

Leahy	Murray	Rockefeller
Levin	Nunn	Sarbanes
Lieberman	Pell	Simon
Mikulski	Pryor	Wellstone
Moseley-Braun	Reid	
Moynihan	Robb	

The PRESIDING OFFICER. On this vote, the yeas are 54, and the nays are 46. Pursuant to the previous order, 60 Senators not having voted in the affirmative, the motion is rejected.

Mr. KENNEDY. Mr. President, I move to reconsider the vote by which the motion was rejected.

Mr. BREAUX. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

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

EXECUTIVE SESSION

Mr. LOTT. Mr. President, on behalf of the leader, I ask unanimous consent that the Senate now proceed to executive session to consider the nomination of James Dennis to be U.S. Circuit Judge.

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

NOMINATION OF JAMES L. DENNIS, OF LOUISIANA, TO BE UNITED STATES CIRCUIT JUDGE FOR THE FIFTH CIRCUIT

The assistant legislative clerk read the nomination of James L. Dennis, of Louisiana, to be U.S. Circuit Judge for the Fifth Circuit.

Mr. COCHRAN addressed the Chair.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. COCHRAN. Mr. President, I move to recommit the nomination to the Judiciary Committee.

Mr. BIDEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. Parliamentary inquiry: Does that call for immediate action, or is that a debatable motion?

The PRESIDING OFFICER. The motion to recommit is a debatable motion.

Mr. COCHRAN. Mr. President, I am prepared to describe to the Senate the reasons for my motion, and to give other Senators an opportunity to discuss this. We had undertaken to work out an agreement on the basis of time constraints allocating time for one side and the other because some did not want to set a precedent for doing the time agreement on a motion to recommit on the Executive Calendar. We have not reached that agreement in any formal way.

But, for the information of Senators, it is my expectation that there will be

debate on this motion for at least 1 hour on this side in support of the motion to recommit. I expect that there will be a corresponding amount of time, or at least certainly the availability of that kind of time, on the other side. Then there would be a request for the yeas and nays on the motion to recommit the nomination. We expect to be able to get a record vote on that motion.

Mr. BIDEN. Mr. President, will the Senator yield?

Mr. COCHRAN. I am happy to yield to the Senator for a question.

Mr. BIDEN. Mr. President, I am the one who was reluctant to enter into a time agreement and/or a formal agreement on the motion to recommit. It is fully within the right of the Senator from Mississippi to do that. The reason I did not wish to do that is that it sets a precedent. As long as I have been here, I do not recall us moving to recommit a judicial nominee unanimously reported out of the Judiciary Committee.

The second point that I make to my friend is that I have no intention of doing anything to delay the vote on this motion to recommit.

I would like at the appropriate moment to explain why I believe Justice Dennis is qualified and should be confirmed and why there is no need to recommit. My colleagues from Louisiana, who have a genuine interest in this nomination, are both here, and I would look to them to speak to the qualifications of Justice Dennis and why a recommittal motion would be in effect a very bad precedent.

I wish to make it clear to my friend from Mississippi that the Senator from Delaware does not have any other agenda. I do not have any intention of slowing up a vote on this. This is a slightly different procedure from the general tradition of the Senate that when a nominee comes up from a committee the Senate debates and votes on the nominee. However, I will not object to this motion to recommit Justice Dennis because it seems to me a version of what the North in the War Between the States had hoped for for many years, that is, that two States in the heart of Dixie would fight over an issue that the rest of us think is not worthy of a fight.

Mr. COCHRAN addressed the Chair.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. COCHRAN. My response to the distinguished Senator from Delaware is I have no problem with his describing the committee's action. I know the chairman of the committee would probably want to do that at some point in this discussion.

Let me just say, if I can, in support of the motion that this is not a fight between two States. This is a question that is being presented to the Senate today under this motion to recommit on the basis of newly discovered information about the fitness of this judge to serve on the fifth circuit court of ap-

peals. The motion to recommit is to give the Judiciary Committee an opportunity to review the facts, the evidence and the investigation that has just recently been concluded by the staff of the Senate Judiciary Committee, at the request of the chairman of that committee.

I have been briefed by the staff on the findings of that investigation, and I was advised at the time I was briefed that no other Senator had requested a briefing, no member of the committee had been briefed, other than the chairman had been given information from the investigators. I am convinced on the basis of what I heard that the Judiciary Committee should reconvene and reconsider the nomination.

That is the reason this motion is being made. If this were just a debate on the merits of the nominee or the fitness of this nominee on the basis of the record as already made by the Judiciary Committee—whether or not one State was being overly represented on the Court—these are all facts that we would debate at that time, and it may be a subject, a proper subject, for discussion at a later time. But this motion is directed to the fact that after the committee reported the nomination, information became available which brought into question the fitness of this judge to serve and whether or not he should have disqualified himself from participating in a case before the Louisiana Supreme Court and related matters.

That is the point we will address this morning. We hope the Senate will agree with us that this is clearly a situation where the committee ought to reconsider the nomination.

Mr. BIDEN. If the Senator will yield without losing his right to the floor—

Mr. COCHRAN. I will be happy to yield for a question.

Mr. BIDEN. The way the Judiciary Committee has operated for the roughly 20 years, I guess, that I have been on it is that the investigative staffs of the majority and minority work together and share all information. I wish to inform my friend from Mississippi that in addition to the Senator from Mississippi and the chairman of the committee, Senator HATCH, the Senator from Delaware has also been briefed on all of the investigative matters including the one to which the Senator refers.

I will be prepared and am ready to speak to that, but I will yield back. I do not have the floor. I thank my friend for his time, but assure him that I am aware the committee has been briefed. I see absolutely no need to refer this back to the committee, but I will speak to that in response to my friend's arguments.

Mr. COCHRAN. Mr. President, I thank the distinguished Senator for his comments.

Let me just say for the purpose of putting this in some historical context that Judge James Dennis is a member of the Louisiana State Supreme Court.