

EXECUTIVE SESSION

NOMINATION OF NITZA I. QUINONES ALEJANDRO TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF PENNSYLVANIA

NOMINATION OF JEFFREY L. SCHMEHL TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF PENNSYLVANIA

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to executive session to consider the following nominations which the clerk will report.

The assistant legislative clerk read the nominations of Nitza I. Quinones Alejandro, of Pennsylvania, to be United States District Judge for the Eastern District of Pennsylvania, and Jeffrey L. Schmehl, of Pennsylvania, to be United States District Judge for the Eastern District of Pennsylvania.

The PRESIDING OFFICER. Under the previous order, there will be 30 minutes of debate equally divided in the usual form.

The Senator from Louisiana.

Ms. LANDRIEU. Mr. President, I suggest the absence of a quorum, and I ask unanimous consent that all time be allocated equally as previously agreed to.

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

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. CASEY. 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 President, I ask unanimous consent that the order for the quorum call be rescinded.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. CASEY. Mr. President, I know we are going to be voting in a matter of minutes on two judicial nominees for the Eastern District of Pennsylvania, which is the eastern side of our State. Obviously, these appointments are critically important to justice and critically important to litigants who come before these courts, whether they are civil or criminal matters.

These candidates go through an exhaustive review process. That is probably an understatement. The process includes the nomination through the White House under any administration and then the process continues through the Senate. There are all kinds of reviews. So we are finally to this point. It has been a very long road and we are grateful for that.

One of the votes will be by voice potentially and one will be a rollcall vote. I wish to speak about both candidates. I spoke about them yesterday, but I will speak briefly this morning.

First of all, Judge Quinones, who has served in the city of Philadelphia, has served on the common pleas court in the city of Philadelphia since 1991, in what is known as the First Judicial District of Pennsylvania, which is the

trial court in the city of Philadelphia. One can just imagine, in a big city such as Philadelphia, all of the matters a judge such as Judge Quinones would deal with over the course of more than two decades now, dealing with civil and criminal cases, all kinds of difficult and complex matters that come before a judge. In essence, she has been performing the same functions as a county judge that she would on the Federal district court. So I think she is more than prepared to take on this assignment.

In her case, this is also a great American story. Judge Quinones was born in Puerto Rico, educated there, and came to the United States. As I said, since 1991 she has been on the court of common pleas in Philadelphia. Prior to that, she was an arbitrator for more than a decade. She worked in the Department of Veterans Affairs. She worked in the Department of Health and Human Services. She did a lot of work in the 1970s for Community Legal Services of Philadelphia. So that speaks to a broad range of experience and expertise dealing with litigants and representing clients, which is so important in our system. She is someone who takes on the responsibility to represent someone in court so they may have their day in court, which is one of the foundational principles of our government. Then, of course, she later served as a judge, as I mentioned.

So it is not only a resume and a life story that speaks to experience and knowledge and insight when it comes to dealing with complex matters that come before the Federal courts, but it is also in a very personal way a great American story. So I am particularly grateful that her nomination is now coming to the Senate floor and that we will be able to have a vote on her nomination today.

I have enjoyed working with Senator TOOMEY on both of these nominations. Both of us represent a big and diverse State, one Democrat and one Republican, working through this process together, these judicial appointments.

We will be voting as well on a second judge in the Eastern District of Pennsylvania: Judge Jeffrey Schmehl. I can say a lot of the same things about his experience. Judge Schmehl is now and has been the president judge of the Berks County Court of Common Pleas since 2007. So for many years now he has been in the trenches, so to speak, or to use an expression from the Bible, "laboring the vineyards," dealing with cases of complex issues. Berks County, just by way of geographic orientation, is north of Philadelphia but on the eastern side of our State. It is a big county. It is a county that has a lot of matters that come before it that are particularly complex.

He has served, as I mentioned, as the president judge of the court of common pleas, but then prior to that he was a judge on that same court from 1998 to 2007. So these are long periods of time, in both instances, for Judge Schmehl

and Judge Quinones to serve on a court.

For those who know something about our judicial system and know a bit about the difference between an appellate court, where we are dealing with appeals and legal arguments, as opposed to a trial court, which is where the action is in terms of litigants, trial judges have to preside over a trial as well as deal with and rule on evidentiary matters. They have to deal with witnesses and lawyers and all the complexities of a trial. As we all know, when your case is on trial, it is the most important case in the world.

So these judges have tremendous experience as trial judges, and we are so grateful they are willing to put themselves forward not just to be nominated and today confirmed as judges, as I am sure they will be, but to put themselves forward for that kind of public service in a difficult environment, where the scrutiny and the review and the long road from nomination to confirmation can be very challenging.

So again I will pay tribute to the work Senator TOOMEY has done working with us. He is on the floor, and I wish to thank him for that good work. And obviously I thank the chairman of the Judiciary Committee, Senator LEAHY, who is on the floor as well. We appreciate him working with our offices to move these nominations forward.

With that, I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, does the other Senator from Pennsylvania wish to say something?

Mr. TOOMEY. Mr. President, I would like to speak for several minutes, principally about the two judicial nominees.

Mr. LEAHY. I just want to make sure I have time prior to the vote at noon. How long does the Senator from Pennsylvania wish to speak?

Mr. TOOMEY. I think I could wrap this up in less than 10 minutes.

Mr. LEAHY. OK. Then, Mr. President, I simply ask unanimous consent that there be 4 minutes for the Senator from Vermont at the conclusion of the comments of the Senator from Pennsylvania.

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

Mr. LEAHY. Because these nominees are from his State, I will step aside and let the Senator go forward.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. TOOMEY. Mr. President, I thank the chairman of the Judiciary Committee.

I do want to speak principally about the two nominees from Pennsylvania, both of whom I strongly support, and I am delighted they are going to get their votes today. But before I do that, I do want to put just a little bit of context on judicial nominations and confirmations as a general matter because I think it is important that we understand this.

In my own experience in the 2½ years I have been in the Senate, I know I have voted to confirm the vast majority of judicial nominees whom President Obama has proposed for us. In fact, since President Obama became President, the Senate has confirmed 193 district court nominees and blocked 2. That is a confirmation rate of about 99 percent. In the last Congress, the 112th Congress confirmed more judges than any Congress in 20 years. So by any reasonable measure, we are confirming judges at a terrific rate. Republicans are cooperating and confirming the nominees of a Democratic President, and this is as it should be when the nominees are competent, as they have been.

So President Obama is enjoying a rate of confirmation of judges that is far greater than the rate President Bush, for instance, enjoyed or most other previous recent Presidents, which is part of the reason why I am concerned when I hear persistent rumors that the majority leader is considering invoking the nuclear option and breaking the rules so he can change the rules as to how nominees get confirmed. I do not understand why there is a problem that would require this. If he were to do this, this would be in direct contradiction to a commitment he made to all of us very publicly that he would not do this. So I really hope that Senator REID will keep his word and that he will not break the rules in order to change the rules.

He stated very clearly in January of 2011 that—I will quote Senator REID:

I agree that the proper way to change Senate rules is through the procedures established in those rules, and I will oppose any effort in this Congress or the next to change the Senate's rules other than through the regular order.

I would remind my colleagues that earlier this year Republicans went along with a rule change about which I had real reservations. I personally could not support it, but most Republicans did. It changed the rules, forfeiting some of the power we have as a minority, granting the majority greater flexibility to go to a bill without assuring us we would be able to offer the amendments we would like. We granted that to the majority in part because we got another explicit commitment that there would be no nuclear rule change if we made that agreement. Well, we did, at least as a party and as a body.

So, again, I certainly hope Senator REID will honor the promise he made that was part of that understanding, where he said in January of this year, in an exchange with Senator McCONNELL—Senator REID said:

Any other resolutions related to Senate procedure would be subject to a regular order process including consideration by the Rules Committee.

I would add, that means a 67-vote majority in the Senate because that is the way you change the rules in accordance with the rules.

SARAH MURNAGHAN

Having said that, I want to also make a brief mention of some terrific news we got in Pennsylvania; that is, the opportunity for a little girl named Sarah Murnaghan to have a lung transplant she had been waiting for. I have spoken about this on the Senate floor. A Federal judge in the Eastern District of Pennsylvania issued a temporary restraining order forbidding a rule that was keeping her off the transplant list to be a potential recipient of a donor lung transplant. Fortunately, by virtue of that restraining order, she was able to go on the list and receive the lung transplant. She had an emergency surgery just yesterday that seems to have gone very well, and we are all delighted for that and wishing for her speedy and full recovery.

Having said that, as I indicated to the chairman, I wanted to come down principally to say how pleased I am that we are going to vote today and I believe confirm both Judge Jeffrey Schmehl and Judge Nitza Quinones, who are two nominees for the Eastern District of Pennsylvania. Both are eminently qualified, terrific individuals who come highly recommended.

I commend Senator CASEY. He and I have worked together since I have been here. He has been terrific to work with. We have looked to identify some of the most capable and talented people. I would like to mention a couple of the things I know Senator CASEY mentioned.

Judge Schmehl is a terrific guy. He is the president judge of the Berks County Court of Common Pleas. His candidacy was approved by a voice vote in the Senate Judiciary Committee. He is a graduate of Dickinson College. He has his J.D. from the University of Toledo School of Law. He has served as a public defender. He has served in private practice. After 9 years at a law firm, he was elected to the Berks County Court of Common Pleas, where his colleagues made him the president judge. He is a very bright individual. He has a keen intellect, a great judicial temperament. He has done a great job on the Berks County court, and he will make a great Federal judge. I hope my colleagues will support his candidacy.

Nitza Quinones is a native of Puerto Rico. She is a graduate of the University of Puerto Rico School of Business Administration. At the University of Puerto Rico, she got her J.D. She has demonstrated a terrific commitment to the legal community and beyond that in Philadelphia. She has been very active mentoring young people—law students in particular—and is a great advocate of civic education for high school students. She has served on the Philadelphia Court of Common Pleas since 1991, presiding over a very large number of very diverse cases. She has extensive experience in the courtroom. She has demonstrated her ability, her commitment, her judicial temperament. Yet, as it happens, she will be the first Latino judge on the Eastern District of Pennsylvania court.

I think it is terrific that we are able to vote today to confirm both of these judges. I look forward to continuing to work with Senator CASEY to fill the remaining vacancies across Pennsylvania. I thank Chairman LEAHY for his work in advancing these nominees. I urge my colleagues to support their confirmation.

I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, I appreciate the words of both Senators from Pennsylvania. I would note there are currently three nominations pending for vacancies in the Eastern District of Pennsylvania. All three have the bipartisan support of their home State Senators. All three were reported unanimously by the Judiciary Committee 3 months ago. Yet Senate Republicans are permitting votes on only two of them. They are forcing Judge Luis Restrepo to continue to wait for a vote even though he would fill a seat that has been vacant for 4 years.

I mention this because we talk about how things move during this President's tenure as compared to that of his predecessor. At the end of President Bush's second term, I was chairman of the Judiciary Committee and I expedited confirmations of three of his nominees to this same court—three, not just allowing two to go through, as my friends on the other side of the aisle are today—and not having to wait for months and months. Those three were confirmed by voice vote. So you know how long it took, we had reported them out of the Judiciary Committee the day before. They were confirmed along with 7 other district court nominees for a total of 10 that day. We got them out of committee and voted them by voice vote. But now we have seven judicial nominees on the calendar, and Republicans are only allowing us to vote on two of them.

This is just the latest example of Senate Republicans insisting that President Obama play by a different set of rules than they had for President Bush. It was perfectly fine to expedite President Bush's three nominees to the Eastern District of Pennsylvania and to confirm them all on the same day, along with seven others. We had Democratic control of the Senate, and we moved them that way. But now with President Obama they refuse to proceed with the seven nominees who are pending on the Calendar. They will not even proceed with the three judicial nominees needed in the Eastern District of Pennsylvania.

So let's not talk about how Presidents are treated. I am not sure what it is that is different about President Obama, but his nominees get delayed, delayed, and delayed, unlike—and I use Pennsylvania as an example—where we vote out three, unanimously, of President Bush's nominees on one day and confirm them by voice vote the next day, along with seven others. Here they are refusing to proceed with the seven

nominees on the Calendar. They will not even proceed with all three of the judicial nominees for the Eastern District of Pennsylvania. There are currently seven vacancies on that court—seven. The Eastern District of Pennsylvania needs judges.

Like the two nominees we will be permitted to vote on today, Judge Restrepo has the support of his Republican home State Senator as well as every single Republican member of the Judiciary Committee. So let's not make him and the people of Pennsylvania wait.

Frankly, there is no good reason Nitza Quiñones Alejandro and Jeffrey Schmehl should have waited this long for a vote. There is no good reason why, when half of President Bush's consensus district nominees waited 18 days or fewer after being sent to the Senate by the Judiciary Committee during his first term, these consensus nominees should have had to wait almost 100 days. This contributes to the unprecedented delays and obstruction of President Obama's consensus judicial nominees.

I read comments last week by Judge James Brady of the Middle District of Louisiana expressing concern about what has happened to the judicial confirmation process. Shelly Dick was confirmed this year to that court after months of delay, and the Advocate article noted the "strain the empty judgeship had on a district overburdened with cases." Judge Brady was quoted saying of the confirmation process: "It's just crazy, and we need to do something about that." I could not agree more. Judge Brady added that the delays in the process are "driving away a lot of really good folks that would make excellent judges because they're saying, 'I don't need to go through that process and be in limbo for 18, 20, 24 months.' That's something I'm very, very concerned about." We should all share that concern, especially Senators who are looking for district nominees to recommend to the President. I ask that this article, entitled "Nomination Delays Hurting Courts, Federal Judge Says," be printed in the RECORD at the conclusion of my statement.

The recent assertion by Senate Republicans that 99 percent of President Obama's nominees have been confirmed is just not accurate. He has nominated 237 individuals to be circuit or district judges, and 193 have been confirmed. That is 81 percent. By way of comparison, at the same point in President Bush's second term, June 13 of his fifth year in office, President Bush had nominated four fewer people, but had seen 214 of them confirmed, or 92 percent. That is an apples to apples comparison, and it demonstrates the undeniable fact that the Senate has confirmed a lower number and lower percentage of President Obama's nominees than President Bush's nominees at the same time in their presidencies.

I noted at the end of last year while Senate Republicans were insisting on

delaying confirmations of 15 judicial nominees that could and should have taken place then, and that we would not likely be allowed to complete work on them until May. That was precisely the Republican plan. So when Senate Republicans now seek to claim credit for their confirmations in President Obama's second term, they are falsely inflating the confirmation statistics. The truth is that only seven confirmations have taken place this year that are not attributable to those nominations they held over from last year and that could and should have taken place last year. To return to the baseball analogy, if a baseball player goes 0-for-9, and then gets a hit, we do not say he is an all-star because he is batting 1.000 in his last at bat. We recognize that he is just 1-for-10, and not a very good hitter. Nor would a fair calculation of hits or home runs allow a player to credit those that occurred in one game or season to the next because it would make his stats look better.

I was Chairman of the Judiciary Committee for 17 months during President Bush's first term, so I know something about how President Bush's nominees were treated. During those 17 months, 100 of them were confirmed. In the 31 months that Republicans controlled the Senate during President Bush's first term, 105 of his circuit and district nominees were confirmed. That is, it took them almost twice as long to make as much progress as I had as Chairman. Even when Senate Democrats were in the minority, we worked with the Republicans to bring the number of vacancies all the way down to 28. Vacancies have remained near or above 80 for 4 years during the Obama presidency. In the last 4 years, Senate Republicans have never let vacancies get below 72. At this point in the fifth year of the Bush presidency there were 44 vacancies. Today they remain almost double that amount. Despite Senate Republicans who make self-congratulatory statements about "progress" this year, we are not even keeping up with attrition. Vacancies have increased, not decreased, since the start of this year.

If President Obama's nominees were receiving the same treatment as President Bush's, Judge Srinivasan would have been the 210th confirmation, not the 193rd and vacancies would be far lower. The nonpartisan Congressional Research Service has noted that it will require 33 more district and circuit confirmations this year to match President Bush's 5-year total. Even with the confirmations finally concluded during the first 6 months of this year, Senate Republicans have still not allowed President Obama to match the record of President Bush's first term. Even with an extra 6 months, we are still a dozen confirmations behind where we were at the end of 2004.

In addition to the obstruction of circuit and district nominees, I am deeply concerned about the impact of sequestration on our Federal courts. I con-

tinue to hear from judges and legal professionals around the country who worry about the impact of these senseless budget cuts, and I share their concern. A recent evaluation of sequestration concluded: "Its impact on the operation of the [F]ederal courts will be devastating and longlasting." Sequestration will exacerbate the delays our courts already face due to persistent understaffing, both for civil and criminal cases. According to the Executive Summary of "FY 2013 Sequestration Impacts on the Federal Judiciary," "Delays in cases will harm individuals, small businesses, and corporations," while the "cuts to funding for drug testing, substance abuse and mental health treatment of federal defendants and offenders have also been made, increasing further the risk to public safety." I ask that the full summary be printed in the RECORD at the conclusion of my statement.

Judge Nitza Quiñones Alejandro has served as a judge on the Court of Common Pleas for the First Judicial District of Pennsylvania since 1991. Prior to being a judge, Judge Quiñones worked as a solo practitioner, a staff attorney with the U.S. Department of Veterans Affairs, an Attorney Advisor with the U.S. Department of Health and Human Services' Bureau of Hearings and Appeals, and a staff attorney at Community Legal Services, Inc. When confirmed, Judge Quiñones will be the first openly gay Latina judge to serve on the Federal bench. Judge Quiñones was also Pennsylvania's first Latina judge.

Judge Jeffrey Schmehl currently serves as the President Judge in Berks County, where he has been an active member of the bench since 1997. Prior to becoming a judge, Judge Schmehl served in various capacities in private practice, including as an associate and partner at Rhoda, Stoudt & Bradley and as a solo practitioner at the Law Offices of Jeffrey L. Schmehl, Esq. While working in private practice, Judge Schmehl was also a Berks County Solicitor from 1989 to 1997. In addition to his experience in private practice, Judge Schmehl has served as an assistant district attorney and as an assistant public defender for Berks County.

I want the Senate to make real progress on filling judicial vacancies so that the American people have access to justice. Before the recess, the minority leader asked during a floor debate when Gregory Phillips, the Wyoming nominee to the Tenth Circuit, would receive a vote.

Majority Leader REID said: OK, let's vote on him right now.

They said: Well, we are not ready.

I hope the American people were watching, because there should be no ambiguity about this: The only reason the Senate is not voting today on Judge Restrepo, Attorney General Phillips, or the other seven judicial nominees pending on the Calendar is because of Republican refusal to allow

such votes. They could be voted on today. We ought to do it. These nominees deserve better, and the American people deserve better.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

FY 2013 SEQUESTRATION IMPACTS ON THE
FEDERAL JUDICIARY

SEQUESTRATION AND THE FEDERAL JUDICIARY

On March 26, 2013, the President signed Public Law 113-6, the Consolidated and Further Continuing Appropriations Act of 2013, which provides full-year FY 2013 funding for the federal government, including the Judiciary. The bill leaves in place the government-wide sequestration cuts mandated under the Budget Control Act of 2011.

Sequestration reduces Judiciary funding overall by nearly \$350 million below the FY 2012 discretionary funding. The impact of sequestration on the Judiciary is compounded by the fact that the Judiciary has no control over its workload—the courts must react to the cases which it receives from the Executive Branch, individuals and businesses—overall, that workload has not declined. In addition, unlike most Executive Branch entities, the Judiciary has little flexibility to move funds between appropriations accounts to lessen the effects of sequestration. There are no lower-priority programs to reduce to transfer to other accounts.

IMPACT OF SEQUESTRATION ON THE COURTS

Sequestration places unprecedented pressure on the federal Judiciary's administration of justice. Its impact on the operation of the federal courts will be devastating and longlasting.

To mitigate the impact of sequestration on employees, the courts have slashed non-salary budgets (training, information technology, supplies and equipment), which is possible for one fiscal year, but cannot be sustained into future years. Even with these reductions, on a national level, up to 1,000 court employees could be laid off, or thousands of employees could face furloughs before the end of the year. These staffing losses will come on top of the nearly 2,200 probation officers and clerks office staff the courts have already lost since the end of July 2011.

Cuts in staffing will result in the slower processing of civil and bankruptcy cases. Delays in cases will harm individuals, small businesses, and corporations.

Sequestration has also reduced funding for probation and pretrial officer staffing throughout the courts, which means less deterrence, detection, and response to possible resumed criminal activity by federal defendants and offenders in the community. In addition, law enforcement funding to support GPS and other electronic monitoring of potentially dangerous defendants and offenders has been cut 20%. Equivalent cuts to funding for drug testing, substance abuse and mental health treatment of federal defendants and offenders have also been made, increasing further the risk to public safety.

Security systems and equipment in our Court Security program have been cut 25% and court security officers' hours have been reduced. These reductions come at a time of heightened security resulting from the prosecutor murders in Texas and the Boston bombings. A high level of security of judges, prosecutors, defense counsel, jurors and litigants entering our courthouses must be maintained.

IMPACT OF SEQUESTRATION ON
REPRESENTATION OF INDIGENT OFFENDERS

For Defender Services, incorporating enacted appropriations, offset by sequestration, results in a \$51 million shortfall in

funding below minimum requirements. This program has no flexibility to absorb such large cuts. It is almost totally comprised of compensation to federal defenders, rent, case related expenses (expert witnesses, interpreters, etc.), and payments to private panel attorneys. The only way to absorb the \$51 million shortfall is to reduce staffing or defer payments to private panel attorneys.

The Executive Committee examined all aspects of the account, scrubbed expenses where possible, and approved a spending plan that will result in federal defender offices having to cut staff and furlough employees an average of approximately 15 days. The approved spending plan will also halt payments to private panel attorneys for the last 15 business days of the fiscal year. This will shift these expenses to FY 2014, which were not considered as part of the Judiciary's FY 2014 budget request to Congress, and add to FY 2014 appropriation requirements.

The uncertainty of the availability of federal defender attorneys and the anticipated suspension of panel attorney payments will create the real possibility that panel attorneys may decline to accept Criminal Justice Act appointments in cases that otherwise would have been represented by FDOs. Delays in the cases moving forward may result in violations of constitutional and statutory speedy trial mandates resulting in criminal cases being dismissed.

Since all non-case related expenses in this account have already been reduced, the only solution to avoiding these impacts is for Congress to provide additional funds.

SUPPLEMENTAL APPROPRIATIONS

The Judiciary transmitted to the Office of Management and Budget and the Congress an FY 2013 emergency supplemental request that seeks \$72.9 million to mitigate the devastating impact of sequestration on defender services, probation and pretrial services offices, court staffing, and court security. The request includes \$31.5 million for the Courts' Salaries and Expenses account, and \$41.4 million for the Defender Services account.

Courts' Salaries and Expenses:

\$18.5 million will be used to avoid further staffing cuts and furloughs in clerks of court and probation and pretrial services offices during the fourth quarter of FY 2013. This funding will save the jobs of approximately 500 court employees and avoid 14,400 planned furlough days for 3,300 court employees.

\$13.0 million will restore half of the sequestration cuts to drug testing and substance abuse and mental health treatment services for defendants awaiting trial and offenders released from prison.

Defender Services:

\$27.7 million is required to avoid deferring payments to private attorneys for the last 15 business days (3 weeks) of the fiscal year.

\$8.7 million is needed to avoid further staffing cuts and furloughs in federal defender organizations during the fourth quarter of FY 2013. This funding will save the jobs of approximately 50 employees and avoid 9,600 planned furlough days for 1,700 federal defender organization employees.

\$5.0 million is for projected defense representation and related expert costs for high-threat trials, including high-threat cases in New York and Boston that, absent sequestration, the Defender Services program would have been able to absorb.

Executive branch agencies with criminal justice responsibilities have had the flexibility and resources to address their FY 2013 post-sequestration requirements. As a result, these agencies—which directly impact the workload of the Judiciary—have been able to avoid furloughs. The Judiciary has no such flexibility and instead must ask Congress to approve a supplemental appropriation.

COST CONTAINMENT IN THE JUDICIARY

Cost containment is not new to the Judiciary. In 2004, as a result of an unexpected shortfall in funding, the Judicial Conference endorsed a cost containment strategy that called for examining more than 50 court operations for reducing expenses. Since then, the Judiciary has focused on three that have the greatest potential for significant long-term savings: rent, personnel expenses, and information technology. To date, the Judiciary has cut costs by \$1.1 billion.

The Judiciary's approach to cost containment is to continuously challenge our ways of doing business and to identify, wherever possible, ways to economize even further. This can be a painful process as we are often proposing changes to long established Judiciary customs and practices and we sometimes face opposition from within. But we are committed to doing everything we can to conserve resources and be good stewards of the taxpayers' money.

While cost containment has been helpful during the last several years of flat budgets, it will not come close to offsetting the major reductions we face from sequestration.

NOMINATION DELAYS HURTING COURTS,
FEDERAL JUDGE SAYS

(By Jim Mustian, Advocate staff writer)

LONG DELAYS DRIVE AWAY NOMINEES

U.S. District Judge James J. Brady spoke out Monday against the increasingly glacial pace of judicial nominations, calling on U.S. Senate leaders to "come to their senses" and recognize the toll a vacant bench has on the court system.

"It's just crazy, and we need to do something about that," said Brady, who sits in the Middle District of Louisiana in Baton Rouge. "What's happening, in my mind, is we're driving away a lot of really good folks that would make excellent judges because they're saying, 'I don't need to go through that process and be in limbo for 18, 20, 24 months.' That's something I'm very, very concerned about."

Brady's remarks, made to more than two dozen people attending a Catholic Community Radio luncheon, came less than a month after Baton Rouge attorney Shelly Dick was confirmed as the Middle District's first female federal judge more than a year after being nominated by President Barack Obama.

Dick's nomination was initially blocked by U.S. Sen. David Vitter, who had been holding out hope that Obama would lose to Republican presidential nominee Mitt Romney. Vitter, R-La., who said at the time he wanted to "let the people speak," later withdrew his block and backed Dick's confirmation after Obama won re-election months later.

Brady did not refer specifically to the delays in Dick's confirmation, but he alluded to the strain the empty judgeship had on a district overburdened with cases. Dick already has been assigned nearly a third of the district's 877 pending civil cases, Brady said.

The federal Middle District of Louisiana includes the parishes of East Baton Rouge, West Baton Rouge, East Feliciana, West Feliciana, Pointe Coupee, Iberville, Ascension, Livingston and St. Helena.

"Getting a third judge has been a real relief for us," Brady said. "It helps people get their cases decided much more promptly and, I think, in a much better fashion."

Delays in judicial nominations due to political differences have become increasingly common in recent years. During Obama's first term, the average wait time from nomination to confirmation was more than six months for nominees to circuit and district court judgeships, according to a recent report by the Congressional Research Service.

"It's gotten to be now that it's almost like you're going to paint a big bullseye on anyone who's nominated as a federal judge," said Brady, whose own confirmation in 2000 took a little less than a year.

Then-President Bill Clinton nominated Brady for the judgeship.

Brady suggested that concerns over district court nominees are often overblown, noting he and his colleagues adhere to parameters set forth by the higher circuit courts and U.S. Supreme Court.

"I don't care if you're a Democratic appointee or a Republican appointee, you're going to follow those laws, the precedents that those courts have set," Brady said. "I don't know of anyone that deliberately goes out and tries to rule against those precedents."

Brady's remarks were unusual for a federal judge but were prompted by the "unusual times" gripping the federal courts, said Carl W. Tobias, a University of Richmond law professor who is an expert on judicial nominations.

"An increasing number of judges and other people are very concerned about the (nomination) process and how long it takes to move people through it," Tobias said. "You have Exhibit A with Shelly Dick right there in Baton Rouge."

Tobias said he was glad to hear of Brady speaking publicly about the issue.

"I think it's important for people to understand what's going on, and nobody knows better than the judges," he said. "They have to live with it."

Mr. LEAHY. I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I urge my colleagues to vote for the nominees who are before the Senate today.

At this point in President Obama's term, when we get done with these two today, we will have approved 195 of the President's judicial appointments, and we have only disapproved 2. That is a 99-plus percent voting record.

It would help if the President would speed up getting his nominees to the Senate. There are 81 vacancies now. The President has only submitted 29. That means there are 52 vacancies that could be filled by the White House that the Senate would have an opportunity to work on as well.

So far this year, the Senate has confirmed 22 lower court nominees. Today, after these nominees are confirmed, we will have confirmed more than twice the number of district and circuit judges that were confirmed at this point in President Bush's second term. In fact, we will have confirmed more lower-court nominees than were confirmed in the entire first year of President Bush's second term.

Think about that—I will repeat it. In the 5 months of this President's second term while we have been in session, we have confirmed more district and circuit judges than were confirmed in the entire first year of President Bush's second term.

The bottom line is that the Senate is processing the President's nominees exceptionally fairly. He is being treated much more fairly than Senate Democrats treated President Bush in 2005.

So I just wanted to set the record straight before we vote on these nominees. I expect they will both be confirmed and I congratulate them on their confirmations.

Judge Quiñones received her B.B.A. from the University of Puerto Rico in 1972 and her J.D. from the University of Puerto Rico School of Law in 1975. Upon graduation, she worked as a staff attorney with Community Legal Services in Philadelphia, where she focused on strictly civil and administrative matters, appearing predominately in family court and before administrative judges.

From 1977 to 1979, Judge Quiñones wrote opinions in support of decisions rendered by an Administrative Judge at the Department of Health & Human Services. From 1979 to 1991, she was a staff attorney at the Department of Veterans Affairs, VA, where her practice involved the interpretation and application of the VA's administrative rules and regulations. During this time, she also appeared in State court and administrative agencies to represent the VA before the Equal Employment Opportunity Commission and Merit Systems Protection Board. Additionally, from 1980 to 1991, Quiñones worked as an arbitrator for the Arbitration Center at the Philadelphia Court of Common Pleas, designed to dispose of small civil cases. In 1991, Judge Quiñones left the VA and established a solo practice. During this time she represented a criminal defendant and sat as an arbitrator in insurance matters.

As a practicing attorney, Judge Quiñones appeared in court with occasional frequency. She estimates that over the course of her pre-judicial career, she tried 20 cases in family court, 300 commitment hearings before a Mental Health officer, pursuant to her work at the VA, and 600 administrative hearings.

In 1990, Judge Quiñones was nominated by then Governor Robert Casey to a judgeship on the Court of Common Pleas for the First Judicial District of Pennsylvania, a court of general jurisdiction. She was confirmed, but also engaged in a judicial election, and secured the first of three 10-year terms in 1992. She won the later terms in November 2001 and 2011.

Judge Quiñones has experience in both criminal and civil divisions, has presided over both jury and nonjury trials, and has supervised nearly every step in the trial process. Judge Quiñones has presided over approximately 1,500 criminal trials and 300 civil trials.

The American Bar Association's Standing Committee on the Federal Judiciary gave her a Majority "Qualified" and Minority "Not Qualified" rating.

Judge Schmehl received his B.A. from Dickinson College in 1977 and his J.D. from University of Toledo School of Law in 1980. Early in his career, he focused on criminal law, first as an As-

sistant Public Defender, then as an Assistant District Attorney. In these capacities, he tried all types of criminal cases, from DUI to murder. During his time as Assistant District Attorney, Judge Schmehl also had his own private civil practice, handling wills, estates, real estate matters, workers' compensation cases, and unemployment compensation cases.

In 1986, Judge Schmehl left private practice and the District Attorney's office to join the private law firm Rhoda, Stoudt, & Bradley. There he worked on insurance defense work and plaintiffs' personal injury cases. As a practicing attorney, he has tried approximately 200 cases to verdict, judgment, or final decision, serving as sole counsel or chief counsel in almost all of them.

In 1997, Judge Schmehl was nominated by both the Democratic and Republican parties for a judicial position in the Berks County Court of Common Pleas and later elected to the bench. In 2007, he was appointed to a 5-year term as President Judge in the same court and remains there today. Judge Schmehl has presided over approximately 180 cases that have gone to verdict.

The American Bar Association's Standing Committee on the Federal Judiciary gave him a majority "Well Qualified" and minority "Qualified" rating.

I also am going to take a couple minutes to discuss something I would have discussed in the Judiciary Committee meeting this morning, but because of our vote I was not able to do it.

First, I want to talk about the nominations hearing we had earlier this week on B. Todd Jones.

There is an open investigation in the Office of Special Counsel regarding very troubling allegations that Mr. Jones retaliated against a whistleblower in the U.S. Attorney's Office.

He is now up for confirmation for the Bureau of Alcohol, Tobacco, and Firearms.

Mr. President, how much time remains until the vote?

The PRESIDING OFFICER. The Senator has 3 minutes remaining.

Mr. GRASSLEY. Last week Carolyn Lerner, the special counsel who leads the office, wrote us a letter explaining the status of the matter. She wrote that the parties had agreed to participate in mediation. She also wrote, "If mediation is unsuccessful, the case would return to the Office of Special Counsel's Investigation Prosecution Division for further investigation."

On Monday, she wrote us another letter confirming that the case was still open. We were told the reason we had to move forward with the hearing was because an April letter from the Office of Special Counsel was made public. The justification for holding the hearing was since that issue was made public, the nominee should have had an opportunity to respond at the hearing.

But, of course, there was nothing confidential in the Office of Special

Counsel's letter. I am not about to hide this issue from the public. It is relevant to our inquiry as to the qualifications of the nominee. Moving forward under these circumstances is not consistent with past committee practices. Of course, there are sensible reasons for that committee practice.

First, none of us knows what the results of that investigation might be. How are we supposed to make an assessment of the matter while it is still open? Second, how are we supposed to ask the nominee about the results of the investigation when the investigation has not been completed? And, third, how are we supposed to ask the nominee about an open investigation when the nominee will claim he cannot talk about it for that exact reason?

I would also note that an assistant U.S. attorney who filed the complaint against Mr. Jones gave his consent on Monday for the Office of Special Counsel to provide the complaint to the committee. I must say the allegations in the complaint are extremely troubling. So I began my questions by asking Mr. Jones about these allegations.

Here is what he had to say:

Because those complaints are confidential as a matter of law I have not seen the substance of the complaints nor can I comment on what they are. I have learned more from your statement today—

meaning, from this Senator,

than what I knew before I came here this morning about the nature and substance in the complaints.

In other words, Mr. Jones said he could not answer questions about the Office of Special Counsel investigation because it remains open. This is precisely why it is imprudent to move forward with a hearing in this way. At his hearing, I followed up with another question to Mr. Jones, had he ever taken adverse personnel action? He responded:

I'm not familiar with the OSC complaint. I'm at somewhat of a disadvantage with the facts. I can say that the privacy act considerations do fit into the picture.

As another followup, I asked him how we were supposed to ask about the complaint if he would not answer it. Here is what Mr. Jones said:

Well, quite frankly, Senator, I'm at a disadvantage with the facts. There is a process in place. I have not seen the OSC complaints.

So we have a problem.

So again, even though there is an open investigation, we were told we were going forward with the hearing so that Mr. Jones had an opportunity to answer the allegations. But whenever he was asked about it, he said he could not answer our questions because he had not seen the Complaint.

So, my point about the hearing being premature was overwhelmingly proven.

I also want to make a few comments about Tony West, nominated to be the Associate Attorney General. He is currently the Acting-Associate Attorney General and has generally done a good job. However, I remain concerned about his time serving as the Assistant Attorney General for the Civil Division.

He was involved in the quid pro quo deal between the Department and the City of St. Paul, Minnesota that was orchestrated by Assistant Attorney General Tom Perez. That quid pro quo involved the Department agreeing to decline two False Claims Act cases pending against the City of St. Paul in exchange for the City dropping a case pending before the Supreme Court.

Perhaps the most concerning part to me is that Mr. West essentially let Tom Perez take control of the Civil Division and cut this deal which hurt the whistleblower, Frederick Newell, leaving him to fight his case all alone. This is not how I expect the Department to treat good faith whistleblowers.

On top of all that, I believe it is contrary to the assurances that I was given by Mr. West that he would protect whistleblowers and vigorously enforce the False Claims Act when we held his confirmation hearing in 2009. If this nominee is ultimately confirmed, I sincerely hope he does not let politics within the Department control, instead of supporting good faith whistleblowers who stick their necks out.

I also wanted to address the nomination of Ms. Caproni, to be a District Judge. I have concerns over the fact that I made a request to the FBI over 6 years ago, asking for documents regarding exigent letters. In March 2007, Chairman LEAHY and I requested copies of unclassified emails related to the use of National Security Letters issued by the FBI.

I only received a few of these emails, and they were heavily redacted, so in 2008 I asked for the rest. Ms. Caproni, was general counsel of the FBI at the time and told me that the documents I was waiting for were on her desk, awaiting her review.

Well, it is now 2013 and as of her hearing, I had never received these documents.

I asked Ms. Caproni about this in her hearing and she had no specific recollection of this request. So, I asked her again in writing. This led to a set of FOIA documents being produced, which are a poor substitute for properly answering a committee request. It also raises further questions as to why it took 6 years and why Ms. Caproni told me years ago that she was working on responding to our request.

I have followed up with the FBI with specific requests regarding Ms. Caproni's involvement in the matter. Therefore, while I did not hold Ms. Caproni's nomination in committee, I reserve my right to do so on the Senate floor.

Concerning S. 394, the metal theft bill that we reported out this morning, I appreciate the changes that the sponsors made at my request to the criminal portion of the bill. The nature of the offense is clarified, and limited to the federal interest of critical infrastructure.

The bill also now requires criminal intent as an element of the proposed offense. The negligence standard in the bill has been eliminated.

However, I still have a number of concerns with this bill. The reality is that theft is already illegal everywhere in the country.

So is receipt of stolen goods. That raises questions about the necessity of a new federal offense.

The civil provisions are also duplicative of many State laws. The regulatory elements of this bill apply to any transaction in specified metal products exceeding \$100. In my opinion, \$100 seems to be a very low threshold.

We should not impose federal obligations unless the transaction is of a significant amount.

States can enforce their own laws if they have enacted a lower threshold.

Some of the recordkeeping requirements are of questionable value. For instance, the recipient must record the license plate number and make of the car used to deliver the metal.

Although the sponsors agreed to reduce the maximum amount, the dealer still faces up to a \$5,000 penalty if he knowingly commits a paperwork violation, unless it is minor. This is true even if the metal is not stolen. That strikes me as excessive.

And the sponsors declined to accept the changes that I sought in the civil provision, especially as enforced by the state attorneys general.

Those provisions effectively allow a private right of action, even a class action, to enforce these paperwork violations at up to \$5,000 per violation.

Not only can federal authorities enforce the bill's civil authorities, but so can the States. If metal theft continues, then that diffuse authority undermines the ability of citizens to hold accountable the responsible level of government.

This would allow the States to bring these cases in friendly State courts and expand the number of cases by outsourcing them to private lawyers paid under contingency fees.

This leads to more enforcement than would occur if these cases had to compete for attention with other priorities that state attorneys general would bring.

Excessive government can derive not only from broad laws, but from overzealous enforcement. The bill sponsors rejected my request that suits by the State AGs be filed only in federal court, and that any federal actions would supersede them.

There should be transparency and accountability for these lawsuits that are brought under authority of federal law.

I had amendments to discuss in markup, but will not do that here. However, when the full Senate takes up the bill, I will not be able to support it in its current form. I hope to work with the sponsors to address the concerns I have with this bill.

The PRESIDING OFFICER. Under the previous order, the question is, Will the Senate advise and consent to the nomination of Nitza I. Quiñones Alejandro, of Pennsylvania, to be United States District Judge for the Eastern District of Pennsylvania?

The nomination was confirmed.

The PRESIDING OFFICER (Ms. BALDWIN). Under the previous order, the question is, Will the Senate advise and consent to the nomination of Jeffrey L. Schmehl, of Pennsylvania, to be United States District Judge for the Eastern District of Pennsylvania?

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The clerk will call the roll.

The bill clerk called the roll.

The result was announced—yeas 100, nays 0, as follows:

[Rollcall Vote No. 149 Ex.]

YEAS—100

Alexander	Flake	Murkowski
Ayotte	Franken	Murphy
Baldwin	Gillibrand	Murray
Barrasso	Graham	Nelson
Baucus	Grassley	Paul
Begich	Hagan	Portman
Bennet	Harkin	Pryor
Blumenthal	Hatch	Reed
Blunt	Heinrich	Reid
Boozman	Heitkamp	Risch
Boxer	Heller	Roberts
Brown	Hirono	Rockefeller
Burr	Hoeven	Rubio
Cantwell	Inhofe	Sanders
Cardin	Isakson	Schatz
Carper	Johanns	Schumer
Casey	Johnson (SD)	Scott
Chambliss	Johnson (WI)	Sessions
Chiesa	Kaine	Shaheen
Coats	King	Shelby
Coburn	Kirk	Stabenow
Cochran	Klobuchar	Tester
Collins	Landrieu	Thune
Coons	Leahy	Toomey
Corker	Lee	Udall (CO)
Cornyn	Levin	Udall (NM)
Cowan	Manchin	Vitter
Crapo	McCain	Warner
Cruz	McCaskill	Warren
Donnelly	McConnell	Whitehouse
Durbin	Menendez	Wicker
Enzi	Merkley	Wyden
Feinstein	Mikulski	
Fischer	Moran	

The nomination was confirmed.

The PRESIDING OFFICER. Under the previous order, the motions to reconsider are made and laid on the table, and the President will be immediately notified of the Senate's action.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, Senate resumes legislative session.

BORDER SECURITY, ECONOMIC OPPORTUNITY, AND IMMIGRATION MODERNIZATION ACT—Continued

The PRESIDING OFFICER. The Senator from Montana is recognized.

Mr. TESTER. Madam President, I ask unanimous consent that I be recognized to speak for up to 5 minutes in order to call up my amendment, that Senator VITTER then be recognized for up to 8 minutes in order to call up his amendment, and then Senator HIRONO be recognized to speak for up to 20 minutes.

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

AMENDMENT NO. 1198

Mr. TESTER. Madam President, I call up amendment No. 1198.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows: The Senator from Montana [Mr. TESTER] proposes an amendment numbered 1198.

The amendment is as follows: (Purpose: To modify the Border Oversight Task Force to include tribal government officials)

On page 922, line 13, insert "and tribal" after "border".

On page 923, line 9, strike "29" and insert "33".

On page 923, line 15, strike "12" and insert "14".

On page 923, between lines 20 and 21, insert the following:

(III) 2 tribal government officials;

On page 924, line 7, strike "17" and insert "19".

On page 924, between lines 12 and 13, insert the following:

(III) 2 tribal government officials;

On page 925, line 8, strike "14" and insert "16".

Mr. TESTER. Madam President, I am proud to be joined by Senators MURKOWSKI, CRAPO, and MURRAY in offering this bipartisan amendment. Border security is one of the most important aspects of this bill, and on both sides of the border, especially the northern border, the only way to secure the border is to involve State, local, and tribal law enforcement in that effort. Native-American lands and people are a vital but, unfortunately, an often overlooked part of our border security plan. A chain is only as strong as its weakest link. Right now, drug smuggling and trafficking in persons is happening on Indian reservations on our border, moving virtually unnoticed into America. The problem, as the GAO told me in a recent report on this very topic, is a lack of communication and coordination between tribal and U.S. border officials.

This amendment adds four tribal voices to the Department of Homeland Security Task Force, two from the northern border region and two from the southern border region. As drafted, this task force included border security experts from various government entities and is responsible for solving problems related to border security. But somehow the tribal perspective was left out. Yet in Montana, the Blackfeet Reservation is bigger than the entire State of Delaware and it directly borders Canada for 50 miles. The Fort Peck Reservation sits less than 30 miles from the Canadian border. This amendment will increase communication and improve coordination between the Federal and tribal governments that it relies on to secure these borders. Adding a tribal representative to that task force is the right thing to do and it is just plain common sense.

I urge my colleagues to support it, and I yield the floor.

The PRESIDING OFFICER (Mr. HEINRICH). The Senator from Louisiana.

AMENDMENT NO. 1228

Mr. VITTER. Mr. President, I call up to my pending amendment No. 1228.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows: The Senator from Louisiana [Mr. VITTER] proposes an amendment numbered 1228.

Mr. VITTER. I ask unanimous consent to waive reading of the amendment.

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

The text of the amendment is printed in the RECORD of June 12, 2013, under "Text of Amendments."

Mr. VITTER. Mr. President, this amendment was in the group of four that was the subject of the previous unanimous consent so I look forward to an ongoing debate and vote on this amendment, hopefully early next week, because we need to start voting on this topic and on amendments to this bill. The amendment is simple and in my opinion very important. It would mandate finally that we have an operational US-VISIT system to track visas coming into the country and exiting the country to guard against visa overstays.

This is an important part of security and enforcement, but one that is not talked about enough. We always talk about the border, as we should. We often talk about workplace enforcement, as we should. That is extremely important. This is the third leg of the stool that we do not talk about enough but we need to focus on because this goes to our national security as well as border security.

The 9/11 terrorists all were individuals who came into this country legally, with a visa, but what happened? They overstayed their visa by a lot and they plotted to kill and destroy, which unfortunately they successfully did on 9/11. Because of that, one of the top recommendations of the 9/11 Commission was to implement this visa entry-exit system using biometric data. We call the system that has been developed the US-VISIT system. The problem is full implementation of the US-VISIT system has never come close to occurring as the 9/11 Commission recommended that it be executed.

This amendment says simply we are finally going to do it. We have talked about it for years. We have lived through actual terrorist attacks that go to the heart of this need. The 9/11 Commission has rated it as a top recommendation, so we are finally going to do it. We are not going to move on to changing the legal status of current illegals in this country under this bill until we do it and until we verify that it has been done. That is a very simple idea.

I look forward to a continuing debate on this need, on this amendment, and a vote on this amendment early next week.

Second, I also want to mention a point of order I will be making on this underlying bill as soon as possible, hopefully also early next week. The point of order is simple. It is a point of order against the emergency designation provision contained in the bill in