vote. But that is what we are trying to do right now; we are trying to make sure everybody is satisfied with that. If we could get that cleared, move it on a voice vote, then we would have no further recorded votes tonight. We are not able to announce it at this moment, but we believe within the next 5 or 10 minutes we will be able to make that clear.

I see the Senator from Vermont just came on the floor. He was one of the ones we were wanting to get some information from about the antinepotism bill, being able to take it up, and whether or not a recorded vote was going to be necessary on that.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Madam President, I tell my friend from Mississippi, we discussed, last night, what we were trying to do, as he knows. The Senator from Arizona has been most helpful in trying to help this along, to get the antinepotism bill up, but also have the time to do the Fletcher nomination.

What I understand the Senator from Mississippi and the Senator from Arizona want to do is to get something locked in so we can take care of both those.

There were some who wanted a rollcall vote on the nepotism bill. Is the distinguished leader saying it would be easier for his scheduling if there was not one? I came to this conversation late; I apologize.

Mr. LOTT. I believe it will be better from a scheduling standpoint; therefore, we can advise Members what they can expect for the remainder of the evening and we can get this legislation completed. Then we will be able to go to the Fletcher nomination tomorrow.

Mr. LEAHY. I ask my good friend, the distinguished leader—and we have been friends for a long time—do I detect a hint in that suggestion of being able to tell Members there may not be further votes if we voice vote the nepotism bill?

Mr. LOTT. That was very much an implied hint.

Mr. LEAHY. I think I can tell my friend from Mississippi we can overcome those who are requesting a rollcall vote on this side. But we do want a specific time for a vote on the Fletcher nomination, and I rely on the distinguished leader to work this to a time convenient for scheduling. It is, of course, with the understanding that there will be a time set down for a vote on Mr. Fletcher that we would be able to reach an agreement.

Mr. LOTT. That is my intent, and, as the Senator knows, I had made a commitment earlier we were going to do that. I will keep that commitment. It is my intent to have that vote tomorrow, or the next day at the latest. We will have a vote on that nomination.

I thank Senator KYL also for his effort. I say to all Members, if they will bear with us just another 5 or 10 minutes, we will be able to make it official that we won't have a recorded vote.

I yield the floor.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Madam President, I withdraw my reservation.

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

AMENDMENT NO. 3743

(Purpose: To provide support for certain institutes and schools)

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Arizona [Mr. MCCAIN], for Mr. FRIST, for himself, Mr. THOMPSON, Mr. DEWINE, Mr. JEFFORDS, Mr. SMITH of Oregon and Mr. WYDEN proposes an amendment numbered 3743.

Mr. MCCAIN. Madam President, I ask unanimous consent that the reading of the amendment be dispensed with.

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

(The text of the amendment is printed in today's RECORD under ''Amendments Submitted.'')

Mr. MCCAIN. Madam President, I ask unanimous consent to add Senator SMITH of Oregon and Senator WYDEN as original cosponsors of this amendment.

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

Mr. MCCAIN. Madam President, I ask unanimous consent that Senators GREGG and LIEBERMAN be considered original cosponsors of amendment No. 3722.

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

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3743) was agreed to.

Mr. MCCAIN. Madam President, I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

MORNING BUSINESS

Mr. MCCAIN. Madam President, according to the previous order, we are in a period for morning business.

The PRESIDING OFFICER. That is correct.

Mr. MCCAIN. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. LOTT. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

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

UNANIMOUS CONSENT AGREEMENT—S. 1892

Mr. LOTT. Madam President, I ask unanimous consent that the majority leader, after consultation with the Democratic leader, may proceed to Calendar No. 381, S. 1892, which is the antinepotism language with regard to judicial appointments, under the following limitations: No amendments in order to the bill, and debate limited on the bill to 15 minutes under the control of Senator KYL and 30 minutes under the control of Senator LEAHY or his designee.

I further ask unanimous consent that following the expiration or yielding back of any debate time, the bill be read the third time and the Senate proceed to a vote on passage, with no intervening action or debate.

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

UNANIMOUS CONSENT AGREEMENT—EXECUTIVE CALENDAR

Mr. LOTT. Madam President, as in executive session, I ask unanimous consent that the majority leader shall, no later than the close of business Thursday, October 8, proceed to executive session for the consideration of Executive Calendar No. 619, the nomination of William Fletcher. I further ask consent there be 90 minutes equally divided between the proponents and opponents of the nomination. I further ask consent that following that debate time, the Senate proceed to a vote on the confirmation of the nomination and, immediately following that vote, Executive Calendar Nos. 803, 804, and 808—that is, H. Dean Buttram, to be U.S. District Judge for the Northern District of Alabama; Inge Johnson, also to be a U.S. District Judge for the Northern District of Alabama; and Robert Bruce King, to be a U.S. Circuit Judge for the Fourth Circuit of West Virginia—and that they be confirmed, the motions to reconsider be laid upon the table, the President be immediately notified of the Senate's action, and the Senate then return to legislative session.

Mr. LEAHY. Reserving the right to object. Would the majority leader consider amending that to add that if he were to bring these up on Wednesday—I know the agreement says no later than Thursday—but if he were to bring it up on Wednesday, that would be notwithstanding the provisions of Rule XXII.

Mr. LOTT. I don't see any problem with that. I believe we probably should have asked that. I will amend it to include that.

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

Mr. LOTT. Mr. President, to clarify, we will have not more than 45 minutes of debate on the anti-nepotism bill. There will not be a recorded vote on that, and then not later than Thursday—but hopefully Wednesday—we can move these judicial nominations—the three I mentioned, plus William Fletcher of the Ninth Circuit court. So we have had the last vote for the day, and we will have this debate and perhaps some other wrap-up business. But

there will be no further recorded votes during the day.

Mr. KYL addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. KYL. Madam President, might I inquire, is it appropriate to begin debate on the subject of the unanimous consent request, S. 1892? And is it correct that the time would be under my control and then Senator LEAHY would have time on the other side?

The PRESIDING OFFICER. Yes, that's the order.

JUDICIAL ANTINEPOTISM ACT

The PRESIDING OFFICER. The clerk will report the bill.

The legislative clerk read as follows:

A bill (S. 1892) to provide that a person closely related to a judge of a court exercising judicial power under article III of the United States Constitution (other than the Supreme Court) may not be appointed as a judge of the same court, and for other purposes.

The Senate proceeded to consider the bill.

Mr. KYL addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, let me thank Senator LEAHY for his cooperation in allowing us to get this bill up at this time and deal with it in an expedited fashion. I will describe briefly the reason for the legislation, what it does. I will ask unanimous consent to submit further remarks for the RECORD.

Under existing law, section 458 of title 28 of the U.S. Code reads: ''No person shall be appointed to, or employed in, any office or duty in any court who is related by affinity or consanguinity within the degree of first cousin to any justice or judge of such court.''

I will read the words that pertain to judges: ''no person shall be appointed . . . to any court who is related . . . to any justice or judge of such court.'' That language seems pretty straightforward on its face—that you can't have relations on the same court, nominated by the President or appointed by the Senate. Notwithstanding that relatively clear language, there has arisen a controversy over whether it means what I suggest it says. The administration has actually interpreted it in a way that could mean that it applies only to employees of the court, not to judges of the court themselves.

This bill clarifies that it applies to both, which I think was both the original intent and the best public policy. I note that the issue has arisen because of the nomination of Professor Fletcher to be a judge on the Ninth Circuit, since his mother sits on the circuit currently. Frankly, most people were not aware of the statute, Madam President. But, in my view, we should not do something that is not permitted under the law. Therefore, while I acknowledge that the administration has raised a question about the interpretation of the statute, I think the statute is pretty clear. This bill makes it crystal clear that it applies to both employees of the court and judges of the court.

In effect, what the legislation would do is to say that on the same court, like the same circuit or the same district court, you would not be able to have a father and son, two brothers, two sisters, that sort of thing. But you could have people related on different circuits or different Federal district courts. For example, you could have a brother in the Fifth Circuit and a brother in the Second Circuit. You could have two sisters serving in different circuits or different districts in the State of Maine, or of the State of Pennsylvania, or of the State of Vermont. But you would not be able to have two close relatives in the very same court.

The public policy reasons for that are fairly obvious. When a litigant is before the court, the litigant wants to know that he or she is being treated fairly. When a relative who is that close to a judge that may have decided a case on a panel of judges is then being called upon to review the decision of that close relative, the litigant clearly is going to have a question as to whether his or her case can be treated fairly. Here is an example: A circuit court judge sits on a panel of three judges who decide against a plaintiff. That case is then given to the en banc panel of the circuit court in which the father, or the brother, or the sister of that judge is also a member of the panel; the litigant might well be a little skeptical that the brother, sister, father, or whoever it is, is going to be treating him fairly, given the fact that the question is whether or not he will overturn the decision of his brother, or his son, or whoever the relative is.

So it is historic that we have tried to avoid that kind of conflict of interest. In most cases, it can be avoided. The kinds of situations in which this will arise are very rare. But since it has arisen in the context of this particular nominee, and since we think we can make the statute crystal clear to apply to both judges and employees, it seemed like a good thing to do.

I have two final points. One, this does not apply to the U.S. Supreme Court. Constitutionally, we have the ability to set the criteria or qualifications for circuit and district courts, but we don't have that ability for the Supreme Court. That is fixed in the Constitution. We could not apply it there.

Secondly, it only applies to nominations made after the effective date of the statute. For those interested in the nomination of Professor Fletcher, this statute or change would not adversely affect his nomination or confirmation by the Senate.

With that explanation, I yield to Senator LEAHY for such comment as he may want to make. I know he is in opposition to the bill.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. LEAHY. I thank my friend from Arizona. As he knows, I have opposition to this bill coming forward. I am not in favor of the bill. It will pass, I understand, but I am not in favor of it. I know of no problem created by the appointment of judges who are from the same family. Indeed, the three historical example of which I am aware lead me to the opposite conclusion. Justice David Brewer served with his uncle Justice Stephen Field on the United States Supreme Court after being appointed by President Harrison in 1890. Learned and his cousin Augustus Hand served together in the Southern District of New York and on the Court of Appeals for the Second Circuit. Richard and Morris Arnold are brothers currently serving on the Court of Appeals for the Eighth Circuit. All served with distinction.

I do not know why the country should be deprived of the judgment and wisdom of someone because a relative proceeded him or her to the bench. We have had relatives serve simultaneously in government before and now. Should one of the LEVIN brothers or HUTCHINSON brothers not serve in Congress? Should one of the Breyer brothers be barred from the federal bench? For that matter, should federal judges be prohibited who are related to Senators who recommend them to the President and then voted for their confirmation?

I believe that S. 1892 is an unnecessary and unwise bill. Moreover, it could lead to appointment barriers against daughters and nieces of current judges. With people living longer and women as well as men having been practicing law and entered public service in the last decades, I fear that the prohibition envisioned by the bill will serve as yet another barrier to keep qualified women from being appointed to the bench. This may be an unintentional consequence of the bill, but a likely consequence nonetheless.

Senator KYL's bill is intended to do what section 458 of title 28, United States Code, does not; namely, prohibit the appointment to a federal court of a relative of a judge already serving on that court. The bill would amend the law to add a prohibition against the appointment of a person to a federal court on which a first cousin or closer relative of that nominee was an active or senior judge.

In 1914 President Woodrow Wilson appointed Augustus Hand to the United States District Court for the Southern District of New York where he joined his distinguished first cousin and close friend Judge Learned Hand. In 1927, President Calvin Coolidge elevated Judge Augustus Hand to the United States Court of Appeals for the Second Circuit, where he rejoined his cousin Judge Learned Hand, who had been elevated three years before. Had the Kyl bill been in force, neither of these appointments would have been in accordance with law.

The service of the Hand cousins on the Second Circuit was central to the development of the law in our Circuit