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Senate

The Senate met at 1 p.m. and was called to order by the Honorable SAXBY CHAMBLISS, a Senator from the State of Georgia.

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray:

Almighty and Everlasting God, with Your words You divide night from day. Thank You for Your glory that brightens our path to the future and for the brilliance of Your hope that beckons us to new beginnings. Forgive us when we are unfaithful, when we desire to sing solo and disrupt the harmony of Your will.

Bless the Members of this body. Guard them from the evil one. Give them hearts large enough to take the honesty of their skepticism and transform it with the confidence of faith. Imbue them with reverence for life and guide them toward unity.

As they find peace with You, give them peace with each other. Give each of us gentleness fashioned after the pattern of Your mercy.

We pray in Your compassionate name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable SAXBY CHAMBLISS led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. STEVENS).

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, July 19, 2004.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable SAXBY CHAMBLISS, a Senator from the State of Georgia, to perform the duties of the Chair.

TED STEVENS,
President pro tempore.

Mr. CHAMBLISS thereupon assumed the Chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. FRIST. Today the Senate will consider the nomination of Williams Myers III to be a U.S. circuit judge for the Ninth Circuit. Last week we attempted to reach a time agreement on the Myers nomination; however, there was an objection from the Democratic side of the aisle. I filed a cloture motion on the nomination and that vote will occur at 2:15 on Tuesday. We will debate that nomination throughout today's session, and I expect a number of Members will come to the floor and speak on this nomination.

As I announced on Friday, there will be no rollcall votes during today's session.

This week we also expect the Appropriations Subcommittee on Defense conference report. This is a very important piece of legislation that we will need to address before we adjourn for the scheduled recess. In addition, there is a conference report regarding some expiring tax provisions. We will consider that measure if and when it becomes available.

This is the final legislative week prior to the August recess. With the co-

operation of all Senators, we should be able to complete our work and begin the recess on time.

RECOGNITION OF THE ACTING MINORITY LEADER

The ACTING PRESIDENT pro tempore. The Senator from Nevada is recognized.

THANKING THE SENATE CHAPLAIN

Mr. REID. Mr. President, I have a couple of questions I would like to ask through the Chair to the majority leader.

First, we tend to dwell on the negative around here quite a bit. But one of the good things that happens to me every day that I come is to hear the prayer. Today, for example, I wish I were good enough to live up to the expectations of the prayer offered by Admiral Black. Really, he does a wonderful job, setting the tone for how we should work in the Senate. A lot of times I think we don't listen very closely to him. But, even though he is not in the Chamber now, I want to have the RECORD spread with my appreciation of the thoughtfulness he goes through every day in preparing his very meaningful prayers.

CONSIDERATION OF CERTAIN MEASURES

Mr. REID. Mr. President, I am wondering if the majority leader could give us an idea of whether we might get to the Morocco Free Trade Agreement this week, and also do we have any word on the childcare conference report? It is my understanding that the Appropriations Committee is going to report out of the committee the military construction and legislative branch bills this week. I would ask about Moroccan free trade, the

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



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childcare conference, and those two appropriations bills, military and legislative branch, if we are going to be able to get to those this week?

Mr. FRIST. Mr. President, all four issues are issues important to the Senate. Progress is being made on all of them. With regard to Morocco, we will need to check with the chairman and the ranking member to see what their intentions are, which I will do and get back with the assistant Democratic leader.

The conference report on the child credit, again I very much would like to see action on it over the course of the week. I know there was discussion over the last several days and over the weekend itself. I will be able to update him once people return to town in the course of the day.

On the appropriations bills, we will see what progress can be made before we leave. It would be nice to be able to make progress on those appropriations bills. We will need to aggressively consider all of these appropriations bills, either now or in September, and finish before we complete the session.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, leadership time is reserved.

EXECUTIVE SESSION

NOMINATION OF WILLIAM GERRY MYERS III TO BE A U.S. CIRCUIT JUDGE FOR THE NINTH CIRCUIT

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will proceed to executive session to consider the nomination of William Gerry Myers III to be a circuit judge.

The assistant legislative clerk read the nomination of William Gerry Myers III, of Idaho, to be U.S. Circuit Judge for the Ninth Circuit.

The ACTING PRESIDENT pro tempore. Under the previous order, the time until 5 p.m. shall be equally divided for debate only between the chairman and ranking member or their designees.

The Senator from Utah.

Mr. HATCH. Mr. President, I yield such time as he needs to the distinguished Senator from Idaho, and I will defer my remarks until after he finishes because he has a hearing scheduled in just a number of minutes, so we will turn to him first.

The ACTING PRESIDENT pro tempore. The Senator from Idaho is recognized.

Mr. CRAIG. Mr. President, I thank the chairman of the Judiciary Committee for yielding me time at this moment. At 2 I have a special Committee On Aging hearing to chair, so I do appreciate the accommodation.

Mr. President, today we are here to visit about, and I hope confirm, a good

friend of mine, William G. Myers III, whom the President nominated for a judgeship to the Ninth Circuit Court of Appeals. I commend President Bush for nominating Bill Myers.

I would like to spend a few moments today talking about the reasons my colleagues should vote for Bill Myers and set aside the larger political issues surrounding judicial nominations. Bill Myers was nominated by the President on May 15 of 2003 not May 15 of 2004 so it has been well over a year since the President sent up the nomination of Bill Myers.

Bill is an extraordinary person, and I believe his nomination deserves our full and focused consideration.

He was reported out of the Judiciary Committee on April 1, 2004. Once confirmed, Bill will fill the vacancy of Judge Thomas Nelson, who became the senior judge of the Ninth Circuit.

At this juncture, I would like to remind my colleagues that this is a vacant seat on the Ninth Circuit, a vacant Idaho seat we are proposing to be filled. The caseload of the Ninth Circuit judges at this moment is one of the largest in the country—as some would suggest, even overpowering and not allowing reasonable and appropriate justice to go forward simply because this seat and others are not filled and the caseload is so substantial.

As my colleagues know, Federal law requires that every State within a circuit be represented by at least one judge. I believe the Senate is in danger of failing to fulfill this requirement if it prevents an up-or-down vote on Bill Myers because he will be the Idaho judge of the Ninth Circuit.

A few critics of this administration's natural resource policy would have you believe Bill should not be confirmed. They have bandied about previous wrongs, if you will, but all they have demonstrated is the certainty of what?

First, these critics desire to capture the judiciary by opposing nominees who do not display activist tendencies that might work to their own political advantage. In other words, if you aren't our politics and we can make an example of your politics, you are not fit to serve. We all know that judges shouldn't be involved in politics.

Second, these critics have done nothing more than confirm that Solicitor Myers is the chief legal officer at the Department of the Interior, which is controversial in every administration by the very nature of the mission and the responsibility of the Solicitor at the Department of Interior.

By enforcing political litmus tests against judicial nominees, some are suggesting that in order to be a nominee, you should have no experience in the law. Let me repeat that. Some are suggesting, some of my colleagues on the Judiciary Committee—and you will probably hear it on the Senate floor—that it is the experience of the nominee that is giving him the problem. So are we to assume, then, that nominees should have no experience? How can

they be a wise and thoughtful judge within the law if they have not had that kind of experience both in the public and private sector?

Make no mistake, Bill Myers' opponents are for enforcing just this test. The substance of their test is this: If you have represented farmers, ranchers, miners, and, frankly, anyone else who advocates a balanced multiple-use policy on public and private lands in the West, the radical left environmental groups have decreed that you do not even merit a vote in the U.S. Senate. And the Democrats at this moment are playing that game: Sorry, Mr. Myers. You did your job down at Interior; you don't deserve to get a vote on the floor of the U.S. Senate in an up-or-down fashion. Senators should be ashamed to enforce such an edict from those liberal interest groups. The interest groups in this instance have grabbed the power of those on the other side. That is a tragedy.

Among their many factual misstatements, critics of this nomination confuse the appropriate roles of the lawyer or the judge by suggesting that because Bill Myers has been a strong advocate for his clients, he will continue to advocate for them from the bench. Of course, they offer nothing but bland or bald assertions in support of their logic.

Of course, we know that as men and women come to the bench, quite the opposite happens. They have a role in the private sector to represent their clients—that is their job—or in the public sector, in the case of Bill Myers, the Solicitor to represent his client, the Secretary of Interior. Is it to suggest that he will continue to do that as a judge? Quite the opposite. Let me tell you, that is the argument we will hear today on the floor of the Senate, and that is the argument being placed.

If their theory is correct, no practitioner who has ever represented committed clients in adversarial proceedings or political policy battles would be qualified to serve in the judiciary. Even so, any fears are allayed by a fair review of Bill's public service. His record as Solicitor shows balance and mainstream decisionmaking.

Let me give you a few examples: opposition to trespass by inholders in national parks of Alaska, impoundment of trespass livestock on Federal lands in Nevada, expansion of a national monument in New York, support for reinterment of Native-American remains, recognition of tribal boundary rights in New Mexico, record penalties for failure of a company to pay gas royalties, and support for settlement of tribal water rights claims.

I remind my colleagues that as Solicitor, Bill Myers was not a decision-maker. He was the legal advisor to the Secretary of the Interior. In this role, as with all other roles in his life, Bill Myers has been an advocate for his clients.

I see no reason to believe Bill Myers would not continue to do this as a