

or yielding back of time on the Christen nomination and the resumption of legislative session, Senator MCCAIN be recognized for up to 30 minutes as if in morning business; that following Senator MCCAIN's remarks, the Senate proceed to the consideration of the conference report to accompany H.R. 1540, the Department of Defense authorization bill; that there be up to 3 hours of debate, equally divided between the two leaders or their designees; that the Senate proceed to vote on adoption of the conference report at a time to be determined by the majority leader after consultation with the Republican leader; further, that no motions be in order to the conference report other than budget points of order and the applicable motions to waive; and, finally, that upon disposition of the conference report, the Senate proceed to the consideration of H. Con. Res. 92, a concurrent resolution to correct the enrollment of H.R. 1540; the concurrent resolution be agreed to; and the motion to reconsider be considered made and laid upon the table.

The ACTING PRESIDENT pro tempore. Is there objection? Without objection, it is so ordered.

The majority leader.

Mr. REID. Mr. President, I appreciate the courtesy of my friend, the assistant leader.

I wish to tell all the Members of the Senate that we will probably have a series of votes around 4 o'clock this afternoon.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Morning business is closed.

EXECUTIVE SESSION

NOMINATION OF MORGAN CHRISTEN TO BE UNITED STATES CIRCUIT JUDGE FOR THE NINTH CIRCUIT

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will proceed to executive session to consider the following nomination, which the clerk will report.

The legislative clerk read the nomination of Morgan Christen, of Alaska, to be United States Circuit Judge for the Ninth Circuit.

The ACTING PRESIDENT pro tempore. The Senator from Vermont.

Mr. LEAHY. Mr. President, I see both Senators from Alaska on the Senate floor, and I beg their indulgence. I will continue for about 5 minutes, first on the nomination of Justice Morgan Christen of Alaska to fill one of the four vacancies on the Court of Appeals for the Ninth Circuit, a judicial emergency vacancy.

This nominee is eminently well qualified and should be confirmed. Senator MURKOWSKI and Senator BEGICH have worked very hard to get this

nominee through, and I thank both of them. Today, we will take a step toward addressing a serious vacancy crisis in the busiest Federal appeals court in the country. I would hope, before we adjourn, that we could get the other 16 judges who have come out of the Judiciary Committee unanimously—every Democrat and every Republican voting for them—that are on the calendar. I would hope before we adjourn we could get those done.

Mr. President, I thank the majority leader for scheduling today's vote. It should not have taken more than 3 months to obtain Republican consent to consider the nomination of Justice Christen after it was reported unanimously by the Judiciary Committee on September 8. Her nomination has the strong support of both of Alaska's Senators, Republican Senator LISA MURKOWSKI and Democratic Senator MARK BEGICH, who introduced Justice Christen to the Judiciary Committee at her hearing on July 13. Several Republican leaders from Alaska also wrote to the Judiciary Committee to express their support, including former Alaska State Senator Arliss Sturgulewski, and Walt Monegan, the former Alaska commissioner for public safety appointed by then-Governor Sarah Palin. Connecticut State Representative Lile Gibbons, a Republican, has also written to the committee to express her support.

Justice Christen is the kind of qualified, consensus nominee who in past years would have been considered and confirmed by the Senate within days of being reported unanimously by the Judiciary Committee, not stuck for months unnecessarily on the Senate calendar. She is an experienced jurist who has served on Alaska's highest court for the past 3 years. She was nominated to that position by then-Governor Sarah Palin, and she is the second woman in Alaska's history to serve on its supreme court. Justice Christen previously served for 7 years as a judge on the Superior Court for Alaska's Third Judicial District, 3 of those years as the presiding judge. She worked in private practice for 13 years in Anchorage, clerked for Judge Brian Shortell of the Alaska Superior Court, and has demonstrated a deep commitment to her community throughout her career. Once she is confirmed, Justice Christen will be the first woman from Alaska to serve on the U.S. Court of Appeals for the Ninth Circuit.

The unexplained Republican delay in consenting to consider her nomination has caused unnecessary delays in filling judicial emergency vacancies on the Ninth Circuit, the busiest Federal circuit court in the country. Sixty-one million Americans live in the jurisdiction served by the Ninth Circuit. At a time when judges on that circuit are being called upon to handle double the caseload of the other Federal circuit courts, the Senate should have expedited the consideration of Justice Christen's nomination, not needlessly

slowed it down. The chief judge of the Ninth Circuit, Judge Alex Kozinski, a Reagan appointee, along with the members of the Judicial Council of the Ninth Circuit, have written to the Senate emphasizing the Ninth Circuit's "desperate need for judges," urging the Senate to "act on judicial nominees without delay," and concluding that they "fear that the public will suffer unless our vacancies are filled very promptly."

The judicial emergency vacancies on the Ninth Circuit are harming litigants by creating unnecessary and costly delays. The Administrative Office of U.S. Courts reports that it takes nearly 5 months longer for the Ninth Circuit to issue an opinion after an appeal is filed, compared to all other circuits. The Ninth Circuit's backlog of pending cases far exceeds other Federal courts. As of March 2011, the Ninth Circuit had 13,913 cases pending before it. The second closest—the Sixth Circuit—had 5,231 cases pending.

If caseloads were really a concern of Republican Senators, as they contended when they filibustered the nomination last week of Caitlin Halligan to the DC Circuit, they would not have delayed Justice Christen's nomination to fill a judicial emergency vacancy for over 3 months. If caseloads were really a concern, Senate Republicans would consent to move forward to confirm Judge Jacqueline Nguyen of California, another well-qualified nominee, to fill a judicial emergency vacancy on the Ninth Circuit. Her nomination was also reported unanimously by the Judiciary Committee and needs only a final up-or-down vote by the Senate. Judge Nguyen is nominated to fill the judicial emergency vacancy that remains after the Republican filibuster of Goodwin Liu. I hope the Senate will be allowed to take up and confirm her nomination to finally fill that vacancy before the Senate concludes its work for the year.

I also hope we can continue to make progress early in the New Year by considering two nominations to the Ninth Circuit now pending before the Judiciary Committee. Earlier this week we held a hearing with Paul Watford of California, nominated to fill yet another judicial emergency vacancy on the Ninth Circuit. I would have included another nominee to the Ninth Circuit at that hearing, Justice Andrew Hurwitz of Arizona, who has the support of Senator KYL, but committee Republicans were not ready to proceed on that nomination. I hope both can be considered and confirmed early next year.

The Senate should act to address the continuing crisis in judicial vacancies that affects not only the Ninth Circuit but Federal courts around the country. It is now December 15, with only days left in the Senate's 2011 session. There is no time to further delay votes on the other 20 judicial nominations now pending on the Senate calendar and awaiting a final vote. Sixteen of these nominations, in addition to that of