

same intelligence, thoroughness and integrity that she has brought to her work as a State Supreme Court judge and as a careful and thoughtful student of the law. I want to again thank Chairman HATCH and the Senate leadership for moving us to this point in the process, and I urge my colleagues to confirm this tremendous nominee.

RECESS UNTIL 2:15 P.M.

The PRESIDING OFFICER. Under the previous order, the Senate will stand in recess until 2:15 p.m.

Thereupon, at 12:50 p.m., the Senate recessed until 2:15 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. SANTORUM).

EXECUTIVE SESSION

The PRESIDING OFFICER. Under the previous order, the hour of 2:15 having arrived, the Senate will now go into executive session.

NOMINATION OF SUSAN GRABER, OF OREGON, TO BE UNITED STATES CIRCUIT JUDGE FOR THE NINTH CIRCUIT

The PRESIDING OFFICER. The Senate will now proceed to vote on the nomination of Susan Graber of Oregon, which the clerk will report.

The legislative clerk read the nomination of Susan Graber of Oregon 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 Susan Graber, of Oregon, to be a U.S. circuit judge for the second circuit? On this question, the yeas and nays have been ordered.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Hawaii (Mr. INOUE) and the Senator from West Virginia (Mr. ROCKEFELLER) are necessarily absent.

I further announce that, if present and voting, the Senator from West Virginia (Mr. ROCKEFELLER) would vote "aye."

The result was announced—yeas 98, nays 0, as follows:

[Rollcall Vote No. 35 Ex.]

YEAS—98

Abraham	Cleland	Ford
Akaka	Coats	Frist
Allard	Cochran	Glenn
Ashcroft	Collins	Gorton
Baucus	Conrad	Graham
Bennett	Coverdell	Gramm
Biden	Craig	Grams
Bingaman	D'Amato	Grassley
Bond	Daschle	Gregg
Boxer	DeWine	Hagel
Breaux	Dodd	Harkin
Brownback	Domenici	Hatch
Bryan	Dorgan	Helms
Bumpers	Durbin	Hollings
Burns	Enzi	Hutchinson
Byrd	Faircloth	Hutchison
Campbell	Feingold	Inhofe
Chafee	Feinstein	Jeffords

Johnson	McCain	Sessions
Kempthorne	McConnell	Shelby
Kennedy	Mikulski	Smith (NH)
Kerrey	Moseley-Braun	Smith (OR)
Kerry	Moynihan	Snowe
Kohl	Murkowski	Specter
Kyl	Murray	Stevens
Landrieu	Nickles	Thomas
Lautenberg	Reed	Thompson
Leahy	Reid	Thurmond
Levin	Robb	Torricelli
Lieberman	Roberts	Warner
Lott	Roth	Wellstone
Lugar	Santorum	Wyden
Mack	Sarbanes	

NOT VOTING—2

Inouye	Rockefeller
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The nomination was confirmed. Mr. WYDEN. Mr. President, I move to reconsider the vote.

Mr. SMITH of Oregon. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. LEAHY. Mr. President, I am delighted that the Majority Leader has chosen to proceed to consideration of the nomination of Justice Susan Graber to the Ninth Circuit. Justice Graber currently serves on the Oregon Supreme Court. She was reported unanimously by the Judiciary Committee earlier this month. She has the support of both Oregon Senators and received the American Bar Association's highest rating.

At her confirmation hearing, she was interrogated about two briefs that she had filed a number of years ago, in 1982 and 1984, in connection with cases being pursued by the ACLU. She was asked whether she is now or ever has been a member of the ACLU. She was asked whether she personally agreed with a number of positions taken recently by the ACLU. I objected to this line of questioning at the hearing and caution the Senate that we are headed down a road toward an ideological litmus test that does not well serve the Senate, the courts or the American people.

I hope that Justice Graber's confirmation will signal a change of direction and a willingness of the Senate to confirm qualified judicial nominees. I was encouraged when Senator SESSIONS voted to report this nomination favorably and said: "I think she is a very talented nominee, has been an activist in some ways in her past, but has many good recommendations, and I think would have the capability of making an outstanding judge. I would support her nomination, although had I been making the nomination, I may not have nominated her." I trust that is the standard that will be applied to other qualified nominees, as well.

I remain concerned, as I look at the Senate Executive Calendar, that we are again passing over other highly-qualified nominees, nominees who will be confirmed by the Senate if they are ever allowed to be considered. In particular, I see G. Patrick Murphy, the nominee to the District Court for the Southern District of Illinois, and Judge Michael P. McCuskey, the nominee to the District Court for the Central District of Illinois. I spoke of these long-

standing nominations yesterday, as well. I know that Senator DURBIN is doing everything he can to try to have them considered by the Senate because they have been on the Senate calendar since last November, over 5 months; they are desperately needed in their districts; and they are so well qualified.

I see Edward F. Shea, a nominee to the District Court for the Eastern District of Washington, and Margaret McKeown, the Washington State nominee to the Ninth Circuit. Mr. Shea was reported at the same time as two other District Court nominees who have been considered and confirmed and should likewise be considered and confirmed without further, unnecessary delay. Margaret McKeown was reported before the Justice Graber but has been skipped over, as well. Her nomination is fast approaching its two-year anniversary. She was reported by the Judiciary Committee on a vote of 16 to 2 and she has the support of Chairman HATCH and a number of Republican Senators. Why these outstanding nominees are being skipped is a mystery to me.

Finally, we have reported to the Senate the nomination of Judge Sotomayor to the United States Court of Appeals for the Second Circuit. Her nomination was received back in June 1997. She, too, was favorably reported by a Committee vote of 16 to 2, once we finally considered her nomination. She is strongly supported by both New York Senators, yet the nomination continues to languish without consideration. This would fill one of the four vacancies that currently plague that Court. A fifth vacancy on this 13-judge court will arise before the end of this month.

The confirmation of Susan Graber will mark the twelfth judge confirmed by the Senate this year. While we are still behind the pace the Senate established in the last nine weeks of last year, we can make a step in the right direction by proceeding to consider and confirm the five additional judicial nominees who remain on the Senate calendar and are ready for our consideration and favorable action.

When the Chief Justice of the United States Supreme Court wrote in his 1997 Year End Report that "some current nominees have been waiting a considerable time for a . . . final floor vote" he could have been referring to Patrick Murphy, Judge Michael McCuskey, Margaret McKeown and Judge Sonia Sotomayor.

Nine months should be more than a sufficient time for the Senate to complete its review of these nominees. During the four years of the Bush Administration, only three confirmations took as long as nine months. Last year, 10 of the 36 judges confirmed took nine months or more and many took as long as a year and one-half. So far this year, Judge Ann Aiken, Judge Margaret Morrow, and Judge Hilda Tagle have taken 21 months, 26 months and 31

months respectively. The average number of days to consider nominees used to be between 50 and 90, it rose last year to over 200 and this year stands at over 300 days from nomination to confirmation. That is too long and does a disservice to our Federal Courts. I urge the Republican leadership to proceed to consideration of each of the judicial nominees pending on the Senate calendar without further delay.

LEGISLATIVE SESSION

The PRESIDING OFFICER (Mr. ROBERTS). The Senate will now return to legislative session.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia is recognized.

CORRECTIONS TO THE CONGRESSIONAL RECORD

Mr. BYRD. Mr. President, on yesterday, I addressed the Senate concerning Senator MOYNIHAN's birthday. On page S1967, the first column, the last full paragraph on that page, the word "stoop" should be "swoop" in Herman Melville's eloquent quotation.

In the RECORD, during my remarks concerning WENDELL FORD being the longest serving Kentuckian in the history of the Senate, on page S1969, the first column, the last full paragraph, the word "countries" should be "counties."

I ask unanimous consent that these two items be corrected in the permanent version of the RECORD.

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

MORNING BUSINESS

Mr. LOTT. Mr. President, I ask unanimous consent that there now be a period for morning business, with Senators permitted to speak therein for up to 10 minutes each until 4 p.m. today, when we will go to the opening discussion on the NATO enlargement issue.

I yield the floor.

Mr. CAMPBELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Colorado is recognized.

Mr. CAMPBELL. Mr. President, I yield to my colleague from Texas.

Mrs. HUTCHISON. Mr. President, I ask unanimous consent that I be allowed to follow Senator CAMPBELL in morning business.

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

Mr. FAIRCLOTH. Mr. President, I ask that I be able to follow the Senator from Texas.

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

Mr. DURBIN. Mr. President, I ask to permission to follow the Senator from Texas.

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

The Senator from Colorado is recognized.

Mr. CAMPBELL. I thank the Chair.

(The remarks of Mr. CAMPBELL and Mr. ALLARD pertaining to the introduction of S. 1771 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

MARRIAGE PENALTY TAX RELIEF

Mrs. HUTCHISON. Mr. President, I rise today to say that we have taken, or are in the process of taking, one major step toward more tax relief for the hard-working American family. The budget resolution, which is being marked up as we speak right now, will allow for \$30 billion in tax relief for the hard-working Americans.

This \$30 billion is not nearly enough. I hope that we will be able to expand the \$30 billion. But, at least it recognizes that we need to keep on the same course that we started last year, and that is giving back to the American people more of the money they earn so they can decide how they want to spend it, rather than sending it to Washington and letting somebody here decide what is best for their families. That is what we are trying to do in this Congress. We are trying to give more of the money that people earn back to them. And \$30 billion will not do it, but at least that is a beginning. It is a beginning for new tax cuts that we would propose over the next 5 years.

I am very pleased to say that both Congressman ARCHER, the chairman of the Ways and Means Committee, and Senator ROTH, the chairman of the Senate Finance Committee, both of whom will be responsible for setting the priorities in tax cuts, have said their first priority is the marriage penalty tax. I am very pleased that Senator FAIRCLOTH and I are working on a bill that will provide that relief. There is a Faircloth-Hutchison bill that allows people to put their money together and split it in half. There is a Hutchison-Faircloth bill that will allow people to file as single or married, whichever is best for them. We want the hard-working young couple that gets married not to have to pay a penalty.

Let me just give you an example that is a true one. A rookie policeman in the city of Houston, TX, makes around \$30,000 a year. He marries a Pasadena School District schoolteacher who makes about \$28,000 a year. When they get married, they will owe almost \$1,000 in additional taxes. Mr. President, we think that is wrong. We do not think that Americans should have to choose between love and money. We do not think that young couples who are getting married, who want to have their first home, who want to buy that new car, should have to give more money to Uncle Sam because they decided to get married and start their family. That is not the American dream. So we are going to try to do something about it.

I want to commend Senator FAIRCLOTH from North Carolina, because he

took the early lead on this. He and I have been working together to eliminate the marriage penalty tax once and for all. I am very pleased that Senator ROTH and BILL ARCHER, from Texas, who understands this issue—have said this is a first priority. If we can give this relief to that young couple that gets married, they will be able to perhaps put that money aside for a downpayment on their first home, or perhaps a downpayment on a new car. Rather than sending that money to Washington for the government to decide how they should spend it, we need to let couples keep that money they earn, which in many cases could equal a couple of car payments.

So, \$30 billion is not quite enough. The Joint Tax Committee says that it would be roughly \$110 billion over 5 years that would be taken out of the Government coffers to repeal the marriage penalty. We are going to have to keep working to look for either a budget surplus or more money that could be set aside, or we may have to phase that in. But the bottom line is this is one step toward the right thing to do. It is one step more in the direction of giving more tax relief to that young couple that decides to get married, who are in entry-level positions, just starting their lives together, and we are going to make that happen. If we have to do it by phasing it in, we will do it; if we have to do it by finding more money, we will do it, because we believe it is the right thing to do.

Thank you, Mr. President. I yield the floor to the Senator from North Carolina, who is a cosponsor with me of both of the bills that would give tax relief to that young couple who should not have to choose between love and money.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. FAIRCLOTH. Mr. President, thank you. I thank Senator HUTCHISON.

Mr. President, I want to join the Senator from Texas in thanking the chairman of the Budget Committee, Senator DOMENICI, for including a repeal of the marriage penalty tax in the budget resolution which was unveiled today.

Mr. President, Senator HUTCHISON, Senator CONNIE MACK, and I have sponsored legislation to remove this unfair tax. It penalizes couples simply because they get married. Because of the hard work of Chairman DOMENICI and the Budget Committee, we are making progress in getting rid of this tax. The majority leader, Senator LOTT, has also been tremendously supportive. Senator HUTCHISON, Senator LOTT, and I recently pledged on Valentine's Day that we would work to have this tax burden removed by Valentine's Day next year. I think it is a reasonable goal and a step closer with today's budget resolution. What better use of money could we have, what better use than to give tax relief to a young couple getting married? The Congressional Budget Office has determined that 21 million married couples pay an average