

for it out here in the Midwest. And now we have this year 12.8 percent. Do we find that somewhat perplexing when we have the President saying we have our responsibilities to write a healthy check? Well, the check was written and we increased it, but the Bush proposal is at 2.8 percent.

I wanted to mention, in the area which is of such central importance to educational reform, that is, having a quality teacher in every classroom, of all the educational issues, and there are many—afterschool programs, the construction issues, smaller class sizes—having a well-trained teacher in every classroom was key.

The President was out in the Midwest another day talking about all the work they have done, increasing teacher recruitment, retention, and pay, 35 percent. That is represented in this \$742 million. We supported every penny of it.

Well, now, look at this fiscal year's proposed budget for the very same function. Zero. Not even the cost of living. Zero. I am just wondering; when the Senator talks about the difference between rhetoric and reality, there must be people in the Senator's own State who have to wonder about that as well. I am just, again, wondering whether it isn't important for us, as we are coming into the debate and national elections in 2002—money doesn't solve everything, but money is a pretty clear indication of a nation's priorities. I know the leader reached his hand out to the Republican leader and we passed a strong bipartisan bill that had reform. I think most of us thought we needed reform and resources.

This is enormously troublesome to me in terms of the K through 12, as the efforts by the administration are to prohibit consolidation. I wonder whether the leader agrees with me that education is a key priority and that we are going to have to watch every aspect of it as we continue through this legislative session so that we are going to meet our responsibilities to families across the country and sharing quality education, K through 12, and even earlier education and college education.

Mr. DASCHLE. Mr. President, I heard someone say the other day: You can't fool all the people all the time, but why not give it a try.

I think that is, in essence, what we find the administration attempting to do when it comes to education—simply assert that they are for it and try to fool all the people all the time. But the Senator from Massachusetts points out the problems with that strategy. You can't fool all the people all the time, when the resources simply don't speak to the reality.

That is exactly the problem the administration continues to face. The resources don't speak to the reality. The resources fall far short of the reality. We can all assert we are for education and that we are not going to leave any child behind. But I can tell you, there are South Dakota children left behind,

there are Massachusetts children left behind, and Nevada and Minnesota children are left behind. I think that is the question we are going to continue to face throughout the remainder of the year: Will we leave these children behind because this administration refuses to provide the resources? I hope not.

Today, we got a good indication that, at least in one instance, they have changed their minds. When it comes to students, they will provide the resources that match the initial reality. We have a lot more of these instances in store, but I think we have made the first downpayment in the effort. I thank and applaud the Senator from Massachusetts for doing so.

I yield the floor.

The PRESIDING OFFICER (Mr. EDWARDS). The Senator from Colorado is recognized.

Mr. ALLARD. Mr. President, I understand we are in morning business.

The PRESIDING OFFICER. The Senator is correct.

JUDICIAL NOMINATIONS

Mr. ALLARD. Mr. President, last week Senator CAMPBELL and I sent a letter to the chairman of the Senate Judiciary Committee expressing our concern about the state of the judicial confirmation process. We shared with the chairman our thoughts on the serious injustice being served on the American people by the committee's failure to provide hearings for the President's judicial nominations.

It is unfortunate that the citizens of the United States must bear the consequences of the Judiciary Committee's delaying tactics. It is unfortunate that the citizens must bear the burden of delayed justice. One year ago, President Bush forwarded his first 11 judicial circuit court nominees to the Judiciary Committee. Every person in this group of nominees received a "qualified" or "well-qualified" rating from the American Bar Association. Now, 365 days later, 8 of the original 11 nominees are yet to receive a hearing. One year later, we are still waiting to have a hearing for 8 of those 11 nominees.

This weekend also marks the 1-year anniversary since the President nominated Tim Tymkovich for the Tenth Circuit Court of Appeals. So, today, 1 year since he was nominated by the President, I stand before you still hoping Mr. Tymkovich will have a hearing, still hoping to fill the 3-year vacancy in the Tenth Circuit, and still hoping that the people of Colorado, Utah, New Mexico, Oklahoma, and Nebraska will no longer be victimized by a vacant bench—a bench paralyzed by a lack of personnel to move quickly through an overwhelming caseload.

So now Mr. Tymkovich, the former solicitor general of Colorado, waits indefinitely for the opportunity to serve his country. He waits indefinitely for his opportunity to help administer the justice that our constitutional Govern-

ment guarantees. And the people of the United States wait for the Senate to fulfill its constitutional duties.

The events of the past year clearly demonstrate an active effort by the enemies of the United States to destroy the liberties and freedom of our great Nation. The most basic of our country's values and traditions are under attack. Congress has responded by enacting new laws and by providing financial assistance to businesses and families and defense. We acted swiftly to suffocate terrorists and destroy the hateful organizations that work to undermine our society.

Yet the instruments through which justice is served are being denied their chance to serve by ugly, partisan politics. For a year, Mr. Tymkovich's nomination has languished in the committee without action. Today, once again, I urge you to move forward with his confirmation. Mr. Tim Tymkovich is highly qualified and will serve his country with the utmost of patriotism and respect for adherence to constitutional principles. The committee must provide a hearing for the Tenth Circuit seat because the seat has remained vacant entirely too long.

A necessary component of providing justice is an efficient court system—a system equipped with the personnel and resources that enable it to fulfill its role as a pillar of our constitutional system of government.

The current state of judicial nominations is simply unacceptable. It has evolved into a petty game of entrenchment, creating a vacancy crisis that prevents the service of the very justice upon which our great Nation depends. The simple fact remains: Justice cannot be delivered when one of every six judgeships on the appellate level remains vacant. I will repeat that: One out of every six judgeships on the appellate level remains vacant.

It is unfortunate—perhaps even shameful—that the confirmation stalemate continues. How much longer will the American people have to wait? How much longer? Many people across the country are asking this same question and responding by urging the chairman to act quickly and provide hearings for qualified judges. The sentiment is being echoed across the pages of every major newspaper in the Nation and the State of Colorado. They all agree that the Senate must act to fill judicial vacancies and end this vacancy crisis.

Mr. President, I wish to share with you some of the statements made in the editorial pages of these papers. They all recognize that the treatment of certain Bush nominees has established a pattern of political partisanship. I ask that these editorials be printed in the RECORD upon completion of my statement.

The PRESIDING OFFICER. Without objection, it is so ordered.
(See exhibit 1.)

Mr. ALLARD. The first article is by the Denver Post, dated Monday, May 6, 2002. The other article I ask to be

printed is an editorial by the Rocky Mountain News from May 8, 2002. Next is an editorial by the Colorado Springs Gazette, dated May 8, 2002. Next is an editorial by the Rocky Mountain News, dated May 9, 2002.

Mr. President, the Denver Post editorial states:

The U.S. Constitution grants to the president the power to appoint judges with the "advice and consent" of the Senate. There is nothing in that provision that anticipates a process in which a president nominates replacements to the federal bench and the Senate acts as if it has no responsibility to cooperate.

The Post continues in its editorial:

. . . it is difficult to think of a single reason why [Mr. Tim Tymkovich] has been denied a confirmation hearing and an up-or-down vote in the full Senate. Such a vote is the prescribed solution for cases where there is disagreement between the Senate and the president.

The Post also expresses the frustration that the American people are feeling:

Unless the Democrat leadership abandons its delay tactics, we think the treatment of judicial nominees ought to be a front-and-center issue in the upcoming elections.

If the Senate won't vote to end the judicial logjam, maybe the citizens should.

The Rocky Mountain News notes that Mr. Tim Tymkovich is not the only Tenth Circuit nominee awaiting a hearing, there are two vacancies, both of whom were appointed 1 year ago. This means the committee is depriving the court of two qualified judges. Unfortunately, it is the people of the United States who suffer, the people who turn to the courts to address their grievances. The committee does not face the daily injustice served on the people, nor does it face the costly court delays caused by an overwhelming docket. The committee does not face the frustration of citizens as they pursue justice in front of an empty bench.

The Rocky Mountain News reveals that the chairman is blaming the President for the delay. According to the chairman, "Controversial nominations take longer." But as the paper points out, there is little controversy regarding the nomination of Tim Tymkovich. Yet he still has not received a hearing.

Outside the city of Denver, newspaper headlines herald the same message, citing the stalemate as "justice delayed" and calling for action. The Colorado Springs Gazette states:

There is a slate of looming vacancies on the federal bench across the country thanks in large part to backlogged nominations, and its risks paralyzing the courts.

The Gazette concludes by adding that swift justice is supposed to be a hallmark of our system; its prospects do not look good while policymakers are making it harder to get before a judge at all.

Mr. Tymkovich is an outstanding choice for the Tenth Circuit Court of Appeals, and he will serve this Nation well, but he must be given the opportunity to do so. In Colorado, his nomi-

nation enjoys broad bipartisan support and the support of our State's legal community.

He has also passed the litmus test of the chairman of the Judiciary Committee, Senator LEAHY, and is deemed qualified by the American Bar Association. The committee must move to end the confirmation stalemate and restore the people's faith that our judicial system is, indeed, built to provide all the judicial resources that are needed to provide access to the courts of law.

It must diligently perform its duty to provide hearings so that the vacancies that plague our courts may be filled. The President has asked for the forging of a bipartisan consensus in favor of fair and efficient consideration of all judicial nominations—I do not think that is an unreasonable request—regardless of the pattern of party control of the political branches of Government. I urge the committee to answer this call and move forward with the judicial nomination process and prove to the American people that the committee is, indeed, interested in serving justice.

I thank the Chair. I yield the floor.

EXHIBIT 1

[From the Denver Post, May 6, 2002]

POLITICS AND THE BENCH

There is a fresh reminder of how political the judicial selection process has become. Colorado's two senators, Ben Nighthorse Campbell and Wayne Allard, both Republicans, have written a letter to Senate Judiciary Committee Chairman Patrick Leahy, D-Vermont, pointing out that it was a full year ago that President Bush nominated Denver attorney Timothy Tymkovich to a seat on the 10th Circuit Court of Appeals.

The two senators complained, and we agree, that "the current state of judicial nominations . . . devolved into a petty game of entrenchment" that has created a vacancy crisis.

The recent treatment of a Charles Pickering, a Bush nominee to the Fifth Circuit Court of Appeals, consumed a great deal of the committee's time and established a pattern of political partisanship.

The issue for the committee and the nation is whether such treatment—and ultimate rejection on a straight party-line vote in committee—is a pattern the Democratic leaders of the Senate want to repeat. It will be no bargain for the country if the Senate committee adopts a strategy of simply delaying all Bush judicial nominations.

The U.S. Constitution grants to the president the power to appoint judges with the "advice and consent" of the Senate. There is nothing in that provision that anticipates a process in which a president nominates replacements to the federal bench and the Senate acts as if it has no responsibility to cooperate.

Because Tymkovich is well-known in Colorado, having served as the state's solicitor general, it is difficult to think of a single reason why he has been denied a confirmation hearing and an up-or down vote in the full Senate. Such a vote is the prescribed solution for cases where there is disagreement between the Senate and the president.

Unless the Democratic leadership abandons its delay tactics, we think the treatment of judicial nominees ought to be a front-and-center issue in the upcoming elections.

If the Senate won't vote to end the judicial logjam, maybe the citizens should.

[From the Rocky Mountain News, May 8, 2002]

BUSH NOMINEES TO DENVER-BASED COURT STILL WAITING FOR HEARINGS

(By Robert Gehrke)

WASHINGTON.—A year ago, it looked like smooth sailing for Michael McConnell.

President Bush had made the conservative University of Utah law professor one of his first appeals court nominees, naming him to the 10 Circuit Court of Appeals in Denver. Approval by the Senate Judiciary Committee, then chaired by Sen. Orrin Hatch, R-Utah, seemed certain.

Bush also nominated Colorado attorney Tim Tymkovich to the 10th Circuit.

A year later, Democrats control the Senate, and McConnell, Tymkovich and five other judges Bush nominated last spring are still awaiting a hearing.

Hatch, McConnell's leading backer, has criticized Judiciary Chairman Patrick Leahy, D-Vt., for moving too slow on judicial nominees, and frequently cites McConnell's case as an example.

"They know that Mike McConnell is one of the truly great Constitutional scholars. They know he's on the fast track to the Supreme Court, so they're going to delay this as long as they can," said Hatch.

Keeping McConnell off the bench, Hatch said, keeps him from compiling the type of judicial experience he would need before moving up to the Supreme Court.

Sens. Wayne Allard and Ben Nighthorse Campbell, both R-Colo., urged Leahy last month to hold a hearing for Tymkovich.

"The current state of judicial nominations is unacceptable," they wrote in a letter to Leahy. "It has devolved into a petty game of entrenchment, creating a vacancy crisis that prevents the service of the very justice upon which our great nation depends."

McConnell and Tymkovich would fill the only two vacancies on the 10th Circuit, which handles appeals from U.S. district courts in Utah, New Mexico, Colorado, Oklahoma and Nebraska. Other circuits have more vacancies.

Leahy spokesman David Carle defended the pace of nominations, saying Democrats confirmed 16 more justices in their first 10 months in control than the Republicans did in their first 10 months in 1995.

Women's groups, gay-rights advocates and church-state separationists have all voiced concerns about McConnell and Tymkovich's records.

McConnell, 46, has represented several groups that have claimed government discrimination because of their religious beliefs. He has argued against a secular government in favor of an arrangement that accepts all religious on an equal footing.

He opposes abortion and co-wrote a law review article challenging the constitutionality of legislation that prohibited protests blocking abortion clinics.

He represented the Boy Scouts of America when they argued they should not be forced to accept homosexual leaders.

As Colorado's solicitor general, Tymkovich defended a state constitutional amendment prohibiting municipalities from adopting ordinances outlawing discrimination against homosexuals.

He also defended a Colorado law prohibiting state financing of abortions in cases of rape or incest.

Adam Shah of the Alliance For Justice, which helped defeat the nomination of Judge Charles Pickering to the Fifth U.S. Circuit of Appeals in New Orleans, said the group has not worked against McConnell or Tymkovich but is examining their records.

"We understand that the president has the right to name nominees that he chooses," Shah said recently. "We are willing to look at the record and their political views and see if they will make good judges . . . and not turn back the clock on civil rights, women's rights and environmental protections."

[From the Colorado Springs Gazette, May 8, 2002]

JUSTICE DELAYED

BLOCKING NOMINEES IS AN OLD POLITICAL GAME—AND IT'S UNDERMINING OUR COURTS

Let's not be naive about how presidential picks, especially for the judiciary, quickly can become political pawns for members of Congress. Holding up a nominee to the bench or to any other office requiring the Senate's advice and consent has become nothing less than a venerated tradition. And it's a bipartisan affair even as each side howls with indignation when the other does it.

Sometimes it's indulged for philosophical reasons—a judicial nominee's stance on abortion or capital punishment, for example. Other times the stonewalling is mundanely political—perhaps some senators want a president to back off of a threatened veto of major legislation. A pending nomination can prove a useful bargaining chip. It all makes for a very old game, and it has been that way almost every time the White House has changed tenants over the years.

But that doesn't make it right. More to the point, the inclination of senators to make judicial appointees cool their heels interferes with the administration of justice. The latest joust between the Senate and the presidency is no exception.

To their credit, Colorado Republican U.S. Sens. Ben Nighthorse Campbell and Wayne Allard have written a letter to the Chairman of the Senate Judiciary Committee, Patrick Leahy, D-Vt., making just that point.

"The current state of judicial nominations is unacceptable. It has devolved into a petty game of entrenchment, creating a vacancy crisis that prevents the service of the very justice upon which our nation depends," they wrote.

Of particular concern to the Colorado delegation is the status of Colorado's former solicitor general, Tim Tymkovich, who was nominated by President Bush in 2001 to fill the Colorado vacancy on the 10th Circuit Court of Appeals. Saturday will mark the one-year anniversary since Tymkovich's nomination was sent to the Judiciary Committee.

It's not as if there are some glaring blemishes on the man's resume. On the contrary, his nomination enjoys the broad support of our state's legal community, and he was deemed qualified when rated by the American Bar Association. and still he remains in limbo.

To reiterate, we're not being naive here. This is an old syndrome that conforms to no political boundaries. Indeed, a couple of years ago, it was Allard who for a time helped delay the nomination of a Clinton administration pick for the 10th Circuit bench.

But the underlying point the Senators make in their letter to Leahy is well taken. Quite simply, there's a slate of looming vacancies on the federal bench across the country thanks in large part to backlogged nominations, and it risks paralyzing the courts.

Whatever reservations members of either party might harbor about any given nominee, and however substantive those concerns may actually be on occasion, at some point they pale next to the need for any judge at all to attend to the logjam in federal courts.

Swift justice is supposed to be a hallmark of our system; its prospects don't look good while the likes of Leahy are making it harder to get before a judge at all.

[From the Rocky Mountain News, May 9, 2002]

GOP MAY PROTEST DELAY ON HEARINGS COLORADAN IS AMONG BUSH JUDICIAL NOMINEES (By M.E. Sprengelmeyer)

WASHINGTON.—Republicans might slow action in the U.S. Senate today to protest a yearlong delay in confirming President Bush's judicial nominees, including one from Colorado.

Saturday will be the one-year anniversary of Bush's nomination of Tim Tymkovich to the 10th Circuit Court of Appeals in Denver.

But he's still waiting for a confirmation hearing, as are eight of the first 11 judicial nominees Bush made a year ago today.

Republican Senators will call attention to the issue in a morning press conference, and then they are expected to invoke procedural maneuvers to slow the Senate's work throughout the day.

"It will be a slowdown in order to make their point," said Sean Conway, spokesman for Sen. Wayne Allard, R-Loveland.

Last week, President Bush called the situation a "vacancy crisis," especially in the 12 regional Courts of Appeals, where one in six judgeships remains vacant. The Denver-based 10th Circuit is still waiting for nominees Tymkovich and Michael McConnell of Utah to get hearings.

In response, Senate Judiciary Committee Chairman Sen. Pat Leahy, D-Vermont, pointed out that the Senate had confirmed 52 of Bush's nominees since Democrats took control 10 months ago. He said Bush should share the blame for other delays.

"Controversial nominations take longer, and the President can help by choosing nominees primarily for their ability instead of for their ideology," Leahy said in a release.

Some groups have questioned McConnell's nomination, claiming that the University of Utah professor would weaken the separation of church and state. They also question his views because he once represented the Boy Scouts of America in its bid to exclude homosexuals. McConnell backers say the fears are based on misunderstandings and that he has been endorsed by several Democratic academics.

But there is little controversy over Tymkovich, Colorado's former solicitor general.

Last month, Allard and Sen. Ben Nighthorse Campbell, R-Ignacio, wrote Leahy, demanding that Tymkovich get a hearing.

"It has devolved into a petty game of entrenchment, creating a vacancy crisis that prevents the service of the very justice upon which our nation depends," they wrote.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. HUTCHINSON. I thank the Chair.

I congratulate Senator ALLARD for an excellent statement. I have a similar story to tell of one of our nominees from the State of Arkansas.

THE PRESIDENT'S COMMITMENT TO EDUCATION

Mr. HUTCHINSON. Mr. President, before I begin discussing the judicial nomination, I wish to respond to the colloquy that took place on the other side of the aisle regarding our President's commitment to education.

I serve on the Education Committee, and I was privileged to serve on the conference committee on the Leave No

Child Behind legislation which reauthorized the Elementary and Secondary Education Act and which was signed into law in January. I saw for more than a year the President's and this administration's deep commitment and involvement to reforming and fully funding our education legislation and our commitment to our elementary and secondary education, special education under IDEA, and the bilingual and other programs that were reauthorized in this legislation.

We have incredible leadership in the White House, and that is why this bipartisan legislation passed by over 80 votes in the Senate. It disappoints me and hurts me to hear my colleagues on the other side of the aisle attack this administration and question its commitment to education. We saw in 30 years under Democrat control an education policy that got us nowhere, in which the learning gap between high-achieving and low-achieving students never narrowed, in which test scores, instead of rising, continued to fall.

Now we have a President who has said: Let's try something different; let's put real accountability into education; yes, let's increase funding, with dramatic increases in title I, dramatic increases in IDEA, special education, and dramatic reforms and increases in bilingual education; but let's accompany spending increases with accountability; let's not just spend more, let's spend smarter.

I, for one, stand and applaud the President for his leadership. I can only say as the President's poll numbers soar on leadership in education and Republicans in general score better on education than ever before, that is the only explanation for the misguided attack on the President on the education issue which we just heard today.

JUDICIAL NOMINATIONS

Mr. HUTCHINSON. Mr. President, I wish to speak about the tragic hold up of our circuit court nominees to the Federal bench. It takes only a few numbers to show the dramatic vacancy crisis we are facing in the Federal court system: 10 percent of Federal judgeships are vacant right now, 85; 20 percent of judicial seats at the Federal courts of appeals are vacant. With eight openings, half of the entire Sixth Circuit is now vacant. It is operating at half strength.

The Judiciary Committee has held a hearing on only one of President Bush's seven nominees for the Sixth Circuit, and that hearing was held just a week and a half ago after pending for over 6 months. Two of the Sixth Circuit nominees, Jeffrey Sutton and Deborah Cook, were nominated a year ago today but have not yet had a hearing.

Do they question their ability? The ABA rated both nominees as unanimously qualified, but they have languished for a year.