

written off Alaska as a priority in matters relating to aviation.

I am pleased my colleagues agreed with my proposal to increase the percentage of airport improvement program funds that flow to airports engaged in cargo operations. This modification will bring additional moneys, almost \$6 million, to the Anchorage International Airport, which is now the busiest cargo airport in this Nation—Anchorage, AK.

It is also encouraging to see the committee once again included my language to allow the Administrator of the FAA to modify regulations to take into account special circumstances in Alaska. Sometimes rules that appear to make sense in the lower 48 simply do not work in our north country. That is why the conference agreed to exempt Alaska from provisions that bar new landfills within 6 miles of an airport. This provision is literally unworkable in Alaska where most of our remote villages are surrounded by Federal refuges and, despite repeated efforts, we are not even allowed to build a road a mile long because of intervention of an alphabet soup type of Federal agency domination.

That may sound strong, but it is literally true.

Many of you may have heard I was concerned about a provision in the budget treatment section of the final compromise package on the FAA. That is true, and I would like to briefly discuss it.

The practical effect of the provision that the House ultimately agreed to delete from this bill would have been to bar any Senate bill or conference report or budget resolution from being considered that did not slavishly adhere to the legislative structure or levels of funding in this bill. Such a provision amounted to an ultimatum to the Senate that presented an unwarranted intrusion into the legislative process. The provision would have given a small number of House Members the ability to completely derail an appropriations conference report, agreed to by the House and the Senate, on completely procedural grounds.

This provision could have had severe and damaging unintended consequences. For example, the House insistence on the across-the-board cuts in last year's wrapup bill would have triggered that provision, and the omnibus bill would not have been in order on the floor of the House.

The minority party in the House could have used this provision to oppose a transportation appropriations conference report, a supplemental conference report, or an omnibus bill if the guaranteed levels or program structures were modified in any fashion, pursuant to the waiver provisions contained in the law, even if such modification were made at the request of the leadership or of the authorization committees.

The bottom line when considering this particular provision is that it is

hard to predict the future. Budget constraints, shifting congressional priorities, administration priorities, and other aviation issues that emerge after enactment of a reauthorization bill often require modification of other legislative provisions. The (C)(3) provision that has been deleted failed to provide for such exigencies, and I am pleased the conferees have deleted it. I hope we will not face that proposal again.

Beyond that, the budget treatment in the FAA reauthorization bill is challenging for the Appropriations and Budget Committees, but it is manageable. It will necessitate that the Senate and the House make some choices between discretionary priorities, transportation, and other priorities during the consideration of the budget and the funding bills for the year 2001. Above all, it will require the House and the Senate to agree to a budget at levels that will enable us to keep the mandates of the FAA reauthorization bill.

This bill adds between \$2.1 and \$2.7 billion in aviation spending above the fiscal year 2000 levels. I support that. I support spending as much on aviation as we can afford. I am not unmindful of the pressure that this and other guaranteed spending will place on the budget, the Budget Committee, and the appropriations bills. We will have to all work together on these matters.

Once again, I thank the members of the conference and my staff, including Steve Cortese, Wally Burnett, Paul Doerrer, Mitch Rose, and my legislative fellow Dan Elwell, for all of their work on this measure over the past year.

I yield the floor.

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

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

Mr. SESSIONS. Mr. President, I ask unanimous consent to speak approximately 12 minutes on the Paez nomination. I don't know whether there is any agreement on that. Otherwise, I will do it in morning business.

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

#### THE PAEZ NOMINATION

Mr. SESSIONS. Mr. President, I remain very troubled by this nomination. I know it has been pending for a long time because of the controversy surrounding the activism of the Ninth Circuit Court of Appeals to which Judge Paez has been nominated and by Judge Paez's own personal history of activism and his philosophy of judging that indicates to me he is quite clearly right along with the leftward group in tilt and movement of that circuit. We need to remove that circuit to the mainstream, not continue it out in left

field, not having it be reversed 17 times, unanimously, by the U.S. Supreme Court in 1 year, a record that has never been met and probably never will be surpassed by any circuit in history. We need to get that circuit in the mainstream of law. Judge Paez will keep it out of the mainstream.

But we have had recent developments. We have been looking into Judge Paez's handling and acceptance of the guilty plea of John Huang, in Los Angeles, where he is a sitting district judge, Federal court judge. I believe there are a number of factors that indicate to me that that was not handled properly, not handled according to the highest standards of justice and, in fact, the plea bargain and sentence he approved was not justified under the law, and that he violated Federal guidelines in order to approve a plea bargain that was unacceptable, in my view, as to what should have occurred in the disposition of that case.

So I believe, and I have asked, and I have written the majority leader and asked that he pull this nomination off the floor and we be allowed to go back to committee and have live witnesses, under oath, to find out how it was, out of 34 judges who could have heard the Huang case in Los Angeles, that this case got to Judge Paez, the one who was already being nominated by the President for a court of appeals that is one step below the U.S. Supreme Court. How did it go to him?

Also, we had the Maria Hsia case that was recently tried here in Washington, and she was convicted. I believe there was a mistrial in California, but he had that case, too. How did this judge, out of 34, get both those cases that had great potential to embarrass the President, because this was the key part of the campaign finance corruption scandal? John Huang is the guy who raised \$1.6 million in illegal funds from foreign sources that the Democratic National Committee had to return because they were illegally obtained.

Then he comes in and the Department of Justice, which was urged by the chairman of the Judiciary Committee of the Senate and the House, Members of this body—we urged the Department of Justice to send a special prosecutor to handle this case, and she did, in a number of cases; Attorney General Janet Reno did make special appointments.

Mrs. BOXER. Will the Senator yield for a question?

Mr. SESSIONS. I will be glad to yield.

Mrs. BOXER. I hope my friend understands that in the Maria Hsia case there were two trials. The campaign trial he is talking about did not go to Judge Paez. The trial he had with her had to do with a tax evasion case where there was a jury that deadlocked. My friend keeps bringing up these cases injecting politics into this. My friend knows all these cases are taken on a random basis. My friend knows there are rated—

Mr. SESSIONS. Mr. President, I reclaim the floor. I appreciate the question.

Mr. BOXER. I want my friend to comment on it.

The PRESIDING OFFICER. The Senator from Alabama has the floor.

Mr. SESSIONS. Maria Hsia was indicted in California and charged here. She had a hung jury there and was convicted here. That was a critical case to the Clinton-Gore administration. It was important to them. She had the potential to cooperate and talk.

At any rate, it still remains odd to me that in these high-profile cases about which much has been written in recent weeks, one of which was tried here in Washington, Judge Paez got both of them.

I submit to my colleagues that perhaps that circuit is assigning those cases randomly, but this case of John Huang did not come off an indictment; it came off a plea bargain. I have a copy of the plea bargain which is part of the public record in California. It was signed by John Huang, his attorneys, and the prosecutor, a Department of Justice employee of Janet Reno who holds her job in Washington at the pleasure of the President of the United States, whose campaign was involved in this illegality. That is who was making the decision on the prosecutorial end.

To me, the question is whether or not the judge handled himself correctly. Some say the judge did not know of all this material and it was not his fault; it was the prosecutor's fault. I do believe the prosecutors failed in advocating effectively the interests of the people of the United States and the rule of law in this case.

In California, young people every day are getting sent to jail for 15 years, 20 years, without parole, for dealing in crack cocaine and other violations. A guy raises \$1.6 million from the Chinese Government and launders it into the Democratic National Committee, and what does he walk out with? Total probation, not a day in jail. That is wrong.

This is how they did it. This is a plea agreement. First and foremost, a judge is not bound to accept the plea agreement. He does not have to accept it. I am going to read the language in this agreement that talks about that. This is Huang and his attorneys and the U.S. attorney prosecutor. They signed this agreement. It says:

This agreement is not binding on the Court.

And the court in this case is Judge Paez.

The United States and you—

Huang—

understand that the Court retains complete discretion to accept or reject the agreed-upon disposition provided for in Paragraph 15(f) of this Agreement.

They had an agreement, but the judge had every right not to accept it. It goes on to say:

In addition, should the Court reject the Agreement and should you thereafter withdraw your guilty plea—

They said if the judge did not follow this recommendation of probation, John Huang could withdraw his plea and go to trial and declare his innocence and they would not use anything he said against him.

It goes on to say:

... without prejudice ... to indictment—

In your defense.

It goes on in detail about it. That is normally done. I was a Federal prosecutor. I am aware of that.

They had the deal arranged. They took it to him. He was not given all of the facts in the case, but he was given enough facts in the case and he was aware of enough facts to reject this plea.

I want to go over with my colleagues a couple of the items. I mentioned them earlier, but this is so critical. This is why we need to take some time to pause before we confirm this man for a lifetime appointment to a court one step below the U.S. Supreme Court. We waited and fought for 4 years as to whether or not he should be confirmed. Now we have these new charges pending, and I do not see why in the world we cannot be given 3 weeks—just 3 weeks—to inquire into it and make a decision.

This is what he was given. He was given evidence that a substantial part of the fraudulent scheme was committed outside the United States because this was foreign money. If that is true, the judge was required to add two levels to the sentencing. He added no levels to the sentencing for that.

He was told there were 24 illegal contributions spread out over a course of 2 years involving multiple overseas corporate entities of which June Huang was responsible for soliciting the money and reimbursing the contributions. That should have added two to four new levels.

He was an officer and a director in a bank, and as an officer and a director, he should have had two levels added for abusing a position of public or private trust.

These are not requests. These are matters at which the judge is supposed to look. They are mandates of law. He ignored all of those, and that is how the judge came out with a sentence level of 8 and not maybe 14 because if it had been a level 9, one more level up, and this sentence would have required John Huang to go to jail at least some time.

The Department of Justice did not want him to go to jail. They wanted him to have a deal. He spent not one day in jail and pled to a contribution to the mayor's race of the city of Los Angeles and did not plea to any criminal charge relating to the 1996 Presidential campaign and, in fact, I want to note what this plea agreement said. It grants him immunity on all of those charges. This is what the agreement said, America. Listen to this. This is serious business.

It said: Judge, if you accept this plea, the prosecutors of the United States will not prosecute you, John Huang, for any other violations of law other than those laws relating to national security or espionage occurring before the date of this agreement signed by you.

He could have been found to commit murder. Giving blind immunity is a very dangerous commitment to make. He could have committed embezzlement. He could have committed bribery. He could never be prosecuted. He got his probation deal, he walked out of court, and he received no time in jail.

There was no evidence presented in court about the \$1.6 million he spent in this campaign for the Democratic National Committee, which was illegal and had to be returned. None of that came out. It was not a plea bargain; it was a wrong plea bargain. He should have looked those lawyers in the eye and said: Gentlemen, I have the right to reject this plea and I do. This is a matter of national importance. It is a matter that goes to the core of justice and our commitment in this country to equal justice under law.

He did not do so. He actually went along with a procedure in which he accepted guideline levels that he could not justify and that were wrong. He was affirmatively wrong. He maybe should have had more evidence, but he had enough to reject this agreement.

I know my time is up, Mr. President. I believe strongly in this. We ought not to be doing this. We ought not to be shoving this through. This man ought not to be on the bench until we know precisely how he got this case and why, and have him stand up under oath and explain why he did not follow the plain guidelines of the law of the United States of America. I believe strongly in it. I have voted for an overwhelming number of Federal judges put forth by this administration. This Congress has rejected only 1 out of over 300-something. This one has been controversial from the beginning, and he ought not go forward.

Mr. President, my time is up, and I yield the floor.

Mr. HATCH. Mr. President, I support the nominations of Ms. Berzon and Judge Paez, and spoke yesterday urging my colleagues to do the same.

I would hope my remarks prove persuasive. But if they do not, my colleagues of course are free to reasonably disagree with my view and to cast a vote against these candidates.

It is quite another story, however, for members of this body to frustrate a majority vote on these nominees by forcing a super-majority cloture vote.

I have reached this conclusion after having been part of this process for over 20 years now, and having served as Chairman of the Judiciary Committee for more than half a decade.

There are times when legislators must, to be effective, demonstrate their mastery of politics. But there are also times when politics—though available—must be foresworn.

I am reminded of the great quote of Disraeli, which I will now paraphrase—"next to knowing when to seize an opportunity, the most important thing is knowing when to forego an advantage." I hope my colleagues will forego the perceived advantage of a filibuster.

Simply put, there are certain areas that must be designated as off-limits from political activity. Statesmanship demands as much. The Senate's solemn role in confirming lifetime-appointed Article III judges—and the underlying principle that the Senate performs that role through the majority vote of its members—are such issues. Nothing less depends on the recognition of these principles than the continued, untarnished respect in which we hold our third branch of Government.

On the basis of this principle, I have always tried to be fair, no matter the President of the United States or the nominees. Even when I have opposed a nominee of the current President, I have voted for cloture to stop a filibuster of that nominee. That was the case with the nomination of Lee Sarokin.

To be sure, this body has on occasion engaged in the dubious practice of filibusters of judicial nominees. But such episodes have been infrequent and, I shall add, unfortunate.

During a number of occasions in the Reagan and Bush Administrations, my colleagues on the other side engaged in filibusters of judicial nominees. Frequently, they backed off, ostensibly realizing there were enough votes to stop a filibuster.

And just last year, I watched with sadness as the minority made history by filibustering one of its own party's nominees. Forcing a cloture vote on Clinton nominee Ted Stewart—who is now acquitting himself superbly as a district judge in Utah—reflected nothing more than a political gambit to force action on other judicial nominees. Fortunately, the effects of that filibuster were short-lived, as the minority recognized the errors of its ways.

These unfortunate episodes do not a precedent make. The fact that these actions precede us does not establish a roadmap for the Senate's handling of future nominations.

Moreover, these filibusters were limited in number. During some of the Reagan and Bush years, I thought our colleagues on the other side did some reprehensible things in regard to Reagan and Bush judges. But by and large, the vast majority of them were put through without any real fuss or bother, even though my colleagues on the other side, had they been President, would not have appointed very many of those judges. We have to show the same good faith on our side, it seems to me.

My message against filibusters of judicial nominees is one I hope to make abundantly clear to my colleagues in the majority. This is so because, to the extent our majority party gives re-

peated credence to the practice of filibustering judicial nominees, we can expect the favor to be returned when the President is one of our own. We hope in earnest that the next President will hail from our party. And if we are gratified in that hope, how short-sighted it will have been that we gave a fresh precedent to the minority party in this body to defeat—by requiring not 51 but a full 60 votes—that Republican President's judicial nominees.

It is important to remember another reason against filibustering judicial nominees. Most of the fight over a nomination has occurred well before a nominee arrives at the Senate floor. Proverbial battles are fought between people in the White House and members of the Judiciary Committee.

As a general matter, when nominees get this far, most of them should be approved. Though there are some that we will continue to have problems with, it is our job to look at them in the Judiciary Committee. That is our job—to look into their background. It is our job to screen these candidates.

In the case of both Ms. Berzon and Judge Paez, each was reported favorably to the floor. And now we have the unusual situation of a Democrat President, the Republican and Democrat Senate Leaders, and Republican and Democrat Chairman and Ranking Member of the Judiciary Committee, all agreeing that votes on the nominees should go forward. But certain Senators who oppose these nominees have nonetheless elected to thwart such votes.

At bottom, it is a travesty if we establish a routine of filibustering judges. We should not play politics with them.

Mr. FEINGOLD. Mr. President, I am pleased that the Senate is finally going to act on the nomination of Marsha Berzon to be a judge on the Ninth Circuit Court of Appeals. The history of her nomination is one of the most disappointing episodes in the Senate's recent shameful treatment of judicial nominees. One of America's most qualified appellate litigators has been held hostage by opponents who raise complaints without substance or merit to impede her confirmation. Today I hope to dispel some of the myths that opponents of her confirmation have used to block Marsha Berzon's nomination. I urge the Senate to confirm her, and put a highly qualified lawyer on the bench where she belongs.

What kind of nominee do we have before us today in the person of Marsha Berzon? We have a woman who has distinguished herself at all levels, from clerkship through successful private appellate practice. We have a woman who has already argued before the Supreme Court four times and has repeatedly appeared before Circuit courts around the country.

Thirty years ago Ms. Berzon received the honor of being picked as U.S. Supreme Court Justice William Brennan's first female law clerk. Her opponents

have seized on this honor as suggesting that Ms. Berzon possesses a liberal and activist judicial philosophy. I say to those who believe serving as a Supreme Court clerk is emblematic of one's political beliefs that they are wrong to believe a clerk adopts her Justice's philosophy for life. First, to be chosen by any Justice of the Supreme Court as a clerk is a rare and noteworthy honor, reserved for the most promising legal minds from the finest law schools. So the most important thing to be gathered from Ms. Berzon's service as a Supreme Court clerk is that her promise as a lawyer and future judge was already apparent thirty years ago just as she was beginning her career.

Second, it is demonstrably untrue that you can tell the philosophy of an individual by the belief of his or her former boss. I'm sure we all know examples of people who have worked for us in the Senate who don't share our views on every issue. But perhaps the best example of the unfairness of assuming that Marsha Berzon believes everything that Justice Brennan did is another former Brennan clerk, Judge Richard Posner of the 7th Circuit Court of Appeals. Many consider Judge Posner the most creative legal mind of his generation, and no one who is familiar with his law and economics philosophy would call him a liberal.

So let's put that fallacious line of argument to rest.

Listen to the praise our Judiciary Committee Chairman, my friend Sen. HATCH, heaped upon Marsha Berzon when the Committee considered her nomination before forwarding it to the full Senate. Chairman HATCH called Berzon "one of the best lawyers I've ever seen." He noted in a letter supporting her nomination that her "competence as a lawyer is beyond question" and that she has the "sound temperament that will serve her well as a federal judge." At the time Chairman HATCH also noted that Marsha Berzon had attracted "both Republican and Democratic support." I am pleased that the Chairman continues to support her nomination on the floor.

Opponents of Marsha Berzon have questioned her credentials unfairly. Despite graduating with honors from Harvard/Radcliffe college and teaching law school courses at both Cornell and Indiana University Law schools, her scholarship has been attacked.

Some who have opposed Berzon's nomination have even called her a labor zealot. But Mr. President, there are a number of people in this room who were attorneys before joining the Senate. They know, as do I, that the code of professional responsibility requires zealous advocacy on a client's behalf. So to mention her zeal for her practice is simply to highlight one of those qualities which makes her such a fine candidate for the 9th Circuit. It shows that she has taken her practice of law to the highest and most professional level.

And lest her opponents complain about professionalism and infer unfairly that a former labor lawyer cannot be fair to management, listen to what numerous management-side attorneys who have litigated against her say about Marsha Berzon. Let's take the case of W.I. Usery, Jr., a former Republican Secretary of Labor:

Usery said Ms. Berzon "has all the qualifications needed, as well as the honesty and integrity that we need and deserve in our court system today. . . I know she will be dedicated to the principles of fairness and impartiality in all her judicial activities."

Or perhaps, we should listen to Fred Alvarez, President Ronald Reagan's former EEOC Commissioner and Assistant Secretary of Labor. Alvarez says:

Someone with the intellect and integrity, which Ms. Berzon has demonstrated, understands the difference between advocacy and the solemn responsibilities undertaken as a federal appellate court judge. . . I can think of no other union-side lawyer who would command so strong and so compelling a consensus from management lawyers on her suitability for such an important position on the 9th Circuit Court of Appeals.

So there you have it Mr. President. Top Republican officials—who we can be sure favor management positions by personal philosophy—endorse Berzon and her professionalism without reservation.

So let's put the foolish argument that Marsha Berzon can't be fair concerning labor issues to rest.

Let's review. We've shown that arguments that Berzon is some liberal by her association with Justice Brennan are fallacious. We've shown that arguments that she is a zealous advocate and should be rejected as an ideologue in fact highlight her mastery of the practice of law and make her highly qualified for this position. We've exploded the myth that she is anti-management and incapable of impartiality in hearing cases pitting management versus labor, and found that she works towards reaching consensus. So one has to wonder Mr. President, what is really going on here?

I'm concerned about the appearance that Marsha Berzon has had such a long, hard road to confirmation because she is a woman. And I don't blame the public for taking that message from this delay when a highly qualified appellate attorney is held up for years and the arguments against her confirmation are so thin.

At the end of 1999, the entire federal judiciary included only 158 women—that's a scant and embarrassing 20% of sitting judges. Rather than attempting to address that disparity, this Senate has chosen to continue the policies of limiting the upward elevation of talented and capable women attorneys and judges. We've repeatedly delayed action on a host of female candidates. What's the impact? If fewer women get confirmed, there are fewer lower court judges to elevate to the nation's appellate courts. And if the judiciary remains a male bastion, as far as we've

come in this country in recognizing equal rights for women, we risk creating the perception that gender biases will continue to plague our judicial system well into the 21st century.

I believe Ms. Berzon is highly qualified to sit on the 9th Circuit, and her confirmation should wait no longer. I enthusiastically support her and I urge my colleagues to do the same.

I yield the floor.

Mr. BUNNING. Mr. President, I rise in opposition to the nominations of Richard Paez and Marsha Berzon to sit on the 9th Circuit Court of Appeals.

There are serious problems with the 9th Circuit. It has become a renegade Circuit, far out of the mainstream of modern American jurisprudence, and I am afraid that if these nominees are confirmed, they will only make a bad situation worse.

Over the past six years, the 9th Circuit has been overturned 86% of the time by the U.S. Supreme Court, a terrible record. During this period, the Supreme Court has reviewed 99 decisions from the 9th Circuit, and overturned 85 of those decisions. During the current session, the 9th Circuit has been overturned in all of the 7 cases reviewed by the Supreme Court, and in one term—1996-97—27 of 28 decisions were overturned, including 17 by unanimous votes.

This is the worst record of any circuit, and is especially troubling given the size and influence of the 9th Circuit. It covers almost 40% of the country, and 50 million Americans—20 million more than any other circuit. The fact that the 9th Circuit has been slipping toward judicial extremism is no laughing matter, and directly affects a large part of our nation and almost one-fifth of our citizens.

The main reason for the judicial imbalance on the 9th Circuit is that Democratic appointees currently comprise 15 of the 22 positions on the 9th Circuit, 10 of whom were appointed by President Clinton. I do not begrudge President Clinton his appointees; he is the President, and has the constitutional right and responsibility to fill the federal bench. But the 9th Circuit has become lopsided with activist judges that has helped push it far out of the judicial mainstream. The circuit cries out for balance.

Confirming Richard Paez and Marsha Berzon to the 9th Circuit would only exacerbate its problems. Mr. President, I do not know the nominees and I have nothing against them. Their records show that they have long legal backgrounds, and deserve a final vote on their nominations. But, the record also shows that they both tilt far too left in their judicial views and would not help to restore balance or judicial sensibilities to the 9th Circuit.

Ms. Berzon has worked as the general counsel of the AFL-CIO for over a decade, and was long active with the ACLU. At least one conservative group has described her as the "worst judicial nomination President Clinton has ever

made." Mr. President, Ms. Berzon is entitled to her views and I am not going to criticize her for her personal beliefs. But looking at her past and the causes which she has pushed show that, if confirmed, she is not going to help steer the 9th Circuit toward the judicial mainstream.

As for Judge Paez, he currently sits on the federal district court in the 9th Circuit, and his nomination is opposed by over 300 grassroots conservative organizations that are troubled by his judicial activism. The U.S. Chamber of Commerce, and the Hispanic Chamber of Commerce, have even taken the unusual step of opposing his nomination because of their concerns over some of his past decisions, arguing that he has pursued an agenda that "has the potential to cause significant disruption in U.S. and world markets." Mr. President, business groups usually do not become involved in judicial nominations, and when they do it should make us wonder.

Even the Washington Post editorial page, no friend of conservative causes, has cautioned that opposition to Judge Paez "is not entirely frivolous", and points to past public remarks by Judge Paez that show how "sympathetic" he is to activist, judicial thinking.

Mr. President, since coming to the Senate I have voted for some of President Clinton's judicial nominees, and I have opposed several. Yesterday, in fact, I voted to confirm Julio Fuente to sit on the Third Circuit. But confirming Richard Paez and Marsha Berzon to sit on the 9th Circuit would be a mistake, and would directly affect 50 million Americans. The 9th Circuit has serious problems, and confirming these nominations are not going to fix those problems. Consequently, I am going to oppose them.

Mr. FEINGOLD. Mr. President, I rise to speak today in strong support of the nomination of Richard Paez to be a judge on the Court of Appeals for the 9th Circuit. By finally moving on the nominations of Judge Paez and Ms. Marsha Berzon this week, the Senate will take long-delayed steps towards returning the 9th Circuit dockets to a manageable level. Action on these nominees is long overdue. I believe their nominations should be confirmed, and I hope, after all this delay, there will be strong bipartisan votes in favor of them.

Four years, 1 month, and 11 days. Just over forty-nine months. One thousand, four hundred and ninety-nine days. That's right. 1499 days, two short of 1500. That is how long Judge Richard Paez has been waiting for the Senate to act on his nomination. In the same amount of time, a young adult could enter and complete a full college degree program. Let me repeat that. Judge Paez has waited for the Senate to grant him the simple grace of voting his nomination up or down for longer than it takes a young American to complete an entire college education. A President or Governor could be inaugurated, serve his or her entire term

and be re-inaugurated during that same four year time period. While I'm sure Judge Paez is a patient man, possessed of the proper judicial temperament that makes him an excellent candidate to sit on the 9th Circuit, I know that even his patience must have long ago worn thin waiting for the Senate to act on his nomination.

First nominated to fill a 9th Circuit vacancy on January 26, 1996, Judge Paez has been subject to delay after delay after delay, and yet his opponents have not been able to give a convincing reason why we shouldn't confirm his nomination. Even with his 13 year record as a LA Municipal Court Judge and nearly 6 years as a U.S. District Court Judge for the Central District of California, those who don't want him on the bench can't build a case against his elevation to the 9th Circuit. They charge that he is an "activist judge," but the record simply doesn't support this allegation.

Judge Paez now bears the dubious distinction of suffering through the longest pendency of a nomination to the federal bench in the history of the United States.

All Judge Paez, has ever asked for was this opportunity: an up or down vote on his confirmation. Yet for years, the Senate has denied him that simple courtesy.

I find it ironic that Judge Paez, the same judge who diligently worked to reduce the length of delays in resolving civil matters in Los Angeles and throughout California's court system through his design and implementation of a civil trial delay reduction project, should himself be subjected to such egregious delay in getting his "day in court" before the full Senate. Particularly when the Senate confirmed his nomination for a District Court judgeship in July 1994 by unanimous consent. Now I recognize that control of this body has changed since 1994, but his nomination to the District Court was confirmed without objection. And his record on that court has been exemplary.

This delay has not simply been unfair to Judge Paez and his family. It has affected the administration of justice. Listen to the concerns of Procter Hug, Jr., Chief Judge of the 9th Circuit. Chief Judge Hug has responsibility for overseeing the functioning and managing the caseloads of the entire Circuit. Currently, of the 28 spots on the 9th Circuit, 6 stand vacant. Chief Judge Hug explained in a letter this past week to the Judiciary Committee that during his term as Chief Judge, the Senate has left him with up to 10 vacancies on the court at any one time. He has responded to this judicial emergency by begging his colleagues to redouble efforts to resolve cases and then increased their dockets to prevent even longer delays in resolution of cases. Hug argues forcefully for the confirmation of Judge Paez and Ms. Berzon and asks this body to swiftly fill the other 4 vacancies on the court.

Now Mr. President, let me address the argument made by the Majority Leader and others that the pending 9th Circuit nominations should be rejected because that circuit has a supposedly high level of reversals when its decisions are reviewed by the Supreme Court. This argument simply doesn't hold water.

First, if we assume that this argument is not meant to be critical of the views or qualifications Judge Paez or any other nominee personally, it makes no sense at all. Even if we disagree with the direction of that court, why would we deny the 9th Circuit adequate resources, thereby depriving the litigants in that circuit of efficient administration of justice? It just makes no sense.

More importantly, arguing that the Ninth Circuit is out of step with the Supreme Court and needs to be reined in doesn't get opponents over the hurdle that they have not yet been able to satisfy—to show that Judge Paez is unsuitable for the appellate bench. He is obviously not responsible for past decisions of the 9th Circuit. So the argument has to be that his elevation will continue the Circuit on its supposedly misguided course. The evidence of Judge Paez being unable to follow Supreme Court precedent is thin indeed, if not non-existent.

But more fundamentally, it is simply not factually correct that the 9th Circuit is out of step with the Supreme Court and other circuit courts. Chief Judge Hug in his letter convincingly refutes the argument that his circuit is reversed more often than others. In fact, its clear from the numbers that even in 1996–1997, when the 9th Circuit's reversal rate was at its highest level of recent years, it was reversed less frequently than 5 other circuits—the 5th, 2nd, 7th, D.C. and Federal—each of which were reversed 100% of the time that year by the Supreme Court. In more recent years, the statistics show even more clearly that the 9th Circuit is not a runaway train that somehow needs to be slowed down, but many in the Senate would like it to become a more conservative circuit, perhaps to be broken into two conservative circuits. And they are willing to hold up Judge Paez and others to achieve that political objective.

Furthermore, I have to point out that reversal rates are a very poor criteria for judging a court's work. The Supreme Court is not required to review every appellate decision. It picks which cases to review. So it is hardly surprising that when it does take a case, it reverses a lower court. Chief Judge Hug quite rightly points out that the 9th Circuit decides about 4,500 cases on the merits each year, 4,500. So the fact that 10 or 20 cases per year are reversed really should not trouble us. It is just not a plausible argument against a nominee for this Circuit that its decisions are out of the mainstream.

We ought to congratulate the women and men currently serving on the 9th

Circuit for so successfully fulfilling their judicial roles at the same time vacancies are greatly increasing their dockets and stretching their time thin. The pressure to carefully make the proper judicial decisions is great, and these Judges are responding with professionalism. I thank them for that, but I cannot help but think that we are putting an unconscionable burden on them.

So what is the point of raising meritless arguments against this nominee? Why the long delay? Let me suggest two possibilities, neither of which reflect well on the Senate. First, Senators delaying these nominations may be trying to run out the clock until President Clinton leaves office. Confirmations always slow down in a presidential election year. In 10 months, we will have a new President. Perhaps a different President will put forward a different nominee. But Judge Paez was actually nominated a year before the President's 2nd inaugural. So holding up this particular nomination for purely political reasons is most unfair. In some ways, this nomination should get special treatment. We had an intervening election after the nomination was first made, and President Clinton won. It is indefensible to hold a nomination hostage for his entire second term. It defies the clear constitutional prerogatives of the duly elected President to choose nominees to the bench and the duty of the Senate to say yes or no.

Some Senators may also object to moving the nomination of Judge Paez because of a perceived judicial philosophy. Some opponents of his nomination look to his long and distinguished service in legal aid and attempt to tar him with the epithet of "liberal," forgetting that his exemplary judicial career has been filled with distinction at all levels. A close look at his record as a U.S. District Court judge since the Senate confirmed his nomination in 1994 debunks attempts to label his opinions as conservative or liberal, reactionary or progressive.

The Los Angeles Daily Journal, which is a newspaper devoted to covering the courts and the legal profession in Los Angeles commissioned 15 legal experts to examine Judge Paez's decisions in seven different cases. Each case was reviewed by at least 2 experts. The results were clear. Thirteen of the legal scholars and practitioners found Paez's opinions "well-reasoned and well-written." Two others were mildly critical. And, in the one decision in which the experts were critical of Judge Paez's decision not to dismiss claims that Unocal Corporation was liable for human rights abuses in Burma, a third expert countered the criticism of Judge Paez's decision, saying "I would give Judge Paez very good marks on his ruling." What's the point here? In a variety of decisions, the commentators praised the work of Judge Paez. Here are some of their comments:

I carefully read Judge Paez's opinion and found that it was excellent in every respect.

His writing was clear and his expression was good. He did not show any ideological or personal bias.

Judge Paez's injunction—in a case against anti-abortion demonstrators—was entirely consistent with the reasoning and result in conservative jurisdictions.

The result is that claims that the Judge's record is activist, or liberally slanted are simply wrong. Claims that he is anti-business are simply not borne out by the facts. Paez also ruled in favor of Philip Morris on a second-hand smoke suit and for Isuzu against Consumers Union. Senators opposing this nominee because they claim he's anti-business are missing the point. Paez rules on each case on the merits—yes, on the merits—and shows no favoritism for or against business. So again, Mr. President, I'm just baffled by these claims of activism or anti-business philosophy being leveled against Richard Paez.

Now if his record as a judge doesn't support these charges of "judicial activism" where did Judge Paez's opponents get the idea that he must be stopped. Opponents aren't saying it openly but it could be that they are worried that a judge who formerly worked in a legal aid capacity must be a liberal, and incapable of making balanced decisions. Having failed to find any hint of bias or lack of judicial temperament in 20 years of judicial decisions, what other reason for opposition could there be other than a belief that if you are an attorney who agrees to work on behalf of those unable to access the legal system because they are poor or under-educated, as Judge Paez did for nine years early in his career, you must be a liberal, right?

Wrong. Dead wrong. The organized Bar in every single state requires public service of attorneys. Every major law firm has dedicated efforts to reach under-served populations needing legal advice. That's part of the profession, a noble part of the profession, and those who would complain about Judge Paez's service to those in need would do well to remember their own reasons for choosing to serve the public. For my part, I applaud the decision of Judge Paez and others like him to serve the poor, and I cannot imagine how his unique perspective from working one on one with these populations for nine years would not be desirable and an advantage to parties before the 9th Circuit. His perspective is badly needed in a circuit which serves 20% of the nation's population, many of whom are people who needed legal aid when he was working with them during the 70s.

If opponents of Judge Paez want to fill the court only with seemingly conservative judges, they mistake their role in the constitutional scheme in my opinion. Let's not kid ourselves. Partisan politics shouldn't play a part in the confirmation of judges, but they do. But to hold up a well-qualified judge for a President's entire term on

the basis of unsupported allegations of "judicial activism" is shameful, it takes the impact of politics on this process to an extreme that we have not seen before, and I hope we never see again.

Mr. President, regardless of the reason for delays in acting on Judge Paez's nomination, the effects of delay are damaging and unmistakable. I believe they are twofold. First, as I discussed before, justice is put on hold in the 9th Circuit because of crowded dockets. Second, this Senate sends a subtle, but unmistakable signal to Hispanic Americans, or recent immigrants about opportunities in America.

It's an old adage but a true one. Justice delayed is justice denied. Parties take their disputes to court to reach a resolution. Longer dockets mean delays for families and businesses seeking to settle legal conflicts and move forward. Holding up qualified nominees like Judge Paez and leaving huge holes to fill on appellate benches literally delays justice.

And the subtle, even subconscious message sent to Hispanic Americans when they examine who hears their disputes in a court of law is that Circuit court judgeships are not open to them. Young Hispanic Americans hearing about Judge Paez will unfortunately learn the message without it ever being said out loud that there are limitations to their advancement in careers of public service. The signals sent by Senators' failure to vote for Paez's confirmation lead to diminished expectations and a view of limited, not limitless opportunities for millions of Hispanic Americans. The Washington Post reported on Monday that only 9 Hispanic American judges currently sit on appellate courts in this country out of a total of 170 appellate judges. And only 31 out of 655 District Judges, including Judge Paez, are Hispanic Americans. That's a shameful record as we begin the 21st century.

Here's the message sent if Judge Paez is not confirmed. You can go to law school at UC Berkeley's Boalt Hall School of Law, work tirelessly with under-served and under-represented populations needing legal assistance, be a successful and well-respected judge on the local bench and the federal District Court, get the highest rating from the American Bar Association, receive endorsements from law enforcement organizations, bar leaders, business leaders, and community leaders, and yet be needlessly and unfairly delayed and prevented from being elevated to the prestigious 9th Circuit Court of Appeals based on unsubstantiated and vague concerns that you are a "judicial activist" or a "liberal." There is only one nominee in this position, whose nomination has been held up for over 4 years. That is Richard Paez, who is a Hispanic American. That's the wrong message from this Senate to millions of Americans, and we should not send it.

I strongly support Judge Paez's confirmation, and urge my colleagues to

join me in quickly filling this and other vacancies on the 9th Circuit. This long delayed confirmation vote for Richard Paez is an important test for the Senate. I hope we pass it.

I yield the floor.

#### WENDELL H. FORD AVIATION INVESTMENT AND REFORM ACT FOR THE 21ST CENTURY—CONFERENCE REPORT—Continued

The PRESIDING OFFICER. Under the previous order, the hour of 5 p.m. having arrived, the Senate will now vote on adoption of the conference report accompanying H.R. 1000.

There are 2 minutes equally divided for debate. The Senator from Washington.

Mr. GORTON. Mr. President, this bill provides a generous contribution to the future of aviation in the 21st century. It significantly reforms the operations of the Federal Aviation Administration. It represents the collective wisdom of the chairman and the ranking minority member of the Commerce Committee, the chairman and the ranking minority member of the Subcommittee on Aviation, and the majority and minority leaders of this Senate. We do not have many bills such as this. I commend it to my colleagues for passage.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROCKEFELLER. We have known a long time we have been underfunding our aviation system as a whole, particularly our air traffic control system, reforming the FAA—all the rest of it—building airports.

Overall, aviation funding is increased by 25 percent in this bill. It is a start. FAA operations funding is increased. Airport money is increased by 33 percent; air traffic control modernization is increased by 40 percent.

This is the first shot we have at making the airways safe for the American people. I urge my colleagues to support the bill.

Mr. President, I note Senator LAUTENBERG wanted to have 1 minute in opposition, but I do not see him on the floor. I do not know what to add further to that.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. LAUTENBERG. Mr. President, we are about to vote on a bill that purportedly takes care of the problems of the FAA. I have to say, this bill guarantees funding increases in a manner that is grossly imbalanced. It threatens to cut funding from Amtrak, from the Coast Guard, from highway safety, and the NTSB in order to provide an aviation entitlement.