



United States  
of America

# Congressional Record

PROCEEDINGS AND DEBATES OF THE 109<sup>th</sup> CONGRESS, SECOND SESSION

Vol. 152

WASHINGTON, WEDNESDAY, MAY 17, 2006

No. 61

## Senate

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

### PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

O Lord, the giver of life, teach us how to become our best selves. Activate us with noble impulses that will produce helpful speech and faithful actions. Lead us ever on the side of the gracious and good as we strive to be instruments of Your peace.

Today, sustain our Senators through the challenges they face. Infuse them with the humility that will motivate them to serve. May their thoughts, words, and deeds be acceptable to You.

We pray in Your holy Name. Amen.

### PLEDGE OF ALLEGIANCE

The PRESIDENT pro tempore 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 PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

### RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The acting majority leader is recognized.

### SCHEDULE

Mr. GREGG. Mr. President, this morning, on behalf of the leader, let me make a statement.

This morning we will immediately return to the consideration of the comprehensive immigration bill. Senators KYL and CORNYN have an amendment

pending on which we hope to get a short time agreement. Senators have had overnight to review the language, and I expect us to lock in a time certain for a vote.

The chairman has been working on a lineup of amendments, and the leader encourages Senators to be ready with amendments when it is their time. We want to keep the bill moving, and the leader anticipates votes throughout the day.

### RECOGNITION OF THE MINORITY LEADER

The PRESIDENT pro tempore. The minority leader is recognized.

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

The PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDENT pro tempore. Without objection, it is so ordered. The Senator is recognized.

### CONGRESSIONAL OVERSIGHT OF THE NSA PROGRAM

Mr. REID. Mr. President, last week USA Today reported that the Bush administration may be collecting the phone records of millions of Americans. The administration's efforts to monitor activities of American citizens appeared to be far broader than President Bush had previously acknowledged.

Not surprisingly, Democratic and Republican Members of Congress have expressed concerns about this report and indicated they have sought more information about this program. Several Members made it clear that General Hayden would be required to answer questions about this program as part of his confirmation process.

Late yesterday, the Senate was informed that the administration agreed to brief all members of the Senate Intelligence Committee on the President's authorization of NSA warrantless surveillance programs, including clarifying whether the reports in USA Today are accurate. This new overture to the Senate on one aspect of the administration's overall efforts is a welcome development. I hope this action has more to do with a newfound interest to keep Congress fully informed than about its concerns regarding their nomination for CIA Director. I am surprised it has taken so long, and so much tugging and pulling, to get the administration to at least this point. It is, quite simply, required by law under the National Security Act of 1947 and by the Senate's own rules. So it really is about time.

Chairman ROBERTS approached me on the floor yesterday to tell me about these new developments. The Senator from Kansas and I have had our differences and will continue to have those differences over the conduct of the Intelligence Committee's investigation of the administration's misuse of intelligence on Iraq. Senator ROBERTS and I spent many good years together as the chairman and vice chairman, back and forth—whatever the leadership was in the Senate—on the Ethics Committee. We had a good relationship. That is going to override all the negativity we have had on this Intelligence Committee stonewalling we have had.

In the instance about this NSA wiretapping, I appreciate Chairman ROBERTS' acknowledgment that the Senate needs more information on these programs and the role the President has played in this. I appreciate very much the work by the Chairman and the hard work by Vice Chairman ROCKEFELLER to step forward to allow all members of the Intelligence Committee to know what is going on or attempt to get to know what is going on. It is important

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



Printed on recycled paper.

for everyone in this Chamber and for the administration to recognize that this briefing on this single issue is very necessary but not sufficient for the American people to have confidence that their Government is not only protecting them from terrorists but also respecting their constitutional rights.

Clearly, Senators need to know a lot more about the domestic surveillance program, and I hope today's briefing accomplishes that objective. But just as clearly, Senators need to know a lot more about other important issues: misuse of intelligence, selective leaking, damage to the CIA.

I hope the administration's offer yesterday is the first of their efforts to inform Congress, not the last.

I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SPECTER. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

The PRESIDENT pro tempore. Without objection, it is so ordered.

#### COMPREHENSIVE IMMIGRATION REFORM ACT OF 2006

The PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of S. 2611, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 2611) to provide for comprehensive immigration reform and for other purposes.

The Senate resumed consideration of the bill.

Pending:

Kyl amendment No. 4027, to make certain aliens ineligible for adjustment to lawful permanent resident status or Deferred Mandatory Departure status.

Mr. SPECTER. Mr. President, I think we made good progress yesterday. We just had a brief discussion in the well of the Senate. I believe we are prepared to proceed.

I ask unanimous consent that we next take up the Kyl-Cornyn amendment, with no second-degree amendments in order, with 30 minutes equally divided.

The PRESIDENT pro tempore. Is there objection? Without objection, it is so ordered.

Mr. SPECTER. Mr. President, I further ask unanimous consent that the amendments beyond Kyl-Cornyn be as follows—Senator SESSIONS, Senator VITTER, Senator OBAMA, and Senator INHOFE. I ask unanimous consent that sequence be agreed to.

The PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. MCCAIN. Mr. President, will the manager yield for a question?

Mr. SPECTER. Yes.

Mr. MCCAIN. How soon does the manager anticipate voting on Kyl-Cornyn?

Mr. SPECTER. At 10:01.

Mr. MCCAIN. I thank the Senator.

Mr. SPECTER. Mr. President, may we proceed with the final argument on Kyl-Cornyn?

#### AMENDMENT NO. 4027

The PRESIDENT pro tempore. The amendment is pending. Who yields time?

The Senator from Texas has 15 minutes.

Mr. CORNYN. Mr. President, it looks like we are beginning to make some progress. About 4 weeks ago, this amendment was introduced in its original form, and unfortunately debate was derailed. We were unsuccessful in moving on for further amendments and debate. Fortunately, it looks as if things have gotten back on track. We are starting to see votes and debate on amendments. I don't necessarily like the way all of the votes are turning out, but this is the Senate and majority rules and I accept that.

All of us who are interested in comprehensive immigration reform want to see this bill continue to move, to have amendments laid down, debated, and have them voted on. I am very pleased that it appears that we are very close to having, if not unanimous agreement, at least majority support on a bipartisan basis for the amendment that Senator KYL and I laid down about a month ago and which has now been modified slightly to bring more people on board.

This amendment, quite simply, is designed to make sure that convicted felons and people who have committed at least three misdemeanors do not get the benefit of the legalization track contained in the underlying bill, whatever it may be. There will be other amendments later on that perhaps won't share the same sort of bipartisan and majority support. But this one at least seems to have gathered a solid group of Senators to support it.

In addition to convicted felons, those who have committed at least three misdemeanors would not be given the benefit of earned legalization under the bill. It would also exclude absconders. By that, I mean people who have actually had their day in court and have been ordered deported from the country but have simply gone underground, hunkered down in the hope they might be able to stay.

There have been some motions made regarding this amendment for waiver by the Secretary of the Department of Homeland Security for extraordinary circumstances. For example, if someone is able to establish that they didn't actually get notified, then as a matter of fundamental due process considerations they ought to be able to revisit that and to show that they did not get notice of the removal proceedings. We agreed that would be a fair basis to waive this provision.

Finally, it also appears that the other basis for waiver would be if the alien's failure to appear was due to exceptional circumstances beyond the control of the alien—a very narrow exception; and, finally, if the alien's departure from the United States would result in extreme hardship to the alien's spouse, parent, or child who is a

citizen of the United States or an alien lawfully permitted to have permanent status.

We move it in the right direction. It is a fundamentally fair and common-sense amendment. I am pleased to support it and announce what appears to be a growing consensus that it should be accepted.

I reserve the remainder of our time.

The PRESIDENT pro tempore. Who yields time?

Mr. KENNEDY. Mr. President, I yield such time as the Senator from Arizona may need.

The PRESIDENT pro tempore. The Senator from Arizona is recognized.

Mr. MCCAIN. Mr. President, for the benefit of my colleagues, I would like to point out that we spent the better part of yesterday negotiating with Senator KYL and Senator CORNYN, along with Senator KENNEDY and others, a group of us. We have been trying to modify the original Kyl-Cornyn amendment so that it would be broadly acceptable. I think we have succeeded, thanks to the goodwill of all parties concerned.

Fundamentally, the purpose, which we are all in agreement with, is we don't want people who are convicted felons or criminals guilty of crimes to be eligible for citizenship in this country. We have enough problems without opening up that avenue. Yet, at the same time, we didn't want to go too far to exclude people from eligibility for citizenship who, frankly, may have committed incidental crimes or the crime was associated with their attempt to enter this country.

For example, in order to obtain asylum, when people flee oppressive and repressive regimes in which their lives are at risk, and they had to use a bogus or counterfeit document in order to expedite their entrance into this country, of course, we don't think that should make them ineligible for citizenship or application for citizenship.

I think we have reached a careful balance. There are categories of people under conditions of extreme hardship or danger who are seeking asylum and would be exempted, but at the same time the thrust of the Kyl-Cornyn amendment, which is the prevention of people who have committed felonies and numbers of misdemeanors and other crimes would not be eligible for a path to citizenship as outlined in the legislation that would apply to the others who have not committed crimes.

I am aware there is some concern about this on both sides of this issue. I want to assure everyone that this is the product of a long, arduous series of negotiations and discussions among all involved in this issue.

I hope there is an understanding that we have come up with what most of us think is a reasonable compromise to address very legitimate concerns on both sides. People who are fleeing oppression may have used a bogus document, and on the other side of the coin, obviously, someone who has committed