

**SENATE—Monday, December 17, 2001**

The Senate met at 12:30 p.m. and was called to order by the President pro tempore [Mr. BYRD].

## PRAYER

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

Here is the good news from Zephaniah 3:17:

“The Lord your God in your midst, The Mighty One, will save; He will rejoice over you with gladness, he will quiet you with His love, He will rejoice over you with singing.”

Gracious God, on the Monday when we return to our responsibilities of completing the work of the Senate before the Christmas recess, we ask You to give us an assurance of Your unqualified love, profound peace that quiets our hearts, and ears tuned to hear Your song of affirmation. We need Your gift of vibrant optimism.

Our optimism often is like a tea bag: We never know how strong it is until we get into hot water. In times of frustration or adversity, our optimism is tested. When the wheels of political process grind slowly, often we become pessimistic. It is then that we need to hear Your song of encouragement. So often we live as if we had to carry the burdens of leadership alone. Today we relinquish to You any negative thoughts, critical attitudes, or impatient moods. Infuse us with Your hope. Hope through us today, O God of hope, so that we will be a lift and not a load, a blessing and not a burden. And as the Christmas angels came to shepherds at work, come to us as we work for Your glory and the good of our Nation. “Ring out the bells of the kirk; God is down to Earth to bless those who work!” You are our Lord and Saviour. Amen.

## PLEDGE OF ALLEGIANCE

The PRESIDENT pro tempore 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.

## RESERVATION OF LEADER TIME

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

## MORNING BUSINESS

The PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business not to extend beyond the hour

of 1 p.m., with Senators permitted to speak therein for up to 10 minutes each and with the time to be equally divided and controlled between the two leaders or their designees.

The Senator from Wyoming.

## CONFIRMATION OF EUGENE SCALIA AS SOLICITOR OF LABOR

Mr. ENZI. Mr. President, I rise this afternoon to speak about the nomination of Eugene Scalia as the Solicitor of Labor. On previous occasions, I have had the opportunity to speak about Mr. Scalia's outstanding qualifications for this position. Today, unfortunately, I must also speak about the failure of the majority party to bring his nomination to the floor.

On April 30, 2001, President Bush nominated Eugene Scalia as the Solicitor of Labor. That was 231 days ago. On October 17 he was reported out of committee. That was 2 months ago today. A lot of time has elapsed since his nomination. Time has also elapsed since his successful reporting out of committee. This is a longer confirmation period than any Solicitor of Labor in the past 20 years.

Each day that passes without a vote on his nomination is an injustice not only to Mr. Scalia but to the President, the Department of Labor, and all those who are served by the Department as well.

I have with me today a letter to Senator KENNEDY, who is the head of the Health, Education, Labor, and Pensions Committee. The letter adds emphasis to what I have just said, that this is the longest time in 20 years that it has taken for a Solicitor of the Department of Labor to be considered. It also talks about how important this position is and how important it is to have it filled right away.

Probably the most important and most interesting part of this is who signed it. We have Thomas Williamson, who was the Solicitor of Labor under President Clinton; we have Robert Davis, who was the Solicitor of Labor under President George H.W. Bush; we have George Salem, who was the Solicitor of Labor under President Reagan; and William Kilberg, who was the Solicitor of Labor under Presidents Nixon and Ford.

I ask unanimous consent a copy of this letter be printed in the RECORD.

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

JULY 19, 2001.

Hon. EDWARD M. KENNEDY,  
*Chairman, Committee on Health, Education,  
Labor & Pensions, U.S. Senate, Russell Sen-  
ate Office Building, Washington, DC.*

Hon. JUDD GREGG,  
*U.S. Senate, Russell Senate Office Building,  
Washington, DC.*

DEAR CHAIRMAN KENNEDY AND SENATOR GREGG: We served as Solicitor of Labor in the administrations of Presidents Nixon, Ford, Reagan, George H.W. Bush, and Clinton. We are writing to urge that the Senate Committee on Health, Education, Labor, and Pensions proceed expeditiously with the nomination of the current Solicitor nominee, Eugene Scalia.

The uniqueness and importance of the solicitor is reflected by the Department's structure, which places him as the third-ranking official, as you are aware. His involvement is crucial to the Department's performance of its important mission—the enforcement of the labor and employment laws administered by the Department, the development of legally compliant policy initiatives, and the issuance of regulations in furtherance of those laws. While it is possible for the Department to function without a confirmed Solicitor for short periods of time, the absence of a Solicitor inevitably causes significant interference with the Department's operation and most important, is detrimental to those who are protected by our Nation's labor laws. Without a Solicitor the Department has more difficulty making important litigation decisions; important enforcement initiatives may be delayed as a consequence, and employment law violations may go unaddressed. The absence of a confirmed Solicitor also makes it harder for the Department to make significant regulatory decisions, as the Secretary and other senior staff await legal review by the person the President has nominated for that task. Finally, the institution of the Office of the Solicitor, which is the second largest cabinet-level legal office, itself suffers when the Solicitor cannot personally participate in the Department's deliberations, and functions ordinarily performed by the Solicitor are assumed by other departmental personnel.

Eugene Scalia was nominated to be Solicitor in April. We recognize that some have raised concerns with his nomination. We believe, however, that the best course at this time is to have those concerns addressed in a confirmation hearing, so that the Office of the Solicitor may be filled as soon as practicable. Thank you.

HENRY L. SOLANO,  
*Solicitor of Labor  
under President  
Clinton.*

ROBERT P. DAVIS,  
*Solicitor of Labor  
under President  
George H.W. Bush.*

WILLIAM J. KILBERG,  
*Solicitor of Labor  
under Presidents  
Nixon, Ford.*

THOMAS S. WILLIAMSON,  
*Solicitor of Labor  
under President  
Clinton.*

GEORGE R. SALEM,  
Solicitor of Labor  
under President  
Reagan.

Mr. ENZI. It is difficult to envision a better qualified person for the Solicitor of Labor than Eugene Scalia. He is a nationally recognized expert in the field of employment and labor law. I sat through the hearings in the Health, Education, Labor, and Pensions Committee. Some very penetrating questions were asked. Some excellent answers were given.

A record was built. We know this is a man who will follow the direction that was given during his hearings and was intended by the nomination of the President of the United States, a person who is excellently qualified.

In fact, there was no question of his qualifications. As Professor Cass Sunstein from the University of Chicago wrote in support of Mr. Scalia's nomination:

In terms of sheer capacity to do a fine job, he's as good a choice as can be imagined.

However, this exceptionally qualified nominee has not even been afforded a vote on his nomination. In the meantime, the absence of a Solicitor significantly harms the Department of Labor's operations as well as those who are protected by the Nation's labor laws. The Solicitor enforces the laws under the Department's jurisdiction and advises on the legality of the actions the Secretary and others at the Department want to take. Without this crucial position, the Department cannot effectively perform its important mission.

I do not see any justifiable explanation for failing to bring the President's nominee for the Solicitor of Labor to the floor. He deserves a vote. What I do see is an attempt to hold up Mr. Scalia's nomination because he took a position consistent with a majority of both Houses of Congress.

In previous articles, he had some opposition to ergonomics, and I am talking about the repealed ergonomics rule that was put forward by OSHA, a rule that was seriously flawed both in its process and in its substance. Congress rejected the ergonomics rule for the same reason Mr. Scalia and many other experts have articulated.

There is simply no justification for now denying Mr. Scalia a vote because he is opposed to a rule this Senate also rejected.

There is also simply no justification for opposing Mr. Scalia's confirmation because of his last name. I hope my colleagues will not allow any antipathy they have for Mr. Scalia's father to cloud this body's solemn responsibility regarding confirmation of Presidential nominees.

The President has selected Eugene Scalia to be the Solicitor of Labor. Our task is to evaluate whether the President's choice is, in fact, qualified for

the position. In Mr. Scalia, the President has chosen someone with the credentials and character to make an outstanding Solicitor.

Mr. Scalia's nomination has been reported out of committee, yet he remains in limbo, as I mentioned, 231 days since his nomination, 2 months since he was successfully reported out of committee. Mr. Scalia's nomination should be brought to the floor of the Senate. Mr. Scalia is entitled to that. The President is entitled to that. The Secretary of Labor is entitled to that. Everyone who is served by the Department is entitled to that. I urge the majority leader and my colleagues to ensure this happens.

I ask my colleagues to read the letter from the former Solicitors to see how important the position is and how important it is to have the President's choice installed in that position.

I thank the Chair. I yield the floor and suggest the absence of a quorum.

The PRESIDENT pro tempore. The absence of a quorum having been suggested, the clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. CARPER. I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDENT pro tempore. Without objection, it is so ordered.

#### CONCLUSION OF MORNING BUSINESS

The PRESIDENT pro tempore. Under the previous order, morning business is closed.

#### MEASURE PLACED ON THE CALENDAR—S. 1833

Mr. KENNEDY. Mr. President, I understand S. 1833 is at the desk and is due for a second reading.

The PRESIDING OFFICER (Mr. CARPER). The Senator is correct.

Mr. KENNEDY. I ask that S. 1833 be read for a second time, and I would then object to any further proceedings at this time.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 1833) to amend the Public Health Service Act with respect to qualified organ procurement organizations.

The PRESIDING OFFICER. The objection having been heard, the bill will be placed on the calendar.

#### NO CHILD LEFT BEHIND ACT OF 2001—CONFERENCE REPORT

The PRESIDING OFFICER. Under the order previously entered, the Senate will now proceed to the conference report accompanying H.R. 1, for debate only.

The clerk will report.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill, H.R. 1, to close the achievement gap with accountability, flexibility, and choice, so that no child is left behind, having met, have agreed the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment, and the Senate agree to the same, signed by a majority of the conferees on the part of both Houses.

(The conference report is printed in the RECORD of December 12 in the House Proceedings at page H. 9773.)

Mr. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. KENNEDY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. KENNEDY. Mr. President, I strongly support the conference report on the education reform bill. I urge the Senate to approve it. This landmark bipartisan legislation contains far-reaching reforms to give all the Nation's students much greater opportunity than ever before to succeed educationally, to do well economically and participate fully in American society, and to enable schools and communities across the Nation to provide a much higher quality of education for their students.

The conference committee has worked well together for over 5 months to reach these agreements. I commend all of the conferees for their effective work and leadership on the many parts of this bill, and for their commitment to the high priority of improving education for all students.

It has been a genuine bipartisan process. We have been able to reach effective agreement on these reforms, because the challenge is so important and the need is so significant.

We need to enact these reforms and implement them as soon as possible. The Nation's students, schools, teachers, principals, and superintendents cannot wait. The parents of the 48 million students in the Nation's public schools cannot wait. And Congress shouldn't wait either.

Throughout our history, education has opened the doors of opportunity for generations of Americans. It has been a long and continuing battle, and it still is.

The Nation's Founders understood this, when they urge public education in the early days of the Republic.

As John Adams said so well,

The education of a nation instead of being confined to a few schools and universities for the instruction of the few, must become the national care and expense for the formation of the many.