

productive meeting with Andy Card, the President's chief of staff. At that meeting, Mr. Card committed that there would be no further circuit and district judicial recess appointments during the remainder of the President's term, and the Democratic leader committed to vote on, by the end of June, 25 judicial nominations now pending on the Executive Calendar.

I ask Senator DASCHLE if I have correctly summarized where we now stand on these nominations.

Mr. DASCHLE. Mr. President, the majority leader is correct. With these 25, we will have confirmed 198 of the President's judicial nominees, 100 of which were confirmed thanks to the efforts of Senator LEAHY and the other members of the Judiciary Committee while the Democrats controlled the Senate. In return for the President's commitment, which Mr. Card has conveyed to us, that there will be no further judicial recess appointments for the remainder of his term, we have committed to confirm now 25 of the judicial nominations currently on the Executive Calendar by the end of June. Some may entail more floor time than others, but there will be a vote on each of the 25 nominations and, if necessary, I will support cloture on any of these 25 that should be necessary.

#### EXECUTIVE SESSION

#### NOMINATION OF MARCIA G. COOKE TO BE UNITED STATES DISTRICT JUDGE

Mr. FRIST. I ask unanimous consent that the cloture vote be vitiated and the Senate proceed to executive session for the consideration of Calendar No. 606, the nomination of Marcia Cooke to be a United States district judge for the Southern District of Florida.

I further ask that the Senate proceed to vote on the nomination and that following the vote the President be immediately notified of the Senate's action and the Senate then resume legislative session.

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

The clerk will report the nomination.

The assistant legislative clerk read the nomination of Marcia G. Cooke, to be United States District Judge for the Southern District of Florida.

Mr. HATCH. Mr. President, I want my remarks to be thought of as constructive remarks rather than not constructive.

Yet another week has gone by without this body confirming a judicial nominee. That makes more than 9 weeks since the last judicial confirmation. Only four judges have been confirmed this year, and that is hardly a record of progress.

It is not enough for the minority to point out how many nominees were confirmed under their watch 2 years ago. We must also look at what is going on now, and this is a dismal

record even for a Presidential election year.

Over the last six Presidential election years, both Republicans and Democrats won the White House and both Republicans and Democrats controlled the Senate. On average, the Senate has confirmed 45 judicial nominees in the six most recent Presidential election years, and continued confirmations until October in four of the last six Presidential election years. At this same point in the last six Presidential election years, the Senate confirmed, on average, 21 judicial nominees by now. I repeat, so far this year we have confirmed just four judges.

This is not for any lack of activity on the part of the Judiciary Committee. The committee is actually one-third ahead of the average for recent Presidential election years in voting out judicial nominees to the full Senate. We have held 10 nomination hearings this year alone.

Yet 32 nominees languish on the Senate calendar in a minority-imposed limbo despite the fact that we all know that if we took the simple up-or-down votes on each and every one of these nominees that the Constitution contemplates, it is probable that virtually all 32 of these nominees would be confirmed.

Fully 22 of the 32 nominees on the calendar were reported out of the Judiciary Committee without even one negative vote in the Judiciary Committee. And that is saying something because our committee is known to be the home of some of the most vigorous debates and debaters in the Senate. As anyone who has ever attended one of our markups can verify, no one on the Judiciary Committee is shy about expressing an opinion on most any subject or reticent to reflect or register a dissenting point of view.

When a nominee goes through the Judiciary Committee without opposition, the nominee is truly a consensus candidate of high qualifications and deserves prompt consideration by the full Senate.

For me and many others, a nominee's American Bar Association rating is a factor to consider. I do not think it is the be all and end all of the confirmation process, but it is something that can be helpful in evaluating a nominee's qualifications. During the Clinton administration, I can recall that some of my friends on the other side of the aisle took the position that the ABA rating was the "gold standard" with respect to judicial confirmations.

Well, where are they now when 24 of the 32 nominees on the Executive Calendar have received the highest rating, "well qualified," by the ABA? And what is more, 14 of the 24 nominees rated "well qualified" by the ABA received this "well qualified" rating by a unanimous vote of the ABA evaluators.

The Constitution requires, and this body has traditionally provided, a vote for every judicial nominee reaching the full Senate. Every Clinton nominee

that reached the Senate floor got a vote, and President Clinton nearly broke the all-time confirmation record set by President Reagan who set this record with 6 years of a Republican-controlled Senate, while President Clinton only had 2 years of a Democratic-controlled Senate to help him. President Bush's nominees should receive the same treatment and get a vote on the floor.

I remain hopeful that this body will not abandon past practice and extend the recent spate of unprecedented filibusters of appellate court nominees to district court nominees. That is why I have continued to encourage the leadership on both sides of the aisle and the White House to arrive at an acceptable compromise on the 32 judges on the Senate Calendar.

I fully support the nomination of Ms. Marcia Cooke to serve as a District Judge on the Southern District of Florida.

Before the Senate votes on the Cooke nomination, it is only appropriate that we spend a few minutes considering her qualifications. Currently serving as Miami Dade County's Assistant County Attorney, Ms. Cooke is one of those nominees who received the ABA's highest "well-qualified" rating. Her experience includes service as both a public defender and prosecutor, a plaintiff's attorney and defense counsel, a private practitioner and public servant, and both an advocate and a jurist. I might add that Ms. Cooke is a graduate of Georgetown University and is an active leader in that fine school's alumni association.

Marcia Cooke served for 8 years as a Federal magistrate in Michigan. She has been an Assistant U.S. Attorney in Michigan and Florida. She has served as Florida's Chief Inspector General. Both of Florida's Democrat Senators support her. The position to which she has been nominated has been vacant so long it is now considered a judicial emergency. If confirmed she would be the first African-American woman to serve as a Federal judge in the Southern District of Florida.

It is no wonder why the Judiciary Committee approved her without a single dissenting vote. Today, the full Senate should act to support her.

I am pleased that a more reasonable and responsible atmosphere has returned to the Senate and this cloture vote has been vitiated as part of a larger agreement on judges.

We should all recognize that a cloture vote on a highly qualified, highly respected district court nominee such as Marcia Cooke is not a positive sign. It indicates that our friends across the aisle may be prepared to extend their policy of delay and filibusters to even district court nominees.

Many believe that the true target of these unprecedented filibusters of judicial nominees is to set the stage for the next Supreme Court vacancies. What

they are trying to do is to, in effect, rewrite article II, section II, clause II, of the Constitution to require a 60-vote supermajority for Supreme Court vacancies. In the process, these misguided efforts have greatly damaged the confirmation process and diminished our efforts to work together on all judicial nominees.

Despite many challenges this year on the Judiciary Committee, Senator LEAHY and his Democratic colleagues have worked with us to approve many highly qualified consensus candidates.

I hope that the progress that we have made in the committee will not be derailed on the Senate floor.

Mr. President, I wish to express my appreciation to my colleagues for moving forward on this nomination, and other nominations to follow over the next few weeks.

I know these have been difficult negotiations. So I express my thanks to the President, to his chief of staff, Andrew Card, to Senator FRIST and to Senator DASCHLE for bringing this agreement to the Senate. I also thank Senator LEAHY and other members of the Judiciary Committee for their cooperation. I look forward to continuing the work of the Committee, and this agreement will help us in that effort.

Mr. President, I ask unanimous consent that an editorial published today by the Miami Herald in support of the confirmation of Marcia Cooke be printed in the RECORD.

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

[From the Miami Herald, May 18, 2004]  
**NOMINATION FACES KEY VOTE; IF CONFIRMED, MARCIA COOKE WOULD BECOME THE FIRST BLACK WOMAN APPOINTED TO A FEDERAL JUDGESHIP IN FLORIDA.; U.S. COURTS**  
 (By Gary Fineout, Frank Davies and Tere Figueras)

Republicans trying to nudge along judicial nominations made by President Bush will force Democrats today to take a potentially embarrassing vote on stalling the appointment of the first black woman to a Federal judgeship in Florida.

Last week, Senate Republicans set in motion today's scheduled vote to close off debate on the appointment of Marcia Cooke, an assistant Miami-Dade County Attorney and the former chief inspector general for Gov. Jeb Bush.

A successful vote for the Republicans would force a final vote on Cooke's nomination, hastening her ascent to bench of the Southern District of Florida, which stretches from Fort Pierce to Key West.

Cooke is caught in a Democratic fight to gain more control over judicial nominations by blocking confirmation votes on even non-controversial nominees like Cooke.

In Tallahassee, the younger brother of the president called on Democrats to support Cooke's nomination.

"This is ridiculous," said Gov. Jeb Bush, who spoke to reporters following a ceremony marking the 50th anniversary of the landmark Brown vs. Board of Education Supreme Court decision. "Marcia, who served here in Tallahassee, did a great job as inspector general, is well qualified to be a Federal judge. If the Democrats hold this up for political purposes, it stinks."

The nomination of Cooke has become a small part of a raging battle over judgeships

in the Senate. Cooke is backed by Sens. Bob Graham and Bill Nelson, both Democrats.

REGISTERED DEMOCRAT

And Cooke, a Bay Harbor Island resident, is herself a registered Democrat.

But Senate Democrats, angered by Bush administration "recess appointments" of other judges, have tried to block confirmations until an agreement can be reached with the GOP on how to handle controversial nominees.

Leaders of both parties were still negotiating Monday, trying to reach some agreement on the process of appointments. If Cooke is confirmed, she would fill a vacancy left by the death of pioneering jurist U.S. District Judge Wilkie D. Ferguson Jr., the first black man appointed to the Miami-Dade Circuit bench and the Third District Court of Appeal.

Cooke, 49 and a native of South Carolina, was unanimously approved by the Senate Judiciary Committee.

A spokesman for Graham said Monday the senator was hopeful that the nomination would be ultimately approved. "Sen. Graham has been very pleased to support Marcia Cooke and considers her an outstanding nominee," said Paul Anderson from his Washington office. "He hopes some agreement can be reached to avoid partisan gamesmanship on the floor tomorrow."

It takes 60 votes for the motion to close debate to succeed. There are 51 Republicans in the U.S. Senate, meaning the nine Democrats would have to support the motion in order for it to pass.

Anderson predicted that when Cooke's name went before the full Senate that she would be "overwhelmingly" approved.

"There should be no need for a procedural vote," said Anderson. "We hope the opportunity will present itself soon for an up or down vote. When that vote comes, she should pass overwhelmingly."

TAPPED BY GOV. BUSH

Cooke earned a degree from Georgetown University in Washington D.C. and a law degree from Wayne State University in Michigan. She worked for legal aid and neighborhood legal services in Michigan before earning a spot as a Federal magistrate judge in the Eastern District of Michigan. She worked seven years for the U.S. Attorney's Office in Miami before Gov. Bush tapped her as his chief inspector general in 1999.

She has been an assistant county attorney for Miami-Dade County since 2002, and has also served as an adjunct professor at the University of Miami law school.

"She will be an excellent addition to that Federal bench," said former U.S. Attorney Roberto Martinez. "That she would be the first African American female Federal judge in the state is important, but her qualities and attributes go beyond her ethnic background."

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Marcia G. Cooke, of Florida, to be United States District Judge for the Southern District of Florida?

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

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. McCONNELL. I announce that the Senator from Kentucky (Mr. BUNNING) is necessarily absent.

I further announce that if present and voting the Senator from Kentucky (Mr. BUNNING) would vote "yea."

Mr. REID. I announce that the Senator from Hawaii (Mr. INOUE), the Senator from Massachusetts (Mr. KERRY), and the Senator from New Jersey (Mr. LAUTENBERG) are necessarily absent.

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

[Rollcall Vote No. 97 Ex.]

YEAS—96

Akaka	Dodd	Lott
Alexander	Dole	Lugar
Allard	Domenici	McCain
Allen	Dorgan	McConnell
Baucus	Durbin	Mikulski
Bayh	Edwards	Miller
Bennett	Ensign	Murkowski
Biden	Enzi	Murray
Bingaman	Feingold	Nelson (FL)
Bond	Feinstein	Nelson (NE)
Boxer	Fitzgerald	Nickles
Breaux	Frist	Pryor
Brownback	Graham (FL)	Reed
Burns	Graham (SC)	Reid
Byrd	Grassley	Roberts
Campbell	Gregg	Rockefeller
Cantwell	Hagel	Santorum
Carper	Harkin	Sarbanes
Chafee	Hatch	Schumer
Chambliss	Hollings	Sessions
Clinton	Hutchison	Shelby
Cochran	Inhofe	Smith
Coleman	Jeffords	Snowe
Collins	Johnson	Specter
Conrad	Kennedy	Stabenow
Cornyn	Kohl	Stevens
Corzine	Kyl	Sununu
Craig	Landrieu	Talent
Crapo	Leahy	Thomas
Daschle	Levin	Voivovich
Dayton	Lieberman	Warner
DeWine	Lincoln	Wyden

NOT VOTING—4

Bunning Kerry  
 Inouye Lautenberg

The nomination was confirmed. The PRESIDING OFFICER. The President will be immediately notified of the Senate's action.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will resume legislative session.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, I want to commend our two leaders. I have been working with Senator DASCHLE for months, as well as with the White House, to find a way out of the impasse in judicial confirmations. Senator FRIST and I have spoken at length about this, and he has been working on it, as well.

I was delighted to see the meeting that Senator DASCHLE, Senator FRIST, and Mr. Card had today in which the White House agreed to no more recess appointments of judges. I think we have demonstrated our good faith. In the 17 months that the Democrats were in charge of the Senate, we confirmed 100 of President Bush's nominees to lifetime positions on the Federal bench. And the Republicans, during the 23 months that they have been in charge of the Senate, they have confirmed another 73 plus one today. With this agreement, I think we should be in