(Mr. CAMPBELL), the Senator from New Hampshire (Mr. GREGG), the Senator from North Carolina (Mr. HELMS), the Senator from Arkansas (Mr. HUTCHINSON), the Senator from Pennsylvania (Mr. SANTORUM), the Senator from Alabama (Mr. SESSIONS), the Senator from Alabama (Mr. SHELBY), the Senator from New Hampshire (Mr. SMITH), the Senator from Pennsylvania (Mr. SPECTER), are necessarily absent.

The PRESIDING OFFICER (Mr. NELSON of Florida). Are there any other Senators in the chamber desiring to vote?

The result was announced—yeas 82, nays 0, as follows:

[Rollcall Vote No. 211 Ex.]

YEAS—82

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

NOT VOTING—18

Akaka	Gregg	Murray
Allard	Harkin	Santorum
Bond	Helms	Sessions
Bunning	Hutchinson	Shelby
Campbell	Lieberman	Smith (NH)
Durbin	Mikulski	Specter

The nomination was confirmed.

Mr. REID. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

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.

HOMELAND SECURITY ACT OF 2002

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of H.R. 5005, which the clerk will report.

The legislative clerk read as follows:

A bill (H.R. 5005) to establish the Department of Homeland Security, and for other purposes.

Pending:

Lieberman amendment No. 4471, in the nature of a substitute.

The PRESIDING OFFICER. The Republican leader.

Mr. LOTT. Mr. President, I yield myself such time as I may consume under the leader's time.

The PRESIDING OFFICER. The leader has that right.

JUDICIAL NOMINATIONS

Mr. LOTT. Mr. President, I do not want to take an extended period of time because I know the managers of the legislation are here and ready to go forward with the very important consideration of and amendments to the Homeland Security Department, but I must comment on action last week of the Senate Judiciary Committee.

Once again, Mr. President, there has been a tremendous miscarriage of justice by the Judiciary Committee. By a vote of 10 to 9, a unanimous, partisan block of Democrats—10 Democrats—voted against the nomination of Priscilla Owen, who had been nominated by the President to a seat on the Fifth Circuit Court of Appeals.

The way this nomination was handled is a cause for great concern as well as the fact that, once again, the Senate will not have a chance to vote on a eminently qualified and experienced nominee to serve on the Fifth Circuit Court of Appeals. I am convinced that had her nomination been permitted to make it to the floor—as the Republican Majority in the past allowed numerous controversial Democrat nominees to get to the floor—Judge Owen would be approved by the full Senate and she would be confirmed.

We always hear the arguments of those who say that there have been actions in the past where nominees who were qualified were not given votes. However, during the time when I was majority leader I remember numerous cases where despite the belief of many Senators on our side that the nominees' views were far, far outside the mainstream, we still permitted their nominations to come to the floor. We did that because while we disagreed with their political and ideological views, it was still hard to argue that they were not professionally qualified.

Mr. President, I specifically remember the nominations of Marsha Berzon, Richard Paez and Rosemary Barkett. Certainly, these nominees, while they were qualified, were in my opinion not near as qualified in the legal profession as Priscilla Owen.

Berzon had had no judicial experience whatsoever. And a minority of the ABA evaluation committee gave Berzon and Paez only a ''qualified'' rating whereas the ABA committee unanimously—unanimously—gave Priscilla Owen its highest rating of ''well qualified.''

Beyond professional qualifications, numerous Senators on this side of the aisle also had severe concerns that Berzon, Paez, and Barkett were very far out of the mainstream in light of their records which raised questions for many Senators as to whether they should be confirmed.

Marsha Berzon had been a prominent ACLU and Labor Union lawyer who opposed parental consent laws for minors' to have abortions and had worked against the rights of individual workers in favor of the rights of unions. She was also a prominent and active member of the Brennan Center for Justice that cranked out initiatives it characterized as ''stand[ing] up to right-wing attacks on the judiciary.''

Richard Paez had written publicly of his belief that whenever judges feel legislatures have failed to act, ''there's no choice but for the courts to resolve the question that perhaps ideally and preferably should be resolved through the legislative process.'' That is exactly the kind of judicial activism that Priscilla Owen's critics have falsely accused her of in order to give themselves an excuse for voting against her. Paez had also ruled as a district judge—prior to his confirmation to the appeals court—that States and cities could not outlaw was aggressive and intimidating panhandling by the homeless because it would infringe on a panhandler's free speech rights.

Rosemary Barkett, while a Florida Supreme Court Justice, had argued for overturning the death penalty of a man who had brutally murdered a youth in Jacksonville and then sent a tape to the victim's mother describing the horrible details of the killing. An opinion signed by Barkett opposed the death arguing that the killing was ''a social awareness case . . . effectuated to focus attention on . . . racial discrimination.''

Nevertheless, despite the misgivings and question marks from an ideology standpoint as to whether or not they should be confirmed, the Republican majority permitted all three of these nominations to come to the floor and be voted on by the full Senate and all three were confirmed.

Now, in contrast to these three far left nominees, let me speak to Priscilla Owen's qualifications.

First of all, I am not one who thinks it is particularly important whether the American Bar Association rates a nominee qualified or not. But, of course, the ABA's judgment has been described by a number of leading Democrats as the gold standard in terms of evaluating a nominee's qualifications to serve in the Federal judiciary. Senator LEAHY and senator SCHUMER described it that way in a March 16, 2001 letter to the President insisting that the ABA's role in the judicial confirmation process had to be maintained.

However, that did not prevent them from voting against Priscilla Owen after she received a ''well qualified'' rating from the American Bar Association—the highest possible rating they could give and they gave it to her unanimously. This is also the first instance, I believe, that we have had of a nominee rated ''well qualified'' by the American Bar Association being defeated in the Judiciary Committee and