



United States
of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 113th CONGRESS, SECOND SESSION

Vol. 160

WASHINGTON, THURSDAY, MAY 22, 2014

No. 78

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.

Creator, redeemer, sustainer, You called us out of darkness into Your marvelous light. Dispel the shadows of confusion in our lives, replacing them with charity and peace. What we do not know, teach us. What we can't see, show us. What we don't have, give us. What we aren't, make us.

Abide with our Senators in their labors, using them as vessels for Your service. Lord, keep them on the path of integrity, strengthened and sustained by Your grace. Bless and keep them. Make Your face shine upon them and be gracious to them. Lift the light of Your countenance upon them and give them Your peace.

We pray in Your great 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.

TO PROTECT AND ENHANCE OPPORTUNITIES FOR RECREATIONAL HUNTING, FISHING, AND SHOOTING—MOTION TO PROCEED

Mr. REID. Mr. President, I now move to proceed to Calendar No. 384, S. 2363, which is the Hagan sportsmen's legislation.

The PRESIDENT pro tempore. The clerk will report the bill by title.

The bill clerk read as follows:

Motion to proceed to S. 2363, a bill to protect and enhance opportunities for recreational hunting, fishing, and shooting, and for other purposes.

SCHEDULE

Mr. REID. Mr. President, following my remarks and those of the Republican leader, the Senate will be in a period of morning business until 1:45 today, with the time until then equally divided and controlled between the two leaders or our designees, with the majority controlling the first 30 minutes and the Republicans the second 30 minutes. Additionally, Senator LEAHY will control the final 5 minutes and Senator PAUL will control the 5 minutes prior to that.

At 1:45 p.m. there will be two rollcall votes. The first vote will be on confirmation of the nomination of David Barron to be U.S. circuit judge for the First Circuit, and the second vote will be on the adoption of the conference report to accompany H.R. 3060, the WRRDA bill.

TAX EXTENDERS

This week Senate Republicans voted against tax cuts that most of them have said they like. The legislation is widely applauded around the country. I have a letter from 152 different entities that say they love this legislation, and they said it should pass, two of which are the Chamber of Commerce, which is certainly no leftwing group, and the National Association of Manufacturers—the same—and there are scores of others. It seems the only Republicans who do not want this tax cut are the Republicans in Congress. Republicans around the country want these tax cuts, Democrats want these tax cuts, and so do Independents.

This legislation is very important because it would bolster nearly every segment of our society. It helps students and teachers, workers and employers, American families and businesses, all

while saving money and growing our economy.

These 152 organizations that signed this letter to me are pleading with the Senate to extend these tax provisions because not doing so would "inject instability and uncertainty into our economy."

Republicans say the reason they voted against the bill is because they want to vote on amendments. Yet the only amendment they have identified was a poison pill amendment. Of course, what was the subject matter? Their favorite subject—ObamaCare. It has nothing to do with the extenders.

But we have seen this game play out before. The Senate is not going to vote on "gotcha" amendments designed to score political points. This legislation is too important. I have said all along that I am willing to undertake reasonable, germane amendments. That is certainly appropriate. That is what they did in the Finance Committee. They had an extended markup of this bill in the Finance Committee. The rule they have there is that amendments have to be germane. That rule applied to this bill, as it should, and that is what should be applied here on the floor.

So if Republican Senators can come up with a list of reasonable, germane amendments, I am more than happy to return to the tax extenders bill. Those are amendments I would not pick. They always say: Well, REID is picking our amendments.

Those are their amendments. They can file reasonable, germane amendments. There are a multitude of amendments they could offer.

So let's see if Republicans want to get something done on this legislation. We can debate back and forth on the finer points of Senate procedure endlessly, as has happened around here in the last 5½ years. But at the end of the day it comes down to a simple question: Do you want to get something done for the middle class? Do you want

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



Printed on recycled paper.

S3245

to get something done for business? Or do you want to impose more gridlock and obstruction and delay for the sake of delay?

We are here because we want to get something done for the middle class. That is how we feel on this side of the aisle. It is a shame my Republican colleagues cannot say the same.

RESERVATION OF LEADER TIME

The PRESIDING OFFICER (Mr. WALSH). 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 1:45, with Senators permitted to speak therein for up to 10 minutes each, with the time equally divided between the two leaders or their designees, with the majority controlling the first 30 minutes and the Republicans controlling the second 30 minutes.

The PRESIDING OFFICER. The Senator from Vermont.

JUDICIAL NOMINATIONS

Mr. LEAHY. Mr. President, later today we are going to vote on the confirmation of David Barron, who has been nominated for a vacancy on the U.S. Court of Appeals for the First Circuit.

Yesterday, we were able to overcome the unjustified Republican filibuster of this extraordinary nominee. Now, I have had the privilege of serving longer in this body than any other Senator here. I have never seen so many filibusters of judicial nominees by any President, Republican or Democratic. In fact, Republicans filibustered the very first judge President Obama sent to this body, a judge who was strongly supported by the Senators from his State, one of whom was the most senior Republican in this body, the other a moderate Democrat. Fortunately, enough Senators joined together to overcome that filibuster.

David Barron is currently a professor at Harvard Law School. He is a nationally recognized expert in constitutional law and the separation of powers, administrative law, and federalism. He clerked on the U.S. Supreme Court for Justice John Paul Stevens. In fact, I recall that Justice Stevens had so much regard for him that he attended Mr. Barron's nomination hearing.

I am in full support of Mr. Barron's nomination. It is almost as if he was sent to central casting for who should be a court of appeals judge. I have not seen any judicial nominee with better qualifications by either a Republican or Democratic President.

Let me respond to some of the criticisms levied against him with respect to the so-called drone memos as well as allegations that he would not be an independent judge who adheres to the rule of law. I reject both of those criticisms.

Over the last few weeks, I have spoken extensively about the issue of the drone materials and would refer specifically to my statement of May 14 of this year. While Senators may disagree with the administration's policies regarding the use of drones for lethal counterterrorism operations—and I have raised concerns about some of those operations—it is important not to conflate the confirmation of David Barron with the disclosure of Justice Department memoranda over which he had no control. He wrote an analysis of the law. Others make the decision of what they will do.

Yesterday the Justice Department made the right decision by agreeing to publicly release the redacted version of the legal justification for the government's potential use of lethal force against U.S. citizens in counterterrorism operations. I welcome the administration's additional step toward greater transparency.

Incidentally, these materials have been available to all Senators in recent weeks. We have had them in the unredacted form in a secure room here in the Capitol. We did that so that nobody could claim: Well, if only I knew what was in those memos, I could make up my mind. Every single Senator has had an opportunity to read them before today's vote.

We have heard some Senators argue that the Justice Department legal analysis provides the government with a blank check to use lethal force against Americans in places such as Germany or Canada. Oh my God, talk about grasping at straws. We are dealing with reality here, not Alice in Wonderland. Such a claim is simply inaccurate, inconsistent with the understanding anybody would have reading these materials.

In any event, the Attorney General has confirmed that Anwar al-Awlaki is the only American who was specifically targeted and killed since 2009. Awlaki was a senior operational leader of all of Al Qaeda in the Arab Peninsula, located in Yemen. He directed the failed attempt to blow up an airliner over Detroit on Christmas Day 2009. He was continuing to plot attacks against the United States when he was killed, according to the Attorney General.

I am glad a number of Senators share my deep regard for the constitutional rights of Americans and have spoken about that on the floor. I hope that after Mr. Barron is confirmed, they will show they really believe what they have been saying by joining me and 21 other Senators in cosponsoring the USA FREEDOM Act to help restore America's constitutional and privacy rights.

Finally, both Mr. Barron and a long list of bipartisan supporters have forcefully refuted any indication that he views the role of a judge as that of a policymaker. In a response to a question from Senator GRASSLEY, Mr. Barron stated the following under oath:

The judicial obligation is to set aside whatever personal views one may have and

to decide the particular case at issue. A judge must base the decision in any case solely on the facts and the law, while respectfully considering the arguments of the litigants. I would take that obligation to be an inexorable one, just as I felt obliged to set aside any personal views I may have had in providing legal advice within the executive branch while serving as the Acting Assistant Attorney General for the Office of Legal Counsel and as a career lawyer in that Office. I believe the best way to ensure one honors that obligation is to immerse oneself fully in the particular facts of the case and the law relevant to it and then to apply the law faithfully to those facts.

Mr. Barron's respect for the rule of law was recently reaffirmed by Stanford Law Professor Michael McConnell, a well-respected conservative scholar and former George W. Bush appointee to the Tenth Circuit. In a letter dated May 7, 2014 in support of Mr. Barron's nomination, Professor McConnell stated:

I suspect that on particular controversial issues, Barron and I disagree more often than not. But I have read much of his academic work, and followed his performance as acting head of the Office of Legal Counsel. In my opinion, his writings and opinions have demonstrated not only intelligence (even where we disagree) but respect for the rule of law. In the Office of Legal Counsel, whose functions closely resemble those of a judge, Barron's publicly released opinions indicated that he was consistently a force for legal regularity and respect for the constitution and laws of the United States. That is an important and precious thing.

I ask unanimous consent that Professor McConnell's letter be printed in the RECORD at the conclusion of my remarks.

It should be clear from Mr. Barron's testimony and Professor McConnell's letter that David Barron would faithfully discharge his duty as a judge in a manner consistent with the Constitution. Senator GRASSLEY cited yesterday to some statements made by Mr. Barron in his academic writings, but as Professor McConnell noted in his letter:

It is important to bear in mind that academic legal writing in constitutional law is often exploratory and provocative. No one should assume that an academic would take the same approach toward deciding cases that he does in writing about cases.

Professor McConnell should know, as he is a prolific academic who was similarly able to discharge his duty as a judge faithfully and consistently with the Constitution when he served on the bench. As a reminder to Republicans who are currently opposing Mr. Barron's nomination on these grounds, I will note that the Senate unanimously confirmed Professor McConnell's nomination to the Tenth Circuit by voice vote in 2002 during the George W. Bush administration.

Mr. Barron is truly an outstanding nominee. So outstanding, in fact, that Professor McConnell called him "one of President Obama's two or three best nominations to the appellate courts." I would urge all Senators to vote to confirm Mr. Barron to the First Circuit.