

United States Senate

WASHINGTON, DC 20510

MEMORANDUM OF UNDERSTANDING ON JUDICIAL NOMINATIONS

We respect the diligent, conscientious efforts, to date, rendered to the Senate by Majority Leader Frist and Democratic Leader Reid. This memorandum confirms an understanding among the signatories, based upon mutual trust and confidence, related to pending and future judicial nominations in the 109th Congress.

This memorandum is in two parts. Part I relates to the currently pending judicial nominees; Part II relates to subsequent individual nominations to be made by the President and to be acted upon by the Senate's Judiciary Committee.

We have agreed to the following:

Part I: Commitments on Pending Judicial Nominations

- A. *Votes for Certain Nominees.* We will vote to invoke cloture on the following judicial nominees: Janice Rogers Brown (D.C. Circuit), William Pryor (11th Circuit), and Priscilla Owen (5th Circuit).
- B. *Status of Other Nominees.* Signatories make no commitment to vote for or against cloture on the following judicial nominees: William Myers (9th Circuit) and Henry Saad (6th Circuit).

Part II: Commitments for Future Nominations

- A. *Future Nominations.* Signatories will exercise their responsibilities under the Advice and Consent Clause of the United State Constitution in good faith. Nominees should only be filibustered under extraordinary circumstances, and each signatory must use his or her own discretion and judgment in determining whether such circumstances exist.
- B. *Rules Changes.* In light of the spirit and continuing commitments made in this agreement, we commit to oppose the rules changes in the 109th Congress, which we understand to be any amendment to or interpretation of the Rules of the Senate that would force a vote on a judicial nomination by means other than unanimous consent or Rule XXII.

We believe that, under Article II, Section 2, of the United States Constitution, the word "Advice" speaks to consultation between the Senate and the President with regard to the use of the President's power to make nominations. We encourage the Executive branch of government to consult with members of the Senate, both Democratic and Republican, prior to submitting a judicial nomination to the Senate for consideration.

Such a return to the early practices of our government may well serve to reduce the rancor that unfortunately accompanies the advice and consent process in the Senate.

We firmly believe this agreement is consistent with the traditions of the United States Senate that we as Senators seek to uphold.

Co. Benjamin Nelson
Mike DeWine
J. Wit
Susan Collins
MARIL PEARCE
Jay Byrnes
LINCOLN CHAFFET

John M. ...
John Warner
Robert C. Byrd
Chris Landis
Allyson S. ...
Ken Salazar
Allyson