The Missouri law enforcement community, whose views I deeply respect, has expressed grave reservations about Judge White's nomination to the Federal bench. They have indicated to me their concern that Judge White might use the power of the bench to compromise the strength of law enforcement efforts in Missouri.

Given the concerns raised by those in Missouri's law enforcement community, who put their lives on the line on a daily basis, and those in Missouri's legal community, who are charged with protecting our system of jurisprudence, I am compelled to vote against Judge White's confirmation.

Mr. SMITH of New Hampshire. Mr. President, I am opposed to the nominations of Raymond Fisher to the United States Court of Appeals for the Ninth Circuit and Ronnie White to the Eastern District of Missouri.

Our judicial system is supposed to protect the innocent and ensure justice, which is what it has done for the most part for over 200 years. However, there have been glaring exceptions: the Dred Scott decision, which ruled that blacks were not citizens and had no rights which anyone was bound to respect, and Roe versus Wade, which similarly ruled that an entire class of people, the unborn, are not human beings and therefore are undeserving of any legal protection.

Both decisions, made by our Nation's highest court, violated two key constitutional provisions for huge segments of the population. Dred Scott, which legally legitimized slavery, deprived nearly the entire black population of the right to liberty, while Roe has taken away the right to life of 35 million unborn children since 1973. Both created rights, the right to own slaves and the right to an abortion, that were not in the Constitution. Of course, both are morally and legally wrong. Sadly, only Dred has been overturned, by the 13th and 14th amendments. Congress and the courts have yet to reverse Roe.

The only requirement, the only standard that I have for any judicial nominees is that they not view ''justice'' as the majorities did in Dred Scott and Roe, and that they uphold the standards and timeless principles so clearly stated in our Constitution.

Unfortunately, I do not believe that Mr. White and Mr. Fisher meet those critical standards. During the committee hearings, Mr. Fisher fully indicated to me that he would uphold the constitutional and moral travesties of Roe and Planned Parenthood versus Casey. Mr. White has also given answers which strongly suggest that he believes Roe was correctly decided by the Supreme Court. In addition, Mr. White's dubious actions as chairman of a Missouri House committee when a pro-life bill was before it further proves that he would enthusiastically enforce the pro-abortion judicial decree of Roe versus Wade.

The Framers of our Constitution believed we are endowed by our Creator with certain unalienable rights. Roe not only violates the 5th and 14th amendments, it violates the first and most fundamental right that we have as human beings and no court, liberal or conservative, can take away that right.

As a U.S. Senator, I recognize the awesome responsibility that we have to confirm, or deny, judicial nominees. I recognize the solemn obligation that we have to make sure that our Federal courts are filled only with judges who uphold and abide by the transcendent ideals explicitly stated in our Constitution and the Bill of Rights. The judges we confirm or deny will be among the greatest and far-reaching of our legacies, and I for one do not ever want my legacy to be that I confirmed pro-abortion judges to our Nation's courts.

This is why I will not support the nominations of Mr. White and Mr. Fisher. I will not support any judges who deny the undeniable connection that must exist, in a free and just civilization, between humanity and personhood. Our judges should be the very embodiment of justice. How can we then approve of those who will deny justice to most defenseless and innocent of us all?

But, further, I would add that these nominees propose a more general concern in that they are liberal activists. In the case of Justice White, who now serves on the Supreme Court in Missouri, he has demonstrated that he is an activist, and has a political slant to his opinions in favor of criminal defendants and against prosecutors. It is my belief that judges should interpret the law, and not impose their own political viewpoints.

He is strongly opposed by the law enforcement community in Missouri, and was directly opposed by the Missouri Association of Police Chiefs due to his activist record.

Senator ASHCROFT spoke in more detail about Justice White's activist record. Coming from the same State, Senator ASHCROFT is in an even better position to comment on Justice White's record. But, he laid out a very disturbing record of judicial activism in Justice White's career, particularly on law and order matters, and I simply do not think that this is the kind of person we need on the U.S. District Court.

With regard to Mr. Fisher, this is a critical slot because of the nature of the Ninth Circuit. This circuit has gained such a bad reputation for its liberal opinions that it has been referred to as a ''rogue'' circuit. It is controlled by an extreme liberal element and it is important that our appointments to this circuit be people who can restore at least some level of constitutional scrutiny.

In the case of Mr. Fisher, this clearly will not be the case. He is not a judge, and therefore, there is not the kind of judicial paper trail that we have with Justice White. However, he has a long record of liberal political activism for causes that run contrary to the Constitution. If he is willing to thwart the Constitution in his political activism, what makes us think he will uphold it in his judicial opinions. He took an active role in supporting the passage of proposition 15 in California regarding registration of handguns. This kind of hostility to the second amendment will not make matters any better on the Ninth Circuit. He very actively supported employment benefits for homosexual partners, and I found him to be very evasive in his responses to questions during the Committee hearings. Given the importance of this circuit and its demonstrated bias toward the left, this nominee, who himself is a liberal activist, is not the right person to help restore some constitutionality to this circuit.

So, I would urge my colleagues to vote against these two judges. We have sworn duty to support and defend the Constitution. This is never more critical than when we exercise our advise and consent role for judicial nominees.

## EXECUTIVE SESSION

## EXECUTIVE CALENDAR

### NOMINATION OF RONNIE L. WHITE

The PRESIDING OFFICER. Under the previous order, the hour of 2:15 having arrived, the Senate will now go into executive session and proceed to the vote on Executive Calendar Nos. 172, 215 and 209 which the clerk will report.

The legislative clerk read the nomination of Ronnie L. White, of Missouri, to be United States District Judge for the Eastern District of Missouri.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I ask unanimous consent that it be in order to ask for the yeas and nays on each nomination with one showing of hands.

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

Mr. HATCH. I now ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There appears to be a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Ronnie L. White, of Missouri, to be United States District Judge for the Eastern District of Missouri? On this question, the yeas and nays have been ordered. The clerk will call the roll.

The legislative assistant called the roll.

Mr. NICKLES. I announce that the Senator from Florida (Mr. MACK) is necessarily absent.

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

The result was announced—yeas 45, nays 54, as follows:

(Rollcall Vote No. 307 Ex.)

YEAS—45

| | | |
|---|---|---|
| Akaka | Edwards | Levin |
| Baucus | Feingold | Lieberman |
| Bayh | Feinstein | Lincoln |
| Biden | Graham | Mikulski |
| Bingaman | Harkin | Moynihan |
| Boxer | Hollings | Murray |
| Breaux | Inouye | Reed |
| Bryan | Johnson | Reid |
| Byrd | Kennedy | Robb |
| Cleland | Kerrey | Rockefeller |
| Conrad | Kerry | Sarbanes |
| Daschle | Kohl | Schumer |
| Dodd | Landrieu | Torricelli |
| Dorgan | Lautenberg | Wellstone |
| Durbin | Leahy | Wyden |

NAYS—54

| | | |
|---|---|---|
| Abraham | Fitzgerald | McConnell |
| Allard | Frist | Murkowski |
| Ashcroft | Gorton | Nickles |
| Bennett | Gramm | Roberts |
| Bond | Grams | Roth |
| Brownback | Grassley | Santorum |
| Bunning | Gregg | Sessions |
| Burns | Hagel | Shelby |
| Campbell | Hatch | Smith (NH) |
| Chafee | Helms | Smith (OR) |
| Cochran | Hutchinson | Snowe |
| Collins | Hutchison | Specter |
| Coverdell | Inhofe | Stevens |
| Craig | Jeffords | Thomas |
| Crapo | Kyl | Thompson |
| DeWine | Lott | Thurmond |
| Domenici | Lugar | Voinovich |
| Enzi | McCain | Warner |

NOT VOTING—1

Mack

Mr. ASHCROFT. Mr. President, I move to reconsider the vote.

Mr. CRAIG. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. LEAHY. Mr. President, I ask unanimous consent to continue for 1 minute.

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

Mr. LEAHY. Mr. President, I have to say this with my colleagues present. When the full history of Senate treatment of the nomination of Justice Ronnie White is understood, when the switches and politics that drove the Republican side of the aisle are known, the people of Missouri and the people of the United States will have to judge whether the Senate was unfair to this fine man and whether their votes served the interests of justice and the Federal courts.

I am hoping—and every Senator will have to ask himself or herself this question—the United States has not reverted to a time in its history when there was a color test on nominations.

The PRESIDING OFFICER. The majority leader.

Mr. LOTT. Mr. President, I use leader time for 1 minute in response.

With regard to nominations, judicial or otherwise, I am sure the Senate would never use any basis for a vote other than the qualifications and the record of the nominee. And just so the record will be complete, as a matter of fact, of the 19 nominees who have been confirmed this year, 4 of them have been women, 1 of them African American, and 3 of them have been Hispanic. Their records and the kind of judges these men and women would make are the only things that have been a factor with the Senate and are the only things that should ever be a factor.

I ask unanimous consent that the remaining votes in the series be limited to 10 minutes each.

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

Mr. DASCHLE. Mr. President, I rise to express how saddened I am by the party-line vote against Judge Ronnie White today. I had sincerely hoped that today would mark the beginning of a bipartisan attempt to clear the backlog of federal judicial nominees and begin to fill the vacancies that are rampant throughout the federal judiciary. I was mistaken. Instead, we got a party-line vote against a qualified minority judge coupled with a continued refusal to schedule votes on other qualified minority and women nominees.

Judge White is eminently qualified to sit on the federal bench. He is a distinguished jurist and the first African-American to serve on the Missouri Supreme Court. Prior to his service on Missouri's Supreme Court, Judge White served as a State Representative to the Missouri Legislature, where he chaired the Judiciary Committee. In his law practice, which he continued during his service as a legislator, White handled a variety of civil and criminal matters for mostly low income individuals. His nomination received the support of the St. Louis Metropolitan Police Department, the Saint Louis Post Dispatch, and the National Bar Association. He is a fine man who has given his life to public service and he deserved better than what he got from this Senate. He deserved better than to be kept waiting 27 months for a vote, and then to be used as a political pawn.

This vote wasn't about the death penalty. This vote wasn't about law and order. This vote was about the unfair treatment of minority judicial nominees. This vote tells minority judicial candidates ''do not apply.'' And if you do, you will wait and wait, with no guarantee of fairness.

Judge Marsha Berzon, for instance, has been kept waiting more than 20 months for a vote. Judge Richard Paez has been waiting more than 44 months. These nominees deserve a vote. While I am totally dismayed by what happened here today with respect to Judge White's nomination, the Senate today functioned, albeit in a partisan, political manner.

As Chief Justice Rehnquist has recognized: ''The Senate is surely under no obligation to confirm any particular nominee, but after the necessary time for inquiry it should vote him up or vote him down.'' An up-or-down vote, that is all we ask for Berzon and Paez. And, after years of waiting, they deserve at least that much. The Republican majority should not be allowed to cherry-pick among nominees, allowing some to be confirmed in weeks, while letting other nominations languish for years. Accordingly, I vow today, that we Democrats just will not allow Paez and Berzon to be forgotten.

As I have in the past, I will again move to proceed to the nominations of Judge Paez and Marsha Berzon, and I intend to take this action again and again should unnamed Senators continue to block a vote. Particularly after today's vote, I must say, I find it simply baffling that a Senator would vote against even voting on a judicial nomination. Today's actions prove that we all understand that we have a constitutional outlet for antipathy against a judicial nominee—a vote against that nominee. What the Constitution does not contemplate is for one or two Senators to grind a nomination to a halt on the basis of a ''secret'' hold. This cowardly, obstructionist tactic is an anathema to the traditions of the Senate. Thus, today, I implore, one more time, every Senator to follow Senator LEAHY's advice, and treat every nominee ''with dignity and dispatch.'' Lift your holds, and let the Senate vote on every nomination.

The business of judges is the simple but overwhelmingly important business of providing equal justice to the poor and to the rich. Accordingly, the consequences of this confirmation process are awesome. It is time that we all take it more seriously and it is time that we schedule votes on every nominee on the Calendar—including Judge Paez and Marsha Berzon. All we are asking of our Republican colleagues is to give these nominees the vote—and hopefully the fair consideration—they deserve. We will press this issue every day and at every opportunity until they get that vote.

Today is a dark day for the Senate. We have voted down a fully-qualified nominee but I hope we can do better in the future and that we can move forward on the Paez and Berzon nominations in a fair and non-partisan manner.

The PRESIDING OFFICER. The Clerk will report the next nomination, Calendar No. 215.

The legislative clerk read the nomination of Brian Theadore Stewart, of Utah, to be United States District Judge for the District of Utah.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Brian Theadore Stewart, of Utah, to be United States District Judge for the District of Utah? On this question, the yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Florida (Mr. MACK) is necessarily absent.

Mr. REID. I announce that the Senator from Montana (Mr. BAUCUS) is necessarily absent.

The result was announced—yeas 93, nays 5, as follows:

[Rollcall Vote No. 308 Ex.]

YEAS—93

| | | |
|---|---|---|
| Abraham | Ashcroft | Biden |
| Akaka | Bayh | Bingaman |
| Allard | Bennett | Bond |

| | | |
|---|---|---|
| Breaux | Gramm | McConnell |
| Brownback | Grams | Moynihan |
| Bryan | Grassley | Murkowski |
| Bunning | Gregg | Murray |
| Burns | Hagel | Nickles |
| Byrd | Harkin | Reed |
| Campbell | Hatch | Reid |
| Chafee | Helms | Robb |
| Cleland | Hollings | Roberts |
| Cochran | Hutchinson | Rockefeller |
| Collins | Hutchison | Roth |
| Conrad | Inhofe | Santorum |
| Coverdell | Inouye | Sarbanes |
| Craig | Jeffords | Schumer |
| Crapo | Kennedy | Sessions |
| Daschle | Kerrey | Shelby |
| DeWine | Kerry | Smith (NH) |
| Dodd | Kohl | Smith (OR) |
| Domenici | Kyl | Snowe |
| Dorgan | Landrieu | Specter |
| Durbin | Lautenberg | Stevens |
| Edwards | Leahy | Thomas |
| Enzi | Levin | Thompson |
| Feinstein | Lieberman | Thurmond |
| Fitzgerald | Lincoln | Torricelli |
| Frist | Lott | Voinovich |
| Gorton | Lugar | Warner |
| Graham | McCain | Wyden |

NAYS—5

| | | |
|---|---|---|
| Boxer | Johnson | Wellstone |
| Feingold | Mikulski | |

NOT VOTING—2

| | |
|---|---|
| Baucus | Mack |

The nomination was confirmed.

NOMINATION OF RAYMOND C. FISHER

The PRESIDING OFFICER (Mr. CRAPO). The clerk will report the next nomination.

The legislative assistant read the nomination of Raymond C. Fisher, of California, to be United States Circuit Judge for the Ninth Circuit.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Raymond C. Fisher, of California, to be United States Circuit Judge for the Ninth Circuit. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Florida (Mr. MACK) is necessarily absent.

Mr. REID. I announce that the Senator from Montana (Mr. BAUCUS) is necessarily absent.

The result was announced—yeas 69, nays 29, as follows:

[Rollcall Vote No. 309 Ex.]

YEAS—69

| | | |
|---|---|---|
| Abraham | Edwards | Lieberman |
| Akaka | Feingold | Lincoln |
| Ashcroft | Feinstein | Lugar |
| Bayh | Fitzgerald | McCain |
| Bennett | Frist | Mikulski |
| Biden | Gorton | Moynihan |
| Bingaman | Graham | Murray |
| Bond | Grassley | Reed |
| Boxer | Harkin | Reid |
| Breaux | Hatch | Robb |
| Bryan | Hollings | Rockefeller |
| Byrd | Inouye | Roth |
| Chafee | Jeffords | Sarbanes |
| Cleland | Johnson | Schumer |
| Cochran | Kennedy | Smith (OR) |
| Collins | Kerrey | Snowe |
| Conrad | Kerry | Specter |
| Daschle | Kohl | Stevens |
| DeWine | Kyl | Thurmond |
| Dodd | Landrieu | Torricelli |
| Domenici | Lautenberg | Voinovich |
| Dorgan | Leahy | Wellstone |
| Durbin | Levin | Wyden |

NAYS—29

| | | |
|---|---|---|
| Allard | Burns | Craig |
| Brownback | Campbell | Crapo |
| Bunning | Coverdell | Enzi |
| Gramm | Inhofe | Sessions |
| Grams | Lott | Shelby |
| Gregg | McConnell | Smith (NH) |
| Hagel | Murkowski | Thomas |
| Helms | Nickles | Thompson |
| Hutchinson | Roberts | Warner |
| Hutchison | Santorum | |

NOT VOTING—2

| | |
|---|---|
| Baucus | Mack |

The nomination was confirmed.

Mr. LEAHY. Mr. President, I want to congratulate Ray Fisher on his Senate confirmation. I will miss Ray and Nancy here in Washington, but know that the Ninth Circuit will greatly benefit from his service there.

Finally, I congratulate Ted Stewart on his confirmation and Senators HATCH and BENNETT, who have worked hard to get him confirmed expeditiously. I trust that Mr. Stewart will honor the commitments that he made to the Judiciary Committee to avoid even the appearance of impropriety on matters on which he has worked while in State government.

I said on the Senate floor last night that this body's recent treatment of women and minority judicial nominees is a badge of shame. I feel that we added to that shame with today's vote of Justice Ronnie White.

In their report entitled ''Justice Held Hostage,'' the bipartisan Task Force on Federal Judicial Selection from Citizens for Independent Courts, co-chaired by Mickey Edwards and Lloyd Cutler, substantiated through their independent analysis what I have been saying for some time: Women and minority judicial nominations are treated differently by this Senate and take longer, are less likely to be voted on and less likely to be confirmed.

Judge Richard Paez has been stalled for 44 months, and the nomination of Marsha Berzon has been pending for 20 months. Other nominees are confirmed in 2 months.

Anonymous Republican Senators continue their secret holds on the Paez and Berzon nominations. The Republican majority refuses to vote on those nominations. In fairness, after almost 2 years and almost 4 years, Marsha Berzon and Judge Richard Paez are entitled to a Senate vote on their nominations. Vote them up or vote them down, but vote. That is what I have been saying, that is what the Chief Justice challenged the Republican Senate to do back in January 1998.

I can assure you that there is no Democratic Senator with a hold on Judge Paez or Marsha Berzon. I can assure you that every Democratic Senator is willing to go forward with votes on Judge Paez and Marsha Berzon now, without delay.

Last Friday, Senator LOTT committed to trying to ''find a way'' to have these nominations considered by the Senate. I want to help him do that.

## LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

## JUDICIAL NOMINATIONS

Mr. NICKLES. Mr. President, before we return to the consideration of the FAA reauthorization bill, I would like to make a couple of comments. Raymond Fisher, just confirmed to the Ninth Circuit, is the 323rd judge who has been confirmed since President Clinton has been in office. 195 of those judges have been confirmed since Republicans took control of the Senate in 1995.

Judge Ronnie White is the first nominee, I believe, to be rejected on the floor since Republicans took control of the Senate. One of our colleagues said that he hoped that we are not returning to a ''color test.'' That is what was said. I am offended by that statement. Many people on our side of the aisle didn't know what race Judge White is. We did know that 77 of Missouri's 114 sheriffs were opposed to his nomination. We did find out that two State prosecutors' offices raised their objections. We did know there was a letter from the National Sheriffs Association opposing his nomination.

I believe that we have been very consistent, at least on this side of the aisle. We do not want to confirm a nominee where you have major law enforcement organizations and leading officials saying they are opposed to the nomination, regardless of what race he or she is. I do not believe the Senate has ever confirmed anyone when national law enforcement organizations or officials have stated that the nominee has a poor or weak background in law enforcement. To my knowledge, I have never voted to confirm any such nominee, nor have many other members.

I want to make it absolutely clear and understood that members voted no on Judge White's nomination because of the statements made by law enforcement officers, in addition to the respect that we have for the two Senators from the nominee's state who recommended a no vote. We respect their recommendation to us. So I make mention of that.

I am bothered that somebody said I hope we are not returning to a ''color test.'' That statement was uncalled for and, I think, not becoming of the Senate. I want to make sure that point is made.

Mr. SCHUMER. Mr. President, will the Senator from Oklahoma yield?

Mr. NICKLES. I would be happy to yield.

Mr. SCHUMER. I thank the Senator. I just want to say a few words not in response but maybe in contraposition to what the Senator said.

Mr. NICKLES. I will be happy to yield for a question.

Mr. SCHUMER. I thank the Senator. I appreciate that. I will ask my question.

It seems to me that whatever the intentions—I am not impugning any intentions of any person who voted the other way, but it seems to me that the recent vote on the floor of the Senate