



United States
of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 113th CONGRESS, FIRST SESSION

Vol. 159

WASHINGTON, TUESDAY, NOVEMBER 12, 2013

No. 160

Senate

The Senate met at 2 p.m. and was called to order by the President pro tempore (Mr. LEAHY).

PRAYER

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

Let us pray.

Our Father, we wait in reverence before Your throne. Cleanse us from our sins, creating in us clean hearts while renewing a right spirit within us.

Lord, help our lawmakers today to discern Your voice and do Your will. Give them the ability to differentiate your guidance from all others, permitting You to lead them to Your desired destination. Speak to them through Your word, guide them with Your spirit, and sustain them with Your might. Let all they do be well done, fit for Your eyes to see and receiving Your divine approbation.

And, Lord, we ask You to comfort Senator and Mrs. Inhofe as they grieve the death of their son.

We pray in Your merciful 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.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The majority leader is recognized.

DRUG QUALITY AND SECURITY ACT—MOTION TO PROCEED

Mr. REID. Mr. President, I move to proceed to Calendar No. 236, H.R. 3204, the drug compounding legislation.

The legislative clerk read as follows:

Motion to proceed to the bill (H.R. 3204) to amend the Federal Food, Drug, and Cosmetic

Act with respect to human drug compounding and drug supply chain security, and for other purposes.

SCHEDULE

Mr. REID. Mr. President, following leader remarks the Senate will be in a period of morning business until 4:30 p.m. At 4:30 p.m. the Senate will proceed to executive session to consider the nomination of Cornelia Pillard to be U.S. circuit judge for the District of Columbia Circuit. At 5:30 p.m. there will be a cloture vote on the Pillard nomination. If cloture is not invoked, there will be a second cloture vote on the motion to proceed to the drug compounding bill.

MEASURE PLACED ON THE CALENDAR—S. 1661

Mr. REID. Mr. President, I am told S. 1661 is due for a second reading.

The PRESIDENT pro tempore. The clerk will read the bill by title for the second time.

The legislative clerk read as follows:

A bill (S. 1661) to require the Secretary of State to offer rewards of up to \$5,000,000 for information regarding the attacks on the United States diplomatic mission at Benghazi, Libya that began on September 11, 2012.

Mr. REID. Mr. President, I would object to any further proceedings with respect to this legislation.

The PRESIDENT pro tempore. Objection is heard. The bill will be placed on the calendar.

CONDOLENCES TO THE INHOFE FAMILY

Mr. REID. Mr. President, I extend my condolences to JIM INHOFE, the senior Senator from Oklahoma, and his wife Kay on the loss of their son Perry. The entire Senate family was saddened to hear of Dr. Inhofe's death. He was a young man, 52 years of age, killed in a plane crash early Sunday.

Flying airplanes is in the blood of JIM INHOFE and his family. I truly care a lot about JIM INHOFE. He and I are unquestionably friends. We may not agree on all political issues, but we agree we are friends.

I have had the good fortune of working to get to know this good man. I

have helped him when I could, and he has helped me when he could. We are able to put all the disagreements to one side and look at each other for what we are outside of our politics.

I have confidence that he is going to do well. He is a man of great faith, and I feel comfortable that he will be able to work his way through this loss.

(Ms. BALDWIN assumed the Chair.)

FILIPINO TYPHOON

Madam President, my heart also goes out to the residents of the Philippines who were drastically affected by this terrible storm that hit one or two or three of their islands over the weekend. The Philippines has 7,000 islands.

The heavily populated area of Manila was not hit—at least not very badly. We know there are thousands of Filipinos dead and missing. Relief and construction efforts will be long and difficult. My thoughts are with the approximately 3½ million Filipino Americans who are living with us—including in Nevada about 100,000 Filipino Americans. They are involved in so many important endeavors, such as the health care field, business field, and hotel business.

They may not have lost family members, but they are a community that is concerned with what is going on in the Philippines. I was happy to hear the administration has already moved in with support and aid for this beleaguered nation.

DC CIRCUIT COURT

Madam President, later today we are going to again attempt to break a filibuster on the highly qualified person who has been asked by the President to serve on the DC Circuit. It is often said the DC Circuit is the second highest court in the land after the Supreme Court, and that is true. It is unfortunate the Republicans have chosen to filibuster a nomination of yet another talented female jurist and dedicated public servant to fill a vacant seat on this court.

The nominee, Georgetown law professor Nina Pillard, has argued nine

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



Printed on recycled paper.

S7937

cases before the Supreme Court and briefed more than a score of cases. In one case she argued before the Supreme Court, it involved a male employee of the State of Nevada who was fired after taking unpaid leave to care for his wife who was sick. It was an important case, a landmark case. The Court ruled 6 to 3 in favor of her client, upholding an important protection under the Family and Medical Leave Act.

Support for Professor Pillard's nomination is bipartisan—at least outside the Senate. Yet Senate Republicans seem poised to block confirmation of this eminently qualified woman for a blatantly political reason: deny President Obama his constitutional right to appoint judges.

The DC Circuit is currently operating with a very bad ratio. We have three vacancies on this very important court. For the Republicans to now claim we don't need 11 judges is a little strange because that is not what they said when President Bush was President. When he needed these vacancies filled, they were filled. They happily filled the 9th, 10th, and 11th seats on the DC Circuit—the same three seats President Obama seeks to fill—even though the court had a significantly smaller caseload at the time. The Supreme Court Chief Justice John Roberts was one of the judges confirmed to the DC Circuit during George Bush's Presidency.

Since a Democrat was elected to the White House, Republicans have blocked two exceedingly qualified female nominees to the DC Circuit, Caitlin Halligan and Patricia Millett. In the last 19 years, five men have been confirmed to the DC Circuit and one woman.

Today the Senate has an opportunity to help shape a court that better reflects our country, so I hope they will not block another qualified female nominee for nakedly partisan reasons. The least Senate Republicans owe Professor Pillard is the same fair confirmation process Chief Justice Roberts enjoyed when he was nominated to the DC Circuit.

DRUG COMPOUNDING

Madam President, should Republicans block her confirmation, as I fear they will, the Senate will then vote on cloture on the motion to proceed to a bill to enhance safeguards at compounding pharmacies which create custom-tailored medication for patients with unique health needs.

This bipartisan legislation will ensure drugs manufactured in factories and mixed in pharmacies across the country are safe for consumers. The measure will also implement tracking of medicines from the factory to the drug store itself.

Last year unsanitary conditions at a compounding pharmacy led to a fungal meningitis outbreak that killed 64 people and very badly sickened more than 750 others. Contaminated medicine mixed at that pharmacy was sent to 75 medical facilities in 23 States and given to 14,000 patients. The facility in

question was actually skirting existing law and acting as a large-scale drug manufacturer rather than creating custom medications for individuals using products manufactured by other companies.

By avoiding stricter regulations on drug manufacturers, companies such as this one boost their profits by putting patients at risk. This legislation will end this dangerous practice and ensure that drugs manufactured and mixed in America are completely safe from the assembly line to the drug store.

This bill could pass the Senate right now, but it has been stalled by Republicans for more than 1 month. This legislation truly is a matter of life and death.

DEFENSE AUTHORIZATION

Madam President, we must finish this legislation quickly so we can wrap up consideration of the crucial Defense authorization bill before Thanksgiving.

I put Senators on notice last week and the week before that we are going to do whatever it takes to accomplish exactly that in order to finish this bill—even if it means working this coming weekend and hopefully not the next weekend but possibly that too.

Further, we must ensure that debate on the Defense authorization bill is about our Nation's defense and not extraneous issues. No Senators should be allowed to jump the line and get a vote on his or her own amendment by threatening delay action on the underlying bill, nor should the Senate waste time debating amendments that are not relevant to defense.

This measure ensures the safety of this Nation and is dedicated to servicemembers, and it is more important than any one Senator's or Senators' parochial or political pet issues.

I note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

RECOGNITION OF THE MINORITY LEADER

The PRESIDING OFFICER. The minority leader is recognized.

HEARTFELT SYMPATHY TO THE INHOSES

Mr. McCONNELL. Madam President, I will start with a word of sympathy about the heartbreaking loss of Perry Inhofe, the son of our colleague, JIM INHOFE, killed in a plane crash on Sunday. Of course, we are all thinking of JIM and Kay, and the heartfelt prayers of the entire Senate family are with them and the entire Inhofe family at this very, very difficult time.

DC CIRCUIT

Madam President, despite the repeated promises of President Obama, millions of people are losing their health insurance—health insurance they very much liked and were assured they could keep. It has been reported

that so far 3.5 million Americans have lost their health insurance under ObamaCare. That includes over a quarter of a million in my State of Kentucky, a third of a million in Florida, and almost a million people in California.

This is a serious problem the President and congressional Democrats need to do something about. The obvious answer is repeal, but in the meantime the legislation offered by Senator RON JOHNSON would help Americans keep the plans they have and like. If the President and Senate Democrats are serious about helping the millions of Americans who have unexpectedly lost their insurance over the past several weeks, then they should support it.

Unfortunately, they appear ready to ignore the problem. Rather than focusing on keeping their commitment to the American people, they are focusing on issues that appeal to their base. Rather than change the law that is causing so many problems for so many, they want to change the subject.

According to a recent press report, our Democratic friends want to divert as much attention as possible away from the problem-plagued ObamaCare rollout at this formative stage of the 2014 campaign, which brings us to the vote we are going to have later today.

We will not be voting on legislation to allow Americans to keep their health insurance if they like it, as they were promised again and again; rather, we will be voting on a nominee to a court that doesn't have enough work to do. A court that is so underworked, it regularly cancels oral argument days. It is a court whose judges tell us that if any more judges were put on the court, there wouldn't be enough work to go around. It is a court that is less busy now than it was when Senate Democrats pocket-filibustered President Bush's nominee to the court, Peter Keisler, for 2 whole years—2 long years. And it is less busy based upon the very standards Democrats themselves set forth when they blocked Mr. Keisler's nomination for 2 years. By the way, it is also less busy now than it was then, according to an analysis provided by the chief judge of that court.

The Senate ought to be spending its time dealing with a real crisis, not a manufactured one. We ought to be dealing with an ill-conceived law that is causing millions of Americans to lose their health insurance. Instead, we will spend our time today on a political exercise designed to distract the American people from the mess that is ObamaCare rather than trying to fix it.

If our Democratic colleagues are going to ignore the fact that millions of people are losing their health insurance plans, they should at least be working with us to fill judicial emergencies that actually exist rather than complaining about fake ones. There are nominees on the Executive Calendar who would fill actual judicial emergencies, unlike the Pillard nomination.

Some of them, in fact, have been pending on the calendar longer than the Pillard nomination. But rather than work with us to schedule votes on those nominations in an orderly manner, as we have been doing all year long, the majority prefers to concoct a crisis on the DC Circuit so it can try to distract the American people from the failings of ObamaCare.

Unfortunately, our friends appear to be more concerned with playing politics than actually solving real problems. So I will be voting no on this afternoon's political exercise. I hope the Senate in the future will focus on what the American people care about rather than spend its time trying to distract them.

CONGRATULATING ARCHBISHOP JOSEPH KURTZ

Finally, I congratulate Archbishop Joseph Kurtz, the Catholic archbishop of Louisville, on his election as president of the U.S. Conference of Catholic Bishops. Archbishop Kurtz is not a native Kentuckian—he is originally from Pennsylvania—but we have adopted him as one of our own since he was appointed head of the Louisville Archdiocese in June 2007. I wish him all the best as he seeks to promote the church's mission in the United States.

Congratulations.

Madam President, I yield the floor.

RESERVATION OF LEADER TIME

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

MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, the Senate will be in a period of morning business until 4:30 p.m., with Senators permitted to speak therein for up to 10 minutes each.

The Senator from Iowa.

PILLARD NOMINATION

Mr. GRASSLEY. Madam President, I come to the floor to speak in opposition to the motion to invoke cloture on the nomination for the DC Circuit nominee Cornelia Pillard. Although her record makes clear that her views are well outside the mainstream on a host of issues, I am not going to focus any attention on those concerns today. I am going to focus instead on the standard the Democrats established in 2006. Based on that standard, the court's caseload makes it clear that the workload simply doesn't justify additional judges, particularly when those additional judges cost approximately \$1 million per year per judge.

I have walked through these statistics several times now, and I am not going to go in depth again. The bottom line is the data overwhelmingly supports the conclusion that the DC Circuit is underworked. Everyone knows this is true. That circuit does not need any more judges. Take, for instance, the appeals filed and appeals termi-

nated. In both categories the DC Circuit ranks last, and in both categories the DC Circuit is less than half the national average. To provide some perspective on this point, compare the DC Circuit to the Eleventh. After another judge took senior status about a week ago, both the DC Circuit and the Eleventh Circuit have eight active judges. If we don't confirm any more judges to either court, the numbers remain the same as last year. The Eleventh Circuit will have 875 appeals per active judge compared to the 149 appeals filed per active judge in DC, which also has 8 active judges. Again, that is 875 cases for the Eleventh compared to 149 for DC.

Some might argue that we shouldn't look only at active judges because those averages will change if and when we confirm more judges to the Eleventh Circuit. Suppose we fill each judgeship on the Eleventh Circuit and each judgeship on the DC Circuit, as the Democrats want to do. If we fill them all, there would be 583 appeals filed per judge for the Eleventh Circuit and only 108 for the DC Circuit. The Eleventh Circuit, then, would have over five times the caseload. This is why everyone who has looked at this objectively understands that the caseload for the DC Circuit is stunningly low. That is why current judges on the court have written to me and said things such as this—and I will quote from one of the letters: “If any more judges were added now, there wouldn't be enough work to go around.”

Some of my friends on the other side recognize that the DC Circuit's caseload is low, and they claim then that the caseload numbers don't take into account the “complexity” of the court's docket. They argue that the DC Circuit hears more administrative appeals than other circuits do, and they claim these administrative appeals are more complex. This argument is nonsense, and I will tell my colleagues why it is nonsense.

I have heard my colleagues argue repeatedly that the DC Circuit's docket is complex because 43 percent of the docket is made up of administrative appeals. But, of course, that is a high percentage of a very small number. When we look at the actual number of those so-called complex cases per judge, the Second Circuit has almost twice as many as the DC Circuit. In 2012 there were 512 administrative appeals filed in DC. In the Second Circuit, there were 1,493 compared to that 512.

We can look at this differently as well. In DC there were only 64 administrative appeals per active judge. The Second Circuit has nearly twice as many per judge with 115. Again, that is 64 administrative appeals per active judge in the DC Circuit as opposed to the Second Circuit, which has almost twice as many with 115.

So this entire argument about complexity is what I already called it—nonsense—and the other side knows it, and if they don't know it, they ought to know it.

Let me raise another question regarding caseload. If these cases were really that hard, if these cases were really so complex, then why in the world would the DC Circuit take the entire summer off? I am not talking about just a couple of weeks in August; they don't hear any cases for the entire summer. The DC Circuit has so few cases on their docket that they don't hear any cases from the middle of May until the second week of September. This past term, the last case they heard before taking the summer off was May 16. The court didn't hear another case until September 9—4 months later.

The bottom line is everyone knows this court doesn't have enough cases as it is, let alone if we were to add more judges. That is why, when we ask the current judges for their candid assessment, they write: “If any more judges were confirmed now, there wouldn't be enough work to go around.”

While I am discussing the caseload issue, I will remind my colleagues of a little bit of history that is very pertinent to this debate. In 2006 the Democrats on the Judiciary Committee blocked Peter Keisler's nomination to the DC Circuit. They blocked Mr. Keisler's nomination based upon—my colleagues can guess it—the court's caseload. Since that time, by the standard set by the other side, the court's caseload has declined sharply.

We did not set this standard. The Democrats set that standard. I recognize that the other side wants to rewrite history. They try to compare John Roberts' second nomination to the circuit, which passed fairly easily, with the current nomination. What they conveniently forget in a misleading way is that they blocked Keisler's nomination after Roberts' nomination.

I recognize the other side hopes we on this side will forget they established these rules and these precedents. I recognize the other side finds those rules very inconvenient today. But these are not reasons to ignore rules and precedents they established. There is simply no legitimate reason the other side should not embrace those very same rules, those very same standards they established in the year 2006.

So under that standard established by the Democrats in 2006, then, very simply, these nominations are not needed. According to the current judges themselves, these judges are not needed. According to the chief judge of the DC Circuit, who happens to be a Clinton appointee, the senior judges are contributing the equivalent of an additional 3.25 judges. So, as a result, the court already has the equivalent of 11.25 judges, and that is beyond even the authorized number.

It seems pretty clear the other side has run out of legitimate arguments in support of these nominations. Perhaps that is why, then, they are resorting to such cheap tactics.

Over the last couple days, I have heard my colleagues on the other side