

Mr. McCAIN. I am glad to yield to the Senator from Nevada.

Mr. REID. Mr. President, I have the greatest respect for the Senator from Florida, but the Senator from Arizona and I came to the Congress together. And I hope that my friend from Florida was not implying the Senator from Arizona was involved in any backroom deals because I have never known the Senator from Arizona to be involved in any backroom deals.

Mr. McCAIN. I have been singularly unsuccessful in orchestrating any backroom deals in the years I have served here, I say to my friend from Nevada. And I thank him.

Mr. President, I move to table the pending Graham amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question occurs on agreeing to the motion to table Graham amendment No. 4857.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from Louisiana (Ms. LANDRIEU) is necessarily absent.

Mr. NICKLES. I announce that the Senator from Nevada (Mr. ENSIGN) is necessarily absent.

The result was announced—yeas 88, nays 10, as follows:

[Rollcall Vote No. 231 Leg.]

YEAS—88

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

NAYS—10

Baucus	Dayton	Rockefeller
Breaux	Graham	Torricelli
Byrd	Lincoln	
Corzine	Nelson (FL)	

NOT VOTING—2

Ensign  
Landrieu

The motion was agreed to.

The PRESIDING OFFICER (Mr. JOHNSON). The majority leader is recognized.

Mr. DASCHLE. Mr. President, I wanted to inform my colleagues, after consultation with the distinguished Republican leader, that it is our inten-

tion, assuming we get cloture tomorrow—the cloture vote will be cast on the resolution tomorrow—it would be my intent to stay in for the full 30 hours, or whatever period of time would be required to complete our work on the resolution.

I said at the beginning of the week, it would be my determination to finish our debate on this resolution before the end of the week and that is still my determination. So if cloture is achieved, we would go for whatever length of time to accommodate Senators who wish to be heard under the rules of cloture.

We would expect, therefore, a vote on final passage on the resolution prior to the time we leave this week. I yield the floor.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, shortly I will yield to my distinguished senior colleague, Mr. THURMOND, for not to exceed—that time does he want?

Mr. NICKLES. Five minutes.

Mr. BYRD. Mr. President, I ask unanimous consent that I may yield to my senior colleague, Mr. THURMOND, for not to exceed 5 minutes, without losing my right to the floor.

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

NOMINATION OF JUDGE DENNIS SHEDD

Mr. THURMOND. Mr. President, I rise today to express my outrage at yesterday's proceedings in the Judiciary Committee. In an unprecedented move, Chairman LEAHY violated committee rules and removed the nomination of Judge Dennis Shedd from the agenda. On a procedural vote, the committee refused to consider Judge Shedd's nomination.

I am hurt and disappointed by this egregious act of destructive politics. Chairman LEAHY assured me on numerous occasions that Judge Shedd would be given a vote. I took him at his word.

Dennis Shedd is a fine judge who has received a rating of well qualified by the American Bar Association. President Bush nominated him to the Fourth Circuit Court of Appeals on May 9, 2001, but his hearing did not take place until June 27 of this year. Since that time, he has answered all questions asked of him.

For over 17 months, I have waited patiently. On July 31, Chairman LEAHY stated publicly before the Judiciary Committee that we had reached a solution regarding Judge Shedd that would be satisfactory. The chairman's recent actions are not only unsatisfactory, but they are unacceptable. In my 48 years in the Senate, I have never been treated in such a manner.

Mr. President, I hope this situation will be corrected and that Judge Shedd will soon be confirmed as a judge on the Fourth Circuit Court of Appeals.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia has the floor.

Mr. REID. Mr. President, may I ask the Senator from West Virginia if he will be kind enough to allow me to respond to the distinguished Senator from South Carolina, as the name of my friend, Senator LEAHY, was mentioned on several occasions.

Mr. BYRD. How much time does the Senator need?

Mr. REID. A few minutes; 6 or 7 minutes at most.

Mr. BYRD. Not to exceed 7 minutes. I make that request.

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

Mr. REID. Mr. President, we understand that Senator THURMOND is disappointed that the Judiciary Committee was not able to proceed on Judge Dennis Shedd's nomination at its meeting this week. We all have great respect for Senator THURMOND and I know that the committee is working toward a committee vote on the Shedd nomination.

The Judiciary Committee has continued to receive opposition from South Carolina and from African American and other civil rights organizations and leaders from around the country to the Shedd nomination. Senators are taking those concerns seriously and being thoughtful and deliberate in reaching their own conclusions.

Over the past weeks, the committee—led by Chairman LEAHY who has done such an outstanding job—has received hundreds of letters from individuals and organizations, both in and out of South Carolina, expressing concerns about elevating Judge Shedd, and these letters raise serious issues. Many of these letters have arrived in just the last week or so. The committee has just received a letter from the Mexican American Legal Defense and Educational Fund, citing the interests of the many Latinos living in the Fourth Circuit, and expressing opposition to Judge Shedd. A letter arrived recently from the Black Leadership Forum asking for more time to consider the nomination. It was signed by a number of well respected African American leaders, including the forum's chairman, Dr. Joseph Lowery, and over a dozen other nationally recognized figures. In recent weeks, State legislators from Delaware, North Carolina, South Carolina, and Maryland, have written with their misgivings about the elevation of Judge Shedd. And hundreds, probably thousands, of letters from South Carolina citizens have been arriving that urge a closer look at Judge Shedd's fitness for this job.

Senator LEAHY was correct in his judgment that beginning the debate on the nomination of Judge Shedd on Tuesday morning would not have resulted in a final vote, but might well have prevented committee action on 17

other judicial nominees of this President. Indeed, as it was, Republicans almost prevented those 17 judicial nominations and six executive branch nominations from being reported before the end of that business session.

Unfortunately, this partisan procedural maneuvering obstructed the committee from reaching any items on the legislative agenda, even the simplest consensus items of significant importance. Republican Senators even objected to granting consent to an amendment of the American Legion charter. I understand that today Republicans boycotted a business meeting of the Governmental Affairs Committee.

I understand that at Senator THURMOND's request, the Judiciary Committee held a hearing for Judge Shedd who has a lifetime appointment to the District Court in south Carolina. Judge Shedd's hearing was the second for a nominee to the Fourth Circuit since the reorganization of the committee in the summer of 2001.

In fact, no judge was confirmed to the fourth Circuit during the last 30 months of Republican majority control even though there were nominees of significant qualifications. Neither Judge James Beaty, Judge Rich Leonard, Judge James Wynn, Judge Roger Gregory, Judge Andre Davis or Elizabeth Gibson received a hearing or a vote from the Republican majority on their nominations to the Fourth Circuit.

In contrast, the first nominee on which the Judiciary Committee held a hearing in July 2001 and the first confirmed after the change in majority was a Fourth Circuit nominee, Judge Gregory.

In addition, the Committee worked hard to consider and report the nomination of Judge Terry Wooten to be a Federal district court judge in South Carolina at the request of Senator THURMOND. Judge Wooten's nomination was not without controversy but with hard work and perseverance the committee was able to report that nomination to the Senate and the Senate confirmed Judge Wooten last November.

The committee also expedited consideration of Strom Thurmond, Jr., to be the U.S. Attorney for south Carolina last fall, under tremendous pressure to Senator LEAHY.

During the last 15 months, the Judiciary Committee has held hearings on over 100 judicial nominees, voted on 100 and reported 98. The Senate has confirmed 80 to date with 18 more on the calendar, as we speak. That is more hearings for more nominees and more votes on nominees and more confirmations of more nominees than in the last 30 months in which Republicans controlled the Senate.

The Judiciary Committee is doing a good job of helping reduce the judicial vacancies it inherited from the Republicans when they delayed and obstructed President Clinton's nominees.

I understand Senator THURMOND's disappointment, but he has to under-

stand Senator LEAHY is doing an outstanding job. And I and the rest of the Democrat conference totally support this good man, the Senator from Vermont.

The PRESIDING OFFICER. The Senator from West Virginia has the floor.

Mr. HATCH. Mr. President, I ask the Senator from West Virginia to allow me 5 minutes to respond.

Mr. BYRD. Mr. President, I ask unanimous consent that I may yield to the distinguished Senator from Utah, Mr. HATCH, for not to exceed 5 minutes—I hope this will be the last request—not to exceed 5 minutes, and that I retain my right to the floor.

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

Mr. HATCH. Mr. President, I thank the Senator from West Virginia for his courtesy. I appreciate it.

I listened to these remarks, and I am outraged. I know they were not written by any staffer for Senator REID, and they are not accurate. I think we have had very disdainful treatment of one of the most prestigious and important Senators in the history of this body.

Let's think about it. Yesterday, Chairman Leahy denied a vote on Dennis Shedd, President Bush's nominee for the Fourth Circuit Court of Appeals, the nominee from South Carolina. This action was outrageous because yesterday may very well have been the last markup Senator THURMOND, the former chairman of the Judiciary Committee, who cares very deeply about Judge Shedd's nomination, was able to attend.

The committee rules are very clear. They allow an agenda item held over from 1 week, which Judge Shedd was held over, to be brought up on the next agenda. He was held over on September 19 on that markup agenda by the Democrats.

Yesterday, Chairman LEAHY, in violation of committee rules, removed Judge Shedd from the agenda. This is not right. To my knowledge, that is the first time that has ever happened. It may have happened before, but I do not remember it.

What makes this even more unusual and has our Members outraged is that we operate in the Senate under a presumption that a Senator's word is as good as gold. Chairman LEAHY assured several Republican Senators—our leader, Senator THURMOND, Senator GRASSLEY, Senator BROWNBAC, and myself—that Judge Shedd would get a vote. He promised that to me, and all of these others. It is fair to say the entire Republican caucus expected a vote yesterday on Judge Shedd.

There is no doubt about Judge Shedd's qualifications. He has strong bipartisan support. One of his most ardent supporters from South Carolina is none other than my dear friend and colleague, Senator FRITZ HOLLINGS. The people of South Carolina support him. The ABA, long held to be the gold standard by the Democrats, gave him a well-qualified rating. So it is not Judge

Shedd's qualifications that are standing in the way. Simply put, there is no good reason that Judge Shedd did not get a vote at yesterday's markup.

In accordance with the rules, I moved to have a vote. The chairman ruled it out of order. It was a 9-to-9 vote, not sustaining his position but basically not allowing the vote.

The real reason Judge Shedd was not on the agenda was there are liberal special interest groups in this city that seem to have lock-stock control over the Judiciary Committee. When I was chairman, I never ceded control to any of these outside groups. In fact, I told them to get lost. I have to say I paid a big price for it, too. It is atrocious that ceding of control is happening now.

With regard to the Fourth Circuit Court of Appeals and those nominees cited by the distinguished Senator from Nevada, they did not have home State senatorial support. We cannot do much about that when there is not home State senatorial support, which has always been a courtesy that has been extended.

Think about it. Judge Shedd has been waiting for almost 18 months. Now all of a sudden, at the last minute, we come up with all of these lame excuses to not give him a vote. All we were asking for was a vote in accordance with the rules of the Senate—a vote in the Judiciary Committee and then a vote on the floor—for a man who used to be chief of staff of the Judiciary Committee, who was sponsored by one of the most dignified and important Senators in the history of this body. Just one committee vote and a floor vote.

If they want to vote him down, they can do that, but Senator THURMOND deserved the benefit of the doubt. He deserved the privilege of having a vote on his nominee, especially since this nominee has waited for almost 18 months. He was peppered with all kinds of questions. He answered them. He did everything he possibly could. He has a wonderful reputation. He had it when he was on the committee. What is more, every member of that committee who sat when he was here knows it.

Now this is wrong. It is wrong to treat a senior Senator like this. It is wrong to treat a distinguished Federal district court judge like this. It is wrong to break the rules. It is wrong to break them with impunity. And I think it is wrong to treat the President's nominees this way.

To make a long story short, virtually everything that was said yesterday and even today was not very accurate. I would ask that this body reconsider, that my friends on the other side—

The PRESIDING OFFICER. The Senator has spoken for 5 minutes.

Mr. HATCH. I ask for 30 seconds more, and I will finish.

Mr. BYRD. Mr. President, I yield an additional minute to the Senator, under the same conditions.

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

Mr. HATCH. I am grateful to my colleague.

I ask for simple courtesy from the other side. Give us an up-or-down vote on Dennis Shedd. Everybody who is on the Judiciary Committee knows this man, and I think most others in the Senate know this man and know what a good person he is. But everybody knows Senator THURMOND, that he is an honest, decent man, and he deserves this kind of courtesy, especially at the end of the longest, most distinguished career in the Senate.

I thank my dear colleague from West Virginia.

#### AUTHORIZATION OF THE USE OF UNITED STATES ARMED FORCES AGAINST IRAQ—Continued

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, I take the floor at this time to urge the joint leadership of the Senate to delay the vote on cloture which is set this moment for 10:15 tomorrow morning. I urge the leadership of this body to consider and to help bring about an order that will vitiate that vote on cloture tomorrow morning at 10:15.

I make my plea on behalf of the mothers, fathers, grandmothers, and grandfathers of this country, the fate of whose sons, daughters and grandchildren hinges upon the outcome of the vote on cloture; shutting off the debate of this Senate, shutting it down to 30 hours, with each Senator to have only 1 hour unless other Senators can be prevailed upon to seek unanimous consent to yield that Senator additional time, with the exception of the managers, the majority leader, and the minority leader, who have an additional 2 hours automatically.

What is involved is the fate of the service men and women in this country who may have to go to Iraq, the fate of the reserves, the fate of our National Guardsmen and Guardswomen in this country who may have to go to Iraq.

This decision is going to be made no later than 10:15 tomorrow morning unless it is changed. This is a fateful decision. It involves the treasure of this country. It involves the blood of our fighting men and women. It is too momentous and too far reaching a decision to be signed, sealed, and delivered by 10:15 tomorrow morning.

I know it is in accordance with the rules of the Senate. Nobody knows the rules of the Senate more than I do, and nobody has used the rules of the Senate more than I have in past years. But I say that this rule, which is perfectly within order, should be set aside because of the fateful, momentous, and far-reaching implications and ramifications of this vote.

If we go through with this vote, Senators are going to have 1 hour each, up to 30 hours, and only amendments which are germane can be offered. This is too much, and I appeal to the sense of justice, the sense of right, and the

sense of our duties to our people. I appeal to all Senators and to the leadership that we seek to get unanimous consent to put off that vote, to delay it.

Mr. SARBANES. Mr. President, will the Senator yield for a question?

Mr. BYRD. Yes, I yield.

Mr. SARBANES. I ask the very able and distinguished Senator from West Virginia—it is my understanding that the motion to proceed to this resolution took place a week ago. Is that the Senator's understanding?

Mr. BYRD. Mr. President, I yield to the Senator for such a parliamentary inquiry.

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

Mr. SARBANES. Parliamentary inquiry. When did the Senate proceed to this resolution?

The PRESIDING OFFICER. It appears from the Journal, the Senate proceeded to this measure on October 4.

Mr. SARBANES. October 4, and today is October 9. October 4, I am told by the Chair. Today is October the 9th, on a resolution that may take the Nation into war.

Mr. BYRD. That includes Saturday and Sunday.

Mr. SARBANES. The distinguished Senator, I think I am correct in recalling, was the leader of the Senate at the time we did the Panama Canal treaties.

Mr. BYRD. The Senator is correct.

Mr. SARBANES. Did the Senator recall there were two treaties, the neutrality treaty and the canal treaty itself? We went to the neutrality treaty. Floor debate began on February 6 of 1978. We voted on March 16 of 1978. So we had a period from February the 6th until March 16 to consider that treaty.

We then went to the Panama Canal treaty. We began debate on March 17 of 1978 and we voted on that treaty on April 18 of 1978. In other words, roughly 6 weeks on one treaty and a month on the other treaty.

Mr. BYRD. Yes.

Mr. SARBANES. Neither of which involved the prospect of going to war.

Mr. BYRD. Exactly.

Mr. SARBANES. Now, as I understand it, we are facing the prospect of, in effect, terminating all debate, precluding a lot of potential amendments, and ending this matter in about one week's time, a matter of this grave import. I ask the Senator if that is correct.

Mr. BYRD. Absolutely correct. Absolutely correct.

Mr. SARBANES. I make this observation to my colleague. It seems to me it is a sad commentary.

Mr. WARNER. Might I make an observation along the lines of the distinguished colleague now debating this?

The PRESIDING OFFICER. The Senator from West Virginia has the floor.

Mr. BYRD. Then I will be glad to yield.

Mr. SARBANES. The distinguished Senator from Virginia, I have been watching him. He is marshaling the war forces on the floor of the Senate.

Mr. MCCAIN. Is this regular order?

Mr. SARBANES. I see as part of that process, any time anyone speaks, he wants to make an observation. I would be happy to hear it so I get an opportunity to respond.

The PRESIDING OFFICER. The regular order is the Senator from Maryland may ask a question of the Senator from West Virginia.

Mr. BYRD. Mr. President, I share that feeling, and in due time we will get that explanation.

At this moment I appeal, I appeal to the Members of the Senate to find a way to give unanimous consent to put aside this vote on tomorrow and delay it so as to give this Senate more time to debate and to act upon this resolution, which is so weighty, involving, as it does, the most serious, the most solemn question that can ever face this Senate, the question of peace or war. We are being hurried by the rules of the Senate, we are being hurried into reaching a decision that is premature.

I appeal to my colleagues. I appeal to my colleagues. The people out there in the country deserve better than this. They deserve a decision taken after due time, due consideration, ample consideration, ample opportunities to offer amendments and to have them decided.

As it is under the rules of the Senate, we will be forced tomorrow at 10:15 a.m. to vote on cloture. If enough Senators voted against cloture, that would be one thing. If 41 Senators opposed it—or put it this way: If those who support this resolution cannot get 60 votes tomorrow, then we would automatically have additional time.

I am concerned the way this Senate is being stampeded, stampeded. I don't blame any Senator in particular. Every Senator here is acting in accordance with the rules. I am asking that in this peculiar, unique situation involving so much of the country's treasury, in blood and in dollars, I am asking the Senators join with me in putting off this decision. It can be done. It can be done by unanimous consent. That is not asking too much. That is not asking too much.

We are talking about people who are in the military of this country who may have to go to war in a foreign country, depending on this vote tomorrow.

Mrs. BOXER. Will the Senator yield?

Mr. WARNER. Will the Senator yield?

Mr. BYRD. Let me first yield to the distinguished Senator from Virginia for a question, without losing my right to the floor.

Mr. WARNER. I thank my colleague and dear friend from West Virginia.

To both of my colleagues, the Senator from Maryland and the Senator from West Virginia, this debate, as stated, started on the 4th, which was last Friday.

The PRESIDING OFFICER. The Chair advises the Senator from Virginia and the Senator from Maryland that on further review of the Journal,