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Senate

The Senate met at 9:30 a.m. and was called to order by the President pro tempore (Mr. STEVENS).

PRAYER

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

Let us pray.

O God, our help in ages past, our hope for years to come, direct and control our lives. Control our tongues that our words may bring life and not death, clarity and not confusion. Control our hearts that we may hear the cries of the hurting. Control our minds that our thoughts may be illuminated by Your presence. Control our actions, that our deeds may match our creeds.

Today, give each Senator an awareness of Your sovereignty. Remind him or her that the hearts of world leaders are in Your hands, and Your purposes will prevail. Enable us all to walk through this world with our garments unstained by evil. Give us courage, endurance, and serenity to face life with a steadfast hope in You.

Remember those who are now braced for Hurricane Rita. We pray in Your matchless Name. Amen.

PLEDGE OF ALLEGIANCE

The PRESIDENT pro tempore 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.

RESERVATION OF LEADER TIME

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

MORNING BUSINESS

The PRESIDENT pro tempore. Under the previous order, there will be a period for the transaction of morning business for up to 60 minutes, with the

first half of the time under the control of the majority leader or his designee and the second half of the time under the control of the Democratic leader or his designee.

RECOGNITION OF THE ACTING MAJORITY LEADER

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

SCHEDULE

Mr. MCCONNELL. Mr. President, under our order from last night, we will start today's session with a 1-hour period of morning business. At approximately 10:30 this morning, we will return to the Agriculture appropriations bill. We have an agreement in place that first-degree amendments be filed at the desk no later than 4 p.m. today. I hope that there will not be many more amendments filed. We would like to finish this bill this evening, and we will stay in session later into the evening with votes in order to accomplish that, if necessary.

We have several meetings occurring this afternoon, including an all-Senators meeting from 4 to 5 today. Because of these meetings, it is important that we get started early this morning and process as many amendments as possible. Therefore, Senators should be aware that we will be scheduling votes as quickly as we can this morning, in order to make as much progress as possible, and of course we will alert Members as soon as the first vote is ordered.

Mr. President, I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. ALLARD. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

The PRESIDENT pro tempore. Without objection, it is so ordered.

NOMINATION OF JOHN ROBERTS

Mr. ALLARD. Mr. President, I rise today in support of President Bush's nomination of Judge John Roberts to serve as Chief Justice of the United States.

It would be difficult to identify a jurist better qualified for our Nation's highest Court than Judge John Roberts. He is a distinguished jurist who enjoys broad bipartisan support.

There is good reason for this broad bipartisan support. Judge Roberts' sharp intellect and legal ability are beyond question. In addition, his humility, fairness, and open-minded approach to the practice of law have won him admirers from across the political spectrum.

During his career as a practicing attorney, Judge Roberts argued a variety of positions in a number of high-profile cases and has represented criminal defendants, environmental interests, and the State of Hawaii in a dispute over legislation meant to favor native Hawaiians as a group.

During the 2001 landmark Microsoft antitrust case before the District of Columbia court, he argued on behalf of the Clinton Justice Department and a group of primarily Democratic State attorneys general that several of Microsoft's business practices violated the Sherman Antitrust Act.

In the landmark 2002 environmental case, Tahoe-Sierra Preservation Council v. Tahoe Regional Planning Agency, he successfully argued before the Supreme Court in favor of limits on property development and in support of protection of the Pristine Lake Tahoe Basin area.

Judge Roberts has been described as "one of the top appellate lawyers of his generation" by the Legal Times, and one of the top 10 civil litigators by the National Law Journal in 1999.

Colorado's own Rocky Mountain News offered its unequivocal endorsement of Judge Roberts. The Rocky Mountain News stated that "Roberts is

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



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not only well-spoken, he's tactful, amicable and focused" and "projects a temperament that should serve a Chief Justice well."

I ask unanimous consent to have the full September 17 article printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Rocky Mountain News, Sept. 17, 2005]

ROBERTS RISES TO THE OCCASION

When Chief Justice John Roberts finished his testimony Thursday before the Senate Judiciary Committee—oops! we're getting ahead of ourselves. When the next chief justice finished his testimony, some senators complained they knew little more about him than when the hearings started because he'd dodged so many questions.

Weren't they listening? Most of us know a lot more about Roberts today than we did a week ago—even though he did, yes, dodge questions about issues that will come before the court. Every one of the current justices once dodged such questions, too.

We learned, for example, that Roberts is quick on his feet and able to respond with aplomb to questions that in some cases were asinine. Wisconsin Sen. Herb Kohl actually wanted Roberts to explain what role he'd play "in making right the wrongs revealed by Katrina." Roberts politely reminded him that courts are "passive institutions" that "decide the cases that are presented."

We learned that Roberts is not only well-spoken, he's tactful, amicable and focused—that he projects a temperament that should serve a chief justice well.

No, we still don't know how he'll rule on cases related to abortion or the regulatory powers of government under the commerce clause, to cite issues that exercised senators. But learning his views on such matters was never realistically in the cards.

Our favorite part of his testimony was when he was pressed to explore his analogy between being a judge and a baseball umpire. He said he believed balls and strikes were objective facts even if an umpire isn't always correct in calling them.

"I do think there are right answers," he explained. "I know that it's fashionable in some places to suggest that there are no right answers and that judges are motivated by a constellation of different considerations . . . That's not the view of the law that I subscribe to."

"I think when you folks legislate, you do have something in mid . . . and you expect judges not to put in their own preferences, not to substitute their judgment for you, but to implement your view of what you are accomplishing in that statute. I think, when the framers framed the Constitution, it was the same thing. . . . And I think there is meaning there and I think there is meaning in your legislation. And the job of a good judge is to do as good a job as possible to get the right answer."

That's not a complete judicial philosophy, of course, but it's the start of a good one. And despite the scattered complaints, we suspect a majority of senators recognize it, too.

Mr. ALLARD. Mr. President, another Colorado newspaper, the Pueblo Chieftain, offered its praise for Judge Roberts stating that "Judge Roberts looks like the kind of justice who would apply the Constitution as it is written," adding "that's as it should be."

I ask unanimous consent to have the full September 8 editorial printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Pueblo Chieftain]

ALTERED CALCULUS

The death of Chief Justice William Rehnquist over the weekend has altered the calculus of Supreme Court nominations.

President Bush, who had named Circuit Court Judge John Roberts to fill the seat of retiring Associate Justice Sandra Day O'Connor, withdrew that nomination and re-nominated him to succeed Justice Rehnquist. It was a logical decision.

The American Bar Association already has given Judge Roberts, 50, its highest rating. He is well-regarded in legal circles. He's been under a microscope by senators and the media and found to be top-notch. Colorado's own Democratic Sen. Ken Salazar gives Judge Roberts high marks.

So the Beltway oddsmakers are calling Judge Roberts' confirmation in the Senate a sure bet. That brings into question, then, the president's choice to replace Justice O'Connor, who says she will remain on the bench until here replacement is confirmed.

During both of his presidential campaigns, Mr. Bush made as one of his key planks restoring the balance on the court away from the liberal, activist mode which became de rigueur when President Eisenhower named Earl Warren ("the biggest damn fool mistake I've ever made") as chief justice.

Credit Justice Rehnquist for slowly tipping the balance back during his tenure. But that balance is precarious.

President Bush will face an unrelenting deluge from liberals saying he should nominate someone from the "mainstream," meaning left of center. These groups would like to derail any Supreme Court nominee who has a conservative bone in his or her body, because it has been only through the liberal courts, not the legislative process, where they have been able to influence public policy.

Funny, though, but recent elections have shown that the mainstream is not over there in the Beltway/Hollywood liberals' bailiwick.

And elections mean something. President Clinton named Ruth Bader Ginsburg to the high court, and most Republicans in the Senate voted to confirm her. If President Bush names someone in the judicial philosophical mold of an Antonin Scalia and Clarence Thomas, he would be fulfilling a campaign pledge and helping return the court to its rightful role, not as a de facto legislature but as arbiter of the law and the Constitution.

Judge Roberts looks like the kind of justice who would apply the Constitution as it is written. And we urge President Bush to nominate another justice with the same inclination.

That's as it should be.

Mr. ALLARD. Mr. President, I believe Judge Roberts will be an advocate and practitioner of judicial restraint, a Justice who focuses on a narrow interpretation of the Constitution as the Framers intended. In his own words:

My obligation is to the Constitution. That's the oath.

I believe he is temperamentally and intellectually inclined to stick to the facts and the law in cases that will come before him on the High Court, and that he will refrain from attempting to legislate from the bench. In his own words, Judge Roberts says:

The role of the judge is limited . . . [j]udges are to decide the cases before them.

They're not to legislate, they're not to execute the laws.

I also believe Judge Roberts' personal views will not determine the outcome of cases before him. In his own words, the "American justice system is epitomized by the fact that judges . . . wear . . . black robes. And that is meant to symbolize the fact that they're not individuals promoting their own particular views, but they are supposed to be doing their best to interpret the law, to interpret the Constitution, according to the rules of law—not their own preferences, not their own personal beliefs."

Judge Roberts recognizes the importance of property rights and the role of the legislature in drawing the line in cases of eminent domain. Commenting on the Court's recent decision in *Kelo*, Judge Roberts explained:

What the Court was saying is there is this power, and then it's up to the legislature to determine whether it wants that to be available—whether it wants it to be available in limited circumstances, or whether it wants to go back to an understanding as reflected in the dissent, that this is not an appropriate public use.

President Bush has sent forward the name of an excellent nominee. His qualifications to serve as Chief Justice of the United States are even more apparent after his remarkable testimony before the Senate Judiciary Committee. Judge Roberts testified for approximately 22 hours, 10 hours longer than William Rehnquist when he became Chief Justice, 5 hours longer than Ruth Bader Ginsburg, and 4 hours longer than Stephen Breyer.

During the course of his testimony, Judge Roberts demonstrated an impressive command of the law and understanding of a myriad of legal issues. He provided thoughtful and thorough answers to over 500 challenging questions asked by Senators of both parties.

Personally, I admire his commitment to maintaining his judicial independence and ability to rule fairly by choosing not to prejudice cases that are likely to come before him. It is indicative of his undying and lifelong commitment to equal protection under the law.

I strongly urge my colleagues to give him a final vote in support of his nomination.

Thank you, Mr. President.

I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceed to call the roll.

Mrs. MURRAY. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

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

ORDER OF PROCEDURE

Mrs. MURRAY. Mr. President, I understand there is some time remaining