

pending record than the record for Judge White who has been on the bench for many years.

First, an issue arose with Judge White because her questionnaire was incomplete. For example, she did not provide reversed opinions that had not been published, as required. During the course of the hearing, there was considerable concern about what Judge White had done while sitting on the Michigan court with respect to the soundness of her judicial scholarship. Then, yesterday, an objection was raised by Senator REID that so many questions were submitted for Judge White. However, the fact is, the number of questions is relatively modest by comparison—73 questions for Judge White. Last year, Judge Jennifer Elrod, nominee to the Fifth Circuit, had 108 questions submitted by the Democrats. Last year, Judge Leslie Southwick had 80 questions submitted by Democrats. Grace Becker, a nominee for the Department of Justice, Civil Rights Division, had 250 questions submitted by the Democrats. These are just a few examples. So the number Judge White received is relatively modest in comparison to others.

Next, you have the situation that there is the absence of the report of the American Bar Association, which is still not in on Judge White, and is not expected until the end of the month.

It is unprecedented to have a hearing on a circuit judge without having the ABA report in hand—absolutely unprecedented.

Yesterday, I spoke at some length about the importance of a court of appeals judge. The courts of appeals are the last appeal before the Supreme Court, meaning that in virtually all of their cases, their decisions are final. If there is a 2-to-1 decision and Judge White is one of the two in the majority, then that is the law, and it has very profound effects. So, it is a very serious obligation of the Senate, under our constitutional responsibility, to advise and consent, and to be sure we take adequate time for deliberation on the matter.

The concern that I expressed yesterday, and will comment on very briefly today, is that there were other nominees waiting who could have been processed in this time without this rush to judgment and without this unprecedented practice. For example, Peter Keisler has had a hearing and has been waiting over 690 days for a committee vote. He could have been processed without this rush to judgment. Judge Conrad has been waiting for 308 days for a hearing and could have been processed without this rush to judgment. Steven Matthews has been waiting 257 days and could have been processed without this rush to judgment.

There were ample nominees available. The majority did not have to proceed with Judge White's nomination. Yesterday, the Senator from Nevada commented that nobody presumed to tell ARLEN SPECTER, when I was chair-

man of the Judiciary Committee, what the scheduling should be or what the order of business should be. But, as I pointed out at some length yesterday, the White House wanted to have the hearing on Chief Justice Roberts starting in August of 2005. I consulted with Senator LEAHY in advance. He objected to it. I thought he was right. I, frankly, thought he was right in advance of consulting him, but I still consulted him. The hearing didn't start until September. Similarly, the White House wanted to have the hearing of Justice Alito concluded before Christmas. I consulted with Senator LEAHY again, and Justice Alito's hearing started in January. Later, the President told me personally that he thought my judgment was right.

The point I raise is—there was always consultation when I was chairman. But, on these matters, regrettably, there has been none. It is still my hope that we will be able to find some way through this morass. Senator LEAHY and I have had a very good record of working on a bipartisan basis. It is my hope that we will establish a protocol for consideration of judicial nominees that so many days after a nomination, there will be a hearing, then so many days later, there will be action by the Judiciary Committee, and then so many days later, there will be floor action. That protocol would prevent this morass, which has engulfed this Senate. I look forward to working with Senator LEAHY to accomplish that.

On the state of the record, I feel constrained to say that the facts speak for themselves. Processing Judge White in this manner, breaking all of the precedents and rules, is simply not the way to conduct the business of the Senate. The deal could have been completed with the other nominees who are waiting in the wings. That is the way the Senate ought to function.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Maryland is recognized.

Mr. CARDIN. Mr. President, I yield myself 3 minutes.

First, let me express my support for Judge Agee's confirmation. I had the opportunity to chair Judge Agee's confirmation hearing. I thank Senator WARNER and Senator WEBB for the manner in which they worked with the White House to get an appointment that could go through the confirmation process, and one which I hope my colleagues will support.

I support Judge Agee because of his experience. I am pleased he has legislative experience. I think that will help him on the court. He respects the rule of law and precedents, and he believes in the independence of the judiciary. He has expressed concerns at times with political interference within the judicial branch of Government. I think he is well qualified to be confirmed to the circuit court.

Let me comment very briefly on the comment made by my colleague, Sen-

ator SPECTER. Let me point out that Judge White was first appointed on January 7, 1997. She then waited 4 years for action in this body and received none because of being held up by the Republicans. So when we say we are "rushing to judgment," I think waiting 4 years without any action is not rushing to judgment. It seems as though the majority leadership is being criticized at times for moving too fast and also too slow. You cannot have it both ways.

In regard to circuit court appointments, there have been three I have opposed—two because of lack of experience, and one because of his record. I was joined by other Members who opposed those nominations. None of us sought to delay those confirmation votes. In fact, on one, the Republican leadership asked that we hold the confirmation vote in committee until they could get some more support.

So I think you should be judged by the record. Let me point out the record very clearly. If you look at the record on vacancies in circuit courts, starting with President Clinton, there was 17. At the end of his term, it grew to 32. The record by the Democrats has been consistent to reduce that so that we now have 12 vacancies. I think the record speaks for itself.

Obviously, we want to get as many judges confirmed as possible. I hope we can work in a bipartisan manner to make sure these vacancies are filled. If the White House would work with the local Senators and with us, I think we can get more confirmations to our circuit courts.

Mr. President, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from New York is recognized.

LEGISLATIVE SESSION

Mr. SCHUMER. Mr. President, I ask unanimous consent the Senate resume legislative session.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

FAIR CREDIT REPORTING ACT AMENDMENTS

Mr. SCHUMER. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 4008, which was received from the House.

The PRESIDING OFFICER. The clerk will state the bill by title.

The assistant legislative clerk read as follows:

A bill (H.R. 4008) to amend the Fair Credit Reporting Act to make technical corrections to the definition of willful noncompliance with respect to violations involving the printing of an expiration date on certain credit and debit card receipts before the date of the enactment of this Act.

There being no objection, the Senate proceeded to consider the bill.

Mr. SCHUMER. Mr. President, I ask unanimous consent that the bill be

read the third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The bill (H.R. 4008) was ordered to a third reading, was read the third time, and passed.

Mr. SCHUMER. Mr. President, I am glad we have just passed H.R. 4008. I thank all of my colleagues and Representative MAHONEY in the House, who authored the Credit and Debt Card Receipt Clarification Act. I introduced an identical bill on the Senate side, which was S. 2978. The House passed this bill last week by the unanimous vote of 407 to 0.

H.R. 4008 is a narrow, commonsense bill that will smooth the transition to new rules for printing credit card receipts under the Fair and Accurate Credit Transaction Act, or FACTA.

FACTA says the credit card receipts can only display one of two things: either the last five digits of the credit card account number or the expiration date.

Unfortunately, the law was not as clear as it could have been, and many companies misunderstood this requirement. They redacted account numbers in order to comply with FACTA but mistakenly left expiration dates in place.

But unlike the State laws after which it is modeled, FACTA is tied to a statutory damages provision that sparked the filing of hundreds of class action lawsuits against companies whose sole error was printing expiration dates on receipts.

Let's be clear. These lawsuits are not alleging that consumers were harmed in any way. I will repeat that. The lawsuits are not alleging that consumers were harmed in any way. In fact, experts on identity theft will tell you that printing the expiration date doesn't present any risk of fraud or identity theft, as long as the account number is truncated.

Yet companies are facing sky-high liability of up to \$1,000 per receipt. Some of them are large retail businesses; most of them are small mom-and-pop stores. The damages in these cases are so huge that judges have refused to certify class actions because the lawsuits could actually destroy the companies—small and large.

The long list of defendants in these cases includes many major corporations—we have all heard of the hotels, restaurant chains, et cetera—as well as little mom-and-pop stores.

It is fair to say that these lawsuits will actually hurt consumers because companies will be forced to raise prices, or even close stores, in order to cover the cost of legal fees and expensive settlements. This is at a time when our economy and businesses—particularly those dealing with retail—are already struggling to rebound from tough times.

So the bill is a win-win proposition for everyone. It stops destructive lawsuits against companies that made a harmless error in the past, but it also ensures that consumers can still sue in any case where they were actually harmed.

Going forward, companies will still have to meet the same strict rules Congress originally passed in fact. I am glad the Senate was able to take quick action on this important bill.

EXECUTIVE SESSION

Mr. SCHUMER. Mr. President, I now ask unanimous consent that the Senate resume executive session.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The Senator from Florida.

Mr. MARTINEZ. Mr. President, I wish to speak on the executive business of the Senate. I am proud today to speak on behalf of my brother, Ralph Martinez, who has been nominated by the President.

The ACTING PRESIDENT pro tempore. The minority has no time remaining.

Mr. MARTINEZ. Mr. President, I ask unanimous consent that I be allowed 3 minutes.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. MARTINEZ. Mr. President, my brother, Ralph Martinez, has been nominated by the President to be a member of the Foreign Claims Settlement Commission of the United States.

I am extremely proud of Ralph. He is someone, such as myself, who has adopted this country as his own and who, after the struggles of all immigrants, succeeded in life. He is the proud father of three wonderful children and has raised a wonderful family. He also has excelled in the practice of law in central Florida. I am delighted he is going to have an opportunity to serve this Nation in this very important capacity.

I am also delighted to thank Leader REID and Leader MCCONNELL for expediting his confirmation, as well as Chairman LEAHY and Ranking Member SPECTER for their courtesies throughout this process for Ralph Martinez.

I know he will serve this Nation well. I am proud to second his nomination and urge the Senate to confirm him swiftly.

Mr. President, I yield the floor. I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. Will the Senator withhold?

Mr. MARTINEZ. Yes.

RECESS

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate stands in recess until 2:15 p.m.

Thereupon, the Senate, at 12:31 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. CARPER).

EXECUTIVE SESSION

NOMINATION OF MICHAEL G. MCGINN TO BE UNITED STATES MARSHAL FOR THE DISTRICT OF MINNESOTA, RALPH E. MARTINEZ TO BE A MEMBER OF THE FOREIGN CLAIMS SETTLEMENT COMMISSION OF THE UNITED STATES, AND G. STEVEN AGEE TO BE UNITED STATES CIRCUIT JUDGE FOR THE FOURTH DISTRICT—Continued

The PRESIDING OFFICER. Under the previous order, there will be 15 minutes equally divided and controlled between the senior Senator from Virginia, Mr. WARNER, and the junior Senator from Virginia, Mr. WEBB, or their designees.

The Senator from Illinois is recognized.

Mr. DURBIN. Mr. President, I will take the time allotted on the Democratic side to Senator WEBB.

Mr. President, we have heard the sad news about our friend TED KENNEDY. Those of us who stood by his side know that there is no better ally and no more determined fighter. Now, as TED KENNEDY faces another great fight, we know he will bring the same courage and determination to the battle. We also know TED has spent his entire life caring for those in need. It is time for those of us who love TED and his family to care for them and join in prayer to give them strength.

Mr. President, at 2:30 we will consider the nomination of Steven Agee of Virginia to serve on the U.S. Court of Appeals for the Fourth Circuit. It is a lifetime appointment. He is a consensus nominee. Both Senators WARNER and WEBB support him. Of the 11 appellate court nominees pending before the Senate, only 6 can claim the same home State Senator support. That is one of the reasons some of them have been delayed. If we work more toward bipartisan consensus, more nominations would be approved.

Also, it is difficult to hear criticisms that these nominations have been delayed. The Republican minority has delayed so many bills and so many matters in this Congress, they have set a new record for filibusters and delay. That is a fact.

The Senate has confirmed 303 judges for lifetime appointments during the Bush Presidency. President Bush has had 86 percent of his judicial nominees confirmed; President Clinton, only 75 percent. When it comes to circuit court nominees, President Bush has even had a higher confirmation rate than President Clinton—71 percent to 57 percent. There has been no mistreatment here when it comes to the nominees sent to us by the Bush White House. Under