



United States  
of America

# Congressional Record

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

Vol. 151

WASHINGTON, MONDAY, JUNE 6, 2005

No. 73

## House of Representatives

The House was not in session today. Its next meeting will be held on Tuesday, June 7, 2005, at 2 p.m.

## Senate

MONDAY, JUNE 6, 2005

### EXECUTIVE SESSION

The Senate met at 2 p.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.

Almighty God, creator and sustainer of the universe, take the misshapen clay of our lives and remake us into vessels fit for Your use. Remind us that we may make plans, but You have the final word.

Help us to remember that even when we think we are right, You judge our motives. Give us the wisdom to share our plans with You so that You will order our steps.

Today, bless all who labor in the legislative branch of Government. Deliver us from pride and help us to avoid evil paths. Remind us that our No. 1 priority should be to please You. Empower each Senator to embrace honesty and truth as he or she seeks to keep America strong. We pray this 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, leadership time is reserved.

#### NOMINATION OF JANICE ROGERS BROWN TO BE UNITED STATES CIRCUIT JUDGE FOR THE DISTRICT OF COLUMBIA CIRCUIT

The PRESIDENT pro tempore. Under the previous order, the Senate will proceed to executive session to resume consideration of Calendar No. 72, which the clerk will report.

The assistant legislative clerk read the nomination of Janice Rogers Brown, of California, to be United States Circuit Judge for the District of Columbia Circuit.

#### RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The majority leader is recognized.

Mr. FRIST. Mr. President, I have just a few announcements and then I will have a short statement. We will have a full day of debate today on the nomination of Janice Rogers Brown. To allow for an orderly debate, I now ask unanimous consent that following the remarks of myself and the Democratic leader, the chairman of the Judiciary Committee be recognized to speak. Further, I ask that the time from 3 to 4 be under the control of the Democratic leader or his designee, and the time from 4 to 5 be under the control of the majority leader or his designee. I further ask that the time from 5 to 5:30 be under the control of the other side of the aisle, and the time from 5:30 to 6 be under the control of the majority.

The PRESIDENT pro tempore. Is there objection?

Without objection, it is so ordered.

Mr. FRIST. Mr. President, as a reminder to our colleagues, the cloture vote on the Brown nomination is scheduled for noon tomorrow. I hope and expect that cloture will be invoked at that time and that we will be able to move quickly to an up-or-down vote on her nomination. The Democratic leader and I will be talking shortly this afternoon and will make more specific plans in terms of voting times and give some idea of how quickly we can move with other nominations.

We do have another cloture vote on the Pryor nomination, which would immediately follow the up-or-down vote on Janice Rogers Brown.

In addition to those judicial nominations, we have agreements to debate and vote on of two Sixth Circuit judicial nominations, as well as one DC Circuit Court nominee. This week, we may also reconsider the vote with respect to the Bolton nomination. As you can tell, we have a very busy week as we return from recess. I thank our colleagues in advance as we move through these issues.

Mr. President, I will have a brief opening statement as well, but I now yield to the Democratic leader.

Mr. REID. Mr. President, I thank the majority leader. We do have our week cut out for us. I think the Republican leader and I will get together later today to try to make a decision as to what we are going to do later. If we get through this block of judges that the leader talked about, we should be in pretty good shape to move on to other things and take the judges on a more regular basis, not eating up so much

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



Printed on recycled paper.

S6075

time. This is something the leader and I will discuss.

We have a work period of 4 weeks, so there is much we have to do because, as the Presiding Officer knows, we are entering the appropriations process time, which is always very hectic. We need to turn to that as soon as we can. I hope we can move through the appropriations bills one at a time and not have to do an omnibus or a continuing resolution. That would be better for individual Senators, our States, and our country.

As I have said, we have devoted a lot of time to this situation on judges. After this week, we should be able to move on to other items. I hope so.

The PRESIDENT pro tempore. The majority leader is recognized.

Mr. FRIST. Mr. President, I welcome our colleagues back from the Memorial Day recess. I know everybody enjoyed spending time with family and friends and constituents, reconnecting with the people we serve. It is always a very busy time during a recess period, and this particular recess period, because it was the Memorial Day recess, where everybody did take that day—or several days or moments on several days—to pause and honor the brave Americans who made the ultimate sacrifice in the course of their service to our Nation and in the cause of liberty.

In addition to Memorial Day, it was a time of graduations, a time of commencements for students, whether it be from elementary school, middle school, high school, college, or graduate school. A number of our colleagues participated—I am sure most colleagues participated in graduation ceremonies at all of those levels over the last couple of weeks.

I also hope that last week was a time when people rested and recharged their batteries because, as was just implied in the remarks of the Democratic leader and myself, we have a very busy 4 weeks ahead of us. We have a lot of work to do in a very short period of time before we have the Fourth of July recess.

Today, we will continue, shortly, to debate the nomination of Janice Rogers Brown to the DC Circuit Court of Appeals. After having been delayed for 2 years by partisan obstruction, she will finally receive a fair up-or-down vote—something she deserves. It will be this week on the floor of the Senate. So I am very pleased because that demonstrates real progress in this body. So after 2 years of partisan obstruction, she is going to receive an up-or-down vote.

The President made a great choice in selecting Judge Brown to serve on the Federal bench. I have had the opportunity to meet and spend time with Judge Brown personally and have studied her record. She is a woman of great accomplishment and talent. She is tough, smart, and principled. Her story is nothing short of remarkable.

From humble beginnings as a sharecropper's daughter in segregated Ala-

bama, Janice Rogers Brown has climbed to the peaks of the legal profession. She was educated in segregated schools and worked her way through college and law school. She went on to serve in prominent positions in California State government.

Today, Janice Rogers Brown is a justice on the California Supreme Court, the first African-American woman to serve on California's highest court. Her fellow California judges, both Democrat and Republican, have called her a "superb judge" who "applies the law without favor, without bias, and with an even hand."

The people of California believe she is doing a great job. They reelected her with 76 percent of the vote, the highest voting percentage of all of the justices on the ballot.

The Senate will have a spirited debate on Justice Brown's nomination, but I hope Senators will remember that this is about treating nominees with fairness. Nominees deserve not only a fair up-or-down vote but to be treated fairly during the debate. Civility is more than a word. It is a value we must all work to uphold in our deliberations, and may that be respected on the floor of the Senate.

Before the recess, the Senate voted up or down on Justice Priscilla Owen and she was confirmed. I hope this progress will continue with Justice Brown this week and with Judge Pryor this week, as well as future nominees. We should have a very positive week on judges. As long as that progress continues, a process that continues to give these up-or-down votes, gives these nominees the consideration they deserve, not blind obstruction of the Constitution, the constitutional option, of course, will not be needed.

Our job as Senators is to govern with meaningful solutions, and we must always remain focused on that larger picture of making America safer and stronger and more secure. That is why it is imperative that we address matters such as America's intolerable dependence upon foreign oil. We have gone on for more than a decade without a comprehensive national energy policy. It is time now to change that. As a result, we have become dependent on foreign sources of oil, putting our security and our economy at risk. That is too long. It is time for us to act now—not just talk about it—for families worried about gas prices as they anticipate summer driving, for families who have to sacrifice next winter to pay their heating bills. They expect us to act, and we will in this body on the floor of the Senate and deliver for the American people.

We must diversify our sources of energy and balance new production with conservation and development of renewable resources.

We must do so in a way that reduces our reliance on foreign sources—by increasing America's domestic production of clean coal, oil, and gas, nuclear, solar, ethanol, and other renewable en-

ergy sources—a comprehensive energy plan that will make America safer and more secure and will inject much needed jobs into the economy.

I thank Chairman DOMENICI and Senator BINGAMAN for their hard work and for working together to get this bill out of committee and ready for the floor on a strong, bipartisan vote.

I am confident that we can move forward in the same bipartisan spirit on the Senate floor to move this bill quickly and get it to conference with the House and have it on the President's desk for his signature.

America needs an energy policy that reflects our modern economic and security challenges.

In the days ahead, we will address the Energy bill and we will complete action on the highway bill, which is currently in conference. As soon as that conference completes its action, we will bring it to the floor. We will address the President's nominees and a host of other issues.

As we do so, I am determined to work with my colleagues on both sides of the aisle to take whatever action is necessary—that bold action to move America forward.

We have made great progress in the 109th Congress thus far. We passed fair and thoughtful legislation to end class action and bankruptcy abuse. We took quick and decisive action to support our troops in the field and to give relief for the victims of the tsunami disaster. We passed the Genetic Nondiscrimination Act, a victory that will provide protections against genetic discrimination in health insurance. And we are now finally giving judges the votes they deserve.

We passed a budget in the fifth fastest time in Senate history.

We are leading today on tomorrow's challenges. We can be proud of our efforts to expand freedom here at home and across the globe.

With mutual trust and civility and a sharp focus on our ultimate goals, we can continue to deliver to the American people the solutions they need and the leadership our Nation deserves.

Mr. President, I yield the floor.

The PRESIDENT pro tempore. The Senator from Pennsylvania is recognized.

Mr. SPECTER. Mr. President, I have sought recognition to support the proceeding to invoke cloture, cut off debate, on California State Supreme Court Justice Janice Rogers Brown, and to bring her to a vote for confirmation to the Court of Appeals for the District of Columbia Circuit. Justice Brown comes to this body with a truly outstanding academic and professional record. She is a graduate of the California State University-Sacramento in 1974. She received her law degree from the University of California at Los Angeles in 1977 and then has had an illustrious career in government in the practice of law and on the bench. She has served in very important legislative roles with the California Legislative Counsel Bureau where she was deputy legislative counsel. She was deputy

attorney general for some 8 years; deputy secretary and general counsel for the State of California Business, Transportation and Housing Agency for 3 years, and then came to the court of appeals, which is an intermediate appellate court in California, for 3 years before becoming a justice on the Supreme Court of California, where she has sat since 1996 until the present time.

During the midst of her career, she has gone on to get a master's degree at the University of Virginia School of Law in the year 2004 which, I would say, is quite an achievement for someone who has been in the California court to take on that kind of academic endeavor and to earn a master's degree.

Beyond her professional work, she has been very active in the community, working with the Youth for Citizenship which serves young people, high school students, teaching them history, civics, reasoning, and debating skills.

She is a participant in a program called "Playing by the Rules" sponsored by a local baseball team, which brings together lawyers, judges, baseball, and elementary and junior high school students to explore life lessons, good citizenship, and the rule of law.

She is a founding board member of Rio Americano High School's Academy Civitas, a 3-year program which specializes in history and political philosophy and seeks to encourage civic virtue by having students participate in internships with Government agencies.

She is the first African-American woman to serve on California's highest court. She is the daughter of sharecroppers, having been born in Greenville, AL, in 1949, 5 years before *Brown v. Board of Education*. She attended segregated schools and came of age in the midst of Jim Crow policies in the South, which is not easy to do.

With all of that, she has had an extraordinary and really illustrious career.

I suggest to my colleagues in the Senate that the confirmation process of Justice Janice Rogers Brown would not be nearly so complicated if it were not set in a timeframe where, for the past two decades, virtually, there has been an exacerbation of the issue of confirmation of judges when one party held the White House and the other political party held the Senate and the Judiciary Committee.

I have served on the Judiciary Committee since my election in 1980. I personally observed, in the last 2 years of President Reagan's administration, after Democrats won control of the Senate in the 1986 election, that the process was slowed down, and the process was further slowed down during the full 4 years of the administration of President George Herbert Walker Bush. I have detailed these in previous floor statements and will not now reiterate them.

Then, in the last 6 years of President Clinton's administration, nearly 70 nominees by President Clinton were

held up in committee, and that was payback, in effect, for what had happened for the last 2 years of President Reagan's administration and the 4 years of the administration of the first President Bush.

When the Republicans won control of the Senate, the Democrats then resorted to the filibuster, which was the first systematic use of the filibuster against judicial nominees in the history of this country. That was followed by President Bush's use of the interim appointment power, the first time in history that the interim appointment power had been used for a judicial nominee after a rejection by the Senate, albeit by the filibuster route. That stopped when there was a commitment made not to use it any more, and the nomination process went forward.

Let us take a look at the record of Justice Janice Rogers Brown and take a look at the record of Justice Owen, now Judge Owen confirmed to the Fifth Circuit Court of Appeals, or Judge Pryor, whose nomination will be before the Senate hopefully in the next several days. We have confirmed many circuit judges during my tenure since my election in 1980, all which I have spent in the service of the Judiciary Committee, who had records not as good as those of Justice Brown or Justice Owen or Judge Pryor. Had we had not been in this situation of holding up judges when one party controlled the White House and the other controlled the Senate and the exacerbation of this situation, we would not have reached the critical stage in which the Senate has been in the immediate past.

We have seen a situation where the filibuster went on and, in my own personal opinion—and I have expressed this at some length in prior floor statements—Democrats were not really pleased with this systematic filibuster. That led to the potential retaliation of the Constitution or nuclear option. I do not think many, if not most, of the Republicans were pleased with that sort of an alternative. But the whole situation had spiraled out of control.

As Senators, we do have a fundamental constitutional obligation to consent, if we choose to do so, to the President's nominees to the bench. This is an advice and consent function under the United States Constitution. That does specify—I think it is more than implication, I think it is really specification—that there be independent judgment used by Senators in coming to that decision. Just as there is a requirement of independence, if there is to be separation of power, then the party which controls the White House ought not to be an automatic rubberstamp for the President. Similarly, the party out of power ought not to be an automatic filibustering machine; there ought to be independent judgment. And that is why I had urged the leaders, again in extended floor statements which I shall not now repeat, to liberate their Members from the straight party-line, straitjacket

vote and allow them to exercise their independence. I think if the 100 Senators were left to our own judgments as to what kind of a nominee ought to be filibustered, Justice Janice Rogers Brown would never have been filibustered. Similarly, if we Senators—Republicans on the situation of the constitutional or nuclear option—had been left to our own judgment, we would have rejected the idea of having the constitutional or nuclear option.

So we have come to a situation now where at least we have moved to confirm Justice Owen, and we are on the brink of the confirmation process of Justice Brown with, as we all know, the agreement of some 14 Senators that there would not be a filibuster as to Justice Brown.

It is true that if you take a look at some of Justice Brown's statements in a context of diplomacy, they might have been left better unsaid, but if everybody in public life—and that would even include Senators—were held to every last syllable that each of us uttered, it would not be a very difficult matter to go through the tracks of speeches each of us has made and find some items on which to be highly critical.

Justice Brown has been criticized for a comment which she made criticizing Justice Holmes' dissent in *Lochner*, where she referred to the "triumph of our own socialist revolution" in 1937. But if we take a look at Justice Brown's decisions, we find her decisions are not in line with that kind of a loose condemnatory statement.

In *Lochyer v. Shamrock Foods*, Justice Brown joined the court's opinion upholding California's stringent standards, which exceeded Federal standards, for identifying and labeling milk and milk products. That is hardly an inactive government.

In the case of *Lungren v. Superior Court*, she joined the court's opinion, broadly construing the phrase "source of drinking water" in the State's clean water statute so that plaintiffs could proceed with their case. Again, not exactly denial of governmental authority.

In the case of *Ramirez v. Yosemite Water Co.*, she joined the court in upholding State regulations regarding overtime pay that applied greater protection to workers than Federal law. Here, again, that is active State regulation.

In *Pearl v. Worker's Compensation Appeals Board*, she joined the court's opinion, upholding the Worker's Compensation Board's stringent standards for ensuring the safety of workers, awarding the plaintiff, an injured police officer, higher benefits; again, sound judicial thinking and not exactly denial of the authority of the State to legislate and look after the common welfare.

She made a statement with respect to discrimination saying it is not ". . . based on age is not . . . like race and sex discrimination. It does not mark

its victim with a 'stigma of inferiority and second class citizenship'; it is the unavoidable consequence of that universal leveler: time.'

That is perhaps an effort to be scholarly, perhaps to be poetic, but hardly disqualifying.

If we take a look at her opinions on the bench, they demonstrate a very distinctive regard for civil rights. In *People v. McKay*, hers was the lone dissent, arguing for the exclusion of evidence of drug possession that was discovered after the defendant was arrested for riding his bicycle the wrong way on a residential street. Her dissent pointedly suggested that the defendant was the victim of racial profiling and included an impassioned critique of that practice.

In *Kasky v. Nike*, the court held that Nike's statements denying mistreatment of overseas workers constituted commercial speech subject to the State truth in advertising laws. Justice Brown dissented saying that Nike's speech constituted noncommercial speech worthy of more strict first amendment protection. Upon appeal, the Supreme Court denied certiorari, but in opinions issued by Justices Breyer and Stevens, there were strong suggestions that if the Court had taken the appeal, Justice Brown's position might well have been upheld, in a very difficult case, where it is hard to draw the line as to what constitutes commercial speech or what is noncommercial speech entitled to more stringent protections under the first amendment.

In this case, as in so many others, Justice Brown demonstrated a real concern for constitutional protections.

In *re Brown*, she wrote the court's opinion reversing a verdict and death sentence on grounds that the prosecutor deprived the defendant of a fair trial by failing to discover and disclose an arguably exculpatory blood test.

In *Visciotti*, she dissented from the majority opinion, arguing that a defendant's death sentence should be set aside on grounds of ineffective assistance of counsel.

In the interest of time, I am not going to delineate any more of Justice Brown's opinions, but I would like to put into the RECORD some summaries of criticism of Justice Brown where she has been criticized for her attitude toward big Government, where she has been criticized for some rulings on civil rights, where she has been criticized for rulings on the first amendment, and where she has been criticized for rulings on criminal law.

I ask unanimous consent that these summaries be printed in the RECORD.

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

OPPOSITION—BROWN'S CRITICISMS OF BIG GOVERNMENT

JUSTICE BROWN'S CRITICS OVERLOOK A RECORD ON THE BENCH OF MODERATION

*Much of the criticism of Justice Brown centers on speeches she made off the bench, but does not hold up next to her judicial opinions*

Most notably, Justice Brown criticized the demise of the Lochner era and the rise of the New Deal in a speech before the Federalist Society. While her speech was indeed critical of Justice Holmes' dissent in *Lochner*, her judicial opinion on the subject in *Santa Monica Beach, Ltd. v. Superior Court* criticized *Lochner* in terms echoing the United States Supreme Court.

Justice Brown also has been attacked for speeches that criticize government as profligate in creating new rights and privileges and redistributing wealth. Again, the attack loses force when the focus turns to her judicial opinions, which are untainted by personal ideology. To give just a few examples, she has voted to employ an expansive interpretation of a state clean water statute so that plaintiffs could proceed with their case; upheld the right of a plaintiff to sue for exposure to toxic chemicals using the government's environmental regulations; upheld state regulations regarding overtime pay; and upheld a workers compensation board's stringent standard for ensuring the safety of workers.

In a recent column, law professor Jonathan Turley, a self-described "pro-choice social liberal," points out that "Brown's legal opinions show a willingness to vote against conservative views . . . when justice demands it" and that Democrats should confirm her. The attempt to brand her as an extremist, derived from a combination of half-truths and the extremism of her critics, is demagoguery of the first order, and should not be permitted to obstruct the confirmation of a jurist who has been a credit to the bench.

OPPOSITION—BROWN'S RULINGS ON CIVIL RIGHTS

*Justice Brown's rulings on racial bias have been distorted*

In *Peatros v. Bank of America*, she dissented on grounds that a state law-based discrimination claim was preempted by the National Bank Act. The dissent in fact deferred to federal jurisdiction under the Supremacy Clause and notably pointed to Title VII as the appropriate civil rights provision to invoke in an area governed by federal law—a far cry from an ideologue who appreciates neither federal authority nor civil rights laws.

Another subject of attack was her dissent from *Aguilar v. Avis Rent A Car System*, a decision upholding an injunction against the use of racial slurs in the workplace. Unmentioned in the attack is that her dissent was based on well established First Amendment prohibitions on prior restraint and that she was joined by the court's late liberal icon, Justice Mosk.

In *Hi-Voltage Wire Works v. City of San Jose*, Justice Brown deferred to precedent in her court opinion invalidating a minority contracting program under Proposition 209. That issue was so straightforward that every judge who reviewed it from the trial court on up reached the same result—including every member of the state supreme court.

Justice Brown's opinion asserted that "discrimination on the basis of race is illegal, immoral, unconstitutional, inherently wrong, and destructive of democratic society."

Justice Brown further acknowledged that "equal protection does not preclude race-conscious programs."

*The innuendo that this jurist is insensitive to racial bias disparages her firm commitment to civil rights*

Consider Justice Brown's lone dissent in *People v. McKay*. There she argued for the exclusion of evidence of drug possession that was discovered after the defendant was arrested for riding his bicycle the wrong way on a residential street.

Justice Brown had this to say: "In the spring of 1963, civil rights protests in Birmingham united this country in a new way. Seeing peaceful protesters jabbed with cattle prods, held at bay by snarling police dogs, and flattened by powerful streams of water from fire hoses galvanized the nation. Without being constitutional scholars, we understood violence, coercion, and oppression. We understood what constitutional limits are designed to restrain. We reclaimed our constitutional aspirations. What is happening now is more subtle, more diffuse, and less visible, but it is only a difference in degree. If harm is still being done to people because they are black, or brown, or poor, the oppression is not lessened by the absence of television cameras."

Justice Brown criticized what she called "the disparate impact of stop-and-search procedures of the California Highway Patrol. The practice is so prevalent, it has a name: 'Driving While Black.'"

When you read such powerful statements, you have to wonder whether this judge, far from being too conservative, may not in fact be a bit too liberal for some of my friends who have opposed her.

OPPOSITION—BROWN'S RULINGS ON THE FIRST AMENDMENT

*Justice Brown's First Amendment opinions have been distorted*

When she is cognizant of First Amendment rights in a discrimination case, she receives no credit. Her critics simply turn to three other First Amendment cases to spin an attack that she gives broad protection to corporate speech while shortchanging individual free speech.

In one case, Justice Brown wrote a plurality opinion upholding an injunction against gang members congregating in a specified area in San Jose, a position supported by the Democratic mayor of the city at the time, the Los Angeles Times, and the San Francisco Examiner.

In another, Justice Mosk, the California Supreme Court's late, liberal icon, joined Justice Brown in a dissent that would have upheld an injunction against a disgruntled former employee sending disruptive mass emails.

In the third case, *Kasky v. Nike*, Justice Brown dissented on grounds that Nike's speech deserved more stringent protection than was provided by a California law. This third case provides the hook for her detractors' spin, but the baselessness of the critique is underscored by strong evidence that a majority of the United States Supreme Court would have taken her position had it considered the merits.

In dismissing the writ of certiorari, Justice Stevens, joined by Justices Ginsburg and Souter, noted in the same vein as Justice Brown that the case involved "novel First Amendment questions."

Justice Breyer, joined by Justice O'Connor, stated in a dissent to the dismissal of certiorari in *Kasky* that "it is likely, if not highly probable" that the law violated the First Amendment.

OPPOSITION—BROWN'S RULINGS ON CRIMINAL  
LAW

*Justice Brown has demonstrated her respect of Fourth Amendment rights and has argued for reversing verdicts or sentences for capital defendants*

In addition to the dissent in *People v. McKay* that I cited, she wrote the court's opinion in *In re Brown* reversing a verdict and death sentence in a case where the prosecutor deprived the defendant of a fair trial by failing to discover and disclose an arguably exculpatory blood test.

In *In re Visciotti*, she dissented from the majority opinion, arguing that a defendant's death sentence should be set aside on grounds of ineffective assistance of counsel.

Mr. SPECTER. I ask unanimous consent that quotations from certain of Justice Brown's supporters be printed in the RECORD.

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

QUOTES FROM SUPPORTERS—WHAT THOSE  
WHO KNOW HER BEST ARE SAYING ABOUT  
JUSTICE BROWN

Letter from a bi-partisan group of 12 of Justice Brown's current and former judicial colleagues (including all of her former colleagues on the Court of Appeal, Third Appellate District and four current members of the California Supreme Court) to the Honorable Orrin G. Hatch, October 16, 2003:

"Much has been written about Justice Brown's humble beginnings, and the story of her rise to the California Supreme Court is truly compelling. But that alone would not be enough to gain our endorsement for a seat on the federal bench. We believe that Justice Brown is qualified because she is a superb judge. We who have worked with her on a daily basis know her to be extremely intelligent, keenly analytical, and very hard working. We know that she is a jurist who applies the law without favor, without bias, and with an even hand."

Statement of former senator and governor Pete Wilson, for whom Justice Brown served between 1991 and 1994:

"She served as my legal affairs secretary for three years because a number of excellent lawyers in the state, whose judgment I trust, said, 'You will not do better.' They were right. She was not only a legal scholar—so that I could rely upon her judgment as to what the law was—she was an excellent guide when I was trying to decide what the law ought to be . . . I would simply say to you that, by intellect and by character, by experience, by capability, Justice Brown deserves not only a vote, but deserves a seat on the District Court of Appeals, where I predict she will, if seated, be a brilliant addition."

Letter from a bi-partisan group of 15 California law professors to the Honorable Orrin G. Hatch, October 15, 2003:

"We know Justice Brown to be a person of high intelligence, unquestioned integrity, and even-handedness. Since we are of differing political beliefs and perspectives, Democratic, Republican and Independent, we wish especially to emphasize what we believe is Justice Brown's strongest credential for appointment to this important seat on the D.C. Circuit: her open-minded and thorough appraisal of legal argumentation, even when her personal views may conflict with those arguments."

Letter from 18 members of the California delegation in the House of Representatives to the Chairman and Ranking Member of this committee, April 14, 2005:

"Janice Rogers Brown is an outstanding jurist with more than eight years of experi-

ence on the California appellate bench. She is well-regarded by her colleagues and known to be a person of great intellect, integrity and dedication. Moreover, Justice Brown is a first-rate judge respected by many for her even-handed and unbiased application of the law."

Letter from Ellis Horvitz, a Democrat and one of the deans of the appellate bar in California, to the Honorable Orrin G. Hatch, September 29, 2003:

"In my opinion, Justice Brown [possesses] those qualities an appellate justice should have. She is extremely intelligent, very conscientious and hard working, refreshingly articulate, and possessing great common sense and integrity. She is courteous and gracious to the litigants and counsel who appear before her."

Undated Letter from Regis Lane, Director of Minorities in Law Enforcement, a coalition of ethnic minority law enforcement officers in California, to Chairman Orrin G. Hatch.

"We recommend the confirmation of Justice Brown based on her broad range of experience, personal integrity, good standing in the community and dedication to public service . . . In many conversations with Justice Brown, I have discovered that she is very passionate about the plight of racial minorities in America, based on her upbringing in the south. Justice Brown's views that all individuals who desire the American dream, regardless of their race or creed, can and should succeed in this country are consistent with MILE's mission to ensure brighter futures for disadvantaged youth of color."

Mr. SPECTER. One of the cases which I studied in law school was the famous dissent by Justice Oliver Wendell Holmes, who argued for dissent and for freedom of speech, saying what I think is, if not the most famous quotation in Supreme Court history—that is pretty hard to categorize—certainly one of the most famous where he said that "time has upset many fighting faiths."

That is why we encourage independent thought. That is why we encourage dissent. There are many dissents which have become the law of the land. *Dred Scott* was overturned. *Plessy v. Ferguson* on segregation was overturned. *Brown v. Mississippi* established the rule of due process of law for State court criminal proceedings, and dissenting opinions of Brandeis and Holmes and Cardozo have become the law of the land.

So when one sees someone who might not conform exactly to the kind of thought or might be a little more colorful in phraseology, it is not necessarily something to be discouraged. If one takes a close reading as to what Justice Brown has had to say, she is worthy of confirmation by this Senate. As we analyze nominees for the Federal court, as we analyze nominees for any important position, we ought not to discourage individualism, independence, and free thought. The phrase that "time has upset many fighting faiths," encouraging independence and free thought has been a great bulwark for the progress of this country.

I yield the floor, and in the absence of any other Senators seeking recognition, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. BURR). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. FRIST. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. FRIST. Mr. President, we are in the midst of debate on Janice Rogers Brown. I know we have the time divided from 3 to about 6 tonight. I ask to speak for about 7 minutes as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

The majority leader is recognized.

FIRST ANNIVERSARY OF RONALD REAGAN'S  
DEATH

Mr. FRIST. Mr. President, yesterday marked the first anniversary of the passing of President Ronald Wilson Reagan, the 40th President of the United States. I will take a moment to reflect very briefly on his extraordinary life and on his leadership that changed history.

Ronald Reagan was raised in a small town, and it was those small-town roots that never, ever left him. As he explained when he grew up in a small town, reflecting on those small-town roots, in his words:

You get to know people as individuals, not as blocs or members of special interest groups. You discover that despite their differences, most people have a lot in common: . . . [W]e all want freedom and liberty, peace, love and security, a good home, and a chance to worship God in our own way; we all want the chance to get ahead and make our children's lives better than our own.

Ronald Reagan believed that the Government should serve the people. He believed that America's strength came from creativity, ingenuity, and productivity of the people, not the plans of Government bureaucrats or the theories of intellectual elites. This core belief guided everything he did, everything he said.

When he came to office, the American economy was in shambles. Inflation was in double digits. Interest rates were soaring. The American worker was demoralized. He set about slashing Federal income taxes and cutting burdensome regulations. It was his mission to free the American worker and unleash the American entrepreneur. His sweeping tax reforms overhauled the Tax Code and removed 6 million taxpayers from the tax rolls. By the time he left, it was morning in America. President Reagan believed in the aspirations and dignity of the individual. As he said in his second inaugural address, there are no limits to growth in human progress when men and women are free to follow their dreams.

He reminded the American people that economic liberty and human freedom were two sides of the same coin. He reminded the world that freedom is the birthright of all peoples. Some call it the Reagan Revolution. Others call