One might credit the sincerity, if not the validity, of such concerns were it not for an inconvenient bit of history. Not so long ago, when Republicans controlled the Senate, Grassley was the chief architect of a bill that actually did most of the bad things he now accuses the Democrats of wanting. As chairman of the finance committee, Grassley championed the legislation that created a prescription-drug benefit under Medicare. The contrast between what he and his colleagues said during that debate in 2003 and what they're saying in 2009 exposes the disingenuousness of their current complaints.

Today the Medicare prescription-drug debate is remembered mainly for the political shenanigans Republicans used to get their bill through. Bush officials lied about the numbers and threatened to fire Medicare's chief actuary if he shared honest cost estimates with Congress. House Republicans cut off C–SPAN and kept the roll call open for three hours—as opposed to the requisite 15 minutes—while cajoling the last few votes they needed for passage. Former Majority Leader Tom DeLay was admonished by the House ethics committee for winning the eleventh-hour support of Nick Smith, a Michigan Republican, by threatening to vaporize Smith's son in an upcoming election. It's worth remembering these moments when Republicans criticize Democratic Majority Leader Harry Reid for his hardball tactics.

The real significance of that episode, however, is not their bad manners, but what Republicans ordered the last time health care was on the menu. Their bill, which stands as the biggest expansion of government's role in health care since the creation of Medicare and Medicaid in 1965, created an entitlement for seniors to purchase low-cost drug coverage. Grassleycare, also known as Medicare Part D, employs a complicated structure of deductibles, co-pays, and coverage limits. Thanks to something called the ''doughnut hole,'' drug coverage disappears when out-of-pocket costs reach $2,400, returning only when they hit $3,850. Simply stated, the bill cost a fortune, wasn't paid for, is complicated as hell, and doesn't do all that much—though it does include coverage for end-of life-counseling, or what Grassley now calls ''pulling the plug on grandma.''

In their 2009 report to Congress, the Medicare trustees estimate the 10-year cost of Medicare D as high as $1.2 trillion. That figure—just for prescription-drug coverage that people over 65 still have to pay a lot of money for—dwarfs the $848 billion cost of the Senate bill. The Medicare D price tag continues to escalate because the bill explicitly bars the government from using its market power to negotiate drug prices with manufacturers or establishing a formulary with approved medications.

And unlike the Democratic bills, which won't add to the deficit, the bill George W. Bush signed was financed entirely through deficit spending. While Grassley and his colleagues accuse Democrats of harming Medicare through cost cuts, it is their bill that has done the most to hasten Medicare's coming insolvency. Between now and 2083, Medicare D's unfunded obligations amount to $7.2 trillion according to the trustees. Numbers like these prompted former Comptroller General David M. Walker to call it ''. . . probably the most fiscally irresponsible piece of legislation since the 1960s.''

Grassley is not alone in his incoherence. Of 28 current Republican senators who were in the Senate back in 2003, 24 voted for the Medicare prescription-drug benefit. Of 122 Republicans still in the House, 108 voted for it. There is not space here to fully review this hall of shame, which includes Lamar Alexander of Tennessee, Mike Enzi of Wyoming, Kay Bailey Hutchison of Texas, and Orrin Hatch of Utah, among many others. Here is Kansas Republican Sam Brownback in 2003: ''The passage of the Medicare bill fulfills a promise that we made to my parents'' generation and keeps a promise to my kids' generation.'' Here is Brownback in 2009: ''This hugely expensive bill will not lower costs and will not cover all uninsured.''Here is Jon Kyl of Arizona: ''As a member of the bipartisan team that crafted the Part D legislation, I am committed to ensuring its successful implementation. I will fight attempts to erode Part D coverage.'' Kyl now calls Harry Reid's legislation: ''a trillion-dollar bill that raises premiums, increases taxes, and raids Medicare.''

The explanation for this vast collective flip-flop is—have you guessed?—politics. Medicare recipients are much more likely to vote Republican than the uninsured who would benefit most from the Democratic bills. In 2003, Karl Rove was pushing the traditional liberal tactic of solidifying senior support with a big new federal benefit, don't worry about how to pay for it. Today, GOP incumbents are more worried about fending off primary challenges from the right, like the one Grassley may face in 2010, or being called traitors by Rush Limbaugh. But what happened the last time they were in charge gives the lie to their claim that they object to expanding government. They only object to expanding government in a way that doesn't help them get re-elected.

JUDICIAL NOMINATIONS

Mr. SESSIONS. Mr. President, as the first session of the 111th Congress comes to a close, I believe it is important to correct the record regarding the Senate's processing of judicial nominations. Despite the statements of some of my Democrat colleagues to the contrary, the fact is we have been moving nominees at a fair and reasonable pace. The Judiciary Committee has held hearings for every one of President Obama's circuit court nominees and all of his district court nominees that are ripe for a hearing. At this point in President Bush's administration, 30 nominees had yet to even receive a hearing. As the numbers bear out, President Obama's nominees have fared far better.

Allegations that Republicans are delaying confirmation votes ring hollow. Democrats control 60 votes in the Senate and set the agenda for the floor. If my Democrat colleagues are dissatisfied with the pace of nominations, I suggest that they look to their leader. On Tuesday, the majority and minority leaders announced that we will vote on Judge Beverly Martin's nomination to the Eleventh Circuit Court of Appeals on January 20. As I have said many times before, Republicans have been ready and willing to proceed to a roll call vote on this nomination for months. I do not know the majority leader's reasons for not calling up the nomination sooner. Indeed, I do not claim to know the majority leader's reasons for not calling up a number of nominations. Perhaps in some cases it is because my Democrat colleagues do not want to have a debate on the merits and expose to the American people just what types of individuals the President has nominated to serve on the Federal bench and in crucial positions at the Justice Department. Or perhaps, and I sincerely hope that this is not the case, Democrats have been purposefully delaying nominees in order to create the illusion that Republicans are obstructing.

It bears mention that the average time from nomination to confirmation for nominees to the Circuit Courts of Appeal under President Bush was 350 days. And that was just the average. The majority of President Bush's first nominees to the circuit courts waited years for confirmation votes and some of them never even received a hearing, despite being highly qualified, outstanding nominees.

It has been suggested by some that roll call votes should not be required for judicial nominees, as if this is something that has never been done before. In fact, rollcall votes and time agreements for noncontroversial judicial nominees became routine in 2001, at the insistence of Chairman LEAHY and former Majority Leader Daschle. During the Bush administration, of the 327 article III judges confirmed by the Senate, 59 percent were by rollcall vote. The vast majority of those—86 percent—were consensus, noncontroversial nominees who were unanimously approved. In short, in 2001 the Democrats adopted a new standard: a presumption that all lifetime appointments receive a formal recorded vote. There is no reason that presumption should change now simply because a Democrat is in the White House. Notwithstanding that new standard, I would be remiss if I did not point out that four of the last five judicial nominees that we have confirmed have been confirmed without rollcall votes.

Over the past month, the Senate has been consumed in a debate on a healthcare bill that would create an enormous entitlement program, the likes of which we have never before seen in this country. Tomorrow morning, the Senate will proceed to a vote on this monumental piece of legislation. It can hardly be said that it has been ''business as usual'' in the Senate. While Senators have been focused on health care, as they should be, Democrats have seen fit to slip through lifetime appointments to the Federal judiciary. Just last week, Chairman LEAHY scheduled a hearing for two Fourth Circuit nominees in the middle of this historic debate. Both Judge Diaz and Judge Wynn were nominated by the President on November 4, 2009. This is a quick turnaround for any circuit court nominee, and it is especially quick for a nominee to the Fourth Circuit. During the 110th Congress, despite the 33 percent vacancy rate and overwhelming need for judges, four nominees to that court were needlessly delayed: Mr. Steve Matthews, Judge Robert Conrad, Judge Glen Conrad, and Mr. Rod Rosenstein.

President Bush nominated Steve Matthews on September 6, 2007, to the same seat on the Fourth Circuit for

which Judge Diaz has been nominated. Mr. Matthews had the support of his home state senators and received an ABA rating of Substantial Majority Qualified. He was a graduate of Yale Law School and had a distinguished career in private practice in South Carolina. Despite his exemplary qualifications, Mr. Matthews waited 485 days for a hearing that never came. His nomination was returned on January 2, 2009.

Another of President Bush's nominees, Chief Judge Robert Conrad, was nominated to the seat for which Judge Wynn is now nominated. He had the support of his home state senators and received an ABA rating of Unanimous Well-Qualified. Further, Judge Conrad met Chairman LEAHY's standard for a noncontroversial, consensus nominee because he previously received bipartisan approval by the Judiciary Committee and the Senate when he was confirmed by voice vote to be a U.S. Attorney in North Carolina and later to the District Court for the Western District of North Carolina. On October 2, 2007, Senators BURR and Dole sent a letter to Senator LEAHY requesting a hearing for Judge Conrad, and they spoke on his behalf at a press conference on June 19 that featured a number of Judge Conrad's friends and colleagues who had traveled all the way from North Carolina to show their support for his nomination. That request was ignored. On April 15, 2008, Senators BURR, Dole, GRAHAM, and DEMINT sent a letter to Senator LEAHY asking for a hearing for Judge Conrad and Mr. Matthews. Despite overwhelming support and exceptional qualifications, Judge Conrad, who was nominated on July 17, 2007, waited 585 days for a hearing that never came. His nomination was returned on January 2, 2009.

Judge Glen Conrad also had the support of his home State Senators—including Democrat Senator JIM WEBB—and received an ABA rating of Majority Well-Qualified. He too met Chairman LEAHY's standard because he was confirmed to the District Court for the Western District of Virginia by a unanimous, bipartisan vote of 89–0 in September 2003. Despite his extensive qualifications, Judge Conrad, who was nominated on May 8, 2008, waited 240 days for a hearing that never came. His nomination was returned on January 2, 2009.

Earlier this year, we confirmed Judge Andre Davis to the ''Maryland'' seat on the Fourth Circuit. A brief history of that seat bears mention. President Bush nominated Rod Rosenstein to fill this vacancy on November 15, 2007. The ABA rated Mr. Rosenstein Unanimous Well Qualified, and in 2005, he was confirmed by a noncontroversial voice vote to be the United States attorney for the District of Maryland. Prior to his service as U.S. attorney, he held several positions in the Department of Justice under both Republican and Democrat administrations. Despite his stellar qualifications, Mr. Rosenstein waited 414 days for a hearing that never came. His nomination was returned on January 2, 2009. The reason given by his home state senators for why his nomination was blocked was that he was ''doing a good job as the U.S. attorney in Maryland and that's where we need him.'' I think that a 2008 Washington Post editorial painted a more accurate picture: ''blocking Mr. Rosenstein's confirmation hearing . . . would elevate ideology and ego above substance and merit, and it would unfairly penalize a man who people on both sides of this question agree is well qualified for a judgeship.''

It was only when President Obama nominated Judge Davis to this seat that we heard Democrats' outrage over the fact that the seat had been vacant for 9 years. Ironically, however, Judge Davis fared far better than President Bush's nominees to the Fourth Circuit. He received a hearing a mere 27 days after his nomination, a committee vote just 36 days later, and, finally, confirmation earlier this year. There are other examples of Democrats' unreasonable delay and obstruction but I will not detail them here. Suffice it to say that Democrats are now capitalizing on their eight years of obstruction by seeking to pack the Fourth Circuit Court of Appeals.

It has been said that the overall federal judiciary vacancy rate is higher than it was when President Bush was in office and therefore we need to confirm more judicial nominees. But, as the story of the Fourth Circuit obstructionism illustrates, that is a specious argument. During the Bush administration, Democrats held up qualified judicial nominees—for years in some cases—denying them an up-or-down vote even though the majority of Senators were ready and willing to confirm them. And, in any event, the need to fill vacancies should not undercut the responsibility of the Senate to properly vet these lifetime appointments. As the minority party, we have a duty and a right to ask the important questions that may not be asked by those who agree with the President's point of view.

In that regard, we can only process nominees that we have before us. President Obama has nominated only 12 circuit court nominees, all of whom have had hearings; there are currently 20 circuit court vacancies. Similarly, President Obama has nominated only 19 district court nominees, all but 6 of whom have had hearings; there are currently 78 district court vacancies. These numbers stand in stark contrast to the 65 nominees President Bush put forth during his first year in office.

I have said many times that I do not wish to engage in a back and forth on this issue but I will not stand by while some in this body attempt to rewrite history in their favor. Facts are stubborn things and despite the statements by some to the contrary, they cannot alter the state of the facts and the evidence.

NOMINATION HOLDS

Mr. GRASSLEY. Mr. President, I, Senator CHUCK GRASSLEY, intend to object to proceeding to the nominations of Lael Brainard to be Under Secretary of the Treasury, Michael Mundaca to be an Assistant Secretary of the Treasury, Mary Miller to be an Assistant Secretary of the Treasury, and Charles Collyns to be an Assistant Secretary of the Treasury.

My support for the final confirmation of these nominees will rest on the response to concerns I have with respect to Internal Revenue Code section 6707A. A letter outlining these concerns was sent to both Secretary Geithner and Commissioner Shulman on December 22, 2009, and I ask unanimous consent that my letter be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
COMMITTEE ON FINANCE,
Washington, DC, December 22, 2009.

Hon. TIMOTHY F. GEITHNER, Secretary,
U.S. Department of Treasury, Pennsylvania Avenue, NW, Washington, DC.

Hon. DOUGLAS SHULMAN, Commissioner,
Internal Revenue Service, Constitution Avenue, NW, Washington, DC.

DEAR SECRETARY GEITHNER AND COMMISSIONER SHULMAN: I am writing to express my disappointment with actions taken by both the Department of the Treasury (Treasury) and the Internal Revenue Service (IRS) with respect to Internal Revenue Code (IRC) sections 382 and 6707A.

On November 18, 2008, I wrote to then Secretary Paulson regarding Notice 2008–83, which changed the rules governing the deductibility of losses under IRC section 382(h). The facts and circumstances surrounding the issuance of that Notice raised concerns about the independence and merits of the decision.

Treasury's most recent guidance on this same issue, Notice 2010–2, raises the same concerns. Accordingly, I request that you provide the Finance Committee with all records relating to communications pertaining to the issuance of Notice 2010–2 between Treasury officials, Citigroup, Inc., or other Troubled Asset Relief Program (TARP) participants and/or their representatives. Please also provide a timeline for, and documentation of, Treasury and IRS discussions and approvals for Notice 2010–2 as well as any discussions about the impact this notice would have on the tax gap. In cooperating with the Committee's review, no documents, records, data, or other information related to these matters, either directly or indirectly, shall be destroyed, modified, removed, or otherwise made inaccessible to the Committee.

I understand that Treasury believes that Notice 2010–2 was justified, in part, because it would help protect the government's interest in Citigroup, Inc. Yet, it appears that Notice 2010–2 may generate billions of dollars of tax savings for Citigroup, Inc. Please provide documentation of any discussions of impact on the tax gap resulting from Notice 2010–2.

The quick and immediate relief provided to Citigroup, Inc. stands in stark contrast to Treasury and IRS's position on providing relief to small business owners who have been assessed penalties under IRC section 6707A. As you know, Chairman Baucus and I have been working throughout this year with our counterparts in the House of Representatives