

one knows exactly what 2005 will bring, we can end this politicization of the Judiciary Committee process and adopt a protocol which I have submitted but which would say that after so many days after a nomination, the committee would consider it with a hearing; so many days after the hearing, the committee would vote; and so many days later, it would come to the floor. We could get rid once and for all of this politicization of the nomination process.

I ask unanimous consent that the text of my resolution of protocol be printed in the RECORD at the conclusion of my remarks.

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

(See Exhibit 2.)

Mr. SPECTER. I yield the floor.

EXHIBIT 1

WILMER, CUTLER & PICKERING,  
Washington, DC, June 24, 2002.

Hon. PATRICK J. LEAHY,

Chairman, Committee on the Judiciary, U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR CHAIRMAN LEAHY: We write to express our concern about your recent request that the Department of Justice turn over "appeal recommendations, certiorari recommendations, and amicus recommendations" that Miguel Estrada worked on while in the Office of the Solicitor General.

As former heads of the Office of the Solicitor General—under Presidents of both parties—we can attest to the vital importance of candor and confidentiality in the Solicitor General's decisionmaking process. The Solicitor General is charged with the weighty responsibility of deciding whether to appeal adverse decisions in cases where the United States is a party, whether to seek Supreme Court review and adverse appellate decisions, and whether to participate as amicus curiae in other high-profile cases that implicate an important federal interest. The Solicitor General has the responsibility of representing the interests not just of the Justice Department, nor just of the Executive Branch, but of the entire federal government, including Congress.

It goes without saying that, when we made these other critical decisions, we relied on frank, honest, and thorough advice from our staff attorneys, like Mr. Estrada. Our decisionmaking process required the unbridled, open exchange of ideas—an exchange that simply cannot take place if attorneys have reasons to fear that their private recommendations are not private at all, but vulnerable to public disclosure. Attorneys inevitably will hesitate before giving their honest, independent analysis if their opinions are not safeguarded from future disclosure. High-level decisionmaking requires candor, and candor in turn requires confidentiality.

Any attempt to intrude into the Office's highly privileged deliberations would come at the cost of the Solicitor General's ability to defend vigorously the United States' litigation interests—a cost that also would be borne by Congress itself.

Although we profoundly respect the Senate's duty to evaluate Mr. Estrada's fitness for the federal judiciary, we do not think that the confidentiality and integrity of internal deliberations should be sacrificed in the process.

Sincerely,

SETH P. WAXMAN.  
WALTER DELLINGER.  
DREW S. DAYS, III.

KENNETH W. STARR.  
CHARLES FRIED.  
ROBERT H. BORK.  
ARCHIBALD COX.

EXHIBIT 2

S. RES. \_\_\_\_

Whereas there has been a continuing controversy with the political party of the President protesting the process on confirmation of Federal judges by the Senate when the Senate is controlled by the opposite political party; and

Whereas there is a concern about a lack of public confidence in the Senate's judicial confirmation process when different parties control the White House and the Senate: Now, therefore, be it

Resolved,

#### SECTION 1. PROTOCOL FOR NONPARTISAN CONFIRMATION OF JUDICIAL NOMINEES.

##### (a) TIMETABLES.—

(1) COMMITTEE TIMETABLES.—The Chairman of the Committee on the Judiciary, in collaboration with the Ranking Member, shall—

(A) establish a timetable for hearings for nominees to the United States district courts, courts of appeal, and Supreme Court, to occur within 30 days after the names of such nominees have been submitted to the Senate by the President; and

(B) establish a timetable for action by the full Committee to occur within 30 days after the hearings, and for reporting out nominees to the full Senate.

(2) SENATE TIMETABLES.—The Majority Leader shall establish a timetable for action by the full Senate to occur within 30 days after the Committee on the Judiciary has reported out the nominations.

##### (b) EXTENSION OF TIMETABLES.—

(1) COMMITTEE EXTENSIONS.—The Chairman of the Committee on the Judiciary, with notice to the Ranking Member, may extend by a period not to exceed 30 days, the time for action by the Committee for cause, such as the need for more investigation or additional hearings.

##### (2) SENATE EXTENSIONS.—

(A) IN GENERAL.—The Majority Leader, with notice to the Minority Leader, may extend by a period not to exceed 30 days, the time for floor action for cause, such as the need for more investigation or additional hearings.

(B) RECESS PERIOD.—Any day of a recess period of the Senate shall not be included in the extension period described under subparagraph (A).

##### (c) REPORT OF NOMINATION TO SENATE.—

(1) NOMINATION TO SUPREME COURT.—Regardless of the vote of the Committee on the Judiciary, a nomination for the Supreme Court of the United States shall be reported by the Committee for action by the full Senate.

(2) NOMINATION TO DISTRICT COURT OR COURT OF APPEALS.—If a nomination for the United States district court or court of appeals is rejected by the Committee on the Judiciary on a party line vote, the nomination shall be reported by the Committee for action by the full Senate.

#### UNANIMOUS CONSENT REQUEST— S. 2949

The PRESIDING OFFICER. The Senate from Nevada.

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 623, S. 2949, the aviation security legislation; that the Smith-Boxer amendment at the desk be considered and agreed to; the committee amendment

be agreed to; the bill, as amended, be read three times, passed, and the motion to reconsider be laid on the table, without any intervening action or debate.

This legislation is sponsored by Senators BOB SMITH and BARBARA BOXER, an unlikely pair, you would think, to sponsor legislation. But they agree, as a majority of the Senate agrees, we should move forward on this legislation to allow certain pilots in commercial aviation to be armed. That is what the legislation is all about.

The PRESIDING OFFICER. Is there objection?

Mr. SPECTER. Mr. President, on behalf of the leader, Senator LOTT, I have been asked to lodge a formal objection to the unanimous consent request. I know the Senator from Nevada had expected that.

I want it plain that I express none of my own views on the pending legislation in lodging this formal objection. I am the last Republican available to represent the leader, who has asked that a formal objection be lodged on behalf of other Members.

The PRESIDING OFFICER. Objection is heard.

Mr. REID. Mr. President, I understand my friend from Pennsylvania entering the objection. This measure has been cleared on this side, the Democratic side, for approximately 2 weeks. I understand the Commerce Committee staff has been working diligently on this matter. It is something we should complete. It has widespread support. I appreciate the statement of my friend from Pennsylvania.

#### MORNING BUSINESS

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to a period of morning business with Senators permitted to speak therein for a period not to exceed 5 minutes each.

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

#### AMERICAN ECONOMY

Mr. DOMENICI. Madam President, it isn't often that a Senator from New Mexico and a Republican quotes an editorial by the Washington Post regarding economics and economic activity and America's economic future. This morning I caught an editorial in that newspaper which I have here behind me. It is from Saturday, October 5. It is styled "Negative Al Gore."

I didn't put it up here to be negative to Al Gore. I put it up here because the editors of this newspaper have come to the conclusion, and have come to it rather firmly, that the President of the United States, George Bush, is not responsible for the current state of the American economy, nor did he do anything to cause the recession—how mild it was, how deep it was, how long it has lasted. He didn't cause it.

I would like to start first with a statement which I will print in the

RECORD which has gotten a lot of notoriety since I issued it and put it in the RECORD some days ago. It is a statement by Joseph Stiglitz, chairman of President Clinton's Council of Economic Advisors. I don't think we can quote it enough, as those on the other side think they are going to convince the American people, who are already rather doubtful, that they are going to convince them that President George Bush is responsible for this slow economy.

This is a man, Dr. Joseph Stiglitz, who speaks for the Democrats, if he speaks for either party. He worked for President Clinton. He answered the question: When did the downturn start? I quote:

[T]he economy was slipping into recession even before Bush took office, and the corporate scandals that are rocking America began much earlier [than that.]

We ought to be able to carry one of these around for the next 4 or 5 weeks, just as our friend Senator BYRD carries the Constitution. Every time we hear a Democrat, wearing his partisan clothes, get up and say President Bush did this, we will refer him to one of the best economists that ever served America, served the previous President on his Council of Economic Advisors, and later on was a member of the Federal Reserve with the distinguished President we have there now, and he wrote this as a part of a dissertation with reference to the American economy.

Along comes the Washington Post a few weeks later, Saturday, October 5. Let me just read the yellow print and you can all be looking at the rest of it:

But President Bush's main economic policy—the large tax cut of last year—was not responsible for any of the current damage. Indeed, given the twin shocks of 9/11 and the post-Enron stock market decline, the short-term stimulus created by the tax cuts has turned out to be fortuitously well timed.

You might recall, on a number of occasions, Senators who were putting forth the President's tax policy—I think the occupant of the Chair might have even supported that tax policy—would get up and say: It just might be the right time. We might be doing something right for a change, where we are getting a tax cut to come in just at the time that the American economy starts to stutter, starts to stammer around. And for once we might be on time, I said, in proposing it and getting the reconciliation instruction through here.

I said, in addition, spending additional resources rather than tightening the budget would be in order also. Sure enough, the tax cuts were supplemented by an increase in expenditures. And, guess what. The Federal Reserve Chairman lowered the interest rates, and we had the threefold attack which normally works in terms of the American economy.

We seldom do it right and punctual enough, but we did. So the American economy is stuttering for some other reason. It may very well be that we had

such an extensive balloon-type economy when the stock market was driving almost everything to outlandish prices coming on to the market that maybe when those start to fall, it takes a little bit longer for things to catch on and push that back up the ladder because so much is falling down on us. Some say \$11 trillion is the amount—trillion—of diminution in value. I put "value" in quotes as I say it because I am not sure what that value meant. I am not sure that was value like you had dollar bills, but I am not sure what it was. People are having difficulty saying how much of that was nothing more than the hot air of the stock market. I don't know the answer to that, I haven't studied that.

I would like very much to say to the editors of the Washington Post, I have some additional comments on the editorial that they have written. Obviously, I have taken parts of it and put it in my statement, obviously giving the Washington Post credit wherever I thought it was right, that that language was consistent with what I am talking about.

The lead editorial on Saturday, titled "Negative Al Gore," seriously questions the Senate leader's attack on President Bush. Let me highlight once more a couple of items:

But President Bush's main economic policy—the large tax cut of last year—was not responsible for any of the current damage.

That is not the Senate Republican Policy Committee saying that. That is the Washington Post.

Another quote:

Given the twin shocks—

I have read that to you. It ends with: . . . fortuitously well timed.

That is again not mine, not the Republican Senatorial Committee. That is the Washington Post's summary of how their editors see things in terms of the stock market and other things related to the American economy.

Another quote:

But to blame the weak American economy on Mr. Bush is nonsense.

That is the editorial of the Washington Post I am showing you here. Anyone who doesn't want to listen can read this and see what the Washington Post says. Let me proceed. I think the writers of the editorial have it just about right. The economic blame and the blame game that Leader DASCHLE and former Vice President Gore have launched is, for certain, wrong. There is little truth to it, and there is little economic veracity attendant. It is not accepted as being realistic by those in the highest echelons of economic terms and assessments in America.

From the long-term economic history, we know a speculative boom, once started, cannot end without some disruption. I believe the American public understands this, and understands that to blame the current weak economy on President George Bush is nonsense.

Having said that, I know we are engaged today, and for the next few days,

in a serious discussion. Some would like to put the economy back front and center, and some think that would not be right. I believe we should proceed with dispatch to give the President the authority, if necessary, to see to it Saddam Hussein does not use weapons of mass destruction, and to use force, if he has to do that. I will speak in more detail and in more depth on that subject later on.

I think we are capable of discussing two major issues at the same time and getting them both right. We surely can discuss this issue the writers in the Washington Post editorial bring to our attention. I, for one, am not fearful of standing up and discussing that issue with anybody, any color of politics, any party that wants to talk about President Bush and the relevancy of his actions to the current status of the American economy.

I believe almost everything that was done—the lowering of the interest rates, extra expenditures that were put on rather than keeping the strings tightened around the budget and, obviously, a tax cut that came in just as the recession started to occur—I think we can discuss those and we can ask anyone around, what would you have done? They would come up with three of them, or two out of the three. When a President gets that done and he is starting his first term, and he has one body that is not of his party, it seems he deserves some very significant accolades. It is not every President who would have gotten that done.

I believe we all looked for the right way to do it and the right things to do—what we did in urging a tax cut, urging the Fed to lower interest rates, and making the strings a little bit looser instead of tighter so we can spend more money. Some other reason is causing the slowdown, but it is not President Bush and his policies. It is not what the Senate voted in when we were in the majority and carrying it out under the majority of the Democrats, who have the body by one vote. We must remember one of our Members became an Independent and now votes with the other side.

Whoever would like to discuss the American economy, I am willing. I have a lot of other Senators who are willing. We will be here whenever you care to speak about it, and we might be here even when you don't care about speaking about it. We may speak to it ourselves.

#### 21ST CENTURY DEPARTMENT OF JUSTICE APPROPRIATIONS AUTHORIZATION ACT

Mr. BIDEN. Mr. President, I rise today to call attention to Section 2202 of the 21st Century Department of Justice Appropriations Authorization Act which directs the President—in consultation with the Attorney General, the Secretary of Health and Human Services and the Secretary of Education—to review all Federal drug and