



United States
of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 108th CONGRESS, FIRST SESSION

Vol. 149

WASHINGTON, WEDNESDAY, FEBRUARY 26, 2003

No. 31

Senate

The Senate met at 9:30 a.m. and was called to order by the President pro tempore (Mr. STEVENS).

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Majestic God, Creator of many different races and colors in the human family, we ask for love as inclusive as Your love and attitudes as free of prejudice as You have shown in Your care for all people.

This month as we gratefully recognize the importance of African Americans in our history, remind us of the truth that Dr. Martin Luther King expressed that "the content of our character" is the highest goal we can achieve. So many outstanding black Americans have risen to prominence in our Nation's history because of the content of their character.

We thank You for Phillis Wheatley, who, in the 18th century at a very young age, achieved international fame as the first black woman poet. We remember women's rights activist and abolitionist Sojourner Truth and civil rights heroine Rosa Parks. We also remember Richard Allen, who, at the dawning of the 19th century, mobilized the black community in Philadelphia and formed the first independent black denomination. We praise You for distinguished athletes like Jackie Robinson and educators like George Washington Carver.

As we work today, may these principled Americans be our examples. Let our words, thoughts, and actions reflect the content of Your character. Thank You for being our Lord and Saviour. Amen.

PLEDGE OF ALLEGIANCE

The Honorable HARRY REID, a Senator from the State of Nevada led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Repub-

lic for which it stands, one nation under God, indivisible, with liberty and justice for all.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDING OFFICER (Mr. BROWNBACK). The majority leader.

SCHEDULE

Mr. FRIST. Mr. President, the Senate will spend the day in executive session deliberating, once again and for the 10th day, the nomination of Miguel Estrada to be a circuit judge for the DC Circuit. Indeed, today will be a very full day. I envision a protracted session extending late into the evening. Roll-call votes are expected in an effort to make progress toward confirming this nominee in order to fill this judicial vacancy.

There is an empty courtroom and a backed up docket awaiting this judge. I hope my colleagues will cooperate so that this ready, willing, and able nominee can report for work at the DC Circuit courthouse.

I ask unanimous consent that a letter to the President dated February 25, 2003, signed by 52 Senators, stating that they "express the strong, majority support in the United States Senate for Miguel Estrada," be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

UNITED STATES SENATE,
Washington, DC, February 25, 2003.
The Hon. GEORGE W. BUSH,
The White House, 1600 Pennsylvania Avenue,
N.W., Washington, DC

DEAR MR. PRESIDENT: We write to express the strong, majority support in the United States Senate for Miguel Estrada, your nominee to the United States Court of Appeals to the District of Columbia Circuit.

Mr. Estrada's professional accomplishments and personal achievement are truly impressive. He graduated magna cum laude from both Columbia College, where he was

elected to Phi Beta Kappa, and Harvard Law School, where he served as an editor of the Harvard Law Review. He clerked on the Second Circuit Court of Appeals and the Supreme Court of the United States. Miguel Estrada served with distinction as an assistant U.S. Attorney in the prestigious Southern District of New York, rising to Deputy Chief of the Appellate section, and in the Solicitor General's office during both Republican and Democrat Administrations where he argued fifteen cases before the Supreme Court.

It is no wonder Mr. Estrada received a rare, unanimous rating of "well qualified" from the American Bar Association, what many of our colleagues call the coveted "Gold Standard."

Mr. Estrada's professional successes are even more remarkable in light of his compelling personal story. After emigrating from Honduras at the age of seventeen, he reached the pinnacle of his profession by overcoming a speech impediment and mastering a second language. These are daunting challenges for anyone; they are particularly impressive when one's profession is the practice of oral advocacy before the nation's highest court.

Despite his obvious qualifications and remarkable personal story, we have been unable to obtain fair consideration on the Senate floor for Mr. Estrada's nomination. Nevertheless, we, the undersigned majority in the United States Senate, commend you for your outstanding choice, and will continue to work diligently to ensure Mr. Estrada receives a simple up or down vote on the Senate floor.

Sincerely,
Mitch McConnell, Zell Miller, Bill Frist, Conrad Burns, Norm Coleman, Lisa Murkowski, Pete Domenici, Joe Kyl, John Cornyn, Jim Bunning, Judd Gregg, Arlen Specter, Orrin Hatch, Robert Bennett, Mike Crapo, Jim Talent, Michael B. Enzi, Lindsey Graham, George Allen, Susan Collins, Ben Nighthorse Campbell, Ted Stevens, Lamar Alexander, Wayne Allard, Richard Shelby, Mike Dewine, Craig Thomas, George V. Voinovich, Richard G. Lugar, Jeff Sessions, John Ensign, Rick Santorum, John E. Sununu, Elizabeth Dole, Don Nickles, Pat Roberts, James Inhofe, Saxby Chambliss, Peter Fitzgerald, Trent Lott, Thad Cochran, Kay Bailey Hutchison, Chuck Hagel, Larry E. Craig, Gordon Smith, John McCain, Sam Brownback, Kit Bond,

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.



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John Warner, Chuck Grassley, Lincoln Chafee, and Olympia Snowe.

Mr. FRIST. I will be very brief, but I will quote four paragraphs from this letter which does demonstrate the majority support of Senators for this nominee. The letter itself is dated February 25, 2003. The letter is to the President of the United States.

First paragraph:

Dear Mr. President, we write to express the strong, majority support in the United States Senate for Miguel Estrada, your nominee to the United States Court of Appeals to the District of Columbia Circuit.

The second paragraph reads:

Mr. Estrada's professional accomplishments and personal achievement are truly impressive. He graduated magna cum laude from both Columbia College, where he was elected to Phi Beta Kappa, and Harvard Law School, where he served as an editor of the Harvard Law Review. He clerked on the Second Circuit Court of Appeals and the Supreme Court of the United States. Miguel Estrada served with distinction as an assistant U.S. attorney in the prestigious Southern District of New York, rising to Deputy Chief of the Appellate section, and in the Solicitor General's Office during both Republican and Democrat Administrations, where he argued fifteen cases before the Supreme Court.

It is no wonder Mr. Estrada received a rare, unanimous rating of "well qualified" from the American Bar Association, what many of our colleagues called the coveted "Gold Standard."

Mr. Estrada's professional successes are even more remarkable in light of his compelling personal story. After emigrating from Honduras at the age of seventeen, he reached the pinnacle of his profession by overcoming a speech impediment and mastering a second language. These are daunting challenges for anyone; they are particularly impressive when one's profession is the practice of oral advocacy before the nation's highest Court.

Mr. President, the last paragraph before the pages of the signators of a majority of people in this body, 52 Senators, reads:

Despite his obvious qualifications and remarkable personal story, we have been unable to obtain fair consideration on the Senate floor for Mr. Estrada's nomination. Nevertheless, we, the undersigned majority in the United States Senate, commend you for your outstanding choice, and will continue to work diligently to ensure Mr. Estrada receives a simple up or down vote on the Senate floor.

Again, there are 4 pages of signatures. The first page is signed by Senators MITCH MCCONNELL and ZELL MILLER, followed by 50 signatures, which is now in the RECORD.

We will have a full day today. I look forward to continuing the discussions as we go forward.

RESERVATION OF LEADER TIME

The PRESIDING OFFICER. Under the previous order, the leadership time is reserved.

EXECUTIVE SESSION

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

The PRESIDING OFFICER. Under the previous order, the Senate will now go into executive session and resume consideration of Executive Calendar Order No. 21, which the clerk will report.

The assistant legislative clerk read the nomination of Miguel A. Estrada, of Virginia, to be United States Circuit Judge for the District of Columbia Circuit.

The PRESIDING OFFICER. The Senator from Nevada.

ORDER FOR RECESS

Mr. REID. Before the majority leader leaves the floor on a matter regarding what we are going to do this afternoon, at 2:30 today it is my understanding the Secretary of Defense will be here to brief Senators. I think it would be in everyone's interest if we had at least an hour recess during the time the Secretary is here.

Mr. FRIST. Mr. President, given the circumstances surrounding and leading to the discussion today at 2:30, that would be satisfactory on our part.

We will likely be in session late this afternoon, into the evening, because there are a number of issues we do want to address. It is appropriate to be in recess from 2:30 to 3:30 today.

Mr. REID. I ask unanimous consent that that be in order.

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

The Senator from Nevada.

Mr. REID. Mr. President, Senator HATCH is in the Chamber, as well as Senator DORGAN, who has been trying to speak for 2 days now. It is obvious there are not enough votes, as indicated by the letter sent to the President. The fact is that there are three ways to dispose of Estrada: No. 1, pull the nomination so we can go to other issues that affect this country, such as the economy, such as have a discussion relating to the global warming document that came out today indicating there certainly needs to be a lot more done regarding global warming. It certainly is time we should be talking about the education of our children. Yesterday, the Democratic leader offered an economic stimulus plan. We wanted to bring that to the floor. So the nomination should be pulled for those other reasons.

If that is not the case, then there is another way of disposing of this matter perhaps—by having the majority file a cloture motion. That failing, it seems to me they should meet our request to have him honestly—I should not say honestly—thoroughly answer questions that have been propounded to him; and, secondly, submit the memos to this body, at least to the Judiciary Committee, so they can review the memos he wrote while he was Solicitor General.

That failing, we can stay in tonight and tomorrow night, whatever the leader decides to do, but as I have indicated before, now that the majority has changed, the majority has to preside and we will have people to protect our interests on the floor, so that is certainly no punishment to us.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I have been interested in the approach by the other side. Yesterday, they came on the floor and said, oh, my goodness, we should get rid of this because we have so many important issues to take care of. There is one way to get it rid of it, and that is to let the people's representatives in the Senate vote. That is what the Washington Post said: Just vote. Vote up or down.

The real reason they are not allowing a vote—because, as we can see from the letter, we have at least 52 votes and there have been at least 3 other Senators on the minority side who have said they are going to vote for Mr. Estrada. So there are at least 55 votes for Mr. Estrada, and I believe there will be others votes as well.

It is one thing to support your party and to stand in an intractable way against the first Hispanic ever nominated to the Circuit Court of Appeals for the District of Columbia. It is another thing to come on the floor and say we are not going about the people's business because we are dealing with this incidental judicial nomination. Well, it is not incidental. It is one of the most important nominations in the country.

This is a man who really deserves to be on the Circuit Court of Appeals for the District of Columbia. This is a man who has every credential and has not had a glove laid on him. That is why the fishing expedition request into privileged matters. They want to get his recommendations, or I suppose in the future anybody's recommendations, especially Republicans who might have worked in the Solicitor General's Office, on appeals, on certiorari petitions, and on amicus curiae matters. Those have never been given to anybody. Those are the crucial documents upon which the Solicitor General, the people's attorney, makes decisions as to where to go and what to do. There is only one reason they would like to get these privileged documents, and that is they are on a fishing expedition because they have not been able to find anything to hang on Miguel Estrada yet, other than these phony accusations that he has not answered the questions.

My gosh, the hearing transcript is that thick; the briefs he has filed and the answers in the testimony before the Supreme Court, two volumes, that thick. They have more materials on Mr. Estrada to know what he is and what he is about than almost any judicial nominee, other than the Supreme Court, who has been nominated in the whole 27 years I have been in the Senate. I think my colleagues can take it