

some of the smaller cities that have been cut out of this for the last almost 20 years—well, I guess 14 years now since 1986.

So, again, many airlines have monopolies in markets, especially if they control a hub airport. Local airport authorities at major hub airports do very little to encourage small carriers to use hub airports. It is no surprise that big airlines would rather see gates empty than lease them to competitors. Dominant carriers flood the market with cheap seats to destinations served by small carriers. They maintain the low price until the day the small carrier is gone.

This happened in Des Moines with Vanguard Airlines. We had a new airline that started. What happened? United and American, flying to Chicago, dropped their fares by over half, dropped their fares down to below what Vanguard could do. The travelers were happy, but Vanguard could only afford to do that for so long, and then they went out of business. As soon as they went out of business, what did United and American do? They upped their fares 83 percent. That is what they were doing to stifle competition.

I believe that allowing new entrant carriers, such as Vanguard, Access Air, and others that may be coming along, easier access to O'Hare from cities such as Des Moines, and the Quad Cities—Moline, Rock Island, Bettendorf, and Davenport and others, will be a step in the right direction toward helping economic development and growth and providing for lower airfares for our people.

The amendment of the managers opens up the opportunity for direct service into LaGuardia, important to cities such as Des Moines and Cedar Rapids and the Quad Cities.

Again, the Quad Cities recently lost American Airlines' service to O'Hare because of the slot rule. American Airlines decided to fly their new regional jet between Omaha and O'Hare. Normally, this would not have had an impact on Quad Cities' service to O'Hare, but under the slot rule, Quad Cities lost American Airlines' service entirely. They entirely lost it.

Without the slot limitation, Quad Cities would be a profitable market for American or any other airline. But the area did not make the cut with a limited number of landing rights available under the existing slot rule. Again, economic decisions are not based upon what they can expect to get from a market; it is based upon the slot rule. That is skewing the economic decisions made by airlines and by small community airports.

So again, for our area, for Iowa, for areas west of the Mississippi—I am sure for Wyoming and for West Virginia—we need to change this system, but we need to do it in a way that does not lock in the past anticompetitive activities of the larger airlines.

Right now, Sioux City, IA, does not have service to O'Hare. It is the No. 1 destination of its business travelers. So, again, what is this doing? It hurts economic development and stifles competition in Sioux City.

Again, I urge the Senate to support the managers' amendment. Doing so will lower airfares, it will improve air service to small- and medium-sized cities across the Nation, and it will allow for economic decisions to be based on economics and not upon an outdated, unmoded, anticompetitive slot rule.

I thank the Chair.

RECESS

The PRESIDING OFFICER. Under the previous order, the Senate will now stand in recess until the hour of 2:15 p.m.

Thereupon, the Senate, at 12:48 p.m., recessed until 2:16 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. INHOFE).

EXECUTIVE SESSION

EXECUTIVE CALENDAR

NOMINATION OF RONNIE L. WHITE

The PRESIDING OFFICER. Under the previous order, the hour of 2:15 having arrived, the Senate will now go into executive session and proceed to vote on Executive Calendar Nos. 172, 215 and 209 which the clerk will report.

The legislative clerk read the nomination of Ronnie L. White, of Missouri, to be United States District Judge for the Eastern District of Missouri.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I ask unanimous consent that it be in order to ask for the yeas and nays on each nomination with one showing of hands.

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

Mr. HATCH. I now ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There appears to be a sufficient second.

The yeas and nays were ordered.

Mr. HATCH. Mr. President, I rise to address the nomination of Judge Ronnie Lee White, of Missouri, to the United States District Court for the Eastern District of Missouri. We have heard thorough discussions of the nominee by the distinguished Senators from Vermont and from Missouri. In coming to my decision on this nominee, I have considered the fairness of the process under which Judge White has been reviewed, the deference due to the President, and the deference due to the Senators from the nominee's home State. This is a very difficult case.

As chairman of the Judiciary Committee, I have conducted thorough

hearings and reviewed nominees in a fair and even-handed manner. As a result, we have seen a hearings process that does not include personal attacks on nominees and that maintains the institutional integrity of the Senate. On numerous occasions, even when several of my Republican colleagues voted against nominees, I maintained a fair process free from personal attacks on nominees. This was the case with Judge White. The committee held a fair and objective hearing on Judge White and thoroughly reviewed his record.

In considering any nomination, I believe that the President, in whom the Constitution vests the nominations power, is due a large degree of deference. Even though there are a large number of the President's nominees that I would not have nominated had I been President, I have supported these nominees in obtaining a floor vote because in my view, the Constitution requires substantial deference to the President.

Of course, the more controversial a nominee is, the longer it takes to garner the consensus necessary to move such a nominee out of committee. Such is the case with Judge White. I supported Judge White coming to the floor on two occasions. In the last vote in committee, no fewer than six of my Republican colleagues voted against reporting Judge White to the floor. At that point, however, I gave the President the deference of allowing a vote on his nominee and voted to report Judge White.

I must say that I am deeply disappointed by the unjust accusations from some that this body intentionally delays nominees, such as Judge White, based on their race. As the administration is well aware, it is not a nominee's race or gender that slows the process down, but rather the controversial nature of a nominee based on his or her record.

Indeed, nominees such as Charles Wilson, Victor Marrero, and Carlos Murguia, minority nominees, and Marryanne Trump Barry, Marsha Pechman, and Karen Schrier, female nominees, had broad support and moved quickly through the committee and were confirmed easily on the floor. And, although the committee does not keep race and gender statistics, a brief review of the committee's record so far this session shows that a large proportion of the nominees reported to the floor and confirmed consists of minorities and women. I categorically reject the allegation that race or gender, as opposed to substantive controversy, has ever played any role whatsoever in slowing down any nominee during my tenure as chairman.

After a fair and thorough review in committee and after paying the deference to the President to obtain a

vote on the floor, I consider the position of a nominee's home State Senators. These Senators are in a unique position to evaluate whether a nominee instills the confidence in the people of a State necessary to be a successful Federal judge in that State. This is especially true for a district judge nominee whose jurisdiction, if confirmed, would be wholly limited to that particular State. Thus, there has developed a general custom and practice of my giving weight to the Senators from a nominee's home State.

There have been several instances where—notwithstanding some serious reservations on my part—I voted to confirm district court nominees because the Senators from the nominees home State showed strong, and in some cases, bipartisan support. The nominations of Keith Ellison, Allen Pepper, Anne Aiken, Susan Mollway, and Margaret Morrow are examples of where I supported contested district court nominees and relied on the view of the home-State Senators in reaching my decision.

While I have harbored great concerns on the White nomination, I withheld my final decision until I had the benefit of the view of my colleagues from Missouri. I was under the impression that one of my colleagues might actually support the nomination, so I felt that the process should move forward—and it did.

Since the committee reported Judge White to the floor of the Senate, however, both of the Senators from Missouri have announced their opposition to confirming Judge White. Also, since the committee reported this nominee to the floor, the law enforcement community of Missouri has indicated serious concerns, and in some cases, open opposition to the nomination of Judge Ronnie White. And indeed, I have been informed that the National Sheriffs Association opposes this nomination. Opposition is mounting and it would perhaps be preferable to hold another hearing on the nomination. But if we must move forward today, it is clear to me that Judge White lacks the home-State support that I feel is necessary for a candidate to the Federal district court in that State.

For me, this case has been a struggle. On the one hand, Judge White is a fine man and the President is due a fair amount of deference. On the other hand, we are faced with the extremely unusual case in which both home State Senators, after having reviewed the record, are opposing this nomination on the floor.

Of course, had the President worked more closely with the two Senators from Missouri and then nominated a less problematic candidate, we would not be in this predicament. But the President did not.

When a nominee has a record of supporting controversial legal positions

that call into question his, or her, respect for the rule of law, it takes longer to gain the consensus necessary to move the nominee. When the President has not adequately consulted with the Senate, it takes longer to gain the consensus necessary to move the nominee. And when both home State Senators of a nominee oppose as nominee on the floor of the Senate, it is almost impossible to vote for the confirmation of that nominee.

Regretfully, such is the case with Judge White. Judge White has written some controversial opinions, especially on death penalty cases that have caused some to question his commitment to upholding the rule of law. The President has not garnered broad support for Judge White. And both Senator ASHCROFT and Senator BOND oppose this nomination. It would have been better for all parties concerned—the President, the Senate, the people of Missouri, and Judge White, had we been able to reach this decision earlier. But I cannot rewrite the past.

After a painstaking review of the record and thorough consultation with the nominee's home State Senators, I deeply regret that I must vote against the nomination of Judge White. This is in no way a reflection of Judge White personally. He is a fine man. Instead, my decision is based on the very unusual circumstances in which the President has placed this body. I must defer to my colleagues from Missouri with respect to a nominee whose jurisdiction, if confirmed, would be wholly limited to that State.

I call on the President to nominate another candidate for the Eastern District of Missouri. He should do so, however, only after properly consulting with both Missouri Senators and thus respecting the constitutional advice and consent duties that this body performs in confirming a nominee who will serve as a Federal judge for life.

Mr. BOND. After discussing this difficult decision with Missouri constituents, the Missouri legal community, and the Missouri law enforcement community, I have determined that Ronnie White is not the appropriate candidate to serve in a lifetime capacity as a U.S. district judge for eastern Missouri.

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The Missouri law enforcement community, whose views I deeply respect, has expressed grave reservations about Judge White's nomination to the Federal bench. They have indicated to me their concern that Judge White might use the power of the bench to compromise the strength of law enforcement efforts in Missouri.

Given the concerns raised by those in Missouri's law enforcement community, who put their lives on the line on a daily basis, and those in Missouri's legal community, who are charged with protecting our system of jurisprudence, I am compelled to vote against Judge White's confirmation.

Mr. SMITH of New Hampshire. Mr. President, I am opposed to the nominations of Raymond Fisher to the United States Court of Appeals for the Ninth Circuit and Ronnie White to the Eastern District of Missouri.

Our judicial system is supposed to protect the innocent and ensure justice, which is what it has done for the most part for over 200 years. However, there have been glaring exceptions: the Dred Scott decision, which ruled that blacks were not citizens and had no rights which anyone was bound to respect, and Roe versus Wade, which

similarly ruled that an entire class of people, the unborn, are not human beings and therefore are undeserving of any legal protection.

Both decisions, made by our Nation's highest court, violated two key constitutional provisions for huge segments of the population. Dred Scott, which legally legitimized slavery, deprived nearly the entire black population of the right to liberty, while Roe has taken away the right to life of 35 million unborn children since 1973. Both created rights, the right to own slaves and the right to an abortion, that were not in the Constitution. Of course, both are morally and legally wrong. Sadly, only Dred has been overturned, by the 13th and 14th amendments. Congress and the courts have yet to reverse Roe.

The only requirement, the only standard that I have for any judicial nominees is that they not view "justice" as the majorities did in Dred Scott and Roe, and that they uphold the standards and timeless principles so clearly stated in our Constitution.

Unfortunately, I do not believe that Mr. White and Mr. Fisher meet those critical standards. During the committee hearings, Mr. Fisher fully indicated to me that he would uphold the constitutional and moral travesties of Roe and Planned Parenthood versus Casey. Mr. White has also given answers which strongly suggest that he believes Roe was correctly decided by the Supreme Court. In addition, Mr. White's dubious actions as chairman of a Missouri House committee when a pro-life bill was before it further proves that he would enthusiastically enforce the pro-abortion judicial decree of Roe versus Wade.

The Framers of our Constitution believed we are endowed by our Creator with certain unalienable rights. Roe not only violates the 5th and 14th amendments, it violates the first and most fundamental right that we have as human beings and no court, liberal or conservative, can take away that right.

As a U.S. Senator, I recognize the awesome responsibility that we have to confirm, or deny, judicial nominees. I recognize the solemn obligation that we have to make sure that our Federal courts are filled only with judges who uphold and abide by the transcendent ideals explicitly stated in our Constitution and the Bill of Rights. The judges we confirm or deny will be among the greatest and far-reaching of our legacies, and I for one do not ever want my legacy to be that I confirmed pro-abortion judges to our Nation's courts.

This is why I will not support the nominations of Mr. White and Mr. Fisher. I will not support any judges who deny the undeniable connection that must exist, in a free and just civilization, between humanity and personhood. Our judges should be the

very embodiment of justice. How can we then approve of those who will deny justice to most defenseless and innocent of us all?

But, further, I would add that these nominees propose a more general concern in that they are liberal activists. In the case of Justice White, who now serves on the Supreme Court in Missouri, he has demonstrated that he is an activist, and has a political slant to his opinions in favor of criminal defendants and against prosecutors. It is my belief that judges should interpret the law, and not impose their own political viewpoints.

He is strongly opposed by the law enforcement community in Missouri, and was directly opposed by the Missouri Association of Police Chiefs due to his activist record.

Senator ASHCROFT spoke in more detail about Justice White's activist record. Coming from the same State, Senator ASHCROFT is in an even better position to comment on Justice White's record. But, he laid out a very disturbing record of judicial activism in Justice White's career, particularly on law and order matters, and I simply do not think that this is the kind of person we need on the U.S. District Court.

With regard to Mr. Fisher, this is a critical slot because of the nature of the Ninth Circuit. This circuit has gained such a bad reputation for its liberal opinions that it has been referred to as a "rogue" circuit. It is controlled by an extreme liberal element and it is important that our appointments to this circuit be people who can restore at least some level of constitutional scrutiny.

In the case of Mr. Fisher, this clearly will not be the case. He is not a judge, and therefore, there is not the kind of judicial paper trail that we have with Justice White. However, he has a long record of liberal political activism for causes that run contrary to the Constitution. If he is willing to thwart the Constitution in his political activism, what makes us think he will uphold it in his judicial opinions. He took an active role in supporting the passage of proposition 15 in California regarding registration of handguns. This kind of hostility to the second amendment will not make matters any better on the Ninth Circuit. He very actively supported employment benefits for homosexual partners, and I found him to be very evasive in his responses to questions during the Committee hearings. Given the importance of this circuit and its demonstrated bias toward the left, this nominee, who himself is a liberal activist, is not the right person to help restore some constitutionality to this circuit.

So, I would urge my colleagues to vote against these two judges. We have sworn duty to support and defend the Constitution. This is never more crit-

ical than when we exercise our advise and consent role for judicial nominees.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Ronnie L. White, of Missouri, to be United States District Judge for the Eastern District of Missouri? On this question, the yeas and nays have been ordered. The clerk will call the roll.

The legislative assistant called the roll.

Mr. NICKLES. I announce that the Senator from Florida (Mr. MACK) is necessarily absent.

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

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

(Rollcall Vote No. 307 Ex.)

YEAS—45

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

NAYS—54

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

NOT VOTING—1

Mack

The nomination was rejected.

Mr. ASHCROFT. Mr. President, I move to reconsider the vote.

Mr. CRAIG. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. LEAHY. Mr. President, I ask unanimous consent to continue for 1 minute.

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

Mr. LEAHY. Mr. President, I have to say this with my colleagues present. When the full history of Senate treatment of the nomination of Justice Ronnie White is understood, when the switches and politics that drove the Republican side of the aisle are known, the people of Missouri and the people of the United States will have to judge whether the Senate was unfair to this

fine man and whether their votes served the interests of justice and the Federal courts.

I am hoping—and every Senator will have to ask himself or herself this question—the United States has not reverted to a time in its history when there was a color test on nominations.

The PRESIDING OFFICER. The majority leader.

Mr. LOTT. Mr. President, I use leader time for 1 minute in response.

With regard to nominations, judicial or otherwise, I am sure the Senate would never use any basis for a vote other than the qualifications and the record of the nominee. And just so the record will be complete, as a matter of fact, of the 19 nominees who have been confirmed this year, 4 of them have been women, 1 of them African American, and 3 of them have been Hispanic. Their records and the kind of judges these men and women would make are the only things that have been a factor with the Senate and are the only things that should ever be a factor.

I ask unanimous consent that the remaining votes in the series be limited to 10 minutes each.

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

Mr. DASCHLE. Mr. President, I rise to express how saddened I am by the party-line vote against Judge Ronnie White today. I had sincerely hoped that today would mark the beginning of a bipartisan attempt to clear the backlog of federal judicial nominees and begin to fill the vacancies that are rampant throughout the federal judiciary. I was mistaken. Instead, we got a party-line vote against a qualified minority judge coupled with a continued refusal to schedule votes on other qualified minority and women nominees.

Judge White is eminently qualified to sit on the federal bench. He is a distinguished jurist and the first African-American to serve on the Missouri Supreme Court. Prior to his service on Missouri's Supreme Court, Judge White served as a State Representative to the Missouri Legislature, where he chaired the Judiciary Committee. In his law practice, which he continued during his service as a legislator, White handled a variety of civil and criminal matters for mostly low income individuals. His nomination received the support of the St. Louis Metropolitan Police Department, the Saint Louis Post Dispatch, and the National Bar Association. He is a fine man who has given his life to public service and he deserved better than what he got from this Senate. He deserved better than to be kept waiting 27 months for a vote, and then to be used as a political pawn.

This vote wasn't about the death penalty. This vote wasn't about law and order. This vote was about the unfair treatment of minority judicial nominees. This vote tells minority judicial candidates "do not apply." And

if you do, you will wait and wait, with no guarantee of fairness.

Judge Marsha Berzon, for instance, has been kept waiting more than 20 months for a vote. Judge Richard Paez has been waiting more than 44 months. These nominees deserve a vote. While I am totally dismayed by what happened here today with respect to Judge White's nomination, the Senate today functioned, albeit in a partisan, political manner.

As Chief Justice Rehnquist has recognized: "The Senate is surely under no obligation to confirm any particular nominee, but after the necessary time for inquiry it should vote him up or vote him down." An up-or-down vote, that is all we ask for Berzon and Paez. And, after years of waiting, they deserve at least that much. The Republican majority should not be allowed to cherry-pick among nominees, allowing some to be confirmed in weeks, while letting other nominations languish for years. Accordingly, I vow today, that we Democrats just will not allow Paez and Berzon to be forgotten.

As I have in the past, I will again move to proceed to the nominations of Judge Paez and Marsha Berzon, and I intend to take this action again and again should unnamed Senators continue to block a vote. Particularly after today's vote, I must say, I find it simply baffling that a Senator would vote against even voting on a judicial nomination. Today's actions prove that we all understand that we have a constitutional outlet for antipathy against a judicial nominee—a vote against that nominee. What the Constitution does not contemplate is for one or two Senators to grind a nomination to a halt on the basis of a "secret" hold. This cowardly, obstructionist tactic is an anathema to the traditions of the Senate. Thus, today, I implore, one more time, every Senator to follow Senator LEAHY's advice, and treat every nominee "with dignity and dispatch." Lift your holds, and let the Senate vote on every nomination.

The business of judges is the simple but overwhelmingly important business of providing equal justice to the poor and to the rich. Accordingly, the consequences of this confirmation process are awesome. It is time that we all take it more seriously and it is time that we schedule votes on every nominee on the Calendar—including Judge Paez and Marsha Berzon. All we are asking of our Republican colleagues is to give these nominees the vote—and hopefully the fair consideration—they deserve. We will press this issue every day and at every opportunity until they get that vote.

Today is a dark day for the Senate. We have voted down a fully-qualified nominee but I hope we can do better in the future and that we can move forward on the Paez and Berzon nominations in a fair and non-partisan manner.

The PRESIDING OFFICER. The Clerk will report the next nomination, Calendar No. 215.

The legislative clerk read the nomination of Brian Theadore Stewart, of Utah, to be United States District Judge for the District of Utah.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Brian Theadore Stewart, of Utah, to be United States District Judge for the District of Utah? On this question, the yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Florida (Mr. MACK) is necessarily absent.

Mr. REID. I announce that the Senator from Montana (Mr. BAUCUS) is necessarily absent.

The result was announced—yeas 93, nays 5, as follows:

[Rollcall Vote No. 308 Ex.]

YEAS—93

Abraham	Enzi	Lott
Akaka	Feinstein	Lugar
Allard	Fitzgerald	McCain
Ashcroft	Frist	McConnell
Bayh	Gorton	Moynihan
Bennett	Graham	Murkowski
Biden	Gramm	Murray
Bingaman	Grams	Nickles
Bond	Grassley	Reed
Breaux	Gregg	Reid
Brownback	Hagel	Robb
Bryan	Harkin	Roberts
Bunning	Hatch	Rockefeller
Burns	Helms	Roth
Byrd	Hollings	Santorum
Campbell	Hutchinson	Sarbanes
Chafee	Hutchison	Schumer
Cleland	Inhofe	Sessions
Cochran	Inouye	Shelby
Collins	Jeffords	Smith (NH)
Conrad	Kennedy	Smith (OR)
Coverdell	Kerrey	Snowe
Craig	Kerry	Specter
Crapo	Kohl	Stevens
Daschle	Kyl	Thomas
DeWine	Landrieu	Thompson
Dodd	Lautenberg	Thurmond
Domenici	Leahy	Torricelli
Dorgan	Levin	Voinovich
Durbin	Lieberman	Warner
Edwards	Lincoln	Wyden

NAYS—5

Boxer	Johnson	Wellstone
Feingold	Mikulski	

NOT VOTING—2

Baucus	Mack
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The nomination was confirmed.

NOMINATION OF RAYMOND C. FISHER

The PRESIDING OFFICER (Mr. CRAPO). The clerk will report the next nomination.

The legislative assistant read the nomination of Raymond C. Fisher, of California, to be United States Circuit Judge for the Ninth Circuit.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Raymond C. Fisher, of California, to be United States Circuit Judge for the Ninth Circuit. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Florida (Mr. MACK) is necessarily absent.

Mr. REID. I announce that the Senator from Montana (Mr. BAUCUS) is necessarily absent.

The result was announced—yeas 69, nays 29, as follows:

[Rollcall Vote No. 309 Ex.]

YEAS—69

Abraham	Edwards	Lieberman
Akaka	Feingold	Lincoln
Ashcroft	Feinstein	Lugar
Bayh	Fitzgerald	McCain
Bennett	Frist	Mikulski
Biden	Gorton	Moynihan
Bingaman	Graham	Murray
Bond	Grassley	Reed
Boxer	Harkin	Reid
Breaux	Hatch	Robb
Bryan	Hollings	Rockefeller
Byrd	Inouye	Roth
Chafee	Jeffords	Sarbanes
Cleland	Johnson	Schumer
Cochran	Kennedy	Smith (OR)
Collins	Kerrey	Snowe
Conrad	Kerry	Specter
Daschle	Kohl	Stevens
DeWine	Kyl	Thurmond
Dodd	Landrieu	Torricelli
Domenici	Lautenberg	Voinovich
Dorgan	Leahy	Wellstone
Durbin	Levin	Wyden

NAYS—29

Allard	Grams	Nickles
Brownback	Gregg	Roberts
Bunning	Hagel	Santorum
Burns	Helms	Sessions
Campbell	Hutchinson	Shelby
Coverdell	Hutchison	Smith (NH)
Craig	Inhofe	Thomas
Crapo	Lott	Thompson
Enzi	McConnell	Warner
Gramm	Murkowski	

NOT VOTING—2

Baucus	Mack
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The nomination was confirmed.

Mr. LEAHY. Mr. President, I want to congratulate Ray Fisher on his Senate confirmation. I will miss Ray and Nancy here in Washington, but know that the Ninth Circuit will greatly benefit from his service there.

Finally, I congratulate Ted Stewart on his confirmation and Senators HATCH and BENNETT, who have worked hard to get him confirmed expeditiously. I trust that Mr. Stewart will honor the commitments that he made to the Judiciary Committee to avoid even the appearance of impropriety on matters on which he has worked while in State government.

I said on the Senate floor last night that this body's recent treatment of women and minority judicial nominees is a badge of shame. I feel that we added to that shame with today's vote of Justice Ronnie White.

In their report entitled "Justice Held Hostage," the bipartisan Task Force on Federal Judicial Selection from Citizens for Independent Courts, co-chaired by Mickey Edwards and Lloyd Cutler, substantiated through their independent analysis what I have been saying for some time: Women and minority judicial nominations are treated differently by this Senate and take longer, are less likely to be voted on and less likely to be confirmed.

Judge Richard Paez has been stalled for 44 months, and the nomination of Marsha Berzon has been pending for 20 months. Other nominees are confirmed in 2 months.

Anonymous Republican Senators continue their secret holds on the Paez and Berzon nominations. The Republican majority refuses to vote on those nominations. In fairness, after almost 2 years and almost 4 years, Marsha Berzon and Judge Richard Paez are entitled to a Senate vote on their nominations. Vote them up or vote them down, but vote. That is what I have been saying, that is what the Chief Justice challenged the Republican Senate to do back in January 1998.

I can assure you that there is no Democratic Senator with a hold on Judge Paez or Marsha Berzon. I can assure you that every Democratic Senator is willing to go forward with votes on Judge Paez and Marsha Berzon now, without delay.

Last Friday, Senator LOTT committed to trying to "find a way" to have these nominations considered by the Senate. I want to help him do that.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

JUDICIAL NOMINATIONS

Mr. NICKLES. Mr. President, before we return to the consideration of the FAA reauthorization bill, I would like to make a couple of comments. Raymond Fisher, just confirmed to the Ninth Circuit, is the 323rd judge who has been confirmed since President Clinton has been in office. 195 of those judges have been confirmed since Republicans took control of the Senate in 1995.

Judge Ronnie White is the first nominee, I believe, to be rejected on the floor since Republicans took control of the Senate. One of our colleagues said that he hoped that we are not returning to a "color test." That is what was said. I am offended by that statement. Many people on our side of the aisle didn't know what race Judge White is. We did know that 77 of Missouri's 114 sheriffs were opposed to his nomination. We did find out that two State prosecutors' offices raised their objections. We did know there was a letter from the National Sheriffs Association opposing his nomination.

I believe that we have been very consistent, at least on this side of the aisle. We do not want to confirm a nominee where you have major law enforcement organizations and leading officials saying they are opposed to the nomination, regardless of what race he or she is. I do not believe the Senate has ever confirmed anyone when national law enforcement organizations

or officials have stated that the nominee has a poor or weak background in law enforcement. To my knowledge, I have never voted to confirm any such nominee, nor have many other members.

I want to make it absolutely clear and understood that members voted no on Judge White's nomination because of the statements made by law enforcement officers, in addition to the respect that we have for the two Senators from the nominee's state who recommended a no vote. We respect their recommendation to us. So I make mention of that.

I am bothered that somebody said I hope we are not returning to a "color test." That statement was uncalled for and, I think, not becoming of the Senate. I want to make sure that point is made.

Mr. SCHUMER. Mr. President, will the Senator from Oklahoma yield?

Mr. NICKLES. I would be happy to yield.

Mr. SCHUMER. I thank the Senator. I just want to say a few words not in response but maybe in contraposition to what the Senator said.

Mr. NICKLES. I will be happy to yield for a question.

Mr. SCHUMER. I thank the Senator. I appreciate that. I will ask my question.

It seems to me that whatever the intentions—I am not impugning any intentions of any person who voted the other way, but it seems to me that the recent vote on the floor of the Senate is going to create division and animus in this country of ours.

Mr. NICKLES. Mr. President, regular order. I will answer a question. If the Senator wants to make a speech, he can make the speech on his own time.

Mr. SCHUMER. I will yield back my time to the Senator, retract my question, and ask unanimous consent that I might speak for 3 minutes.

The PRESIDING OFFICER. Is there objection?

The Senator from Oklahoma.

Mr. NICKLES. I didn't know my colleague wanted to engage in this. I was not clear that the Senator wanted to make a speech.

I want to say absolutely and positively that there is no "color test." No one raised that suggestion, that I am aware of, during the Clarence Thomas confirmation. I want to clarify again. I had several colleagues say they did not know what race Mr. White is. I think it is very much uncalled for and incorrect for anybody to make that kind of implication.

I yield the floor.

Mr. SCHUMER. Will the Senator yield for a question?

The PRESIDING OFFICER. The Chair advises that the pending business before the Senate is the vote on the Robb amendment. Unless there is unanimous consent to move beyond that vote, debate is not in order.