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Senate

The Senate met at 9:30 a.m., and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

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

Almighty God, awe and wonder grip us as we think magnificently about You. You are all-knowing, all-loving, all-wise, all-powerful. We openly confess our human inadequacies and our need for You to infuse us with the strength, understanding, and compassion needed for this day.

We open our minds to think Your thoughts. We commit to You our communications with others. Help us to speak truth as we know it, but also enable us to be responsive to what others say. Free us from judgmental categorizations that make us resistant to listening to people with whom we expect to differ. Give us the humility to know that none of us has a corner on Your truth and that we all need each other to discover Your guidance together. We yield our attitudes and dispositions to Your control so that we might work effectively with others. We press on with the duties of the day with hope in our hearts. Through our Lord and Saviour. Amen.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The able acting majority leader, Senator ALLARD, is recognized.

UNANIMOUS-CONSENT AGREEMENT

Mr. ALLARD. Mr. President, I ask unanimous consent that the vote previously scheduled for 9:40 a.m. today now occur at 10:30 a.m., with the debate time on the nomination beginning at 10:20 a.m., as under the previous order.

In addition, I ask unanimous consent that the debate on the motion to proceed to S. 1269 now begin at 9:30 a.m.,

with the time counting as under the previous order.

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

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

The PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

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

SCHEDULE

Mr. ALLARD. Mr. President, this morning, the Senate will resume legislative session and debate on the motion to proceed to S. 1269, the fast-track legislation, with Senator ROTH in control of 3 hours and Senator DORGAN in control of 4 hours. As under the previous order, the Senate will vote on or in relation to the motion to proceed to S. 1269 at no later than 5 p.m. At 10:20 this morning, the Senate will proceed to executive session to debate the nomination of James Gwin to be U.S. district judge for the northern district of Ohio for 10 minutes as under the previous order. A rollcall vote on the nomination will now occur at 10:30 a.m. Following the vote on fast track, the Senate may debate S. 1269 or turn to any of the following items if available: the D.C. appropriations bill, FDA reform conference report, Intelligence authorization conference report, and any additional legislative or executive items that can be cleared for action. Therefore, Members can anticipate rollcall votes throughout today's session of the Senate.

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

The PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. ALLARD). Without objection, it is so ordered.

NOMINATION OF MARGARET MORROW TO BE U.S. DISTRICT JUDGE FOR THE CENTRAL DISTRICT OF CALIFORNIA

Mr. LEAHY. Mr. President, although I am delighted that the Senate will today be confirming James S. Gwin as a Federal district court judge, the Republican Leader has once again passed over and refused to take up the nomination of Margaret Morrow. Ms. Morrow's nomination is the longest pending judicial nomination on the Senate Calendar, having languished on the Senate Calendar since June 12. The central district of California desperately needs this vacancy filled, which has been open for more than 18 months, and Margaret Morrow is eminently qualified to fill it.

Just last week, the opponents of this nomination announced in a press conference that they welcomed a debate and rollcall vote on Margaret Morrow. But again the Republican majority leader has refused to bring up this well-qualified nominee for such debate and vote. It appears that Republicans have time for press conferences to attack one of the President's judicial nominations, but the majority leader will not allow the U.S. Senate to turn to that nomination for a vote. We can discuss the nomination in sequential press conferences and weekend talk show appearances but not in the one place that action must be taken on it, on the floor of the U.S. Senate. The Senate has suffered through hours of quorum calls in the past few weeks which time would have been better spent debating and voting on this judicial nomination.

The extremist attacks on Margaret Morrow are puzzling—not only to those

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



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of us in the Senate who know her record but to those who know her best in California, including many Republicans.

They cannot fathom why a few Senators have decided to target someone as well-qualified and as moderate as she is.

Mr. President, I ask unanimous consent that a recent article from the Los Angeles Times by Henry Weinstein on the nomination of Margaret Morrow, entitled "Bipartisan Support Not Enough For Judicial Nominee," be printed in the RECORD at the conclusion of my statement.

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

(See exhibit 1.)

Mr. LEAHY. This article documents the deep and widespread bipartisan support that Margaret Morrow enjoys from Republicans that know her. In fact, these Republicans are shocked that some Senators have attacked Ms. Morrow. For example, Sheldon H. Sloan, a former president of the Los Angeles County Bar Association and an associate of Gov. Pete Wilson, declared that: "My party has the wrong woman in their sights."

Stephen S. Trott, a former high-ranking official in the Reagan administration and now a Court of Appeals judge wrote to the majority leader to try to free up the Morrow nomination, according to this article Judge Trott informed Senator LOTT.

I know that you are concerned, and properly so, about the judicial philosophy of each candidate to the federal bench. So am I. I have taken the oath, and I know what it means: follow the law, don't make it up to suit your own purposes. Based on my own long acquaintance with Margaret Morrow, I have every confidence she will respect the limitations of a judicial position.

Robert Bonner, the former head of DEA under a Republican administration, observed in the article that: "Margaret has gotten tangled in a web of larger forces about Clinton nominees. She is a mere pawn in this struggle." I could not agree more.

Mr. President, it is time to free the nomination of Margaret Morrow from this tangled web that some extremists are trying to weave. It is time to debate and vote on the nomination of Margaret Morrow.

Mr. President, again, I am pleased we will take up the nomination of Judge James Gwin. But we are, once again, overlooking the nomination of Margaret Morrow. Ms. Morrow's nomination is the longest pending judicial nomination on the Senate Calendar, and is strongly supported by both Republicans and Democrats. The Senate ought to have the courage and the honesty to either vote for her or against her.

[From the Los Angeles Times, Nov. 3, 1997]

EXHIBIT 1

BIPARTISAN SUPPORT NOT ENOUGH FOR JUDICIAL NOMINEE

(U.S. Senate: Margaret Morrow's appointment is stalled despite backing across political spectrum. Some say she is victim of effort to downsize courts)

(By Henry Weinstein)

If ever there was an unlikely candidate to be the target for a militant campaign against "judicial activism," it would be Los Angeles lawyer Margaret Mary Morrow.

An honors graduate of Harvard Law School, 47, was the first female president of the California Bar Assn., where she worked to strengthen the state's attorney discipline system.

A commercial litigation specialist, Morrow is a partner in the Los Angeles office of Arnold & Porter, one of the most venerable firms based in the nation's capital. Her clients have included First Interstate Bank, McDonnell Douglas, TWA and The Limited.

President Clinton, on the recommendation of Sen. Barbara Boxer (D-Calif.), tapped Morrow for a federal trial judgeship in May 1996. She quickly won bipartisan support—including endorsements from judges appointed by presidents Ronald Reagan and George Bush and governors George Deukmejian and Pete Wilson.

"Margaret is superbly well qualified," said Los Angeles lawyer Robert C. Bonner, who has served as a federal judge and head of the Drug Enforcement Administration during Bush's presidency.

She also received the highest possible rating—"very well qualified"—from the American Bar Assn.'s judicial evaluation committee. By late 1996, after a perfunctory hearing, Morrow cleared the committee unanimously. But the nomination died, along with several others in the congressional slowdown that inevitably occurs in election years.

Clinton renominated Morrow on Jan. 7. Within three weeks, trouble emerged and her nomination remains in limbo even though she was approved a second time on June 12 by the Judiciary Committee, whose chairman, Orrin G. Hatch (R-Utah), said in late September that he would push for a swift vote and support her.

Much to the surprise of her backers, particularly her Republican supporters, Morrow has become the subject of the sort of intense partisan attacks generally reserved for nominees with a long record of activism such as civil rights lawyer Thurgood Marshall or a trail of controversial decisions such as Judge Robert Bork.

Indeed, the story of Morrow's confirmation battle is in significant measure a tale about the fissures within the Republican Party about judicial nominations.

One conservative federal judge, speaking on condition of not being identified, said that, in reality, the campaign against Morrow has nothing to do with her qualifications or her views, but rather is part of a "conscious plan to downsize" the federal courts in the western United States with the goal of remaking them after Clinton's presidency ends.

Echoed Bonner: "Margaret has gotten tangled in a web of larger forces about Clinton nominees. She is a mere pawn in this struggle."

The campaign against Morrow began with a Jan. 28 op-ed piece in The Washington Times by Thomas L. Jipping, director of the militantly conservative Free Congress Foundation's Judicial Selection Monitoring Project.

Jipping contended that Morrow was likely to become an "activist judge," who improv-

erly would attempt to legislate a political agenda from the bench. Soon, Republican senators John Ashcroft of Missouri and Jeff Sessions of Alabama, both staunch conservatives, new members of the Judiciary Committee and Jipping allies, joined the attack.

Since that time, Morrow has been back to the committee for another hearing and answered three sets of questions in writing—including highly unusual questions about her positions on many California ballot initiatives during the past 10 years. She also told the committee she would adhere strictly to precedents and would have no problem applying the death penalty.

Last Wednesday, the effort to derail Morrow's nomination escalated. Ashcroft and Sessions announced that they would spearhead further opposition to Morrow and said more than 100 "grassroots" organizations, including the National Rifle Assn. and the Traditional Values Coalition, had joined the campaign against her.

The coalition was assembled while Ashcroft had placed "a hold" on the nomination, which under Senate protocol had prevented it from coming to the floor for a vote. On Wednesday, at a news conference announcing the coalition, he said he now favors a roll-call vote.

Ashcroft and Sessions pointedly reminded their colleagues that several organizations in the coalition would be "scoring" the votes of senators on the nomination.

Morrow's adversaries contend that she would be a "judicial activist" on the bench. "She views the law as an engine for social change . . . and as a means of imposing public policy from the courts on the rest of us," Ashcroft asserted.

Morrow declined to respond. "I do not believe it is appropriate for me to comment while my nomination is pending before the Senate," she said in a brief telephone interview at week's end.

Morrow has previously denied such characterizations. For example, in June 1996, she told the Judiciary Committee: "I view the role of a judge as being the resolution of disputes that come before . . . him or her for resolution. So I would look to the facts of the case. I would attempt to apply the law as I understand it to those facts. And I would not seek to expand them or otherwise to use any particular case as a reason for articulating new constitutional rights or otherwise expanding what I understand to be the existing law."

Boxer and Patrick Leahy (D-Vt.), the ranking minority member on the Judiciary Committee, came to Morrow's defense last week. Boxer described her as "the epitome of mainstream" and Leahy charged that a coalition of conservative activists is using Morrow as "a fund-raising vehicle" for their campaign to reduce the power of federal judges.

Perhaps more importantly, several staunch Republicans said the accusations against Morrow are ludicrous. "My party has the wrong woman in their sights," declared Sheldon H. Sloan, former president of the Los Angeles County Bar Assn. and a close ally of Wilson. "There is no flag burning for Margaret Morrow," said Sloan, describing the nominee as both an outstanding lawyer and "a church-going, basketball mom."

A large number of prominent Republicans have backed the nominee in writing—highlighted by rare letters of support from three conservative U.S. 9th Circuit Court of Appeals judges—Pamela A. Rymer, Cynthia Holcomb Hall and Stephen S. Trott, State Supreme Court Justice Marvin R. Baxter and state appeals court justices Roger Boren, H. Walter Croskey and Charles S. Vogel, all appointed by Republican governors, also have weighed in on Morrow's behalf, as have Los Angeles Mayor Richard Riordan, then-state

Assembly Majority Leader James E. Rogan of Glendale and Orange County Dist. Att. Michael R. Capizzi.

In an effort to unplug the nomination, Trott, who earlier served as a high-ranking official in the Justice Department under President Reagan, recently wrote to Senate Majority Leader Trent Lott (R-Miss.).

"I know you are concerned, and properly so, about the judicial philosophy of each candidate to the federal bench. So am I. I have taken the oath, and I know what it means: follow the law, don't make it up to suit your own purposes. Based on my own long acquaintance with Margaret Morrow, I have every confidence she will respect the limitations of a judicial position."

In their letters, some of Morrow's backers have sought to clearly establish their bona fides with conservative senators.

"I am a lifelong Republican from Orange County, California," Costa Mesa attorney Andrew J. Guilford wrote Hatch. "I have never voted for a Democrat in any presidential campaign. . . . I did not believe Anita Hill, I am happy that Justice Clarence Thomas is on our Supreme Court and I regret that [Robert] Bork is not on our Supreme Court. It is partly my concern over the unfair destruction of Judge Bork's judicial career that causes me to enthusiastically endorse Margaret Morrow."

Backers of Morrow cite her intellect, character and record of public service. As president of the Los Angeles County Bar Assn., she instituted a voluntary program urging attorneys to provide at least 35 hours of free legal services yearly for the poor. And she was a member of the commission that drafted an ethics code for Los Angeles city government.

Morrow's advocates also assert that her speeches and writings have been distorted beyond recognition by her foes, particularly one sentence in a 1988 article on the initiative process that is cited as prime evidence of her "activist" proclivities.

In the Los Angeles Lawyer magazine article, Morrow wrote: "The fact that initiatives are presented to a 'legislature' of 20 million people renders ephemeral any real hope of intelligent voting by a majority."

The article was written in the wake of one of the most expensive initiative campaigns in state history, highlighted by five complicated measures dealing with insurance and attorney's fees. At the time, many charged that that television advertising about the measures was misleading, prompting widespread calls for reform.

Morrow's article did not call for abolition of initiatives. The article noted that use of the initiative had escalated dramatically in the 1980s, discussed possible reforms of the initiative and legislative processes and urged lawyers to play a role in improving government.

Croskey, an appointee of Deukmejian, said he was stunned that the article was cited as evidence that Morrow would improperly legislate from the bench.

"She was making a profound and useful criticism of the initiative process and how it could be improved," Croskey said. "To metamorphose that into the conclusion that she is a judicial activist has no foundation."

On Friday, Croskey faxed a letter to Lott urging the senator to bring the nomination to the floor for a vote. But it seems unlikely that will happen before Congress adjourns in the next few weeks. Lott, who has the power under Senate procedure to hold up the nomination indefinitely, said a few days ago that he felt no pressure to take any action on judicial nominees during the remainder of the year.

The White House declined to comment last week on Morrow's nomination.

RECIPROCAL TRADE AGREEMENT OF 1997—MOTION TO PROCEED

The PRESIDING OFFICER (Mr. AL-LARD.). The clerk will report the motion to proceed.

The assistant legislative clerk read as follows:

Motion to proceed to the consideration of S. 1269, a bill to establish objectives for negotiating and procedures for implementing certain trade agreements.

The Senate resumed consideration of the motion to proceed.

Mr. DORGAN addressed the Chair.

The PRESIDING OFFICER. The Senator from North Dakota is recognized.

Mr. DORGAN. Mr. President, the Senate, as I understand it, will be voting in about 50 minutes on the confirmation of a judge. Between now and that time, there will be time for debate on the motion to proceed to the fast-track legislation, and I intend to take a few minutes of that time. I believe Senator WELLSTONE will be here as well to speak. I wanted to begin, again, discussing this question because there seems to be a substantial amount of misinformation and there is a substantial misimpression by many people about what this debate is.

I started yesterday by saying this debate is not about whether we should have free trade or expanded trade or more trade. It is not about that. I think we should have expanded trade. I think we should lower barriers, lower tariffs—in fact, eliminate barriers, lower tariffs, and have a world in which we have more opportunity to trade. It's not about those who believe in trade and those who don't. It is a debate about whether our current trade strategy is working for this country. Does the current trade strategy work? Or is this country embarking on a trade strategy and are we in the middle of a trade strategy that, in recent years, has failed us, hurt our economy, injured our manufacturing base, has moved American jobs overseas and put us in a weaker position? I happen to think that is the case.

I want to go through some of this to describe why I am concerned about not just this fast-track proposal, but our trade policy generally. Mr. President, this is a chart that shows our net export balance. All of this red below the line represents deficits. We have had the largest net export deficits in the history of this country for 3 years in a row, and this year will make it the fourth year in a row. These are the largest trade deficits in the history of this country.

Now, I would ask the question of those trotting out here supporting the current trade strategy and saying, "let's again pass fast-track trade authority." Is this going in the right direction? Is this the right trade strategy? Is this producing the right results? If so, where do you intend to go with this? Do you want to take the chart out here and go down to \$350 billion a year in net trade deficits, as some are predicting will happen? Be-

cause if you think this is working, the logical extension of this is larger and larger deficits.

We are now the largest debtor nation in the world, and a significant part of that debt comes from the contributions of these trade deficits. So if you think the current trade strategy is working real well and you like this chart and you love debt, then you need to be out here saying, gee, let's pass fast track and continue doing what we are doing because it is really good for this country.

Now, Mr. President, I have said before that I used to teach economics, briefly, in college. But I was able to overcome that experience and go on to do other things in life. I am told that in the old days in ancient China, those who would travel from one region to another giving advice of the type we now get from economists had to be careful about it. That is because if they gave the wrong advice and stuck around the province too long and it was discovered what they had suggested would happen didn't happen, they were boiled, cut in two, or put on the sides of two chariots and pulled apart. We have no such dilemma posed to the economists of today.

Economists of today tell us what they think, for example, on trade. They say if you pass a trade agreement with Canada and Mexico, we will substantially increase American jobs. We passed a trade agreement with Canada and Mexico, called NAFTA, and we lost 395,000 American jobs. Where are the economists who predicted these enormous gains for our country? They are off predicting the results of fast-track and new trade agreements. It's just fine for them to keep predicting, despite the fact that they are consistently wrong.

The components of this country's economy are personal consumption—you see where that is. That is personal consumption and expenditures. That is one component. There is gross private domestic investment. Then, we have Government expenditures and investments. The fourth component of this economy is the balance of net exports. Now, if you look at this chart, is this balance of net exports a net positive or a net negative? This shows red. Why? Because it is a net negative. It is a drag on our economy. It pulls our economy down, not lifts it up.

So when the President or Members of the Senate come to this Chamber and say, gee, we are doing so well, we have more exports and we are doing so well, and it boosts our economy, they are dead flat wrong. They would not pass the beginner's course in economics, preaching that message, because net exports and the current balance of net exports is a drag on our economy. It is not a contribution to our economy.

In fact, yesterday, somebody said, well, since we have negotiated the agreement with Mexico under NAFTA, we now get more cars into Mexico that are produced in the United States.