



United States
of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 113th CONGRESS, SECOND SESSION

Vol. 160

WASHINGTON, WEDNESDAY, DECEMBER 3, 2014

No. 146

Senate

The Senate met at 9:30 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.

Our gracious God and friend, great is Your faithfulness. Guard our Senators. As they wait expectantly for Your salvation, may they not stumble in the darkness.

Lord, protect their minds with Your instructions so that they will not deviate from the path of integrity. May they follow Your directions and embrace Your counsel so that America can be like a shining city on a hill.

Give their petitions Your personal care so that no weapon formed against them will prosper. Let praises cascade from their lips and Your promises ring from their tongues, O God of our salvation.

We pray in Your merciful 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.

SCHEDULE

Mr. REID. Mr. President, following my remarks and those of the Republican leader, the Senate will proceed to executive session, with the time until 10 a.m. equally divided and controlled between the two leaders or their designees.

At 10 a.m. the Senate will proceed to five rollcall votes on confirmation of the Burrows and Lopez nominations and on cloture on the Hale, Kearney, and Pappert nominations.

There will be another series of up to five rollcall votes at 5:30 p.m. this afternoon.

MEASURE PLACED ON THE CALENDAR—S. 2970

Mr. REID. Mr. President, I understand that S. 2970 is at the desk and due for a second reading.

The PRESIDENT pro tempore. The Senator is correct.

The clerk will read the bill by title for the second time.

The assistant legislative clerk read as follows:

A bill (S. 2970) to reform procedures for determinations to proceed to trial by court-martial for certain offenses under the Uniform Code of Military Justice, and for other purposes.

Mr. REID. I object to any further proceedings with respect to the bill.

The PRESIDENT pro tempore. Objection is heard. The bill will be placed on the calendar.

RESERVATION OF LEADER TIME

Mr. REID. Would the Chair announce the business of the day.

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

EXECUTIVE SESSION

NOMINATION OF CHARLOTTE A. BURROWS TO BE A MEMBER OF THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

The 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 assistant legislative clerk read the nomination of Charlotte A. Burrows, of the District of Columbia, to be a Member of the Equal Employment Opportunity Commission.

The PRESIDENT pro tempore. Under the previous order, the time until 10 a.m. will be equally divided and controlled between the two leaders or their designees.

Mr. REID. I suggest the absence of a quorum.

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

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

RECOGNITION OF THE MINORITY LEADER

The PRESIDENT pro tempore. The Republican leader is recognized.

HONORING OUR ARMED FORCES

LANCE CORPORAL CHADWICK A. GILLIAM

Mr. MCCONNELL. Mr. President, this morning, I rise to share with my colleagues the story of one brave marine from Kentucky who lost his life while wearing our country's uniform.

LCpl Chadwick A. Gilliam of Mayking, KY, passed away on January 3, 2009, of an apparent cardiac arrest at Camp Buehring, Kuwait. He was 29 years old.

For his service in uniform, Lance Corporal Gilliam received several medals, awards, and decorations, including the Global War on Terrorism Service Medal and the National Defense Service Medal.

Chris Damron, Chad's brother-in-law, recalls how Chad was happy to enlist. "He'd said that it was just something he wanted to do," Chris says. "All his life he wanted to be a Marine."

Before entering the U.S. Marine Corps, Chad graduated from Whitesburg High School in the mid-1990s. After earning his bachelor's degree, he also graduated from Lindsay

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



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Wilson College with a master's degree in counseling and human development.

One of his former high school teachers, Scottie Billiter, said Gilliam was an inspiration to other students. Billiter remembers that Chad had a wide array of interests, from the football team to the Spanish club. "I have nothing but great, fond memories of him," Billiter says. "He was a big part of who we were."

As a marine, Chad continued to be a natural inspiration to others. "All the Marines seemed to really look up to Chad," says brother-in-law Chris Damron. "He was a leader in the Marine Corps."

Chad was assigned to the 2nd Battalion, 6th Marines, 2nd Marine Division, Second Marine Expeditionary Force, based out of Camp Lejeune, NC. He was an infantryman and joined the unit in June 2007. He was promoted to lance corporal in 2008 and deployed to Iraq in support of Operation Iraqi Freedom.

We are thinking of Chad's family as I share his story with my Senate colleagues, particularly his parents Paul Gilliam and Mary Ellen Cook Gilliam, his wife Corinne Marie Stewart Gilliam, his sister Paula Regina Damron, his brother Michael Wayne Gilliam, his brother-in-law Chris Damron, along with many other beloved family members and friends. Chad was preceded in death by his paternal grandparents Willard and Belvia Holbrook Gilliam and his maternal grandparents Arlie and Edna Sergeant Cook.

I know my Senate colleagues join me in expressing gratitude and sympathy to the family of LCpl Chadwick A. Gilliam—gratitude for his life of service and sympathy for his ultimate sacrifice. Without brave men and women such as Lance Corporal Gilliam to defend our country, we would not be free. Those of us who cherish our freedoms must never ever forget that.

I suggest the absence of a quorum

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

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. HARKIN. Mr. President, I support the nomination of Charlotte Burrows to be a commissioner of the Equal Employment Opportunity Commission, or EEOC, and David Lopez to continue to serve as the agency's general counsel.

These are two eminently qualified nominees. Mr. Lopez is a dedicated public servant who has spent over two decades protecting people from workplace discrimination. He did an admirable job during his first term, and was responsible for marked improvements in both the agency's litigation program and in its outreach to stakeholders.

Ms. Burrows has also had a distinguished career in public service. She is currently Associate Deputy Attorney General at the Department of Justice, and previously served as general counsel for Civil and Constitutional Rights for Senator Kennedy and the Committee on Health, Education, Labor, and Pensions. She is a leading expert in the field of discrimination law, and she has proven herself committed to public service.

Both of these nominees deserve to be confirmed by the Senate. And our Nation needs public servants of their caliber and experience at the EEOC, which has the critical mission of protecting working Americans from workplace discrimination.

Throughout my career I have been guided by the vision of an America that is compassionate, just, and inclusive—a society where the government provides a ladder, or sometimes a ramp—of opportunity that gives every American a fair shot at the American dream. However, that ladder cannot function properly if there are barriers of discrimination that unfairly limit opportunities for some Americans to fully participate in the social, political, and economic life of this Nation.

Over the last 50 years, we have made great strides towards eliminating discrimination in the workplace. The Civil Rights Act of 1964 prohibited discrimination on the basis of race, sex, national origin and religion. The Age Discrimination in Employment Act, in 1967, prohibited discrimination on the basis of age. The Americans with Disabilities Act, in 1990, and the ADA Amendments Act, in 2008, prohibited discrimination on the basis of disability.

These important guarantees, however, are not self-enforcing. They are only as strong as the agency charged with enforcing them, the EEOC. The EEOC's mission is simple and profoundly important—to promote equality of opportunity in the workplace and enforce Federal laws prohibiting employment discrimination.

While much progress has been made in recent decades, discrimination in the workplace continues to be all too common. Too many employment decisions are based on insidious stereotypes and prejudices rather than an employee's talent, ability, and qualifications. Too many hardworking Americans face the harsh reality of getting a pink slip or not being hired at all because of race, sex, national origin, religion, age, disability or some other irrelevant factor.

The realities are especially harsh for individuals with disabilities. Less than 30 percent of working-age Americans with disabilities participate in the workforce, and households with an adult member with a disability earn 38.4 percent less than households without an adult member who has a disability. These facts make it clear that people with disabilities are still encountering roadblocks, and that the

ADA's goal of economic self-sufficiency is far from achieved.

The EEOC has an important role to play in combating discrimination and supporting employment opportunities for individuals with disabilities and for all Americans.

Unfortunately, today's EEOC faces enormous challenges. The agency has a substantial backlog of almost 71,000 cases. And it takes an average of 267 days to process a discrimination claim. The truth is that the EEOC suffers from chronic underfunding, and this underfunding has resulted in a significant reduction in full-time employees. Under this administration, the agency has made real progress moving investigations forward in a timely manner, but all too often justice delayed is justice denied.

American workers deserve better, especially in these times of economic turmoil, when discrimination often increases and workers who are victims of discrimination face even greater challenges. Now more than ever, we need strong leadership at the EEOC. The nominees are both extremely well-qualified and have a deep commitment to public service. They possess the extraordinary skills and experience that will help them advance the EEOC's mission and ensure proper enforcement of critically important laws.

Some of my friends on the other side of the aisle have raised concerns that EEOC is too quick to bring lawsuits. That is just not the case. Litigation is a last resort for the agency, and represents less than 0.5 percent of all charges filed and only around 5 percent of charges where the commission has issued a cause finding.

The EEOC under this administration has made enormous strides in improving the conciliation process. In the last 3 years, the EEOC improved its conciliation results significantly with successful conciliations now at a rate of 41 percent of all cases that are conciliated, up from 31 percent in fiscal year 2011. It is important to remember that EEOC v. CRST, the case so often cited as evidence that the agency isn't doing enough in the conciliation process, was a case brought by a Bush administration-appointed general counsel.

My Republican colleagues also criticize the Commission for delegating the prosecution of routine cases to the general counsel. There is absolutely nothing inappropriate about that practice, and it should not be a controversial issue. It is a practical measure to make sure the Commissioners are focusing on the most important issues and have ample opportunity to deliberate on broader policy issues. That is why the EEOC's delegation policy has been carried forward across multiple administrations and has bipartisan support from both Republican and Democratic Commissioners.

Now, I think we can all agree that there have been some unacceptable instances where courts have required the EEOC to pay attorney's fees for a defendant. But those cases are rare and

need to be viewed in perspective. Out of the 1,045 lawsuits filed from fiscal year 2009 through fiscal year 2013, there have only been seven in which fees have been assessed, and two of those are pending an appeal. Generally, the EEOC is prudent and successful in litigation, and the agency has won 11 out of 16 trials from fiscal year 2013 to the present.

I want to comment on another issue that came up at the HELP Committee hearing on these nominees—the EEOC’s work with regard to wellness programs. I am a strong supporter of wellness programs, and I was intimately involved in drafting the section of the Affordable Care Act that encourages such programs. Recently, the EEOC has been involved in litigation involving wellness programs, and I think a lot of people are trying to cloud the issue here. The EEOC has never—never—taken the position that wellness programs are illegal. They are, however, investigating extreme cases where employers have allegedly forced their employees to participate in programs that require medical testing. That raises Americans with Disabilities Act issues, and the EEOC is right to look carefully at the issue. Plus, the agency has indicated that it intends to issue guidance next year to help employers and employees navigate the tricky legal issues.

One final point, none of the manufactured concerns coming from the other side of the aisle have anything to do with the ability of these two nominees to do the job for which they were nominated. No one has questioned their qualifications. Both Ms. Burrows and Mr. Lopez are eminently qualified. Some of my Republican colleagues just do not like the fact that the EEOC is doing its job and enforcing our Nation’s civil rights laws. That is a shame because civil rights should not be a partisan issue. We should all be coming together to support the agency and the important role it plays in making fairer, more equal workplaces.

I urge my colleagues to support both of these distinguished nominees and confirm them quickly so they can get to work ensuring fairness and equal opportunity for every American worker.

The PRESIDING OFFICER. Under the previous order, all cloture time has expired.

Under the previous order, there will be 2 minutes of debate prior to a vote on the Burrows nomination.

Mr. LEAHY. Mr. President, I don’t know of anybody seeking recognition. I ask unanimous consent that all time be yielded back.

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

All time having been yielded back, the question is, Will the Senate advise and consent to the nomination of Charlotte A. Burrows, of the District of Columbia, to be a Member of the Equal Employment Opportunity Commission?

Mr. ENZI. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.
The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from California (Mrs. BOXER), the Senator from Louisiana (Ms. LANDRIEU), and the Senator from West Virginia (Mr. ROCKEFELLER) are necessarily absent.

Mr. CORNYN. The following Senators are necessarily absent: the Senator from Oklahoma (Mr. COBURN) and the Senator from Mississippi (Mr. COCHRAN).

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 93, nays 2, as follows:

[Rollcall Vote No. 301 Ex.]

YEAS—93

Alexander	Gillibrand	Moran
Ayotte	Graham	Murkowski
Baldwin	Grassley	Murphy
Barrasso	Hagan	Murray
Begich	Harkin	Nelson
Bennet	Hatch	Paul
Blumenthal	Heinrich	Portman
Blunt	Heitkamp	Pryor
Booker	Heller	Reed
Boozman	Hirono	Reid
Brown	Hoeven	Risch
Burr	Inhofe	Rubio
Cantwell	Isakson	Sanders
Cardin	Johanns	Schatz
Carper	Johnson (SD)	Schumer
Casey	Johnson (WI)	Scott
Chambliss	Kaine	Sessions
Coats	King	Shaheen
Collins	Kirk	Stabenow
Coons	Klobuchar	Tester
Corker	Leahy	Thune
Cornyn	Lee	Toomey
Crapo	Levin	Udall (CO)
Cruz	Manchin	Udall (NM)
Donnelly	Markey	Vitter
Durbin	McCain	Walsh
Enzi	McCaskill	Warner
Feinstein	McConnell	Warren
Fischer	Menendez	Whitehouse
Flake	Merkley	Wicker
Franken	Mikulski	Wyden

NAYS—2

Roberts Shelby

NOT VOTING—5

Boxer	Cochran	Rockefeller
Coburn	Landrieu	

The nomination was agreed to.

NOMINATION OF P. DAVID LOPEZ TO BE GENERAL COUNSEL OF THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

The PRESIDING OFFICER. The clerk will report the Lopez nomination.

The legislative clerk read the nomination of P. David Lopez, of Arizona, to be General Counsel of the Equal Employment Opportunity Commission.

The PRESIDING OFFICER. Under the previous order, there will be 2 minutes of debate prior to a vote on the nomination.

Mr. ALEXANDER. Mr. President, today we are voting on the nomination of P. David Lopez to serve as general counsel of the Equal Employment Opportunity Commission. The EEOC is an important agency with a critical task.

In August 1963, I stood in the crowd on the National Mall and listened to Dr. Martin Luther King’s “I Have a Dream” speech when he called for our Nation to “make real the promises of democracy.”

The next year, the historic Civil Rights Act of 1964 was passed, establishing the EEOC as an important, independent agency to put an end to workplace discrimination, particularly in hiring, firing, and promoting.

Today, employees are protected by law if they are discriminated against because of race, color, religion, sex, pregnancy, national origin, age, disability, or genetic information.

The EEOC is charged with investigating complaints of discrimination to determine whether or not they have merit, and then attempting to resolve them informally, through conciliation and mediation.

The general counsel at the EEOC has a great deal of responsibility—he or she is in charge of conducting litigation at this important agency.

Mr. Lopez is being re-nominated for the general counsel position. I do not believe he has fulfilled his charge over the last four and one-half years and will not support extending his time at the agency. I would strongly urge my colleagues to vote against this nomination as well.

It is critical that the general counsel make wise decisions about which cases to litigate and how. Unfortunately, Mr. Lopez, often has failed to meet this standard.

I have three primary concerns about the EEOC.

First, EEOC has placed too much emphasis on litigating high profile lawsuits, some of which have been rebuked by the courts, rather than resolving its backlog of discrimination charges filed by individuals.

Second, EEOC has not been fully transparent in how it issues guidance to the public and in the information it shares with the public about its activities.

And third, EEOC is suing employers for following the President’s very own health care law.

On the first concern, a judicious general counsel should view costly and time-consuming litigation as a last resort. However, this EEOC has placed too great an emphasis on litigating high-profile cases, some of which have been rebuked by the courts, rather than resolving its backlog of discrimination charges filed by individuals.

In fiscal year 2014, more than 88,000 charges of discrimination were filed with the EEOC and at the end of November 2014, EEOC reported it had 75,935 unresolved discrimination charges pending.

A backlog of charges pending is nothing new for EEOC, but given this backlog, I am disappointed that this EEOC has placed such a strong emphasis on actions and lawsuits—predicated upon not a single complaint—that do not address actual charges of discrimination brought to the Agency by employees.