

## EXECUTIVE SESSION

NORMAN RANDY SMITH TO BE UNITED STATES CIRCUIT JUDGE FOR THE NINTH CIRCUIT

MARCIAS MORALES HOWARD TO BE UNITED STATES DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF FLORIDA

The ACTING PRESIDENT pro tempore. The Senate will proceed to executive session to consider the following nominations en bloc.

The clerk will report.

The assistant legislative clerk read the nominations of Norman Randy Smith, of Idaho, to be United States Circuit Judge for the Ninth Circuit and Marcia Morales Howard, of Florida, to be United States District Judge for the Middle District of Florida.

Mr. LEAHY. Mr. President, today, we consider nominations for lifetime appointments to the Federal bench, including Judge Norman Randy Smith to the Court of Appeals for the Ninth Circuit. Judge Smith was nominated to a seat on the Ninth Circuit designated a judicial emergency by the Administrative Office of the Courts. Judge Smith's nomination easily could have been confirmed in the last Congress—and the emergency addressed many months ago—had the Bush administration chosen the common-sense approach it has now followed of nominating Judge Smith—who is from Idaho—to Idaho's seat on the Ninth Circuit.

Instead, the President picked a fight by insisting on nominating Judge Smith to a California seat on the Ninth Circuit. Judge Smith had been nominated to fill the seat last occupied by Judge Stephen Trott, an appointee from California who made a personal decision to move to Idaho. I know of no precedent for shifting a circuit seat based on a judge's personal decision to change his or her personal residence. That generated opposition from the California Senators and created an impasse. I supported the California Senators, as I had Senators Sarbanes and MIKULSKI in a similar circumstance when this President sought to fill a Maryland seat on the Fourth Circuit with someone from Virginia.

I have tried for some time to get the President to redesignate the Smith nomination and nominate him to fill the Idaho vacancy. At long last, the President has done the right thing. The White House finally changed course and the President nominated Judge Smith for the Idaho seat on the Ninth Circuit. I thank the President for finally doing the right thing.

With the cooperation of the Senators from California and the other Members of the Judiciary Committee, we were able to avoid having a hearing on Judge Smith's nomination in this Congress and to expedite his consideration, now that he has been designated for the Idaho vacancy. We were able to re-

port Judge Smith's nomination last Thursday. Today, at long last, Senator CRAIG and Senator CRAPO and the people of Idaho will have a judge on this important court from their home State.

We have worked hard since convening this Congress to make significant progress in our consideration of judicial nominations. At our first executive business meeting, the Judiciary Committee reported out five judicial nominations little more than 2 weeks after they were sent to us. Three of these were for vacancies determined by the Administrative Office of the U.S. Courts to be judicial emergencies. All five were among those returned to the President without Senate action at the end of last year when Republican Senators objected to proceeding with certain of the President's judicial nominees in September and December last year. All five were confirmed only 3 weeks after they were nominated.

Last week, we reported another five nominations, including the nominations we consider today. We reported nominees from the home States of Senator SPECTER and Senator GRASSLEY and I want to thank Senator CASEY and Senator BROWN for expediting their consideration of nominees from their home States and approving them so quickly after taking office. I have worked cooperatively with Members from both sides of the aisle on our Committee, and in the Senate, to consider quickly and report 10 judicial nominations so far this year, allowing us to fill vacancies and improve the administration of justice in our Nation's Federal courts.

With the five confirmations last week we have confirmed more of President Bush's nominations in the 18 months I have served as Judiciary Committee Chairman than in the more than two years when Senator HATCH chaired the Committee with a Republican Senate majority or during the entire last Congress with a Republican Senate majority.

With Judge Smith's confirmation today, we will have confirmed a nomination to one of the Nation's important circuit courts little more than a month after the Republicans agreed to resolution allowing the Senate to organize. That is more than the total of President Clinton's nominations to circuit court vacancies confirmed by the Republican-controlled Senate during the entire 1996 session. Today, with this one confirmation we will surpass the Republican total for an entire session of the Congress.

Last week, we also held the first judicial nominations hearing of the new Congress and considered three more nominees, two of whom are nominated to fill judicial emergency vacancies. We held that hearing on February 6. When a Republican chaired the Committee in 1999 and there was a Democratic President, the first hearing on a judicial nominee was not held until June 16. We could have postponed this

hearing because it was at the same time as the Senators briefing on the new National Intelligence Estimate about the deteriorating situation in Iraq. As I did after 9/11, and after the Senate buildings were shut down by the anthrax letters, I chose to go forward with the nominations hearing.

I know some on the other side of the aisle have tried to raise a scare since I, again, became Chairman of the Judiciary Committee. They rant as if the sky is falling and as if we would not proceed on any judicial nominations. On the contrary, we have proceeded promptly and efficiently.

I have long urged the President to fill vacancies with consensus nominees. After this week's confirmations, according to the Administrative Office of the U.S. Courts there will be 51 judicial vacancies, 24 of which have been deemed to be judicial emergencies. Of those 24 judicial emergency vacancies, the President has yet to send us nominees for 17 of them. That means two-thirds of the judicial emergency vacancies are without a nominee from the President.

We will continue moving forward efficiently as long as the President sends us qualified, consensus nominees.

## IRAQ

Mr. HAGEL. Mr. President, just a brief response to the distinguished majority leader about motives as to debate on Iraq.

I don't know a Senator who has been clearer or more concise on this administration's positions on Iraq than the senior Senator from Nebraska. To suggest that some on this side are impeding or trying to protect the Bush administration's policy on Iraq, specifically escalating our military involvement in Iraq, is a bit off the mark.

The fact is, the minority leader is very clear in his purpose. I have supported that. Minority rights are the essence, the foundation of this body. The minority should have an opportunity to present their resolution or resolutions. It should not be dictated to by the majority.

Make it very clear, those on this side who have pushed for this debate are very clear in our position. I doubt if there is anyone who has been clearer than this Senator.

I yield the floor.

Mr. SPECTER. Mr. President, there is only a minute left before 10:30, not enough time to discuss. I ask unanimous consent I be recognized at the conclusion of the third vote for 10 minutes.

Mr. LEAHY. I did not hear the request.

Mr. SPECTER. My request—we were supposed to speak, but the time has been consumed otherwise. With only less than a minute left until 10:30, I have asked for consent to speak for 10 minutes at the conclusion of the third vote.

Mr. LEAHY. At the conclusion of the third vote?

Mr. SPECTER. Let me amend that to ask for 10 minutes for the chairman of the Judiciary Committee.

Mr. LEAHY. I have an hour reserved after the third vote anyway. Certainly, if the Senator from Pennsylvania wants to take his 10 minutes ahead of that hour, I have no objection.

Mr. SPECTER. I ask consent to that request.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

VOTE ON NOMINATION OF NORMAN RANDY SMITH

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

The ACTING PRESIDENT pro tempore. Is there a sufficient second?

There is a sufficient second.

The question is, Will the Senate advise and consent to the nomination of Norman Randy Smith, of Idaho, to be United States Circuit Judge for the Ninth Circuit? The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from California (Mrs. BOXER), the Senator from Connecticut (Mr. DODD), and the Senator from South Dakota (Mr. JOHNSON) are necessarily absent.

Mr. LOTT. The following Senators were necessarily absent: the Senator from Nevada (Mr. ENSIGN), the Senator from New Hampshire (Mr. GREGG), and the Senator from Texas (Mrs. HUTCHISON).

The ACTING PRESIDENT pro tempore. Are there any other Senators in the Chamber desiring to vote?

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

[Rollcall Vote No. 49 Ex.]

YEAS—94

Akaka	Dorgan	Murkowski
Alexander	Durbin	Murray
Allard	Enzi	Nelson (FL)
Baucus	Feingold	Nelson (NE)
Bayh	Feinstein	Obama
Bennett	Graham	Pryor
Biden	Grassley	Reed
Bingaman	Hagel	Reid
Bond	Harkin	Roberts
Brown	Hatch	Rockefeller
Brownback	Inhofe	Salazar
Bunning	Inouye	Sanders
Burr	Isakson	Schumer
Byrd	Kennedy	Sessions
Cantwell	Kerry	Shelby
Cardin	Klobuchar	Smith
Carper	Kohl	Snowe
Casey	Kyl	Specter
Chambliss	Landrieu	Stabenow
Clinton	Lautenberg	Stevens
Coburn	Leahy	Sununu
Cochran	Levin	Tester
Coleman	Lieberman	Thomas
Collins	Lincoln	Thune
Conrad	Lott	Vitter
Corker	Lugar	Voinovich
Cornyn	Martinez	Warner
Craig	McCain	Webb
Crapo	McCaskill	Whitehouse
DeMint	McConnell	Wyden
Dole	Menendez	
Domenici	Mikulski	

NOT VOTING—6

Boxer	Ensign	Hutchison
Dodd	Gregg	Johnson

The nomination was confirmed.

VOTE ON NOMINATION OF MARCIA MORALES HOWARD

The PRESIDING OFFICER (Mr. BROWN). There are now 2 minutes equally divided before a vote on the Howard nomination.

Who yields time?  
The Senator from Florida.

Mr. NELSON of Florida. Mr. President, two Senators from Florida rise to lend our support to Judge Howard, who is currently a magistrate judge and is an excellent choice. It is the privilege of Senator MARTINEZ and myself to support the outstanding choice of Judge Howard to be a Federal district judge.

Judge Howard is a graduate of Vanderbilt University and the University of Florida Law School.

I want to make reference to a note I received from Judge Howard telling a bit about something unusual, because her parents arrived here from Cuba. This is what she writes:

My parents arrived here with very little other than an education and a willingness to work. Their success and my nomination are truly a testament to the opportunity that exists here simply by virtue of being an American. My parents never let my brother, my sister, or me forget how fortunate we were to be in a country where we could be whatever we wanted to be or that we had a duty to give back to our country.

That is the kind of person who will be a successful Federal district judge.

The PRESIDING OFFICER. The Senator from Florida.

Mr. MARTINEZ. Mr. President, I am delighted to join my colleague Senator NELSON in advancing the nomination of Marcia Morales Howard as a Federal district court judge for the Middle District of Florida. This outstanding woman lawyer from Florida not only has a distinguished academic background, having graduated from the University of Florida College of Law, being an editor of the Law Review there, but she also has been an accomplished litigator for 13 years with two very fine law firms in the State of Florida, Foley & Lardner and McGuireWoods. In 2003, she became a Federal magistrate. As a magistrate, she has distinguished herself in the Middle District of Florida where she would be serving as a Federal district court judge.

I know her and her family. I know what an outstanding American she is. I am very proud that with the magnitude of importance of a Federal appointment for a lifetime, we have someone of this competence, this dedication, and this quality to serve in this important post. I am delighted not only for the opportunity to advance the nomination but also to tell of the judicial nominating commission Senator NELSON and I have formed in the State of Florida, which I frankly believe is a model for bipartisan cooperation and also seeking the best and most qualified on the merits by positioning the nomination before a group of distinguished lawyers who then see the applicants, study their qualifications, and make recommendations.

I am delighted to urge my colleagues to support the nomination of Marcia Morales Howard for Federal district judge for the Middle District of Florida.

Mr. LEAHY. Mr. President, Judge Marcia Morales Howard, nominated to the Middle District of Florida, has the bipartisan support of both Florida Senators. With valuable experience as a Federal magistrate judge and as a former civil litigator, Judge Howard is well versed in litigation matters in Federal court. Judge Howard graduated from Vanderbilt University with a B.S. in 1987, and received her J.D. with honors in 1990, from the University of Florida, College of Law, where she served as Symposium Editor for the Florida Law Review.

As a litigator in private practice, Judge Howard worked mostly on complex civil litigation matters in Federal court as an Associate with the law firm of Foley and Lardner, and later worked on labor and employment law cases as an Associate, and then Partner, at the law firm of McGuireWoods, LLP. Judge Howard has also shown her dedication to serving others by providing pro bono legal services through the Jacksonville Area Legal Aid and pro bono seminars through the Jacksonville Center for Independent Living to disabled individuals informing them of their rights under the Americans with Disabilities Act.

I understand that Judge Howard is a first generation Cuban-American. She is being called upon to fill a position in one of the fastest growing areas in Florida. Senator NELSON has been a strong supporter of this nomination and has pressed for early action. I thank both Senators from Florida for their interest in this nomination. I also understand that Judge Howard's grandfather celebrated his 100th birthday just 2 weeks ago, on February 1. Her confirmation today is testimony to the great promise that America holds for people from all parts of the world, that the granddaughter of someone who came to America can become a Federal judge.

I congratulate the nominee and her family on her confirmation today.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, may I claim 1 minute as ranking member of the Judiciary Committee?

I think Senator NELSON and Senator MARTINEZ had important things to say about the nominee, but I don't think anybody heard them. So if I could have the attention of my colleagues.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. The nominee has an outstanding record, having served as a United States magistrate. She graduated from Vanderbilt in 1987, and from the University of Florida College of Law, with honors, in 1990. She has an outstanding professional record. I urge my colleagues to support her nomination.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Marcia Morales Howard, of Florida, to be a U.S. District Judge for the Middle District of Florida.

Mrs. MURRAY. I ask for the yeas and nays on the nomination.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The clerk will call the roll.

The bill clerk called the roll.

Mr. DURBIN. I announce that the Senator from California (Mrs. BOXER), the Senator from Connecticut (Mr. DODD), and the Senator from South Dakota (Mr. JOHNSON) are necessarily absent.

Mr. LOTT. The following Senators were necessarily absent: the Senator from Nevada (Mr. ENSIGN), the Senator from New Hampshire (Mr. GREGG), the Senator from Texas (Mrs. HUTCHISON), and the Senator from Oklahoma (Mr. INHOFE).

Further, if present and voting, the Senator from Oklahoma (Mr. INHOFE) would have voted "yea."

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

The result was announced—yeas 93, nays 0, as follows:

[Rollcall Vote No. 50 Ex.]

YEAS—93

Akaka	Domenici	Mikulski
Alexander	Dorgan	Murkowski
Allard	Durbin	Murray
Baucus	Enzi	Nelson (FL)
Bayh	Feingold	Nelson (NE)
Bennett	Feinstein	Obama
Biden	Graham	Pryor
Bingaman	Grassley	Reed
Bond	Hagel	Reid
Brown	Harkin	Roberts
Brownback	Hatch	Rockefeller
Bunning	Inouye	Salazar
Burr	Isakson	Sanders
Byrd	Kennedy	Schumer
Cantwell	Kerry	Sessions
Cardin	Klobuchar	Shelby
Carper	Kohl	Smith
Casey	Kyl	Snowe
Chambliss	Landrieu	Specter
Clinton	Lautenberg	Stabenow
Coburn	Leahy	Stevens
Cochran	Levin	Sununu
Coleman	Lieberman	Tester
Collins	Lincoln	Thomas
Conrad	Lott	Thune
Corker	Lugar	Vitter
Cornyn	Martinez	Voinovich
Craig	McCain	Warner
Crapo	McCaskill	Webb
DeMint	McConnell	Whitehouse
Dole	Menendez	Wyden

NOT VOTING—7

Boxer	Gregg	Johnson
Dodd	Hutchison	
Ensign	Inhofe	

The nomination was confirmed.

The PRESIDING OFFICER. Under the previous order, the motion to reconsider and lay on the table is agreed to, and the President will be immediately notified of the Senate's action.

#### LEGISLATIVE SESSION

Mr. REID. Mr. President, I announce to all Democratic Senators: We are having a caucus in Room S-219. The subject matter of this caucus is interesting.

I have a unanimous consent request that I am going to propound.

Mr. President, I ask you and the other Members to be patient. I am having a little script prepared for me to read.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

#### UNANIMOUS CONSENT REQUESTS

Mr. REID. Mr. President, I ask unanimous consent that when the Senate convenes on Monday, February 26, the Senate proceed to the consideration of H. Con. Res. 63, the House Iraq resolution; that there be 12 hours of debate; that the debate be divided equally between the two leaders; that no amendments or motions be in order; and that the Senate vote on passage of the concurrent resolution at the conclusion of that time.

The PRESIDING OFFICER. Is there objection?

Mr. McCONNELL. Reserving the right to object.

The PRESIDING OFFICER. The Republican leader.

Mr. McCONNELL. Mr. President, of course, I will object. This is right back where we were a week ago. As the distinguished majority leader and the distinguished majority whip have said on numerous occasions in the last couple of years, the Senate is not the House. Senate Republicans are going to insist on fair treatment on the most important issue on the minds of the American people today; that is, the war in Iraq. The Senate simply cannot—and I have heard Senator BYRD make these points on numerous occasions—cannot operate this way. The Senate Republicans insist on one or more amendments on the most important issue confronting our country—the war in Iraq.

What I had hoped was that the distinguished majority leader and myself would be able to work out a consent agreement that would allow us to have—he would pick his amendment, and it is apparent the amendment the majority would like to have is the House-passed concurrent resolution, and then there would be an alternative, at least one alternative. Many of my Members would like to have more than one alternative in this extremely important debate, but at least one alternative on this side of the choosing of the majority of Republicans. So, therefore, I object.

The PRESIDING OFFICER. Objection is heard. The majority leader is recognized.

Mr. REID. Mr. President, I have told the distinguished Republican leader that when we get to the matter dealing with implementing the 9/11 recommendations, that will be a vehicle which will be open to debate and amendment.

The unanimous consent request I propounded would complete work on

the Iraq surge issue within a matter of hours, as I indicated, so that we could move within a day, 1 day, to 9/11 and amendments—Warner, Gregg, McCain, whatever amendments the minority wanted to offer; they would certainly be permitted to do that.

We find ourselves in a very unusual position, Mr. President. We tried to proceed to this matter before. Everyone has heard the arguments used to stop us from going forward on this issue. Cloture was not invoked. We need not go over all the reasons, some of which have been outlined by the distinguished Republican leader just a few minutes ago. But there have been those on the other side of the aisle who think we should be in next week. Mr. President, speaking for this Senator, I am happy to be in next week. If you want to be in next week, we can do that. I have things in Nevada I have wanted to do for a while because I have been here for 5 weeks, but that is OK, I can take care of that, as everyone else can, if necessary. But we find ourselves in the same position, that there is a hesitation on behalf of the minority to go forward on now a very simple matter—a very simple matter.

The Warner-Levin amendment was a little more complicated than the simple House measure which says we support the troops and we are against the surge. That is what we think should be disposed of quickly. We can move to 9/11, all the debates on other things people want to do with Iraq and other issues. Certainly, they can do that. We can spend considerable time on that. As long as progress is being made, there is no reason to file cloture. There are other things we need to do the following week during the work period.

We are anxious to go forward on this issue. We have, again, been stopped from doing that. All the plaintive cries about not being able to debate Iraq—there were opportunities to debate Iraq, and they were turned down. I was disappointed, as I said earlier today, that the people crying the loudest are the people against going forward on Iraq.

It is my understanding, Mr. President, that the order is Senator LEAHY has 1 hour right now.

The PRESIDING OFFICER. The Senator from Pennsylvania is to be recognized first for 10 minutes and then Senator LEAHY.

The Republican leader is recognized.

Mr. McCONNELL. Mr. President, we are not here today, I assume, to debate the substance of the Iraq matter, but it is important to remember that both the majority leader and the majority whip in December were saying a surge might be a good idea, and now they are saying the only resolution we should have before the Senate is one condemning a surge. Let me repeat, that is not the way the Senate works.

So I would like to propose a unanimous consent request, Mr. President.

I ask unanimous consent that on Tuesday, February 27, at a time determined by the majority leader, after