

The PRESIDING OFFICER. The question is on agreeing to the resolution.

The resolution (S. Res. 457) was agreed to, as follows:

S. RES. 457

*Resolved*, That a summons shall be issued which commands G. Thomas Porteous, Jr. to file with the Secretary of the Senate an answer to the articles of impeachment no later than April 7, 2010, and thereafter to abide by, obey, and perform such orders, directions, and judgments as the Senate shall make in the premises, according to the Constitution and laws of the United States.

SEC. 2. The Sergeant at Arms is authorized to utilize the services of the Deputy Sergeant at Arms or another employee of the Senate in serving the summons.

SEC. 3. The Secretary shall notify the House of Representatives of the filing of the answer and shall provide a copy of the answer to the House.

SEC. 4. The Managers on the part of the House may file with the Secretary of the Senate a replication no later than April 21, 2010.

SEC. 5. The Secretary shall notify counsel for G. Thomas Porteous, Jr. of the filing of a replication, and shall provide counsel with a copy.

SEC. 6. The Secretary shall provide the answer and the replication, if any, to the Presiding Officer of the Senate on the first day the Senate is in session after the Secretary receives them, and the Presiding Officer shall cause the answer and replication, if any, to be printed in the Senate Journal and in the Congressional Record. If a timely answer has not been filed, the Presiding Officer shall cause a plea of not guilty to be entered.

SEC. 7. The articles of impeachment, the answer, and the replication, if any, together with the provisions of the Constitution on impeachment, and the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials, shall be printed under the direction of the Secretary as a Senate document.

SEC. 8. The provisions of this resolution shall govern notwithstanding any provisions to the contrary in the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials.

SEC. 9. The Secretary shall notify the House of Representatives of this resolution.

Mr. REID. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. MCCONNELL. Mr. President, I move to lay the motion on the table.

The motion to lay on the table was agreed to.

**APPOINTMENT OF A COMMITTEE TO RECEIVE AND TO REPORT EVIDENCE WITH RESPECT TO ARTICLES OF IMPEACHMENT AGAINST JUDGE G. THOMAS PORTEOUS, JR.**

Mr. REID. Mr. President, on behalf of myself and the distinguished Republican leader, Mr. MCCONNELL, I send a resolution to the desk on the appointment of an impeachment trial committee and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 458) to provide for the appointment of a committee to receive and

to report evidence with respect to articles of impeachment against Judge G. Thomas Porteous, Jr.

The PRESIDING OFFICER. The question is on agreeing to the resolution.

The resolution (S. Res. 458) was agreed to, as follows:

S. RES. 458

*Resolved*, That pursuant to Rule XI of the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials, the Presiding Officer shall appoint a committee of twelve senators to perform the duties and to exercise the powers provided for in the rule.

SEC. 2. The majority and minority leader shall each recommend six members, including a chairman and vice chairman, respectively, to the Presiding Officer for appointment to the committee.

SEC. 3. The committee shall be deemed to be a standing committee of the Senate for the purpose of reporting to the Senate resolutions for the criminal or civil enforcement of the committee's subpoenas or orders, and for the purpose of printing reports, hearings, and other documents for submission to the Senate under Rule XI.

SEC. 4. During proceedings conducted under Rule XI the chairman of the committee is authorized to waive the requirement under the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials that questions by a Senator to a witness, a manager, or counsel shall be reduced to writing and put by the Presiding Officer.

SEC. 5. In addition to a certified copy of the transcript of the proceedings and testimony had and given before it, the committee is authorized to report to the Senate a statement of facts that are uncontested and a summary, with appropriate references to the record, of evidence that the parties have introduced on contested issues of fact.

SEC. 6(a). The actual and necessary expenses of the committee, including the employment of staff at an annual rate of pay, and the employment of consultants with prior approval of the Committee on Rules and Administration at a rate not to exceed the maximum daily rate for a standing committee of the Senate, shall be paid from the contingent fund of the Senate from the appropriation account "Miscellaneous Items" upon vouchers approved by the chairman of the committee, except that no voucher shall be required to pay the salary of any employee who is compensated at an annual rate of pay.

(b). In carrying out its powers, duties, and functions under this resolution, the committee is authorized, in its discretion and with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable, or nonreimbursable, basis the services of personnel of any such department or agency.

SEC. 7. The committee appointed pursuant to section one of this resolution shall terminate no later than 60 days after the pronouncement of judgment by the Senate on the articles of impeachment.

SEC. 8. The Secretary shall notify the House of Representatives and counsel for Judge G. Thomas Porteous, Jr. of this resolution.

Mr. REID. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. MCCONNELL. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

**APPOINTMENT OF IMPEACHMENT TRIAL COMMITTEE**

Mr. REID. Mr. President, in accordance with the resolution on the appointment of an impeachment trial committee, I recommend to the Chair the appointment of Senators MCCASKILL, as chair, KLOBUCHAR, WHITEHOUSE, UDALL of New Mexico, SHAHEEN, and KAUFMAN.

The PRESIDING OFFICER. The Republican leader is recognized.

Mr. MCCONNELL. Mr. President, in accordance with the resolution on the appointment of an impeachment trial committee, I recommend to the Chair the appointment of Senator HATCH, who will serve as vice chairman, and Senators BARRASSO, DEMINT, JOHANNNS, RISCH, and WICKER.

The PRESIDING OFFICER. Pursuant to the resolution on the appointment of an impeachment trial committee and impeachment rule XI, the Chair appoints upon the recommendation of the two leaders the following Senators to be members of the committee to receive and report evidence in the impeachment of Judge G. Thomas Porteous, Jr.: Senators MCCASKILL (chairman), KLOBUCHAR, WHITEHOUSE, UDALL of New Mexico, SHAHEEN, KAUFMAN, HATCH (vice chairman), BARRASSO, DEMINT, JOHANNNS, RISCH, and WICKER. The Senate will take further proper order and notify the House of Representatives and counsel for Judge Porteous.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

**TAX ON BONUSES RECEIVED FROM CERTAIN TARP RECIPIENTS—Resumed**

The ACTING PRESIDENT pro tempore. The clerk will report the pending business.

The legislative clerk read as follows:

A bill (H.R. 1586) to impose an additional tax on bonuses received from certain TARP recipients.

Pending:

Rockefeller amendment No. 3452, in the nature of a substitute.

Sessions/McCaskill modified amendment No. 3453 (to amendment No. 3452), to reduce the deficit by establishing discretionary spending caps.

McCain/Bayh amendment No. 3475 (to amendment No. 3452), to prohibit earmarks in years in which there is a deficit.

McCain amendment No. 3527 (to amendment No. 3452), to require the Administrator of the Federal Aviation Administration to develop a financing proposal for fully funding the development and implementation of technology for the Next Generation Air Transportation System.

McCain amendment No. 3528 (to amendment No. 3452), to provide standards for determining whether the substantial restoration of the natural quiet and experience of the Grand Canyon National Park has been achieved and to clarify regulatory authority with respect to commercial air tours operating over the Park.

The ACTING PRESIDENT pro tempore. The Senator from North Dakota is recognized.

Mr. DORGAN. Mr. President, Senator ROCKEFELLER will be back on the floor shortly. We are on the FAA reauthorization bill. This is the fourth day in the Senate that we have been trying to pass the FAA reauthorization bill. We have accepted many amendments. We have had many amendments offered that have nothing at all to do with this legislation. I understand that. I think we voted on three or four of them last night. But the process of trying to get something through the Senate these days is slow and difficult. It is a little like watching paint dry to see activity on the floor of the Senate. We are trying very hard to do this.

This is not and should not be a controversial bill. Every American who gets on a commercial airplane in this country has a stake in this bill. This bill includes modernization of the air traffic control system which will allow people to fly in the skies more safely, more direct routes, save energy, and save pollution.

Modernization of the air traffic control system, to go from ground-based radar to a GPS navigation system—we should have done that a while ago. We have not. We need to catch up with the Europeans and others. We need to move with some dispatch.

This bill should have been done long ago, but it has been extended 11 times.

Ms. KLOBUCHAR. Will the Senator yield for a question?

Mr. DORGAN. I am happy to yield.

Ms. KLOBUCHAR. Mr. President, I serve on the Commerce Committee with Senator DORGAN. I thank him for his leadership.

During the time we waited and dithered and didn't get this done—not you but others—have other countries modernized their air traffic control systems?

Mr. DORGAN. Other countries are making good progress on this, going to a GPS system. GPS is not a new technology, as many of us know. You see many vehicles, automobiles around town using a GPS to navigate. You have people using GPS on their cell phones. But on a jet airliner flying across the country, hauling a couple of hundred people behind the cockpit, they are using World War II technology, ground-based radar for navigation, not GPS, which is the modernization approach.

This is called NextGen, modernizing the air traffic control system. Europe is moving on it, other parts of the world are moving on it, and we need to move. This is about safety. It is about modernizing the system. But more than that, it is about investing in the

infrastructure for aviation in the country, building the airports and the runways. It is about the issue of the passenger bill of rights, which is in this bill, saying to the airlines: Here are the new rules. You can't have somebody in an airplane 6 or 7 hours sitting on a runway someplace; 3 hours and then you have to bring them back to the gate. I know some do not like that, but that is the passenger bill of rights, giving passengers some rights as well.

I have spoken at length about this legislation, as has Senator ROCKEFELLER. I guess our hope would be that, if there are those who have additional amendments and wish to debate them, they might come to the floor or engage in the discussion on the floor so we can get this piece of legislation passed. It makes no sense for us to continue to talk and to continue to wait and not pass legislation when we have so much ahead of us to do.

#### COBELL SETTLEMENT

I want to mention a couple of other issues we need to address while I am waiting. One is the proposed settlement of the Cobell v. Salazar litigation. The parties to the Cobell settlement asked Congress to pass legislation approving the settlement by April 16th. It needs to be done by April 16th or the parties may return to litigation.

Let me tell you what the Cobell settlement is. It is about American Indians, the people who were here first in this country, the first Americans. American Indians ceded certain property as a result of treaties and other agreements, and reserved lands for their communities. The federal government promised to manage these reservations and hold the lands in trust. Well, over the last century, Indians watched as timber companies would come in and produce timber from those lands, mineral companies would come in and produce minerals, and drill for oil on those lands. All the while, the government was managing these lands and holding monies earned from that land in trust for the Indians.

Then the Indians asked the question: What has happened to our money? We see all these timber, grazing, and mineral activities going on and we are supposed to get money from these lands—that the government is holding in trust—but the money never quite shows up.

The Cobell case is named after a remarkable woman, Elouise Cobell, from Montana. She is an American Indian, a member of the Blackfeet Nation, and a banker. She filed a lawsuit against the United States and she asked for one thing. She said to the Federal government: Give me an accounting of the monies that you collected from my lands, my lands that you held and managed in trust for me. And do the same for all other Native Americans.

The fact is, nobody knew how much money was owed her. When they took a look at the records that the Federal government had, and held for Indian property and income, it was shameful.

For example, Mary Fish, an Oklahoma Indian, lived on her land in a very small, humble house, and she lived next to an oil well pump that was constantly pumping oil off of her land. She received just a pittance of money from that oil. Where did the money go? Who would account for that money? Why is it that Mary lived in such a humble manner, in a very small home, when on her land, an oil well was producing oil. Why is it that the money being managed by the Federal Government somehow never got to Mary?

When the lawsuit was filed by Elouise Cobell, the judges in the Federal courts asked: Where are the trust records for all these timber, grazing, and mineral activities?

Here is what they found: the Federal Government could not produce the records necessary for an accounting. For example, there were 162 boxes of case-related documents that were shredded after the trial began—a procedure that the U.S. Justice Department lawyers withheld from the court for 3 months. Other records were in Louisiana, and in a rat-infested warehouse in New Mexico.

Still more records were in North Dakota, and scattered in sheds across the country. I have photographs of what they saw when they opened up the warehouses in North Dakota. You can see piles of worn and damaged boxes of what were supposed to have been records. And, this is how the Federal Government cared for the information that was going to tell American Indians how their trust lands were used. It is unbelievable.

After years of litigation, the Parties in the Cobell case have reached a \$3.4 billion settlement. The settlement needs to be approved by Congress, and the parties have an April 16th deadline for Congress to approve the settlement. I have mentioned this on the floor of the Senate before. This Congress has a responsibility to proceed by the April 16th deadline to avoid further, unnecessary litigation.

The President, the Secretary of Interior—whom I commend, by the way, who negotiated this settlement—have asked us to get this done, and we have a responsibility to get this done.

#### DISABILITY CLAIMS

I also have another point which we will get to in a short period of time on appropriations. I will mention those Americans who have filed disability claims under Social Security and are now waiting over 16 months to have the Federal Government determine whether their claims are valid, waiting 490 days after a claim is filed. That is pretty unbelievable to me. This Congress has included about \$2.5 billion of additional funding for the Social Security Administration in the last 4 to 5 years. The expectation was that we would reduce the giant backlog that existed of cases, disability claims filed by people who have paid for this insurance.

American people pay for disability insurance out of their paycheck under

OASDI. When someone who is disabled files a claim in this country, on average it takes 491 days to process it. That, after we have given more than \$2.5 billion in increased funding to the Social Security Administration.

Precious little progress has been made. They say it used to be 514 days, now it is 491 days. That is not much progress as far as I am concerned if you are disabled and you are expecting to file a claim and have a claim processed in a reasonable period of time.

In my State there are 2,800 claims that are awaiting action. The number of administrative law judges—we have two vacancies now out of five. One gave his notice almost a year ago and has not been replaced.

None of this makes any sense to me. Congress should expect, of an agency like this, especially when you get \$2.5 billion in extra funding over five years, to understand why has no progress been made. I sent a letter to the head of Social Security asking what happened to the \$2.5 billion. On the appropriations side, I want some understanding of what happened to that money and why significant progress has not been made in these disability claims that resulted from the funding given the administration by the Congress.

Let me withhold for a moment and yield the floor so my colleague can take the floor with an agreement.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized.

UNANIMOUS CONSENT AGREEMENT  
EXECUTIVE CALENDAR

Mr. WHITEHOUSE. As in executive session I ask unanimous consent that today at 3 p.m. the Senate proceed to executive session to consider Calendar No. 653, the nomination of O. Rogeriee Thompson to be a U.S. circuit judge for the First Circuit, and there be up to 30 minutes of debate with respect to the nomination with the time equally divided and controlled between Senators WHITEHOUSE and SESSIONS or their designees; with Senator REED of Rhode Island controlling up to 5 minutes; that at 3:30 p.m. the Senate proceed to vote on confirmation of the nomination; that upon confirmation, the motion to reconsider be considered made and laid on the table and any statements relating to the nomination be printed in the RECORD as if read, the President be immediately notified of the Senate's action, and the Senate then resume legislative session.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. WHITEHOUSE. I thank the distinguished Senator for yielding for that unanimous consent.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, In the remaining couple of minutes, let me say it is my hope and the hope of Senators ROCKEFELLER and HUTCHISON that we will be able to make progress and complete the FAA reauthorization bill.

This is the fourth day. We have seen so many interminable delays in the Senate. Let's not delay legislation that has bipartisan support, that deals with the issue of air safety in this country, and has so many important provisions. Let's not at this point decide to delay this, of all pieces of legislation, something that should have been done long ago and has had 11 extensions instead of a reauthorization bill, when we finally have a bipartisan reauthorization bill brought to the floor of the Senate.

It is my hope if we are going to get cooperation on anything, at least we could expect it on this piece of legislation. My hope would be in the half-hour debate—I guess 1-hour debate and subsequent vote on the judge, we might make some progress in seeing whether we could get cooperation to be able to complete this bill today.

I yield the floor.

I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. Will the Senator withhold the request?

Mr. DORGAN. I will withhold.

EXECUTIVE SESSION

NOMINATION OF O. ROGERIEE THOMPSON TO BE UNITED STATES CIRCUIT JUDGE FOR THE FIRST CIRCUIT

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will go to executive session. The clerk will report the nomination.

The legislative clerk read the nomination of O. Rogeriee Thompson, of Rhode Island, to be United States Circuit Judge for the First Circuit.

Mr. LEAHY. Mr. President, I congratulate Justice Thompson on what should be her confirmation by the Senate today as a judge on the United States Court of Appeals for the First Circuit. President Obama has made another outstanding judicial nomination. The Senators from Rhode Island have worked tirelessly to bring this matter to conclusion with a Senate vote since her nomination was reported by the Senate Judiciary Committee 2 months ago.

It has been 2 weeks since the Senate has acted on any of the 18 judicial nominations approved by the Senate Judiciary Committee that are being stalled by Republican obstruction on the Senate Executive Calendar. It has been almost 4 months since I began publicly urging the Senate Republican leadership to abandon its strategy of obstruction and delay of the President's judicial nominees. Regrettably, their practices continue. Even though Justice Thompson is a well-respected judge who has more than two decades of experience on her State's courts, and whose nomination was reported by the Senate Judiciary Committee without a single dissenting vote, her nomination has been stuck on the Senate Executive Calendar for nearly 2 months. Jus-

tice Thompson's nomination is not the only one being stalled despite having been reported without opposition by the Senate Judiciary Committee. There are a dozen such nominations ready for consideration and confirmation that have been stalled without reason or explanation. They could and should all be considered and confirmed without further delay.

In addition there are another half dozen judicial nominees awaiting final consideration by the Senate that were reported with just a single, or a few, negative votes. Those should be debated and voted upon without more delay. If Republicans would enter into time agreements, they would be considered. We should not have to go through another filibuster and cloture vote like that on Judge Barbara Keenan of Virginia, whose nomination was stalled for 4 months and then approved 99 to 0. There was no reason for that delay. Yet it amounted to a Republican filibuster until it was finally ended 2 weeks ago by the majority leader and that Senate vote.

Just yesterday, more than a dozen Senators spoke about the delays and obstruction of the President's nominees. Many Senators spoke about the recent Republican filibuster of Judge Barbara Keenan. The Senator from Pennsylvania spoke about the nominee stalled since December to fill a Pennsylvania vacancy on the Third Circuit. The Senators from North Carolina and Maryland noted that two well-qualified nominees to vacancies on the Fourth Circuit remain stalled. And the Senator from Rhode Island, a hardworking member of the Judiciary Committee, spoke of the nomination on which we are finally being allowed to vote today, that of Justice Rogeriee Thompson.

When the Senate confirms Justice Thompson, we will be confirming the first African American to serve on the First Circuit, and only the second woman. She is a trailblazer and an extraordinary woman. She will be an outstanding Federal judge.

The Judiciary Committee has favorably reported 35 of President Obama's Federal circuit and district court nominees to the Senate for final consideration and confirmation. Only 17 of these have been confirmed. Justice Thompson's nomination will be the 18th. There are another five judicial nominations set to be reported by the Judiciary Committee this week, bringing the total awaiting final action by the Senate to 22.

Despite skyrocketing vacancies—now totaling over 100, more than 30 of which are “judicial emergencies”—we are far behind the pace for considering nominations set by the Democratic majority during President Bush's first 2 years in office. By this date during President Bush's first term, the Senate had confirmed 41 Federal circuit and district court nominations and there was only a single judicial nomination pending on the Senate's Executive Calendar. Only a single nomination was