

I say it's been by the grace of God that I've been blessed to live this long. I don't want to take any honor or anything, as if I've done something myself to stay healthy. It's all for the grace of God."

TRIBUTE TO MARVIN CLEVINGER

Mr. McCONNELL. Mr. President, I rise today to honor the heroic efforts of an honored Kentuckian. Known for his service and his allegiance to his country, PFC Marvin Clevinger is a true World War II hero in Pike County, KY.

Born March 18, 1922, to James and Dollie May Clevinger, Marvin was the oldest of eight. Growing up on a farm in eastern Kentucky, Mr. Clevinger, also known as "Garl" around his family, was an intelligent young man who dropped out of the 7th grade to help provide for his family. Working as a timber man and a farmer before his days as a soldier, "Garl" did all he could to help his family as well as his community.

After enrolling in the war, Private First Class Clevinger, also known as "Zeke" to his platoon, fought in numerous battles, putting his life on the line for his country. Clevinger was said to be amongst the strongest and most agile of the soldiers and was honored with the privilege of being a scout for his platoon. In one battle, when his platoon found itself pinned by German machine gun fire, Private First Class Clevinger advanced 150 yards under intense fire and threw several grenades to silence the enemy. He received a Bronze Star for his heroic actions.

Private First Class Clevinger spent a month in the hospital in Paris after receiving multiple wounds in his legs during battle. He received numerous medals, awards, and decorations, including the Bronze Star with Three Oak Leaf Clusters, the Purple Heart, the Good Conduct Medal, the Rifle Sharpshooter Badge, the Combat Infantryman Badge, the American Campaign Ribbon, the World War II Victory Medal Ribbon, and the European/African/Middle Eastern Theatre Campaign Ribbon.

Marvin Clevinger returned to Belcher, KY, after the war and worked for the Russell Fork Coal Company Preparation Plant for 32 years. Currently, Marvin is an active member of Ferrell's Creek Church of Christ, and he serves as an inspiration to his family. Because of his hard work and all he has achieved and overcome in his 89 years, Marvin Clevinger is a hero to us all.

Mr. President, the Appalachian News Express recently published an article highlighting Marvin Clevinger's life and service. I ask unanimous consent that the full article be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Appalachian News Express, May 28, 2011]

MARVIN CLEVINGER: A WORLD WAR II HERO
(By Nancy M. Goss)

BELCHER.—Over 66 years ago 89-year-old Marvin "Garl" Clevinger of Belcher fought in the European Campaign during World War II.

Because he suffered a stroke 10 years ago that affected his ability to converse fluently, Marvin allowed family members to tell his story, adding comments from time to time. His nephew, Phillip Ratliff, is an authority on his uncle's role in World War II and provided most of this information.

"I fought in Germany," Marvin said. Then added, "I was shot three times."

"Marvin never really talked about his war time experiences when I was young, but I'm familiar with the battles he was in," Phillip said. "I was always fascinated by soldiers and military stuff so I just read a lot and later on, I had the little campaign book Garl brought back from the war and I read it a couple times."

Marvin is mentioned in the book by the nickname his platoon gave him, "Zeke" Clevinger.

Phillip said there were probably only about 200 copies of the campaign booklet of Marvin's company's actions during the war; they were given to the men at the end of the fighting.

Marvin's rank and unit: PFC Marvin Clevinger, 1st Rifle Squad, 2nd Platoon, Company B, 61st Armored Infantry Battalion, 10th Armored Division, 3rd Army, USA.

He was also a scout for his platoon.

"Only a couple men in a platoon were scouts," Phillip explained. "Back then, if there was a man like Marvin, who was agile and able to move through heavy woods and rough terrain, he was pretty much sought out."

Many of the men were city boys and not used to tramping through woods as was Marvin, who grew up in the mountains of Eastern Kentucky.

"Garl was a deadly shot when he was a young man and came back from the war," Phillip said. "I feel sorry for any human that got in front of his rifle sight because you're talking about a man who could shoot squirrels out of a tree with a 22 rifle. And in the army, those men were pretty valuable, I'd say."

"He got the medal for sharp shooter," added Marvin's brother Paul. "And the Purple Heart and Bronze Star."

According to a paper accompanying his Bronze Star:

"Private First Class Marvin Clevinger, Company B, Armored Infantry Battalion, United States Army. For heroic achievement in connection with military operations against an enemy of the United States in Germany on March 26, 1945. During an attack on Schoden, Germany, an infantry platoon was suddenly pinned down by machine gun and sniper fire from a well-concealed pillbox. Private First Class Clevinger, scout, advanced 150 yards under the intense fire to within five yards of the enemy position from where he threw grenades through an embrasure in the pillbox, silencing the enemy fire. PFC Clevinger's intrepid action reflects great credit upon himself and the military forces of the United States. Entered the military service from Belcher, Kentucky."

Marvin was shot twice in one leg and once in the other, but still managed to walk and crawl about three miles to an aid station that was back down the side of the mountain. He spent a month and a half in Paris at the hospital and then went straight back to the front lines and saw heavy action again.

Phillip said the winter of '44, during the Battle of the Bulge, was the coldest winter of the 20th century and Marvin got frostbit, as did most of the men in his unit.

Besides the battle at Schoden and the Battle of the Bulge, Martin also fought in the Battle of Bastogne, and at the Saar-Moselle Triangle, Trier, Berdorf, Consdorf, Echtemach, Landau, Oehringer, Heilbronn, Ulm, Inst, Oberammergau and countless other sites.

Marvin was born March 18, 1922, the son of the late James and Dollie May Clevinger. He was raised at Belcher, close to where he lives now, and according to Paul, attended Belcher Grade School up to seventh grade. He had to quit to help on the family's farm. He is the oldest of eight children. He, his sister Faye Potter, and Paul, are the only ones living.

Before Marvin went to war, he timbered and farmed. After the war, he was employed in the preparation plant at the Russell Fork Coal Company, owned by A.T. Massey, where he worked for 32 years. He was a member of United Mine Workers of America, Local 8338, at Beaver, which closed many years ago.

Marvin said he remembers working at the coal company.

"He would come home from work at the tiple and hoe corn until dark," Phillip said. "For his size, Garl was the strongest guy and the hardest working man I ever saw."

"He had been out pulling brush and trees down on the road on the day he had the stroke," said Gloria Sweeney, Marvin's cousin and caretaker.

"And he knew the woods," Phillip said. "If you went into the woods any time of the year with him, whether there were leaves on the trees or not, he could look at the tree and tell you, 'that's a black oak, that's a chestnut oak, that's a red oak . . .'"

"He was an expert on ginseng, too," added his nephew Jason Clevinger. "Every time we went into the woods—and he was much older than I—he could find much more than I could."

Marvin was an active member of DAV Chapter 140, Elkhorn City, until he had the stroke and is a member of the Ferrells Creek Church of Christ.

"You'll never find a more humble man than this one right here," Gloria said. "Best man in the world."

"He was always my hero," Phillip said.

Then he added, "There's a much larger story here really, even than Garl. He deserves to be the centerpiece because of what he did, but Garl had two first cousins and they all grew up in this holler here. One of his cousins was named Clyde Clevinger and he was killed in action during the first Allied landings in North Africa. His other first cousin's name was Gordon "Bennett" Clevinger. Bennett enlisted in the Navy and was on an American submarine right after Pearl Harbor and was captured by the Japanese. He spent about three and a half years in a Japanese prisoner of war camp. But he did survive and came home.

"Of those three boys who grew up in this little narrow holler here, all of them were heroes. You can't find men like that anymore," Phillip said.

NLRB

Mr. CARDIN. Mr. President, I rise today to praise the National Labor Relations Board for issuing new proposed rules that will modernize the process that workers use to form a union. These new rules will improve the consistency and efficiency of the election process, protect workers' right to a

timely vote, and limit opportunities for possible coercion by both employers and unions.

America's middle class is struggling. Hard-working families are finding it hard to make ends meet. We are recovering from the deepest recession since the Great Depression, and there are workers who are trying to achieve for their families what we all want: financial stability that keeps our families secure. However, as workers see their benefits, hours, and pay being cut, they feel powerless. Meanwhile, executives can and do negotiate their employment contracts. Where is the fairness?

Unions can level the playing field for workers, but the process for choosing a union is outdated. Current NLRB election procedures produce extensive delays, encourage litigious stall tactics, and provide opportunities for intimidation. Further, the organizational structure of the NLRB has created inconsistencies in the processing of the election petitions. It is time for the NLRB to address these important procedural shortcomings, and I am encouraged by their response.

The new rules do not advantage nor do they disadvantage unions. The rules merely create a uniform process for resolving pre- and post-election disputes. Both sides are given the opportunity to present arguments to allow a fair and well-informed vote. It is also important to note that these streamlining rules apply equally to both elections seeking to certify a union and elections seeking to decertify a union.

Workers deserve the right to choose a union or not to choose a union with a fair, timely, and well-informed up-or-down vote. The right to vote is central to our democracy, and we must continue to ensure that American workers are afforded this right without impediment or fear. Thus, I applaud the NLRB for their actions.

MINORITY VIEWS—S. 1103

Mr. COBURN. Mr. President, because our minority views were not included in the Senate Judiciary Committee's report on S. 1103, I ask unanimous consent to have them printed in the RECORD. We hope these views will be of use to Members of the Senate if this legislation is considered on the Senate floor.

There being no objection, the material was ordered to be printed in the RECORD, as follows.

MINORITY VIEWS OF SENATORS HATCH, SESSIONS, GRAHAM, LEE, AND COBURN

We fully support the President's request to extend FBI Director Mueller's time in office by two years, followed by a return to the previous practice of one ten-year term for each subsequent FBI Director. We also are committed to implementing this extension before Director Mueller's current ten-year term expires in August. The Senate must, however, pursue this extension in a constitutional manner.

1. CONSTITUTIONAL CONCERNS

Senators Hatch, Cornyn, Graham, Lee, and Coburn have proposed a method of extending

FBI Director Mueller's time in office in a way that is universally agreed to be constitutionally unimpeachable. In contrast, a prominent legal scholar has called into question the constitutionality of the method of appointment that S. 1103 proposes. Setting aside the question of our duty to ensure the constitutionality of all legislation approved by our chamber of Congress, the practical consequences of a court declaring void Director Mueller's extension could have widespread ramifications. Any litigation challenging the constitutionality of S. 1103 would call into question the authority of the head of one of America's most important domestic counterterrorism and law enforcement agencies. Potential litigants could be numerous given the substantial number of suspects seeking to avoid criminal liability and those seeking to undermine our terrorism investigations and national security apparatus. For example, at the hearing, James Madison Distinguished Professor of Law at the University of Virginia School of Law John Harrison was asked about potential legal challenges to the validity of Section 215 orders for sensitive business records. Pursuant to the 2005 extension to the Patriot Act, these Section 215 orders must be authorized by one of three top government officials or their deputies. Professor Harrison testified that 215 orders were a good example of the potential problem that could result from challenges to Director Mueller's extension because a judge might find that orders signed by him were unauthorized.

Since at least one prominent legal scholar has testified that S. 1103 would unconstitutionally appoint Director Mueller to a new term, it is easy to imagine at least a few of our 677 Federal District Court judges coming to the same conclusion. In fact, even Senators Schumer and Whitehouse agreed this legislation is of questionable constitutionality. Senator Whitehouse said, "with respect to the Appointments Clause, we are in a constitutionally gray area," and he said he could see the judicial decision "going either way." Senator Whitehouse continued that if he "were a clerk for a judge and was asked to" he could "write it going both ways." Senator Schumer agreed stating it is a "fuzzy issue" and "there are merits on either side" and "it is a close question."

Even assuming that such a ruling were overturned on appeal, during the intervening period, FBI operations could be stagnated as all official acts of the FBI Director since his extension began would be of questionable validity. This scenario could lead to a failure to gather critical intelligence or to the release of dangerous criminal and terrorism suspects.

The Majority argues that constitutional concerns are nonexistent because only one witness at the June 8, 2011 hearing raised constitutional concerns about S. 1103; however, the Minority would point out that due to longstanding committee practice, the minority is allocated a limited number of witnesses. In this case, the ratio on the panel was three to one. Our one witnesses testified as to concerns and these concerns are likely shared by other legal scholars who were not invited to testify. Notwithstanding, even if there is only a small chance that a judge might find S. 1103 unconstitutional, we believe that the Senate has a duty to avoid that contingency, which carries with it potentially severe consequences.

Fortunately, we have an ironclad alternative that would accomplish the same goals as S. 1103 in the form of the amendment Senator Coburn offered to S. 1103. We believe the supporters of S. 1103 have the burden of proof to show why we should not follow the undisputedly constitutional course, even if they believe there is only a small chance of

a judge declaring an action taken by Director Mueller to be unauthorized. Given the opinions of Professor Harrison and other eminent scholars in addition to the lack of a U.S. Supreme Court decision directly on point, they cannot credibly claim there is no realistic chance at all. Indeed, at the Committee's June 16, 2011 business meeting, Senator Whitehouse stated that "with respect to the Appointments Clause, we are in a constitutionally gray area" and that he could see a judge "going either way." Senator Schumer said this was a "fuzzy issue," "there are merits on either side," and "it is a close question." Senator Coburn's simple alternative removes the gray fuzz, thus preserving our national security and law enforcement infrastructure from potential confusion.

2. S. 1103 VIOLATES THE APPOINTMENTS CLAUSE OF THE CONSTITUTION

The Appointments Clause's four methods

The Appointments Clause of the Constitution requires all Executive Branch appointments to be made by the President with the Advice and Consent of the Senate with only three exceptions: "[T]he Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments." Congressional appointments are not among the exceptions, and the majority report properly points out that Congress cannot make appointments of Executive Branch officials and that the FBI Director is an Executive Branch official. The question, then, is whether or not S. 1103 would allow Congress to extend the FBI Director's statutory ten year term for two additional years.

Professor Harrison testified that, "An appointment is a legal act that causes someone to hold an office that otherwise would be vacant or held by someone else. . . . A statutory extension of the term of an incumbent causes the current incumbent to hold an office that otherwise would be vacant upon the expiration of the incumbent's term. It is thus a statutory appointment. . . . It is just like a statute that provides that a named person is hereby appointed to a specified office." We believe Professor Harrison's interpretation has merit and thus conclude that extending Director Mueller's term and causing him to hold an office that otherwise would be vacant on August 4, 2011, could violate the Appointments Clause.

The law currently requires Director Mueller to step down after his ten-year term ends and forbids his reappointment by the President. Thus, it could be argued that S. 1103 reappoints Director Mueller to a new two-year term by legislative decree in violation of the Appointments Clause. The Supreme Court has recognized that Congress cannot make Executive appointments, even if the President signs the law making those appointments. It is irrelevant that the President and almost all members of Congress wish Director Mueller to continue in office. Constitutional formalities must be followed. For example, if all members of both houses of Congress sent a letter to the President saying they thereby willed a certain bill to become law, and the President sent a letter in return saying that he too willed the bill to become law through his letter, it would not become law, and no court would treat it as law. We have a written Constitution for this very reason and Congress and the president must comply with its specific procedures. The Constitution requires that both houses vote on a bill and present it to the President for his signature before it can become law. The majority's emphasis on the President's desire that the FBI Director continue in office is immaterial. The President's only constitutional method of placing someone in office is by appointment.