



United States
of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 109th CONGRESS, SECOND SESSION

Vol. 152

WASHINGTON, WEDNESDAY, JANUARY 25, 2006

No. 5

House of Representatives

The House was not in session today. Its next meeting will be held on Tuesday, January 31, 2006, at noon.

Senate

WEDNESDAY, JANUARY 25, 2006

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.

Almighty and merciful God, who has given us grace in times past and hope for the years to come, strengthen us to continue to grow in grace and in our knowledge of You. Quicken our hearts with warmer affection for You and Your creation. Stir up the talents in each of us and give us a desire to serve You and humanity.

Bless the Members of this body and the staffs that serve them. Increase their faith as You increase their years. Give them the moral fitness to live lives of integrity and faithfulness. May they not falter under the burdens they are asked to carry in these uncertain days. Bless them with clear minds and open eyes that they will not seek to solve tomorrow's problems with yesterday's solutions.

We thank You for our new Senate page class. Inspire our pages to trust You passionately so that You will direct their steps. 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.

MORNING BUSINESS

The PRESIDENT pro tempore. Under the previous order, there will be a period for the transaction of morning business with Senators permitted to speak therein for up to 10 minutes each.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. FRIST. President, I welcome everyone back to begin this second session of the 109th Congress.

In a few moments we will begin another historic debate in the Senate Chamber as we consider the nomination of Samuel Alito to be Associate Justice of the Supreme Court of the United States.

We will lock in a debate structure in a few moments so we will be able to alternate hours back and forth between the two sides of the aisle. This will help facilitate the schedule so Members will have a better understanding of when they will have the opportunity to come to the floor to give their statements and to participate in that debate.

We will remain in session all day today and into the night this week to

accommodate Senators who wish to make statements. As I mentioned, every Senator will have the opportunity to speak, but it is my hope we will be able to lock in a time certain for a vote on this qualified nominee as soon as possible in order that our fellow Senators will know when that confirmation vote will occur. I would like to be able to do that shortly. I have been in discussion with the Democratic leader, and we will continue that discussion on that particular matter.

EXECUTIVE SESSION

NOMINATION OF SAMUEL A. ALITO, JR., TO BE AN ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES

Mr. FRIST. Mr. President, at this point, I ask unanimous consent that the Senate proceed to executive session for the consideration of Calendar No. 490, the nomination of Samuel Alito to be an Associate Justice of the Supreme Court of the United States.

The PRESIDENT pro tempore. Is there an objection?

Without objection, it is so ordered.

The Senate will proceed to executive session, and the clerk will report.

The legislative clerk read the nomination of Samuel A. Alito, Jr., of New Jersey, to be an Associate Justice of the Supreme Court of the United States.

Mr. MCCAIN. Mr. President, will the majority leader yield to me for 1 minute while I bring up an issue that we were discussing yesterday?

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



Printed on recycled paper.

Mr. FRIST Mr. President, I will be happy to yield.

The PRESIDENT pro tempore. The Senator from Arizona.

LOBBYING REFORM

Mr. MCCAIN. Mr. President, I thank the majority leader for his efforts to move the issue of lobbying reform forward. We had a good meeting yesterday amongst other Members, and Senator LIEBERMAN and I and others also, as the majority leader knows, have introduced legislation. There has been input made by other Members, and I know the majority leader joins me in saying we need to put together a bipartisan coalition to address this issue as quickly as possible. We need to sit down with Members of both sides of the aisle in whatever format the majority leader and the Democratic leader decide so we can get to work right away and get legislation done to curb the lobbying excesses that have been brought to light that need to be fixed.

At another time I would like to talk with the majority leader about the issue of earmarks, but I thank the majority leader for urging rapid action on this issue. We do have a basis for negotiation, and I hope we will be able to immediately sit down with Members from the other side of the aisle, come to conclusions and agreements—since it is pretty obvious the majority of the fixes that need to be made—and move forward. I thank the majority leader and the Democratic leader for urging rapid action in addressing this issue which is causing us, our image and our reputation to be hurt very badly in the eyes of the American people.

I thank the majority leader.

Mr. FRIST. Mr. President, just a very short comment. I have been in discussion with the Democratic leader on this issue as well. As our distinguished colleague from Arizona has just said, we on the Republican side have put together a working group in terms of how to address this very important issue. It has to be done in a bipartisan way. America is looking at this body to respond to abuses that we have all seen in our Government today. I think we all need to be committed to address this in a bipartisan way.

We have a great structure to build upon in the legislation that has been introduced in a bipartisan way with Senators MCCAIN and LIEBERMAN. I look forward to working with both sides of the aisle in developing an appropriate response over the coming days.

Mr. President, I now ask unanimous consent that the time from 10 a.m. until 8 p.m. tonight be divided, with the time from 10 to 11 under the control of the majority leader or his designee, the time from 11 to noon under the control of the Democratic leader or his designee, with each hour rotating back and forth in that same manner. I further ask unanimous consent that on Thursday this same division occur, with the first hour from 10 to 11 under the control of the Democratic leader or his designee.

The PRESIDENT pro tempore. Is there an objection?

Without objection, it is so ordered.

Mr. FRIST. Mr. President, today, I am honored to open debate on the nomination of Judge Sam Alito to be the 110th Associate Justice of the Supreme Court of the United States.

I enthusiastically support his confirmation.

Judge Alito deserves to become Justice Alito. Those who oppose him are smearing a decent and honorable man and imposing an unfair political standard on all judicial nominees.

I support Judge Alito because he is exceptionally qualified to be a Supreme Court Justice. I support Judge Alito because he is a man of integrity and modest judicial temperament. I support Judge Alito because he has a record that demonstrates a respect for judicial restraint, an aversion to political agendas on the bench, and a commitment to the rule of law and the Constitution.

There is no question that Judge Alito is exceptionally well qualified. He is measured, brilliant, deeply versed in and respectful of the law, and a man of character and integrity. But there is another reason I support Judge Alito. I support Judge Alito because denying him a seat on the Supreme Court could have devastating long-term consequences for our judicial nomination process. Let me address these issues one at a time.

Exceptional qualifications: From the moment President Bush nominated him last October, Judge Alito's exceptional qualifications had a "wow" factor that impressed Senators of both parties. In every respect, Judge Alito is a nominee who meets the highest standards of excellence.

He is a graduate of Princeton and Yale Law School. He has dedicated his 30-year legal career to public service as a Federal prosecutor and assistant to the Solicitor General, where he argued 12 cases before the Supreme Court, and for the last 15 years as a Federal judge on the Third Circuit in New Jersey. He has been unanimously confirmed by this body not once but twice. On the Federal bench, he has participated in more than 3,500 cases and has written more than 300 opinions. The American Bar Association gave Judge Alito its highest rating, unanimously "well qualified." He is a man of integrity and modest judicial temperament.

Exceptional qualifications only begin to reveal why Sam Alito should be confirmed to the Supreme Court. Throughout his career as a prosecutor and a judge, Sam Alito earned a reputation as a man of integrity who was fair-minded and evenhanded. He earned the trust and respect of his colleagues, Republicans, Democrats, and Independents. That is one reason seven Federal judges endorsed his nomination and testified on his behalf.

Through the Judiciary Committee hearings, we saw a clear picture emerge of Judge Alito's modest judi-

cial temperament. Despite enduring relentless questioning of his credibility, integrity, and personal and political views, Judge Alito remained unflappable, never once raising his voice or becoming confrontational, focusing clearly and articulately on the facts, the law, and the constitutional questions presented to him. He understands the limited role of a judge—judicial restraint, impartiality, and a commitment to the rule of law.

In addition to all of his exceptional qualifications, integrity, and temperament, Judge Alito deserves confirmation because he understands the limited role of a judge to interpret the law and not legislate from the bench. He practices judicial restraint and refuses to prejudge cases or apply a personal political agenda on the bench. In his hearing before the Judiciary Committee, this philosophy was clear. He said:

A judge can't have an agenda. A judge can't have any preferred outcome in any particular case. . . . The judge's only obligation—and it's a solemn obligation—is to the rule of law, and what that means is that in every single case, the judge has to do what the law requires.

In his 15 years on the bench, Judge Alito has done exactly that. Just listen to the words of one of Judge Alito's former law clerks, a registered Democrat who, by the way, still has a "Kerry for President" bumper sticker on his car. His words:

Until I read [Judge Alito's] 1985 Reagan job application, I could not tell you what his politics were. . . . When we worked on cases, we reached the same result about 95 percent of the time. . . . It was my experience that Judge Alito was (and is) capable of setting aside any personal biases he may have when he judges. He is the consummate professional.

Long-term consequences for the judicial nominations process: Perhaps the most important reason to support Judge Alito has less to do with Judge Alito himself and more to do with our judicial nominations process. Regardless of their political views, Senators should treat judicial nominees with dignity, respect, and fairness, not just because it is the right thing to do but because a process that politicizes and degrades judicial nominees will drive our very best and our brightest away from the bench. I am profoundly disappointed in the unfair and unseemly treatment of Judge Alito during this process. His judicial record has been distorted and mischaracterized. He has been labeled as nonresponsive during his hearings, despite providing candid and articulate answers to more than 650 questions and over 18 hours of testimony—far more than many, perhaps any Supreme Court nominee in the past—and most sadly, he has been the victim of a calculated but unsuccessful campaign to smear his character, his integrity, and his credibility.

In an editorial in support of Judge Alito, published on January 15, the

Washington Post expressed this concern, even though they would have chosen a different nominee than Judge Alito:

He would not have been our pick for the high court. Yet Judge Alito should be confirmed, both because of his positive qualities as an appellate judge and because of the dangerous precedent his rejection would set. . . . Supreme Court confirmations have never been free of politics, but neither has their history generally been one of party-line votes or of ideology as the determinative factor. To go down that road is to believe that there exists a Democratic law and a Republican law—which is repugnant to the ideal of the rule of law. However one reasonably defines “mainstream” of contemporary jurisprudence, Judge Alito’s work lies within it. While we harbor some anxiety about the direction he may push the court, we would be more alarmed at the long-term implications of denying him a seat. No President should be denied the prerogative of putting a person as qualified as Judge Alito on the Supreme Court.

I ask unanimous consent that the full text of the Washington Post editorial of January 15 entitled “Confirm Samuel Alito on the Supreme Court” be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. FRIST. Thirteen years ago, a Republican minority in the Senate voted to confirm the qualified nominee of a Democratic President by an overwhelming vote of 96 to 3. Despite a well-documented liberal record, Justice Ruth Bader Ginsburg sits on the Supreme Court today because Republican Senators chose to focus on her qualifications and not to obstruct her nomination based merely on her judicial philosophy or ideology. I urge my colleagues to vote to confirm Judge Alito by applying that same fair standard. As we debate this week, I hope we can put aside partisan rhetoric and the politics of personal destruction and stand on principle. Qualified judicial nominees such as Judge Alito deserve respectful debate and a fair up-or-down vote on the Senate floor. As Senators, it is our fundamental constitutional duty and responsibility.

EXHIBIT 1

[From the Washington Post, Jan. 15, 2006]

CONFIRM SAMUEL ALITO

The Senate’s decision concerning the confirmation of Samuel A. Alito Jr. is harder than the case last year of now-Chief Justice John G. Roberts Jr. Judge Alito’s record raises concerns across a range of areas. His replacement of Justice Sandra Day O’Connor could alter—for the worse, from our point of view—the Supreme Court’s delicate balance in important areas of constitutional law. He would not have been our pick for the high court. Yet Judge Alito should be confirmed, both because of his positive qualities as an appellate judge and because of the dangerous precedent his rejection would set.

Though some attacks on him by Democratic senators and liberal interest groups have misrepresented his jurisprudence, Judge Alito’s record is troubling in areas. His generally laudable tendency to defer to elected representatives at the state and federal levels sometimes goes too far—giving

rise to concerns that he will prove too tolerant of claims of executive power in the war on terror. He has tended at times to read civil rights statutes and precedents too narrowly. He has shown excessive tolerance for aggressive police and prosecutorial tactics. There is reason to worry that he would curtail abortion rights. And his approach to the balance of power between the federal government and the states, while murky, seems unpromising. Judge Alito’s record is complicated, and one can therefore argue against imputing to him any of these tendencies. Yet he is undeniably a conservative whose presence on the Supreme Court is likely to produce more conservative results than we would like to see.

Which is, of course, just what President Bush promised concerning his judicial appointments. A Supreme Court nomination isn’t a forum to reflight a presidential election. The president’s choice is due deference—the same deference that Democratic senators would expect a Republican Senate to accord the well-qualified nominee of a Democratic president.

And Judge Alito is superbly qualified. His record on the bench is that of a thoughtful conservative, not a raging ideologue. He pays careful attention to the record and doesn’t reach for the political outcomes he desires. His colleagues of all stripes speak highly of him. His integrity, notwithstanding efforts to smear him, remains unimpeached.

Humility is called for when predicting how a Supreme Court nominee will vote on key issues, or even what those issues will be, given how people and issues evolve. But it’s fair to guess that Judge Alito will favor a judiciary that exercises restraint and does not substitute its judgment for that of the political branches in areas of their competence. That’s not all bad. The Supreme Court sports a great range of ideological diversity but less disagreement about the scope of proper judicial power. The institutional self-discipline and modesty that both Judge Alito and Chief Justice Roberts profess could do the court good if taken seriously and applied apolitically.

Supreme Court confirmations have never been free of politics, but neither has their history generally been one of party-line votes or of ideology as the determinative factor. To go down that road is to believe that there exists a Democratic law and a Republican law—which is repugnant to the ideal of the rule of law. However one reasonably defines the “mainstream” of contemporary jurisprudence, Judge Alito’s work lies within it. While we harbor some anxiety about the direction he may push the court, we would be more alarmed at the long-term implications of denying him a seat. No president should be denied the prerogative of putting a person as qualified as Judge Alito on the Supreme Court.

Mr. FRIST. I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. CORNYN). Without objection, it is so ordered.

JUDICIARY COMMITTEE AGENDA

Mr. SPECTER. Mr. President, before proceeding to the nomination of Judge Alito to the Supreme Court of the United States, I think it worthwhile to comment very briefly on some of the

scheduling items for the Judiciary Committee.

As we all know, the PATRIOT Act was extended from December 31 until February 3. I circulated a letter today among our colleagues, and I ask unanimous consent that it be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. SPECTER. It outlines the alternatives which we face at the present time. One is to let the act expire on February 3, which I think no one would like. Second would be to extend the current bill for a period of time. We will be discussing a 4-year extension. Or, third, to have cloture imposed on the filibuster which is in effect and then vote to utilize the conference report and pass the act. It is always possible to take another course of action if there is unanimous consent.

The conference is technically discharged at this point, and the House of Representatives has made it emphatically clear that they have gone as far as they think it reasonable to go on the compromises.

There have been very substantial compromises worked out. At one juncture, there were three additional requests which we took to the House and got all of them, the most important of which was the sunset provision changed from 7 years to 4 years. Then additional changes were requested, and they could not be accommodated.

That is where we stand at the present time. I know there are discussions underway to try to get some additional changes made. My own view is those prospects are somewhere between bleak and nonexistent.

Mr. LEAHY. Mr. President, will the Senator yield on that point for a moment?

Mr. SPECTER. Certainly.

Mr. LEAHY. Mr. President, the distinguished senior Senator from Pennsylvania has worked as hard on this issue as anybody here. As the distinguished Presiding Officer knows, the original PATRIOT Act was written by myself, the distinguished Senator from Pennsylvania, and others. It was the distinguished Republican leader from Texas, Dick Armey, and I who put in the sunset provisions so we would be forced to come back and look at different parts of it. Much of the PATRIOT Act is permanent law, but we should look at certain parts. Those are the parts that are now most in contention because they will expire.

The distinguished Senator from Pennsylvania and I were at the White House on another matter recently and talked briefly about this with the President. I know the distinguished Senator from New Hampshire, Mr. SUNUNU, has been working very hard with us. I think the changes that still need to be made are relatively minor. I urge parties, especially all of us who helped write the original PATRIOT