

“(i) notify the State that the Administrator proposes to suspend the authority and the reasons for the proposed suspension; and
“(ii) before taking final action to suspend authority under this subsection, provide the State an opportunity to respond to the proposal to suspend within 30 calendar days after the State receives notice under clause (i).

“(9) LIMITS ON LIABILITY.—No action for monetary damages may be heard in any Federal court against—

“(A) a State acting as a registering agency under the authority of and consistent with this subsection for injury or damage resulting from the use of a product registered by the State under this subsection; or

“(B) a registrant for damages resulting from adulteration or compositional alteration of a Canadian pesticide registered under this subsection if the registrant did not have and could not reasonably have obtained knowledge of the adulteration or compositional alteration.

“(10) DISCLOSURE OF INFORMATION BY ADMINISTRATOR TO THE STATE.—The Administrator may disclose to a State that is seeking to register a Canadian pesticide in the State information that is necessary for the State to make the determinations required by paragraph (4) if the State certifies to the Administrator that the State can and will maintain the confidentiality of any trade secrets and commercial or financial information provided by the Administrator to the State under this subsection to the same extent as is required under section 10.

“(11) PROVISION OF INFORMATION BY REGISTRANTS OF COMPARABLE DOMESTIC PESTICIDES.—

“(A) IN GENERAL.—On request by a State, the registrant of a comparable domestic pesticide shall provide to the State that is seeking to register a Canadian pesticide in the State under this subsection information that is necessary for the State to make the determinations required by paragraph (4) if the State certifies to the registrant that the State can and will maintain the confidentiality of any trade secrets and commercial and financial information provided by the registrant to the State under this subsection to the same extent as is required under section 10.

“(B) PENALTY FOR NONCOMPLIANCE.—

“(i) IN GENERAL.—If the registrant of a comparable domestic pesticide fails to provide to the State, not later than 15 days after receipt of a written request by the State, information possessed by or reasonably accessible to the registrant that is necessary to make the determinations required by paragraph (4), the Administrator may assess a penalty against the registrant of the comparable pesticide.

“(ii) AMOUNT.—The amount of the penalty shall be equal to the product obtained by multiplying—

“(I) the difference between the per-acre cost of the application of the comparable domestic pesticide and the application of the Canadian pesticide, as determined by the Administrator; and

“(II) the number of acres in the State devoted to the commodity for which the State registration is sought.

“(C) NOTICE AND OPPORTUNITY FOR HEARING.—No penalty under this paragraph shall be assessed unless the registrant is given notice and opportunity for a hearing in accordance with section 14(a)(3).

“(D) ISSUES AT HEARING.—The only issues for resolution at the hearing shall be—

“(i) whether the registrant of the comparable domestic pesticide failed to timely provide to the State the information possessed by or reasonably accessible to the reg-

istrant that was necessary to make the determinations required by paragraph (4); and
“(ii) the amount of the penalty.

“(12) PENALTY FOR DISCLOSURE BY STATE.—

“(A) IN GENERAL.—The State shall not make public information obtained under paragraph (10) or (11) that is privileged and confidential and contains or relates to trade secrets or commercial or financial information.

“(B) DISCLOSURE.—Any State employee who willfully discloses information described in subparagraph (A) shall be subject to penalties described in section 10(f).

“(13) DATA COMPENSATION.—A State or person registering a Canadian pesticide under this subsection shall not be liable for compensation for data supporting the registration if the registration of the Canadian pesticide in Canada and the registration of the comparable domestic pesticide are held by the same registrant or by affiliated entities.

“(14) FORMULATION CHANGES.—

“(A) IN GENERAL.—The registrant of a comparable domestic pesticide shall notify the Administrator of any change in the formulation of a comparable domestic pesticide or a Canadian pesticide registered by the registrant or an affiliated entity not later than 30 days before any sale or distribution of the pesticide containing the new formulation.

“(B) STATEMENT OF FORMULA.—The registrant of the comparable domestic pesticide shall submit, with the notice required under subparagraph (A), a confidential statement of the formula for the new formulation if the registrant has possession of or reasonable access to the information.

“(C) SUSPENSION OF REGISTRATION FOR NONCOMPLIANCE.—

“(i) IN GENERAL.—If the registrant fails to provide notice or submit a confidential statement of formula as required by this paragraph, the Administrator may issue a notice of intent to suspend the registration of the comparable domestic pesticide for a period of not less than 1 year.

“(ii) EFFECTIVE DATE.—The suspension shall become final not later than the end of the 30-day period beginning on the date of the issuance by the Administrator of the notice of intent to suspend the registration, unless during the period the registrant requests a hearing.

“(iii) HEARING PROCEDURE.—If a hearing is requested, the hearing shall be conducted in accordance with section 6(d).

“(iv) ISSUES.—The only issues for resolution at the hearing shall be whether the registrant has failed to provide notice or submit a confidential statement of formula as required by this paragraph.”.

(b) CONFORMING AMENDMENTS.—

(1) Section 24(c) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136v(c)) is amended—

(A) in paragraph (1), by inserting “IN GENERAL.—” after “(1)”;

(B) in paragraph (2), by inserting “DISAPPROVAL.—” after “(2)”;

(C) in paragraph (3), by inserting “CONSISTENCY WITH FEDERAL FOOD, DRUG, AND COSMETIC ACT.—” after “(3)”;

(D) by striking “(4) If the Administrator” and inserting the following:

“(4) SUSPENSION OF AUTHORITY TO REGISTER PESTICIDES.—Except as provided in subsection (d)(8), if the Administrator”.

(2) The table of contents in section 1(b) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. prec. 121) is amended by striking the item relating to section 24(c) and inserting the following:

“(c) Additional uses.

“(1) In general.

“(2) Disapproval.

“(3) Consistency with Federal Food, Drug, and Cosmetic Act.

“(4) Suspension of authority to register pesticides.

“(d) Registration of Canadian pesticides by States.

“(1) Definitions.

“(2) Authority to register Canadian pesticides.

“(3) Requirements for registration sought by person.

“(4) State requirements for registration.

“(5) Disapproval of registration by Administrator.

“(6) Labeling of Canadian pesticides.

“(7) Revocation.

“(8) Suspension of State authority to register Canadian pesticides.

“(9) Limits on liability.

“(10) Disclosure of information by Administrator to the State.

“(11) Provision of information by registrants of comparable domestic pesticides.

“(12) Penalty for disclosure by State.

“(13) Data compensation.

“(14) Formulation changes.”.

(c) EFFECTIVE DATE.—This section and the amendments made by this section take effect 180 days after the date of enactment of this Act.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON FOREIGN RELATIONS

Mr. SESSIONS. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, February 6, 2003, at 9:30 a.m., to hold a hearing on the foreign affairs budget.

Witness: The Honorable Colin L. Powell, Secretary, Department of State, Washington, DC.

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

COMMITTEE ON THE JUDICIARY

Mr. SESSIONS. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a markup on Thursday, February 6, 2003, at 11:30 a.m., in Dirksen Room 226.

(Tentative) Agenda

I. Nominations

Deborah Cook to be U.S. Court of Appeals Judge for the Sixth Circuit; John Roberts to be U.S. Court of Appeals Judge for the D.C. Circuit; Jeffrey Sutton to be U.S. Court of Appeals Judge for the Sixth Circuit; John Adams to be U.S. District Court Judge for the Northern District of Ohio; Robert Junell to be U.S. District Court Judge for the Western District of Texas; and S. James Otero to be U.S. District Court Judge for the Central District of California.

II. Bills

S. 253, A bill to amend title 18, United States Code, to exempt qualified current and former law enforcement officers from State laws prohibiting the carrying of concealed handguns. [Campbell/Leahy/Hatch/Grassley/DeWine/Kyl/Sessions/Craig/Cornyn/Graham/Feinstein/Schumer]

S. 113, A bill to exclude United States persons from the definition of "foreign power" under the Foreign Intelligence Surveillance Act of 1978 relating to international terrorism. [Kyl/Hatch/DeWine/Schumer/Chambliss]

III. Resolutions

S. , National Inventor's Day [Hatch/Leahy]

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

APPOINTMENT

The PRESIDING OFFICER. The Chair, on behalf of the Vice President, pursuant to Public Law 93-642, appoints the Senator from Washington (Mrs. MURRAY) to be a member of the Harry S Truman Scholarship Foundation Board of Trustees, vice the former Senator from Missouri (Mrs. Carnahan).

ORDERS FOR MONDAY, FEBRUARY 10, 2003

Mr. FRIST. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 11 a.m., Monday, February 10. I further ask unanimous consent that on Monday, following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and the Senate then return to executive session to resume consideration of the nomination of Miguel Estrada to be a circuit judge for the DC Circuit.

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

PROGRAM

Mr. FRIST. For the information of Senators, on Monday, the Senate will resume debate on the nomination of Miguel Estrada. We have had a number of Senators speak on the nomination over the past 2 days. The debate has been productive. I will continue to try to reach agreement with my colleagues on the other side of the aisle to set a time certain for a vote on the confirmation of this very important nomination.

In addition, I understand three additional district court judges were reported by the Judiciary Committee today. We are also attempting to clear several important pieces of legislation that may require a small amount of debate and a rollcall vote. If we are still unable to vote on the Estrada nomination on Monday, it would be my hope

and expectation to vote on a district judge or one of the bills we are working towards clearing. Therefore, Members should be on notice that the next rollcall vote can be expected approximately at 5:15 on Monday. We will alert Members to the precise timing, but it won't be any earlier than 5:15 on Monday.

Mr. REID. If I could interrupt the majority leader, I wish to speak for up to 15 minutes, and then Senator BIDEN wishes to speak for up to 15 minutes.

ORDER FOR ADJOURNMENT

Mr. FRIST. Mr. President, if there is no further business, I ask unanimous consent that the Senate resume executive session, and that following the remarks of the assistant Democratic leader for 15 minutes and the Senator from Delaware for up to 15 minutes, the Senate then stand in adjournment under the previous order.

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

EXECUTIVE SESSION

NOMINATION OF MIGUEL A. ESTRADA, OF VIRGINIA, TO BE UNITED STATES CIRCUIT JUDGE FOR THE DISTRICT OF COLUMBIA CIRCUIT—Continued

The PRESIDING OFFICER. The Democratic whip.

Mr. REID. I apologize to the Chair. I know the Chair has things to do. We have been in the same position. We know that it is not convenient sometimes to preside, but we were kind of dared to come out here today, even though there are a lot of things going on. We had a number of people who went to the memorial. Senators from the other side said: I am amazed there are no Democrats here to debate Estrada. We recognize there is going to be other time to debate, but we do not want the record to appear that we are not interested. That is the reason I came down here, to offer my opinion.

Migrada Estrada has literally had no paper trail. Despite what some of my colleagues have said on the other side of the aisle, it is indisputable that Solicitor General memoranda have been turned over in the past. For example, the Department of Justice turned over Solicitor General memoranda for Bork, Rehnquist, and Easterbrook. On executive branch appointments, the Department of Justice turned over memoranda for Benjamin Civiletti.

While my colleagues may note that former Solicitors General have written a letter opposing the release of these memos, they cite no legal authority for keeping these memos secret. Basically what they say is it would impede these people from writing their opinions. It doesn't happen very often that these people are asked to serve on the second highest court of the land. It is not often they are asked to serve on the

U.S. Supreme Court. But in cases in the past when that has occurred, with Rehnquist, Bork and, of course, another important appointment, Easterbrook, they were made available. And they should be made available here.

There is no attorney-client privilege at work here. The courts have determined that applying that privilege to Congress would impede our work. Both the House and the Senate have refused to recognize the privilege in their rules. Former Solicitors argue that the policy considerations of ensuring candid advice outweighs the Senate's interest in examining this nominee. I don't think that is valid.

As I mentioned, the precedent supports release of these memos to the Senate. Further, the United States' own Department of Justice guidelines from 2000 state:

Our experience indicates that the Justice Department can develop accommodations with congressional committees that satisfy their needs for the information that may be obtained in deliberative material while at the same time protecting the Department's interest in avoiding a chill in the candor of future deliberations.

It is my understanding the Department of Justice has made no attempt to reach such an accommodation with the Judiciary Committee. The stonewalling on the Estrada nomination is part of a larger systematic effort by this administration to disable the Senate, to govern in secret, to advance the interests of big business over the public interests.

I joined an amicus curiae brief in a matter where Vice President CHENEY had all these meetings with big oil companies. It was determined that there should be some divulging of whom he met with, when he met with them, and what they talked about. Litigation had to be filed on that, and I joined in that litigation, filing a friend of the court brief. It is not right that there be stonewalling. Here is another example of what has happened in this administration.

My colleague and a dear friend, the chairman of the Judiciary Committee, Senator HATCH, has called the Democratic calls for more information about Estrada "silly." Well, we have a role as Members of the Senate to advise and give consent to nominations forwarded to us by the White House. I don't think what we are asking is silly.

My friend may not agree with our position, but it is not a silly position. Here is a person about whom the Hispanic caucus of the Congress unanimously said: We don't want him.

Here is a person about whom I put in the RECORD over 50 organizations yesterday saying: We don't want him.

There are lots of different reasons organizations give based on his qualifications, his temperament. We have one of his former employers who said his temperament, demeanor is not appropriate to serve on a circuit court. In fact, he said he was an ideologue.