

Breaux	Gramm	McConnell
Brownback	Grams	Moynihan
Bryan	Grassley	Murkowski
Bunning	Gregg	Murray
Burns	Hagel	Nickles
Byrd	Harkin	Reed
Campbell	Hatch	Reid
Chafee	Helms	Robb
Cleland	Hollings	Roberts
Cochran	Hutchinson	Rockefeller
Collins	Hutchison	Roth
Conrad	Inhofe	Santorum
Coverdell	Inouye	Sarbanes
Craig	Jeffords	Schumer
Crapo	Kennedy	Sessions
Daschle	Kerrey	Shelby
DeWine	Kerry	Smith (NH)
Dodd	Kohl	Smith (OR)
Domenici	Kyl	Snowe
Dorgan	Landrieu	Specter
Durbin	Lautenberg	Stevens
Edwards	Leahy	Thomas
Enzi	Levin	Thompson
Feinstein	Lieberman	Thurmond
Fitzgerald	Lincoln	Torricelli
Frist	Lott	Voinovich
Gorton	Lugar	Warner
Graham	McCain	Wyden

NAYS—5

Boxer	Johnson	Wellstone
Feingold	Mikulski	

NOT VOTING—2

Baucus	Mack
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The nomination was confirmed.

NOMINATION OF RAYMOND C. FISHER

The PRESIDING OFFICER (Mr. CRAPO). The clerk will report the next nomination.

The legislative assistant read the nomination of Raymond C. Fisher, of California, to be United States Circuit Judge for the Ninth Circuit.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Raymond C. Fisher, of California, to be United States Circuit Judge for the Ninth Circuit. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

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	Burns	Craig
Brownback	Campbell	Crapo
Bunning	Coverdell	Enzi

Gramm	Inhofe	Sessions
Grams	Lott	Shelby
Gregg	McConnell	Smith (NH)
Hagel	Murkowski	Thomas
Helms	Nickles	Thompson
Hutchinson	Roberts	Warner
Hutchison	Santorum	

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.

Mr. SCHUMER. Mr. President, I ask unanimous consent to address the Senate for 3 minutes.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. MCCAIN. Mr. President, I respect the right of my friend from New York. In behalf of the Senator from Connecticut, who is waiting, we have pending business we are trying to finish today. I ask unanimous consent that the Senator from New York be allowed to speak for 3 minutes. Hopefully, we can move on.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. SCHUMER. I very much appreciate the courtesy.

The PRESIDING OFFICER. Will the Senator withhold?

Without objection, the vote on the Robb amendment is laid aside.

Mr. MCCAIN. Mr. President, could I ask for recognition?

The PRESIDING OFFICER. The Senator from Arizona may clarify his unanimous consent.

Mr. MCCAIN. Mr. President, prior to the Senator from New York being recognized, I ask unanimous consent the vote on or in relation to the Robb amendment be postponed, to occur in the next stacked sequence of votes, and, prior to the vote, Senators ROBB, WARNER, BRYAN, and MCCAIN be given 5 minutes each for closing remarks and that the amendment now be laid aside.

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

The Senator from New York is recognized for 3 minutes.

Mr. SCHUMER. I thank the Senators from Arizona, Oklahoma, and Connecticut for their courtesy, and the President as well.

I would like to make some remarks in contraposition to the Senator from Oklahoma. I say that without casting any impugning of any motivations as to why people voted.

It seems to me that this being, as I understand it, the first time we have this year rejected a Senate candidate on the floor—and I understand that there were recommendations from the home State—I still find myself very troubled by that rejection. I find myself troubled because we do need diversity on our bench. We need to, in my judgment, try to have more African Americans on the bench.

There is not an African American Member of this body. I find that regretful. The first impression I had the first day I walked on the floor was that. And I guess what I would like to do is just call into question why this nomination was rejected. I would ask that we examine. I know one of the reasons was the opposition of this nominee to the death penalty. I happen to be for the death penalty. I wrote the death penalty law when I was in the House. But I would like to ask how many other nominees we have rejected because of opposition to the death penalty.

I am told that one of the Senators who objected from Missouri actually nominated judges on that State court who agreed with Ronnie White on the very case that has been brought into question.

So if we are not to be accused of maybe having two standards, I think we ought to be very careful.

I respect each Senator's right to oppose nominations for judge. I respect the idea that we often defer to our colleagues in their home States. But I think there is a higher calling here. That is, because this was one of the few African American nominees to reach this floor, we ought to be extra careful to make sure the standard was not being used that we haven't used for some other nominees who have come before this body this year.

I disagree with that nominee on the issue at hand. But I still think that we should have extra sensitivity, given the long history of division in this country and the need to try to bring some equality onto our bench in the sense that we have a diverse and representative judiciary.

I hope my colleagues will examine those questions. I do not know the answers to them. But my guess is, we have unanimously approved or approved overwhelmingly judges who have the same view as Judge Ronnie White on this very controversial issue.

Mr. NICKLES. Mr. President, will the Senator yield for a question?

Mr. SCHUMER. I would be happy to yield for a question.

Mr. NICKLES. To my knowledge, we have never confirmed a nominee who was opposed by the National Sheriffs

Association or by a State Federation of Police Chiefs. I don't think we have done that in my Senate career.

Does the Senator know of any instance where we have ignored the recommendations of major law enforcement officers?

The PRESIDING OFFICER. The Senator's 3 minutes have expired.

Mr. SCHUMER. I ask unanimous consent for 30 seconds to respond to the Senator's question.

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

Mr. SCHUMER. I thank the Senator. I don't know of cases. But I would want to have examined the record about those questions and the questions I asked before we moved so hastily to reject this nominee. It so happened that there were votes on the other side in committee for this nominee that abruptly reversed themselves without any explanation as to why.

I yield my time.

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

AIR TRANSPORTATION IMPROVEMENT ACT—Resumed

The PRESIDING OFFICER. Under the regular order, we are now in legislative business.

The Senator from Connecticut.

AMENDMENT NO. 2241

(Purpose: To require the submission of information to the Federal Aviation Administration regarding the year 2000 technology problem, and for other purposes)

Mr. DODD. Mr. President, I call up amendment No. 2241.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Connecticut (Mr. DODD), for himself, Mr. BENNETT, Mr. MCCAIN, Mr. ROCKEFELLER, and Mr. HOLLINGS, proposes an amendment numbered 2241.

Mr. DODD. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

At the appropriate place, insert the following:

SEC. ____ FEDERAL AVIATION ADMINISTRATION YEAR 2000 TECHNOLOGY SAFETY ENFORCEMENT ACT OF 1999.

(a) SHORT TITLE.—This section be cited as the "Federal Aviation Administration Year 2000 Technology Safety Enforcement Act of 1999".

(b) DEFINITIONS.—In this section:

(1) ADMINISTRATOR.—The term "Administrator" means the Administrator of the Federal Aviation Administration.

(2) AIR CARRIER OPERATING CERTIFICATE.—The term "air carrier operating certificate" has the same meaning as in section 44705 of title 49, United States Code.

(3) YEAR 2000 TECHNOLOGY PROBLEM.—The term "year 2000 technology problem" means a failure by any device or system (including any computer system and any microchip or integrated circuit embedded in another device or product), or any software, firmware, or other set or collection of processing instructions to process, to calculate, to compare, to sequence, to display, to store, to