

EXECUTIVE SESSION

NOMINATION OF MARGO KITSY BRODIE TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF NEW YORK

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to executive session to consider the following nomination which the clerk will report.

The assistant editor of the Daily Digest read the nomination of Margo Kitsy Brodie, of New York, to be United States District Judge for the Eastern District of New York.

Mr. LEAHY. Mr. President, am I correct that the order is such that the vote will be at 5:30?

The PRESIDING OFFICER. The order is actually for 60 minutes of debate.

Mr. LEAHY. Mr. President, I ask unanimous consent that the vote be at 5:30.

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

Mr. LEAHY. Mr. President, certainly if the ranking member comes to the floor and wishes to change that, I would not object.

Earlier this month the Senate finally ended a four-month and two-day filibuster of the confirmation of Judge Adalberto Jordan and he is now the first Cuban-American to serve on the Eleventh Circuit. We also finally ended the five-month filibuster of the nomination of Jesse Furman, a former counselor to Attorney General Mukasey, and he is now a confirmed Federal trial judge in the Southern District of New York.

The Majority Leader should not have had to file cloture petitions for the Senate to vote on these outstanding judicial nominations. Senate Republicans have filibustered nine of President Obama's judicial nominations despite the fact that he has reached out to both Republican and Democratic home state Senators and nominated qualified, ideologically moderate men and women to fill vacancies on our Federal courts.

Before I turn to the nomination of Margo Brodie, another nomination that should have been confirmed last year after being reported by the Senate Judiciary Committee unanimously in October, I want to spend a moment reflecting on Senate Republicans' treatment of Jesse Furman. Judge Furman was a Federal prosecutor who also served as a top legal advisor to Attorney General Michael Mukasey during the George W. Bush administration. He was involved with the prosecutions of the Times Square bomber, the infamous Russian spies, and a Pakistani scientist with ties to Al Qaeda whose actions were responsible for the 1998 bombings of the U.S. embassies in Kenya and Tanzania. He has impeccable credentials including having clerked for Justice David Souter on the United States Supreme Court. Based on

his superior qualifications and bipartisan support, the Senate Judiciary Committee reported his nomination last September unanimously, without a single Republican Senator dissenting.

His nomination, like so many others, was then subjected to obstruction and delay. From the start of his term, Republican Senators have applied a double standard to President Obama's nominees. Senate Republicans have chosen to depart dramatically from the long tradition of deference to home state Senators on district court nominees. Instead, an unprecedented number of President Obama's highly-qualified district court nominees have been targeted for opposition and obstruction. That approach is a serious break from the Senate's practice of advice and consent. Since 1945, the Judiciary Committee has reported more than 2,100 district court nominees to the Senate. Of these 2,100 nominees, only six have been reported by party-line votes—only six total in the last 65 years. Five of those six party-line votes have been by Republican Senators against President Obama's highly-qualified district court nominees. In fact, only 22 of those 2,100 district court nominees were reported by any kind of split roll call vote at all, and eight of those, more than a third, have been by Republican Senators choosing to oppose President Obama's nominees. President Obama's nominees are being treated differently than those of any President, Democratic or Republican, before him.

Despite his qualifications and bipartisan supporters, Jesse Furman's nomination was stalled for more than five months by Senate Republicans. When the Majority Leader was able to break through and schedule debate and a vote, I saw something else I have not seen until recently. Republican Senators who had supported the nomination after studying it for months when it was before the Judiciary Committee for a hearing and vote, flipped and changed their votes.

In total, 34 Republican Senators voted against this highly-qualified nominee. I am at a loss as to why. It appears that Senators decided to ignore Jesse Furman's record and be swayed by mischaracterizations of a brief he had written in a religious freedom case or by something he wrote as an 18-year old freshman in college. I urge Senators, as I have for years, not to listen to the extreme special interests but to make their own judgments. I suspect that in this case it was the last-minute campaign by narrow special interests groups that accounted for the number of negative votes.

Today the Senate will vote on the confirmation of another highly-qualified, consensus nominee to the Federal bench. Margo Brodie has practiced law for 20 years including working as a Federal prosecutor in Brooklyn for the last 12. She has risen from the ranks of Assistant U.S. Attorney to Deputy Chief of General Crimes to Deputy

Chief of the Criminal Division. Ms. Brodie has successfully prosecuted numerous cases on matters ranging from violent crimes and drug offenses to white collar crimes. She has also led public corruption cases, successfully prosecuting criminals who embezzled funds and tried to bribe government agencies in her home state of New York.

Ms. Brodie has the support of both her home state Senators and was reported by the Senate Judiciary Committee on October 6, 2011, without a single dissent. She has demonstrated her commitment to the rule of law, her legal abilities and knowledge of the law. It is past time for the Senate to confirm this outstanding African-American woman to the Federal bench.

Margo Brodie is one of 20 judicial nominations approved by the Senate Judiciary Committee still awaiting a final vote. Fifteen of these nominations have been pending since last year and should have been confirmed before the end of last year. Eighteen of these nominees received strong bipartisan support from the Senate Judiciary Committee.

These nominees should be confirmed without further delay. Now in the fourth year of President Obama's first term, the number of judicial vacancies remains at 85. That is nearly double what they were at this point in President Bush's administration. One hundred and thirty million Americans live in circuits or districts with a judicial vacancy that could be filled if Senate Republicans would vote on judicial nominees that have already been voted on by the Senate Judiciary Committee and are stalled awaiting final Senate consideration.

The Senate is more than 40 confirmations behind the pace we set confirming President Bush's judicial nominees in 2001 through 2004. For the second year in a row, the Senate Republican leadership ignored long-established precedent and refused to allow votes before the December recess on the nearly 20 consensus judicial nominees who had been favorably reported by the Judiciary Committee.

Ultimately, it is the American people who pay the price for Senate Republican's unnecessary and harmful delay in confirming judges to our Federal courts. It is unacceptable for hard-working Americans who are seeking their day in court to find seats on one in 10 of those courts vacant. When an injured plaintiff sues to help cover the cost of medical expenses, that plaintiff should not have to wait for years before a judge hears his or her case. When two small business owners disagree over a contract, they should not have to wait years for a court to resolve their dispute.

I, again, urge Senate Republicans to stop the destructive delays that have plagued our nominations process. I urge them to stop the slow-walking of highly-qualified, consensus nominees. The American people deserve no less.

Mr. GRASSLEY. Mr. President, today we turn to the nomination of Margo Brodie to be U.S. District judge for the Eastern District of New York. This will be the 69th judicial nominee of President Obama which the Senate has confirmed during this Congress. Overall, more than 70 percent of President Obama's judicial nominees have been confirmed.

We continue, on the Senate floor and in the Judiciary Committee, to work together to reduce the number of judicial vacancies. We have held 21 nominations hearings during this Congress, with 80 judicial nominees appearing at those hearings. All in all, over 85 percent of President Obama's judicial nominees have received a hearing. We will hear from additional judicial nominees later this week.

So even as we continue to hear concerns about the judicial vacancy rate and claims of obstructionism, I would note we are making progress as we continue to confirm judicial nominees. But let me emphasize again that for more than half of the vacancies, including those designated as "judicial emergencies," the President has failed to submit a nomination. So critics need to look at the beginning of the process when commenting on vacancies.

I would like to say a little about our nominee today. Ms. Brodie earned a BA from St. Francis College in 1988, and her JD from the University of Pennsylvania School of Law in 1991. She began her legal career as an assistant corporation counsel for the City of New York in 1991. In this role, she defended city agencies and officials in the performance of their duty to manage municipal affairs.

In 1994, Ms. Brodie became an associate with Carter, Ledyard & Milburn, representing clients in various types of civil litigation.

Since 1999, Ms. Brodie has served as an assistant U.S. attorney with the Eastern District Court of New York. From May 2005 to March 2006, she served as a legal advisor to the Independent Corrupt Practices and Other Related Offices Commission, ICPC, in Nigeria. From 2006 to 2009, she supervised new AUSAs in the General Crimes Section in roles as deputy chief and chief. In October 2009, she became the counselor to the Criminal Division of the U.S. Attorney's Office. In her current position as deputy chief of the Criminal Division, she supervises over 100 Criminal Division AUSAs in the areas of public corruption, civil rights, terrorism, organized crime, gang violence, narcotics trafficking, and business and securities fraud. She also advises the office on legal policy and management issues.

Ms. Brodie has received a majority: "Qualified;" minority: "Well Qualified" rating from the American Bar Association's Standing Committee on the Federal Judiciary.

Mr. SCHUMER. Mr. President. I rise today in strong support of the historic

confirmation of Margo K. Brodie to the United States District Court for the Eastern District of New York.

Frankly, at this point, all of our nominees deserve special attention. With one out of 10 seats on the Federal bench still vacant, and with 14 nominees with strong bi-partisan support pending since last year, we should be focused today on confirming more than one nominee. However, Margo Brodie's nomination is of singular importance to my fellow New Yorkers, and to this country.

First—to put it simply her presence is desperately needed on one of the busiest benches in the country, one that handles some of our most important cases.

Second, Margo Brodie will be, by all accounts, the first Caribbean-born nominee in our Nation's history to be confirmed to an Article III court.

As I've said many times, I look for three qualities in judicial candidates: excellence, moderation, and diversity. When excellence and moderation are both present in a candidate—as they are with Ms. Brodie—diversity is a bonus: a bonus that benefits the bench, the community, and Americans everywhere who might otherwise think that this kind of public service, or even a law degree, was beyond their reach. In fact, I think that a candidate like Ms. Brodie is especially well-qualified for a lifetime appointment to the court.

She has chosen to make her home in this country, and in the neighborhoods served by this court in the Eastern District of New York—and she has already graced her community with outstanding and dedicated service. In 1996, Ms. Brodie became a citizen of the United States in the very court house where she would serve as a judge. I can't think of a more fitting candidate to serve the people in Brooklyn, Queens, Long Island, and all the communities in between than someone who pledged her allegiance to this country just footsteps from where she will uphold the rule of law in her chosen country.

Ms. Brodie's story is a classic immigrant's story—one that is born from our country's finest and deepest traditions. It's a story that speaks to our acceptance of people from all over the world who want to come to the United States to work hard, prosper, and become a part of our social fabric.

Ms. Brodie was born in St. John, Antigua. She and her brother Euan were raised by a single mother, with the help of her mother's parents and 14 siblings. After graduating from high school at the age of 16, she attended St. Francis College in Brooklyn, where she worked full time and graduated magna cum laude.

She went on to the University of Pennsylvania Law School. After graduating from law school, Ms. Brodie worked for the New York City Law Department for three years, where she learned how to litigate cases. She then spent five years at Carter, Ledyard &

Milburn, founded in 1854 and known for alumni that include Franklin D. Roosevelt.

Ms. Brodie returned to public service in 1999 by joining the United States Attorney's Office in the Eastern District of New York, one of the preeminent U.S. Attorney's offices in the Nation.

She rose to become Deputy Chief and then Chief of the General Crimes Unit, where she trained more than half of the current AUSA's in the Eastern District. Since 2010, she has been the deputy chief of the Criminal Division, supervising all 100-plus criminal AUSAs in cases involving public corruption, civil rights, business and securities fraud, terrorism, organized crime, narcotics, and many other areas.

Ms. Brodie has also lent her considerable talents to training prosecutors and law enforcement officers on the rule of law in many developing countries. She spent 10 months in Nigeria as a legal advisor on behalf of the DOJ's overseas training program, and has conducted and assisted in human trafficking training for prosecutors in the Bahamas, Jordan, Swaziland, and Tanzania.

In a short while, Ms. Brodie will be confirmed as a Federal judge—an honor she deserves and a position that she has more than earned. I am proud to have supported her nomination, and to vote for her today.

Mr. LEAHY. Mr. President, have the yeas and nays been ordered?

The PRESIDING OFFICER. They have not.

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

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

The question is, Will the Senate advise and consent to the nomination of Margo Kitsy Brodie, of New York, to be United States District Judge for the Eastern District of New York.

The clerk will call the roll.

The assistant editor of the Daily Digest called the roll.

Mr. DURBIN. I announce that the Senator from Iowa (Mr. HARKIN), the Senator from Hawaii (Mr. INOUE), the Senator from Louisiana (Ms. LANDRIEU), the Senator from New Jersey (Mr. LAUTENBERG), the Senator from Missouri (Mrs. MCCASKILL), and the Senator from Michigan (Ms. STABENOW), are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Oklahoma (Mr. COBURN), the Senator from Oklahoma (Mr. INHOFE), the Senator from Illinois (Mr. KIRK), the Senator from Arizona (Mr. MCCAIN), the Senator from Ohio (Mr. PORTMAN), and the Senator from Louisiana (Mr. VITTER).

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

The result was announced—yeas 86, nays 2, as follows:

[Rollcall Vote No. 23 Ex.]

YEAS—86

Akaka	Enzi	Murkowski
Alexander	Feinstein	Murray
Ayotte	Franken	Nelson (NE)
Barrasso	Gillibrand	Nelson (FL)
Baucus	Graham	Paul
Begich	Grassley	Pryor
Bennet	Hagan	Reed
Bingaman	Hatch	Reid
Blumenthal	Heller	Risch
Blunt	Hoeben	Roberts
Boozman	Hutchison	Rockefeller
Boxer	Isakson	Rubio
Brown (MA)	Johanns	Sanders
Brown (OH)	Johnson (SD)	Schumer
Burr	Johnson (WI)	Sessions
Cantwell	Kerry	Shaheen
Cardin	Klobuchar	Shelby
Carper	Kohl	Snowe
Casey	Kyl	Tester
Chambliss	Leahy	Thune
Coats	Levin	Toomey
Cochran	Lieberman	Udall (CO)
Collins	Lugar	Udall (NM)
Conrad	Manchin	Warner
Coons	McConnell	Webb
Corker	Menendez	Whitehouse
Cornyn	Merkley	Wicker
Crapo	Mikulski	Wyden
Durbin	Moran	

NAYS—2

DeMint Lee

NOT VOTING—12

Coburn	Kirk	McCaskill
Harkin	Landrieu	Portman
Inhofe	Lautenberg	Stabenow
Inouye	McCain	Vitter

The nomination was confirmed.

The PRESIDING OFFICER (Mrs. HAGAN). Under the previous order, a motion to reconsider is considered made and laid on the table. The President will be immediately notified of the Senate's action.

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate shall resume legislative session.

MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, there will be a period of morning business up to 60 minutes, equally divided and controlled by Senators PRYOR and ALEXANDER.

The Senator from Tennessee.

Mr. ALEXANDER. Madam President, I ask unanimous consent that Senator PRYOR and I and designated Senators be allowed to speak in a colloquy.

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

MAKING THE SENATE WORK

Mr. ALEXANDER. Madam President, some of the Senators on the Republican side have other appointments to make, so I am going to defer my remarks until the end of the colloquy.

What I will do is first state why we are here; second, go to Senator ISAKSON, then we will go to Senator PRYOR, and then back to Senator COLLINS, if we may.

Madam President, our leaders—the Democratic leader, the majority leader and the Republican leader—sometimes get criticized. They have hard jobs, and we recognize that. We also recognize

that they can't do their jobs unless we do our jobs well. So tonight what some of us thought we would do, on the Democratic side and the Republican side, is apply a management principle that is called "catching people doing things right."

We believe the majority leader and the minority leader, Senator INOUE, the chairman of the Appropriations Committee, and Senator COCHRAN, the ranking member, are doing things exactly right when they say it is their intention to try to move all 12 of our appropriations bills through the Appropriations Committee and get them to the floor so we can deal with them before the next fiscal year starts. We are here not just to compliment them but to pledge to them our support in helping them achieve that goal.

There are many important reasons we should do that, but basically it is our constitutional responsibility to appropriate money. It is a time when we need to save every penny we can. This is our best opportunity for oversight, and it is also good management, and it allows the Senate to do what the Senate ought to do, which is consider legislation, have a hearing, ask questions, cut out what ought to be cut out, add what ought to be added, vote on it, bring it to the floor, amend it, debate on it, and pass it or defeat it. That is what we should be doing. Only twice since 2000 has this Senate actually considered every single one of the 12 appropriations bills. Only twice, in 2001 and 2005. So it has been 7 years since we considered every single one of the appropriation bills, which is our most basic responsibility: appropriate and oversight.

That is why we are here tonight. Our leaders have said this is what their intention is. We are here to say: You are right. Congratulations. We compliment you, and we are here to help you succeed. Because it is very difficult for our leaders to succeed if they don't have any followers making it possible for them to achieve their goals.

I would defer to Senator ISAKSON and then to Senator PRYOR.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. ISAKSON. I thank Senator ALEXANDER for giving me a moment on the floor.

It is ironic that when I received the call last week asking if I would participate in this colloquy, I was traveling my State doing townhall meetings. I was near Ooltewah, TN, on Thursday night, north of Dalton, GA, and Murray County. We had a townhall meeting, and this fellow in the back of the room raised his hand when it came time for questions.

He said: Mr. ISAKSON, I have got a question for you. I said: What is that? He said: Last night, my wife and I amended our budget that we established in December for this year because some things have not gone so well, and we had to recast how we are spending our money so we wouldn't go

any further in debt than we already are. Why can't you all do the same thing? "You all," talking about us.

A few days earlier in Dublin, GA, a great, prosperous town in south Georgia, a similar question was asked by a Chamber of Commerce director who couldn't understand why the Federal Government and the Congress of the United States could not wrap their arms around fiscal responsibility, have a budget, and have appropriations acts that come to the floor, are debated, are amended, and the spending of the United States of America's government is spent like the households of the United States of America have to spend their money.

So I commend Senator ALEXANDER and Senator PRYOR for bringing this to the floor, and I want to commend our leaders for making affirmative statements about the desire to bring the 12 appropriations bills to the floor of the Senate, debate them, let us amend them, and let us bring them together.

If you think about it, in the last 3 years we have had a situation where we either had continuing resolutions or omnibus appropriations. During a difficult period of time where we have had deficits of \$1.3 trillion to \$1.5 trillion, we haven't taken the time to debate how we are spending our money, where we are spending our money, and doing it in the context of what we call on the floor regular order. In fact, it is not hard to understand why only 11 percent of the American people view the Congress as favorable, because they can't understand our inability to do what they have to do themselves. The IRS doesn't take excuses on April 15 if you are not ready. You have got to be ready. If you are a business and you file as an LLC or a sub S corporation, on the 15th of January, the 15th of April, the 15th of June, and the 15th of September, you file a quarterly tax return; and if you don't, you are held accountable.

We are now going into our fourth year, and it looks as though for the first time in the last 3 years we are going to have debate on the floor of how we spend the American people's money. I commend Senator ALEXANDER and Senator PRYOR, and I thank our leadership for making the statement of the desire to do so. I have already seen Senator INOUE and I have already seen Senator COCHRAN working diligently in the basic appropriations subcommittees to see to it that those bills come to the floor. I think it is time we do our business just as the American people do their business, and I commend Senator ALEXANDER and Senator PRYOR for calling for this colloquy tonight.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. PRYOR. Madam President, since we have other Senators on the floor, what I would like to do is withhold my comments until a few of our other colleagues have a chance to speak, if that would be permissible to Senator ALEXANDER?