



United States  
of America

# Congressional Record

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

Vol. 151

WASHINGTON, TUESDAY, JULY 12, 2005

No. 93

## Senate

The Senate met at 9:45 a.m. and was called to order by the Honorable DAVID VITTER, a Senator from the State of Louisiana.

### PRAYER

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

Let us pray.

O God, the giver and sustainer of life, we thank You that Your power extends beyond humanity's prowess and achievements. We thank You for the things that humble us before the mystery of life and keep us from the folly of worshipping the works of our hands.

Empower our Senators today to do Your will. As they labor for liberty, make them aware of Your willingness to be their divine ally. As they wrestle with issues, may they seek Your wisdom. Whisper Your words when they need them most. Let Your blessings be upon us all as we learn to experience the joy of friendship with You. We pray in Your Holy Name. Amen.

### PLEDGE OF ALLEGIANCE

The Honorable DAVID VITTER 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, July 12, 2005.

To the Senate:

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

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

TED STEVENS,  
President pro tempore.

Mr. VITTER thereupon assumed the Chair as Acting President pro tempore.

### RECOGNITION OF THE MAJORITY LEADER

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

### SCHEDULE

Mr. FRIST. Mr. President, in a moment we will begin consideration of the Homeland Security appropriations bill. Yesterday, all first-degree amendments to the bill were required to be filed at the desk. There appear to be about 100 that were filed. Although I hope the Senators will not feel compelled to call up many of these amendments, we have 100. Hopefully we can narrow those down. The chairman and ranking member will do so over the course of the day.

We will finish the bill this week. Therefore, Members should contact the two managers to schedule consideration of their amendments. At the current time, we have three amendments pending, one dealing with veterans health funding and two relating to the homeland grant formula. We hope to shortly work out time agreements on these and vote with respect to at least a couple of these amendments. Therefore, there is a chance for a vote prior to our policy luncheons today. We will alert Members as we come to an agreement on the starting times. We will continue to vote throughout the day on amendments. Senators can expect a busy day.

Yesterday, we came in for a 3-week block. It will be a very busy 3 weeks before our August recess. We need to continue to address the appropriations measures. Prior to the July Fourth re-

cess, we finished some appropriations in a very positive way. We continue with Homeland Security, and we have a number of other legislative priorities. We need to make the most of this legislative period as we work together to complete all of the work that is ahead of us.

We are likely to have a nominee for the Supreme Court sometime in the near future, and much of September, I suspect, will be focused on that, which again establishes a sense of urgency for addressing the very important issues of the business that is before the Senate over the next 3 weeks. I will be talking to the Democrat leader over the course of the day in terms of working through the specifics of that schedule.

### SUPREME COURT CONFIRMATION PROCESS

Mr. FRIST. Mr. President, I will take a moment now to speak briefly about the confirmation process, the upcoming confirmation process of the new Supreme Court Justice. This morning, the Democrat leader and I and the chairman and ranking member of the Judiciary Committee had a discussion with the President of the United States which continues the consulting process which I would say, at least as we get started, is being conducted in an unprecedented way.

Over the last few months, this Senate has made considerable progress with judicial nominations. We have confirmed six of the President's appellate court nominees and four district court nominees. I am very pleased with this progress. Indeed, this is real progress, especially when you consider each of the appeals court nominees were blocked. Those same people were blocked in the last Congress. That is real progress, working in a bipartisan way for the American people.

Now we will be able to continue that progress. To do so, we must place principle before partisan politics, and we

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



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must place results before rhetoric. That is the challenge to the Senate. Above all, we need to fulfill our constitutional duty as Senators.

Since Justice O'Connor announced her retirement now 11 days ago, the Supreme Court nomination has garnered a lot of attention in Washington, in the press, among our colleagues, and indeed all across America. As the President considers her replacement, many Senators have been talking about the issue of consultation. This raises some important questions: Is the President obligated to consult with Senators about a particular nominee? And if so, to what extent?

Under the Constitution, the President is not obligated to consult with Senators before making a nomination. In fact, he is not obligated to consult with anyone. Indeed, the consultation is a courtesy, it is not a constitutional mandate. The Constitution plainly states in article II that the President shall nominate and the Senate shall provide advice and consent. That is it. Yet this White House has welcomed suggestions from Senators.

On the very same day we departed for our recess, on the same day Justice O'Connor announced her retirement, the President personally engaged in the consultation process. He called Senator REID and myself, the two leaders of the Senate. He called the chairman and ranking member of the Judiciary Committee, Senators SPECTER and LEAHY. Since then, the President and the White House have continued to consult in an unprecedented manner and a very inclusive manner. For example, while in Europe at the G-8 summit with the President, White House Chief of Staff Andy Card made time to call a number of Senators, including Senators DURBIN, SCHUMER, KENNEDY, and Senator BEN NELSON. In the last few weeks, White House counsel Harriet Miers met one-on-one with the Democrat leader, with myself, with Senator LEAHY, and with Senator SPECTER. She has called a number of other Senators to discuss the Supreme Court vacancy specifically.

All together, the White House has reached out to more than 60 Senators, including more than half of the Democratic caucus and every single member of the Judiciary Committee. This consultation process is well underway and, as I mentioned earlier, continued again bright and early this morning when the President invited the four of us to breakfast, the two leaders and the two leaders of the Judiciary Committee, the chairman and ranking member. That meeting was productive. We freely exchanged views on the nomination process and what to expect. We discussed the type of nominee the President may want to consider. It was in a good spirit, bipartisan, working together, everyone stressing the importance of, once the nomination is made, having a process that would play out and have that nominee in place by October 3.

I do commend the President for taking all of these steps. He is not obligated to consult before selecting a Supreme Court nominee, but he is choosing to consult. He is reaching out in this inclusive and bipartisan manner. It is a manner that is unprecedented.

I understand the White House will continue to consult after the nomination is made. Despite this effort by the President, I am concerned that no amount of consultation will be sufficient for a few of our colleagues in this Senate, and statements will continue to be made. I say that because conomination rather than consultation may be their ultimate goal. Some Senators may prefer to choose the nominee for the President, but that is not the way the system works. That is not the way the Constitution works.

The President has the power to nominate, and the Senate offers advice and consent. Again, consultation does not mean conomination; consultation is a courtesy of the President. It works two ways. If he extends it to us, as he has, we should extend it to him.

As we look ahead, most Senators face a relatively new challenge in a Supreme Court nomination. We talked about it this morning at breakfast. More than half of us in this Senate were not here 11 years ago when the Senate last confirmed a Supreme Court nominee. But I am confident we will rise to the occasion. We should work together to ensure that the nomination process is fair, dignified, and respectful, and we should make sure that a new Justice is confirmed before the Supreme Court begins its new term on October 3.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from New York.

#### SUPREME COURT NOMINATIONS

Mr. SCHUMER. Mr. President, I was listening to our majority leader's words on consultation and the process thus far. I will make a couple of points.

The first is that we are off to a good start. I certainly agree with the majority leader. The phone calls that have been made and this morning's meeting with Senators FRIST, REID, SPECTER, and LEAHY are a good first start. That is how it should be. But simply phone calls or meetings, if they are devoid of substance, are not going to lead to real consultation.

I certainly agree with the majority leader's point. The Senate is not a conominee. It is the President who has to do the nominating. The way consultation has successfully worked in the past is for the President to quietly, privately, offer some of the names he is considering to those on both sides of the aisle and get opinions about those names: How would this one fare? How would that one fare? Would this one cause a fight? How about that one?

It is not that we would be conominators at all. Consultation is that. The President is the nominator, and a good

consultation means that nominator discusses who he is thinking of nominating, takes the temperature, if you will, of the Senate, particularly of the other party, to see if a consensus nominee could come about. Thus far, neither the President nor any of the people working for him—I had one call with Andrew Card, the Chief of Staff—has offered a single name. From what I understand this morning, the President did not offer a single name.

So we are off to a good first start. Make no mistake about it—it is a first start to begin the consultation process. But the consultation process, for it to work, is not going to be, Okay, who do you think is a good name, and that is that and we do not have a back and forth. In fact, for consultation to work—and we all want it to work—the President should suggest some names and get the opinion of those in the Senate.

This is how it worked with President Clinton. It was not simply that President Clinton called up ORRIN HATCH and said, Give me some names, and didn't have a discussion. President Clinton bounced off names. In ORRIN HATCH's book, he states that one of the names offered who President Clinton very much wanted to nominate was Bruce Babbitt, the former Interior Secretary and Governor of Arizona. While ORRIN HATCH did not state how he would vote—and I have talked to ORRIN a little about this—he said: I think Babbitt would cause a big fight. And wisely, President Clinton did not offer his name. So that is how the consultation process, to be successful, ought to go.

In my call with Andrew Card, I told him something I have said repeatedly. And I think I speak for just about every member of this caucus on this side of the aisle. We do not want a fight. We certainly do not relish a fight. We would much prefer a consensus nominee. Furthermore, we know that nominee is not going to be a liberal or even a moderate. It is likely to be a conservative. But our view is—again, this time I am speaking for myself, but I think a lot of my colleagues share this view—our view is very simple: that nominee, though conservative, will interpret law, not make it; will be thoughtful, will be pragmatic, will understand the other point of view. If that happens, I think we can have a process that works well.

So in summary, Mr. President, the consultation we have had is great. The number of phone calls may exceed any others that have been named. But so far, at least according to my phone call and the ones of many of my colleagues with whom I have talked, and from what I have been told about the meeting this morning, we have not gotten into the real nitty-gritty of consultation—not conomination, absolutely not. The President is the nominator. But the nitty-gritty means offering some names. The President offers some names and gets the opinion before he