

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

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