

NOMINATIONS OF JANICE R.
BROWN AND WILLIAM PRYOR

Mr. FRIST. Mr. President, today we will vote on the confirmation of Janice Rogers Brown to serve on the Court of Appeals for the D.C. Circuit. We are on a good path, a constructive, very positive path for getting up-or-down votes for these judicial nominees, and we will stay on that, as I just mentioned, over the remainder of this week, confirming these judges.

After 2 years of delay, Justice Brown will finally get the courtesy of an up-or-down vote. She will finally get the respect she deserves by getting an up-or-down vote. Indeed, all 100 Members, later today, will be able to come to the floor and vote to confirm or reject—yes or no, up or down—her nomination. I am delighted we have finally reached this point.

Following the vote on Justice Brown, we will move to the cloture vote on Judge William Pryor. Similar to Justice Brown, Judge Pryor's nomination, in the past, has faced deliberate delay and postponement and obstruction. But with the progress we are making, I believe William Pryor will also now get a fair up-or-down vote, a vote he deserves.

So I am very happy we have moved beyond the impasse on his nomination and that we are back to fulfilling our constitutional duty for advice and consent. That is what these nominees deserve. It gives them the respect they deserve. It gives them the courtesy they deserve.

Mr. President, I will yield the floor. We will continue to vote on judges this week, and then next week we will be turning our attention to lowering energy prices, to lowering natural gas prices for Americans, and we will be on that bill until completion. That is the Energy bill.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

EXECUTIVE SESSION

NOMINATION OF JANICE R. BROWN
TO BE UNITED STATES CIRCUIT
JUDGE

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will proceed to executive session to resume consideration of calendar No. 72, which the clerk will report.

The legislative clerk read the nomination of Janice R. Brown, of California, to be United States Circuit Judge for the District of Columbia Circuit.

The ACTING PRESIDENT pro tempore. The Democratic leader.

Mr. REID. Mr. President, I ask unanimous consent that today the Demo-

cratic time for debate, with respect to the Brown nomination, be controlled as indicated on the list which I now send to the desk.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. REID. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. VITTER). Without objection, it is so ordered.

Under the previous order, the time from 11 a.m. until 12 noon shall be under the control of the Democratic leader or his designee.

The Senator from Wisconsin is recognized for 20 minutes.

Mr. FEINGOLD. Mr. President, I will vote "no" on Justice Brown's nomination to the D.C. Circuit.

Let me first remind my colleagues of the importance of this particular circuit in our judicial system. The D.C. Circuit is widely regarded as the most important Federal circuit. It has jurisdiction over the actions of most Federal agencies. Many of the highest profile cases that have been decided in recent years by the Supreme Court concerning regulation of economic activity by Federal agencies in areas such as the environment, health and safety regulation, and labor law, went first to the D.C. Circuit. In the area of administrative law and the interpretation of major regulatory statutes such as the Clean Air Act, the Clean Water Act, the Occupational Safety and Health Act, and the National Labor Relations Act, the D.C. Circuit is generally the last word, as the Supreme Court reviews only a tiny minority of circuit court decisions.

The D.C. Circuit is now almost evenly split, and has been for some time, between nominees of Democratic and Republican Presidents. There are five judges who were appointed by Republicans, including John Roberts, who the Senate confirmed earlier this year, and four by Democrats, and there are three vacancies. President Clinton made two excellent nominations that were never acted upon by the Senate Judiciary Committee. In one case, the committee held a hearing but never scheduled a vote, and in another, that of now-Harvard Law School Dean Elena Kagan, the Clinton nominee was not even given the courtesy of a hearing.

I want to express my great disappointment that the administration has not been willing to seek a compromise on the many vacancies that now exist on this court. By insisting on its often highly controversial choices for this circuit in particular, the administration has continued to push the Senate toward the "nuclear" confrontation that loomed over the Senate

before the recess. Regrettably, President Bush is responsible for much of the ill will that has plagued this body for the past few years and the potentially disastrous upending of Senate precedents that we faced last month and may well see again.

If only the President had really been a uniter and not a divider; if only he had truly tried to change the tone in Washington and repair some of the damage done to the nomination process by previous Congresses; if only he had not squandered the opportunity that the four vacancies on the D.C. Circuit as of his inauguration in 2001 presented, we would not be in this situation today.

In light of this history and the importance of this Circuit, I believe it is my duty to give this nomination very close scrutiny. After reviewing this nominee's record and her testimony, I will vote "no." I do not believe she is the right person at this time to be given a lifetime appointment to this important court. The fact that a majority of the Senate is apparently willing to confirm a nominee whose record so clearly demonstrates that she is not suited for such an important position is surprising and discouraging. I do not and will never apologize for supporting the filibuster to protect the Federal courts and the people of this country from her ideological, results-oriented judging.

At her hearing, I asked Justice Brown about a case on age discrimination called *Stevenson v. Superior Court*. The majority in that case said that Ms. Stevenson's wrongful discharge violated a fundamental public policy against age discrimination. Justice Brown dissented, saying that the plaintiff had "failed to establish that public policy against age discrimination . . . is fundamental and substantial." She went on: "Discrimination based on age does not mark its victim with a stigma of inferiority and second class citizenship."

These statements looked shocking when I read them, but I wanted to make sure I understood Justice Brown's views, so I gave her a chance to respond. I questioned her about the case in the Judiciary Committee, and concluded by asking if it was fair to say she believed age discrimination does not stigmatize senior citizens. She agreed that it was. I appreciate her candor, but I have to say I found that testimony very troubling. Senior citizens in this country live every day with the stigma of age discrimination; it is a real problem, and I think everyone here takes it very seriously. Just because we all will be old someday, and, therefore perhaps will be subject to prejudice and discrimination of this type, does not make it any less reprehensible. I have not heard anyone in the Senate trying to defend Justice Brown's view on this issue; nor do I expect to, because it is truly indefensible.

I was also concerned by a comment Justice Brown made in 2000 about senior citizens. She said: "Today senior