

Personally, as I have explained to my colleagues, I don't believe this is the appropriate bill on which to be addressing the minimum wage. We should be debating the war on terror and the progress that has been achieved in Iraq and the way we can further that success in the future.

We have agreed to set aside amendments so that the Senator from Massachusetts can offer an amendment on the minimum wage, and I second-degreed that amendment with a child custody protection amendment.

Our discussions have led to the understanding that after we figure out how we are going to address both the minimum wage and child custody protection over the course of this afternoon or tonight or tomorrow, we will get around to having a vote on the minimum wage issue.

There has been some discussion whether we had to file cloture on the minimum wage or on child custody protection, but we agree that, after further discussion, we will figure out the most appropriate manner to bring to the floor and address these issues over the next—I am not sure how long it will take, but figure out exactly how long that is. I do encourage our Members to come to the floor and to continue debating the underlying bill as well, the Department of Defense authorization bill.

Again, I wish that neither one of these issues that we just offered were going to be debated on this particular bill, but I understand it is the right of each Senator to come forward and offer those two bills.

Again, I will turn to my colleague from Massachusetts to make a statement as to whether that is the general understanding of where we are.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I thank the leader for his cooperation. As I understand what he is basically saying is that he will work out, I imagine with the Democratic leader, an appropriate time so at least the Senate will have an opportunity, before final passage of this legislation, that we will get a vote on my amendment or action on it related thereto. Am I right?

Mr. FRIST. That is correct.

Mr. KENNEDY. I thank the leader. Earlier in the day, I listened to the concerns of the leader about the appropriateness of my amendment on this legislation. I pointed out earlier, when I addressed the Senate, that I believe that our fighting men and women in Iraq, Afghanistan, and around the world are fighting for American values, and part of American values is economic fairness and economic justice, and part of economic fairness and economic justice is making sure we are going to treat American workers decently and fairly.

So I want to indicate both to the leader and, most particularly, to the chairman of the Armed Services Committee, we will work with him in every

possible way to work out the appropriate timing on it so that other serious work of the committee can move ahead in a timely way.

I thank both leaders.

The PRESIDING OFFICER. The majority leader.

Mr. FRIST. The challenge with the Department of Defense authorization bill is really just this, what is playing out; that is, for us to address what is the issue, I believe, that is most important to the United States today. That is supporting our men and women who are fighting so bravely and gallantly for us right now in this war on terror.

Thus, I believe that a minimum wage amendment should not be debated on this particular bill, but it looks like it will be debated on this particular bill. In the colloquy that was just entertained, it is clear we will be debating it on the bill.

It was clear last week the other side did not really want to stay on this issue of debating Iraq, surrounding Iraq. And by offering this amendment, they made it clear they do want to shift debate off to an entirely different issue, an issue that does have a time and a place that is more appropriate for it to be addressed. At that time, we should be debating the overall economy and the impact that it would have on small business and on jobs in this country.

We need to also have that debate on how to maintain, to continue the strong economic growth that we are seeing in this country today because of President Bush's strong progrowth economic policies which have created 5.3 million jobs in the last 3 years. We have unemployment that is down to 4.7 percent, which is lower than the average of the 1990s and 1980s and 1970s.

In order to keep the economy growing, we need to continue to debate how to open new markets, how to reduce the burden on our economy of taxation and regulation, how we make education more affordable, how we tackle health care costs—all of which are very important issues.

Again, I prefer not to debate all those issues on this important bill, the Department of Defense authorization bill. We need to look, at some point, at the issues surrounding our overall economy, a progrowth package, and look at the issues surrounding the minimum wage, but to do it in isolation on a totally unrelated bill I don't think is the way to go.

On this bill, I do believe America can do better.

Mr. President, I yield the floor.

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

The PRESIDING OFFICER. The clerk will please call the roll.

The bill clerk proceeded to call the roll.

Mr. REID. 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. REID. Mr. President, what is the matter before the Senate at this time?

The PRESIDING OFFICER. The second-degree amendment of the Senator from Tennessee, Mr. FRIST, to the amendment from the Senator from Massachusetts.

Mr. REID. We are on the Defense bill, then?

The PRESIDING OFFICER. That is correct, until 4 o'clock.

Mr. REID. Mr. President, at an appropriate time I will lay down an amendment. Right now I will just speak on it for a few minutes.

(The remarks of Mr. REID pertaining to the introduction of S. 3536 are printed in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. President, the hour of 4 o'clock will be here in a couple minutes, and I have a few more minutes to speak. I ask unanimous consent that I be allowed to finish my statement using leader time, and that the 4 o'clock time for consideration of the judicial nomination be extended for probably less than 5 minutes.

The PRESIDING OFFICER. Is there objection?

Mr. WARNER. No objection.

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

Mr. REID. Mr. President, I extend my appreciation to the distinguished Senator from Virginia, Mr. WARNER.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I had stepped off the floor for a minute. You are going to introduce your legislation as an amendment to the authorization bill.

Mr. REID. Yes, but I will do it at a subsequent time.

Mr. WARNER. I appreciate that cooperation.

Mr. REID. I want to talk to Senator LEVIN and the chairman before offering it.

Mr. WARNER. I thank my colleague. I believe we should proceed under the standing order.

EXECUTIVE SESSION

NOMINATION OF SANDRA SEGAL IKUTA TO BE UNITED STATES CIRCUIT JUDGE FOR THE NINTH CIRCUIT

The PRESIDING OFFICER. Under the previous order, the hour of 4 p.m. having arrived, the Senate will proceed to executive session for consideration of Executive Calendar No. 699, which the clerk will report.

The legislative clerk read the nomination of Sandra Segal Ikuta, of California, to be United States Circuit Judge for the Ninth Circuit.

The PRESIDING OFFICER. Under the previous order, the time until 5 p.m. shall be equally divided between the Senator from Pennsylvania, Mr. SPECTER, and the Senator from

Vermont, Mr. LEAHY, or their designees.

Mr. WARNER. Mr. President, it is my understanding that at 5 o'clock we will have the vote; is that correct?

The PRESIDING OFFICER. The Senator is correct. Under the previous order, the Senate will vote at 5 p.m. on the nomination.

Mr. WARNER. Upon the conclusion of that vote, would the Chair advise, are there any orders with regard to the business to be conducted then by the Senate?

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

Mr. WARNER. On the authorization bill for the Armed Forces?

The PRESIDING OFFICER. The authorization bill is the pending legislative business, so the answer is yes.

Mr. WARNER. I thank the Chair. It is my understanding two Senators, both of whom are members of the Armed Services Committee, the senior Senator from Georgia and the Senator from Rhode Island, desire to address the Senate. I want it clearly understood, we do not wish to have additional amendments filed. I will have to work this out in the interim period. I will do my best to accommodate these Senators without amendments being filed to the bill at this time.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. WARNER. 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. WARNER. Momentarily, I will ask that the quorum call be reinstated, but I ask unanimous consent that the time be allocated equally between both sides on the pending nomination.

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

Mr. WARNER. 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 Senator from Pennsylvania.

Mr. SPECTER. 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. SPECTER. Mr. President, I have sought recognition to speak on the nomination of Ms. Sandra Segal Ikuta to be a judge for the U.S. Court of Appeals for the Ninth Circuit. Ms. Ikuta was nominated by President Bush to be a judge for the Ninth Circuit on February 8, 2006. Her hearing was held on May 2, 2006. Thanks to the cooperation of the distinguished ranking member, Senator LEAHY, and all members of the committee, we processed her through on May 25, 2006, and she is now ready for a confirmation vote by the Senate.

Ms. Ikuta has an extraordinary record. She received a bachelor's degree from the University of California, Phi Beta Kappa, a master's degree from Columbia University School of Journalism, and a law degree from the University of California. She clerked for Judge Kozinski of the Ninth Circuit. Ms. Ikuta then clerked for U.S. Supreme Court Justice Sandra Day O'Connor. Following her Supreme Court clerkship, she went to work for O'Melveny & Myers as an associate, becoming a partner in 1997. She specialized in environmental law, including serving as co-chair of the firm's environmental practice group.

She then entered public service as Deputy Secretary and General Counsel to the California Resources Agency in Governor Schwarznegger's administration. She has written extensively in the field of environmental law, served as chair of the environmental section of the Los Angeles County Bar in 2001 and 2002, and she received a unanimous "well qualified" rating from the American Bar Association. I urge my colleagues to confirm her.

Mr. President, before yielding to my distinguished colleague, let me again thank him for all of his cooperation, and we will soon celebrate a year and a half of very productive, very cooperative, very collegial work on the Senate Judiciary Committee.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, I thank the distinguished senior Senator from Pennsylvania. He and I have been friends since the day we were both prosecutors, and I think that has helped in running that committee.

Today the Senate will confirm another lifetime appointment to our Federal courts. Sandra Segal Ikuta, who has been nominated to a seat on the Court of Appeals for the Ninth Circuit, has the support of her home-state Senators, Senator FEINSTEIN and Senator BOXER. Her nomination was reported unanimously by the Judiciary Committee last month as we expedited consideration through the committee.

I am pleased that the Republican leadership has scheduled debate and consideration of this nomination and am glad that the Republican leadership is this month taking notice of the fact that we can cooperate on swift consideration and confirmation of consensus nominations. Working together, we confirmed 5 judges in 1 week earlier this month. All of them could have been confirmed last month if the Republican leadership had chosen to make progress instead of picking a fight on a controversial nomination. I look forward to working with the Republican leadership to schedule debate and consideration of Andrew Guilford, who has been nominated to the United States District Court for the Central District of California.

I, again, commend the Republican Senate leadership for wisely passing over the controversial nominations of

William Gerry Myers III, Terrence W. Boyle, and Norman Randy Smith. The Republican leadership is right to have avoided an unnecessarily divisive debate over these nominations that were reported on a party-line vote.

During the 17 months I was Chairman of the Judiciary Committee and the Senate was under Democratic control, we confirmed 100 of President Bush's nominees. After today, in the last 17 months under Republican control, the Senate will have confirmed 44. With this nomination, the Senate has confirmed 22 judicial nominations this year and equaled its total for all of last year.

Judicial vacancies continue to hover just under the 50 mark, but more than half of these vacancies have no nominee. I urge the White House to work with Senators from both parties to select nominees who can be expeditiously considered and confirmed like Ms. Ikuta.

I am particularly pleased that they have chosen to turn to the nomination of Ms. Ikuta who, like Judge Milan Smith, is a nominee to the Ninth Circuit. Ms. Ikuta is a consensus nominee who can be easily confirmed. Unfortunately, the same cannot be said about another pending Ninth Circuit nominee, Norman Randy Smith. In nominating Judge Smith of Idaho for a lifetime appointment to the Ninth Circuit, President Bush broke with the longstanding precedent of replacing each circuit court vacancy with a nominee from the same State, taking away a California seat on the Ninth Circuit. Senators FEINSTEIN and BOXER expressed their strong opposition to this nomination in a January 30, 2006, letter to Chairman SPECTER.

I have urged President Bush to resolve this impasse by doing the right thing and nominating Judge Smith not for a California seat but for the vacancy created by the retirement of Judge Thomas G. Nelson from Idaho. Regrettably, he has not done so.

In their letter to Chairman SPECTER, Senators FEINSTEIN and BOXER expressed their concerns that the confirmation of Judge Smith to the Ninth Circuit would transfer a judgeship from California to Idaho, violating historical precedent. Judge Smith has been nominated to fill the seat last occupied by Judge Stephen Trott, an appointee of President Ronald Reagan from California, whose retirement in 2004 created this vacancy. Judge Trott was from California, where he had practiced for much of his career prior to becoming a judge. In fact, he was nominated to fill the seat of another Californian, Judge Joseph Sneed. At the time of his nomination, while he worked at the Department of Justice in Washington, the Senators from California were consulted and it was understood to be a California seat.

While an agreement can sometimes be worked out among Senators and the White House to proceed with someone from another State within the circuit

first, so long as the subsequent nomination comes from the first State, I do not know of any precedent for shifting a circuit seat based on a judge's personal decision to change his or her personal residence. If that were to become the rule, I expect that Vermont might well benefit from judges initially named as from New York or Connecticut recognizing the beauty and lifestyle that Vermont has to offer and moving to the Green Mountain State. But that is not the rule and has never been the rule. Instead, we have worked out circuit court allocations among the States based on tradition and history.

Of course this White House has attempted to steal a seat before, when it attempted to replace a Maryland Fourth Circuit judge with someone from Virginia. That attempt was unsuccessful. That was the ill-fated nomination of Claude Allen, a White House insider who has since resigned his high-ranking position and been arrested on charges of retail theft.

I am sensitive that every State within a circuit should have at least one judge come from that State. I supported legislation to ensure that and to afford Hawaii a seat on the Ninth Circuit. I will defend Idaho's right to a seat on the Ninth Circuit, just as I defend Vermont's right to a seat on the Second Circuit. However, Judge Smith was not nominated to Idaho's seat. If the President would take my suggestion and renominate him to that Idaho vacancy, that would resolve this problem.

Judge Ikuta will occupy a California seat on the Ninth Circuit previously held by Judge James R. Browning. Judge Browning was an extraordinary jurist for whom the Ninth Circuit's building in San Francisco was recently named. She has a great tradition to uphold and I wish her well. I congratulate her and her family on her confirmation.

While I am pleased that the Senate will today confirm Ms. Ikuta to the Ninth Circuit, I note that President Bush has yet to nominate a single Asian-Pacific American candidate to any of the dozens of vacancies that have arisen on our federal circuit courts. Indeed, President Bush has nominated only one Asian-American candidate out of the hundreds of Federal judicial nominees he has named overall. There are many, many qualified Asian-American attorneys and judges. There is no quota or requirement that the Federal bench be diverse, but it is surprising that given the nominations he has had the opportunity to make, which are approaching 300, I can remember only a single Asian-Pacific American judicial nominee, and not one Asian-Pacific American appellate nominee. This lack of diversity in nominees is quite a contrast with the record of President Clinton, who appointed several Asian-Pacific nominees to the district and appellate courts. President Clinton appointed Judge Denny Chinn, Judge George H.

King, Judge Anthony W. Ishii, and Judge Susan Oki Mollway to Federal district courts in New York, California and Hawaii, and who elevated Judge A. Wallace Tashima to the United States Court of Appeals for the Ninth Circuit. The current President is more interested in naming White House insiders and ideologues. In fact, he has nominated more people associated with the Federalist Society than African-American, Hispanic, and Asian-Pacific American nominees combined.

With the retirement of Judge Tashima from the Ninth Circuit, there are no Asian-American circuit court judges. Despite the opportunity presented with two Supreme Court vacancies in the past year to make the Nation's highest court better reflect America's diversity, the President has made the Supreme Court less diverse, failing even to fill the seat of the Court's first female Justice, Sandra Day O'Connor, with a qualified woman. Of course he was forced by the extreme faction of his own party to withdraw his nomination of his friend and counsel Harriet Miers before she even had a hearing.

President Clinton sought to add diversity to the Federal bench. This President is more focused on guaranteed results and making sure certain circuits will be stocked with those who tilt the courts to the right and rule in his favor.

Mr. President, if I have remaining time, I yield it back.

The PRESIDING OFFICER (Mr. CORNYN). Under the previous order, the hour of 5 p.m. having arrived, the Senate will proceed to vote on the nomination.

Mr. LEAHY. Mr. President, have the yeas and nays been ordered?

The PRESIDING OFFICER. They have not.

Mr. LEAHY. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The question is, Will the Senate advise and consent to the nomination of Sandra Segal Ikuta, of California, to be United States Circuit Judge for the Ninth Circuit?

The clerk will call the roll.

The legislative clerk called the roll.

Mr. McCONNELL. The following Senators were necessarily absent: the Senator from Kansas (Mr. BROWNBACK), the Senator from Pennsylvania (Mr. SANTORUM), the Senator from Montana (Mr. BURNS), the Senator from Louisiana (Mr. VITTER), the Senator from South Carolina (Mr. DEMINT), the Senator from Wyoming (Mr. ENZI), the Senator from Mississippi (Mr. LOTT), the Senator from Florida (Mr. MARTINEZ), the Senator from Arizona (Mr. MCCAIN), and the Senator from Alaska (Ms. MURKOWSKI).

Further, if present and voting, the Senator from South Carolina (Mr. DEMINT) would have voted "yea."

Mr. REID. I announce that the Senator from Delaware (Mr. BIDEN), the

Senator from Washington (Ms. CANTWELL), the Senator from Illinois (Mr. DURBIN), the Senator from Hawaii (Mr. INOUE), the Senator from Vermont (Mr. JEFFORDS), the Senator from South Dakota (Mr. JOHNSON), the Senator from Massachusetts (Mr. KERRY), the Senator from New Jersey (Mr. MENENDEZ), and the Senator from West Virginia (Mr. ROCKEFELLER) are necessarily absent.

I further announce that if present and voting, the Senator from Washington Ms. (CANTWELL), the Senator from Hawaii (Mr. INOUE), and the Senator from Massachusetts (Mr. KERRY) would each vote "yea."

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

The result was announced—yeas 81, nays 0, as follows:

[Rollcall Vote No. 175 Ex.]

YEAS—81

Akaka	Dodd	McConnell
Alexander	Dole	Mikulski
Allard	Domenici	Murray
Allen	Dorgan	Nelson (FL)
Baucus	Ensign	Nelson (NE)
Bayh	Feingold	Obama
Bennett	Feinstein	Pryor
Bingaman	Frist	Reed
Bond	Graham	Reid
Boxer	Grassley	Roberts
Bunning	Gregg	Salazar
Burr	Hagel	Sarbanes
Byrd	Harkin	Schumer
Carper	Hatch	Sessions
Chafee	Hutchison	Shelby
Chambliss	Inhofe	Smith
Clinton	Isakson	Snowe
Coburn	Kennedy	Specter
Cochran	Kohl	Stabenow
Coleman	Kyl	Stevens
Collins	Landrieu	Sununu
Conrad	Lautenberg	Talent
Cornyn	Leahy	Thomas
Craig	Levin	Thune
Crapo	Lieberman	Voinovich
Dayton	Lincoln	Warner
DeWine	Lugar	Wyden

NOT VOTING—19

Biden	Inouye	Menendez
Brownback	Jeffords	Murkowski
Burns	Johnson	Rockefeller
Cantwell	Kerry	Santorum
DeMint	Lott	Vitter
Durbin	Martinez	
Enzi	McCain	

The nomination was confirmed.

The PRESIDING OFFICER. Under the previous order, the President will be immediately notified of the Senate's action.

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will resume legislative session.

The Senator from Idaho.

MORNING BUSINESS

Mr. CRAIG. Mr. President, I ask unanimous consent that there now be a period of morning business, with Senators permitted to speak for up to 10 minutes each.

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