

Supreme Court. I have a duty to protect the fundamental rights I believe our Constitution guarantees. I have a duty to preserve the incredible progress that has been made toward the realization of those rights for Americans. I have a duty to safeguard our national security, and to prevent the executive from using war as a blank check to violate both national and international law.

John Roberts will be confirmed. I hope and look forward to decisions that will allay all of my concerns. He may author or join opinions protecting the rights which we hold so dear, and in so doing he may prove all of my concerns to be groundless. I hope so. But the questions I have raised, the absence of critical documents, the lack of clarity surrounding fundamental issues on how he would interpret the Constitution, requires me to fulfill my constitutional duty by opposing his nomination to be the next Chief Justice.

I thank the Chair again, and I thank the Senator for his courtesy.

#### CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

#### AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG ADMINISTRATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 2006

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of H.R. 2744, which the clerk will report.

The legislative clerk read as follows:

A bill (H.R. 2744) making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 2006, and for other purposes.

The PRESIDING OFFICER (Ms. MURKOWSKI). The Senator from Utah.

NOMINATION OF JOHN ROBERTS TO BE CHIEF JUSTICE

Mr. BENNETT. Madam President, we are on the Agriculture bill, but the morning has been taken up with discussion of Judge Roberts. I think that is appropriate given the decision of the ranking member of the Judiciary Committee, Senator LEAHY, to support Judge Roberts and to announce that here this morning. That was perhaps unexpected by some of the commentators and, therefore, deserved a little time.

I will take the opportunity, having listened to the junior Senator from Massachusetts, to respond to some of the things he said, not with the understanding that it is going to change anything anywhere but for the satisfaction of getting a few things off my chest.

The Senator complained bitterly, as he and others have done with respect to other nominees, that the memos given to the Solicitor General are not

being made public. He did not tell us that every Solicitor General—regardless of party, regardless of administration—who is currently living has agreed with Judge Roberts, with Miguel Estrada, with others who worked in the Office of the Solicitor General, that those memos should, in fact, not be made public.

They are, in fact, covered by the attorney-client privilege. Some say, “Well, the American people are the client, not the Solicitor General.” The Solicitor General is the attorney for the American people and has a right to attorney-client privilege within his own staff, as any attorney has for material within that attorney’s own office, as if they are representing a private client.

This keeps coming up. It keeps being repeated in the hope that it catches on. We need to always remember that every single Solicitor General who is living—regardless of their party—says that is the bad thing to do. That is the wrong interpretation of the law. The Senator from Massachusetts did not point that out. I think it needs to be pointed out.

He made a reference to the bureaucrats who were involved here who, as he said, have not taken an oath to defend the Constitution as we Senators have. I have been a bureaucrat. I have taken an oath as a bureaucrat to defend the Constitution. Those who serve the United States in these positions are sworn in with the same oath Senators take. It should be made clear those people who took that position and were in that position were, in fact, under oath to defend the Constitution. It demeans them to suggest their actions were any less patriotic or anxious to protect the law than actions of Senators.

I will conclude by quoting from an editorial that appeared in the Los Angeles Times. The Los Angeles Times is not known as a paper supportive of Republican positions. Indeed, it is often thought of as being a companion publication with the New York Times. But the Los Angeles Times says:

It will be a damning indictment of petty partisanship in Washington if an overwhelming majority of the Senate does not vote to confirm John G. Roberts Jr. to be the next chief justice of the United States.

As last week’s confirmation hearings made clear, Roberts is an exceptionally qualified nominee, well within the mainstream of American legal thought, who deserves broad bipartisan support. If a majority of Democrats in the Senate vote against Roberts, they will reveal themselves as nothing more than self-defeating obstructionists. . . .

Even if one treats this vote merely as a tactical game, voting against an impressive, relatively moderate nominee hardly strengthens the Democrats’ leverage [on the upcoming second nomination].

If Roberts fails to win their support, Bush may justifiably conclude that he needn’t even bother trying to find a justice palatable to the center. And if Bush next nominates someone who is genuinely unacceptable to most Americans, it will be harder for Democrats to point that out if they cry wolf over Roberts.

I am not sure that will change anything, but it makes me feel a little better having said it, after listening to the presentations we have heard over the last hour. I congratulate my friend, Senator LEAHY from Vermont, for his courage in standing up to internal pressures and his announcement that he will, following the advice of the Los Angeles Times and others who have examined this, in fact vote to confirm Judge Roberts. This guarantees that we will have a bipartisan vote out of committee, as we should, and that we will have strong bipartisan support here on the floor, as we should.

AMENDMENT NO. 1783

Returning to the Agriculture appropriations bill, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows: The Senator from Utah [Mr. BENNETT] proposes an amendment numbered 1783.

Mr. BENNETT. I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 173, at the end of the page, insert the following:

“SEC. 7. (a) Notwithstanding subtitles B and C of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4501 et seq.), during fiscal year 2006, the National Dairy Promotion and Research Board may obligate and expend funds for any activity to improve the environment and public health.

“(b) The Secretary of Agriculture shall review the impact of any expenditures under subsection (a) and include the review in the 2007 report of the Secretary to Congress on the dairy promotion program established under subtitle B of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4501 et seq.).”

Mr. BENNETT. Madam President, we need a little background on this amendment. It may be controversial. I understand there are some Senators who have opposed it and will be coming to the floor.

It would allow the producers on the National Dairy Promotion and Research Board to vote to fund or not fund the dairy air emission research required under the Environmental Protection Agency’s Air Quality Compliance Agreement. This sounds fairly technical. In fact, the money that is available to the board has always been used for particular purposes, and most dairy producers want to make sure that it stays restricted to those purposes. But something has come up that requires research. It has come not from the Department of Agriculture but from the Environmental Protection Agency in a new agreement that affects dairy farmers. And in order to defend themselves against the position taken by the EPA, they need research. They need it now, and they need it badly.

This amendment would allow a one-time use of dairy promotion and research funds to fund the research. Most