

Investments in aviation do have to be made, but it has to be in a balanced way if we are going to avoid gridlock. You cannot ignore the rail system or highway safety and only focus on aviation.

The agreement seeks to guarantee a 64-percent increase in airport grants and a 37-percent increase in modernization funding. Tight budget caps mean either cuts in transportation appropriations—including the Coast Guard or Amtrak—or cuts to other discretionary programs, such as education, health care, veterans' benefits, or agriculture.

Further, it does not provide for the kinds of funding that operations will need to put on more controllers to man this larger system. It does not provide money for the continued training of new controllers.

The PRESIDING OFFICER. The time of the Senator from New Jersey has expired.

Mr. LAUTENBERG. I yield the floor. The PRESIDING OFFICER. The question is on agreeing to the conference report to accompany H.R. 1000. The yeas and nays have been ordered. The clerk will call the roll.

The bill clerk called the roll.

Mr. NICKLES. I announce that the Senator from Arizona (Mr. MCCAIN) is necessarily absent.

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

The result was announced—yeas 82, nays 17, as follows:

{Rollcall Vote No. 35 Leg.}

#### YEAS—82

Abraham	Enzi	Mack
Akaka	Feingold	McConnell
Allard	Feinstein	Mikulski
Ashcroft	Gorton	Murkowski
Baucus	Graham	Murray
Bennett	Grassley	Reed
Biden	Hagel	Reid
Bingaman	Harkin	Roberts
Bond	Hatch	Rockefeller
Boxer	Helms	Roth
Breaux	Hollings	Santorum
Brownback	Hutchinson	Sarbanes
Bryan	Hutchison	Schumer
Bunning	Inhofe	Shelby
Byrd	Inouye	Smith (NH)
Campbell	Jeffords	Smith (OR)
Chafee, L.	Johnson	Snowe
Cleland	Kennedy	Specter
Cochran	Kerrey	Stevens
Collins	Kerry	Thomas
Conrad	Kohl	Thompson
Coverdell	Landrieu	Thurmond
Daschle	Leahy	Torricelli
DeWine	Levin	Warner
Dodd	Lieberman	Wellstone
Domenici	Lincoln	Wyden
Dorgan	Lott	
Durbin	Lugar	

#### NAYS—17

Bayh	Frist	Moynihan
Burns	Gramm	Nickles
Craig	Grams	Robb
Crapo	Gregg	Sessions
Edwards	Kyl	Voinovich
Fitzgerald	Lautenberg	

#### NOT VOTING—1

McCain

The conference report was agreed to. Mr. GORTON. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

#### ORDER OF PROCEDURE

Mr. GORTON. Mr. President, I ask unanimous consent that the next vote in this series be limited to 10 minutes in length.

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

#### EXECUTIVE SESSION

#### NOMINATION OF MARSHA L. BERZON TO BE UNITED STATES CIRCUIT JUDGE FOR THE NINTH CIRCUIT

#### NOMINATION OF RICHARD A. PAEZ, OF CALIFORNIA, TO BE UNITED STATES CIRCUIT JUDGE FOR THE NINTH CIRCUIT

#### CLOTURE MOTIONS

The PRESIDING OFFICER. Under the previous order, the Chair lays before the Senate the pending cloture motion, which the clerk will report.

The legislative clerk read as follows:

#### CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on Executive Calendar No. 159, the nomination of Marsha L. Berzon, to be United States Circuit Judge for the Ninth Circuit:

Trent Lott, Orrin G. Hatch, Susan M. Collins, Arlen Specter, Ted Stevens, Thad Cochran, James M. Jeffords, Robert F. Bennett, Richard G. Lugar, Chuck Hagel, Conrad Burns, John W. Warner, Patrick J. Leahy, Harry Reid of Nevada, Charles E. Schumer, and Tom A. Daschle.

The PRESIDING OFFICER. By unanimous consent, the quorum call has been waived.

The question is, Is it the sense of the Senate that debate on the nomination of Marsha L. Berzon to be United States Circuit Judge for the Ninth Circuit shall be brought to a close?

The yeas and nays are required under the rule.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Arizona (Mr. MCCAIN) is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The yeas and nays resulted—yeas 86, nays 13, as follows:

{Rollcall Vote No. 36 Ex.}

#### YEAS—86

Abraham	Boxer	Collins
Akaka	Breaux	Conrad
Ashcroft	Bryan	Coverdell
Baucus	Burns	Crapo
Bayh	Byrd	Daschle
Bennett	Campbell	Dodd
Biden	Chafee, L.	Domenici
Bingaman	Cleland	Dorgan
Bond	Cochran	Durbin

Edwards	Kerry	Roberts
Feingold	Kohl	Rockefeller
Feinstein	Kyl	Roth
Fitzgerald	Landrieu	Santorum
Frist	Lautenberg	Sarbanes
Gorton	Leahy	Schumer
Graham	Levin	Sessions
Grams	Lieberman	Smith (OR)
Grassley	Lincoln	Snowe
Gregg	Lott	Specter
Hagel	Lugar	Stevens
Harkin	Mack	Thomas
Hatch	McConnell	Thompson
Hollings	Mikulski	Thurmond
Hutchison	Moynihan	Torricelli
Inouye	Murray	Voinovich
Jeffords	Nickles	Warner
Johnson	Reed	Wellstone
Kennedy	Reid	Wyden
Kerrey	Robb	

#### NAYS—13

Allard	Enzi	Murkowski
Brownback	Gramm	Shelby
Bunning	Helms	Smith (NH)
Craig	Hutchinson	
DeWine	Inhofe	

#### NOT VOTING—1

McCain

The PRESIDING OFFICER. On this vote, the yeas are 86, the nays are 13. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

Mr. VOINOVICH. Under the previous order, pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion on the nomination, which the clerk will state.

The legislative clerk read as follows:

#### CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on Executive Calendar No. 208, the nomination of Richard A. Paez, to be United States Circuit Judge for the Ninth Circuit.

Trent Lott, Orrin G. Hatch, Susan M. Collins, Arlen Specter, Ted Stevens, Thad Cochran, Robert F. Bennett, Harry Reid, Richard G. Lugar, Chuck Hagel, Conrad Burns, John Warner, Patrick Leahy, Charles E. Schumer, Thomas A. Daschle, and Barbara Boxer.

The PRESIDING OFFICER. By unanimous consent, the quorum call under the rule is waived.

The question is, Is it the sense of the Senate that debate on the nomination of Richard A. Paez, of California, to be United States Circuit Judge for the Ninth Circuit, shall be brought to a close?

The yeas and nays are required under the rule. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Arizona (Mr. MCCAIN) is necessarily absent.

The yeas and nays resulted—yeas 85, nays 14, as follows:

{Rollcall Vote No. 37 Ex.}

#### YEAS—85

Abraham	Biden	Burns
Akaka	Bingaman	Byrd
Ashcroft	Bond	Campbell
Baucus	Boxer	Chafee, L.
Bayh	Breaux	Cleland
Bennett	Bryan	Cochran

Collins	Inouye	Reid
Conrad	Jeffords	Robb
Coverdell	Johnson	Roberts
Crapo	Kennedy	Rockefeller
Daschle	Kerrey	Roth
Dodd	Kerry	Santorum
Domenici	Kohl	Sarbanes
Dorgan	Kyl	Schumer
Durbin	Landrieu	Sessions
Edwards	Lautenberg	Smith (OR)
Feingold	Leahy	Snowe
Feinstein	Levin	Specter
Fitzgerald	Lieberman	Stevens
Gorton	Lincoln	Thomas
Graham	Lott	Thompson
Grams	Lugar	Thurmond
Grassley	Mack	Torricelli
Gregg	McConnell	Voinovich
Hagel	Mikulski	Warner
Harkin	Moynihn	Wellstone
Hatch	Murray	Wyden
Hollings	Nickles	
Hutchison	Reed	

## NAYS—14

Allard	Enzi	Inhofe
Brownback	Frist	Murkowski
Bunning	Gramm	Shelby
Craig	Helms	Smith (NH)
DeWine	Hutchinson	

## NOT VOTING—1

McCain

The PRESIDING OFFICER (Mr. SMITH of Oregon). On this vote, the yeas are 85, the nays are 14. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

Mr. LEAHY. Mr. President, is the Senator from Vermont correct that we have now voted cloture on both the nominations before the Senate?

The PRESIDING OFFICER. The Senator from Vermont is correct.

Mr. LEAHY. Then what is the parliamentary situation, as regarding the two nominations?

The PRESIDING OFFICER. There are 30 hours, evenly divided.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. LOTT. Mr. President, I have a unanimous consent request and closing script.

As you know, cloture was just invoked on two Ninth Circuit judges. I still hope we have not set a precedent. I don't believe we have because it was such an overwhelming vote to invoke cloture and stop the filibuster. We should not be having filibusters on judicial nominations and having to move to cloture. But we had to, and it was an overwhelming vote of 86-13 on the first one, and I guess that was the vote on the second one, too. I intend to offer a time agreement between the proponents and opponents regarding postcloture debate.

Mr. President, I ask unanimous consent that Senator SMITH of New Hampshire be in control of up to 3 hours of total debate on both nominations, and that Senator LEAHY, or his designee, be in control of up to 1 hour 30 minutes of total debate on both nominations; that following the conclusion or yielding back of the time, the Senate lay the

nominations aside until 2 p.m., at which time the Senate would proceed to back-to-back votes on or in relation to the confirmations of Berzon and Paez. That would be at 2 p.m. tomorrow.

Mr. LEAHY. Reserving the right to object, and I will not, I tell the distinguished leader I was struck by the comments of the distinguished leader in saying we should not have the precedents of filibusters and requiring cloture. I commend him for supporting the cloture motion and moving this forward so we would not have that precedent. I am concerned, though, because I have heard rumors that one of these votes may be on a motion to indefinitely postpone a vote on these nominees. I understand that while such a vote might be in order, there is no precedent for such a vote on a judicial nominee; am I correct on that? I mean in my lifetime, and I was born in 1940.

The PRESIDING OFFICER. There is a precedent that a motion to postpone is in order after cloture is invoked.

Mr. LEAHY. That was not my question, Mr. President. My question was very specific. In fact, I stated that I understand motions to postpone indefinitely, I believe, are always in order, as are filibusters. But as the distinguished leader said, we would not want to set a precedent of filibusters on judicial nominations. Am I correct that we have not used motions to postpone indefinitely on judicial nominations following cloture?

The PRESIDING OFFICER. The precedent does not state what the item of cloture is on.

Mr. LEAHY. Mr. President, if I understand, we have never had this circumstance. Certainly, I have not in my 25 years in the Senate. I do not believe ever having a circumstance where we have had cloture on two judicial nominations and then had a motion to postpone, in effect, killing the nominations.

Mr. LOTT. Will the Senator yield?

Mr. LEAHY. Yes.

Mr. LOTT. I believe, traditionally, it is in order postcloture to have a motion to table or a motion to postpone indefinitely. I don't know the precedents in terms of that actually having been used. I am certainly not advocating it. But under the rules of the Senate, I am under the impression that it would be in order. I thought maybe I could answer it succinctly without getting into the precedents.

Mr. President, has the request been—

Mrs. BOXER. Reserving the right to object, and I will not object, I say, first, to the majority leader that I appreciate very much his effort to bring the nominations forward, and voting for cloture, because without that we would not be where we are. I want that understood.

I state on the RECORD today that this Senator believes if there is going to be a motion made—which there very well may be because that is the rumor that

I hear—to indefinitely postpone a vote on one of these nominees, then I believe that kind of a motion is denying that nominee an up-or-down vote. You can argue that it is really like an up-or-down vote, but after we have gotten over 80 votes, with the help of the majority leader and Senator HATCH, in a bipartisan way—and Senator LEAHY worked on that—you would think we could vote up or down. There is no precedent that I have gotten from the Parliamentarian up to this point where he has been able to show me this was done with a judicial nomination after cloture was invoked. I wish to make that point because I don't like to ever blindsides my colleagues on anything.

I think that if we go this route, it will be interpreted as a way to deny a vote on the nominee, and I hope this will not be the case. Surely, I hope, if it is offered, we will defeat it. But it seems to me a bad precedent. I hope we won't see this go in that fashion. I thank the Chair. I shall not object.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. LOTT. Then the votes will occur back to back at 2 p.m. on Thursday. In light of this agreement, there will be no further votes this evening. I believe our staffs have probably put everybody on notice of that.

## LEGISLATIVE SESSION

Mr. LOTT. Mr. President, I ask unanimous consent that the Senate now resume legislative session.

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

## MORNING BUSINESS

Mr. LOTT. Mr. President, I ask unanimous consent that there be a period for the transaction of routine morning business, with Senators permitted to speak therein for up to 10 minutes each.

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

## NUCLEAR WEAPONS

Mr. KERREY. Mr. President, the question of how to write Federal laws and consider treaties that enable our armed forces and diplomats to protect and defend the people of the United States is both important and difficult for Members of Congress to answer. To write laws that keep America safe, we must evaluate today's threats and tomorrow's threats, we must consider the plans presented by our military to meet those threats, and we must be vigilant against the understandable tendency to want to withdraw from the world. We must remember those moments in our past when lack of preparation and planning resulted in terrible loss and then prepare to defend against threats we face.

We must also remember that freedom is not free, and that the price paid by