

pursuant to Public Law 105-83, announces the appointment of the following individual to serve as a member of the National Council of the Arts: the Honorable CLAIRE MCCASKILL of Missouri.

ORDERS FOR THURSDAY,  
NOVEMBER 19, 2009

Ms. CANTWELL. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 9:30 a.m. tomorrow, Thursday, November 19; that following the prayer and pledge, the Journal of proceedings be approved to date, the morning hour be deemed expired, the time for the two leaders be reserved for their use later in the day, and the Senate proceed to a period of morning business for 1 hour, with Senators permitted to speak therein for up to 10 minutes each, with the time equally divided and controlled between the two leaders or their designees, with the majority controlling the first half and the Republicans controlling the final half; that following morning business, the Senate proceed to the consideration of Calendar No. 190, S. 1963, the Caregivers and Veterans Omnibus Health Services Act Of 2009, as provided for under the previous order.

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

PROGRAM

Ms. CANTWELL. Mr. President, at 2:30 p.m. tomorrow the Senate will proceed to a series of three rollcall votes. The votes will be on the confirmation of the nomination of David Hamilton to be a U.S. circuit judge for the Seventh Circuit; in relation to the Coburn amendment No. 2785, relating to spending priorities; and passage of S. 1963, the Caregivers and Veterans Omnibus Health Services Act, as amended, if amended.

Finally, I ask unanimous consent that following the remarks of Senator SESSIONS, Senator HARKIN, and Senator ALEXANDER, the Senate adjourn under the previous order.

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

The Senator from Alabama is recognized.

NOMINATION OF DAVID HAMILTON

Mr. SESSIONS. Mr. President, I thank Senator CANTWELL. I appreciate her courtesy. I just want to share a few remarks tonight.

We are now postcloture on the nomination of Judge David Hamilton to the circuit court of appeals. Cloture is a procedure in the Senate generally used to end a prolonged debate. The majority leader, Senator REID, filed cloture on Judge Hamilton, however, before there had been even 1 hour of debate on the nomination. The cloture motion was filed before I or any of my col-

leagues had time set aside and had the opportunity to debate this matter.

Judge Hamilton's judicial philosophy and record as a district judge were problematic. There are important matters involved considering the fact that President Obama has nominated him to serve on the Court of Appeals for the Seventh Circuit. It is worthy of serious consideration, this lifetime appointment.

Yesterday, 28 Senators joined me in voting against cloture. I believe they voted no on cloture for a number of reasons. The first is the one I have just mentioned. Cloture is generally reserved to end a prolonged debate, and Senator REID filed cloture without any debate, before debate had really begun.

The second is that Judge Hamilton's judicial philosophy is outside the mainstream—I think well outside the mainstream. As I have said before, if a judge is not committed to following the law whether they like it or not, then that person is not qualified to be a judge. They may be a good advocate, but a judge must, by definition, be impartial.

I think there will be more people voting against Judge Hamilton's nomination than voted against cloture—the 29 who voted yesterday. I think we need to spend some time talking about his record and his judicial philosophy.

I do not have anything against Judge Hamilton. I understand he may be a fine person, and I really mean that. But there is afoot in this country a philosophy of judging, an approach to law that I think is dangerous and strikes at the very heart of the classical American judicial philosophy and legal system that has served us so well. So that is what this is about. If judges have the wrong philosophy as they approach the bench about how they should go about deciding cases, then that can disqualify them.

As Senators, we each have a right to express our opinion on whether we believe a nominee is qualified and should be confirmed or not elevated to a higher court, but the American people expect we will not misrepresent the facts. Let's be fair to this nominee, and let's not in any way misrepresent who he is and what he did and what his philosophy is. I intend to be fair to him. I think any nominee is entitled to that. Even though I might be a critic, I should not be inaccurate in what I say.

In this case, I think the facts have been misrepresented by others, and I want to correct the record on some of the issues, where it has been suggested that I or others have been incorrect or unfair in our criticism. Accuracy goes both ways. If you are for a judge and want to move him forward, OK, let's be accurate. Those who are opposed to him, you must be restrained and accurate also.

Yesterday on the floor of the Senate, the majority leader, Senator REID, invoked the Golden Rule. He said that when he became majority leader, he sought to "treat [President Bush's] ju-

dicial nominees the way they would want them treated if the roles were reversed."

Let's take a look at the way President Bush's judicial nominees were treated by the Democratic majority. Senator REID complained that Judge Hamilton, the judge before us tonight—tomorrow—waited 166 days for this vote. If Republicans followed Senator REID's version of the Golden Rule, would he have been confirmed earlier? No. Judge Hamilton would have waited at least another year and a half before he received consideration on the Senate floor. That is exactly how President Bush's nominees were treated for the first group of nominees he submitted to the circuit courts.

Priscilla Owen, a fabulous judge at the Supreme Court of Texas, John Roberts, now on the Supreme Court of the United States, and Deborah Cook all waited 2 years before receiving a confirmation vote.

Yesterday Senator REID said:

It's really unfortunate we have to file cloture on a judge.

Really unfortunate that we have to file cloture on a judge? As if this was something that had never been done before. Indeed, during the Bush administration, cloture had to be filed on at least 17 different judicial nominees because Senator REID was leading filibusters himself. The majority leader complains he could not get a time agreement. But he never offered a reasonable amount of time. I believe there were discussions about 30 hours of debate, which was rejected. Senator REID said he was stunned that some people believed there was not enough time to debate the nomination when no debate had been had.

He accused Republicans of not entering into a time agreement. But as I said Monday, Senator REID has a short memory. When Senator REID was in the middle of filibustering Priscilla Owen, Senator BENNETT made a unanimous consent request that the Senate spend 10 hours more debating the nomination and then vote. Senator REID objected. When Senator BENNETT asked how much time would be sufficient to debate the Priscilla Owen nomination, Senator REID responded by saying:

[T]here is not a number of [hours] in the universe that would be sufficient.

Later Senator MCCONNELL sought a time agreement on Judge Owen. Senator REID responded by saying:

We would not agree to a time agreement . . . of any duration.

Yesterday Senator REID said:

The Democratic majority in the Senate confirmed three times as many nominees [under President Bush] as we have been able to confirm in the same amount of time under President Obama.

Senator REID left out the fact that Democrats filibustered more than three times as many nominees under President Bush. Indeed, there were 30 cloture votes on 17 different judicial nominations during the Bush administration. There were 1,044 total votes

against two filibustered President Bush's nominees. The Democrats, under Senator REID's leadership, cast 99.9 percent of those votes.

Yesterday Senator REID talked about the Senate and the legal precedent and advocated that Republicans follow Senate precedent in judicial confirmations. Ironically, that is exactly what Senate Republicans asked Senator REID to do during the Bush administration. There had been 214 years of precedent of not filibustering judges. Yet Senator REID voted more than 20 times to filibuster President Bush's judges. Everyone knows that in a court of law, you follow the most recent precedent, and the most recent precedent was established last time in the Bush administration by the Democrats in this body.

Yesterday Senator REID also said the following:

I want to reiterate that every Senator may vote for or against Judge Hamilton's nomination as he or she sees fit. That's what we do here, but that is not the issue before us today. The question before us is whether the President of the United States deserves to have his nomination reviewed by the Senate as the Constitution demands he does.

The fact is that Senator REID did not feel that way about Terrence Boyle who was nominated by President Bush for the Fourth Circuit Court of Appeals and languished for close to 8 years without ever receiving a confirmation vote, even though he passed out of the Senate Judiciary Committee with a majority vote. He did not feel that way about President Bush's nominee, the superb legal mind of Miguel Estrada, unanimously voted well qualified by the American Bar Association. He was filibustered through seven cloture votes and was never confirmed, a fabulous nominee to the court of appeals and one capable of being on any short list for the Supreme Court. Or what about Charles Pickering who was filibustered and never confirmed; Carolyn Kuhl who was filibustered and never confirmed; William Myers who was filibustered and never confirmed; Harry Saad who was filibustered and never confirmed; William Haynes who was filibustered and never confirmed?

What Senator REID meant to say was: Do not do unto me as I have done unto you. You get it? Do not do unto me as I did to you.

I don't believe Senator REID or President Obama would wish for us to return to the Democratic version of the Golden Rule. I don't believe we intend to do that. Republicans have not held a private retreat to figure out how to change the ground rules and to block President Obama's nominations. That is what the Democrats did. It was reported in the New York Times. We have not taken orders from outside groups to block nominees. We have not blocked nominees because we do not want them to sit on a specific case, and we had some of that in the past. We have not attempted to filibuster a nominee in the Judiciary Committee.

We let them go through. That is how President Bush's nominees were treated. I am not exaggerating. I was there. Those are the facts.

I will express my opinion in more detail when I vote against Judge Hamilton. I have a right to do that, as does every Member. But I do not have a right to misrepresent the facts, and I try to be accurate in what I say. If I am in error, I look forward to being corrected. I hope my colleagues will start making an effort to do that.

The way this happened was this: After President Bush was elected, the Democrats met with Marcia Greenberg and Lawrence Tribe and Cass Sunstein. They came up with a new idea. They said: We are going to change the ground rules. We no longer are not going to filibuster, as has been done in the history of the Senate. We are going to do anything we can to block in committee and on the floor good nominees.

We had some fabulous nominees, such as Priscilla Owen, Bill Pryor. These are brilliant lawyers, proven people. They were rated highly by the American Bar Association. There was strong support in their home States and communities. They were blocked for months, even years before they could get a vote. Some got through, and some did not.

My personal view is that the President deserves deference in his nominees. I fully expect and hope to be able to vote for 90 percent of President Obama's nominees. I voted for well over 90 percent of President Clinton's nominees. But I am not a rubberstamp. I am not going to vote for a judge who I believe, by virtue of their stated judicial philosophy, thinks a judge has the right to write footnotes to the Constitution, as Judge Hamilton has said, who blocks legislation for 7 years and has to be finally slapped down hard by the court of appeals because apparently he didn't appreciate the State of Indiana's passage of a law on informed consent. He kept that bottled up for 7 years. And how much Indiana had to spend on legal fees, and how much of the will of the people was frustrated by one unelected, lifetime-appointed judge I do not know, but it was significant.

So those are the issues we will talk about in more detail. But I did want to set the record straight that I do not like not moving forward with a judge and giving them an up-or-down vote, but after the 8 years of President Bush and the repeated filibusters that occurred then, I have to agree with a number of my colleagues that, indeed, the Democrats did successfully change the standard in the Senate. We have to be careful about it. But they changed it to say that a filibuster is legitimate if you believe, according to the Gang of 14, there are extraordinary circumstances.

To me, a person can be honest and have integrity, but if they believe, as a philosophical approach to the law, they have the ability to write footnotes to the Constitution, they have an ability to actually amend the Constitution

through their decisions, when the Constitution itself provides only one method to amend the Constitution, then that makes the person one who is not qualified to be on the bench.

So it is a big deal. We love the American legal system. I so truly admire it. It is based on a firm commitment to the rule of law. The oath judges take that they will impartially apply the law—not allow their personal views but impartially do it—that they will do equal justice to the poor and to the rich, that they will serve under the Constitution and laws of the United States—and not above them—that is the essence of it.

I think a judge who cannot follow that oath they must take, one whose philosophy indicates they are not committed to that oath, is not qualified.

I thank the Chair and yield the floor. The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Mr. President, this body often finds itself divided. But today we are united in our respect and affection for the senior Senator from West Virginia, ROBERT BYRD. I join with my colleagues in congratulating him on yet another historic milestone: becoming the longest serving Member of Congress.

But I hasten to add that to salute Senator BYRD only for his remarkable longevity is to really kind of miss the point. The measure of a Senator is not just how many years he or she serves but the quality and the consequences of that service. That is where Senator BYRD has truly distinguished himself in Congress over the last 20,774 days.

The "Almanac of American Politics" says, ROBERT BYRD "may come closer to the kind of Senator the Founding Fathers had in mind than any other." I could not agree more. He is a person of wise and mature judgment, a patriot with a deep love of country. He is passionately loyal to the Constitution, and a fierce defender of the role and prerogatives of Congress, the Senate in particular.

Senator BYRD was once asked how many Presidents he has served under. He answered he had not served "under" any President, but he has served "with" 11 Presidents, as a proud Member of a separate and coequal branch of government.

During his more than 56 years in Congress, Senator BYRD has witnessed many changes. Our population has grown by more than 125 million. There has been an explosion of new technologies. America has grown more prosperous, more diverse, more powerful.

But across those nearly six decades of rapid change, there has been one constant: Senator BYRD's tireless service to his country, his passion for bringing new opportunities to the people of West Virginia, and his dedication to this branch of government, the U.S. Congress, and especially to this House of Congress, the U.S. Senate.

Senator BYRD is a person of many accomplishments and a rich legacy. But,

above all, in my brief time today I want to focus on his commitment to improving K through 12 public education in the United States and expanding access to higher education, especially for those of modest means.

As my colleagues know, ROBERT C. BYRD was raised in the hardscrabble coal fields of West Virginia. His family was poor but rich in faith and values. And his parents nurtured in young ROBERT BYRD a lifelong passion for education and learning.

He was valedictorian of his high school class but too poor to go to college right away. Of course, that was in the days before Pell grants and loans and Byrd Scholarships. So he worked as a shipyard welder and later as a butcher in a coal company town. It took him 12 years to save enough money to even start college.

He was a U.S. Senator when he later earned his law degree. No other Member of Congress before or since has started and completed law school while serving in the Congress.

But degrees do not begin to tell the story of the education of ROBERT BYRD. He is the ultimate lifetime learner. It is like for the last seven decades he has been enrolled in the Robert C. Byrd School of Continuing Education.

Senator BYRD's erudition has borne fruit in no less than nine books he has written and published over the last two decades. We all know that he literally wrote the book on the U.S. Senate—a masterful four-volume history of this institution that was an instant classic that will bear the burdens of time. What my colleagues may not know is that he also authored a highly respected history of the Roman Senate. Now, there are some who think ROBERT BYRD served in the Roman Senate, but that part of the Byrd legend just is not so.

I have talked at length about Senator BYRD's education because this explains why he is so passionate about ensuring every American has access to a quality public education—both K through 12 and higher education.

One thing Senator BYRD and I have in common—and we always kind of talk about it when we get together—is we are the only two Senators whose fathers were actually coal miners. We are both the sons of coal miners, neither of whom had very much formal education. My father only went to the 8th grade. Actually, he only went to the 6th grade, but we will not get into that. But, anyway, he said he went to the 8th grade, but, like I said, I will not get into that. But coming from a poor background, Senator BYRD believes, as I do, that a cardinal responsibility of government is to provide a ladder of opportunity so everyone, no matter how humble their background, has a shot at the American dream.

Obviously, the most important rungs of that ladder of opportunity involve education—beginning with quality K through 12 public schools, and including access to college, vocational edu-

cation, and other forms of higher education.

During my 25 years in this body, no one has fought harder for public education than Senator ROBERT BYRD. As the longtime chairman and still the senior member of the Appropriations Committee, he has been the champion of education at every turn—fighting to reduce class sizes, improving teacher training, bringing new technologies into the classroom, boosting access to higher education.

In 1985, he created the only national merit-based college scholarship program funded through the U.S. Department of Education. Congress later named them in his honor. Originally, the Byrd Scholarships consisted of a 1-year \$1,500 award to outstanding students. Today, Byrd Scholarships provide grants of up to \$6,000 over 4 years.

Senator BYRD is a great student of literature, and I am sure he knows *The Canterbury Tales*—a lot of it, probably, by heart. Describing the Clerk of Oxford, Chaucer might just as well have been describing ROBERT C. BYRD. Chaucer wrote:

Filled with moral virtue was his speech;  
And gladly would he learn and gladly teach.

Senator BYRD is a great Senator and a great American. He has both written our Nation's history and left his mark on it. It has been an honor to serve with my friend, my longtime chairman, Senator BYRD, for the last 25 years.

Today, as he reaches yet another historic milestone that no other Member of Congress has ever achieved—and I daresay probably no one ever will—we honor his service. And we express our respect and our love for this remarkable U.S. Senator.

I yield the floor.

The PRESIDING OFFICER. The Senator from Tennessee.

#### CONGRATULATING SENATOR ROBERT C. BYRD

Mr. ALEXANDER. Mr. President, I am glad I had the opportunity to hear the comments of the Senator from Iowa on Senator BYRD. We all have enormous respect for Senator BYRD. I had a chance this morning to say a word about him and to reflect on, among other things, that when I first came here as a young aide 42 years ago to Senator Baker, Senator BYRD had already been here for 10 years as a Senator.

So it is quite a span of history, and all of us have many stories, including the instructions he would give us to stand behind our desk when we vote, and not work at the table when we preside. He kept order in the Senate, and we are grateful to him for that.

#### HEALTH CARE REFORM

Mr. ALEXANDER. Mr. President, I would like to say a word about health care. The Democratic leader, Senator REID, today announced that he has

completed work on a health care bill. We have been waiting for that. It has been written behind closed doors in Senator REID's office for the last several weeks, so we have not known exactly what might be in it.

We have had two pieces of legislation from the Senate, one written by the HELP Committee, upon which I serve, another one from the Finance Committee. Now a bill has come from the House of Representatives. It has actually been passed there. Now the Democratic majority leader will be bringing forward his version of the bill. The bill seems to grow each time we have a new one—a little faster than the Federal debt grows even. This one seems to be another 2,000-page, trillion-dollar bill.

But the point I want to make tonight is that the American people's response to this work will be what all of ours should be: We want to read the bill. We want to know what it costs. And we want to make sure we have time to understand exactly how it affects the health of each American.

This is the most personal kind of debate we could have about the health of every single American. It affects 17 percent of our economy. It is a dramatic proposal, an enormous amount of money, at a time when our debt has reached \$12 trillion. A great many Americans are concerned about Washington, DC, because we do not seem to have a check and a balance on the various proposals for Washington takeovers, more debt, more spending, more taxes. Tonight I would like to do a simple thing, which is not to make a Republican speech but to read a letter, or parts of a letter, and insert it in the RECORD, that was written by eight Democratic Senators on October 6 to Senator REID.

I think their words say a great deal about this bill and about how we should proceed on it. The letter is dated October 6, from eight Democratic Senators. It says, in part:

Dear Leader REID:

... Whether or not our constituents agree with the direction of the debate, many are frustrated and lacking accurate information on the emerging [health care] proposals in Congress. Without a doubt—

Say these eight Democratic Senators—  
reforming health care in America is one of the most monumental and far-reaching undertakings considered by this body in decades. We believe the American public's participation in this process is critical to our overall success of creating a bill that lowers health care costs and offers access to quality and affordable health care for all Americans.

And then, if I may read a couple more paragraphs from the letter from these eight Democratic Senators to the Democratic leader:

Every step of the process needs to be transparent, and information regarding the bill needs to be readily available to our constituents before the Senate starts to vote—

“to vote”——

on legislation that will affect the lives of every American.

The eight Democratic Senators continue: