



United States  
of America

# Congressional Record

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

Vol. 164

WASHINGTON, WEDNESDAY, JANUARY 2, 2019

No. 207

## Senate

The Senate met at 4 p.m. and was called to order by the Honorable JOHN BOOZMAN, a Senator from the State of Arkansas.

### PRAYER

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

Let us pray.

O God, from whom all desires and good counsels proceed, rise mercifully upon our darkened hearts, and deliver us from the trench warfare of yet another government shutdown. Wipe out all our old, secret, and selfish desires so that we may be true instruments for Your glory. Lord, remind our law-makers that You are our strength and that those who abandon You cannot ultimately prevail.

Be near to this Nation, O Lord. We are Your children and find our protection in You.

We pray in Your mighty 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 senior assistant legislative clerk read the following letter:

U.S. SENATE,  
PRESIDENT PRO TEMPORE,  
Washington, DC, January 2, 2019.

To the Senate:

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

ator from the State of Arkansas, to perform the duties of the Chair.

ORRIN G. HATCH,  
President pro tempore.

Mr. BOOZMAN 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.

### CHILD PROTECTION IMPROVEMENTS ACT OF 2017

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of the House message to accompany H.R. 695, which the clerk will report.

The senior assistant legislative clerk read as follows:

House message to accompany H.R. 695, a bill to amend the National Child Protection Act of 1993 to establish a voluntary national criminal history background check system and criminal history review program for certain individuals who, related to their employment, have access to children, the elderly, or individuals with disabilities, and for other purposes.

Pending:

McConnell motion to concur in the House amendment to the Senate amendment to the House amendment to the Senate amendment to the bill.

### RECOGNITION OF THE MAJORITY LEADER

(Mr. GARDNER assumed the Chair.)

The PRESIDING OFFICER (Mr. YOUNG). The majority leader is recognized.

### APPROPRIATIONS

Mr. McCONNELL. Mr. President, I would like to wish my colleagues happy new year. It is a time for new beginnings. Tomorrow, we will kick off the 116th Congress.

Of course, there is urgent business that the new House and the new Senate will need to tackle immediately. Democrats will finally have to get serious about border security so a government funding agreement can be reached that can pass the House, earn 60 votes in the Senate, and get a Presidential signature. All three of those things are needed to make a law. One partisan vote in the House tomorrow is not going to solve anything.

I made it clear to the Speaker that we are not interested in having show votes in the Senate. We are interested in bringing up something the House has passed, 60 Senators will support, and the President will sign; in other words, make a law.

The legislation House Democrats are reportedly planning to introduce and have voted on tomorrow will not be a serious contribution to the negotiations that are going on between the administration and the incoming Democratic majority in the House. It isn't comprehensive. It ignores the needs of border security. It is exactly the kind of proposal you would expect if the incoming House Democrats were choosing to stage a political sideshow rather than doing the hard work of helping to govern the country; in other words, it is a total nonstarter.

Will these new Democrats come to Washington ready to roll up their sleeves, work together, and make laws or are they going to waste time on partisan show votes that will do nothing to move the country in a forward direction? That is the question, political performance art or responsible governance?

We will get an early signal in the next few days, but let me make it perfectly clear one more time, as I have

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



Printed on recycled paper.

S8051

said consistently for the last 2 weeks: The Senate will not waste its time considering a Democratic bill which cannot pass this Chamber and which the President will not sign.

#### NOMINATIONS

Mr. President, on another matter, I am pleased to announce this evening that the Democratic leader and I have reached an agreement to confirm a number of the administration's nominees. In a few moments, I will be asking unanimous consent to confirm a series of several well-qualified individuals to serve in important executive branch posts. Each of them will be confirmed. I am glad the President will have more of his rightful team in place, and I am glad this group of newly confirmed nominees will be able to get to work on important business for the American people.

#### EXECUTIVE SESSION

#### EXECUTIVE CALENDAR

Mr. McCONNELL. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider the following treaty on today's Executive Calendar No. 7. I further ask unanimous consent that the treaty be considered as having passed through its various parliamentary stages, up to and including the presentation of the resolution of ratification; that any committee conditions, declarations, or reservations be agreed to as applicable; that any statements be printed in the CONGRESSIONAL RECORD as if read; further, that when the resolution of ratification is voted upon, the motion to reconsider be laid upon the table and that the President be immediately notified of the Senate's action.

There being no objection, the Senate proceeded to consider Treaty Document No. 114-7, U.N. Convention on the Assignment of Receivables in International Trade.

Mr. McCONNELL. I ask for a division vote on the resolution of ratification.

The PRESIDING OFFICER. The question is on the resolution of ratification.

All in favor stand and be counted. All opposed stand and be counted.

Two-thirds of the Senators present having voted in the affirmative, the resolution of ratification is agreed to.

The resolution of ratification is as follows:

Resolved, (two-thirds of the Senators present concurring therein),

Section 1. Senate Advice and Consent Subject to Understandings and Declarations.

The Senate advises and consents to the ratification of the United Nations Convention on the Assignment of Receivables in International Trade, done at New York on December 12, 2001, and signed by the United States on December 30, 2003 (the "Convention") (Treaty Doc. 114-7), subject to the understandings of section 2 and the declarations of sections 3 and 4.

Sec. 2. Understandings.

The Senate's advice and consent under section 1 is subject to the following under-

standings, which shall be included in the instrument of ratification:

(1) It is the understanding of the United States that paragraph (2)(e) of Article 4 excludes from the scope of the Convention the assignment of—

(A) receivables that are securities, regardless of whether such securities are held with an intermediary; and

(B) receivables that are not securities, but are financial assets or instruments, if such financial assets or instruments are held with an intermediary.

(2) It is the understanding of the United States that the phrase "that place where the central administration of the assignor or the assignee is exercised," as used in Articles 5(h) and 36 of the Convention, has a meaning equivalent to the phrase, "that place where the chief executive office of the assignor or assignee is located."

(3) It is the understanding of the United States that the reference, in the definition of "financial contract" in Article 5(k), to "any other transaction similar to any transaction referred to above entered into in financial markets" is intended to include transactions that are or become the subject of recurrent dealings in financial markets and under which payment rights are determined by reference to—

(A) underlying asset classes; or

(B) quantitative measures of economic or financial risk or value associated with an occurrence or contingency. Examples are transactions under which payment rights are determined by reference to weather statistics, freight rates, emissions allowances, or economic statistics.

(4) It is the understanding of the United States that because the Convention applies only to "receivables," which are defined in Article 2(a) as contractual rights to payment of a monetary sum, the Convention does not apply to other rights of a party to a license of intellectual property or an assignment or other transfer of an interest in intellectual property or other types of interests that are not a contractual right to payment of a monetary sum.

(5) The United States understands that, with respect to Article 24 of the Convention, the Article requires a Contracting State to provide a certain minimum level of rights to an assignee with respect to proceeds, but that it does not prohibit Contracting States from providing additional rights in such proceeds to such an assignee.

Sec. 3. Declarations to be Included in the Instrument of Ratification.

The Senate's advice and consent under section 1 is subject to the following declarations, which shall be included in the instrument of ratification:

(1) Pursuant to Article 23(3), the United States declares that, in an insolvency proceeding of the assignor, the insolvency laws of the United States or its territorial units may under some circumstances—

(A) result in priority over the rights of an assignee being given to a lender extending credit to the insolvency estate, or to an insolvency administrator that expends funds of the insolvency estate for the preservation of the assigned receivables (see, for example, title 11 of the United States Code, sections 364(d) and 506(c)); or

(B) subject the assignment of receivables to avoidance rules, such as those dealing with preferences, undervalued transactions and transactions intended to defeat, delay, or hinder creditors of the assignor.

(2) Pursuant to Article 36 of the Convention, the United States declares that, with respect to an assignment of receivables governed by enactments of Article 9 of the Uniform Commercial Code, as adopted in one of its territorial units, if an assignor's location

pursuant to Article 5(h) of the Convention is the United States and, under the location rules contained in section 9-307 of the Uniform Commercial Code, as adopted in that territorial unit, the assignor is located in a territorial unit of the United States, that territorial unit is the location of the assignor for purposes of this Convention.

(3) Pursuant to Article 37 of the Convention, the United States declares that any reference in the Convention to the law of the United States means the law in force in the territorial unit thereof determined in accordance with Article 36 and the Article 5(h) definition of location. However, to the extent under the conflict-of-laws rules in force in that territorial unit, a particular matter would be governed by the law in force in a different territorial unit of the United States, the reference to "law of the United States" with respect to that matter is to the law in force in the different territorial unit. The conflict-of-laws rules referred to in the preceding sentence refer primarily to the conflict-of-laws rules in section 9-301 of the Uniform Commercial Code as enacted in each State of the United States.

(4) Pursuant to Article 39 of the Convention, the United States declares that it will not be bound by chapter V of the Convention.

(5) Pursuant to Article 40, the United States declares that the Convention does not affect contractual anti-assignment provisions where the debtor is a governmental entity or an entity constituted for a public purpose in the United States.

Sec. 4. Self-Execution Declaration.

The Senate's advice and consent under section 1 is subject to the following declaration: This Convention is self-executing.

#### EXECUTIVE CALENDAR

Mr. McCONNELL. Mr. President, I ask unanimous consent that the Commerce Committee be discharged from further consideration and the Senate proceed to the consideration of PN1999; that the nominations be confirmed; that the motions to reconsider be considered made and laid upon the table with no intervening action or debate; that no further motions be in order; that any statements related to the nominations be printed in the RECORD; that the President be immediately notified of the Senate's action; and that the Senate then resume legislative session.

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

Thereupon, the committee was discharged, and the Senate considered and confirmed the nominations as follows:

The following named officers for appointment in the United States Coast Guard to the grade indicated under title 14, U.S.C., section 271(d).

#### To be rear admiral

Rear Adm. (lh) Matthew T. Bell, Jr.  
Rear Adm. (lh) Melissa Bert  
Rear Adm. (lh) David M. Dermanelian  
Rear Adm. (lh) Robert P. Hayes  
Rear Adm. (lh) Andrew J. Tiongson  
Rear Adm. (lh) Anthony J. Vogt

#### EXECUTIVE CALENDAR

Mr. McCONNELL. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged and the Senate proceed to the en bloc consideration of the following nominations: