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## Senate

The Senate met at 9:30 a.m. and was called to order by the Honorable JOHN ENSIGN, a Senator from the State of Nevada.

### PRAYER

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

Let us pray.

Lord God Almighty, Maker of heaven and Earth, Creator of humanity in Your own image, we rejoice because of Your strength. Lord, from the quietness that heals, from the searching that reveals, guide Your Senators into channels of faithful service. Use them to bind up the wounds of the broken, the disinherited, and the rejected. Teach them to bring harmony from discord and hope from despair. Help them to daily celebrate life in all its myriad aspects. May they never lose their zeal in working to make our planet a place of peace.

Bless the men and women of our military as they sacrifice to keep us free. Shower them with eternal blessings. We praise You, Lord, for all Your glorious power. Let the works of our mouths and the meditations of our hearts bring glory to Your Name. Amen.

### PLEDGE OF ALLEGIANCE

The Honorable JOHN ENSIGN 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 legislative clerk read the following letter:

U.S. SENATE,  
PRESIDENT PRO TEMPORE,  
Washington, DC, April 21, 2005.

To the Senate:

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

TED STEVENS,  
President pro tempore.

Mr. ENSIGN thereupon assumed the chair as Acting President pro tempore.

### RESERVATION OF LEADER TIME

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

### RECOGNITION OF THE MAJORITY LEADER

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

### SCHEDULE

Mr. FRIST. Mr. President, today we will begin with a 1-hour period for morning business. We will finish the emergency supplemental appropriations bill during today's session. The order from last night provides for up to three votes, including final passage, and those votes will be stacked for a time certain late this afternoon. We also have an agreement to consider the nomination of John Negroponte to be Director of National Intelligence. We will debate that nomination today and stack that vote to occur with the remaining votes on the emergency supplemental bill.

I thank Chairman COCHRAN and Senator BYRD for their hard work on the appropriations measure. That bill will go to conference next week, and we hope that we can have a conference report available in a reasonable period of time.

Again, we will alert Members when we have locked in the exact time of the stacked votes later today.

I yield the floor.

### MORNING BUSINESS

The ACTING 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.

The Senator from South Dakota.

### JUDICIAL NOMINATIONS

Mr. THUNE. Mr. President, I rise today in morning business to speak about a matter of great importance, and that is our broken judicial nomination and confirmation process. As Senators, we have sworn to support and defend the Constitution, and on the issue of judicial nominations the Constitution is straightforward. It states that the President nominates judges and the Senate has the duty to give its advice and consent on those nominations. For over 200 years, that is exactly how it worked, regardless of which party was in power.

Over the past 2 years, the Democrat minority has attempted to change the rules and stand 200 years of Senate tradition on its head. The Democrat minority now thinks that 41 Senators should be able to dictate to the President which judges he can nominate. The minority also thinks that it should be able to prevent the rest of the Senate from fulfilling its constitutional duty of voting up or down on judicial nominees.

The Democrats' position is contrary to our Constitution, our Senate traditions, and the will of the American people as expressed at the ballot box this past November. It must stop.

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



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The advice and consent provision in the Constitution has served us for over 214 years up until the last Congress. That meant that the Senate should vote, and for over 200 years no nominee with majority support has been denied an up-or-down vote in this body, zero.

The Democrats have said that they have confirmed 98 percent of the President's nominees. The actual number is 89 percent. But even at that, are we to say that we are only going to follow the Constitution 89 percent of the time? Furthermore, this Senate's record on dealing with the President's appellate court nominees is the worst for any President in modern history. This President's record of having his appellate court nominees voted on is 69 percent, which ranks him lowest of any President in modern history.

It would be one thing if these nominees did not have the votes for confirmation, but they do. These nominees will have 54 or 55, 56, 57 votes for confirmation. It is wrong to deny them what the Constitution says they deserve and for us to ignore our constitutional responsibility to see that they have an up-or-down vote in this body.

The Democrats have said that it is their prerogative to debate. Well, that is great. Let us debate them on the floor of the Senate. But before they can be debated, a nomination has to be brought to the Senate floor for debate. We have a right to debate under the Constitution in the Senate.

They have also suggested that judges ought to have broad support; that they ought to have more than the necessary 51 votes for the simple majority that has traditionally been the case in the Senate. There is nothing in the Constitution about filibustering judges. There is nothing in the Constitution about requiring a super-majority to confirm judges. If the Founders had wanted judges to get a super-majority vote, they would have put that in there. They did it for treaties, for constitutional amendments, and for overriding a Presidential veto. Clearly, that was not the case with judges. It was the Founders' intention that the Senate dispose of them with a simple majority vote.

The Democrats in the Chamber have said that what we are trying to accomplish is "the nuclear option," suggesting that somehow this is a radical process that we are trying to implement. Well, simply, that is not true. There is nothing nuclear about re-establishing the precedent that has been the case, the practice, and the pattern in this Senate for over 200 years.

What is nuclear is what is being discussed by the Democrats in this body, and that is shutting the Senate down over the issue of judicial nominees, which means important legislation to this country, such as passing a highway bill that will create jobs and growth in this economy, could get shut down, or an energy policy which is important in my State of South Dakota. We have gas prices at record levels, we

have farmers going into the field, the tourism industry is starting its season, so we need to do something to help become energy independent. I am very interested in the issue of renewable fuels. I want to see as big a renewable fuels standard as we can get on the Energy bill, but we have to get it on the floor to debate it first. We cannot have these attempts, these threats—and I hope they are just that: threats—because it would be tragic, it would be nuclear, if the other side decided to shut this Senate down over the issue of judicial nominees.

The Democrats in this Chamber have tried to confuse the issue of legislative and judicial filibusters, clearly trying to confuse the public about what this means. Well, what we are talking about is simply the narrow issue of judicial nominees. It is part of this Senate's constitutional responsibility and duty, and we must take it very seriously. However, in the last Congress that became extremely politicized.

What we are talking about again is simply the issue of judicial filibusters. Incidentally, it was the Democrats who last voted on the filibuster in the Senate to do away with it back in 1995. It was a 76-to-19 vote. It had to do with the whole issue, not just judicial but legislative filibusters as well. Many of those Democrats who voted to end the filibuster still serve in this institution today.

The American people see this as an issue of fundamental fairness. They understand that this body's constitutional obligation, responsibility, and duty is to provide advice and consent, and that means an up-or-down vote in the Senate.

The Democrats in the Senate have said that this President's nominees are extreme. There are going to be a couple of them reported out of the Judiciary Committee today. Janice Rogers Brown received 76 percent of the vote the last time she faced the voters in California, which is not exactly a bastion of conservatism. Her nomination in this Senate has been stalled out for 21 months. Priscilla Owen will also be reported out today. She received 84 percent of the vote the last time she faced the voters in Texas. She has been waiting around for 4 years in the Senate to get an up-or-down vote on her nomination. She was endorsed by every major newspaper in the State of Texas. These nominees are not extreme. What is extreme is denying these good nominees a vote, and it betrays the role and responsibility the Founders gave the Senate.

So as we embark upon and engage in this debate that is forthcoming on judicial nominees, let us keep in sight and in focus the facts, and the role and responsibility this institution has to perform its duty. And that is to make sure that when good people put their names forward for public service, they at least are afforded the opportunity that every nominee with majority support throughout this Nation's history has

had, and that is the chance to be voted on in the Senate.

I fully support what the other side is saying about wanting to debate these nominees. Let us do it. I am certainly willing and hopeful that we will be able to engage in a spirited and vigorous debate. Let us debate, but then let us vote.

I yield the floor.

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

#### JUDICIAL NOMINATIONS

Mr. REID. I understand we are in a period for morning business. I will use leader time.

Mr. President, I have the greatest respect for my friend from South Dakota, but his assertion of facts is simply without foundation. When the Democrats took the majority in the Senate, I, along with others, said that this was not payback time; we were not going to treat the Republicans the way they treated us during the Clinton years. During those years, they did not have the decency even to have hearings for judicial nominations; they simply left them, 60 in number, in the committee. We thought that was inappropriate, and that is the reason during the time that President Bush has been President—we were in the majority, and we are now in the minority—we have approved 205 judges for President Bush and turned down 10, which is a pretty good record.

For people to say there have not been judicial filibusters in the past is simply without historical foundation. In the early days of this Republic, there was no way to stop a filibuster. The only way one could stop a filibuster on judges or anything else was by virtue of agreeing to stop talking. Many judges were simply left by the wayside. They were talked out and they simply never came forward for a vote before the Senate.

The most noteworthy filibuster of a judge that would require a vote that failed was in 1881. There was a filibuster of a judge that went to a vote. Prior to that time, they never even went to a vote.

It was determined in the Senate in 1970 that it would be appropriate to figure out some way to break a filibuster—on judges, on Cabinet nominations, and on legislation. At that time the Senate changed its rules by a two-thirds vote and had filibusters broken, then, by 67 votes. In the 1960s it was determined that was a burden that was no longer necessary, and it was changed to 60 votes. From that time to today, there has been the ability to break a filibuster by 60 Senators voting.

There have been filibusters since that rule was changed in 1960, filibusters of judges. The most noteworthy, of course, was Abe Fortas. There was a filibuster, and there are wonderful statements in the CONGRESSIONAL