

Murkowski	Rockefeller	Stabenow
Murray	Santorum	Stevens
Nelson (FL)	Sarbanes	Sununu
Nelson (NE)	Schumer	Talent
Nickles	Sessions	Thomas
Pryor	Shelby	Voinovich
Reed	Smith	Warner
Reid	Snowe	Wyden
Roberts	Specter	

## NOT VOTING—2

Brownback Kerry

The nomination was confirmed.

# NOMINATION OF WALTER D. KELLEY, JR. TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF VIRGINIA

The PRESIDING OFFICER. The clerk will state the nomination.

The assistant legislative clerk read the nomination of Walter D. Kelley, of Virginia to be United States District Judge for the Eastern District of Virginia.

Mr. WARNER. Mr. President, the chairman of the Judiciary Committee is here. Senator ALLEN and I need to have a few minutes together.

There is no greater responsibility as a Senator than selecting for recommendation to a President our nominees to the Federal judiciary. I have known Mr. Kelley for many years. He graduated cum laude from my alma mater, Washington and Lee University. After working for a year as a press secretary to a member of the U.S. House of Representatives, he returned to Washington and Lee and earned his law degree magna cum laude.

Subsequent to law school, Mr. Kelley served as a law clerk to a judge on the U.S. Court of Appeals for the Second Circuit in New York City. We are fortunate that when he completed his clerkship, Mr. Kelley returned home to Norfolk, VA, where he practiced law with great distinction.

Article II, Section 2 of the Constitution provides the President with the authority to nominate, with the "Advice and Consent of the Senate," individuals to serve as judges on the Federal courts. Thus, the Constitution provides a role for both the President and the Senate in this process. The President has the power to nominate, and the Senate has the power to render "Advice and Consent" on the nomination.

In fulfillment of this constitutional responsibility, after Judge Morgan of the Eastern District of Virginia bench took senior status, Senator ALLEN and I had the honor of recommending Walter Kelley to President Bush to fill that vacancy. After reviewing our recommendations, President Bush nominated Mr. Kelley.

Mr. Kelley's nomination was subsequently received by the Senate, and in a timely fashion, the Senate Judiciary Committee provided its unanimous approval of this nominee. I am grateful to Chairman HATCH and Senator LEAHY for their hard work in moving this nomination forward. And, I am grateful

to the leadership on both sides of the aisle for bringing Mr. Kelley's nomination before the full Senate.

When Senator ALLEN and I first learned of the vacancy on the Eastern District of Virginia bench, we began our search to find the most qualified and well-respected individual to fill that vacancy. During that process, one name repeatedly was brought up. That name was Walt Kelley.

Walt Kelley graduated with his bachelor's degree, cum laude, in 1977 from my alma mater, Washington & Lee University. Then, after working for a year as a Press Secretary to a member of the United States House of Representatives, he returned to Washington & Lee and earned his law degree, magna cum laude.

Subsequent to law school, Mr. Kelley served as a law clerk to a judge on the United States Court of Appeals for the Second Circuit, in New York City. We are fortunate in Virginia that after he completed his clerkship, Mr. Kelley returned to his home town of Norfolk, VA to practice law.

Since then, for the past 22 years, Walt Kelley has practiced law for two of Virginia's best law firms, Wilcox & Savage PC, and Troutman Sanders LLP. During these two decades plus of his legal career, his practice has focused primarily on complex business litigation before the Federal courts.

Moreover, during these 22 years, Mr. Kelley has earned a reputation for not only being one of the best lawyers in Virginia, but also being one of the best lawyers in America. Each year, since 1997, he has been listed in *The Best Lawyers in America* for business litigation. This is a publication that lists the "best" lawyers in America based on the recommendations of other lawyers all across America.

But, not only is Mr. Kelley dedicated to his family and to his legal career, he also has taken the time to give back to his community. In addition to other community activities, he is a member and the former rector of the Old Dominion University Board of Visitors in Norfolk, VA, and he is a member of the Virginia Business Higher Education Council.

Mr. President, Walt Kelley has my strong support and the strong support of Senator ALLEN. In addition, he has the support of Virginia's legal community. The Virginia State Bar; Virginia Bar Association; the Virginia Association of Defense Attorneys; and the Norfolk & Portsmouth Bar Association all support Mr. Kelley's nomination. Furthermore, the American Bar Association has unanimously rated Mr. Kelley as "well qualified" for this judgeship.

I know that Walt Kelley is a fine nominee. If confirmed, he will serve on the bench in Virginia with distinction.

I urge my colleagues to support his nomination.

The PRESIDING OFFICER. The junior Senator from Virginia is recognized.

Mr. ALLEN. Mr. President, I join my colleague and friend, Senator WARNER,

in endorsing Walt Kelley for this judgeship for the U.S. District Court for the Eastern District of Virginia. I have known him for many decades. He is a patient man and an outstanding lawyer.

Senator WARNER and I interviewed many highly qualified candidates for that judgeship in the Eastern District of Virginia. Walt Kelley has extensive trial experience and, most importantly, has the right philosophy as a judge and will not invent the law but interpret it according to the facts.

I hope my colleagues will support his nomination.

Mr. HATCH. Mr. President, I rise today to express my strong support for the confirmation of Walter D. Kelley Jr. to serve as a judge for the United States District Court for the Eastern District of Virginia.

Mr. Kelley received both his undergraduate and his law degree, magna cum laude, from Washington and Lee University. Upon graduation from law school, he clerked for Judge Ellsworth Van Graafeiland on the Second Circuit.

In 1982, he joined the Norfolk, VA, law firm of Wilcox and Savage. Since 2001, he has been a partner at Troutman Sanders in Norfolk, where he practices in the area of business litigation with an emphasis on intellectual property and antitrust law.

Aside from his private practice, Mr. Kelley has devoted significant time to improving the legal community as a leader in bar activities. He has served as a mentor to younger attorneys, a quasi-judge of the Norfolk Circuit Court, and as a law professor. He also served on the Virginia Attorney General's Task Force on Higher Education; as rector and a member of Old Dominion University Board of Visitors; as a chairman and director of the Hampton Roads Board of the Salvation Army; and as a trustee of the Norfolk Collegiate School.

Walter Kelley is an extremely well-qualified nominee with a significant amount of litigation experience. The American Bar Association unanimously bestowed on him its highest rating of "Well Qualified," in recognition of his outstanding legal skills and reputation. He will make an excellent addition to the Federal bench and I urge my colleagues to join me in supporting his confirmation.

Mr. LEAHY. Mr. President, today we are asked to consider the nomination of Walter Kelley, Jr. to the Eastern District of Virginia. Mr. Kelley is currently a partner with the Norfolk office of the Troutman Sanders law firm. He has significant civil litigation experience. The ABA unanimously found Mr. Kelley to be well-qualified to be a district court judge. He also has the support of both of his home-State Senators.

It should be noted that Mr. Kelley has been very active in Republican politics over the past several decades. Mr. Kelley recently served as the Chairman of the Republican Party of Norfolk for

four years. He is currently involved in a Republican political action committee and serves as Director of the Downtown Republican Club. A few years ago, upon being elected Rector of the Old Dominion University Board of Visitors, Mr. Kelley was asked about the political nature of the position and politics in general, when he answered, "[i]f you really believe strongly in how it is you think Government should act with the citizenry . . . you can't sit on the sidelines and not be in the game. You're either in there trying to make happen that which you believe in, or you're ceding the whole debate to the other side."

I trust that Mr. Kelley will not believe that he can continue this advocacy as a judge. By taking his oath of office he will be expected to assume a position of impartiality and discard his previous partisan advocacy. Certainly, we can all agree that the Federal bench is not the place to advocate any agenda other than fairness.

I congratulate Mr. Kelley and his family on his confirmation today.

Mr. President, again, he had the highest ABA rating and is strongly supported by the two Senators from Virginia. I hope everybody on this side of the aisle will vote for him.

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is, Shall the Senate advise and consent to the nomination of Walter D. Kelley, Jr., of Virginia, to be United States District Judge for the Eastern District of Virginia?

The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from Kansas (Mr. BROWNBACK), the Senator from Utah (Mr. BENNETT), the Senator from Idaho (Mr. CRAPO), the Senator from Utah (Mr. HATCH), and the Senator from Oregon (Mr. SMITH) are necessarily absent.

I further announce that if present and voting the Senator from Kansas (Mr. BROWNBACK) would vote "yea."

Mr. REID. I announce that the Senator from Massachusetts (Mr. KERRY) is necessarily absent.

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

The result was announced—yeas 94, nays 0, as follows:

[Rollcall Vote No. 142 Ex.]

YEAS—94

Akaka	Campbell	Dayton
Alexander	Cantwell	DeWine
Allard	Carper	Dodd
Allen	Chafee	Dole
Baucus	Chambliss	Domenici
Bayh	Clinton	Dorgan
Biden	Cochran	Durbin
Bingaman	Coleman	Edwards
Bond	Collins	Ensign
Boxer	Conrad	Enzi
Breaux	Cornyn	Feingold
Bunning	Corzine	Feinstein
Burns	Craig	Fitzgerald
Byrd	Daschle	Frist

Graham (FL)	Levin	Rockefeller
Graham (SC)	Lieberman	Santorum
Grassley	Lincoln	Sarbanes
Gregg	Lott	Schumer
Hagel	Lugar	Sessions
Harkin	McCain	Shelby
Hollings	McConnell	Snowe
Hutchison	Mikulski	Specter
Inhofe	Miller	Stabenow
Inouye	Murkowski	Stevens
Jeffords	Murray	Sununu
Johnson	Nelson (FL)	Talent
Kennedy	Nelson (NE)	Thomas
Kohl	Nickles	Voinovich
Kyl	Pryor	Warner
Landrieu	Reed	Wyden
Lautenberg	Reid	
Leahy	Roberts	

NOT VOTING—6

Bennett	Crapo	Kerry
Brownback	Hatch	Smith

The nomination was confirmed.

The PRESIDING OFFICER. The President will be notified of the Senate's action.

#### LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

#### COSPONSORSHIP—S. 1246

Mr. ROBERTS. I ask unanimous consent that Senator JOHN BREAUX be added as a cosponsor to a bill I introduced on June 12, 2003, S. 1246, to permit charitable and educational organizations to make collegiate housing and infrastructure grants and continue to be treated as tax-exempt organizations.

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

#### UNANIMOUS CONSENT AGREEMENT—S. 2062

Mr. FRIST. Mr. President, briefly I have a consent regarding the class action legislation which has been cleared on both sides. Before proceeding, I remind everyone that an earlier order provided we would proceed to the class action legislation following completion of Defense authorization, which I expect we will be able to complete today. However, we now have a Defense appropriations bill available and it is vitally important for us to proceed with that bill to ensure no disruption in funds to our troops. Having said that, this agreement will allow us to proceed to the class action legislation without any procedural hurdles following the Defense appropriations bill.

Therefore, I now ask unanimous consent that the previous order with respect to Calendar No. 430, S. 2062, the class action bill, be vitiated and further that the Senate proceed to its consideration following the disposition of the Defense appropriations bill.

The PRESIDING OFFICER. The minority leader.

Mr. DASCHLE. Reserving the right to object, I want to make sure I understand. The majority leader is proposing that we go to class action immediately following the completion of our work on the Defense appropriations bill; is that correct?

Mr. FRIST. Mr. President, that is correct. The clarification I made was that initially we would follow the Defense authorization with class action. Now in effect what we are doing is we are going to finish the Defense authorization today, go to Defense appropriations, to be followed by class action.

Mr. DASCHLE. Mr. President, I appreciate that. I have made it clear I am not a supporter of the class action bill, but I have made a commitment to many of the colleagues in my caucus with regard to the assurances we have provided to them in the past that they would have a chance to have this legislation brought before the Senate and offer the appropriate amendments. They have been very patient. We have asked them to delay consideration of this bill now on several occasions, but with the assurances given by the majority leader, I have no objection.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. CARPER. Reserving the right to object, I will not object, I express my thanks to both leaders for that colloquy and this brief discussion we have had. As both leaders know, the movement of this legislation is a priority for a number of us, certainly for me, and I am gratified that once we have disposed of the Defense appropriations bill, the next bill we will turn to is class action. I express my thanks to the majority leader for making that clear, and to the Democratic leader, Senator DASCHLE, for his steadfast position, realizing this is not legislation that is at the top of his list of priorities.

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

#### TRIBUTE TO MATTHEW "MATTIE" JOSEPH THADEUS STEPANEK

Ms. MIKULSKI. Mr. President, I rise to inform my colleagues and all who are watching that a wonderful American passed away yesterday. He was a 13-year-old boy who lost his life to muscular dystrophy. He was known to the world because of his many appearances on radio and TV reading his poetry. His name was Matthew Joseph Thadeus Stepanek. The world knew him as "Mattie."

Though this young man's death is a great tragedy, his life was a triumph. At age 13, he was a gifted author. He was even a noted peacemaker. He took a personal challenge and turned it into a life of inspiration for all of us.

Mattie Stepanek once said, "I want my message to live beyond me," and it certainly will. His message of peace and hope has reached millions.

He was born in 1990 in Upper Marlboro, MD, and doctors did not expect him to live more than 24 hours. He suffered from a rare form of muscular dystrophy. He had two brothers and a sister, all who died before the age of 4. His own mom also has muscular dystrophy.

Though the disease would eventually render him unable to walk or breathe