicial emergency vacancies. These delays mean that judicial vacancies around the country remain well above what they should and could be. With current vacancies hovering around 90 and many more upcoming, the Senate is being prevented from solving the vacancies crisis that the Chief Justice, President, Attorney General and judges around the country have urged us to end.

When we take nominations considered 1 year and then delay them into the next year, it is wrong to say that you are ''moving right along.'' I have served with Presidents Ford, Carter, Reagan, the first President Bush, Clinton, the second President Bush, and now President Obama. During all that time, whether Democrats or Republicans were in the majority, no President had to put up with these unseemly delays, except for President Obama.

The delay in considering this nomination is only the latest demonstration that those on the other side who say the majority leader can simply call up nominations are wrong. Senators know it is not true. If that were true, nominees like Mr. Simon would have been considered and voted on last year.

Some Senators may seek to avoid responsibility for the Senate's historically slow pace of confirming judicial nominations and claim their hands are clean, but they know the Senate is a body that requires consent to avoid extensive delays. They know that if there is no consent, it takes the burdensome requirement of invoking cloture in order to end a filibuster and have a vote. Moving forward to address the ongoing judicial vacancy crisis—and it is a crisis—requires cooperation. It requires the minority to work together with the majority and set aside partisan differences for the good of the American people.

Last week, the Senate was able to get consent to confirm the first two judicial nominees since May 17, even though almost a score of qualified nominees has been awaiting final confirmation since that date. In addition to the Simon nomination, there are 19 judicial nominations currently pending on the Senate's Executive Calendar. Of those, 16 are, by anyone's definition, consensus nominees. Seven of them were nominated to fill judicial emergency vacancies. Sixteen nominees were unanimously approved by every Republican and every Democratic Senator on the Judiciary Committee after thorough review, and an additional nominee was reported with only one Senator in opposition. All are supported by their home State Senators, Republicans and Democrats.

These are the kinds of nominees who in past years would have been confirmed within days of being reported to the Senate. Instead, extended delays now burden every nomination before the Republican leadership finally consents, if it does, to take up nominations. Mr. Simon's nomination was first reported with bipartisan support last December. Three district court nominations reported unanimously by the Committee in early April remain stalled before the Senate, Paul Oetken and Paul Engelmayer of New York, and Romana Manglona of the Mariana Islands. All of these consensus nominations would easily have been confirmed if the majority leader was not blocked from bringing them up. We should not need to file cloture to vote on these kinds of consensus nominees, but that is what has been required by the Senate Republican minority. Incidentally, when we have filed for cloture on these nominees, for many of them we got a vote and they passed overwhelmingly.

We should have regular votes on President Obama's highly qualified nominees instead of more delays. We should also restore the Senate's tradition—a tradition I can speak to as one who has been in the Senate for 37 years—of working to clear the calendar of pending nominations before a recess. Contrast that traditional practice with what the Senate did before the Memorial Day recess, when no judicial nominees were confirmed. With vacancies still totaling more than 90 on Federal courts throughout the country, and with nearly two dozen future vacancies on the horizon, there is no time to delay consideration of these nominations. If we were to take positive action just on the nominees who received unanimous support in committee, vacancies could be reduced below 80 for the first time since the beginning of President Obama's administration.

With judicial vacancies continuing at crisis levels, affecting the ability of courts to provide justice to Americans around the country, I have been urging the Senate to vote on the judicial nominations reported favorably by the Judiciary Committee and pending on the Senate's Executive Calendar. My efforts have not yielded much success or sense of urgency. Nor have the statements by the Chief Justice of the United States, the Attorney General of the United States, the Federal Bar Association and a number of Federal judges across the country.

Those who delay or prevent the filling of these vacancies must understand they are delaying and preventing the administration of justice. We can pass all the bills we want to protect American taxpayers from fraud and other crimes, but you cannot lock up criminals or recover ill-gotten gains if you do not have judges. The mounting backlogs of civil and criminal cases are growing larger.

I think of the first 2 years of the last President Bush's term in office. During the 7 months that Republicans had the majority, they did not bother to hold a hearing on President Bush's nominees. But in the 17 months that the Democrats were in charge, the Democrats held hearings and confirmed 100 of his nominees. To their credit, in the following 24 months, the Republicans confirmed 105.

Ah, for those days.

Our ability to make progress regarding nominations has been hampered by the creation of what I consider to be misplaced controversy over many nominees' records. As with the long-delayed nomination of Judge Edward Chen, the supposed ''controversy'' that has delayed and obstructed the nomination of Michael Simon is the result of some Senators seeking to impose a partisan litmus test in place of our sworn constitutional duty to offer advice and consent on nominations. That Mr. Simon filed amicus briefs on behalf of the ACLU and several Jewish organizations in cases involving the First Amendment, discrimination against gay and lesbian individuals, and the rights of religious minorities does not

render him unfit to be a judge. Our legal system is an adversary system, predicated upon legal advocacy for both sides. Certainly defending civil liberties is no vice. Since when do we impose a litmus test for nominees that they can never have been legal advocates? If we were to do that, we would have no judges. Almost every nominee who had been a practicing lawyer would be disqualified by one side or the other.

I had hoped when 11 Republican Senators joined in voting to end a filibuster against Judge Jack McConnell of Rhode Island that the Senate was moving away from the narrow, partisan attacks on judicial nominations that have slowed us from making progress since President Obama took office. Yet the successful Republican filibuster of the nomination of Professor Goodwin Liu to the Ninth Circuit was one of the most disappointing votes I have seen in the U.S. Senate. There were no ''extraordinary circumstances'' or justification for this partisan filibuster of a good man and brilliant nominee.

In the wake of the filibuster, newspapers around the country decried the Senate for denying Professor Liu the up-or-down vote that Republican Senators argued just a few years ago every nominee was entitled to have when there was a Republican in the White House. The New York Times editorialized that the standard of ''extraordinary circumstances'' for filibustering nominees ''is meaningless if senators are going to define someone like Mr. Liu as a legal extremist.''

The editorial continued:

He is, not surprisingly, a liberal thinker who is nonetheless squarely in the legal mainstream, having even received the support of strong conservatives, including Kenneth Starr and Clint Bolick.

The New York Times also described the filibuster of Professor Liu as ''payback'' making it ''harder to fill benches during this administration and many more to come.''

The Denver Post wrote in an editorial:

The Senate filibuster last week of federal appellate court candidate Goodwin Liu wasn't just a defeat for the president who nominated him. It signifies the dissolution of a truce that had been struck years earlier in which senators had generally agreed not to hold hostage qualified judicial candidates from the opposing political party. It is a shame it has come to this.

The San Francisco Chronicle editorialized:

Fair-minded people who have looked at Liu's record and determined that he has the intellect and temperament to be a superb appellate judge include prominent conservatives Richard Painter, chief ethics lawyer in the Bush White House, and Whitewater prosecutor Ken Starr. But neither fair play nor intellectual honesty carried the day in the Senate, where Liu's nomination remained bottled up through the efforts of multiple Republicans who had opined (in the Bush years) that it was unconstitutional for senators to deprive a judicial nominee of an up-or-down vote.

In an editorial entitled, ''Trashing of Court Nominees Must End,'' the Iowa City Press-Citizen wrote:

What is most disturbing about Thursday's Senate vote is not the fact that the Senate rejected this nominee, but how it was done: by a filibuster. In other words, the Republicans used the Senate rules to prevent a simple up-or-down vote on the Liu nomination.

I ask unanimous consent that copies of these editorials 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. The question for me about Mr. Simon is the same question I have asked about Judge Chen, Professor Liu, and every judicial nominee, whether nominated by a Democrat or a Republican President: whether he or she will have judicial independence. I don't care what their politics are. I don't care what party they belong to. I don't care who they have represented in the past. All I want to know is: Will they have judicial independence? Do they understand the role of a judge and how that differs from the role of an advocate?

The judge has to protect everybody in their courtroom, on both sides. There is no question that Michael Simon is going to have judicial independence. So I hope Senators today will set aside their partisan litmus test and join me in supporting this fine nomination.

EXHIBIT 1

[From the New York Times, May 22, 2011]

BREAKING FAITH

''I will not vote to deny a vote to a Democratic president's judicial nominee just because the nominee may have views more liberal than mine.''

That was Senator Lamar Alexander, Republican of Tennessee, promising in 2003 not to filibuster judicial nominees for reasons of ideology. But on Thursday, Mr. Alexander, along with 41 other Senate Republicans, voted to filibuster one of President Obama's judicial nominees for that very reason—breaking a promise and kindling yet another row over a president's right to appoint like-minded judges.

The fight was over Goodwin Liu, a Berkeley law professor nominated by the president for a seat on the Ninth Circuit Court of Appeals. He lost on a vote of 52 to 43, short of the 60-vote requirement demanded by Republicans.

He became the first Obama nominee to be successfully filibustered, and the only nominee since 2005. That year, a Senate ''Gang of 14'' agreed that such nominees should be allowed an up-or-down majority vote except in extraordinary circumstances.

The group was correct in preserving the right to filibuster the most extreme candidates, but the agreement is meaningless if senators are going to define someone like Mr. Liu as a legal extremist. He is, not surprisingly, a liberal thinker who is nonetheless squarely in the legal mainstream, having even received the support of strong conservatives, including Kenneth Starr and Clint Bolick.

What, specifically, made him so extraordinary that he was not worthy of an up-or-down vote? The Republican argument against him is laughably thin. ''He believes the Constitution is a fluid, evolving document,'' said Jeff Sessions of Alabama. John Cornyn of Texas falsely accused Mr. Liu of holding the ''ridiculous view that our Constitution somehow guarantees a European-style welfare state.''

But other Republicans were more forthcoming about the real reason for the blockade: Mr. Liu dared to criticize Justice Samuel Alito Jr. as harshly conservative before he was confirmed to the Supreme Court. The filibuster apparently was payback, and the Republican eagerness for revenge has broken faith and a clear understanding on the Senate floor. That will make it harder to fill benches during this administration and many more to come.

[From denverpost.com, May 28, 2011]

EDITORIAL: SO MUCH FOR THE GANG OF 14 TRUCE

The Senate filibuster last week of federal appellate court candidate Goodwin Liu wasn't just a defeat for the president who nominated him.

It signifies the dissolution of a truce that had been struck years earlier in which senators had generally agreed not to hold hostage qualified judicial candidates from the opposing political party.

It is a shame it has come to this.

Republicans may be celebrating the defeat of President Obama's nominee, who on Wednesday officially withdrew his nomination to the 9th U.S. Circuit Court of Appeals; however, it's an action that surely will come back to bite them.

Democrats are unlikely to forget. In fact, Senate Judiciary Chairman Patrick Leahy, D–Vt., told reporters before the vote that a Liu filibuster would mean Democrats would do the same to the next Republican president's nominees.

It would be regrettable if that were to happen. The so-called Gang of 14 had in 2005 joined forces to avert a showdown on judicial candidates nominated by then-President Bush.

Seven Republican and seven Democratic senators, cleaving to the ''advise and consent'' role of senators as enumerated in the U.S. Constitution, agreed not to filibuster or block qualified judicial candidates unless ''extraordinary circumstances'' were in play.

There was, at the time, little consensus as to what constituted ''extraordinary circumstances'' and assuredly even less agreement now.

At the time of the compromise, which then-Sen. Ken Salazar of Colorado took part in crafting, several senators said they would know extraordinary circumstances when they saw them.

The Republican filibuster of Liu, a University of California-Berkeley law professor, will set precedents as to how extraordinary circumstances will be defined. (Colorado's U.S. Sens. Michael Bennet and Mark Udall, both Democrats, voted against a filibuster.)

Extraordinary circumstances, it seems, will come to mean a candidate who holds views that are ideologically repugnant. That is a dangerous standard.

Liu is a liberal and far more so than other prominent judicial nominees President Obama has sent to the Senate for confirmation.

We aren't crazy about some of Liu's positions either, but he is qualified for the job. The American Bar Association, which independently evaluates judicial nominees, gave him their highest ranking: unanimously well-qualified.

We have long favored an up-or-down vote on judicial candidates, and this is no exception. Elections have consequences, and those

include the president getting to choose judicial candidates, even if they are controversial.

A return to the so-called judge wars in an effort to block the president's power to fill vacancies on the federal bench ultimately will serve neither party.

[From SFGate.com, May 20, 2011]

SHAME ON GOP SENATORS WHO BLOCKED GOODWIN LIU

Senate Republicans, dripping with partisanship and hypocrisy, blocked an up-or-down vote Thursday on the nomination of UC Berkeley law Professor Goodwin Liu to the Ninth U.S. Circuit Court of Appeals in San Francisco.

Their argument that Liu is a leftist ideologue does not hold up to scrutiny. Instead, the continuing filibuster of Liu's nomination carries the distinct scent of political retribution.

Fair-minded people who have looked at Liu's record and determined that he has the intellect and temperament to be a superb appellate judge include prominent conservatives Richard Painter, chief ethics lawyer in the Bush White House, and Whitewater prosecutor Ken Starr.

But neither fair play nor intellectual honesty carried the day in the Senate, where Liu's nomination remained bottled up through the efforts of multiple Republicans who had opined (in the Bush years) that it was unconstitutional for senators to deprive a judicial nominee of an up-or-down vote. The obstructionists included Sens. John McCain, R–Ariz., and Lindsey Graham, R–S.C., who were among a group of 14 senators who had pledged that they would filibuster a nominee only in ''extraordinary circumstances.''

Both McCain and Graham suggested, unconvincingly, that Liu was sufficiently out of the mainstream to merit such extreme action. Graham specifically mentioned Liu's ''outrageous attack'' on Samuel Alito during his Supreme Court confirmation hearings in 2006. But, again, on closer inspection, Liu's point-by-point dissection of Alito's record was meticulously documented with facts.

Another undercurrent at play is a GOP fear that the 40-year-old Liu, with his sharp intellect and appealing manner, might be a candidate to become the first Asian American on the Supreme Court. The gamesmanship against this well-qualified nominee is a disgrace to the Senate and a disservice to the judiciary.

[From Press—citizen.com, May 23, 2011]

TRASHING OF COURT NOMINEES MUST END

The judicial confirmation wars just got a fresh supply of ammunition. The U.S. Senate on Thursday failed to muster the votes needed to move forward on the confirmation of a nominee for a federal judgeship.

That almost certainly ended the Obama administration's two-year struggle to win confirmation for Goodwin Liu to the 9th Circuit U.S. Court of Appeals.

The rejection also shattered any hope that partisan battles over confirmations might finally end. Democrats outraged over this loss will no doubt remember this and look for an opportunity for payback. This has been the story since 1987, when Senate Democrats led the effort to defeat Robert Bork, Ronald Reagan's nominee to the U.S. Supreme Court. Since then, both parties have been guilty of trashing the potential judicial careers of clearly fit nominees: Republicans skewering Democratic presidents' nominees; Democrats returning the favor for Republican presidents.

Sadly, Sen. Chuck Grassley, R–LA, played a role in defeating the Liu nomination. This is especially disappointing since, as the ranking Republican on the Senate Judiciary Committee—which vets judicial nominees—Grassley could have helped set a new tone on confirmations. He has done just the opposite.

Grassley has consistently opposed Liu's confirmation because, he has said, the professor and associate dean at the University of California-Berkley Law School is has made numerous controversial statements in his writings and speeches that express an ''activist judicial philosophy'' and because has no prior judicial experience. In a prepared statement, Grassley said ''Liu holds a view of the Constitution that can only be described as an activist judicial philosophy'' and if appointed to the court, ''he will bring a personal agenda and political ideology into the courtroom.''

That is one opinion, and Grassley is certainly entitled to it. Others—including several conservative Republican lawyers, including former Whitewater prosecutor Kenneth Starr and two former lawyers in the Bush administration—disagree. Liu was given a unanimous ''well qualified'' endorsement from the American Bar Association, and his resume bristles with sterling academic and professional credentials. Liu would have been the first Asian-American judge on the 9th Circuit Court.

What is most disturbing about Thursday's Senate vote is not the fact that the Senate rejected this nominee, but how it was done: by a filibuster. In other words, the Republicans used the Senate rules to prevent a simple up-or-down vote on the Liu nomination. The effort to end the filibuster fell eight votes short of the 60 needed. But had the 52 senators who voted for cloture voted for confirmation, Liu would be headed for the bench.

This is the very same tactic Republicans (including Grassley) rightly condemned when Democrats filibustered to block Republican nominees. They said that all presidential nominees deserve an up-or-down vote, and they were right then.

How soon they forget.

Alas, Democrats who are outraged by Thursday's move will not forget, and this mindless back-and-forth battle over judges will continue, probably forever. It is a sad day for the courts, for bipartisanship in the Senate and for the nation.

Mr. GRASSLEY. Today, the Senate will consider the nomination of Michael Simon, nominated to be a U.S. district judge for the District of Oregon. This nominee was reported out of Judiciary Committee with four votes in opposition. I am one of those who opposed the nominee and would like to detail my reasons for doing so.

Mr. Simon received his B.A. summa cum laude from the University of California, Los Angeles, in 1978, and J.D. cum laude from Harvard Law School in 1981. He began his legal career as a trial attorney with the Antitrust Division of the Justice Department.

In 1985, he spent 6 months as special assistant U.S. attorney for the Eastern District of Virginia and argued one appeal before the Fourth Circuit. Mr. Simon joined a large law firm as an associate in 1986. Since 1990, he has been a partner and the head of litigation for the firm's Portland office.

Throughout his career, Mr. Simon has advocated on behalf of the American Civil Liberties Union of Oregon as a pro bono attorney. But his involvement in the ACLU goes beyond mere representation of a client. Mr. Simon has been a member of the ACLU of Oregon since 1986. He is an active member of their Lawyers' Committee and served as a board member from 1997 to the year 2004, the vice president for legislation 1997 to 1998, and vice president for litigation from 2000 to 2004.

I recognize that judicial nominees should not be evaluated solely on client lists or memberships, that would be very unfair. However, these are relevant bits of information about a nominee.

Listen to the words of one of my Democratic colleagues, who inferred that the ACLU is beyond a moderate and mainstream approach. This was stated during the debate on judges nominated by President Bush:

> If you look at the records of these judges and you put scales, left to right, 10 being the most liberal and 1 being the most conservative, these judges are ''ones'', to be charitable. When Bill Clinton nominated judges, he nominated mainly sixes and sevens, people who tended to be a little more liberal, but were moderate and mainstream—very few legal aid lawyers or ACLU charter members, much more prosecutors and partners in law firms.

My colleague recognized that ACLU lawyers were beyond moderate and mainstream. I would complete his analysis and rank this organization as very liberal.

In Mr. Simon's case, there has been concern about whether or not he shares the far out views of the ACUL. On this question, Mr. Simon refuses to provide a clear answer. At his hearing he stated that ''we do not necessarily agree with all of the positions taken by the American Civil Liberties Union.'' When asked in follow-up questions to describe the legal or policy position with which he disagrees, he argued that his advice to the ACLU was confidential and subject to the attorney-client privilege. In a second round of questions, committee members clarified they were not asking about advice to a client, but policy positions with which he disagreed. This was met with ''I am not at liberty to describe the legal or policy positions advocated by the ACLU with which I disagree.''

The ACLU does hold very liberal views, and Mr. Simon has been the voice for those views. For example, Mr. Simon wrote a letter to the Tillamook County Courthouse in Oregon expressing the ACLU's concern with religious Christmas signs and decorations. The letter encouraged the county to repeal its resolution that deemed the county a ''Merry Christmas County.''

On issue after issue, Mr. Simon refused to disassociate himself from legal and policy positions held by the ACLU, that are far outside the mainstream. This includes the legalization of drugs, the unconstitutionality of the death penalty, the unconstitutionality of the Pledge of Allegiance, the ACLU's opposition to tax exemptions for churches and extreme views regarding separation of church and state.

Mr. Simon's views on the war on terrorism and a liberal view on civil liberties are troubling to me. In a speech in 2007, Mr. Simon argued that Americans' civil liberties have been threatened because of measures undertaken following 9/11. In his speech, he said that ''our thinking would be clearer and our solutions more effective if we stop thinking about—and stop calling—terrorism a 'war' or a 'crime,' '' and argued that calling military action against terrorism a ''war'' ''implies that a military conquest is the best tool for this fight'' and that terminology ''may limit more creative and even more successful techniques to promote and protect our security.''

Perhaps Mr. Simon agrees with the Attorney General who, in a recent speech, asserted that ''our most effective terror-fighting weapon'' is our article III [civil] court system. I certainly disagree with that assertion, and I think most national security experts, our military, and most Americans would disagree as well.

Mr. Simon appears to approach constitutional theory with an activist slant. In remarks before a conference sponsored by the Oregon Lawyers Chapter of the American Constitution Society on May 23, 2007, Mr. Simon stated:

> There is also support for the conclusion that the Founders did not believe that their intentions and understanding should bind future generations. That may be the only real 'original intent' of the Founders.

That quotation makes me wonder, if the Constitution wasn't going to have any hold on future generations, why did the drafters spend so much time during that summer of 1787—and even longer periods of time—getting the Constitution adopted. That seems to be the implication of what he says there.

It is no surprise, then, that Mr. Simon has a hostile view of religion in the public square. He continued in those remarks, ''There is also support for the proposition that the concept of 'separation of church and state' was an 'unfolding and evolving' idea at the time of the Founders. . . .''

Mr. Simon appears to demand an absolute wall of separation between church and state, as opposed to the U.S. Government promoting a specific religion. He has argued against religious displays on public land, against religious visitors to schools, against a coach praying with his football players. I assume that means even if you're praying that they don't get injured. Mr. Simon has argued that it is unconstitutional under the establishment clause to teach intelligent design in public school science classes.

Based on his views regarding the war on terror, his activist approach to constitutional interpretation, his hostility to religion in the public square, and his remarks and advocacy of ideas which indicate a legal view that is outside the mainstream, I will oppose this nomination. I ask my colleagues to do likewise.

Mr. LEAHY. Mr. President, I see my two friends—the two outstanding and distinguished Senators from the State of Oregon—and I yield the floor to them.

The PRESIDING OFFICER. The junior Senator from Oregon.

Mr. MERKLEY. Mr. President, I thank the chairman of the Judiciary Committee for his comments and perspective on judicial independence. It is extremely important in having a court system that can both be effective and reflect the faith of the citizens of this Nation that they have a system of true justice.

I rise in support of the nomination of Michael Simon to the post of U.S. District Judge for the District Court of Oregon. Quite simply, Michael Simon is a man of enormous integrity, intellectual breadth and depth, and good old-fashioned common sense and decency. Michael Simon has earned a reputation as a top lawyer in commercial litigation, appellate law, and constitutional law. He is respected nationally. He is eminently qualified for this seat.

After graduating summa cum laude from UCLA, he attended Harvard Law School, where he graduated cum laude. He began his legal career in the Department of Justice's antitrust division, where he served as a trial attorney for 5 years. During this time, he also volunteered for and served as a special assistant U.S. Attorney for the Eastern District of Virginia.

Mr. Simon is currently a partner at Perkins Coie in Portland, where he has worked since 1986 and earned a reputation as one of the Northwest's real legal stars. He has engaged in extensive pro bono work and has volunteered for many nonprofit organizations. He has served as an adjunct faculty member at Lewis & Clark Law School, teaching antitrust law, drawing on his earlier life experience. He has also served as a pro tem judge on the Multnomah County Circuit Court.

In the courts, Michael has made his name as a staunch defender of consumer protection, antitrust laws, and the first amendment. He has found the time to be deeply involved in his community, displaying a commitment to voluntarism, civic participation, and public service.

For years, Michael has been a leader of the Classroom Law Project, a nonprofit that prepares youths to become active, engaged and informed participants in our democratic society. Serving as president, and then as a board member, he has helped bring a love of civics and democracy to thousands of public school students across Oregon.

In addition to his service in government and civic organizations, Mr. Simon has been an active member of the Jewish community in Portland. He is a familiar and beloved face at his temple, Beth Israel, and has served on the boards of the American Jewish Committee and the Jewish Federation of Greater Portland.

In short, Michael Simon exemplifies the traits that every Federal district judge should possess—a brilliant legal mind and a heart dedicated to service, fairness, and community.

The U.S. District Court of Oregon has historically had a reputation as a place of efficient and fair courts led by outstanding professional jurists. I know Michael Simon will uphold this tradition. He will be an outstanding judge who will continue the district's tradition of fairness and commitment to public service, and he will fill a critical vacancy in this district.

Michael Simon is an excellent nominee, and I urge all my colleagues to reflect on his record and his capacity in multiple dimensions throughout his life that brings a seasoned judgment and the independence of mind to the judicial system. I urge my colleagues to support his nomination.

I thank the Chair.

The PRESIDING OFFICER. The senior Senator from Oregon.

Mr. WYDEN. Mr. President, Senator MERKLEY has said it very well this morning. I had a chance to speak about Michael Simon yesterday, and I want to make a few additional remarks this morning.

After the retirement of Senator Hatfield, whom we all know is still beloved by many here in the Senate, I have had a chance to work with our former colleague Senator Gordon Smith and now with Senator MERKLEY to send to both Republican and Democratic Presidents some outstanding men and women for their consideration for the District Court in Oregon. Today, Senator MERKLEY and I send to the Senate for its consideration another outstanding individual—someone who is going to take his place with the other leaders who have been named to the district court of Oregon.

Michael Simon is one of those persons who, when you look at what kind of jurist you want to have, meets all the essential tests. He is a thoughtful man, he is a fair man, and he is an individual who always wants to have all the facts in front of him before he makes a reasoned judgment. When I look at his background—and Senator MERKLEY has laid out several of the areas that were special and that we are especially proud of, his work in the private sector at Perkins Coie—I come particularly to his work in consumer protection and the antitrust field, because it highlights the kind of person Michael Simon is.

He made one of his most notable contributions to strengthening consumer protection law working on behalf of the Department of Justice on the case of the United States v. American Airlines, and he successfully argued then for extending the reach of the Sherman Act to include monopolization and attempted monopolization.

This is not a partisan issue. This is the kind of issue that helps all Americans—all Americans, regardless of their political philosophy or party they belong—to benefit from the fruits of a more competitive American marketplace.

Michael Simon's work in that area benefits each and every one of us every single day.

Second, as I talked about yesterday, and Senator MERKLEY has described eloquently this morning, we are very proud of Michael Simon's championing work as a volunteer. I can tell you, that it seems as though virtually every good cause that comes across my desk at home seems to have Michael Simon's name on it urging that Oregonians participate and volunteer their time.

We are especially proud of his work on behalf of children. His work with the Classroom Law Project, his work at the Waverly Children's Home, where he was past head of the board of directors, these kinds of positions are ones where you make a difference. These kinds of positions give Mr. Simon a chance to teach not just right and wrong to young people but a chance to give them the kind of background about the rule of law and the rights and responsibilities we want to instill in our children. That is why we are very proud to bring to the attention of the Senate his work with Oregon's youngsters.

Finally, I want to stress the immediacy of the need for the Senate to confirm Michael Simon today. This seat has been vacant for 664 days. It is just 1 of 36 judicial emergencies. As it stands, there are nearly 90 Federal court vacancies, some of which have been empty for more than 3 years. Judicial emergencies are not just some sort of Washington phrase to throw around on the floor of the Senate. They are actually an emergency defined by the Chief Justice of the United States, John Roberts. And to earn this designation, filings must exceed 600 per judge in district courts and 700 per judge in circuit courts.

Justice delayed is justice denied. Until the Senate begins to move expeditiously to fill these vacancies, justice will continue to be denied to thousands of Americans who deserve due process.

Both Senator MERKLEY and I are very grateful to Senator LEAHY and Senator GRASSLEY, the majority leader Senator REID, and the minority leader Mr. MCCONNELL for their work to bring this nomination to the floor.

I hope colleagues who have questions about Michael Simon will come to Senator MERKLEY and myself. We will stay on the floor and be available to colleagues to answer any questions.

But this is a good and decent man who possesses all of the requisite qualities we would like in a jurist, whether it is his work in the private sector, whether it is his pioneering work in the field of extending the reach of the Sherman Act to deal with monopolies. This is a person who will reflect great credit on the District Court of Oregon and on the legal system of our country.

I hope all our colleagues will support Michael Simon today.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Georgia.

PANETTA NOMINATION

Mr. CHAMBLISS. Mr. President, I rise to support the nomination of Leon Panetta to be the 23rd Secretary of Defense. Director Panetta has a long history of government and private sector service and experience, including service in the U.S. Army.

Director Panetta served ably for eight terms as a member of the U.S. House of Representatives, rising to be chairman of the House Budget Committee. He left that position to be President Clinton's Director of the Office of Management and Budget and later served 2½ years as President Clinton's Chief of Staff, which is where I got to know him well. He then spent 10 years codirecting a foundation with his wife that seeks to instill in young men and women the virtues and values of public service. Knowing Director Panetta, this comes as no surprise. In February 2009, he became the 19th Director of the Central Intelligence Agency, and it is in this capacity where I have had the opportunity to work very closely with him over the last several years and consider him a close friend.

Director Panetta has been an outstanding leader of the Central Intelligence Agency, and it is bittersweet to see him leave. Director Panetta is a true leader in every sense of the word. He understands how Capitol Hill works since he served in Congress for 16 years. He has always shown the Senate Select Committee on Intelligence, which is the committee that oversees his organization, the right kind of deference and responded to our questions and concerns promptly and directly.

Although he leaves the CIA, he is not leaving the administration and I am quite pleased that I will continue to have the opportunity to work with him as Secretary of Defense. I think he has the right qualifications for his new job. He understands budgets, and in this time of economic austerity we need someone with that knowledge and his ability to understand and manage the resources of a huge organization such as the Department of Defense.

In his current capacity as Director of the CIA, he has also worked and built strong partnerships with the Department of Defense, having been involved in the planning and execution of numerous joint operations, including of course the most recent operation against Osama bin Laden. He will continue this strong partnership in his new position, and I know he will continue to ensure that these two organizations work closely together and cooperate successfully in the interest of our national security and for the safety of our country.

Director Panetta has a very challenging job ahead of him. The United States is involved in three major military operations overseas, as well as countless smaller ones. Budgets are extremely tight, and they are only going to get tighter. However, no country has the global interests and global responsibilities that the United States has, and for that reason we need a military that can protect those interests and carry out those responsibilities. Director Panetta will need to decide how we do that and will also help decide what, if anything, the United States can and needs to stop doing.

He will also need to take responsibility for shaping our military to be prepared for the future. For the last decade, our military has necessarily been focused on fighting and winning the conflicts we are in; namely, Iraq and Afghanistan. We continue to meet that challenge, and I am very optimistic that we, with the Afghan people, will prevail against insurgents in Afghanistan, just as we prevailed with the Iraqi people against insurgents in Iraq. However, we can't take our eyes off the future. As a nation, we have a very poor record of predicting where our next conflict will come from.

I have heard it said that when Secretary McNamara had his confirmation hearing to be Secretary of Defense in 1961, no one asked him a question about a country called Vietnam. And when Secretary Rumsfeld had his confirmation hearing in 2001, no one asked him about Afghanistan. But, in both cases, those were the issues that would dominate their tenure as Secretary of Defense.

If I might say, Director Panetta, if a new global hot spot dominates your tenure as Secretary of Defense, there is a good chance that it will be one that no one asked you about at your confirmation hearing.

For this reason, our Armed Forces need to be prepared to fight conflicts that are unlike our current ones. We cannot, and should not, assume that the next war will be like the current one. We need to be prepared for both high-end and low-end conflict. We need to be prepared not just so that we can fight and win these conflicts but so we can deter potential adversaries and not have to fight in the first place.

I know Leon Panetta realizes that, and I know he will continue to be committed to ensuring our military is as prepared as possible to meet whatever challenges may come our country's way. That will not be easy, and it will take a man of his ability to do this successfully and in a way that takes into account our current fiscal situation. However, I believe the President has chosen the right man for the job.

I support Leon Panetta's nomination to be the next Secretary of Defense, and I encourage my colleagues to support that nomination as well.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Mr. President, let me first say I thought the statement from the distinguished Senator from Georgia was spot on, and I particularly appreciated his point that when we confirm Leon Panetta to head Defense, no one can possibly predict what kind of challenges he will face there. But this is the kind of person who, because of ability and background, is up to any kind

of challenges that are thrown to him. So I want to associate myself with my colleague from Georgia.

Mr. President, I would suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. WYDEN. Mr. President, I ask unanimous consent to yield back the remainder of the time and I ask for the yeas and nays.

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

Is there a sufficient second? There appears to be a sufficient second.

The question is, Will the Senate advise and consent to the nomination of Michael H. Simon, of Oregon, to be United States District Judge for the District of Oregon? On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The bill clerk called the roll.

Mr. KYL. The following Senator is necessarily absent: the Senator from New Hampshire (Ms. AYOTTE).

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

The result was announced—yeas 64, nays 35, as follows:

[Rollcall Vote No. 92 Ex.]

YEAS—64

Akaka	Graham	Murkowski
Alexander	Hagan	Murray
Baucus	Harkin	Nelson (NE)
Begich	Inouye	Nelson (FL)
Bennet	Johnson (SD)	Pryor
Bingaman	Kerry	Reed
Blumenthal	Kirk	Reid
Boxer	Klobuchar	Rockefeller
Brown (MA)	Kohl	Sanders
Brown (OH)	Kyl	Schumer
Cantwell	Landrieu	Shaheen
Cardin	Lautenberg	Snowe
Carper	Leahy	Stabenow
Casey	Levin	Tester
Collins	Lieberman	Udall (CO)
Conrad	Lugar	Udall (NM)
Coons	Manchin	Warner
Cornyn	McCain	Webb
Durbin	McCaskill	Whitehouse
Feinstein	Menendez	Wyden
Franken	Merkley	
Gillibrand	Mikulski	

NAYS—35

Barrasso	Grassley	Paul
Blunt	Hatch	Portman
Boozman	Heller	Risch
Burr	Hoeven	Roberts
Chambliss	Hutchison	Rubio
Coats	Inhofe	Sessions
Coburn	Isakson	Shelby
Cochran	Johanns	Thune
Corker	Johnson (WI)	Toomey
Crapo	Lee	Vitter
DeMint	McConnell	Wicker
Enzi	Moran	

NOT VOTING—1

Ayotte

The nomination was confirmed.

RECESS

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until 2:15 p.m.

Thereupon, the Senate, at 12:45 p.m., recessed and reassembled at 2:15 p.m. when called to order by the Presiding Officer (Mr. WEBB).

EXECUTIVE SESSION

NOMINATION OF LEON E. PANETTA TO BE SECRETARY OF DEFENSE

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to the consideration of the following nomination, which the clerk will report.

The legislative clerk read the nomination of Leon E. Panetta, of California, to be Secretary of Defense.

The PRESIDING OFFICER. Under the previous order, there will be 2 hours of debate, equally divided, between the two leaders or their designees.

The Senator from Michigan.

Mr. LEVIN. Mr. President, I understand there is a time agreement on this nomination; is that correct?

The PRESIDING OFFICER. The Senator is correct—2 hours of debate, equally divided.

Mr. LEVIN. I thank the Presiding Officer, and I yield myself 10 minutes.

Mr. President, the nomination of Leon Panetta to be Secretary of Defense is a wise and a solid nomination. Director Panetta has given decades of dedicated public service to this Nation, and we should all be grateful he is once again willing to answer the call and take the helm at the Department of Defense. We are also grateful to his wife Sylvia for her significant sacrifices over the last 50 years in supporting Leon Panetta's efforts in the public and private sectors.

When Mr. Panetta appeared before the Armed Services Committee at his nomination hearing, all of our Members commented invariably in the same way—reflecting the view that we are grateful Mr. Panetta is willing to take on this position. He is going to bring a reassuring level of continuity and in-depth experience. He has been a critical member of President Obama's national security team during his tenure as Director of the Central Intelligence Agency. The Department of Defense will need Director Panetta's skill and his wisdom to navigate the extraordinarily complex set of challenges in the years ahead.

Foremost among those demands are the demands on our Armed Forces, and these are exemplified by the ongoing wars in Afghanistan and Iraq. Between those two conflicts, we continue to have approximately 150,000 troops deployed. The U.S. military is also providing support to NATO operations to protect the Libyan people. In addition, even after the extraordinary raid that killed Osama bin Laden, we face potential terrorist threats against us and against our allies which emanate from Pakistan, Yemen, Somalia, and other places.

The risk of a terrorist organization getting their hands on and detonating an improvised nuclear device or other weapon of mass destruction remains one of the gravest possible threats to the United States. To counter that threat, the Defense Department is working with the Departments of State, Energy, Homeland Security, and other U.S. Government agencies to prevent the proliferation of nuclear weapons, fissile materials, and dangerous technologies. As Secretary of Defense, Director Panetta's leadership in this area will be of vital importance. Here again, it is that experience as Director of the CIA which will be so invaluable.

In the coming weeks, President Obama and his advisers will face a number of key national security decisions. While the drawdown of U.S. forces in Iraq remains on track, there have been recent signs of instability in that country. As a result, it is possible that Iraq's political leadership may ask for some kind of continuing U.S. military presence beyond the December 31 withdrawal deadline which was agreed to by President Bush and Prime Minister Maliki in the 2008 Security Agreement.

Another key decision point is looming in Afghanistan regarding reductions in U.S. forces starting next month. President Obama said the other day:

> It's now time for us to recognize that we have accomplished a big chunk of our mission and that it's time for Afghans to take more responsibility.

The President also said a few months ago that the reductions starting next month will be ''significant.'' Hopefully, they will be. Director Panetta, while not assigning a specific number, agreed they need to be significant. A significant reduction in our troop level this year would send a critical signal to Afghan leaders that we mean it when we say our commitment is not open-ended and that they need to be urgently focused on preparing Afghanistan's security forces to assume security responsibility for all of Afghanistan. The more that Afghan security forces do that, the better the chances of success because the Taliban's biggest nightmare is facing a large, effective Afghan Army—an army which is already respected by the Afghan people, but now, hopefully—and soon—in control of Afghanistan's security.

Another major issue facing the Department is the stress that 10 years of unbroken war has placed on our Armed Forces. Over the last decade, many of our service men and women have been away from their families and homes for multiple tours. Not only is our force stressed, so are our military families. We owe them our best efforts to reduce the number of deployments and increase the time between deployments.

The next Secretary of Defense will have to struggle with the competing demands on our forces while Washington struggles with an extremely challenging fiscal environment. The