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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.

God of grace and glory, open our eyes to the power You provide for all of our challenges. Give us a glimpse of Your ability to do what seems impossible, to exceed what we can request or imagine. Encourage us again with Your promise to never forsake us and to render ineffectual the weapons we face.

Strengthen the Members of this body in their efforts to do good, knowing that in due season You will bring a bountiful harvest. Sustain them during today's challenging labors. Give them more than human wisdom to solve the problems of these momentous times. Provide them with the insight to know what is right and the courage to do it. We pray in Your holy 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.

EXECUTIVE SESSION

NOMINATION OF PRISCILLA RICHMAN OWEN TO BE UNITED STATES CIRCUIT JUDGE FOR THE FIFTH CIRCUIT—Resumed

The PRESIDENT pro tempore. Under the previous order, the Senate will pro-

ceed to executive session for the consideration of calendar No. 71, 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.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. FRIST. Mr. President, today we will resume executive session to consider Priscilla Owen to be a U.S. circuit court judge for the Fifth Circuit. We will continue the debate, as we did yesterday, by rotating back and forth between the aisle every 60 minutes. I think this orderly flow of debate will be helpful in terms of scheduling Members' speaking times. It worked well yesterday, and I would expect it to be orderly today as well. I know there is a large number of Senators who have indicated their desire to speak, and we will remain on the nomination to give everyone a chance to fully voice their concerns and their discussion on this very qualified nominee.

I am hopeful that at some point we will be able to schedule a vote on the nomination, and I will update Members later today on the upcoming schedule as it relates to the nomination of Priscilla Owen.

Mr. President, I will have a brief statement—the Democratic leader and I were just discussing our plans—and then he will have a statement, and then at that juncture I believe we will proceed as we set out the time schedule yesterday, alternating back and forth.

Mr. President, we did, yesterday, have a vibrant and spirited debate on the Senate floor. We have been debating a very simple principle—one based on fairness and one grounded in the Constitution. The principle is that judicial nominees, with the support of a majority of Senators, deserve a fair up-or-down vote on the floor of the Senate.

Yesterday, 21 Senators—evenly divided, I believe 11 Republicans and 10 Democrats—debated for over 10 hours on the nomination of Priscilla Owen. We will continue that debate—10 hours yesterday—maybe 20 hours, maybe 30 hours, and we will take as long as it takes for Senators to express their views on this qualified nominee.

But at some point that debate should end and there should be a vote. It makes sense: up or down, "yes" or "no," confirm or reject; and then we move on in regular order.

Senators can vote to confirm or reject a nominee. But we should fulfill our constitutional responsibility to give advice and consent by voting up or down.

The nominee before us is Priscilla Owen, a Texas Supreme Court justice nominated to serve on the Fifth Circuit Court of Appeals. I have studied her record. I have had the opportunity to meet with her personally. I believe she would serve our Nation well as a circuit court judge.

Her academic and professional qualifications are outstanding. She graduated near the top of her class in law school, and she once achieved the highest score in the State of Texas on the bar exam. The American Bar Association unanimously rated her "well qualified," its highest possible rating.

Her opponents suggest she is a judicial activist who is out of the mainstream. Her record simply shows that is not true. She was reelected by 84 percent of Texans. Are 84 percent of Texans really out of the mainstream? She is supported by Republicans and Democrats on the Texas Supreme Court. She has been endorsed by every major newspaper in her home State.

That is a mainstream record.

In her judicial decisions, some on the floor over the last day, and actually last week as well, have criticized her as a judicial activist in cases, and the focus has always been on these cases involving a parental notification law.

• 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 law is not about whether a minor is able to have an abortion or whether a minor must receive parental consent before having an abortion. The law simply requires a parent to be notified if their child is having an abortion, except in certain circumstances.

The author of the law, and 26 other members of the Texas legislature, have defended Justice Owen's opinions, and it is spelled out clearly in a letter of May 16, 2005, that is signed by the author of the legislation itself and 26 other members of the Texas legislature.

The letter is interesting. It is a letter dated May 16, and it is a letter that was sent to Senator SPECTER, of the Judiciary Committee, and Senator LEAHY. The letter is indeed quite powerful. I would like to read just a couple sections from the letter.

Mr. President, I ask unanimous consent that following my remarks the entire letter be printed in the RECORD.

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

(See Exhibit 1.)

Mr. FRIST. The letter reads pretty clearly: "Dear Chairman SPECTER"—and there was a copy sent to Senator LEAHY. This is from the author of the legislation of which these accusations of judicial activism have been floating around on the floor. These are the authors, the people who wrote—who wrote—the legislation. I quote from the letter:

I, along with my colleagues in the Texas Senate and Texas House of Representatives, am writing to express my full and unconditional support for Justice Priscilla Owen's nomination to the U.S. Court of Appeals for the Fifth Circuit. As the author of the Texas Parental Notification Act, I followed closely the Texas State Supreme Court rulings regarding that statute. As such, we are disturbed by the recent attacks on Justice Owen's review of the Texas Parental Notification Act. Justice Owen's opponents have characterized her as an activist member of the bench, and nothing could be further from the truth.

The letter continues:

To the contrary, her opinions interpreting the Texas Parental Notification Act serve as prime examples of her judicial restraint.

Mr. President, I will have my colleagues read the remainder of the letter. It goes on and gives examples in explaining that statement. And then, down in the following paragraph, I quote:

Throughout the series of cases, Justice Owen's interpretation of legislative intent were based on careful reading of the new statute and the governing U.S. Supreme Court precedent.

This is the final sentence of the letter:

In short, Justice Owen's academic and professional qualifications are beyond question. We strongly urge Senators to vote positively on her nomination.

Again, it is signed by the author, Florence Shapiro, and, again, 26 others from the house of representatives and senate in Texas.

In addition, a pro-choice Democratic law professor also has defended Justice

Owen. This professor, Linda Eads, is a member of the Texas Supreme Court Advisory Committee that drafted rules to help judges deciding cases under this law, the parental notification law. She says Justice Owen's decisions "do not demonstrate judicial activism. She did what good appellate judges do every day . . . if this is activism, then any judicial interpretation of a statute's terms is judicial activism."

If you look fairly at Justice Owen's record, you will see a well-qualified, mainstream judge.

But I will say, as we step back and look at the larger debate, some Senators may draw different conclusions about Justice Owen, and they may decide she does not deserve confirmation. Indeed, they may decide that none of the President's nominees deserve confirmation. And they, as Senators, are entitled to that choice. But they should express that choice, give that advice and consent by a vote, an up-or-down vote, "yes" or "no," confirm or reject. They should not hide behind a procedure that prevents 100 Senators from their responsibility, their duty to vote "yes" or "no" on the nominee, up or down.

As everyone knows, I have advocated fair up-or-down votes for judicial nominees again and again and again and will continue to do so. In the past, some of our colleagues on the other side of the aisle have shared this view. Many of them have argued forcefully and eloquently for up-or-down votes on judicial nominees. Let me share some of their arguments with you.

One Senator on the other side of the aisle, in opposition to giving up-or-down votes today, said:

[E]veryone who is nominated ought to have a hearing and to have a shot to be heard on the floor and have a vote on the floor.

Another Democratic Senator said:

A nominee is entitled to a vote. Vote them up; vote them down. . . . If there are things in their background, in their abilities that don't pass muster, vote no. Our institutional integrity requires an up-or-down vote.

Another Democratic Senator noted that:

According to the U.S. Constitution, the President nominates, and the Senate shall provide advice and consent. It is not the role of the Senate to obstruct the process and prevent numbers of highly qualified nominees from even being given the opportunity for a vote on the Senate floor.

These are all arguments from my Democratic colleagues in years past. These quotes capture what this debate today is all about. It is about fairness. It is about principle. It is about the constitutional duty of every Senator. The Senate must do what is right. We must do what is fair. We must do the job the American people elected us to do.

So let us continue to debate. Let Senators exercise their right to speak. We may not agree. We will not agree on every judicial nominee, but we can agree on the principle that every qualified judicial nominee deserves an up-or-down vote.

I yield the floor.

EXHIBIT 1

TEXAS STATE SENATE, DISTRICT 8,

Plano, Texas, May 16, 2005.

Hon. Chairman ARLEN SPECTER,
Committee on the Judiciary, U.S. Senate, Russell Senate Office Bldg., Washington, DC.

DEAR CHAIRMAN SPECTER: I, along with my colleagues in the Texas Senate and Texas House of Representatives, am writing to express my full and unconditional support for Justice Priscilla Owen's nomination to the U.S. Court of Appeals for the Fifth Circuit. As the author of the Texas Parental Notification Act (SB 30/HB 623), I followed closely the Texas State Supreme Court rulings regarding that statute. As such, we are disturbed by the recent attacks on Justice Owen's review of the Texas Parental Notification Act. Justice Owen's opponents have characterized her as an activist member of the bench, and nothing could be further from the truth.

To the contrary, her opinions interpreting the Texas Parental Notification Act serve as prime examples of her judicial restraint. Although some might try to hold up the Texas Parental Notification Act as a litmus test on abortion, they simply cannot make the case. The Act is not about whether a minor is able to have an abortion or must receive parental consent, but whether a parent should be notified. The Act recognizes that a girl may have an abortion and does not question whether the Constitution guarantees that right.

Throughout the series of cases, Justice Owen's interpretations of legislative intent were based on careful reading of the new statute and the governing U.S. Supreme Court precedent. For example, Justice Owen's opinion that a minor should "indicate to the court that she is aware of and has considered that there are philosophic, social, moral, and religious arguments that can be brought to bear when considering abortion." This opinion is consistent with prior U.S. Supreme Court precedent stating: "The waiting period, for example, may provide the parent or parents of a pregnant young woman the opportunity to consult with her in private, and to discuss the consequences of her decision in the context of the values and moral or religious principles of their family" (Planned Parenthood v. Casey).

In short, Justice Owen's academic and professional qualifications are beyond question. We strongly urge Senators to vote positively on her nomination.

Very truly yours,

Sen. FLORENCE SHAPIRO,

President Pro Tempore.

Sen. Chris Harris; Sen. Jane Nelson; Rep. Brian McCall; Rep. Harvey Hilderbran; Rep. Suzanna Gratia Hupp; Rep. Betty Brown; Rep. Robert E. Talton; Rep. Kent Grusendorf; Rep. Gary Elkins; Rep. Edmund Kuempel; Rep. Joe Crabb; Rep. Leo Berman; Rep. Mike Krusee; Rep. Dianne White Delisi; Rep. Joe L. Driver; Rep. Frank J. Corte, Jr.; Rep. Fred Brown; Rep. Peggy Hamric; Rep. Joe Nixon; Rep. Mary Denny; Rep. Elvira Reyna; Rep. Geanie Morrison; Rep. Eugene Seaman; Rep. Anna Mowery; Rep. Richard L. Hardcastle; and Rep. Ray Allen.

RECOGNITION OF THE MINORITY LEADER

The PRESIDENT pro tempore. The Democratic leader is recognized.

Mr. REID. It is my understanding that we go to the debate on Judge Owen at what time?

The PRESIDENT pro tempore. We are on debate now.

Mr. REID. I ask unanimous consent that the time of the two leaders not