

My wife and I came to Madisonville, Tennessee, 24 years ago as national health service corps doctors. We helped start the Women's Wellness and Maternity Center, Tennessee's first out of hospital birth center. We depend on the obstetrical service at Sweetwater Hospital for C-sections and consultation.

This doctor goes on to tell me that because of high malpractice premiums Sweetwater has only one remaining obstetrician who is now forced to bear full responsibility for providing 24-hour maternity coverage and that efforts to recruit additional doctors have failed.

As these real life stories show, this health care crisis is real and it is spreading. The current medical liability system is costly, inefficient and hurts all Americans. In addition to damaging access to medical services, the current medical malpractice system creates problems throughout the entire health care system.

It indirectly costs the country billions of dollars every year in defensive medicine. The fear of lawsuits forces doctors to practice defensive medicine by ordering extra tests and procedures. Though the numbers are hard to calculate, well-researched reports predict savings from meaningful reform at tens of billions of dollars per year.

It directly costs the taxpayers billions. The CBO has estimated that reasonable reform will save the federal government \$14.9 billion over 10 years primarily through savings in Medicare and Medicaid.

It impedes efforts to improve patient safety. The threat of excessive litigation discourages doctors from discussing medical errors in ways that could dramatically improve health care and save hundreds or thousands of lives. I am a strong supporter of patient safety legislation which I hope we will pass this year. But in addition to patient safety legislation, we need to address the underlying problem—our liability system.

We must reform this broken liability system. That is why I strongly support the Patients First Act. I want to thank my colleague, Senator MCCONNELL, the majority whip, who skillfully led this debate. I also want to thank Chairman GREGG and Chairman HATCH for their longstanding leadership of this issue, and Senator ENSIGN, the lead sponsor of S. 11, who has seen the current crisis close up in his own State of Nevada. And finally, I want to thank Senator DIANNE FEINSTEIN of California. Her State has been the model of medical liability reform and has demonstrated that commonsense reforms work. I look forward to continuing to work with Senator FEINSTEIN on this issue. We share the goal of putting patients first.

The Patients First Act will protect access to care and ensure that those who are negligently injured are fairly compensated. Again, I encourage my colleagues to move this legislation forward. We cannot afford further delay.

I yield the remainder of our time.

CLOTURE MOTION

The PRESIDING OFFICER. All time having expired, under the previous order, the clerk will report the motion to invoke cloture.

The bill clerk read as follows:

CLOTURE 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 the motion to proceed to the consideration of Calendar No. 186, S. 11, the Patients First Act of 2003.

Bill Frist, Mitch McConnell, John Ensign, Craig Thomas, Rick Santorum, Larry E. Craig, George V. Voinovich, John Cornyn, Trent Lott, Ted Stevens, Michael B. Enzi, James Inhofe, Chuck Hagel, Jon Kyl, Judd Gregg, Pat Roberts, John E. Sununu.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on the motion to proceed to S. 11, the Patients First Act, shall be brought to a close?

The yeas and nays are ordered under the rule. The clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from Florida (Mr. GRAHAM), the Senator from Massachusetts (Mr. KERRY), and the Senator from Georgia (Mr. MILLER) are necessarily absent.

I further announce that, if present and voting, the Senator from Florida (Mr. GRAHAM) and the Senator from Massachusetts (Mr. KERRY) would each vote "nay."

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

The yeas and nays resulted—yeas 49, nays 48, as follows:

[Rollcall Vote No. 264 Leg.]

YEAS—49

Alexander	DeWine	McConnell
Allard	Dole	Murkowski
Allen	Domenici	Nickles
Bennett	Ensign	Roberts
Bond	Enzi	Santorum
Brownback	Fitzgerald	Sessions
Bunning	Frist	Smith
Burns	Grassley	Snowe
Campbell	Gregg	Specter
Chafee	Hagel	Stevens
Chambliss	Hatch	Sununu
Cochran	Hutchison	Talent
Coleman	Inhofe	Thomas
Collins	Kyl	Voinovich
Cornyn	Lott	Warner
Craig	Lugar	
Crapo	McCain	

NAYS—48

Akaka	Dorgan	Levin
Baucus	Durbin	Lieberman
Bayh	Edwards	Lincoln
Biden	Feingold	Mikulski
Bingaman	Feinstein	Murray
Boxer	Graham (SC)	Nelson (FL)
Breaux	Harkin	Nelson (NE)
Byrd	Hollings	Pryor
Cantwell	Inouye	Reed
Carper	Jeffords	Reid
Clinton	Johnson	Rockefeller
Conrad	Kennedy	Sarbanes
Corzine	Kohl	Schumer
Daschle	Landrieu	Shelby
Dayton	Lautenberg	Stabenow
Dodd	Leahy	Wyden

NOT VOTING—3

Graham (FL)	Kerry	Miller
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The PRESIDING OFFICER. On this vote, the yeas are 49, the nays are 48.

Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

EXECUTIVE SESSION

NOMINATION OF VICTOR J. WOLSKI, OF VIRGINIA, TO BE A JUDGE OF THE UNITED STATES COURT OF FEDERAL CLAIMS

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to executive session to consider the following nomination, which the clerk will report.

The legislative clerk read the nomination of Victor J. Wolski, of Virginia, to be a Judge of the United States Court of Federal Claims.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Victor J. Wolski, of Virginia, to be a Judge of the United States Court of Federal Claims?

Mr. HATCH. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from Florida (Mr. GRAHAM), the Senator from Massachusetts (Mr. KERRY), the Senator from Georgia (Mr. MILLER) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) would vote "nay".

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

The result was announced—yeas 54, nays 43, as follows:

[Rollcall Vote No. 265 Ex.]

YEAS—54

Alexander	DeWine	Lugar
Allard	Dole	McCain
Allen	Domenici	McConnell
Baucus	Ensign	Murkowski
Bennett	Enzi	Nickles
Bond	Feinstein	Roberts
Brownback	Fitzgerald	Santorum
Bunning	Frist	Sessions
Burns	Graham (SC)	Shelby
Campbell	Grassley	Smith
Chafee	Gregg	Snowe
Chambliss	Hagel	Specter
Cochran	Hatch	Stevens
Coleman	Hutchison	Sununu
Collins	Inhofe	Talent
Cornyn	Kyl	Thomas
Craig	Lincoln	Voinovich
Crapo	Lott	Warner

NAYS—43

Akaka	Corzine	Jeffords
Bayh	Daschle	Johnson
Biden	Dayton	Kennedy
Bingaman	Dodd	Kohl
Boxer	Dorgan	Landrieu
Breaux	Durbin	Lautenberg
Byrd	Edwards	Leahy
Cantwell	Feingold	Levin
Carper	Harkin	Lieberman
Clinton	Hollings	Mikulski
Conrad	Inouye	Murray

Nelson (FL)	Reid	Stabenow
Nelson (NE)	Rockefeller	Wyden
Pryor	Sarbanes	
Reed	Schumer	

NOT VOTING—3

Graham (FL)	Kerry	Miller
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The nomination was confirmed.

Mr. LAUTENBERG. Mr. President, I rise today to express my profound disappointment with the very troublesome nomination of Victor Wolski to be a judge on the U.S. Court of Federal Claims.

The last time I spoke on the Senate floor about judicial nominations, I wholeheartedly supported and endorsed President Bush's nomination of Mr. Michael Chertoff to the Third Circuit Court of Appeals.

I commended the administration for selecting Mr. Chertoff because he was a "consensus nominee." I supported Mr. Chertoff and many other judicial nominees because they demonstrated that they were not ideologues beholden to a specific political agenda.

I support nominees who demonstrate moderation, fairness, open-mindedness, and the proper judicial temperament.

Victor Wolski is a self-described political ideologue on a mission to promote extreme right-wing libertarian views.

In his own words, Mr. Wolski told the *National Journal* that "every single job I've taken since college has been ideologically oriented, trying to further my principles," which he describes as a "libertarian" belief in "property rights" and "limited government."

There is nothing wrong with having convictions and strong beliefs. I respect that. But when a judicial nominee views the world through a limited, ideological prism, that presents a grave danger to our democracy and judicial system.

Such a nominee does not inspire trust or confidence in our judicial system.

Victor Wolski has unabashedly dedicated his career to promoting an extreme right-wing crusade to erode important Federal safeguards protecting workers, human health, and the environment.

For example, he has argued that it was "far beyond" Congress's power under the Commerce Clause to protect wetlands that serve as habitat for 55 different species of migratory birds and repeatedly referred to these wetlands as "puddles."

Mr. Wolski also lacks the judicial temperament necessary for a Federal judge.

In his testimony to the Judiciary Committee, Mr. Wolski asserted that he "certainly meant no disrespect" when he referred to Members of Congress as "bums" in a letter he wrote to the editor of the *San Francisco Chronicle*. I wonder what he did mean?

Mr. President, it is entirely permissible for Mr. Wolski—as an advocate—to promote limited government; but he should not be a Federal judge.

And he certainly shouldn't be a judge on the Court of Federal Claims.

This is the court that hears disputes involving the Government arising under the fifth amendment's "takings" clause—the very constitutional provision Mr. Wolski has fervently worked to undermine and redefine.

Appointing Victor Wolski to the Court of Federal Claims is akin to putting the fox in charge of the henhouse. It is part of the Bush administration's war against the environment—a war the administration is waging on many fronts—the courts included. His nomination is another example of the Bush administration's zeal to pack the courts with right-wing ideologues despite the President's claim that he is "a uniter, not a divider." How cynical.

The "bottom line" is that Victor Wolski is wholly unfit for the position to which he has been nominated. I urge my colleagues to vote against his confirmation.

Mr. HATCH. Mr. President, I feel compelled to take a moment to respond to remarks of my colleague from New York on the nomination of Mr. Wolski and the status of the Court of Federal Claims. My colleague from New York has stated that we should not fill the judgeships that Congress itself created. This eleventh-hour attack on the court of claims and Mr. Wolski is simply a thinly veiled effort to stall action on more of President Bush's judicial nominees. Let's give the President a break and be honest.

I would like to respond to allegations that Mr. Wolski is not qualified to serve on the court of claims. These allegations are simply unfounded. I agree with my colleague that, in print, Mr. Wolski's statement in his 1999 *National Journal* profile raised questions about how he would view his role as a judge. But Mr. Wolski was indeed thoroughly questioned about this statement at his hearing. His response to those questions has convinced me that this statement should not be any bar whatsoever to his confirmation. Mr. Wolski testified at his hearing that he understands that the role of a judge is not political. He understands that the role of a judge—especially a trial court judge—is to follow the law and not to consider personal beliefs or positions argued as an advocate in determining how to rule. Mr. Wolski explained during his hearing that this statement was meant to reflect that his decision to work for our former colleague, Senator Connie Mack, was consistent with his commitment to public service. Mr. Wolski emphatically stated on several occasions throughout his hearing that his statement was meant to clarify the point that he has been not motivated by the money throughout his career, and he does not consider himself an ideologue.

Mr. Wolski has also been criticized about some of the clients that he has represented. It is important to remember that the clients Mr. Wolski has represented have been on both sides of the issues. He has represented property owners in takings cases, but he has also represented municipal and State

governments. For example, he is presently a member of the litigation team representing the State of Nevada, Clark County, and the city of Las Vegas in their opposition to the location of a nuclear waste repository at Yucca Mountain. He represented a group of municipal governments challenging a commercial development that would have caused environmental, traffic, and other urban sprawl problems. So plainly, Mr. Wolski has represented a broad range of clients, including some whom a die-hard conservative ideologue would not represent. Instead, Mr. Wolski's clients indicate to me that he has done his best to act as an advocate on behalf of his clients' positions, regardless of his personal beliefs, just as every good lawyer should do.

I know that some of my colleagues have expressed concern about Mr. Wolski's brief in the case of *Cargill v. United States*. The first thing that I want to point out is the obvious: Mr. Wolski was acting in this case as a lawyer on behalf of his employer and had to perform his duties as assigned to him. In this case, his job was to submit an amicus brief. Second, it is important to note that Mr. Wolski was not challenging Congress's ability to protect migratory birds in general. Rather, his argument specifically addressed the scope of the Clean Water Act, which does not incorporate findings about migratory birds. Mr. Wolski clearly testified that he believes that the Clean Water Act is constitutional.

Finally, in regard to Mr. Wolski's comments in the *San Francisco Examiner*, I agree that they were a bit passionate, but Mr. Wolski's hearing testimony reflects that he has matured in the 11 years since he penned that letter. In fact, Mr. Wolski testified that he wrote that letter before he worked as a congressional staffer. He testified that had he worked on the Hill before he wrote that letter, he probably wouldn't have written it at all. So I believe that this letter can easily be chalked up to youthful indiscretion, and nothing more. I have every reason to believe that, as a judge, he will act consistently with his past practice by following the law regardless of his personal beliefs.

Now, I would also like to take a moment to respond to some of the allegations regarding the Court of Claims. It is clear that the Court of Claims is a necessity, especially with the current backlog of cases in our Federal district courts. The Court of Claims and the district courts have overlapping jurisdiction. This allows the Court of Claims to ease the heavy caseload in the district courts. As such, the Court of Claims is a mainstay of the system.

A letter to the editor in the *Washington Post* on April 9, 2003, from the president of the Court of Claims bar association made the point well. He said that the docket of the court "consists of more than 4,000 cases. Opinions by the judges are recognized as well-written and well-considered and reflecting

of the complexity of the caseload. Those practicing before the Court know that its judges are busy." This letter, drafted by a lawyer who actually practices before the court, took direct issue with the Post's recommendation to abolish the court, saying it "missed the central point."

The editorial by Professor Schooner in the Washington Post on March 23, 2003, suggesting that the current cases pending before the Court of Claims can be easily divided among the district courts is troubling to me. Eliminating the Court of Claims would add nearly 5,000 additional cases to the district courts at a time when they are unable to keep up with the pace of cases being filed. Professor Schooner's academic analysis also fails to take account of the considerable work and learning that district judges do in order to handle complex patent, antitrust, environmental or civil rights cases.

I must admit that I was surprised to learn how inaccurate the statistics of my colleague from New York were after I did some research regarding the caseloads of the Federal district courts and the Court of Claims. These misleading numbers allege that the district court judges have an average caseload of 355 cases per judge, whereas Court of Claims judges would have an average caseload of 19 cases if the four pending nominees were confirmed. After reviewing statistics from both the Federal courts' legislative affairs office and the Court of Claims, however, it is clear that Senator SCHUMER's figures are erroneous. If we take the current caseload of the Court of Claims and suppose that the court was at its fully authorized number of 16 judges, the average caseload per judge would be 309. This is in sharp contrast to the 19 my colleagues would have us believe and not much less than the average caseload per district judge.

This campaign against Mr. Wolski and the Court of Claims is just the newest tactic in an organized effort to prevent President Bush's well-qualified judicial nominees from being confirmed and it must stop. It is obvious to me that the criticism of the court's necessity is borne more of political opportunity than any serious merit. We shouldn't be in the business of creating more rationales for delay. The lack of any functional problem in litigation between sovereign and citizen, or problem with the court structure, makes the solution of elimination of the Court of Claims a solution in search of a problem.

Mr. HATCH. Madam President, I rise today in support of Victor Wolski, one of the four nominees for the Court of Federal Claims who have been awaiting votes on their nominations by the full Senate since March.

When Mr. Wolski was first nominated to the Court of Claims in September 2002, he joined three other well-qualified nominees to the same court who had been pending even longer. Charles Lettow had been nominated a month

earlier, in August 2002, while Susan Braden and Mary Ellen Coster Williams had been nominated, respectively, in May and June 2001. None of them received a hearing in the 107th Congress.

So I am pleased that we have at last reached an agreement for an up-or-down vote on the nominations of Mr. Wolski and the other Court of Claims nominees. But getting to this point was not simple. We had to file a motion to invoke cloture on Mr. Wolski's nomination. Now, I am pleased that our Democratic colleagues agreed to vitiate this motion. But the fact still remains that we were almost forced to resort to a cloture vote simply to secure an up-or-down vote on Mr. Wolski's nomination. Mr. Wolski would have been the first Court of Claims nominee in the history of the Senate to be forced through a cloture vote. This would have been a historic but sad precedent that we came dangerously close to setting. As I said, I am pleased that we did not go down this path and that we are proceeding to an up-or-down vote on Mr. Wolski's nomination.

Mr. Wolski will make a fine addition to the Court of Claims. His nomination has bipartisan support, having been reported favorably to the full Senate by all 10 Judiciary Committee Republicans and Senator FEINSTEIN. He is an accomplished trial attorney who has represented clients on both sides of the issues, including a number of clients on what many consider to be the so-called liberal side. For example, Mr. Wolski has represented a group of municipal governments challenging a commercial development that would have caused environmental, traffic, and other urban sprawl problems. He presently represents a class of Medicare beneficiaries who are suing the tobacco industry to try to recover reimbursement to the Medicare system. And he represents the State of Nevada, Clark County, and the City of Las Vegas in their opposition to the location of a nuclear waste repository at Yucca Mountain. Clearly, this is not the work of an ideologue but the work of an accomplished lawyer who recognizes his duty to represent his clients' interests to the best of his ability.

Mr. Wolski's breadth and depth of experience will be a true asset to the Court of Claims. After graduating from the University of Virginia Law School, Mr. Wolski clerked for Judge Vaughn Walker of the U.S. District Court for the Northern District of California. He has a fine record in public service, including 5 years as a litigator with a public interest law firm. During his tenure there, he represented clients in cases presenting significant issues of constitutional and property rights law. He continued his public service by serving as General Counsel and Chief Tax Advisor in the Congress with the Joint Economic Committee for Senator Connie Mack. As the first person to attend college in his family, Victor Wolski feels it is important to give back to the community and felt a

strong commitment towards the public sector. This commitment is quite evident in his professional background.

In 2000, Mr. Wolski transitioned from the public sector to private practice, joining the prominent Washington, DC, law firm Cooper, Carvin & Rosenthal. He now practices with its successor firm, Cooper & Kirk. He has a reputation for being a thoughtful and hard-working legal professional who will be a stellar addition to the Court of Federal Claims, and I commend President Bush for nominating him.

Mr. President, we find ourselves at an important point. We have two eminent and well-qualified circuit court nominees, Miguel Estrada and Priscilla Owen, currently being blocked by a minority of Senators from an up-or-down vote on the Senate floor. History will show that this minority group of Senators was not asking for a full and open debate. They were not asking for meaningful deliberation on these well-qualified nominees. Rather, this minority group of Senators was committed to subverting precedent and reworking the meaning of advice and consent.

I think we can agree that the confirmation process is broken. I certainly hope we can find a constructive way to restore the process, but recent talk does not lead me to be overly optimistic—not when we hear injudicious talk about plans for three, four, or more planned filibusters. I hope that is not the kind of history we want to write. Instead, I hope that my colleagues will see today's up-or-down vote on Mr. Wolski's nomination as an opportunity to put a stop to the obstruction and delay by giving all the rest of our nominees the courtesy of a simple vote on their nominations. That is all we ask.

NOMINATIONS OF MARY ELLEN COSTER WILLIAMS, OF MARYLAND, SUSAN G. BRADEN, OF THE DISTRICT OF COLUMBIA, AND CHARLES F. LETTOW, OF VIRGINIA

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to the consideration of the following nominations, en bloc, which the clerk will report.

The assistant legislative clerk read the nominations of Mary Ellen Coster Williams, of Maryland, to be a Judge of the United States Court of Federal Claims; Susan G. Braden, of the District of Columbia, to be a Judge of the United States Court of Federal Claims; and Charles F. Lettow, of Virginia, to be a Judge of the United States Court of Federal Claims.

The PRESIDING OFFICER. The Senator from Texas.

Mrs. HUTCHISON. Madam President, I ask unanimous consent to speak for up to 2 minutes on the nomination of Susan Braden before the vote.

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