



United States  
of America

# Congressional Record

PROCEEDINGS AND DEBATES OF THE 114<sup>th</sup> CONGRESS, SECOND SESSION

Vol. 162

WASHINGTON, TUESDAY, MAY 10, 2016

No. 73

## Senate

The Senate met at 2:15 p.m. and was called to order by the Honorable ROB PORTMAN, a Senator from the State of Ohio.

### PRAYER

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

Let us pray.

Eternal God, help us to so live that the generations to come will know of Your mighty acts.

Today, guide our Senators in the path You have created, inspiring them with the potency of Your powerful presence. May they trust You in times of adversity and prosperity, knowing that they will reap a productive harvest if they persevere. Lord, keep them from underestimating the power of Your great Name, inspiring them never to forget that nothing is impossible with You. Give them the wisdom to solve the hard problems of our times and grace to live in harmony with one another.

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 senior assistant legislative clerk read the following letter:

U.S. SENATE,  
PRESIDENT PRO TEMPORE,  
Washington, DC, May 10, 2016.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby

appoint the Honorable ROB PORTMAN, a Senator from the State of Ohio, to perform the duties of the Chair.

ORRIN G. HATCH,  
President pro tempore.

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

The ACTING PRESIDENT pro tempore. The Senator from Delaware.

Mr. COONS. Mr. President, I suggest the absence of a quorum.

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

The senior assistant legislative clerk proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.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

### RECOGNITION OF THE MAJORITY LEADER

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

### ENERGY AND WATER DEVELOPMENT APPROPRIATIONS BILL

Mr. MCCONNELL. Mr. President, yesterday we had another opportunity to move the energy security and water infrastructure funding bill forward, and I was disappointed to see it stalled once again.

I wish to reiterate what Senator ALEXANDER, the chairman of the Energy and Water Subcommittee, said. Advancing this funding bill is important—not only for policy but also for process. Members worked in committee and arrived at a bill they reported out unanimously. Many more Members had their voices heard on the floor, where we processed 17 amendments from both Democrats and Republicans.

Now, after much research, debate, and input from both sides, we are al-

most ready to move this bill across the finish line. We have one outstanding issue to address. It is the amendment authored by Senator COTTON, and we will have a vote on it no later than tomorrow. Senator COTTON was rightly concerned about the administration's recent announcement that it would purchase so-called heavy water from Iran, so he filed an amendment that would keep the funds we are appropriating through this bill from being spent on future heavy water purchases from that country.

Let me repeat that point. This amendment does not impact the current heavy water agreement. Instead, it aims at preventing future funds from going to Iran—funds that country could use to procure ballistic missiles or air defenses that could be used against us or our allies.

I agree with Senator COTTON's objective, and I will be supporting his amendment, which aims to keep Americans safe. But regardless of Members' positions on this issue, we will each have an opportunity to have our opinions count with a vote. Whether or not Senators support the amendment, this is the way the process works.

The amendment is a restriction on the use of funds—clearly a matter related to the use of appropriated funds.

No matter how Senators choose to vote on this amendment, we all know the importance of moving forward with this Energy and Water appropriations bill.

I leave colleagues with one last point offered by Senator ALEXANDER yesterday. This energy security and water infrastructure funding bill is one that “virtually every Senator in this body has some interest in,” and passing it would help us “set a good example for the other 11 appropriations bills.”

We will soon have the opportunity to keep moving forward.

Mr. President, I suggest the absence of a quorum.

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

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



Printed on recycled paper.

S2653

The senior assistant legislative clerk proceeded to call the roll.

Mr. CASEY. 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.

#### RESERVATION OF LEADER TIME

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

#### ENERGY AND WATER DEVELOPMENT AND RELATED AGENCIES APPROPRIATIONS ACT, 2016

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of H.R. 2028, which the clerk will report.

The senior assistant legislative clerk read as follows:

A bill (H.R. 2028) making appropriations for energy and water development and related agencies for the fiscal year ending September 30, 2016, and for other purposes.

Pending:

Alexander/Feinstein amendment No. 3801, in the nature of a substitute.

McConnell (for Cotton) amendment No. 3878 (to amendment No. 3801), of a perfecting nature.

The ACTING PRESIDENT pro tempore. The Senator from Pennsylvania.

Mr. CASEY. Mr. President, I ask unanimous consent to speak as in morning business.

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

#### UNANIMOUS CONSENT REQUESTS—EXECUTIVE CALENDAR

Mr. CASEY. Mr. President, I rise to talk today about judges, specifically district court judges across our country. We have a number of judges in Pennsylvania who have not moved forward, and I want to speak to that today.

I think it is a case of or a story about obstruction. It is as simple as that, and there is no excuse for this kind of obstruction. These nominees came from Senators of both parties, and that applies to Pennsylvania, as well, and have had all their credentials vetted and approved by the Judiciary Committee.

Pennsylvania currently has four nominees to the district court, and one seat on the Third Circuit Court of Appeals is vacant as well. All of these excellent nominees deserve immediate consideration and confirmation.

The Pennsylvania judges were agreed to by my colleague from Pennsylvania, Senator TOOMEY. We worked together to arrive at a consensus. Just by way of example, the two we are talking about today, in particular, Judge Susan Baxter and Judge Marilyn Horan, are Pennsylvania judges who have sterling qualifications and credentials, were selected on a bipartisan basis, as I mentioned, in our State, were unanimously

approved by the Senate Judiciary Committee, and they have been languishing now for months, even after Judiciary Committee consideration.

We have two other Pennsylvania district court nominees, Judge John Colville and Judge Milton Younge, who are still inexplicably stuck in the Judiciary Committee, despite being equally qualified and nominated the same day as Judge Baxter and Judge Horan.

So the old expression applies here: Justice delayed is justice denied. That is what we are seeing when we have this kind of obstruction preventing the confirmation of judges who have come through the Judiciary Committee.

The American people have fundamental basic rights. I believe one of those rights is to expect that their courts are working with a full complement of judges. President Obama has seen just 17 judges confirmed in the last 2 years of his Presidency so far—I know we are still in the midst of those 2 years but 17 judges to date in the last 18 months, roughly—compared to 68 when Democrats controlled the Senate the last years of President Bush's administration.

We have seen the same obstruction at all levels of the court system. For example, we know the chief judge of the District of Columbia Court of Appeals, Judge Merrick Garland, has in fact been completely obstructed—not even getting a hearing, not even getting a vote of any kind. That might be the most glaring and egregious example of obstruction. So when it comes to Judge Garland and his consideration to be a member of the Supreme Court, I hope our Republican colleagues would simply do their job. That is what the Constitution tells us we must do. The Constitution says advise and consent, not advise and consent when you feel like it or when it is politically expedient.

One last point about the judiciary, in terms of how essential it is to our democracy, is that we pride ourselves as a nation having a judiciary which is independent—separate from the legislative branch, separate from the executive branch—an independent and in fact coequal branch of government, not an institution that is the instrument of one party, especially the party in power.

So when it comes to Judge Garland, we simply ask Republican Senators to do their job: allow a hearing, conduct a hearing, ask a lot of questions, and then have a vote on Judge Garland to be a Justice.

On district court nominees, it is as simple as agreeing to what has already been agreed to; that all these candidates are of the highest caliber and they are through the Judiciary Committee. All we need now is for folks in the Senate to come together and make a collective decision to move these district court judges forward.

Mr. President, I yield the floor.

I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. Will the Senator withhold his suggestion of an absence of a quorum?

Mr. CASEY. Yes.

The ACTING PRESIDENT pro tempore. The Senator from Maryland.

Mr. CARDIN. Mr. President, I thank my colleague from Pennsylvania, Senator CASEY, for bringing to the attention of this body the fact that we have not met our constitutional responsibility in the advice and consent of appointments made by the President to the courts.

I think we all understand the challenge on the Supreme Court of the United States, where the failure to hold a hearing on Judge Garland, basically saying the President's term is no longer 4 years but 3 years in an election year, makes no sense at all. We have all been talking about that, but as Senator CASEY pointed out, this is now becoming a matter for our district courts.

Let me share with my colleagues. This past week, I went by the U.S. District Court in Greenbelt, MD, and had a chance to talk with some of the judges who were there. They were telling me there is a serious urgency to fill the vacancies on the Maryland District Court. We have two vacancies on the Maryland District Court. One was appointed by the President in March of last year, Paula Xinis, to fill the vacancy. We have a judicial emergency in Maryland. The President did his job in making the nomination in March of 2015. For reasons I don't quite understand, it took 6 months before the Judiciary Committee reported out that nomination, but they did. They reported it out in September 2015, 6 months later. This is not a controversial appointment. It passed by voice vote out of the Judiciary Committee.

Paula Xinis is well qualified. She has clerked for judges. She has a distinguished record in public service, public interest law as well as in private law. I could go through her full record. I have done it before, but Paula Xinis has now been waiting over a year for consideration.

So I am sort of puzzled. Is the Republican leadership now telling us that the term of a President is no longer 4 years but 2 years for the appointment of district court judges? This is a non-controversial appointment that should have been confirmed well before now and is still on the calendar. As my friend from Pennsylvania pointed out, when we look at the number of actions this Congress has taken on President Obama's appointments—17 confirmations by the Senate—compared to a comparable number in 2008, when the Democrats controlled the Senate and it was in the last 2 years of President Bush's term, 68 nominations were filled in that year.

Currently, we have 20 nominations on the Executive Calendar waiting for action that have been approved by non-controversial votes of the Judiciary Committee. The number of vacancies has increased in these 2 years from 43 to 79.

I know the distinguished leader is on the floor. I am hopeful we will find a