



United States  
of America

# Congressional Record

PROCEEDINGS AND DEBATES OF THE 109<sup>th</sup> CONGRESS, FIRST SESSION

Vol. 151

WASHINGTON, TUESDAY, APRIL 26, 2005

No. 52

## Senate

The Senate met at 9:45 a.m. and was called to order by the Hon. JIM TALENT, a Senator from the State of Missouri.

### PRAYER

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

Let us pray.

Eternal Spirit, we look to You for hope. Teach us the power of being quiet in Your presence. Shelter us from the noise, tension, sound, and fury that bewilder us. Remind us to be still in order to know Your wisdom. Help us to see that those who love You are never alone, for we are sustained by Your powerful companionship.

May we find our peace in the knowledge that You are always with us. Bless our Senators. Give them the wisdom to trust You without wavering. Make them constantly aware of Your unfailing love. Rescue them from danger and keep their feet from slipping.

We pray this in Your holy Name. Amen.

### PLEDGE OF ALLEGIANCE

The Honorable JIM TALENT 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 26, 2005.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable JIM TALENT, a Sen-

ator from the State of Missouri, to perform the duties of the Chair.

TED STEVENS,  
President pro tempore.

Mr. TALENT 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 our session with a 1-hour period of morning business. Following morning business, the Senate will have an hour for debate on the motion to proceed to the highway bill. Under the order, after the 60 minutes of debate, the Senate will begin a vote on the motion to invoke cloture on the motion to proceed to the highway legislation.

I do expect that cloture will be invoked and that we would be able to consider the substance of the bill during today's session. Once we are on the bill, Senators can expect amendments. Therefore, additional rollcall votes will occur today.

Today we will also recess from the hour of 12:30 to 2:15 to accommodate the weekly policy luncheons.

In addition to the highway bill, this week we will consider any conference reports that become available. We hope both the budget and the emergency supplemental conference reports will be ready for floor consideration before we conclude our business this week.

Finally, I would announce we have several district judges who should be cleared for Senate action. If votes are

necessary on those nominations, we will be scheduling those votes periodically throughout the week.

I yield the floor.

### MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will be time for the transaction of morning business for up to 60 minutes, with the first half hour under the control of the Democratic leader or his designee and the second half hour under the control of the majority leader or his designee.

The Senator from New York.

### JUDICIAL NOMINATIONS

Mr. SCHUMER. Mr. President, I rise under morning business to discuss some events that occurred overnight. Most important, there is a story in today's USA Today, based on a direct interview, that Karl Rove rejected a compromise with Senate Democrats Monday on long-stalled nominations for the Federal judiciary and strongly defended President Bush's choice of John Bolton.

I am going to talk about the first matter.

It is disconcerting and surprising to see an aide to the President, an important aide, tell the Senate how to conduct itself. The Senate has conducted itself by its own rules for decades—for centuries. Those rules, by the design of the Founding Fathers, written into the Constitution, talk about the Senate as being a preserve of minority rights. The Founding Fathers called it the cooling saucer.

It is clear, if you read the Federalist Papers and look at the history of this Republic, that when a Senate minority of 45 rejects 10 out of 215 judges and supports 205 out of 215, that is the very way the Founding Fathers wanted the Senate to behave. After all, one of the very earliest nominations of President

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



Printed on recycled paper.

S4225

Washington, John Rutledge, was rejected by the Senate for the Supreme Court—rejected by the Senate. In that Senate were I believe eight Founding Fathers, the people who wrote the Constitution, rejecting the President's choice.

We have, in a certain sense, people way out of the mainstream, way over—a small group—telling the Republican Party in the Senate and telling the President that they must have all the judges, including the most extreme. Because, after all, it was only the most extreme we rejected, judges who believe, for instance, that the New Deal was a socialist revolution and should be undone; judges who believe zoning laws are unconstitutional; judges who believe the purpose of a woman should be to be subjugate herself to a man; judges who believe slavery was God's gift to white people.

These are some of the judges we have rejected. It was not based on any one particular issue. People say this is all code for abortion. It is not. I have voted for I believe it is about 190 of the judges. The overwhelming majority do not agree with me on abortion, but I believe they met the ultimate test, that they would interpret the law, not make law. Thus, even though they had strongly held beliefs on their own, they would be good judges. The 10 we rejected failed that test. They feel so passionately that they have to impose their views.

One of them, Priscilla Owen of Texas, was criticized repeatedly by conservative members of her own court, the Texas Supreme Court, for placing her interpretation of law ahead of the standard interpretation, the interpretation everybody accepted.

So we were proud to do our constitutional duty and reject these judges, judges we were not consulted about, judges who were way out of the mainstream.

Now, because of the demands of a few—way over, way out there—it seems the majority leader is pushing the so-called nuclear option. The problem is a large number, a good number of people on the other side, do not want to do the nuclear option. They know it would change the rules in the middle of the game. You don't change the rules in the middle of the game because you cannot get your way on every single judge. Our Constitution, our system of laws, is too hallowed, is too important to do that.

These wavering Republican Senators know the Senate has been the repository of checks and balances. That is why we have not done the nuclear option yet. I have to say I wish the majority leader would not be moving it. He should as a Senator stand up for the rights of the Senate. He should as an American stand up for the rights of the American people. But that has not happened.

Yesterday they had to call the heavy guns in. Karl Rove, a member of the executive branch, told the Senate Republicans there should be no compromise.

It is quite natural, by the way, that the White House would not want a Senate with checks and balances. This is not simply true of Republican Presidents, it is true of all Presidents, whether they be Democrat or Republican. They want to have their way. They regard the legislature, and particularly the Senate, as sort of a pesky obstacle to getting their way.

But the wisdom of our Republic has shown that when the Senate does slow things down, when the Senate does invoke checks and balances, the Republic is better off.

Now we have Karl Rove telling the Senate how they ought to act—how we ought to act—to change a tradition of 200 years.

Senator REID has said publicly that the President told him the White House would stay out of this. That is clearly not the case. The White House is not staying out of this and they are trying to aggrandize executive power. The American people, though, are not buying it. There is a story today in the Washington Post that shows “. . . by a 2 to 1 ratio”—that is pretty strong, that is more than the filibuster amount—

the public rejected easing the Senate rules in a way that would make it harder for Democratic Senators to prevent final action on Bush's nominees. Even many Republicans were reluctant to abandon current Senate confirmation procedures. Nearly half opposed any rule changes, joining eight in 10 Democrats and seven in 10 political independents. . . .

The American public may not follow minute to minute, day by day, what we do on this floor, but they have a pretty good nose to smell what is going on. What they smell is a whiff of extremism, a whiff of “I can't get my way so I change the rules in the middle of the game,” a whiff of “not simply a fight of the moment over a particular judge but rather a desire not to live with the traditions of this body and this Republic, which involves compromise and mediation.”

Honestly, when I recommended to our caucus early on that we filibuster a few of the judges and then later that we prevent and stand up to the nuclear option no matter what it took, I thought we would lose politically. I thought the argument: “Well, have 51 votes on everything” would prevail. But the American people's wisdom is large, deep, and hard to fool. The American people have said they understand what is going on. When the Republicans were in charge, they didn't allow judges to come out. We are not in charge now and the filibuster is a way of mitigating the President's desire to put whomever he wants on the bench and that the filibuster is appropriate.

I do not believe what some on the other side say, that the public is with the Democrats because they have gotten their message out ahead of us. Please. The public is with the Democrats in this case, not because they are Democratic and not because they may agree with the stand or disagree with

the stand of each of the judges we have rejected—although I suspect that would be the case if they knew—the public is with us because they understand fundamentally the checks and balances that are so important in this Republic and that because a President gets 51½ percent of the vote he doesn't always have to get his way, particularly when it comes to choosing the third, unelected—only unelected branch of Government.

So Mr. Rove can order Senators not to compromise. I hope and pray the Senators will not take direction from the White House on something where the interests of the White House, whatever party the President might be, are different from those of the Senate and frankly different from the Republic's—and I believe they will not.

The wisdom of the American people is strong. I let my colleagues know, if they should try to invoke the nuclear option and it succeeds, we will have no choice but to enforce the Senate rules and try to bring up issues the American people want us to bring up: the high cost of energy and gasoline, health care, education. We do not usually do that because of comity in the Senate. After all, the other party is the majority party.

But if they are not respecting the rights of the minority, as a majority, they do not deserve that same deference. What we will do is not shut down the Senate, not not show up. We will, rather, use the remaining rules at our disposal to bring up issues the American people care about.

Again, my plea to my colleagues on the other side—I know many of them have doubts about this nuclear option but are under tremendous pressure—resist the entreaties of the executive branch, in this case in the personification of Mr. Rove, stand tall, stand firm. Do not change the rules in the middle of the game; protect the sacred checks and balances at the core of the Republic by rejecting this trampling on the rules, the so-called nuclear option.

I yield the floor.

The PRESIDING OFFICER (Mr. VITTER). The Senator from North Dakota is recognized.

Mr. DORGAN. How much time remains on our side?

The PRESIDING OFFICER. There are 18 minutes.

#### DANGEROUS POLITICAL INTERSECTION

Mr. DORGAN. Mr. President, everyone in this country knows what a dangerous intersection is. We all drive and understand the consequences of a dangerous intersection. We are coming to a dangerous intersection in American politics, especially in the Congress: first, by actions that are, on their face, wrong and are harmful to our country; and second, by inaction on matters that cry out for attention—but, again, get none in this Congress and by this administration.