

address the contamination crisis in Flint and provide assistance to our communities across our country facing similar infrastructure challenges.

The Flint aid package included in the bipartisan WRDA bill includes direct funding for water infrastructure emergencies and critical funding for programs to combat the health complications from lead exposure. This includes a drinking water lead exposure registry and a lead exposure advisory committee to track and address long-term health effects.

Additionally, funding for national childhood health efforts, such as the childhood lead prevention poisoning program, would be increased in this bill.

The Water Resources Development Act also includes funding for secured loans through the Water Infrastructure Finance and Innovation Act, or WIFIA program. This financing mechanism was created by Congress in 2014 in a bipartisan effort to provide low-interest financing for large-scale water infrastructure projects. These loans will be available to States and municipalities all across our country.

There are also a number of other important provisions in this year's WRDA bill. It promotes restoration of our great lakes and great waters, which include ecosystems such as the Great Lakes, Puget Sound, Chesapeake Bay, and many more.

In fact, the bill includes an authorization of the Great Lakes Restoration Initiative through the year 2021, which has been absolutely essential to Great Lakes cleanup efforts in recent years. It is important to know that the Great Lakes provide drinking water for over 40 million people.

The WRDA bill also will modernize our ports, improve the condition of our harbors and waterways, and keep our economy moving.

A saying attributed to Benjamin Franklin rings especially true with this WRDA bill. He said: "An ounce of prevention is worth a pound of cure." If we make the necessary infrastructure investments now, we will preserve clean water, save taxpayer money in the long run, and protect American families from the dangerous health impacts of aging lead pipes.

The Environment and Public Works Committee passed the Water Resources Development Act with strong, overwhelming bipartisan support last month. This bill is ready for consideration by the full Senate, and communities across our country—including the families of Flint—are waiting for us to act.

I am hopeful that this body will do just that in the coming weeks, and I urge my colleagues to prioritize this commonsense, bipartisan infrastructure bill for a vote on the Senate floor.

I yield the floor.

The PRESIDING OFFICER. The Senator from South Dakota.

MORNING BUSINESS

Mr. ROUNDS. Mr. President, I ask unanimous consent that the Senate be in a period of morning business, with Senators permitted to speak therein for up to 10 minutes each.

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

JUDICIAL NOMINATIONS

Mr. LEAHY. Mr. President, nearly 150 years ago, Congress determined that a fully functioning Supreme Court should consist of nine Justices. For more than 100 days, however, the Supreme Court has been unable to operate at full strength as a result of unprecedented obstruction by Senate Republicans. Under Republican leadership, the Senate is on track to be in session for the fewest days since 1956. Senate Republicans simply refuse to do their jobs. If Senate Republican leadership has its way, this seat on the Supreme Court will remain unnecessarily vacant for more than a year.

President Obama nominated Chief Judge Merrick Garland 70 days ago. Based on the timing of the Senate's consideration of Supreme Court nominees over the past four decades, Chief Judge Garland should be receiving a confirmation vote on the Senate floor today. Instead, Republican Senators are discussing a hypothetical list of nominees issued by their presumptive nominee for President.

Senate Republicans should be responsible enough to address the real vacancy on the Supreme Court that is right now keeping the Court from operating at full strength. Chief Judge Garland has received bipartisan support in the past, and there is no reason other than partisan politics to deny him the same process the Senate has provided Supreme Court nominees for the last 100 years. The chairman of the Judiciary Committee recently suggested we put down on paper how the Senate treats Supreme Court nominees. I did just that with Senator HATCH in 2001 when we memorialized the longstanding Judiciary Committee practice that Supreme Court nominees receive a hearing and a vote, even in instances when a majority of the Judiciary Committee did not support the nominee. The chairman and all Republicans should go back to that letter to use as roadmap for considering Chief Judge Garland's nomination now.

Republicans have been dismissive about the need for a fully functioning Supreme Court with nine Justices, but as we have already seen this term, the Supreme Court has been repeatedly unable to serve its highest function under our Constitution. Without a full bench of justices, the Court has deadlocked and has been unable to address circuit court conflicts or resolve cases on the merits. The effect, as the New York Times reported recently, is a "diminished" Supreme Court. In a bid to appeal to moneyed interest groups, Re-

publicans have weakened our highest Court in the land, both functionally and symbolically.

In the face of this obstruction, some Supreme Court justices have tried to put on a brave face, proclaiming things are going along just fine. The facts show, however, that the opposite is true. As another recent news article notes, the Supreme Court is on pace to take on the lightest caseload in at least 70 years. At least one Supreme Court expert has suggested that the eight Justices currently serving may be reluctant to take on certain cases when they cannot be certain they will reach an actual decision on the merits without deadlocking. As each week passes and we see the Court take a pass on taking additional cases, the problem gets worse and the Court is further diminished.

In some instances, the Court has issued rare and unprecedented follow-up orders to try to reach some kind of compromise where they otherwise cannot resolve the issue with eight Justices. This happened in *Zubik v. Burwell*, which involved religiously affiliated employers' objections to their employees' health insurance coverage for contraception. In that case, the Court took the unusual step of ordering supplemental briefing in the case, seemingly to avoid a 4-4 split and to reach some kind of compromise. Even with the extra briefing, the Court could not make a decision. Instead, it sent the issue back to the lower courts expressing "no view on the merits of the cases." The reason we have one Supreme Court is so it can issue final decisions on the merits after the lower courts have been unable to do so in a consistent fashion. But the Supreme Court has recently punted cases back down to the lower courts for them to resolve the issue, possibly in different ways, because of its diminished stature. A Supreme Court that cannot resolve disputes among the appellate courts cannot live up to its name.

The Court has been unable to resolve cases where even the most fundamental right is at stake, that of life and death. Former Judge Timothy K. Lewis of the Third Circuit Court of Appeals warned us of this earlier this month when he spoke at a public meeting to discuss the qualifications of Chief Judge Garland. Sadly, these warnings have become a reality. In one death row case, the Supreme Court has not yet decided whether to review it despite the fact that, at trial, an expert testified that the defendant was more likely to be dangerous in the future because of his race. The prosecution later conceded this testimony was inappropriate, but continued to raise procedural defenses in Buck's case. Such a case about whether a person sentenced to death has received due process is at the very heart of our democracy; yet our diminished Supreme Court has been unable to make a decision in this case and could deadlock on others.

There are some who suggest a deadlocked decision may be beneficial when