

the emergency that plagues the Second Circuit.

We have seen the strong support for this nominee from the Congressional Hispanic Caucus and from the Puerto Rican Bar Association, the Hispanic National Bar Association, and many other bar associations around the country. We have received literally thousands of letters of support for this nominee.

Late this summer, a column in the Wall Street Journal noted that Judge Sotomayor was being held up on the Republican side of the aisle because of speculation that she might one day be considered by President Clinton for nomination to the United States Supreme Court. This was confirmed by a report in the New York Times on June 14.

As I said earlier, this has not been the Senate's finest hour.

How disturbing and how shameful: trying to disqualify an outstanding Hispanic woman judge by an anonymous hold. Here is a highly-qualified Hispanic woman judge who should have been confirmed to help end the crisis in the Second Circuit more than seven months ago.

How petty, how mean, how wrong to cost this judge the seniority she should have had on the Second Circuit by someone anonymously holding her up on the other side of the aisle.

I note very clearly for the RECORD that every time the question of her nomination came forth, it has been made clear that every single Democrat said they were prepared to go forward with her nomination. Every single Democrat said they would vote for her.

When she is confirmed as I fully expect she will be, she will be only the second woman and second judge of Puerto Rican descent to serve on the Second Circuit. Judge Sotomayor is a source of pride to Puerto Rican and other Hispanic supporters and to women everywhere.

Judge Sotomayor is a highly qualified nominee who was confirmed to the United States District Court for the Southern District of New York in 1992 after being nominated by President Bush. She rose from a housing project in the Bronx to attend Princeton University and Yale Law School. She worked for over four years in the New York District Attorney's Office as an Assistant District Attorney and was in private practice with Pavia & Harcourt in New York.

She has been a fine District Court Judge. It was Judge Sotomayor who issued a key decision in 1995 that brought an end to the work stoppage in major league baseball. She applies the law. In this, as in her other decisions, Judge Sotomayor followed the law. That is what judges are supposed to do. There is no basis for a charge that she is or will be a judicial activist.

In his annual report on the judiciary this year on new Year's Day, the Chief Justice of the United States Supreme Court observed: "Some current nomi-

nees have been waiting a considerable time for a Senate Judiciary Committee vote or a final floor vote. * * * "The Senate is surely under no obligation to confirm any particular nominee, but after the necessary time for inquiry it should vote him up or vote him down."

Acting to fill judicial vacancies is a constitutional duty that the Senate—and all of its members—are obligated to fulfill. In its unprecedented slowdown in the handling of nominees in the 104th and 105th Congresses, the Senate is shirking its duty. When those nominees are women or members of racial or ethnic minorities, this is especially disturbing.

Today, after holding this nomination for seven months on the Senate calendar, the Senate will finally get a chance to vote on the nomination of Judge Sonia Sotomayor to the Second Circuit. I look forward to our taking action to confirm this outstanding nominee.

Mr. President, obviously I am not going to put this in the RECORD. But I would just note that this two-foot stack of papers contains some of the letters from distinguished lawyers and distinguished bar associations from all over this country—from prosecutors and defense attorneys alike; from people who do appellate work and those who do not; from every spectrum of the bar. These are all letters from people who support the nomination of Judge Sotomayor. These are people who can now finally get a response, a response indicating that this superb candidate is finally being considered by the Senate, that the anonymous holds are no longer being allowed to restrain her nomination, and that the Senate finally walked out into the daylight to vote. I have every confidence that vote will be a favorable one and that she will finally be confirmed—even though she was unjustly denied the seniority she would have gotten had the confirmation gone forward on schedule.

Mr. President, I understand there is no one else seeking to speak on either side. And I have been told by the Republican side that I have permission to yield back their time. I yield their time. I yield our time. We are prepared to vote.

The PRESIDING OFFICER. All time having been yielded, the question is, Will the Senate advise and consent to the nomination of Sonia Sotomayor of New York to be the United State Circuit Judge for the Second Circuit? On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Missouri (Mr. BOND) is necessarily absent.

Mr. FORD. I announce that the Senator from Ohio (Mr. GLENN), the Senator from South Carolina (Mr. HOLLINGS), and the Senator from Illinois (Ms. MOSELEY-BRAUN) are necessarily absent.

The PRESIDING OFFICER (Mr. FRIST). Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 68, nays 28, as follows:

[Rollcall Vote No. 295 Ex.]

YEAS—68

Akaka	Durbin	Lugar
Baucus	Feingold	Mack
Bennett	Feinstein	Mikulski
Biden	Ford	Moynihan
Bingaman	Frist	Murkowski
Boxer	Graham	Murray
Breaux	Grams	Nickles
Bryan	Gregg	Reed
Bumpers	Harkin	Reid
Byrd	Hatch	Robb
Campbell	Helms	Rockefeller
Chafee	Inouye	Roth
Cleland	Jeffords	Santorum
Coats	Johnson	Sarbanes
Cochran	Kennedy	Smith (OR)
Collins	Kerrey	Snowe
Conrad	Kerry	Specter
D'Amato	Kohl	Stevens
Daschle	Landrieu	Torricelli
DeWine	Lautenberg	Warner
Dodd	Leahy	Wellstone
Domenici	Levin	Wyden
Dorgan	Lieberman	

NAYS—28

Abraham	Gramm	McConnell
Allard	Grassley	Roberts
Ashcroft	Hagel	Sessions
Brownback	Hutchinson	Shelby
Burns	Hutchison	Smith (NH)
Coverdell	Inhofe	Thomas
Craig	Kempthorne	Thompson
Enzi	Kyl	Thurmond
Faircloth	Lott	
Gorton	McCain	

NOT VOTING—4

Bond	Hollings
Glenn	Moseley-Braun

The nomination was confirmed.

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

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

Mr. BURNS. Mr. President, the Senate is not in order.

The PRESIDING OFFICER. The Senate will be in order.

Mr. MCCAIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

INTERNET TAX FREEDOM ACT

The Senate continued with the consideration of the bill.

Mr. MCCAIN. Mr. President, what is the parliamentary situation?

AMENDMENT NO. 3677

The PRESIDING OFFICER. The Senate is considering the bill, S. 442, and the amendment offered by the Senator from Arkansas is the pending question.

Mr. MCCAIN. Mr. President, I am going to propound a unanimous consent request for a time agreement so that Members can know when the next vote will take place. I thank my colleagues for their cooperation. Perhaps not all time will be used.

I ask unanimous consent that prior to the vote on the Bumpers amendment, the following time be allocated:

10 minutes for Senator DORGAN, 10 minutes for Senator BUMPERS, 10 minutes for Senator GRAHAM of Florida, 10 minutes for Senator SNOWE and 5 minutes equally divided between Senator MCCAIN and Senator WYDEN.

The PRESIDING OFFICER. Is there objection?

Mr. BUMPERS. Reserving the right to object, and I shall not object, I want to include, if it is agreeable with the manager, 2 minutes for the distinguished Senator from New York to speak on the previous nomination.

Mr. MCCAIN. Will the Senator repeat that?

The PRESIDING OFFICER. Will the Senator repeat the request? Can we have all extraneous conversations taken to the Cloakroom?

Mr. BUMPERS. I suggest to the distinguished floor manager that I will not object to his request, but I want to include 2 minutes immediately for the distinguished Senator from New York to speak on the previous nomination.

Mr. MCCAIN. Mr. President, I ask unanimous consent that prior to resuming debate, the Senator from New York be recognized for 2 minutes.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. MCCAIN. I understand the unanimous consent request is now agreed to, Mr. President.

The PRESIDING OFFICER. The Senator is correct.

The Senator from New York is recognized.

NOMINATION OF SONIA SOTOMAYOR, OF NEW YORK, TO BE UNITED STATES CIRCUIT JUDGE FOR THE SECOND CIRCUIT

Mr. MOYNIHAN. Mr. President, the Senate has just passed an enormous milestone in the composition of the American judiciary with the confirmation of Judge Sonia Sotomayor for the appointment to the second circuit court of appeals. It is a fine day for New York, I might say specifically for the Bronx, a fine day for the judiciary.

I thank our distinguished Judiciary Committee chairman, Senator HATCH, Senator LEAHY, and the majority leader, Mr. LOTT, and his colleague, Mr. DASCHLE, and, of course, my colleague, Senator D'AMATO.

It was 7 years ago in March that I had the honor to nominate Sonia Sotomayor to serve on the southern district of New York. President Bush placed her name in nomination, and she was sworn in directly on October 1992. Her subsequent experience on the bench has been admirable. In 5½ years, she has presided over 500 cases and has been overturned only 6 times. She has presided over cases of enormous complexity with skill and confidence that would befit the editor of the Yale Law Journal and a person who rose from the most simple circumstances in south Bronx to the eminence she is now assured.

I thank the Senate, I thank all those involved, and I thank, not least, my friend from Arkansas for yielding me this time.

INTERNET TAX FREEDOM ACT

The Senate continued with the consideration of the bill.

The PRESIDING OFFICER. The Senator from Arkansas.

AMENDMENT NO. 3677

Mr. BUMPERS. Mr. President, let me remind my colleagues of a very simple fact. Don't vote against this amendment because you want to go home and tell your constituents that it imposes a new tax. It does not. For all of you people, when we talked about unfunded mandates, who talked endlessly about States rights, this is a classic States rights issue. If you vote against my amendment, you are saying to the States: We don't trust you; we are not going to let you collect new taxes on remote sales; we are going to stand by while your tax base is eroded, while you try to raise property taxes in order to pay for schools, but we simply cannot trust you and, therefore, we are not going to give you the authority.

I am telling you—I do not know how I can say it more dramatically, more graphically—as a former Main Street merchant, I can tell you it is patently unfair to make the people of my State and your States make Main Street merchants collect sales tax on every single dime they take in, but if you want to move just across the State line and ship it back into the State, you can do it and not charge any sales tax.

I had a cousin who bought a fur coat in New York. The clerk said, "You sound like you're southern." She said, "I am. I'm from Little Rock." The clerk said, "Why don't you let us mail this coat to you? That way you won't have to pay this \$100 or \$300"—whatever it was—"in sales tax." She said, "Fine. Just mail it to me." That is the kind of thing that is going on, and it is going to continue to go on.

On your desk, in about 10 minutes, you will find the list of people in this country who strongly favor the BUMPERS amendment. You know who they are? They are the Governors; they are the mayors; they are the city councils; they are a whole host of Main Street merchant organizations. Look at it before you vote, and figure out what you are going to say to them the next time you address their organizations on why you didn't vote for this amendment. Tell the Governors why their tax base is being eroded.

Mr. President, we exempt in this bill—listen carefully—we exempt every mail-order house in the United States that does less than \$3 million a year. That exempts about 89% of the mail-order companies in the United States. My amendment would make the States put in a 1-800 number so any mail-order house that is confused can call the State and find out what that State's rule is. We have a blended rate so that

the mail-order house only has to collect one rate and the States will distribute it between the cities and the counties. We have done everything in the world to make this as easy as possible for everybody.

Mr. President, here is an article from the New York Times this morning. There is a copy of the article on every member's desk. This article make all the arguments that I have made here this morning.

Let me tell you one other argument they make that I have not made, and that is that people who buy on the Internet are the wealthiest people in the country. They are the ones who are doing most of the buying, because they have Internet access. So if I am a wealthy person, I have a computer in my home, and I am on-line, this sales tax loophole favors me. The guy making \$6 to \$10 an hour does not have a computer in his house. He does not know what is available on the Internet. It is another way of discriminating against those who have the least.

Mr. President, I am really sorry that we are in such a rush. I know a lot of people want to catch planes, and I am sympathetic to that. I have been in that situation myself. But I want to say, No. 1, please read the New York Times article; please look at the list of people that will be on your desk in about 5 minutes who support this amendment; and, finally, if you are going to vote against this amendment, please figure out what you are going to say to the mayors and the Governors who have the responsibility of keeping the schools open, who have the responsibility of funding the fire departments, who have the responsibility of funding the police departments, keeping the streets clean, keeping the landfills in compliance with EPA rules, and all the other things that cost "gazillions" of dollars across the country. Ask them why they are not allowed to collect a little tax to at least help pay the landfill for covering up 4 million tons of catalogs a year, if nothing else.

So, Mr. President, I know everybody is in a hurry. And I guess I have said about all I need to say. I see Senator DORGAN on the floor who wants to speak and who has time allocated. So, Mr. President, I yield the floor.

Mr. DORGAN addressed the Chair.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, let me, in just the 10 minutes that I am allotted, make a comment about the amendment offered by Senator BUMPERS and also to comment about the underlying bill.

Senator BUMPERS offers an amendment that I think is very important and one that I intend to vote for and feel is a good amendment. The bill brought to the floor of the Senate, in its original form when it was passed out of the Commerce Committee, was totally unacceptable to me. I voted against it, worked against it, and felt