



United States
of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 107th CONGRESS, SECOND SESSION

Vol. 148

WASHINGTON, WEDNESDAY, APRIL 17, 2002

No. 43

Senate

The Senate met at 10 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:

Dear God, it is with reverence and commitment that we address You as Sovereign of our lives and of our Nation. Our forefathers called You Sovereign with awe and wonder as they established this land and trusted You for guidance and courage.

We thank you that in 1787, at a pivotal moment at the Constitutional Convention, Benjamin Franklin's convictions led him to rise and speak these now-famous words to George Washington: "I have lived, sir, a long time, and the longer I live the more convincing proofs I see of this truth: that God governs in the affairs of men. If a sparrow cannot fall to the ground without His notice, is it probable that an empire can rise without His aid? I believe that without His concurring aid we shall succeed no better than the builders of Babel. We shall be divided by our partial local interests; our projects will be confounded . . ."

Lord, it is with the same emphatic certainty that we echo his words of dependence on You and we ask, Sovereign Lord, that You would help us realize Your best for America. In Your holy name. 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, April 17, 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 acting majority leader is recognized.

SCHEDULE

Mr. REID. Madam President, under the previous order, the Senate will shortly begin a vote on a nomination of Lance M. Africk to be United States district judge for the Eastern District of Louisiana. Following that vote, the Senate will resume consideration of the energy reform bill, the ANWR amendments now pending. Cloture was filed yesterday evening on each of the ANWR amendments. Therefore, there will be votes on these cloture motions this coming Thursday.

RESERVATION OF LEADER TIME

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

EXECUTIVE SESSION

NOMINATION OF LANCE M. AFRICK, OF LOUISIANA, TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF LOUISIANA

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now go into executive session and proceed to vote on Executive Calendar No. 760, which the clerk will report.

The legislative clerk read the nomination of Lance M. Africk, of Louisiana, to be United States District Judge for the Eastern District of Louisiana.

The ACTING PRESIDENT pro tempore. The yeas and nays have been ordered.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from West Virginia (Mr. BYRD) and the Senator from Minnesota (Mr. DAYTON) are necessarily absent.

I further announce that, if present and voting, the Senator from Minnesota (Mr. DAYTON) would vote "aye."

Mr. NICKLES. I announce that the Senator from Tennessee (Mr. THOMPSON) is necessarily absent.

The result was announced—yeas 97, nays 0, as follows:

(Rollcall Vote No. 69 Ex.)

YEAS—97

Akaka	Cantwell	Domenici
Allard	Carnahan	Dorgan
Allen	Carper	Durbin
Baucus	Chafee	Edwards
Bayh	Cleland	Ensign
Bennett	Clinton	Enzi
Biden	Cochran	Feingold
Bingaman	Collins	Feinstein
Bond	Conrad	Fitzgerald
Boxer	Corzine	Frist
Breaux	Craig	Graham
Brownback	Crapo	Gramm
Bunning	Daschle	Grassley
Burns	DeWine	Gregg
Campbell	Dodd	Hagel

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



Printed on recycled paper.

S2757

Harkin	Lincoln	Schumer
Hatch	Lott	Sessions
Helms	Lugar	Shelby
Hollings	McCain	Smith (NH)
Hutchinson	McConnell	Smith (OR)
Hutchison	Mikulski	Snowe
Inhofe	Miller	Specter
Inouye	Murkowski	Stabenow
Jeffords	Murray	Stevens
Johnson	Nelson (FL)	Thomas
Kennedy	Nelson (NE)	Thurmond
Kerry	Nickles	Torricelli
Kohl	Reed	Voivovich
Kyl	Reid	Warner
Landrieu	Roberts	Wellstone
Leahy	Rockefeller	Wyden
Levin	Santorum	
Lieberman	Sarbanes	

NOT VOTING—3

Byrd	Dayton	Thompson
------	--------	----------

The nomination was confirmed.

The PRESIDING OFFICER (Mr. BAUCUS). The motion to reconsider is laid upon the table.

LEGISLATIVE SESSION

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

The Senator from New Mexico.

ORDER OF PROCEDURE

Mr. BINGAMAN. Mr. President, I ask unanimous consent that the Senator from Vermont, Mr. LEAHY, be allowed to speak for up to 5 minutes, followed by Senator MILLER from Georgia for 10 minutes, followed by Senator ROBERTS from Kansas for 10 minutes.

Mr. REID. Mr. President, reserving the right to object.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I ask unanimous consent that the Senator from Pennsylvania, Mr. SPECTER, be recognized for 5 minutes as in morning business.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. MURKOWSKI. Mr. President, reserving the right to object, my concern is we have pending a cloture vote tomorrow at some time. I have no objection to accommodating my colleagues to speak this morning, but I wonder if we could get some idea as to how to proceed so that this would not take away from the time before the proposed cloture vote. I have no idea what time it would be.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I say to my friend from Alaska, the majority leader said that people can talk tonight as long as they care to talk. He has not yet decided what time the cloture vote will be in the morning, but there should be time to talk in the morning also.

Mr. MURKOWSKI. Then, I would simply appeal to the majority leader, who I see is on the floor, to allow us an additional time from whatever his time may be, which we do not know.

But to extend the courtesy, I have no objection.

The PRESIDING OFFICER. Is there objection?

Mr. MURKOWSKI. Mr. President, I put our Members on notice, we have probably 15 Members who want to speak today. So I suspect we will be in rather late this evening.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, I ask unanimous consent that I modify my request, that after the Senator from Vermont and the Senator from Pennsylvania and the Senator from Georgia and the Senator from Kansas have all spoken, that we go back on the bill, and that I be recognized to speak at that time on the amendment.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from Vermont.

NOMINATIONS

Mr. LEAHY. Mr. President, I thank my colleagues for their unanimous and positive vote on the last nominee. I will bring everybody up to date.

Today, the Senate is voting on the 44th judicial nominee to be confirmed since last July when the Senate Judiciary Committee was reassigned new members in connection with the reorganization of the Senate after the shift in majority. The confirmation of Judge Africk will be the third district court judgeship we have filled in Louisiana and the seventh judgeship filled overall in the Fifth Circuit since July, including the first new judge for the Fifth Circuit in seven years. In fact, it was this Senate's confirmation of Judge Edith Brown Clement last fall that created this vacancy, which we are now proceeding to fill without delay.

In the past few months, the Senate has also confirmed Judge Kurt Engelhardt and Judge Jay Zainey to fill vacancies on the District Court for the Eastern District of Louisiana. The Senate has confirmed Judge Michael Mills to fill a vacancy on the District Court for the Northern District of Mississippi. The Senate has also confirmed Judge Philip Martinez to fill a vacancy on the District Court for the Western District of Texas and Judge Randy Crane to fill a vacancy on the District Court for the Southern District of Texas.

Of course many of the vacancies in the Fifth Circuit are longstanding. Judge Clement was confirmed to fill a judicial emergency on the Fifth Circuit. Judge Martinez and Judge Crane likewise filled what had been judicial emergencies. These many vacancies and emergencies are the legacy of the years of inaction. For example, despite the fact that President Clinton nominated Jorge Rangel, a distinguished Hispanic attorney, to fill a Fifth Circuit vacancy in July 1997, Mr. Rangel never received a hearing and his nomination was returned to the President without Senate action at the end of 1998. On September 16, 1999, President Clinton nominated Enrique Moreno, another outstanding Hispanic attorney,

to fill a vacancy on the Fifth Circuit but that nominee never received a hearing either. When President Bush took office last January, he withdrew the nomination of Enrique Moreno to the Fifth Circuit. The Senate has moved quickly to confirm Judge Armijo in New Mexico and Judges Martinez and Crane in Texas, who were among the very few Hispanic judicial nominees sent so far by this Administration to us.

The Senate received Judge Africk's nomination the last week in January and his paperwork was complete on March 6. Judge Africk was scheduled for the very next confirmation hearing on March 19. He has been serving as a federal magistrate in the Eastern District of Louisiana for more than a decade. Judge Africk is a member of the Federalist society and a registered Republican. His confirmation, along with that of Judge Clement, Judge Wooten in South Carolina, Judge Mills in Mississippi, Judge Caldwell in Kentucky, Judge Granade in Alabama, Judge Hartz to the Tenth Circuit, and so many others, shows that the Senate has been very accommodating to this Administration's conservative nominations.

The Senate is making progress on judicial confirmations. Under Democratic leadership, the Senate has confirmed more judges in the last nine months than were confirmed in four out of 6 full years under Republican leadership. The number of judicial confirmations over this time—44—exceeds the number 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. Some like to talk about the 377 judges confirmed during the Clinton administration, but forget to mention that more than one-third were confirmed during the first 2 years of the Clinton administration while the Senate majority was Democratic and Senator BIDEN chaired the Judiciary Committee. The pace of confirmations under a Republican majority was markedly slower—especially in 1996, 1997, 1999, and 2000.

Thus, during the 6½ years of Republican control of the Senate, judicial confirmations averaged 38 per year a pace of consideration and confirmation that we have already exceeded under Democratic leadership over these past nine months in spite of all of the challenges facing Congress and the Nation during this period and all of the obstacles Republicans have placed in our path.

I ask myself how Republicans can justify seeking to hold the Democratic majority in the Senate to a different standard than the one they met themselves during the last 6½ years. There simply is no answer other than partisanship. This double standard is most apparent when Republicans refuse fairly to compare the progress we are making with the period in which they were