

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 read a communication to the Senate from the President pro tempore (Mr. STEVENS).

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, December 5, 2006.

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, I hope everyone has had a good Thanksgiving recess—enjoyable, relaxing. We have a busy few days ahead of us as we have our final week for the 109th Congress, and there are a number of priorities we need to address.

We have the Gates nomination. The hearing on that nomination began this morning. It is our intent to have the Senate address and complete action on this nomination no later than this Friday.

We have a continuing resolution. I was just talking to the Democratic leader about that. The continuing resolution does expire at midnight on Friday. Absent action on any other appropriations, this continuing resolution will extend funding for Government operations into 2007, and it will not contain earmarks or policy initiatives.

Also on the agenda are various tax, trade, and health extenders. Bipartisan Senate work has been spearheaded by Senator GRASSLEY and Senator BAUCUS. They assembled a package of necessary tax, trade, and health policy extensions. That is being filed as we speak.

Fourth, yesterday Senate conferees were named to the United States-India

civil nuclear cooperation deal. The burden now falls on the Senate and House conferees to conclude final work on this very important piece of legislation. It would implement a nuclear power technology sharing agreement with the United States and India. This morning I talked with Prime Minister Singh of India, who underscored the importance of this legislation.

Fifth, the Senate is also close to action on the bioterrorism bill, a bill we had worked on in a bipartisan way. This legislation will make improvements and enhancements in our ability to anticipate and react to bioterrorism attacks—again a bipartisan priority. I very much hope we will be able to finish that this week as well.

Sixth, we have the Vietnam trade agreement. If the House can act on the Vietnam trade agreement, the Senate will act on that measure.

There are a whole range of other legislative initiatives that the Senate will consider as they do become available. These will include necessary programmatic extensions as well as any cleared nominations, so we have a packed agenda.

Specifically for today, this afternoon we will begin with the time until 2 p.m. set aside for Senator DEWINE. I will have a brief statement. The Democratic leader will have a brief statement after my opening remarks and announcements this morning. Shortly after 2 o'clock today we will proceed to the consideration of the Agriculture appropriations bill. Following the statements from the bill's managers, Senator CONRAD will be recognized to offer his amendment on agricultural disaster. It is expected a point of order will be raised to the Conrad amendment, and a vote on the motion to waive will occur around 5 o'clock this afternoon. That will be the first roll-call vote this week. We have a number of items to address over the course of the week, which I have outlined.

Mr. President, I do want to make a very brief statement.

JUDICIAL NOMINATIONS

Mr. FRIST. Mr. President, there is a very common question I been asked over the last several days: During your 4-year tenure as majority leader, what has been the most constitutionally challenging issue confronting the Senate?

I didn't have to think very long. I very quickly came to this whole topic of judicial filibusters, which unfortunately reflected one of the most difficult and challenging aspects of this institution over the last 4 years; that is, the partisanship that would come to the surface and the obstruction that resulted from that partisanship. It was this unprecedented use of these filibusters, judicial filibusters, in the last two Congresses that came very close to fundamentally disrupting the Senate's relationship with the executive branch and the Senate's relationship with the

judicial branch. It impaired the Senate's ability to discharge a very basic constitutional obligation—to advise and consent.

In the process, Senate traditions were damaged. I believe they have been resolved. I am very hopeful that this partisanship will not resurface in future Congresses. In those 214 years between 1789 and 2003, exactly one judicial nominee was stopped by filibuster, and over that period of 214 years that single case was a lonely historical aberration. Until this Congress and the Congress right before that, the previous Congress, which was my first as leader, we had this Senate tradition literally shattered and we saw in that one Congress, and it continued into this Congress; after 214 years of one blocked nominee by filibuster, there were 10 in that very short period of time. So for decades we have had two great Senate traditions that existed side by side: For one, a general respect for the filibuster itself, and the other, a consensus that judicial nominations brought to the floor would receive an up-or-down vote.

Filibusters, of course, are periodically conducted on legislative matters. Sometimes successfully and sometimes they are ended by cloture. However, filibusters on judicial nominees have not impeded this basic constitutional responsibility of our Senate's advice and consent, that important role in judicial nominations. In the exceedingly rare cases in the past where filibusters were attempted on these nominations, very quickly cloture was always invoked with bipartisan support, support from both sides, and the filibusters ceased.

But in the last Congress, the previous Congress, these judicial filibusters became an instrument of partisan politics. As I said, I hope that such partisan politics can be set aside in the future.

Due to these filibusters—again, a whole series of them in the last Congress and this Congress—the Senate traditions were set aside. They were set aside but then also they collided before they were set aside. If matters were left to their own purpose, either the power to give advice and consent would yield to the filibuster or the filibuster would ultimately have to yield to advise and consent. So in response to these tradition-shattering filibusters, we sought to create a precedent. The precedent came to be known as the constitutional option, and that would guarantee a very simple principle, one which had been respected over time by tradition here. And that is after substantial debate each judicial nominee brought to the floor would get an up-or-down vote.

Proceeding with the constitutional option was painful to many Senators, including myself, because of that respect for minority rights. But even