

hoped that we could get an 8-to-7 or 7-to-6 ratio, or at minimum 6 to 5 to accommodate members of the Finance Committee who are on the subcommittee of jurisdiction and who have put a lot of work into this. I have even tried to say: OK, maybe we can make it work at 5 to 4, but we have not been able to get that worked out.

I think for the Senate to be limited to only five conferees on a bill of this magnitude and as complicated as this is, and as many people who worked so hard on it, that it would not be an acceptable arrangement at this time. So I have to object.

The PRESIDING OFFICER. Objection has been heard.

Mr. REID. Mr. President, I am disappointed, but I certainly understand.

UNANIMOUS CONSENT REQUEST—
H.R. 7

Mr. REID. Mr. President, I ask unanimous consent that at a time to be determined by the majority leader, after consultation with the Republican leader, and prior to the August recess, the Senate proceed to the consideration of H.R. 7, the charitable deductions bill, as reported by the Finance Committee, and that it be considered under the following limitation: That there be 4 hours for debate on the bill equally divided between the chairman and ranking member of the Finance Committee; that there be one substitute amendment in order to be offered by the majority leader or his designee; that the debate time shall come from the time on the bill; that upon the disposition of the substitute amendment and the use or yielding back of time, the bill be read a third time and the Senate vote on final passage of the bill, without any intervening action or debate.

The PRESIDING OFFICER. Is there objection?

Mr. LOTT. Reserving the right to object, Mr. President.

The PRESIDING OFFICER. The Republican leader.

Mr. LOTT. Mr. President, this bill has not been filed and the amendment mentioned is a brandnew amendment which was received at 3:10 p.m. today. I really do not have any idea what is contained in this complete substitute, but I do know we would be unable to clear it for consent at this time. We are working right now to get in touch with Senator GRASSLEY and others to make sure they are familiar with this and have had a chance to look over the substitute amendment to make sure there is no problem with it.

I had hoped we had been able to clear this earlier today, and I hope that if we are not going out of session right away, we might even have a chance to come back, if I can get this cleared, later this afternoon. But until I can do a hotline on it and check with the senior member on the Finance Committee about the substitute amendment, I have to object at this time. I emphasize, I think maybe we can clear it be-

fore the afternoon is done. I hope we can come back to it.

The PRESIDING OFFICER. Objection has been heard.

Mr. REID. Mr. President, I say to my friend, the distinguished Republican leader, Senator DASCHLE will be here tomorrow and maybe even tomorrow something can be worked out. My understanding is the President wants this badly, and I hope we can work it out.

UNANIMOUS CONSENT REQUEST—
S. 1140

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 210, S. 1140; that the bill be read a third time and passed; that the motion to reconsider be laid upon the table, with no intervening action or debate; and that any statements relating to the bill be printed in the RECORD.

The PRESIDING OFFICER. Is there objection?

Mr. LOTT. Reserving the right to object.

The PRESIDING OFFICER. The Republican leader.

Mr. LOTT. Mr. President, I have to say, I have no objection to this legislation. In fact, I am a cosponsor of this legislation. It has been discussed and considered for quite some time now, and with the overwhelming support it has, it should move forward.

However, on behalf of a Senator on my side of the aisle who is now in the Judiciary Committee in a meeting and could not be here at this particular time, I am going to have to object on his behalf, but I do want to say this: I do not agree. I believe this is legislation we should pass, and this is the last time I am going to have anybody on this side of the aisle object on this issue. Any Senator who has further objection is going to have to do it himself. As a courtesy to a Senator who is currently tied up, I do object.

The PRESIDING OFFICER. Objection has been heard.

Mr. REID. Mr. President, I am truly disappointed. People from Nevada and all over the country need this legislation. As the majority leader said, we should work out some way to move this forward. It is too bad one Senator is holding this up.

UNANIMOUS CONSENT REQUEST—
S. 1991

Mr. REID. Mr. President, I ask unanimous consent that the majority leader, following consultation with the Republican leader, may proceed to the consideration of Calendar No. 404, S. 1991, the Amtrak authorization bill, at a time to be determined.

The PRESIDING OFFICER. Is there objection?

Mr. LOTT. Mr. President, again reserving the right to object.

The PRESIDING OFFICER. The Republican leader.

Mr. LOTT. This is legislation we need to consider. It needs to be considered in

the full light of day with amendments in order. We did have a full consideration of the bill in the Commerce Committee with amendments offered. Some were adopted and some were rejected. I voted for the legislation.

We need to move forward on the reform of Amtrak. We are in the process of putting additional money in Amtrak right now, and I support both the loan the administration is working out and perhaps additional money in the supplemental.

Having said that, I do note also that we have to make tough choices. Do we want a national rail passenger system or not? If we do, we have to figure out what kind of reforms we can put in place that will save money or provide additional money; what lines are we going to keep open and keep running or not; if and how much we are going to have to pay for it.

If the American people, through their Representatives and Senators, do not want to vote for additional funds, then that is one choice. I spoke passionately on the floor in 1997 when we passed Amtrak reform legislation. I made a commitment on this floor and to the American people that I supported this because I thought it could become self-supporting. I was wrong. I have to admit that. Now the question is, Do we want to continue to have Amtrak or not? I think we should. I still think it is an important mode of transportation we should not sacrifice. But the Congress is going to have to come to terms with reform.

There are some Senators who object to moving to it at this time. I believe specifically Senator MCCAIN has indicated he has an objection to it. So while I do not agree with the objection, I do agree that the timing is such that we would not be able to give it full and appropriate consideration, in view of other issues to which we have already agreed to go. Therefore, I object.

The PRESIDING OFFICER. Objection has been heard.

UNANIMOUS CONSENT REQUEST—
EXECUTIVE CALENDAR

Mr. LOTT. Mr. President, I ask unanimous consent that the Senate now proceed to executive session for consideration of the following nominations on the calendar: Nos. 810, 825 through 828, 840, 862 through 867, 887 through 889; I further ask that the nominations be confirmed, en bloc; that the motions to reconsider be laid upon the table; that the President be immediately notified of the Senate's action; and that the Senate then resume legislative session.

Before the Chair rules, I wish to indicate this request is with respect to 15 judicial nominations, some of which have been on the calendar since May 2. These are nominations that are pending in the Senate, not in the Judiciary Committee. They are ready for consideration by the entire Senate with only one exception; I know of no objections.

I will be giving a statement with regard to this matter later, but in consideration of Senator REID's and others' time, I thought I would make this unanimous consent request first and make my statement on this matter later.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Reserving the right to object.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, as we speak, there are negotiations going on at the White House dealing with a wide range of appointments and nominations. I hope this can be worked out. I was confident a day or two ago that the majority leader and the Republican leader, together with the White House, had worked something out on nominations on which we could move forward, but that did not come to be. We also know there is someone on the other side of the aisle who has asked that we on his behalf object, and I am doing that now. I object.

The PRESIDING OFFICER. The objection has been heard.

The Republican leader.

Mr. LOTT. Mr. President, I understand there may be another unanimous consent request in a moment, but it could lead to some discussion back and forth, so at this time I yield myself leader time so I can address the issue that was just objected to.

The PRESIDING OFFICER. The Senator has that right.

Mr. LOTT. Mr. President, the Senate, the American people, and the House of Representatives have all expressed their outrage at the decision by the Ninth Circuit Court of Appeals yesterday which ruled that the Pledge of Allegiance is unconstitutional because it contains the phrase "under God." People are understandably stunned and find it not only unbelievable, but indefensible.

Senators and the American people are shocked that two Federal circuit judges were capable of making such an absurd decision. The fact that they did points up, once again, how vitally important these Federal judicial appointments are in guiding not only the country's present, but its future as well. Judges are important at every level, but particularly at the appellate court, the circuit court level.

This preposterous decision about the Pledge of Allegiance, which Senators have been outraged about, was handed down by three circuit court judges who voted 2-1 that reciting the Pledge violated the Constitution's Establishment Clause protections.

I should note that the vigorous dissent in the case was filed by Judge Ferdinand Fernandez, who was appointed by the first President Bush, and who went into great detail since echoed by many members of this chamber—as to why the other two judges views and reading of the law are both unfounded and inappropriate.

An interesting fact about these three judges is that two of the three are actually on senior status which means they are not considered active judges and are semi-retired. The fact that semi-retired judges were deciding is an indication in and of itself that there are problems in this circuit court and there are clearly major problems in the Ninth Circuit Court of Appeals.

Mr. President, we have been arguing for years about how the Ninth Circuit should be changed. It is a huge circuit which includes not only Hawaii and California, but Nevada, Arizona, Idaho, Oregon, Washington, and Montana as well. It is not surprising that the states in the circuit also have very different cultural views of the world. Therefore, geographically and ideologically, many Senators encompassed by the Ninth Circuit want it split into at least two, if not three, circuits.

The Ninth Circuit is also by far the court that has been reversed the most by the United States Supreme Court. Indeed, the 9th Circuit decisions that have been reviewed by the Supreme Court have been reversed over 80% of the time over the last 6 years. And these have not been close cases in the Supreme Court either. On average, the Ninth Circuit's decisions have received just two votes from the Supreme Court's nine justices.

Mr. President, I should also point that one of the judges who did decide to hold that the Pledge of Allegiance to the flag is unconstitutional was Stephen Reinhardt. This active judge, who was appointed in the last year of Jimmy Carter's Presidency, holds the record for the most unanimous reversals by the Supreme Court in a single court term—five. He has been reversed a total of 11 times since the court's 1996-1997 term. He has been involved in such infamous, ridiculous decisions as striking down California's "three strikes and you're out" criminal law this spring. He has a long record of other extremely unpopular and, in my opinion, inaccurate and unfounded interpretations of the law and/or the Constitution. So, this judge has engaged in a pattern of using his position on the court to become an activist for social change instead of interpreting the law as passed and voted on by Congress or as written by the Nation's Framers.

Twenty-eight active judges are authorized for the Ninth Circuit and five of those seats are vacant. Due to the heavy caseload in the Circuit, all five of those vacancies have been declared judicial emergencies by the Administrative Office of the Courts. President Bush has nominated individuals to fill three of those five vacancies, one from Hawaii who is supported by both of the Democrat Senators from his state has pending on the Executive Calendar since May 16, another from California has been held up in the Committee since June 22nd of last year without even a hearing, and the third from Nevada has been in the Committee for two months.

As we can see from this case that has everyone up in arms, these circuit judges do make a difference, and that is why President Bush's Circuit Court nominees are being held up. He and I agree that we should not be putting judges on the appellate courts who will render decisions such as this. The judgment of such judges really has to be questioned by the vast majority of Americans.

Despite the vacancies and the judicial emergencies on the Ninth Circuit and all the federal circuits, the Senate continues to have a problem confirming judges without undue and unjustifiable delay. There are some 45 judicial nominees pending before the Senate at one level or another. Yet, we have not confirmed one judge since before the Memorial Day Recess.

As I have already noted, as of this morning, there were 15 judges on the Executive Calendar who are ready to go if a few Senators would only let them. Three of the 15 are Circuit Court judges. And there are several circuits around the country that are having real problems handling their caseloads because they do not have enough judges to fill all of their seats—indeed one circuit, the Sixth, has half of its 16 judgeships vacant.

Around the country there are 89 judicial vacancies. Thirty-one are Circuit Court vacancies, 17 of which have been declared judicial emergencies by the Administrative Office of the Courts and the Judiciary Committee is holding 11 nominees President Bush has named to fill those 17 emergencies. There are currently 57 vacancies at the District Court level, 18 of which have been declared judicial emergencies.

I expect we are going to hear arguments back and forth about the numbers, well, it is because you guys did not confirm enough judges during the President Clinton's last 2 years. But whatever the history may have been, we have a problem now with our circuits that must and can be fixed.

Mr. President, another example of how important these judicial appointments can be and what the effect on the nation can be is the decision handed down by the Supreme Court today by a 5-4 vote upholding Cleveland's school voucher program. Frankly, I was amazed it was that close. Again, it points up the importance of even a single judge on the Supreme Court or on a circuit court.

I think that says a lot about the real reasons behind what is going on in the Committee with the President's judicial nominees. There are a number of people in the Senate who say that if the President tries to put a conservative, strict constructionist judge on the Supreme Court who will follow the law and not write it from the bench as the judges did in the Pledge of Allegiance case they are going to oppose him no matter how temperamentally, professionally, intellectually, or ethically qualified he or she is.

However, as I have said before, many of us on this side of the aisle, voted for

Justice Ginsburg when she went through the Senate when President Clinton was in office. We knew we would not agree with most if not all of her future decisions but we felt we had to admit that she was competent, ethical, and qualified for the job despite our philosophical differences with her.

There are several other Clinton judges, particularly one or two out in the California circuit, that I voted whose future decisions I will probably live to regret for as long as I live. But there is something worse than bad judges, I guess, and that is no judges, which then expands the power of the bad judges like Judge Goodwin and Judge Reinhardt that are on the Circuit Courts of Appeal now.

I will take a moment to note that the Supreme Courts 5-to-4 decision on school vouchers will prove immensely important to thousands of low-income parents whose children are trapped in failing schools. Low-income children need an education even more than other children since it is often their only means of escaping poverty for the rest of their lives. So, when public schools are not succeeding, they and their parents shouldn't be sentenced to failure year after year. They deserve a system and a process that offers them a hand up, and if need be a hand out of a failing school, to find another avenue to succeed. The Supreme Court upheld a process where the money that is being expended on their child in a failing school, or in a school that is drug infested or riddled with crime, can be used instead to lift the child out of the failure and into a setting where they can get an real academically sound education. Is that such an awful result for the thousands of low-income children trapped in dysfunctional and failing schools?

In Philadelphia, PA, I understand the State has taken over the running of the public schools. What a tragedy.

When Cleveland's system was failing, the city seized the initiative to try and improve things, and so have other areas. In this Cleveland's case, they put in place a voucher program that is working. It is helping children get an education that will last the rest of their lives.

Mr. President, getting back to the absurd decision in San Francisco, it is easy for us all to say the Pledge of Allegiance with gusto and mean it, but we need to look behind this decision—how in the world it happened. It is that America's voters understand that these Federal judgeships, and who fills them, do make a difference in the kind of society that not only will we live in, but our children's children will live in. That is why I have tried to find a way to get an agreement to move the President's eminently qualified nominees.

Senator DASCHLE and I have been talking about it for about 3 weeks. I thought we had it all worked out. I think, frankly, we did have it worked out, but now our friend Senator

MCCAIN says he is going to object to any and all nominations until he gets some sort of guarantee with regard to a nominee for the Federal Election Commission (FEC). Her nomination was not agreed to for 5 months, and now that the President has started the routine vetting process in order to formally send her nomination to the Senate, Senator MCCAIN is saying that if the nomination is not moved on immediately, he is going to hold up every single nomination pending in the Senate.

The investigation and FBI clearance process, for all nominees—and this is a Democrat nominee—usually takes about 2 months now and she will have to go through that process the same as everyone else. So, the President could not appoint her right now if he wanted to. She has not had the clearance check. So, evidently every nominee is going to be held up today, this week, and all of July over a single nominee to the FEC. That means that lifetime appointments of Federal judges on the circuit and district courts, both Democrat and Republican, some who have been waiting for a year or more, will have to wait for months on this single nominee who could not be confirmed today even if everyone was in agreement about her.

I do not get it, Mr. President. I think this is a real sad commentary and not becoming, quite frankly, of the Senate, if she should allow this unjustifiable obstruction of all nominees to occur.

I have made an effort, as has Senator DASCHLE. I thought we had made real progress and were ready to go forward with an agreement that would move nonjudicial nominations, judicial nominees, marshals, U.S. attorneys, and a lot of folks who have been waiting a long time. Then we hit a stone wall yet again.

I had hoped that one way to do overcome this obstacle would be to move these nominees en bloc. As everyone knows, I do not usually move to Executive Calendar nominations on my own because that is normally the majority leader's prerogative, but if all else fails, you have to take advantage of whatever avenue is available to you.

I hope the American people, and the Senate, will take another look at these judicial nominations—and how we can move them and get them confirmed. If it is a continuation of tit for tat when will it ever end? Maybe it will fall to my lot—no pun intended—to some day say that we are going to end this, and we are going to move these nominations unless there is a big ethical problem or they are obviously not qualified.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Before the Republican leader leaves, I am not going to give a long statement regarding judicial appointments because I have done that on a number of occasions. Suffice it to say, the majority leader went through this. As has been said by the majority

leader, and I have said it on a number of occasions, this is not tit for tat, this is not payback time.

I served and practiced law for many years and argued cases before the Ninth Circuit. I have two sons in the Ninth Circuit—Leif Reid is the administrative assistant for the circuit judge; the other was a law clerk to the chief judge—and I am familiar with the circuit. There are very fine men and women serving in that court. I am not here today to defend in any way President Nixon's appointment to the court or President Carter's appointment to the court the two people who wrote that decision. We would all acknowledge it is wrong. I am confident that the Ninth Circuit, when they meet en banc, will stay that decision made by the two judges.

UNANIMOUS CONSENT REQUEST

Mr. REID. I ask unanimous consent that upon completion of the county reform bill, the Senate proceed to immediate consideration of Calendar No. 414, S. 2039, the National Aviation Capacity Expansion Act for 2002.

The PRESIDING OFFICER. Is there objection?

Mr. FITZGERALD. I object.

The PRESIDING OFFICER. The objection is heard.

Mr. REID. It is unfortunate we cannot get consent to move forward with this bill. It is a bill that enjoys strong bipartisan support.

In April, the Commerce Committee voted 19 to 4 in favor of this very important legislation. More than 60 Senators indicated their support by sending a letter to the two leaders asking for this bill to come before the Senate immediately. I simply believe this is a national priority. I have flown into O'Hare many times and understand how busy and important that airport is for the country, not just for the people of Illinois. I believe we have the votes to pass this bill and to do so very quickly.

I say to my friend, the junior Senator from Illinois, to object to this point only delays the inevitable and stands in the way of addressing a national aviation capacity problem in the Chicago region which affects the whole country. It jeopardizes jobs and stalls economic development. I am very disappointed.

Mr. DURBIN. Will the Senator yield?

Mr. REID. I am happy to yield to my friend.

Mr. DURBIN. I thank the majority whip for the unanimous consent request and would like to ask him a question as to whether he has any plans or discussion with the majority leader in reference to proceeding on this matter.

Mr. REID. I have spoken to the majority leader on several occasions. This legislation enjoys strong support and is a priority for the majority leader. It is fair to say the majority leader will use all appropriate avenues to bring this legislation to final passage.

When an impressive coalition and supermajority of the Senate, labor,

business, aircraft controllers, pilots, airlines, general aviation, and five former Secretaries of Transportation write, call, or in some way visit with the majority leader in support of this legislation, it is hard for the majority leader to ignore this, I respond to my friend.

Mr. DURBIN. If the majority whip will continue to yield, the purpose of this unanimous consent request was to make it clear on the record what I personally believed would occur when my colleague from the State of Illinois objected. There were some who said that would not happen, that once this bill had been reported from the committee, had gone through the regular order, with two hearings before the Senate Commerce Committee, on which my colleague from Illinois serves, a hearing both in Chicago as well as in Washington, when ample opportunity had been given both sides to present their point of view, when amendments were considered and offered by my colleague from Illinois, when the final vote on the committee was a substantial bipartisan vote of 19 to 4, it was the belief—and I am sorry to say the mistaken belief—of some of my colleagues in the Senate that my colleague from Illinois would accept a debate on this issue and would accept the consequences, up or down.

Apparently that is not to be the case. It leads us in a position, today, where those colleagues on the floor who have any doubt in their mind should have it dispelled. The objection by the Senator from Illinois makes it clear that he is prepared to delay this as long as possible.

The Senator from Nevada has put his finger on the issue. What is at stake is the safety of O'Hare, the world's busiest airport. What is at stake is the efficiency of that airport. What is at stake are hundreds of thousands of jobs in Illinois and literally the future of our economy. That may sound like hyperbole from a Senator, but what I have said is supported by the Chamber of Commerce on a national and State basis, the national AFL-CIO and the State AFL-CIO, all of the major business organizations, economic development organizations which support this bill and oppose the position taken by the junior Senator from Illinois.

This is not a bill just being offered by me but, rather, with the cooperation and the active participation of my colleague, Senator GRASSLEY of Iowa, Senator HARKIN as well, and a bipartisan coalition. As the majority whip has noted, 61 Senators have signed on in support of this bill and sent a letter to the majority leader and Republican leader to indicate that support. My junior colleague from the State of Illinois certainly does not have that kind of support. He has said he is going to try to delay this and try to avoid it for as long as possible.

In making this unanimous consent and making this statement, I hope it is clear on the record that at this point in

time we will use any appropriate means to bring this issue forward. We will not be enslaved by the threat of filibuster. I say to my colleague from the State of Illinois, if he will accept a debate on this issue for a reasonable period of time, offer the amendments, and bring it up for a vote, I will accept the consequences. Let the Senate make its decision, yes or no. If the merits of his argument are compelling, he will succeed. If they are not compelling, he will lose. The same is true for my position. That is the nature of the legislative body. It is the nature of fair play. I hope my colleague from the State of Illinois will reconsider his dedication to these delays.

NINTH CIRCUIT OPINION

Mr. REID. Mr. President, while I still have the floor, I will respond more specifically to my friend, but I want to go off subject a little bit with some good news.

As I just stated, I had a couple of sons who worked the Ninth Circuit. My son Leif Reid is administrative assistant to the Ninth Circuit. He just called the cloakroom and indicated the Ninth Circuit stayed the order that was issued yesterday. The pledge is intact. He is faxing me the opinion of the court.

I am, frankly, amazed they did it as quickly as they did, but I am happy they did this.

Back to O'Hare, again I am speaking—and I rarely do this, but on this occasion I am speaking for the majority leader of the Senate, TOM DASCHLE. Senator DASCHLE has authorized me to say to Senator DURBIN that he will use all his options, all the options of the Senate, to pass this legislation this year.

On behalf of the many people who support this legislation, I say to my friend, Senator DURBIN, he has done great work on this issue. I appreciate the support of Senator GRASSLEY and Senator HARKIN but especially the Senator from Illinois for his hard work on behalf of frustrated fliers everywhere. We have frustrated fliers at McCarran in Las Vegas, the sixth busiest airport in America. This is unfortunate to frustrated fliers. When fliers at O'Hare are less frustrated, we have more people coming to Las Vegas. It affects not only the Chicago area, the State of Illinois, but the entire country. That is a massive airport and is a feeder to the rest of the world.

I salute Senator DURBIN for such patience. The Senate is going to act on this legislation in some way. There are ways to do this. We are going to do it in some way, shape, or form, and we will do it as quickly as we can. The Senator has the full support of the majority leader.

Mr. DURBIN. I ask unanimous consent to be recognized for 10 minutes in morning business.

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

Mr. DURBIN. Mr. President, I again thank my colleague from the State of

Nevada. Let me explain for a moment what the issue is before us so those who are not familiar with it can come to understand it. O'Hare is pretty well known across America. It is our busiest airport. In the year 2001, despite September 11, it turned out to have more flights and passengers than virtually any airport in America.

But O'Hare is an airport that was designed and built in 1959, 43 years ago, with an anticipated annual volume of 20 million passengers. It now has some 67 million passengers annually. The runways that were designed in 1959 were designed to standards and expectations of that era—standards and expectations that have changed dramatically.

What we have seen in 43 years is larger planes, more frequent flights, changes in air traffic control. All of these have challenged O'Hare and every airport in the country to modernize. But O'Hare has been stuck with the same runway configuration now for over 40 years.

Part of it has to do with politics because in my State of Illinois the Governor has the final word when it comes to the construction of airports. Politically, it meant that a Democratic mayor of Chicago and a Republican mayor from some other part of our State would rarely find common ground or agreement on the future of O'Hare. But last year, there was finally a breakthrough. Gov. George Ryan, a Republican, and Mayor Richard Daley of Chicago, a Democrat, came to an agreement about how to change O'Hare, modernize it, improve it, and make it safer. Many people thought it could not occur, but it did happen, and because of that decision and because of that agreement we now have a chance to make that airport modern and safe by 21st century standards.

Some say that seems to be obvious. Who would object to it? It turns out that a handful of communities around O'Hare naturally are concerned about the prospects of changing flight patterns or expanding service to that airport. They would object, as one might expect.

The elected officials in that area created a coalition to oppose these changes at O'Hare. My colleague in the Senate, the junior Senator from Illinois, has announced his opposition to any plans to change O'Hare. I understand that. But there comes a moment in time when you have to say: What is in the best interests of our entire State? What is in the best interests of the region? What is in the best interests of the Nation?

I think what the people of Illinois have said in overwhelming numbers is they believe this historic agreement is in our best interests. We have the support, as I mentioned earlier, of the National Chamber of Commerce, the Illinois State Chamber of Commerce, the National AFL-CIO, the Illinois State AFL-CIO, the Airline Pilots Association, the air traffic controllers, general

aviation, virtually all major airlines. They have all signed onto this.

So as some might suggest, this is a unanimous opinion of the experts in aviation that this plan moving forward makes sense.

Of course, every item in the planned agreement between the Governor and the mayor would be subject to the same types of scrutiny and restriction as any other airport design. What I have here is the report of the Committee on Commerce, Science, and Transportation, which presents this bill, S. 2039, to the Senate. They make it clear here in precise language:

Nothing in the bill guarantees any funding for the O'Hare or Peotone project, or mandates that a specific set of runway configurations be approved, as the FAA retains all its existing discretion to analyze, review, and, if all relevant tests are met, approve the O'Hare project.

They go on to to say:

The FAA has discretion to modify the plan, if necessary, for efficiency, safety, or other concerns.

It says of the bill that it:

Requires any redesign plan to conform with the Clean Air Act and to conform with all other environmental mandates to the maximum extent possible, while requiring the State use its customarily practices to analyze any Clean Air Act requirements.

And it goes on to say this bill:

Provides no Federal priority for federal funding of any O'Hare projects, including the runway design plan.

My colleague will stand up here and tell you what I said is a lie; it is not true. But what I put before you is the report of his committee, which says in black and white that the FAA has the last word. The FAA can reject it. The FAA can say this runway plan will not work. He can stand here, as he has repeatedly, and say those words are not true. I stand behind the committee, his committee, and the report they have given to the Senate.

I think what they have said is true because I wrote the bill and I know what is in it. When the Senator from Illinois offered an amendment in committee and said: I want to make sure the FAA has the last word, we said we will take the amendment. We accept it. Still, it is not enough.

It has really come down to the point where it will never be enough when it comes down to what my colleague is asking for in this bill.

We have a situation where we have 61 Senators here who have signed onto a letter to the leadership, saying they are prepared to move forward on this bill. I can tell you an additional two Senators this week have told me they are prepared to support this as well. Another 10 Senators on the Republican side of the aisle have said they will support it when it comes to a vote. So the vote will be substantial.

The question before us, though, is when and where this will take place. The Senator from Illinois, my colleague, has made it clear by his objection that he is prepared to filibuster this bill. He has said as much—in Illi-

nois and here in Washington. It is no great surprise.

But some of my colleagues in the Senate have said: Oh, no, he won't do that; when it is all over, he is going to bring it up and offer his amendments and take a vote and then it will all be over.

I said: No, I don't think so. Let's go ahead and make this unanimous consent request so it is clear on the record his intention and design to lead this to a filibuster, and I think we have done that today. In the course of doing that, I think what we have established is that we have to find whatever appropriate means are available, working to bring this issue for a vote in the Senate.

I am prepared to accept the decision of the Senate on this issue. I think that is why we are elected to this body, to bring our best ideas forward and say to the assembled Senators: We hope you will support us. If you do not, then it is understood we have lost our day, our opportunity. But I think now, in the best interests of safety at O'Hare, hundreds of thousands of jobs in our State, and the best interests of business in the region, that we should pass this bill as quickly as possible.

The PRESIDING OFFICER. The majority leader.

Mr. DASCHLE. Mr. President, I come to the floor just to compliment the distinguished Senator from Illinois for his determination and the effort that he continues to make to ensure success. I will guarantee that before the end of this session, one way or the other, we are going to resolve this successfully. We will do whatever it takes to ensure that the people of Illinois, the business community at and around O'Hare and the tremendous service it provides are protected and that the priority it deserves is given on the Senate floor.

The Senator from Illinois has been relentless in his determination and in his advocacy. He has spoken in the caucus on countless occasions, in leadership, and on the Senate floor. I just wanted to assure him publicly, as I have privately, that we will continue to work on this until we get it done. It will happen.

I am convinced that 95, maybe 98 Senators support what the Senator from Illinois is attempting to do. I have every confidence that once we get to the vote, it is going to be overwhelming. So I will assure the Senator that we will continue to work with him and find a way to do it and make sure that it gets done in a time that will send the right message to the people of Illinois, the people of Chicago, the people who are concerned about safety, concerned about jobs, concerned about economic development—that the Senate understands that and, thanks to the leadership of the Senator from Illinois, we are going to deliver.

I simply wanted to add my voice to the many who support the Senator's efforts. I appreciate very much his coming to the floor this afternoon, again,

to reiterate the extraordinary importance that this issue and this project has for the people of his State. I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, I express my appreciation for this expression of personal support from the majority leader. I thank him. He has been cooperative from the start. He understands, as we all do, this is not a Chicago issue. This is a national issue. It is an issue that Senators across the Nation understand as we sit, hour after weary hour, in airports, wondering: What is wrong at O'Hare now?

What is wrong is a 40-year-old runway design that needs to be modernized; it needs to be safer; it needs to be improved. We cannot allow this issue to die. For the good of that airport, for national aviation, for jobs in Illinois, stopping this bill is a job killer in a State that needs jobs desperately. Stopping this bill is a business killer in a State that desperately needs businesses to expand. Stopping this bill is putting a dagger in the heart of the single most important public works project in the history of our State. I am not going to let that happen without a fight. I am happy to have the majority leader in my corner.

I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

The Senator is recognized.

Mr. FITZGERALD. I thank the Chair.

Mr. President, I would like to respond to what my colleague from Illinois just said. I think there are a number of points that were glossed over.

I do oppose Senator DURBIN's bill with respect to O'Hare. Mr. DURBIN said it is necessary to pass this bill in order to expand O'Hare Airport. But I would point out that never in the history of our country, that I am aware of, has any airport in this country had a special bill mandating that the FAA approve its particular expansion plans.

The fact is, if Mayor Daley of Chicago wants to expand O'Hare Airport, he can simply file an application with the FAA to expand O'Hare Airport. The trouble is, if that were the case—if Mayor Daley were simply to file an application similar to all the other airports in the country—his application would have to be judged on the mere merits.

So Senator DURBIN and Mayor Daley came up with the idea of drafting a statute. They put that into bill form and are now asking Congress to pass it.

The purpose of that bill is twofold:

No. 1, the bill would straightjacket the FAA so that they would have no choice but to approve Mayor Daley's specific runway design at O'Hare Airport.

I could go on for a very long time. But maybe I will save that for a later date to tell you why it is in fact a bad runway design that Mayor Daley is trying to mandate in Federal law.

The bill of Senator DURBIN—I don't care what the committee report says—says that the FAA shall implement a Federal policy in favor of approving six parallel runways running in the east-west direction at O'Hare Airport. It says east-west. It is very specific.

I take issue with my colleague's comments or suggestions that the FAA could change it. In fact, it would be illegal for the FAA to reposition those runways in a northwest-southeast direction. Mayor Daley's and Senator DURBIN's exact runway design will be locked into Federal statutory law if my colleague's bill passes.

That is one of the objectives my colleague has. He wants to straightjacket the FAA, put a gun to the FAA's head, and force them to approve a bad runway design that has never been reviewed by any Federal aviation expert. It has never been tested in any modeling. In fact, it appears to be the back-of-a-napkin design.

Mayor Daley was before the Senate Commerce Committee, and he admitted that the city of Chicago had never itself done any studies to back up that design.

There is another goal my colleague is trying to accomplish with S. 2039. Right now, the city of Chicago has the power to condemn lands around O'Hare Airport and communities around O'Hare Airport, provided Mayor Daley gets a permit from the State of Illinois to do that. Senator DURBIN's bill would remove the requirement that Mayor Daley get a permit from the State before he condemns the communities around O'Hare. They cannot pass legislation in the State senate that would get rid of the permit requirement. So they have decided to come to Congress in Washington and to strip away the State's law and permit requirement at the Federal level.

If my colleague's bill passes, that will mean Mayor Daley could condemn all the communities around O'Hare without getting a permit from anybody. He would have an unfettered ability to condemn properties in communities that are outside the city of Chicago.

Imagine if the mayor of Minneapolis could go willy-nilly and condemn communities all around Minneapolis. Imagine what the communities around Minneapolis would think.

I think the State legislature was wise in imposing a requirement that the mayor of Chicago, before he goes out and condemns communities around his city, get a permit from the State of Illinois. I think the Federal Government would unbalance that wise State law if we were to remove that permit requirement.

If one person had the ability to willy-nilly condemn all parts of the Chicago area around O'Hare Airport, that would literally give the mayor of Chicago unfettered license to run over anybody he wanted at any time he wanted. I don't think this body should be part of conferring that kind of unfettered ability

to run over people on the mayor of Chicago.

There are delays at O'Hare Airport right now. That is no doubt true. I stood right here 2 years ago and warned Congress not to lift the delay controls at O'Hare Airport. From 1969 to 1999—for 30 years—the FAA had delay controls at O'Hare Airport so that the airlines didn't schedule more flights than the airport had the capacity to handle.

In 1999, Congress took off the delay controls, allowing the airlines to schedule more flights than O'Hare had the capacity to handle. I warned that we would have horrible delays if we lifted those delay controls. That happened. There were interim studies by the FAA which showed that if the delay controls at O'Hare were lifted, delays would go up exponentially, and they have.

In my judgment, that was a deliberate attempt by United Airlines and American Airlines to cause delays at O'Hare and to build pressure to further expand O'Hare in an attempt to block a third airport which has been needed in Chicago for nearly 30 years. That is what we now see.

I also note that while Senator DURBIN's legislation would require the FAA, or force, or command the FAA to approve a runway expansion plan at O'Hare that would increase the capacity of the runways by 78 percent, at the same time the plan is to build new terminals which would only add 12 new gates.

This is a very bizarre plan that Congress is entering into. We are going to expand runway capacity by 78 percent, but we are only going to add 12 new gates. That really means that once runway capacity is expanded at O'Hare, it will be possible under this plan to land a plane but you will have nowhere to park it. It doesn't make any sense. It is not appropriate for Congress to be wresting control of airport design from the FAA and curtailing the FAA's discretion. We should leave the FAA's discretion intact.

If Senator DURBIN believes his runway design for O'Hare Airport has merit, then he should file an application with the FAA and see if the FAA approves it. He should not seek an end-run around the rules that all the other airports in the country abide by, nor should this body be part of stripping away the State of Illinois' requirement that the mayor of the city of Chicago get a permit before he condemns properties and communities that are outside the city of Chicago.

It is not right to give the mayor of Chicago unfettered ability to run over anyone he wants at any time he wants.

S. 2039 is an unfortunate piece of legislation. I will do everything I can to prevent its passage.

I note one good development. The House of Representatives took this bill up in just the last couple of days—I believe on Wednesday—a House companion bill to S. 2039. The House com-

mittee stripped out the language that had the effect of putting a straight-jacket around the FAA and commanding the FAA to approve a specific runway design at O'Hare Airport. Even the House committee recognizes the impropriety of Congress putting a gun to the head of the FAA and forcing them to approve a specific runway design.

The House legislation simply allows Chicago to file a plan with the FAA and to be considered the same way any other airport expansion program or proposal is considered anywhere else in the country. Unfortunately, however, the House legislation does have the language giving the mayor of the city of Chicago unfettered condemnation authority, which I think is, as I pointed out earlier, a big mistake.

So with that, I do look forward to the debate. I am sure the debate will be coming. And if I cannot defeat this legislation, I ultimately want to change or modify it to make it less egregious than it now is. In its current form, it is such an egregious piece of legislation that I think it would be inappropriate for our Senate to devote time to it when we have Medicare prescription drug issues, homeland security, and 13 appropriations bills we still have not addressed.

With that, Mr. President, I thank this body for affording me this time to speak. I yield the floor and wish all my colleagues a good Fourth of July recess.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. NELSON of Florida). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

(The remarks of Mr. REID pertaining to the introduction of S. 2697 are printed in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

MORNING BUSINESS

Mr. REID. Mr. President, I ask unanimous consent that we proceed to a period of morning business, with Senators permitted to speak therein for up to 5 minutes each.

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

PATENT AND TRADEMARK AUTHORIZATION ACT OF 2002

Mr. LEAHY. Mr. President, I am pleased that the Senate passed a bill which I introduced, the Patent and Trademark Authorization Act of 2002, which was reported out of the Judiciary Committee last week without objection. I appreciate that Senators HATCH, CANTWELL, REID, BENNETT and