

EXECUTIVE SESSION

NOMINATION OF J. MICHAEL SEABRIGHT TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF HAWAII

The PRESIDING OFFICER. The clerk will report the nomination.

The legislative clerk read the nomination of J. Michael Seabright, of Hawaii, to be United States District Judge for the District of Hawaii.

The PRESIDING OFFICER. Under the previous order, there are 30 minutes, equally divided, for debate on the nomination.

The Senator from Hawaii.

Mr. INOUE. Mr. President, I am pleased and honored to speak in support of J. Michael Seabright of Honolulu, Hawaii, who has been nominated by the President to serve as a Federal district court judge for the District of Hawaii.

Mr. Seabright graduated magna cum laude from his undergraduate alma mater of Tulane University, before going on to attend The National Law Center at George Washington University, where he received his juris doctor and graduated with high honors as a member of the Order of the Coif.

At George Washington, he further distinguished himself by serving as the editor of the *George Washington Journal of International Law & Economics*.

I have had the pleasure of knowing Mr. Seabright since he arrived in Hawaii 20 years ago, having watched him as he successfully became a member of the Hawaii State Bar Association, and became involved in our community.

Now Mr. Seabright stands out as a leader in the legal side of law enforcement, where he developed the District of Hawaii plan for implementing "Operation Triggerlock-Hawaii," a Federal-local effort aimed at the prosecution of violent armed career criminals in Federal court.

His broad experience in prosecution, from violent crimes to government corruption, have provided him a balanced perspective of the criminal justice system that will continue to serve him well as he prepares for this most recent development in his career of public service.

Mr. Seabright's work for Hawaii goes beyond his professional commitments as an assistant U.S. attorney, however. He has served on the Hawaii Supreme Court's disciplinary board since 1995 and holds the chairmanship of its rules committee, which is charged with the drafting proposed rules for the Hawaii Rules of Professional Conduct.

He was also a member of the Hawaii State Board of Bar Examiners, and has been an adjunct professor at the University of Hawaii William S. Richardson School of Law.

This extraordinary record of achievement has now culminated with his nomination to the Federal bench, and amply supports the favorable reports he has received from the Hawaii State Bar Association, the American Bar As-

sociation, and the Federal Bureau of Investigation.

I am confident that his record will prove equally impressive to the full Senate, and I trust that he will become the 206th of Mr. Bush's judicial nominees to be confirmed to the Federal bench. I hope my colleagues will join me in voting in favor of Mr. Seabright.

The PRESIDING OFFICER. The Senator from Hawaii, Mr. AKAKA, is recognized.

Mr. AKAKA. Mr. President, it is with great pleasure that I join Senator INOUE in support of the nomination of Mr. J. Michael Seabright for the U.S. District Court for the District of Hawaii. The Hawaii State Bar Association has found Mr. Seabright to be highly qualified for the position of U.S. District Court Judge in Hawaii. This is of significant importance to me, as I value the opinion of Hawaii's legal community in evaluating those nominated to serve as judges.

Mr. Seabright has practiced law in the State of Hawaii for over 20 years, in a number of capacities, including both private practice and public service. Mr. Seabright has been employed by the U.S. Attorney's Office for the District of Hawaii for the past 15 years, and he has headed the white-collar and organized crime section since 2002.

I am very pleased that this position, after being vacant for so many years, will now be filled by an individual as qualified as J. Michael Seabright. For the past few years, I have heard from jurists and a number of attorneys in Hawaii about the need to fill this judicial vacancy. I am encouraged to see that with the consideration of this nominee the Senate will continue its tradition of fulfilling its advice and consent role under the Constitution.

I urge my colleagues to vote in favor of Mr. Seabright's nomination.

I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, it has taken some time, but the Senate Republican leadership will finally allow the Senate to consider the nomination of Michael Seabright to be a United States District Court Judge for Hawaii. I commend the distinguished Senators from Hawaii for their effort in identifying this consensus nominee. When Mr. Seabright is confirmed by an overwhelming, bipartisan vote of the Senate, he will be the 206th nominee of this President confirmed to a lifetime appointment to our Federal courts.

This is only the second judicial nomination Senate Republicans have been willing to consider all year. There has been no filibuster of judicial nominees this year. Instead, it is the Senate Republican leadership that, through its deliberate inaction, is keeping judgeships unnecessarily vacant for months. With this nomination and with the nomination of Judge Crotty, I was the one asking for months for the nomination to be considered, debated, voted, and confirmed. For the last several

weeks, I have been calling upon the Republican readership to proceed to the confirmation of Michael Seabright to the District Court of Hawaii.

All Democrats on the Judiciary Committee had been prepared to vote favorably on this nomination for some time. We were prepared to report the nomination last year, but it was not listed by the then-chairman on a committee agenda. I thank Chairman SPECTER for including Mr. Seabright at our meeting on March 17. The nomination was unanimously reported and has been on the Senate Executive Calendar for more than a month. It is Senate Republicans who resisted a vote on this judicial nominee, not Democrats. In their fashion, they did so without any explanation akin to the anonymous "holds" that doomed more than 60 of President Clinton's judicial nominees not so long ago.

Once confirmed, Mr. Seabright will be the 206th of 216 nominees brought before the full Senate for a vote to be confirmed. That means that 829 of the 875 authorized judgeships in the Federal judiciary, or 95 percent, will be filled. It is regrettable that Republican delay has now pushed the Senate behind even the pace set by the Republican majority in 1999, when President Clinton was in the White House. That year, the Senate Republican leadership did not allow the Senate to consider any circuit court nominees for the entire session and only 17 district court nominees were confirmed. The Republican Senate has fallen behind that pace.

Of the 47 judicial vacancies now existing, President Bush has not even sent nominees for 29 of those vacancies, more than half. I have been encouraging the Bush administration to work with Senators to identify qualified and consensus judicial nominees and do so, again, today. The Democratic leader and I sent the President a letter in this regard on April 5, but we have received no response.

It is now the last week in April. We are almost one-third through the year and so far the President has sent only one new nominee for a Federal court vacancy all year—only one. Instead of sending back divisive nominees, would it not be better for the country, the courts, the American people, the Senate, and the administration if the White House would work with us to identify, and for the President to nominate, more consensus nominees such as Michael Seabright who can be confirmed quickly with strong, bipartisan votes?

I commend the Senators from Hawaii for their efforts to work cooperatively to fill judicial vacancies. I only wish Republicans had treated President Clinton's nominees to vacancies in Hawaii with similar courtesy. Had they, there would not have been the vacancies on the Ninth Circuit and on the District Court. The work of the Senators from Hawaii is indicative of the type of bipartisan efforts Senate Democrats have made with this President

and remain willing to make. We can work together to fill judicial vacancies with qualified, consensus nominees. The vast majority of the more than 200 judges confirmed during the last 3½ years were confirmed with bipartisan support.

The truth is that in President Bush's first term, the 204 judges confirmed were more than were confirmed in either of President Clinton two terms, more than during the term of this President's father, and more than in Ronald Reagan's first term when he was being assisted by a Republican majority in the Senate. By last December, we had reduced judicial vacancies from the 110 vacancies I inherited in the summer of 2001 to the lowest level, lowest rate and lowest number in decades, since Ronald Reagan was in office.

The Hawaii judgeship at issue here has been vacant for more than 4 years, since December of 2000 when Judge Alan Kay took senior status. President Clinton made a nomination to that seat in advance of the vacancy, but the Republicans in control of the Senate refused to act on it. They preserved the vacancy for a Republican President.

In 2002, President Bush nominated James Rohlifing to the vacancy. That nomination failed, however, because in the view of his home State Senators and the American Bar Association, he was not qualified for the position. It took the White House more than 2 additional years to agree. Finally, in May 2004 that nomination was withdrawn by President Bush.

The administration finally got it right after consultation with the Hawaii Senators. The President sent Michael Seabright's name to the Senate last September. An outstanding attorney who has experience in private practice as well as a sterling reputation as an Assistant United States Attorney, Mr. Seabright merited consideration and swift confirmation. Despite his reputation as a law-and-order Republican, Republicans would not move on Mr. Seabright's nomination last Congress. The President took his time re-nominating Mr. Seabright and even then it took repeated requests to get his nomination included on the agenda of the committee. When he was considered on March 17, he was reported with unanimous support. Senate Democrats have long supported and requested action on this nomination.

I have been urging this President and Senate Republicans for years to work with all Senators and engage in genuine, bipartisan consultation. That process leads to the nomination, confirmation, and appointment of consensus nominees with reputations for fairness. The Seabright nomination, the bipartisan support of his home State Senators, and the committee's action by a unanimous bipartisan vote is a perfect example of what I have been urging.

I have noted that there are currently 29 judicial vacancies for which the President has delayed sending a nomi-

nee. In fact, he has sent the Senate only one new judicial nominee all year. I wish he would work with all Senators to fill those remaining vacancies rather than through his inaction and unnecessarily confrontational approach manufacture longstanding vacancies. It is as if the President and his most partisan supporters want to create a crisis.

Over the last weeks, we have heard some extremists call for mass impeachments of judges, court-stripping, and punishing judges by reducing court budgets. Now we are seeing an effort at religious McCarthyism by which Republican partisans inject religion into these matters. Rather than promote crisis and confrontation, I urge the President to disavow the divisive campaign and, instead, do what most others have and work with us to identify outstanding consensus nominees. It ill serves the country, the courts and, most importantly, the American people for this administration and the Senate Republican leadership to continue down the road to conflict.

The Seabright nomination shows how unnecessary that conflict really is. Let us join together to debate and confirm consensus nominees to these important lifetime posts on the Federal judiciary.

It is the Federal judiciary that is called upon to rein in the political branches when their actions contravene the constitutional limits on governmental authority and restrict individual rights. It is the Federal judiciary that has stood up to the overreaching of this administration in the aftermath of the September 11 attacks.

It is more and more the Federal judiciary that is being called upon to protect Americans' rights and liberties, our environment and to uphold the rule of law as the political branches under the control of one party have overreached. Federal judges should protect the rights of all Americans, not be selected to advance a partisan or personal agenda. Once the judiciary is filled with partisans beholden to the administration and willing to reinterpret the Constitution in line with the administration's demands, who will be left to protect American values and the rights of the American people?

The Constitution establishes the Senate as a check and a balance on the choices of a powerful President who might seek to make the Federal judiciary an extension of his administration or a wholly-owned subsidiary of his political party. Today, Republicans are threatening to take away one of the few remaining checks on the power of the Executive branch by their use of what has become known as the nuclear option. This assault on our tradition of checks and balances and on the protection of minority rights in the Senate and in our democracy should be abandoned. Eliminating the filibuster by the nuclear option would destroy the Constitution's design of the Senate as an effective check on the Executive. The elimination of the filibuster would

reduce any incentive for a President to consult with home State Senators or seek the advice of the Senate on lifetime appointments to the Federal judiciary. It is a leap not only toward one-party rule but to an unchecked executive.

Rather than blowing up the Senate, let us honor the constitutional design of our system of checks and balances and work together to fill judicial vacancies with consensus nominees. The nuclear option is unnecessary. What is needed is a return to consultation and for the White House to recognize and respect the role of the Senate appointments process.

The American people have begun to see this threatened partisan power grab for what it is and to realize that the threat and the potential harm are aimed at our democracy, at an independent and strong federal judiciary and, ultimately, at their rights and freedoms.

Mr. President, I commend the two Senators from Hawaii, Mr. INOUE and Mr. AKAKA, for their support and their work with the White House in getting this nominee to the floor. I commend the White House for working with them.

This nominee was confirmed unanimously in the Senate Judiciary Committee, Republicans and Democrats joined alike. I urge on our side of the aisle that all Senators vote for him.

I have been advised by the distinguished members of the Republican side of the aisle that they are willing to yield back their time. So I ask that all time on either side on this nominee be yielded back so we can go to a vote.

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

Mr. LEAHY. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is, Will the Senate advise and consent to the nomination of J. Michael Seabright, of Hawaii, to be United States District Judge for the District of Hawaii?

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Montana (Mr. BAUCUS) and the Senator from Delaware (Mr. BIDEN), are necessarily absent.

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

The result was announced—yeas 98, nays 0, as follows:

[Rollcall Vote No. 111 Ex.]

YEAS—98

Akaka	Bunning	Cochran
Alexander	Burns	Coleman
Allard	Burr	Collins
Allen	Byrd	Conrad
Bayh	Cantwell	Cornyn
Bennett	Carper	Corzine
Bingaman	Chafee	Craig
Bond	Chambliss	Crapo
Boxer	Clinton	Dayton
Brownback	Coburn	DeMint

DeWine	Kennedy	Reid
Dodd	Kerry	Roberts
Dole	Kohl	Rockefeller
Domenici	Kyl	Salazar
Dorgan	Landrieu	Santorum
Durbin	Lautenberg	Sarbanes
Ensign	Leahy	Schumer
Enzi	Levin	Sessions
Feingold	Lieberman	Shelby
Feinstein	Lincoln	Smith
Frist	Lott	Snowe
Graham	Lugar	Specter
Grassley	Martinez	Stabenow
Gregg	McCain	Stevens
Hagel	McConnell	Sununu
Harkin	Mikulski	Talent
Hatch	Murkowski	Thomas
Hutchison	Murray	Thune
Inhofe	Nelson (FL)	Vitter
Imouye	Nelson (NE)	Voinovich
Isakson	Obama	Warner
Jeffords	Pryor	Wyden
Johnson	Reed	

NOT VOTING—2

Baucus	Biden
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The nomination was confirmed.

The PRESIDING OFFICER. Under the previous order, the President shall be immediately notified of the Senate's action.

LEGISLATIVE SESSION

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

Mr. INOUE. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

TRANSPORTATION EQUITY ACT: A LEGACY FOR USERS—Continued

Mr. INHOFE. Mr. President, I ask unanimous consent that we set aside the pending Bayh amendment for the purpose of adopting an agreed-to amendment, the Talent amendment, and go immediately back to the Bayh amendment.

Mr. BAYH. With that understanding, I do not object.

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

AMENDMENT NO. 582

The PRESIDING OFFICER. Is there further debate on the Talent amendment?

If not, the question is on agreeing to amendment No. 582.

The amendment (No. 582) was agreed to.

Mr. INHOFE. Mr. President, I move to reconsider the vote and to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 568

The PRESIDING OFFICER. Under the previous order, the Bayh amendment will be the pending amendment.

The Senator from Michigan.

Ms. STABENOW. Mr. President, I rise today to show my strong support

for the Bayh amendment on countervailing duties, and I ask unanimous consent to be added as a cosponsor.

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

Ms. STABENOW. I commend my friend and colleague from Indiana for his vision on the issue of what we need to do to create a level playing field for our businesses and workers. This is an important amendment.

I have spoken forcefully about our need to address the unfair trade practices of those with whom we trade. A necessary step in this process is to change those U.S. laws that hinder our industries from operating on a level playing field. That is what this amendment addresses. Our businesses, our workers have an expectation that we will provide a level playing field for them, and we need to deliver on that. This amendment is a good step in that direction.

Unfair trade practices are hurting our U.S. manufacturers and costing jobs. In my State of Michigan, I regret to say, we now have the highest unemployment rate in the country. At the time when our Nation's countervailing duty laws were approved in 1979, the Department of Commerce decided it was impracticable to apply those laws to nonmarket economies such as China due to the difficulty of determining what defines a government subsidy within the context of a state-controlled economy.

However, since that time, many non-market economies have undertaken significant economic reforms that have liberalized the state control over their economies. Unfortunately, however, some of these nations, such as China, refuse to comply with standard international trading rules and practices and use subsidies and other economic incentives to give their producers an unfair competitive advantage. This has a direct impact on job loss in Michigan, as well as in other States.

As we all know—and it has been documented—these subsidies range from currency manipulation, to providing below interest rate loans to less than creditworthy companies, to providing preferential access to raw materials and other input. I should mention that I was very proud to be a part of the effort to get a very strong vote a few weeks ago; 67 Members on both sides of the aisle joined to send a message both to the White House and to China that we expect China to stop manipulating their currency, which means it costs more for us to sell to them than for them to sell to us. It is part of what we need to do to level the playing field. I hope that because we have joined together in the vote we had on a very strong bipartisan basis, we will see the same kind of vote on this Bayh amendment.

I will give you a few examples of how this hurts Michigan manufacturers and workers directly. Counterfeit automotive products are a very big problem in Michigan. Not only does it kill

American jobs, but it has the potential to kill Americans as cheap, shoddy automotive products replace legitimate ones of higher quality. The American automotive parts components industry loses an estimated \$12 billion in sales on a global basis to counterfeiting. This must stop. We don't even keep statistics on the potential loss of life.

The United States is losing manufacturing jobs as a direct result of China's policies. China's policies have cost our economy 1.5 million jobs in the last 15 years and 51,000 jobs alone in Michigan. These job losses are hurting all of our manufacturers, from apple juice, to auto parts, to clothing, to furniture.

At this stage, U.S. industries have no direct recourse to combat subsidies used by nonmarket economies. They must rely upon the Federal Government to negotiate a settlement, or on the dispute settlement processes of international organizations, such as the WTO.

Why do we put such a strain on our own businesses? The remedies available currently might eventually lead to relief, but it takes years to see relief. We are losing jobs every day. There are headlines every day in Michigan about job loss. We have to have a sense of urgency here in the Senate and in the Congress and in the White House.

The Bayh amendment would change the situation to ensure that nonmarket economies are subject to the same countervailing duty laws as all other trading nations.

At a recent Finance Committee hearing on his nomination, Congressman PORTMAN said he thinks "we . . . need an additional focus on China. After a top-to-bottom review, I would plan to shift some resources, including some people to that effort."

I certainly encourage him to do that. I also want to indicate at this time that Congressman PORTMAN indicated support for a focus on creating an international trade prosecutor, or some people in his office who would focus on the role of prosecutor more broadly on those other countries that are violating rules. Senator BAYH has been a champion of that effort, and I am very proud he has joined with me and Senator GRAHAM in South Carolina in introducing specific legislation that relates to creating an international trade prosecutor as well. All of these pieces are important. We have taken one step to sending a message to China and to the administration that we expect them to address the issue of currency manipulation.

Now, this amendment is a very important piece in leveling the playing field for our businesses and our workers. I also urge that we incorporate an international trade prosecutor who will be our American voice for business and for workers on the broad issue of continuing to make sure the rules are fair. I think these pieces together create hope for the people we represent, whom we, in fact, would stand up for and stand up for American jobs.