

empathy standard. I wanted to clarify for the record three points of misinformation.

Bill Martinez did not work for the ACLU. He served on an advisory board regarding cases in Denver. Several Bush nominees were members of the Federalist Society and contributors to other conservative litigation centers and were confirmed just a few years ago. Bill Martinez is not the ACLU, and we ought to be careful to avoid setting false standards.

From the Martinez Hearing:

Senator Sessions: Have you ever acted as counsel in a matter on behalf of the ACLU? If so, please provide the Committee with a citation for each case, a description of the matter, and a description of your participation in that matter.

Martinez Response: No.

Senator SESSIONS claimed he was dissatisfied with Bill Martinez's response regarding the death penalty, stating that he was not clear in his beliefs. This is misleading and the record states otherwise.

From the Martinez Hearing:

Senator Sessions: Please answer whether you personally believe that the death penalty violates the Constitution.

Martinez Response: It is clear under current Supreme Court jurisprudence that, with very limited exceptions, the death penalty does not violate the Eighth Amendment to the U.S. Constitution. *Gregg v. Georgia*, 428 U.S. 153 (1976); *Roper v. Simmons*, 543 U.S. 551 (2005); *Kennedy v. Louisiana*, 129 S.Ct. 1 (2008). Consistent with this precedent, I do not believe the death penalty is unconstitutional.

Senator SESSIONS also claimed that Bill Martinez stated empathy can be taken into consideration with legal decisions. This is misleading and the record states otherwise.

From the Martinez Hearing:

Senator Sessions: Do you think that it's ever proper for judges to indulge their own subjective sense of empathy in determining what the law means?

Martinez Response: No.

Let me end on this note. Bill Martinez is a man of high character, he is a good man, and he will make an excellent Federal judge. Let us vote to confirm Bill Martinez to the Colorado U.S. District Court.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. BEGICH). Under the previous order, the second-degree amendment is withdrawn. The question is on agreeing to the motion to concur.

Mr. UDALL of Colorado. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. The yeas and nays have been ordered.

The clerk will call the roll.

The bill clerk called the roll.

Mr. DURBIN. I announce that the Senator from Indiana (Mr. BAYH) and the Senator from Oregon (Mr. WYDEN) are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Kansas (Mr. BROWNBACK), the Senator from New Hampshire (Mr. GREGG), and the Senator from Missouri (Mr. BOND).

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

The result was announced—yeas 79, nays 16, as follows:

[Rollcall Vote No. 289 Leg.]

YEAS—79

Akaka	Franken	Murkowski
Alexander	Gillibrand	Murray
Barrasso	Grassley	Nelson (FL)
Baucus	Hagan	Pryor
Begich	Harkin	Reed
Bennet	Hutchison	Reid
Bennett	Inouye	Roberts
Bingaman	Johanns	Rockefeller
Boxer	Johnson	Sanders
Brown (MA)	Kerry	Schumer
Brown (OH)	Kirk	Sessions
Bunning	Klobuchar	Shaheen
Cantwell	Kohl	Shelby
Cardin	Kyl	Snowe
Carper	Landrieu	Specter
Casey	Lautenberg	Stabenow
Cochran	Leahy	Tester
Collins	Levin	Thune
Conrad	Lieberman	Udall (CO)
Coons	Lincoln	Udall (NM)
Corker	Lugar	Voinovich
Dodd	Manchin	Warner
Dorgan	McCaskey	Webb
Durbin	McConnell	Whitehouse
Ensign	Menendez	Wicker
Enzi	Merkley	
Feinstein	Mikulski	

NAYS—16

Burr	Feingold	McCain
Chambliss	Graham	Nelson (NE)
Coburn	Hatch	Risch
Cornyn	Inhofe	Vitter
Crapo	Isakson	
DeMint	LeMieux	

NOT VOTING—5

Bayh	Brownback	Wyden
Bond	Gregg	

The motion was agreed to.

EXECUTIVE SESSION

NOMINATION OF BENITA Y. PEARSON TO BE UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF OHIO

NOMINATION OF WILLIAM JOSEPH MARTINEZ TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF COLORADO

The PRESIDING OFFICER. Under the previous order, the Senate will go into executive session to consider the following two nominations, which the clerk will report.

The legislative clerk read the nomination of Benita Y. Pearson, of Ohio, to be United States District Judge for the Northern District of Ohio.

The legislative clerk read the nomination of William Joseph Martinez, of Colorado, to be United States District Judge for the District of Colorado.

Who yields time? The Senator from Alabama.

Mr. SESSIONS. Mr. President, is there an agreement as to the time?

The PRESIDING OFFICER. There is 8 minutes total, 4 minutes on each side on both nominations in combination.

Mr. SESSIONS. Mr. President, I would assume the chairman, who will be speaking in favor, would want to go first, and I yield to Senator LEAHY.

Mr. LEAHY. No, go ahead.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, the two nominees today are nominees who came out of the Judiciary Committee with substantial negative votes. Mr. Martinez is a long-time member of the American Civil Liberties Union. He has refused, when asked at the hearing, by myself and in written questions, to state whether he believes the Constitution of the United States prohibits the death penalty—not whether he believed in it. That is his prerogative. He hid behind the answer that the Supreme Court says it is. But the ACLU holds to the view that the cruel and unusual punishment provision of the Constitution prohibits the imposition of the death penalty and, therefore, it is unconstitutional.

He refused to answer that question, and I believe that is an untenable view. There are four references, at least, in the Constitution to the death penalty, and I do not know how somebody could take the cruel and unusual clause to override specific references to the death penalty which was provided for in every Colony and the Federal Government when the Constitution passed.

With regard to the other nominee, Mrs. Benita Pearson, she has some very extreme views on animal rights. When asked by Senator COBURN whether it would be in the best interests of a steer to be slaughtered—she was asked that in the committee—she said probably not in the best interests of the steer, sir. But then you have to look beyond that. I mean, the steer is going to lose its life. It is a painful situation. And steers, evidence has shown, may have some idea or apprehension about the slaughter that is impending. But the next step is, is it necessary to slaughter the steer in order to provide food for those who might otherwise go hungry or perhaps be malnourished without the sustenance that this steer's flesh and hide could provide in terms of clothing and matters necessary for the well-being of animals.

Basically, what I understand this to be is that she is suggesting a court should enter into some sort of balancing test on whether it is legitimate to slaughter a steer, and also she is a member of the ALDF, the defense of animals group, that is very extreme in its views.

For that reason, the National Cattleman's Beef Association and the Farm Animal Welfare Coalition strongly oppose the nomination. I think her views on this issue are out of the mainstream.

I yield the floor and reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, President Obama nominated William J. Martinez to fill a judicial emergency vacancy on the District of Colorado last February. Mr. Martinez is a well-respected legal practitioner in Denver who has the strong support of both of his home State Senators. The statements earlier today from Senator UDALL and Senator

BENNET were compelling. They have been steadfast, forthright and exceedingly patient. I wholeheartedly agree with them that Bill Martinez should now, at long last, be confirmed. When he is, he will become only the second Hispanic to serve Colorado as a district court judge.

The Judiciary Committee favorably reported his nomination over 8 months ago, on April 15. It has been delayed ever since. In May we received a letter from the chief judge of the District of Colorado, Judge Wiley Y. Daniel, urging us to confirm Mr. Martinez because without additional judges "it is impossible for the court to possess the judicial resources that are necessary to effectively discharge the business of the court." Despite that plea from the chief judge of the district, the Senate has not been allowed to consider this nomination until today.

This is another example of the unnecessary delays that have led to a judicial vacancies crisis throughout the country. Judicial vacancies have skyrocketed to over 100 while nominations are forced to languish without final Senate action. In fact, President Obama's nominees have been forced to wait on average six times longer to be considered than President Bush's judicial nominees reported by the Judiciary Committee during the first 2 years of his Presidency.

I still do not understand why this nomination was subjected to a party-line vote before the Judiciary Committee. I recall all the Bush nominees who were members of the Federalist Society and other conservative litigation centers who were confirmed just a few years ago. Can it be that some are seeking to apply a conservative activist ideological litmus test and discount Mr. Martinez' qualifications and work experience?

Our ranking Republican Senator, Senator SESSIONS, reflected on the confirmation process last year, saying:

What I found was that charges come flying in from right and left that are unsupported and false. It's very, very difficult for a nominee to push back. So I think we have a high responsibility to base any criticisms that we have on a fair and honest statement of the facts and that nominees should not be subjected to distortions of their record.

I listened closely to the Senator's statement against Mr. Martinez but heard nothing about anything Mr. Martinez had done or even any position taken by the Colorado ACLU in which Mr. Martinez was involved. There was nothing on which to base opposition to this qualified nominee. Certainly not the "gotcha" questions he was asked months ago.

More than two dozen Federal circuit and district court nominations favorably reported by the Judiciary Committee still await a final Senate vote. These include 17 nominations reported unanimously and another 2 reported with strong bipartisan support and only a small number of no votes. These nominations should have been con-

firmed within days of being reported. In addition, 15 nominations ready for final action are to fill judicial emergency vacancies. With judicial vacancies at historic highs, we should act on these nominations. During President Bush's first 2 years in office, the Senate proceeded to votes on all 100 judicial nominations favorably reported by the Judiciary Committee. That included controversial circuit court nominations reported during the lame-duck session after the election in 2002. In contrast, during the first 2 years of President Obama's administration, the Senate has considered just 55 of the 80 judicial nominations reported by the Judiciary Committee.

Adding to the letters we have received recently urging us to take action to fill vacancies is one sent this week to the Senate leaders by the National Association of Assistant United States Attorneys, a group of career prosecutors. John E. Nordin, vice president for membership and operations, writes:

Judicial vacancies in our federal courts are reaching historic highs. Our members—career federal prosecutors who appear daily in federal courts across the nation—are concerned by the increasing number of vacancies on the federal bench. These vacancies increasingly are contributing to greater caseloads and workload burdens upon the remaining federal judges. Our federal courts cannot function effectively when judicial vacancies restrain the ability to render swift and sure justice.

I ask unanimous consent that this letter be printed in the RECORD. It concludes, "[w]e believe that all judicial nominees approved by the Senate Judiciary Committee are deserving of a prompt up-or-down floor vote." I agree with these career Federal prosecutors who understand the vital importance of functioning courts and rely on them every day. It is time for the Senate to act on the dozens of judicial nominees that have been stalled from final consideration before we adjourn.

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

NATIONAL ASSOCIATION OF
ASSISTANT UNITED STATES ATTORNEYS,
Lake Ridge, VA, December 17, 2010.

HON. HARRY REID,
Majority Leader, U.S. Senate, The Capitol, Washington, DC.

HON. MITCH MCCONNELL,
Minority Leader, U.S. Senate, The Capitol, Washington, DC.

DEAR MAJORITY LEADER REID AND MINORITY LEADER MCCONNELL: Judicial vacancies in our federal courts are reaching historic highs. Our members—career federal prosecutors who daily appear in federal courts across the nation—are concerned by the increasing numbers of vacancies on the federal bench. These vacancies increasingly are contributing to greater caseloads and workload burdens upon the remaining federal judges. Our federal courts cannot function effectively when judicial vacancies restrain the ability to render swift and sure justice.

As you know, thirty-eight judicial candidates have been approved by the Senate Judiciary Committee and await a Senate floor vote. A large number of these candidates have been approved without con-

trovery by unanimous consent. Some candidates have been named to judgeships whose vacancies have been designated as "judicial emergencies" by the Judicial Conference, because of their high caseloads and the significant periods of time that these judgeships have remained unfilled.

We believe that all judicial nominees approved by the Senate Judiciary Committee are deserving of a prompt up-or-down floor vote. Thank you for taking the time to consider our views on this issue and for your leadership.

Sincerely,

JOHN E. NORDIN, II,
*Vice President for Membership,
and Operations.*

Mr. LEAHY. Mr. President, today, the Senate is finally considering a judicial nomination that has been stalled since February on the Executive Calendar. The nomination of Benita Y. Pearson to serve on the Northern District of Ohio was reported favorably by the Judiciary Committee more than 10 months ago. Judge Pearson is currently a Federal magistrate judge on the court to which she is nominated. When confirmed, she will become the first African-American woman to serve as a Federal judge in Ohio.

I have reviewed the record and considered the character, background and qualifications of the nominee and join with the Senators from Ohio, one a Democrat and the other a Republican, in supporting this nominee. Frankly, the opposition is a dramatic departure from the traditional practice of considering district court nominations with deference to the home State Senators that know the nominees and their districts best. I commend Senator BROWN on his statement in support of the nomination today. As he noted, he worked closely with Senator VOINOVICH, the Republican Senator from his State and a judicial screening commission in making this recommendation to the President.

The obstruction of these district court nominations is unprecedented, a sign that a different standard is being applied to President Obama's nominees that has never before been applied to the nominees of any President, Democratic or Republican. Out of the 2,100 district court nominees reported by the Judiciary Committee since 1945, only five have been reported by party-line votes. Four of these party-line votes have been in this Congress, including the two of the nominations we consider today. In fact only 19 of those 2,100 nominees were reported by any type of split rollcall vote at all, but five of them—more than 25 percent of the total—have been this Congress.

The party-line vote against this nomination in the Judiciary Committee was without explanation. Judge Pearson has been a Federal judge magistrate for 8 years and a prosecutor before that. Nothing in her professional background justifies the delay or opposition to this nomination.

At her hearing, there were some who tried to make a mountain out of a mole hill with respect to a statement she made about animals. I just worked

with Senator KYL and Senator MERKLEY on a constitutional, legal prohibition against vicious videos that show animals being crushed. That bill passed unanimously. No Senators thought twice about approving that important legislation. I remember a couple of years ago when a famous professional football player went to prison for his participation in a dog fighting ring. Many Americans were outraged by those activities and no Senator questioned the State and Federal laws against such activities. Are those who oppose this nomination also now opposed to the Humane Society of the United States and to the legislative actions we took since they involved animals?

I join the Senators from Ohio in urging the Senate to confirm Judge Pearson without further delay.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. BROWN of Ohio. Mr. President, there has been concern, as the chairman pointed out and the ranking member pointed out, on Benita Pearson's views on animal law. With all due respect to my colleague, you know it is a red herring. If you look at the record of Ohio's Northern District, which goes back to 1839, there has been exactly one case on animal welfare. Some 20 years ago, the Cleveland Zoo was sued to stop the transfer of Timmy the gorilla to the Bronx Zoo—I am not making this up—from transferring Timmy the Gorilla to the Bronx Zoo for mating purposes. The case was dismissed. One case in 170 years.

Judge Pearson is qualified, say the two former presiding judges, Chief Judges Carr and White, and the sitting presiding judge, Judge Oliver from the Northern District—a combined 50 years' experience on the district court.

Judge James Carr, the Chief U.S. District Judge at the time of her nomination, lauded Judge Pearson as "a splendid choice . . . eminently well-qualified by intelligence, experience . . . and judicial temperament." His successor, Chief Judge Solomon Oliver, is just as supportive of her nomination.

So is former Chief Judge George White, who wrote that:

Magistrate Judge Pearson's record as a Judicial Officer and her litigation and business experience do more than idly suggest her readiness to assume the position of District Court Judge. Taken all together, you will be hard-pressed to find a more suitable candidate.

Mr. BROWN of Ohio. These judges have made glowing reports on Judge Benita Pearson, who has been a magistrate, a CPA, practiced privately, worked for the U.S. Attorney's Office. She will be the first African-American woman to sit on the Federal bench in Ohio. She has been supported by Senator VOINOVICH and a bipartisan commission of 17 lawyers who picked her. She is a great choice. I ask the concurrence of my colleagues. I yield to Senator UDALL.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. UDALL of Colorado. I rise to support the nomination of Bill Martinez. Senator LEAHY made the case for his nomination and for him to be confirmed. I have great affection for my friend from Alabama, but I want to set the record clear that Bill Martinez did not work for the ACLU, he advised the ACLU. If we are going to raise that standard and change the rules, then we ought to remember that the Bush nominations often included Federalist Society members and contributors.

We ought to be careful about setting false standards. Bill Martinez was recommended by a bipartisan nominating commission that Senator BENNET and I created. He is a good man. His story is a quintessential American story. He will be an excellent judge. I urge us all to vote for his confirmation today.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. How much time is remaining on this side?

The PRESIDING OFFICER. The Senator has 1 minute 5 seconds.

Mr. SESSIONS. Mr. President, Mr. Martinez, I know, has a lot of good supporters and friends, as I have noted. But he did refuse to answer a simple question of whether the U.S. Constitution prohibits the death penalty, which I believe the ACLU, of which he was a member and a member of the legal panel, definitely favored.

I do believe Judge Pearson's view that somehow there should be a balancing test about whether we should actually slaughter a steer based on the need for food or hide is an extreme view also.

We have had about 15 members of the ACLU confirmed by this administration. But we expect this President to submit mainstream judges. The ACLU is not mainstream in its positions. I do believe the administration needs to understand that this is going to be a more contentious matter if we keep seeing the ACLU chromosome as part of this process.

The PRESIDING OFFICER. The Senator's time has expired.

The Senator from Vermont.

Mr. LEAHY. Mr. President, I would like nothing better than to vote on the judges. We have a number of them who came out unanimously from the Senate Judiciary Committee. My friends from the other side are not even allowing votes on them.

We did not do that to President Bush in his first 2 years.

The PRESIDING OFFICER. The Senator's time has expired.

The question is, Will the Senate advise and consent to the nomination of Benita Y. Pearson, of Ohio, to be United States District Judge for the Northern District of Ohio?

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

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator for Indiana (Mr. BAYH), and the Senator from Oregon (Mr. WYDEN) are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Kansas (Mr. BROWNBACK), the Senator from New Hampshire (Mr. GREGG), and the Senator from Missouri (Mr. BOND).

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

The result was announced—yeas 56, nays 39, as follows:

[Rollcall Vote No. 290 Ex.]

YEAS—56

Akaka	Gillibrand	Murray
Baucus	Hagan	Nelson (FL)
Begich	Harkin	Pryor
Bennet	Inouye	Reed
Bingaman	Johnson	Reid
Boxer	Kerry	Rockefeller
Brown (OH)	Klobuchar	Sanders
Cantwell	Kohl	Schumer
Cardin	Landrieu	Shaheen
Carper	Lautenberg	Specter
Casey	Leahy	Stabenow
Conrad	Levin	Tester
Coons	Lieberman	Udall (CO)
Dodd	Lincoln	Udall (NM)
Dorgan	Manchin	Voinovich
Durbin	McCaskill	Warner
Feingold	Menendez	Webb
Feinstein	Merkley	Whitehouse
Franken	Mikulski	

NAYS—39

Alexander	DeMint	Lugar
Barrasso	Ensign	McCain
Bennett	Enzi	McConnell
Brown (MA)	Graham	Murkowski
Bunning	Grassley	Nelson (NE)
Burr	Hatch	Risch
Chambliss	Hutchison	Roberts
Coburn	Inhofe	Sessions
Cochran	Isakson	Shelby
Collins	Johanns	Snowe
Corker	Kirk	Thune
Cornyn	Kyl	Vitter
Crapo	LeMieux	Wicker

NOT VOTING—5

Bayh	Brownbak	Wyden
Bond	Gregg	

The nomination was confirmed.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of William Joseph Martinez, of Colorado, to be U.S. District Judge for the District of Colorado?

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

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Indiana (Mr. BAYH) and the Senator from Oregon (Mr. WYDEN) are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Kansas (Mr. BROWNBACK), the Senator from New Hampshire (Mr. GREGG), and the Senator from Missouri (Mr. BOND).

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

The result was announced—yeas 58, nays 37, as follows:

[Rollcall Vote No. 291 Ex.]

YEAS—58

Akaka	Franken	Murray
Baucus	Gillibrand	Nelson (NE)
Begich	Hagan	Nelson (FL)
Bennet	Harkin	Pryor
Bingaman	Inouye	Reed
Boxer	Johnson	Reid
Brown (MA)	Kerry	Rockefeller
Brown (OH)	Klobuchar	Sanders
Cantwell	Kohl	Schumer
Cardin	Landrieu	Shaheen
Carper	Lautenberg	Specter
Casey	Leahy	Stabenow
Collins	Levin	Tester
Conrad	Lieberman	Udall (CO)
Coons	Lincoln	Udall (NM)
Dodd	Manchin	Warner
Dorgan	McCaskey	Webb
Durbin	Menendez	Whitehouse
Feingold	Merkley	
Feinstein	Mikulski	

NAYS—37

Alexander	Enzi	McConnell
Barrasso	Graham	Murkowski
Bennett	Grassley	Risch
Bunning	Hatch	Roberts
Burr	Hutchison	Sessions
Chambliss	Inhofe	Shelby
Coburn	Isakson	Snowe
Cochran	Johanns	Thune
Corker	Kirk	Vitter
Cornyn	Kyl	Voinovich
Crapo	LeMieux	Wicker
DeMint	Lugar	
Ensign	McCain	

NOT VOTING—5

Bayh	Brownback	Wyden
Bond	Gregg	

The nomination was confirmed.

The PRESIDING OFFICER. Under the previous order, the motions to reconsider are considered made and laid upon the table, and the President will be immediately notified of the Senate's action.

TREATY WITH RUSSIA ON MEASURES FOR FURTHER REDUCTION AND LIMITATION OF STRATEGIC OFFENSIVE ARMS—Resumed

The PRESIDING OFFICER. The clerk will report the treaty.

The assistant legislative clerk read as follows:

Treaty with Russia on Measures for Further Reduction and Limitation of Strategic Offensive Arms.

Pending:

Corker modified amendment No. 4904, to provide a condition and an additional element of the understanding regarding the effectiveness and viability of the New START Treaty and United States missile defenses.

The PRESIDING OFFICER. There will now be 4 minutes of debate equally divided and controlled between the two leaders or their designees.

Who yields time?

The Senator from Massachusetts.

Mr. KERRY. Mr. President, I believe the Senator from Arizona is prepared to yield back time, and I will also yield back time.

CLOTURE MOTION

The PRESIDING OFFICER. Having all time yielded back, pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will state.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on Treaties Calendar No. 7, Treaty Document No. 111-5, the START treaty.

Harry Reid, Joseph I. Lieberman, John D. Rockefeller, IV, Byron L. Dorgan, John F. Kerry, Sheldon Whitehouse, Mark L. Pryor, Jack Reed, Robert Menendez, Mark Begich, Benjamin L. Cardin, Kent Conrad, Bill Nelson, Amy Klobuchar, Patty Murray, Barbara A. Mikulski, Christopher J. Dodd, Richard G. Lugar.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on Treaty Document No. 111-5, the New START treaty, shall be brought to a close?

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Indiana (Mr. BAYH) and the Senator from Oregon (Mr. WYDEN) are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Missouri (Mr. BOND), the Senator from Kansas (Mr. BROWNBACK), and the Senator from New Hampshire (Mr. GREGG).

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

The yeas and nays resulted—yeas 67, nays 28, as follows:

[Rollcall Vote No. 292 Ex.]

YEAS—67

Akaka	Feinstein	Murkowski
Alexander	Franken	Murray
Baucus	Gillibrand	Nelson (NE)
Begich	Hagan	Nelson (FL)
Bennet	Harkin	Pryor
Bennett	Inouye	Reed
Bingaman	Isakson	Reid
Boxer	Johnson	Rockefeller
Brown (MA)	Kerry	Sanders
Brown (OH)	Klobuchar	Schumer
Cantwell	Kohl	Shaheen
Cardin	Landrieu	Snowe
Carper	Lautenberg	Specter
Casey	Leahy	Stabenow
Cochran	Levin	Tester
Collins	Lieberman	Udall (CO)
Conrad	Lincoln	Udall (NM)
Coons	Lugar	Voinovich
Corker	Manchin	Warner
Dodd	McCaskey	Webb
Dorgan	Menendez	Whitehouse
Durbin	Merkley	
Feingold	Mikulski	

NAYS—28

Barrasso	Graham	McConnell
Bunning	Grassley	Risch
Burr	Hatch	Roberts
Chambliss	Hutchison	Sessions
Coburn	Inhofe	Shelby
Cornyn	Johanns	Thune
Crapo	Kirk	Vitter
DeMint	Kyl	Wicker
Ensign	LeMieux	
Enzi	McCain	

NOT VOTING—5

Bayh	Brownback	Wyden
Bond	Gregg	

The PRESIDING OFFICER. On this vote, the yeas are 67, the nays are 28. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

Who yields time?

The Senator from Idaho.

PREDATOR WOLVES

Mr. CRAPO. Madam President, I wish to rise to speak about an issue that has been at the center of debate in the northern Rockies for quite some time; that is, the issue of the wolf. The wolf was introduced into the northern Rockies in the 1990s and has flourished. Wolves are now abundant in the region, but, unfortunately, we have not been able to return the management of the wolves to the State, mostly due to litigation and to the inflexibility of the Endangered Species Act. In the meantime, wolf populations are growing at a rate of about 20 percent a year, resulting in substantial harm to our big game herds and domestic livestock.

Whenever I am back in Idaho, I hear from hunters who are angry their favorite hunting spots are no longer rich with elk and deer or from sheep and cattle ranchers who have lost many a head of cattle or sheep due to the wolf predation.

The State of Idaho has done everything it has been asked to do in order to manage wolves, and we continue to be denied that much needed opportunity. As such, it is time for Congress to act.

I intend to make a unanimous consent request in a few moments. First, I yield a few moments to my colleague from Idaho, Senator RICH.

Mr. RICH. Madam President, I join my colleague from Idaho in underscoring the difficulty we have on this issue. Most people on this floor don't have a full appreciation of what those of us in the West have to deal with. Two out of every three acres in Idaho are owned by the Federal Government. The Federal Government came in, in the mid-1990s, and forced the wolf upon the State. The Governor didn't want it, the legislature didn't want it, and the congressional delegation didn't want it. Nonetheless, the Federal Government brought us 34 wolves. Now they have turned into well over 1,000, and nobody knows exactly how many breeding pairs there are. The result is that there has been tremendous havoc wreaked on our preferred species in Idaho, the elk. We have done an outstanding job of managing elk, the preferred species, but they are also the preferred species for the wolf to eat. They are not vegetarians.

As a result, we have had a tremendous problem with wolves in Idaho, and we have brought a bill to the Senate to turn the management of wolves over to the State. All the other animals are managed by the State. We have done a great job for well over 100 years of managing two other difficult predators, the bear and various cats. We have done it responsibly, on a sustained basis, and we want to do the same thing with wolves.

The Federal Government has to let go of this. We have tried. We have the Federal courts that have stepped in. I don't quite understand how the Federal