



United States
of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 111th CONGRESS, FIRST SESSION

Vol. 155

WASHINGTON, TUESDAY, AUGUST 4, 2009

No. 120

House of Representatives

The House was not in session today. Its next meeting will be held on Tuesday, September 8, 2009, at 2 p.m.

Senate

TUESDAY, AUGUST 4, 2009

The Senate met at 10 a.m. and was called to order by the Honorable ROLAND W. BURRIS, a Senator from the State of Illinois.

PRAYER

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

Let us pray.

Eternal God, we are grateful for Your mercies renewed every morning and for Your faithfulness every night. As the dew refreshes the Earth morning by morning, let Your spirit restore the faith and energy of our lawmakers. Give them the discernment to understand the challenges of our times and the wisdom to devise ways to meet them. Lord, keep them open and alert to Your providential leading, as You guide them to a destination that will bring glory to Your Name. May the collective talents of our Senators be mobilized in the awesome task of building a better Nation and world. Make their hands ready to lift burdens and their hearts eager to respond in service to humanity.

We pray in Your great Name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable ROLAND W. BURRIS 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 4, 2009.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable ROLAND W. BURRIS, a Senator from the State of Illinois, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. BURRIS 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. REID. Mr. President, following leader remarks, we will resume consideration of the Agriculture appropriations bill, with the time until 10:30 equally divided and controlled between the two managers or their designees. At 10:30, the Senate will proceed to a series of two rollcall votes in relation to the pending McCain amendments. Following the votes, the Senate will recess until 2:15 p.m. to allow for the weekly caucus luncheons. The time will be expanded a little bit today because the Democrats are going to the White House for the caucus today, rather than here in the Mansfield

Room. As a reminder to all Senators, the filing deadline for second-degree amendments is 10:15 this morning. We have every belief we can complete the Agriculture appropriations bill today. I hope so because as soon as we finish that we are going to move to the nomination of Sonia Sotomayor to be an Associate Justice of the Supreme Court of the United States.

MEASURE PLACED ON THE CALENDAR—H.R. 3435

Mr. REID. Mr. President, H.R. 3435 is at the desk. It is my understanding it is due for a second reading.

The ACTING PRESIDENT pro tempore. The clerk will report the bill by title for the second time.

The legislative clerk read as follows:

A bill (H.R. 3435) making supplemental appropriations for fiscal year 2009 for the Consumer Assistance to Recycle and Save Program.

Mr. REID. I ask unanimous consent that any further proceedings in this matter not proceed. I object.

The ACTING PRESIDENT pro tempore. Objection is heard.

The bill will be placed on the calendar.

SOTOMAYOR NOMINATION

Mr. REID. Mr. President, a long 10 weeks ago, President Obama made history when he nominated the Nation's first Hispanic to be a Justice of the U.S. Supreme Court, and only the third woman. This week, the Senate will make history when we confirm her.

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



Printed on recycled paper.

S8709

Judge Sonia Sotomayor is an American of tremendous qualifications. Both her academic record and her career experience are second to none. She graduated summa cum laude from Princeton University and went on to do as well at Yale, where she was a member of the Law Review. She has served as a prosecuting attorney, a lawyer in private practice; she was on the trial bench and an appellate judge. After she is confirmed, she will be the only Justice in the current Supreme Court with experience as a trial judge—experience that I believe will be valuable to her colleagues.

One of the objections people have had about the makeup of the Court is that people come with basically no experience in the courtroom other than the appellate judges who sit in back rooms and listen to arguments once in a while and not in a courtroom listening to cases being presented, sustaining and overruling objections, and listening to arguments to the jury. They simply have not had that experience. She has. She has developed a 17-year record as a moderate, mainstream judge.

When the judge testified before the Senate Judiciary Committee for 4 grueling days, she respectfully and thoroughly answered questions from both sides of the aisle—Democrats and Republicans. This week, the Senate will debate her nomination. It will be a fair debate. It will be a full debate.

I appreciate the statements from my colleagues on the other side of the aisle who have said they will vote to confirm her to the Supreme Court.

Many Senators have very thoughtfully said they regret how politicized the process of confirming judges has become in recent years. An unsung hero in the battle for the judiciary is LAMAR ALEXANDER, the Senator from Tennessee. Senator ALEXANDER has been Governor of the State of Tennessee. He was in the Cabinet as Secretary of Education. During the very difficult nuclear option, when there was a knockdown, drag-out fight that I felt would have ruined the basic makeup of the Senate and what the Senate stood for, it was he who quietly and in the background came up with the idea of the Gang of 14. Basically, he said to me and to others: Why don't we have an equal number of Democrats and Republicans sit down and try to work this out. He took none of the limelight. He stepped back, and the process he suggested went forward.

He has decided to vote for Sonia Sotomayor. Most of his colleagues are not going to do that. I am sure if you ask LAMAR ALEXANDER why he decided to do that, of course, the qualifications are fine, but I think one reason he wants to do it is he believes in having temperate suggestions on both sides of the aisle to make a better Senate.

So I am very fond of LAMAR ALEXANDER. I appreciate his ability to bring sides together, and I appreciate his standing up in this instance for this judge, because the process of con-

firmed judges has become in recent years very politicized. Whose fault is it? It is probably the fault of both sides. It is something that just got out of hand. Hopefully, we can bring it back to where it has been in the past.

I have tried during the time I have been the majority leader to allow full and firm debate. There have been limited instances out of necessity where we haven't had full opportunities to amend pieces of legislation. That is the way it used to be when I came here, and that is the way I hope it is going to be in the future.

In light of the battle we have had in the past over the so-called nuclear option, I appreciate the sentiments of a number of Senators. LINDSEY GRAHAM is an example. LINDSEY GRAHAM has had editorials all over the country written on his behalf. Columns have been written in major newspapers in Nevada complimenting the Senator from South Carolina for the statements he made regarding this judicial problem we have now.

I am disappointed that not more of my colleagues on the other side of the aisle are likely to vote for this outstanding nominee, particularly in light of her record and qualifications, but maybe in the future things will get better. I am, however, grateful for the respect my colleagues have shown her throughout this process, even those who have said they are not going to vote for her.

I look forward to voting to confirm Judge Sotomayor as soon as we can so that she can continue her commendable service to our country.

RECOGNITION OF THE MINORITY LEADER

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

SOTOMAYOR NOMINATION

Mr. McCONNELL. Mr. President, the Senate will soon begin debate on the nomination of Judge Sonia Sotomayor to be an Associate Justice of the Supreme Court. Before that debate begins, I wish to make a few observations.

First, I thank the chairman and the ranking member of the Judiciary Committee, along with their respective staffs, for conducting what can only be described as a dignified and respectful hearing. I know it was gratifying to them, as it was to me, to hear Judge Sotomayor say that every single Senator who had promised to give her the opportunity to explain her views had kept that promise. It was equally gratifying to hear Senators DURBIN and SCHUMER describe the hearings as respectful and fair.

As I have often said, our goal in the Senate should be to disagree without being disagreeable. I think we hit the mark during the hearings on Judge Sotomayor, and the Judiciary Com-

mittee should be commended for it. As we begin final consideration, our goal should be the same: Those who support the nomination will make their case, those who oppose it will make theirs, and then we will vote, fulfilling our constitutional responsibility with the seriousness and the deliberation the American people expect.

Over several weeks, I have outlined my concerns about the nominee in some detail. Once the hearing was over, I said that those concerns had only multiplied. But the primary reason I will not support this nomination, as I have already said, is because I cannot support the so-called empathy standard upon which Judge Sotomayor was selected and to which she, herself, has subscribed in her writings and rulings.

As I have said, the empathy standard is a very fine quality. And I have no doubt that Senator Obama, now President Obama, had very good intentions when he made the case for a so-called empathy standard as a Senator, a candidate, and now as President. But when it comes to judging—when it comes to judging—empathy is only good if you are lucky enough to be the person or group for whom the judge in question has empathy. In those cases, it is the judge, not the law, which determines the outcome. That is a dangerous road to go down if you believe, as I do, in a nation not of men but of laws.

Judge Sotomayor has impressed all of us with her life story, but if empathy is the new standard, then the burden is on nominees such as she who are chosen on that basis to demonstrate a firm commitment to equal justice under the law. On the contrary, Judge Sotomayor has openly doubted the ability of judges to adhere to this core principle, and she has even doubted the wisdom of them doing so.

In her writings and in her speeches, Judge Sotomayor has repeatedly stated that there is no objectivity or neutrality in judging. Let me say that again. Judge Sotomayor has repeatedly stated that there is no objectivity or neutrality in judging. She has said her experiences will affect the facts she chooses to see as a judge. Her experiences will affect the facts she chooses to see as a judge. She has argued that in deciding cases judges should bring their sympathies and prejudices to bear. She has dismissed judicial impartiality as an "aspiration" that cannot be met even in most cases. She has even questioned whether a judge trying to be as fair as possible in applying the law does a disservice both to the law and to society. These statements suggest not just a sense that impartiality is not possible but that it is not even worth the effort.

Nothing could be more important in evaluating a judicial nominee than where they stand on the question of equal justice. As I have said, Americans expect one thing when they walk into a courtroom—whether it is traffic court or the Supreme Court—and that is equal treatment under the law.