

I carefully read Judge Paez's opinion and found that it was excellent in every respect.

His writing was clear and his expression was good. He did not show any ideological or personal bias.

Judge Paez's injunction—in a case against anti-abortion demonstrators—was entirely consistent with the reasoning and result in conservative jurisdictions.

The result is that claims that the Judge's record is activist, or liberally slanted are simply wrong. Claims that he is anti-business are simply not borne out by the facts. Paez also ruled in favor of Philip Morris on a second-hand smoke suit and for Isuzu against Consumers Union. Senators opposing this nominee because they claim he's anti-business are missing the point. Paez rules on each case on the merits—yes, on the merits—and shows no favoritism for or against business. So again, Mr. President, I'm just baffled by these claims of activism or anti-business philosophy being leveled against Richard Paez.

Now if his record as a judge doesn't support these charges of "judicial activism" where did Judge Paez's opponents get the idea that he must be stopped. Opponents aren't saying it openly but it could be that they are worried that a judge who formerly worked in a legal aid capacity must be a liberal, and incapable of making balanced decisions. Having failed to find any hint of bias or lack of judicial temperament in 20 years of judicial decisions, what other reason for opposition could there be other than a belief that if you are an attorney who agrees to work on behalf of those unable to access the legal system because they are poor or under-educated, as Judge Paez did for nine years early in his career, you must be a liberal, right?

Wrong. Dead wrong. The organized Bar in every single state requires public service of attorneys. Every major law firm has dedicated efforts to reach under-served populations needing legal advice. That's part of the profession, a noble part of the profession, and those who would complain about Judge Paez's service to those in need would do well to remember their own reasons for choosing to serve the public. For my part, I applaud the decision of Judge Paez and others like him to serve the poor, and I cannot imagine how his unique perspective from working one on one with these populations for nine years would not be desirable and an advantage to parties before the 9th Circuit. His perspective is badly needed in a circuit which serves 20% of the nation's population, many of whom are people who needed legal aid when he was working with them during the 70s.

If opponents of Judge Paez want to fill the court only with seemingly conservative judges, they mistake their role in the constitutional scheme in my opinion. Let's not kid ourselves. Partisan politics shouldn't play a part in the confirmation of judges, but they do. But to hold up a well-qualified judge for a President's entire term on

the basis of unsupported allegations of "judicial activism" is shameful, it takes the impact of politics on this process to an extreme that we have not seen before, and I hope we never see again.

Mr. President, regardless of the reason for delays in acting on Judge Paez's nomination, the effects of delay are damaging and unmistakable. I believe they are twofold. First, as I discussed before, justice is put on hold in the 9th Circuit because of crowded dockets. Second, this Senate sends a subtle, but unmistakable signal to Hispanic Americans, or recent immigrants about opportunities in America.

It's an old adage but a true one. Justice delayed is justice denied. Parties take their disputes to court to reach a resolution. Longer dockets mean delays for families and businesses seeking to settle legal conflicts and move forward. Holding up qualified nominees like Judge Paez and leaving huge holes to fill on appellate benches literally delays justice.

And the subtle, even subconscious message sent to Hispanic Americans when they examine who hears their disputes in a court of law is that Circuit court judgeships are not open to them. Young Hispanic Americans hearing about Judge Paez will unfortunately learn the message without it ever being said out loud that there are limitations to their advancement in careers of public service. The signals sent by Senators' failure to vote for Paez's confirmation lead to diminished expectations and a view of limited, not limitless opportunities for millions of Hispanic Americans. The Washington Post reported on Monday that only 9 Hispanic American judges currently sit on appellate courts in this country out of a total of 170 appellate judges. And only 31 out of 655 District Judges, including Judge Paez, are Hispanic Americans. That's a shameful record as we begin the 21st century.

Here's the message sent if Judge Paez is not confirmed. You can go to law school at UC Berkeley's Boalt Hall School of Law, work tirelessly with under-served and under-represented populations needing legal assistance, be a successful and well-respected judge on the local bench and the federal District Court, get the highest rating from the American Bar Association, receive endorsements from law enforcement organizations, bar leaders, business leaders, and community leaders, and yet be needlessly and unfairly delayed and prevented from being elevated to the prestigious 9th Circuit Court of Appeals based on unsubstantiated and vague concerns that you are a "judicial activist" or a "liberal." There is only one nominee in this position, whose nomination has been held up for over 4 years. That is Richard Paez, who is a Hispanic American. That's the wrong message from this Senate to millions of Americans, and we should not send it.

I strongly support Judge Paez's confirmation, and urge my colleagues to

join me in quickly filling this and other vacancies on the 9th Circuit. This long delayed confirmation vote for Richard Paez is an important test for the Senate. I hope we pass it.

I yield the floor.

WENDELL H. FORD AVIATION INVESTMENT AND REFORM ACT FOR THE 21ST CENTURY—CONFERENCE REPORT—Continued

The PRESIDING OFFICER. Under the previous order, the hour of 5 p.m. having arrived, the Senate will now vote on adoption of the conference report accompanying H.R. 1000.

There are 2 minutes equally divided for debate. The Senator from Washington.

Mr. GORTON. Mr. President, this bill provides a generous contribution to the future of aviation in the 21st century. It significantly reforms the operations of the Federal Aviation Administration. It represents the collective wisdom of the chairman and the ranking minority member of the Commerce Committee, the chairman and the ranking minority member of the Subcommittee on Aviation, and the majority and minority leaders of this Senate. We do not have many bills such as this. I commend it to my colleagues for passage.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROCKEFELLER. We have known a long time we have been underfunding our aviation system as a whole, particularly our air traffic control system, reforming the FAA—all the rest of it—building airports.

Overall, aviation funding is increased by 25 percent in this bill. It is a start. FAA operations funding is increased. Airport money is increased by 33 percent; air traffic control modernization is increased by 40 percent.

This is the first shot we have at making the airways safe for the American people. I urge my colleagues to support the bill.

Mr. President, I note Senator LAUTENBERG wanted to have 1 minute in opposition, but I do not see him on the floor. I do not know what to add further to that.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. LAUTENBERG. Mr. President, we are about to vote on a bill that purportedly takes care of the problems of the FAA. I have to say, this bill guarantees funding increases in a manner that is grossly imbalanced. It threatens to cut funding from Amtrak, from the Coast Guard, from highway safety, and the NTSB in order to provide an aviation entitlement.

Investments in aviation do have to be made, but it has to be in a balanced way if we are going to avoid gridlock. You cannot ignore the rail system or highway safety and only focus on aviation.

The agreement seeks to guarantee a 64-percent increase in airport grants and a 37-percent increase in modernization funding. Tight budget caps mean either cuts in transportation appropriations—including the Coast Guard or Amtrak—or cuts to other discretionary programs, such as education, health care, veterans' benefits, or agriculture.

Further, it does not provide for the kinds of funding that operations will need to put on more controllers to man this larger system. It does not provide money for the continued training of new controllers.

The PRESIDING OFFICER. The time of the Senator from New Jersey has expired.

Mr. LAUTENBERG. I yield the floor. The PRESIDING OFFICER. The question is on agreeing to the conference report to accompany H.R. 1000. The yeas and nays have been ordered. The clerk will call the roll.

The bill clerk called the roll. Mr. NICKLES. I announce that the Senator from Arizona (Mr. MCCAIN) is necessarily absent.

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

The result was announced—yeas 82, nays 17, as follows:

[Rollcall Vote No. 35 Leg.]

YEAS—82

Table listing Senators who voted 'Yeas' (82 total). Includes names like Abraham, Akaka, Allard, Ashcroft, Baucus, Bennett, Biden, Bingaman, Bond, Boxer, Breaux, Brownback, Bryan, Bunning, Byrd, Campbell, Chafee, L., Cleland, Cochran, Collins, Conrad, Coverdell, Daschle, DeWine, Dodd, Domenici, Dorgan, Durbin, Enzi, Feingold, Feinstein, Gorton, Graham, Grassley, Hagel, Harkin, Hatch, Helms, Hollings, Hutchinson, Inhofe, Inouye, Jeffords, Johnson, Kennedy, Kerrey, Kohl, Landrieu, Leahy, Levin, Lieberman, Lincoln, Lott, Lugar, Mack, McConnell, Mikulski, Murkowski, Murray, Reed, Reid, Roberts, Rockefeller, Roth, Santorum, Sarbanes, Schumer, Shelby, Smith (NH), Smith (OR), Specter, Stevens, Thomas, Thompson, Thurmond, Torricelli, Voynovich, Warner, Wellstone, Wyden.

NAYS—17

Table listing Senators who voted 'Nays' (17 total). Includes names like Bayh, Burns, Craig, Crapo, Edwards, Fitzgerald, Frist, Gramm, Grams, Gregg, Kyl, Lautenberg, Moynihan, Nickles, Robb, Sessions, Voynovich.

NOT VOTING—1

McCain

The conference report was agreed to. Mr. GORTON. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

ORDER OF PROCEDURE

Mr. GORTON. Mr. President, I ask unanimous consent that the next vote in this series be limited to 10 minutes in length.

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

EXECUTIVE SESSION

NOMINATION OF MARSHA L. BERZON TO BE UNITED STATES CIRCUIT JUDGE FOR THE NINTH CIRCUIT

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

CLOTURE MOTIONS

The PRESIDING OFFICER. Under the previous order, the Chair lays before the Senate the pending cloture motion, which the clerk will report.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on Executive Calendar No. 159, the nomination of Marsha L. Berzon, to be United States Circuit Judge for the Ninth Circuit:

Trent Lott, Orrin G. Hatch, Susan M. Collins, Arlen Specter, Ted Stevens, Thad Cochran, James M. Jeffords, Robert F. Bennett, Richard G. Lugar, Chuck Hagel, Conrad Burns, John W. Warner, Patrick J. Leahy, Harry Reid of Nevada, Charles E. Schumer, and Tom A. Daschle.

The PRESIDING OFFICER. By unanimous consent, the quorum call has been waived.

The question is, Is it the sense of the Senate that debate on the nomination of Marsha L. Berzon to be United States Circuit Judge for the Ninth Circuit shall be brought to a close?

The yeas and nays are required under the rule.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Arizona (Mr. MCCAIN) is necessarily absent.

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

The yeas and nays resulted—yeas 86, nays 13, as follows:

[Rollcall Vote No. 36 Ex.]

YEAS—86

Table listing Senators who voted 'Yeas' (86 total). Includes names like Abraham, Akaka, Ashcroft, Baucus, Bayh, Bennett, Biden, Bingaman, Bond, Boxer, Breaux, Bryan, Burns, Byrd, Campbell, Chafee, L., Cleland, Cochran, Collins, Conrad, Coverdell, Crapo, Daschle, Dodd, Domenici, Dorgan, Durbin.

Table listing Senators who voted 'Nays' (13 total). Includes names like Kerry, Kohl, Kyl, Landrieu, Lautenberg, Leahy, Levin, Lieberman, Lincoln, Lott, Lugar, Mack, McConnell, Mikulski, Moynihan, Murray, Nickles, Reed, Reid, Robb, Roberts, Rockefeller, Roth, Santorum, Sarbanes, Schumer, Sessions, Smith (OR), Snowe, Specter, Stevens, Thomas, Thompson, Thurmond, Torricelli, Voynovich, Warner, Wellstone, Wyden.

NAYS—13

Table listing Senators who voted 'Nays' (13 total). Includes names like Allard, Brownback, Bunning, Craig, DeWine, Enzi, Gramm, Helms, Hutchinson, Inhofe, Murkowski, Shelby, Smith (NH).

NOT VOTING—1

McCain

The PRESIDING OFFICER. On this vote, the yeas are 86, the nays are 13. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

Mr. VOINOVICH. Under the previous order, pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion on the nomination, which the clerk will state.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on Executive Calendar No. 208, the nomination of Richard A. Paez, to be United States Circuit Judge for the Ninth Circuit.

Trent Lott, Orrin G. Hatch, Susan M. Collins, Arlen Specter, Ted Stevens, Thad Cochran, Robert F. Bennett, Harry Reid, Richard G. Lugar, Chuck Hagel, Conrad Burns, John Warner, Patrick Leahy, Charles E. Schumer, Thomas A. Daschle, and Barbara Boxer.

The PRESIDING OFFICER. By unanimous consent, the quorum call under the rule is waived.

The question is, Is it the sense of the Senate that debate on the nomination of Richard A. Paez, of California, to be United States Circuit Judge for the Ninth Circuit, shall be brought to a close?

The yeas and nays are required under the rule. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Arizona (Mr. MCCAIN) is necessarily absent.

The yeas and nays resulted—yeas 85, nays 14, as follows:

[Rollcall Vote No. 37 Ex.]

YEAS—85

Table listing Senators who voted 'Yeas' (85 total). Includes names like Abraham, Akaka, Ashcroft, Baucus, Bayh, Bennett, Biden, Bingaman, Bond, Boxer, Breaux, Bryan, Burns, Byrd, Campbell, Chafee, L., Cleland, Cochran, Coverdell, Crapo, Daschle, Dodd, Domenici, Dorgan, Durbin.