

The PRESIDING OFFICER. The Senate is not on that bill.

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

The PRESIDING OFFICER. The clerk will report the motion to invoke cloture.

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

The PRESIDING OFFICER. The clerk will call the roll to ascertain the presence of a quorum.

The legislative assistant proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

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

The PRESIDING OFFICER. Under the previous order, the clerk will report the motion to invoke cloture.

The assistant legislative clerk read as follows:

CLOUTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on Executive Calendar No. 215, the nomination of Brian Theodore Stewart, of Utah, to be United States district judge for the district of Utah vice J. Thomas Greene, retired:

Trent Lott, Orrin Hatch, Mike Crapo, Wayne Allard, Ben Nighthorse Campbell, Charles Grassley, Peter G. Fitzgerald, Connie Mack, Chuck Hagel, Rod Grams, Pat Roberts, Conrad Burns, Judd Gregg, Larry E. Craig, Robert F. Bennett, and Mike DeWine.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call under rule XXII is waived.

The question is, Is it the sense of the Senate that debate on the nomination of Brian Theodore Stewart, of Utah, to be United States District Judge for the District of Utah, be brought to a close?

The yeas and nays are required under the rule.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Arizona (Mr. MCCAIN), is necessarily absent.

The yeas and nays resulted—yeas 55, nays 44, as follows:

[Rollcall Vote No. 281 Ex.]

YEAS—55

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

NAYS—44

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

NOT VOTING—1

McCain

The PRESIDING OFFICER. On this vote, the yeas are 55, the nays are 44. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

Mr. LEAHY. Mr. President, I deeply regret that we have reached this point in connection with the nomination of Brian Theodore Stewart to the District Court for Utah. Please understand that Democrats are prepared to vote on this nomination, as we are on all of the judicial nominations pending on the Senate Executive Calendar. This impasse is caused not by Democrats' refusals to vote on that nomination but by Republican refusals to allow a vote on the nominations of Judge Paez or Ms. Berzon. If we can vote on the Stewart nomination in less than 2 months, we should be able to vote on the Paez nomination within 4 years and the Berzon nomination within 2 years.

This debate is about fairness. The Senate needs to be fair to all people in this country. For too long nominees—judicial nominees like Judge Paez, Ms. Berzon and Justice Ronnie White of Missouri, and Executive Branch nominees like Bill Lann Lee—have been opposed in anonymity through secret holds and delaying tactics. They have been forced to run a gauntlet of Senate confirmation. Those strong enough to survive are being dealt the final death blow not by being defeated in a fair up or down vote on the nomination but through a refusal of the Republican leadership to call them up for a vote. These nomination are being killed through neglect and silence, not defeated by a majority vote.

Today we are not asking for any Senator's vote for any nomination. Instead, I am asking the Senate recognize that its responsibility is to vote on all the judicial nominations on the calendar. We can vote for them or against them, we can vote them up or vote them down, but after 44 months or 27 months or 20 months, after completing every step in what is a long, tortuous confirmation process, the nominations of Judge Richard Paez, Justice Ronnie White and Marsha Berzon are as entitled to a Senate vote as the nomination of Ted Stewart.

I do not begrudge Ted Stewart a Senate vote. Despite strong opposition from many quarters from Utah and around the country, from environmentalists and civil rights advocates

alike, I did not oppose the Stewart nomination in Committee and I expect to vote for his final confirmation here on the floor of the United States Senate. I have been supportive of Chairman HATCH in his efforts to expedite Committee consideration of the Stewart nomination with the expectation that these other nominees who have been held up so long, nominees like Judge Richard Paez, Marsha Berzon and Justice White, were to be considered by the Senate and finally voted on, as well. The Chairman and I have both voted for Judge Paez and Justice White each time they were considered by the Committee and we both voted for and support Marsha Berzon.

I have tried to work with the Chairman and with the Majority Leader on all these nominations. I would like to work with those whom the Majority Leader is protecting from having to vote on the Paez and Berzon nominations, but I do not know who there are. In spite of what was supposed to be a Senate policy that did away with anonymous holds, we remain in a situation where I do not even know who is objecting to proceeding to schedule a vote on the Paez and Berzon nominations, let alone why they are objecting. In this setting I have no ability to reason with them or address whatever their concerns are because I do not know their concerns. That is wrong and unfair to the nominees.

I do not deny to any Senator his or her prerogatives as a member of the Senate. I have great respect for this institutions and its traditions. Still, I must say that this use of anonymous holds for extended periods that doom a nomination from ever being considered by the United States Senate is wrong and unfair.

Again, I say that this debate is about fairness and about the Senate being fair to all nominees and to other Senators and to the American people. If we can vote on the Stewart nomination within 4 weeks in session, we can vote on the Paez nomination within 4 years and the Berzon nomination within 2 years. That is the point that the distinguished Democratic Leader was making by moving to proceed to consider those nominations this evening. The Republican majority has refused to debate those nominations and continues its steadfast refusal to vote on them after years of delay.

I do not want to see any judicial nomination held up without a vote, but the Republican leadership is not being fair to the other judicial nominees on the calendar. We ask only for a firm commitment that they will each get an up or down vote, too. The Republican Majority refuses to make even that commitment to a vote before the end of the session on these qualified nominees.

In my statement last week I detailed the path that each of these nominees has traveled to the Senate. All are now available for a vote on confirmation by the Senate. All should be accorded an up or down vote.

Judge Richard Paez is an outstanding jurist and a source of great pride and inspiration to Hispanics in California and around the country. He served as a local judge before being confirmed to the federal court bench several years ago and is currently a Federal District Court Judge. He has twice been reported to the Senate by the Judiciary Committee and has spent a total of 9 months over the last 2 years on the Senate Executive Calendar awaiting the opportunity for a final confirmation vote. His nomination was first received by the Senate in January 1996, 44 months ago.

Justice Ronnie White is an outstanding member of the Missouri Supreme Court and has extensive experience in law and government. He is the first African American to serve on the Missouri Supreme Court. He has also been twice reported favorably to the Senate by the Judiciary Committee and has spent a total of 7 months on the floor calendar awaiting the opportunity for a final confirmation vote. His nomination was first received by the Senate in June 1997, 27 months ago.

Marsha Berzon is one of the most qualified nominees I have seen in 25 years. Her legal skills are outstanding, her practice and productivity have been extraordinary. Lawyers against whom she has litigated regard her as highly qualified for the bench. Nominated for a judgeship within the Circuit that saw this Senate hold up the nominations of other qualified women for months and years—people like Margaret Morrow, Ann Aiken, Margaret McKeown and Susan Oki Mollway—she, too, is listed ahead of the Stewart nomination on the floor calendar. Ms. Berzon was first nominated in January 1998, 20 months ago, and a year and one-half before Mr. Stewart.

It is against this backdrop that we are asking the Senate to be fair to these judicial nominees and all nominees. I do not want to see votes delayed on any nominee. For the last few years the Senate has allowed one or two or three secret holds to stop judicial nominations from even getting a vote. That is wrong.

The Chief Justice of the United States Supreme Court wrote in January last year:

Some current nominees have been waiting a considerable time for a Senate Judiciary Committee vote or a final floor vote. . . . 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.

Let us follow the advice of the Chief Justice. Let the Republican leadership schedule up or down votes on the nominations of Judge Paez, Justice White and Marsha Berzon so that we can vote them up or vote them down. And so that we can proceed on all the judicial nominations that our federal courts need to do their job of administering justice. Let us be fair to all.

Mrs. BOXER. Mr. President, I voted against cloture on the Stewart nomina-

tion because the process that brought us to this vote has, to date, prevented the Senate from even considering the nominations of several other judicial nominees who have been waiting far longer than has Mr. Stewart.

Richard Paez and Marsha Berzon, two nominees for the 9th Circuit, have both been reported by the Judiciary Committee and have been on the Senate Executive Calendar since July. But, more important, their nominations have been pending in the Senate for years—2 years in the case of Ms. Berzon and three years for Judge Paez!

It is patently unfair to ignore these fine nominations while moving forward on the Stewart nomination. I have no problem with Mr. Stewart, as far as I know. But this is an important process question, and I simply had no choice but to vote no on cloture on Stewart until we are assured of also moving ahead with those nominations which have been pending far longer.

Mr. KOHL. Mr. President, Ted Stewart, as any other nominee, deserves a vote. And eventually, I expect to vote for him, because I respect the judgment of my friend ORRIN HATCH and of the President. But there is a long line of qualified nominees ahead of him and, at least at this point, it's not right for him to "cut" in line.

For example, just compare Mr. Stewart's path with that of another qualified candidate, Tim Dyk, a nominee for the Federal Circuit. Mr. Dyk was first nominated 18 months ago, came out of Committee with strong bipartisan support, then stalled on the floor in the last days of the session because of a "secret" hold. He was nominated again eight months ago, and he has still never been placed on the agenda.

As for Mr. Stewart, he was nominated less than two months ago, and it took him just 48 hours to go from nomination, to hearing, to Committee approval. Now Mr. Stewart is up for a full Senate vote just 53 days after he was nominated. Meanwhile, five hundred and two days after Tim Dyk was nominated, he seems to be going nowhere fast.

That makes no sense to me or, I suspect, to Chairman HATCH, who also supports this nominee.

Mr. President, as with Mr. Stewart, Mr. Dyk will, I predict, be confirmed with bipartisan support. He's a first-rate intellect. He passed this Committee by a 14 to 4 vote last year, and all of us know that the Federal Circuit would be lucky to have someone of his caliber.

Like Tim Dyk and Ted Stewart, there are many other deserving nominees out there. Let's not play favorites. These nominees, who have to put their lives on hold waiting for us to act, deserve an "up or down" vote. And, more importantly, the American people deserve prompt action, so that our courts can stay on top of their workload, and continue putting criminals behind bars.

So, Mr. President, I expect to support Ted Stewart, but don't think he alone

should get the timely consideration that all nominees—including Tim Dyk, Marsha Berzon and Richard Paez—deserve. So I hope we can get an agreement to move forward not only Mr. Stewart, but also other deserving nominees. Thank you.

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will now return to legislative session.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2000—CONFERENCE REPORT

Mr. LOTT. Mr. President, under the previous consent agreement, I ask the Chair to lay before the Senate the conference report to accompany the DOD authorization bill.

The PRESIDING OFFICER. The clerk will report.

The legislative assistant read as follows:

The committee on conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 1059), have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of August 5, 1999.)

Mr. DASCHLE addressed the Chair.

The PRESIDING OFFICER. The Senate Democratic leader.

FAILURE OF REGULAR ORDER IN THE SENATE

Mr. DASCHLE. Mr. President, I wanted to have the opportunity to talk about the next four votes because it is critical that everyone understand what really is at stake tonight. Many Democratic Senators are in favor of the bankruptcy bill. Many of us have indicated publicly we support a bankruptcy bill. But we also support debate on a bankruptcy bill.

We support the opportunity to take up a bill under the regular rules of the Senate, regular order, have a good debate, have amendments offered, do what we should do in the Senate tradition, and have the kind of full and open debate we have not had on a bill since last May.

We have not brought a nonappropriations bill to the Senate floor since last May under the normal Senate rules.

Every single bill that has come before us since May has been under unanimous-consent agreements that circumvent, if not completely eliminate, the use of the normal Senate rules.

I had a clear understanding, as early as last summer, that when we brought the bankruptcy bill up, it would come up under normal Senate rules. I understand times change and circumstances