

change, but it is regrettable—although not surprising—that once again cloture was filed preemptively and without good cause.

Keep in mind, when one files cloture, it calls for the end of all debate. It is amazing to me that tonight we are voting on a motion to end all debate before we have even had any debate. Not a word of debate has been uttered on the bankruptcy bill.

We find ourselves in an amazing Orwellian circumstance in which we are ending debate before it begins, calling it a debate, filing cloture, and calling it quits. We cannot do that.

Time after time, I have indicated that many of us have opportunities to stop legislation, and we will be inclined to do that if we have no opportunity to bring up amendments, as regular order would allow. Again, many of us support bankruptcy reform and want to see a bankruptcy bill, but we also want to be able to offer amendments.

If cloture is invoked tonight, many of the amendments we had agreed to prior to bringing the bill to the floor will fall—amendments that both sides agree will improve the bill. Cloture will actually prevent those relevant amendments from being considered.

I do not know why any colleague would vote to eliminate even relevant amendments, amendments for which there is agreement. We have a managers' amendment to make improvements to the bill, but under cloture it would be subject to a point of order.

We want to go to bankruptcy. I want to see if we can reach some agreement on going to bankruptcy, but we cannot continue to gag Senators and prevent them from using the normal rules of the Senate in offering amendments.

Second issue: Cloture on Mr. Stewart. I have indicated publicly that even though I have some misgivings about Mr. Stewart, I will support him. This issue is not about Mr. Stewart. This issue is about the 45 nominations that are still pending, awaiting Senate action a few weeks before the end of the session. This issue has to do with 38 nominations in committee, 24 district, 13 circuit, and 1 International Trade Court judge. This issue has to do with nominees who have been waiting for the Senate to act now since January of 1996.

Judge Richard Paez, who is currently a U.S. district court judge, was first nominated in January of 1996. Judge Paez has been waiting 3½ years for a Senate vote—3½ years. That is half a Senate term. He has been waiting half a Senate term for the Senate to act. He has been waiting for more than 1,300 days for the Senate to vote, or 25 times longer than Mr. Stewart. Mr. President, 1,300 days is a long time to wait for the Senate to act. Judge Paez is a patient man, but I do not think it is too much to ask that, up or down, we let him get on with his life, up or down he have the opportunity to have a vote, up or down we say yes or no, you will be a circuit judge.

Justice Ronnie White, the first African American to serve on the Missouri Supreme Court, was originally nominated on June 26 of 1997. He was actually put on the calendar in this Congress on July 22 of 1999, but he has waited for a total of over 7 months on the calendar in this and in previous Congresses.

Marsha Berzon was first nominated in January of 1998. Her nomination has been pending over 10 times longer than Ted Stewart's nomination.

There are 64 vacancies in the Federal judiciary today. Chief Justice Rehnquist has noted that and has urged the Senate to act. We have 45 nominations pending in the Senate right now awaiting action either in the committee or on the floor. There are seven nominations on the Executive Calendar. Only 17 judges have been confirmed to date.

Some might claim: We have seen that happen before. I hate to say "when we were in the majority," but when we were in the majority, during the first session in 1991, the last year we were in the majority in a nonelection year, we confirmed 57 judges; in 1992, an election year, we confirmed 66 judges. In the election year 1994, the last election year where we were in the majority, we had 101 judges confirmed.

All one has to do is look back at past precedent. All one has to do is look at the terrible unfairness of someone having to wait 1,300 days, 25 times longer than Ted Stewart, months and months—10 times longer than Ted Stewart in the case of Marsha Berzon—to see how unfair this system is.

I want to find a way to work through this. I know Senator HATCH, the chairman of the Judiciary Committee, wants to find a way through it. I am hopeful we can find a way through it within the next few days. Tonight I will move to proceed to the nominations of Judge Paez and Ms. Berzon, and we will have an opportunity to express ourselves on the importance of these judges. We will vote. I hope the majority will not oppose moving to proceed to those two judges: Ms. Berzon, an exceptional nominee for the ninth circuit; and Judge Paez, a sitting district court judge, a Hispanic American, also fully qualified, a nominee for the Ninth Circuit. I hope we can find a way to resolve our differences and move forward.

I felt strongly about the importance of having these votes. I feel equally strongly about the importance of trying to resolve this impasse. We will make every effort to do so. I believe my colleagues will support an effort to break this impasse, recognizing that, as important as this is, we cannot go home leaving all of this work undone.

I hope we can do so this week. I know the majority leader has indicated a willingness to perhaps even hotline Judge Paez and Ms. Berzon. I hope that will happen this week. If that happens, we will be in a better position to know just how much opposition there is. We

have to move on. We have to have these votes. We have to confirm these nominations. We have to ensure we can pass a good bankruptcy bill. There is so much more we can and ought to do. That will take working together, and I stand ready to do so.

NOMINATION OF MARSHA L. BERZON OF CALIFORNIA TO BE UNITED STATES CIRCUIT JUDGE FOR THE NINTH CIRCUIT—MOTION TO PROCEED

Mr. DASCHLE. I now move to proceed to executive session to consider calendar No. 159, Marsha L. Berzon, of California, to be United States Circuit Judge for the Ninth Circuit, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to proceed to executive session to consider the nomination of Marsha L. Berzon, of California, to be United States Circuit Judge for the Ninth Circuit. The yeas and nays have been ordered. The clerk will call the roll.

The legislative assistant 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 desiring to vote?

The result was announced—yeas 45, nays 54, as follows:

[Rollcall Vote No. 282 Leg.]

YEAS—45

Akaka	Edwards	Levin
Baucus	Feingold	Lieberman
Bayh	Feinstein	Lincoln
Biden	Graham	Mikulski
Bingaman	Harkin	Moynihan
Boxer	Hollings	Murray
Breaux	Inouye	Reed
Bryan	Johnson	Reid
Byrd	Kennedy	Robb
Cleland	Kerrey	Rockefeller
Conrad	Kerry	Sarbanes
Daschle	Kohl	Schumer
Dodd	Landrieu	Torricelli
Dorgan	Lautenberg	Wellstone
Durbin	Leahy	Wyden

NAYS—54

Abraham	Fitzgerald	McConnell
Allard	Frist	Murkowski
Ashcroft	Gorton	Nickles
Bennett	Gramm	Roberts
Bond	Grams	Roth
Brownback	Grassley	Santorum
Bunning	Gregg	Sessions
Burns	Hagel	Shelby
Campbell	Hatch	Smith (NH)
Chafee	Helms	Smith (OR)
Cochran	Hutchinson	Snowe
Collins	Hutchison	Specter
Coverdell	Inhofe	Stevens
Craig	Jeffords	Thomas
Crapo	Kyl	Thompson
DeWine	Lott	Thurmond
Domenici	Lugar	Voinovich
Enzi	Mack	Warner

NOT VOTING—1

McCain

The motion was rejected.