

in which he claimed that GEN John Abizaid's nomination to be Ambassador to Saudi Arabia "is being held up."

Allow me to ease the majority leader's concerns. Far from being "held up," the Foreign Relations Committee, with my full support, has been extremely diligent in taking up General Abizaid's nomination; he appeared on the very first committee nominations hearing of the 116th Congress, and his nomination is advancing through the regular committee process expeditiously. I look forward to his approval by the committee and, hopefully, a speedy confirmation. As with all nominees, his final confirmation is under the control of the majority leader.

I am concerned that the majority leader has an inaccurate view of the nominations situation facing the Foreign Relations Committee. He stated yesterday that "if we want to solve problems in the Middle East, through diplomacy, we'll need to confirm diplomats." Unfortunately, we cannot confirm diplomats that we do not have.

It took 23 months before the Trump administration bothered to nominate General Abizaid, leaving a gaping hole in our diplomatic posture to Saudi Arabia and the region. It is possible that this failure of leadership is the result of the President believing that his son-in-law, Jared Kushner, is capable of doing this job from the White House.

Regardless of the reason, Saudi Arabia is not an isolated example. It took even longer, over 2 years, before the Trump administration nominated a candidate to be U.S. Ambassador to Turkey. We are now 26 months into the Trump administration, and we still lack ambassadorial nominees to critical countries like Egypt, Pakistan, and our close ally, Jordan. This failure is a reckless abdication of a constitutional responsibility that is essential to projecting American power abroad. There is only one person responsible for this failure: President Trump; yet the majority leader appears to be curiously oblivious to that fact.

Let me be clear: When the committee has received nominations, we have worked with efficiency and diligence to vet and advance those nominations. I have devoted my time and staff resources to ensure this because of my strong belief that the State Department, USAID, and other foreign affairs agencies must be appropriately staffed. We cannot promote our foreign policy, protect American citizens, and advocate for American businesses without a robust diplomatic corps. In the 115th Congress, the committee reported 169 nominations. I reject any assertion that we have not done our part to ensure that the State Department is appropriately staffed.

All too often, however, the committee has received nominations late or not at all.

There is, unfortunately, there is another severe problem that we cannot ignore with regard to this administration's nominees. Delays in advancing

Trump political nominees is largely due to poor vetting by this administration. When the President nominates and renominates individuals with restraining orders for threats of violence, who engaged in incidents that should, frankly, mean they never should have been nominated, or made material omissions, sometimes on a repeated basis, in their nomination materials, the Foreign Relations Committee must do our due diligence on behalf of the American people. Someone has to. My staff and I have had to spend significant additional time on vetting because of the White House's negligence or incompetence.

The United States and our allies continue to face tremendous challenges around the world. We must continue to lead on the international stage and work in collaboration with international partners to achieve our shared security goals, but to have our diplomats in place, they must be nominated in a timely fashion and vetted properly. Despite the majority leader's confusion on this issue, that is the real hold-up here.

#### S.J. RES. 7

Mr. MENENDEZ. Mr. President, I rise to express a concern over the Rubio amendment to the Sanders-Lee joint resolution, S.J. Res. 7, which was passed by voice vote in yesterday's debate.

The Rubio amendment attempts to make clear that nothing in the joint resolution is intended or may be interpreted to affect any intelligence or counterintelligence activity or investigations relating to threats in or from Yemen, which involves the collection, analysis, or sharing of intelligence with any coalition partner.

I do not believe that it was the intention of the authors of S.J. Res. 7 to restrict these intelligence activities *per se*. I believe it was Senator RUBIO's intention to make sure that that legitimate intelligence activities, as specified, were not affected.

However, my concern springs from the full implications of what "sharing intelligence" means. I assume it is meant to share useful intelligence the United States may acquire about the intentions, activities, characteristics, and other information about, for example, the Houthis or Al Qaeda in the Arabian Peninsula. That is entirely appropriate.

But if the intelligence being shared is actually information that allows Saudi Arabia or other members of the Saudi-led coalition to specifically target and conduct military operations, such as airstrikes, against specific sites in Yemen, then that would get perilously close to the U.S. being directly involved in hostilities in Yemen, including under the War Powers Resolution.

Section 8 of the War Powers Resolution considers U.S. Armed Forces to be "introduced into hostilities" if, among other activities, members of the U.S.

Armed Forces "coordinate" the activities of foreign forces. Arguably, enabling Saudi forces to target specific sites in Yemen could constitute "coordination" under the War Powers definition.

Why is this important? It is important, first, to preserve the scope of application of the War Powers Resolution, which the Congress enacted to rein in the power of the executive branch to make war anywhere under any circumstances.

Second, the more direct assistance U.S. Armed Forces provide to the Saudi-led coalition, the closer they are associated with the actions of those countries. That could lead to shared liability in those activities if and when those activities lead, inadvertently or otherwise, to atrocities on the ground in Yemen.

Again, I do not believe that it was the intention of the author of this amendment to create the legal space for this to occur. I would advise the Department of Defense and the appropriate intelligence agencies to be mindful of this issue and be cautious about what intelligence information is shared and for what purposes it is used.

#### H.R. 269

Mr. BRAUN. Mr. President, I ask unanimous consent that the following letter be printed in the CONGRESSIONAL RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. SENATE,  
March 14, 2019.

Hon. MITCH MCCONNELL,  
Senate Majority Leader,  
U.S. Senate, Washington, DC.

DEAR LEADER MCCONNELL, I am requesting to be consulted before the Senate enters into any unanimous consent agreements or time limitations regarding H.R. 269, the Over-the-Counter Drug Safety, Innovation, and Reform Act. I further request that this legislation not be incorporated into any larger legislative vehicles that the Senate as a whole may consider until the concerns I describe below are fully addressed.

This legislation streamlines the outdated over-the-counter (OTC) drug approval process at the U.S. Food and Drug Administration (FDA)—a process originally developed in 1972. Specifically, the legislation allows the FDA to approve OTC versions of prescription drugs administratively, rather than going through the lengthy notice-and-comment-rulemaking procedures under the Administrative Procedure Act. The legislation also encourages more innovation and investment in the OTC space by providing an 18-month market-exclusivity component that rewards a return on investment for new OTC drugs. The 18-month market exclusivity period is crucial to creating a thriving OTC drug market; however, H.R. 269 does not contain adequate oversight mechanisms to ensure that this exclusivity provision is not abused by some OTC drug manufacturers after the reforms of H.R. 269 are implemented by the FDA.

Although the legislation encourages more innovation and investment in the OTC space, it does not include any conditions under which an OTC drug manufacturer would forfeit eligibility for the 18-month exclusivity

period. For example, there is no “failure to market” provision for OTC drug approvals in the legislation similar to the provisions applying to generic drugs under Hatch-Waxman to prevent OTC drug manufacturers, who can otherwise enter the market, from refraining to do so (a practice called exclusivity parking).

Anti-competitive behavior—like exclusivity parking—has disrupted the generic drug industry. In fact, exclusivity parking has become common in the context of patent litigation settlement agreements where proprietary drug manufacturers pay generic drug manufacturers to delay entering the market, allowing proprietary drug manufacturers to charge higher prices for long periods of time (i.e. pay-for-delay settlements). The Federal Trade Commission has estimated that this behavior costs consumers \$3.5 billion per year as a result of higher brand-name drug prices. And even though the process for obtaining OTC drug approval under H.R. 269 is more straightforward than that for obtaining market approval for a generic drug—anti-competitive behavior (e.g., exclusivity parking) may creep into the OTC drug space if Congress fails to include sufficient oversight mechanisms in the legislation to ensure adequate accountability and effective competition.

Modernizing the OTC drug approval process under H.R. 269 will benefit consumers and advance the public health; however, H.R. 269 as currently drafted does not give the FDA the necessary oversight tools to ensure accountability in the OTC space. Including a “failure to launch” provision in H.R. 269—that is, a mechanism that gives an OTC drug manufacturer a reasonable amount of time to bring an FDA approved OTC product to market—will protect the incentive to innovate and invest, while also providing adequate accountability. Indeed, to ensure effective competition in the OTC space, Congress must provide the FDA with the necessary oversight tools to prevent abuse of the OTC regulatory approval process under the reforms of H.R. 269.

Thank you for protecting my rights as a Senator to weigh in on this legislation, which has not gone through regular order during my time as a member of the Committee to which this legislation has been referred to in the 116th congress.

Sincerely,

MIKE BRAUN,  
*United States Senator.*

#### RECOGNIZING THE AMERICAN LEGION

Mr. CRAPO. Mr. President, I congratulate the American Legion on its 100-year anniversary.

On March 15, 1919, the first American Legion caucus was held. Later that year, Congress established the American Legion as a federally chartered corporation with purposes that include “to cement the ties and comradeship born of service; and to consecrate the efforts of its members to mutual helpfulness and service to their country.” The original membership to the American Legion was extended to those who served in the Armed Forces during World War I, which had ended a few months before the organization was started. Over the past 100 years, its membership has grown to nearly 2 million, with more than 12,000 posts.

I recently joined fellow Senators in cosponsoring S. 504, the Let Everyone

Get Involved in Opportunities for National Service, or LEGION, Act, which would enable the American Legion to establish its own membership criteria instead of requiring an act of Congress to change eligibility requirements. In this legislation, we recognize the American Legion “provides invaluable services to its members and supports the community of veterans who sacrificed in service of the United States,” and it “has aided, assisted, and comforted the families of the men and women who were called to serve or volunteered to serve . . .”

I join many others across our country, including local posts, in recognizing the American Legion’s century of representation of American veterans. In Idaho alone, there are approximately 9,750 Idaho members of the American Legion as of 2018.

Thank you to the American Legion and its membership for your outstanding service to our country and America’s veterans. Congratulations on 100 years of achievements on their behalf. I look forward to our continued work ahead to ensure veterans have access to the highest quality services worthy of their remarkable dedication to our Nation.

#### ADDITIONAL STATEMENTS

##### 50TH ANNIVERSARY OF FUELCELL ENERGY

• Mr. BLUMENTHAL. Mr. President, today I wish to recognize FuelCell Energy as it celebrates 50 years of dedication to the research and delivery of clean, affordable fuel cell solutions.

Founded in 1969 by Dr. Bernard Baker as the Energy Research Corporation, the company has grown exponentially over the past half century. Starting as a highly regarded research company focused on electrochemical battery and fuel cell technologies, FuelCell Energy is now a worldwide leader in its field.

The Danbury, CT, based company provides efficient commercial fuel cell solutions for the supply, recovery, and storage of energy. Fifty years of tireless commitment, diligent effort, and creative innovation has resulted in SureSource power plants located in three continents. These power plants have produced over 8.7 million megawatt-hours of ultraclean power.

FuelCell Energy invests its work in all steps of the process: recognizing a need, developing a solution, and then implementing a solution in an economic and sustainable manner. The breadth of their successes and the critical level of forward progress in the realm of clean energy are truly impressive. Thanks to their remarkable efforts, FuelCell Energy enables universities, commercial enterprises, government entities, and other industries the opportunity to make clean choices in a more affordable and accessible way than ever before.

As they mark this important anniversary, the company continues to

look toward the future, searching for even more effective options that will benefit our planet and its people. Though there is still more progress to be made, FuelCell Energy stands at the forefront of past innovation and future possibility.

Devoted to creating energy solutions that will make it easier for more and more industries to use clean power, FuelCell Energy is a positive model for modernization and advancement in this vital field. I applaud the accomplishments of FuelCell Energy’s visionary leaders and highly skilled and dedicated workers and hope my colleagues will join me in congratulating FuelCell Energy on 50 years of excellence.●

#### REMEMBERING EUBA HARRIS- WINTON

• Mr. BOOZMAN. Mr. President, today I wish to recognize the contributions of Euba Harris-Winton to Fort Smith and the State of Arkansas. She passed away on Monday, March 11, at the age of 95 and leaves behind a large, loving family and countless Arkansans whom she helped and inspired throughout her life.

Euba was born on June 26, 1923, to Rev. Daniel Haven Edward Harris and Martha T. Hill Harris in Cotton Plant, AR. Her school years were spent in Fort Smith where she attended Howard Elementary School and Lincoln High School. After attending Westark Community College and Philander Smith College, she returned to Fort Smith to raise a family with her husband, Ellsworth Daniel Winton. They had 10 children: five girls and five boys.

She was a devout member of the United Methodist Church, and her great faith and passion for service led her to become the executive director of the Mallalieu Community Development Center in 1970. The center’s mission was to strengthen the outreach ministry of the church. As part of that mission, she worked on efforts to fight poverty, improve substandard housing, increase educational opportunities, and personally provide help to anyone who asked. She led the organization for 25 years and improved the lives of countless Arkansans in the process.

Throughout her life, she met with leaders at all levels of government to advocate for others and served on numerous boards and councils. In an article in the Lincoln Echo several years ago, Bennie Mae Ware Gunn remarked that, “Euba is known and respected for being both relentless and resourceful in her pursuit of justice and opportunities for others. However, she is also known for her sensitivity and compassion.”

That is certainly true of my experience with her and that of so many others she influenced or helped over the years. I was honored to know Mrs. Euba and will personally miss her example, kindness, advice, and willingness to help others.

She was a rare individual who never stopped fighting to improve the world