

The bill was read the third time.

Mrs. MURRAY. I yield back our time and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is, shall the bill as amended pass:

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Louisiana (Ms. LANDRIEU) is necessarily absent.

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

The result was announced—yeas 73, nays 25, as follows:

[Rollcall Vote No. 287 Leg.]

#### YEAS—73

Akaka	Franken	Nelson (NE)
Alexander	Gillibrand	Nelson (FL)
Baucus	Gregg	Pryor
Begich	Hagan	Reed
Bennet	Harkin	Reid
Bennett	Hatch	Roberts
Bingaman	Hutchison	Rockefeller
Bond	Inouye	Sanders
Boxer	Johanns	Schumer
Brown	Johnson	Shaheen
Brownback	Kaufman	Shelby
Burr	Kerry	Snowe
Byrd	Klobuchar	Specter
Cantwell	Kohl	Stabenow
Cardin	Lautenberg	Tester
Carper	Leahy	Udall (CO)
Casey	Levin	Udall (NM)
Cochran	Lieberman	Voinovich
Collins	Lincoln	Warner
Conrad	Lugar	Webb
Dodd	Menendez	Whitehouse
Dorgan	Merkley	Wicker
Durbin	Mikulski	Wyden
Feingold	Murkowski	
Feinstein	Murray	

#### NAYS—25

Barrasso	DeMint	McCain
Bayh	Ensign	McCaskill
Bunning	Enzi	McConnell
Burr	Graham	Risch
Chambliss	Grassley	Sessions
Coburn	Inhofe	Thune
Corker	Isakson	Vitter
Cornyn	Kyl	
Crapo	LeMieux	

#### NOT VOTING—1

Landrieu

The bill, H.R. 3288, as amended, was passed, as follows:

(The bill will be printed in a future edition of the RECORD.)

Mrs. MURRAY. Madam President, I move to reconsider the vote and lay that motion upon the table.

The motion to lay upon the table was agreed to.

The PRESIDING OFFICER. Under the previous order, the Senate insists on its amendment and requests a conference with the House on the disagreeing votes of the two Houses.

The chair appointed Mrs. MURRAY, Mr. BYRD, Ms. MIKULSKI, Mr. KOHL, Mr. DURBIN, Mr. DORGAN, Mr. LEAHY, Mr. HARKIN, Mrs. FEINSTEIN, Mr. JOHNSON, Mr. LAUTENBERG, Mr. SPECTER, Mr. INOUE, Mr. BOND, Mr. SHELBY, Mr. BENNETT, Mrs. HUTCHISON, Mr. BROWNBACK, Mr. ALEXANDER, Ms. COLLINS, Mr. VOINOVICH, and Mr. COCHRAN, conferees on the part of the Senate.

#### EXECUTIVE SESSION

#### NOMINATION OF GERARD E. LYNCH TO BE UNITED STATES CIRCUIT JUDGE FOR THE SECOND CIRCUIT—Continued

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to executive session to vote on the nomination of Gerard E. Lynch, of New York, to be U.S. circuit judge for the Second Circuit.

There is 2 minutes of debate equally divided.

The Senator from Vermont is recognized.

Mr. LEAHY. Madam President, it is Constitution Day. Two hundred twenty-two years ago today, the Constitutional Convention finished its work and proposed our fundamental charter.

With this vote, the Senate will finally begin fulfilling one of its most important constitutional duties by granting consent to the President's lifetime appointment to the Federal judiciary. This is the first Federal circuit court judge the Senate has confirmed all year. The Senate has yet to confirm a single district court judge. Judicial vacancies have spiked and could approach 120 soon.

We all know Judge Lynch is an outstanding judge and will make an excellent circuit judge. His nomination has been on the calendar awaiting Senate action for more than 3 months. I am glad his wait is finally over. The President made a good nomination, and the Senate should grant consent so that Judge Lynch's appointment may finally proceed.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Madam President, this nominee is a brilliant lawyer and an excellent, hard-working judge. He has made a number of speeches in the past which evidenced an activist philosophy. I voted against him in 1997 when he came up. And absent one or two opinions since then, it seems he has done an excellent job on the bench.

I remain concerned that we are seeing a pattern of nominees who believe they have the power to amend the Constitution. One—not this one—has said he can make footnotes to the Constitution. But this nominee is a man of good integrity, a proven record on the bench, and I will support the nomination.

I yield the floor.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Gerard E. Lynch, of New York to be U.S. Circuit Judge for the Second Circuit?

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

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

The clerk will call the roll.

The bill clerk called the roll.

Mr. DURBIN. I announce that the Senator from Louisiana (Ms. LANDRIEU) is necessarily absent.

Mr. KYL. The following Senator is necessarily absent: the Senator from Wyoming (Mr. ENZI).

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

The result was announced—yeas 94, nays 3, as follows:

[Rollcall Vote No. 288 Ex.]

#### YEAS—94

Akaka	Feingold	Mikulski
Alexander	Feinstein	Murkowski
Barrasso	Franken	Murray
Baucus	Gillibrand	Nelson (NE)
Bayh	Graham	Nelson (FL)
Begich	Grassley	Pryor
Bennet	Gregg	Reed
Bennett	Hagan	Reid
Bingaman	Harkin	Risch
Bond	Hatch	Roberts
Boxer	Hutchison	Rockefeller
Brown	Inouye	Sanders
Brownback	Isakson	Schumer
Burr	Johanns	Sessions
Burr	Johnson	Shaheen
Byrd	Kaufman	Shelby
Cantwell	Kerry	Snowe
Cardin	Klobuchar	Specter
Carper	Kohl	Stabenow
Casey	Kyl	Tester
Chambliss	Lautenberg	Thune
Cochran	LeMieux	Udall (CO)
Collins	Leahy	Udall (NM)
Conrad	Levin	Vitter
Corker	Lieberman	Voinovich
Cornyn	Lincoln	Warner
Crapo	Lugar	Webb
DeMint	McCain	Whitehouse
Dodd	McCaskill	Wicker
Dorgan	McConnell	Wyden
Durbin	Menendez	
Ensign	Merkley	

#### NAYS—3

Bunning Coburn Inhofe

#### NOT VOTING—2

Enzi Landrieu

The PRESIDING OFFICER. Under the previous order, the 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 will resume legislative session.

#### DEPARTMENT OF THE INTERIOR, ENVIRONMENT, AND RELATED AGENCIES APPROPRIATIONS ACT, 2010—Continued

AMENDMENT NO. 2394

The PRESIDING OFFICER. There are now 2 minutes of debate prior to a vote in relation to amendment No. 2394 offered by the Senator from Nebraska, Mr. JOHANNES.

The Senator from Nebraska.

Mr. JOHANNES. Madam President, this morning I presented the argument on this amendment to the Senate. The question was raised: We don't think there is money that comes out of this budget relative to this organization, ACORN. I went back to the office and did some research. This is a bill that controls hundreds of grant programs. After studying that, it appears I was right. ACORN gets money out of this appropriations.

Moments ago my staff brought me information that would suggest that