

NOMINATION OF RICHARD A. PAEZ, OF CALIFORNIA, TO BE UNITED STATES CIRCUIT JUDGE FOR THE NINTH CIRCUIT—MOTION TO PROCEED

Mr. DASCHLE. I move to proceed to executive session to consider Executive Calendar No. 208, Richard A Paez, to be a U.S. Circuit Court Judge for the Ninth circuit. I ask for the yeas and nays.

The PRESIDING OFFICER (Mr. BENNETT). Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to proceed to executive session to consider the nomination of Richard A. Paez, 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 Arizona (Mr. MCCAIN) and the Senator from North Carolina (Mr. HELMS) are necessarily absent.

The result was announced—yeas 45, nays 53, as follows:

[Rollcall Vote No. 283 Leg.]

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—53

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

NOT VOTING—2

Helms	McCain
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The motion was rejected.

Mr. HATCH. Mr. President, I must begin by confessing my disappointment that the minority would refuse to avoid a filibuster of one of the nominees of its own administration, when the record of this Senate so dramatically proves the deference this Senate has shown to this administration's judicial nominees. But that is what has just happened this evening, and in the face of this blatant double standard by the minority, I will only say that I will continue to work in good faith to secure a vote on the merits on the Presi-

dent's nomination of Ted Stewart to be a Federal district court judge.

When I speak of the traditional deference the Senate has shown to the executive in matters of Federal judicial nominations, I believe I speak with considerable experience. Since the time I was first sworn into the Senate in 1977, I have participated in and witnessed the confirmation of 1,159 judges and Justices, and have voted in favor of almost all of them.

I have personally presided over the confirmation of 321 of President Clinton's judicial appointments. This accounts for almost a quarter of the entire Federal judiciary. And this session alone, I have held 4 judicial confirmation hearings, and reported 24 nominees out of committee.

This evening's cloture vote concerns me all the more because I had publicly stated, in response to some of my colleagues' concerns about moving forward with other judicial nominations, that we would hold another hearing in this month of September, yet another in October, and, if the Senate continued in session throughout November, that it had been my hope to hold yet another hearing during that time.

With these plans, we would have been on track to equal or exceed the historical average for first-session judicial confirmations by the Senate. And so I find it incredible that this distinguished body resorted to the unfounded criticism that we are not doing as much as we should to fill the ranks of the Federal judiciary.

And now, in light of today's vote on cloture, we shall have to reexamine the best way to move forward on judicial nominees so that we eliminate the double standard that has been applied tonight.

To take a step back, and apply some perspective to the matter at hand, I want to emphasize that I have made every effort to promote a fair nominations process, recognizing the deference a President is traditionally accorded in nominating judges akin to his political philosophy. I have done as much notwithstanding the sometime heated criticism of interest groups opposed to President Clinton's nominations.

Even nominees attacked by interest groups as liberal and controversial have received my support in the Judiciary Committee and on the Senate floor. In fact, since I have been chairman, I have never voted against any of the 31 Clinton judicial nominations for whom there has been a roll call vote. I have supported these nominees not because I agreed with their philosophies, but because I have always believed that the judicial nominations process should be as free from politics as possible.

But let me offer some specifics. I have supported getting out of committee controversial nominees such as Judge William Fletcher, Judge Richard Paez, Judge Lynn Adelman, and Marsha Berzon, even though I would not

have nominated them had I been President. Rather, so long as a nominee is qualified and capable of serving with integrity in a position, and I have his/her assurance that they will follow precedent, I believe they deserve to be confirmed.

Judge Fletcher, Judge Paez, and Ms. Berzon were opposed by a number of conservative organizations; yet, I supported their report by the committee to the floor. Now, Mr. Stewart is being unduly attacked by liberal groups. In this same spirit of bipartisanship with which I have supported this administration's nominees, it had been and continues to be my hope that the Democrats would support the nomination of Ted Stewart.

I ultimately want this body to recognize that, in the same manner that I have been fair to this administration's nominees in the face of severe opposition, trust must be placed in the judgment of home State senators for a nominee whose jurisdiction would be confined wholly to that senator's State. So now, as I expect we will soon be considering Ted Stewart, I will ask you to extend your deference to President Clinton's choice and the Judiciary Committee's ranking member's support, but also to extend your trust to the judgment of both senators from Utah.

Ted is a good, honorable person, who has been deemed qualified for a position as District judge of the District of Utah and who will make a wonderful District Court Judge. I urge the Democrats to stop playing politics with this nomination and allow a vote expeditiously.

I ask unanimous consent to have printed in the RECORD pertinent charts.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

Status of article III judicial nominations

Total number of Clinton judges appointed, 1993-present	321
Clinton nominees confirmed during the 106th Congress:	
U.S. Circuit Court Judge	3
U.S. District Court Judge	14
Total confirmed	17
Vacancies in the Federal judiciary:	
U.S. Circuit Court	23
U.S. District Court	40
USIT	1
Total number of vacancies:	64
Percent vacant	7.6
Vacancies with no nominee slated to fill position:	
U.S. Circuit Court	7
U.S. District Court	14
Total number of vacancies without nominee	21
Nominations Pending:	
U.S. Circuit Court Judge	16
U.S. District Court Judge	28
USIT Judge	1
Total number of nominees	45
Nominees pending on the Senate floor	7

Status of article III judicial nominations—
Continued

Nominees pending in committee
w/hearing 6

Status of article III judicial nominations—
Continued

Nominees pending in committee w/o
hearing 32

HISTORICAL VACANCY AND CONFIRMATION
RATES OF JUDICIAL NOMINEES

101ST CONGRESS

[Republican President (Bush)—Democrat Senate (Biden)]

	Convened—Jan. 3, 1989		Confirmed	Adjourned—Oct. 28, 1990	
	Judgeships	Vacancies		Judgeships	Vacancies
Supreme Court	9	0	1	9	0
Court of Appeals	168	10	22	168	7
District Court	575	26	48	575	25
Court of International Trade	9	1	0	9	1
Total	761	37 (4.9%)	71	761	33 (4.3%)

102ND CONGRESS

[Republican President (Bush)—Democrat Senate (Biden)]

	Convened—Jan. 3, 1991		Confirmed	Adjourned—Oct. 8, 1992	
	Judgeships	Vacancies		Judgeships	Vacancies
Supreme Court	9	0	1	9	0
Court of Appeals	179	18	20	179	16
District Court	636 (+13T)	107	101	636 (+13T)	79
Court of International Trade	9	1	1	9	2
Total	846	126 (15%)	123	846	97 (11.5%)

103RD CONGRESS

[Democrat President (Clinton)—Democrat Senate (Biden)]

	Convened—Jan. 5, 1993		Confirmed	Adjourned—Dec. 1, 1994	
	Judgeships	Vacancies		Judgeships	Vacancies
Supreme Court	9	0	2	9	0
Court of Appeals	179	17	19	179	15
District Court	636 (+13T)	90	107	636 (+13T)	46
Court of International Trade	9	2	0	9	2
Total	846	109 (13%)	128	846	63 (7.4%)

104TH CONGRESS

[Democrat President (Clinton)—Republican Senate (Hatch)]

	Convened—Jan. 3, 1995		Confirmed	Adjourned—Oct. 3, 1996	
	Judgeships	Vacancies		Judgeships	Vacancies
Supreme Court	9	0	0	9	0
Court of Appeals	179	16	11	179	18
District Court	636 (+13T)	52	62	636 (+11T)	46
Court of International Trade	9	2	2	9	1
Total	846	70 (8.3%)	75	844	65 (7.7%)

105TH CONGRESS

[Democrat President (Clinton)—Republican Senate (Hatch)]

	Convened—Jan. 7, 1997		Confirmed	Adjourned—Oct. 21, 1998	
	Judgeships	Vacancies		Judgeships	Vacancies
Supreme Court	9	0	0	9	0
Court of Appeals	179	22	20	179	14
District Court	636 (+10T)	62	79	636 (+10T)	35
Court of International Trade	9	1	2	9	1
Total	843	85 (10.1%)	101	843	50 (5.9%)

106TH CONGRESS

[Democrat President (Clinton)—Republican Senate (Hatch)]

	Convened—Jan. 4, 1999	
	Judgeships	Vacancies
Supreme Court	9	0
Court of Appeals	179	17
District Court	636 (+10T)	41
Court of International Trade	9	1
Total	843	59 (7.0%)

Mr. LEAHY. Mr. President, the distinguished Senator from South Dakota, Mr. DASCHLE, stated the case very well this evening about the unprecedented sequence of three votes on judicial nominations. As I look at the Senate floor now, I have served in this body longer than anybody presently on the floor. In 25 years, I have not seen

an instance where we have had such a series of votes.

We certainly have had times when Republicans have been in control of the Senate and times when Democrats have been in control of the Senate where nominees were sometimes voted down and sometimes were voted up, which is the way it should be. When the President is of a different party from the party controlling the Senate, that does not mean that the President's nominee, the man or woman he nominates for whatever position, automatically has to be voted against because one party controls the Senate and a different party is in the White House.

I look at two of my very distinguished, dear friends on the floor—the Senator from Virginia and the Senator from Michigan—both of whom have voted many times for nominees of the President of the other party in a whole lot of areas, certainly within their expertise on armed services but also for ambassadors and judicial nominations.

I am sure that if the distinguished Senators sitting here were to go back and search their memories, they could think of a number of people for whom they voted who were confirmed and who were not the persons they would have nominated had they been President. They might have picked somebody else. They might have picked somebody with a different political

bent or ideology. But I think they have given the President of the United States the benefit of the doubt, and if the person is otherwise qualified, he or she gets the vote.

We have come to a difficult situation with judges. There continue to be a large number of vacancies, and there are a lot of nominees who are not being voted on. There are some that have waited for several years to be voted on. We talked about Judge Paez and Marsha Berzon who have been waiting for years to be voted on. We should either vote for or against them.

The distinguished chairman of the Senate Judiciary Committee deserves great credit for having gotten these nominees through our committee, notwithstanding opposition from some members of his own party, and for having gotten them onto the floor and on the calendar. I compliment the distinguished senior Senator from Utah, Mr. HATCH, for what he has done.

I have worked closely with him to help him get matters out of that committee. There were some matters with which I disagreed and that I voted against. But he was chairman, and I thought he should have as much leeway as possible in setting the agenda. I made it possible through various procedural actions for him to get his legislation out of committee.

Tonight we had a situation born out of the frustration, possibly mistakes, and, unfortunately, some unnecessary partisanship—although not partisanship between the distinguished chairman of the committee and myself. I intend to vote for his recommended nominee for district judge from Utah, Mr. Stewart. I intend to vote for him as I did in the committee.

I also intend to vote for Marsha Berzon. I intend to vote for Judge Richard Paez, Justice Ronnie White, and, for that matter, for all of the other judicial nominees who are on the Executive Calendar. I intend to vote for every one of them.

I hope we will have a chance to vote on them, not just in committee where I have voted for each one of them, but on the floor of the Senate. That is what the Constitution speaks of in our advise and consent capacity. That is what these good and decent people have a right to expect. That is what our oath of office should compel Members to do—to vote for or against. I do not question the judgment or conscience of any man or woman in this Senate if they vote differently than I do, but vote.

We have just a very few people, a small handful of people stopping these nominees from coming to a vote. Basically, the Senate is saying we vote "maybe"—not yes or no—we vote maybe. That is beneath Members as Senators.

We are privileged to serve in this body. There are a quarter of a billion people in this great country. There are only 100 men and women who get a chance to serve at any time to rep-

resent that quarter of a billion people in this Senate. It is the United States Senate. No one owns the seat. No one will be here forever. All will leave at some time. When we leave, we can only look back and say: What kind of service did we give? Did we put the country's interests first? Or did we put partisan interest first? Did we put integrity first, or did we play behind the scenes and do things that were wrong?

I hope my children will be able to look at their father's representation in this body as one of honor and integrity, as many of my friends on both sides of this aisle have done.

I hope what happened tonight was something we will not see repeated. I understand the distinguished majority leader in going forward with his motion. I understand and support the motion of the distinguished Democratic leader.

Now that this has happened, can it be like the little escape valve on a pressure cooker? The distinguished Presiding Officer and I are from a generation that remembers the old pressure cookers prior to the age of microwaves. Certainly, my wife and I as youngsters saw a pressure cooker now and then in the kitchen. Let us hope that maybe tonight's votes will act as a little valve and let the pressure off.

I do not want to infringe on the kindness of the distinguished chairman and ranking member of the Armed Services Committee, two of the very best friends I have ever had in the Senate and two Senators whom I respect and like the most here.

Let me close with this: Maybe the pressure cooker has allowed its pressure to be released now. I suggest that the distinguished majority leader, the distinguished Democratic leader, the distinguished Senator from Utah, Mr. HATCH, and I now sit down and perhaps quietly, without the glare of publicity and the cameras, try to work out where we go from here. It may be necessary for the four of us to meet with the President. But let us find a way to tell these nominees they will get a vote one way or the other.

I am not asking anybody how they should or should not vote but allow nominees to have a vote. All the people being nominated are extremely highly qualified lawyers and judges. They have to put their lives on hold and the lives of their family on hold while they wait. They are neither fish nor fowl as a nominee. In private practice, all your partners come in and throw a big party and say it is wonderful, we are so proud of you, could you move out of the corner office because we want to take it now. And you cannot do anything while you wait and wait and wait.

Vote them up, vote them down.

Now that we have done this, let the cooler heads of the Senate prevail so the Senate can reassure the United States we are meeting our responsibility. Again, each Member is privileged to be here. There are only 100 Members, with all our failings and all

our faults, to represent a quarter of a billion people. Let us represent that quarter of a billion people better on this issue.

The distinguished Senator from Utah, Mr. HATCH, and I have a close personal relationship. We will continue to have that. We will continue to work together, but the Senate has to work with us.

JUDICIAL NOMINATIONS

Mr. KENNEDY. Mr. President, for several months, many of us have been concerned about the Senate's continuing delays in acting on President Clinton's nominees to the federal courts. Since the Senate convened in January, we have confirmed only 17 judges and 43 are still waiting for action. These delays can only be described as an abdication of the Senate's constitutional responsibility to work with the President and ensure the integrity of our federal courts.

At the current rate it will take years to confirm the remainder of the judicial nominees currently pending before the Judiciary Committee. This kind of partisan, Republican stonewalling is irresponsible and unacceptable. It's hurting the courts and it's hurting the country. It's the worst kind of "do nothing" tactic by this "do nothing" Senate.

The continuing delays are a gross perversion of the confirmation process that has served this country well for more than 200 years. When the Founders wrote the Constitution and gave the Senate the power of advice and consent on Presidential nominations, they never intended the Senate to work against the President, as this Senate is doing, by engaging in a wholesale stall and refusing to act on large numbers of the President's nominees.

Currently, there are 61 vacancies in the federal judiciary, and several more are likely to arise in the coming months, as more and more judges retire from the federal bench. Of the 61 current vacancies, 22 have been classified as "judicial emergencies" by the Judicial Conference of the United States, which means they have been vacant for 18 months or more.

The vast majority of these nominees are clearly well-qualified, and would be confirmed by overwhelming votes of approval. It would be an embarrassment for our Republican colleagues to vote against them. It should be even more embarrassing for the Republican majority in the Senate to abdicate their clear constitutional responsibility to do what they were elected to do.

The delay has been especially unfair to nominees who are women and minorities. Last year, two-thirds of the nominees who waited the longest for confirmation were women or minorities. Already, in this Congress, the Senate is on track to repeat last year's dismal performance. Of the 11 nominees who have been waiting more than