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Senate

The Senate met at 9:30 a.m. and was called to order by the Honorable SHERROD BROWN, a Senator from the State of Ohio.

PRAYER

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

Let us pray.

O God of light, illumine our way. O God of hope, strengthen our resolve. O God of truth, edify our souls, that we may live today for Your glory.

May our lawmakers bring honor to You by being faithful stewards of love, grace, compassion, and patience. Use them to meet the pressing needs of our Nation and world, providing them opportunities to be Your hands and heart in these challenging times. Let them never lack the courage or the will to do Your work. May their words, thoughts, and actions reflect the content of Your character.

And, Lord, while many travel during the August recess, bless and keep them, providing Your traveling mercies.

We particularly thank You for our outgoing page class.

We pray in Your sovereign Name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable SHERROD BROWN 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. BYRD).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, August 3, 2007.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable SHERROD BROWN, a Senator from the State of Ohio, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. BROWN thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

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

UNANIMOUS CONSENT AGREEMENT

Mr. REID. Mr. President, I ask unanimous consent that prior to the vote on the judge that is scheduled, we have 1 minute of debate by the ranking member of the Judiciary Committee, Senator SPECTER, 1 minute for Senator INHOFE, and 1 minute for Dr. COBURN, the Senator from Oklahoma.

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

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, leadership time is reserved.

EXECUTIVE SESSION

NOMINATION OF TIMOTHY D. DEGIUSTI, TO BE A UNITED STATES DISTRICT JUDGE FOR THE WESTERN DISTRICT OF OKLAHOMA

The ACTING PRESIDENT pro tempore. The Senate will proceed to execu-

tive session to consider the following nomination, which the clerk will report.

The legislative clerk read the nomination of Timothy D. DeGiusti, of Oklahoma, to be a United States District Judge for the Western District of Oklahoma.

The ACTING PRESIDENT pro tempore. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I yield my time to the Senators from Oklahoma.

Mr. INHOFE. Mr. President, this morning, as I do every morning, I was taking my aggressive walk around the Capitol. I walked in front of the U.S. Supreme Court, and I looked up at the eight pillars facing west, and I said audibly, "Help is on its way," in the form of a young jurist from Oklahoma named Tim DeGiusti.

I pause for a moment to thank, certainly, Senator SPECTER for his help. I single out Senator LEAHY, who gave me his word a long time ago that this would happen before the August recess. I say the same thing about the majority leader, Senator REID. I thank him for his assistance.

I know my junior Senator would like to say a couple of words and will talk about the qualifications of this man. He has highest ratings in everything. He has strong support from Democrats—our Democratic Governor, and my predecessor here, David Boren, a Democrat.

On a personal note, 41 years ago, I was elected to the State house of representatives with a very bright guy named Ralph Thompson. He ended up being one of the most renowned Federal district judges in the history of Oklahoma. He and his family are watching us right now from a reunion in Ohio. I only suggest, through the Chair, that Ralph Thompson and his wife Barbara had three beautiful little girls. His daughter Elaine married Tim DeGiusti. So there is a connection there. You have a great jurist in Ralph

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



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Thompson, and then you have the next generation, his son-in-law, Tim DeGiusti, whose nomination is before us now.

I am so honored to have the opportunity to call for this vote in a few minutes for Tim DeGiusti to be a Federal district court judge in Oklahoma.

The ACTING PRESIDENT pro tempore. The junior Senator from Oklahoma is recognized.

Mr. COBURN. Mr. President, I am proud to support the nomination of Timothy DeGiusti to be a Federal judge in the Western District of Oklahoma.

Timothy brings impeccable credentials to the table and a solid respect for the rule of law.

Timothy appreciates and understands that a Federal judge's role is not to write the law from the bench but to apply the law as Congress and the President set out.

At his hearing he said it's important for judges to not wish they were legislators when deciding a statute.

At his hearing, Timothy also talked about the importance of judicial integrity and the need for judges to act fairly in court so as to not erode public confidence in the rule of law which is the bedrock of American law.

Timothy brings a unique perspective to the bench as a veteran military lawyer. His expertise in military and intelligence issues will be especially need in this ongoing war on terror.

There is support of his nomination from prominent Democrats in the State, including former U.S. Senator David Boren, current Democratic Governor Brad Henry, former Democratic Attorney General Mike Turpen, and former Democratic State Senate Majority Leader Stratton Taylor.

Mr. President, again, this is a gentleman of extreme experience, intellectual honesty, and absolute character. I am proud that he will be making decisions on the Federal bench in the Western District of Oklahoma.

Mr. LEAHY. Mr. President, the senior Senator from Oklahoma, Mr. INHOFE, has talked to me about this nominee several times. I am glad he is on the floor with me. He would corral me on the floor, in the corridors, in the Senate elevators, and everywhere else. I am glad we are going through with this nomination.

Mr. INHOFE. Mr. President, if the Senator will yield. I have talked about the Senator's cooperation. When I was elected 12 years ago, Henry Bellman, a good friend of his, said, "Become a good friend of PAT LEAHY. He keeps his word."

Mr. LEAHY. Mr. President, Henry Bellman was one of the finest men I have ever served with. I valued his friendship too. We traveled to Vermont and we traveled out to his home and elsewhere.

Today as we head into the August recess, the Senate considers another nomination for a lifetime appointment to the Federal bench, Timothy D.

DeGiusti for the Western District of Oklahoma, a well-qualified nominee with the support of both home State Senators.

When we confirm the nomination we consider today, the Senate will have confirmed 26 nominations for lifetime appointments this year, 4 more than were confirmed in all of 2005 with a Republican chairman and Republican majority and 9 more than were confirmed during the entire 1996 session. The Judiciary Committee has reported out 31 lifetime appointments to the Federal courts since January of this year.

It is a little known fact that during the Bush Presidency, more circuit judges, more district judges and more total judges have been confirmed, in less time, while I served as Judiciary chairman than during the longer tenures of either of the two Republican chairmen working with Republican Senate majorities.

Taking into account today's confirmation, the Administrative Office of the U.S. Courts lists 49 judicial vacancies. The President has sent us only 25 nominations for these 49 remaining vacancies. Twenty-four of these remaining vacancies—almost half—have no nominee. Of the 17 vacancies deemed by the Administrative Office to be judicial emergencies, the President has yet to send us nominees for 8 of them, almost half. Of the 16 circuit court vacancies, exactly half are without a nominee. If the President had worked with the Senators from Michigan, Rhode Island, Maryland, California and New Jersey, we could be in position to make even more progress. And of the 24 vacancies without any nominee, the President has violated the timeline he set for himself at least 13 times—13 have been vacant without so much as a nominee for more than 180 days. The number of violations may in fact be much higher since the President said he would nominate within 180 days of receiving notice that there would be a vacancy or intended retirement rather than from the vacancy itself. We conservatively estimate that he also violated his own rule 11 times in connection with the nominations he has made. That would mean that with respect to the 49 vacancies, the President is out of compliance with his own rule almost half of the time.

Timothy D. DeGiusti is a partner at the law firm of Holladay, Chilton & DeGiusti, PLLC in Oklahoma City, OK. He previously served 3 years in the U.S. Army as a military prosecutor and legal adviser for the Judge Advocate General Corp. Before that he was in private practice and taught as an adjunct professor of law at the University of Oklahoma College of Law. Mr. DeGiusti graduated from the University of Oklahoma and the University of Oklahoma College of Law.

I congratulate the nominee and his family on his confirmation today.

UPDATING THE FREEDOM OF INFORMATION LAW

Mr. President, I have some good news. We are reaching an agreement

that should clear the way for Senate passage of the Openness Promotes Effectiveness in Our National Government Act, the OPEN Government Act, S. 849, which is a mouthful. That means we will have a much needed update of the Freedom of Information Act.

This is comprehensive legislation which Senator CORNYN and I introduced earlier this year. A lot of people have not sat by idly while there has been obstruction on this floor. They have pushed for it and demanded it. I think of all of the editorial writers and letter writers who said: Let's do this. I will speak further if we do pass it.

Every administration, Democratic or Republican, will tell you all the things they do right. Most administrations don't want to talk about the things that don't go right. It is usually the press and public citizens, individuals, who find things out through FOIA.

Open government and transparent decisionmaking are bedrock American values. For more than four decades, FOIA has translated those great values into practice by guaranteeing access to government information. Just recently, we witnessed the effectiveness of FOIA in shedding light on the chronic abuse of National Security Letters, NSLs, at the FBI. This disclosure of government documents obtained under FOIA showed the FBI reported an intentional and willful violation of the laws governing NSLs to the President's Intelligence Oversight Board just before the 2004 election, contrary to the impression created by testimony of Attorney General Gonzales.

Although FOIA continues to demonstrate its great value in shedding light on bad government policies and abuses, this open government law is being hampered by excessive delays and lax FOIA compliance. Today, Americans who seek information under FOIA remain less likely to obtain it than during any other time in FOIA's 40-plus year history. According to the National Security Archive, an independent research institute, the oldest outstanding FOIA requests date back to 1989, before the collapse of the Soviet Union. In fact, more than a year after the President's FOIA executive order to improve agency FOIA performance, FOIA backlogs are at an all-time high. According to a recent report by the Government Accountability Office, federal agencies had 43 percent more FOIA requests pending and outstanding in 2006 than in 2002. In addition, the percentage of FOIA requestors who obtained at least some of the information that they requested from the Government declined by 31 percent in 2006, according to a study by the Coalition of Journalists for Open Government. As the first major reform to FOIA in more than a decade, the OPEN Government Act would help to reverse these troubling trends and help to begin to restore the public's trust in their government. This bill also improves transparency in the Federal Government's FOIA process by:

Restoring meaningful deadlines for agency action under FOIA;

Imposing real consequences on Federal agencies for missing FOIA's 20-day statutory deadline;

Clarifying that FOIA applies to government records held by outside private contractors;

Establishing a FOIA hotline service for all federal agencies; and

Creating a FOIA Ombudsman to provide FOIA requestors and Federal agencies with a meaningful alternative to costly litigation.

Let me also be clear about what this bill does not do. This bill does not harm or impede in any way the Government's ability to withhold or protect classified information. Classified, national security and homeland security-related information are all expressly exempt from FOIA's public disclosure mandate and this bill does nothing to alter these important exemptions. Senator CORNYN and I have been proposing an amendment to our own bill that would preserve the right of federal agencies to assert these and other FOIA exemptions, even if agencies miss the 20-day statutory deadline under FOIA.

The OPEN Government Act is cosponsored by a bipartisan group of 14 Senators, including the bill's lead Republican cosponsor, Senator CORNYN. This bill is also endorsed by more than 115 business, public interest, and news organizations from across the political and ideological spectrum, including the American Library Association, the U.S. Chamber of Commerce, OpenTheGovernment.org, Public Citizen, the Republican Liberty Caucus, the Sunshine in Government Initiative and the Vermont Press Association. I thank all of the cosponsors of this bill for their commitment to open government. I also thank the many organizations that have endorsed the OPEN Government Act for their support of this legislation.

I especially want to thank the concerned citizens who have not sat idly by while some have sought to delay and obstruct Senate consideration of this measure. Instead, knowing the importance of this measure to the American people's right to know, they have demanded action and refuse to take no for an answer. That is what led to this breakthrough and to the commitment of Senate opponents of our FOIA bill to come around.

The OPEN Government Act is a good-government bill that Democrats and Republicans, alike, can and should work together to enact. For more than 2 years, I have worked on a bipartisan basis to pass this legislation and I remain committed to work with any Senator, from either party, who is serious about restoring transparency, trust and accountability to our government. Open government should not be a Democratic issue or a Republican issue. It is an American issue and an American value.

I am glad to announce to today that with Senator CORNYN's help we have

come to an understanding with Senators KYL and BENNETT that should lead to Senate passage before the August recess.

I ask unanimous consent that a recent USA Today editorial entitled, "Our view on your right to know: Endless delays mar requests for government information," be printed in the RECORD.

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

[From USA Today]

OUR VIEW ON YOUR RIGHT TO KNOW: ENDLESS DELAYS MAR REQUESTS FOR GOVERNMENT INFORMATION

Federal agencies are supposed to respond to requests for information within 20 business days. In some cases, 20 years has been more like it. A sampling of pending queries:

In 1987, lawyers for the Church of Scientology asked the State Department for information about whether the department had been gathering information about the church or about "cults."

In 1988, steelmaker USX Corp. requested government data on the steel industry in Luxembourg.

And in 1989, the Armenian Assembly of America sought documents on the Armenian genocide that occurred more than 70 years earlier during World War I.

What these queries have in common is that they are among thousands of requests that have been sandbagged, stonewalled or lost by government agencies.

Congress passed the Freedom of Information Act in 1966 to give citizens and taxpayers access to government-held records that they've paid to have gathered. But 40 years later, scores of agencies still can't—or won't—get it right.

Compliance with the 20-day deadline is "an exception rather than a standard practice," according to a report this month from the Knight Foundation and the National Security Archive watchdog group.

Twelve agencies, ranging from the Defense Department to the Environmental Protection Agency, have backlogs of 10 years or more. Only one-fifth of federal agencies are in compliance with a 10-year-old law that was supposed to put so much government information on the Internet that most FOIA requests would no longer be needed.

Long-overdue reforms that sailed through the House in March with a wide bipartisan majority have been stalled in the Senate—largely because of opposition from Sen. Jon Kyl, R-Ariz.—despite a unanimously favorable vote by the Judiciary Committee.

The ugly reality is that the freedom-of-information law has been sabotaged for years by politicians and bureaucrats trying to make it hard, if not impossible, for citizens to obtain information to which they're entitled.

The pending reforms would restore meaningful deadlines for agency action and impose serious consequences on agencies that miss those deadlines. The bill also would establish a freedom-of-information hotline to enable citizens to track the status of their requests. And it seeks to repeal a perverse incentive that encourages agencies to delay compliance with information requests until just before a court decision that is going to be favorable to the requester.

Of the more than 500,000 freedom-of-information requests filed every year, over 90% are from private citizens, businesses or state and local agencies seeking information that's important to them and that in most cases they are entitled to.

Critics of the legislation object to getting tough on agencies that flout the law and claim that some of the proposed reforms would force the disclosure of sensitive information. If so, these are issues that should be thrashed out in Congress, not used as a club to stall consideration of this long-overdue legislation. The public's right to know is too important to remain on hold.

The ACTING PRESIDENT pro tempore. All time has expired.

Mr. LEAHY. Mr. President, I ask for the yeas and nays on the nomination.

The ACTING PRESIDENT pro tempore. Is there a sufficient second? There is a sufficient second.

The question is, Will the Senate advise and consent to the nomination of Timothy D. DeGiusti, of Oklahoma, to be a United States District Court Judge for the Western District of Oklahoma?

The yeas and nays have been ordered, and the clerk will call the roll.

Mr. DURBIN. I announce that the Senator from New York (Mrs. CLINTON), the Senator from Connecticut (Mr. DODD), the Senator from South Dakota (Mr. JOHNSON), and the Senator from Washington (Mrs. MURRAY) are necessarily absent.

The ACTING PRESIDENT pro tempore. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 96, nays 0, as follows:

[Rollcall Vote No. 308 Ex.]

YEAS—96

Akaka	Domenici	McCaskill
Alexander	Dorgan	McConnell
Allard	Durbin	Menendez
Barrasso	Ensign	Mikulski
Baucus	Enzi	Murkowski
Bayh	Feingold	Nelson (FL)
Bennett	Feinstein	Nelson (NE)
Biden	Graham	Obama
Bingaman	Grassley	Pryor
Bond	Gregg	Reed
Boxer	Hagel	Reid
Brown	Harkin	Roberts
Brownback	Hatch	Rockefeller
Bunning	Hutchison	Salazar
Burr	Inhofe	Sanders
Byrd	Inouye	Schumer
Cantwell	Isakson	Sessions
Cardin	Kennedy	Shelby
Carper	Kerry	Smith
Casey	Klobuchar	Snowe
Chambliss	Kohl	Specter
Coburn	Kyl	Stabenow
Cochran	Landrieu	Stevens
Coleman	Lautenberg	Sununu
Collins	Leahy	Tester
Conrad	Levin	Thune
Corker	Lieberman	Vitter
Cornyn	Lincoln	Voinovich
Craig	Lott	Warner
Crapo	Lugar	Webb
DeMint	Martinez	Whitehouse
Dole	McCain	Wyden

NOT VOTING—4

Clinton	Johnson
Dodd	Murray

The nomination was confirmed.

The ACTING PRESIDENT pro tempore. Under the previous order, the motion to reconsider is laid upon the table, and the President shall be immediately notified of the Senate's action.

LEGISLATIVE SESSION

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now return to legislative session.