

Mr. HATCH (when his name was called). Present.

Mr. INHOFE (when his name was called). Present.

Mr. KYL. The following Senators are necessarily absent: the Senator from New Hampshire (Ms. AYOTTE), the Senator from South Carolina (Mr. DEMINT), the Senator from South Carolina (Mr. GRAHAM), the Senator from Illinois (Mr. KIRK), the Senator from Utah (Mr. LEE), the Senator from Arizona (Mr. MCCAIN), and the Senator from Alaska (Ms. MURKOWSKI).

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

The yeas and nays resulted—yeas 56, nays 34, as follows:

[Rollcall Vote No. 186 Ex.]

YEAS—56

Akaka	Gillibrand	Nelson (NE)
Baucus	Hagan	Nelson (FL)
Begich	Harkin	Pryor
Bennet	Inouye	Reed
Bingaman	Johnson (SD)	Reid
Blumenthal	Kerry	Rockefeller
Boxer	Klobuchar	Sanders
Brown (MA)	Kohl	Schumer
Brown (OH)	Landrieu	Shaheen
Cantwell	Lautenberg	Snowe
Cardin	Leahy	Stabenow
Carper	Levin	Tester
Casey	Lieberman	Udall (CO)
Collins	Manchin	Udall (NM)
Conrad	McCaskill	Warner
Coons	Menendez	Webb
Durbin	Merkley	Whitehouse
Feinstein	Mikulski	Wyden
Franken	Murray	

NAYS—34

Alexander	Grassley	Portman
Barrasso	Heller	Risch
Blunt	Hoeben	Roberts
Boozman	Hutchison	Rubio
Burr	Isakson	Sessions
Chambliss	Johanns	Shelby
Coats	Johnson (WI)	Thune
Cochran	Kyl	Toomey
Corker	Lugar	Vitter
Cornyn	McConnell	Wicker
Crapo	Moran	
Enzi	Paul	

ANSWERED "PRESENT"—3

Coburn	Hatch	Inhofe
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NOT VOTING—7

Ayotte	Kirk	Murkowski
DeMint	Lee	
Graham	McCain	

The PRESIDING OFFICER. On this vote, the yeas are 56, the nays are 34, 3 Senators responded "present." Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

Mr. COBURN. We just disallowed one of the best candidates for the appellate court in my 8 years since I have been in the Senate. Magistrate Judge Bob Bacharach is a stellar individual rated "very highly qualified" by the American Bar Association. What has happened is we are in the position today because of games that are being played, political games.

Let me just put into the RECORD what is going on. There are three judges ahead of Bob Bacharach in line. We have had a Leahy-Thurmond rule for some 20 years. I have been quoted saying I think it is a stupid rule. But the background is that protecting the prerogative of the Senate is one of the

most important things the majority leader can do.

What we have seen happen with the lack of agreement this last holiday season over the moving forward of judges and their approval was the unconstitutional usurpation of power by the President of the United States in the appointment, during our pro forma sessions, of four individuals, one to CFPB and three to the NLRB.

Quite frankly, if we look at what Madison wrote in Federalist 51:

The great security against a gradual concentration of the several powers in the same branch of government consists in giving to those who administer each branch the necessary constitutional means and personal motives to resist encroachment of the others. Ambition must be made to counteract ambition. The interest of the man must be connected with the constitutional rights of the place.

So started the saga in January of this past year, where the reaction of my colleagues on my side of the aisle was to shut down, in response to the President's move, all circuit court confirmations.

I stood in my caucus and fought that. I thought it was the wrong action then. I still think it would have been the wrong action. But I convinced my caucus not to go that direction. To do that, I agreed I would consent to the Leahy-Thurmond rule in this election cycle. But I hope this is the last election cycle we use the Leahy-Thurmond rule.

Because on the other side of the constitutional issues is that a duly elected President does have the right to have their nominees considered, whether I agree with them or not. To prove this, that this was a stunt rather than anything other than that, and Bob Bacharach becomes the pawn in that, is that we had an agreement on judges. Then we had cloture filed on fourteen district court judges, of which there was no real controversy.

All of those district court judges, after that cloture was filed on them and then withdrawn, have henceforth been approved. To the American public, the game is politics and not policy for our country. To me, it saddens me. It frustrates me that we are at this state because it is not a whole lot different than what we see in the playground at a kindergarten.

The person who most has spoken in favor of the Leahy-Thurmond rule is the chairman of the Judiciary Committee. Yet we find this impasse today. So what we ought to all do, every Member of the Senate and the Judiciary Committee during the break after this election, is work together to try to resolve this so this does not happen to any other President and does not do damage to the Senate and the integrity of the Senate and the game on judges. The President gets elected, with their home State Senators, they make a selection. We should not use the filibuster, unless a judge is highly questionable or biased in their viewpoint.

I regret that we are in this position. I think this was just a vote to delay

Bob Bacharach's eventual confirmation. If President Obama wins the election, I fully expect Judge Bob Bacharach will be approved. If he does not win the election, I plan on standing and fighting for this judge for this same position under a Republican President because he is exactly what we want on a court, someone who is right down the middle in terms of what the law means, what the Constitution means. He has stellar intellectual capabilities, and he has the qualities we all would want, both from the right and the left, as a fair decider of the facts. That is what we want in judges. He will make an ideal appellate judge, regardless of his political affiliation.

If we cannot get there then what that says is the partisan politics of today, as everybody outside Washington recognizes, is killing our country.

LEGISLATIVE SESSION

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

CYBERSECURITY ACT OF 2012

The PRESIDING OFFICER. Under the previous order, the motion to proceed to S. 3414 is agreed to and the clerk will report the measure.

The assistant legislative clerk read as follows:

A bill (S. 3414) to enhance the security and resiliency of the cyber and communications infrastructure of the United States.

The PRESIDING OFFICER. The majority leader.

Mr. REID. Madam President, I ask unanimous consent that there now be a period of debate only on S. 3414, and that this will go forward until 2:15 p.m. on Tuesday, July 31; further, that at 2:15 p.m. on that date, Tuesday, I be recognized.

The PRESIDING OFFICER. Is there objection?

Mr. COBURN. Madam President, reserving the right to object.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. COBURN. Just a question through the Chair to the majority leader. I had planned to make a statement on Judge Bacharach, and the Senator is saying we will have debate only. Will that preclude a unanimous consent for speaking as in morning business?

Mr. REID. The Senator can do that. It is totally appropriate.

Mr. COBURN. I thank the Senator.

I have no objection.

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

The Senator from New Hampshire.

Mrs. SHAHEEN. Madam President, if the majority leader is finished, I ask unanimous consent to speak as in morning business.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. REID addressed the Chair.