The PRESIDING OFFICER. Is there an objection?
Mr. REID. Reserving the right to object, is 2520 the McConnell amendment?
Mr. GRASSLEY. Yes. Mr. REID. No objection.
The PRESIDING OFFICER. Without objection, it is so ordered.

The amendments (Nos. 1659, as modified; 2520, 2746, as modified; and 2522, as modified) were agreed to as follows:

**AMENDMENT NO. 1659, AS MODIFIED**
(Purpose: To increase bankruptcy filing fees, increase funds for the United States Trustees System Fund, and for other purposes)

On page 124, between lines 14 and 15, insert the following:

**SEC. 322. UNITED STATES TRUSTEE PROGRAM FILING FEE INCREASE.**

(a) **AMENDMENT NO. 2520, AS MODIFIED**
(Purpose: To provide for the expenses of long-term care)

(b) **AMENDMENT NO. 2522, AS MODIFIED**
(Purpose: To provide for the expenses of long-term care)

(c) **AMENDMENT NO. 2746, AS MODIFIED**
(Purpose: To provide for the expenses of long-term care)

On page 7, line 13, insert the following:

(1) in paragraph (2) by striking “one-half” and inserting “three-fourths”; and
(2) in paragraph (4) by striking “one-half” and inserting “one.”

Mr. GRASSLEY. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

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

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. The clerk will call the roll.

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

Mr. INHOFE. Mr. President, I ask unanimous consent that I be recognized as if in morning business.

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

**RECESS APPOINTMENTS**

Mr. INHOFE. Mr. President, I wish to have a brief word about the issue of recess appointments.

For quite some number of years, Presidents—Democrats and Republicans—have, in my opinion, violated the Constitution by making recess appointments. The Constitution is very explicit when it says that recess appointments can only be made in the event the vacancy occurs during the recess. There is a reason for this, historically.

Back in the days when we were on horses and we had legislative sessions that might have lasted 1, 2, or 3 months, we found ourselves in recess more than we were in session. Therefore, on occasion it would be necessary for the Secretary of State, who may have died in office—or when vacancies had occurred while we were in recess—to have to reappoint somebody. So we did. It made sense. But since that time—over the last several years—that privilege has been abused. As I say, this is not just an abuse that takes place by Republican or Democrat Presidents; it is both of them equally.

Consequently, the Constitution, which says that the Senate has the prerogative of advice and consent, has been violated. It was put there for checks and balances. It was put there for a very good reason. That reason is just as legitimate today as it was when our Founding Fathers put it in there; that is, the Senate should advise and consent to these appointments. It means we should actually be in on the discussion as well as consenting to the decision the President has made by virtue of his nomination.

In 1985, President Reagan was making a number of recess appointments that, in my opinion, and in the opinion of most of the Democrats and Republicans, was not in keeping with the Constitution. And certainly the majority leader at that time—who was Senator Bob Byrd from West Virginia, the very distinguished Senator—made a request of the President not to make recess appointments. He extracted from him a commitment in writing that he would not make recess appointments and, if it should become necessary because of extraordinary circumstances to make recess appointments, that he would have to give the majority leader—who was, of course, Bob Byrd—in sufficient time in advance that they could prepare for it either by agreeing in advance to the confirmation of that appointment or by not going into recess and staying in pro forma so the recess appointments could not take place.

In order to add some leverage to this, the majority leader, Senator Byrd, said he would hold up all Presidential appointments until such time as President Reagan would give him a letter agreeing to those conditions. The President did give him a letter. President Reagan gave him a letter.

I will quote for you from within this letter. This was on October 18, 1985. He said:

... prior to any recess breaks, the White House would inform the Majority Leader and the (Minority Leader) of any recess appointments that might be taking such recess. They would do so in advance sufficiently to allow the leadership on both
sides to perhaps take action to fill whatever vacancies that might be imperative during such a break.

This is exactly what we talked about. This is the reason President Reagan agreed to this. He gave a letter to Senator Byrd. Senator Byrd was satisfied. Along came recess last May or June, and the President did in fact appoint someone he had nominated long before the recess occurred—in fact, not just months but even more than a year before that—and who had not complied with the requirement to inform Congress in order to come up for confirmation. In that case, President Clinton did in fact violate the intent of the appointment process in the advice and consent provision found in the Constitution.

I wrote a letter to President Bill Clinton. My letter said exactly the same thing the letter said from Bob Byrd to President Reagan in 1985. It was worded the same way President Reagan’s letter was worded. It said: Unless you will give us a letter, I am going to personally put a hold on all nonmilitary appointments.

The President started appointing people. And I put a hold on all of them—it didn’t make any difference; I put a hold on all nonmilitary appointments—until finally. I remember one time somebody said: Well, we have a really serious problem because we can’t get confirmation on the President’s nominee for Secretary of the Treasury. This could have a dramatic adverse effect on the economy. The value of the dollar could go down. All these things came into the picture. What are you going to do about that? I said: I am not going to do anything, but you had better tell the President about that because it is serious. Finally, he agreed to it.

Mr. President, I ask unanimous consent that all of these documents be printed in the Record immediately following remarks.

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

(See Exhibit 1.)

Mr. INHOFE. The letter finally came on June 15, 1999. I will read one sentence out of that letter.

I share your opinion that the understanding reached in 1985 between President Reagan and Senator Byrd cited in your letter remains a fair and constructive framework.

Once again, what is he following? He is saying, prior to any recess, the White House will inform the majority leader and the minority leader of any recess appointment which might be contemplated during such recess? Would they do so in advance sufficiently to allow leadership on both sides to perhaps take action to fill whatever vacancies might be imperative during such break? He agreed to it. I have a document, but I think in anticipation of the recess we are going in, it is my understanding that the President merely sent a list of some 150 nominees he has. Again, I didn’t see it. It was never officially received by the Senate. It was sent back to the White House.

If he thinks this is a loophole in the commitment he made, it certainly is not a loophole.

Anticipating that this President—who quite often does things he doesn’t say he is going to do and who quite often says things that aren’t true—is going to in fact have recess appointments, we wrote a letter. It is not just on my letterhead signed by me, but also I believe there are 16 other Senators saying that if you make recess appointments during the upcoming recess, which violates the spirit of your agreement, we will respond by placing holds on all judicial nominees.

The result would be a complete breakdown in cooperation between our two branches of government on this issue which could prevent the confirmation of any such nominees next year.

I want to make sure there is no misunderstanding and that we don’t go into a recess with the President not understanding that we are very serious about that. It is not just me putting a hold on all judicial nominees for the remaining year of his term of service, but 16 other Senators have agreed to do that.

It would be very easy for the President to just go ahead and comply with that agreement he has in his letter of June 15, 1999, rather than feeling compelled to make judicial appointments during this recess.

I want to serve notice to make it very clear.

I received a letter from the President. He did not honor me with a personal letter. It came from John Podesta, Chief of Staff to the President. Without reading the whole letter, because it is rather lengthy, it says that they might not comply with this.

I want to make sure it is abundantly clear without any doubt in anyone’s mind in the White House—I will refer back to this document I am talking about right now—that in the event the President makes recess appointments, we will put holds on all judicial nominations for the remainder of his term.

It is very fair for me to stand here and eliminate any doubt in the President’s mind of what we will do.

EXHIBIT I

U.S. SENATE,
OFFICE OF THE MAJORITY LEADER,
WASHINGTON, DC, JUNE 19, 1999.
HON. WILLIAM JEFFERSON CLINTON,
THE WHITE HOUSE, WASHINGTON, DC.

DEAR MR. PRESIDENT: We write to urge your compliance with the spirit of our recent agreement regarding recess appointments and to inform you that there will be serious consequences if you do not.

If you do make recess appointments during the upcoming recess which violate the spirit of our agreement, then we will respond by placing holds on all judicial nominees. The result would be a complete breakdown in cooperation between our two branches of government on this issue which could prevent the confirmation of any such nominees next year.

We do not want this to happen. We urge you to cooperate in good faith with the Majority Leader concerning all contemplated recess appointments.

Sincerely,
Jesse Helms, Wayne Allard, Michael Crapo, Michael B. Enzi, Bob Smith, George Voinovich, Pete B. Domenici, James M. Inhofe, Phil Gramm, Mitch
November 17, 1999

CONGRESSIONAL RECORD—SENATE

29917

McConnell, Craig Thomas, Rod Grames, Tim Hutchinson, Conrad Burns, Chuck Grassley, Richard Shelby.

THE WHITE HOUSE,

Senator JAMES INHOFE,

Dear Senator INHOFE:

I am at a loss to understand why we cannot.

I say to my friend from Nevada, yesterday morning—and I normally speak about an octave higher than this; I am coming out of a bout of bronchitis—I came back to be here at 10 o'clock because we were going to vote on the bill. Instead, we had morning business, I believe, until about 4 o'clock in the afternoon. That is 6 hours. That is what it would have taken to finish the bill, especially after the work of the Senate from Nevada, and others, in clearing out so many of the Republican and Democratic amendments to get them accepted or voted on.

We are willing to move on our side. We are willing to have our amendments come up.

I see the distinguished Senator from California on the floor. She has sat and sat some time. She has been here several days waiting with an amendment. She has indicated she is willing to go ahead with a relatively short period of time. The Senator from New York, Mr. Schumer, has said the same. We are ready to go, and I wish we would.

As I stated earlier, I would have liked very much to get this done. I would actually like very much to finish all the items we have. I wish we could have finished a couple weeks ago. I want to go to Vermont. I want to be with my family. It was snowing there yesterday, as I am sure it was in parts of the State of the distinguished Presiding Officer. I see the distinguished Senator from Maine on the floor. I expect it did in parts of the State. As the Senator knows, we have maybe 8 or 9 amendments total out of 320, and we could have a bill. And the contentious amendments on one that is causing us not to move forward, the Senator from New York, Mr. Schumer, has agreed to a half hour. That is all he wants. I just cannot imagine, if this bill is as important as I think it is and, as I have heard, the majority believes it is, why we cannot get a bill.

Does the Senator from Vermont understand why we are not moving forward?

Mr. LEAHY. I am at a loss to understand why we cannot.

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Mr. REID. It was 81 degrees in Las Vegas yesterday.

Mr. LEAHY. Eighty-one degrees in Las Vegas. How about snow in the mountains?

Mr. REID. Oh, there was snow in the mountains.

Mr. LEAHY. The Senator from Nevada has the good fortune as I do: We both represent two magnificent and beautiful States. He has the ability, however, in his State to go far greater ranges in climate, in temperature, over a distance of 100 miles or so than just about anywhere else in the country. We