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Senate

The Senate met at 9:30 a.m. and was called to order by the Honorable JOHN E. WALSH, a Senator from the State of Montana.

PRAYER

The PRESIDING OFFICER. Today's prayer will be offered by Trevor Barton, Pastor of Hawk Creek Baptist Church in London, KY.

The guest Chaplain offered the following prayer:

Let us pray:

Gracious Lord, as the most high God who alone is sovereign over the Kingdoms of this world, we stand in awe of You. We stand in awe of Your faithfulness to this great Nation, whose history itself gives witness to Your gracious providence.

We are grateful to know that You are the author of our storied past, and we are confidently optimistic to know that You are the architect of our blessed future. So as we move toward that which You have prepared for us, we pray for all of those who will lead us toward that better tomorrow.

We pray that this Senate and our national leaders would have unparalleled wisdom as they navigate the complexities ever before them. Enable them to know what is best and to do what is best.

May they serve always with the most noble of intentions and be forever found to be the epitome and essence of heroic statesmen as they exchange and debate the most important ideas of their day.

Give our leaders a compelling vision for America's future—a future that is full of what could be and, more importantly, a future of what should be. May the authority entrusted to them always be leveraged for the good of others.

May all of our leaders and every individual who calls this Republic their home live their lives by the most profound but simplistic of ethics: To love our neighbors as ourselves. Continue to preserve and protect this great democracy. And may the motives and meth-

ods of this United States Senate and the United States of America always be to please thee.

In Your holy, loving Name, Jesus, I pray. Amen.

PLEDGE OF ALLEGIANCE

The Presiding Officer 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.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. LEAHY).

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, May 8, 2014.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable JOHN E. WALSH, a Senator from the State of Montana, to perform the duties of the Chair.

PATRICK J. LEAHY,
President pro tempore.

Mr. WALSH thereupon assumed the Chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

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

HIRE MORE HEROES ACT OF 2014— MOTION TO PROCEED

Mr. REID. Mr. President, I move to proceed to Calendar No. 332, H.R. 3474.

The ACTING PRESIDENT pro tempore. The clerk will report the motion.

The assistant legislative clerk read as follows:

Motion to proceed to Calendar No. 332, H.R. 3474, to amend the Internal Revenue

Code of 1986 to allow employers to exempt employees with health coverage under TRICARE or the Veterans Administration from being taken into account for purposes of the employer mandate under the Patient Protection and Affordable Care Act.

SCHEDULE

Mr. REID. Mr. President, following my remarks and those of the Republican leader, the Senate time until 11:15 a.m. will be equally divided and controlled.

There will be a series of votes beginning at 11:15 today and another series of votes at 1:45. This is to confirm a number of nominations. There could be as many as nine votes. We will see what happens as the day goes on.

Yesterday I filed cloture on S. 2262, the energy efficiency bill. As a result, the filing deadline for all first degree amendments is today at 1 p.m.

OBSTRUCTIONISM

Mr. REID. Mr. President, anyone who watches the Senate on C-SPAN knows that the desks in the Senate Chamber are split between Democrats and Republicans. But when I come to the Senate Chamber anymore, we shouldn't have just Democrats and Republicans; we should have obstructionists.

With the Democrats, there are 55 of us. With the Republicans, anymore, there are six or seven on a good day. There are obstructionists of about 40, for sure, on any day.

The legislators—Republicans who, like Senate Democrats, are tired of all the useless obstruction, who want to get things done for Americans, and the obstructionists—the guardians of gridlock, as the Republican leader has proudly called himself—are playing politics and constantly grinding the wheels of the Senate to a standstill, a stop.

Over the last few months, I have spoken with Republicans who are fed up with obstructionism in this body. I

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



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have spoken with them in my office when they come to see me, on the Senate floor, and in various places. So these Republicans always have the same message from me: We came to the Senate to get things done, so let's work together. I am happy to work with them, as we did a few months ago with the Child Care and Development Block Grant. That is who I have always been in this Chamber. When I was the whip, my Republican colleagues knew I was someone they could talk to and work with to get things done.

It is a shame the Republican leader has decided that being the "proud guardian of gridlock"—his words, not mine—is more important than working with us to get things done for the American people.

The Shaheen-Portman energy efficiency bill before the Senate is a perfect example. They brought their bipartisan legislation to the floor last September. Regrettably, a Republican Senator on a one-man crusade against health benefits for Senate staffers filibustered the bill. But Senators SHAHEEN and PORTMAN didn't give up. Instead, they worked with Democrats and Republicans for seven months to strengthen the bill, gaining more bipartisan support along the way.

This legislation will give our country more energy independence, protect our environment, and save American families money on their energy bills. It also creates 200,000 jobs that can't be exported.

When the legislation was finalized, Senators SHAHEEN and PORTMAN were ready to bring the bill to the Senate floor. In anticipation of the bill's consideration, Republicans who worked on this bill came to speak with me prior to the Easter recess. They told me the bill, which now includes 10 Republican-supported amendments, was ready for passage. They requested that I fill the legislative tree to ensure the bill would pass.

I repeat: Republican Senators wanting to pass this bipartisan bill asked me to bring the bill to a vote as soon as possible—as is.

And that is what I did.

For those Republicans acting in good faith, passage of the energy efficiency legislation was most important. Unfortunately, the obstructionist wing of the Republican caucus has decided once again to block this bill. But this time it is not the junior Senator from Louisiana bringing a bipartisan bill to a screeching halt; it is the guardian of gridlock himself, my friend, the Republican leader.

Senators PORTMAN, AYOTTE, COLLINS, HOEVEN, ISAKSON, MURKOWSKI, and WICKER have done good work on this legislation. What a shame they will see their efforts scrapped by my friend the Republican leader.

This isn't the first time he has steamrolled members of his own caucus. For example, the Senate considered a bipartisan transportation bill. Subcommittee Chairwoman PATTY

MURRAY and Ranking Member SUSAN COLLINS worked for months on that legislation. Notwithstanding the bipartisan support for the bill or Senator COLLINS' hard work, the Republican leader single-handedly dismantled the bill.

There are many other examples.

After the legislation was blocked, the senior Senator from Maine was quoted as saying that she had never seen the Republican leader work so hard to defeat a member of his own caucus.

If my Republican counterpart wants to keep blocking his own Senators' bipartisan efforts, go ahead. But it is not good for the country.

Eventually, members of his caucus will break from the gridlock to get their constituents the help they need, just as a handful of Republicans did with the extension of unemployment benefits.

Let me just say this. I am pleading to Republicans to help us work. Let's get things done. This is a good bill that deserves to pass. I invite my friend the Republican leader to listen to Members of his own caucus who worked so hard on this legislation.

I know back home in Kentucky the Republican leader said it wasn't his job to create jobs, but most of us around here disagree with him and want to work to create jobs. In this bill 200,000 jobs will be created.

So I say to my friend from Kentucky, honor your Members' efforts and the bipartisan compromise that created this legislation and allow us to vote on Shaheen-Portman. Bring this unnecessary obstruction to an end today and pass this energy efficiency legislation. It is what Democrats want. It is what Republicans want. More importantly, it is what the American people want and need.

MEASURES PLACED ON THE CALENDAR—H.R. 2824
AND H.R. 3826

Mr. President, there are two bills at the desk due for a second reading.

The ACTING PRESIDENT pro tempore. The clerk will read the bills by title for a second time.

The assistant legislative clerk read as follows:

A bill (H.R. 2824) to amend the Surface Mining Control and Reclamation Act of 1977 to stop the ongoing waste by the Department of the Interior of taxpayer resources and implement the final rule on excess spoil, mining waste, and buffers for perennial and intermittent streams, and for other purposes.

A bill (H.R. 3826) to provide direction to the Administrator of the Environmental Protection Agency regarding the establishment of standards for emissions of any greenhouse gas from fossil fuel-fired electric utility generating units, and for other purposes.

Mr. REID. I object to further proceedings with respect to these bills.

The ACTING PRESIDENT pro tempore. Objection is heard.

The bills will be placed on the calendar.

RECOGNITION OF THE MINORITY LEADER

The ACTING PRESIDENT pro tempore. The Republican leader is recognized.

WELCOMING THE GUEST CHAPLAIN

Mr. McCONNELL. Mr. President, we are all pleased today to welcome Pastor Trevor Barton to the Senate as he delivered the opening prayer.

Pastor Trevor, as everyone calls him, serves as lead pastor at Hawk Creek Church in London, KY. He is a laid-back guy, not big on fancy titles—the kind of pastor who would rather be preaching in blue jeans than a suit.

But under his leadership, Hawk Creek has exploded from a tiny fellowship to a congregation of well over 1,000 souls. I hear some parishioners drive all the way from Tennessee and Virginia just to listen to his sermons. Apparently, Pastor Trevor's parishioners aren't the only ones who have had a long commute to Hawk Creek. I hear the pastor sometimes drove in from almost an hour and a half away in Lexington. He did it so he could be close to his two young sons Shepherd and Greyson and to his wife Allison as she worked on a residency at UK Hospital.

Still, Pastor Trevor has developed important ties with the community in and around London. Hawk Creek does a lot of work with the Appalachian Children's Home. His church also has an important partnership with the local jail. Pastor Trevor's sermons are piped in live and loud every Sunday for the inmates to hear. One of my staffers told me she heard of Hawk Creek performing a baptism for about 70 inmates in a parking lot of that jail.

I think that says a lot about Hawk Creek Church, and it underscores something today's guest Chaplain once said: Whether "you've messed up in the past, present, future, you are welcome" in his church.

So I am proud to introduce Pastor Trevor today. We have been pleased to have him here as he dignified our proceedings with a prayer.

Earlier this week, the Supreme Court did the right thing by affirming his right to do so. I am delighted to welcome this fellow Kentuckian as he carries out this proud American tradition

SENATE DEBATE

Mr. President, the American people sent us to Washington to debate serious issues. They expect us to take our jobs seriously, to develop effective solutions to the issues that matter to them. That is our charge. Throughout our Nation's history, the Senate has been the place where the weightiest issues have been discussed and debated and, in many cases, resolved.

It is where we wrestle with whether to go to war. It is where we pass landmark bipartisan legislation such as the Civil Rights Act, the GI bill, and the Welfare Reform Act. But over the past several years, and very vividly in the past several months, that proud history has started to erode.

Instead of a forum for debate and resolution of the most pressing domestic and international issues facing our Nation, it has become fodder for late-night TV. When the American people turn on C-SPAN these days they do not

often see a majority party driving serious debate on the issues of the day. They hear bizarre monologues about greased pigs and a couple of Kansans the majority leader seems to be thinking about all the time. They see a daily display of absurd political theater that has almost no relevance at all to their daily lives.

It is quite disgraceful. But it is no surprise either since the Democratic majority clearly ran out of ideas a long time ago. Their refusal to engage in serious debate is just another symptom of that. Senate Democrats are afraid to expose their party's empty playbook, so they play games instead. They fill the time with aimless diatribes against private citizens and legislative theatrics that are more about satisfying their liberal patrons than addressing the real concerns and anxieties of the American middle class.

It is all about revving up the far left for them, so they will show up in November and save the President's Senate majority. That is the hope, at least.

But the larger point is this: As Washington Democrats seek to preserve their hold on power, they are becoming increasingly untethered from the daily concerns of average Americans.

That is why you are seeing the Senate lose its sense of purpose. That is why you are not seeing any real debates. Instead of listening to the needs of the middle class, they dance to the tune of the left. That is why you see Senate Democrats pushing legislation that would cost up to 1 million jobs—at a time when the middle class is practically begging us to create jobs. That is why you see Senate Democrats basically boasting that their legislative agenda was drafted by campaign staffers—with no shame at all. And that is why you see Senate Democrats killing job creation bills the House sends us, without even so much as a vote.

No wonder the American people are so disgusted with Washington. Wouldn't you be? The majority's antics this week were particularly shameful. They shook their fists and declared that global warming was the most important issue of our age—that to stand in the way of their preferred solutions would be, at best, immoral. They shouted it from the rooftops and, presumably, sent emails to leftwing supporters to let them know just how serious they were and how Republicans were somehow holding things up.

What they did not tell their supporters was that the Democrats' own majority leader, who also spoke forcefully on the issue yesterday, has been blocking the Senate from voting on global warming for years. Why? Because he does not want his fellow Senate Democrats to have to take a tough vote and because he knows it would never pass a Chamber Democrats control anyway.

As I said, almost everything has become a show in the Senate now. The needs of the middle class are simply lost in the shuffle, and the institution

itself is trivialized, it is diminished. The Senate used to be a place where we would discuss the pressing issues of the day. We would be able to do so again if the Senate floor were not being used as a campaign studio.

On Iran, Republicans have tried for months to debate and vote on additional sanctions to put an end to its nuclear program. We know a huge bipartisan majority would vote for increased sanctions if the majority leader would only allow the bill to come to the floor. But he will not. Just as he stopped us from voting to approve the Keystone XL Pipeline yesterday, resulting in headlines such as this one from the AP: "Democratic leader blocks Senate vote on Keystone."

"Democratic leader blocks Senate vote on Keystone."

In fact, at a time when we should have been debating energy, the majority leader refused to allow a single Republican amendment on energy this week—not a one. As I have noted in recent days, the Republican-led House has offered Democrats 125 rollcall votes on their amendments since last July. Here in the Senate, the majority leader has allowed us nine—nine—rollcall votes on Republican amendments since July.

But let me put a finer point on that. Democrats in the House have received more than twice as many rollcall votes on energy-related amendments alone as we have received on all amendments since July. That is not the way this body was meant to function. It is disrespectful to the millions of American citizens represented on the Republican side of the aisle. They deserve a chance to be heard.

The way the Senate operates these days is a travesty—no real debate, no amendments, no respect for the millions of Americans represented by the minority party. It has become an arm of the Democratic Senatorial Campaign Committee. We owe the American people so much more than that.

It is time to focus on the middle class again—to let go of the obsession with the far left and the next election. It is time for the Senate to be the Senate again.

HONORING OUR ARMED FORCES SERGEANT JEREMY R. SUMMERS

Mr. President, I want to speak today about a brave young U.S. Army soldier from my home State of Kentucky who was lost in battle. SGT Jeremy R. Summers, of Brooksville, KY, perished on July 14, 2011, from wounds suffered when the enemy attacked his unit with small-arms fire in the Paktika Province of Afghanistan. He was 27 years old.

For his service in uniform, Sergeant Summers received many awards, medals, and decorations, including the Bronze Star Medal, the Purple Heart Medal, two Army Commendation Medals, the Army Achievement Medal, the Army Good Conduct Medal, the National Defense Service Medal, the Afghanistan Campaign Medal with

Bronze Service Star, the Global War on Terrorism Expeditionary Medal, the Global War on Terrorism Service Medal, the Korean Defense Service Medal, the Army Service Ribbon, three Overseas Service Ribbons, the NATO Medal, and the Combat Action Badge.

Kenneth Michael Summers, Jeremy's father, says this about his son:

He never hesitated to make a new soldier feel welcome into the unit. There was one soldier who said he was so scared because he was a newbie, but Jeremy stepped up and helped him. [The other soldier] said for that, he was so thankful and would never forget Jeremy. That was a common story when soldiers told us about their experiences with Jeremy.

Jeremy was not only thoughtful and willing to help others, he was also a dedicated and committed servicemember, and I am sure it was due in part to his following the example that was set for him. Both Jeremy's father and mother, Laura Jo Summers, served in the Army. Jeremy, who graduated from Bracken County High School in Brooksville in 2002, enlisted in the Army in March of 2005 and served for 6 years.

At the time of his deployment to Afghanistan, he was serving as a U.S. Army forward scout observer and was assigned to Headquarters and Headquarters Company, 2nd Battalion, 506th Infantry Regiment, 101st Airborne Division, based out of Fort Campbell, KY. Previously Jeremy had deployed to both Iraq and Korea.

Jeremy was a voracious reader and loved to watch scary movies. He was known to indulge in a practical joke or two to scare his friends. Jeremy was also a bright student in school, who earned a degree in computer engineering after his first tour of duty. Jeremy asked his parents for advice about reenlisting and decided to continue serving his country in uniform.

Sergeant Summers has followed not only the tradition of his parents but also the tradition of service of so many brave Kentucky men and women who have worn our country's uniform.

"He felt more comfortable in the military lifestyle than he did as a civilian," Jeremy's father recalls. "I reckon it was only fitting . . . since he started life as a military brat and ended as an honorable soldier."

Speaking for his family, Jeremy's father continues on to say this:

Jeremy was a good listener, a great friend, an awesome brother and a terrific son. I wish all of you could have known him like we did. He is still one of our hearts' greatest treasures.

Mr. President, we are thinking of Sergeant Summers' family today after the loss of one of their hearts' greatest treasures. These include his parents, Kenneth Michael and Laura Jo Summers; his grandparents Joyce Wagoner and Mary Fowler, his siblings Austin Hunter and Jessica Elizabeth Summers, and many other beloved family members and friends.

My colleagues and I here in the Senate extend our greatest sympathies and

condolences to the Summers family for the loss of their son, brother, grandson, and friend Jeremy. We are proud of him for following the example set by his parents and volunteering to wear an American patriot's uniform.

We are deeply humbled and honored to be the beneficiaries of his life of service and his ultimate sacrifice. Without the bravery of men such as SGT Jeremy R. Summers, our Nation would not be free.

RESERVATION OF LEADER TIME

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

Under the previous order, the time until 11:15 a.m. will be equally divided between the two leaders or their designees.

The Senator from Iowa.

BARRON NOMINATION

Mr. GRASSLEY. Mr. President, I come to the Senate floor to discuss a pending nomination, that of Harvard Law School Professor David Barron to a seat on the First Circuit Court of Appeals.

This nomination is exceptionally controversial and was voted out of our committee, the Judiciary Committee, on a 10-to-8 vote. Even a cursory look at Professor Barron's record reveals views on the Constitution and on federalism that are well outside the mainstream. But I want to put all those views aside and speak about this nomination from another point of view.

So today I discuss Professor Barron's service as Acting Assistant Attorney General for the Office of Legal Counsel in 2009 and 2010.

According to multiple media sources, while heading up the Office of Legal Counsel, Professor Barron was instrumental in formulating the legal arguments that this administration used to justify the targeted killing of American citizens by drone strikes.

According to press reports, Professor Barron wrote at least two legal opinions laying out those arguments. We also know the Department of Justice relied on the legal arguments Professor Barron formulated to justify the targeted killing of an American citizen in a tribal region of Yemen in September 2011.

In a May 2013 letter to the chairman of our Judiciary Committee, the Attorney General wrote that "since 2009, the United States, in the conduct of U.S. counterterrorism operations against Al-Qaeda and its associated forces outside of areas of active hostilities, has specifically targeted and killed one U.S. citizen."

According to press reports, that individual was the first American citizen placed on the CIA's disposition matrix, better known as the kill list. However, the Attorney General conceded that three additional Americans located outside the United States have been killed by drone strikes since 2011.

According to the Attorney General's letter, these Americans were killed even though they "were not specifi-

cally targeted by the United States" as part of a counterterrorism operation.

But today I am not debating Professor Barron's legal arguments related to the drone strikes. The fact is that Senators aren't in a position to make an informed judgment about the nominee because of the way this administration has handled the issue, so I wish to address our constitutional duty with respect to the nomination.

Article II, Section 2, instructs us to give advice and consent on the President's judicial nominees. That is not a procedural technicality, it is a constitutional imperative. These happen to be lifetime appointments, and the men and women we confirm to the Federal bench play a vital role in the life of our Republic.

It is my view this body cannot, as things stand today, fully and appropriately discharge its constitutional duty to advise and consent with respect to this nominee. I will briefly address some recent developments in the courts that lead me to that conclusion.

On April 21 of this year, the Second Circuit issued an opinion in a Freedom of Information Act lawsuit brought by two New York Times reporters and the American Civil Liberties Union against the Department of Justice, the Department of Defense, and the CIA. That lawsuit began in December 2011 after the administration denied a Freedom of Information Act request from the New York Times for documents on the administration's targeted killing of American citizens outside this country. Specifically, the Times requested "a copy of all Office of Legal Counsel memorandums analyzing the circumstances under which it would be lawful for United States armed forces or intelligence community assets to target for killing a United States citizen who is deemed to be a terrorist."

The administration refused to provide anything in response to that request by the New York Times. In fact, initially the administration wouldn't even acknowledge that any responsive documents even existed, but as the litigation developed, the Department of Justice identified a single document but claimed it was exempt from disclosure under FOIA. That document is the so-called OLC-DOD memorandum.

Essentially, according to the Second Circuit, that is Professor Barron's memo providing the legal justification for targeted killing of American citizens abroad with drones. Basically, the court reasoned that because the administration had leaked and then officially released the so-called Department of Justice White Paper on the drone program, the administration then waived any basis for withholding the Barron drone memo under the Freedom of Information Act. Therefore, the Second Circuit ordered the administration to produce a redacted copy of this Barron drone memo to the New York Times.

The Second Circuit's opinion confirms that Professor Barron wrote this drone memo. However, according to

press reports going as far back as September 2010, Professor Barron had written at least one other drone memo on the targeted killing of Americans while he was at the Office of Legal Counsel. That second memo wasn't addressed by the Second Circuit's opinion and hasn't been disclosed publicly.

We also don't know whether Professor Barron wrote or was involved in producing other materials related to the drone program that have yet to be provided to the full Senate. For example, the Second Circuit has identified two additional memos from the Office of Legal Counsel that it ruled were not subject to disclosure under the Freedom of Information Act. Moreover, according to some media reports, there are quite a few additional memos on the drone program. In fact, the Second Circuit opinion repeats the ACLU's contention that there may be as many as 11 total memos related to this drone program.

This fact didn't escape the Second Circuit. In sending the case back to the district court for further litigation, the circuit left open the possibility that there might be other documents subject to disclosure down the road. The court said, after giving the government another chance to submit additional reasons for withholding the documents: "The district court may, as appropriate, order the release of any documents that are not properly withheld."

Let me be very clear. My colleagues should be on notice that more of these documents very well may be made public down the road. In my view, that is all the more reason for the full Senate to receive all materials on the drone program, written by and related to Professor Barron, from the Office of Legal Counsel and do it now before Members decide and are held accountable for their vote on this nominee.

It is impossible to overstate the importance of these materials to our consideration of Professor Barron's nomination. The memos and whatever other materials Professor Barron drafted as the acting head of the Office of Legal Counsel provides the legal framework for the administration's policies related to killing American citizens abroad. We know this because the administration itself has said so. In testimony before the Senate Select Committee on Intelligence, CIA Director Brennan testified that advice from the Office of Legal Counsel on the drone program "establishes the legal boundaries in which we can operate."

Once again, let me be clear. The Senate cannot properly discharge its duty to advise and consent on this nomination without having a full picture of this nominee's legal philosophy. A very legitimate question is, How can the Senate predict what kind of a judge he will be if we don't know what kind of a lawyer he has been?

The Senate simply cannot evaluate whether this nominee is fit for a lifetime appointment to one of the Nation's most important courts without

complete access to his writings. It is even more important now that we know some of those writings concern perhaps some of the most controversial issues the Office of Legal Counsel has addressed in recent years; that is, the use of drones to kill American citizens abroad.

Time and again this President and even this Attorney General have promised transparency. They have made these promises to us. They have made promises to the American people. We all know in our oversight capacity of trying to get information out of this administration that they haven't delivered on these promises.

In that letter from the Department of Justice to Chairman LEAHY that I mentioned just a few minutes ago, the Attorney General claimed this administration "has provided an unprecedented level of transparency as to how sensitive counterterrorism operations are conducted." The Attorney General also wrote that the administration was taking all steps to ensure that congressional committees "are fully informed of the legal basis" for targeted killings of American citizens.

Again, those assertions aren't accurate when it comes to this nominee's track record at the Department of Justice. If press reports are accurate, this administration hasn't made all the relevant materials available to all Members of this body yet. I am not the first Member of this body to point this out.

I give several of my Democrat colleagues credit for publicly drawing attention to this administration's shortcomings in respect to this administration sufficiently giving us information. I agree with them that this nomination cannot go forward until this body, every Member of this body, is given access to any and all secret legal opinions this nominee wrote on this critical issue of the constitutional basis for the President subjecting an American to killing by drone without trial. Every legal opinion this nominee wrote related to this issue ought to be made available. I wholeheartedly concur in the sentiment of my colleagues, some of them Democrats, on this issue.

Again, I think all Senators should bear in mind that these documents may very well become public in the future. Are Senators who are up for reelection in a few short months ready to vote on this nominee without knowing the full extent of his writings on a topic as serious as the killing of an American citizen by a drone? Are those Senators ready to go home to face their constituents and explain that they cast a vote on that nominee without knowing all of the facts?

On Tuesday the administration announced it will provide the full Senate access to the Barron drone memo that it was ordered to make public by the Second Circuit.

Is this what the most transparent administration in American history looks like, disclosing a memo that a court has already ordered it to disclose?

Keep in mind this administration agreed to the disclosure only after the Second Circuit order and a threat from the American Civil Liberties Union. Is that transparency?

In fact, I am having a bit of a flashback to a statement I made before this body just last week about another judicial nominee. That nominee led the administration's effort to stonewall congressional oversight into the murder of four Americans at our diplomatic mission in Benghazi. That nominee refused to comply with congressional subpoenas and assisted the administration's unlawful withholding of documents from Congress. The Benghazi documents that should have been turned over years ago weren't released until a judge forced the administration to turn over those documents by issuing a court order in a Freedom of Information Act lawsuit.

Just like the memos I have been talking about today, I am starting to see a pattern, and I am starting to understand what this administration means by the word "transparency." It means "show me a court order first."

Incidentally, I have been for more transparency at the Office of Legal Counsel for years, and even more so since January, when President Obama threatened to aggressively use Executive orders to circumvent Congress. It is the job of the Office of Legal Counsel to ensure that Executive orders are constitutional.

On January 31 I wrote the Attorney General to ask him to disclose the Office of Legal Counsel's work related to Executive orders issued by the President. I still haven't received a response.

I will also note that Professor Barron himself has gone on record publicly and urged increased transparency at his former workplace, the Office of Legal Counsel, and for that we ought to give him due credit.

In fact, the nominee said this about the OLC—the Office of Legal Counsel:

OLC should follow a presumption in favor of timely publication of its written legal opinions. Such disclosure helps to ensure executive branch adherence to the rule of law and guard against excessive claims of executive authority.

It couldn't be said any better by me in regard to the letter I wrote on January 31. He went on to say:

... transparency also promotes confidence in the lawfulness of government action.

That is a very admirable standard. I would like to call it the Barron standard, and I hope the administration follows the Barron standard with respect to informing the full Senate about this nominee's work in the Office of Legal Counsel. The administration's offer to disclose the memo it was already ordered to make public by a court isn't good enough, and it shouldn't be good enough for the other 99 Senators, because this is already their legal obligation.

The administration must turn over not only the memo addressed by the

Second Circuit, but every legal opinion from the Office of Legal Counsel written by and related to Professor Barron on this issue. Given the lack of clarity thus far, I call on the White House to provide every Senator with access to all Barron materials related to the administration's drone program.

I am also calling on the White House to comply with the Second Circuit's order and release to the public—not just to Senators—a redacted copy of the Barron drone memo that it addressed in its opinion. This is the administration's legal obligation.

Our obligation, as Senators, is to ensure our constituents have full access to information a Federal Court has ordered to be made public before we vote on the nomination. Without full disclosure to the full Senate of all materials on this nominee's involvement in the legal case for the administration's drone program, this nomination should not proceed.

I suggest the absence of a quorum.

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

The legislative clerk proceeded to call the roll.

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

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

ENERGY SAVINGS

Mr. REED. Mr. President, I rise today to express my support for the Energy Savings and Industrial Competitiveness Act.

While there is much more to be done on energy issues, we have an opportunity with this bill to make strides in increasing energy efficiency across many sectors of our economy—from schools and homes to commercial buildings, industry, and manufacturing.

I commend my colleagues, Senators SHAHEEN and PORTMAN, for their tireless efforts to craft a bipartisan energy efficiency bill that has the support of a diverse range of businesses and environmental and labor groups. This demonstrates the broad consensus that being smarter about how we use energy will help strengthen our economy, create jobs, improve our energy security, and protect our environment. Investing in a cleaner, more efficient energy system is one of the fastest, most cost-effective ways to increase our global competitiveness, support job growth, and save families and businesses money through improved efficiency and reduced energy consumption.

I have been particularly focused on addressing the burden of high energy costs on families and businesses in my home State of Rhode Island. One of the most pressing, far-reaching, and complex challenges we face in Rhode Island is the high cost of energy to power and heat homes and businesses. Rhode Island and the New England region face significant energy transmission and distribution challenges, which results

in consumers and businesses in the region experiencing some of the highest, most volatile energy costs in the country. These high energy costs are hurting Rhode Island families and businesses, threatening the growth of our economy, and reducing our competitiveness.

After paying their monthly home energy bills, Rhode Island families, who have been hit particularly hard during this period of high unemployment, are left with few resources to meet other basic needs. High energy costs also place Rhode Island businesses, manufacturers, and industrial users at a competitive disadvantage. To revitalize Rhode Island's rich manufacturing history, we must find ways to lower energy costs.

These were among the issues explored when I welcomed Secretary Moniz to Providence last month as part of the Administration's outreach on the Quadrennial Energy Review. Secretary Moniz had the opportunity to hear directly from Rhode Islanders impacted by high energy costs and engage in a dialogue of potential solutions.

While I continue working with my New England colleagues to find long-term solutions to ensure an affordable, cleaner, and more reliable energy system for the region, one of the things we can do to help families and businesses in our States right now is to pass the Shaheen-Portman energy efficiency bill.

Addressing the existing energy infrastructure constraints in New England is just one piece of the puzzle. Energy efficiency will also be an important tool in reducing demand, lowering energy costs, and addressing and maintaining the reliability of our energy system.

Improved efficiency not only saves families and businesses directly on their energy bills, but by also reducing demand, it helps to alleviate stress on the power system and can help mitigate volatile price spikes in the New England region, as we witnessed over the last several months.

I would also like to take a moment to speak about an amendment I have joined Senators COONS and COLLINS in filing to this bill to reauthorize the Weatherization Assistance Program. I, along with Senator COLLINS, yearly lead the fight in the Senate for funding for the Weatherization and State Energy Programs. This amendment would reauthorize and enhance these two well-established, cost-effective energy programs that support jobs, contribute to the Nation's economic recovery, and help meet important goals, such as improving energy efficiency and lowering energy costs.

I know that we have many supporters of the Weatherization and State Energy Programs here in the Senate, and I look forward to continuing to work with each of you to ensure that these important programs remain successful in improving energy efficiency, creating jobs, and reducing the overall

cost of heating and powering our homes and businesses.

While we should certainly do much more to advance our national energy policy—and I hope that we can take greater steps very soon—I urge my colleagues to join me now in supporting the Shaheen-Portman energy efficiency bill.

I once again commend those two Senators for their extraordinarily thoughtful, conscientious, and determined leadership. Now we must follow their example and pass this legislation.

BARRON NOMINATION

Mr. LEAHY. Mr. President, earlier today, the ranking member requested that the administration provide materials relating to Anwar Al-Awlaki so that all Senators would be able to properly evaluate Mr. Barron's nomination. The administration has now made available unredacted copies of any memo issued by Mr. Barron regarding the potential use of lethal force against Anwar Al-Awlaki. I hope and expect that all Senators will review these materials today.

Mr. President, I yield the floor, and I would note the absence of a quorum.

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

The legislative clerk proceeded to call the roll.

The PRESIDING OFFICER (Mr. BOOKER). The Senator from New Hampshire.

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

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

EXECUTIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to executive session.

Mr. LEAHY. Mr. President, today, we are again voting to overcome Republican filibusters of four highly qualified judicial nominees. The nominees are Judge Robin Rosenbaum to fill an emergency vacancy on the U.S. Court of Appeals for the Eleventh Circuit; Indira Talwani to fill a vacancy on the U.S. District Court for the District of Massachusetts; James Peterson to fill an emergency vacancy on the U.S. District Court for the Western District of Wisconsin; and Nancy Rosenstengel to fill an emergency vacancy on the U.S. District Court for the Southern District of Illinois.

Before proceeding with the qualifications of these four judicial nominees, I would like to address some questions regarding the nomination of David Barron. Mr. Barron has been nominated to fill a vacancy on the U.S. Court of Appeals for the First Circuit. There have been press accounts that Senate Republicans are placing a hold on Mr. BARRON's nomination because they are seeking access to a Justice Department memorandum regarding Anwar Al-Awlaki, an Al Qaeda leader who was killed by a U.S. drone strike in Yemen.

Since Senate Republicans have blocked every single judicial nominee this year from receiving an up-or-down vote, it comes as no surprise that they would attempt to block Mr. Barron as well. This is nothing new. As for the Justice Department memo, the majority leader and I have urged the administration to make the memo available to all Senators, and the administration has agreed. All Senators can review it for themselves. All members of the Judiciary Committee were previously able to review this memo, and now that his nomination is before the full Senate, it makes sense that all Senators will have that opportunity.

I am confident that once we proceed with Mr. Barron's nomination, Senators will vote to confirm him. He is brilliant nominee who is currently a professor at Harvard Law School. He is a nationally recognized expert on constitutional law, the separation of powers, administrative law, and federalism. He clerked on the U.S. Supreme Court for Justice John Paul Stevens. Justice Stevens has such high regard for Mr. Barron that the Justice attended his nomination hearing.

Mr. Barron has been an outstanding law professor and public servant. He has the credentials, expertise, and temperament to make an outstanding judge. As the acting head of the Department of Justice's Office of Legal Counsel in the beginning of the Obama administration, one of Mr. Barron's first actions was to withdraw several of the torture memos that OLC issued during the Bush administration that found "enhanced interrogation techniques" lawful, including sleep deprivation, stress positions, and waterboarding.

Mr. Barron has stood up for the rights of gay and lesbian students. In 2005, he coauthored amici briefs in the case *Rumsfeld v. FAIR*, which challenged the Solomon Amendment. The Solomon Amendment provided that if an institution of higher education denies military recruiters or ROTC programs access to campus, the entire institution would lose certain Federal funds. Until 2011, the Department of Defense discriminated based on sexual orientation, and many universities did not permit discrimination on campus. In response to a question for the record from Senator GRASSLEY on the issue, Mr. Barron said: "With respect to my participation along with other faculty members and my dean as amici in *Rumsfeld v. FAIR*, I believed it was important as a faculty member at Harvard Law School to help in the effort to ensure that gay and lesbian students at my institution continued to have equal opportunities to seek legal employment."

Mr. Barron is truly an outstanding nominee, and I hope all Senators will support his nomination when it comes up.