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Senate

The Senate met at 10 a.m. and was called to order by the President pro tempore (Mr. STEVENS).

The PRESIDENT pro tempore. Today we are privileged once again to have our guest Chaplain, Rabbi Arnold E. Resnicoff, U.S. Navy, to lead us in prayer.

PRAYER

The guest Chaplain, Rabbi Arnold E. Resnicoff, offered the following prayer:

Almighty God, this week we remember nightmares, to reaffirm our dreams. On this Holocaust Remembrance Day—during this week we have set aside—our Nation recalls victims of the Holocaust: a Holocaust brave Americans took up arms to fight and many gave their lives to end. And so, before this session starts, and during a time when our brave men and women still risk their lives for better times, we pray the day will come when the lesson of this horror, the lessons of all nightmares, help make our dreams of peace come true.

From the Holocaust we learn: when human beings deny humanity in others, they destroy humanity within themselves. When they reject the human in a neighbor's soul, then they unleash the beast, and the barbaric, in their own hearts.

And so, remembering, we pray: if the time has not yet dawned when we can proclaim our faith in God, then let us say at least that we admit we are not gods ourselves. If we cannot yet see the face of God in others, then let us see, at least, a face as human as our own.

You taught us through the Bible—taught that life might be a blessing or a curse: the choice is in our hands. So many people, so many peoples, have felt the curse of life too filled with cruelty, violence, and hate. As Americans we pray—we vow—to keep alive the dream of better times; to keep our faith that we can be, will be, a force for good; a force for hope; a force for freedom; a blessing, not a curse—to all our people; to all the world.

And may we say, 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.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDING OFFICER (Mr. GRAHAM of South Carolina). The majority leader is recognized.

SCHEDULE

Mr. FRIST. Mr. President, today the Senate will resume consideration of the nomination of Jeffrey Sutton to be a circuit judge for the Sixth Circuit. Under the previous consent agreement reached, a vote will occur on the confirmation of that nomination at 12 noon.

The Senate will recess for the weekly party lunches from 12:30 until 2:15 p.m.

Following the confirmation of Jeffrey Sutton, it is my intention to resume consideration of the nomination of Priscilla Owen to be a circuit judge for the Fifth Circuit. It will be my hope that we can reach a time agreement for the vote on this judicial nomination.

In addition, there are a number of other legislative items that will be scheduled for action during the remainder of this week, including the bioshield bill, the digital and wireless technology legislation, State Department authorization, and other legislative or executive items that can be cleared over the coming days.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, if the distinguished majority leader will allow me to direct a couple of questions to him. First, we have asked before. Do you think there is any way we can have the vote on the Sutton nomination after the caucus? We have a lot of people who want to be able to discuss it in our caucus. I don't think it would in any way hurt the schedule or hold up getting to the Owen nomination by 20 minutes or half an hour, but there would be a number of Senators—especially Senator HARKIN—who would deeply appreciate it if we could have a vote at 2:15. We would even be willing to shorten our caucus to expedite the time on this and vote at 2 rather than 2:15.

Mr. FRIST. Mr. President, I have been made aware of the request. I talked to our caucus and our leadership and really would much prefer to go ahead with the vote as scheduled. A number of people made plans to come back from out of town specifically for this vote recognizing that we had made it clear the vote would be at 12 noon today. Out of consistency, when I set a time for a vote, people alter their plans very specifically to make sure they are here. Some simply can't be back, and I understand that as well. But we will go ahead and have that vote at noon today.

Mr. REID. Mr. President, we have been advised by the leader's competent floor staff that this afternoon, during the debate of Priscilla Owen, it will not be necessary for somebody to be here all day. I will be happy to be here, as the distinguished leaders know, but we would hope there would not be a vote unless the majority leader gives us some notice.

Mr. FRIST. Mr. President, for today, that is absolutely fine. We will work in good faith. The objective with all of these nominees is to have good discussion as we go forward. We want to make sure that occurs. I expect today that we will not have a vote this afternoon, and we will notify leadership in advance.

Mr. REID. One final note: We have worked during the recess. I think the

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position of the minority is the same as it was prior to the break. We don't think there will be any time that would be agreeable on the Owen nomination. That being the case, is it the expectation of the majority leader that he would file cloture on the Priscilla Owen nomination sometime today or tomorrow?

Mr. FRIST. Mr. President, let me get back with the leadership on the other side of the aisle. We, of course, would very much like an up-or-down vote on Priscilla Owen. If not and it is necessary for us to file cloture, it will be done either sometime this week or next week. The final decision has not been made. We would like to discuss this with you, and we will let you know once that decision is made.

Mr. REID. Finally, Mr. President, we are willing to work with the majority on judges. We have a number of circuit judges on which we think we can move very quickly. The leadership should know that.

Mr. FRIST. Mr. President, in response, I recognize that. We are making slow but consistent and steady progress. We have the vote today. We have made reasonable progress up until today. I think as judges are put forward, we will continue to consider them in an orderly way in the Senate. That being said, I am very hopeful that we can ultimately have an up-or-down vote on Miguel Estrada, someone whom we believe is the embodiment of the American dream. We will work in that regard. I hope we will be able to have an up-or-down vote on Priscilla Owen as well.

RESERVATION OF LEADERSHIP TIME

The PRESIDING OFFICER. Under the previous order, the leadership time is reserved.

EXECUTIVE SESSION

NOMINATION OF JEFFREY S. SUTTON, OF OHIO, TO BE UNITED STATES CIRCUIT JUDGE FOR THE SIXTH CIRCUIT

The PRESIDING OFFICER. Under the previous order, the Senate will now go into executive session and resume consideration of Executive Calendar No. 32, which the clerk will report.

The assistant legislative clerk read the nomination of Jeffrey S. Sutton, of Ohio, to be United States Circuit Judge for the Sixth Circuit.

The PRESIDING OFFICER. Under the previous order, the time until 12 noon shall be equally divided between the chairman of the Judiciary committee and the Senator from Iowa, Mr. HARKIN.

The Senator from Nevada.

Mr. REID. Mr. President, I ask unanimous consent that Senator DURBIN be recognized on the Democrats' time first for 20 minutes. Our next speaker would be Senator SCHUMER for 15 minutes. There will be a Republican in between, I am sure, if that is the wish. But I ask unanimous consent that our first two speakers be lined up accordingly.

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

The Senator from New York.

Mr. SCHUMER. Mr. President, I ask unanimous consent that I immediately proceed after Senator DURBIN for 15 minutes—that I follow him.

Mr. REID. The Senator from New York understands——

Mr. STEVENS. I reserve the right to object.

Mr. REID. There will be a Republican in between him and Senator DURBIN.

Mr. SCHUMER. Yes.

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

The Senator from Illinois.

Mr. DURBIN. Mr. President, this week appears to be ''Judge Week'' in the Senate. We are going to focus on judicial nominations.

It is interesting, as I traveled across Illinois over the last 2 weeks, not a soul raised a question about Federal judges—the debate here in the Senate. It does not seem to be on the radar screen of average Americans. It is certainly an important issue; it is one that we focus on as political parties, and it is one that I think is timely when we consider the nominees who are before us.

For the average American, it may not mean much, it may not mean much until that day comes that a decision is handed down by a court that has an impact on families across America, and businesses and individuals, because Federal judges have extraordinary power. The men and women we are considering in the Senate are being given lifetime appointments to the Federal bench. If they are good, they will be good for a lifetime; if they are bad, they will be bad for a lifetime. Most of us in the Senate will come and go, and they will still be sitting on the bench with gavel in hand, in their black robes, meting out justice according to their own values. So it is important that we ask questions and make inquiries as to what those values might be.

The judge before us today is Jeffrey Sutton. If you read about Jeffrey Sutton, you find a man of extraordinary intellect. He is a partner in a large Columbus, OH, law firm, and served as State solicitor in Ohio. He is a professor at Ohio State University Law School. He has been a law clerk for Supreme Court Justices Scalia and Powell, and he has done a number of other things which suggest that this is a thoughtful man.

There is no question as to whether he is up to the job intellectually. The question is whether he brings to the job the values that are in the mainstream of America. I would suggest that he does not.

As a result of that, I will oppose his nomination. I would like to spell out exactly why. In the cases he has taken, and the legal arguments he has advanced, Jeffrey Sutton has shown a consistent pattern of insensitivity to civil rights, human rights, and the rights of minorities, women, and the disabled in America.

Time and again, he has asked the Federal courts to remove the authority of Congress to create laws involving individual rights and liberties and to give compensation to those who have been wronged. That is the hallmark of his legal career. That is who Jeffrey Sutton is. That is what he believes.

Given a lifetime appointment to this bench in the Sixth Circuit Court of Appeals, we can predict, with some degree of certainty, he will continue in his quest to try to deny those coming before the court the right for a day in court if they happen to be disabled, victims of age discrimination, victims of civil rights discrimination, and the like.

His hearing was held on January 29, with two other controversial nominees: Deborah Cook, also a nominee for the Sixth Circuit, and John Roberts, for the DC Circuit. It was the first time since 1990 that the Judiciary Committee held a hearing on one day for three circuit court nominees. It is unfortunate. We had some time to ask Professor Sutton questions, but not as much time as we needed. I sent some written questions to him and have those responses.

But if you look at the interest in his nomination, you will find an extraordinary lineup of organizations that oppose Jeffrey Sutton. It is hard to believe, but true, that 70 national and nearly 400 local organizations oppose Jeffrey Sutton for confirmation to the Circuit Court of Appeals. Twenty-three of them are based in Illinois. The disability community is particularly alarmed. And you will understand that as I talk about some of the cases he has taken.

In our history, seldom do people stand and announce publicly they are prejudiced. That is not something you hear very often. There are a lot of things people say. Usually the shield, the explanation, and the rationale for prejudice in America is to say: I am standing up for States rights. Boy, that has been the clarion call from those who oppose universal concepts and principles of human rights and civil rights, I guess dating back to our debates in the Senate and the House about slavery, which led to the Civil War. You remember that, of course.

The States argued that the Federal Government could not impose on them a standard relative to slavery; it would be a matter of States rights. It reached such a high peak of anger and frustration that it led to the secession of States, a civil war, and the bloodiest moment in the history of the United States.

The end of that war did not end the debate. Those who continue to oppose civil rights and human rights—whether