

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.