

judicial nominations receive a fair, up-or-down vote and, therefore, to allow this great legislative body to carry out its constitutional duty of advice and consent—a responsibility that we, as Senators, have been duly elected to uphold by the American people.

There is a little housekeeping we might do before my good friend, the Senator from Wisconsin, chooses to speak. I thank the Senator for that.

I ask unanimous consent I be permitted to speak as in morning business.

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

#### APPOINTMENT

The PRESIDING OFFICER. The Chair, on behalf of the Vice President, in accordance with 22 U.S.C. 1928a-1928b, as amended, appoints the following Senator as Acting Vice Chairman to the NATO Parliamentary Assembly for the spring meeting in Ljubjana, Slovenia, May 2005: the Honorable PATRICK LEAHY of Vermont.

#### WELCOMING HIS EXCELLENCY HAMID KARZAI, THE PRESIDENT OF AFGHANISTAN

Mr. BURNS. I ask unanimous consent the Senate now proceed to consideration of S. Res. 152, which was submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 152) welcoming His Excellency Hamid Karzai, the President of Afghanistan, and expressing support for a strong enduring strategic partnership between the United States and Afghanistan.

There being no objection, the Senate proceeded to consider the resolution.

Mr. BURNS. I ask unanimous consent the resolution be agreed to, the preamble be agreed to, and the motion to reconsider be laid upon the table.

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

The resolution (S. Res. 152) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follow:

#### S. RES. 152

Whereas Afghanistan has suffered the ravages of war, foreign occupation, and oppression;

Whereas following the terrorist attacks of September 11, 2001, the United States launched Operation Enduring Freedom, which helped to establish an environment in which the people of Afghanistan are building the foundations for a democratic government;

Whereas, on January 4, 2004, the Constitutional Loya Jirga of Afghanistan adopted a constitution that provides for equal rights for full participation of women, mandates full compliance with international norms for human and civil rights, establishes procedures for free and fair elections, creates a system of checks and balances between the

executive, legislative, and judicial branches, encourages a free market economy and private enterprise, and obligates the state to prevent terrorist activity and the production and trafficking of narcotics;

Whereas, on October 9, 2004, approximately 8,400,000 Afghans, including nearly 3,500,000 women, voted in Afghanistan's first direct Presidential election at the national level, demonstrating commitment to democracy, courage in the face of threats of violence, and a deep sense of civic responsibility;

Whereas, on December 7, 2004, Hamid Karzai took the oath of office as the first democratically elected President in the history of Afghanistan;

Whereas nationwide parliamentary elections are planned in Afghanistan for September 2005, further demonstrating the Afghan people's will to live in a democratic state, and the commitment of the Government of Afghanistan to democratic norms;

Whereas the Government of Afghanistan is committed to halting the cultivation and trafficking of narcotics and has pursued, in cooperation with the United States and its allies, a wide range of counter-narcotics initiatives;

Whereas the United States and the international community are working to assist Afghanistan's counter-narcotics campaign by supporting programs to provide alternative livelihoods for farmers, sustainable economic development, and capable Afghan security forces; and

Whereas, on March 17, 2005, Secretary of State Condoleezza Rice said of Afghanistan "this country was once a source of terrorism; it is now a steadfast fighter against terrorism. There could be no better story than the story of Afghanistan in the last several years and there can be no better story than the story of American and Afghan friendship. It is a story of cooperation and friendship that will continue. We have a long-term commitment to this country": Now, therefore, be it

*Resolved*, That the Senate—

(1) welcomes, as an honored guest and valued friend of the United States, President Hamid Karzai on the occasion of his visit to the United States as the first democratically elected President of Afghanistan scheduled for May 21 through 25, 2005;

(2) supports a democratic, stable, and prosperous Afghanistan as essential to the security of the United States; and

(3) supports a strong and enduring strategic partnership between the United States and Afghanistan as a primary objective of both countries to advance their shared vision of peace, freedom, security and broad-based economic development in Afghanistan, the broader South Asia region, and throughout the world.

#### STATE CRIMINAL ALIEN ASSISTANCE PROGRAM REAUTHORIZATION ACT OF 2005

Mr. President, I ask unanimous consent the Senate now proceed to immediate consideration of Calendar No. 56, S. 188.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 188) to amend the Immigration and Nationality Act to authorize appropriations for fiscal years 2005 through 2011 to carry out the State Criminal Alien Assistance Program.

There being no objection, the Senate proceeded to consider the bill.

Mr. BURNS. I ask unanimous consent the Feinstein amendment at the desk be agreed to, the bill as amended be read a third time and passed, and the motion to reconsider be laid upon the table.

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

The amendment (No. 763) was agreed to, as follows:

(Purpose: To require that certain funds are used for correctional purposes)

At the end add the following new section:

#### SEC. 3. LIMITATION ON USE OF FUNDS.

Section 241(i)(6) of the Immigration and Nationality Act (8 U.S.C. 1231(i)(6)) is amended to read as follows:

"(6) Amounts appropriated pursuant to the authorization of appropriations in paragraph (5) that are distributed to a State or political subdivision of a State, including a municipality, may be used only for correctional purposes."

The bill (S. 188), as amended, was read the third time and passed, as follows:

S. 188

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. SHORT TITLE.

This Act may be cited as the "State Criminal Alien Assistance Program Reauthorization Act of 2005".

#### SEC. 2. AUTHORIZATION OF APPROPRIATIONS FOR FISCAL YEARS 2005 THROUGH 2011.

Section 241(i)(5) of the Immigration and Nationality Act (8 U.S.C. 1231(i)(5)) is amended by striking "appropriated" and all that follows through the period and inserting the following: "appropriated to carry out this subsection—

"(A) such sums as may be necessary for fiscal year 2005;

"(B) \$750,000,000 for fiscal year 2006;

"(C) \$850,000,000 for fiscal year 2007; and

"(D) \$950,000,000 for each of the fiscal years 2008 through 2011."

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#### ORDER OF PROCEDURE

Mr. BURNS. I ask unanimous consent that the majority leader be recognized at 5:30 p.m. today; provided further that from 6 to 7 this evening be under the control of the majority leader or his designee, that from 7 to 8 p.m. be under the Democratic control, with time continuing to rotate in that fashion until 9 a.m.

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

Mr. BURNS. I yield the floor.

The PRESIDING OFFICER. The Chair will note the minority now controls 41 minutes.

The Senator from Wisconsin.

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

Mr. KOHL. Mr. President, as passions rise higher and higher here in the Senate, I come to the floor today to urge that cooler heads prevail; to urge that the majority not take the fateful step they are contemplating; to urge that we step back from the cliff we are approaching, before it is too late.

We have all heard the arguments for and against a rule change that has been dubbed “the nuclear option.” I will not reiterate those arguments here. But as someone who came to the Senate to get things done for real people, I have some experience trying to reach compromise on difficult issues. The heart of compromise is well known: one side cannot have all that they want. Yet the essence of the so called “nuclear option” is just that—one side wins, one party wins, one majority wins full power over who will sit on the Federal bench. The other side—the other party, the minority—is left powerless, silenced by a new rule that strips the minority of all power over judges. We all know that such an outcome is the opposite of moderation, the opposite of compromise, the opposite of bipartisanship. In short, the opposite of how to get things done in a way that encourages participation on both sides of the aisle.

There is no need to go down this troubled partisan path on judicial nominations and my own State of Wisconsin has shown us a smoother road for more than a quarter century. In all those years, Wisconsin has used a bipartisan nominating commission to force all sides to act in bipartisan cooperation when selecting judges. During the administrations of Democrats and Republicans, and during the tenure of Republican as well as Democratic Senators, we have used the Commission and succeeded in selecting well-qualified nominees who have been easily confirmed by the Senate in every case. Using this process, both political parties have been represented—the minority does not get to choose the nominee, but they can affect the choice and have their views count.

If we move forward with the proposed rule change—a change designed to bring about one-party rule whenever the Senate considers judges—we will silence a minority of the Senate and a majority of Americans. You see, the Democratic Senators in this body were elected by a majority of Americans. How will a majority of Americans speak up about judges who will sit in their districts, on the Seventh Circuit, on the Supreme Court, making decisions about their lives for generations to come if this rule change is made?

People all across our country—whether in the majority or the minority—deserve better. They deserve to have some say over who will sit in judgment over them. And they deserve more than that, they deserve a Senate

that is working to solve the challenges they face every day, challenges like the skyrocketing cost of health care which leaves too many without coverage and even more struggling to pay for the coverage they have, challenges like factories closing and jobs that pay too little to support a family, challenges like the need to save for retirement in an age of disappearing pensions and job insecurity. These are among the problems we should be dealing with today.

So for the sake of those who need healthcare, for the sake of those working for too little, for the sake of those nearing retirement with fear and worry, I urge my colleagues to stop. Stop and listen. I hope you will hear what I hear, Americans asking for what they have always asked of the Senate—that it be a place where debate continues, passions cool, and compromise prevails for the good of all.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, what is the parliamentary situation?

The PRESIDING OFFICER. The Senator will note the business at hand is the Priscilla Owen nomination, and the minority controls the time until 5:30.

Mr. LEAHY. I thank the distinguished Presiding Officer. I will take some of my time.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. LEAHY. Mr. President, the Senate is on a path toward a divisive and actually unnecessary showdown. I have been here long enough to know that if the vote on the Republican leader’s nuclear option were by a secret ballot it would fail overwhelmingly. There are too many Senators who will tell you privately that on a secret ballot they would never vote for it. We know this because, as these Senators know, it is harmful to this institution and it is wrong for this country—wrong in terms of protecting the rights of the American people, wrong in terms of undercutting our fundamental system of checks and balances, wrong in terms of defending the independence of and public support for an independent Federal judiciary. But especially it is wrong in unilaterally destroying minority protections in the Senate in order to promote one-party rule, something this Senate has never known and has never wanted.

I have served in the Senate for almost 31 years. During that time, several times the Democrats were in charge of the Senate—in the majority. Several times the Republicans were. The hallmark of every leader, Republican or Democratic, was that the spe-

cial minority protections of the Senate would remain. No matter who was in the majority, they believed they had as their obligation protecting the rights of the minority because that is what the Senate is all about. Every Senate majority leader took as his trust to make sure that when he left, the Senate had at least the strengths it had when he took over.

Today, Democratic Senators alone will not be able to rescue the Senate and our system of checks and balances from the breaking of the Senate rules the Republican leadership seem so insistent on demanding. It will take at least six Republicans standing up for fairness and for checks and balances. I know a number of Senators on the other side of the aisle know in their hearts that this nuclear option is the wrong way to go.

Senators on both sides of the aisle have called for the vote on the nuclear option to be one of principle rather than one of party loyalty, and for this to be a vote of conscience. I agree. To ensure that it is, I urge both the Republican leader from Tennessee and the Democratic leader from Nevada—both of whom are my friends—to announce publicly, today, in advance of the momentous vote that awaits us at the end of this debate, that every Senator should search his or her heart, his or her conscience, and vote accordingly.

I call on both the Democratic and Republican leaders to announce that there will be no retribution or punishment visited upon any Senator for his or her vote.

I remember in the aftermath of another vote, one I called at that time a profile in courage, when our friend, the senior Senator from Oregon, Mark Hatfield, cast the deciding vote against a proposed constitutional amendment. Ten years ago some of the newer Republican Senators at the time reportedly wanted to strip him of the chairmanship of the Appropriations Committee. The press at the time provided counsel to those newer Senators, some having recently arrived from the other Chamber, and who were accustomed to the way the Republican Party in that body operates, where everything is all or nothing.

At the time, some of those Members urged that Senator Hatfield be penalized for his vote of conscience, a vote they did not like. They thought conscience should be set aside, he should have toed the party line. I remember the unfair pressures brought to bear on Senator Hatfield. I do not want to see that befall other Senators, Republican or Democrat, whichever way they choose to vote on the nuclear option.

The Senate has its own carefully calibrated role in our system of Government. The Senate was not intended to function like the House. The Great Compromise of the Constitutional Convention more than 200 years ago was to create in the Senate a different legislative body from the House of Representatives. Those fundamental differences