

Skykomish River Valley of the State of Washington by designating certain lower-elevation Federal lands as wilderness, and for other purposes;

S. 2587, to establish the Joint Federal and State Navigable Waters Commission for Alaska;

S. 2612, to establish wilderness areas, promote conservation, improve public land, and provide for high quality development in Clark County, Nevada, and for other purposes;

S. 2652, to authorize the Secretary of Agriculture to sell or exchange certain land in the State of Florida, and for other purposes; and

S. Con. Res. 107, expressing the sense of Congress that Federal land management agencies should fully support the Western Governors Association "Collaborative 10-year Strategy for Reducing Wildland Fire Risks to Communities and the Environment", as signed August 2001, to reduce the overabundance of forest fuels that place national resources at high risk of catastrophic wildfire, and prepare a National Prescribed Fire Strategy that minimizes risks of escape.

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

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

Mr. REID. Mr. President, I ask unanimous consent that the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs be authorized to meet on Tuesday, July 30, 2002, at 9:30 a.m., for a hearing entitled "The Role of the Financial Institutions in Enron's Collapse."

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

PRIVILEGES OF THE FLOOR

Mrs. LINCOLN. Mr. President, I ask unanimous consent that privilege of the floor be granted to Michael Anzick and Elizabeth Pika, two fellows in my office, during debate on this legislation.

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

Mr. GRAHAM. Mr. President, I ask unanimous consent to grant floor privileges to Dr. Louis Kazal, a health fellow from the office of Senator KENT CONRAD, for the duration of debate on S. 812 and related amendments.

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

Mr. HATCH. Madam President, I ask unanimous consent that my aides, Christopher Rogers and Matt Hargraves, be granted the privilege of the floor for the duration of the debate on Judge D. Brooks Smith.

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

ORDER OF PROCEDURE

Mr. REID. Mr. President, I have a few things to do here to close, a very few. Then the Senator from Utah wants to speak for 5 minutes, and the Senator from Florida will speak for 10.

APPOINTMENTS

The PRESIDING OFFICER. The Chair announces, on behalf of the two Leaders, pursuant to provisions of S. Res. 98, agreed to July 25, 1997, the appointment of the Senator from Nevada [Mr. REID] to the Global Climate Change Observer Group, vice the Senator from Nebraska [Mr. Kerrey], retired.

The Chair, on behalf of the President pro tempore, pursuant to P.L. 103-227, reappoints Barbara Kairson, of New York, Representative of Labor, to the National Skill Standards Board, effective August 13, 2002.

ORDERS FOR WEDNESDAY, JULY 31, 2002

Mr. REID. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand adjourned until 9:30 a.m. Wednesday, July 31; that on Wednesday, following the prayer and the pledge, the Journal of proceedings be approved to date, the morning hour be deemed expired, and the time for the two leaders be reserved for their use later in the day; that the Senate then resume consideration of Calendar No. 491, S. 812, as provided for under the previous order; provided further that after the first vote on the motion to waive the Budget Act with respect to the Graham amendment, there be 2 minutes of debate before each succeeding vote, equally divided and controlled in the usual form; and each succeeding vote following the first in the sequence be 10 minutes in duration; that the mandatory quorum required under rule XXII be waived with respect to the cloture motion and the conference report accompanying H.R. 3009.

I have a parliamentary inquiry, Mr. President. Under this unanimous consent agreement, would the debate time prior to the vote on judicial nomination of Brooks Smith be 2 minutes equally divided?

The PRESIDING OFFICER. Yes. The Senator is correct in assuming that.

Mr. REID. I ask unanimous consent that be modified to give Senator LEAHY 2½ minutes and Senator HATCH 2½ minutes.

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

ORDER FOR ADJOURNMENT

Mr. REID. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent we stand in adjournment under the previous order, following the remarks of the Senator from Utah, for 6 minutes, and the Senator from Florida, for 12 minutes.

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

The Senator from Utah is recognized.

JUDICIAL NOMINATIONS

Mr. HATCH. Mr. President, I do have to make a few remarks since my col-

league from New York made some very cogent, very important remarks this evening.

I happen to have a lot of respect for my colleague from New York, and he has the guts to really stand up and say that one of the reasons he is voting against some of these judges is the question of ideology. I think he is dead wrong on that, but the fact is, I respect him for at least being upfront and stating what he believes.

He has also said we need to have balance on the courts. I am not so sure that is a bad concept, but I believe whoever is President, we have to have that President's choice of judges. That is one thing we do when we elect a President. Unless you can find some really valid reason for voting against these judges, that I think has to be more than ideology—at least that is my view—then you should vote for those judges, which is a practice I have followed throughout the Clinton administration and throughout the Carter administration, as a matter of fact. I think it is the correct practice.

I still respect my colleague for his beliefs, for his forthright statements.

I want to correct the record on a few things. No. 1, with regard to balance, there is a lack of balance in many circuit courts of appeals today one way or the other. In the Ninth Circuit Court of Appeals, 17 of the 23 judges are Democrats; 14 were appointed by none other than President William Jefferson Clinton.

In the Second Circuit Court of Appeals, the majority of them are Democrats.

These are two very important circuit courts. In the Circuit Court of Appeals for the District of Columbia, it could very easily have been that way.

It comes down to whoever is President. That is one of the things we do when we choose a President: We choose the person who is going to pick the judges for the next 4 years. And I believe, unless you have a legitimate reason—and it has to be a very legitimate reason for opposing those judges—you need to vote for them.

I heard the distinguished Senator from Vermont tonight say Judge Smith rules too much for corporations. Give me a break. He has been on the bench 14 years. He has ruled for everybody during those 14 years. And, by the way, occasionally corporations are right. And if they are right, as judges in this country they ought to rule in their favor if it is a nonjury trial. They ought to be fair in their instructions if it is a jury trial and in the conduct of the trial if it is a jury trial. Brooks Smith has had that type of reputation.

With regard to another comment of my friend from New York, he continues to repeat a myth that arose out of the Clarence Thomas proceedings. I happened to be there during those Clarence Thomas proceedings, and that myth is that he said he never discussed *Roe v. Wade*. That is not what he said. He was

asked directly, and he said: I never debated it with my philosophy classmates. That is a considerably different answer.

And from that, they extrapolated he never discussed it, and he wasn't asked any further questions about it by the same person who asked that question.

The fact of the matter is, some ideologically disagree with Justice Thomas. Many on our side disagree with Justice Thurgood Marshall. I happened to have respected him greatly. I didn't agree with a lot of the things he wrote, but I also respected him.

Clarence Thomas is writing some of the most literate, intelligent decisions on the Supreme Court right now.

Let me say the danger of the position of my friend from New York, in saying ideology counts, is: Whose ideology? Because I have seen some very conservative judges get on the bench and become very liberal judges almost overnight. I have seen some very liberal judges get on the bench and become very conservative judges—maybe not overnight but certainly in time.

I have to ask you, if you start talking ideology, whose ideology? There are differences on the Democratic side on ideology. There are differences on the Republican side on ideology. Are we going to have a single litmus test to bar somebody from serving just because they may be against *Roe v. Wade* or may be pro-life? Are we going to have a litmus test against somebody serving because they once participated as a corporate lawyer? A terrible thing to do, I guess.

No, we should not do that. If we took that attitude, that *Roe v. Wade* is paramount and preeminent in all judicial considerations, there would have been very few Clinton judges. As I say, he came very close, virtually was the same as the all-time confirmation champion, Ronald Reagan.

So that is the danger, in my belief and in my philosophy, of the position of the distinguished Senator from New York. I respect the position. I respect his openness. I respect his forthrightness. I respect him personally. He is very intelligent, a good lawyer—some would say a great lawyer. I would say that. I enjoy being with him on the Judiciary Committee. But his doctrine is a dangerous doctrine because—whose ideology?

People have tried to stereotype me the whole time I have been in the Senate. I just got finished writing a book that will be published this fall. It is going to be called "The Square Peg." Guess who the square peg is. The fact is, that book is going to show I don't particularly fit in any category. Neither does the Senator from New York. In some respects, he is a very conservative Senator. In other respects, he is very liberal. I have had the same thing said about me. Does that mean neither of us could serve on any court because we might be conservative on some issues, we might be liberal on other issues, that offend some in this body? No, it should not mean that.

Look, if a person is out of the mainstream, that is another matter. But I have seen the argument come up time after time the judges are outside of the judicial mainstream. That is pure bunk, to be honest with you. They do not get through this process where they are nominated by any President of the United States by being outside of the mainstream. They just do not. Some are conservative and some are liberal. This President has nominated some very liberal judges. He has nominated some very good conservative judges. He has nominated people in between. He has nominated Democrats. He has nominated Republicans.

But it is dangerous to say that anybody's personal ideology ought to determine whether a person serves on the bench if that person is otherwise qualified.

I hope my colleague who is forced to sit there and listen to me at this time as the Presiding Officer will reconsider at least some aspects of his position because he may be chairman of the Judiciary Committee someday. When he is, he is going to find that in the interest of fairness, you have to presume and give the benefit of the doubt to the President's nominee, especially unless you can show that they are outside of the mainstream of American jurisprudence.

I have to tell you that I haven't seen many—in my whole time in 26 years in the Senate and confirming almost every judge that currently sits on the Federal bench—that I would consider coming close to being outside of the mainstream of American jurisprudence. By the time they get through the vetting process at the White House, the vetting process of the FBI, the vetting process of the American Bar Association, and when they wind up with a well-qualified rating from the American Bar Association, you can't say they are outside of the mainstream of American jurisprudence, nor can you say that because they differ with you ideologically you have to vote against them.

I happen to love my colleague. I just hope he will reconsider because I don't want him leading those who are less mentally equipped down the primrose path of partisan politics.

I yield the floor to my dear colleague and friend from Florida, who has really fought that good battle on S. 812, which is something I very much respect.

The PRESIDING OFFICER. The Senator from Florida is recognized after the eloquent and kind remarks of the Senator from Utah.

Mr. GRAHAM. Mr. President, I also appreciate the kind remarks of the Senator from Utah and hope that he will open his CONGRESSIONAL RECORD tomorrow and will read the remarks that I am going to be delivering shortly, as we both share a very strong interest in the same destination, which is to assure that the 40 million Americans who are currently benefitting by Medicare will see in this year a fulfillment

of a long held aspiration, which is to expand Medicare benefits to include prescription drugs.

GREATER ACCESS TO AFFORDABLE PHARMACEUTICALS

Mr. GRAHAM. Mr. President, along with my colleague, Senator GORDON SMITH of Oregon, and a number of other Members of the Senate, earlier today I introduced an amendment which will be debated beginning at 9:30 tomorrow, and voted on at 11 o'clock.

I would like to use this opportunity to briefly summarize some of the elements of that amendment, and then use that as the basis to respond to some comments which have been made questioning the desirability and appropriateness of passage of this amendment.

Our amendment has a simple objective. It is to bring Medicare into the 21st century by providing for it what virtually every private health insurance plan has—coverage of prescription drugs.

When Medicare was established in 1965, prescription drugs were a relatively minor part of a comprehensive health care program. In fact, it is surprising to know that in 1965 the average senior American spent \$65 a year on prescription drugs. That number has increased 35 times to over \$2,100 as the average amount that senior Americans are spending this year on prescription drugs.

Our objective is to provide a modern Medicare Program by providing a critical missing element from the current program.

In our debate a week ago, there was a great deal of concern about the cost of the plan. I introduced a plan which would have met fully the standards of universal coverage, comprehensive in terms of drugs covered, and affordable to the beneficiary. That plan received 52 votes, which obviously is a majority of the Senate. Unfortunately, we weren't debating under the rules of majority rule. We were debating under the rules that said you had to have 60 votes in order to overcome procedural hurdles. We fell short of those 60 votes.

One of the reasons given for not voting for our plan was that it was just too expensive; it had to be reined in.

So we spent the last week reviewing our proposal to see what we could do in order to make it more acceptable to our brethren so that we can get the 60 votes.

I want to again recognize and thank my colleague, Senator GORDON SMITH, for the great contribution he has made in accomplishing this task.

But one of the things we did was to say we are going to develop a plan which would cost no more than \$400 billion over the next 10 years. We received today from the Congressional Budget Office their scoring of our plan where they found the plan actually had a cost of \$389 billion over the next 10 years. We thought that would be a goal—holding the cost to under \$400 billion that