

Ensign	Leahy	Sanders
Enzi	Levin	Schumer
Feinstein	Lieberman	Sessions
Franken	Lincoln	Shaheen
Gillibrand	Lugar	Shelby
Grassley	Manchin	Snowe
Hagan	McCaskill	Specter
Harkin	McConnell	Stabenow
Hutchison	Menendez	Tester
Inouye	Merkley	Thune
Johanns	Mikulski	Udall (CO)
Johnson	Murkowski	Udall (NM)
Kerry	Murray	Voinovich
Kirk	Nelson (FL)	Warner
Klobuchar	Pryor	Webb
Kohl	Reed	Whitehouse
Kyl	Reid	
Landrieu	Roberts	Wicker
Lautenberg	Rockefeller	

NAYS—16

Burr	Feingold	McCain
Chambliss	Graham	Nelson (NE)
Coburn	Hatch	Risch
Cornyn	Inhofe	Vitter
Crapo	Isakson	
DeMint	LeMieux	

NOT VOTING—5

Bayh	Brownback	Wyden
Bond	Gregg	

The motion was agreed to.

EXECUTIVE SESSION

NOMINATION OF BENITA Y. PEARSON TO BE UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF OHIO

NOMINATION OF WILLIAM JOSEPH MARTINEZ TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF COLORADO

THE PRESIDING OFFICER. Under the previous order, the Senate will go into executive session to consider the following two nominations, which the clerk will report.

The legislative clerk read the nomination of Benita Y. Pearson, of Ohio, to be United States District Judge for the Northern District of Ohio.

The legislative clerk read the nomination of William Joseph Martinez, of Colorado, to be United States District Judge for the District of Colorado.

Who yields time? The Senator from Alabama.

Mr. SESSIONS. Mr. President, is there an agreement as to the time?

THE PRESIDING OFFICER. There is 8 minutes total, 4 minutes on each side on both nominations in combination.

Mr. SESSIONS. Mr. President, I would assume the chairman, who will be speaking in favor, would want to go first, and I yield to Senator LEAHY.

Mr. LEAHY. No, go ahead.

THE PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, the two nominees today are nominees who came out of the Judiciary Committee with substantial negative votes. Mr. Martinez is a long-time member of the American Civil Liberties Union. He has refused, when asked at the hearing, by

myself and in written questions, to state whether he believes the Constitution of the United States prohibits the death penalty—not whether he believed in it. That is his prerogative. He hid behind the answer that the Supreme Court says it is. But the ACLU holds to the view that the cruel and unusual punishment provision of the Constitution prohibits the imposition of the death penalty and, therefore, it is unconstitutional.

He refused to answer that question, and I believe that is an untenable view. There are four references, at least, in the Constitution to the death penalty, and I do not know how somebody could take the cruel and unusual clause to override specific references to the death penalty which was provided for in every Colony and the Federal Government when the Constitution passed.

With regard to the other nominee, Mrs. Benita Pearson, she has some very extreme views on animal rights. When asked by Senator COBURN whether it would be in the best interests of a steer to be slaughtered—she was asked that in the committee—she said probably not in the best interests of the steer, sir. But then you have to look beyond that. I mean, the steer is going to lose its life. It is a painful situation. And steers, evidence has shown, may have some idea or apprehension about the slaughter that is impending. But the next step is, is it necessary to slaughter the steer in order to provide food for those who might otherwise go hungry or perhaps be malnourished without the sustenance that this steer's flesh and hide could provide in terms of clothing and matters necessary for the well-being of animals.

Basically, what I understand this to be is that she is suggesting a court should enter into some sort of balancing test on whether it is legitimate to slaughter a steer, and also she is a member of the ALDF, the defense of animals group, that is very extreme in its views.

For that reason, the National Cattlemen's Beef Association and the Farm Animal Welfare Coalition strongly oppose the nomination. I think her views on this issue are out of the mainstream.

I yield the floor and reserve the remainder of my time.

THE PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, President Obama nominated William J. Martinez to fill a judicial emergency vacancy on the District of Colorado last February. Mr. Martinez is a well-respected legal practitioner in Denver who has the strong support of both of his home State Senators. The statements earlier today from Senator UDALL and Senator BENNET were compelling. They have been steadfast, forthright and exceedingly patient. I wholeheartedly agree with them that Bill Martinez should

now, at long last, be confirmed. When he is, he will become only the second Hispanic to serve Colorado as a district court judge.

The Judiciary Committee favorably reported his nomination over 8 months ago, on April 15. It has been delayed ever since. In May we received a letter from the chief judge of the District of Colorado, Judge Wiley Y. Daniel, urging us to confirm Mr. Martinez because without additional judges “it is impossible for the court to possess the judicial resources that are necessary to effectively discharge the business of the court.” Despite that plea from the chief judge of the district, the Senate has not been allowed to consider this nomination until today.

This is another example of the unnecessary delays that have led to a judicial vacancies crisis throughout the country. Judicial vacancies have skyrocketed to over 100 while nominations are forced to languish without final Senate action. In fact, President Obama's nominees have been forced to wait on average six times longer to be considered than President Bush's judicial nominees reported by the Judiciary Committee during the first 2 years of his Presidency.

I still do not understand why this nomination was subjected to a party-line vote before the Judiciary Committee. I recall all the Bush nominees who were members of the Federalist Society and other conservative litigation centers who were confirmed just a few years ago. Can it be that some are seeking to apply a conservative activist ideological litmus test and discount Mr. Martinez' qualifications and work experience?

Our ranking Republican Senator, Senator SESSIONS, reflected on the confirmation process last year, saying:

What I found was that charges come flying in from right and left that are unsupported and false. It's very, very difficult for a nominee to push back. So I think we have a high responsibility to base any criticisms that we have on a fair and honest statement of the facts and that nominees should not be subjected to distortions of their record.

I listened closely to the Senator's statement against Mr. Martinez but heard nothing about anything Mr. Martinez had done or even any position taken by the Colorado ACLU in which Mr. Martinez was involved. There was nothing on which to base opposition to this qualified nominee. Certainly not the “gotcha” questions he was asked months ago.

More than two dozen Federal circuit and district court nominations favorably reported by the Judiciary Committee still await a final Senate vote. These include 17 nominations reported unanimously and another 2 reported with strong bipartisan support and only a small number of no votes. These nominations should have been confirmed within days of being reported. In addition, 15 nominations ready for

final action are to fill judicial emergencies. With judicial vacancies at historic highs, we should act on these nominations. During President Bush's first 2 years in office, the Senate proceeded to votes on all 100 judicial nominations favorably reported by the Judiciary Committee. That included controversial circuit court nominations reported during the lame-duck session after the election in 2002. In contrast, during the first 2 years of President Obama's administration, the Senate has considered just 55 of the 80 judicial nominations reported by the Judiciary Committee.

Adding to the letters we have received recently urging us to take action to fill vacancies is one sent this week to the Senate leaders by the National Association of Assistant United States Attorneys, a group of career prosecutors. John E. Nordin, vice president for membership and operations, writes:

Judicial vacancies in our federal courts are reaching historic highs. Our members—career federal prosecutors who appear daily in federal courts across the nation—are concerned by the increasing number of vacancies on the federal bench. These vacancies increasingly are contributing to greater caseloads and workload burdens upon the remaining federal judges. Our federal courts cannot function effectively when judicial vacancies restrain the ability to render swift and sure justice.

I ask unanimous consent that this letter be printed in the RECORD. It concludes, “[w]e believe that all judicial nominees approved by the Senate Judiciary Committee are deserving of a prompt up-or-down floor vote.” I agree with these career Federal prosecutors who understand the vital importance of functioning courts and rely on them every day. It is time for the Senate to act on the dozens of judicial nominees that have been stalled from final consideration before we adjourn.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

NATIONAL ASSOCIATION OF ASSISTANT UNITED STATES ATTORNEYS,
Lake Ridge, VA, December 17, 2010.
Hon. HARRY REID,
Majority Leader, U.S. Senate, The Capitol,
Washington, DC.
Hon. MITCH MCCONNELL,
Minority Leader, U.S. Senate, The Capitol,
Washington, DC.

DEAR MAJORITY LEADER REID AND MINORITY LEADER MCCONNELL: Judicial vacancies in our federal courts are reaching historic highs. Our members—career federal prosecutors who daily appear in federal courts across the nation—are concerned by the increasing numbers of vacancies on the federal bench. These vacancies increasingly are contributing to greater caseloads and workload burdens upon the remaining federal judges. Our federal courts cannot function effectively when judicial vacancies restrain the ability to render swift and sure justice.

As you know, thirty-eight judicial candidates have been approved by the Senate Judiciary Committee and await a Senate floor vote. A large number of these can-

didates have been approved without controversy by unanimous consent. Some candidates have been named to judgeships whose vacancies have been designated as “judicial emergencies” by the Judicial Conference, because of their high caseloads and the significant periods of time that these judgeships have remained unfilled.

We believe that all judicial nominees approved by the Senate Judiciary Committee are deserving of a prompt up-or-down floor vote. Thank you for taking the time to consider our views on this issue and for your leadership.

Sincerely,

JOHN E. NORDIN, II,
Vice President for Membership,
and Operations.

Mr. LEAHY. Mr. President, today, the Senate is finally considering a judicial nomination that has been stalled since February on the Executive Calendar. The nomination of Benita Y. Pearson to serve on the Northern District of Ohio was reported favorably by the Judiciary Committee more than 10 months ago. Judge Pearson is currently a Federal magistrate judge on the court to which she is nominated. When confirmed, she will become the first African-American woman to serve as a Federal judge in Ohio.

I have reviewed the record and considered the character, background and qualifications of the nominee and join with the Senators from Ohio, one a Democrat and the other a Republican, in supporting this nominee. Frankly, the opposition is a dramatic departure from the traditional practice of considering district court nominations with deference to the home State Senators that know the nominees and their districts best. I commend Senator BROWN on his statement in support of the nomination today. As he noted, he worked closely with Senator VOINOVICH, the Republican Senator from his State and a judicial screening commission in making this recommendation to the President.

The obstruction of these district court nominations is unprecedented, a sign that a different standard is being applied to President Obama's nominees that has never before been applied to the nominees of any President, Democratic or Republican. Out of the 2,100 district court nominees reported by the Judiciary Committee since 1945, only five have been reported by party-line votes. Four of these party-line votes have been in this Congress, including the two of the nominations we consider today. In fact only 19 of those 2,100 nominees were reported by any type of split rollcall vote at all, but five of them—more than 25 percent of the total—have been this Congress.

The party-line vote against this nomination in the Judiciary Committee was without explanation. Judge Pearson has been a Federal judge magistrate for 8 years and a prosecutor before that. Nothing in her professional background justifies the delay or opposition to this nomination.

At her hearing, there were some who tried to make a mountain out of a mole hill with respect to a statement she made about animals. I just worked with Senator KYL and Senator MERKLEY on a constitutional, legal prohibition against vicious videos that show animals being crushed. That bill passed unanimously. No Senators thought twice about approving that important legislation. I remember a couple of years ago when a famous professional football player went to prison for his participation in a dog fighting ring. Many Americans were outraged by those activities and no Senator questioned the State and Federal laws against such activities. Are those who oppose this nomination also now opposed to the Humane Society of the United States and to the legislative actions we took since they involved animals?

I join the Senators from Ohio in urging the Senate to confirm Judge Pearson without further delay.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. BROWN of Ohio. Mr. President, there has been concern, as the chairman pointed out and the ranking member pointed out, on Benita Pearson's views on animal law. With all due respect to my colleague, you know it is a red herring. If you look at the record of Ohio's Northern District, which goes back to 1839, there has been exactly one case on animal welfare. Some 20 years ago, the Cleveland Zoo was sued to stop the transfer of Timmy the gorilla to the Bronx Zoo—I am not making this up—from transferring Timmy the Gorilla to the Bronx Zoo for mating purposes. The case was dismissed. One case in 170 years.

Judge Pearson is qualified, say the two former presiding judges, Chief Judges Carr and White, and the sitting presiding judge, Judge Oliver from the Northern District—a combined 50 years' experience on the district court.

Judge James Carr, the Chief U.S. District Judge at the time of her nomination, lauded Judge Pearson as “a splendid choice . . . eminently well-qualified by intelligence, experience . . . and judicial temperament.” His successor, Chief Judge Solomon Oliver, is just as supportive of her nomination.

So is former Chief Judge George White, who wrote that:

Judge Pearson's record as a Judicial Officer and her litigation and business experience do more than idly suggest her readiness to assume the position of District Court Judge. Taken all together, you will be hard-pressed to find a more suitable candidate.

Mr. BROWN of Ohio. These judges have made glowing reports on Judge Benita Pearson, who has been a magistrate, a CPA, practiced privately, worked for the U.S. Attorney's Office. She will be the first African-American woman to sit on the Federal bench in

Ohio. She has been supported by Senator VOINOVICH and a bipartisan commission of 17 lawyers who picked her. She is a great choice. I ask the concurrence of my colleagues. I yield to Senator UDALL.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. UDALL of Colorado. I rise to support the nomination of Bill Martinez. Senator LEAHY made the case for his nomination and for him to be confirmed. I have great affection for my friend from Alabama, but I want to set the record clear that Bill Martinez did not work for the ACLU, he advised the ACLU. If we are going to raise that standard and change the rules, then we ought to remember that the Bush nominations often included Federalist Society members and contributors.

We ought to be careful about setting false standards. Bill Martinez was recommended by a bipartisan nominating commission that Senator BENNET and I created. He is a good man. His story is a quintessential American story. He will be an excellent judge. I urge us all to vote for his confirmation today.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. How much time is remaining on this side?

The PRESIDING OFFICER. The Senator has 1 minute 5 seconds.

Mr. SESSIONS. Mr. President, Mr. Martinez, I know, has a lot of good supporters and friends, as I have noted. But he did refuse to answer a simple question of whether the U.S. Constitution prohibits the death penalty, which I believe the ACLU, of which he was a member and a member of the legal panel, definitely favored.

I do believe Judge Pearson's view that somehow there should be a balancing test about whether we should actually slaughter a steer based on the need for food or hide is an extreme view also.

We have had about 15 members of the ACLU confirmed by this administration. But we expect this President to submit mainstream judges. The ACLU is not mainstream in its positions. I do believe the administration needs to understand that this is going to be a more contentious matter if we keep seeing the ACLU chromosome as part of this process.

The PRESIDING OFFICER. The Senator's time has expired.

The Senator from Vermont.

Mr. LEAHY. Mr. President, I would like nothing better than to vote on the judges. We have a number of them who came out unanimously from the Senate Judiciary Committee. My friends from the other side are not even allowing votes on them.

We did not do that to President Bush in his first 2 years.

The PRESIDING OFFICER. The Senator's time has expired.

The question is, Will the Senate advise and consent to the nomination of Benita Y. Pearson, of Ohio, to be United States District Judge for the Northern District of Ohio?

Mr. SESSIONS. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator for Indiana (Mr. BAYH) and the Senator from Oregon (Mr. WYDEN) are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Kansas (Mr. BROWNBACK), the Senator from New Hampshire (Mr. GREGG), and the Senator from Missouri (Mr. BOND).

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

The result was announced—yeas 56, nays 39, as follows:

[Rollcall Vote No. 290 Ex.]

YEAS—56

Akaka	Gillibrand	Murray
Baucus	Hagan	Nelson (FL)
Begich	Harkin	Pryor
Bennet	Inouye	Reed
Bingaman	Johnson	Reid
Boxer	Kerry	Rockefeller
Brown (OH)	Klobuchar	Sanders
Cantwell	Kohl	Schumer
Cardin	Lautenberg	Shaheen
Carper	Leahy	Specter
Casey	Levin	Tester
Conrad	Lieberman	Udall (CO)
Coons	Lincoln	Udall (NM)
Dodd	Manchin	Warner
Dorgan	McCaskill	Webb
Durbin	Menendez	Whitehouse
Feingold	Merkley	
Feinstein	Mikulski	

NAYS—39

Alexander	DeMint	Lugar
Barrasso	Ensign	McCain
Bennett	Enzi	McConnell
Brown (MA)	Graham	Murkowski
Bunning	Grassley	Nelson (NE)
Burr	Hatch	Risch
Chambliss	Hutchison	Roberts
Coburn	Inhofe	Sessions
Cochran	Isakson	Shelby
Collins	Johanns	Snowe
Corker	Kirk	Thune
Cornyn	Kyl	Vitter
Crapo	LeMieux	Voinovich

NOT VOTING—5

Bayh	Brownback	Wyden
Bond	Gregg	

The nomination was confirmed.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of William Joseph Martinez, of Colorado, to be U.S. District Judge for the District of Colorado?

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

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Indiana (Mr. BAYH) and the Senator from Oregon (Mr. WYDEN) are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Kansas (Mr. BROWNBACK), the Senator from New Hampshire (Mr. GREGG), and the Senator from Missouri (Mr. BOND).

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

The result was announced—yeas 58, nays 37, as follows:

[Rollcall Vote No. 291 Ex.]

YEAS—58

Akaka	Franken	Murray
Baucus	Gillibrand	Nelson (NE)
Begich	Hagan	Nelson (FL)
Bennet	Harkin	Pryor
Bingaman	Inouye	Reed
Boxer	Johnson	Reid
Brown (MA)	Kerry	Rockefeller
Brown (OH)	Klobuchar	Sanders
Cantwell	Kohl	Schumer
Cardin	Lautenberg	Shaheen
Carper	Leahy	Specter
Casey	Levin	Tester
Conrad	Lieberman	Udall (CO)
Coons	Lincoln	Udall (NM)
Dodd	Manchin	Warner
Dorgan	McCaskill	Webb
Durbin	Menendez	Whitehouse
Feingold	Merkley	
Feinstein	Mikulski	

NAYS—37

Alexander	Enzi	McConnell
Barrasso	Graham	Murkowski
Bennett	Grassley	Risch
Bunning	Hatch	Roberts
Burr	Hutchison	Sessions
Chambliss	Inhofe	Shelby
Coburn	Isakson	Snowe
Cochran	Johanns	Thune
Collins	Kirk	Vitter
Corker	Kyl	Voinovich
Cornyn	Crapo	Wicker
Crapo	LeMieux	
Franken	Lugar	
McCain	McCain	

NOT VOTING—5

Bayh	Brownback	Wyden
Bond	Gregg	

The nomination was confirmed.

The PRESIDING OFFICER. Under the previous order, the motions to reconsider are considered made and laid upon the table, and the President will be immediately notified of the Senate's action.

TREATY WITH RUSSIA ON MEASURES FOR FURTHER REDUCTION AND LIMITATION OF STRATEGIC OFFENSIVE ARMS—Resumed

The PRESIDING OFFICER. The clerk will report the treaty.

The assistant legislative clerk read as follows:

Treaty with Russia on Measures for Further Reduction and Limitation of Strategic Offensive Arms.

Pending:

Corker modified amendment No. 4904, to provide a condition and an additional element of the understanding regarding the effectiveness and viability of the New START Treaty and United States missile defenses.

The PRESIDING OFFICER. There will now be 4 minutes of debate equally