

|            |            |             |
|------------|------------|-------------|
| Collins    | Inouye     | Reid        |
| Conrad     | Jeffords   | Robb        |
| Coverdell  | Johnson    | Roberts     |
| Crapo      | Kennedy    | Rockefeller |
| Daschle    | Kerrey     | Roth        |
| Dodd       | Kerry      | Santorum    |
| Domenici   | Kohl       | Sarbanes    |
| Dorgan     | Kyl        | Schumer     |
| Durbin     | Landrieu   | Sessions    |
| Edwards    | Lautenberg | Smith (OR)  |
| Feingold   | Leahy      | Snowe       |
| Feinstein  | Levin      | Specter     |
| Fitzgerald | Lieberman  | Stevens     |
| Gorton     | Lincoln    | Thomas      |
| Graham     | Lott       | Thompson    |
| Grams      | Lugar      | Thurmond    |
| Grassley   | Mack       | Torricelli  |
| Gregg      | McConnell  | Voinovich   |
| Hagel      | Mikulski   | Warner      |
| Harkin     | Moynihn    | Wellstone   |
| Hatch      | Murray     | Wyden       |
| Hollings   | Nickles    |             |
| Hutchison  | Reid       |             |

## NAYS—14

|           |            |            |
|-----------|------------|------------|
| Allard    | Enzi       | Inhofe     |
| Brownback | Frist      | Murkowski  |
| Bunning   | Gramm      | Shelby     |
| Craig     | Helms      | Smith (NH) |
| DeWine    | Hutchinson |            |

## NOT VOTING—1

McCain

The PRESIDING OFFICER (Mr. SMITH of Oregon). On this vote, the yeas are 85, the nays are 14. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

Mr. LEAHY. Mr. President, is the Senator from Vermont correct that we have now voted cloture on both the nominations before the Senate?

The PRESIDING OFFICER. The Senator from Vermont is correct.

Mr. LEAHY. Then what is the parliamentary situation, as regarding the two nominations?

The PRESIDING OFFICER. There are 30 hours, evenly divided.

Mr. LEAHY. Mr. 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.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. LOTT. Mr. President, I have a unanimous consent request and closing script.

As you know, cloture was just invoked on two Ninth Circuit judges. I still hope we have not set a precedent. I don't believe we have because it was such an overwhelming vote to invoke cloture and stop the filibuster. We should not be having filibusters on judicial nominations and having to move to cloture. But we had to, and it was an overwhelming vote of 86-13 on the first one, and I guess that was the vote on the second one, too. I intend to offer a time agreement between the proponents and opponents regarding postcloture debate.

Mr. President, I ask unanimous consent that Senator SMITH of New Hampshire be in control of up to 3 hours of total debate on both nominations, and that Senator LEAHY, or his designee, be in control of up to 1 hour 30 minutes of total debate on both nominations; that following the conclusion or yielding back of the time, the Senate lay the

nominations aside until 2 p.m., at which time the Senate would proceed to back-to-back votes on or in relation to the confirmations of Berzon and Paez. That would be at 2 p.m. tomorrow.

Mr. LEAHY. Reserving the right to object, and I will not, I tell the distinguished leader I was struck by the comments of the distinguished leader in saying we should not have the precedents of filibusters and requiring cloture. I commend him for supporting the cloture motion and moving this forward so we would not have that precedent. I am concerned, though, because I have heard rumors that one of these votes may be on a motion to indefinitely postpone a vote on these nominees. I understand that while such a vote might be in order, there is no precedent for such a vote on a judicial nominee; am I correct on that? I mean in my lifetime, and I was born in 1940.

The PRESIDING OFFICER. There is a precedent that a motion to postpone is in order after cloture is invoked.

Mr. LEAHY. That was not my question, Mr. President. My question was very specific. In fact, I stated that I understand motions to postpone indefinitely, I believe, are always in order, as are filibusters. But as the distinguished leader said, we would not want to set a precedent of filibusters on judicial nominations. Am I correct that we have not used motions to postpone indefinitely on judicial nominations following cloture?

The PRESIDING OFFICER. The precedent does not state what the item of cloture is on.

Mr. LEAHY. Mr. President, if I understand, we have never had this circumstance. Certainly, I have not in my 25 years in the Senate. I do not believe ever having a circumstance where we have had cloture on two judicial nominations and then had a motion to postpone, in effect, killing the nominations.

Mr. LOTT. Will the Senator yield?

Mr. LEAHY. Yes.

Mr. LOTT. I believe, traditionally, it is in order postcloture to have a motion to table or a motion to postpone indefinitely. I don't know the precedents in terms of that actually having been used. I am certainly not advocating it. But under the rules of the Senate, I am under the impression that it would be in order. I thought maybe I could answer it succinctly without getting into the precedents.

Mr. President, has the request been—

Mrs. BOXER. Reserving the right to object, and I will not object, I say, first, to the majority leader that I appreciate very much his effort to bring the nominations forward, and voting for cloture, because without that we would not be where we are. I want that understood.

I state on the RECORD today that this Senator believes if there is going to be a motion made—which there very well may be because that is the rumor that

I hear—to indefinitely postpone a vote on one of these nominees, then I believe that kind of a motion is denying that nominee an up-or-down vote. You can argue that it is really like an up-or-down vote, but after we have gotten over 80 votes, with the help of the majority leader and Senator HATCH, in a bipartisan way—and Senator LEAHY worked on that—you would think we could vote up or down. There is no precedent that I have gotten from the Parliamentarian up to this point where he has been able to show me this was done with a judicial nomination after cloture was invoked. I wish to make that point because I don't like to ever blindside my colleagues on anything.

I think that if we go this route, it will be interpreted as a way to deny a vote on the nominee, and I hope this will not be the case. Surely, I hope, if it is offered, we will defeat it. But it seems to me a bad precedent. I hope we won't see this go in that fashion. I thank the Chair. I shall not object.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. LOTT. Then the votes will occur back to back at 2 p.m. on Thursday. In light of this agreement, there will be no further votes this evening. I believe our staffs have probably put everybody on notice of that.

## LEGISLATIVE SESSION

Mr. LOTT. Mr. President, I ask unanimous consent that the Senate now resume legislative session.

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

## MORNING BUSINESS

Mr. LOTT. Mr. President, I ask unanimous consent that there be a period for the transaction of routine morning business, with Senators permitted to speak therein for up to 10 minutes each.

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

## NUCLEAR WEAPONS

Mr. KERREY. Mr. President, the question of how to write Federal laws and consider treaties that enable our armed forces and diplomats to protect and defend the people of the United States is both important and difficult for Members of Congress to answer. To write laws that keep America safe, we must evaluate today's threats and tomorrow's threats, we must consider the plans presented by our military to meet those threats, and we must be vigilant against the understandable tendency to want to withdraw from the world. We must remember those moments in our past when lack of preparation and planning resulted in terrible loss and then prepare to defend against threats we face.

We must also remember that freedom is not free, and that the price paid by