

Fitzgerald	Landrieu	Sarbanes
Frist	Leahy	Schumer
Graham	Levin	Sessions
Gramm	Lieberman	Shelby
Grassley	Lincoln	Smith (NH)
Gregg	Lott	Smith (OR)
Hagel	Lugar	Snowe
Harkin	McCain	Specter
Hatch	Mikulski	Stabenow
Hollings	Miller	Stevens
Hutchison	Murkowski	Thomas
Inhofe	Murray	Thompson
Inouye	Nickles	Thurmond
Jeffords	Nelson (NE)	Torricelli
Johnson	Reed	Voinovich
Kennedy	Reid	Warner
Kerry	Roberts	Wellstone
Kohl	Rockefeller	Wyden
Kyl	Santorum	

NOT VOTING—5

DeWine	Hutchinson	Nelson (FL)
Helms	McConnell	

Mr. FRIST. Mr. President, I rise today to thank my colleagues for the confirmation of Julia Smith Gibbons to the U.S. Court of Appeals for the Sixth Circuit. I am also grateful to President Bush for his nomination of this outstanding judge whose distinguished life is an example of the American dream.

Raised in Pulaski, TN, Judge Gibbons has been a trailblazer for women in the legal profession, and exemplifies in both her professional and personal life the character that makes us a great nation—active in her church and community, a supportive and loving wife to her husband, Bill, for 29 years, and a proud mother of two wonderful children, Carey and Will. A product of small town America and the solid values that her family instilled in her, as valedictorian of her senior class at Giles County High School, Julia was obviously poised to accomplish great things.

With an outstanding record of achievement at Vanderbilt University and the University of Virginia Law School, Judge Gibbons headed home to Tennessee to begin her legal career. She served then-Governor Lamar Alexander as his legal advisor, and in 1981, she became the first female trial judge of a court of record in Tennessee. President Reagan recognized her talent and skill, and just 2 years later, in 1983, she was confirmed by the Senate as a U.S. District Judge in the Western District of Tennessee. At that time, Julia became the first female Federal judge in Tennessee, and was the youngest person on the Federal bench in the country, and the second youngest in the Nation's history ever appointed to a district court judgeship. Despite her tender years, her legal acumen and human touch soon made her one of the brightest stars in our Federal judicial system.

Judge Gibbons is known for being bright, industrious, thorough, evenhanded and someone who truly loves the law. She is everything anyone could want in a judge, and will continue to serve our country with distinction on the Sixth Circuit.

NOMINATION OF JOY FLOWERS CONTI, OF PENNSYLVANIA, TO BE UNITED STATES DISTRICT JUDGE FOR THE WESTERN DISTRICT OF PENNSYLVANIA

The PRESIDING OFFICER. Under the previous order, there will now be 2 minutes for debate equally divided prior to the vote on Executive Calendar No. 827, which the clerk will report.

The legislative clerk read the nomination of Joy Flowers Conti, of Pennsylvania, to be United States District Judge for the Western District of Pennsylvania.

The PRESIDING OFFICER. Who yields time?

Mr. LEAHY. Mr. President, with today's votes on these judicial nominations to the Federal district courts in Pennsylvania, the Democratic-led Senate will have confirmed 63 judicial nominees since the change in Senate majority a little more than 1 year ago. I commend Majority Leader DASCHLE for having worked through the problems created by the White House's refusal to proceed in a bipartisan way with nominations to bipartisan boards and commissions and for having worked with Senator MCCAIN to get to this point.

I understand Senator MCCAIN's frustration with the White House and how it is treating nominations but thank him for allowing us to proceed with these judicial nominations at this time. In fact, this majority leader has worked hard to bring these nominations to the floor and his efforts have included having to proceed by way of cloture on three nominees in the last few weeks. He has gone the extra mile and that should be acknowledged.

Similarly, the Judiciary Committee continues to make efforts that were not made by the Republican leadership.

We have held hearings on a record number of nominees and reported a record number of nominees. Seventy-five judicial nominees have been voted on by the Judiciary Committee since the change in majority last summer. This week we will hold a hearing for the 82nd, 83rd, 84th and 85th judicial nominees, including our 18th circuit court nominee. We have proceeded with nominees to fill vacancies even though Republicans held up moderate nominees by President Clinton to those same vacancies. We have confirmed new judges for the Fourth, Fifth, and Sixth Circuit courts of appeals for the first time in three, six and five years, respectively. So much for the partisan critics who scream about a blockage of President Bush's nominees by Democrats in the Senate. The facts are that we have been fairer to President Bush's nominees than the Republicans were to President Clinton's.

Today is another example. The Senate has acted quickly on these nominations to the district courts in Pennsylvania. Joy Flowers Conti participated in a hearing in May, within weeks of her paperwork being complete. I know that Senator SPECTER strongly sup-

ports Ms. Conti's nomination, as well as Mr. JONES, and he specifically requested that she be accorded a hearing as soon as possible. Likewise John Jones received a hearing in May, shortly after his paperwork was completed.

With today's votes on two Pennsylvania nominees, the Judiciary Committee will have held hearings for 10 district court nominees from that State, including Judge Davis, Judge Baylson, and Judge Rufe, who were confirmed in April, and Judge Conner, who was just confirmed last Friday. Those confirmations illustrate the progress being made under Democratic leadership and the fair and expeditious way this President's nominees are being treated.

With today's confirmations, there is no State in the Union that has had more Federal judicial nominees confirmed by this Senate than Pennsylvania. I think that the Senate Judiciary Committee and the Senate as a whole have done well by Pennsylvania. Contrast this with the way vacancies in Pennsylvania were left unfilled during Republican control of the Senate, particularly regarding nominees in the western half of the State.

Despite the best efforts and diligence of my good friend from Pennsylvania, Senator SPECTER, to secure confirmation of all of the judicial nominees from every part of his home State, there were seven nominees by President Clinton to Pennsylvania vacancies that never got a hearing or a vote.

A good example of the contrast is the nomination of Judge Legrome Davis. He was first nominated to the position of U.S. District Court Judge for the Eastern District of Pennsylvania by President Clinton on July 30, 1998.

The Republican-controlled Senate took no action on his nomination and it was returned to the President at the end of 1998. On January 26, 1999, President Clinton renominated Judge Davis for the same vacancy. The Senate again failed to hold a hearing for Judge Davis and his nomination was returned after 2 more years.

Under Republican leadership, Judge Davis' nomination languished before the committee for 868 days without a hearing. Unfortunately, Judge Davis was subjected to the kind of inappropriate partisan rancor that befell so many other nominees to the district courts in Pennsylvania during the Republican control of the Senate.

The lack of Senate action on Judge Davis's initial nominations is in no way attributable to a lack of support from the senior Senator from Pennsylvania. Far from it. In fact, I give Senator SPECTER full credit for getting President Bush to renominate Judge Davis earlier this year and commended him publicly for all he has done to support this nomination from the outset.

This year we moved expeditiously to consider Judge Davis, and he was confirmed in just 84 days.

The saga of Judge Davis recalls for us so many nominees from the period of

January 1995 through July 10, 2001, who never received a hearing or a vote and who were the subject of secret anonymous holds by Republicans for reasons that were never explained.

In contrast, the hearing we had earlier this year for Ms. Conti was the very first hearing on a nominee to the Western District of Pennsylvania since 1994, in almost a decade, despite President Clinton's qualified nominees. No nominee to the Western District of Pennsylvania received a hearing during the entire period that Republicans controlled the Senate in the Clinton administration.

One of the nominees to the Western District, Lynette Norton, waited for almost 1,000 days, and she was never given the courtesy of a hearing or a vote. Unfortunately, Ms. Norton died earlier this year, having never fulfilled her dream of serving on the Federal bench. Today's confirmation vote on Ms. Conti will be the first on a nominee to the Western District of Pennsylvania in almost 8 years, since Judge McLaughlin and Judge Cindrich were confirmed in October of 1994. Despite this history of poor treatment of President Clinton's nominees, we continue to move forward fairly and expeditiously.

Large numbers of vacancies continue to exist, in large measure because the recent Republican majority was not willing to hold hearings or vote on more than 50 of President Clinton's judicial nominees, many of whom waited for years and never received a vote on their nomination. It is Democrats who have broken with that history of inaction from the Republican era of control, delay, and obstruction.

With today's confirmations of Judge Conti and Judge Jones to the Federal district courts in Pennsylvania, the Senate will have confirmed 51 district court nominees and 63 judges overall since the change in majority last summer. Contrast this with the Republican average, during their past 6½ years on control, of 31 district court judges a year and 38 judges a year overall. I congratulate the nominees and their families on their confirmations today and commend Senator SPECTER and Majority Leader DASCHLE for all they have done to bring us to this day.

Mr. HATCH. Mr. President, I had no intention of bringing up the topic of judicial nominations today, but I feel I must respond to the comments made just now.

Currently there are 92 empty seats in the Federal judiciary, a 10.7 percent vacancy rate—one of the highest in modern times. This means that 10.7 percent of all Federal courtrooms are presided over by an empty chair.

There are currently 22 nominees pending who are slated to fill positions which have been declared judicial emergencies by the Administrative Office of the Courts. Of those, 13 are courts of appeals nominees.

During President Clinton's second year in office, the Senate confirmed 100

of his judicial nominees. I would expect the Senate Democrats to do the same for President Bush. But they are not doing so.

Only 4 of President Bush's first 11 nominees—nominated on May 9, 2001—have had hearings. In other words, the Judiciary Committee has taken no action whatsoever on nearly two-thirds of the circuit court nominations that have been pending for over 14 months. There is no reason for this other than stall tactics. All of these nominees received qualified or well-qualified ratings from the American Bar Association.

There were 31 vacancies in the Federal courts of appeals on May 9, 2001, and there are 30 today. The Senate Democrats are trying to create an illusion of movement by creating great media attention and controversy concerning a small handful of nominees in order to make it look like progress. But we are hardly making any progress in filling circuit vacancies.

President Bush has responded to the vacancy crisis in the appellate courts by nominating a total of 31 top-notch men and women to these posts—but the Senate is simply stalling them. Over the past year, the Senate has confirmed only nine. There are still 22 circuit court nominees pending in committee. By comparison, at the end of President Clinton's second year in office, we had confirmed 19 circuit judges and had 15 circuit court vacancies.

Mr. President, the comparison does not end there. There were only two Circuit Court nominees left pending in Committee at the end of President Clinton's first year in office. In contrast, there were 23 of President Bush's circuit court nominees pending in committee at the end of last year.

Mr. President, some try to blame the Republicans for the vacancy crisis, but that is bunk. At the end of the 106th Congress when I was chairman, we had 67 vacancies in the Federal judiciary. During the past 9 months, the vacancy rate has been hovering right around 100. Today it is at 92.

The real story here, Mr. President, is that the Senate's Democratic leadership is treating President Bush unfairly when it comes to judicial nominees. Some would justify this unfair treatment of President Bush as tit for tat, or business as usual, but the American people should not accept such a smokescreen. What the Senate leadership is doing is unprecedented.

Historically, a President can count on seeing all of his first 11 circuit court nominees confirmed. Presidents Reagan, Bush and Clinton all enjoyed a 100 percent confirmation rate on their first 11 circuit court nominees. In stark contrast, 8 of President Bush's first 11 nominations are still pending now for over 1 whole year.

History also shows that Presidents can expect almost all of their first 100 nominees to be confirmed swiftly. Presidents Reagan, Bush, and Clinton got 97, 95 and 97, respectively, of their

first 100 judicial nominations confirmed. But the Senate has confirmed only 57 of President Bush's first 100 nominees.

In sum, Mr. President, I think that the American people deserve better, President Bush deserves better, and the Judicial Branch of our Government deserves better. I yield the floor.

The PRESIDING OFFICER. The time of the Senator has expired. Who yields time?

The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, it is a proud moment for me to speak on behalf of Joy Flowers Conti. I had the privilege of practicing with her as a lawyer in Pittsburgh. She is an outstanding litigator and outstanding person in the community, and I am very grateful that her nomination is coming to the Senate floor.

The next vote will be on John E. Jones for the Middle District, another outstanding litigator and someone who is going to be a credit to the court. We still have six district court judges in Pennsylvania who have yet to be confirmed in the Senate and two third circuit—Pennsylvania positions that need to be filled. I am hopeful those nominations will also make their way to the floor quickly.

The PRESIDING OFFICER. Who yields time?

Mr. SANTORUM. I yield the remainder of my time.

The PRESIDING OFFICER. All time is yielded back. The question is on the confirmation of the nomination.

Mr. LEAHY. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The question is, Will the Senate advise and consent to the nomination of Joy Flowers Conti, of Pennsylvania, to be United States District Judge for the Western District of Pennsylvania.

The clerk will call the roll.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS), the Senator from Ohio (Mr. DEWINE), the Senator from Arkansas (Mr. HUTCHINSON), and the Senator from Kentucky (Mr. MCCONNELL), are necessarily absent.

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

The result was announced—yeas 96, nays 0, as follows:

[Rollcall Vote No. 195 Ex.]

YEAS—96

Akaka	Campbell	Dodd
Allard	Cantwell	Domenici
Allen	Carnahan	Dorgan
Baucus	Carper	Durbin
Bayh	Chafee	Edwards
Bennett	Cleland	Ensign
Biden	Clinton	Enzi
Bingaman	Cochran	Feingold
Bond	Collins	Feinstein
Boxer	Conrad	Fitzgerald
Breaux	Corzine	Frist
Brownback	Craig	Graham
Bunning	Crapo	Gramm
Burns	Daschle	Grassley
Byrd	Dayton	Gregg

Hagel	Lincoln	Schumer
Harkin	Lott	Sessions
Hatch	Lugar	Shelby
Hollings	McCain	Smith (NH)
Hutchinson	Mikulski	Smith (OR)
Inhofe	Miller	Snowe
Inouye	Murkowski	Specter
Jeffords	Murray	Stabenow
Johnson	Nelson (FL)	Stevens
Kennedy	Nelson (NE)	Thomas
Kerry	Nickles	Thompson
Kohl	Reed	Thurmond
Kyl	Reid	Torricelli
Landrieu	Roberts	Voinovich
Leahy	Rockefeller	Warner
Levin	Santorum	Wellstone
Lieberman	Sarbanes	Wyden

NOT VOTING—4

DeWine	Hutchinson
Helms	McConnell

The nomination was confirmed.

**NOMINATION OF JOHN E. JONES III, OF PENNSYLVANIA, TO BE UNITED STATES DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

The PRESIDING OFFICER. Under the previous order, there will now be 2 minutes of debate equally divided prior to the vote on Executive Calendar No. 828, which the clerk will report.

The assistant legislative clerk read as follows:

John E. Jones, III, of Pennsylvania to be United States District Judge for the Middle District of Pennsylvania.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Madam President, I will yield time on this side, if the distinguished Republican leader wants to yield the time on his side.

Madam President, I withhold that.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Madam President, John E. Jones III is a very distinguished lawyer. I have known him personally for 15 years. He comes from Pottsville, PA. He had an outstanding practice. He has an exemplary academic record. He served as chairman of a very important agency, the Liquor Control Board of Pennsylvania, which has quasi-judicial functions.

Joy Flowers Conti was just voted on.

I thank the chairman, Senator LEAHY, for moving these two judges. I urge him to follow the calendar, which has next in line D. Brooks Smith, who is the present judge of the Western District of Pennsylvania and who has been approved by the committee for the Court of Appeals for the Third Circuit.

We are taking up another judge tomorrow.

I trust that Judge Smith will be up for confirmation.

I yield the remainder of my time.

Mr. LEAHY. Madam President, in my earlier statement, I praised the distinguished senior Senator from Pennsylvania for working hard to get through the judges on the Western District of Pennsylvania.

For year, after year, after year, after year, after year, after year, a Republican hold blocked any consideration of the nominations by President Clinton

for those same seats. But thanks to the distinguished senior Senator from Pennsylvania, we have been able to move forward quickly.

This, incidentally, will be the 63rd judge confirmed by the Senate since the change in majority about this time last year.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of John E. Jones III, of Pennsylvania, to be United States District Judge for the Middle District of Pennsylvania?

Mr. LEAHY. Madam President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS), the Senator from Arizona (Mr. HUTCHINSON), the Senator from Ohio (Mr. DEWINE), and the Senator from Kentucky (Mr. MCCONNELL) are necessarily absent.

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

The result was announced—yeas 96, nays 0, as follows:

[Rollcall Vote No. 196 Ex.]

YEAS—96

Akaka	Dorgan	Lugar
Allard	Durbin	McCain
Allen	Edwards	Mikulski
Baucus	Ensign	Miller
Bayh	Enzi	Murkowski
Bennett	Feingold	Murray
Biden	Feinstein	Nelson (FL)
Bingaman	Fitzgerald	Nelson (NE)
Bond	Frist	Nickles
Boxer	Graham	Reed
Breaux	Gramm	Reid
Brownback	Grassley	Roberts
Bunning	Gregg	Rockefeller
Burns	Hagel	Santorum
Byrd	Harkin	Sarbanes
Campbell	Hatch	Schumer
Cantwell	Hollings	Sessions
Carnahan	Hutchinson	Shelby
Carper	Inhofe	Smith (NH)
Chafee	Inouye	Smith (OR)
Cleland	Inouye	Snowe
Clinton	Jeffords	Specter
Cochran	Johnson	Stabenow
Collins	Kennedy	Stevens
Conrad	Kerry	Thomas
Corzine	Kohl	Thompson
Craig	Kyl	Thurmond
Crapo	Landrieu	Torricelli
Daschle	Leahy	Voinovich
Dayton	Levin	Warner
Dodd	Lieberman	Wellstone
Domenici	Lincoln	Wyden
	Lott	

NOT VOTING—4

DeWine	Hutchinson
Helms	McConnell

The nomination was confirmed.

The PRESIDING OFFICER. Under the previous order, the President will be notified of the Senate's action.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

**GREATER ACCESS TO AFFORDABLE PHARMACEUTICALS ACT OF 2001**

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of S. 812, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 812) to amend the Federal Food, Drug, and Cosmetic Act to provide greater access to affordable pharmaceuticals.

Pending:

Reid (for Dorgan) amendment No. 4299, to permit commercial importation of prescription drugs from Canada.

McConnell amendment No. 4326 (to amendment No. 4299), to provide for health care liability reform.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Madam President, I ask unanimous consent that the Senator from Arizona be recognized for up to 30 minutes to speak as in morning business.

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

ARMS CONTROL

Mr. KYL. Madam President, I thank the distinguished assistant majority leader and would note that Senator SPECTER also wanted to address the Senate, but since he is not here, I will go ahead with my remarks.

Mr. KYL. Madam President, on June 13 the United States officially withdrew from the 1972 Anti-Ballistic Missile, ABM, Treaty, closing a chapter in U.S.-Soviet relations, and beginning another with Russia. The lapsing of the ABM Treaty, combined with the Senate's defeat of the Comprehensive Test Ban Treaty in 1999 and the signing of a new type of nuclear reduction treaty with Russia in May, represent a fundamental shift in the way the United States approaches strategic security. We have moved away from reliance on traditional arms control treaties toward a reliance on our own capabilities—namely missile defenses and a credible nuclear deterrent.

Proponents of the ABM Treaty were convinced that it was the "cornerstone of strategic stability," and that U.S. withdrawal would damage the improving U.S.-Russia relationship, spark a new arms race, and even lead, as one of my colleagues remarked, to "Cold War II." Those predictions were wrong. Yet some still cling to the notion that arms control is the key elements in U.S. national security.

Over the past 6 months, I have addressed the Senate on the strategic justification for U.S. withdrawal from the ABM Treaty, the question of how much a missile defense system will cost, and the President's constitutional authority to exercise the right of withdrawal without legislative consent. And, today, in response to those who continue to believe in the utopian aims of traditional arms control agreements, I rise to address the President's decision to abrogate the ABM Treaty, this time