

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

S. CON. RES. 20

Mr. REID. Madam President, it is my understanding there is a minute on each side. Is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. REID. Madam President, the Gregg amendment has been changed since it was originally filed. It is still imperfect. I still think, at least from my observation, it is not good, especially in light of the fact that the Murray amendment so clearly defines the necessity of taking care of the troops when they come home. But there is no caucus position on this issue. Senators on this side of the aisle should vote however they feel comfortable. I personally am not going to vote for it because I don't feel comfortable. I believe the resolution leaves a lot to be desired. It can be construed many different ways. It is wrong that we do not take into consideration the injured troops when they come home. My caucus can vote any way they feel appropriate.

The PRESIDING OFFICER. The Senator from New Hampshire is recognized.

Mr. GREGG. I am just wondering what the parliamentary situation is. Do I have a minute or was the minute on the other side just used?

The PRESIDING OFFICER. The Senator has a minute.

Mr. GREGG. That was a minute on the other side that was used or was that leadership time?

The PRESIDING OFFICER. Forty-five seconds was used.

Mr. GREGG. I think it is important Members understand what this amendment says, so I am going to read it:

That it is the sense of Congress that Congress shall not take any action that will endanger United States military forces in the field, including the elimination or reduction of funds for troops in the field, as such action with respect to funding would undermine their safety or harm their effectiveness in pursuing their assigned missions.

It is very simple. If you support the troops, you have to support this amendment. In fact, if you supported the Murray amendment, you have to support this amendment unless you changed your mind in the last 30 seconds.

I yield back my time.

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

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The question is on agreeing to the resolution. The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from South Dakota (Mr. JOHNSON) is necessarily absent.

Mr. LOTT. The following Senator was necessarily absent: the Senator from Arizona (Mr. MCCAIN).

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

The result was announced—yeas 82, nays 16, as follows:

[Rollcall Vote No. 77 Leg.]

YEAS—82

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

NAYS—16

Akaka	Feingold	Reid
Biden	Kennedy	Rockefeller
Bingaman	Leahy	Sanders
Byrd	Menendez	Whitehouse
Corker	Murray	
Dodd	Reed	

NOT VOTING—2

Johnson	McCain
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The concurrent resolution (S. Con. Res. 20) was agreed to.

The preamble was agreed to.

The concurrent resolution, with its preamble, reads as follows:

S. CON. RES. 20

Whereas under Article II, Section 2, of the Constitution of the United States, the President is the "commander in chief of the Army and Navy of the United States", and in such capacity the President has the command of the Armed Forces, including the authority to deploy troops and direct military campaigns during wartime;

Whereas under Article I, Section 8, of the Constitution of the United States, Congress has the power of the purse specifically as it relates to the Armed Forces, and in such capacity Congress has the responsibility to fully and adequately provide funding for United States military forces, especially when they are at war and are defending the Nation; and

Whereas when United States military forces are in harm's way and are protecting our country, Congress and the Nation should give them all the support they need in order to maintain their safety and accomplish their assigned missions, including the equipment, logistics, and funding necessary to ensure their safety and effectiveness, and such support is the responsibility of both the Executive Branch and the Legislative Branch of Government: Now, therefore, be it

*Resolved by the Senate (the House of Representatives concurring),* That it is the sense of Congress that Congress should not take any action that will endanger United States military forces in the field, including the elimination or reduction of funds for troops in the field, as such action with respect to funding would undermine their safety or harm their effectiveness in pursuing their assigned missions.

EXECUTIVE SESSION

NOMINATION OF JOHN PRESTON BAILEY TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

NOMINATION OF OTIS D. WRIGHT II TO BE U.S. DISTRICT JUDGE FOR THE CENTRAL DISTRICT OF CALIFORNIA

NOMINATION OF THOMAS M. HARDIMAN TO BE U.S. CIRCUIT JUDGE FOR THE THIRD CIRCUIT

The PRESIDING OFFICER (Mr. SALAZAR). Under the previous order, the Senate will proceed to executive session to consider en bloc the following nominations, which the clerk will report.

The assistant legislative clerk read the nominations of John Preston Bailey, of West Virginia, to be U.S. District Judge for the Northern District of West Virginia; Otis D. Wright II, of California, to be U.S. District Judge for the Central District of California; Thomas M. Hardiman, of Pennsylvania, to be U.S. Circuit Judge for the Third Circuit.

The PRESIDING OFFICER. There is now 20 minutes equally divided for debate on the nominations.

The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, is the pending business the nomination of Thomas Hardiman to the Court of Appeals for the Third Circuit?

The PRESIDING OFFICER. That is one of the nominations that is pending.

Mr. SPECTER. Mr. President, I urge my colleagues to support Thomas Michael Hardiman for the Court of Appeals for the Third Circuit. He has served on the U.S. District Court for the Western District of Pennsylvania. He has an outstanding academic record. He has a law degree from Georgetown, bachelor's degree from the University of Notre Dame. He started his practice of law in 1990. He has an outstanding record both academically and professionally.

Senator Santorum and I know him personally and can vouch for him. I urge my colleagues to confirm him for the Third Circuit.

I ask unanimous consent that my full statements on the nominees be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

STATEMENT OF SENATOR ARLEN SPECTER ON THE NOMINATION OF THOMAS MICHAEL HARDIMAN TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Mr. President, I seek recognition today to urge my colleagues to confirm Thomas Michael Hardiman to the Third Circuit Court of Appeals. Judge Hardiman was nominated during the last Congress, and a hearing was held on November 14, 2006. The Senate, however, did not act on his nomination prior to adjournment of the 109th Congress. President

Bush re-nominated Judge Hardiman on January 9, 2007 and his nomination was reported out of Committee favorably on March 8, 2007.

Judge Hardiman has an impressive resume and strong bipartisan support in the Commonwealth of Pennsylvania. He received his B.A. from the University of Notre Dame in 1987 and his J.D. from Georgetown University Law Center in 1990. He served on the Georgetown Law Journal as an Associate Editor and as a Note and Comment Editor.

After law school, Judge Hardiman joined the Washington, DC, office of Skadden, Arps, Slate, Meagher, & Flom as an associate in their litigation group. In 1992, Judge Hardiman moved to Pittsburgh and joined the litigation group of Cindrich & Titus, which later became Titus & McConomy. In 1996, he was elected partner. In 1999, Judge Hardiman joined the law firm of Reed Smith, also in Pittsburgh, as a partner.

In 2003, Judge Hardiman was nominated to be a U.S. District Judge for the Western District of Pennsylvania. On October 22 of that year, the Senate confirmed him to that position by voice vote. Throughout his legal career, he has taken time to give back to the people of Pennsylvania, most notably through his active involvement in Big Brothers and Big Sisters of Greater Pittsburgh, of which he is a past president.

The American Bar Association unanimously rated Judge Hardiman “well qualified.” The vacancy to which Judge Hardiman is nominated has been designated a “judicial emergency” by the nonpartisan Administrative Office of the Courts.

Lawyers and judges who know Judge Hardiman best believe he is the right choice to succeed for Judge Richard L. Nygaard. Timothy Lewis, a Pittsburgh native and former Third Circuit judge, recently praised this nomination. Judge Lewis, who considers himself pro-choice and a civil rights activist, emphasized the consensus nature of this nomination: He said “[t]his is the perfect opportunity—gift wrapped, signed, sealed and delivered—for both [parties] to work together.” He reiterated his belief that “[t]here is absolutely no way anyone is going to find a more moderate candidate who is completely noncontroversial” and that Judge Hardiman “is the quintessential perfect judicial nomination for the 3rd Circuit.”

I urge all my colleagues to join me and Senator Casey in supporting this fine nominee.

**STATEMENT OF SENATOR ARLEN SPECTER ON THE NOMINATION OF OTIS D. WRIGHT, II TO THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA**

Mr. President, I seek recognition today to support the nomination of Judge Otis D. Wright, II of California to be a district court judge in the United States District Court for the Central District of California.

Judge Wright was nominated to the District Court for the Central District of California during the last Congress; however, the Senate did not act on his nomination prior to adjournment of the 109th Congress.

President Bush re-nominated Judge Wright on January 9, 2007. A hearing was held on his nomination on February 6 and the Judiciary Committee favorably reported him to the floor on March 1.

Judge Wright has dedicated much of his life to public service. He is a veteran of the Marine Corps and served for eleven years in the Los Angeles County Sheriff's Department. He also has considerable experience as a prosecutor.

Judge Wright received his B.S. from California State University of Los Angeles in 1976 and his J.D. from Southwestern School of Law in 1980.

Prior to receiving his B.S., he served as a sergeant in the U.S. Marine Corps from 1963–

1969. From 1969 to 1980, including his time in law school, Judge Wright served as a deputy sheriff in Los Angeles.

After law school, Judge Wright took a position as Deputy Attorney General in the Criminal Appeals Section of the California Department of Justice. During his three years in the office, he handled approximately 200 appeals before the Court of Appeals and the California Supreme Court.

In 1983, Judge Wright joined the Los Angeles office of Wilson, Elser, Moskowitz, Edelman and Dicker LLP.

As a partner in the firm, he handled all aspects of insurance law including, drafting of policies and reinsurance treaties, providing coverage options, auditing insurance company claims departments, defending insurance companies in direct actions by insureds for bad-faith, and defending insureds on a wide variety of matters.

On October 28, 2005, Governor Arnold Schwarzenegger appointed Judge Wright to the California Superior Court for the County of Los Angeles. Judge Wright is assigned to the Substance Abuse Court where he handles driving under the influence (DUI) arraignments, pre-trial, motions, and sentencing. He also monitors three drug diversion programs for felony drug possession offenders, including probation violation sentencing hearings.

The American Bar Association has unanimously rated Judge Wright “qualified.”

The vacancy to which Judge Wright is nominated has been designated a “judicial emergency” by the nonpartisan Administrative Office of the Courts. The people of California will be grateful to see this vacancy filled so that litigants do not suffer from unnecessary delays.

I urge my colleagues to join me in supporting this fine nominee.

**STATEMENT OF SENATOR ARLEN SPECTER ON THE NOMINATION OF JOHN PRESTON BAILEY TO BE A UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

Mr. President, I seek recognition today to support the nomination of John Preston Bailey to the United States District Court for the Northern District of West Virginia.

Mr. Bailey was nominated during the last Congress, but a hearing was not held on his nomination in the Judiciary Committee prior to the adjournment of the 109th Congress.

President Bush re-nominated Mr. Bailey in the 110th Congress on January 9, 2007. A hearing was held on the nomination on February 6, 2007 and it was unanimously reported out of the Judiciary Committee on March 1, 2007.

Mr. Bailey is a highly regarded attorney in his home state of West Virginia where his qualifications are well known. He received his Bachelor of Arts degree from Dartmouth College in 1973 and received his Juris Doctorate degree from the West Virginia University College of Law in 1976.

Upon graduating from law school, he clerked for two years in the chambers of Judge Charles H. Haden, II, on the U.S. District Court for the Southern District of West Virginia.

Following his clerkship, Mr. Bailey returned home to Wheeling, West Virginia, to join the law firm Bailey, Riley, Buch & Harmon, where he remains today.

Mr. Bailey has had an impressive career as a general practitioner. He has handled a diverse civil caseload ranging from personal injury and mass toxic tort defense to complex construction litigation and bankruptcy matters.

In addition to his civil docket, he has served as the Ohio and Marshal County Assistant Prosecutor. In that capacity he has

handled the full spectrum of criminal matters.

The American Bar Association has rated unanimously Mr. Bailey “Qualified.”

The vacancy to which Mr. Bailey is nominated has been designated a “judicial emergency” by the nonpartisan Administrative Office of the Courts, underscoring how pressing it is that we act to fill the vacancy.

I urge my colleagues to join me in supporting this fine nominee.

**THE PRESIDING OFFICER.** The Senator from Vermont.

**MR. LEAHY.** Mr. President, the Senator from Pennsylvania said we are considering the nomination of Thomas Hardiman to a seat on the U.S. Court of Appeals for the Third Circuit that has been designated a judicial emergency by the Administrative Office of the U.S. Courts.

In 2003, the Senate confirmed Judge Hardiman to the District Court for the Western District of Pennsylvania at the age of 37. Four years later, and now 41 years old, Judge Hardiman is before the Senate for confirmation to lifetime tenure on the United States Court of Appeals for the Third Circuit. Out of deference to the home state Senators, Senator SPECTER and Senator CASEY, I support this nomination.

I only wish President Clinton’s nominees, many of whom had a long record of accomplishment, had received the treatment we are according this nominee. Instead, highly qualified nominees, such as Elena Kagan, now Dean of the Harvard Law School, and Allen Snyder, who served as a clerk to Justice Rehnquist and was an experienced and respected litigator, were left without consideration for years. No questions were raised about their qualifications, as there have been for so many of President Bush’s nominations. The fact is that during President Clinton’s last two years, Senate Republicans refused to consider more than half of his appellate court nominees. They were just blocked, pocket filibustered with impunity.

Last Congress, we wasted enormous time and energy with controversial nominees. Now, a Democratic Congress has taken a better path and the high road.

Judge Hardiman has been nominated to a seat on the Third Circuit after serving as a Federal district court judge for four years. Before arriving on the bench, Judge Hardiman was a lawyer in private practice, where he worked for 13 years. In 1990, Judge Hardiman began his legal career as an Associate at the law firm of Skadden, Arps, Slate, Meagher & Flom in Washington, DC. From 1992 to 2003, he engaged in the private practice of law in Pittsburgh, PA, first as a partner at the law firm of Titus & Cindrich—now Titus & McConomy, LLP—and later as a partner at Reed Smith, where he specialized in real estate, contracts, securities, and constitutional law.

Judge Hardiman graduated from the University of Notre Dame in 1987, and received his law degree from my alma mater the Georgetown University Law

Center, in 1990, where he served on the Georgetown Law Journal as a Notes and Comments Editor.

I thank both home State Senators for their support of this nominee. I know Senator SPECTER, who has been a strong advocate for Judge Hardiman on the Committee, will welcome his confirmation. I also thank Senator CASEY for his support, and for considering and approving this nominee so quickly after taking office.

With this confirmation, the Senate continues to make significant progress in this Congress on nominations for lifetime appointments to the Federal bench. We continue to put the lie to the alarmist rhetoric of some on the other side of the aisle by proceeding promptly and efficiently.

This session of Congress, the Senate has already confirmed 10 judicial nominations, including the nomination of Norman Randy Smith to the Court of Appeals for the Ninth Circuit. And now the Senate stands poised to confirm a Second Circuit court nomination and will likely have confirmed 13 judges by the end of the day.

The treatment of President Bush's judicial nominees in a Democratic Congress stands in stark contrast to the fate of many of President Clinton's nominees, who were blocked and delayed by the Republican majority. In the 1996 session, a Republican-controlled Senate confirmed only 17 of President Clinton's nominees—this year, we have already reported 15 nominees out of committee in just 3 months. In 1996, not a single judge was confirmed to the circuit courts—not one. This nomination is already the second confirmed this year. In all, more than 60 of President Clinton's judicial nominees were defeated in Senate committees through pocket filibusters and practices that Republicans then abandoned as soon as there was a Republican in the White House.

Regrettably, the Administrative Office of the U.S. Courts lists 50 judicial vacancies, yet the President has sent us only 20 nominations for these vacancies. Thirty of these vacancies—more than half—have no nominee. Of the 22 vacancies deemed by the Administrative Office to be judicial emergencies, the President has yet to send us nominees for 16 of them. That means more than two-thirds of the judicial emergency vacancies are without a nominee.

I would rather see us work together in the selection of nominees so that we can confirm judges rather than spend time fighting about them.

I congratulate Judge Hardiman, and his family, on his confirmation today.

#### NOMINATIONS OF JOHN PRESTON BAILEY AND OTIS D. WRIGHT

Mr. President, now the Senate will consider and, I believe, confirm the nominations of John Preston Bailey for the Northern District of West Virginia and Otis D. Wright II for the Central District of California.

With these two confirmations, both to fill judicial emergency vacancies, the Senate will have confirmed 13 lifetime appointments to the Federal bench so far this year. There were only 17 in the entire 1996 session. I have worked cooperatively with Members from both sides of the aisle on our committee and in the Senate to move quickly to consider and confirm these judicial nominations so that we can fill vacancies and improve the administration of justice in our Nation's Federal courts.

The Administrative Office of the U.S. Courts lists 48 remaining judicial vacancies, yet the President sent us only 18 nominations for these vacancies. Thirty of these vacancies—more than half—have no nominee. Of the 20 vacancies deemed by the Administrative Office to be judicial emergencies, the President has yet to send us nominees for 16 of them. That means four-fifths of the judicial emergency vacancies are without a nominee.

Each of the nominations before us today has the support of their home State Senators. And I thank Senators BYRD, ROCKEFELLER, FEINSTEIN, and BOXER for their support of these nominations.

John Preston Bailey has been nominated to the Northern District of West Virginia, a seat deemed to be a judicial emergency by the Administrative Office of the U.S. Courts. Mr. Bailey is a graduate of Dartmouth College, and he obtained his law degree from West Virginia University where he graduated with honors as a member of the Order of the Coif and the West Virginia Law Review. After law school, Mr. Bailey served as a law clerk to Judge Charles H. Haden II, a U.S. District Judge of the Northern and Southern Districts of West Virginia.

In his legal career, Mr. Bailey has worked as an assistant prosecuting attorney for Ohio County, WV, and special assistant prosecuting attorney for Marshall County, WV. He currently is a partner at the Wheeling, WV, law firm of Bailey, Riley, Buch and Harman, L.C., where he has worked since 1978.

Judge Otis D. Wright II has been nominated to the Central District of California, another seat designated a judicial emergency. Judge Wright is a judge on the Superior Court of California, a court with one of the largest caseloads in the country. Before coming to the bench, Judge Wright worked for 22 years as a civil litigator at the Los Angeles law firm of Wilson, Elser, Moskowitz, Edelman and Dicker LLP, and 3 years as a deputy attorney general for the California Department of Justice. He graduated from California State University and received his law degree from Southwestern School of Law.

Judge Wright's story has been a march toward the American dream. As an African American born in Tuskegee, AL, Judge Wright rose above the travails and barriers posed by a Jim Crow segregated society to serve his country

as a U.S. marine, a deputy sheriff in the Los Angeles County Sheriff's Department, a State government attorney, a partner at a Los Angeles law firm, and a judge on the State bench. Today this great American story includes confirmation to a lifetime appointment on the Federal bench.

I am pleased one of the two nominations before us is an African American. I have urged, and will continue to urge, the President to nominate men and women to the Federal bench who reflect the diversity of America. Racial diversity remains a pillar of strength for our country and one of our greatest natural resources. Diversity on the bench helps ensure that the words "equal justice under law," inscribed in Vermont marble over the entrance to the Supreme Court, are a reality and that justice is rendered fairly and impartially. Judicial decisions should reflect insight and experiences as varied as America's citizenry. A more representative judiciary helps cultivate public confidence in the judiciary which strengthens the independence of our Federal courts.

A more representative judiciary also strengthens the fabric of our democracy. As we were reminded earlier this year, while honoring the life of Dr. Martin Luther King, Jr., the promise of our democracy lies in building a nation more inclusive of all Americans.

The nomination before us today represents an important step toward achieving that promise. I am pleased that, if confirmed, Judge Wright would become the 90th African-American judge currently on the Federal bench.

But there is still much work to be done. In 6 years, President Bush has nominated only 18 African-American judges to the Federal bench, compared to 53 African-American judges appointed by President Clinton in his first 6 years in office. He has yet to appoint an African-American judge from Mississippi even though that State has the highest percentage of African-American residents of any State.

Our Nation has highly qualified individuals of diverse heritages who would help to unify our Nation while adding to the diversity of our courts. I hope the President will send us more consensus nominees that reflect the rich diversity of our Nation.

I congratulate the nominees, and their families, on their confirmations today.

#### NOMINATION OF OTIS D. WRIGHT

Mrs. FEINSTEIN. Mr. President, it is my pleasure to support Judge Otis Wright, a distinguished nominee to the U.S. District Court for the Central District of California.

Judge Wright is nominated to a seat that has been designated as a judicial emergency. The Central District of California, based in Los Angeles, is the largest and busiest Federal judicial district in the Nation.

When this Congress began, there were five vacancies on this court more than twice as many as in any other judicial district in the country.