



United States  
of America

# Congressional Record

PROCEEDINGS AND DEBATES OF THE 115<sup>th</sup> CONGRESS, SECOND SESSION

Vol. 164

WASHINGTON, MONDAY, JULY 16, 2018

No. 119

## Senate

The Senate met at 3 p.m. and was called to order by the Honorable JOHN BARRASSO, a Senator from the State of Wyoming.

### PRAYER

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

Let us pray.

Shepherd of Love, help our law-makers to live in such magnanimity and restraint that they will be salt and light to their generation. May they make the world more palatable as they bring the illumination of Your Word to the problems they seek to solve. Guided by Your love, lead them to live to glorify Your Name. Lord, give them the wisdom to consistently strive to live in conformity to Your Will.

We praise You, mighty God, for You are slow to anger, abounding in love and mercy. In accordance with Your great love, continue to bless America.

We pray in Your strong Name. 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. HATCH).

The legislative clerk read the following letter:

U.S. SENATE,  
PRESIDENT PRO TEMPORE,  
Washington, DC, July 16, 2018.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable JOHN BARRASSO, a

Senator from the State of Wyoming, to perform the duties of the Chair.

ORRIN G. HATCH,  
President pro tempore.

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

### RESERVATION OF LEADER TIME

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

### CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Morning business is closed.

### EXECUTIVE SESSION

#### EXECUTIVE CALENDAR

The ACTING PRESIDENT pro tempore. 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 Scott Stump, of Colorado, to be Assistant Secretary for Career, Technical, and Adult Education, Department of Education.

The ACTING PRESIDENT pro tempore. Under the previous order, the time until 5:30 p.m. will be equally divided between the two leaders or their designees.

Who yields time?

If no one yields time, the time will be charged equally to both sides.

The Senator from Texas.

#### NOMINATION OF BRETT KAVANAUGH

Mr. CORNYN. Mr. President, last week I had the chance to reconnect with Judge Brett Kavanaugh, the President's choice to be Associate Justice of the U.S. Supreme Court, succeeding Anthony Kennedy, who has announced his retirement effective at the

end of this month. I say reconnect because I actually met Judge Kavanaugh back in 2000, when, as attorney general of Texas, I had the great privilege to represent my State in front of the U.S. Supreme Court in an oral argument.

As part of my preparation for that argument—something that is sort of like the Super Bowl for lawyers—I had a chance to practice that argument in a moot court, as it is called, in front of three distinguished Supreme Court advocates, including Brett Kavanaugh, who at that time was a private lawyer. I am sure I benefitted from his help, as I did from the help of the other two.

I have followed Judge Kavanaugh's career closely in the 18 years since I met him. Of course, in the last 12 years, he has served with distinction on the DC Circuit Court of Appeals, which some have called the second most powerful court in the Nation, since most of the controversial litigation involving the Federal Government tends to come up through that appellate court from the district courts here in the District of Columbia.

Based on what I know of Brett Kavanaugh, I am pleased with the nominee the President has chosen. After talking to him again, I look forward to supporting his nomination and doing everything I can to ensure his bipartisan confirmation.

On the issue of bipartisanship, let me just point out that Justice Gorsuch was confirmed by 54 votes, a bipartisan vote of confirmation. I would expect, based upon his similar qualifications in many ways—outstanding academic record, outstanding experience, and demonstrated ability on a circuit court of appeals—that I would think and expect that Justice Kavanaugh would get a bipartisan confirmation vote, much as Justice Gorsuch has. Obviously, they are two different individuals, but in terms of their experience, education, preparation, and judicial philosophy, I think it would be difficult to explain why one would vote for Justice

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



Printed on recycled paper.

S4957

Gorsuch's confirmation and vote against Justice Kavanaugh.

I know Members of the Senate take our responsibilities to provide advice and consent very seriously. I know a number of our colleagues who don't have the benefit of 18 years of familiarity with the judge will want to do their homework, and that is exactly as it should be.

A bipartisan questionnaire has now gone out to the judge from the Judiciary Committee. Senator FEINSTEIN, the Democratic ranking member, and Senator GRASSLEY, the Republican chairman, have sent a questionnaire, asking him to answer a litany of questions necessary for the Judiciary Committee to prepare for the hearing, which I hope will occur sometime in mid-August or so. We know also that nominees for judicial office get a very extensive background check, and that will have to be updated. I am sure that will take place as well.

Then, we all will have the chance to meet with Judge Kavanaugh, as I did, and to make our own personal assessment after asking questions and getting his answers to those questions.

Many people have now become familiar with the arc of his career: graduating with honors from Yale College, graduating Yale Law School, clerking for two appellate judges before clerking for Justice Anthony Kennedy on the Supreme Court. From there he went on to work as the Staff Secretary at the White House.

I want to pause and talk about what the Staff Secretary at the White House does. This is kind of an obscure but important position. Basically, you are the last eyes on a document before the President signs it. So what that means is there is a tremendous responsibility to coordinate and to verify the accuracy of the contents of the documents and that they reflect the policies that the President does indeed support before it is presented to him for his signature.

I mention the Staff Secretary position because the last time Judge Kavanaugh was confirmed to the DC Circuit Court of Appeals, there was no discussion about getting the voluminous copies of records that came across his desk as Staff Secretary. No one particularly thought that those were very useful, and that is for understandable reasons. He didn't author those documents. He didn't create them, but he was responsible for their verification and authentication and to see that they got to the President after having been reviewed as they should be. So as for any excuse that we hear along this confirmation process that the thousands—maybe hundreds of thousands, maybe millions—of documents that would have come across his desk as Staff Secretary will have to all be produced before Senators can vote on his confirmation, well, they didn't do that back when he was confirmed to the DC Circuit Court of Appeals. I think it makes no logical sense that documents

that came across his desk that he did not create and he did not vouch for are relevant, but, rather, that represents a fishing expedition designed to delay the confirmation process unnecessarily.

After he was Staff Secretary at the White House, he practiced law. Then, of course, he was confirmed to the Federal bench. His resume is really one that speaks for itself, but I want to address some of the character assassinations that have already begun about the judge because it is pretty troubling, knowing him as I have come to know him, to hear these accusations and descriptions, which I think are pure fantasy. They are worse than that. As I said, they are character assassinations. They are conspiracy theories. They are designed to cause good people to doubt this nominee, but there is a good answer to each of them.

First comes one from House Minority Leader PELOSI, who has no role whatsoever in the Supreme Court process. The Senate has the responsibility of providing advice and consent. The House of Representatives is a virtual spectator, like the rest of the American population. She called his nomination "a clear and respectful assault on the fundamental rights of women." It is an outrageous statement.

NARAL Pro-Choice America, the national abortion rights action league, has claimed that any vote to confirm him would be one that would "punish women." This same group also degenerated into a middle-school mocking of his name. I am not sure what relevance that has, but it shows, I believe, how desperate opponents of this nomination are.

If you don't have anything substantive to offer as criticism or if you don't have policy differences that you want to debate, engage in name calling. That is all this is.

A Yale Law professor, Amy Chua, wrote last week in the Wall Street Journal about how Judge Kavanaugh had been a mentor to young female lawyers whom he has engaged with over his legal career. The professor wrote that since he joined the Court of Appeals for the DC Circuit in 2006, a quarter of the judge's law clerks, the most valued members of his staff, have been members of a minority group—one or the other—and more than half, 25 out of 48, have been women. Years ago, when I was a member of the Texas Supreme Court, it seemed as though I also had a similar proclivity to hire female clerks.

I asked one of them one day: Why is it you think I hired you to be my law clerk?

She said: It is easy, Judge—women are smarter, and they work harder.

Perhaps that is what Judge Kavanaugh discovered during his experience too.

These women, these former clerks, have spoken glowingly about Judge Kavanaugh's mentorship and his personal decency and support and encour-

agement for their careers. It is absurd and hyperbolic to call Judge Kavanaugh anti-woman. It is so ridiculous. You would wonder why anybody would feel as if they needed to respond. Here in Washington, DC, in the echo chamber inside the beltway and with all the special interest groups and the mainstream media unfortunately many times repeating these falsehoods over and over again, it is necessary for some of us to stand up and say: This is blatantly false.

The women who know Judge Kavanaugh best and worked alongside him in his chambers would take issue with Ms. PELOSI's characterization.

A second line of conspiracy theories regarding Judge Kavanaugh relates to Presidential power. Some have claimed that Judge Kavanaugh believes that a President cannot be indicted for a crime and that that should be an automatic disqualification for Supreme Court consideration. Well, this arises out of a misreading and a misunderstanding of a 2009 Minnesota Law Review article he wrote that explored a gray area of the law and suggested that Congress consider legislation that would defer civil lawsuits and criminal charges until after the President leaves office.

As people will remember, Judge Kavanaugh worked for a while for the independent counsel who was investigating then-President Clinton. He said he learned from that experience that a President is busy doing so many things, it really makes sense not to provide immunity but, rather, to defer litigation of those criminal indictments, should there be any, and civil cases until after the President leaves office. He was quick to note that if the President ever engaged in serious misconduct, there was always the option of impeachment, which is very different from a criminal case. It is one where Congress expresses its view on the suitability of an office holder to continue holding office, and that is always a last resort.

As one fact checker found, his position is different from saying that Presidents can't ever be indicted. Professors like Noah Feldman at Harvard Law have agreed. The Fact Checker from the Washington Post concluded by calling these claims "an extreme distortion" of Judge Kavanaugh's views and I believe gave it two Pinocchios for being false and misleading.

A third and final line of bogus arguments I want to address this afternoon hinges on his views regarding the Affordable Care Act, sometimes called ObamaCare, with the senior Senator from Massachusetts saying that he is "hostile to healthcare." That is as preposterous as saying he is hostile to women. Who is hostile to healthcare? Well, that was also fact-checked by the New York Times, which found hers and other claims to be highly exaggerated.

The reality is that Judge Kavanaugh, in his official capacity, has issued two

dissenting opinions and legal challenges to the Affordable Care Act, both highly technical in nature. Clearly, he is not against healthcare. That is really just a dumb comment. He is simply a judge, who has no role in evaluating the wisdom or efficacy of policies. His job is to call balls and strikes, as an umpire would, to decide whether something is within the law or outside of the law. I believe he will continue to do that when confirmed as a Justice on the Supreme Court.

I agree with the majority leader, Senator MCCONNELL, who last week said Judge Kavanaugh's qualifications are "so obvious, and his reputation so excellent, that unhinged attacks are all that remains in the far left's arsenal." I agree with him, but that doesn't mean we won't continue to hear these unhinged, ridiculous charges against a good man. Judge Kavanaugh, by all accounts, is a fair and thoughtful judge who approaches each judicial decision with precise reasoning and careful analysis. That is why the conspiracy theories will not work. They are doomed to fail, and the cracks are already beginning to show.

As I said, the Judiciary Committee will conduct a thorough and timely hearing, and then we will follow with an up-or-down vote in the committee and then on the Senate floor this fall, prior to the time the Supreme Court's new term begins in October. The eventual outcome from this process should be that Judge Kavanaugh will be easily confirmed. That is what he and I believe the American people deserve.

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

The PRESIDING OFFICER (Mr. DAINES). Without objection, it is so ordered.

#### TRUMP-PUTIN SUMMIT

Mr. NELSON. Mr. President, almost everybody in the world knows by now that the President met with Vladimir Putin today. While nobody knows what the two Presidents said in their private meeting, what they said afterward certainly should alarm all of us.

President Trump refused, once again, to accept the fact that Russia, at Putin's order, interfered in our elections. What the President said was alarming, it was embarrassing, and it is unacceptable. We know Putin interfered, and we know he will do it again in our upcoming elections. This is from the unanimous report of the intelligence community of this country and was reaffirmed earlier today by the Director of National Intelligence, former Senator Dan Coats, who was President Trump's appointee.

In its January 2017 assessment, the IC assessed that Russian President Putin ordered an influence campaign in the 2016 election, which was aimed at

the U.S. Presidential election. That assessment described the campaign as a mix of cyber operations that were conducted by Russian intelligence services in its overt use of propaganda and fake social media accounts and trolls.

Take it from President Trump's own administration. Then-Director of the CIA and now-Secretary of State Mike Pompeo acknowledged the Russian interference. He stood by the intelligence community's assessments, and that was a year and a half ago. He even said he had every expectation that Russia would continue to try to interfere in our elections.

A few days ago, Dan Coats, who is the Director of the DNI, said:

The warning lights are blinking red again. . . . The digital infrastructure that serves this country is literally under attack.

Just this past Friday, the Justice Department announced the indictment of 12 Russian intelligence officers for hacking the Clinton campaign and the DNC. This is just the latest in a series of indictments.

Today, though, the President, while standing right next to Vladimir Putin, said that while the men and women of the U.S. intelligence community concluded with high confidence that Putin did, indeed, interfere in our elections, President Trump said:

[President Putin] said it's not Russia. I don't see any reason why it would be.

That is rather curious.

Even worse, the President stood next to Putin and said the United States was to blame for the Russian aggression. Let me repeat that. The President stood next to Putin and said the United States was to blame for the Russian aggression. This Senator believes our own intelligence community, not a former KGB spy and colonel who is bent on undermining democracy and the rule of law around the world, is whom you ought to believe.

What does a spy do? In order to achieve a spy's ends, the spy lies. That is what and how Vladimir Putin was trained, and it is obvious he is no friend of the United States.

There has been a lot of discussion about Russia, and I know that, at times, it can be confusing to everyday folks. Yet amidst all of the talk and the disinformation, it is critically important that we don't lose sight of the threat to our democracy. That is what Russian interference in our elections is. It is an attack on the very foundation of our democratic institutions. Of course, that is what Putin is trying to do—invalidate our own democracy in order to divide us; it is to undermine our own faith in our own institutions, and to ultimately undermine American leadership in the world.

This should not be a partisan issue in America, in our domestic politics. I hope we come together quickly, in a bipartisan way, to defend ourselves and to finally push back on Putin. I hope we insist that the White House enforces all of the economic sanctions the Congress has already pushed

through but that the White House has been very slow to enact. I hope this Congress is also going to enact more economic sanctions and get them to where they will really start causing a crimp in the step of the Russian leaders. Why not start freezing the bank accounts of some of its highest leaders?

First, the United States, led by our President, has to see the enemy and the threat for what they are. Now, going on 2 years into his administration, the President is unwilling to stand up to Putin—man-to-man, eyeball-to-eyeball—and to defend our country.

I yield the floor.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDING OFFICER. The majority leader is recognized.

NOMINATION OF BRETT KAVANAUGH

Mr. MCCONNELL. Mr. President, it has been less than a week since the President nominated Judge Brett Kavanaugh to serve as an Associate Justice of the Supreme Court. Already, praise has poured in for his legal abilities, professional accomplishments, and personal character.

Some of the most interesting testimony has come from the men and women who may know better than anyone how Judge Kavanaugh approaches his work—his law clerks. You can learn a lot about a leader by asking the men and women who work for and with him. Thirty-four of his past clerks sent an open letter to Chairman GRASSLEY and Senator FEINSTEIN last week.

Their own political and legal views are quite diverse:

Our ranks include Republicans, Democrats, and Independents. But we are united in this: our admiration and fondness for Judge Kavanaugh run deep.

They describe his commitment to legal excellence:

We never once saw him take a shortcut, treat a case as unimportant, or search for an easy answer. Instead, in each case, large or small, he masters every detail and rereads every precedent.

They also compliment the way Judge Kavanaugh conducts himself both inside and outside the courtroom. They call him "unfailing warm and gracious, grounded, and kind." They describe a "fundamental humility."

A subset of those clerks wrote a second letter. It was from every one of Judge Kavanaugh's female clerks whose current employments allowed them to sign it.

These 18 women explain: "We feel compelled to write separately to convey our uniformly positive experiences with the Judge as a boss on issues of gender and equality in the workplace."

"In our view," they write, "the Judge has been one of the strongest advocates in the Federal judiciary for women lawyers."

They explain how Judge Kavanaugh seeks out the best and brightest, how he goes above and beyond to advise and mentor all of his clerks.

Judge Kavanaugh's hiring reflects, in their words, "rare gender parity." Note