



United States  
of America

# Congressional Record

PROCEEDINGS AND DEBATES OF THE 108<sup>th</sup> CONGRESS, FIRST SESSION

Vol. 149

WASHINGTON, THURSDAY, MAY 1, 2003

No. 64

## Senate

The Senate met at 9:15 a.m. and was called to order by the President pro tempore (Mr. STEVENS.)

The PRESIDENT pro tempore. Today's prayer will be offered by our guest Chaplain, the Rev. Canon Martyn Minns of Fairfax, VA.

### PRAYER

The guest Chaplain offered the following prayer:

Almighty God, we thank You for blessing us as a nation. We pray that we would always be a generous people, eager to share the gifts of freedom, respect for human dignity, and commitment to service, with all the peoples of the world.

We pray for all who suffer and are afflicted in body or mind, especially those who face the devastation of HIV/AIDS and the unfolding terror of SARS. Grant them healing and comfort, and stir up in us the will and patience to minister to their needs.

We commend to Your gracious care all the men and women of our Armed Forces. Defend them day-by-day with Your heavenly grace, and give them a sense of Your abiding presence wherever they may be.

We thank You for the men and women of this Senate, and for all who serve in this place. Grant them the spirit of wisdom, charity and justice; that with steadfast purpose they may faithfully carry out the work set before them.

All this we pray because of the love first shown us in the call of Abraham and Sarah and now revealed to us in the life and witness of Jesus the Christ. Amen.

### PLEDGE OF ALLEGIANCE

The Honorable TED STEVENS 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 PRESIDING OFFICER (Mr. SUNUNU). Under the previous order, the leadership time is reserved.

### RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDING OFFICER. The Senator from Utah is recognized.

### SCHEDULE

Mr. HATCH. Mr. President, for the information of all Senators, this morning the Senate will resume consideration of the Owen nomination. Under the order, at 10:15 the Senate will proceed to a rollcall vote on the motion to invoke cloture on the nomination of Priscilla Owen to be a circuit judge for the Fifth Circuit. If cloture is not invoked, the Senate will begin consideration of the nomination of Edward Prado to be circuit judge. It is hoped we will reach a short time agreement with a vote on that nomination to occur by early afternoon.

In addition to the Owen and Prado nominations, the Senate may also consider the Cook nomination. As the majority leader stated last night, we have attempted to work out a unanimous consent agreement to process these judicial nominations. Unfortunately, we were unable to reach an understanding last night. There continues to be hope that as these nominations are considered we would be able to reach reasonable time limitations for their consideration.

In addition, the leader is still working toward agreements for considering and completing a number of other legislative matters, including the FISA legislation, the State Department authorization bill, the Bioshield legislation, or additional judicial nominations during today's session. Therefore, Senators should expect rollcall votes throughout the day.

### MEASURES PLACED ON THE CALENDAR—S. 14 AND H.J. RES. 51

Mr. HATCH. I understand there is a bill and a joint resolution at the desk which are due for a second reading.

The PRESIDING OFFICER. The Senator is correct.

Mr. HATCH. I ask unanimous consent it be in order to read the titles of the measures en bloc.

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

The clerk will read the titles of the bills en bloc.

The legislative clerk read as follows:

A bill (S. 14) to enhance the energy security of the United States, and for other purposes.

A joint resolution (H.J. Res. 51), increasing the statutory limit on the debt.

Mr. HATCH. I ask that the Senate proceed en bloc to the measures, and I object to further proceeding en bloc.

The PRESIDING OFFICER. The objection having been heard, the bills will be placed on the calendar.

Mrs. BOXER. Will the Senator yield for a question? Just on the matter of timing.

Mr. HATCH. I will be delighted.

Mrs. BOXER. Mr. President, I have a markup at 9:30. I wanted to make a 5-minute statement on the judicial nomination. If we can do that and I will give Senator HATCH that 5 minutes back on his time, would that be acceptable?

Mr. HATCH. I think the 5 minutes will be taken from the minority side.

Mrs. BOXER. Yes, that is what I suggested.

Mr. HATCH. I am happy to yield so the Senator can make her statement.

Mrs. BOXER. That is very kind. I appreciate it.

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



Printed on recycled paper.

S5619

## EXECUTIVE SESSION

NOMINATION OF PRISCILLA OWEN  
TO BE UNITED STATES CIRCUIT  
JUDGE FOR THE FIFTH CIRCUIT

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to executive session. The clerk will report the pending business.

The legislative clerk read the nomination of Priscilla Richmond Owen, of Texas, to be United States Circuit Judge for the Fifth Circuit.

The PRESIDING OFFICER. Under the previous order, there will now be 1 hour of debate divided in the usual form, prior to the vote on the nomination of Priscilla Owen to be circuit court judge for the Fifth Circuit.

The Senator from California.

Mrs. BOXER. Mr. President, I again thank my colleague for allowing me to move forward on this because of a commitment to a markup in the Commerce Committee.

I rise to express my deep concerns regarding the nomination of Priscilla Owen to the U.S. Fifth Circuit Court of Appeals. I have noted there is a lot of politics around this particular nomination, as there is around the Miguel Estrada nomination. I read the Republican Party is planning to run ads against those of us who vote against these nominees, saying we do not want to see diversity on the bench.

Let me say that is extraordinary because as someone who worked so hard to support qualified minorities and women, I have been praised by many in my State for doing just that. But I have to tell you, if you place on the bench a minority or a woman who has animosity toward the goals of minorities and women, you are dealing a great setback to both minorities and women. I will make that point when I have to.

But as for today, I point out I voted for well over 90 percent of the President's appointees up to this point in time, but I cannot support this nomination. This is why.

President Bush pledged to govern from the center. Those were his words. Yet this nominee is so far from the center that she is almost off, to the right. She is barely on that line at all. That differs from the mainstream values of my constituents and I believe of the majority of Americans.

In such important areas as reproductive rights, civil rights, consumer rights, and environmental protection, this nominee has legislated from the bench. She inserted her personal beliefs into the judicial process.

I have to say even members of her own party, and even Mr. Gonzales, who is White House counsel, has criticized her for that.

What is particularly troubling to me is that I believe in the advice and consent role of Senators in the nomination and the confirmation of judicial nominees of any President, be that President a Democrat or a Republican. As

we have heard many times from historians, the selection of judges and the confirmation of judges is a shared responsibility. So it is not a question of whether they are Clinton judges or Carter judges or Bush judges; they are America's judges. As such, there has to be a role for the Senate and for the executive.

This President knew very well that this particular nominee was well off the center. He knew very well there was deep objection to her. She was voted down once before. Yet he comes right back with this nomination.

I have made it a priority of mine in this Senate to stand up for the mainstream values of people of my State. So I cannot possibly support this nomination. I wish to outline a case that illustrates Priscilla Owen's callous attitude toward individuals who are fighting against large corporate interests and their well-paid legal defense teams.

A young man in Texas was paralyzed in a car accident. His injuries were made much worse because of a malfunctioning seatbelt, and his family took the automaker to court. The case made its way to the Texas Supreme Court on appeal.

Judge Owen waited 16 months before issuing a decision in that case, in that Ford Motor case. When she did, she essentially sent the case back and created a substantial roadblock for this paralyzed teenager to receive funds to pay for his medical care. There were 2 years of delay on a procedure issue that was never raised in the case but was raised by her, and this young man died. This young man died. His family couldn't afford around-the-clock monitoring of his ventilator. This is a truly tragic example of delayed justice.

I could go into detail about the fundamental right to choose in which Justice Owen set up a barrier to a young woman who was seeking to end her pregnancy. When she issued her opinion, it dealt with having to seek religious counseling, which was not part of the law. In that case, Judge Gonzales, who as you know is White House counsel to this President, said:

To create hurdles that simply are not to be found in the words of the statute would be an unconscionable act of judicial activism.

That is a quote from Mr. Gonzales regarding Judge Priscilla Owen, criticizing her for judicial activism.

I know the issues of judges are very touchy. Senator HATCH, when President Clinton was President, told me—he said it with a twinkle in his eye: Senator, don't send me judges that are outside the mainstream.

You know, I didn't. Senator HATCH helped me. He helped me get these wonderful people confirmed.

Now we have a circumstance where we are not getting our judges from the mainstream. We are getting some. I have supported 90 percent of these judges. But in this case—

Mr. HATCH. Will the Senator yield for a question?

Mrs. BOXER. I certainly will. I just want to finish my thought.

In this particular case, I think this is a nominee who is outside the mainstream and who was criticized for that by the President's White House counsel.

I am happy to yield to my friend.

Mr. HATCH. Is the Senator aware that there is an ample record that even Judge Gonzales admits he was not criticizing her as an activist, he was criticizing the court. She didn't write the opinion. That has been more than established. Yet we keep hearing Senators on the floor of the Senate and elsewhere saying Judge Gonzales directly criticized her. He didn't. I think the record is pretty clear on that.

Mrs. BOXER. I will have printed in the RECORD my understanding of what actually happened here.

In the case of the 2-year delay, I find that was unconscionable.

The point is this: I will support candidates who are from the mainstream. I want to do that. The chair of the Judiciary Committee has changed his attitude about who is going to get through this Senate. During the Clinton years, you had to have someone from the mainstream. During the Bush years, you can have people from the far right of the spectrum. My constituents do not think that is fair. We had a situation during the Clinton years that two Senators had to sign off on a judge before there would even be a hearing. Oh, no, now the committee has changed its mind. Suddenly, because they have a Republican in the White House, two Senators don't have to sign off and they are pushing forward with hearings.

It is wrong. It is not right. I would say regarding this particular nominee, you have very moderate Members of this Senate saying she is a judicial activist and any words to the contrary can be disproven by her record. I think this is someone who does not come from the center, does not come from the mainstream. I think this is a President who, in this case, has not sought the advice and consent, really, of the Senate. He is essentially saying we don't care that you Democrats—none of you—vote for her. I should not say none—maybe one. Certainly none on the committee. We are going to go right back and bring her back here.

This is a lifetime appointee. I think when we make these types of appointments, we have to make sure the person who is being nominated is not going to be an activist, make sure the person has demonstrated the types of qualities we want on the bench.

I don't think it is a quality you want on the bench when a woman waits 2 years before she renders a decision in a case of a paralyzed teenager whose parents didn't have the money to keep their teenager on a ventilator. And the record shows otherwise? I know what the record is. We have people combing that record. That is why you are going to see very many women in this Senate take this floor. I will repeat, when you put a woman on the bench who has a