

The nomination was confirmed.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of John J. Tharp, Jr., of Illinois, to be United States District Judge for the Northern District of Illinois.

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The clerk will call the roll.

The assistant bill clerk called the roll.

Mr. DURBIN. I announce that the Senator from Pennsylvania (Mr. CASEY), the Senator from North Carolina (Mrs. HAGAN), and the Senator from Florida (Mr. NELSON) are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Missouri (Mr. BLUNT), the Senator from North Carolina (Mr. BURR), the Senator from Texas (Mr. CORNYN), the Senator from South Carolina (Mr. DEMINT), the Senator from Illinois (Mr. KIRK), the Senator from Kansas (Mr. MORAN), the Senator from Alaska (Ms. MURKOWSKI), the Senator from Kentucky (Mr. PAUL), the Senator from South Dakota (Mr. THUNE), and the Senator from Mississippi (Mr. WICKER).

Further, if present and voting, the Senator from Texas (Mr. CORNYN) would have voted "yea" and the Senator from South Carolina (Mr. DEMINT) would have voted "nay."

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

The result was announced—yeas 86, nays 1, as follows:

[Rollcall Vote No. 90 Ex.]

YEAS—86

Akaka	Gillibrand	Merkley
Alexander	Graham	Mikulski
Ayotte	Grassley	Murray
Barrasso	Harkin	Nelson (NE)
Baucus	Hatch	Portman
Begich	Heller	Pryor
Bennet	Hoeven	Reed
Bingaman	Hutchinson	Reid
Blumenthal	Inhofe	Risch
Boozman	Inouye	Roberts
Boxer	Isakson	Rockefeller
Brown (MA)	Johanns	Rubio
Brown (OH)	Johnson (SD)	Sanders
Cantwell	Johnson (WI)	Schumer
Cardin	Kerry	Sessions
Carper	Klobuchar	Shaheen
Chambliss	Kohl	Shelby
Coats	Kyl	Snowe
Coburn	Landrieu	Stabenow
Cochran	Lautenberg	Tester
Collins	Leahy	Toomey
Conrad	Levin	Udall (CO)
Coons	Lieberman	Udall (NM)
Corker	Lugar	Vitter
Crapo	Manchin	Warner
Durbin	McCain	Webb
Enzi	McCaskey	Whitehouse
Feinstein	McConnell	Wyden
Franken	Menendez	

NAYS—1

Lee

NOT VOTING—13

Blunt	Cornyn	Kirk
Burr	DeMint	
Casey	Hagan	

Moran	Nelson (FL)	Thune
Murkowski	Paul	Wicker

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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.

LEGISLATIVE SESSION

The PRESIDING OFFICER (Mrs. HAGAN). The Senate will resume legislative session.

The Senator from Ohio.

EXPORT-IMPORT BANK REAUTHORIZATION ACT OF 2012—MOTION TO PROCEED—Continued

Mr. BROWN of Ohio. Madam President, I rise to discuss the Export-Import Bank reauthorization's importance to strengthen manufacturing and creating jobs in places such as my home State of Ohio.

Ohio is the third leading manufacturing State in the country. Only Texas, which has twice our population, and California, which has three times our population, produce more goods than we do.

The Export-Import Bank's mission is simple: It facilitates exports and contributes to job creation in the United States. It does this through loans and guarantees of insurance, filling in gaps in trade financing at no ultimate cost to taxpayers. Yet, despite this record of success, exports and jobs are at stake because Congress cannot agree to Ex-Im reauthorization, in large part because there is a group of people in this body and down the hall in the House of Representatives who simply think the Federal Government should not have a role in much of anything.

The bank's lending authority is set to expire May 31, 17 days from now. We must act. The Export-Import Bank has been reauthorized by both Chambers, by both parties, decade after decade, and we know how important it is for job creation, but it has taken too long to get this reauthorization moving. While manufacturers wait, Congress has stalled. We cannot wait any longer.

We know that Ohio workers can compete with anyone in the world when the playing field is level. When we stamp the "Made in Ohio" label, it is a sign that an item was made with pride by some of the finest workers in the United States and some of the finest workers in our country.

We know that U.S. manufacturing is getting stronger due in no small part to increased exports with the help of the Ex-Im Bank. Ohio has had quicker increases in job growth than other States.

We know that the manufacturing sector nationally has gained back some number of jobs that it lost. As an example, from 1965 to 1998 or 1999, this country had roughly the same number of manufacturing jobs. It was a smaller

percentage of GDP and a smaller percentage of the workforce but a pretty constant similar number of jobs in 1999 as we had in 1965. But in the decade after 1999, we lost between 3 and 4 million manufacturing jobs in this country.

Since 2010, almost every single month we have seen manufacturing jobs increase in Ohio, in the Presiding Officer's home State of North Carolina, and in State after State in this country. That is good, obviously, but too many people in my State are still out of work or underemployed. What will happen to Ohio workers in our growing manufacturing sector if we fail to do what we should be doing here, if we fail to fund this critical resource?

Ohio's manufacturers have been able to increase their exports with the assistance and the assurance that the Ex-Im Bank provides. In Fremont, OH, workers at Crown Battery, an employee-owned company, make renewable energy systems. With the help of the Ex-Im Bank's short-term, multibuyer insurance policy, about \$400,000 worth of Crown Battery's storage battery manufacturing equipment was exported to South Africa. Middletown Tube Works in Butler County in southwest Ohio exports tubular steel to Spain and Portugal with less risk because of the Ex-Im Bank. Before that support, Nook Industries in Cuyahoga County required international customers to pay cash in advance of every order, which is an average of 4- to 6-weeks. Now Nook Industries has major customers in places such as China, South Korea, and Israel because of Ex-Im Bank support.

Exporting is especially tough for small businesses. Large businesses need this less than the small company that makes things, that manufactures things. Less than 1 percent of the Nation's nearly 26 million small businesses export their products. Imagine if we can increase that only a little bit in percentage terms.

One of the most important resources to help small and medium-sized businesses—especially those that make things—boost their exports is the Ex-Im Bank. That is why the Ohio Manufacturers Association strongly supports its reauthorization. They said:

The Ex-Im Bank is the only tool that American manufacturers have to counter the huge sums of export financing—many hundreds of millions of dollars—that other countries and other governments provide their exporters.

Tom Buffenbarger, president of the International Association of Machinists, told the Senate Banking Committee:

America's working families struggle in today's difficult economy [and] have little patience for Beltway politics that continue to stall a proven instrument of export growth and job creation.

I hear from the head of the Ohio Manufacturers Association and I hear from small business owners who want to expand and gain access to foreign

markets but can't secure private financing due to the credit risk associated with some overseas investments.

Export-supported jobs linked to the manufacturing sector already account for an estimated 7 percent of our total private sector employment. More than one-fourth of the manufacturing jobs in Ohio depend on exports for their jobs.

In 2011 the bank worked with nearly 100 Ohio businesses to support more than \$400 million in export sales. To renew the Bank's charter should be a cause that all Senators support just like the 25 times that the Senate unanimously reauthorized the agency since its establishment almost 80 years ago. It is a matter of American jobs and a matter of global competitiveness.

Some people who seem to oppose everything the Federal Government wants to do because of this philosophy that the Federal Government never does anything of use—forgetting Medicare, Social Security, clean drinking water, all that—even though the Senate has reauthorized this program 25 times, they are standing in the way and blocking it.

We faced a trade deficit with China of almost \$300 billion in 2011, meaning that we imported about \$800 million a day more than we exported to China. We know that China's export-import and development banks provide as much as \$100 billion in export credits each year. That is more than three times as many new export credits as our U.S. Export-Import Bank.

It is time we continue fighting for and investing in American manufacturing. It is so important, like we do so well in Ohio, that we make things. It creates wealth, it creates a strong middle class, and it creates opportunity for our young people. It is time to end the delay and reauthorize the Export-Import Bank.

I note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BROWN of Ohio. Madam President, I ask unanimous consent that the quorum call be rescinded.

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

MORNING BUSINESS

Mr. BROWN of Ohio. Madam President, I ask unanimous consent that the Senate proceed to a period of morning business, with Senators permitted to speak therein for up to 10 minutes each.

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

SUPREME COURT REVIEW

Mr. LEAHY. Madam President, I was fortunate to be able to attend the argument before the U.S. Supreme Court on the constitutionality of the provision

in the affordable care act providing that individuals should take personal responsibility for paying for their health care by obtaining health insurance or pay a fine. I have watched a lot of arguments in the Supreme Court. Obviously, as the chairman of the Judiciary Committee I pay close attention—as do all Members—to what goes on there. I heard a great deal of instant analysis from commentators after the argument, including their predictions on how the Court will rule. I didn't hear much devoted to the role of the Chief Justice of the United States.

When I watched the arguments, I saw a Chief Justice that day who I thought seemed well aware of the significance of this decision. Chief Justice Roberts had not been appointed when the Court intervened in the Presidential election of 2000, but he certainly saw the reaction to that decision in *Bush v. Gore*, a 5-to-4 decision that the country viewed as partisan. In fact, many in the country felt that five people on the Supreme Court decided a Presidential election that was actually for the person who got less votes than the one they said lost. That decision was unprecedented. In a shocking admission, the Court itself said that it should never be considered precedent or cited in the future. That decision shook the confidence of the American people in the Supreme Court and, as Justice Stevens observed at the time, the loser in that decision was "the Nation's confidence in the judge as an impartial guardian of the rule of law." That activism undermined the reputation of the Court as fair and impartial.

But the Chief Justice did participate in the Court's recent 5-to-4 decision in *Citizens United* that divided along ideological lines and continues to engender a significant backlash. That decision was one in which the Supreme Court reached out to decide a matter not argued initially and in which it made a broad constitutional ruling that reversed nearly 100 years of progress in the country to control the corrupting influence of money in our elections and politics. That decision led directly to the super PACs and campaign excesses that are now plaguing our Democratic elections, and actually plagued this year's Republican Presidential primaries. As bad as its effect is on both Republicans and Democrats and elected offices, I believe it has contributed to the further erosion of the public's confidence in the Supreme Court to be an independent arbiter.

The constitutional challenge to the affordable care act is the current instance in which narrow ideology and partisanship are pressuring the Supreme Court to intervene where it should not, to override the law and constitutional legal understandings that have been settled since the Great Depression, and also to overturn the actions of the people who are elected to represent all Americans in both the House and the Senate. I was struck by

how little respect some of the Justices showed to Congress and of how dismissive they were to the months of work that included dozens of hearings, or the committee actions and the debate of amendments and motions and points of order on the Senate and House floors before the measure was enacted, how that was almost summarily dismissed by some.

Their actions will not help restore Americans' confidence in the Court to fairly apply the law. According to a recent poll, half of all Americans expect the justices to decide the challenge to the affordable care act mainly based on their "partisan political views," while only 40 percent expect them to decide the case "on the basis of the law." That has contributed to the historically low percentage of Americans, fewer than half, that said in a recent poll that they approve of the Supreme Court.

I am not going to be offended if some of the Justices don't like us personally or disagree with the policy judgments reflected in the law as individuals, as citizens, or as human beings; they are entitled to their personal views just as we are. But as Justices, they are supposed to put those petty personal views and feelings aside. They are supposed to begin their inquiry by respecting the will of the people as reflected in the work of Congress and to defer to Congress unless the laws we pass violate the Constitution. However, during the argument, it seemed that the Justices were second guessing the policy judgments that were made during the extended legislative process. That is not the purpose or proper exercise of judicial review. Acting out based on their personal views in this matter would be the height of conservative judicial activism. Let me repeat that. Acting out based on their personal views in this matter would be the height of conservative judicial activism.

The Chief Justice seemed to understand that deference to the elected branch is fundamental to the proper exercise of judicial review. I was struck that more than once he commented on the extreme arguments coming from other Justices by noting they were not being fair. Chief Justice Roberts was right in that regard.

I thought I saw—at least the day I watched—a Chief Justice who understands the importance of this case to all Americans, including those millions who would otherwise continue without health care insurance and access to affordable health care—the kind of health care insurance and access to affordable health care each one of us in this Chamber has and each member of the Supreme Court has. This case is also significant because of the impact it will have on the American people's view of the Supreme Court.

We all remember when the Chief Justice was nominated, and he testified that if confirmed, he would act with judicial modesty, he would honor precedent, and he would acknowledge the