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# Senate

The Senate met at 2 p.m. and was called to order by the Honorable RICHARD BURR, a Senator from the State of North Carolina.

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Our God, Creator of all life, we come in thankfulness because You have loved us through all the days of our lives. We find peace in the knowledge that You know us and accept us as we are. Thank You for enabling us to run and not be weary, to walk and not faint. Keep us always in Your care.

Bless our Senators. Forgive them when they make mistakes and give them comfort when they feel downhearted. Keep them from selfishness. Give them wisdom and courage to live each day as Your children and as brothers and sisters to each other.

God, bless our Nation, drive back the forces of evil and release the powers of goodness throughout our land.

We pray in Your strong Name, Amen.

## PLEDGE OF ALLEGIANCE

The Honorable RICHARD BURR led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

## APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. STEVENS).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
*Washington, DC, May 9, 2005.*

*To the Senate:*

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable RICHARD BURR, a Senator from the State of North Carolina, to perform the duties of the Chair.

TED STEVENS,
*President pro tempore.*

Mr. BURR thereupon assumed the chair as Acting President pro tempore.

## RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

## RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

## SCHEDULE

Mr. FRIST. Mr. President, today we will shortly resume consideration of the highway bill. There are a couple of Members desiring to speak on other subjects prior to going back to the highway legislation, and we will accommodate those statements. I will have a brief statement. The Democrat leader has a statement, as well.

Chairman INHOFE will be managing the highway bill today. As we announced prior to the recess, we expect a vote this evening at approximately 5:30 p.m. That vote will be in relation to an amendment on the highway bill. Several Senators have indicated they would be available today to offer amendments. We hope to schedule one of those for a vote this evening.

We are now beginning our second week of work on the highway bill. The managers have patiently waited for Members to come to the Senate to offer their amendments. I am concerned about the pace of the bill. We need to finish the bill this week. I put our colleagues on notice that we will use cloture if necessary to bring this bill to conclusion.

Having said that, be prepared for full sessions to consider and dispose of highway amendments over the next few days. As I think about it, I want to make it clear to our Members, we will be voting throughout this week, including Friday.

With respect to the emergency supplemental appropriations bill, that should now be at the desk. Our expectation is to begin debate on that conference report this evening. I hope any Member who wants to speak will stay this evening for debate in order to schedule a vote on the emergency supplemental appropriations conference report sometime tomorrow, hopefully early tomorrow. I will be consulting further with the Democrat leader on the exact timing but, again, we want to vote as early as possible on Tuesday so we can get back to the highway bill.

I thank our colleagues in advance for their help on these two important measures.

Mr. REID. Mr. President, if I could make a brief comment on the highway bill: I agree with the distinguished leader that we need to move forward on this bill. I have been advised over the last several days, and had a couple calls this morning, that they are having problems with the transit section of the bill. Senators SHELBY and SARBANES want a little different formula than is in the bill. They are working on that now as we speak. I hope they can get that worked out. A significant amount of work has gone into the bill not only by members of the Environment and Public Works Committee and the Banking Committee, which has jurisdiction over transit, but also by the Finance Committee. It is a very complicated bill.

I underscore what the distinguished Republican leader said. It is my understanding that Senators BAUCUS and GRASSLEY are going to lay down an amendment today. I hope everyone would offer their amendments on this bill. I have had a lot of comments from

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



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Members saying they have concerns about what is in the bill. This is an opportunity to lay down the amendments. We have been told by the distinguished Republican leader today that if there is no progress on this bill he is going to file cloture. This is the highway bill. This is not a bill where cloture will not be invoked. There is wide-ranging support for this bill.

I hope everyone follows the admonition the Republican leader just gave and be ready with amendments because, if we wind up waiting much longer, we will not have an opportunity to do that.

The ACTING PRESIDENT pro tempore. The majority leader.

## JUDICIAL NOMINATIONS

Mr. FRIST. Mr. President, 4 years ago today President Bush nominated Miguel Estrada to the District of Columbia Circuit Court of Appeals. His nomination should have gone smoothly. The American Bar Association pronounced him highly qualified, a rating my colleagues on the other side of the aisle once called the gold standard. He clerked for a Supreme Court Justice and worked in both the Bush and Clinton administrations.

The Honduran immigrant then won top honors at Columbia University and Harvard Law School. Miguel Estrada epitomized the American dream. But Miguel Estrada's nomination never received an up-or-down vote. A minority of Senators used the filibuster to stop the Senate from exercising its constitutional duty to advise and consent.

Senators supporting his nomination made seven attempts to bring his nomination to a vote. Each time the effort failed. Finally, after enduring 2 years of obstruction, Miguel Estrada withdrew his name from consideration.

Unfortunately, today marks the fourth anniversary of another candidate whose nomination is, likewise, being blocked. Priscilla Owen, who has served on the Texas Supreme Court for 10 years, has earned the praise of both Republicans and Democrats. Judge Owen won reelection to the Texas bench with 84 percent of the vote and the endorsement of every major newspaper in the State.

Former justice Raul Gonzalez, a Democrat, says:

> I found her to be apolitical, extremely bright, diligent in her work, and of the highest integrity. I recommend her for confirmation without reservation.

Still, a minority of Senators is using the filibuster to stop this Senate from exercising its constitutional duty to advise and consent, to vote up or down, to vote yes or no, to vote, confirm or reject.

This campaign of obstruction is unprecedented. Before Miguel Estrada, the Senate had never denied a judicial nominee with majority support an up-or-down vote. In the last Congress, the President submitted 34 appeals court nominees to the Senate. Ten of those nominees continue to be blocked. Each has been rated ''qualified'' or ''well-qualified'' by the American Bar Association, each has the majority support of the Senate, and each would be confirmed if brought to the Senate floor to a vote.

Meanwhile, the other side threatens to shut down the Senate and obstruct government itself if it does not get its way. Instead of thoughtful deliberation and debate, a small minority is attempting to change 225 years of constitutional history. Former Senate majority leader Bob Dole is correct when he says:

> By creating a new threshold for the confirmation of judicial nominees, the Democratic minority has abandoned the tradition of mutual self-restraint that has long allowed the Senate to function.

Precedent has been replaced with partisanship, and respect for the separation of powers tossed aside.

Now, 12 of the 16 court of appeals vacancies have been officially declared judicial emergencies. The Department of Justice tells us that the delay caused by these vacancies is complicating their ability to prosecute criminals. The Department also reports that due to the delay in deciding immigration appeals, it cannot quickly deport illegal aliens who are convicted murderers, rapists, and child molesters. Additionally, there are notoriously long delays in deciding habeas petitions, meaning that both victims' families and prisoners often wait years before getting final resolution on murder convictions.

All of this obstruction must stop. It is hurting the nominees. It is hurting the Senate. It is hurting the American people.

For most of the 20th century the same party controlled the White House and the Senate. Yet until the last Congress, no minority ever denied a judicial nominee with majority support an up-or-down vote. They treated judicial nominees fairly. They respected the Senate's role in the appointments process designed by the Framers.

Before the recess, I came to the Senate to offer a compromise. That proposal was simple: Appeals court judicial nominees should get a fair, open, and exhaustive debate, and then they should get an up-or-down vote. Whether on the floor or in committee, it is time for judicial obstruction to end no matter which party controls the White House or the Senate.

Senate tradition is comprised of shared values based on civility and respect for the Constitution. I sincerely hope that Senate tradition can be restored. It is a matter of fairness. It is a matter of honor. It is our constitutional duty to give these nominees a vote.

I yield the floor.

## RECOGNITION OF THE MINORITY LEADER

The ACTING PRESIDENT pro tempore. The Senate minority leader is recognized.

## JUDICIAL NOMINATIONS

Mr. REID. Mr. President, of the initial Bush nominees, the 10 or 11 we are talking about today, 8 have been confirmed; only 3 were not. Of course, one of those, Miguel Estrada, has not been renominated. Another, Terrence Boyle, has never been reported by the Judiciary Committee, even after 4 years of Republican control. So only one of the initial nominees, Priscilla Owen, is currently on the calendar.

I think the Democrats have been responsible and reasonable in exercising advice and consent regarding this initial nominee.

Regarding Priscilla Owen, she served on the Texas Supreme Court with the President's lawyer, Alberto Gonzales, who is now the Attorney General. Judge Gonzales wrote that several of Judge Owen's opinions were acts of unconscionable activism.

I am concerned the Senate is heading toward an unnecessary showdown over judicial nominations. One of the Hill newspapers recently reported that my distinguished friend, the majority leader, is under enormous pressure from right-wing groups to trigger the so-called nuclear option. So many of our colleagues, Democrats and Republicans, have contacted me and, I am sure, the majority leader, saying: Let's try to work something out. They want to avert this damaging confrontation because it would be bad for the Senate and bad for the country. So we need to take every step we can to avoid this confrontation.

We are prepared to be reasonable even with respect to these controversial nominations that are now before the Senate. But it seems that the White House, and maybe the Senate leadership, will not give the Senate a chance to put this issue behind us.

It is important to understand that this manufactured crisis has been forced upon the Senate by the White House. During President Bush's first term, the Senate confirmed 205 of his judicial nominations and turned back only 10. This is a significant, strong percentage—more than 95 percent.

The President could have accepted that success and avoided confrontation by choosing not to resubmit the names of those who were rejected. Instead, the President sent back 7 of the 10 nominees the Senate declined to confirm, including: the very controversial nominations of Priscilla Owen, whom I briefly commented about; William Myers, who, by the way, is the first nominee to the Federal bench that American Indians have ever opposed; William Pryor; Janice Rogers Brown; and Henry Saad.

In fact, this whole crisis is really about five people. I have mentioned the five. Of the 10 previously rejected nominees, 3 were not renominated, and 2 are tied up in a separate controversy over the Sixth Circuit involving procedural matters. So we are talking only, I repeat, about 5 judges, 5 out of the