

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.