

Thank you, Mr. President.
I yield the floor.

The PRESIDING OFFICER. The minority leader is recognized.

Mr. DASCHLE. Mr. President, I intend to use my leader time for purposes of making a couple of statements this morning. I would like first to voice my support for the conference report to H.R. 1000, which, as has already been noted, is the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century.

I hope our former colleague, Senator Wendell Ford, a dear and very special friend of mine who served as chairman and ranking member of the Senate Commerce Committee's Aviation Subcommittee for many years, is watching because this truly is a tribute to his dedication not only to aviation but to his country and to the Senate for a long time. It is a very appropriate designation for this legislation.

The conference report we are considering today will help repair our aviation system for the skyrocketing number of passengers who will travel in the 21st century. It is also a fitting tribute to Senator Ford's vision that he expressed to us on many occasions as he was leading us on this and many other issues.

I thank as well the majority leader, Senator LOTT, for his persistence in providing leadership on this matter and in getting us to this point. I think the credit also must go to our distinguished subcommittee chairman and ranking member. It is clear they have the chemistry and the working relationship it takes to accomplish something of this complexity, and I pay tribute to both of them for their efforts and for their arduous work in getting us to this point. We ought to be celebrating this morning the accomplishments of something that many of us have been hoping to achieve for a long period of time. Were it not for their leadership and support, it would not have happened.

I have been reminded oftentimes of the movie "Groundhog Day" with Bill Murray, with the Senate waking up once a year to consider the same FAA reauthorization bill. The Senate first began considering this bill in 1998 and passed S. 2279, the Wendell H. Ford National Air Transportation System Improvement Act, in September of that year. Although there was overwhelming support for that legislation in the Senate, House and Senate negotiators could not agree on a multiyear bill at that time.

Last year, the Senate passed S. 82, the Air Transportation Improvement Act of 1999, in October. As my colleagues have recalled, this legislation was almost identical to the FAA reauthorization bill we approved the year before. Again, there was overwhelming support for the legislation in the Senate. However, House and Senate negotiators could not agree on a multiyear FAA reauthorization bill, just as they were unable to do the year before.

As the Senate has considered and reconsidered the FAA reauthorization bill in recent years, the FAA has been operating for the most part under short-term extensions. I have mentioned on many occasions my view that this is no way to fund such an important Federal agency. Short-term extension after short-term extension disrupts long-term planning at the FAA and airports around the country that rely on Federal funds to improve their facilities and enhance aviation safety. The only thing worse than passing a short-term extension is allowing funding for FAA programs to lapse altogether. Unfortunately, that is exactly what the Congress did when the House again refused to consider the 6-month extension the Senate passed on November 10 of last year. For the last 4 months, funds for airport improvement projects have been tied up because Congress has been unable to forge an agreement on the FAA reauthorization bill.

So today we begin to rectify that mistake and prepare for the increased demand that will be placed on our aviation system in the 21st century. This bill will authorize approximately \$40 billion for aviation programs over the next 3 years. In fiscal year 2001, the bill will authorize \$12.7 billion, an increase of \$2.7 billion over current levels. In the next fiscal year, it will enhance aviation safety by authorizing \$3.2 billion for airport improvement projects, \$3.3 billion in fiscal year 2002, and \$3.4 billion in fiscal year 2003.

It will also allow airports to increase passenger facility charges from \$3 to \$4.50. This PFC increase is expected to generate \$700 million for much-needed construction projects that will improve airports in South Dakota and around the country, in every State.

The conference report to the FAA reauthorization bill also includes a number of provisions that would encourage competition among the airlines and ensure quality air service for communities. For instance, it would authorize funding for a 4-year pilot program to improve commercial air service in small communities that have not benefited from deregulation.

Specifically, the bill calls for the establishment of an Office of Small Community Air Service Development at the Department of Transportation (DOT) to work with local communities, states, airports and air carriers and develop public-private partnerships that bring commercial air service including regional jet service to small communities.

We have often commented on how critical the Essential Air Service Program has been to small communities in South Dakota and around the country in their efforts to retain air service. The Small Community Aviation Development Program would give DOT the authority to provide up to \$500,000 per year to as many as 40 communities that participate in the program and agree to pay 25 percent in matching

funds. In addition, the legislation would establish an air traffic control service pilot program that would allow up to 20 small communities to share in the cost of building contract control towers.

I am hopeful that South Dakota will have the opportunity to participate in the Small Community Aviation Development Program. I think it is one of the better features of this legislation. I commend my colleagues for their inclusion of it.

Mr. President, I know some of our colleagues may oppose this bill because it would increase the number of flights at the four slot-controlled airports. The proposal to increase the number of flights at Ronald Reagan Washington National Airport has been particularly controversial, and I would again like to commend Senator ROBB for being a strong advocate for his constituents in northern Virginia.

I know some of our colleagues on the Appropriations Subcommittee on Transportation will also oppose this bill because of the budgetary treatment of the aviation trust fund. I understand their concerns and look forward to working with them to ensure that Amtrak, Coast Guard, the National Transportation Safety Board, and FAA operations are adequately funded.

Although there may be different provisions in this bill that each of us may find objectionable, I hope my colleagues will join me in supporting H.R. 1000, the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century. Spring is just around the corner, and we cannot afford to delay construction on airport improvement projects any longer.

It is unfair to FAA, it is unfair to airports in South Dakota and throughout the country, and it is unfair to passengers who rely on the aviation system for their travel needs.

I encourage my colleagues to support the conference report to the FAA reauthorization bill.

Again, I commend my colleagues, especially the chairman and ranking member, for their work on this bill. I hope we can pass it this afternoon on a bipartisan basis.

NOMINATIONS OF MARSHA BERZON AND RICHARD PAEZ

Mr. DASCHLE. Mr. President, among the constitutional responsibilities entrusted to the Senate, none is more critical to the well-being of our democracy than providing advice and consent on Presidential nominations. Later on today, we take up that solemn responsibility in connection with two very distinguished judicial nominees, Marsha Berzon and Judge Richard Paez.

Let me commend the majority leader for his commitment to the Senate, and to these nominees, that we would take up these nominees for consideration and ultimately for a vote on confirmation before the 15th of March. We

would not be here were it not for the fact that he persisted and that he was willing to hold to the commitment he made to us last year.

Both nominees have waited an extraordinarily long time for this consideration. Marsha Berzon, a nominee for the Ninth Circuit, has been kept waiting for a vote more than 2 years. Judge Paez, another Ninth Circuit nominee, has waited for more than 4 years. That is longer than any Federal court nominee in history—a statistic that should shame the Senate.

Judge Paez and Ms. Berzon are both exceptional legal minds and remarkable people. But before I discuss their qualifications, I wish to say something about the context in which these nominations are being considered. Since the 106th Congress convened in January, the President has nominated 79 men and women to fill the vacancies on the Federal bench. Without exception, these nominees have come to us with the highest marks from their peers. Yet of the 79 nominees, only 34—fewer than half—were confirmed last year, and only 4 have been confirmed so far this year.

Looking at those figures, one might assume we have no pressing need for Federal judges. In fact, just the opposite is true. Today, there are 76 vacancies on the Federal bench. Of those 76 vacancies, 29 have been empty so long they are officially classified as “judicial emergencies.” The failure to fill these vacancies is straining our Federal court system and delaying justice for people all across this country.

This cannot continue. As Chief Justice Rehnquist warns, “Judicial vacancies cannot remain at such high levels indefinitely without eroding the quality of justice.”

The Ninth Circuit court, to which both Judge Paez and Marsha Berzon have been nominated, is also one of our Nation's busiest courts. It has also been hardest hit by our neglect. More than 20 percent of the Ninth Circuit bench is vacant. This is a court that serves almost 20 percent of the United States.

Procter Hug, the Chief Justice of the Ninth Circuit Court of Appeals, was appointed in 1980 when the court had 23 active judges and a caseload of 3,000 appeals. Today, with six vacancies, the Ninth Circuit has 22 active judges to hear more than 9,000 appeals. They have one fewer judge today than they had 20 years ago—with 300 percent more cases.

So I thank my colleagues for finally coming together to address this urgent question. The failure to fill Federal court vacancies harms plaintiffs and defendants alike. Both are forced to wait too long for justice. The failure to fill Federal court vacancies also imposes heavy and unjustifiable burdens on judicial nominees and their families. Can any of us imagine what it would be like to be kept waiting more than 4 years, as Judge Paez has? What would it be like to be unable to make

personal or professional plans for 4 years? I have met Judge Paez, and I have to tell you, I am amazed by the dignity and grace he has exhibited during this ordeal. Perhaps that is not surprising, though, from a man lawyers routinely rate as exceptional in both his judicial temperament and his command of legal doctrine.

For a long time, those who opposed Marsha Berzon and Judge Paez would not say why. Now some of them say the problem isn't with the nominees, the problem is with the court itself. The Ninth Circuit, they claim, is a “rogue” circuit. They claim the Ninth Circuit's reversal rate by the Supreme Court is too high. They argue, therefore, that we should refuse to confirm anymore Ninth Circuit judges. We should just let the vacancies go unfilled.

The fact is, the Eleventh, Seventh, and Fifth Circuits all have a higher rate of reversal than the Ninth Circuit. The Ninth Circuit is completely within the mainstream of prevailing judicial opinion.

Even if that were not the case, this Senate has no right to attempt to punish the citizens who rely on the Ninth Circuit in this manner. Nor do we have the right to try to influence the independence of the court in this way. That is unconstitutional.

Our responsibility under the Constitution is to vote on whether to confirm judges. It is not our responsibility, and it is not our right, to try to influence or intimidate judges after they are confirmed.

As we consider the nominations of Judge Richard Paez and Marsha Berzon, let us remember that these votes are not a referendum on the Ninth Circuit, or on President Clinton.

And they should not be about partisan politics. These votes are about two people. Two distinguished and inspiring Americans who are eminently qualified for the bench.

Richard Paez has been a judge for 18 years. He is the first Mexican-American ever to serve as a federal district judge in Los Angeles. He was confirmed by this body in 1994; that vote was unanimous.

Judge Paez has received the highest rating the American Bar Association gives for federal judicial nominees. He has worked for the public good throughout his career, working first as a legal aid lawyer, and then, for 13 years, as a Los Angeles Municipal Court judge.

In his current position, as a United States District Judge, Judge Paez has presided over a wide variety of complex civil and criminal cases. For his work, he has garnered bipartisan support, and the support of such law enforcement organizations as the Los Angeles County Police Chiefs' Association and the National Association of Police Organizations.

Time and again, on the bench he has demonstrated the qualities that are essential to a strong and respected judicial system—wisdom, courage, and

compassion. We need judges like Richard Paez on the bench. Without public servants like him, this system fails.

Marsha Berzon is equally qualified.

She is a nationally known and extremely well regarded appellate litigator with a highly respected San Francisco law firm. She is also a former clerk for the United States Supreme Court. She has served as a visiting professor at both Cornell Law School and Indiana University Law School. She is a widely recognized expert in the field of employment law—an area of the law that requires the increasing attention of our federal judiciary.

She has argued four cases in the Supreme Court of the United States, and has filed dozens of Supreme Court briefs on complex issues. To quote my friend Senator HATCH, her “competence as a lawyer is beyond question.”

Ms. Berzon also has the support of the National Association of Police Organizations, business and Republican leaders. She enjoys a reputation among colleagues and opposing counsel for being a fair-minded, well prepared, and principled advocate. I have also met Ms. Berzon, and I find her temperament and seriousness well-suited for the job she has been nominated to fill.

The federal judiciary has been described as “the thin black line between order and chaos.” I have faith that Richard Paez and Marsha Berzon, once confirmed, will live up to that challenge.

Mr. President, I yield the floor.

WENDELL H. FORD AVIATION INVESTMENT AND REFORM ACT FOR THE 21ST CENTURY—CONFERENCE REPORT—Continued

The PRESIDING OFFICER. The Senator from Virginia.

Mr. ROBB. Thank you, Mr. President.

I thank my friend from New Jersey for yielding time.

Mr. President, for the third time in as many years, I am forced to express in this Chamber my strong opposition to a congressional proposal to meddle with Virginia airports. I will have to oppose the FAA conference report, most of which I strongly support and I believe is long overdue because it breaks a promise to the people of Northern Virginia—a promise that Congress would permit us to manage and develop our own airports.

While I will again vote against this bill to protest congressional interference in the operation of Virginia's airports, I would like to make clear that I fully support FAA reauthorization and release of the airport improvement funds. In fact, as someone who has long believed that we need to substantially increase our investments in transportation, I commend the conferees for crafting a conference report which does just that.

Under this bill, annual funding for many airports in Virginia will nearly