



United States
of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 113th CONGRESS, SECOND SESSION

Vol. 160

WASHINGTON, WEDNESDAY, MARCH 5, 2014

No. 37

Senate

The Senate met at 10 a.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.

Holy God, because of Your great love, we do not cringe or falter at the challenges our Nation faces, for You have never forsaken us in our hour of need. Lord, give our lawmakers a desire to seek Your wisdom and to follow You where You lead. May they claim Your promise that no weapon formed against us will prosper. Help them to not permit the world to squeeze them into its mold as they seek to be transformed by Your powerful presence. Thank You for our many freedoms and empower us to use them to bless others.

We pray in Your mighty 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.

CHILD CARE AND DEVELOPMENT BLOCK GRANT ACT OF 2014—MOTION TO PROCEED—Resumed

Mr. REID. Mr. President, I move to proceed to Calendar No. 309, the Child Care and Development Block Grant Act.

The ACTING PRESIDENT pro tempore. The clerk will report.

The legislative clerk read as follows:

A bill (S. 1086) to reauthorize and improve the Child Care and Development Block Grant Act of 1990, and for other purposes.

SCHEDULE

Mr. REID. Mr. President, because of the inclement weather we have had to rearrange things. Senator MCCONNELL and I have been directing our staffs to help us get through what we need to do. We should be able to finish this week's work tomorrow, but that is not assured. So we are going to be working throughout the day to move forward as quickly as we can. Everyone should be aware that we could have some votes into the evening tonight and tomorrow. We may have to be here on Friday.

Following my remarks and those of the Republican leader, the Senate will proceed to executive session with the time until 11:45 equally divided and controlled. At 11:45 there will be up to three rollcall votes. We expect to recess following those votes to allow for the weekly caucus meetings and work through the remaining nominations this afternoon. Senators will be notified when the votes are scheduled.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. MARKEY). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MCCONNELL. Mr. 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 Republican leader is recognized.

ADEGBILE NOMINATION

Mr. MCCONNELL. Mr. President, the Department of Justice and this administration have too often put politics ahead of the law. The record of the nominee before us to head the Civil Rights Division strongly indicates that if he were confirmed, the politicization of the Justice Department would increase even further. He has a long record of leftwing advocacy marked by ideologically driven positions and very poor judgment.

In the District of Columbia v. Heller he argued in the Supreme Court that it would be "radical" to recognize "an individual right to keep and bear arms." In fact, before the Supreme Court he repeatedly described the principle of individual liberty protected by the Second Amendment as a "radical" proposition. It was the position advocated by the nominee, however, that the Supreme Court rule was woefully at odds with the Constitution and individual liberty.

He also called the requirement to present identification before voting a "modern poll tax." Americans strongly support this basic safeguard for the integrity of our elections. It has been endorsed by liberal Democrats such as President Carter. Not surprisingly, in Crawford v. Marion County the Supreme Court rejected the nominee's views on that subject as well.

In Hosanna-Tabor v. EEOC he took the position in the Supreme Court that a church did not have the First Amendment right to hire or fire individuals who were responsible for conveying the church's message and implementing its mission. The position the nominee advocated would greatly infringe on the free exercise of rights of religious institutions. The Supreme Court rejected his views there too, this time 9 to 0.

But it is his advocacy on behalf of the Nation's most notorious cop killer that most calls into question his fitness for the powerful government position he seeks. Back in December of 1981, 25-year-old officer Daniel Faulkner was conducting a routine traffic stop when Wesley Cook, also known as Mumia Abu-Jamal, shot him in the back. He then stood over Officer Faulkner and shot him several more times in the chest. As Officer Faulkner laid dying in the streets defenseless, Abu-Jamal shot him in the face, killing him. At the hospital Abu-Jamal bragged that he had shot Officer Faulkner and expressed his hope that he would die.

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



Printed on recycled paper.

S1285

At trial he was remorseless. He turned the trial into political theater, interrupting the proceedings, insulting the judge, and even smirking at Officer Faulkner's widow when the blood-stained shirt was held up in court as evidence. Four eyewitnesses saw Abu-Jamal gun down Officer Faulkner—four eyewitnesses. Three more witnesses at the hospital heard him confess to the crime. Ballistics evidence proved that Officer Faulkner had been shot with a handgun that was registered to Abu-Jamal, which was found at the scene of the murder, along with the shell casings.

Based on this overwhelming evidence, Abu-Jamal was tried, convicted, and sentenced to death. What followed was a 30-year effort by the far left to glorify Abu-Jamal and to exonerate him. This effort was taken up by law professors, leftwing activists, and in 2009 by the organization which the nominee before us led for several years, the NAACP Legal Defense Fund.

When the Legal Defense Fund became Abu-Jamal's cocounsel in 2011, its press release called him a "symbol" of "racial injustice." It said: "Abu-Jamal's conviction and death sentence are relics of a time and place that was notorious for police abuse and racial discrimination." An LDF lawyer attended rallies for Abu-Jamal. She said it was absolutely an "honor" to represent him and that doing so was her "pleasure." She said: "There is no question in the mind of anyone at the Legal Defense Fund that the justice system has completely and utterly failed Mumia Abu-Jamal." This demagoguery of the murder of a defenseless police officer has shocked and offended law enforcement officers from across the country. Current District Attorney of Philadelphia Seth Williams wrote the Judiciary Committee last month to oppose this nominee's confirmation. Here is what he had to say:

Apart from being patently false, moreover, these claims are personally insulting to me. As an African-American, I know all too well the grievous consequences of racial discrimination and prejudice. I also know that Abu-Jamal was convicted and sentenced because of the evidence, not because of his race. And I have continued to fight for the jury's verdict because it was the just result.

District Attorney Williams notes that, given all the cases in which the Legal Defense Fund could be involved, it was "telling" that the nominee would go out of his way to inject himself and his organization into this one. "His decision to champion the cause of an extremist cop-killer . . . sends a message of contempt to police officers."

The national Fraternal Order of Police wrote President Obama to express its "vehement opposition to the nomination." The FOP wrote that "as word of this nomination spreads through the law enforcement community, reactions range from anger to incredulity," and that it "can be interpreted in only one way: It is a thumb in the eye of our nation's law enforcement officers."

The Kentucky Narcotics Officers' Association wrote me a powerful letter in opposition to the nomination as well. In it they note: "The thought that [the nominee] would be rewarded, in part, for the work he did for Officer Faulkner's killer is revolting."

The nominee has acknowledged that as the director of litigation for the Legal Defense Fund, he "supervised [its] entire legal staff." According to LDF's own Web site, the director is responsible for coordinating "the selection of cases" the LDF chooses to get involved in. He manages "all aspects of the legal docket." He oversees "all aspects of discovery, motion practice, briefs, trials, appellate work and amicus briefing."

As director of litigation he is responsible for advocacy both in the courts of law and in the court of public opinion.

Let me repeat. He is responsible for advocacy both in the courts of law and in the court of public opinion. As the head of the Civil Rights Division, the nominee now would be responsible for fulfilling the Division's mission of upholding the civil and constitutional rights of all individuals. He would have powerful resources at his disposal as well as the discretion to determine how and on whose behalf to use them.

As the junior Senator from Pennsylvania has noted, the head of the Civil Rights Division must have an absolute commitment to truth and justice. My friend from Pennsylvania goes on to observe that, while there are many highly qualified Americans who could carry out this critical mission, the nominee's record creates serious doubts that he is one of them.

I might point out that the senior Senator from Pennsylvania also opposes this nominee. So I could not say it any better. Everyone deserves a fair trial and a zealous legal defense. Lawyers are not personally responsible for the actions of their clients. But lawyers are responsible for their own actions. In this case the nominee inserted his office in an effort to turn reality on its head, impugn honorable and selfless law enforcement officers, and glorify an unrepentant cop killer.

This is not required by our legal system. On the contrary, it is noxious to it. I therefore will oppose the nomination and strongly urge my colleagues to do so as well.

Finally, I would like to note the manner in which this nomination may come to an up-or-down vote. Last fall the majority chose to break the rules of the Senate in order to change the rules of the Senate. In so doing, they violated the right of the minority under the rules to require extended debate on controversial nominees to powerful Federal positions. This serious breach of the rules is an ongoing violation. It is highlighted again today by the majority's effort to muscle through the current nominee under a procedure they came up with in the majority leader's conference room, not through the rules committee and regular order as was promised.

Members of the majority who voted for this heavyhanded procedure last fall will be responsible for the nominee's confirmation today—if that occurs—regardless of how they vote on the nomination itself. And they should not be heard to complain that the nomination process is not as productive as it was only a few months ago—before they threw caution to the wind and violated our rights under the Standing Rules of the Senate.

UKRAINE

Mr. President, last week's military intervention by Russian forces into Crimea makes it clear that President Putin is determined to maintain the Russian sphere of influence there—and at a cost to his country. That is why Washington and its allies will now be of such critical importance in Ukraine.

According to the Budapest agreement, Russia has an obligation to respect the sovereignty of its neighbor, and the West should stand united in holding President Putin to that agreement.

The United States, NATO, and the EU should also work together to support the interim government in Kiev by supporting free and fair elections. And Members of Congress are already discussing loan guarantees and additional sanctions against Russia.

But if there is one thing Russia's military intervention into Crimea also makes absolutely clear, despite the best hopes of some, it is this: The foundation of the international system is governed by force, capability, and interest. Let me say that again. The foundation of the international system is governed by force, capability, and interest. That is the reality by which we should be guided in approaching this conflict, and it is a reality by which we should be guided when it comes to American power more generally.

As I have argued before, this President has eroded American credibility in the world:

[It starts] with the arbitrary deadlines for military withdrawal . . . and the triumph and declaration that Guantanamo would be closed within a year, without any plan for what to do with its detainees. . . . there were the executive orders that ended the Central Intelligence Agency's detention and interrogation programs . . .

We all saw the so-called reset with Russia, and how the President's stated commitment to a world without nuclear weapons led him to hastily sign an arms treaty with Russia that did nothing to substantially reduce its stockpile, or its tactical nuclear weapons.

We saw the President announce a strategic pivot to the Asia-Pacific, without any real plan to fund it, and an effort to end the capture, interrogation, and detention of terrorists, as well as the return of the old idea that terrorism should be treated as a law enforcement matter.

After a decade-long counterinsurgency in Afghanistan, we've seen the President's failure to invest in the kind of strategic modernization that's needed to make his pivot into Asia meaningful.

Specifically, his failure to make the kind of investments that are needed to maintain our dominance in the Asia Pacific theater, in the kind of naval, air, and Marine Corps

forces that we'll need there in the years ahead, could have tragic consequences down the road.

Let's be clear. Whether it is recent reports suggesting the Obama administration knew for years about potential Russian violations of the treaty that regulates medium-range missiles or whether it is Russia's refusal to negotiate a reduction in tactical nuclear weapons, its shipment of arms to the Syrian Government, or its invasion of Crimea, we can now put to rest for good any notion that the relationship with Russia has been reset.

President Putin sees himself as the authoritarian ruler of a great power—and one who is determined to preserve his regime. That is how we should understand him.

In invading Crimea he clearly concluded that protecting Russia's sphere of influence there was worth the risk of Russian lives and of any response on the part of the United States and Europe. We and our allies pay a price when our capabilities diminish. That is why I have continually advocated for investments in the modernization of our forces, for marrying our commitments to our capabilities, and for a recognition that receding from the world comes with consequences—mainly bad ones.

We remain a member of NATO and have treaty commitments to our fellow members. We also know that in Asia, China has pursued a policy of coercing its neighbors and exploiting territorial disputes. American military might is the backbone of the international order, but when we diminish our capabilities, we must understand that regional powers will fill the void.

Our President is still the leader of the free world. We will support him however we can to ensure a satisfactory outcome for the Ukrainian people and to prevent this conflict from escalating into a wider war. Ukrainians deserve our support. But this is a moment when President Obama is going to have to lead.

HONORING OUR ARMED FORCES

CHIEF PETTY OFFICER COLLIN T. THOMAS

Mr. President, I rise to speak in tribute to a brave Kentuckian who has given his life in service to his country. CPO Collin T. Thomas, a highly distinguished and decorated Navy SEAL, was killed in his final mission on August 18, 2010, in eastern Afghanistan in direct combat with the enemy. In his final act, he killed a Taliban fighter who had shot him and other members of his team, thus saving his teammates. For these acts of valor, he received the Silver Star Medal. He was 33 years old.

Chief Petty Officer Thomas held a rating of chief special warfare operator, was a Navy SEAL for 10 years, and served in the Navy for 13. In that time he received many awards, medals, and decorations, including the Silver Star Medal for the actions I have described, three Bronze Star Medals with combat "V" distinguishing device, a Purple Heart, the Defense Meritorious

Service Medal, two Joint Service Commendation Medals with combat "V" distinguishing device, a Navy and Marine Corps Commendation Medal, six Marine Corps and Navy Achievement Medals, two Combat Action Ribbons, four Good Conduct Medals, the National Defense Service Medal, Afghanistan Campaign Medals with two campaign stars, the Iraq Campaign Medal, Marksmanship Medals with "expert" service device for both rifle and pistol, and a multitude of personal, unit and campaign awards.

On September 11, 2001, Collin Thomas's cousin, Navy weatherman AG1 Edward Earhart, was the first identified military casualty of the terrorist attack that struck the Pentagon. Sadly, this was not the first time terrorism had directly struck Collin's family. His uncle, Maj. John Macrogrou, was the senior marine killed in the Beirut barracks bombing in 1983.

Then a Navy SEAL for a little over 1 year, Collin vowed to his family to make amends for the death of his uncle and his cousin. Collin's father Clayton says:

When asked by his grandfather why he continued to be a SEAL, Collin would say that he was going to be the one to capture or kill bin Laden.

Collin was born in San Diego, and by high school he had lived in seven States and two countries. But he always considered himself a Kentuckian.

After his father's retirement from the U.S. Marine Corps, the Thomas family settled in Morehead, where Collin attended Rowan County Senior High School. He ran track and played varsity football. Collin enjoyed camping and hunting. He liked to shoot and was good at it. His grandmother would prepare squirrel gravy from the spoils of Collin's hunting expeditions reluctantly because as much as she wanted to celebrate her grandson's marksmanship, squirrel was not a favored delicacy in her household.

A story from Collin's high school years demonstrates that the motivation to help others that was the driving force behind his Navy SEAL career was present at a young age. At age 14 Collin stood up for some younger children to bullies on the schoolbus. "He didn't even know these children, but he knew they were being bullied and denied a bus seat by bigger and older children," Clayton remembers. He "gave them his seat and told the bullies they would have to answer to him if he ever saw them bullying these or any other children again. . . . The character and sense of fairness he demonstrated taking on bullies he did not know to protect others would be repeated throughout his life."

Collin was very driven and focused from a young age on his life's goal—becoming a Navy SEAL. He began his unofficial training at age 15 after talking with a Navy master chief at the Naval Academy, who gave him an idea of the physical, academic, and psychological training Collin would need to undergo

to follow his dream. By the time he received his driver's license, Collin had also completed his SCUBA open water dive certification.

Collin graduated from high school in 1995, and at Morehead State University he took every ROTC class available. The summer after his first year of college, Collin was selected for basic airborne training by his ROTC commander. He met many Active-Duty Navy SEALs there and came away convinced he was ready.

Collin enlisted in the Navy on February 20, 1997, and his oath was administered by his father Clayton, a retired marine lieutenant colonel.

Collin completed basic training, was an honor graduate at the hospital corpsman school, and trained in basic underwater demolition. He was then assigned to a SEAL team to develop his skills as a special warfare operator. He became a SEAL on June 9, 2000, and was sent on his first deployment to South America.

Chief Petty Officer Thomas was a highly skilled and capable SEAL, and his constant training took him around the world. He became certified as a paramedic and a lead climber, able to scale near-vertical cliffs. He was a master parachutist specializing in nighttime high-altitude operations. He mastered underwater diving and was able to stay underwater for over 4 hours. He won inter-unit shooting competitions with both longbarrelled and shortbarrelled weapons. He excelled in snow skiing and skied the most difficult airdrop courses in South America, Europe, and America.

In April 2010 Collin achieved a lifetime goal when he and two of his SEAL teammates climbed Mount Kilimanjaro in Tanzania, the highest freestanding mountain in the world at 19,341 feet above sea level. They made most of the climb in speedy time. Near the summit, however, Collin encountered two women from California who were ill from altitude sickness. Against his guide's advice, Collin stopped to give them medical attention, delaying his final ascent. Collin's father recalled, "Somehow, one of the women found out that Collin had been killed, and she sent a letter telling the family how kind he was to them, and she felt he had saved their lives." Once again, the same young man who had stood up to bullies on a schoolbus had set his own interests aside to save others.

Collin was buried with full military honors at Forest Lawn Memorial Gardens in Rowan County, KY.

We are thinking of his loved ones today, including his parents Clayton and Paul; his sister Meghan; his fiancée Sarah Saunders, and many other beloved family members and friends.

To his father Clayton I say "Semper fidelis"—your son was always faithful.

One of Collin's senior officers, engaged in many highly sensitive and consequential missions, was unable to give his name for attribution on the Senate floor. However, he was able to

say these words about Collin, which I will share with all of you. This unnamed officer said:

Collin Thomas was a brave American patriot and an incredibly gifted Navy SEAL. His tireless professionalism, inspiring passion for life, and humble demeanor made him a role model for all who knew him. We are deeply saddened by this tremendous loss of a brother in arms.

I know my colleagues share these sentiments, and we mourn the loss of CPO Collin T. Thomas. We extend our deepest condolences to his family. No words spoken in this Chamber can take away the sadness and loss Collin's family must feel, but I do want them to know this Nation and this Senate are deeply grateful for CPO Collin T. Thomas's service and sacrifice. We are humbled to pay tribute to his life and legacy.

I yield the floor.

RESERVATION OF LEADER TIME

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

EXECUTIVE SESSION

NOMINATION OF DEBO P. ADEGBILE TO BE AN ASSISTANT ATTORNEY GENERAL

The PRESIDING OFFICER. Under the previous order the Senate will proceed to executive session to consider the following nomination, which the clerk will report.

The legislative clerk read the nomination of Debo P. Adegbile, of New York, to be an Assistant Attorney General.

The PRESIDING OFFICER. Under the previous order, the time until 11:45 a.m. will be equally divided between the Senator from Vermont and the Senator from Iowa or their designees.

The Senator from Iowa.

Mr. GRASSLEY. Mr. President, similar to my Republican leader, I come to the floor to share my concerns about Mr. Adegbile's nomination, and I will explain my voting no today.

I begin by saying I believe the nominee possesses high moral character and personal integrity. I have met him. I am also aware he has been working on the chairman's staff of the Judiciary Committee for the last few months. Unfortunately, I have reached the conclusion that this nominee isn't the right pick to lead the Civil Rights Division.

First of all, it is no secret that I believe the last individual to lead this office, the current Secretary of Labor, was very political and extremely committed to a host of political causes. Of course, I don't expect President Obama to nominate conservatives to his political appointments, but as we all know, these are very important and powerful jobs. The individual who holds them wields a tremendous amount of power on behalf of the Department of Justice.

I expect the President's nominees to be liberal, maybe even very liberal, and in the vast majority of cases the President is entitled to have people of his own choosing serving in these important positions, but the Senate must provide its advice and consent, which is what we are doing today.

In my view the President's nominees can't be so committed to political causes and so devoted to political ideology that it clouds his or her judgment. This is particularly important here, given that this office, under the leadership of the last Assistant Attorney General, was marked by controversy, and those controversies, in my view, were directly linked to that individual's deep commitment to a host of liberal causes, regardless of how well held they were. At the end of the day I believe it clouded his judgment.

With that brief bit of background, I would first note there is bipartisan opposition to this nomination. As I will discuss in a few minutes, there is also widespread opposition from the law enforcement community.

Seth Williams, a Democrat and Philadelphia's district attorney, opposes this nomination. Many of the largest national law enforcement organizations, including the Fraternal Order of Police and the National Association of Police Organizations, vigorously oppose this nomination as well. This opposition is based upon the nominee's record—and the nominee's record, in my view, demonstrates that the nominee has a long history of advocating legal positions far outside the mainstream. I believe it is a record which demonstrates he is simply too deeply committed to these causes to be an effective and fair leader of this very important Civil Rights Division of the Department of Justice.

I am not going to mention every aspect of the nominee's record I find troubling but a few will be mentioned.

His record on First Amendment issues should give us all pause. For example, in the Hosanna-Tabor case before the Supreme Court, the nominee advocated for a position which would have infringed on the free-exercise rights of religious organizations. Specifically, he argued that a church didn't have the right to freely hire or fire individuals who were responsible for conveying the church's message and carrying out its religious mission. This is at the core of what religious freedom means under our Constitution. The nominee's view was a dramatic departure from established First Amendment jurisprudence. In fact, it was so outside the mainstream that the Supreme Court unanimously rejected it 9 to 0.

Likewise, the nominee's views on the Second Amendment to our Federal Constitution are out of step with the law. In *Heller* he argued, "The Second Amendment does not protect an individual's right to keep and bear arms for purely private purposes." He also argued that "the right protected by the

Second Amendment are ones that exist only in the context of a lawfully organized militia."

The Supreme Court, of course, rejected that view, as we all know, and the Supreme Court's decision very much strengthened the right of individuals to bear arms.

I have also been disappointed by the answers the nominee provided to a number of my questions. For example, I asked whether he believed voter-ID requirements—which have been upheld by the Supreme Court in the Crawford case—are the modern-day equivalent of a poll tax. I asked this question for several reasons.

First of all, according to press reports, this nominee said as much in 2005 during a discussion in Georgia regarding voter-ID laws. According to press reports, he called voter-ID cards "a modern poll tax." But the Supreme Court upheld Indiana's voter-ID law as constitutional in the Crawford case in 2008.

So, if the nominee continues to believe that voter-ID laws are the modern-day equivalent of a poll tax and is firmly committed to that principle, I am concerned—we all ought to be concerned—that he would look for creative ways to undermine and challenge those laws, notwithstanding the Crawford case upholding Indiana's voter-ID law.

It goes without saying, of course, a significant part of this job is the enforcement of voting-rights laws, and that enforcement power should be entrusted only to someone we are confident will apply the law in an even-handed way and, obviously, uphold what the Supreme Court has already said was constitutional.

I have also repeatedly asked the nominee whether, if confirmed, he would commit to implementing the recommendations made by the Department of Justice's Inspector General regarding the hiring process in the Civil Rights Division. The IG's report exposed a hiring process in that division which was structured in a way that systematically screened out conservative applicants. So, evidently, only one point of view is welcomed in that division. But the nominee will not commit to implementing the recommendations the IG's report has put out which addressed those issues so the office has the benefit of an ideologically diverse group of lawyers. This concerns me, and it ought to concern my colleagues. Again, this is a division in the Department of Justice which needs a clean break from the political partisanship which plagued the office under the last Assistant Attorney General.

Finally, I wish to address the nominee's involvement with and representation of Mumia Abu-Jamal. To understand why the nominee's involvement in this case is so concerning to many of us, a bit of history is in order.

Mr. Abu-Jamal is this country's most notorious cop-killer. The facts of the Abu-Jamal case are well known and cannot be seriously disputed.