to satisfy you? And you know who you are.

There is an article by Investors Business Daily to which I want to refer. According to this article—not talking about the taxation of a certain amount of income—if the government confiscated all the income of the people earning $250,000 a year or more, that money would fund the Federal Government today for a mere 140 days. Do you know what you would have? You wouldn't have those people trying to maximize their income because why would they maximize it if the government was going to confiscate it.

So that is a very basic question: How high do taxes have to go to satisfy the appetite of people in this Congress to spend money?

Funding the government should be one of if not the primary goal of our income tax laws. Of course, that leaves out this whole business of whether the Federal Government's purpose is the purpose of redistributing income.

Note here that I am specifically focusing on the income tax. This is because payroll taxes are not used to fund the government. Social Security and Medicare taxes are, in fact, insurance programs. Because they are insurance programs, the taxes they pay are insurance premiums because individuals who pay them expect to benefit when they reach a certain age.

It is clear some believe the Tax Code should be used to reduce the growing income disparity between the lowest and highest income quintiles. This assumes a key objective of the Federal Government, through the Federal income tax laws, should be to ensure that income is distributed equally throughout our citizenry. In other words, these folks actually believe the Federal Government is the best judge of how income should be spent. That is not what our Founding Fathers or original authors of the tax laws intended.

In addition to considering the purpose of tax revenue, we ought to, in fact, have some principles of taxation by which we abide. These principles of taxation would be a much stronger foundation than the day-to-day decisions about whether we ought to raise taxes on a certain number of people. So I abide by the principle that has been a fact of our tax laws for 50 years—that an average of 18.2 percent of the GDP of this country is good enough for what the government needs to spend.

Now, I say that because with a 50-year average it hasn't been harmful to the economy, as we have seen this country expand and expand and expand economically over that period of time.

Quite frankly, it ought to be clear that 18.2 percent of the GDP of this country coming in for us to spend is not a level of expenditures that taxpayers have revolted against. So we take in that 18.2 percent for 535 of us to decide how to spend, and the other 82 percent is in the pockets of the taxpayers to decide how to spend or to save. If 535 Members of Congress were to decide how to divide up the resources of this country, we would not have the economic growth that we have had in our economy. With 137 million taxpayers deciding how to spend or how to save, and how much of each, the economic growth of this country is enhanced tremendously because of the dynamics of the free-market system. If we were going to go the greater route of increasing that 18 percent very dramatically, we would be moving increasingly toward the Europeanizing of our economy, and I think that would be very bad.

In evaluating whether people are paying their fair share, experts frequently look at whether a proposal improves the progressivity of our tax system. Critics of lower tax rates continue to attempt to use distribution tables to show that tax relief proposals disproportionately benefit the upper income. We keep hearing that the rich are getting richer while the poor are getting poorer. This is not an intellectually honest statement because it implies that those who are poor stay poor throughout their lifetimes, and those who are rich stay rich throughout their lifetimes. And that is just not the case.

To illustrate this point, I quote from a 2007 report from the Department of the Treasury titled, ''Income Mobility in the U.S. from 1996 to 2005.'' I quote the key findings:

> There was considerable income mobility of individuals in the U.S. economy during 1996 through 2005 period as over half of the taxpayers moved to a different income quintile over this period.
>
> Roughly half of taxpayers who began in the bottom income quintile in 1996 moved up to a higher income group by 2005.
>
> Among those with the very highest incomes in 1996—the top 1/100 of 1 percent—only 25 percent remained in this group in 2005. Moreover, the median real income of these taxpayers declined over this period.
>
> The degree of mobility among income groups is unchanged from the prior decade.

The prior decade meaning the prior study by the Treasury Department from 1987 through 1996.

> Economic growth resulted in rising incomes for most taxpayers for the period of 1996 to 2005. Median income of all taxpayers increased by 24 percent after adjusting for inflation. The real incomes of two-thirds of all taxpayers increased over this period. In addition, the median incomes of those initially in the lower income groups increased more than the median incomes of those initially in the higher income groups.

Therefore, whoever is saying—and we hear it every day on the floor of the Senate—that once rich, Americans stay rich; and once poor, they stay poor, is purely mistaken. The Internal Revenue Service data supports this analysis. A report on the 400 tax returns with the highest income reported over 14 years shows that in any given year, on average, about 40 percent of the returns were filed by taxpayers who are not in any of the other 14 years.

In other words, 40 percent of those people who are in the highest brackets are not in the highest brackets ever in that 14-year period of time. So once rich, not always rich.

I welcome this data on this important matter for one simple reason: It sheds light on what America is all about: vast opportunities and income mobility. Built by immigrants from all over the world, our country truly provides unique opportunities for everyone. These opportunities include better education, health care services, and financial security. But, most importantly, our country provides people with the freedom to obtain the necessary skills to climb the economic ladder and live better lives.

We are a free nation. We are a mobile nation. We are a nation of hard-working, innovative, skilled, and resilient people who like to take risks when necessary in order to succeed. Bottom line, we have an obligation as lawmakers to incorporate these fundamental principles into our tax system instead of just asking: Are the rich paying enough?

Madam President, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Texas.

Mr. CORNYN. Madam President, I ask unanimous consent to speak for up to 20 minutes.

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

NOMINATION OF JACK McCONNELL

Mr. CORNYN. Madam President, I rise to speak on a nomination that is pending before the Senate, and I do so with some degree of trepidation because, as someone who has been a member of the legal profession for about 30-plus years, I believe it is imperative that I voice my strong concerns and, indeed, my objections to the nomination of Jack McConnell to become a U.S. district judge prior to the vote we will have tomorrow morning on a cloture vote.

The reason I was attracted, like so many others, I think, to law school and the legal profession was because of the majesty of the notion of the rule of law, its importance to our democracy, the responsibilities that lawyers owe not just to themselves, to enrich themselves, but to their clients—the fiduciary duty that a lawyer has to represent a client. Then, of course, the ethical standards, which some might scoff at but which actually work pretty well. They keep lawyers, for the most part, accountable to the high ethical standards imposed by the legal profession.

Unfortunately, and I am sorry to have to say this, but the hard truth is Mr. McConnell's record—which I will describe in a moment—is one of not upholding the rule of law but perverting the rule of law, ignoring the responsibilities he had to his client, and manipulating those ethical standards in order to enrich himself and his law partners.

First, let me just say that Mr. McConnell, when he came before the

Senate Judiciary Committee, intentionally misled the committee during the confirmation process. I don't know how I can say it any more gently. The fact is, he lied to the Senate Judiciary Committee during his confirmation process: Regardless of who nominates an individual, party affiliation aside, I don't think the Senate, as an institution, should tolerate a nominee who essentially misrepresents the facts in the context of a confirmation process. This involved his participation in or involvement with a set of stolen confidential documents his law firm obtained in a lawsuit against the Sherman-Williams Company.

In 2010, in his answers to written questions to the committee, Mr. McConnell told members of the committee: ''I would not say I was familiar with the documents in any fashion.'' Only a few months later, in September 2010, this same nominee gave a deposition in an Ohio court, where he testified he was the first attorney at his firm to review the documents in question, that he had drafted a newspaper editorial citing information that had come from those documents, and that portions of those documents were incorporated in a brief filed under his signature. Despite this obvious contradiction and given an opportunity to correct his misleading statement, Mr. McConnell has unequivocally stood by his original statement to committee members.

I reiterate, this body should not approve or confirm, for a lifetime appointment, someone who wants to serve as a judge, in particular, but anyone who would lie to or, at best, intentionally mislead the Senate by downplaying his role in a serious controversy involving, in this case, stolen confidential documents.

During the time I practiced law and served on the State court bench in my State of Texas, I have come to respect lawyers who handle all sorts of cases—lawyers who prosecute criminal cases, lawyers who defend criminal cases, lawyers who defend citizens, including companies, sued for money damages, and those who bring those lawsuits—constrained, again, by the rule of law, duty to the client, and high ethical standards. But based on his long career as a lawyer, Mr. McConnell has advocated—it is clear from the evidence—a results-oriented view of the law and manipulated it for his personal gain. These theories he has advanced, ostensibly on behalf of his client, have been rejected, not just by people like me but by a very broad range of people in the legal community.

For example, Mr. McConnell and his firm sued paint manufacturers based on an unprecedented theory of public nuisance that allowed them to circumvent longstanding legal doctrine and receive a huge jury award in a sympathetic judge's courtroom.

Ultimately, the Rhode Island Supreme Court rejected unanimously this theory, declaring it ''at odds with centuries of American law and antithetical to the common law,'' to quote the court. As one Iowa attorney general who happens to be a Democrat said: ''Mr. McConnell's lead paint litigation was a lawsuit in search of a legal theory.''

Mr. McConnell's lead paint litigation scheme required the complicity, unfortunately, of State and local officials, a practice I will speak more on in just a moment. But Mr. McConnell's reaction to the decision of the Rhode Island Supreme Court also demonstrates his lack of judicial temperament, something very important, particularly for a judge. It showed that not only does he still adamantly believe in these radical, unprecedented legal theories, rejected by the highest court in Rhode Island, but he also lacks the temperament to serve on the Federal bench. Instead of respecting the decision made by the highest court in the State, Mr. McConnell wrote a strident op-ed piece condemning the court and stating he believed their decisions ''let the wrongdoers off the hook.'' In other words, Mr. McConnell made clear he believes the law should be manipulated to serve his agenda, not to uphold the rule of law, nor to respect the very bodies that are responsible under our system for interpreting law and rendering judgment.

Mr. McConnell's outburst was not particularly surprising, given his public admission previously that he is ''an emotional personal about injustice at any level, personal, societal, or global,'' as he put it. This lack of temperament and novel view of the law is indicative of the type of judge Jack McConnell would be, I am sorry to say: biased against a certain class of people and untethered to the rule of law.

Mr. McConnell's practices also existed under an ethical cloud throughout his career. He and his law firm made billions of dollars and a name for themselves through their pioneering practice of soliciting no-bid, contingent-fee contracts from State officials. For example, Mr. McConnell and his firm played a central role in litigating lawsuits brought by State attorneys general, first against tobacco companies and then lead-based paint manufacturers. Of course, I am not saying tobacco companies and other companies should not be held accountable for harmful products, but the purpose of the law should be to compensate those people who have been aggrieved and to deter others from acting in the same fashion in the future. The litigation he constructed and devised, the scheme he literally created, did none of that. The question is, ultimately, where did the money go?

Under these contracts, Mr. McConnell and his partners have repeatedly sued American businesses, pocketing billions of dollars for themselves in attorney's fees, while leaving taxpayers on the hook for the resulting costs. In the word of one respected legal commentator, Mr. McConnell and lawyers like him have ''perverted the legal system for personal and political gain at the expense of everyone else.''

In several lawsuits, Mr. McConnell and his partners received contingent-fee contracts from State officials, to whom they later contributed tens of thousands of dollars. I think there are a lot of very important public policy reasons why State officials should not be able to outsource their responsibilities to private lawyers based on a contingency fee, where their only incentive is one of a profit motive, untethered by the sorts of checks and balances that elected or other appointed government officials would ordinarily have.

Our system of justice relies on financially disinterested officials who take an oath to uphold the law and not those whose sole motive is not to uphold the law but to twist it and manipulate it in order to maximize their economic gain.

Some of these lawyers, including Mr. McConnell's firm, have pocketed what amounts to hundreds of thousands of dollars per hour for their work in lawsuits against tobacco companies. Mr. McConnell and lawyers like him are the big winners in these lawsuits, taking home large sums of money that rightfully belong to the taxpayer, the client I mentioned at the outset. Imagine if these billions of dollars were spent on cancer research or improving public health, instead of lining the pockets of a few politically well-connected lawyers. More important, however, the outsourcing of suits to private trial lawyers on a contingent-fee basis creates both the opportunity and appearance for corruption by allowing State officials to reward their friends and campaign contributors.

One reason I have taken such a strong personal interest in this issue is because of my service as attorney general of Texas, following that of Dan Morales, my predecessor. Mr. Morales served over 3 years in the Federal penitentiary for attempting to illegally channel millions of dollars in a tobacco settlement, money that was due to the State of Texas, but he steered it to a lawyer friend of his by trying to backdate a contract, to make it appear to be something it was not. The actions of Mr. McConnell and his partners, by funneling tens of thousands of dollars into campaign accounts of State officials who hired them, raise concerns about pay-to-play dealings.

In the State of Washington, for example, Mr. McConnell and members of his small South Carolina-based law firm contributed $23,200 to the reelection of the attorney general in the State of Washington. By the way, that was the very same lawyer who hired them on a contingency basis to represent the State.

In North Dakota, Mr. McConnell and his wife contributed $30,000 to the gubernatorial campaign of the attorney general who appointed him as special

assistant attorney general, for purposes of representing that State in tobacco litigation. Mr. McConnell and his law firm contributed an additional $73,000 to that same attorney general's State political party during the campaign cycle, making them the No. 4 campaign contributor to that organization.

There is nothing wrong with people contributing money to political candidates or parties or causes they believe in. But it is another matter when these contributions are made in connection with no-bid contracts or apparent political favors. It is no small matter that Mr. McConnell has a lucrative, ongoing financial arrangement as a product of his previous work as a trial lawyer. In fact, he will receive $2.5 to $3.1 million a year through 2024 as part of his payout for his work in the tobacco litigation I mentioned a moment ago—$2.5 to $3.1 million a year through 2024. For anyone who would praise Mr. McConnell for giving up a successful legal career in order to serve as a Federal judge, remember he would be reaping huge windfalls at the expense of taxpayers long into his tenure as a Federal judge.

Some Senators will say that whatever his past, Mr. McConnell deserves the benefit of the doubt and that he would be an impartial judge if confirmed by the Senate to this lifetime appointment. I cannot agree and neither does, by the way, the U.S. Chamber of Commerce. They have taken an unprecedented step of opposing this nomination.

I ask unanimous consent that letter be printed in the RECORD following my remarks.

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

(See exhibit 1.)

Mr. CORNYN. The Chamber has taken this unprecedented step of opposing his nomination and declaring him ''unfit to serve.'' In fact, this is the first time in its 99-year history they have opposed a district court nominee.

My colleagues have asked me whether I believe that Texas businesses and businesspeople would get a fair shake in Jack McConnell's courtroom, and I absolutely do not believe they could.

To my colleagues who may doubt what I am saying or look for some proof, I would just say: Read the record. I am convinced you would have trouble looking your constituents in the eye and telling them you believe Mr. McConnell would be fair to all litigants in his courtroom and, in this case, especially businesses that may be sued for money damages, as he did throughout his legal career. In fact, Mr. McConnell, during the Judiciary Committee deliberations, described his legal philosophy by saying: ''There are wrongs that need to be righted and that is how I see the law.'' That doesn't cite any applicable legal standard. It doesn't actually take into account law as we know it, just wrongs he believes need to be righted.

Similarly, Mr. McConnell has said that based upon his experience he has ''absolutely no confidence'' that certain industries will ever do the right thing and that they will only do the right thing ''when they're sued and forced to by a jury.''

Given his tendency to view lawsuits against businesses as a movement against societal injustice, it is difficult to see how Mr. McConnell could put those personal views aside and give all litigants in his courtroom a fair trial, a right which they are guaranteed under our Constitution and laws. I believe a vote to support Mr. McConnell's nomination is a vote to create yet another court where trial lawyers will repeatedly prevail in frivolous litigation against American businesses. That is something we ought not allow.

Mr. McConnell's behavior during his career and confirmation procession demonstrates a lack of ethics and temperament necessary to serve as a Federal judge. I hope a President would never appoint someone such as Jack McConnell, but apparently everyone makes mistakes, including this nomination by this President. Instead of stubbornly digging in his heels, usually the President has agreed to withdraw nominees whose confirmation process produces extraordinary controversy, but since he has failed to do so here, the President has forced me and others to stand our ground and to fight Mr. McConnell's appointment to the Federal bench.

Based on his deeply troubling ethical record and poor judicial temperament and the fact he intentionally misled, if not lied to, the Judiciary Committee during his confirmation process, I believe we must fight this nomination with every tool at our disposal.

I yield the floor.

EXHIBIT 1

CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA,
Washington, DC, March 30, 2011.

Hon. PATRICK LEAHY,
Chairman, Committee on the Judiciary, U.S. Senate, Washington, DC.
Hon. CHARLES GRASSLEY,
Ranking Member, Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR CHAIRMAN LEAHY AND RANKING MEMBER GRASSLEY: The U.S. Chamber of Commerce, the world's largest business federation representing the interests of more than three million businesses and organizations of every size, sector, and region, strongly opposes the nomination of John ''Jack'' McConnell to serve on the United States District Court for the District of Rhode Island.

Mr. McConnell's past statements, conduct as a personal injury plaintiffs' lawyer, and lackluster ABA rating raise serious concerns about his fitness to be confirmed to a lifetime appointment to the federal bench. Although the Chamber has historically stayed away from debates surrounding federal district court nominees, we believe that a response is warranted in this circumstance given Mr. McConnell's record.

Our opposition begins with Mr. McConnell's mediocre ''substantial majority qualified, minority unqualified'' rating from the American Bar Association. For a practicing lawyer with 25 years of experience to obtain such a low rating speaks poorly of his legal abilities. It is likely that he generated negative comments from judges before whom he appeared and/or from lawyers who know him.

Mr. McConnell's ABA rating should come as no surprise given his past statements, which raise serious questions about whether he will follow precedent and the rule of law. For example, in 1999, Mr. McConnell was hired on a contingency fee basis by the State of Rhode Island to sue paint companies under theories of liability that exceeded the bounds of well-settled law. After nine years of protracted litigation, and after millions of dollars spent by defendants, the Rhode Island Supreme Court unanimously (4–0) rejected Mr. McConnell's misguided interpretation of public nuisance law. Mr. McConnell demonstrated little respect for the Supreme Court's ruling and publicly attacked the decision in an op-ed that he penned for The Providence Journal, claiming that the justices ''got [the decision] terribly wrong'' by letting ''wrongdoers off the hook.''

Mr. McConnell's public criticism of the Rhode Island Supreme Court's lead paint ruling should also give the Committee pause because it casts light on a judicial philosophy that appears to be outcome-driven rather than based on interpreting and applying the law. Indeed, Mr. McConnell has publicly affirmed his support for ''an active government'' that should not ''stand on the sidelines'' and that ''[he] see[s] the law'' as a mechanism to redress ''wrongs that need to be righted.'' Considering these statements together, a picture of a judicial nominee who will legislate from the bench begins to emerge.

The Chamber is equally concerned that Mr. McConnell lacks the capacity to be an impartial jurist, especially against business defendants who may appear before him. Mr. McConnell has defined his career by suing business defendants. As his own Committee questionnaire indicates, of the top ten cases he views as the ''most significant'' litigations of his legal career, all but two involve actions against businesses, and none involved him representing or defending a business. Worse still, when asked by the Columbus Post Dispatch in 2006 about the possibility of future lead paint litigation, he said that, based on history, he had ''absolutely no confidence'' that defendant paint companies would do the right thing. He added ''[t]he only time is when they're sued and forced to by a jury.'' How could a business hope to receive an impartial hearing in Mr. McConnell's courtroom when these statements show that the deck is already stacked so heavily against them?

Moreover, Mr. McConnell's ability to render fair and impartial rulings from the bench should be seriously questioned in light of the potentially significant financial windfalls that he stands to recover for the next 15 years. According to Mr. McConnell's questionnaire, he is scheduled to receive millions of dollars annually through 2024 from an organization closely tied with his current employer, the Motley Rice plaintiffs' firm. This has all the appearance of a conflict of interest and it is difficult to see how Mr. McConnell could render impartial judgments in matters involving plaintiffs' law firms while simultaneously receiving millions of dollars in compensation from another plaintiffs' firm.

Ultimately, we are concerned that Mr. McConnell's apparent bias against business defendants, underlying judicial philosophy, and questionable respect for the rule of law, will lead to the multiplication of baseless lawsuits in his courtroom with untold consequences to businesses large and small

across the country. Given the limited number of judges who currently serve in the District of Rhode Island, it is not hard to imagine a generation of enterprising personal injury lawyers flocking to a new ''magnet jurisdiction'' at the federal level with a chance to draw such a plaintiff-lawyer friendly judge. State courts like those in Madison County, Illinois have amply demonstrated the problems that can arise from courts that accept plaintiffs' claims no matter their merits. Finally, as most litigators understand, federal judges exercise virtually unreviewable discretionary authority in many circumstances, and the chance of the appellate courts correcting every misstep is unrealistic. As such, the Chamber must urge the Committee to resist the confirmation of a lawyer with an animus against one type of defendant.

As Mr. McConnell has not demonstrated that he would provide the kind of fair and impartial judicial temperament needed to be a federal judge, as well as his demonstrated bias against a clear class of litigants, the Chamber urges you to oppose this nomination. Should Mr. McConnell's nomination be considered on the Senate floor, the Chamber may consider votes on, or in relation to, his nomination in our annual How They Voted scorecard.

Sincerely,

R. BRUCE JOSTEN.

Mr. CORNYN. 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. LEAHY. 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. LEAHY. Mr. President, last night, Majority Leader REID was forced to file another cloture petition on a Federal judicial nominee, the fifth required to be filed during President Obama's term. Among the highly qualified nominees being stalled is Jack McConnell, who is nominated to a vacancy on the United States District Court for the District of Rhode Island.

I am concerned that we have to file cloture on nominations that should simply have an up-or-down vote. I hope we are not returning to the situation we had during the Clinton administration when my friends on the Republican side of the aisle pocket filibustered 61 of his nominees.

We tried to change that in the 17 months I was chairman during the first 2 years of President Bush's first term when I moved 100 of President Bush's nominees through the Senate. In the remaining 2½ years, the Republicans were in charge, and the Senate confirmed another 105. We tried to change what had been an unfortunate procedure. I hope we are not going back to that.

Jack McConnell has the strong support of his home State Senators, bipartisan support from those in his home State, and his nomination has been reported favorably by a bipartisan majority of the Judiciary Committee multiple times. This nomination is one of many that have been stranded on the Senate's Executive Calendar for many months stalled by Republican objection to proceeding to debate and vote.

Just a few years ago, Republican Senators argued that filibusters of judicial nominees were unconstitutional, and that every nominee was entitled to an up-or-down vote. They unsuccessfully filibustered President Obama's first judicial nominee, and have stalled many others. Cloture is now being required to overcome another in a series of Republican filibusters in order to vote up or down on a judicial nominee at a time when extensive, and extended, judicial vacancies are creating a crisis for the Federal justice system and all Americans.

With these filibusters, the Senate's Republican leadership seems determined to set a new standard for obstruction of judicial nominations. I cannot recall a single instance in which a President's judicial nomination to a Federal trial court, a Federal district court, was blocked by a filibuster.

When I came to the Senate, the President of the United States was Gerald Ford, whose statue we just unveiled in the Rotunda. We did not filibuster any of his Federal district court nominees. We did not filibuster any of President Jimmy Carter's district court nominees. We did not filibuster any of President George H. W. Bush's district court nominees.

We did not filibuster on the floor any of President Clinton's or any of President George W. Bush's nominees. Somehow the rules have changed for President Obama.

This is troubling as chairman of the Judiciary Committee, but also troubling to the Federal judiciary nationwide. So I did a little research. Looking back over the last six decades, I found only three district court nominations—three in over 60 years—on which cloture was even filed. For two of those, the cloture petitions were withdrawn after procedural issues were resolved. For a single one, the Senate voted on cloture and it was invoked. All three of those nominations were confirmed. I trust that the nomination of Jack McConnell will also be confirmed.

From the start of President Obama's term, Republican Senators have applied a heightened and unfair standard to President Obama's district court nominees. Senate Republicans have chosen to depart dramatically from the long tradition of deference on district court nominees to the home State Senators who know the needs of their States best. Instead, an unprecedented number of President Obama's highly qualified district court nominees have been targeted for opposition and obstruction.

That approach is a serious break from the Senate's practice of advice and consent. Since 1945, the Judiciary Committee has reported more than 2,100 district court nominees to the Senate. Out of these 2,100 nominees, only five have been reported by party-line votes. Only five total in the last 65 years. Four of these five party-line votes have been against President Obama's highly qualified district court nominees. Indeed, only 19 of those 2,100 district court nominees were reported by any kind of split rollcall vote at all, and five of those, more than a quarter, have been President Obama's nominees, including Mr. McConnell.

Democrats never applied this standard to President Bush's district court nominees, whether in the majority or the minority. And certainly, there were nominees to the district court put forth by that administration that were considered ideologues. All told, in 8 years, the Judiciary Committee reported only a single Bush district court nomination by a party line vote. Somehow President Obama is being treated differently than any President, Democratic or Republican, before him.

That was the controversial nomination of Leon Holmes, which Senators opposed because of the nominee's strident, intemperate, and insensitive public statements over the years. Judge Holmes argued that ''concern for rape victims is a red herring because conceptions from rape occur with the same frequency as snow in Miami,'' and called concerns about pregnant rape victims ''trivialities.'' He suggested that it was correct to say that slavery was just God's way of teaching White people the value of servitude. He wrote that he did not believe the Constitution ''is made for people of fundamentally differing views.'' We opposed Judge Holmes nomination, strongly, but we did not block it from consideration by the Senate. He was not filibustered. His nomination was confirmed without the need for a cloture vote.

With judicial vacancies at crisis levels, affecting the ability of courts to provide justice to Americans around the country, we should be debating and voting on each of the 13 judicial nominations reported favorably by the Judiciary Committee and pending on the Senate's Executive Calendar. No one should be playing partisan games and obstructing while vacancies remain above 90 in the Federal courts around the country. With one out of every nine Federal judgeships still vacant, and judicial vacancies around the country at 93, there is serious work to be done.

Regrettably, Senate Republicans seem intent on continuing with the practices they began when President Obama first took office, engaging in narrow, partisan attacks on his judicial nominations.

These unfair attacks started with President Obama's very first judicial nomination, David Hamilton of Indiana, a 15-year veteran of the Federal bench. President Obama nominated Judge Hamilton in March 2009, after consultation with the most senior and longest-serving Republican in the Senate, Senator DICK LUGAR of Indiana, who then strongly supported the nomination. Rather than welcome the nomination as an attempt by President

Obama to step away from the ideological battles of the past, Senate Republicans ignored Senator LUGAR's support, caricaturing Judge Hamilton's record and filibustering his nomination. The Senate was not able to have an up-or-down vote on his nomination until we overcame a Republican filibuster 8 months after he was nominated. After rejecting the filibuster with an overwhelming vote of 70 to 29, Judge Hamilton was confirmed.

Republican Senators who just a few years ago protested that such filibusters were unconstitutional, Republican Senators who joined in a bipartisan memorandum of understanding to head off the ''nuclear option'' and agreed that nominees should only be filibustered under ''extraordinary circumstances,'' abandoned all that they said they stood for and joined together in an attempt to prevent an up-or-down vote on President Obama's very first judicial nominee.

In other words, the standard they said should be applied to every single President in the history of this country suddenly was changed when this President came in. They chose to ignore their own standards outlined in a letter sent to President Obama not long after he took office, and before he had made a single judicial nomination, in which Senate Republicans threatened to filibuster any nomination made without consultation. Of course, President Obama did consult with the seniormost Republican Senator on a nomination to fill a vacancy in his home State, but still they filibustered. In fact, he has consistently consulted with home State Senators, both Republicans and Democrats. It makes you wonder what it is about President Obama which makes Republicans want to change the rules for him, rules that existed for every President prior to him.

Since the filibuster of Judge Hamilton, Senate Republicans have required the majority leader to file cloture on three more highly qualified circuit court nominees. This is a far cry from Republican insistence that every nominee is required by the Constitution to have an up-or-down vote, or even from the ''extraordinary circumstances'' Republican Senators now claim to be the basis for a filibuster.

The PRESIDING OFFICER. The Senator has used his 10 minutes.

Mr. LEAHY. Mr. President, I ask unanimous consent for 5 minutes more. I know there are other Senators waiting to speak.

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

Mr. LEAHY. No Senator could claim the circumstances surrounding the filibusters of President Obama's circuit court nominations to be extraordinary. Republicans filibustered the nomination of Judge Barbara Keenan, a nominee with nearly 30 years of judicial experience, and who had the distinction of being the first woman to hold a number of important judicial roles in Virginia. She was ultimately confirmed 99–0 as the first woman from Virginia to serve on the Fourth Circuit. Senate Republicans filibustered the nomination of Judge Thomas Vanaskie, whose 16 years of experience as a Federal district court judge in Pennsylvania are now being used in service to the Third Circuit Court of Appeals, after his overwhelming confirmation. Senate Republicans filibustered Judge Denny Chin of the Second Circuit, another nominee with 16 years of experience as a Federal district court judge. He is now the only active Asian Pacific American judge to serve on a Federal appellate court, after being confirmed unanimously.

In addition, the Republicans' across-the-board practice of refusing consent and delaying consideration of even nominations with unanimous support has led to a steady backlog of pending nominations. The refusal of Republicans to give consent to consideration meant that 19 judicial nominations were stranded on the Senate's Executive Calendar at the end of last Congress. There are 13 judicial nominations now on the calendar that Democrats are prepared to consider.

Each of these nominations should be considered without unnecessary delay. If we do that, we can reduce the judicial vacancies to 80 for the first time since July 2009. Yet we are forced to overcome filibusters even to have a debate and vote on district court nominations.

These filibusters stand in stark contrast to the views of Republican Senators about the role of the Senate in considering judicial nominees when the President was from their own party. In 2005, when the Republican majority threatened to blow up the Senate to ensure up-or-down votes for each of President Bush's judicial nominations, Senator MCCONNELL, then the Republican whip, said:

> Any President's judicial nominees should receive careful consideration. But after that debate, they deserve a simple up-or-down vote. . . . It's time to move away from advise and obstruct and get back to advise and consent. The stakes are high . . . . The Constitution of the United States is at stake.

Other Republican Senators made similar statements back then. Many declared that they would never support the filibuster of a judicial nomination. Others subscribed to the standard that the so-called gang of 14 formulated that they would only filibuster in ''extraordinary circumstances.'' The only extraordinary circumstance in this case is the judicial vacancies crisis that has prompted the President, the Chief Justice, the Attorney General, bar associations and many others to call for prompt consideration and confirmation of judicial nominees.

Yet rather than applying consistent standards and debating and voting on judicial nominations favorably reported by the Judiciary Committee, we see Republican Senators adopting a double standard and engaging in a dramatic break from the Senate's tradition by filibustering this district court nomination.

Jack McConnell is an outstanding lawyer. President Obama has nominated him three times to serve as a Federal district court judge in Rhode Island. With more than 25 years of experience as a lawyer in private practice, Mr. McConnell has the strong support of both Rhode Island Senators, Senator REED and Senator WHITEHOUSE. He has been reported by a bipartisan majority of the Judiciary Committee three times.

Individuals and organizations from across the political spectrum in that State have called for Mr. McConnell's confirmation. The Providence Journal endorsed his nomination by saying

> in his legal work and community leadership [he] has shown that he has the legal intelligence, character, compassion, and independence to be a distinguished jurist.

Leading Republican figures in Rhode Island have endorsed his nomination. They include First Circuit Court of Appeals Judge Bruce Selya; Warick Mayor Scott Avedisian; Rhode Island Chief Justice Joseph Weisberger; former Rhode Island Attorney General Jeffrey Pine; former Director of the Rhode Island Department of Business, Barry Hittner; former Rhode Island Republican Party Vice-Chair John M. Harpootian; and Third Circuit Court of Appeals Judge Michael Fisher.

Some oppose him because he successfully represented plaintiffs, including the State of Rhode Island itself, in lawsuits against lead paint manufacturers. Some here in the Senate may support the lead paint industry. That is their right. I support those who want to go after the people who poison children. That is what Mr. McConnell did. But nobody should oppose Mr. McConnell for doing what lawyers do and vigorously representing his clients in those lawsuits.

The Senate has finally begun to debate this nomination, and some have wasted no time in coming to the Floor and distorting, I believe, Mr. McConnell's testimony before the committee. I disagree with Senator CORNYN's characterization of Mr. McConnell's testimony. As chairman, I take seriously the obligation of nominees appearing before the Judiciary Committee to be truthful. I would be the first Senator to raise an issue if there were any legitimate question as to the accuracy of Mr. McConnell's testimony. But there is not.

The accusation stems from Mr. McConnell's recent testimony as a witness deposed in a lawsuit brought by one of the paint companies engaged in litigation with Mr. McConnell's client. That lawsuit alleges that Motley Rice, the law firm where Mr. McConnell is employed, improperly obtained a 34-page confidential company document from one of the lead paint companies. Mr. McConnell is not a party to the lawsuit, but was deposed last September only as a witness. His answers at his

deposition concerning his knowledge of the confidential document were the same as his responses to written questions from Senator KYL following his hearing nearly a year ago, and the same as his responses to Senator LEE in written questions this February. At no time has there been a suggestion of wrongdoing by Mr. McConnell in this lawsuit.

Far from establishing that Mr. McConnell was untruthful with the committee, the deposition transcript obtained by the Committee after it was unsealed by the Court only further validates Mr. McConnell's account of his knowledge of this document. To believe that Mr. McConnell was untruthful with the committee, some Senators would have to disbelieve not just his answers to written questions from committee members, but also Mr. McConnell's sworn testimony as a witness being deposed in a lawsuit. Some Senators may feel strongly that Mr. McConnell and his firm were wrong to sue lead paint companies, but there is simply no basis believing that Mr. McConnell was untruthful with the committee. I reject those conclusions.

These Republican filibusters of district court nominations are unprecedented. The consequences for the American people and their access to justice in our Federal courts are real. I urge the Senate to reject these efforts and reject this filibuster.

Mr. President, I appreciate the courtesy of my colleagues in giving me the extra time, the distinguished senior Senator from Delaware and the distinguished Senator from Connecticut.

I yield the floor.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. CARPER. Mr. President, I am always happy to yield a little more time to the chairman of the Judiciary Committee.

COMMENDING THE NAVY SEALS

Mr. CARPER. Mr. President, I want to start off today—I did not plan on saying this; I am here to talk about small businesses and how to incentivize job creation and job preservation—but before I do that, I want to take a moment of personal privilege to talk about the Navy SEALs.

I am a retired Navy captain. I spent about 23 years of my life as a naval flight officer. Before that, I was a midshipman, a Navy ROTC midshipman out of Ohio State. We would do our summer tours as midshipmen being trained to be junior naval officers. One of our tours was down at Little Creek, where we learned a little bit about storming the beaches of Virginia and we learned how to become marines, or pretended we were. We also, later on, I guess as a lieutenant JG at Coronado, before we went over to Southeast Asia, had a chance to see—in both places, both the Little Creek Naval Station and over at the Coronado, North Island Naval Station—the Navy SEALs train. I remember talking with some of my compadres who were going through training with us, saying: We would not want to mess with those guys—and for good reason.

They have made us proud. They have taken on an incredibly difficult task and I think handled themselves splendidly, and I want to start off today saying how proud we are of them.

JOB CREATION

Mr. CARPER. I am not quite as proud, however, when it comes to one of our responsibilities; that is, the responsibility to provide and nurture a climate for job creation and job preservation. I talk a lot with small business folks, and I talk in my work with people who run pretty big businesses. One of the things I have heard again and again—not just this year but last year and the year before—large businesses are making a fair amount of money these days and a lot of them are sitting on a pile of cash. When you ask them, why are you sitting on a pile of cash and not hiring people, what we hear from a lot of them—particularly large businesses—is businesses like certainty and predictability. In too many areas—areas we actually have something to do with—there is not the kind of predictability and certainty those businesses need.

For example, are we going to get serious about reducing our deficit? I hope so. I think the Deficit Commission, led by Erskine Bowles and Alan Simpson, gives us a pretty good roadmap to take $4 trillion out of the deficit over the next 10 years. I hope in the end we will use that as a roadmap, not to use it with precision but to use it as a roadmap. But that is a big uncertainty.

The Tax Code. What about our Tax Code? We are running sort of a 2-year extension of the previous Tax Code, but that will end at the end of next year. What are we going to do about it? There is a lot of uncertainty there.

We have worked long and hard to try to pass health care legislation that is designed not just to extend coverage to people who do not have it but also designed to get us to better health care outcomes, to achieve better health care outcomes for less money, or at least better health care outcomes for the same amount of money.

We have the prospect of the Federal courts, with a number of litigations that are underway around the country, either at the circuit court of appeals level or maybe someday at the Supreme Court level, taking apart pieces of the health care bill. We need some certainty there, and we need the courts to act on it. I am not a lawyer, but some of my friends are, and some of them, who are a lot smarter than I am on these things, suggest that as far as they are concerned, this meets constitutional muster. We need an answer and we need to get on with it. To the extent we need to change the health care legislation to fix it and make it better, let's do that. But there is a lot in the legislation that enables us to get better health care results for less money. We need to do more of what works.

There is a lot of uncertainty with respect to transportation policy, on the series of extensions of the transportation programs for this country.

The way it works, if you will, Mr. President: Looking at my podium here, we will say right here is the transportation trust fund, and right here in the middle is the general fund for our country, our Treasury, and over here on the other side is sources of capital from the rest of the world. We do not have enough money in our transportation trust fund over here to build transportation projects. We end up borrowing from the general fund right here, moving funds over to the transportation trust fund. Unfortunately, we do not have enough money in the trust fund to run the general government, so we go overseas and borrow money from everybody we can to replenish the general fund, in order to put money in the transportation trust fund. It is crazy, and it is one of the reasons why we have a big budget deficit. We have uncertainty. The transportation system in this country has been awarded a grade ''D'' as in ''dealt,'' actually a grade ''D'' as in ''decaying'' because that is what is going on in our transportation system. I think things worth having are worth paying for. We need to get on with it. That is a source of uncertainty.

The last one is energy policy. As we see runups in energy prices—the price of fuel at the pump—people are wondering, What are we going to do about it? Part of what we tried to do is say, we want more energy efficient cars, trucks, and vans to be built in this country. We changed the CAFE legislation to raise the fuel efficiency standards for cars, trucks, and vans. So now, by 2016, the overall average has to be 36 miles per gallon—a huge increase from where it has been since 1975.

That is being ramped up, and that will help. But beyond that, we do not have, really, the kind of energy policy we need. That is another uncertainty.

So those are five reasons why large businesses, especially, sit on a pile of cash and are not hiring. One of our obligations is to address those uncertainties. My hope is we will do it. We actually got off to a pretty good start this year in a couple ways. No. 1, we passed the FAA reauthorization, the Federal Aviation Administration reauthorization. In doing so, we agreed on a revenue package—agreed to by the industry—to be able to modernize the air traffic control system—that is great—to be able to put some extra money toward airport construction—that is good as well—as part of our infrastructure system.

We passed in the Senate patent reform legislation. If the Presiding Officer from Montana were—and he is a very clever fellow, but if he invents or