

Constitution says that we present a bill to the President; he either signs it or vetoes it. His veto is subject to override on a two-thirds vote. But, the President cannot pick and choose among the provisions of the act.

When we passed the PATRIOT Act, there were some provisions very carefully negotiated as to congressional oversight. No objection had been raised by the Department of Justice in our discussions as we negotiated about the bill. And then, when the President signed the bill, the President specifically said that he would not pay attention to those provisions if he felt that his Executive power would be impinged upon. If he disagreed with the provisions, he should have told us before we legislated.

Similarly, in the McCain Anti-Torture legislation, which passed the Senate 90 to 9, a compromise was struck between the White House and Senator MCCAIN. And here again, the President's signing statement seems to undermine the compromise that was struck.

I am not going to reintroduce the legislation now because we are discussing some modifications with some of my Senate colleagues, and I am going to defer for a brief period of time to see if we can get additional cosponsors.

#### JUDICIAL NOMINATIONS

Mr. SPECTER. Madam President, finally, a brief comment on judicial nominations. During the course of the 109th Congress, the Senate confirmed two Supreme Court Justices, Chief Justice Roberts and Justice Alito, 16 Court of Appeals judges, 35 District Court judges, and 1 Court of International Trade judge. At the close of the 109th Congress, there were 13 District Court nominees on the Executive Calendar, but were held up on a technicality.

I am pleased to say that Senator LEAHY advised me earlier today he is going to put those 13 nominees on the first executive session of the Judiciary Committee next week, so they will be confirmed. There was no objection raised to them in the last Congress, except they were tied up on a concern raised by one Senator about a nominee for the Western District of Michigan.

In the last Congress, we were also able to confirm a number of judges—circuit judges, who have been held up for a long period of time: Priscilla Owen, pending since 2001; Janice Rogers Brown, pending since 2003; William Pryor, pending since 2003; Brett Kavanaugh, pending since 2003.

I ask unanimous consent that my full statement be printed in the RECORD at the conclusion of these extemporaneous remarks.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

#### JUDICIAL NOMINATIONS

Mr. SPECTER. Madam President, I seek recognition today, to discuss one of this

body's most important responsibilities; namely, our responsibility to provide advice and consent on the President's judicial nominations.

At the outset, I would like to take a few moments to remind my colleagues of the Judiciary Committee's success during the last Congress in moving the President's judicial nominees through the confirmation process in a timely manner.

During the last Congress, the Senate confirmed 54 Article III judges, including the Chief Justice of the United States, an Associate Justice of the Supreme Court, 16 Court of Appeals judges, 35 District Court judges, and one Court of International Trade judge. The Senate could have, and I believe should have, confirmed 13 more District Court nominees before the conclusion of the last Congress. All of these qualified men and women were favorably reported by the Judiciary Committee without a single dissenting vote. Many of them are nominated to vacancies that have been deemed judicial emergencies. I hope we can promptly move to confirm all of these men and women in the new Congress. Failure to do so will continue to delay justice in courts from Pennsylvania to California. I have asked my friend and new Judiciary Committee Chairman Senator LEAHY to place these nominees on our Committee's very first executive business meeting. I am happy to report that he has agreed to do so.

I remind my colleagues that at the beginning of the last Congress judicial confirmations, particularly to the Circuit Courts, were at a virtual standstill with many nominees subject to filibusters. Much of the debate in this chamber during the first months of the 109th Congress involved whether or not to invoke the so-called "Constitutional Option," whereby the rules of the Senate would be altered to allow for a vote on Circuit Court nominees. Thankfully, the Senate managed to avert a major showdown over this debate and instead confirmed highly qualified nominees to the Courts of Appeals, several of whom had been pending for many years. These included Priscilla Owen (pending since 2001); Janice Rogers Brown (pending since 2003); Bill Pryor (pending since 2003); and Brett Kavanaugh (pending since 2003).

So in the last Congress we managed to move to a vote on many long languishing nominees. We also moved expeditiously on new nominations. It was my practice as Chairman to schedule a prompt hearing on every judicial nomination as soon as all necessary materials were received and the nominee was prepared to move forward. Once given a hearing, every nominee was placed promptly on the Committee's agenda for consideration. I believe our practice, while avoiding unnecessary delay, also ensured that each nomination was thoroughly vetted so that the Senate had the information it needed to come to a vote.

In short, the Judiciary Committee and the Senate, by following regular order, carried out our Constitutional responsibilities. As a result, the federal court vacancy rate fell to as low as 4.8% during my tenure as Chairman. This is among the lowest vacancy rates in the last 20 years. Unfortunately, in part because of our failure to confirm the 13 district court nominees late in the last Congress, the vacancy rates have increased during the fall and winter.

I cite this recent history and these statistics as examples of what can be done in this body when we work hard and put fairness ahead of partisanship. I committed myself to this principle as Chairman of the Judiciary Committee and I am hopeful we can continue to work in this vein during the 110th Congress under the Chairmanship of Senator

Leahy. Working together, I believe we can avoid some of the acrimony that has poisoned the nominations process in recent years.

In fact, I want to give Senator LEAHY a good bit of credit. He worked cooperatively with us to ensure that nominees were moved during the 109th Congress. There were times when our friends across the aisle could stymie our efforts to process nominees, but Senator LEAHY worked with me to enable the Senate to carry out its constitutional responsibilities.

That is why I am troubled by recent suggestions that it is appropriate to dramatically slow the confirmation process during the last two years of a president's term. Our Constitutional duties remain, despite the fact that we are now beginning a Presidential election cycle. Past Congresses have been very productive on judicial nominations during Presidential elections cycles and we should be as well.

The record shows that the Senate has confirmed numerous nominees during the last two years of every modern president's term in office. For example, in the last two years of the Carter Administration, the Senate confirmed 44 Circuit Court nominees and 154 District Court nominees.

During the last two years of the Reagan Administration, the Senate confirmed 17 Circuit Court nominees and 66 District Court nominees.

During the last two years of the George H.W. Bush Administration, the Senate confirmed 20 Circuit Court nominees and 100 District Court nominees.

During the last two years of the Clinton Administration, the Senate confirmed 15 Circuit Court nominees and 57 District Court nominees.

In many of these cases the Senate was controlled, sometimes by a substantial margin, by a different party than that which controlled the White House. I see no reason why this Senate should not be at least as productive as the Republican controlled Senate which confirmed 15 Circuit Court nominees during President Clinton's final two years in office.

I would also like to address what has been called the "Thurmond Rule." Some have suggested that this so-called rule holds that the Senate should dramatically curtail confirmations after the spring of a presidential election year. Review of the historical record suggests that this rule is more myth than reality.

It does not appear that Senator Thurmond, for whom the purported rule is named, ever publicly asserted that nominations should be delayed due to an impending presidential election. The only comment that could be so construed was made after the Committee approved ten nominees at a September 17, 1980 markup. He stated, "[L]et me make the point [that] the Minority has tried to be more than fair in considering all of the nominees that have appeared before this Committee. I would remind [the Committee] it is just about six weeks before the election, and I want to say that for a year and a half before the last election, there was no action taken on judges when we had a Republican President." However, because Senator Thurmond used this as a point of contrast, the natural implication seems to be that he considered blocking nominations in the lead up to an election unfair.

The fact of the matter is that the Senate has regularly confirmed judges in presidential election years. In the election year of 1980, when it is asserted Senator Thurmond inaugurated the so-called rule, the Senate confirmed ten Circuit Court nominees and 53 District Court nominees. Several of the Circuit Court nominations were high profile

nominees with well-known credentials. Many of these nominees were confirmed relatively late in the year.

Between June 1 and September 1, 1980, the Senate confirmed four Circuit Court nominees and 15 District Court nominees, including then-ACLU General Counsel Ruth Bader Ginsburg, who was confirmed June 18, 1980.

After September 1, 1980, the Senate confirmed two more Circuit Court nominees and eleven District Court nominees. The first Circuit Court nominee, Stephen Reinhardt of the Ninth Circuit, who is now thought to be one of nation's most liberal jurists, was confirmed on September 11, 1980.

More remarkable is the second Circuit Court nominee, that of Stephen Breyer to the First Circuit. Justice Breyer was then Senator Kennedy's Chief Counsel. He was nominated by President Carter on November 13, 1980, after Carter had lost the election to Ronald Reagan. The Senate, which was also about to switch party control, held a swift confirmation hearing and voted to confirm Breyer on December 9, 1980.

The presidential election year of 1980 was not an aberration, the pattern continued in subsequent election years. In 1988, President Reagan's last year in office, the Senate confirmed seven Circuit Court nominees and 33 District Court nominees. In 1992, President George H.W. Bush's last year in office, the Senate confirmed eleven Circuit Court nominees and 53 District Court nominees. In 2000, President Clinton's last year in office, the Senate confirmed eight Circuit Court nominees and 31 District Court nominees.

Furthermore, many of these presidential election year confirmations occurred late in the year. Since 1980, 110 judges were confirmed after July 1st of a presidential election year, 17 of those were confirmed to Circuit Courts. In the same period, 63 judges were confirmed after September 1st of presidential elections years, twelve of those to Circuit Courts. In short, there does not appear to be any historical basis for the so-called "Thurmond Rule." The Senate has confirmed numerous nominees during presidential election years, and I expect that with Senator Leahy and I working together, we will do so again next year.

In fact, I think it's time to move beyond some of the more acrimonious judicial battles of the past. I think the country is served best when the Senate fulfills its constitutional duty and votes on the President's nominees.

I have called on the White House to consult with Senator Leahy and Leader Reid during the nomination process. I have also worked to ensure that judicial nominees are afforded prompt consideration and fair treatment by the Judiciary Committee. I plan to continue to do that as the Ranking Member and am confident that under Senator Leahy's leadership, our Committee will fairly and expeditiously consider judicial nominees.

Aside from the responsibility the Senate has to vote up or down on the President's nominees, we cannot forget that these people, who have agreed to undertake important government service, have family considerations and professional lives that are often adversely impacted when their careers are out on hold because of a pending nomination. We should never forget that these nominees, whether a Member decides ultimately to support them or not, are deserving of our thanks for their willingness to undergo this process and to offer their services to the American people. They deserve fair treatment by this body.

I trust that during the 110th Congress the Senate will work productively to ensure that nominees are treated fairly and that judicial vacancies are filled as soon as possible. I

look forward to working with the White House and with Chairman Leahy to that end. I yield the floor.

Mr. SPECTER. Madam President, in the absence of any other Senator on the floor, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. LEAHY. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. LEAHY. Madam President, what is the parliamentary situation?

The PRESIDING OFFICER. The Senate is in morning business, with Senators permitted to speak therein for up to 10 minutes.

The Senator from Vermont is recognized.

Mr. LEAHY. I thank the Chair.

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

Mr. LEAHY. Madam President, I realize I have gone over the appropriate time, and I appreciate the Chair not calling me on it.

I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER (Mrs. LINCOLN). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. KYL. Madam President, I ask unanimous consent the order for the quorum call be rescinded.

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

#### WORKING TOGETHER

Mr. KYL. Madam President, this has been a good day. It is a day on which many of us were sworn in and a day that the Senate began again to function in this new 110th Congress. It began with a rather historic meeting called by the new majority leader, HARRY REID, in the Old Senate Chamber, a place which I explained to my family is so imbued with the history of the United States and the history of the Senate that one cannot but help feel a sense of responsibility, a special sense of duty when functioning as a Senator in that Old Senate Chamber. Frequently there are people there who remind us of some of the history to call on us to try to rise to the same level to which many of the great Senators in the history of this country rose in the most difficult and challenging times of our country.

I believe it was Senator KENNEDY who reminded us that exactly on this day, at the very beginning of the Civil War, the Senators from the South left the Senate Chamber for the last time. They did not meet with the Senate thereafter because of the beginning of the Civil War, and that is when the Senate moved from the Old Senate Chamber to the Chamber we are now in—here.

There is a great deal of a sense of mission and of history and of responsibility when we meet in a place such as that. The purpose for the meeting was to begin this new Congress thinking about something that we have tended to forget in recent months and even, I would say, years, and that is the degree to which Senators had in the past worked together to get the people's business done.

Unlike under the rules of the House of Representatives in which the majority pretty much rules and the minority has very little power, in the Senate the minority and the majority must work together to get anything done because of the rules. With a 51-49 division right now, it is obvious that this body is almost equally divided and that under our rules we are going to have to work very well together to get anything done.

In the past there has been—and I would say leading up to the last election—a special amount of politicking and of negativity, the sort of "gotcha" kind of politics that is designed to score political points; a cynicism, a lack of comity. I think we always see that a little bit before an election but I felt it much more oppressively in the runup to this last election.

Someone has pointed out that perhaps with a divided Government now, in the sense that Democrats control the Congress and the Republican Party controls the executive branch, actually there may be much less incentive for either side to engage in that kind of politics and, to the contrary, much more incentive for both sides to try to work with each other to get things done. The reputation of Democratic Senators and Representatives will depend to some extent on how much they can accomplish. They will have to have Republican help to accomplish things. The last 2 years of the Bush Presidency will depend a great deal on how much he, working with the Congress, can get done in these 2 years. He can't do anything on his own. He has to sign bills that we pass. So he has to work with us, meaning that Republicans working with him also have to reach across the aisle and work with our colleagues in the Democratic Party.

I thought some things the Republican leader, MITCH MCCONNELL, said today were especially appropriate in this regard. I want to close our day today, reiterating some of the thoughts he expressed with which I am in total agreement. He said this:

The Senate can accomplish great things over the next 2 years, but this opportunity will surely slip from our grasp if we do not commit ourselves to a restoration of civility and common purpose.

New Democratic colleague BERNIE SANDERS from Vermont, with whom I served in the House—we got reacquainted today—said, Are you enjoying it over here? I hesitated. And he laughed. We had a discussion about the fact that it can be very enjoyable when you work together to try to get something done. You have to work with