

## JUDICIAL NOMINATIONS

Mr. LEAHY. Mr. President, available for brief debate and confirmation votes by the United States Senate are several of the President's judicial nominees. Roger W. Titus of Maryland was unanimously reported by the Judiciary Committee to the Senate more than a month ago. This nomination was greeted with universal acclaim. He is an outstanding Maryland lawyer and leader of the bar, an active litigator in Maryland for over 37 years, a partner at the Venable law firm, a former President of the Maryland Bar Association. He has also served as an Adjunct Professor at the Georgetown University Law Center. Mr. Titus earned a unanimous "Well-Qualified" rating from the ABA, and an AV rating from Martindale-Hubbell.

In 2001, Mr. Titus was honored with The Baltimore Daily Record's first Leadership in the Law Award, which recognizes members of the legal community for their devotion to the betterment of the profession and their communities. In 1999, Mr. Titus received the Century of Service Award from the Montgomery County Bar Association for his outstanding contributions to the legal profession and community during the twentieth century.

According to an article in The Baltimore Sun, Mr. Titus was apparently in the running to be nominated for a seat on the U.S. Court of Appeals for the Fourth Circuit. In light of his stellar qualifications, deep roots in his legal community and ability to garner the bipartisan support of his elected officials he would have been a consensus choice for this important appellate seat. This White House was not interested in appointing a consensus nominee to the Fourth Circuit. It wanted to pick a fight. So it did. It nominated someone from Virginia to the Maryland vacancy on the Fourth Circuit and precipitated a controversy. There are reportedly 30,000 practicing attorneys in the State of Maryland. Instead of nominating a well qualified Marylander like Mr. Titus to Judge Murnahan's vacant seat on the Fourth Circuit, the President selected a controversial nominee with very little litigation experience from another jurisdiction. That nominee, Claude Allen, received a partial "not qualified" rating by the American Bar Association and his selection has engendered significant opposition from concerned citizens groups and understandably from the Maryland Senators.

It is regrettable that this President has again chosen the course of confrontation and conflict for his appellate court nominations. Mr. Titus, with his many years of litigation experience and his well-deserved reputation as a leader among lawyers in Maryland is the type of person who should have been chosen for Judge Murnahan's vacant seat on the Fourth Circuit. His nomination stands in sharp contrast to the inexperienced and divisive candidates chosen by the White House for

too many appellate judgeships in what appear to be an effort to pack the court with ideological nominees and tilt these courts.

There is no doubt that Mr. Titus is a Republican, yet he has the support of both of his home-state Senators, both Democrats, and has earned the unanimous support of the Members of the Judiciary Committee. I would have supported his nomination to the Fourth Circuit vacancy. I continue to support his nomination to the District Court. The month-long delay the Republican leadership has already caused in his consideration for the District Court position reminds me of their delay in scheduling a vote on the Fifth Circuit nomination of Judge Edward Prado earlier this year. Then they did not want to allow Democratic Senators to vote for a conservative Hispanic nominee when they were trying desperately to mischaracterize Senate Democrats as anti-Hispanic. Now it seems we are making too much progress on too many judicial nominees to suit their partisan interests in mischaracterizing Senate Democrats as blockading Bush nominee's to the courts.

The truth is that in less than three years' time, President George W. Bush exceeded the number of judicial nominees confirmed for President Reagan in all four years of his first term in office. Senate Democrats have cooperated so that this President already surpassed the record of the President Republicans acknowledge to be the "all time champ" at appointing Federal judges. Since July, 2001, despite the fact that the Senate majority has shifted twice, a total of 167 judicial nominations have already been confirmed, including 29 circuit court appointments. One hundred judges were confirmed in the 17 months of the Democratic Senate majority and the Senate has proceeded to confirm another 67 judges during the comparative time of the Republican majority for a total of 167 judges.

One would think that the White House and the Republicans in the Senate would be heralding this landmark. One would think they would be congratulating themselves for putting more lifetime appointed judges on the federal bench than President Reagan did in his entire first term and doing it in three-quarters the time. One would think that they would be building upon that success by scheduling prompt votes on noncontroversial nominees like Roger Titus. But Republicans have a different partisan message and this truth is not consistent with their efforts to mislead the American people into thinking that Democrats have obstructed judicial nominations. That is why the President chose to criticize the Senate from the Rose Garden again last week and in campaign appearances around the country last weekend and earlier this week rather than work with us and recognize what we can accomplish together.

Not only has this President been accorded more Senate confirmations than

President Reagan achieved during his entire first term, but he has also achieved more confirmations this year than in any of the six years that Republicans controlled the Senate when President Clinton was in office. Not once was President Clinton allowed 67 confirmations in a year when Republicans controlled the pace of confirmations. Despite the high numbers of vacancies and availability of highly qualified nominees, Republicans never cooperated with President Clinton to the extent Senate Democrats have. President Bush has appointed more lifetime circuit and district court judges in 10 months this year than President Clinton was allowed in 1995, 1996, 1997, 1998, 1999, or 2000.

Last year alone, the Democratic majority in the Senate proceeded to confirm 72 of President Bush's judicial nominees and was savagely attacked nonetheless. With a little cooperation from Senate Republicans we might match that record before adjournment this year, as well.

In fact, President Bush has now already appointed more judges in his third year in office than in the third year of the last five presidential terms, including the most recent term when Republicans controlled the Senate and President Clinton was leading the country to historic economic achievements. That year, in 1999, Republicans allowed only 34 judicial nominees of President Clinton's to be confirmed all year, including only 7 circuit court nominees. Those are close to the average totals for the six years 1995-2000 when a Republican Senate majority was determining how quickly to consider the judicial nominees of a Democratic President. By contrast, the Senate this year has already confirmed 67 judicial nominees, including 12 circuit court nominees, almost double the totals for 1999.

We have worked hard and bent over backwards cooperating with a very uncooperative White House and Senate Republican majority. In spite of their false charges and partisanship, Senate Democrats have continued working to make progress in filling judicial vacancies. According to the website of the Republican Chairman of the Judiciary Committee we have reduced the number of judicial vacancies below 40. Had the Senate Democratic majority not acted last year to authorize between 15 and 20 additional judgeships, the vacancies total might well be in the low 20's. After inheriting 110 vacancies when the Senate Judiciary Committee reorganized under Democratic control in 2001, I helped move through and confirm 100 of the President's judicial nominees in just 17 months. Through hard work we have proceeded to reduce vacancies to the lowest number in 13 years and arguably the lowest level since President Reagan. There are more Federal judges on the bench today than at any time in American history. These facts stand in stark contrast to the false partisan rhetoric that

demonize the Senate for having blocked all of this President's judicial nominations. The reality is that the Senate is proceeding at a record pace and achieving record numbers.

Also on the Senate calendar awaiting action is the nomination of Gary Sharpe of New York. That nomination was reported unanimously by the Judiciary Committee two weeks ago. He remains on the Senate Executive Calendar because the Senate Republican leadership has no interest in scheduling this noncontroversial judicial nominee for a vote.

Also on the Senate Executive Calendar awaiting scheduling of debate and a final vote are the nominations of Judge Dora Irizarry of New York and J. Leon Holmes of Arkansas. Mr. Holmes nomination has been awaiting debate since May, more than six months. Let us be clear. There is no Democratic hold preventing debate and votes on either of these nominees. They merit debate. There was debate in the Judiciary Committee. There should be debate on the Senate floor. And then the Senate will vote.

Indeed, following the debate on Judge Irizarry more than half of the Republican Members indicated that they opposed the President's nomination. I respect and understand their concern. I have had similar concerns about a number of this President's nominees. More than two dozen have received ratings or partial ratings of "not qualified" by the ABA. Some, like Timothy Hardiman of Pennsylvania and Dora Irizarry of New York, do not have the support of their local bar association either.

Unlike the way Republicans treated the nomination of Justice Ronnie White of Missouri when he was ambushed on the Senate floor and defeated in a party line vote. I do not expect that to happen with Judge Irizarry. Those with concerns have been forthright in coming forward. I do not expect Democratic Senators to do what Republicans did in 1999 to Ronnie White when they switch their votes and voted lockstep in a partisan effort to defeat his nomination on the floor.

With these four nominees for additional lifetime appointments to the federal bench, the Senate has the chance to reach a total of more than 170 judicial confirmations for the President in less than three years. Maybe that is why the Republican leadership has chosen not to go forward. Could it be that they do not want the American people to know that we have cooperating in filing 170 judicial vacancies in less than three years? That would not be consistent with the talking points the Administration is peddling to friendly media outlets all over town and around the country.

Over the last several days more than 200 people have been killed or wounded in Baghdad. The number of unemployed Americans has been at or near levels not seen in years, poverty is on the rise in our country, and the current Admin-

istration seems intent on saddling our children and grandchildren with trillions in deficits and debt. For the first time in a dozen years, charitable giving in this country is down.

While negative indicators are spiking, the Republican leadership of the Congress would rather demonize Democrats, engage in name calling and charge obstruction where the facts are historic levels of cooperation. The Senate wheel-spinning exercises involving the most controversial judicial nominees and the Republican leadership's insistence on unsuccessful cloture votes are unhelpful to the Senate or the courts. Despite the heated rhetoric on the other side of the aisle, we have made progress on judicial vacancies when and where the Administration has been willing to work with the Senate.

Only a handful of the President's most extreme and controversial nominations have been denied consent by the Senate. Up to today only four have failed. That record is in stark contrast to the more than 60 judicial nominees from President Clinton who were blocked by a Republican-led Senate. One-hundred sixty-seven to four, but as I have said, that total could be 170 to four if the Republican leadership would work with us and schedule voted and debate on the four nominees I have identified.

But despite this record of progress, made possible only through good faith effort by Democrats on behalf of a Republican President's nominees, and in the wake of the years of unfairness shown the nominees of a Democratic President, the Republican leadership has decided to use partisan plays out of its playbook as this year winds down.

Instead of putting partisanship aside and bridging our differences for the sake of accomplishing what we can for the American people, we are asked to participate in a transparently political exercise initiated by a President. With respect to his extreme judicial nominations, President George W. Bush is the most divisive President in modern times. Through his extreme judicial nominations, he is dividing the American people and he is dividing the Senate. Far from a uniter, on judicial nominations he has chosen to be a divider.

#### IN RECOGNITION OF TWO U.S. ARMY CIVILIANS RECEIVING AWARDS FOR OUTSTANDING SERVICE ON CAPITOL HILL

Mr. INOUE. Mr. President, I would like to bring my colleagues' attention to two civil servants whose exemplary work in the U.S. Senate Army Congressional Liaison office has been formally recognized by the U.S. Army at a recent awards ceremony. For many years, my constituents have benefitted from their outstanding, timely, and compassionate service. It is my honor to also recognize their service, and to bring to your attention the nature of

the awards given to Ms. Margaret Tyler and Mrs. Trulesta Pauling.

Ms. Tyler and Mrs. Pauling, both assigned to the Office of the Chief, Legislative Liaison, Headquarters, Department of the Army, were recognized in a ceremony held on October 23, 2003.

Ms. Tyler and Mrs. Pauling, Congressional Liaison Representatives for the U.S. Army's Senate Liaison Division on Capitol Hill, were each awarded the Army Staff Identification Badge and the Commander's Award for Civilian Service for exceptionally meritorious achievement. Both women were recognized for their work in support of Operations Enduring Freedom and Iraqi Freedom.

According to the award citations, Ms. Tyler and Mrs. Pauling managed their increased caseload with calm, grace, professionalism, and efficiency. Their commitment to excellence and devotion to duty has had a significant and long-lasting, positive impact on soldiers and their families.

The Commander's Award for Civilian Service is the fourth highest Department of the Army award for civilians. All Army civilian employees are eligible for consideration to receive this award for service, achievement and heroism. It is equivalent to the Army Commendation Medal awarded to soldiers.

The Army Staff Identification Badge was first proposed by General Douglas MacArthur while he was Chief of Staff of the U.S. Army, on December 28, 1931. The award of the lapel button for civilian personnel in the grade of GS-11 and higher was authorized in 1982 and is a symbol of exemplary service.

Once again, I extend my sincere congratulations to these two outstanding civil servants.

#### NOMINATION OF JOSEPH TIMOTHY KELLIHER

Mr. GRASSLEY. Mr. President, I rise today to state that I object to proceeding to the consideration of an executive nominee to the Federal Energy Regulatory Commission. The nominee is Joseph Timothy Kelliher, who is listed as a "senior policy advisor" to the Secretary of the Energy Department.

I have an outstanding document request at the Energy Department, and I must be certain that it will be answered in a timely and complete manner. I am also concerned that some Department of Energy officials are, among other things, misconstruing an amendment that I offered to H.R. 2754. My amendment is section 316 of the Energy and Water Appropriations Act, H.R. 2754, and it transfers claims processing responsibilities for "Subtitle D" of the Energy Employees Occupational Illness Compensation Program Act of 2000, EEOICPA, from the Department of Energy to the Department of Labor. I am trying to get some answers and straighten that out as well.