

PAUL LEWIS MALONEY

UNITED STATES DISTRICT JUDGE FOR THE
WESTERN DISTRICT OF MICHIGAN*Birth*

December 15, 1949; Cleveland, Ohio.

Legal Residence

Michigan.

Education

B.A., Lehigh University, 1972.

J.D., University of Detroit School of Law,
1975.*Employment*Assistant Prosecutor, Berrien County
Prosecutor's Office, 1975–1981; Prosecuting
Attorney, 1981–1989.Deputy Assistant Attorney General, Crimi-
nal Division, United States Department of
Justice, 1989–1993.Special Assistant to the Director, State of
Michigan, Department of Corrections, 1993–
1995.District Judge, Berrien County, Michigan,
1995–1996.Circuit Judge, Berrien County, Michigan,
1996–Present.*Selected Activities*Member, Michigan Prosecuting Attorneys
Association.Member, Michigan District Judges Asso-
ciation.Member, Michigan Judges Association
(Board of Directors Member for one year).

Member, Michigan Bar Association.

Member, American Bar Association.

Member, Berrien County Bar Association.

Member, Knights of Columbus.

President, Catholic Community Education
Commission.*ABA Rating*

Unanimous “well qualified”.

PAUL LEWIS MALONEY—U.S. DISTRICT JUDGE
FOR THE WESTERN DISTRICT OF MICHIGAN

Paul Lewis Maloney was initially nomi-
nated to be a U.S. District Court Judge for
the Western District of Michigan on June 28,
2006. A hearing was held on his nomination
on September 19, 2006, and he was reported
out favorably on September 29, 2006, by a
voice vote. No further action was taken on
the nomination before the 109th Congress ad-
journed.

Judge Maloney was re-nominated by the
President on March 19, 2007, and reported fa-
vorably by the Committee on May 24, 2007.

Judge Maloney has an impressive resume
reflecting a devotion to public service.

He received a B.A. from Lehigh University
in 1972 and a J.D. from the University of De-
troit School of Law in 1975.

Following law school, Judge Maloney
began working as an assistant prosecutor for
the Berrien County Prosecutor's Office. In
1981, he was appointed the county's Pros-
ecuting Attorney and was re-elected in 1982,
1984, and 1988.

In 1989, Judge Maloney left the Berrien
County Prosecutor's Office to serve as a Dep-
uty Assistant Attorney General for the
Criminal Division of the United States De-
partment of Justice.

Following his work at the Department of
Justice, Judge Maloney returned to Michi-
gan to serve as Special Assistant to the Di-
rector of Michigan's Department of Correc-
tions.

In 1995, Judge Maloney was appointed Dis-
trict Judge for Berrien County. He held this
position for a year, before he was appointed
to be Circuit Judge of Berrien County, where
he continues to serve.

The American Bar Association rated Judge
Maloney unanimously well-qualified, its
highest rating.

This vacancy has been designated a “judi-
cial emergency,” and, indeed, the Western
District of Michigan is in dire need of judges.
Currently, there is only one active judge—
Chief Judge Bell—out of the four judgeships
authorized for the district. Chief Judge Bell
wrote letters on December 28, 2006, and April
18, 2007, explaining that he and the senior
judges are “exhausted.”

ROBERT JAMES JONKER

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MICHIGAN*Birth*

March 9, 1960, Holland, Michigan.

Legal Residence

Michigan.

Education

B.A., with honors, Calvin College, 1982.

J.D., summa cum laude, University of
Michigan Law School, 1985; Order of the Coif;
Robert S. Feldman Labor Law Award.*Employment*Law Clerk, Honorable John F. Feikens,
U.S. District Court for the Eastern District
of Michigan, 1985–1987.Associate, Warner Norcross & Judd LLP,
1987–1993; Partner, 1994–Present.*Selected Activities*

Fellow, Michigan State Bar Foundation.

Member, Federal Bar Association, Western
District Chapter; President-Elect, October
2006; Vice President—Operations, 2 years;
Treasurer, 2 years; Executive Board Member,
1999–2006.Chairperson, Judicial Code Committee of
the Christian Reformed Church.Listed in Best Lawyers in America for
Business Litigation.

Member, Grand Rapids Bar Association.

Member, Michigan Bar Association.

Member, American Bar Association.

ABA Rating

Unanimous “well qualified”.

ROBERT JAMES JONKER—U.S. DISTRICT JUDGE
FOR THE WESTERN DISTRICT OF MICHIGAN

Robert James Jonker was nominated to be
a United States District Judge on June 29,
2006. A hearing was held on his nomination
on September 19, 2006. His nomination was
favorably reported out of the Judiciary Com-
mittee on September 29, 2006; however, the
Senate failed to act on his nomination prior
to the adjournment of the 109th Congress.
President Bush renominated Mr. Jonker on
March 19, 2007, and the committee favorably
reported him on June 7, 2007.

Mr. Jonker received his B.A., with honors,
from Calvin College in 1982 and his J.D.,
summa cum laude, from the University of
Michigan Law School in 1985, where he was
elected Order of the Coif.

Upon graduation from law school, Mr.
Jonker served as a law clerk to the Hon-
orable John F. Feikens of the U.S. District
Court for the Eastern District of Michigan.
His clerkship lasted from 1985 to 1987.

Following his clerkship, Mr. Jonker ac-
cepted an associate position with the Michi-
gan law firm, Warner Norcross & Judd,
where he focuses on complex business and
environmental litigation.

In 1994, Warner Norcross made him a part-
ner, a position he holds today.

For 6 years, Mr. Jonker has served as chair
of the professional staff committee of War-
ner Norcross, which is responsible for the re-
cruitment, development, retention and re-
view of associate attorneys.

Mr. Jonker was recognized in the Best
Lawyers in America for his business litiga-
tion expertise.

The American Bar Association has unani-
mously rated Mr. Jonker “Well Qualified” to
serve as a Federal district court judge.

This vacancy has been designated a “judi-
cial emergency.” In fact, the Western Dis-
trict of Michigan has the highest weighted
case filings in the Sixth Circuit. Currently,
there is only one active judge—Chief Judge
Bell—out of the four judgeships authorized
for the district. Chief Judge Bell wrote let-
ters on December 28, 2006, and again on April
18, 2007, explaining the dire need for judges in
the Western District and that he and the sen-
ior judges are “exhausted.”

EXECUTIVE PRIVILEGE

Mr. SPECTER. Madam President, I
wish to make a comment or two on the
subject broached by the distinguished
chairman of the committee on the cur-
rent issue with the challenge on execu-
tive privilege where letters were re-
ceived today from the White House
Counsel indicating that executive
privilege would be asserted. It is my
hope that we will yet be able to resolve
this controversy because of the impor-
tance of getting the information which
the Judiciary Committee has sought in
its oversight capacity.

We are dealing with a Department of
Justice which I think, fairly stated, is
dysfunctional. We have seen the Attor-
ney General of the United States come
before the Judiciary Committee and
say he was not involved in discussions,
not involved in deliberations, and then
was contradicted by three of his top
deputies, contradicted by documentary
evidence in the e-mails.

I think it is generally conceded that
the President of the United States has
the authority to remove U.S. attorneys
for no reason, just as President Clinton
did when he took office in 1993, but you
cannot remove a U.S. attorney for a
bad reason.

There have been questions raised as
to the request for the resignation from
the U.S. attorney from San Diego, that
she perhaps was hot on the trail of con-
federates of former Congressman Duke
Cunningham, who is serving 8 years in
jail. I do not know whether that is
true. We have yet not had an expla-
nation from the Department of Justice
as to why her resignation was
requested.

Similarly, a cloud has existed over
the reasons for the requested resigna-
tion for the U.S. attorney from New
Mexico, with some suggestions that he
was asked to resign because he would
not bring prosecutions for vote fraud
when he thought there was no basis,
and some of us thought there was a
basis. That has not yet been explained,
and the request for resignations gen-
erally has not been explained.

The Department of Justice is second
only to the Department of Defense in
importance to the United States. The
Department of Justice has the respon-
sibility for investigating terrorism, has
the responsibility for investigating and
prosecuting drug dealers in inter-
national cartels, the responsibility for
investigating and prosecuting orga-
nized crime and violent crime. Yet it is
pretty hard to make a more conclusive
description than to say that the De-
partment of Justice is dysfunctional,
and the Attorney General insists on

staying. I think, as to his own decision, it is a matter for him personally. I am not going to tell him what to do, nor am I going to make a recommendation to the President. Under separation of powers, it is the President's call. I don't want the President to tell me how to conduct my office in the Senate and I am not going to impede upon his executive authority, but I do believe that the inquiry which the Judiciary Committee is conducting might produce facts, if we get to the bottom of things, find out what they are, which would lead us to a new Attorney General, which I think is very much in the national interest.

So I am hopeful we can yet avoid the confrontation. I think, candidly, there is a lot of posturing on both sides. I don't think it is realistic to seek a contempt citation brought against the President—that is newspaper talk—contempt citation brought against anybody in the executive branch, because there are arguments on both sides of this issue. I hope we can work it out so that we don't test the good faith of the executive branch in asserting privilege or the good faith of the legislative branch, the House of Representatives Judiciary Committee and the Senate Judiciary Committee, in seeking facts as part of our oversight responsibility. I hope we can work it out.

I said a long while ago I would be prepared to accept the President's terms, with only one exception, and that was the importance of having a transcript as to what happens. The President made an offer on national television months ago saying he would allow White House personnel to come in and be informally questioned, but he did not want to have them under oath, and I would prefer to see them under oath. But I would give on that issue, because what they say is subject to a criminal prosecution with a 5-year penalty, the same as a perjury conviction for a false official statement under 18 U.S. Code 1001.

Mr. LEAHY. Will the distinguished Senator yield for a question on that point?

Mr. SPECTER. I yield.

Mr. LEAHY. Would the distinguished Senator accept the offer of the President, if the rejoinder of the President was if we did it the way you describe—transcript, knowing that the criminal code applies—but once you have done that, there would be no followup? Even if you were to find something out during that meeting, there would be no followup; there would be a promise of no subpoenas, there would be no further proceedings?

Mr. SPECTER. I will be pleased to respond to that relevant inquiry. Senator LEAHY and I have discussed this before. We have discussed just about everything, because we do things on a joint basis—about as pure as Ivory Snow, 99.4. We have some disagreements, but we try to work them out on a bipartisan basis because we think it is the right way to approach it.

The Senator from Vermont has said he thinks we would be barred from a followup, and I don't know whether that is part of the offer which the President has made, but we can get it clarified further. I do not think we could make the commitment not to pursue a subpoena at a later time if we felt the informal interviews were insufficient. I don't think we can give up our authority in that process, and if we could, I wouldn't agree to that because I don't know what the informal interviews are going to produce and I would want to retain the right to exercise our right to subpoena. I would acknowledge at the same time that if we exercise our right to a subpoena that the President could exercise whatever rights he has on executive privilege. We would be back to square one, but at least we would have the advantage of the questioning. I know the questioning of Senator LEAHY, a tough prosecutor from Burlington, VT. I have been there. And on an informal basis, Senator LEAHY can extract quite a lot of information, and Chairman CONYERS has the capacity to extract a lot of information. I might even have a relevant question or two to ask in the course of the proceedings.

I think we can get a lot of information. I want to have that information. I want to find out as much as I could before I go to court on what is going to be a 2-year battle. It is going to outlast the President's term. It is going to outlast Attorney General Gonzales's tenure. I don't think the next President is going to reappoint Attorney General Gonzales.

Let the record show there is a smile from staff in the back. It was intended to be not serious.

Then the President doesn't want there to be these witnesses to go before both committees, and that is all right. I think Chairman CONYERS and Chairman LEAHY, in consultation with their ranking members, can work out a smaller group from the House and Senate, bipartisan, bicameral, sufficient to ask the questions. Then I would prefer that it be public. But as long as the transcript is published, I would give that up as well.

I think it is so important that we get to the bottom of this important issue so we can have the Department of Justice function in the interest of the public that I am prepared to make those concessions, but I want a transcript. I would even be willing to give up the transcript if I am compelled to. I would take the interviews rather than have nothing. It would be at least something. But I would say to the President, the executive branch, that the transcript protects not only the questioners but the persons being questioned so there is no doubt as to what was said. I have been in closed-door meetings and had a number of participants walk out and, in perfectly good faith, have different versions as to what occurred. That happens when you are in a closed session. That happens

when you are in a closed meeting, in perfectly good faith. That is why a transcript would protect Sara Taylor. It would protect Ms. Harriet Miers. It would protect the people who are being questioned.

It is my hope we can yet work this out. Before taking the floor, I asked Senator LEAHY if he would be willing to accept—he doesn't want to go as far as I do, and I can understand why he would insist on a transcript—I say I would like to have a transcript—but rather than have nothing, I would be willing to go into a closed session and have Senator LEAHY question, Chairman LEAHY question, Chairman CONYERS question, and I question, some others question, to find out what we can. If at the end of that process we feel it is necessary to revert to subpoenas, we cannot, I think—but in any event should not—give up that power that resides with the legislative branch. I don't think we have the authority to give it up, but if we had the authority to give it up, I wouldn't want to give it up.

But I want to pursue this matter and I want to get the information. When you talk about a criminal citation, a citation for criminal contempt, you are talking about a very serious matter. I have great empathy for the witnesses, Sara Taylor and Harriet Miers, who have been subjected to these subpoenas. If they assert executive privilege, and I agree that they are compelled to, I think once they are instructed by the President that the work they did for him is subject to his executive privilege, as he sees it, I think they have no choice. But when you bring a criminal contempt citation against Sara Taylor, people aren't going to understand she is an innocent pawn in the midst of this proceeding. If you bring a criminal contempt citation against anybody, there is an inference of some wrongdoing. You don't have a criminal charge customarily unless there is probable cause to believe a crime has been committed. That is when you have a warrant of arrest. That is when you have an indictment. Of course, a contempt citation is different, but if you call it a citation for criminal contempt, that has a tarring effect which is very serious and which is very profound.

The U.S. attorney has to bring the charge, and the U.S. attorney has discretion. It is not an automatic matter that if the Congress refers the issue for a criminal contempt citation, it is mandated. U.S. attorneys have discretion as to what they do. They can bring it or not, depending upon their conclusions, upon their allocation of resources. And they can bring it on what they want to do. I could see how a U.S. attorney might not want to spend a whole lot of time on this matter. I can see how the taxpayers of the United States wouldn't like to spend a whole lot of time on this matter. But that is where we are heading if this posturing continues.

Most importantly, we will not find out the underlying facts on the request for the resignations of these U.S. attorneys, and that is important to do so we can make a final evaluation by the Judiciary Committee as to what our conclusions are on this matter, and it would bear heavily on the continued service, the continued activity, by Attorney General Gonzales in holding that position.

Madam President, I see the distinguished Senator from Kansas on the floor, and we have a short time left until the votes start at 5:30, but I yield to Senator BROWNBAC.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. BROWNBAC. I wish to address the nomination of Janet Neff, who is the second nominee to come up. I can do so now or wait until after the first vote. I would defer to my colleague from Pennsylvania, if he wants to do it that way, or if there an order established on the vote or for debate on the second nomination.

The PRESIDING OFFICER. There are 10 minutes provided to the Senator from Kansas after the first vote.

Mr. BROWNBAC. I would be happy to take my time at that point in time, and I yield the floor.

Mr. SPECTER. Madam President, I think there is going to be real interest on the part of the body in moving to the second vote, but there are 10 minutes for the Senator from Kansas after the first vote?

The PRESIDING OFFICER. That is correct.

Mr. BROWNBAC. I would be happy, if I could, Madam President, to take that time now. It won't be the full 10 minutes, but I wish to be able to discuss this. This is a matter of some concern. It has been pending for over a year, and I think it is meritorious of the nominee that it be brought forward.

Mr. SPECTER. Madam President, I would ask the Senator from Kansas if he would be willing to take 5 minutes and delay it to that extent.

Mr. BROWNBAC. Let us see if I can cover it, but if I can't, I will take some time before the second vote occurs. This has been pending for a year's period of time, and it is a significant matter.

Mr. SPECTER. Madam President, I suggest we proceed to regular order then.

The PRESIDING OFFICER. The Senator from Pennsylvania has time remaining, if you choose to yield that to the Senator or yield it back.

Mr. SPECTER. How much time do I have remaining?

The PRESIDING OFFICER. Nine minutes.

Mr. SPECTER. Ten minutes. I yield to the Senator from Kansas on the understanding that will be the time he would have had otherwise, and that we may proceed then to the sequence of votes.

Mr. BROWNBAC. That is acceptable to me.

The PRESIDING OFFICER. Without objection, it is so ordered. There are 9 minutes remaining.

Mr. BROWNBAC. I thank my colleague from Pennsylvania for accommodating me. Also, we wish to accommodate the other Members who will come in and I think will want to vote in a series of votes. I think that is perfectly fine.

I wish to address the second nominee who will be up today, Janet T. Neff, for the District Court of the Western District of Michigan. The Presiding Officer has had an interest in this matter, as well as many others. Alexander Hamilton, in Federalist 78, said this about judges:

The courts must declare the sense of the law; and if they should be disposed to exercise WILL instead of JUDGMENT, the consequence would equally be the substitution of their pleasure to that of the legislative body. The observation, if it proves anything, would prove that there ought to be no judges distinct from that body.

As we consider judicial nominees, we must consider whether they have the temperament, disposition, and ideology to interpret the law without regard to their own personal will. Because I am not convinced Judge Neff can do that, I cannot support her nomination.

I wish to give the body some background on this matter. On June 28, 2006, Judge Janet Neff was nominated by President Bush for a seat on the U.S. District Court for the Western District of Michigan. I wish to point out that she was part of an overall package of judges that was put forward and that the Michigan Senators were part of this discussion of her nomination. I do not know if she would have been the top pick of the President, but this is where we work together in this body, trying to get district judges the Senators from that State would support. These were supported by my two distinguished colleagues from Michigan. They were for Judge Neff.

In September of 2006, following her hearing before the Senate Judiciary Committee, I became aware of Judge Neff's participation in a same-sex commitment or marriage ceremony in Massachusetts in 2002. This was reported in the New York Times.

This concerned me. I placed a hold on Judge Neff's nomination in order to ascertain her role in the ceremony and her position on the constitutional validity of State bans on same-sex marriage. That is the core issue. No. 1, factually, what is it that took place that she participated in and, No. 2, what is her view of the constitutionality of same sex marriages? She would be going on to the Federal bench and this issue is likely to come in front of her.

With regard to her involvement in the 2002 Massachusetts commitment ceremony, Judge Neff first responded to my concerns in a letter. She described the context of the ceremony itself but declined to answer questions regarding the legality of traditional marriage laws and initiatives. For that

reason, I requested a second hearing with Judge Neff, which was held on May 10, 2007. My distinguished colleague from Vermont, the chairman of the committee, accommodated that hearing, and I appreciate that he did. At that hearing, Judge Neff testified she attended the commitment ceremony in Massachusetts as a close friend of one of the women involved. She stated she did not "lead" the proceeding, as the New York Times reported but, rather, participated as the homilist in the formal ceremony itself. Judge Neff testified that when she was asked to deliver the homily, she was pleased to do that.

I spent much time considering whether her role as a homilist can fairly be described as leading the ceremony. It is my belief, whether she led the ceremony, she was an active participant and not a mere bystander.

I wish to make clear my decision to oppose Judge Neff's nomination is not based merely on her involvement in this ceremony. Rather, her participation in this ceremony was simply the means I became aware of her approach to interpreting same-sex marriage laws, which are likely to come in front of her or have a good possibility of coming in front of her were she to be placed on the Federal bench.

After discussing her role in the ceremony, I asked about her understanding of the law regarding same-sex marriage. When asked whether she feels the Constitution creates a right to same-sex marriage, Judge Neff said that is a "continuing legal controversy."

When asked what her understanding is regarding Michigan statutory defense of marriage law, she said, "I really don't have an understanding of it."

I would note for the record the State of Michigan passed a constitutional amendment by a vote of the people in 2004, 59 percent to 41 percent, defining marriage as a union of a man and woman. But prior to that, in 1996, prior to this commitment ceremony in 2002, the legislature passed a State law defining marriage as between a man and a woman—clearly the law of Michigan.

When asked her understanding regarding the law in Michigan, she said, "It's not entirely settled," even though the legislature had passed this in 1996 and by 2004 the people of Michigan had passed a definition of marriage.

These answers of hers give me pause. Michigan's defense of marriage law, which has been on the books since 1996, says:

Marriage is inherently a unique relationship between a man and a woman. As a matter of public policy, this State has a special interest in encouraging, supporting and protecting that unique relationship in order to promote, among other goals, the stability and welfare of society and its children. A marriage contracted between individuals of the same sex is invalid in this State.

In addition to this statute, in 2004, the voters of Michigan passed a similar constitutional amendment defining marriage as a union of a man and a

woman. In my opinion, the law of Michigan could not be more settled. The fact that Judge Neff feels the court has to weigh in before this issue is settled suggests a misunderstanding of the role of the judiciary. The people of Michigan have spoken, similar to those of 27 other States. The amendment was a direct statement by the people of Michigan. Never is it more important to respect the will of the people than with issues of fundamental family values. Those issues must be decided by the people and not by Federal judges.

Because I am not persuaded that Judge Neff will fairly uphold the law of the State of Michigan, I cannot support her nomination for a lifetime appointment to the bench.

This has been a long and arduous journey and I recognize that for Judge Neff and I recognize that for the State of Michigan. I appreciate her willingness to come in front of us in the confirmation process. But I believe one of the most important aspects of my job as a Senator is the consideration of judges for the Federal bench. I take the Senate's role in the judicial nomination process very seriously. Individuals who are put in these positions assume lifetime appointments. We have a responsibility to ensure they understand their role and are firmly rooted in the principles of law and justice and what they will do in interpreting the law, not writing the law. They must be committed to following the letter of the law without imposing their own ideologies.

Because I am not satisfied that Judge Neff can do this, on a very important, very controversial issue of our day, I cannot support her nomination. I have reached out. I met personally with Judge Neff. I met with the Senators from the State of Michigan. This has been a long ordeal.

It is my considered judgment that she is not well-set on her role as a judge and more willing to consider her role as an activist in this particular issue.

With that, I ask my colleagues and urge my colleagues to consider it and consider opposing and voting against Judge Neff's nomination.

I thank my colleagues for accommodating me. I urge a "no" vote on Judge Neff, the second nominee. I yield the floor.

The PRESIDING OFFICER. The distinguished Senator from Vermont.

Mr. LEAHY. Madam President, does the Senator from Vermont have any time remaining?

The PRESIDING OFFICER. The Senator does not have any further time on this nomination.

Mr. LEAHY. Madam President, I ask unanimous consent that 3 minutes of the time I have reserved between this vote and the next vote be yielded to the distinguished senior Senator from Michigan at this point.

The PRESIDING OFFICER. Is there objection?

Mr. BROWNBAC. Madam Present, do I have any time remaining? The

only reason I am asking this is—I think that is a fair request, but I would like to have a minute between the votes when our colleagues are gathered here. It seems it would be only fair.

The PRESIDING OFFICER. The Senator from Kansas has 45 seconds remaining.

Mr. BROWNBAC. If I could ask for a minute at that time, I would have no problem for 3 minutes for my colleague from Michigan. I think it is fair when our colleagues are present to hear some of this discussion.

The PRESIDING OFFICER. Is there objection? The Senator from Michigan.

Mr. LEVIN. I believe the Presiding Officer would also need some time between the votes, and I believe that is not impacted by the current request; is that correct?

Mr. LEAHY. I will take it off my time between the votes. But there will be time for both the Senator from Pennsylvania and the Senator from Vermont between the votes.

Mr. SPECTER. Is the Senator from Kansas asking for 1 minute?

Mr. BROWNBAC. I am.

Mr. LEVIN. Between the votes or no?

Mr. BROWNBAC. Between the votes. That is when your time would occur.

Mr. LEAHY. I have no objection to that.

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

Mr. LEAHY. Madam President, before the Senator from Michigan speaks, the first pending is who?

The PRESIDING OFFICER. O'Grady is the next.

Mr. LEAHY. Madam President, I ask it be in order to ask for the yeas and nays on both the O'Grady and the Neff nominations at this point.

The PRESIDING OFFICER. Is there objection to the request? Without objection, it is so ordered.

Mr. LEAHY. I ask for the yeas and nays on those two and only those two.

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

The yeas and nays are ordered on the two nominations.

The PRESIDING OFFICER. The distinguished Senator from Michigan is recognized for up to 3 minutes.

Mr. LEVIN. I am pleased the long road to confirmation for three nominations for the Federal bench in the Western District of Michigan, Janet Neff, Robert Jonker, and Paul Maloney is apparently near the end of the road. Senator STABENOW and I worked with the White House on these nominations. Last year they were unanimously reported out of the Judiciary Committee and again this year. The confirmation of these nominees has been blocked since last November. The sticking point of the Senator who objected was that one of the nominees, Judge Neff, personally attended a same-sex commitment ceremony of a family friend who was a next-door neighbor of hers for 26 years.

When Judge Neff was asked to deliver some remarks, Judge Neff felt it was similar to being asked by one of her own daughters to be part of an important event in her life.

The ceremony was entirely private. It took place in Massachusetts, where Judge Neff has no official capacity. The ceremony had no legal effect. Judge Neff took no official role in the ceremony whatsoever.

Her qualifications are clear. She currently serves on the Michigan Court of Appeals, where she has served for a significant period of time.

Judge Neff graduated with honors from the University of Pittsburgh in 1967, then graduated from Wayne State University Law School in 1970. She has had a distinguished legal career. After law school, Judge Neff served as an estate and gift tax examiner for the Internal Revenue Service and then as a research attorney for the Michigan Court of appeals, before becoming an assistant city attorney for the city of Grand Rapids. Judge Neff has also worked in private practice, served as a commissioner for the Michigan Supreme Court and then as an assistant U.S. attorney. Judge Neff currently serves on the Michigan Court of Appeals. She has been granted numerous awards and honors, including the Outstanding Member for 2006 of the Women Lawyers Association of Michigan.

We are fortunate to have the opportunity today to confirm Judge Neff, along with two other qualified nominees, Robert Jonker and Paul Maloney.

I only hope now that we finally have an opportunity to confirm these three judges, that we will do so and do so overwhelmingly.

I yield the floor.

Mr. WEBB. Madam President, it is my distinct pleasure to offer my support—along with my colleague Senator WARNER—for the nomination of Magistrate Judge Liam O'Grady to be a judge on the U.S. District Court for the Eastern District of Virginia.

Since graduating from law school, Judge O'Grady's career has been as expansive as it has been distinguished. Judge O'Grady currently serves as magistrate judge in the U.S. District Court for the Eastern District of Virginia, where he has sat since 2003. Prior to taking the bench, Judge O'Grady was a partner at the law firm of Finnegan, Henderson, Farabow, Garrett, & Dunner, LLP, 1992–2003, an assistant U.S. Attorney in the Eastern District of Virginia, 1986–1992, and an assistant Commonwealth Attorney for the Commonwealth of Virginia. Judge O'Grady began his career as a law clerk to an administrative law judge for the Department of Labor and the Department of the Interior, 1976–1979, and was subsequently a sole practitioner, 1979–1982.

Judge O'Grady has spent equal time in Federal and State courts and has spent equal time handling criminal and civil matters. Judge O'Grady has tried more than 100 cases before a jury.

Moreover, he has authored and published several scholarly articles, and he has devoted countless hours in pro bono work for low-income and indigent clients. Judge O'Grady was unanimously rated "well-qualified" by the American Bar Association.

Judge O'Grady is married to Grace McPhearson O'Grady and has four children. He resides in McLean, VA. Judge O'Grady received a B.A. from Franklin & Marshall College, 1973, and a J.D. from George Mason University School of Law, 1977.

As I have previously noted, the Constitution assigns a pivotal role to the Senate in the advice and consent process related to Federal judges. These judgeships are lifetime appointments, and Virginians expect me to take very seriously my constitutional duties. In my mind, it matters not whether a nominee is a Republican or a Democrat, but rather whether the nominee will be respectful of the Constitution, and impartial, balanced, and fair-minded to those appearing before him. After careful deliberation, including conferring with Senator Warner, I believe that Judge O'Grady meets these high standards.

I thank the Chair for the opportunity to make these remarks about Judge O'Grady and for the expeditious way the Senate has moved his nomination through the process during the 110th Congress. Again, it is with pride that I join Senator WARNER in recommending Judge O'Grady to each of my colleagues in the Senate.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Liam O'Grady, of Virginia, to be U.S. district judge for the Eastern District of Virginia.

On this question, the yeas and nays have been ordered. The clerk will call the roll.

The assistant journal clerk called the roll.

Mr. DURBIN. I announce that the Senator from North Dakota (Mr. DORGAN), the Senator from Hawaii (Mr. INOUE), the Senator from South Dakota (Mr. JOHNSON), the Senator from Arkansas (Mrs. LINCOLN), and the Senator from Illinois (Mr. OBAMA) are necessarily absent.

Mr. LOTT. The following Senators are necessarily absent: the Senator from Colorado (Mr. ALLARD), the Senator from North Carolina (Mr. BURR), the Senator from Georgia (Mr. CHAMBLISS), the Senator from Nevada (Mr. ENSIGN), the Senator from Arizona (Mr. MCCAIN), the Senator from South Dakota (Mr. THUNE), and the Senator from Ohio (Mr. VOINOVICH).

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

The result was announced—yeas 88, nays 0, as follows:

[Rollcall Vote No. 239 Ex.]

YEAS—88

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

NOT VOTING—12

Allard	Ensign	McCain
Burr	Inouye	Obama
Chambliss	Johnson	Thune
Dorgan	Lincoln	Voinovich

The nomination was confirmed.

NOMINATION OF JANET T. NEFF TO BE U.S. DISTRICT JUDGE FOR THE WESTERN DISTRICT OF MICHIGAN

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will proceed to Executive Calendar No. 140, which the clerk will report.

The bill clerk read the nomination of Janet T. Neff, of Michigan, to be United States District Judge for the Western District of Michigan.

The ACTING PRESIDENT pro tempore. The Senator from Vermont.

Mr. LEAHY. I am about to yield momentarily to the Senator from Michigan. I know the Senator from Pennsylvania has assured, as I have, the Senator from Kansas that he will have a minute. Then I will yield back whatever time remains so we can go to a rollcall vote on this nomination. Neither the Senator from Pennsylvania nor I will ask for rollcall votes on the remaining nominations. They would then have a voice vote, assuming this one is confirmed.

I yield such time as the Senator from Michigan needs.

The ACTING PRESIDENT pro tempore. The Senator from Michigan.

Ms. STABENOW. Mr. President, I thank Judiciary Chairman LEAHY and Ranking Member SPECTER for their assistance in moving forward the nominations of Judge Paul Maloney and Judge Janet Neff and Robert Jonker to the U.S. District Court for the Western District of Michigan.

Judge Paul Maloney has served as a circuit judge on the Berrien County Trial Court for over 10 years. Judge Maloney also brings a wealth of public

service experience to the bench, including: working as a Berrien County prosecutor, a deputy assistant attorney general in the Department of Justice and as chairman of the Michigan Sentencing Commission.

Judge Janet Neff has served as a judge on the Court of Appeals for the Third District of Michigan for nearly 20 years. In addition to her distinguished career on the bench, Judge Neff has been an active leader in Grand Rapids, including serving as the first woman president of the Grand Rapids Bar Association.

Robert Jonker has been a partner at Warner, Norcross & Judd in Grand Rapids for over 12 years. A life-long Michigania, Robert Jonker is a graduate of Calvin College and the University of Michigan Law School, and has served as a law clerk for U.S. District Court Judge Robert Feikens in the Eastern District.

This situation is critical for my State. Currently, the Western District has only one full-time judge hearing cases, and the Judicial Conference has declared it a judicial emergency. Even when the bench is full, this district presents logistical challenges because it covers Michigan cities all the way from Marquette to Benton Harbor—St. Joe.

I was deeply disappointed that in the last Congress, the Senate failed to act on these three nominees despite a bipartisan agreement between myself and Senator LEVIN and the administration.

I am pleased the full Senate will be voting to confirm the three nominees, who will all bring distinguished legal careers to the Federal bench.

This is an important example of how we can work together. I hope the administration sees the value of working together in a bipartisan fashion with the Senate to ensure an independent and impartial judiciary that is accessible to all.

Senator LEVIN and I have worked closely with the White House. While it has taken longer than we would have liked to come to this point, we are extremely pleased and grateful to our distinguished chairman, who has worked very hard on our behalf, Senator LEAHY, and the ranking member, Senator SPECTER. Both Senators have worked hard to bring these nominees forward. These are three very distinguished people from Michigan with tremendous credentials for the bench. They will serve ably, and I am proud to support them.

The ACTING PRESIDENT pro tempore. The Senator from Kansas.

Mr. BROWNBACK. Mr. President, I urge my colleagues to vote against Judge Neff going onto the bench for a lifetime appointment. I have met directly with her. I have been present for two hearings where she has spoken on the controversial issue of same-sex marriage, which we all agree should be decided by legislative bodies and by the people, not by the courts. She has an