

[Rollcall Vote No. 259 Ex.]

YEAS—56

Alexander	Fischer	Murkowski
Barrasso	Flake	Paul
Bennet	Gardner	Perdue
Blunt	Graham	Portman
Boozman	Grassley	Risch
Burr	Hatch	Roberts
Capito	Heitkamp	Rounds
Cassidy	Heller	Rubio
Cochran	Hoeven	Sasse
Collins	Inhofe	Scott
Corker	Isakson	Shelby
Cornyn	Johnson	Strange
Cotton	Kennedy	Sullivan
Crapo	Lankford	Thune
Cruz	Lee	Tillis
Daines	Manchin	Tillis
Donnelly	McCain	Toomey
Enzi	McConnell	Wicker
Ernst	Moran	Young

NAYS—41

Baldwin	Gillibrand	Peters
Blumenthal	Harris	Reed
Booker	Hassan	Sanders
Brown	Heinrich	Schatz
Cantwell	Hirono	Schumer
Cardin	Kaine	Shaheen
Carper	King	Stabenow
Casey	Klobuchar	Tester
Coons	Leahy	Udall
Cortez Masto	Markay	Van Hollen
Duckworth	Merkley	Warren
Durbin	Murphy	Whitehouse
Feinstein	Murray	Wyden
Franken	Nelson	

NOT VOTING—3

McCaskill Menendez Warner

The nomination was confirmed.

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

CLOTURE MOTION

The PRESIDING OFFICER. Pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will state.

The senior 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, do hereby move to bring to a close debate on the nomination of Stephanos Bibas, of Pennsylvania, to be United States Circuit Judge for the Third Circuit.

Mitch McConnell, Steve Daines, Tom Cotton, Pat Roberts, John Boozman, Mike Rounds, Patrick J. Toomey, John Barrasso, Cory Gardner, Richard Burr, Thom Tillis, Roger F. Wicker, James E. Risch, John Cornyn, Lamar Alexander, Dan Sullivan, Chuck Grassley.

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 the nomination of Stephanos Bibas, of Pennsylvania, to be United States Circuit Judge for the Third Circuit, shall be brought to a close?

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The senior assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Missouri (Mrs. McCas-

KILL), the Senator from New Jersey (Mr. MENENDEZ) and the Senator from Virginia (Mr. WARNER) are necessarily absent.

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

The yeas and nays resulted—yeas 54, nays 43, as follows:

[Rollcall Vote No. 260 Ex.]

YEAS—54

Alexander	Fischer	Murkowski
Barrasso	Flake	Paul
Blunt	Gardner	Perdue
Boozman	Graham	Portman
Burr	Hatch	Risch
Capito	Heitkamp	Roberts
Cassidy	Heller	Rounds
Cochran	Hoeven	Rubio
Collins	Inhofe	Sasse
Corker	Isakson	Scott
Cornyn	Johnson	Shelby
Cotton	Kennedy	Strange
Crapo	Lankford	Sullivan
Cruz	Lee	Thune
Daines	Manchin	Tillis
Donnelly	McCain	Toomey
Enzi	McConnell	Wicker
Ernst	Moran	Young

NAYS—43

Baldwin	Gillibrand	Peters
Blumenthal	Harris	Reed
Booker	Hassan	Sanders
Brown	Heinrich	Schatz
Cantwell	Hirono	Schumer
Cardin	Kaine	Shaheen
Carper	King	Stabenow
Casey	Klobuchar	Tester
Coons	Leahy	Udall
Cortez Masto	Markay	Van Hollen
Duckworth	Merkley	Warren
Durbin	Murphy	Whitehouse
Feinstein	Murray	Wyden
Franken	Nelson	

NOT VOTING—3

McCaskill Menendez Warner

The PRESIDING OFFICER. On this vote, the yeas are 54, the nays are 43.

The motion is agreed to.

EXECUTIVE CALENDAR

The PRESIDING OFFICER. The clerk will report the nomination.

The senior assistant legislative clerk read the nomination of Stephanos Bibas, of Pennsylvania, to be United States Circuit Judge for the Third Circuit.

The PRESIDING OFFICER. The Senator from Pennsylvania.

TAX REFORM

Mr. TOOMEY. Madam President, I rise to speak about the nomination of Professor Stephanos Bibas, on whom we have just invoked cloture, but before I do that, I want to take a quick moment to observe that we had a big development today—a big development in that the House of Representatives, the majority Ways and Means Committee members, led by KEVIN BRADY and Speaker of the House PAUL RYAN, have unveiled a tax reform plan that is a very exciting step forward in our ambition to bring tax relief and is a direct pay raise to hard-working Americans whom we represent, creating an environment where we could have much stronger economic growth and much more opportunity and rising wages for the American people.

So I congratulate Chairman BRADY and all the members of the Ways and Means Committee. I know this process has a long way to go, but they are off to a great start with a very solid bill. I look forward to continuing to work with my colleagues on the Finance Committee as we finalize our version of the pro-middle-class, pro-growth tax reform, and I am excited to see that step forward.

Madam President, let me get back to the issue of the candidacy of Professor Stephanos Bibas and say how enthusiastically I support his candidacy to serve as a judge on the U.S. Court of Appeals for the Third Circuit.

I thank the President for nominating Professor Bibas, I thank Chairman GRASSLEY for moving Professor Bibas through the nomination process of his committee, and I thank Leader MCCONNELL for bringing Professor Bibas's nomination to the floor. I also thank my colleagues who just voted to invoke cloture so that later today we can vote to confirm this terrifically well-qualified man to a really important court.

Let me touch on some of his qualities. Professor Bibas has a tremendous wealth of experience in the law as a legal scholar and a practicing attorney, so much so that the American Bar Association voted to give him a unanimous rating of "well-qualified," and let me tell you why. No. 1, he starts with outstanding academic credentials. Professor Bibas graduated summa cum laude and Phi Beta Kappa from Columbia University, and he did so at the age of 19. After Columbia, he studied at Oxford University in England and earned his law degree from Yale University.

He has clerked at the highest levels of our Federal court system. He clerked for U.S. Supreme Court Justice Anthony Kennedy and Judge Patrick Higginbotham on the U.S. Court of Appeals for the Fifth Circuit.

The fact is, Professor Bibas is an accomplished legal scholar. For 16 years, he has served as law professor at two outstanding universities—the University of Iowa College of Law and the University of Pennsylvania School of Law. Professor Bibas has been a prolific author whose academic writings are frequently cited by the U.S. Supreme Court, courts of appeals, and other law professors. He has written two books and more than 60 articles, many of which have focused on criminal law and procedures. In fact, in his writings, he has expressed views regarding criminal justice reform that I suspect many of my Democratic colleagues would share. For instance, Professor Bibas has criticized what he sees as the overuse of plea bargains in our courts as being unfair to criminal defendants who then never get their day in court.

So there is no question that Professor Bibas has very extensive academic credentials, but he is also an experienced attorney. He has served on both sides of our criminal justice system. He has been a prosecutor, and he

has been a defense attorney. He has a balanced perspective from both sides of this part of our judicial system. He served as a Federal prosecutor in New York City, where he prosecuted over 100 criminal cases.

Currently, he is the director of the Supreme Court Clinic at the University of Pennsylvania. Professor Bibas also argued six cases before the U.S. Supreme Court. He won a landmark U.S. Supreme Court decision for a criminal defendant in the *Padilla v. Kentucky* case, a case that held criminal defense attorneys must advise their noncitizen clients about the deportation risk associated with a guilty plea. That was a Professor Bibas case. He has represented dozens of other clients before the Supreme Court, and most of those cases were pro bono clients—clients he did not charge any fees because they couldn't afford experienced counsel. He voluntarily provided that service for them.

Over the course of the work he has done, as a result of the work he has done for the Supreme Court, he has been praised by both Justices Kagan and Ginsberg. Justice Ginsberg praised him as “among the very best of lawyers presenting cases to the Supreme Court.”

I hope all of my colleagues will support Professor Bibas’s nomination. He has outstanding credentials, he has a wealth of experience, and I hope everyone will see that in his background.

I must state I am disappointed that Senator DURBIN, our colleague from Illinois, has stated that he opposes Professor Bibas’s nomination. Senator DURBIN has stated that his opposition is because of an unpublished academic paper that Professor Bibas drafted in 2009. In that paper, he proposed the consideration of the use of corporal punishment as an alternative to imprisonment for certain criminal offenses, but Professor Bibas has stated unequivocally that he decided not to publish the paper because he realized that idea was wrong, was deeply offensive, and he does not support corporal punishment for criminals.

Professor Bibas also testified at his confirmation hearing that he fully understands and respects the difference between the role of a professor who considers theoretical questions and writes about them, on the one hand, versus, on the other hand, a judge who is deciding cases that impact the lives of real people.

One of the most important reasons I am an enthusiastic supporter of Professor Bibas is his clear understanding of the role of a judge in the American constitutional system. From my review of his record and from my conversation with him, it is clear he understands the proper role of a judge is to apply the law, including the Constitution, as written and not to make policy himself and that his obligation is to treat everyone absolutely equally, regardless of race, sex, wealth, political affiliation, political connections, or anything else.

Unfortunately, many liberals and progressives have a very different view of a judge. Many of my colleagues and others believe the Constitution is a living document, by which they mean that it really means whatever a judge decides it means. Under this view, changes to the law and Constitution can be made by unelected, unaccountable judges who then substitute their policy preference for the preference of the American people as reflected in their elected representatives. Some who hold this view even think judges should take into account such factors as a person’s race, sex, wealth, or political affiliation in deciding cases. In my view, that is a deeply flawed view of the law and is fundamentally inconsistent with the principles of the separation of powers that is essential to our democracy, the sovereignty of the American people, and the fair and equal application of the law to all people. Contrary to this view, Professor Bibas understands the proper role of a judge is to apply the law as written and to treat everyone who comes before him equally, not to impose his policy preferences or impose the law differently for different people.

Finally, let me say a word about Professor Bibas’s temperament and suitability for the bench. I think it is very clear that not only does he understand the role a judge is supposed to play, but he is a man of character and of a temperament that makes him very fit to be a judge. I will give you an example. In one letter of support for his nomination, a bipartisan group of 121 law professors from across the ideological spectrum stated that “his fair-mindedness, conscientiousness, and personal integrity are beyond question.”

In another quote, “We have no doubt that his judicial temperament will reflect these qualities and that he will faithfully discharge his duty to apply the law fairly and evenhandedly in all matters before him.”

I am very pleased and proud to support Professor Bibas’s nomination to the Third Circuit. I am completely confident he has the intellect, experience, temperament, and respect for the limited role of a judge in our system, those attributes that are necessary for him to excel as a Federal appellate judge, and I am pleased to speak on behalf of this highly qualified nominee. I urge all of my colleagues to support his confirmation.

Mr. President, I ask unanimous consent that notwithstanding rule XXII, all postclosure time on the Bibas nomination expire at 1:45 p.m. today.

The PRESIDING OFFICER (Mr. SASSE). Is there objection?

Without objection, it is so ordered.

The Senator from Maryland.

TAX REFORM

Mr. VAN HOLLEN. Mr. President, I see my friend and colleague from Pennsylvania on the floor. We have worked together on a number of things over the years, including now, working to-

gether to impose and really enforce sanctions against North Korea, putting together a bill modeled after the Iran sanctions bill so we are serious about working to get China and others to come to the table. I thank my colleague for his work on that.

Where we disagree strongly is on the bill that has emerged from the House of Representatives, the so-called tax reform bill. The Senator from Pennsylvania said people should be excited to see it. I can assure you, if you are a millionaire or billionaire, you are going to be really excited about the bill that is coming out of the House and supported by President Trump.

I want to talk a little bit about tax reform because we need tax reform in America. We need to simplify our Tax Code. It has been gummed up over many years with special tax breaks that are there not because they make good sense for the American people but because somebody was able to hire a high-priced lobbyist to give them a break the rest of the country does not enjoy. We need to simplify our Tax Code, and we need to reform our Tax Code.

Unfortunately, what we are seeing come from Republicans today, supported by the Trump administration, doesn’t do that. In fact, what it will do is provide full-time employment for tax accountants around the country because it creates all sorts of special provisions for powerful, special interests. It will dramatically cut taxes for big multinational corporations and for millionaires and billionaires, and everybody else is going to be left to pick up the bill in one way or another.

Now we know why this has been cooked up behind closed doors for so long. People knew it would have a lot of turbulence when it emerged. Secondly, we know why there is such a desperate effort to ram this huge tax proposal through the House and the Senate—because people don’t want the American people to figure out exactly what is in it because when they do, they are going to see it is bad for everybody but the folks who are at the very top or who are very powerful.

The good news is that people have scrambled to begin to look at this. In fact, certain groups like Realtors—we all have Realtors in all our neighborhoods. They are often very connected to our community. They know exactly what is going on. So they have been monitoring this Republican tax plan and raising concerns about it. In fact, they said just a few days ago that because there was this effort “to speed tax legislation through the House by Thanksgiving and get it to Mr. Trump by the end of the year, ‘we didn’t feel like we could wait,’” said the representatives from the National Association of Realtors.

So they began to do an analysis of the impact, and here is what they had to say today when they caught a glimpse of what was actually in the Republican Trump bill. They said that