

The PRESIDING OFFICER. Objection is heard.

Mr. FRIST. Mr. President, with respect to the rejection of these five proposed unanimous consents, we do ask that the other side look at these as individuals. Once again, I state the willingness on our side of the aisle to bring these forward. I mentioned 4 hours for debate equally divided. If it takes 8 hours or 10 hours of debate, I would put that forward.

Rather than run through the unanimous consent request again, we will continue our conversations off the floor.

Mr. REID. Mr. President, through the Chair, I ask the leader this question: In regard to two of the names put forward, the woman from Ohio and Roberts, the best way to alleviate a very serious problem that has developed—and, you know, I think Senator LEAHY is right on his interpretation of the rules, but it really does not matter at this stage—why do we not have the Judiciary Committee reconvene regarding those two judges? If there are some more questions the Judiciary Committee members have, ask the questions and then those two matters, I am sure, will receive a number of Democratic votes, and we could have these two people on the floor. That could be scheduled under whatever the rules are in the Judiciary Committee.

I think we are creating problems for ourselves. I know Senator HATCH feels right the way he interprets the rules. We have people on this side who feel that he is wrong, and it would seem that an easy way to avoid that problem would be to reconvene the Judiciary Committee, see if Democratic members of the Judiciary Committee want to ask any more questions of those nominees, and we could move along. Otherwise, I am afraid that because of how we interpret the rules of the committee having been violated, it is going to unnecessarily throw another cloud over an already cloudy situation. I do not suggest the leader has to answer that publicly, but I would hope that he would follow through on that and see if that would be a way to avoid these problems.

The PRESIDING OFFICER. The majority leader.

Mr. FRIST. Mr. President, all five of these individuals are on the Executive Calendar for consideration on the floor of the Senate. We can continue our conversations, but all of these have gone through the Judiciary Committee and have been presented on the floor.

#### EXECUTIVE SESSION

#### NOMINATION OF MIGUEL A. ESTRADA, OF VIRGINIA, TO BE UNITED STATES CIRCUIT JUDGE FOR THE DISTRICT OF COLUMBIA—Continued

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate

proceed to executive session for the consideration of the Estrada nomination.

The PRESIDING OFFICER. Is there an objection?

Without objection, it is so ordered. The clerk will report.

The assistant legislative clerk read the nomination of Miguel A. Estrada, of Virginia, to be United States Circuit Judge for the District of Columbia Circuit.

Mr. FRIST. Mr. President, earlier today we had a productive debate with the Vice President in the Presiding Officer's chair. The debate was constructive and did fulfill my goals to elevate the debate to the level of talking about advice and consent of the Constitution itself.

The nomination of Miguel Estrada has been pending before the full Senate for over a month. He was initially nominated 2 years ago. I have tried on numerous occasions to reach out for a time certain for a very simple up-or-down vote. That is all we ask for after these 5 weeks of debate. Each of the requests has been met with an objection from the other side of the aisle.

As I have stated, we are not going to give up on this nominee. We are going to continue to push for that very simple request that this nominee should have an up-or-down vote. He deserves an up-or-down vote, and I will continue to pursue every avenue possible in terms of reaching out. If the other side of the aisle says they want more information, we have responded by saying submit written questions and we will get the answers. The White House has made Miguel Estrada available individually to Senators to answer their questions, in an effort to keep this nomination moving forward.

Prior to lunch, I asked my Democratic friends if they would agree to a time certain for an up-or-down vote if a further hearing in the Judiciary Committee is scheduled. If they think they need more information regarding this nomination, they would agree to a hearing to be followed by an up-or-down vote. That would be another way to get information, if it really is the fact that the other side of the aisle wants more information. I hope it reflects to my colleagues on both sides of the aisle my attempt to reach out through every avenue possible to respond to their request for more information.

At the end of that hearing, I would expect as part of the proposal to have an up-or-down vote. If people do not like what they hear or, after that process, they say they do not know enough, then let them vote no, so they can express themselves with an up-or-down vote. I think it is time for a vote.

I am happy to yield for a brief response to my Democratic colleague, if he would like to comment.

Mr. REID. I thank the leader. As I indicated this morning, we would be willing to attend the hearing and ask questions of Mr. Estrada if, in addition to

that, we had the documents that we have requested from the Solicitor's Office while he worked there.

Mr. FRIST. Mr. President, I ask unanimous consent that following a further hearing with respect to the Estrada nomination, there be an additional 4 hours for debate equally divided in the usual form, and the Senate then vote on the confirmation of the nomination of Miguel Estrada with no intervening action or debate.

Mr. REID. Mr. President, I ask unanimous consent that the request be modified to allow the provision of documents relevant to Mr. Estrada's Government service, which were first requested in May of 2001; that the nominee thereafter appear before the Judiciary Committee to answer questions which we believe he failed to answer in his confirmation hearing and any additional questions that may arise after reviewing the documents we have requested.

The PRESIDING OFFICER. Does the Senator so modify his request?

Mr. FRIST. Mr. President, reserving the right to object, as we have mentioned again and again, access to these SG confidential memorandum would be unprecedented and would jeopardize the integrity of our system. Therefore, I object to the request for modification.

The PRESIDING OFFICER. The objection is heard.

Is there objection to the initial request of the majority leader?

Mr. REID. Objection.

The PRESIDING OFFICER. The objection is heard.

#### CLOTURE MOTION

Mr. FRIST. Mr. President, given that response, I now send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The assistant legislative clerk read as follows:

#### CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on Executive Calendar No. 21, the nomination of Miguel A. Estrada to be United States Circuit Judge for the District of Columbia Circuit.

Bill Frist, Orrin Hatch, Trent Lott, Robert F. Bennett, Peter Fitzgerald, Jeff Sessions, John Ensign, Kay Bailey Hutchison, Rick Santorum, Don Nickles, Jim Talent, Lindsey Graham of South Carolina, Lisa Murkowski, Conrad Burns, John Warner, John Sununu, Gordon Smith, Elizabeth Dole, Saxby Chambliss, Christopher Bond, Susan Collins, Wayne Allard, Lamar Alexander, Norm Coleman, Pat Roberts, Craig Thomas, Larry E. Craig, Olympia Snowe, John McCain, James Inhofe, Jon Kyl, Lincoln Chafee, Judd Gregg, Richard G. Lugar, George Allen, Chuck Grassley, George V. Voinovich, Mike Capo, Michael B. Enzi, Thad Cochran, Mike DeWine, Arlen Specter, Sam Brownback, Ben Nighthorse Campbell, Richard Shelby, Ted Stevens, Chuck Hagel, John Cornyn, Pete

Domenici, Mitch McConnell, Jim Bunning.

Mr. FRIST. I ask unanimous consent that the live quorum provided for under rule XXII be waived.

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

#### LEGISLATIVE SESSION

Mr. FRIST. I ask unanimous consent that we resume legislative session.

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

#### PARTIAL-BIRTH ABORTION BAN ACT OF 2003—Continued

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. If I could ask a question of the manager of the bill, the distinguished Senator from Pennsylvania, has the Senator had an opportunity to look over the unanimous consent request that we submitted to staff earlier today regarding the late-term abortion matter that is now before the Senate?

Mr. SANTORUM. We have been reviewing the one amendment. Has the Senator submitted all the other amendments? Only one amendment has been submitted, to my knowledge.

Mr. REID. I apologize for that. I thought staff had all the amendments, but the Senator does have our amendment, of course. It has been filed.

Mr. SANTORUM. We have one amendment. That is the only one I am aware that we have.

Mr. REID. We will make sure the Senator gets all the amendments. Can we agree on a time on this amendment before us without any second-degree amendments?

Mr. SANTORUM. Yes. In fact, I just spoke to the Senator from Washington about this.

Mr. REID. I am sorry.

Mr. SANTORUM. I suggested we would be willing to accept the amendment. She has requested that we have a rollcall vote of some sort. I am happy to agree on a reasonable time agreement.

Mr. REID. That would be fine. We would be happy to.

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. SANTORUM. 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. SANTORUM. Mr. President, we are working in good faith. I thank the Democratic whip for his willingness to try to work through these amendments. We are reviewing, on our side, the Murray amendment. There may be some concerns about it. We are hopeful to get a resolution and enter into a unanimous consent agreement on the disposition of that amendment.

We have just been handed another amendment. That is a positive step, a

step in the right direction. We are hopeful we can proceed with a vote on the Murray amendment sometime today, and maybe another vote later this evening; if not, tomorrow morning. So there are fewer than a half dozen amendments we are aware of on this legislation. It looks as though we are making some progress.

Again, I thank the other side of the aisle for their cooperation.

I want to go back and go over some of the issues that have been discussed today about the underlying bill, which is the Partial-Birth Abortion Ban Act, and provide the context in which this legislation comes to the floor of the Senate.

Back three Congresses ago, in 1995 and 1996, this procedure had been unearthed, if you will. There was some medical literature that some Members of Congress found so abhorrent, for obvious reasons, that there was a strong belief that this procedure should be banned. So for three consecutive Congresses, the House of Representatives and, for two of those Congresses, the Senate debated this issue—always being blocked by the President of the United States and then, on the third attempt, by the U.S. Supreme Court.

We are now here with a version of the bill that is different from the previous versions. The version that was considered by the U.S. Supreme Court.

The reason we are back is not just to say the Court was wrong or that we disagree with the Court's judgment on constitutionality, although I do. I have to say the Court's view of the constitutionality of abortion statutes is really quite remarkable. It is not, as has been depicted by many on the other side with whom we have debated this issue in the past, that Roe v. Wade allows absolute freedom of choice in the first trimester, provides some limitations in the second, greater limitations in the third trimester. Lots of statements have been made on the floor that that is the case. Statements have been reported in the press. The press themselves have adopted this analysis of Roe v. Wade.

That is not what Roe v. Wade says—or Doe v. Bolton, its companion case—and not what subsequent cases from the U.S. Supreme Court have held. If that were the case, then the U.S. Supreme Court would have upheld the partial-birth abortion case.

Why? Because if there are legitimate restrictions on the right to abortion in the second and third trimester, I can't imagine a more legitimate restriction. But that is not what the Court has said. The Court has basically said there are no restrictions on abortion. It really is quite amazing that a right that was created, as I understand, by judicial fiat, not by the legislative process and not by the constitutional amendment process—I dare anyone to look at the U.S. Constitution and find the right to abortion. It does not exist in the U.S. Constitution. But by judicial fiat, by an act of judicial activism, this right was created.

Interestingly enough, this right, since it was created by nine people, they have no limitation on how they define it because there is nothing in the written Constitution that limits their own interpretation. It is what they say it is. It is a pure case of positive law created by an unelected group of men at the time.

What they are saying is absolutely right. There are no restrictions—none. I would challenge any of you to go through the Constitution, go through the Bill of Rights, and look at the rights within our Constitution and find another right in the Constitution that has no limit, that has no restriction. Every other right written in the Constitution has a limit, has curbs. The courts have permitted it, except this right that doesn't exist in the Constitution.

When we approach this issue of partial-birth in trying to find, in a sense, a way to put this procedure outside of Roe, I would argue that was the argument all along. And I believe back in 1996 when I argued this, it did not belong under Roe v. Wade. There are no health concerns of the mother. That is what makes all of the abortion basically unlimited up until the moment that the child is separated from the mother; that there is always a reason for the health of the mother and health defined under Roe v. Bolton means anything—stress, anxiety, fear. Anything associated with mental or physical health counts for allowing abortion up to the time of the separation of the child from the mother.

That is why I said there are simply no restrictions. We looked and questioned whether the partial-birth abortion procedure affects the health of women. The answer is clearly no. It does not.

There is a huge amount of congressional testimony both here in the Senate, with debates on the floor, debates on the floor of the House, testimony, overwhelming evidence, dispositive evidence that this procedure is never—I underscore the word “never”—medically necessary to preserve the health of the mother. That is a strong word, “never.” That is an absolute term—“never.” I use it with complete comfort—and have for 7 years here on the floor of the U.S. Senate. I did earlier today when I said, as I have repeated over and over again to those who believe that a health exception is necessary, give me a medical case in which a partial-birth abortion is medically necessary to preserve the health of the woman. Give me a case where it is preferable—not just necessary, where it is preferable. I can give you quote after quote, from the AMA to C. Everett Koop to the experts in late-term abortions, all of whom have said not only isn't it medically necessary but it is bad medicine. It is unhealthy. It is contraindicated.

The overwhelming body of medical evidence is that it is outside the scope of medicine. It is not taught in medical