

the President of the United States. I do thank the majority leader for the timely consideration of this issue.

Let me also just point out I understand that there has to be vigorous debate on this issue. There also has to be votes. It is our intention to have votes on various amendments throughout this debate, and we need to have every one on record on this issue. Also, I know I can count on the majority leader and the distinguished Democratic leader in trying to bring closure to this debate, to this issue, after reasonable debate, in one fashion or another.

Again, I want to thank the majority leader. It shows again the majority leader of this Senate, as was the case when the other side was the majority, when the leader gives his word, when the majority leader gives his word, it is good. And if it were otherwise, this body does not function.

I thank the majority leader and I thank the Democratic leader for all of his cooperation.

Mr. STEVENS. Will the Senator yield?

Mr. LOTT. I am happy to yield to the Senator.

Mr. STEVENS. Mr. President, I note that there is an understanding between us that conference reports coming out of the Appropriations Committee will receive prompt attention, but I wanted to make sure everyone understands that means putting aside anything that is here, to try and get these bills to the President before the end of the fiscal year.

Mr. LOTT. Mr. President, they are privileged, and would be brought up as soon as they are available. That is our highest priority as we reach the end of the fiscal year, and we want to move to immediate consideration of a continuing resolution also when it is available, if it is necessary, which I presume it will be.

Mr. STEVENS. Mr. President, the pending unanimous-consent agreement would provide 8 hours on that. I hope that, too, would be subject to taking up the conference reports as they become available.

Mr. LOTT. It would be. I hope we would not take 8 hours on the CR. I hope we have an understanding what is in it. It would be clean, I believe. There are only two amendments in order, one on each side. I hope maybe that would not be necessary and we would have short debate and go straight to vote.

Mr. STEVENS. I am sure Senator BYRD and I appreciate that very much.

Mr. LOTT. I yield the floor.

DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, 1998—CONFERENCE REPORT

The PRESIDING OFFICER. Under the previous order, the yeas and nays have been ordered on the defense appropriations conference report. The question is on agreeing to the conference report.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Delaware [Mr. BIDEN] and the Senator from Maryland [Ms. MIKULSKI] are necessarily absent.

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

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

[Rollcall Vote No. 258 Leg.]

YEAS—93

Abraham	Faircloth	Lott
Akaka	Feinstein	Lugar
Allard	Ford	Mack
Ashcroft	Frist	McCain
Baucus	Glenn	McConnell
Bennett	Gorton	Moseley-Braun
Bingaman	Graham	Moynihan
Bond	Gramm	Murkowski
Boxer	Grams	Murray
Breaux	Grassley	Nickles
Brownback	Gregg	Reed
Bryan	Hagel	Reid
Burns	Hatch	Robb
Byrd	Helms	Roberts
Campbell	Hollings	Rockefeller
Chafee	Hutchinson	Roth
Cleland	Hutchison	Santorum
Coats	Inhofe	Sarbanes
Cochran	Inouye	Sessions
Collins	Jeffords	Shelby
Conrad	Johnson	Smith (NH)
Coverdell	Kempthorne	Smith (OR)
Craig	Kennedy	Snowe
D'Amato	Kerrey	Specter
Daschle	Kerry	Stevens
DeWine	Kyl	Thomas
Dodd	Landrieu	Thompson
Domenici	Lautenberg	Thurmond
Dorgan	Leahy	Torricelli
Durbin	Levin	Warner
Enzi	Lieberman	Wyden

NAYS—5

Bumpers	Harkin	Wellstone
Feingold	Kohl	

NOT VOTING—2

Biden	Mikulski
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The conference report was agreed to. Mr. INOUE. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

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

The motion to lay on the table was agreed to.

EXECUTIVE SESSION

NOMINATION OF KATHARINE SWEENEY HAYDEN, OF NEW JERSEY, TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF NEW JERSEY

The PRESIDING OFFICER (Mr. DEWINE). Under the previous order, the Senate will go into executive session to consider the nomination of Katharine Sweeney Hayden, of New Jersey, to be U.S. district judge for the District of New Jersey, which the clerk will report.

The legislative clerk read the nomination of Katharine Sweeney Hayden, of New Jersey, to be U.S. district judge for the District of New Jersey.

Mr. NICKLES. Mr. President, I ask for the yeas and nays on the nomination.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Katharine Sweeney Hayden, of New Jersey, to be U.S. district judge for the District of New Jersey? On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. Mr. President, I announce that the Senator from Vermont, [Mr. JEFFORDS] is necessarily absent.

Mr. FORD. I announce that the Senator from Delaware [Mr. BIDEN] and the Senator from Maryland [Ms. MIKULSKI] are necessarily absent.

The result was announced—yeas 97, nays 0, as follows:

[Rollcall Vote No. 259 Ex.]

YEAS—97

Abraham	Feingold	Lugar
Akaka	Feinstein	Mack
Allard	Ford	McCain
Ashcroft	Frist	McConnell
Baucus	Glenn	Moseley-Braun
Bennett	Gorton	Moynihan
Bingaman	Graham	Murkowski
Bond	Gramm	Murray
Boxer	Grams	Nickles
Breaux	Grassley	Reed
Brownback	Gregg	Reid
Bryan	Hagel	Robb
Bumpers	Harkin	Roberts
Burns	Hatch	Rockefeller
Byrd	Helms	Roth
Campbell	Hollings	Santorum
Chafee	Hutchinson	Sarbanes
Cleland	Hutchison	Sessions
Coats	Inhofe	Shelby
Cochran	Inouye	Smith (NH)
Collins	Johnson	Smith (OR)
Conrad	Kempthorne	Snowe
Coverdell	Kennedy	Specter
Craig	Kerrey	Stevens
D'Amato	Kerry	Thomas
Daschle	Kohl	Thompson
DeWine	Kyl	Thurmond
Dodd	Landrieu	Torricelli
Domenici	Lautenberg	Warner
Dorgan	Leahy	Wellstone
Durbin	Levin	Wyden
Enzi	Lieberman	
Faircloth	Lott	

NOT VOTING—3

Biden	Jeffords	Mikulski
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The nomination was confirmed.

STATEMENT ON NOMINATION OF JUDGE KATHARINE SWEENEY HAYDEN

Mr. LEAHY. Mr. President, today is the 40th anniversary of the beginning of the end of racial segregation in the public schools in Little Rock, AR. As we turn to reflect on Little Rock and the aftermath of the Supreme Court's landmark decision on public school segregation, we should consider the important lessons those times still hold for us today. Little Rock was a testing point in our history when the rule of law and respect for our courts and Constitution prevailed.

Three years earlier, the Supreme Court's unanimous Brown versus Board of Education decision prompted a concerted assault on the judiciary. On March 12, 1956, 81 Members of Congress signed a resolution condemning that ruling as a "clear abuse of judicial power" and part of a "trend in the Federal judiciary to legislate, in derogation of the authority of Congress, and

to encroach upon the reserved rights of the people." Billboards sprouted around the country demanding the impeachment of Chief Justice Earl Warren. Justice Clarence Thomas recalls that as a young man his "most vivid childhood memory of the Supreme Court was the 'Impeach Earl Warren' signs that lined Highway 17 near Savannah. I didn't understand who this Earl Warren fellow was, but I knew he was in some kind of trouble."

It should concern all of us that a pattern resembling that which followed the Supreme Court's decision in *Brown* is being repeated. It has once again become fashionable in some quarters to sloganeer about impeaching Federal judges. This year's continuing attack on the judicial branch, the slowdown in the processing of the scores of good women and men the President has nominated to fill vacancies on the Federal courts, and widespread threats of impeachment are all part of a partisan, ideological effort to intimidate the judiciary. Extremist elements have turned their fire on the branch of Government most protective of our freedoms but the least equipped to protect itself from political attacks.

We are hearing from some Members of Congress a clamor for impeachment when a judge renders a decision that irritates them. We are hearing demands that Congress destroy the orderly process of appellate court and Supreme Court review and, instead, assume the role of a supercourt that would legislatively review and veto individual decisions. We are seeing proposals to amend the Constitution, to eliminate the independence and lifetime tenure of judges. Extreme rhetoric and outlandish proposals have contributed to a poisonous atmosphere in which the Federal justice system is overloaded.

Last week on the 210th anniversary of the signing of the Constitution, a newspaper reported that the majority leader of the Senate applauded the idea of Republicans plotting to intimidate the Federal judiciary, commenting that "it sounds like a good idea to me." For the majority leader of the Senate to join an acknowledged attack on the independence and integrity of the Federal judiciary is a troubling and disappointing development that shows how easily political leaders can succumb to such political temptations, even at the expense of the checks and balances that are needed to protect our rights.

It is one thing to criticize the reasoning of an opinion, or the result in a case, or to introduce legislation to change the law. It is quite another matter to undercut the separation of powers and the independence that the Founders created to insulate the judiciary from politics. Independent judicial review has been a crucial check on two political branches of our Government that has served us so well for more than two centuries. This bedrock principle has helped preserve our freedoms and helped make this country the

model for emerging democracies around the world.

Something that sets our Nation—the world's oldest continuing democracy—apart from virtually all others is the independence of our Federal judiciary and the respect that the public and that political leaders give it. Every fledgling democracy sends observers to the United States to study and emulate our independent judiciary, the envy of the world. The independence of our third, coequal branch of Government gives it the ability to fairly and impartially arbitrate disputes, to prevent overreaching by the other two branches, and to defend our individual rights and freedoms that are so susceptible to the gusting political winds of the moment.

In the 23 years that I have been privileged to serve in the U.S. Senate I have never known a time when the Senate's leadership, Republican or Democratic, would tolerate partisan and ideological politics to so divert the institution from its constitutional responsibilities to the third, coequal branch of Government.

The Nation needs to move forward, as we did after President Eisenhower acted to restore the rule of law. The citizens of Little Rock and other cities throughout the country accepted the constitutional imperative to end segregated schools. A few years later Congress acted to pass the historic Civil Rights Act of 1964 and the Voting Rights Act of 1965. In 1997, can anyone say that we are not a better and stronger nation for having honored the Supreme Court's *Brown* decision by enforcing it in Little Rock?

The American people know that a fair and impartial judiciary is key to maintaining our democracy and our rights. The continuing partisan campaign against qualified and fair judicial nominees has to come to an end. If the judiciary is to retain its ability to protect our rights and freedoms as we move into a new century of American history, if it is to serve as a check on the political branches, it must have the judges and resources necessary to the task. Vacant courtrooms and empty benches cannot hear criminal trials, enforce our environmental protection laws, resolve legal claims or uphold the Constitution against encroachment.

I am delighted that the majority leader has decided to take up the nomination of Judge Katherine Sweeney Hayden to be a U.S. district judge for the District of New Jersey. Judge Sweeney Hayden is a well-qualified nominee.

Since 1991, the nominee has been a judge on the superior court in Newark, NJ. The ABA has unanimously found her to be well qualified, its top rating. She has the support of Senators LAUTENBERG and TORRICELLI. She had a confirmation hearing on June 25 and was reported by the Judiciary Committee on July 10 along with the nomination of Anthony Ishii to be a district judge in the Eastern District of California, whose nomination remains pend-

ing on the Senate Calendar. Her nomination has been held up for the last 2½ months without explanation and I am glad to see it finally being brought forward. I congratulate Judge Sweeney Hayden and her family and look forward to her service on the federal court.

I spoke on September 5 and 11 urging that this nomination and the others on the calendar be considered. There are now five other judicial nominations ready for Senate consideration. Unfortunately, they are not being taken up today and I know of no plan for them to be taken up any time soon.

With Senate confirmation of these district judges, the Senate will still be a confirmation short of the dismal total of last year. We still have more than 40 nominees among the 68 nominations sent to the Senate by the President who are pending before the Judiciary Committee and have yet to be accorded even a hearing during this Congress.

Many of these nominations have been pending since the very first day of this session, having been renominated by the President. Several of those pending before the committee had hearings or were reported favorably last Congress but have been passed over so far this year, while the vacancies for which they were nominated over 2 years ago persist. The committee has 10 nominees who have been pending for more than a year, including 5 who have been pending since 1995.

While I am encouraged that the Senate is today proceeding with the nomination of Judge Sweeney Hayden, there is no excuse for the committee's delay in considering the nominations of such outstanding individuals as Prof. William A. Fletcher; Judge James A. Beaty, Jr.; Judge Richard A. Paez; Ms. M. Margaret McKeown; Ms. Ann L. Aiken; and Ms. Susan Oki Mollway, to name just a few of the outstanding nominees who have all been pending all year without so much as a hearing. Professor Fletcher and Ms. Mollway had both been favorably reported last year. Judge Paez and Ms. Aiken had hearings last year but have been passed over so far this year. Nor is there any explanation or excuse for the Senate not immediately proceeding to consider the other five judicial nominations pending on the Senate Calendar.

The Senate continues to lag well behind the pace established by Majority Leader Dole and Chairman HATCH in the 104th Congress. By this time 2 years ago, the Senate had confirmed 36 Federal judges. With today's actions, the Senate will have confirmed less than one-half that number, only 16 judges. We still face almost 100 vacancies and have 50 pending nominees to consider with more arriving each week.

For purposes of perspective, let us also recall that by August 1992, during the last year of President Bush's term, a Democratic majority in the Senate had confirmed 53 of the 68 nominees sent to us by a Republican President.

By the end of August this year, this Senate had acted on only 9 out of 61 nominees. Indeed, by the end of September in President Bush's final year in office, the Senate confirmed 59 of his 72 nominees. This Senate is on pace to confirm only 16 out of a comparable number of nominations.

Those who delay or prevent the filling of these vacancies must understand that they are delaying or preventing the administration of justice. We can pass all the crime bills we want, but you cannot try the cases and incarcerate the guilty if you do not have judges. The mounting backlogs of civil and criminal cases in the dozens of emergency districts, in particular, are growing taller by the day. National Public Radio has been running a series of reports all this week on the judicial crises and quoted the chief judge and U.S. attorney from San Diego earlier this week to the effect that criminal matters are being affected.

I have spoken about the crisis being created by the vacancies that are being perpetuated on the Federal courts around the country. At the rate that we are going, we are not keeping up with attrition. When we adjourned last Congress there were 64 vacancies on the federal bench. After the confirmation of 16 judges in 9 months, there has been a net increase of 32 vacancies. The Chief Justice of the Supreme Court has called the rising number of vacancies "the most immediate problem we face in the Federal judiciary."

The Judiciary Committee has heard testimony from second circuit, ninth circuit and 11th circuit judges about the adverse impact of vacancies on the ability of the Federal courts to do justice. The effect is seen in extended delay in the hearing and determination of cases and the frustration that litigants are forced to endure. The crushing caseload will force Federal courts to rely more and more on senior judges, visiting judges and court staff. Judges from the Second Circuit Court of Appeals testified, for example, that over 80 percent of its appellate court panels over the next 12 months cannot be filled by members of that court but will have to be filled by visiting judges. This is wrong.

We ought to proceed without delay to consider the nomination of Judge Sonia Sotomayor to the second circuit and move promptly to fill vacancies that are plaguing the second and ninth circuits. We need to fill the 5-year-old vacancy in the Northern District of New York and move on nominations for over 30 judicial emergency districts.

In choosing to proceed on this nominee, the Republican leadership has chosen for at least the fourth time this month to skip over the nomination of Margaret Morrow. I, again, urge the Senate to consider the long-pending nomination of Margaret Morrow to be a district court judge for the Central District of California.

Ms. Morrow was first nominated on May 9, 1996—not this year, but May

1996. She had a confirmation hearing and was unanimously reported to the Senate by the Judiciary Committee in June 1996. Her nomination was, thus, first pending before the Senate more than 15 months ago. This was one of a number of nominations caught in the election year shutdown.

She was renominated on the first day of this session. She had her second confirmation hearing in March. She was then held off the Judiciary agenda while she underwent rounds of written questions. When she was finally considered on June 12, she was again favorably reported with the support of Chairman HATCH. She has been left pending on the Senate Executive Calendar for more three months and has been passed over, time and again, without justification or explanation.

What is this mystery hold all about? In spite of my repeated attempts to find out who is holding up consideration of this outstanding nominee, and why, I am at a loss.

Ms. Morrow is a qualified nominee to the district court. I have heard no one contend to the contrary. She has been put through the proverbial wringer—including at one point being asked her private views, how she voted, on 160 California initiatives over the last 10 years.

The committee insisted that she do a homework project on Robert Bork's writings and on the jurisprudence of original intent. Is that what is required to be confirmed to the district court in this Congress?

With respect to the issue of "judicial activism," we have the nominee's views. She told the committee:

The specific role of a trial judge is to apply the law as enacted by Congress and interpreted by the Supreme Court and courts of appeals. His or her role is not to make law.

She also noted:

Given the restrictions of the case and controversy requirement, and the limited nature of legal remedies available, the courts are ill equipped to resolve the broad problems facing our society, and should not undertake to do so. That is the job of the legislative and executive branches in our constitutional structure.

Margaret Morrow was the first woman President of the California Bar Association and also a past president of the Los Angeles County Bar Association. She is an exceptionally well-qualified nominee who is currently a partner at Arnold & Porter and has practiced for 23 years. She is supported by Los Angeles' Republican Mayor Richard Riordan and by Robert Bonner, the former head of DEA under a Republican Administration. Representative JAMES ROGAN attended her second confirmation hearing to endorse her.

Margaret Morrow has devoted her career to the law, to getting women involved in the practice of law and to making lawyers more responsive and responsible. Her good works should not be punished but commended. Her public service ought not be grounds for delay.

She does not deserve this treatment. This type of treatment will drive good people away.

The President of the Women Lawyers Association of Los Angeles, the President of the Women's Legal Defense Fund, the President of the Los Angeles County Bar Association, the President of the National Conference of Women's Bar Association and other distinguished attorneys from the Los Angeles area have all written the Senate in support of the nomination of Margaret Morrow. They write that: "Margaret Morrow is widely respected by attorneys, judges and community leaders of both parties" and she "is exactly the kind of person who should be appointed to such a position and held up as an example to young women across the country." I could not agree more.

Mr. President, the Senate should move expeditiously to consider and confirm Margaret Morrow, along with Anthony Ishii, Richard Lazzara, Christina Snyder and Marjorie Rendell.

(At the request of Mr. DASCHLE, the following statement was ordered to be printed in the RECORD.)

EXPLANATION OF ABSENCE

● Mr. BIDEN. Mr. President, this evening, the Senate conducted two rollcall votes—on the conference report to the Defense Department Appropriations bill and on the nomination of Katharine Sweeney Hayden to be U.S. District Judge for the District of New Jersey. Unfortunately, I was not present for those votes.

Tonight, at my daughter's school in Wilmington is what is called mini roster night. That is what most people know as open house or parents' night—where the parents go around and meet all of the teachers. Because of the Senate voting schedule, I will either have to miss votes or miss mini roster night at my daughter's school.

On both matters voted on tonight, my position is already on the record, and my vote is not expected to change the outcome.

With regard to the defense bill, I voted for the bill on July 15 when it passed the Senate by the overwhelming margin of 94-4. There have been no substantial changes in the legislation, and I continue to support it.

On July 10, the Senate Judiciary Committee reported out the nomination of Katharine Sweeney Hayden to be a New Jersey district judge. I supported her nomination, and I continue to do so.

Again, Mr. President, on both matters, my vote is not expected to change the outcome, and therefore, I have decided to attend parents' night at my daughter's school. I appreciate the understanding of my colleagues and my constituents.●

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate returns to legislative session.