The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

Under the previous order, the hour of 4 o'clock having arrived, the question is, Will the Senate advise and consent to the nomination of William H. Pryor, Jr., of Alabama, to be United States Circuit Judge for the Eleventh Circuit? The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. The following Senator was necessarily absent: the Senator from Alaska (Ms. MURKOWSKI).

Mr. DURBIN. I announce that the Senator from Vermont (Mr. JEFFORDS) is necessarily absent.

The PRESIDING OFFICER (Mr. CHAFEE). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 53, nays 45, as follows:

[Rollcall Vote No. 133 Ex.]

YEAS—53

Alexander	Dole	McConnell
Allard	Domenici	Nelson (NE)
Allen	Ensign	Roberts
Bennett	Enzi	Salazar
Bond	Frist	Santorum
Brownback	Graham	Sessions
Bunning	Grassley	Shelby
Burns	Gregg	Smith
Burr	Hagel	Specter
Chambliss	Hatch	Stevens
Coburn	Hutchison	Sununu
Cochran	Inhofe	Talent
Coleman	Isakson	Thomas
Cornyn	Kyl	Thune
Craig	Lott	Vitter
Crapo	Lugar	Voinovich
DeMint	Martinez	Warner
DeWine	McCain	

NAYS—45

Akaka	Dodd	Lieberman
Baucus	Dorgan	Lincoln
Bayh	Durbin	Mikulski
Biden	Feingold	Murray
Bingaman	Feinstein	Nelson (FL)
Boxer	Harkin	Obama
Byrd	Inouye	Pryor
Cantwell	Johnson	Reed
Carper	Kennedy	Reid
Chafee	Kerry	Rockefeller
Clinton	Kohl	Sarbanes
Collins	Landrieu	Schumer
Conrad	Lautenberg	Snowe
Corzine	Leahy	Stabenow
Dayton	Levin	Wyden

NOT VOTING—2

Jeffords	Murkowski

The nomination was confirmed.

The PRESIDING OFFICER (Mr. CHAFEE). The President will be immediately notified of the Senate's action.

NOMINATION OF RICHARD A. GRIFFIN TO BE UNITED STATES CIRCUIT JUDGE FOR THE SIXTH CIRCUIT

NOMINATION OF DAVID W. MCKEAGUE TO BE UNITED STATES CIRCUIT JUDGE FOR THE SIXTH CIRCUIT

The PRESIDING OFFICER. The clerk will report the next two nominations en bloc.

The assistant legislative clerk read the nominations of Richard A. Griffin, of Michigan, to be United States Circuit Judge for the Sixth Circuit, and David W. McKeague, of Michigan, to be United States Circuit Judge for the Sixth Circuit.

The PRESIDING OFFICER. Who yields time? The Senator from Michigan.

Ms. STABENOW. Mr. President, I rise this afternoon in support of the nominations of Judge David McKeague and Judge Richard Griffin to the Sixth Circuit Court.

For some time now, Senator LEVIN and I have been proposing the Senate move forward on these nominees as part of a good-faith effort for us to be working together in a bipartisan way in the Senate. I am pleased we are now to vote on the nomination of Judge Griffin and Judge McKeague as a result of the bipartisan agreement to move forward and stop what was called the nuclear option, which would have eliminated the checks and balances in the Senate. It is my hope this bipartisan agreement will help restore comity and civility in our very important Chamber.

I will say a few words about these two nominees. Judge Richard Griffin is a lifelong resident of Michigan. He would be the first nominee to the Sixth Circuit from Traverse City, MI. He has had a distinguished career both as an attorney and as a State appeals judge. He has served on the Michigan Court of Appeals for over 16 years and has been rated as ''well-qualified'' by the American Bar Association.

Judge David McKeague is also a lifelong resident of Michigan. He would be the first nominee from my home of Lansing, MI, to the Sixth Circuit. Judge McKeague has also had a distinguished career as an attorney, a law professor, and a Federal judge. He served on the U.S. District Court for the Western District of Michigan for over 12 years and has been rated ''well-qualified'' by the American Bar Association.

I urge my colleagues to join me and Senator LEVIN in supporting the nomination of Judge Griffin and Judge McKeague. It is important for us to move forward.

I hope confirming the Sixth Circuit nominees before the Senate will help restore comity and civility to the judicial nominations process. We have a constitutional obligation to advise and consent on Federal judicial nominees. This is a responsibility I take extremely seriously, as I know my colleagues do on both sides of the aisle. These are not decisions that will affect our courts for three or four years, but for 30 or 40 years, making it even more important for the Senate not to act as a rubberstamp.

This is the third branch of government and it is important we move forward in a positive way and be able to work with the White House on nominees who will reflect balance and reflect a mainstream approach for our independent judiciary.

I hope the White House will begin working with the Senate in a more bipartisan and inclusive manner on judicial nominations. I look forward to working with the White House on any future Michigan nominees since it is absolutely critical we work together in filling these positions.

I yield the floor.

The PRESIDING OFFICER (Mr. CHAFEE). The Senator from Michigan.

Mr. LEVIN. Mr. President, I am supporting the two nominations before the Senate.

With today's confirmation of William Pryor, 211 of 218 of President Bush's judicial nominees have been confirmed. After Richard Griffin's and David McKeague's upcoming confirmation, 213 of 218 of President Bush's nominees will have been confirmed. What a contrast to the way that President Clinton's nominees were treated. More than 60 of President Clinton's nominees never received a vote in the Judiciary Committee. In the battles over judicial nominations that have consumed this body in recent years, the way those nominees were treated stands out as uniquely unfair. Even then-White House Counsel Alberto Gonzales acknowledged that treatment of President Clinton's nominees was ''inexcusable.''

For the last 4 years of the Clinton Presidency, there were Michigan vacancies on the Sixth Circuit court. The Republican majority refused to hold hearings in the Judiciary Committee on Clinton nominations for those vacancies. Indeed, one of those nominees waited longer for a hearing in the Senate Judiciary Committee than any nominee in American history had—a hearing she ultimately never received.

Her nomination was held up for some time by former Senator Spencer Abraham in an attempt to secure the nomination of his preferred candidate to a second position. Then, the seats were kept vacant because the majority hoped that a Republican would be elected President and would put forward his nominees for those vacancies. When President Bush came to office, he not only filled positions which should have been filled by nominees of President Clinton, his nominees were allowed to go forward even over the objections of their home state senators.

Today, we will confirm two of President Bush's Michigan nominees to the Sixth Circuit Court. They should be confirmed and I will vote for them. In deciding to move on, we should not excuse the treatment of President Clinton's nominees or the refusal of President Bush to adopt a bipartisan solution to the acknowledged wrong. A brief history of the Michigan vacancies on the Sixth Circuit will also hopefully prevent a recurrence of the tactic which was used against Clinton nominees—denial of a hearing in the Judiciary Committee, year after year—not just in the last year of a presidential term but in the years before the last year of a presidential term.

Michigan Court of Appeals Judge Helene White was nominated to fill a

Sixth Circuit vacancy on January 7, 1997. Some months later, Senator LEAHY, as ranking member of the Judiciary Committee, came to this floor to urge that the Committee act on her nomination. This would be the first of at least sixteen statements on the Senate floor by Senator LEAHY regarding the Sixth Circuit nominations over a 4 year period.

A year and a half after Judge White was nominated—Senator LEAHY came to the floor and said: ''At each step of the process, judicial nominations are being delayed and stalled.'' His plea was again ignored and the 105th Congress ended without a hearing for Judge White.

On January 26, 1999, President Clinton again submitted Judge White's nomination. That day, I urged both Senator Abraham and Chairman HATCH to recognize that fundamental fairness dictated that she receive an early hearing in the 106th Congress, having received no hearing in the 105th.

On March 1, 1999, a second Michigan vacancy on the Sixth Circuit opened up. The next day, Senator LEAHY returned to the floor, reiterated that nominations were being stalled by the majority.

The reason that the majority in the Judiciary Committee did not hold a hearing on Judge White was because of Senator Abraham's opposition, based on his effort to obtain the nomination of Jerry Rosen, a district court judge in the Eastern District of Michigan, to the second Michigan opening on the Sixth Circuit. President Clinton, however, in September of 1999, decided to nominate Kathleen McCree Lewis to that seat.

Soon thereafter, I spoke with Senator Abraham about the Lewis and White nominations, Senator LEAHY again urged the Committee to act, calling the treatment of judicial nominees ''unconscionable.''

On November 18, 1999, I again urged Senator Abraham and Chairman HATCH to proceed with hearings for the two Michigan nominees. At that time I noted that Judge White had been waiting for nearly 3 years and that the confirmation of the two women was ''essential for fundamental fairness.'' 1999 ended without Judiciary Committee hearings.

In February of 2000 Senator LEAHY spoke again on the Senate floor about the multiple vacancies on the Sixth Circuit. Less than two weeks later, I again made a personal plea to Senator Abraham and Chairman HATCH to grant a hearing to the Michigan nominees.

On March 20, 2000, the chief judge of the Sixth Circuit sent a letter to Chairman HATCH expressing concerns about a reported statement from a member of the Judiciary Committee that ''due to partisan considerations'' there would be no more hearings or votes on vacancies for the Sixth Circuit Court of Appeals during the Clinton administration. His concern would turn out to be well founded.

On May 2, 2000, I sent a note to Chairman HATCH, but neither Judge White's nor Ms. Lewis's nominations were placed on the Committee's hearing agenda. Over the next several months, Senator LEAHY went to the floor ten more times to urge action on the Michigan nominees. I also raised the issue on the Senate floor on several occasions.

In the fall of 2000, in a final attempt to move the nominations of the two Michigan nominees, I met with Majority Leader LOTT to discuss the situation. On September 12, I sent him a letter saying ''the nominees from Michigan are women of integrity and fairness. They have been stalled in this Senate for an unconscionable amount of time without any stated reason.'' Neither the meeting with Senator LOTT nor the letter prompted the Judiciary Committee to act on the nominations, and the 106th Congress ended without hearings for either woman.

By this point, Judge White's nomination had been pending for nearly 4 years—the longest period of time that any circuit court nominee had waited for a hearing in the history of the United States Senate. Ms. Lewis's nomination had been pending for about a year and a half.

The experience of Kent Markus of Ohio will shed some light on these events. Professor Markus was nominated by President Clinton in February of 2000, to fill an Ohio vacancy on the sixth Circuit. Both home state senators indicated their approval of his nomination. Nevertheless, he was not granted a Judiciary Committee hearing. In his testimony before the Judiciary Committee, Professor Markus recollected the events:

> ''. . . To their credit, Senator DeWine and his staff and Senator Hatch's staff and others close to him were straight with me. Over and over again they told me two things:
>
> (1) There will be no more confirmations to the 6th Circuit during the Clinton Administration, and
>
> (2) This has nothing to do with you; don't take it personally—it doesn't matter who the nominee is, what credentials they may have or what support they may have.

And Professor Markus continued:

> ''. . . On one occasion, Senator DeWine told me ''This is bigger than you and it's bigger than me.'' Senator Kohl, who had kindly agreed to champion my nomination within the Judiciary Committee, encountered a similar brick wall . . . The fact was, a decision had been made to hold the vacancies and see who won the presidential election. With a Bush win, all those seats could go to Bush rather than Clinton nominees.

The logic of it was quite straightforward, and unfair.

Senator STABENOW and I are not alone in our view that what occurred with respect to the Michigan nominees was fundamentally unfair. As I said, even Judge Gonzales, then-White House Counsel, has acknowledged that the treatment of some nominees during the Clinton administration was ''inexcusable.''

Given that belief, Senator STABENOW and I had hoped that the Bush administration might consider a bipartisan approach and believed that simply moving forward with Bush nominees would mean the unfair tactic used against the Clinton nominees would succeed.

The number of Michigan vacancies on the federal courts provided an unusual opportunity for bipartisan compromise. In an effort to achieve a fair resolution of the mistreatment of President Clinton's Michigan nominees, Senator STABENOW and I proposed a bipartisan commission to recommend nominees to the President for two of the then-four open Michigan Sixth Circuit positions. Similar commissions have successfully been used in other states. Such a commission would not guarantee the recommendation of any particular individual, much less the nomination of any particular individual, since the nomination decision is the President's alone. That proposal was rejected. The administration rejected another proposal to resolve the matter suggested by Senator LEAHY and endorsed by then-Republican Governor John Engler.

In the hopes of stimulating a bipartisan response, Senator STABENOW and I returned negative blue slips on President Bush's nominees. Despite past practice of not proceeding in the face of negative blue slips from home state Senators, the Judiciary Committee held hearings on the nominees.

In 1999, Chairman HATCH had stated, with respect to the Clinton nomination of Judge Ronnie White, ''had both home-State Senators been opposed to Judge (Ronnie) White in committee, [he] would never have come to the floor under our rules, [and] that would be true whether they are Democrat Senators or Republican Senators. That has just been the way the Judiciary Committee has operated . . .''

During the entire Clinton Presidency, it is my understanding that not a single judicial nominee got a Judiciary Committee hearing if there was opposition by one home-state Senator, let alone two. In our case, both home-state Senators opposed proceeding with President Bush's Michigan judicial nominees absent a bipartisan approach, but the Committee held hearings anyway.

So, the unreturned blue slips of one Republican Senator was enough to block Judiciary Committee consideration of two nominees by a Democratic President. But despite negative blue slips of both home State Democratic Senators, hearings were held for Sixth Circuit nominations of President Bush. That is inconsistent and unfair.

Mr. President, each of us who was here during that time knows what happened to President Clinton's Michigan nominees to the Sixth Circuit was unfair. Senator HATCH said it accurately, and I give him credit for putting it just this way when, in July of 2004, he said the following:

> The two senators from Michigan have been very upset and if I'd put myself in their shoes I'd feel the same way.

Well, it is time, however, to move on. And we support moving on with these two nominations and hope that in doing so, it might produce some bipartisanship and compromise. But bipartisanship cannot just be a one-way street. It requires reciprocity.

In closing, I thank the many Senators who worked for a bipartisan approach to the Michigan nominees. In particular, I thank Senator HARRY REID, who, like Senator Daschle before him, got personally involved and tried to achieve a compromise. I thank Senator LEAHY for his extraordinary efforts over the many years. I cannot tell you how many times he came to the Senate floor to make a statement. I thank him for his efforts personally to try to resolve this matter. I also thank Senator SPECTER, who has recently provided some bipartisan suggestions to the White House.

With that, Mr. President, I thank the Chair and yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. CORNYN). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. SPECTER. Mr. President, President George W. Bush first nominated Judge Richard Allen Griffin to the Sixth Circuit on June 26, 2002.

During the 108th Congress, on June 16, 2004, the committee held a hearing on the nomination of Judge Griffin. He was successfully voted out of committee on July 20, 2004.

Judge Griffin is a judge of the Michigan Court of Appeals currently serving his 16th year on the court.

Judge Griffin is an outstanding and highly qualified candidate.

After graduating magna cum laude from Western Michigan University Honors College, Judge Griffin received his juris doctor from the University of Michigan Law School in 1977.

Upon graduating from law school, Judge Griffin clerked for the Honorable Washtenaw Circuit Judge Ross W. Campbell. He then became an associate and eventual partner at Coulter Cunningham, Davison & Read.

In 1985, Judge Griffin started his own firm, Read & Griffin, where he practiced a broad range of litigation, including automobile negligence, premises liability, products liability, and employment law. Judge Griffin engaged in both plaintiff and defense personal injury litigation.

During this time, Judge Griffin also provided pro bono legal services as a volunteer counselor and attorney with the Third Level Crisis Clinic.

In 1989, Judge Griffin successfully ran for the Michigan Court of Appeals. He was reelected to retain his seat in 1996, and again in 2002.

The American Bar Association rated Judge Griffin ''Well-Qualified'' for appointment to the Sixth Circuit.

Judge Griffin has engaged in numerous noteworthy activities. In addition to his duties on the Michigan Court of Appeals, Judge Griffin also devotes a significant amount of time to volunteer activities. Judge Griffin has served as president of the Grant Traverse Zoological Society since 1987. He also has served as chief judge of the YMCA Youth in Government Mock Trial Program since 1997.

Judge Griffin has widespread support.

Gerald Ford, 38th President of the United States, said:

> I can say with conviction that Judge Griffin is a person of the highest quality character. As the record shows, he has been a very excellent Judge with unquestioned integrity.

Maura D. Corrigan, chief justice, Michigan Supreme Court, said:

> Judge Griffin brings a depth of practical experience and a grasp of real life problems to the decisions of cases . . . Richard Allen Griffin is a man of integrity and probity who is fully capable of discharging the duty of protecting our Constitution and laws. He is deserving of the public trust as he has already proven himself worthy of that trust during his years of service to the State of Michigan.

William C. Whitbeck, chief judge, Michigan Court of Appeals, said:

> [T]here is no question that the United States Senate should promptly confirm Judge Griffin for the position on the Sixth Circuit . . . He is a decisive, scholarly judge with an instinct for the core issues and with a flair for authoring crisp, understandable opinions.

Stephen L. Borrello, judge, Michigan Court of Appeals, said:

> Judge Griffin possesses a rare trait amongst my colleagues: an intrinsic sense of justice. His innate fairness is combined with a rigorous work ethic and a thorough grasp of legal issues. Judge Griffin is one of the finest jurists in this State.

Mr. President, Judge David McKeague was originally nominated by President George W. Bush on November 8, 2001, and was renominated by the President on February 14, 2005. He received a hearing on June 16, 2004, and was voted out of the Judiciary Committee on July 20, 2004.

Judge McKeague is extremely well qualified to sit on the Court of Appeals for the Sixth Circuit. Judge McKeague has a B.A. from the University of Michigan and a J.D. from the University of Michigan Law School. Upon his graduation from law school, he joined the law firm of Foster, Swift, Collins & Smith, P.C., in Lansing, MI, and was elected a shareholder and director of the firm. Judge McKeague served on the firm's Executive Committee in various offices, and was chairman of the firm's Government and Commerce Department, for many years before his confirmation to the Federal bench in 1992.

Since February 1992, Judge McKeague has served as a judge on the U.S. District Court for the Western District of Michigan. Judge McKeague has regularly participated by designation on, and authorized appellate opinions for, panels of the U.S. Court of Appeals for the Sixth Circuit. The American Bar Association has rated Judge McKeague as unanimously ''well-qualified'' for appointment to the Sixth Circuit.

Judge McKeague is an active member of the community and several professional associations. Judge McKeague has been active as a member of several community, local, and professional organizations, including the Judicial Conference of the United States, the Federal Judicial Center, the Michigan State and Ingham County bar associations. Both while in private practice and while on the Federal bench, Judge McKeague has directed and participated in numerous seminars, moot court competitions, and trial advocacy programs at high schools, universities and law schools throughout Michigan.

Prior to his confirmation to the Federal bench, he served 6 years in the U.S. Army Reserve. Since 1998, he has also served as an adjunct professor of law at Michigan State University's Detroit College of Law, where he teaches Federal Jurisdiction and Trial Advocacy.

Judge McKeague has the support of many attorneys and peers in Michigan, including several Democrats.

John H. Logie, attorney and Mayor of Grand Rapids, said:

> What emerged from our mutual experiences was a deep admiration for Judge McKeague's concerns both with the processes of the court and with their impact on people. If these are matters that we want out appellate judges to have in equal measure, then I can and do assure you that he will be an excellent choice.

Paul D. Borman, U.S. District Judge for the Eastern District of Michigan, said:

> I have known Judge McKeague for seven years and I can vouch for his intelligence, hard work, and commitment to equal protection under the law.

Randall S. Levine, attorney and lifelong Democrat, said:

> Judge McKeague is extremely intelligence, possesses a sharp wit and keen intellect . . . His integrity is beyond reproach.

Mr. LEAHY. Mr. President, as we debate the nominations of Richard Griffin and David McKeague to the Sixth Circuit Court of Appeals, and move on to their almost certain confirmation, I believe we must acknowledge the cooperation and statesmanship of the two Senators from Michigan who have compromised a great deal in order to contribute to the preservation of the rules and traditions of the Senate. Senator LEVIN and Senator STABENOW have spent much of the last 4 years trying to persuade the President to fulfill his constitutional duty and consult with them on his Michigan appointments, to no avail. Because of that lack of cooperation, combined with the shameful treatment given to President Clinton's nominees, the Michigan Senators exercised their right as home State Senators to withhold their consent to the nominations of candidates chosen without consultation to the Sixth Circuit.

The Michigan Senators had the support of other Senators. Nonetheless, the Michigan Senators, with grace and dedication to this institution, withdrew their opposition to three of those nominees as part of the discussions related to averting the nuclear option. Because of their willingness to go forward, we are here today debating and voting upon the confirmation of two nominees to the Sixth Circuit despite a lack of consultation by President Bush and a complete disregard for the history of this court.

First, it is essential to explain what a significant break with precedent it was that these two nominees were even given a hearing in the last Congress without the support of either of their home State Senators. The scheduling of that hearing was another example of the downward spiral the committee traveled over the last 2 years, when we witnessed rule after rule broken or misinterpreted away.

The list is long. From the way that home State Senators were treated to the way hearings were scheduled, to the way the committee questionnaire was altered, to the way our committee's historic protection of the minority by committee rule IV was violated; the Republican leadership on the committee last Congress destroyed virtually every custom and courtesy that had been available to help create and enforce cooperation and civility in the confirmation process.

The then-chairman of the committee crossed a critical line that he had never before crossed when in June of 2003, he held a hearing for Henry Saad, another of the Michigan nominees to the Sixth Circuit, opposed by both of his home State Senators. It may have been the first time any chairman and any Senate Judiciary Committee proceeded with a hearing on a judicial nominee over the objection of both home State Senators. It was certainly the only time in the last 50 years, and I know it to be the only time during my 31 years in the Senate.

Having broken a longstanding practice of the Judiciary Committee founded on respect for home State Senators, whether in the case of a district or circuit court nominee, the committee's leadership did not hesitate to break it again and hold a hearing for Richard Griffin and David McKeague.

The Michigan Senators did not do what so many other Senators did when holding up more than 60 of President Clinton's nominees, and block them silently. To the contrary, they came to the committee and articulated their very real grievances with the White House and their honest desire to work towards a bipartisan solution to the problems filling vacancies in the Sixth Circuit. We should have respected their views, as the views of home State Senators have been respected for decades. I urged the White House to work with them. I proposed reasonable solutions to the impasse that the White House rejected. The Michigan Senators proposed reasonable solutions, including a bipartisan commission, but the White House rejected every one.

Although President Bush promised on the campaign trail to be a uniter and not a divider, his practice once in office with respect to judicial nominees has been most divisive. Citing the remarks of a White House official, The Lansing State Journal reported that President Bush was simply not interested in compromise on the existing vacancies in the State of Michigan. It is unfortunate that the White House was never willing to work toward consensus with all Senators and on all courts. Over the last 4 years, time and again the good faith efforts of Senate Democrats to repair the damage done to the judicial confirmation process over the previous six years were rejected. And time and again, the rules were thrown by the wayside.

When Republicans chaired the Judiciary Committee and we were considering the nominations of a Democratic President, one negative blue slip from just one home State Senator was enough to doom a nomination and prevent a hearing on that nomination. This included all nominations, including those to the circuit courts. How else to explain the failure to schedule hearings for such qualified and noncontroversial nominees as James Beaty and James Wynn, African-American nominees from North Carolina? What other reason could plausibly be found for what happened to the nominations of Enrique Moreno and Jorge Rangel—both Latino, both Harvard graduates, both highly rated by the ABA, and both denied hearings in the Judiciary Committee? There is no denying that was the rule during the previous Democratic administration. There is no way around the conclusion that with a Republican in the White House, the Republicans in the Senate have found it politically expedient to change the rules and reverse their own practices time and again.

In all, more than 60 of President Clinton's judicial nominees and more than 200 of his executive branch nominees were defeated in Senate committees through the enforcement of rules and precedents that the Republican majority later found inconvenient—now that there is a Republican in the White House. Indeed, among the more than 60 Clinton judicial nominees who the committee never considered there were more than a few who were blocked despite positive blue slips from both home State Senators. So long as a Republican Senator had an objection, it appeared to be honored, whether that was Senator Helms of North Carolina objecting to an African-American nominee from Virginia or Senator Gorton of Washington objecting to nominees from California.

During the last Congress, the Judiciary Committee also took the unprecedented action of proceeding to a hearing on the nomination of Carolyn Kuhl to the Ninth Circuit over the objection of Senator BOXER. When the senior Senator from California announced her opposition to the nomination as well at the beginning of a Judiciary Committee business meeting, I suggested to the chairman that further proceedings on that nomination ought to be carefully considered. I noted that he had never proceeded on a nomination opposed by both home State Senators once their opposition was known. Senator FEINSTEIN likewise reminded the then-chairman of his statements in connection with the nomination of Ronnie White when he acknowledged that had he known both home Sstate Senators were opposed, he would never have proceeded. Nonetheless, in one in a continuing series of changes of practice and position, the committee was required to proceed with the Kuhl nomination. A party-line vote was the result.

With the Saad nomination, the committee made a further profound change in its practices. When a Democratic President was doing the nominating and Republican Senators were objecting, a single objection from a single home State Senator stalled the nomination. There was not a single example of a single time that the committee went forward with a hearing over the objection or negative blue slip of a single Republican home State Senator during the Clinton administration. But once a Republican President was doing the nominating, no amount of objecting by Democratic Senators was sufficient. The committee overrode the objection of one home State Senator with the Kuhl nomination. The committee overrode the objection of both home State Senators when a hearing and a vote was held on the Saad nomination, and once more by holding a hearing and vote for the two circuit court nominees we are discussing today.

I know it is frustrating that there have been unfilled vacancies on the Sixth Circuit for so long. Many of us experienced worse frustration during the Clinton years when good nominees were held up for no discernable reason—other than politics. During President Clinton's second term, the Republican Senate majority shut down the process of confirmations to the Sixth Circuit entirely, and three outstanding nominees were not accorded hearings, committee consideration or Senate votes. In fact, while there were numbers of vacancies on the Sixth Circuit and nominees for those vacancies, from November of 1997 there was not a confirmation to that court until the confirmation of Julia Smith Gibbons while I was chairman on July 29, 2002, a span of nearly 5 years. Not a single Sixth Circuit nominee was even given a hearing during Republican control of the 106th Congress, and one of the nominees, Kent Marcus from Ohio, testified at a Judiciary subcommittee hearing in 2002 that he was told that he would not be confirmed despite public support from his home State Senators. Republicans wanted to keep the vacancies in

case a Republican was elected President.

When I chaired the committee, we broke that impasse with the first Sixth Circuit confirmation in those many years. I scheduled a hearing and a vote for Julia Smith Gibbons of Tennessee, who was confirmed shortly thereafter, and I did the same for John Rogers of Kentucky, who was confirmed in November of 2002.

I know that around the time a Republican leadership staffer was found to have stolen confidential Democratic files there were outrageous accusations made that Judge Gibbons' confirmation was delayed to affect a pending affirmative action case in some way. I have never considered the outcome of any particular case when scheduling that or any other nominee for a hearing.

The facts of this nomination belie this scurrilous accusation. Judge Gibbons was nominated to the Sixth Circuit in October 2001 but did not have a completed file until November 15, shortly before the end of the first session of the 107th Congress. Before her paperwork was complete, the Sixth Circuit panel assigned to the affirmative action cases had already circulated a request for the full court to hear argument, and on November 16, the Sixth Circuit ordered that the case to be argued to the full court. The oral argument in that case took place after Thanksgiving, on December 6.

Given the lateness of her nomination, her paperwork, and the year, Gibbons could not realistically have expected a hearing, a committee vote and a confirmation vote to all have taken place in the 3 weeks between the time her paperwork was complete and the time the Sixth Circuit sat for the oral argument in that case and took a poll about the outcome of that case. The ordinary practice is that only the judges who are on the court at the time the court votes to hear the case ''en banc'' can participate in the case, even if they retire. It is just unreasonable to contend that Judge Gibbons could have heard the December 6 argument in that case.

When we returned for the second session of the 107th Congress, I scheduled several hearings at the request of a number of different Republican Senators. The first circuit court nominee to get a hearing was Michael Melloy for the Eighth Circuit at Senator GRASSLEY's request; followed by Judge Pickering, who was supported by Senator LOTT; then Judge D. Brooks Smith, for the Third Circuit, at Senator SPECTER's request; then Terrence O'Brien, for the Eighth Circuit, at the request of Senators THOMAS and ENZI; and Jeffrey Howard, for the First Circuit, who was supported by Senator Bob Smith.

Once those hearings were completed, in the week of April 15, I scheduled a hearing for Judge Gibbons. Her hearing was held on April 25. I listed her for a committee vote the very next week, and all of the Democratic Senators joined in voting her out the same day, May 2. She did not get an immediate floor vote due to a dispute between the White House and Senators over commissions, but she was ultimately confirmed on July 29, 2002.

The Sixth Circuit issued its decision in the Michigan affirmative action case on May 14, 2002, which means the judges were already working on the majority and dissenting opinions for weeks, likely even months, given the complexity of the case. The Supreme Court, where I think we all knew the issue would finally be decided, accepted the appeal of the affirmative action decision later that year and issued its ruling on June 23, 2003.

To say that Democrats used their power to influence the Sixth Circuit in any case is demonstrably false. What is factually true is that from the time the case against the University of Michigan case was filed in District Court until the time I facilitated the confirmation of Judge Gibbons, Republicans had successfully blocked any and all appointees to that Circuit.

Even after the 107th Congress, Democrats continued to cooperate in filling seats on the Sixth Circuit. Although many of us strongly opposed their nominations, we did not block the confirmations of two more controversial judges to that court: Deborah Cook and Jeffrey Sutton. With their confirmations, that brought us to a total of four Sixth Circuit confirmations in 3 years as opposed to no confirmation in the last 3 years of the Clinton administration. We cut Sixth Circuit vacancies in half. With cooperation from the White House, we could have done even better.

The Republican Senate majority refused for over 4 years to consider President Clinton's well-qualified nominee, Helene White, to the Sixth Circuit. Judge White has served on the Michigan Court of Appeals with Judge Griffin since 1993, and, prior to her successful election to that seat, served for nearly 10 years as a trial judge, handling a wide range of civil and criminal cases. She was first nominated by President Clinton in January 1997, but the Republican-led Senate refused to act on her nomination. She waited in vain for 1,454 days for a hearing, before President Bush withdrew her nomination in March 2001. It stands in contrast to the recent mantra from Republicans that every judicial nominee is entitled to an up-or-down vote.

President Clinton had also nominated Kathleen McCree Lewis. She is the daughter of a former Solicitor General of the United States and a former Sixth Circuit Judge. She was also passed over for hearings for years. No effort was made to accord her consideration in the last 18 months of President Clinton's term. The Republican double standard denied her the treatment they now demand for every Bush nominee.

Despite the flawed process that brought us here, the Michigan Senators understood that in recent weeks we found ourselves on the brink of a terrible moment in the United States Senate when the majority leader would break the rules to change the rules in order to achieve the President's goal of packing the courts. They understood the extreme tactics of the Republican majority. I applaud their sacrifice, and hope that the President was listening to the 14 other Senators who expressly asked him in their memorandum of understanding on nominations to engage in real consultation with home State Senators. That is sound advice.

In deference to the Michigan Senators, I will no longer oppose these confirmations. Still, there are issues related to their records and views that trouble me. I hope that they will be able to put any ideologies or preconceptions aside and rule fairly in all cases.

As a judge on the Michigan Court of Appeals since 1989, Judge Griffin has handled and written hundreds of opinions involving a range of civil and criminal law issues. Yet, a review of Judge Griffin's cases on the Michigan Court of Appeals raises concerns. He has not been shy about interjecting his own personal views into some of his opinions, indicating that he may use the opportunity, once confirmed, to further his own agenda when confronted with cases of first impression.

For example, in one troubling case involving the Americans with Disabilities Act—ADA—Doe v. Mich. Dep't of Corrections, Judge Griffin followed precedent and allowed the State disability claim of disabled prisoners to proceed, but wrote that, if precedent had allowed, he would have dismissed those claims. Griffin authored the opinion in this class action brought by current and former prisoners who alleged that the Michigan Department of Corrections denied them certain benefits on the basis of their HIV-positive status. Although Judge Griffin held that the plaintiffs had stated a claim for relief, his opinion makes clear that he only ruled this way because he was bound to follow the precedent established in a recent case decided by his Court. Moreover, he went on to urge Congress to invalidate a unanimous Supreme Court decision, written by Justice Scalia, holding that the ADA applies to State prisoners and prisons. He wrote, ''While we follow Yeskey, we urge Congress to amend the ADA to exclude prisoners from the class of persons entitled to protection under the act.''

In other cases, he has also articulated personal preferences that favor a narrow reading of the law, which would limit individual rights and protections. For example, in Wohlert Special Products v. Mich. Employment Security Comm'n, he reversed the decision of the Michigan Employment Security Commission and held that striking employees were not entitled to unemployment benefits. The Michigan Supreme Court vacated part of Judge Griffin's decision, noting that he had inappropriately made his own findings of fact

when ruling that the employees were not entitled to benefits. This case raises concerns about Judge Griffin's willingness to distort precedent to reach the results he favors.

In several other cases, Judge Griffin has gone out of his way to interject his conservative personal views into his opinions. The appeals courts are the courts of last resort in over 99 percent of all federal cases and often decide cases of first impression. If confirmed, Judge Griffin will have much greater latitude to be a conservative judicial activist.

It is ironic that Judge Griffin's father who, as Senator in 1968, launched the first filibuster of a Supreme Court nominee and blocked the nomination of Justice Abe Fortas to serve as Chief Justice. Despite the deference given in those days to the President's selected nominee, former Senator Griffin led a core group of Republican Senators in derailing President Johnson's nomination by filibustering for days. Eventually, Justice Fortas withdrew his nomination. I know that the Republicans here have called filibusters of Federal judges ''unconstitutional'' and ''unprecedented'', but this nominee's father actually set the modern precedent for blocking nominees by filibuster on the Senate floor.

The second of the two nominees before us today is David McKeague. His record raises some concerns, and his answers to my written questions on some of these issues did little or nothing to assuage them.

In particular, I am concerned about Judge McKeague's decisions in a series of cases on environmental issues. In *Northwoods Wilderness Recovery* v. *United States Forest Serv.*, 323 F.3d 405 (6th Cir. 2003), Judge McKeague would have allowed the U.S. Forest Service to commence a harvesting project that allowed selective logging and clear-cutting in areas of Michigan's upper peninsula. The appellate court reversed him and found that the Forest Service had not adhered to a ''statutorily mandated environmental analysis'' prior to approval of the project, which was dubbed ''Rolling Thunder.''

Sitting by designation on the Sixth Circuit, Judge McKeague joined in an opinion that permitted the Tennessee Valley Authority—TVA—broadly to interpret a clause of the National Environmental Policy Act in a way that would allow the TVA to conduct large-scale timber harvesting operations without performing site-specific environmental assessments. This is the case of *Help Alert Western Ky., Inc.* v. *Tenn. Valley Authority*, 1999 U.S. App. LEXIS 23759 (6th Cir. 1999). The majority decision in this case permitted the TVA to determine that logging operations that covered 2,147 acres of land were ''minor,'' and thus fell under a categorical exclusion to the environmental impact statement requirement. The dissent in this case noted that the exclusion in the past had applied only to truly ''minor'' activities, such as the purchase or lease of transmission lines, construction of visitor reception centers and onsite research.

Judge McKeague also dismissed a suit brought by the Michigan Natural Resources Commission against the Manufacturer's National Bank of Detroit, finding that the bank was not liable for the costs of environmental cleanup at sites owned by a ''troubled borrower.'' This is the case of *Kelley ex rel. Mich. Natural Resources Comm'n* v. *Tiscornia*, 810 F. Supp. 901 (W.D. Mich. 1993). The bank took over the property from Auto Specialties Manufacturing Company when it defaulted on its loans. The Natural Resources Commission argued that the bank should be responsible for taking over the cost of cleanup because it held the property when the toxic spill occurred, but Judge McKeague disagreed.

In *Miron* v. *Menominee County*, 795 F. Supp. 840 (W.D. Mich. 1992), Judge McKeague rejected the efforts of a citizen who lived close to a landfill to require the Federal Aviation Administration to enjoin landfill cleanup efforts until an environmental impact statement regarding the efforts could be prepared. The citizen contended that if the statement were prepared, the inadequacies of a State-sponsored cleanup would be revealed and appropriate corrective measures would be undertaken to minimize further environmental contamination and wetlands destruction. Holding that the alleged environmental injuries were ''remote and speculative,'' Judge McKeague denied the requested injunctive relief.

In *Pape* v. *U.S. Army Corps of Engineers*, 1998 U.S. Dist. LEXIS 9253 (W.D. Mich.), Judge McKeague seems to have ignored relevant facts in order to prevent citizen enforcement of environmental protections. Dale Pape, a private citizen and wildlife photographer, sued the U.S. Corps of Army Engineers under the Federal Resource Conservation and Recovery Act of 1976 (RCRA), alleging that the Corps mishandled hazardous waste in violation of RCRA, destroying wildlife in a park near the site. Despite the Supreme Court's holding in Lujan v. Defenders of Wildlife that ''the desire to use or observe an animal species, even for purely esthetic purposes, is undeniably a cognizable interest for purpose of standing,'' and even though RCRA specifically conferred the right for citizen suits against the government for failure to implement orders or to protect the environment or health and safety, Judge McKeague dismissed the case, holding that plaintiff lacked standing to sue.

Judge McKeague found plaintiff's complaint insufficient on several grounds, in particular plaintiff's inability to establish which site specifically he would visit in the future. Plaintiff had stated in his complaint that he ''has visited the 'area around' the RACO site 'at least five times per year' and that he has made plans to vacation in 'Soldiers Park' located 'near' the RACO site in early October 1998, where he plans to spend his time 'fishing, canoeing, and photographing the area.' '' Comparing Pape's testimony with that of the Lujan plaintiff, who had failed to win standing after he presented general facts about prior visits and an intent to visit in the future, Judge McKeague rejected Pape's complaint as too speculative, based on the Court's holding in Lujan that:

> [Plaintiffs'] profession of an ''intent'' to return to the places [plaintiffs] had visited before—where they will, presumably, this time, be deprived of the opportunity to observe animals of the endangered species—is simply not enough to establish standing . . .. Such ''some day'' intention— without any description of concrete plans, or indeed, even any specification of when the some day will be—do not support a finding of the ''actual or imminent'' injury that our cases require.

In concluding that ''the allegations contained in plaintiff's first amended complaint fail to establish an actual injury because they do not include an allegation that plaintiff has specific plans to use the allegedly affected area in the future,'' Judge McKeague seemed to ignore completely the detailed fact description that Pape submitted in his amendment complaint. The judge further asserted that there was no causal connection between the injury and the activity complained of, and that, in any case, the alleged injury was not redressable by the suit.

On another important topic, that of the scheme of enforcing the civil and constitutional rights of institutionalized persons, I am concerned about one of Judge McKeague's decisions. In 1994, in *United States* v. *Michigan*, 868 F. Supp. 890 (W.D. Mi. 1994), he refused to allow the Department of Justice access to Michigan prisons in the course of its investigation into some now notorious claims of sexual abuse of women prisoners by guards undermines the long-established system under the Constitutional Rights of Institutionalized Persons Act or CRIPA. That act's investigative and enforcement regime is unworkable if the Department of Justice is denied access to State prisons to determine if enough evidence exists to file suit, and Judge McKeague's tortured reasoning made it impossible for the investigation to continue in his district.

I know that concern for the rights of prisoners who have often committed horrendous criminal acts is not politically popular, but Congress enacted the law and expected its statute and its clear intent to be followed. It seems to me that Judge McKeague disregarded legislative history and the clear intent of the law, and that sort of judging is of concern to me.

Finally, I must express my profound disappointment in his answer to a question I sent him about a presentation he made in the Fall of 2000, when he made what I judged to be inappropriate and insensitive comments about the health and well-being of sitting Supreme Court Justices. In a speech to a law school audience about the impact of the 2000 elections on the

courts, Judge McKeague discussed the possibility of vacancies on the Court over the following year. In doing so he felt it necessary to not only refer to—but to make a chart of—the Justices' particular health problems, and ghoulishly focus on their life expectancy by highlighting their ages. He says he does not believe he was disrespectful, and used only public information. There were other, better ways he could have made the same point, and it is too bad he still cannot see that.

Under our Constitution, the Senate has an important role in the selection of our judiciary. The brilliant design of our Founders established that the first two branches of Government would work together to equip the third branch to serve as an independent arbiter of justice. As columnist George Will once wrote: ''A proper constitution distributes power among legislative, executive and judicial institutions so that the will of the majority can be measured, expressed in policy and, for the protection of minorities, somewhat limited.'' The structure of our Constitution and our own Senate rules of self-governance are designed to protect minority rights and to encourage consensus. Despite the razor-thin margin of recent elections, the majority party has never acted in a measured way but in complete disregard for the traditions of bipartisanship that are the hallmark of the Senate. It acted to ignore precedents and reinterpret longstanding rules to its advantage, but fortunately its attempt to eliminate the voice of the minority entirely failed because of the efforts of well-meaning and fair-minded Senators. Two more well-meaning and fair-minded Senators did their part to save the Senate by clearing the way for the confirmation of the two nominees today. I hope that despite the concerns I have expressed and others that may emerge during this debate, once confirmed Judge Griffin and Judge McKeague will fulfill their oath and provide fair and impartial justice to all who come before them.

Mr. McCONNELL. Mr. President, I rise in support of the nominations of David McKeague and Richard Griffin to the Sixth Circuit Court of Appeals.

The Sixth Circuit covers thirty million people in Michigan, Ohio, Tennessee and my home State of Kentucky. For the last several years, the Sixth Circuit has been operating with at least one-fourth of its 16 seats empty. This 25 percent vacancy rate is the highest vacancy rate among Federal circuit courts. The Administrative Office of the Courts has declared all four of these empty seats to be ''judicial emergencies.''

Because of this high vacancy rate, the Sixth Circuit has been operating under a crushing caseload burden and has been the slowest circuit in the Nation. According to the AOC, last year—like the year before it—the Sixth Circuit was a full 60 percent behind the national average. In 2004, the national average for disposing of an appeal in the Federal circuit courts was 10.5 months. But in the Sixth Circuit, it took almost 17 months to decide an appeal. For your average litigant, that means in other circuits, if you file your appeal at the beginning of the year, you get your decision around Halloween. But in the Sixth Circuit, if you file your appeal at the same time, you get your decision after the following Memorial Day—over a half year later.

Mr. President, you know the old saying that ''justice delayed is justice denied.'' Well, the thirty million residents of the Sixth Circuit have been denied justice due to the continued obstruction of Michigan nominees by my Democrat colleagues. What is the reason for this sorry state of affairs? An intra-delegation spat in the Michigan delegation from years ago—when a quarter of the current Senate was not even here. Nor, I might add, was the current President around either. This dispute has dragged on year after year. I do not know who started it.

My colleagues from Michigan cite Clinton nominees to the Sixth Circuit who did not receive hearings. Other people note that our colleagues from Michigan do not have a monopoly on disappointment. They point to Michigan nominees from President George Herbert Walker Bush, such as Henry Saad and John Smietanka, who did not get hearings when Democrats controlled the Senate Judiciary Committee in the early 1990s.

Regardless of who started what and when, all the residents in the Sixth Circuit have been suffering from the refusal of our Democratic colleagues to allow these seats from Michigan to be filled. Moreover, this obstruction has been out of all proportion to any alleged grievance. Specifically, our colleagues had been blocking four circuit court nominees from Michigan, as well as three district court nominees from Michigan. But of these seven Michigan vacancies that the Democrats had been refusing to let the Senate fill, five of the seats were not even involved in this dispute. President Clinton never nominated anyone to the seat to which current nominee Henry Saad has been nominated. The seat to which current nominee David McKeague has been nominated did not even become vacant until the current Bush administration. And the three district court seats that are being blocked were not involved in the dispute either. So my friends from Michigan had been holding up one-fourth of an entire circuit in crisis, along with three district court seats, because of an internal dispute about two seats, the genesis of which occurred years ago.

What had my friends from Michigan been demanding in order to lift this blockade? They had wanted to pick circuit court appointments. Mr. President, let us get back to first principles. As much as they would like to, Democrat Senators do not get to pick circuit court judges in Republican administrations. For that matter, Republican Senators do not get to pick circuit court judges in Republican administrations.

Article II, section 2 of the Constitution clearly provides that the President, and the President alone, nominates judges. It then adds that the Senate is to provide its advice and consent to the nominations that the President has made. By tradition, the President may consult with Senators. But the tradition of ''consultation'' does not transform individual Senators into co-presidents. We have elections for that, and President Bush has won the last two.

Fortunately, it appears our friends from Michigan have reconsidered their position. As a result, two fine jurists, Judge Richard Griffin and Judge David McKeague, will get up or down votes, and will be confirmed to the Sixth Circuit Court of Appeals. All residents of the Sixth Circuit will benefit from their service on that court. We should all be thankful for that.

Mr. FRIST. Mr. President, before the recess, the Senate confirmed Priscilla Owen to the Fifth Circuit Court of Appeals. Yesterday, we confirmed Janice Rogers Brown to the DC Circuit. And earlier today, William Pryor was confirmed to serve on the Eleventh Circuit Court of Apeals.

All three of these judges had been waiting for years to get an up-or-down vote on the Senate floor. Until 2 weeks ago, all three of these nominees had been blocked by partisan obstructionist tactics.

In a few minutes, we will give Judge Richard Griffin and Judge David McKeague fair up or down votes. We are making progress on fulfilling our constitutional duty to advise and consent.

The judges before us now are nominees to the Sixth Circuit Court of Appeals—a circuit which includes Michigan, Ohio, Kentucky, and my home State of Tennessee. It is a circuit that desperately needs new judges. My circuit—the Sixth Circuit—has the highest vacancy rate and the slowest appeals process in the Nation.

For the last 3 years, the Sixth Circuit has had the highest the vacancy rate for Federal judges in the nation. Twenty five percent—4 out of 16—of its seats are empty. All four have been declared judicial emergencies.

These vacant judgeships have turned the Sixth Circuit into the slowest circuit in the country. Consider that the national average for an appeal is about 10 months. In the Sixth Circuit, it takes almost 17.

This situation is unfair to our constituents and unfair to the hard-working judges who labor under increasingly heavy caseloads.

Judicial obstruction has been delaying and denying justice to the 30 million people who live in the Sixth Circuit. It is time to end this judicial obstruction and fill these seats with qualified judges.

I would like to comment briefly on the backgrounds of Judges McKeague and Griffin.

The President nominated Judge McKeague on November 8, 2001, and Judge Griffin on June 26, 2002.

Judge Griffin has extensive experience as a practicing attorney. He has appeared before the Federal district courts in Michigan and before the Sixth Circuit Court of Appeals.

He also has served with distinction as a State court judge for well over a decade. As an appellate judge, he wrote over 280 published opinions and heard thousands of criminal and civil cases.

He enjoys bipartisan support from his colleagues. The chief judge of the Michigan Court of Appeals has called Judge Griffin a ''decisive scholarly judge with an instinct for the core issues and with a flair for authoring crisp understandable opinions.''

Judge Griffin has been waiting nearly 3 years for a fair up or down vote. It is time to give him that courtesy. It is time to vote.

Judge David McKeague, likewise, is a highly regarded jurist. In 1992, the Senate voted unanimously to confirm him to serve on the U.S. District Court for the Western District of Michigan.

Many of those same Senators who confirmed Judge McKeague to the district court have been obstructing his nomination to the appellate court for over 3 years.

Judge McKeague was also appointed by Supreme Court Chief Justice Rehnquist to serve on the Judicial Conference's Committee on Defender Services and on the Federal Judicial Center's District Judges Education Committee, which he chairs.

Those in the legal community who have worked with Judge McKeague respect him. One fellow attorney called him ''a person of unquestioned honor and integrity. Judge McKeague's judgments are sound, impartial, and prompt.''

Attorneys who have represented clients before Judge McKeague say that he is fair and ''treats all litigants and litigators with courtesy and respect'' and that ''his rulings are well reasoned with due regard for precedent and the law.''

Judge McKeague has been waiting nearly 4 years for an up-or-down vote. It is time to give him that courtesy. It is time to vote.

Judges Griffin and McKeague are highly qualified individuals with extensive legal experience and bipartisan support. Both have been rated ''well qualified'' by the American Bar Association, the highest rating possible.

It is only because of partisan obstruction that they have not received a fair vote. Justice has been delayed because an up-or-down vote has been denied.

I hope things are changing in the Senate. I am pleased that with today's votes the Senate is continuing to move forward to embrace the principle of fair up or down votes on judicial nominees.

I urge my colleagues to join me to vote to confirm Judge Griffin and Judge McKeague to the Federal appeals court.

Mr. President, for the information of our colleagues, we plan on beginning the votes—there will be two votes—in about 5 minutes. I know a number of people are in meetings and around the Hill, but I want to notify them that we will begin voting at 4:55, in about 5 minutes.

Mr. LEAHY. Mr. President, with the leader on the floor, have the yeas and nays been ordered on these two nominees?

The PRESIDING OFFICER. They have not.

Mr. LEAHY. Mr. President, I ask unanimous consent that it be in order at this time to ask for the yeas and nays on both nominations.

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

Mr. LEAHY. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

Mr. LEAHY. Mr. President, I know the two Senators from Michigan support both these nominees. They both returned positive blue slips, which is one of the reasons they are moving so quickly.

As to when the time arrives that the leader wishes to begin the votes, I ask unanimous consent that at that time the time on this side of the aisle be yielded back, whether I am on the floor or not.

Mr. FRIST. No objection.

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

Mr. FRIST. Mr. President, I understand that all time will have been yielded back and, therefore, we will be starting the vote at 4:55 sharp.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. SPECTER. Mr. President, I know our colleagues are anxious to vote. I have put into the RECORD statements in support of the nominations of Richard Allen Griffin to be a judge on the Sixth Circuit Court of Appeals and David W. McKeague to be, similarly, a judge on the Sixth Circuit. It would have been gratifying a couple of years ago to have had this confirmation at that time, but it is good to have it now rather than at some time in the future. It would not serve any useful purpose to go through the litany of reasons these nominees have been held up. Suffice it to say, they are very well qualified, and the Sixth Circuit is in a state of crisis, and it will help the administration of justice to have these nominees confirmed.

Mr. President, I believe we are ready to vote.

VOTE ON NOMINATION OF RICHARD A. GRIFFIN

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Richard A. Griffin, of Michigan, to be United States Circuit Judge for the Sixth Circuit? The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. MCCONNELL. The following Senators were necessarily absent: the Senator from Tennessee (Mr. ALEXANDER) and the Senator from Alaska (Ms. MURKOWSKI).

Further, if present and voting, the Senator from Tennessee (Mr. ALEXANDER) would have voted ''yea.''

Mr. DURBIN. I announce that the Senator from Delaware (Mr. BIDEN), the Senator from Vermont (Mr. JEFFORDS), and the Senator from Illinois (Mr. OBAMA) are necessarily absent.

I further announce that, if present and voting, the Senator from Delaware (Mr. BIDEN) would vote ''yea.''

The PRESIDING OFFICER (Mr. COLEMAN). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 95, nays 0, as follows:

[Rollcall Vote No. 134 Ex.]

YEAS—95

Akaka	Dole	Martinez
Allard	Domenici	McCain
Allen	Dorgan	McConnell
Baucus	Durbin	Mikulski
Bayh	Ensign	Murray
Bennett	Enzi	Nelson (FL)
Bingaman	Feingold	Nelson (NE)
Bond	Feinstein	Pryor
Boxer	Frist	Reed
Brownback	Graham	Reid
Bunning	Grassley	Roberts
Burns	Gregg	Rockefeller
Burr	Hagel	Salazar
Byrd	Harkin	Santorum
Cantwell	Hatch	Sarbanes
Carper	Hutchison	Schumer
Chafee	Inhofe	Sessions
Chambliss	Inouye	Shelby
Clinton	Isakson	Smith
Coburn	Johnson	Snowe
Cochran	Kennedy	Specter
Coleman	Kerry	Stabenow
Collins	Kohl	Stevens
Conrad	Kyl	Sununu
Cornyn	Landrieu	Talent
Corzine	Lautenberg	Thomas
Craig	Leahy	Thune
Crapo	Levin	Vitter
Dayton	Lieberman	Voinovich
DeMint	Lincoln	Warner
DeWine	Lott	Wyden
Dodd	Lugar	

NOT VOTING—5

Alexander	Jeffords	Obama
Biden	Murkowski	

The nomination was confirmed.

VOTE ON NOMINATION OF DAVID W. MCKEAGUE

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of David W. McKeague, of Michigan, to be a United States Circuit Judge for the Sixth Circuit? On this question, the yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. The following Senators were necessarily absent: the Senator from Tennessee (Mr. ALEXANDER), and the Senator from Alaska (Ms. MURKOWSKI).

Further, if present and voting, the Senator from Tennessee (Mr. ALEXANDER) would have voted ''yea.''

Mr. DURBIN. I announce that the Senator from Delaware (Mr. BIDEN), and the Senator from Vermont (Mr. JEFFORDS), are necessarily absent.

I further announce that if present and voting, the Senator from Delaware (Mr. BIDEN) would vote ''yea.''

The PRESIDING OFFICER (Mr. CHAFEE). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 96, nays 0, as follows:

[Rollcall Vote No. 135 Ex.]

YEAS—96

Akaka	Dole	Martinez
Allard	Domenici	McCain
Allen	Dorgan	McConnell
Baucus	Durbin	Mikulski
Bayh	Ensign	Murray
Bennett	Enzi	Nelson (FL)
Bingaman	Feingold	Nelson (NE)
Bond	Feinstein	Obama
Boxer	Frist	Pryor
Brownback	Graham	Reed
Bunning	Grassley	Reid
Burns	Gregg	Roberts
Burr	Hagel	Rockefeller
Byrd	Harkin	Salazar
Cantwell	Hatch	Santorum
Carper	Hutchison	Sarbanes
Chafee	Inhofe	Schumer
Chambliss	Inouye	Sessions
Clinton	Isakson	Shelby
Coburn	Johnson	Smith
Cochran	Kennedy	Snowe
Coleman	Kerry	Specter
Collins	Kohl	Stabenow
Conrad	Kyl	Stevens
Cornyn	Landrieu	Sununu
Corzine	Lautenberg	Talent
Craig	Leahy	Thomas
Crapo	Levin	Thune
Dayton	Lieberman	Vitter
DeMint	Lincoln	Voinovich
DeWine	Lott	Warner
Dodd	Lugar	Wyden

NOT VOTING—4

Alexander	Jeffords
Biden	Murkowski

The nomination was confirmed.

The PRESIDING OFFICER. The President will be immediately notified of the Senate's action.

The majority leader.

ORDER OF PROCEDURE

Mr. FRIST. Mr. President, pursuant to the order of May 24, I ask unanimous consent that at 2:30 p.m. on Monday, June 13, the Senate proceed to the Griffith nomination as provided under the order; provided further that following the use or yielding back of time, the Senate resume legislative session and the vote occur on the confirmation of the nomination at 10 a.m. on Tuesday, June 14.

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

Mr. FRIST. I ask unanimous consent that on Tuesday, immediately following the vote on the Griffith nomination, the Senate proceed to the consideration of H.R. 6, the Energy bill; provided further that the chairman be recognized in order to offer the Senate-reported bill as a substitute amendment, the amendment be agreed to and considered as original text for the purpose of further amendment.

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

Mr. FRIST. I ask unanimous consent that at 6:30 p.m. on Monday, June 13, the Judiciary Committee be discharged from further consideration of S. Res. 39 and the Senate proceed to its immediate consideration. I further ask unanimous consent there be 3 hours for debate with the time equally divided and controlled between Senators LANDRIEU and ALLEN or their designees, and upon the use or yielding back of time, the Senate proceed to a vote on the adoption of the resolution without intervening action or debate. I ask unanimous consent that upon adoption, the preamble then be agreed to, and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER (Mr. ISAKSON) Without objection, it is so ordered.

MORNING BUSINESS

Mr. FRIST. Mr. President, I ask unanimous consent there now be a period of morning business with Senators permitted to speak for up to 10 minutes each.

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

FUNDING FOR HOMELAND SECURITY

Mr. GREGG. Mr. President, I rise to speak a little bit about the Department of Homeland Security. I have the good fortune to chair their appropriations committee, and we will be marking up the appropriations bill relative to that agency next week, hopefully, if we can straighten out the proper allocations for funding within the budget, which I expect to happen today under the leadership of Chairman COCHRAN.

The Homeland Security Department is a big one because, of course, this goes to the essence of how we protect ourselves as a nation, how we make sure that we are ready should we be attacked, and how we, hopefully, make it possible for us to avoid such an attack. Regrettably, the Department of Homeland Security has been thrown together and has had some problems as it has tried to shake out in the post-9/11 world.

In fact, the problems have been so extreme that almost a day does not go by that we do not see an inspector general report or a GAO report outlining some function of that agency which simply is not working correctly. Today, there was a report where the inspector general found that there were no backup computer systems within the Department for some of the critical agencies that are involved, but that is only one of literally a stack of GAO and inspector general reports which probably is 2 or 3 feet high.

There is a lot to do in this agency. Certainly, I congratulate the President on bringing aboard Secretary Chertoff. I know he is a hard-driving and committed individual, and I know he is going to try to put together programs which will get that agency focused and functioning in a manner in which the American people expect.

As we look at the agency, however, I do think we have to be driven by a certain theory or theme, a set of policies. The first is that we address threat first and that we start with the highest threats as being the first threats which we should focus on. Of course, the highest threats are weapons of mass destruction coming into the country or being developed in the country which would be used against American citizens.

Those weapons involve things such as chemical or biological weapons or potentially some sort of nuclear device. So we must prepare ourselves and focus that Department on making sure that it is ready to deal with those types of threats.

Some of the responsibility for making ourselves adequately prepared in the area, especially biologics, falls outside the Department and falls with the CDC or HHS—the Health and Human Services Department—which have responsibility for developing vaccines. NIH, for example, National Institutes of Health, has the responsibility for making sure that we are on course to bring on line adequate responses should we be attacked with a biological weapon such as anthrax, a plague or botulism.

The Department still has a huge role in this area, and it obviously has a role in the nuclear area of detection and making sure that we are ready to try to anticipate and stop a weapon of that sort. Below that level of addressing the weapons of mass destruction issues, we have to look at the other areas of threat and how we as a government are structured to handle it.

There was a report today that the President of the United States, in a meeting with the leadership of the House at least, and maybe the Senate, said that he thought we should be focusing on border security as a priority in the area of maintaining our security as a nation. I think that is absolutely true. Most Americans today wonder why there are still literally tens of thousands, maybe hundreds of thousands of people coming across our borders, entering this country illegally.

A lot of other Americans wonder why today there is so much happening in the area of people coming into the country without us knowing what their purposes are or what their potential threat is as individuals. There is concern about our capacity to screen folks who are coming into this Nation who may have as one of their purposes to do us harm. We need to strengthen our ability to stay on top of this situation.

There is significant concern about what is happening within our ports and whether we are putting in place systems which adequately review and give us the capacity to address what might be in a container in one of the hundreds of thousands of containers that