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|------------|-----------|-------------|
| Kennedy | Lieberman | Reid |
| Kohl | Lincoln | Rockefeller |
| Landrieu | Mikulski | Sarbanes |
| Lautenberg | Murray | Schumer |
| Leahy | Pryor | Stabenow |
| Levin | Reed | Wyden |

NOT VOTING—3

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| Biden | Edwards | Kerry |
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The PRESIDING OFFICER. On this vote, the yeas are 55, the nays are 42. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

JAY S. BYBEE, OF NEVADA, TO BE UNITED STATES CIRCUIT JUDGE FOR THE NINTH CIRCUIT—Continued

The PRESIDING OFFICER. The Senate will resume consideration of the Bybee nomination.

Who yields time?

Mr. GREGG. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant bill clerk proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Ms. COLLINS. Mr. President, I ask unanimous consent that I be recognized as in morning business for up to 10 minutes for the purpose of introducing a bill.

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

The Senator from Maine is recognized.

(The remarks of Ms. COLLINS pertaining to the introduction of S. 616 are printed in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Ms. COLLINS. I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. 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 President, I ask unanimous consent that the order for the quorum call be rescinded.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.

Mr. REID. Mr. President, the two leaders have agreed that the vote on the circuit judge would occur at 3:45. I am sure there will be a unanimous consent brought here soon.

Mr. SESSIONS. Mr. President, I ask unanimous consent that at 3:45 all time be yielded and the Senate proceed to the first vote, which is on the confirmation of Mr. Bybee.

The PRESIDING OFFICER (Mr. SMITH). Without objection, it is so ordered.

The Senator from Connecticut.

Mr. DODD. Mr. President, might I inquire, what is the pending business before the Senate?

The PRESIDING OFFICER. The pending business is the nomination of Jay S. Bybee.

Mr. DODD. Mr. President, I ask unanimous consent to proceed as in morning business so as not to interrupt the debate on the nomination.

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

(The remarks of Mr. DODD are printed in today's RECORD under "Morning Business.")

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. Mr. President, I want to speak for 3 minutes on the nominee. I can do it before or after my leader on the Judiciary Committee.

Mr. LEAHY. I tell my friend from New York, I have allowed others to go, but one more doesn't bother me, especially someone as good as the Senator from New York. I certainly have no objection.

Mr. SCHUMER. I thank my colleague. I will try to be brief and leave the majority of the remaining time for him.

I rise in support of the nomination of Jay Bybee for the Ninth Circuit Court of Appeals. I realize that my support—I was one of two Democrats on the Judiciary Committee to be for Mr. Bybee—may surprise some people, so I wanted to explain for a few moments why I will be voting to confirm him.

As most of my colleagues know, I use three criteria to evaluate judicial nominees: Excellence, moderation, diversity.

Excellence, legal excellence, Mr. Bybee meets that criteria. Diversity, you can't judge that by one individual, but the Bush administration has been pretty good, certainly not terrible, in terms of diversity.

It is moderation where I have had the greatest problem with some of the President's nominees. I don't believe in judicial nominees too far left or too far right because in each case, they tend to make law, not interpret law, as the Founding Fathers said they should. I believe there has to be balance, balance on the courts. And I have said this many times, but there is nothing wrong with a Justice Scalia on the court if he is balanced by a Justice Marshall. I wouldn't want five Scalias, but one might make a good and interesting and thoughtful court with one Brennan. A Rehnquist should be balanced by a Marshall.

Jay Bybee, make no mistake about it, is a very conservative nominee. It is fair to put him in a similar category with many of the more conservative nominees we have had. If Mr. Bybee were nominated to another court that is hanging in the balance or where most of the nominees were conservative, I probably wouldn't vote for him. If he were nominated for the Supreme Court, for example, there would be a different calculus. But Mr. Bybee is nominated to the Ninth Circuit. The Ninth Circuit is by far the most liberal court in the country. Most of the nominees are Democratic from Democratic Presidents. It is the court that gave us the Pledge of Allegiance case which is

way out of the mainstream on the left side. Therefore, I think Jay Bybee will provide some balance.

Let me repeat, if he were nominated to another court, I might have evaluated this differently. But when it comes to nominations, I mean what I say and I say what I mean. There has to be balance. Standards cannot only apply when they help achieve the desired outcome.

I want to be as fair and honest as I can be in this process. I have developed a set of criteria for evaluating nominees. I don't pretend to change them when after applying those criteria the scales tip in favor of supporting a nominee many of my friends oppose.

I respect those who arrive at a different conclusion. I understand their reasoning. I intend to vote yes on Mr. Bybee.

I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, we have moved the time up, I realize, in the next 6 minutes for the first vote. That is something I have agreed to accommodate a number of Senators on both sides of the aisle who have commitments. As a result, also as a result of yielding time to the distinguished Senator from Alabama, who had one of the nominees and, of course, appropriately should be speaking, and others, I will not be able to say all the things I wanted to.

I ask unanimous consent that I be recognized for 20 minutes after the conclusion of the final rollcall vote today.

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

Mr. LEAHY. Obviously, as usual, should the leaders have other plans for that, I will do my usual courtesy of yielding to them.

(The remarks of Mr. LEAHY are printed in today's RECORD under "Morning Business.")

The PRESIDING OFFICER. The question is, Will the Senate advise and consent on the nomination of Jay S. Bybee, of Nevada, to be United States Circuit Judge for the Ninth Circuit? On this question, the yeas and nays are required.

Mr. LEAHY. Mr. President, 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.

Mr. LEAHY. Mr. President, parliamentary inquiry: Who is the next judge after this?

The PRESIDING OFFICER. That would be Judge Steele from the State of Alabama.

Mr. LEAHY. Mr. President, I understand we also have J. Daniel Breen, of Tennessee, on the list. I ask unanimous consent that it be in order to ask for the yeas and nays on his nomination.

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

Mr. LEAHY. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there sufficient second.

There is a sufficient second.

The yeas and nays were ordered.

Mr. LEAHY. I thank the Chair.

The PRESIDING OFFICER. The clerk will call the roll with respect to the Bybee nomination.

The bill clerk called the roll.

Mr. FRIST. I announce that the Senator from Colorado (Mr. CAMPBELL), the Senator from Texas (Ms. HUTCHISON), the Senator from Arizona (Mr. KYL), and the Senator from Kentucky (Mr. MCCONNELL) are necessarily absent.

Mr. REID. I announce that the Senator from Delaware (Mr. BIDEN), the Senator from North Carolina (Mr. EDWARDS), and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

I further announce that, if present and voting, the Senator from North Carolina (Mr. EDWARDS) would vote "no."

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

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

The result was announced—yeas 74, nays 19, as follows:

[Rollcall Vote No. 54 Ex.]

YEAS—74

| | | |
|-----------|-------------|-------------|
| Akaka | DeWine | Lugar |
| Alexander | Dodd | McCain |
| Allard | Dole | Miller |
| Allen | Domenici | Murkowski |
| Baucus | Dorgan | Nelson (FL) |
| Bayh | Ensign | Nelson (NE) |
| Bennett | Enzi | Nickles |
| Bingaman | Fitzgerald | Pryor |
| Bond | Frist | Reid |
| Breaux | Graham (FL) | Roberts |
| Brownback | Graham (SC) | Rockefeller |
| Bunning | Grassley | Santorum |
| Burns | Gregg | Schumer |
| Cantwell | Hagel | Sessions |
| Carper | Hatch | Shelby |
| Chafee | Hollings | Smith |
| Chambliss | Inhofe | Snowe |
| Cochran | Jeffords | Specter |
| Coleman | Johnson | Stevens |
| Collins | Kohl | Sununu |
| Conrad | Landrieu | Talent |
| Cornyn | Leahy | Thomas |
| Craig | Lieberman | Voinovich |
| Crapo | Lincoln | Warner |
| Daschle | Lott | |

NAYS—19

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| Boxer | Feinstein | Murray |
| Byrd | Harkin | Reed |
| Clinton | Inouye | Sarbanes |
| Corzine | Kennedy | Stabenow |
| Dayton | Lautenberg | Wyden |
| Durbin | Levin | |
| Feingold | Mikulski | |

NOT VOTING—7

| | | |
|----------|-----------|-----------|
| Biden | Hutchison | McConnell |
| Campbell | Kerry | |
| Edwards | Kyl | |

The nomination was confirmed.

CHANGE OF VOTE

Mr. DAYTON. Mr. President, on rollcall vote No. 54, I voted aye. It was my intention to vote no. Therefore, I ask unanimous consent that I be permitted to change my vote since it will not affect the outcome of the vote.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

(The foregoing tally has been changed to reflect the above order.)

The PRESIDING OFFICER. The Senator from Nevada is recognized.

Mr. REID. Mr. President, following this vote, I ask that the majority leader be recognized; following that, that Senator LEAHY be recognized; following that, Senator KENNEDY.

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

NOMINATION OF WILLIAM H. STEELE, OF ALABAMA, TO BE UNITED STATES DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF ALABAMA

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of William H. Steele, of Alabama, to be the United States District Judge for the Southern District of Alabama?

The nomination was confirmed.

Mr. HATCH. Mr. President, I support the nomination of Judge William Steele to the United States District Court for the Southern District of Alabama.

Judge's Steele's professional record indicates that he is eminently qualified for the federal trial bench. Upon graduation from the University of Alabama School of Law, Judge Steele clerked for the Tuscaloosa County district court. As an Assistant District Attorney in Mobile, he handled hundreds of criminal matters, including more than 75 jury trials. Upon being promoted to Chief Assistant District Attorney, he was significantly involved in the creation of the Child Advocacy Center for physically and sexually abused children. He then served as an Assistant United States Attorney prosecuting mail fraud, public corruption, drug violations, firearms violations, and tax code violations.

In addition to his broad federal and state criminal experience, Judge Steele has considerable civil experience. In the private sector, while continuing to maintain a viable state and federal criminal trial and appellate practice, he also handled domestic relations matters, civil litigation in State and Federal court, representation of claimants in social security matters, and representation of the Alabama Department of Human Resources in child custody matters.

Since 1990, Judge Steele has served as a Federal magistrate judge. In this capacity, he has handled a wide range of civil matters, preliminary criminal matters, prisoner cases, and social security appeals.

I know that Judge Steele will be a credit to the Federal bench and will honorably serve the citizens of south Alabama. I thank my colleagues for voting for his confirmation.

Mr. SESSIONS. Mr. President, I am pleased to be able to make some remarks in support of the nomination of Judge William H. Steele to be U.S. dis-

trict judge for the Southern District of Alabama. He is one of America's finest magistrate judges—a magistrate judge who does a lot of the kind of legal work that goes on in every Federal courthouse in America. Magistrate judges are not title III Federal judges, but they do much the same work day after day that Federal judges do.

During his time as a magistrate judge, Judge Steele has had firsthand experience in the work, and he has won the respect of the bench and the bar in southern Alabama.

He has been in training now for 12 years for this position. In the Southern District of Alabama the magistrates are used to an extraordinary degree by the Federal judges who allow the magistrates to do as much work as possible. And they frequently preside over civil cases with the consent of the parties involved.

I have talked with other lawyers and judges in Alabama. They are very excited about his nomination and look forward to his confirmation.

Some people talk about public service, but throughout his life, Bill Steele has done more than just talk. Judge Steele has dedicated the better part of his life to public service and has served both this country and the State of Alabama well. After graduating summa cum laude from the University of Southern Mississippi in 1972, Judge Steele served in the U.S. Marine Corps as an officer, pilot, and instructor pilot. During his service in the Marine Corps, Judge Steele participated in the operation to evacuate American citizens from Lebanon in 1976. He also served in the Alabama National Guard as a pilot and as commanding officer of an assault helicopter company.

After serving his country in the Marine Corps, Judge Steele attended the University of Alabama School of Law. After law school, he was employed as an assistant district attorney in Mobile, AL, and worked for 6 years in the office of a Democrat district attorney.

I was U.S. attorney during that time. That is where I got to know Bill. Our staff worked closely with the district attorney's office, and they always came back with the most glowing opinions of Bill Steele and his integrity, his judgment, and his fidelity to truth and justice.

Later, Judge Steele became chief assistant district attorney in Mobile. I got to know him well during that time and developed great respect for him. I think he tried 100 or more trials as an assistant district attorney. Then, in 1987, given his reputation for excellence, I hired him as an assistant attorney in the U.S. Attorney's Office. I can say without reservation that during his service, while I was a U.S. Attorney in the Southern District of Alabama, Judge Steele did not disappoint. Judge Steele tried a number of cases while he was in the U.S. Attorney's Office, which is the Federal system in which he will now be a district court judge. He held that position for 2 years and