

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

### MORNING BUSINESS

Mr. ALLEN. Madam President, I ask unanimous consent that there now be a period of morning business until 1:30 p.m., with Senators permitted to speak for up to 10 minutes each.

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

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 Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

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

(The remarks of Mr. KYL are printed in today's RECORD under "Morning Business.")

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

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

### DIGITAL AND WIRELESS NETWORK TECHNOLOGY ACT OF 2003—Continued

Mr. ALLEN. Mr. President, I ask unanimous consent we now proceed to the vote on S. 196.

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

The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill, as amended, pass? The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from Oklahoma (Mr. INHOFE) is necessarily absent.

Mr. REID. I announce that the Senator from Florida (Mr. GRAHAM) and the Senator from Maryland (Mr. SARBANES) are necessarily absent.

The PRESIDING OFFICER. (Mr. SUNUNU). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 97, nays 0, as follows:

[Rollcall Vote No. 136 Leg.]

YEAS—97

Akaka	Dodd	Lott
Alexander	Dole	Lugar
Allard	Domenici	McCain
Allen	Dorgan	McConnell
Baucus	Durbin	Mikulski
Bayh	Edwards	Miller
Bennett	Ensign	Murkowski
Biden	Enzi	Murray
Bingaman	Feingold	Nelson (FL)
Bond	Feinstein	Nelson (NE)
Boxer	Fitzgerald	Nickles
Breaux	Frist	Pryor
Brownback	Graham (SC)	Reed
Bunning	Grassley	Reid
Burns	Gregg	Roberts
Byrd	Hagel	Rockefeller
Campbell	Harkin	Santorum
Cantwell	Hatch	Schumer
Carper	Hollings	Sessions
Chafee	Hutchison	Shelby
Chambliss	Inouye	Smith
Clinton	Jeffords	Snowe
Cochran	Johnson	Specter
Coleman	Kennedy	Stabenow
Collins	Kerry	Stevens
Conrad	Kohl	Sununu
Cornyn	Kyl	Talent
Corzine	Landrieu	Thomas
Craig	Lautenberg	Voinovich
Crapo	Leahy	Warner
Daschle	Levin	Wyden
Dayton	Lieberman	
DeWine	Lincoln	

NOT VOTING—3

Graham (FL) Inhofe Sarbanes

The bill (S. 196), as amended, was passed, as follows:

S. 196

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. SHORT TITLE.

This Act may be cited as the "Minority Serving Institution Digital and Wireless Technology Opportunity Act of 2003".

#### SEC. 2. ESTABLISHMENT OF OFFICE.

(a) IN GENERAL.—There is established within the National Science Foundation an Office of Minority Serving Institution Digital and Wireless Technology to carry out the provisions of this Act.

(b) PURPOSE.—The Office shall—

(1) strengthen the ability of eligible institutions to provide capacity for instruction in digital and wireless network technologies by providing grants to, or executing contracts or cooperative agreements with, those institutions to provide such instruction; and

(2) strengthen the national digital and wireless infrastructure by increasing national investment in telecommunications and technology infrastructure at eligible institutions.

#### SEC. 3. ACTIVITIES SUPPORTED.

An eligible institution shall use a grant, contract, or cooperative agreement awarded under this Act—

(1) to acquire the equipment, instrumentation, networking capability, hardware and software, digital network technology, wireless technology, and infrastructure;

(2) to develop and provide educational services, including faculty development, related to science, mathematics, engineering, or technology;

(3) to provide teacher education, library and media specialist training, and preschool and teacher aid certification to individuals who seek to acquire or enhance technology skills in order to use technology in the classroom or instructional process;

(4) to implement joint projects and consortia to provide education regarding technology in the classroom with a State or State education agency, local education agency, community-based organization, national non-profit organization, or business, including minority businesses;

(5) to provide professional development in science, mathematics, engineering, or technology to administrators and faculty of eligible institutions with institutional responsibility for technology education;

(6) to provide capacity-building technical assistance to eligible institutions through remote technical support, technical assistance workshops, distance learning, new technologies, and other technological applications;

(7) to foster the use of information communications technology to increase scientific, mathematical, engineering, and technology instruction and research; and

(8) to develop proposals to be submitted under this Act and to develop strategic plans for information technology investments.

#### SEC. 4. APPLICATION AND REVIEW PROCEDURE.

(a) IN GENERAL.—To be eligible to receive a grant, contract, or cooperative agreement under this Act, an eligible institution shall submit an application to the Director at such time, in such manner, and accompanied by such information as the Director may reasonably require. The Director, in consultation with the advisory council established under subsection (b), shall establish a procedure by which to accept and review such applications and publish an announcement of such procedure, including a statement regarding the availability of funds, in the Federal Register.

(b) ADVISORY COUNCIL.—The Director shall establish an advisory council to advise the Director on the best approaches for involving eligible institutions in the activities described in section 3, and for reviewing and evaluating proposals submitted to the program. In selecting the members of the advisory council, the Director may consult with representatives of appropriate organizations, including representatives of eligible institutions, minority businesses, eligible institution communities, Federal agency personnel, and other individuals who are knowledgeable about eligible institutions and technology issues. Any panel assembled to review a proposal submitted to the program shall include members from minority serving institutions. Program review criteria shall include consideration of—

(1) demonstrated need for assistance under this Act; and

(2) diversity among the types of institutions receiving assistance under this Act.

(c) DATA COLLECTION.—An eligible institution that receives a grant, contract, or cooperative agreement under section 2 shall provide the Office with any relevant institutional statistical or demographic data requested by the Office.

(d) INFORMATION DISSEMINATION.—The Director shall convene an annual meeting of eligible institutions receiving grants, contracts, or cooperative agreements under section 2 for the purposes of—

(1) fostering collaboration and capacity-building activities among eligible institutions; and

(2) disseminating information and ideas generated by such meetings.

#### SEC. 5. MATCHING REQUIREMENT.

The Director may not award a grant, contract, or cooperative agreement to an eligible institution under this Act unless such institution agrees that, with respect to the costs to be incurred by the institution in carrying out the program for which the grant, contract, or cooperative agreement was awarded, such institution will make available (directly or through donations from public or private entities) non-Federal contributions in an amount equal to ¼ of the

amount of the grant, contract, or cooperative agreement awarded by the Director, or \$500,000, whichever is the lesser amount. The Director shall waive the matching requirement for any institution or consortium with no endowment, or an endowment that has a current dollar value lower than \$50,000,000.

**SEC. 6. LIMITATIONS.**

(a) **IN GENERAL.**—An eligible institution that receives a grant, contract, or cooperative agreement under this Act that exceeds \$2,500,000, shall not be eligible to receive another grant, contract, or cooperative agreement under this Act until every other eligible institution that has applied for a grant, contract, or cooperative agreement under this Act has received such a grant, contract, or cooperative agreement.

(b) **AWARDS ADMINISTERED BY ELIGIBLE INSTITUTION.**—Each grant, contract, or cooperative agreement awarded under this Act shall be made to, and administered by, an eligible institution, even when it is awarded for the implementation of a consortium or joint project.

**SEC. 7. ANNUAL REPORT AND EVALUATION.**

(a) **ANNUAL REPORT REQUIRED FROM RECIPIENTS.**—Each institution that receives a grant, contract, or cooperative agreement under this Act shall provide an annual report to the Director on its use of the grant, contract, or cooperative agreement.

(b) **EVALUATION BY DIRECTOR.**—The Director, in consultation with the Secretary of Education, shall—

(1) review the reports provided under subsection (a) each year; and

(2) evaluate the program authorized by section 3 on the basis of those reports every 2 years.

(c) **CONTENTS OF EVALUATION.**—The Director, in the evaluation, shall describe the activities undertaken by those institutions and shall assess the short-range and long-range impact of activities carried out under the grant, contract, or cooperative agreement on the students, faculty, and staff of the institutions.

(d) **REPORT TO CONGRESS.**—The Director shall submit a report to the Congress based on the evaluation. In the report, the Director shall include such recommendations, including recommendations concerning the continuing need for Federal support of the program, as may be appropriate.

**SEC. 8. DEFINITIONS.**

In this Act:

(1) **ELIGIBLE INSTITUTION.**—The term “eligible institution” means an institution that is—

(A) a historically Black college or university that is a part B institution, as defined in section 322(2) of the Higher Education Act of 1965 (20 U.S.C. 1061(2)), an institution described in section 326(e)(1)(A), (B), or (C) of that Act (20 U.S.C. 1063b(e)(1)(A), (B), or (C)), or a consortium of institutions described in this subparagraph;

(B) a Hispanic-serving institution, as defined in section 502(a)(5) of the Higher Education Act of 1965 (20 U.S.C. 1101a(a)(5));

(C) a tribally controlled college or university, as defined in section 316(b)(3) of the Higher Education Act of 1965 (20 U.S.C. 1059c(b)(3));

(D) an Alaska Native-serving institution under section 317(b) of the Higher Education Act of 1965 (20 U.S.C. 1059d(b));

(E) a Native Hawaiian-serving institution under section 317(b) of the Higher Education Act of 1965 (20 U.S.C. 1059d(b)); or

(F) an institution determined by the Director, in consultation with the Secretary of Education, to have enrolled a substantial number of minority, low-income students during the previous academic year who received assistance under subpart I of part A of

title IV of the Higher Education Act of 1965 (20 U.S.C. 1070a et seq.) for that year.

(2) **DIRECTOR.**—The term “Director” means the Director of the National Science Foundation.

(3) **MINORITY BUSINESS.**—The term “minority business” includes HUBZone small business concerns (as defined in section 3(p) of the Small Business Act (15 U.S.C. 632(p))).

**SEC. 9. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated to the Director of the National Science Foundation \$250,000,000 for each of the fiscal years 2004 through 2008 to carry out this Act.

The PRESIDING OFFICER. The majority leader.

RECESS

Mr. FRIST. Mr. President, I ask unanimous consent the Senate now stand in recess until 3 p.m. today.

There being no objection, the Senate, at 2:11 p.m., recessed until 3 p.m. and reassembled when called to order by the Presiding Officer (Mrs. DOLE).

EXECUTIVE SESSION

NOMINATION OF PRISCILLA RICHMAN OWEN, OF TEXAS, TO BE UNITED STATES CIRCUIT JUDGE FOR THE FIFTH CIRCUIT

The PRESIDING OFFICER. Under the previous order, the Senate will now go into executive session to resume consideration of Executive Calendar No. 86, which the clerk will report.

The legislative clerk read the nomination of Priscilla Richman Owen, of Texas, to be United States Circuit Judge for the Fifth Circuit.

The PRESIDING OFFICER. The Senator from Maryland.

Ms. MIKULSKI. Madam President, I wish to speak about the nomination of Priscilla Owen. I thank the Senator from North Dakota for allowing me to go first.

I rise in opposition to the nomination of Priscilla Owen to the U.S. Court of appeals for the Fifth Circuit. I know the President has the constitutional responsibility to appoint Federal judges. I respect that right. In fact, I have voted for President Bush's judicial nominations 97 percent of the time. Yet the Senate also has the constitutional responsibility to advise and consent. We cannot rubberstamp nominations. Our courts are charged with safeguarding the very principles on which our country was built: justice, equality, individual liberty, and the basic implicit right of privacy.

When I look at a nominee, I have three criteria: judicial competence, personal integrity, and a commitment to core constitutional principles.

I carefully reviewed Judge Owen's rulings and opinions. I read the dissenting opinions of other judges and the views of legal scholars. I have concluded that Judge Owen does not meet my criteria. Her decisions appear to be driven by ideology—not by law. She appears to be far outside the mainstream

of judicial thinking, and her extreme and ideological agenda would make her unsuitable to sit on the Court of Appeals for the Fifth Circuit.

What we are considering with an appellate nomination is a lifetime appointment for a court that is only one step below the Supreme Court. The decisions made by this court have a lasting impact on the lives of all Americans for generations to come. This court's decisions will affect America's fundamental protections involving civil rights, individual liberty, health, and safety, and the implicit right of privacy. We need to be very careful about what we do.

That is why President Bush and all Presidents should nominate competent, moderate judges who reflect broad American values. No President should try to place ideologues on the court. If they do, I am concerned that it will slow the pace of confirmations, backlog our courts, and deny justice for too many Americans. Yet in nominating Judge Owen, the President has chosen someone with an extreme ideological agenda on civil rights, individual rights, and the rights of privacy.

Judge Owen has pursued an extreme activist agenda. Can anyone be surprised that this nomination has so many flashing yellow lights?

When President Bush discussed what would be his criteria for nominating judges, he said his standard for judicial nominees would be that they “share a commitment to follow and apply the law, not to make law from the bench.”

We applaud that criteria from the President. But I must say when we look at Priscilla Owen, that is exactly what she does. She makes law and does not limit herself to interpreting law, and, therefore, fails the President's own criteria.

The Texas court-watching journal, *Juris Publici*, said that Owen is a “conservative judicial activist.” That means she has a consistent pattern of putting her ideology above the law and ignoring statutory language and substituting her own views.

She has offered over 16 significant activist opinions and joined 15 others. Even White House counsel Judge Alberto Gonzales, who served with Judge Owen on the Texas Supreme Court, once called her dissent in the case “unconscionable . . . judicial activist.”

In a different case, Judge Gonzales called a dissent by Judge Owen an attempt to “judicially amend” a Texas statute. A number of dissents she wrote or joined in would have effectively rewritten or disregarded the law usually to the detriment of ordinary citizens.

An example: Quantum Chemical Corp v. Toennies was a case concerning age discrimination based on a civil rights statute. The majority of the Texas Supreme Court found for the plaintiff. Owen's dissent stated that the plaintiff needed to show that discrimination was a motivating factor. Her dissent would have changed Texas law and