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From: Joel Pardue [UNKNOWN])

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Bcc: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])

Subject: : Judicial Confirmations

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-Senator Cornyn's Judiciary subcommittee is having a hearing tomorrow at 2:30 PM in Room SD226. The hearing will address the constitutional issues relating to the filibuster. It is entitled, "Judicial Nominations, Filibusters, and the Constitution: What Happens When a Majority is Denied the Opportunity to Express its Consent?" The tentative witness list includes: Arlen Specter, Charles Schumer, Zell Miller, Steven Calabresi, John Eastman, Bruce Fein, Michael Gerhardt, Marcia Greenberger, and Douglas Kmiec. If you have any questions, please contact Steven Duffield (224-3463 or steven_duffield@rpc.senate.gov). -Attached is an extensive list of quotations by Democrats and Republican Senators dating back several years relating to the filibuster and to obstruction generally. -This is a reminder that there is a rally Friday in the Senate Swamp (between the Capitol and Russell Senate Office Building) at 12:00. It is Obstruction Day. -Below is a letter sent by Freshmen Senators to Senators Frist and Daschle
United States Senate

Washington, DC 20510

April 30, 2003

Dear Senators Frist and Daschle,

As the ten newest members of the United States Senate, we write to express our concerns about the state of the federal judicial nomination and confirmation process. The apparent breakdown in this process reflects poorly on the ability of the Senate and the Administration to work together in the best interests of our country. The breakdown also disserves the qualified nominees to the federal bench whose confirmations have been delayed or blocked, and the American people who rely on our federal courts for justice.

We, the ten freshmen of the United States Senate for the 108th Congress, are a diverse group. Among our ranks are former federal executive branch officials, members of the U.S. House of Representatives, and state

attorneys general. We include state and local officials, and a former trial and appellate judge. We have different viewpoints on a variety of important issues currently facing our country. But we are united in our commitment to maintaining and preserving a fair and effective justice system for all Americans. And we are united in our concern that the judicial confirmation process is broken and needs to be fixed.

In some instances, when a well qualified nominee for the federal bench is denied a vote, the obstruction is justified on the ground of how prior nominees - typically, the nominees of a previous President - were treated. All of these recriminations, made by members on both sides of the aisle, relate to circumstances which occurred before any of us arrived in the United States Senate. None of us were parties to any of the reported past offenses, whether real or perceived. None of us believe that the ill will of the past should dictate the terms and direction of the future.

Each of us firmly believes that the United States Senate needs a fresh start. And each of us believes strongly that we were elected to this body in order to do a job for the citizens of our respective states - to enact legislation to stimulate our economy, protect national security, and promote the national welfare, and to provide advice and consent, and to vote on the President's nominations to important positions in the executive branch and on our nation's courts.

Accordingly, the ten freshmen of the United States Senate for the 108th Congress urge you to work toward improving the Senate's use of the current process or establishing a better process for the Senate's consideration of judicial nominations. We acknowledge that the White House should be included in repairing this process.

All of us were elected to do a job. Unfortunately, the current state of our judicial confirmation process prevents us from doing an important part of that job. We seek a bipartisan solution that will protect the integrity and independence of our nation's courts, ensure fairness for judicial nominees, and leave the bitterness of the past behind us.

Yours truly,

John Cornyn	Mark Pryor
Lisa Murkowski	Lindsey Graham
Elizabeth Dole	Saxby Chambliss
Norm Coleman	Jim Talent
Lamar Alexander	John Sununu

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&n bsp; John Sununu

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Hypocrisy On Judicial Nominations: Senate Democrats Guilty As Charged

As Senate Democrats Continue Their Unprecedented Filibusters Against Miguel Estrada And Priscilla Owen—President Bush’s Highly Qualified Nominees To The U.S. Courts Of Appeals—A Closer Look At The Record Reveals A Level Of Hypocrisy Worthy Of Cloture. For Years, Democrat Senators Demanded “Up Or Down” Floor Votes For All Judicial Nominees.



PROMINENT DEMOCRAT SENATORS ON THE RECORD:

- ✓ **Tom Daschle (D-SD):** “I find it simply baffling that a Senator would vote against even voting on a judicial nomination.”
- ✓ **Harry Reid (D-NV):** “Once they get out of committee, let’s bring them here and vote up or down on them.”
- ✓ **Patrick Leahy (D-VT):** “I think the Senate is entitled to a vote in this matter, and I think the president is entitled for the Senate to vote, and I think the country is entitled for the Senate to vote.”
- ✓ **Edward Kennedy (D-MA):** “It is true that some Senators have voiced concerns about these nominations. But that should not prevent a roll call vote which gives every Senator the opportunity to vote ‘yes’ or ‘no.’”
- ✓ **Barbara Boxer (D-CA):** “I think, whether the delays are on the Republican side or the Democratic side, let these names come up, let us have debate, let us vote.”
- ✓ **Tom Harkin (D-IA):** “I’ll just close by saying that Governor [George W.] Bush had the right idea. He said the candidate should get an up or down vote within 60 days of their nomination.”
- ✓ **Carl Levin (D-MI):** “The truth of the matter is that the leadership of the Senate has a responsibility to do what the Constitution says we should do, which is to advise and at least vote on whether or not to consent to the nomination of nominees for these courts.”
- ✓ **Blanche Lincoln (D-AR):** “Honey, it’s rude!”

Senator Blanche Lincoln Said It Was “Rude” And “Irresponsible” For Judicial Nominees To “Not Even Be Voted Up Or Down.” “Although there aren’t any judges in my home state awaiting confirmation, I’m here because I’m appalled, as a woman and as a senator, about the games that are being played with these people’s lives and with our judicial system. . . . I was taught at an early age that public service is a high calling and a noble profession. We need to encourage it, not discourage it. I was also taught at an early age that there is absolutely no good excuse to be rude. And the way that we’re handling these confirmations is irresponsible, it’s unacceptable and it’s rude, to think that we are asking these people to put their life on hold, to not even be heard, to not have a hearing, to not even be voted up or down.” (Senator Blanche Lincoln, Press Conference, September 14, 2000)

Lincoln Pleaded To Give President Clinton’s Nominees “The Up Or Down Vote That They Deserve.” “If we want people to respect their government again, then government must act respectably. It’s my hope that we’ll take the necessary steps to give these men and these women especially the up or down vote that they deserve.” (Senator Blanche Lincoln, Press Conference, September 14, 2000)

Lincoln: “We’re Not Asking Them To Vote For These Nominees, We’re Just Asking Them To Vote.” “Why should we have to trade progress for partisanship? I mean, this is our duty. This is something we should be doing. We’re not asking them to vote for these nominees, we’re just asking them to vote. Give these people the courtesy that they deserve of being heard, you know, instead of asking them to put their lives on hold for 1,300 days.” (Senator Blanche Lincoln, Press Conference, September 14, 2000)

Lincoln Said Democrats Were “Poised To Be Fair And Timely” On President Bush’s Judicial Nominees. “I don’t think [President Bush’s] judicial nominees will be treated like Bill Clinton’s were,” said Arkansas Sen. Blanche Lincoln, a Democrat. “The Democrats are poised to be fair and timely and hold fair hearings.” (Kevin Freking, “Bickering To Persist On Judges,” *The Arkansas Democrat-Gazette*, June 10, 2001)

Lincoln, On Nominees Not Getting Their Day In The Senate: “Honey, It’s Rude!” “Sen. Blanche Lincoln (D-Ark.) also offered comments on the nine women whose nominations await consideration by the Senate. ‘Just saying they’re gonna do it and not do it?’ an exasperated Lincoln asked, rolling her eyes in disgust. ‘Honey, it’s rude!’ She explained, “This is truly just people dragging their feet.” (Betsy Rothstein, “Senate Dems Upset By Shelved Bills,” *The Hill*, September 20, 2000)

Senator Barbara Boxer Told Her Fellow Senators That Judicial Nominees Deserved An Up Or Down Vote. “I make an appeal: If we vote to indefinitely postpone a vote on these two nominees or one of these two nominees, that is denying them an up-or-down vote. That would be such a twisting of what cloture really means in these cases. It has never been done before for a judge, as far as we know--ever. Again, it would undermine what Senator Lott said when he said these people deserve an up-or-down vote.” (Senator Barbara Boxer, *Congressional Record*, March 9, 2000)

Boxer: “Let These Names Come Up, Let Us Have Debate, Let Us Vote.” “Mr. President, I am very glad that we are moving forward with judges today. We all hear, as we are growing up, that, ‘Justice delayed is justice denied,’ and we have, in many of our courts, vacancies that have gone on for a year, 2 years, and in many cases it is getting to the crisis level. So I am pleased that we will be voting. I think, whether the delays are on the Republican side or the Democratic side, let these names come up, let us have debate, let us vote.” (Senator Barbara Boxer, *Congressional Record*, January 28, 1998)

In 2000, Boxer Called The Treatment Of Women Nominated To The Bench A “Nightmare.” “I want to thank Senator Mikulski, I want to thank the American Association of University Women for organizing this effort to call attention to the shameful way that women nominees to the federal judiciary have been treated by this Republican Senate. Senator Mikulski has pointed out the long time that women and minorities have had to wait to get their day, if you will, in the Senate court, so they can take their seats on the judiciary. . . . So we’re here today to end that nightmare, to give the Republican Senate a wake-up call, to let the people of America know how these fine women are being treated, and we are here to say we are going to focus the light on this matter.” (Senator Barbara Boxer, Press Conference, September 14, 2000)

CALIFORNIA

DIANNE FEINSTEIN

In 1999, Senator Dianne Feinstein Said That “A Nominee Is Entitled To A Vote.” “A nominee is entitled to a vote. Vote them up; vote them down. To keep them hanging on – the court has 750 cases waiting for a judge. These judges are necessary.” (Senator Dianne Feinstein, *Congressional Record*, September 16, 1999)

Feinstein: “The Honest Thing To Do” Would Be To Have Votes On The Nominees, And “If We Don’t Like Them, We Can Vote Against Them.” “It is our job to confirm these judges. If we don’t like them, we can vote against them. That is the honest thing to do. If there are things in their background, in their abilities that don’t pass muster, vote no. I think every one of us on this side is prepared for that. The problem is, we have a few people who prevent them from having a vote, and this goes on month after month, year after year.” (Senator Dianne Feinstein, *Congressional Record*, September 16, 1999)

Feinstein Said That “Our Institutional Integrity Requires An Up-Or-Down Vote.” “Chief Justice Rehnquist recently said that ‘the Senate is surely under no obligation to confirm any particular nominee, but after the necessary time for inquiry it should vote him up or vote him down.’ . . . Our institutional integrity requires an up-or-down vote.” (Senator Dianne Feinstein, *Congressional Record*, October 4, 1999)

Feinstein, Commenting Specifically On Women And Minority Nominees: “Have The Decency To Give These People A Floor Vote.” “Women and minorities come up in the law in a different way Many male nominees have a background almost entirely in corporate law. Women and minorities are more likely to have a background in public service. But there are senators trying to block the confirmation of anybody with that kind of background. All we have said is have the decency to give these people a floor vote.” (Joel Connelly, “Sen. Feinstein Sees Senate GOP As Dangerously Rigid,” *Seattle Post-Intelligencer*, October 25, 1999)

Feinstein Said That “A Nominee Should Not Be Held Up Interminably By A Handful Of Senators.” “If a Senator has a problem with particular nominees, he or she should vote against them. But a nominee should not be held up interminably by a handful of Senators.” (Senator Dianne Feinstein, *Congressional Record*, October 4, 1999)

Feinstein Said It Was “A Disturbing Fact That Women And Minority Nominees Are Having A Difficult Time Getting Confirmed By The Senate.” (Senator Dianne Feinstein, *Congressional Record*, October 4, 1999)

CONNECTICUT

CHRISTOPHER DODD

Senator Christopher Dodd Warned That Slow Confirmations Of Judicial Nominations Would Cause “A Shutdown Of The Federal Judiciary.” “Connecticut’s two U.S. senators say their picks for the federal bench should be confirmed swiftly to combat a backlog of court cases facing the state and the nation. ‘You can’t have, in effect, a shutdown of the federal judiciary which is what we’re approaching if we don’t end up having the people in place,’ said Sen. Christopher J. Dodd, during a news conference Monday.” (Evan Berland, “Senators Tap U.S. Attorney, Litigator For Federal Benches,” *The Associated Press*, March 18, 1997)

Along With Senator Lieberman, Dodd Accused Republicans Of Holding The “Judicial System Hostage,” Costing Taxpayers Millions Of Dollars. “Republicans are holding our judicial system hostage, which sends the wrong message to criminals and costs taxpayers millions of dollars. It’s critical that we move these nominations through and end this dangerous backlog,’ Dodd and Lieberman said.” (Senator Christopher Dodd, Press Release, “White House Officially Nominates Connecticut Attorneys,” June 5, 1997)

CONNECTICUT

JOSEPH LIEBERMAN

Senator Joseph Lieberman Noted That Politicizing The Confirmation Process Was “Hurtful.” “I certainly hope there’s nothing political about the slowdown and, if there is, it’s silly—not silly, it’s hurtful,’ Lieberman said.” (Evan Berland, “Senators Tap U.S. Attorney, Litigator For Federal Benches,” *The Associated Press*, March 18, 1997)

In 2000, Lieberman Said He’d “Love” To See It Made “A Bit Harder To Filibuster.” “The centrist group also discussed lessening the power of individual senators in the next Congress by restricting the use of filibusters, cloture votes and other procedural maneuvers often used to thwart the will of the majority. ‘I’d love to see us make it a bit harder to filibuster,’ Lieberman said. ‘But I also want to make sure you figure out some ways for the minority to offer its programs.’ . . . This year, for example, senators have placed holds on a record number of judicial nominees and federal appointments. Similarly, both filibusters and cloture votes -- votes that end debate often before it has even begun -- have also sky-rocketed in the last several years. ‘There are always ways to frustrate rules that are intended to provide fairness,’ Lieberman said. ‘But it’s worth a try.’” (Allison Stevens, “Senate Centrists Seek To Defuse Partisan Strife,” *The Hill*, June 21, 2000)

Senator Joseph Biden Stated That All Nominees Are Entitled To A Vote On The Senate Floor. “But I also respectfully suggest that everyone who is nominated is entitled to have a shot, to have a hearing and to have a shot to be heard on the floor and have a vote on the floor.” (Senator Joseph Biden, *Congressional Record*, March 19, 1997)

Biden Said That It Is Inappropriate For The Senate To Not Bring Nominations To The Floor And Allow For A Vote. “It is totally appropriate for Republicans to reject every single nominee if they want to. That is within their right. But it is not, I will respectfully request, Madam President, appropriate not to have hearings on them, not to bring them to the floor and not to allow a vote, and it is not appropriate to insist that we, the Senators-we, the Senators-get to tell the President who he must nominate if it is not in line with the last 200 years of tradition.” (Senator Joseph Biden, *Congressional Record*, March 19, 1997)

Biden Believes Nominees Should Not Have To Answer How They Would Rule On Controversial Legal Issues. “I do not believe that the nominee should have to answer how he would rule on *Roe*. I do not believe he should have to do that because I think that sets a precedent that may very well come back and bite everything I believe in, even though I would like to know how he would rule on *Roe*.” (Senator Joseph Biden, Hearing Before The Senate Judiciary Committee, September 18, 1990)

Senator Bob Graham: “I Consider It A Judicial Emergency When A Judgeship Is Vacant For One Day More Than Necessary.” “The ability of the judiciary to do its job is significantly diminished by the slow speed at which judicial vacancies are filled. . . . The Judicial Conference declares a judicial emergency if a judgeship has been vacant for 18 months. Mr. President, I consider it a judicial emergency when a judgeship is vacant for one day more than necessary.” (Senator Bob Graham, *Congressional Record*, April 24, 1991)

In 1991, Senator Graham Introduced Legislation That Would Have Required A Full Senate Vote On Judicial Nominees Within 30 Days Of Committee Action. (S. 910, Introduced April 24, 1991)

In 1997, Graham Stated That He Would Work To Confirm Judicial Nominations “Without Needless Delay.” “The selection of federal judges—who are appointed for life—should be a thoughtful and deliberate process. I will continue to work to ensure that judicial nominations receive proper scrutiny, and to fill judicial vacancies in Florida without needless delay.” (Senator Bob Graham, Letter to the Editor, *St. Petersburg Times*, October 22, 1997)

Senator Daniel Akaka Called For Bipartisanship To Eliminate The “Backlog of Vacancies.” “I hope we will eliminate the existing backlog of vacancies at all levels of the federal court system in a bipartisan manner.” (Senator Daniel Akaka, Press Release, “Akaka Introduces Fairness In Judiciary Appointments,” March 5, 1997)

ILLINOIS

RICHARD DURBIN

Senator Richard Durbin Sought To Impose Accountability On The Senate For Nominees And Demanded, “Vote The Person Up Or Down.” “I think that responsibility requires us to act in a timely fashion on nominees sent before us. The reason I oppose cloture is I would like to see that the Senate shall also be held to the responsibility of acting in a timely fashion. If, after 150 days languishing in a committee there is no report on an individual, the name should come to the floor. If, after 150 days languishing on the Executive Calendar that name has not been called for a vote, it should be. Vote the person up or down. They are qualified or they are not. But to impose all of the burden on the executive branch and to step away from our responsibility I don’t think is fair.” (Senator Richard Durbin, *Congressional Record*, September 28, 1998)

Durbin Sponsored An Amendment To Force A Vote On Excessively Delayed Nominations. “I have filed and certainly hope to have an opportunity to offer some relevant amendments designed to address those instances of dilatory Senate Committee processing and floor inaction once a nominee is advanced to the calendar. . . . [One] amendment would require the Senate to take up for a vote any nomination which has been pending on the Executive Calendar in excess of 150 days. Such Senate consideration must occur within 5 calendar days of the 150th day. In effect, it creates an end point after which we can no longer hold up a nominee. I am not suggesting that we would give our consent to all of these nominees. I am basically saying that this process should come to a close. The Senate should vote. It should make its decision.” (Senator Richard Durbin, *Congressional Record*, September 28, 1998)

Durbin Lamented The Scrutiny Of Nominees As “Sad” And “Tragic.” “I also want to comment for a moment on the period of time that this very able nominee has waited for confirmation. It is unfortunate. In fact, it is sad, and it borders on tragic, that men and women who are prepared to give their lives to public service, who have gone through a withering process of investigation, by the FBI, by the Judiciary Committee, by the White House, by the American Bar Association, and so many others, still must wait over a year, in many cases, for their nominations to be considered by the Judiciary Committee and by this Chamber. . . . It does a great disservice to this country and to the judiciary for us to create a process that is so demanding that ordinary people would be discouraged from trying.” (Senator Richard Durbin, *Congressional Record*, March 19, 1997)

In 1998, Durbin Thought Failure To Confirm Judicial Nominees Imposed A “Hardship” On “Ordinary People In America.” “When the Senate fails to do its work and confirm judges, the hardship is imposed on ordinary people in America and they are puzzled: ‘Well, why is this the case? Why does it take so long for me to get my day in court?’ Is justice delayed truly justice denied? In many cases, it is. In this situation, unfortunately, the burden is on us, those men and women who sit in this Chamber and have the singular responsibility to confirm Federal judges.” (Senator Richard Durbin, *Congressional Record*, March 13, 1998)

In 1997, Durbin Complained About The Lack Of Movement On A D.C. Circuit Court. “I rise today to support the nomination of Merrick Garland to be judge on the D.C. Circuit Court of Appeals. It is interesting today in this debate that many people have spoken and no one has

questioned his integrity nor his ability. He was born in Chicago, graduated from Harvard College magna cum laude, Harvard Law School and . . . had a distinguished career both as a lecturer at Harvard Law School and partner in a prestigious firm, and then prosecuting cases in the District of Columbia during the past few years, served as well in the Department of Justice. Despite Mr. Garland's obvious and many qualifications for this job, we must vote on whether he will serve on the D.C. Circuit Court of Appeals. Frankly, we should leap at the opportunity to have him on that court." (Senator Richard Durbin, *Congressional Record*, March 19, 1997)

IOWA

TOM HARKIN

Senator Tom Harkin Declared That Filibustering Nominations Was Tantamount To Blackmail. "We had nominations that were filibustered. This was almost unheard of in our past. . . . It is used, Mr. President, as blackmail for one Senator to get his or her way on something that they could not rightfully win through the normal processes." (Senator Tom Harkin, *Congressional Record*, January 4, 1995)

Harkin Agreed That A Judicial Nominee "Should Get An Up Or Down Vote Within 60 Days Of Their Nomination." "I'll just close by saying that Governor Bush had the right idea. He said the candidate should get an up or down vote within 60 days of their nomination." (Senator Tom Harkin, Press Conference, September 14, 2000)

In 2000, Harkin Urged "The Republican Leadership To Take The Steps Necessary To Allow The Full Senate To Vote Up Or Down On These Important Nominations." (Senator Tom Harkin, *Congressional Record*, September 11, 2000)

Harkin Just Wanted A Vote, Regardless Of The Outcome. "If they want to vote against them, let them vote against them. That's their prerogative. But at least have a vote." (Senator Tom Harkin, Press Conference, September 14, 2000)

Harkin Used To Think That The Process Of Judicial Nominations Dragged On For Too Long. "Again, I'm sure I'm just going to echo the sentiments expressed by my colleagues on these judicial nominations. This process has been dragging on too long. The Senate should act promptly to fill these vacancies." (Senator Tom Harkin, Press Conference, September 14, 2000)

Harkin Vowed To Fight "Every Day" To Get Judicial Nominees A Vote. "I intend to make my point every day." (Jake Thompson, "Harkin Vows To Keep Fighting For Controversial Nomination," *Omaha World-Herald*, October 8, 2000)

LOUISIANA

MARY LANDRIEU

Senator Mary Landrieu Declared That The Federal Court System Should Not Suffer Because Of Partisan Differences. "Landrieu expressed hope that the vote for [James] Brady and other long-waiting judicial nominees signaled an end to 'partisan delays.' 'I am optimistic that this is a sign that both parties are willing to work together to ensure our federal court system does not suffer because of partisan differences in Washington,' Landrieu said." (Bruce Alpert, "Former Head of LA. Democrats Finally Confirmed To Judgeship," *The [New Orleans] Times-Picayune*, May 25, 2000)

In 2000, Senator Barbara Mikulski Urged Her Colleagues To Hold Hearings On Judicial Nominations And “Have Votes.” “[T]his is not only about color; it is about ensuring that there’s competency on the judicial bench. We’ve encouraged them to hold hearings, have votes, move this out.” (Senator Barbara Mikulski, Press Conference, September 14, 2000)

Mikulski Declared That Neither The Courts Nor America Have Time For Judicial Delays. “What we now have is a judicial emergency. Four of the 15 seats are vacant. Every woman and minority has delayed. We don’t have time for delays; the courts don’t have time for delays; America doesn’t have time for delays.” (Senator Barbara Mikulski, Press Conference, September 14, 2000)

Mikulski Criticized Republicans For Putting Minority Nominees At The “Back Of The Bus” For Judicial Hearings. “[I]n the Republicanly [sic]-controlled Congress, if you are a woman or a minority, you wait at the back of the bus. This party seems to forget that it was once the party of Lincoln, and now it is the party of judicial block.” (Senator Barbara Mikulski, Press Conference, September 14, 2000)

In 1998, Mikulski Likened Republicans To Klansmen For “Hiding In Processes” To Bottle Up President Clinton’s Judicial Nominations. “Then, U.S. Sen. Barbara Mikulski, a Maryland Democrat, compared Republicans in Congress holding up President Clinton’s judicial and Cabinet appointments to Klansmen... Mikulski, the keynote speaker, accused Republicans of ‘hiding in committees and hiding in processes’ to anonymously bottle up Clinton appointments, then criticized Klansmen for ‘hiding behind hoods and white sheets.’” (Tom Pelton, et. al., “Image Is Everything,” *The Baltimore Sun*, January 25, 1998)

Senator Paul Sarbanes Said That Denying Judicial Nominees “An Up Or Down Vote On The Senate Floor” Was The Equivalent Of Politicizing The Process. “This politicization, Mr. President, has been extended to include the practice of denying nominees an up or down vote on the Senate floor, or even in the Judiciary Committee. If the majority of the Senate opposes a judicial nominee enough to derail a nomination by an up or down vote, then at least the process has been served. Instead, however, the President’s nominees are not even receiving that courtesy from this Senate: Some of the individuals whose nominations are pending before the Judiciary Committee or the full Senate have not been allowed a vote on the floor, much less in committee, for close to 2 years. It is especially troubling that of the 14 nominees who have been held up the longest by the Republican majority in the Senate, 12 are women or minorities.” (Senator Paul Sarbanes, *Congressional Record*, December 15, 1997)

Sarbanes Said The Federal Judicial System Is The One Subject “That Should Remain Immune From Political Games.” “I submit to my colleagues, however, that if there is one subject that should remain immune from political games and pressure it is our Federal judicial system, which is the envy of the world for its independence and integrity, and which is absolutely

fundamental to our system of government. It is essential for the maintenance of public confidence in this system that the confirmation process be as far removed from politics as possible.” (Senator Paul Sarbanes, *Congressional Record*, December 15, 1997)

Sarbanes Complained That Nominees Were Not Even Allowed To “Be Considered By The Senate For An Up-Or-Down Vote.” “It is not whether you let the President have his nominees confirmed. You will not even let them be considered by the Senate for an up-or-down vote. That is the problem today. In other words, the other side will not let the process work so these nominees can come before the Senate for judgment. (Senator Paul Sarbanes, *Congressional Record*, March 19, 1997)

Sarbanes Called On Senators To Stop “Playing With The Federal Courts” and If They Object To A Nominee To “Voice That Objection and Vote Against Them.” “I just submit to you this game ought to stop. We ought not to be playing with the Federal courts in this way. If people have a legitimate objection to a particular nominee, they ought to voice that objection and vote against them and try to persuade their colleagues to vote against them. But this is crippling the courts.” (Senator Paul Sarbanes, *Congressional Record*, May 14, 1997)

Sarbanes Maintained That Politicizing The Confirmation Process Would Undermine “Public Confidence In the Judicial System.” “I just submit that we are not going to maintain public confidence in the judicial system, and we ought not to politicize the judicial process the way it is being done.” (Senator Paul Sarbanes, *Congressional Record*, May 14, 1997)

MASSACHUSETTS

EDWARD KENNEDY

Senator Edward Kennedy Said That Voting On Judicial Nominees Was Something That The Senate Owed To All Americans. “We owe it to Americans across the country to give these nominees a vote. If our Republican colleagues don’t like them, vote against them. But give them a vote.” (Senator Edward Kennedy, *Congressional Record*, February 3, 1998)

Kennedy Advocated A Vote On Judicial Nominees, Even If Some Senators Had “Concerns” About A Nominee. “It is true that some Senators have voiced concerns about these nominations. But that should not prevent a roll call vote which gives every Senator the opportunity to vote ‘yes’ or ‘no.’” (Senator Edward Kennedy, *Congressional Record*, September 21, 1999)

Kennedy Thought That Delaying Nominees Was An “Abdication Of The Senate’s Constitutional Responsibility.” “[D]elays can only be described as an abdication of the Senate’s constitutional responsibility to work with the President and ensure the integrity of our federal courts.” (Senator Edward Kennedy, *Congressional Record*, September 21, 1999)

Kennedy Called Stonewalling On Judicial Nominations A “Do Nothing” Tactic Used By A “Do Nothing” Senate. “This kind of partisan, Republican stonewalling is irresponsible and unacceptable. It’s hurting the courts and it’s hurting the country. It’s the worst kind of ‘do nothing’ tactic by this ‘do nothing’ Senate.” (Senator Edward Kennedy, *Congressional Record*, September 21, 1999)

Kennedy Saw Delays In The Confirmation Process As A “Gross Perversion.” “The continuing delays are a gross perversion of the confirmation process that has served this country well for more than 200 years.” (Senator Edward Kennedy, *Congressional Record*, September 21, 1999)

Kennedy Contended That Stalling And Refusing To Act On Judicial Nominations Was Not What The Founders Of The Constitution Had In Mind. “When the Founders wrote the Constitution and gave the Senate the power of advice and consent on Presidential nominations, they never intended the Senate to work against the President, as this Senate is doing, by engaging in a wholesale stall and refusing to act on large numbers of the President’s nominees.” (Senator Edward Kennedy, *Congressional Record*, September 21, 1999)

Kennedy Once Argued That It Was “Especially Unfair To Nominees Who Are Women And Minorities” To Have Their Vote For Confirmation Delayed. “The delay has been especially unfair to nominees who are women and minorities.” (Senator Edward Kennedy, *Congressional Record*, September 21, 1999)

Kennedy Accused Republican Leaders Of Playing “Politics With The Federal Judiciary” While “Justice Is Being Delayed And Denied In Courtrooms Across The Country.” “While Republican leaders play politics with the federal judiciary, countless individuals and businesses across the country are forced to endure needless delays in obtaining the justice they deserve. Justice is being delayed and denied in courtrooms across the country because of the unconscionable tactics of the Senate Republican majority.” (Senator Edward Kennedy, *Congressional Record*, September 21, 1999)

**MASSACHUSETTS
KERRY**

JOHN

Senator John Kerry Recently Said The Senate Puts Aside Differences For Qualified Nominees, Whether Liberal or Conservative. “We routinely put aside our partisan differences to send qualified men and women to the federal bench because it is in the best interests of our country to fill seats with those individuals who have pledged to interpret the law objectively and without bias, whether or not they happen to be liberal or conservative in temperament.” (Senator John Kerry, *Congressional Record*, November 19, 2002)

MICHIGAN

CARL LEVIN

Senator Carl Levin: “The Senate Should Not Be Playing Politics With The Federal Judiciary.” “[J]udgeships are currently vacant, causing undue delays in justice for citizens served by the Court.... The Candidates for these vacancies...deserve to have an up or down vote on their nominations. The Senate should not be playing politics with the Federal Judiciary.” (Senator Carl Levin, Press Release, May 24, 2000)

Levin Claimed The Nation “Deserves To Have” Nominees “Acted On” By The Senate. “These nominees deserve a vote. The districts in which they will serve surely deserve to have their nominations acted upon. I believe the nation, as a whole, deserves to have these nominees, and other nominees awaiting hearings and votes acted on by this Senate as well. . . . [N]ominees wait in vain for years just for a hearing. That strikes me as being an arbitrary and inexplicable system, unfair to nominees awaiting hearings, awaiting votes, and unfair to the districts or the circuits in which they would serve if confirmed. I believe it is also unfair – perhaps this is most important of all – to the people who await justice in their courts.” (Senator Carl Levin, *Congressional Record*, October 3, 2000)

Levin Said Senate Leadership Had A “Responsibility” To “Advise And At Least Vote” On Judicial Nominees. “Two of the women who we’re focusing on today are from Michigan. They are nominees for the Sixth Court of Appeals....The truth of the matter is that the leadership of the Senate has a responsibility to do what the Constitution says we should do, which is to advise and at least vote on whether or not to consent to the nomination of nominees for these courts.” (Senator Carl Levin, Press Conference, September 14, 2000)

MONTANA

MAX BAUCUS

Senator Max Baucus’ Spokesman Bill Lombardi Said Baucus Has Been Seeking To Expedite The Judicial Nomination Process. “Max has been pushing in the past several years to make sure that the Senate Judiciary Committee moves forward with naming judges to federal judgeships Justice delayed is justice denied.” (Mike Dennison, Mike. “Filling Montana’s Open Judgeship A Political Issue,” *Great Falls Tribune*, June 21, 2000)

**NEVADA
REID**

HARRY

Senator Harry Reid: “I Think We Should Have Up-Or-Down Votes In The Committee And On The Floor.” “I don’t think we should have litmus tests for members of the sub-Cabinet, the Cabinet or the judges. . . . [Y]ou take the 106th Congress, it took 285 days on an average to get a judge approved; 103rd Congress when we controlled, it was 80 days. So you can see the difference there. Fifty five percent of President Clinton’s judicial nominations to the appellate court were turned down. We’re not going to do that. We’re going to have hearings. We’re going to have the process vetted as soon as possible. And I think we should have up-or-down votes in the committee and on the floor.” (Senator Harry Reid, CNN’s “Evans Novak Hunt & Shields,” June 9, 2001)

Reid: “Once They Get Out Of Committee, Let’s Bring Them Here And Vote Up Or Down On Them.” “[W]e now have 30 nominations pending. Once they get out of committee, let’s bring them here and vote up or down on them. I don’t know Richard Paez. I talked to him on the phone. I have talked to his mother. I think anybody who has to wait 4 years deserves an up-or-down vote. I say to my friend that if there is something wrong with Judge Paez or Ms. Berzon, come out here and vote them down.” (Senator Harry Reid, *Congressional Record*, March 7, 2000)

Reid Said That Democrats Wanted Judges Approved And That Republicans Were Holding Up Female And Minority Nominees. Harry Reid: “You know, this is unbelievable. Of course there’s only been one vote taken, but that’s all they’ll let us take. All the minorities are being held up – women – Judge Paez has been there almost four years waiting for a vote. We’re happy to vote on minorities or anyone. We want judges approved.” **Mitch McConnell:** “Harry, we’ve already approved more minorities and women than any Senate in history.” **Harry Reid:** “We want judges approved. They won’t let us do it.” (“Fox News Sunday,” October 31, 1999)

NEW JERSEY

FRANK LAUTENBERG

Senator Frank Lautenberg Said Timely Confirmations Ensure “Citizens Will Receive Justice Promptly and Fairly.” “We must ensure that the federal bench is at full strength so that our citizens will receive justice promptly and fairly.” (Senator Frank Lautenberg, *Congressional Record*, September 13, 1999)

Lautenberg Lamented That The Confirmation Process Is “Mired In Politics.” “The process for confirming federal judges is mired in politics, and prompt and efficient justice is denied our citizens. We risk entering the new century with crowded dockets, long delays and growing frustration on the part of those seeking justice in our nation’s federal courthouses.” (Senator Frank R. Lautenberg, “Justice Held Hostage In New Jersey,” *New Jersey Law Journal*, October 18, 1999)

Lautenberg Blasted A Colleague’s Hold On A Judicial Nominee, Calling It “Extremism Run Amok.” “This is extremism run amok. It’s outrageous . . . It’s almost unbelievable.” (Ron Hutchison, “Hutchison Block Of Judicial Nominee Deadlocks Senate,” *Fort Worth Star-Telegram*, August 3, 1996)

Lautenberg Declared That A Senator’s Political Views Should Not Affect The Confirmation Of Judicial Nominees. “But Sen. Frank R. Lautenberg, D-N.J., who criticized Republicans for opposing the nomination [of H. Lee Sarokin for the Third Circuit Court of Appeals] for partisan reasons, defended Sarokin. ‘He has not allowed his personal views to affect his judicial decision[s]. And we should not allow our personal or political views to affect our judgment on his fitness for the job,’ Lautenberg said.” (Jennifer Buksbaum, “Senate Confirms Judge H. Lee Sarokin For 3rd Circuit Court Of Appeals,” *States News Service*, October 4, 1994)

NEW YORK

HILLARY CLINTON

As A Candidate For The Senate, Hillary Clinton Lamented That Nominees Were Not Given An “Up Or Down” Vote. “The Senate is bottling up people who deserve to be voted on - up or down.” (Paul Shepard, “In Poke At Bush, First Lady Tells NAACP Compassionate Isn’t Enough,” *The Associated Press*, July 11, 2000)

NEW YORK

CHARLES SCHUMER

In 2000, Senator Charles Schumer Pleaded With His Colleagues To Bring Judicial Appointments To A Vote “With Alacrity.” “The basic issue of holding up judgeships is the issue before us, not the qualifications of judges, which we can always debate. The problem is it takes so long for us to debate those qualifications. It is an example of Government not fulfilling its constitutional mandate because the President nominates, and we are charged with voting on the nominees. . . . I also plead with my colleagues to move judges with alacrity – vote them up or down. But this delay makes a mockery of the Constitution, makes a mockery of the fact that we are here working, and makes a mockery of the lives of very sincere people who have put themselves forward to be judges and then they hang out there in limbo.” (Senator Charles Schumer, *Congressional Record*, March 7, 2000)

Schumer Said Government Does Not Fulfill Its Constitutional Mandate When Judicial Nominees Do Not Receive A Vote. “The basic issue of holding up judgeships is the issue before us, not the qualifications of judges, which we can always debate. The problem is it takes so long for us to debate those qualifications. It is an example of Government not fulfilling its constitutional

mandate because the President nominates, and we are charged with voting on the nominees.”
(Senator Charles Schumer, *Congressional Record*, March 7, 2000)

NORTH CAROLINA

JOHN EDWARDS

Senator John Edwards Demanded That The Senate Act On Qualified Nominees Without Regard To Partisan Affiliation. “We should be nominating judges. Whether it is a Democratic or a Republican administration, it shouldn’t make any difference in nominating well-qualified judges. This body should act on the qualification of those men and women to serve on the court, not based upon the Republican or Democratic composition of the court. It is just that simple. This should be totally nonpartisan. My State has no one representing them on the Fourth Circuit. There is not, nor has there ever been, an African American judge on this court. The simple bottom line is that we have the responsibility of deciding how many judges should be authorized for that court.” (Senator John Edwards, *Congressional Record*, October 3, 2000)

NORTH DAKOTA

BYRON DORGAN

Senator Byron Dorgan Accused Senate Republicans Of Stalling On President Clinton’s Judicial Nominees. “Can I just make a point on this issue of stalling . . . because I think it’s important. . . . This Congress, in this area, has been dragging their feet and stalling because they don’t want to appoint or they don’t want to confirm judges that are sent down to the Congress by this president. And, I mean, I think that just lays bare the issue of who is doing what around here. On judicial appointments, the evidence is quite clear.” (Senator Byron Dorgan, Press Conference, October 12, 2000)

Dorgan Stated That There Would Be No “Foot Dragging” On President Bush’s Nominees. “We’re moving expeditiously on the president’s nominees, refusing to return in kind the foot dragging and delay accorded so many of then President Clinton’s nominees.” (Senator Byron Dorgan, “Senate Democrats Set To Accomplish Goals,” *The Hill*, July 25, 2001)

Dorgan Said That Democrats Were “Not Going To Hold Up Judicial Nominations.” “[M]y expectation is that we’re not going to hold up judicial nominations. . . . It is not our intention as a caucus to hold them up. . . . We’re not going to keep nominations bottled up for years, we’re just not going to do that.” (Senator Byron Dorgan, “Fox News Sunday,” June 3, 2001)

RHODE ISLAND

JACK REED

Senator Jack Reed Urged His Colleagues To “Take Their Constitutional Duty Seriously” And To Vote On Judicial Nominees Based Upon Their Qualifications. “I ask my colleagues today take their constitutional duty seriously and vote for these nominees on the basis of their objective qualifications, and not on the basis of petty politics. This process is much too important to the citizens of this great democracy to do otherwise.” (Senator Jack Reed, *Congressional Record*, March 9, 2000)

Reed Acknowledged That The Public Expects The Senate To Act Quickly On Judicial Nominations “Without Regard To Politics.” “More often than not, nominations move through

the Senate the way they're supposed to. However, in this case, the system has broken down. As a result, considerable public attention is being paid to this nomination, especially among members of the Latino community, because the Senate is not doing its job. This is troubling. In regards to nominations, the public rightly expects us to move judiciously and expeditiously and without regard to politics." (Senator Jack Reed, *Congressional Record*, March 9, 2000)

SOUTH DAKOTA

TOM DASCHLE

Senator Tom Daschle Questioned Why A Senator Would Ever Oppose Voting On A Judicial Nominee, Calling For An Up-Or-Down Vote "On Every Nomination." "I find it simply baffling that a Senator would vote against even voting on a judicial nomination. . . . Thus, today, I implore, one more time, every Senator to follow Senator Leahy's advice, and treat every nominee 'with dignity and dispatch.' Lift your holds, and let the Senate vote on every nomination." (Senator Tom Daschle, *Congressional Record*, October 5, 1999)

Daschle: "It Is Wrong Not To Have A Vote On The Senate Floor. What Are They Afraid Of?" "I don't know how Members tell the Hispanic community we are being equally as fair with them as we are with all non-Hispanic judges when that simply is not true. If one is in a minority, that person has a bigger contest in getting confirmed. That is a fact. I won't deal with all the perceptions that creates, but it is wrong. Hispanic or non-Hispanic, African American or non-African American, woman or man, it is wrong not to have a vote on the Senate floor. What are they afraid of? What are they afraid of? What is wrong with a vote? There is something wrong in our system when somebody has the right to tell somebody who is willing to commit him or herself to public service that we are going to make that person wait 3 1/2 years just to get a vote. We are not going to tell them what is wrong. We are not going to say if there is something wrong in their background. We are not going to debate whether they have qualifications or not. We are going to make them wait, and hopefully they will go away. Hopefully, they will go away. What does that say? What does that say about the intentions of people on the other side? Go away. Don't make any noise. That is wrong. That is worse than a legislative landfill." (Senator Tom Daschle, *Congressional Record*, October 28, 1999)

Daschle Quoted Chief Justice Rehnquist In Stating That The Senate Was Obligated To Have An Up-Or-Down Vote On Judicial Nominees. "As Chief Justice Rehnquist has recognized: 'The Senate is surely under no obligation to confirm any particular nominee, but after the necessary time for inquiry it should vote him up or vote him down.' An up-or-down vote, that is all we ask for Berzon and Paez." (Senator Tom Daschle, *Congressional Record*, October 5, 1999)

Daschle Said That Senators Have "A Constitutional Outlet For Antipathy Against A Judicial Nominee – A Vote Against That Nominee." "Today's actions prove that we all understand that we have a constitutional outlet for antipathy against a judicial nominee – a vote against that nominee." (Senator Tom Daschle, *Congressional Record*, October 5, 1999)

Daschle Pleaded With His Colleagues To Have A Vote On The Judicial Nominations, And Vowed To Continue Pressing For That Vote. "All we are asking of our Republican colleagues is to give these nominees the vote – and hopefully the fair consideration – they deserve. We will press this issue every day and at every opportunity until they get that vote." (Senator Tom Daschle, *Congressional Record*, October 5, 1999)

Daschle Stated That Holding Up Judicial Nominees For Months Or Years Constituted “An Extraordinary Unfairness, Not Only To The Nominees But To The System Itself.” “These [judicial nominations] are important matters. As the majority leader has heard me say, and others say, now for some time, in some cases they have been pending not for months but for years. For anyone to be held that long is just an extraordinary unfairness, not only to the nominees but to the system itself.” (Senator Tom Daschle, *Congressional Record*, October 1, 1999)

Daschle Said That It Was “Incredibly Unfair” To Block An Up-Or-Down Vote On Judicial Nominations. “It’s just so incredibly unfair to me that they would continue to persist in their determination not to allow these very qualified people to have even a vote.” (Senator Tom Daschle, Press Conference, September 22, 1999)

**VERMONT
LEAHY**

PATRICK

Senator Patrick Leahy Declared That The Senate, The President And The American People Are Entitled To Have A Vote For Judicial Nominees. “I think the Senate is entitled to the recommendation of the committee and you made the recommendation by the vote just taken. But I think the Senate is entitled to a vote in this matter, and I think the president is entitled for the Senate to vote, and I think the country is entitled for the Senate to vote. I would hope it’d be sent to the Senate, let the full Senate act.” (Senator Patrick Leahy, Hearing Before The Senate Judiciary Committee, November 6, 1997)

“Vote Them Up Or Down,” Leahy Told The Senate. “But I think they have given the President of the United States the benefit of the doubt, and if the person is otherwise qualified, he or she gets the vote. . . . Vote them up or down.” (Senator Patrick Leahy, *Congressional Record*, September 21, 1999)

Quoting Chief Justice Rehnquist, Leahy Urged The Entire Senate To Have A Vote On Judicial Nominees. “Some current nominees have been waiting a considerable time for a Senate Judiciary Committee vote or a final floor vote. . . . The Senate is surely under no obligation to confirm any particular nominee, but after the necessary time for inquiry, it should vote him up or vote him down.’ Which is exactly what I would like.” (Senator Patrick Leahy, *Congressional Record*, March 7, 2000) (quoting Chief Justice Rehnquist)

In 1998, Leahy Reminded His Senate Colleagues That It Is The President’s Right To Appoint Judges. “That’s not the way it is. I mean, the Republicans didn’t win the election anymore than Ronald Reagan would have said Democrats ought to pick the judges he appoints. It’s whoever wins the election appoints the judges.” (NPR’s “Morning Edition,” July 20, 1998)

Leahy Called The Blocking Of Judicial Nominees Unprecedented And Begged Other Senators To Be Honest Enough To At Least Vote. “For some reason, about halfway through President Clinton’s first term, when Republicans took control of the Senate, they made a conscious decision to slow down and block as many of his nominations to the courts as they could, which is really an unprecedented position,” said Patrick Leahy, D-Vt., the ranking Democrat on the Senate Judiciary Committee. . . . ‘We’re saying at least be honest enough to vote on him,’ Leahy said. ‘If

you don't want him, you've got 55 votes, you can defeat him." (John Berlau, "Partisanship Or Politics As Usual?" *Investor's Business Daily*, October 18, 1999)

WASHINGTON

PATTY MURRAY

Senator Patty Murray Claimed That Inaction On Female And Minority Nominees Was Denying Justice And Holding The System Hostage. "We are here today to strongly object to the Republican majority who continues to block the confirmation of qualified judges, especially women and minorities. This is about justice, and justice delayed is justice denied. By failing to confirm nominees, the Republicans have delayed justice for those who rely on our overburdened court system. As a result of their inaction, cases are piling up in dockets across America. Our justice system is being held hostage, and America's communities are paying the price." (Senator Patty Murray, Press Conference, September 14, 2000)

Murray: Republicans Have Created A "Glass Ceiling" For Female And Minority Judicial Nominees. "This delay is especially troubling when we look at what's happened to women and minorities. . . . Unfortunately, Republicans have created a glass ceiling that blocks the confirmation of women judges. It's time to dismantle that glass ceiling and let qualified jurists take their place on the bench. We are here to send a message to the Republican leadership: Confirm the judicial nominees pending before the Senate, and let these qualified men and women fill the vacancies in courtrooms across America." (Senator Patty Murray, Press Conference, September 14, 2000)

WISCONSIN

RUSS FEINGOLD

Senator Russ Feingold Said It Was A "Simple Courtesy" To Have An Up Or Down Vote On A Confirmation. "All Judge Paez, has ever asked for was this opportunity: an up or down vote on his confirmation. Yet for years, the Senate has denied him that simple courtesy." (Senator Russ Feingold, *Congressional Record*, March 8, 2000)

Feingold Stated That A Nomination Delayed Was "Justice Delayed." "A nomination delayed is justice delayed. As we know, justice delayed is justice denied. A vacancy unfilled is justice unfulfilled." (Senator Russ Feingold, Hearing Before The Senate Judiciary Committee, June 10, 1999)

Feingold Stated That The Senate's Failure To Confirm A Hispanic Nominee Would Send A Subtle Message To Hispanic Americans That "Circuit Court Judgeships Are Not Open To Them." "And the subtle, even subconscious message sent to Hispanic Americans when they examine who hears their disputes in a court of law is that Circuit court judgeships are not open to them. Young Hispanic Americans hearing about Judge Paez will unfortunately learn the message without it ever being said out loud that there are limitations to their advancement in careers of public service." (Senator Russ Feingold, *Congressional Record*, March 8, 2000)

WISCONSIN

HERB KOHL

Senator Herb Kohl Stated That Judicial Nominees Deserved An Up Or Down Vote. “Like Tim Dyk and Ted Stewart, there are many other deserving nominees out there. Let’s not play favorites. These nominees, who have to put their lives on hold waiting for us to act, deserve an ‘up or down’ vote. And, more importantly, the American people deserve prompt action, so that our courts can stay on top of their workload, and continue putting criminals behind bars.” (Senator Herb Kohl, *Congressional Record*, September 21, 1999)

Kohl Declared The Judicial Confirmation Process “Shouldn’t Be About Politics.” “[W]e need these judges, both to prosecute and sentence violent criminals and to prevent more backlogs in civil cases. This is about justice – it shouldn’t be about politics.” (Senator Herb Kohl, *Congressional Record*, May 15, 1997)

Kohl Urged Votes On Nominees Who Had Been Approved By The Judiciary Committee. “[L]et’s breathe life back into the confirmation process. Let’s vote on the nominees who have already been approved by the Judiciary Committee, and let’s set a timetable for future hearings on pending judges. Let’s fulfill our constitutional responsibilities; justice demands that at a minimum.” (Senator Herb Kohl, *Congressional Record*, May 15, 1997)