

Judge Richard Paez is an outstanding jurist and a source of great pride and inspiration to Hispanics in California and around the country. He served as a local judge before being confirmed to the federal court bench several years ago and is currently a Federal District Court Judge. He has twice been reported to the Senate by the Judiciary Committee and has spent a total of 9 months over the last 2 years on the Senate Executive Calendar awaiting the opportunity for a final confirmation vote. His nomination was first received by the Senate in January 1996, 44 months ago.

Justice Ronnie White is an outstanding member of the Missouri Supreme Court and has extensive experience in law and government. He is the first African American to serve on the Missouri Supreme Court. He has also been twice reported favorably to the Senate by the Judiciary Committee and has spent a total of 7 months on the floor calendar awaiting the opportunity for a final confirmation vote. His nomination was first received by the Senate in June 1997, 27 months ago.

Marsha Berzon is one of the most qualified nominees I have seen in 25 years. Her legal skills are outstanding, her practice and productivity have been extraordinary. Lawyers against whom she has litigated regard her as highly qualified for the bench. Nominated for a judgeship within the Circuit that saw this Senate hold up the nominations of other qualified women for months and years—people like Margaret Morrow, Ann Aiken, Margaret McKeown and Susan Oki Mollway—she, too, is listed ahead of the Stewart nomination on the floor calendar. Ms. Berzon was first nominated in January 1998, 20 months ago, and a year and one-half before Mr. Stewart.

It is against this backdrop that we are asking the Senate to be fair to these judicial nominees and all nominees. I do not want to see votes delayed on any nominee. For the last few years the Senate has allowed one or two or three secret holds to stop judicial nominations from even getting a vote. That is wrong.

The Chief Justice of the United States Supreme Court wrote in January last year:

Some current nominees 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.

Let us follow the advice of the Chief Justice. Let the Republican leadership schedule up or down votes on the nominations of Judge Paez, Justice White and Marsha Berzon so that we can vote them up or vote them down. And so that we can proceed on all the judicial nominations that our federal courts need to do their job of administering justice. Let us be fair to all.

Mrs. BOXER. Mr. President, I voted against cloture on the Stewart nomina-

tion because the process that brought us to this vote has, to date, prevented the Senate from even considering the nominations of several other judicial nominees who have been waiting far longer than has Mr. Stewart.

Richard Paez and Marsha Berzon, two nominees for the 9th Circuit, have both been reported by the Judiciary Committee and have been on the Senate Executive Calendar since July. But, more important, their nominations have been pending in the Senate for years—2 years in the case of Ms. Berzon and three years for Judge Paez!

It is patently unfair to ignore these fine nominations while moving forward on the Stewart nomination. I have no problem with Mr. Stewart, as far as I know. But this is an important process question, and I simply had no choice but to vote no on cloture on Stewart until we are assured of also moving ahead with those nominations which have been pending far longer.

Mr. KOHL. Mr. President, Ted Stewart, as any other nominee, deserves a vote. And eventually, I expect to vote for him, because I respect the judgment of my friend ORRIN HATCH and of the President. But there is a long line of qualified nominees ahead of him and, at least at this point, it's not right for him to "cut" in line.

For example, just compare Mr. Stewart's path with that of another qualified candidate, Tim Dyk, a nominee for the Federal Circuit. Mr. Dyk was first nominated 18 months ago, came out of Committee with strong bipartisan support, then stalled on the floor in the last days of the session because of a "secret" hold. He was nominated again eight months ago, and he has still never been placed on the agenda.

As for Mr. Stewart, he was nominated less than two months ago, and it took him just 48 hours to go from nomination, to hearing, to Committee approval. Now Mr. Stewart is up for a full Senate vote just 53 days after he was nominated. Meanwhile, five hundred and two days after Tim Dyk was nominated, he seems to be going nowhere fast.

That makes no sense to me or, I suspect, to Chairman HATCH, who also supports this nominee.

Mr. President, as with Mr. Stewart, Mr. Dyk will, I predict, be confirmed with bipartisan support. He's a first-rate intellect. He passed this Committee by a 14 to 4 vote last year, and all of us know that the Federal Circuit would be lucky to have someone of his caliber.

Like Tim Dyk and Ted Stewart, there are many other deserving nominees out there. Let's not play favorites. These nominees, who have to put their lives on hold waiting for us to act, deserve an "up or down" vote. And, more importantly, the American people deserve prompt action, so that our courts can stay on top of their workload, and continue putting criminals behind bars.

So, Mr. President, I expect to support Ted Stewart, but don't think he alone

should get the timely consideration that all nominees—including Tim Dyk, Marsha Berzon and Richard Paez—deserve. So I hope we can get an agreement to move forward not only Mr. Stewart, but also other deserving nominees. Thank you.

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will now return to legislative session.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2000—CONFERENCE REPORT

Mr. LOTT. Mr. President, under the previous consent agreement, I ask the Chair to lay before the Senate the conference report to accompany the DOD authorization bill.

The PRESIDING OFFICER. The clerk will report.

The legislative assistant read as follows:

The committee on conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 1059), have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of August 5, 1999.)

Mr. DASCHLE addressed the Chair.

The PRESIDING OFFICER. The Senate Democratic leader.

FAILURE OF REGULAR ORDER IN THE SENATE

Mr. DASCHLE. Mr. President, I wanted to have the opportunity to talk about the next four votes because it is critical that everyone understand what really is at stake tonight. Many Democratic Senators are in favor of the bankruptcy bill. Many of us have indicated publicly we support a bankruptcy bill. But we also support debate on a bankruptcy bill.

We support the opportunity to take up a bill under the regular rules of the Senate, regular order, have a good debate, have amendments offered, do what we should do in the Senate tradition, and have the kind of full and open debate we have not had on a bill since last May.

We have not brought a nonappropriations bill to the Senate floor since last May under the normal Senate rules.

Every single bill that has come before us since May has been under unanimous-consent agreements that circumvent, if not completely eliminate, the use of the normal Senate rules.

I had a clear understanding, as early as last summer, that when we brought the bankruptcy bill up, it would come up under normal Senate rules. I understand times change and circumstances

change, but it is regrettable—although not surprising—that once again cloture was filed preemptively and without good cause.

Keep in mind, when one files cloture, it calls for the end of all debate. It is amazing to me that tonight we are voting on a motion to end all debate before we have even had any debate. Not a word of debate has been uttered on the bankruptcy bill.

We find ourselves in an amazing Orwellian circumstance in which we are ending debate before it begins, calling it a debate, filing cloture, and calling it quits. We cannot do that.

Time after time, I have indicated that many of us have opportunities to stop legislation, and we will be inclined to do that if we have no opportunity to bring up amendments, as regular order would allow. Again, many of us support bankruptcy reform and want to see a bankruptcy bill, but we also want to be able to offer amendments.

If cloture is invoked tonight, many of the amendments we had agreed to prior to bringing the bill to the floor will fall—amendments that both sides agree will improve the bill. Cloture will actually prevent those relevant amendments from being considered.

I do not know why any colleague would vote to eliminate even relevant amendments, amendments for which there is agreement. We have a managers' amendment to make improvements to the bill, but under cloture it would be subject to a point of order.

We want to go to bankruptcy. I want to see if we can reach some agreement on going to bankruptcy, but we cannot continue to gag Senators and prevent them from using the normal rules of the Senate in offering amendments.

Second issue: Cloture on Mr. Stewart. I have indicated publicly that even though I have some misgivings about Mr. Stewart, I will support him. This issue is not about Mr. Stewart. This issue is about the 45 nominations that are still pending, awaiting Senate action a few weeks before the end of the session. This issue has to do with 38 nominations in committee, 24 district, 13 circuit, and 1 International Trade Court judge. This issue has to do with nominees who have been waiting for the Senate to act now since January of 1996.

Judge Richard Paez, who is currently a U.S. district court judge, was first nominated in January of 1996. Judge Paez has been waiting 3½ years for a Senate vote—3½ years. That is half a Senate term. He has been waiting half a Senate term for the Senate to act. He has been waiting for more than 1,300 days for the Senate to vote, or 25 times longer than Mr. Stewart. Mr. President, 1,300 days is a long time to wait for the Senate to act. Judge Paez is a patient man, but I do not think it is too much to ask that, up or down, we let him get on with his life, up or down he have the opportunity to have a vote, up or down we say yes or no, you will be a circuit judge.

Justice Ronnie White, the first African American to serve on the Missouri Supreme Court, was originally nominated on June 26 of 1997. He was actually put on the calendar in this Congress on July 22 of 1999, but he has waited for a total of over 7 months on the calendar in this and in previous Congresses.

Marsha Berzon was first nominated in January of 1998. Her nomination has been pending over 10 times longer than Ted Stewart's nomination.

There are 64 vacancies in the Federal judiciary today. Chief Justice Rehnquist has noted that and has urged the Senate to act. We have 45 nominations pending in the Senate right now awaiting action either in the committee or on the floor. There are seven nominations on the Executive Calendar. Only 17 judges have been confirmed to date.

Some might claim: We have seen that happen before. I hate to say "when we were in the majority," but when we were in the majority, during the first session in 1991, the last year we were in the majority in a nonelection year, we confirmed 57 judges; in 1992, an election year, we confirmed 66 judges. In the election year 1994, the last election year where we were in the majority, we had 101 judges confirmed.

All one has to do is look back at past precedent. All one has to do is look at the terrible unfairness of someone having to wait 1,300 days, 25 times longer than Ted Stewart, months and months—10 times longer than Ted Stewart in the case of Marsha Berzon—to see how unfair this system is.

I want to find a way to work through this. I know Senator HATCH, the chairman of the Judiciary Committee, wants to find a way through it. I am hopeful we can find a way through it within the next few days. Tonight I will move to proceed to the nominations of Judge Paez and Ms. Berzon, and we will have an opportunity to express ourselves on the importance of these judges. We will vote. I hope the majority will not oppose moving to proceed to those two judges: Ms. Berzon, an exceptional nominee for the ninth circuit; and Judge Paez, a sitting district court judge, a Hispanic American, also fully qualified, a nominee for the Ninth Circuit. I hope we can find a way to resolve our differences and move forward.

I felt strongly about the importance of having these votes. I feel equally strongly about the importance of trying to resolve this impasse. We will make every effort to do so. I believe my colleagues will support an effort to break this impasse, recognizing that, as important as this is, we cannot go home leaving all of this work undone.

I hope we can do so this week. I know the majority leader has indicated a willingness to perhaps even hotline Judge Paez and Ms. Berzon. I hope that will happen this week. If that happens, we will be in a better position to know just how much opposition there is. We

have to move on. We have to have these votes. We have to confirm these nominations. We have to ensure we can pass a good bankruptcy bill. There is so much more we can and ought to do. That will take working together, and I stand ready to do so.

NOMINATION OF MARSHA L. BERZON OF CALIFORNIA TO BE UNITED STATES CIRCUIT JUDGE FOR THE NINTH CIRCUIT—MOTION TO PROCEED

Mr. DASCHLE. I now move to proceed to executive session to consider calendar No. 159, Marsha L. Berzon, of California, to be United States Circuit Judge for the Ninth Circuit, and I ask for the yeas and nays.

THE PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

THE PRESIDING OFFICER. The question is on agreeing to the motion to proceed to executive session to consider the nomination of Marsha L. Berzon, of California, to be United States Circuit Judge for the Ninth Circuit. The yeas and nays have been ordered. The clerk will call the roll.

The legislative assistant called the roll.

Mr. NICKLES. I announce that the Senator from Arizona (Mr. MCCAIN) is necessarily absent.

THE PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 45, nays 54, as follows:

[Rollcall Vote No. 282 Leg.]

YEAS—45

Akaka	Edwards	Levin
Baucus	Feingold	Lieberman
Bayh	Feinstein	Lincoln
Biden	Graham	Mikulski
Bingaman	Harkin	Moynihan
Boxer	Hollings	Murray
Breaux	Inouye	Reed
Bryan	Johnson	Reid
Byrd	Kennedy	Robb
Cleland	Kerrey	Rockefeller
Conrad	Kerry	Sarbanes
Daschle	Kohl	Schumer
Dodd	Landrieu	Torricelli
Dorgan	Lautenberg	Wellstone
Durbin	Leahy	Wyden

NAYS—54

Abraham	Fitzgerald	McConnell
Allard	Frist	Murkowski
Ashcroft	Gorton	Nickles
Bennett	Gramm	Roberts
Bond	Grams	Roth
Brownback	Grassley	Santorum
Bunning	Gregg	Sessions
Burns	Hagel	Shelby
Campbell	Hatch	Smith (NH)
Chafee	Helms	Smith (OR)
Cochran	Hutchinson	Snowe
Collins	Hutchison	Specter
Coverdell	Inhofe	Stevens
Craig	Jeffords	Thomas
Crapo	Kyl	Thompson
DeWine	Lott	Thurmond
Domenici	Lugar	Voinovich
Enzi	Mack	Warner

NOT VOTING—1

McCain

The motion was rejected.