



United States
of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 107th CONGRESS, SECOND SESSION

Vol. 148

WASHINGTON, TUESDAY, MARCH 12, 2002

No. 27

Senate

The Senate met at 10:30 a.m. and was called to order by the Honorable MARY L. LANDRIEU, a Senator from the State of Louisiana.

The PRESIDING OFFICER. Rabbi Abraham Shemtov, National Director of American Friends of Lubavitch, will lead us in prayer this morning.

PRAYER

The guest Chaplain offered the following prayer:

Almighty God, our Father in heaven, grace this august body of the U.S. Senate with wisdom, strength, vision, and clear focus as they seek to lead this Nation, and as this Nation leads the world in the struggle of freedom against tyranny and of good over evil.

As the world marks the 100th anniversary since the birth of Lubavitcher Rebbe, Rebbe Menachem Mendel Schneerson, of blessed memory, we must heed his teachings that unity is so much stronger than division, goodness is so much better than evil. His message to people of various origins and persuasions was that we must always be on the same side, for we are all children of the same God.

We must find the inherent goodness in each other and encourage one another to fulfill our charge from the Almighty God to perfect the world under His sovereignty. In this way we can bring light in place of darkness, redemption in place of despair, and happiness and peace to all who seek it.

So as we may have opinions which differ, let us not waver. Let us be strong, and with God's blessings, we will prevail. Amen.

PLEDGE OF ALLEGIANCE

The Honorable MARY L. LANDRIEU led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. BYRD).

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, March 12, 2002.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable MARY L. LANDRIEU, a Senator from the State of Louisiana, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Ms. LANDRIEU thereupon assumed the chair as Acting President pro tempore.

RESERVATION OF LEADER TIME

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

RECOGNITION OF THE ACTING MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The Senator from Nevada is recognized.

ORDER OF PROCEDURE

Mr. REID. Madam President, I ask unanimous consent that the vote on the confirmation of Executive Calendar No. 706 occur at 11 o'clock this morning, that the additional time be divided as previously provided, and that the remaining provisions of the previous order remain in effect, with no intervening action or debate.

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

SCHEDULE

Mr. REID. Madam President, we will shortly conclude the debate on the confirmation. The two Senators from Alaska are going to speak about the new judge they are going to get in Alaska.

I also note that we are moving along with the energy bill. We have some important amendments pending. We have a number of important issues. There is now talk of being able to complete this bill by a week from this Friday.

As everyone knows, the important issues that remain—there are a lot of important issues, but the matters that appear to be quite contentious are those dealing with CAFE standards, ANWR drilling, and electricity regulation. So it appears that there is light at the end of the tunnel and that we can finish this legislation. We certainly hope so. But Members are going to have to be willing to come and offer amendments, and Members are going to have to be ready to vote at all times of the day and night.

EXECUTIVE SESSION

NOMINATION OF RALPH R. BEISTLINE, OF ALASKA, TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF ALASKA

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now go into executive session and proceed to the consideration of Executive Calendar No. 706, which the clerk will report.

The assistant legislative clerk read the nomination of Ralph R. Beistline, of Alaska, to be United States District Judge for the District of Alaska.

The ACTING PRESIDENT pro tempore. The Senator from Alaska.

Mr. MURKOWSKI. Madam President, we are going to be voting in a few minutes on Judge Ralph Beistline to be United States District Judge in my State of Alaska.

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.



Printed on recycled paper.

S1737

Senator STEVENS, Representative YOUNG, and I are very pleased that this vote is about to take place. Before we vote, I would like to speak very briefly on the qualifications of Judge Beistline.

First of all, I thank all my colleagues for moving expeditiously because in spite of the prevailing attitude in Alaska that it has taken too long to confirm him, by standards around here it has moved along quite nicely. So I very much appreciate that.

No one would question Judge Beistline's qualifications or his fitness to serve on the Federal bench. He has served with distinction in our State of Alaska for many years. He has always been an asset to his community. He and Mrs. Beistline have had a commitment to furthering the quality of life for Alaskans, which is exemplified by their commitment to public service.

Judge Beistline is truly an Alaskan. He was born in Fairbanks, AK. That happens to be my hometown. He is a graduate of the University of Alaska, Fairbanks, and the University of Puget Sound Law School. His heart has always been in the golden heart city of Fairbanks.

Judge Beistline served honorably in the Army National Guard, the Army Reserves, and the Air National Guard for over 17 years. He was in private practice in Fairbanks, AK. During this time, Judge Beistline distinguished himself as a hard-working, fair, honest, and very popular lawyer—if, indeed, that is the correct terminology for lawyers. Nevertheless, he is very well respected. And I am always reminded—well, it is inappropriate to reflect on lawyer jokes, so I will restrain myself, with some reluctance.

Judge Beistline is a strong advocate for the rights of his clients. He has always maintained respect for the courts and the legal system, and that respect is matched by the manner in which his peers admire and support him.

Since 1992, Ralph Beistline has served as Superior Court Judge for the State of Alaska. Through his public service, Judge Beistline has demonstrated the requisite legal temperament and the traits that will make him clearly a distinguished Federal judge.

Obviously, he is committed to upholding the law, even if he may disagree from time to time with it. Judge Beistline exhibits and demands fairness, respect, and diligence from all of those who practice in his court. Most importantly, the judge has ensured that justice is delivered fairly, responsibly, and in a timely manner. I would like to amplify that note—in a timely manner. Oftentimes, there is a great deal of frustration for those of us who believe that justice is not done in a timely manner.

He is a longstanding and distinguished member of the Fairbanks community, the Fairbanks Bar, and the Alaskan Bar. Judge Beistline has earned the respect of his colleagues. He has also earned the respect of our en-

tire delegation—Senator STEVENS, Representative YOUNG, and myself. We enthusiastically support his nomination and look forward to voting on his nomination today.

I thank the Presiding Officer for her attention.

Mr. STEVENS. Madam President, Ralph Beistline is a lifelong Alaskan, born in Fairbanks. He grew up in Alaska and will bring that important perspective to the bench.

He served as a superior court judge from 1992 until today and for the past 5 years he has been the presiding judge in the Fairbanks Superior Court.

He is married to Peggy Beistline and has five children: Carrie, Daniel, Tamara, Rebecca, and David.

He is the former president of the Alaska Bar Association, former president of the Tanana Valley Bar Association, former president of the Alaska Conference of Judges, and a former member of the board of governors of the Alaska Bar Association. He has been a lawyer representative to the Ninth Circuit Judicial Conference and was a long time pro-bono participant.

Ralph is also an executive board member of the Boy Scouts of America and a member of Igloo #4 Pioneers of Alaska.

Hailing from Fairbanks, Ralph will also bring further geographical balance to the court.

I thank Chairman LEAHY and Senator HATCH for moving his nomination to the floor.

Mr. LEAHY. Madam President, today, the Senate is voting on the 40th judicial nominee to be confirmed since last July when the Senate Judiciary Committee reorganized after the Democrats became the majority party in the Senate. With the confirmation of Ralph Beistline of Alaska, we will have confirmed more judges in the last 9 months than were confirmed in 4 out of 6 years under Republican leadership.

The number of judicial confirmations over these past nine months—40—now exceeds the number of judicial nominees confirmed during all 12 months of 2000, 1999, 1997 and 1996. Thus, during the last 9 tumultuous months we have exceeded the one-year totals for 4 of the 6 years in which a Republican majority last controlled the pace of confirmations.

During the preceding 6½ years in which a Republican majority most recently controlled the pace of judicial confirmations in the Senate, 248 judges were confirmed. The larger number, the total judges confirmed during President Clinton's two terms includes 2 years in which a Democratic majority proceeded to confirm 129 additional judges in 1993 and 1994. During the 6½ years of Republican control of the Senate, judicial confirmations averaged 38 per year—a pace of consideration and confirmation that has already been exceeded under Democratic leadership over these past nine months.

During the recent Republican control of the Senate 46 nominees to the

Courts of Appeal were confirmed, a rate of approximately seven per year on average, including one whole session, 1996, in which no circuit court judges were confirmed at all. In only nine months of Democratic control of the Senate, seven of President Bush's nominees to the Courts of Appeals have been confirmed. Two additional circuit court nominees have had hearings and the hearing scheduled for next week will include another circuit court nominee.

Under Democratic leadership we have had more hearings, for more nominees, and had more confirmations than the Republican leadership did for President Clinton's nominees during the first 9 months of 1995. In each area—hearings, number of nominees given hearings, and number of nominees confirmed—this Committee has exceeded the comparable period when Republicans were in power. And 1995 was one of the most productive years. It was 1996 and after that the Republican majority began stalling the judicial confirmation process and the session in which only 17 judges were confirmed all year with none to the Courts of Appeals.

Additionally, under Democratic leadership, we have reformed the process and practices used in the past to deny Committee consideration of judicial nominees. The fact that 248 judicial nominees were confirmed in the prior 6½ years of Republican leadership does not diminish the fact that almost 60 other judicial nominees never received a hearing by the Senate Judiciary Committee or received a hearing but were never voted on by the Committee.

The Majority Leader, Senator DASCHLE, the Assistant Majority Leader, Senator REID, and the members of the Judiciary Committee have worked hard to return the Senate's consideration of judicial nominations to a more orderly and open process. We have been working hard to move away from the anonymous holds and inaction on judicial nominations that characterized so much of the period from 1995 through 2000.

Today's vote to confirm the 40th judicial nominee since the reorganization of the Committee last July demonstrates that we have made a positive difference in the confirmation process by improving the pace and fairness of consideration of nominees for lifetime appointment to the federal courts. Not only has the Senate been able to confirm more judges in a shorter time frame than were confirmed in 4 of the past 6 years, but we have also done so at a faster pace than in any of the recent 6½ years in which Republicans were most recently in the majority.

I make these observations to set the record straight. I do not mean by my comments to be critical of Senator HATCH. Many times during the 6½ years he chaired the Judiciary Committee, I observed that were the matter left up to us, we would have made more progress on more judicial nominees. I thanked him during those years

for his efforts. I know that he would have liked to have been able to do more and not have to leave so many vacancies and so many nominees without action.

With the confirmation of Ralph Robert Beistline, there will be no active vacancies on the Alaska District Court. We have moved expeditiously to consider and confirm Judge Beistline. He was nominated in November, received his ABA peer review in January, participated in a hearing in February, was reported favorably by the Committee last week, and is today being confirmed.

Judge Beistline has an extensive career litigating civil cases in state and Federal courts, providing pro bono services in civil matters, including social security appeals. I congratulate the nominee and his family on his confirmation today.

This nominee has the support of both Senators from his home state and appears to be the type of qualified, consensus nominee that the Senate has been confirming to help fill the vacancies on our Federal courts.

The ACTING PRESIDENT pro tempore. Who yields time? If no one yields time, time will be charged equally to both sides.

Mr. MURKOWSKI. Madam President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. Without objection, the clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. ENZI. Madam President, I ask unanimous consent to speak as in morning business.

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

(The remarks of Mr. ENZI are located in today's RECORD under "Morning Business.")

The ACTING PRESIDENT pro tempore. The Senator from Utah is recognized.

Mr. HATCH. Madam President, parliamentary inquiry: Are we on the Beistline nominee?

The ACTING PRESIDENT pro tempore. We are. Under the previous order, the time was reserved, but all time remaining is under the control of Senator LEAHY and those who have been scheduled.

Mr. HATCH. Since they are not here, I ask unanimous consent that I might be able to speak.

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

Mr. HATCH. The vote is at 11, is that right?

The ACTING PRESIDENT pro tempore. That is correct.

Mr. HATCH. Madam President, I rise to support the confirmation of Ralph

R. Beistline to be U.S. District Judge for the District of Alaska.

I have had the pleasure of reviewing Judge Beistline's distinguished legal career, and I have come to the opinion that he is a fine jurist who will add a great deal to the Federal bench in Alaska.

Judge Beistline began his legal career as the first law clerk for the Superior Court in Fairbanks, where he not only completed legal research and wrote opinions for three judges, but also held hearings in probate and uncontested divorce cases. Following his clerkship, he maintained a litigation practice for 17 years. He left the practice of law to become a State trial court judge, and he has earned a stellar reputation for fairness and hard work among lawyers and judges in his community.

I have every confidence that Judge Beistline will serve with distinction on the Federal district court for the district of Alaska.

We are in the middle of a circuit court vacancy crisis, and the Senate is doing nothing whatsoever to address it.

There were 31 vacancies in the Federal courts of appeals when President Bush sent us his first 11 circuit nominees on May 9, 2001, and there are 31 today. We are making no progress.

Eight of President Bush's first 11 nominees have not even been scheduled for hearings, despite having been pending for 307 days as of today. All of these nominees received qualified or well-qualified ratings from the American Bar Association.

A total of 22 circuit nominations are now pending for those 31 vacancies.

But we have confirmed only 1 circuit judge this year, and only 7 since President Bush took office.

The sixth circuit is half-staffed, with 8 of its 16 seats vacant. This crisis exists today despite the fact that we have 7 Sixth Circuit nominees pending motionless before the Judiciary Committee right now. Although the Michigan senators are blocking 3 of those nominees by not returning blue slips, the other 4 are completely ready to go, all have complete paperwork, good ratings by the ABA, and most importantly, the support of both home State senators.

The D.C. Circuit is two-thirds staffed, with 4 of its 12 seats sitting vacant. This is despite the fact that President Bush nominated Miguel Estrada and John Roberts, who have not yet been given a hearing and whose nominations have not seen the light of day since they were nominated 307 days ago.

There is simply no explanation for this situation other than stall tactics.

The Senate Democrats are trying to create an illusion of movement by creating great media attention concerning a small handful of nominees in order to make it look like progress.

Some try to blame the Republicans for the circuit court vacancy crisis, but that is complete bunk. Just look at the record:

Some have suggested that 45 percent of President Clinton's circuit court nominees were not confirmed during his presidency. That number is a bit of an Enron-ization. It is inflated by double counting individuals that were nominated more than once. For example, by their numbers, Marsha Berzon—who was nominated in the 105th Congress, but not confirmed until the 106th—would count as two nominations and only one confirmation. If you remove the double counting and count by individuals, only 23 were not confirmed—that's 27 percent, as opposed to 45 percent.

And of those 23 nominees who did not move, 4 were withdrawn, 8 lacked home State support, 1 had incomplete paperwork and another was nominated after the August recess in 2000. That leaves 9 circuit court nominees that did not receive action some of which had issues that I cannot discuss publicly.

Now, as I said, there are currently 31 circuit court vacancies.

During President Clinton's first term, circuit court vacancies never exceeded 21 at the end of any year.

There were only 2 circuit court nominees left pending in committee at the end of President Clinton's first year in office. In contrast, 23 of President Bush's circuit court nominees were pending in committee at the end of last year.

At the end of President Clinton's second year in office, the Senate had confirmed 19 circuit judges and there were only 15 circuit court vacancies.

In contrast, today in President Bush's second year, the Senate has confirmed 1 and there are 22 pending.

At the end of 1995, my first year as chairman, there were only 13 circuit vacancies left at the end of the year.

At the end of 1996, the end of President Clinton's first term and in a Presidential election year, there were 21 vacancies—only 1 higher than the number the Democrats left at the end of 1993 when they controlled the Senate and Clinton was President.

Taking numbers by the end of each Congress, a Republican controlled Senate has never left as many circuit vacancies as currently exist today. At the end of the 104th Congress, the number was 18, at the end of the 105th Congress, that number was 14, and even at the end of the 106th Congress, a Presidential election year, that number was only 25. Today there are 31 vacancies in the circuit courts.

Despite all the talk—and lack of action—the unmistakable fact is that there is a circuit court vacancy crisis of 31 vacancies, which is far higher than the Republicans ever let it reach, and the current Senate leadership is doing nothing about it. Actually, I should correct myself, they are doing something about it: They are making it grow even larger. They have acted with a deliberate lack of speed, and that is something the American people do not deserve.

I yield the floor.

The ACTING PRESIDENT pro tempore. All time having expired, the question is, Will the Senate advise and consent to the nomination of Ralph R. Beistline, of Alaska, to be United States District Judge for the District of Alaska? The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Pennsylvania (Mr. SPECTER) and the Senator from Pennsylvania (Mr. SANTORUM) are necessarily absent.

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

The result was announced—yeas 98, nays 0, as follows:

[Rollcall Vote No. 46 Ex.]

YEAS—98

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

NOT VOTING—2

Santorum Specter

The nomination was confirmed.

Mr. REID. Mr. President, I move to reconsider the vote.

Mr. MURKOWSKI. 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 motion to reconsider is laid upon the table, and the President shall be immediately notified of the Senate's action.

LEGISLATIVE SESSION

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

ORDER OF BUSINESS

Mr. REID. Mr. President, I have spoken to the two managers of this legislation. What we are going to do now, if the unanimous consent request is approved, is go to morning business until 12:30.

The amendment offered by the Senator from California, Mrs. FEINSTEIN, is an extremely important amendment dealing with derivatives, among other things. The way the legislation is now written, it appears Senator GRAMM of Texas opposes this legislation. He and the Senator from California are now in deliberations. The arrangement has been made that they are going to report back at 2:15 today after the party conferences are completed. If there is some hope that further discussion between them will bear some fruit, then we will go further; otherwise, we are going to complete that matter today. Senator GRAMM said he wants to speak on it for a while. He may have a second-degree amendment.

I say to all Members, we need to move forward. As I indicated on behalf of the majority leader today, we have light at the end of the tunnel. The minority leader has indicated he thinks we can finish this bill by a week from this Friday. We agree that is certainly the way it should be.

We have some important matters to consider. We have to do something with ANWR, we have to do something with CAFE standards, and electricity. We hope those three very difficult, contentious issues can be disposed of. And we would indicate we are going to finish derivatives before we move to something else, unless there is some agreement between the two Senators. We cannot keep bouncing around this legislation.

MORNING BUSINESS

Mr. REID. So, Mr. President, I ask unanimous consent that the Senate now proceed to a period of morning business, with Senators allowed to speak therein for a period of 10 minutes each, until 12:30 p.m., when, under the previous order, we will recess for the weekly party conferences.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from Alaska.

THE ENERGY BILL

Mr. MURKOWSKI. Mr. President, I concur with the statement of the majority whip. I look forward to, hopefully, moving with some dispatch on the energy bill. There are probably a few more contentious issues, as you know: Electricity, certainly ANWR, CAFE, renewables. So we have our work cut out for us. I encourage Mem-

bers to try to recognize that it is very important we have an energy bill and we get it in conference.

I communicate to the majority whip, perhaps he can enlighten us at a later time if indeed campaign finance reform is going to come into play and delay us. Perhaps he can do that at such time as he is able to give us some idea when that might occur. I assume that would not necessarily take us off the bill.

Mr. REID. If the Senator will yield, Senator DASCHLE and Senator LOTT met today with some of us, and it is believed that the campaign finance matter can be resolved in as little as 3 hours, to complete everything within that period of time, and send it to the House. That certainly isn't done yet. Senator DASCHLE has asked for an agreement to be entered in the RECORD tomorrow in that regard. If that were the case, it would temporarily slow down this bill, but that is all.

Mr. MURKOWSKI. I appreciate that. I must say, I am pleased with the optimism shown by the majority whip. Perhaps to finish in 3 hours would be a record. Let's work towards it.

Mr. President, I am going to speak in morning business for 10 minutes.

The PRESIDING OFFICER. The Senator from Alaska.

IRAQ

Mr. MURKOWSKI. Mr. President, yesterday our President, President George W. Bush, marked the 6-month anniversary of the terrorist attacks. I think we would all agree he used some very strong words for our adversaries.

I quote President Bush:

Every nation in our coalition must take seriously the growing threat of terror on a catastrophic scale—terror armed with biological, chemical or nuclear weapons.

That was his comment yesterday.

Further, he stated:

Some states that sponsor terror are seeking or already possess weapons of mass destruction. Terrorist groups are hungry for these weapons and would use them without a hint of conscience.

Further quoting him:

In preventing the spread of weapons of mass destruction, there is no margin for error and no chance to learn from mistakes.

Further quoting him:

Our coalition must act deliberately, but inaction is not an option.

I would refer to that again: "inaction is not an option."

He added:

Men with no respect for life must never be allowed to control the ultimate instruments of death.

The President did not name names, but it is becoming increasingly clear that when we talk about targeting terror, we are talking about targeting Saddam Hussein's Iraq.

We know he has chemical weapons because we have watched him use them on his own people. We know Saddam wants nuclear weapons because his chief bomb maker defected to the West