

The PRESIDING OFFICER (Mr. NELSON of Nebraska). The Senator from Connecticut.

TERRORISM INSURANCE

Mr. DODD. Mr. President, I thank my colleague from New York. Before he arrived, I thanked him. In his presence, I thank him. The Senator played a very critical role in putting this product together. He is a new Member of the Senate, but he has already demonstrated, as others have pointed out, that he is very much a seasoned legislator. He brings from the New York legislature and from the other body years of experience, and it is a pleasure to do business with my colleague from the neighboring State of New York.

I hesitate to use the word "landmark" because we haven't finished it, but you can sense the enthusiasm we all feel about this compromise and at being able to arrive at a moment where we have the names already as cosponsors of a substitute that demonstrates a bipartisan commitment to this issue.

We don't claim perfection with this bill, but we do claim we are going to certainly improve the process immeasurably. My hope is that the leaders will find a time, if not as the first bill, as one of the early proposals we can bring to the floor for consideration.

I didn't want the Senator to leave the floor because I wanted to change the subject briefly. I will leave the record open for others who may want to comment about this bill. The hour is getting late and the time is running short. We all want to depart.

I want to mention the terrorism insurance bill, which is of critical importance to my colleague from New York. It is very important to many people across the country. I don't know what is going to happen with the so-called stimulus bill, but the terrorist insurance proposal is about as important a piece of legislation as this body could consider.

We have been at this now for a couple months trying to craft a proposal that would allow us to bridge this time from the September 11 events to a time when the industry would be able to calculate risk through the reinsurance efforts, and then through competitive pricing, be able to get back into this business.

It is a very complicated and arcane subject. It is not one that is going to be easily understood because the subject matter is complicated. Suffice it to say this: A critical leg of a healthy economy is the insurance industry. You cannot really have a healthy economy without it. People can't buy a home without fire insurance. You can't get loans today without having proper insurance.

The Presiding Officer, of course, brings a wealth of experience in this area because of his previous work in State government, where he dealt with insurance both in the private sector as well as a Governor. We have heard from Senator NELSON of Florida, also.

I know the Senator from New York is running off, but I hope—and it is my fervent plea this evening with a day left—there is still time for us to get this matter up. We are very close. I hope that Members on both sides will allow a motion to proceed to go forward. Give us a day, if that is what we can have, to consider various amendments on this bill. The House already passed one.

Bob Rubin, the former Secretary of the Treasury, when asked how he would calibrate the importance of this issue—and I can paraphrase his remarks and I think my friend from New York may have been there—said that this was as important, if not more important, than the stimulus package we have been considering.

Our failure to address and deal with this issue could mean that small businesses, construction projects, all across America, come January, will cease. Unemployment will go longer—not of CEOs of insurance companies, but of construction workers, small business people, shopkeepers—all of whom need to have this bill if they are going to get the bank loans to continue to operate.

This has to get done. If we don't do it, this body will be held accountable, in my view. We have known about this issue for weeks. Yet, we have not yet brought the matter to the floor. I hope that will change in the next 24 hours, because if we leave here and don't deal with this, more than 70 percent of these contracts are up for renewal, and we will create a further problem for our economy.

So I know it is not at an issue that attracts a lot of support automatically. It is complicated. There is no great affection for the issue of insurance. Those knowledgeable about the importance of this issue for the strength and vitality of our economy, to leave and go home for the holidays and leave this unattended to, I think, is a problem. I think we need to come back over the next day and address this. We may not succeed, but you have to try. I hope this matter will come up on the floor so we can at least debate it and, hopefully, pass it.

I know my colleague has a deep interest in the subject matter because of the facts concerning his own city and State. I wanted to give him an opportunity to comment on this as well. I am happy to yield to him or have him claim the floor in his own right.

Mr. SCHUMER. I thank the Senator for yielding. He is so right. If there was ever a time when the perfect should not be the enemy of the good, it is on this insurance bill. If you think this doesn't affect you because it is the arcane Dickensian, almost, world of insurance, it does. My colleague is exactly right. If we don't have terrorism insurance, and as of January 1—less than 2 weeks away—no one will write terrorism insurance, then your banks, whether they be in small towns or in large cities, will not lend to new projects. They may not even refinance

existing loans, and that means, as my friend has correctly pointed out, new projects come to a halt. No more new jobs. No construction jobs. No jobs that those projects create.

Each of us in the course of these few weeks as we debated this has had a different view as to how to do this better. But no one disputes that we have to do it. I don't know hardly a person in this body—maybe 10 of the 100—who would say we should not do anything. And so if there were ever a time that we all should sort of give in a little bit and say, well, it is not going to be done my way—if I had my druthers, I would have an FDIC for terrorism insurance. That is what I would do.

Warren Buffet, from the State of the Presiding Officer, proposed that. But that is not going to happen. I know there is too much opposition in the other body and in the White House for that.

So the proposal that the Senator from Connecticut and my good friend from Maryland, our chairman of the Banking Committee, and the Senator from Texas, the ranking member from the other side, and I, and the Senator from New Jersey, and so many others have put together, is sort of a grand compromise. Is it perfect? No. Is it a lot better than letting terrorism insurance lapse? You bet.

This is a test, I say to my friend from Connecticut, for this body, this Congress, this Government. If in the post-September 11 world, when we have new necessities and new urgencies, we all cannot pull together a little bit to deal with the problems and instead we let rumor-mongering, egos, or whatever else get in the way, we are going to hurt this country.

This ain't beanbag, as Boss Tweed said in Plunket's book on New York City politics. This ain't beanbag, this is serious stuff. As my friend from Connecticut said, it probably means more to the country, even though it is more esoteric than the stimulus package in terms of the economy heading south. If we do not try to grapple with this difficult, thorny issue, it is at our own peril.

I join my colleague in his heartfelt plea that we make an effort to take this bill up and deal with one of the hidden but very seriously vexing problems facing our economy in the post-September 11 world.

I yield back to my friend.

Mr. DODD. Mr. President, I thank my colleague. I know Senator DASCHLE and others are working on this. Colleagues who are paying attention to this and heard the comments of our colleague from New York and myself, there are matters involved in this that I know are important to some but, in terms of the centerpiece of what we are trying to do, are really extraneous.

We are talking about a brief period of time for this bill to work. I know there are matters others would like to use dealing with other, more profound, long-term issues on this bill, and I urge

them to hold up if they can and not allow a larger debate on those questions and not stop the debate on something that needs to be dealt with in the next 24 hours before we recess for the year.

The President has urged us to do this. Every single industry group I know of beyond the insurance industry—the private sector—is calling on us to deal with this issue. Even the Consumer Federation has different ideas but understands our failure to act could create a serious problem. For us to not even try I think would be a huge mistake.

I urge before we recess that we make an effort, starting early tomorrow, to give this body time to hear some of the various ideas my colleagues may have. I may disagree with them on those ideas, but I am prepared to spend the time necessary tomorrow to engage in debate on those ideas, resolve them one way or another, and send this bill from this Chamber to conference with the one adopted in the House and resolve it, so we can finish the business of giving the President a proposal that will avoid the kinds of problems the Senator from New York has very properly described.

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

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

JUDICIAL NOMINATIONS

Mr. HATCH. Mr. President, I understand some of my colleagues were on the floor today trying to make some points about judges, and I would like to set the record straight because I think they protest too much. There is just far too much protesting and far too much misinformation being given out about judges by some in this body.

Having been intimately involved in trying to get as many judges through as I could over the last 7 years, I have to say I find some of the comments that were made were a little unctuous and perhaps to some people who have been involved and have worked so hard to do a good job a little bit irritating and maybe offensive.

As Congress nears the end of its current session, we are beginning to see the end result of the systematic and calculated effort by some Senate Democrats to confirm the absolute minimum number of President Bush's judicial nominees they believe will be acceptable to the American public.

Some of the Senate Democrats want us to believe they have done everything that can be expected because they have confirmed as many judges during President Bush's first year in office as were confirmed in President

Clinton's first year 8 years ago. What they are not telling the public is the Senate has purposefully ignored more judicial nominees than in any other President's first year in office in recent history.

Thirty-two of President Bush's nominees have been prohibited from even having a hearing, the first step in the Senate's constitutionally-required process of advice and consent.

Some Senate Democrats want to use an inaccurate measure of performance focused on the end result of 8 years ago rather than exposing the percentage of their work they left uncompleted this year. The percentage is a much more appropriate gauge for the simple reason our current President Bush sent many more judicial nominations to the Senate than the previous President did in his first year.

So let us look at the percentages. The Senate has exercised its advice and consent duty on only 21 percent of President Bush's circuit nominees this year. The other 79 percent of our work remains unfinished. This is despite the fact that President Bush sent his first batch of 11 circuit nominations to the Senate on May 9 of this year, which gave the Judiciary Committee plenty of time to act on them. Even so, only 3 of those 11 have been confirmed. A significant number of those have the highest possible rating from the American Bar Association. Even so, only three, as I say, have been confirmed. President Clinton, on the other hand, did not send his first circuit nominations to the Senate until August 1993, but still saw 60 percent of his circuit court nominees confirmed before the Senate adjourned in November of 1993.

The Senate's record on overall judicial nominations is not much better than our record on circuit nominees. Since some of my colleagues on the other side of the aisle are so fond of comparing their record to the first year of the Clinton and first Bush administrations, let us see how they stack up. President Clinton had nominated 32 judges by October 31 of his first year in office. Eighty-eight percent of those, or 28 nominees, were confirmed by the time Congress went out of session in 1993. The first President Bush had nominated 18 judges by October 31, 1989, of which 89 percent, 16 nominees, were confirmed by the time Congress recessed at the end of that year. In contrast, as of today, the current President Bush has nominated 66 judges and only 27 have been confirmed, a mere 41 percent. (I hope that tomorrow we will confirm the five who are presently on the Senate calendar.)

The importance of this percentage is that the Senate has done only 41 percent of its job this year. In other words, nearly 60 percent of judicial nominees are somewhere in the Senate's black hole. We will conclude our work by leaving nearly 100 vacancies in the judicial branch, which means more than 11 percent of all Federal courtrooms in this country are presided over by an empty chair.

Some of my Democratic colleagues recently asserted the present vacancy crisis is the result of Republican inaction on judicial nominees during the Clinton administration. Incredibly, some have asserted that the vacancy rate increased 60 percent under Republican control of the Senate. That is a wild exaggeration. The truth is that, during the 6 years when I was chairman of the judiciary committee, the vacancy rate was never above 8 percent at the end of any session of Congress.

In December 1995, there were 63 vacancies in the Federal courts, which is a vacancy rate of 7.4 percent. In December 1996, after Congress had been out of session for nearly 2 months during which it could not immediately fill any vacancies, there were 75 openings in the Federal judiciary. December 1997, 81 vacancies; December 1998, only 54 vacancies; December 1999, 68 vacancies, and last year, only 67 vacancies. All tolled, the average number of vacancies under my chairmanship in the month of December is 68—a vacancy rate of 8 percent.

Contrast this to 2001: We are about to adjourn with nearly 100 vacancies, a rate of over 11 percent. This year will indeed go down in history as a black hole—and a black mark—for the failure to confirm judicial nominees.

Of course, trying to shift the blame for this present vacancy crisis ignores the end result of how Republicans treated President Clinton's judicial nominees. During the Clinton Administration, the Senate confirmed 377 judicial nominees. This number is only 5 short of the all-time record of 382 judges confirmed during the Reagan administration. And keep in mind, for 6 years of the Reagan administration the Senate was controlled by the President's party. But for 6 of President Clinton's 8 years, the Senate was controlled by Republicans. So the Republican-controlled Senate confirmed essentially the same number of judges for Clinton as it did for Reagan. We have not heard a single Democratic Senator acknowledge this fact because it proves that the Republicans treated Democratic nominees fairly. The fact is, contrary to the assertion that Republicans held up President Clinton's judicial nominees, the Republicans who controlled the Senate during 6 years of the Clinton administration put a near record number of judges on the bench. What is more, those 377 confirmed judges represent nearly 80 percent of all of President Clinton's judicial nominees.

As for the pace of moving nominees, it is worth noting that 20 Clinton judicial nominees received a hearing within 2 weeks of their nomination. Thirty-four Clinton judicial nominees received a hearing within 3 weeks of their nomination, and 66 received a hearing within a month of their nomination.

In contrast to the Republican Senate, the present Democratic-controlled Senate has only contributed to the vacancy crisis. In the first 4 months of