

bill and strengthens it, keeping in mind that our first priority should be the people right now who need the help. We can do that if we are willing to work together.

I yield the floor.

The PRESIDING OFFICER (Ms. MURKOWSKI). The Senator from Nevada.

#### ORDER OF BUSINESS

Mr. REID. Madam President, I know the Senator from New Jersey wishes to speak. There is a unanimous consent request that will be propounded which will help people understand what will happen. We are waiting for someone on the other side to read the request, and then we can agree to it. If the Senator will withhold for a moment.

Mr. LAUTENBERG. Without losing my opportunity to the floor.

Mr. REID. I have the floor. Madam President, we are shortly going to enter into an agreement to have a vote late today for two more judges. This will make 131 judges—I think that is the number—we have approved during the time the present President Bush has been President.

I am really not certain as to the number, but I believe it is 36 or 37 circuit court judges. The vacancy rate, as we discussed yesterday, is extremely low. There has been a lot of agitation and talk about how poorly the administration is being treated with their judicial nominees. Even the President can understand that a count of 131 to 2 is a pretty good record for him.

The PRESIDING OFFICER. The Senator from New Hampshire.

#### UNANIMOUS CONSENT AGREEMENT—EXECUTIVE CALENDAR

Mr. SUNUNU. Madam President, I ask unanimous consent, as in executive session, that at 2:15 p.m. today, the Senate proceed to executive session for the consideration of Calendar No. 221, the nomination of J. Ronnie Greer to be a U.S. District Judge for the U.S. District of Tennessee; provided that the Senate then proceed immediately to a vote on the confirmation of the nomination, with no intervening action or debate; provided, further, that immediately following that vote, the Senate proceed to the consideration of Calendar No. 222, the nomination of Mark Kravitz to be a U.S. District Judge for the District of Connecticut; that there then be 5 minutes for debate equally divided between the chairman and ranking member or their designees; and that following the use of that time, the Senate proceed to vote on the confirmation of the nominees. Finally, I ask unanimous consent that following the votes, the President be immediately notified of the Senate's action and the Senate then resume legislative session.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Reserving the right to object, in the statement I just gave, I in-

dicated there have been 36 circuit judges approved. It is 26 circuit judges approved. I misspoke. The 131 figure that will be completed about quarter to 3 today is an accurate number of judges who have been approved in this administration.

Also, Madam President, the chairman of the full Energy Committee, the manager of this bill, along with Senator BINGAMAN, is in the Chamber, and the record should reflect we on this side are not holding up this Energy bill. I have no objection to the unanimous consent request.

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

#### ENERGY POLICY ACT OF 2003— Continued

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Madam President, as a manager of the bill, our side is awaiting communication from the executive branch by way of explanation of the Feinstein amendment. That should be arriving shortly. When it arrives, we will be ready on our side for the conclusion of any discussion. So it should not be too long—probably after lunch—before we are ready on our side for a vote on the Feinstein amendment.

For those who are wondering, that is what is happening. There is no need to be in the Chamber on that amendment until that event occurs. I am certain nothing will happen on the Energy bill until that time because there is no concurrence that anything can happen. In other words, we cannot do anything because the Feinstein amendment cannot be set aside for any other amendments.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Madam President, I say to my friend from New Mexico, I am very appreciative of the statement he just made because I am going to do as he just did during this lull of time: Go get my hair cut.

Mr. DOMENICI. We hope it will be here shortly. I noted the presence a short time ago of the chairman of the Agriculture Committee, which has primary jurisdiction on the Feinstein amendment. He, too, was wondering what was happening. I want he and his staff to know that is exactly what is happening. It should not be too much longer until we then proceed in due course for a vote.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. LAUTENBERG. Madam President, I ask unanimous consent to speak as in morning business.

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

(The remarks of Mr. LAUTENBERG are printed in today's RECORD under "Morning Business.")

The PRESIDING OFFICER. The Senator from Alabama.

AMENDMENT NO. 876

Mr. SHELBY. Madam President, I rise today to encourage my colleagues

to oppose the amendment of the senior Senator from California, Mrs. FEINSTEIN.

First, I address the second-degree amendment the senior Senator from Nevada, Senator REID, is offering. I encourage my colleagues to oppose this second-degree amendment, also. The Reid second-degree amendment would exempt derivative contracts on precious metals from the new regulatory scheme the Feinstein amendment creates. We are told the Feinstein amendment is necessary to avoid the manipulation of markets for commodities that are in limited supply like oil or metals.

Underpinning the Feinstein amendment is the belief the Enron debacle and the California energy crisis occurred because there was insufficient regulation and wrongdoers were able to accomplish massive frauds and manipulation. The Feinstein amendment is intended to close the alleged regulatory loophole for off-exchange transactions for exempt commodities.

Assume, only for argument's sake, that Senator FEINSTEIN is correct. Assume the regulatory regime established only 2½ years ago is insufficient and that we must close a so-called regulatory loophole. If you believe this and support the Feinstein amendment, you must necessarily oppose the Reid second-degree amendment, which will carve a vast number of derivative contracts out of the regulatory scheme the Feinstein amendment creates.

I don't believe we can have it both ways. What is necessary for the energy markets is necessary for the metals markets. I encourage my colleagues to oppose both the Reid second-degree amendment and the Feinstein amendment as unnecessary, redundant, and potentially destabilizing to our financial markets. I encourage my colleagues who feel compelled to support the Feinstein amendment to not support the Reid amendment, which is at direct cross-purposes to the underlying amendment.

Less than 3 years ago, in December 2000, Congress enacted the Commodity Futures Modernization Act of 2000, which was landmark legislation that provided legal certainty regarding the regulatory status of derivatives. Passage of the modernization act was the result of many months of analysis of the role that derivatives play in the marketplace and the consequences of increased regulation. In fact, because the modernization act addressed derivative products pertaining to commodities and financial products, both the Agriculture Committee and Banking Committee held numerous hearings to help Members and the public better understand the role the various derivative financial instruments and contracts played in our economy and what regulatory landscape, if any, is appropriate.

Now, only 3 years after enactment of the modernization act, Senator FEINSTEIN's amendment proposes fundamental changes to the law. I believe