We reported the Juvenile Justice and Delinquency Prevention Reauthorization Act just last week. And after many working sessions, we were finally able to report the historic Free Flow of Information Act to establish a qualified privilege in Federal law for journalists to protect their confidential sources and the public's right to know.

Through the course of the year Senators on this Committee contributed to enactment of the Lilly Ledbetter Fair Pay Act, Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act, the Fraud Enforcement and Recovery Act, the OPEN FOIA Act, the Human Rights Enforcement Act, the Webcasters Settlement Act, an extension of the EB–5 program for three years, an end to the ''widow penalty'' in immigration law, the Judicial Survivors Protection Act, the Reserve Officers Modernization Act, the charter for the Military Officers Association of America, as well as legislation to keep the Patent Office on a financial footing, and legislation to clarify statutory time periods for litigation. We worked to include in the American Recovery and Reinvestment Act provisions to provide needed funding to state and local law enforcement and to protect privacy as we improve healthcare information technology.

Many of us worked for Senate passage of the District of Columbia House Voting Rights Act.

Within the health insurance reform legislation being passed by the Senate this week are provisions we worked on to improve our anti-fraud efforts and to provide recourse for those harmed by health services.

I thank the members of the Senate Judiciary Committee for their contributions and cooperation.

JUDICIAL AND EXECUTIVE NOMINATIONS

Mr. LEAHY. Mr. President, I have been calling on the Republican leadership to end the delays and obstruction of judicial nominations and join with us to make progress in filling some of the many vacancies on Federal circuit and district courts. I have done so repeatedly for most of the year, and several times over this last month. Regrettably, as we head into the winter recess and the end of the first session of the 111th Congress, Republican obstruction is setting a new low for the Senate in our consideration of judicial nominations.

The Senate has been allowed to confirm only one judicial nominee all month. It is now December 23. By this date in President Bush's first year in office, the Senate with a Democratic majority confirmed 10 nominations just in December to reach a total of 28 confirmed Federal circuit and district court nominees in the first session of the 107th Congress. That is 10 times as many nominations as the Senate has considered and confirmed this month. During the first year of President Bush's tumultuous administration, with the Senate majority changing in the middle of the year and Democrats then in the majority, we worked from July through December to confirm 28 judicial nominees. That was, of course, the year of the September 11 attacks and the anthrax attacks in the Senate, but we continued our work. The Senate proceeded to confirm 6 judicial nominees by voice vote in December 2001, a total of 10 judicial nominees that month, a total of 28 in the last 6 months of that year, and 100 in the 17 months I served as chairman of the Senate Judiciary Committee during President Bush's first term.

By contrast, thus far this month, with 12 judicial nominees now available to the Senate for final consideration, Senate Republicans have only allowed a vote on Judge Jacqueline Nguyen to the Central District of California. She was confirmed unanimously after been delayed 6 weeks. They have even refused to consider the nomination of Beverly Martin of Georgia to the Eleventh Circuit, despite strong support from her home state Senators, both Republicans. Instead of acting of her nomination, which has been awaiting final action since September 10, and that of Judge Greenaway of New Jersey, who has been nominated to the Third Circuit and was reported on October 1, they insist on delaying debate on that nomination for at least a month. I hope we will be able to turn to that nomination when the Senate returns in late January.

The refusal by the Republican minority to enter into customary time agreements to consider non-controversial nominees has led us to fall well short of the confirmations achieved in the first years of other Presidents. On the eve of the end of the session, the Senate has confirmed little more than one-third as many of President Obama's circuit and district court nominees as it confirmed of President George W. Bush's—28—or of President Clinton's—27—in their first years. In fact, President Obama is on pace to have the fewest judicial nominees confirmed by a President in his first year since President Eisenhower, who only made nine nominations in 1953. Of course, all nine were confirmed. The total this year stands to be the fewest confirmed in any President's first year in more than 50 years, and the fewest in any year since the Republican majority confirmed only 17 in the 1996 session, a Presidential election year.

The unprecedented obstruction we have seen by Senate Republicans on issue after issue—over 100 filibusters this year alone, by some calculations, which have affected 70 percent of all Senate action—have ground Senate consideration of judicial nominations to a crawl. Instead of time agreements and the will of the majority, the Senate is faced with filibusters, and anonymous and Republican leadership holds. Those who just a short time ago said that a majority vote is all that should be needed to confirm a nomination, and that filibusters of nominations are unconstitutional, have hypocritically reversed themselves and now employ any delaying tactic they can.

Judicial nominees have been and are available for consideration. This lack of Senate action is attributable to Senate Republicans and no one else. The President has reached across the aisle to consult and has made quality nominations. We have held the hearings, and the Senate Judiciary Committee has favorably reported 12 judicial nominees to the Senate on which action has not been permitted. There are now more judicial nominations stalled on the Senate Executive Calendar—12—than the number that have been confirmed all year. One has been ready for Senate consideration for more than 13 weeks, another more than 10 weeks, and the list goes on. Nor are these controversial nominees. Eight of the 12 were reported from the Judiciary Committee without a single dissenting vote. The majority leader and all Democratic Senators have been ready to proceed. The Republican Senate leadership is not. It has stalled and delayed and obstructed.

Unlike his predecessor, President Obama has reached out and across the aisle to work with Republican Senators in making his judicial nominations. The nomination of Judge Hamilton, which the Republican leadership filibustered, was supported by the most senior Republican in the U.S. Senate, my respected friend from Indiana, Senator LUGAR. Other examples are the nominees to vacancies in Alabama supported by Senators SESSIONS and SHELBY, in South Dakota supported by Senator THUNE, and in Florida, supported by Senators MARTINEZ and LAMIEUX. Still others are the President's nomination to the Eleventh Circuit from Georgia, supported by Senators ISAKSON and CHAMBLISS, which the Senate will not consider until the end of January because of Republican objection, and his nomination to the Sixth Circuit from Tennessee, supported by Senator ALEXANDER.

Last week we held a confirmation hearing for two more well-respected and well-qualified nominees that were the result of President Obama's effort to reach out and consult with home state Senators from both sides of the aisle, Judge James Wynn and Judge Albert Diaz. Judge Wynn and Judge Diaz have been nominated to fill two long-standing vacancies on the U.S. Court of Appeals for the Fourth Circuit. Both are from North Carolina. Senator BURR and Senator HAGAN worked with each other and with the White House on these nominations. I thank them both for their testimony before the committee last week in strong support of these nominees.

These nominations are just the most recent examples of this President reaching out to home State Senators from both parties to consult before making nominations. Just as I worked

last year to end a decade-long impasse on the Sixth Circuit with the confirmations of Judge Helene White and Ray Kethledge of Michigan, I will work to see that these nominations from North Carolina are considered fairly and confirmed expeditiously. With the support of the senior Senator from North Carolina, a Republican, and the determined efforts of Senator HAGAN, a Democrat, North Carolina will finally have the representation on the Fourth Circuit that it deserves.

Instead of praising the President for consulting with Republican Senators, the Republican leadership has doubled back on what they demanded when a Republican was in the White House. No more do they talk about each nominee being entitled to an up-or-down vote. That position is abandoned and forgotten. Instead, they now seek to filibuster and delay judicial nominations. They have also walked back from their position at the start of this Congress, when they threatened to filibuster nominees on which home state Senators were not consulted. We saw with Judge Hamilton that they filibustered a nominee supported by Senator LUGAR.

When President Bush worked with Senators across the aisle, I praised him and expedited consideration of his nominees. When President Obama reaches across the aisle, the Senate Republican leadership delays and obstructs his qualified nominees. It is clear that the Republican leadership has returned to their practices in the 1990s, which resulted in more than doubling circuit court vacancies, and led to the pocket filibuster of more than 60 of President Clinton's nominees. The crisis they created eventually led even to public criticism of their actions by Chief Justice Rehnquist during those years.

The Republican obstruction and delay in considering well-qualified noncontroversial nominees comes at a tremendous cost to the ability of our Federal courts to provide justice for all Americans. We have seen a tremendous spike in judicial vacancies. Although there have been nearly 110 judicial vacancies this year on our Federal circuit and district courts around the country, only 10 vacancies have been filled. That is wrong. The American people deserve better.

In only 5 months of President Bush's first year in office when I served as Senate Judiciary Committee chairman and with a Democratic Senate majority, we confirmed 28 judicial nominees. During 17 months of President Bush's first 2 years in office, we confirmed 100 of his judicial nominees. Although two Republicans chaired the Senate Judiciary Committee and Senate Republicans held the Senate majority for more than half of President Bush's time in office, more judges nominated by President Bush were confirmed by the Senate Democratic majority and when I served as Senate Judiciary Committee chairman. During President Bush's last year in office, we had reduced judicial vacancies to as low as 34, even though it was a Presidential election year. When President Bush left office, we had reduced vacancies in 9 of the 13 circuits since President Clinton left office.

As matters stand today, judicial vacancies have spiked and are being left unfilled. We will start 2010 with the highest number of vacancies on article III courts since 1994, when the vacancies created by the last comprehensive judgeship bill were still being filled. While it has been nearly 20 years since we enacted a Federal judgeship bill, judicial vacancies are nearing record levels, with 97 current vacancies and another 23 already announced. If we had proceeded on the judgeship bill recommended by the Judicial Conference to address the growing burden on our Federal judiciary, as we did in 1984 and 1990, in order to provide the resources the courts need, current vacancies would stand at 160 today. That is the true measure of how far behind we have fallen. I know we can do better. Justice should not be delayed or denied to any American because of overburdened courts and the lack of Federal judges.

I, again, urge the Republican minority to allow Senate action on the 12 judicial nominees on the Senate Executive Calendar before the end of the session. We have now wasted weeks having to seek time agreements in order to consider even nominations that were reported by the Judiciary Committee unanimously and confirmed unanimously by the Senate when finally allowed to be considered. The 12 judicial nominees are Beverly Martin of Georgia, nominated to the Eleventh Circuit; Joseph Greenaway of New Jersey, nominated to the Third Circuit; Edward Chen, nominated to the District Court for the Northern District of California; Dolly Gee, nominated to the District Court for the Central District of California; Richard Seeborg, nominated to the District Court for the Northern District of California, Barbara Keenan of Virginia, nominated to the Fourth Circuit; Jane Stranch of Tennessee, nominated to the Sixth Circuit; Thomas Vanaskie of Pennsylvania, nominated to the Third Circuit; Louis Butler, nominated to the District Court for the Western District of Wisconsin; Denny Chin of New York, nominated to the Second Circuit; Rosanna Malouf Peterson, nominated to the District Court for the Eastern District of Washington; and William Conley, nominated to the District Court for the Western District of Wisconsin.

At the end of the Senate's 2001 session, only four judicial nominations were left on the Senate Executive Calendar, all of which were confirmed soon after the Senate returned in 2002. At the end of the first session of Congress during President Clinton's first term, just one judicial nominee was left on the Senate Executive Calendar. At the end of the President George H.W. Bush's first year in office, a Democratic Senate majority left just two judicial nominations pending on the Senate Executive Calendar. At the end of the first year of President Reagan's first term—a year in which the Senate confirmed 41 of his Federal circuit and district court nominees—not a single judicial nomination was left on the Senate Executive Calendar.

In stark contrast, there are now 12 judicial nominees on the Senate Executive Calendar, and unless there is a burst of cooperation from Republicans, they will remain on the calendar awaiting Senate consideration beyond the end of this session and into next year. That is a significant change from our history and tradition of confirming judicial nominations that have been reported favorably by the Senate Judiciary Committee by the end of a session.

The record of obstruction of the Senate Republicans is just as disappointing when we consider the executive nominations that have been reported by the Judiciary Committee. There are currently an incredible 20 executive nominations that have been reported favorably by the Senate Judiciary Committee pending on the Senate Executive Calendar, including nominations for Assistant Attorneys General to run three of the 11 divisions at the Department of Justice. Each of these nominations has been pending 4 months or longer. An editorial in today's Washington Post entitled ''Nominees in Limbo'' and subtitled ''The Senate should do its job before taking a vacation'' describes the Republican obstruction of the nomination of Dawn Johnson to head the Office of Legal Counsel, which has been stalled on the Senate Executive Calendar since March, as ''[p]erhaps the greatest nominations travesty.'' The editorial concludes: ''[T]he president should be given deference in choosing executive-branch officials who share his views. Ms. Johnsen is highly qualified and should be confirmed. At the very least, senators should have the decency to give her an up-or-down vote.''

Senate Democrats treated President Bush's first nominations for these same posts quite differently than Senate Republicans are now treating President Obama's nominees. We promptly reported the President's nominees to head the Office of Legal Counsel, the Office of Legal Policy, and the Tax Division, and they each received Senate consideration in a matter of days or weeks after they were reported by the committee. We still have heard no explanation for the five months of Republican obstruction of the nomination of Chris Schroeder to head the Office of Legal Policy after his nomination was reported by the committee in July by voice vote without dissent. The Washington Post editorial rightfully calls for Mr. Schroeder's confirmation as well as for the confirmation of the long-pending nomination of Mary Smith to run the Tax Division.

As with the judicial nominations, the Republicans have employed new standards of demanding a supermajority and

floor time and delays to consider even nominations that could be confirmed easily, grinding our progress to a halt. I hope that the Republican Senators and leadership will relent and end the year by making progress on these important nominations to put us on a better path for the next session.

THE TORTURE VICTIMS PROTECTION ACT

Mr. LEAHY. Mr. President, the U.S. Supreme Court recently granted certiorari in a case involving the Torture Victim Protection Act of 1991, TVPA, a law I supported from the earliest days following its introduction by Senator SPECTER in the summer of 1986. Senator SPECTER and I worked for years to see this historic human rights bill become law in 1991. Yet today I am concerned that the TVPA's crucial role in protecting human rights may be weakened or even rendered meaningless. The Supreme Court case, Samantar v. Yousuf, may decide the fate of this landmark law.

The TVPA provides a Federal cause of action against any individual who subjects any person to torture or extrajudicial killing. This cause of action is available where the individual acts under actual or apparent authority, or under color of law of any foreign nation. Congress passed the TVPA in response to widespread use of official torture and summary executions that took place around the world, despite the universal consensus condemning such practices. Congress recognized that neither Federal nor international law was strong enough to curb such egregious human rights abuses. We enacted the TVPA to ensure accountability for those who commit atrocious violations of human rights.

The case currently before the Supreme Court, Samantar v. Yousuf, raises the question of whether the Foreign Sovereign Immunities Act, FSIA, allows an action filed under the TVPA to be brought against a former government official of a foreign country who is now living in the United States. The answer is clear in the TVPA and its legislative history. The answer is yes. Congress expressly intended the TVPA to apply against former government officials. In enacting the TVPA, Congress made it explicit that the FSIA would almost never provide a defense to such persons. They can be sued under the TVPA to recoup damages caused by their torturous actions.

The Senate clearly stated its intention to ensure that the TVPA operated in concert with existing law, specifically taking into account the FSIA, the Alien Tort Claims Act, and the United Nations Convention Against Torture, which the United States signed in 1988. This point was discussed extensively as we drafted and refined the legislation. The operation of the TVPA was considered in a hearing held by the Judiciary Committee's Subcommittee on Immigration and Refugee Affairs in June 1990. The committee was not oblivious to the concerns raised at the time by the executive branch regarding sovereign immunity. We were cognizant of the role of the executive to manage foreign policy. We addressed each of these concerns in turn, but we were not persuaded that they outweighed the importance of creating a private cause of action under the TVPA. The full Congress agreed when it enacted the TVPA in March 1992.

The TVPA was drafted, in part, in response to gaps in two existing laws: the Alien Tort Claims Act and the Convention Against Torture. In deciding whether the Alien Tort Claims Act could be used by victims of torture committed abroad, one Federal judge expressed concern that separation of powers principles required an explicit grant by Congress of a private right of action for lawsuits that affect foreign relations. The Alien Tort Claims Act did not have such an explicit grant. Congress responded by enacting the TVPA with an unambiguous basis for a cause of action.

Similarly, the United States signature on the Convention Against Torture was an important and symbolic step in the prevention of torture, but the Convention fell short of the TVPA in at least two important respects. First, the Convention required that signatories open their courts to suits for damages caused by torture in their own countries. That policy was welcome but insufficient. The TVPA allows torture victims to sue their abuser without returning to the country of abuse. Congress took this step because it believed that governments that had allowed torture to occur within their jurisdiction would not necessarily provide meaningful redress to victims. Furthermore, torture victims who escaped from the country of abuse would not eagerly return to that country to file suit. Congress designed the TVPA specifically to respond to that situation by opening U.S. courts to these cases and providing a civil cause of action here in the United States for torture committed abroad.

Second, by creating a Federal cause of action in our own courts, Congress ensured that torturers would no longer have a safe haven in the United States. The legislation served notice to individuals engaged in human rights violations that their actions were anathema to American values and they would not find shelter from accountability here.

Congress explicitly drafted the TVPA to strengthen and expand the scope of action that victims of torture could take in our courts, but Congress was nonetheless conscious of the bill's limits. The TVPA was not meant to override traditional diplomatic immunities or the FSIA's grant of immunity to foreign governments. The act struck a balance. It protected well established notions of sovereign and diplomatic immunities for current political actors without creating a safe haven for the perpetrators of horrible acts after they left their official positions and settled in, or fled to, the United States.

For example, Congress carefully created the cause of action against an ''individual'' to ensure that foreign states or their entities could not be sued under the act under any circumstances. Similarly, we discussed at length the fact that the legislation would not permit a suit against a former leader of a country merely because an isolated act of torture occurred somewhere in that country. But Congress neither intended nor imagined that the FSIA would provide former officials with a defense to a lawsuit brought under the TVPA. Such an interpretation would undermine the purpose of the law. The TVPA was not intended to cover the torturous acts of private individuals. To the contrary, in order for a defendant to be liable under the TVPA, the torture must have been taken ''under actual or apparent authority or under the color of law of a foreign nation.'' The Judiciary Committee explicitly stated in its report on the bill that, ''the FSIA should normally provide no defense to an action taken under the TVPA against a former official.''

I hope that the Supreme Court studies this definitive and comprehensive history as it considers the case of Samantar v. Yousuf. Congress clearly intended the TVPA to extend to former officials of foreign countries if they choose to come to the United States after leaving their positions of authority. Congress also stated that the FSIA does not extend immunity to such individuals. Claims that a suit brought against a former official would undermine the FSIA and endanger foreign relations are simply inaccurate. Congress properly weighed the foreign policy concerns when it passed the TVPA. The Supreme Court should not overrule the well-considered judgment of Congress.

DETERIORATING SITUATION IN NEPAL

Mr. LEAHY. Mr. President, over the years, both during and since the end of the monarchy in Nepal, I have urged the Nepal Army to respect human rights and cooperate with civilian judicial authorities in investigations of its members who abuse human rights. I spoke on this subject a few days ago in relation to the horrific case of Maina Sunuwar, a 15-year-old Nepali girl who was tortured to death by Nepal Army officers who then sought to cover up the crime.

I have also, similarly, urged the Maoists to stop committing acts of violence and extortion against civilians, respect human rights, and work to improve the lives of the Nepali people through the political process. The fact that the Maoists laid down their arms and entered into a peace agreement gave the Nepali people the first chance in Nepal's history to build a democratic government that is responsive to their needs.