United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 107th CONGRESS, SECOND SESSION

Vol. 148 WASHINGTON, FRIDAY, MARCH 15, 2002 No. 30

House of Representatives

The House was not in session today. Its next meeting will be held on Monday, March 18, 2002, at 2 p.m.

Senate

FRIDAY, MARCH 15, 2002

The Senate met at 9:15 a.m. and was called to order by the Honorable DEBBIE STABENOW, a Senator from the State of Michigan.

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Lord of our Lives, our prayer this morning is to report in for duty. We know it makes a great difference how we think about You and how we conceive of our relationship with You. You are our supreme commander, we are Your servants. Throughout the Bible, the truly great men and women regarded the name ''Servant of God'' as a description of their highest calling. Patriarchs, priests, prophets, and disciples bore the distinguished title of servants. The psalmist urgently calls us to ''Serve the Lord with gladness.''—Psalm 100:2. That's our purpose today. As Senators, officers of the Senate, and staff, we all renew our commitment to serve You in our work in government. We are not here to be served but to serve. May no challenge be too momentous nor any assignment too menial for us as Your servants. Our security and esteem are not in titles, positions, power, or turf but in being Your servants, working for Your glory and the good of America. May it be so today, Sovereign Master of our Lives. Amen.

PLEDGE OF ALLEGIANCE

The Honorable DEBBIE STABENOW led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. BYRD).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, March 15, 2002.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable DEBBIE STABENOW, a Senator from the State of Michigan, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Ms. STABENOW thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE ACTING MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The Senator from Nevada.

SCHEDULE

Mr. REID. Madam President, shortly the Senate will vote on the confirmation of Executive Calendar No. 704, David Bury of Arizona, to be United States District Judge for the District of Arizona. Following that, we will return to the energy bill. The managers will be ready to accept amendments. We hope there can be some done today between the two managers. There will be no further rollcall votes. The majority leader announced last night we will come in, it appears, at about 3 o'clock on Monday, and further information will be given before we adjourn today.

The leader has also announced we will have at least one vote beginning at 6 o'clock Monday. There could be more than one vote.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

EXECUTIVE SESSION

NOMINATION OF DAVID C. BURY, OF ARIZONA, TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF ARIZONA

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now go into executive session and proceed to the consideration of Executive Calendar No. 704. The clerk will state the nomination.

The legislative clerk read the nomination of David C. Bury, of Arizona, to be United States District Judge.

Mr. LEAHY. Mr. President, today, the Senate is voting on the 41st judicial nominee to be confirmed since last July when the Senate Judiciary Committee reorganized after the Democrats became the majority party in the Senate. With the confirmation of David C.

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

Printed on recycled paper.

Bury to the U.S. District Court for the District of Arizona, the Senate will have resolved 6 judicial emergencies since we returned to session just a few short weeks ago and 11 since I became chairman this past summer. As of this week, the Senate has confirmed more judges in the last 9 months than were confirmed in 4 out of 6 years under Republican leadership. The number of judicial confirmations over these past 9 months—41—exceeds the number of judicial nominees confirmed during all 12 months of 2000, 1999, 1997, and 1996.

During the preceding 6½ years in which a Republican majority most recently controlled the pace of judicial confirmations in the Senate, 248 judges were confirmed. The larger number, the total judges confirmed during President Clinton's two terms, includes 2 years in which a Democratic majority proceeded to confirm 129 additional judges in 1993 and 1994. During the 6½ years of Republican control of the Senate, judicial confirmations averaged 38 per year—a pace of consideration and confirmation that has already been exceeded under Democratic leadership over these past 9 months. The Republican majority did not proceed on any of the judicial nominations resent to the Senate in January by President Clinton or those initially sent to the Senate in May by President Bush.

In the past 9 months, we have had more hearings, for more nominees, and had more confirmations than the Republican leadership did for President Clinton's nominees during the first 9 months of 1995. In each area—hearings, number of nominees given hearings, and number of nominees confirmed—the Judiciary Committee has exceeded the comparable period when Republicans were in power. And 1995 was one of their most productive years. Beginning in 1996, the Republican majority really began stalling the judicial confirmation process. In the 1996 session, only 17 judges were confirmed all year. Judge Bury will be the 13th judge confirmed since January 24 this year, and it is only March.

Under Democratic leadership, we have reformed the process and practices used in the past to deny Committee consideration of judicial nominees. Almost 60 judicial nominees never received a hearing by the Senate Judiciary Committee or received a hearing but were never voted on by the Committee. We are holding more hearings for more nominees than in the recent past. We have moved away from the anonymous holds that so dominated the process from 1996 through 2000. We have made home State Senators' blue slips public for the first time.

I do not mean by my comments to appear critical of Senator HATCH. Many times during the 6½ years he chaired the Judiciary Committee, I observed that were the matter left up to us, we would have made more progress on more judicial nominees. I thanked him during those years for his efforts. I know that he would have liked to have been able to do more and not have to leave so many vacancies and so many nominees without action.

The speedy confirmation of David Bury to the District Court for Arizona illustrates the effect of the reforms to the process that the Democratic leadership has spearheaded, despite the poor treatment of too many Democratic nominees through the practice of anonymous holds and other obstructionist tactics employed by some in the preceding 6 years.

David Bury will be filling a judicial emergency vacancy seat that has been vacant since 2000, when the new position was created by public law to handle the greater number of criminal and immigration cases in the courts along our Southwest Border. I have worked with the Senators from Arizona, Texas and other Senators from the Southwestern Border States to fill these new judgeships. It is a shame, however, that the Congress did not see fit to create the judgeships needed so desperately in the Southern District of California. Perhaps Senator FEINSTEIN will succeed in doing that this year. I know that I am supporting her efforts and will be trying to help her finally achieve that goal.

David Bury is the second Federal judge confirmed from Arizona in a little more than a month and the third since the change in majority. On February 26th, the Senate confirmed by a vote of 98 to zero Judge Cindy Jorgenson and last December we confirmed Judge Frederick Martone.

There are some who insist that circuit court nominees are being treated unfairly. Nothing could be farther from the truth. By having fair hearings and voting on nominees, up or down, the Judiciary Committee is proceeding as it should. Unlike the many judicial nominees who did not get hearings or were accorded a hearing but were never allowed to be considered by the Committee, we are trying to accord nominees both a hearing and a fair up or down vote.

Until Judge Edith Clement received a hearing on her nomination to the 5th Circuit last year, there had been no hearings on 5th Circuit nominees since 1994 and no confirmations since 1995. Last year we were able to confirm the first new judge to the 5th Circuit in 6 years and help end the Circuit emergency that had been declared in 1999 by the Chief Judge.

Jorge Rangel was nominated to the 5th Circuit in 1997 and never received a hearing on his nomination or a vote by the Committee. His nomination to a Texas seat on the Fifth Circuit languished without action for 15 months.

Enrique Moreno was first nominated to the 5th Circuit in 1999 and never received a hearing on his nomination or a vote by the Committee. His nomination to a Texas seat on the Fifth Circuit also languished without action for 17 months.

H. Alston Johnson was also first nominated to the 5th Circuit in 1999 and never received a hearing on his nomination or a vote by the Committee in 1999, 2000, or the beginning of 2001. His nomination to a Louisiana seat on the Fifth Circuit also languished without action for 23 months.

In contrast, under the Democrat-led Senate, President Bush's nominees to the 5th Circuit, Judge Edith Brown Clement and Judge Charles Pickering, were treated fairly. Both received hearings less than 6 months after their nominations. In fact, Judge Clement was the first Fifth Circuit nominee to receive a hearing since 1994, when Senator BIDEN chaired the Senate Judiciary Committee. She is the first person to be confirmed to that Circuit since 1995.

In contrast to recent, past practices, we are moving expeditiously to consider and confirm David Bury, who was nominated in September, received his ABA peer review in November, participated in a hearing in February, was reported by the Committee in March and is today being confirmed.

This nominee has the support of both Senators from his home State and appears to be the type of qualified, consensus nominee that the Senate has been confirming to help fill the vacancies on our federal courts. I congratulate Mr. Bury and his family on his confirmation today.

Mr. HATCH. Mr. President, I rise to support the confirmation of David C. Bury to be U.S. District Judge for the District of Arizona.

I have had the pleasure of reviewing Mr. Bury's distinguished legal career, and I have come to the opinion that he is a fine lawyer who will add a great deal to the Federal bench in Arizona.

David Bury was born and raised in Tulsa, OK. After graduating from Oklahoma State University in 1964, he attended the University of Arizona College of Law, earning his Juris Doctorate in 1967.

Mr. Bury has been a trial lawyer in private practice for over 34 years, and he has experience in almost every area of civil trial practice—primarily in the area of insurance defense. His clients have included private citizens, large corporation, lawyers, doctors, insurance companies, Pima County, and the State of Arizona. Mr. Bury has defended medical and legal malpractice cases, products liability and construction site cases, governmental entities in false arrest cases, assault and battery cases, United States Code section 1983 actions, and road design and construction cases. He has defended school teachers and school districts. Additionally, he has represented individuals in personal injury and employment cases.

Mr. Bury is a Fellow of the American College of Trial Lawyers and an Advocate in the American Board of Trial Advocates. He is also listed in the ''Best Lawyers in America.'' He has served as a lawyer representative to the Ninth Circuit Judicial Conference,

on the Commission on Trial Court Appointments for Pima County, and on the disciplinary committee for the State Bar of Arizona. In addition, Mr. Bury often serves as an arbitrator and has been a guest lecturer for legal and medical organizations throughout his career.

I have every confidence that David Bury will serve with distinction on the Federal District Court for the District of Arizona.

Thank you, Mr. President.

I yield the floor.

The ACTING PRESIDENT pro tempore. The question is, Will the Senate advise and consent to the nomination of David C. Bury, of Arizona, to be United States District Judge for the District of Arizona? On this question, the yeas and nays have been ordered. The clerk will call the roll.

The bill clerk called the roll.

Mr. REID. I announce that the Senator from Arkansas (Mrs. LINCOLN) and the Senator from Georgia (Mr. MILLER) are necessarily absent.

Mr. NICKLES. I announce that the Senator from Kansas (Mr. BROWNBACK), the Senator from Montana (Mr. BURNS), the Senator from Idaho (Mr. CRAIG), the Senator from Tennessee (Mr. FRIST), the Senator from North Carolina (Mr. HELMS), the Senator from Arizona (Mr. MCCAIN), the Senator from Kentucky (Mr. MCCONNELL), and the Senator from Texas (Mrs. HUTCHISON) are necessarily absent.

I further announce that if present and voting the Senator from Montana (Mr. BURNS) would vote ''yea''.

The ACTING PRESIDENT pro tempore. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 90, nays 0, as follows:

[Rollcall Vote No. 51 Ex.]

YEAS—90

Akaka	Dorgan	Lugar
Allard	Durbin	Mikulski
Allen	Edwards	Murkowski
Baucus	Ensign	Murray
Bayh	Enzi	Nelson (FL)
Bennett	Feingold	Nelson (NE)
Biden	Feinstein	Nickles
Bingaman	Fitzgerald	Reed
Bond	Graham	Reid
Boxer	Gramm	Roberts
Breaux	Grassley	Rockefeller
Bunning	Gregg	Santorum
Byrd	Hagel	Sarbanes
Campbell	Harkin	Schumer
Cantwell	Hatch	Sessions
Carnahan	Hollings	Shelby
Carper	Hutchinson	Smith (NH)
Chafee	Inhofe	Smith (OR)
Cleland	Inouye	Snowe
Clinton	Jeffords	Specter
Cochran	Johnson	Stabenow
Collins	Kennedy	Stevens
Conrad	Kerry	Thomas
Corzine	Kohl	Thompson
Crapo	Kyl	Thurmond
Daschle	Landrieu	Torricelli
Dayton	Leahy	Voinovich
DeWine	Levin	Warner
Dodd	Lieberman	Wellstone
Domenici	Lott	Wyden

NOT VOTING—10

Brownback	Helms	McConnell
Burns	Hutchison	Miller
Craig	Lincoln	
Frist	McCain	

The nomination was confirmed.

Mr. REID. Madam President, I move to reconsider the vote and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

• Mr. MCCAIN. Madam President, due to my absence, I was unable to vote today on the confirmation of David C. Bury as a judge for the United States District Court for the District of Arizona, Tucson Division.

Had I been present today, I would have voted ''yea'' on Mr. Bury's nomination with whole-hearted enthusiasm for a man of outstanding character and tremendous legal talent.

Without question, Mr. Bury is well-qualified for this position. His reputation precedes him. In the State of Arizona, he has always been a well-respected and highly competent trial attorney. His unblemished 34 years in the practice of law have proven his commitment to the legal profession. Not only does he bring to the Federal bench extensive experience in civil litigation, he will bring to the bench the requisite qualities of patience, fairness and the highest ethical standards. In short, Mr. Bury will be an outstanding Federal judge for our great state of Arizona.

I congratulate him, his wife Debby and his three children on his nomination to the Federal court. They are undoubtedly proud of him not only for this high honor, but also for the rest of his professional accomplishments and his personal commitment to them.

I am very confident that Mr. Bury will be a top-notch public servant who will bring to the Federal judiciary the highest level of professionalism, leadership and dedication. He will make the people in Arizona proud. And for his public service, I thank him.•

LEGISLATIVE SESSION

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now return to legislative session.

NATIONAL LABORATORIES PARTNERSHIP IMPROVEMENT ACT OF 2001—Resumed

The ACTING PRESIDENT pro tempore. The clerk will report the pending business.

The legislative clerk read as follows:

A bill (S. 517) to authorize funding for the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes.

Pending:

Daschle/Bingaman further modified amendment No. 2917, in the nature of a substitute.

Feinstein amendment No. 2989 (to amendment No. 2917), to provide regulatory oversight over energy trading markets.

Kerry/McCain amendment No. 2999 (to amendment No. 2917), to provide for increased average fuel economy standards for passenger automobiles and light trucks.

Dayton/Grassley amendment No. 3008 (to amendment No. 2917), to require that Federal agencies use ethanol-blended gasoline and biodiesel-blended diesel fuel in areas in which ethanol-blended gasoline and biodiesel-blended diesel fuel are available.

Bingaman amendment No. 3016 (to amendment No. 2917), to clarify the provisions relating to the Renewable Portfolio Standard.

Lott amendment No. 3028 (to amendment No. 2917), to provide for the fair treatment of Presidential judicial nominees.

Mr. MURKOWSKI. Madam President, during this lull in the debate of the energy bill I would like to take a moment to thank the Senator from New Mexico and his staff for all of their hard work and cooperation on the Alaska gas pipeline title of this bill.

Mr. BINGAMAN. I thank the Senator for those kind words. This is an important energy policy initiative for the nation. I thought we had a good beginning with the amendments that were offered and debated last week.

Mr. MURKOWSKI. I agree, it was a good start. However, we still have a fair piece to go before we reach the end of this trail. If the Senator would recall during last week's debate I mentioned that there were a number of additional items that would need to be addressed before we completed our legislative effort on this important issue.

These additional items include crafting language that sets procedures in place for allocating initial gas capacity of the pipeline and for any subsequent expansions that might be warranted based on new discoveries or additional needs in Lower 48 markets.

Mr. BINGAMAN. Yes, I do recall the Senator's remarks and I am aware that there are several additional items that are being worked on at the staff level. I particularly hope we will be able to make some improvements that will assist in lowering the overall risk associated with this $20 billion project.

These include enhancing the ability of the Pipeline Coordinator created in the gas pipeline title to keep the numerous Federal and State agencies that will be involved in this project working in a cooperative and coordinated fashion and providing for clear and expedited procedures for resolving legal challenges that might arise during permitting and construction of the pipeline. Streamlining the permitting process will help reduce the risks of delay and added costs to the project.

Mr. MURKOWSKI. I do indeed understand what my friend from New Mexico is saying. This point is especially true when you recall that the oil and gas producers who hold the leases on the Prudhoe Bay gas have stated publicly that the project as it now stands is uneconomical. Any legislative language that adds risk or cost to the project will simply make it impossible to build the Alaska gas transportation system—and this will deny the American consumers with access to a dependable,