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House of Representatives

The House was not in session today. Its next meeting will be held on Friday, August 17, 2018, at 9 a.m.

Senate

WEDNESDAY, AUGUST 15, 2018

The Senate met at 12 noon and was called to order by the President pro tempore (Mr. HATCH).

PRAYER

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

Let us pray.

Glorious God, the source of our strength, fill us with life anew. Strengthen and guide our lawmakers by the light of Your counsels, directing their steps. Lord, open their eyes so that they may discern Your truth and courageously obey Your precepts. Give them reverence for You in all their thoughts, words, and actions. Think Your thoughts through them, providing them with the peace, power, and patience needed to do Your will on Earth.

Eternal God, we give You all praise, glory, blessings, and honor.

We pray in Your sacred 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.

The PRESIDING OFFICER (Mrs. ERNST). The Senator from Utah.

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

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant legislative clerk proceeded to call the roll.

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 Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

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

RESERVATION OF LEADER TIME

The PRESIDING OFFICER. Under the previous order, the leadership time is reserved.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of the following nomination, which the clerk will report.

The senior assistant legislative clerk read the nomination of A. Marvin Quattlebaum, Jr., of South Carolina, to be United States Circuit Judge for the Fourth Circuit.

Mr. CORNYN. Madam President, I ask unanimous consent to speak for up to 15 minutes as in morning business.

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

CALLING FOR THE RELEASE OF AUSTIN TICE

Mr. CORNYN. Madam President, yesterday marked the sixth anniversary of the kidnapping of a brave young man named Austin Tice.

Back in 2012, Austin decided to put his law school studies on hold and

spend the summer in Syria as a freelance journalist. He was frustrated with the lack of good information on Syria's civil war—a war that, by some estimates, has claimed more than one-half million lives and displaced millions more, having created a refugee crisis affecting neighboring countries, like Jordan, Turkey, and Lebanon, and having destabilized the entire region.

In spite of the violence and political turmoil and as a strong believer in the freedom of the press, Austin wanted to let his fellow Americans know what was going on in that terrible civil war, which continues to this day. So he didn't wait around for someone else to act; he went to Syria himself, and he reported on the civil war.

As with most things he tried, Austin proved to be a very successful journalist. But then, in August of 2012, just days before he was planning to leave Syria, he was taken hostage, and little has been heard from him since. That is why I am again today renewing my call for Austin Tice's immediate release by his captors.

Over the last several years, I have had the privilege of meeting with Austin's parents a number of times, Mark and Debra Tice, who have worked tirelessly to locate him and bring him home safely. In fact, I plan to meet with them again this afternoon to bring them up to speed on my most recent conversations with National Security Adviser John Bolton, whom I have asked to meet with the Tices and maintain the continuity between the Obama administration and now the Trump administration when it comes to efforts

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



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to return him safely to his family and friends.

Of course, his family doesn't know Austin as a journalist, primarily; they don't know him primarily as a decorated Marine Corps veteran, a Houston native, and a seventh-generation Texan, either—all of which he is. They, of course, know him as their friend, their brother, their son.

Austin Tice has a family who is waiting for him, missing him, and laboring to find any piece of information that will lead to his whereabouts and return him home safely.

Today, on the sixth anniversary, I am here to say that the entire Nation stands behind the Tice family. In solidarity with them, we call for Austin's immediate release by his captors and urge the administration to use all possible means to secure Austin's safe return home. I am thankful to the Trump administration, as I am to the Obama administration, and I have met with them both about Austin's case.

I know the former administration of President Obama and the current administration of President Trump share my desire to see Austin come home as soon as possible, but we need to take a step back and realize why people like Austin are taken hostage in the first place. In many parts of the world, authoritarian regimes and criminal nonstate actors see a free press as a threat—an existential threat. They don't want to risk a spotlight exposing human rights abuses, lies, corruption, and graft. They want to inoculate themselves from criticism and bury the truth so it never sees the light of day.

In places like Turkey, Syria, China, and elsewhere, journalists are silenced and often jailed, sometimes even killed. We have seen this to the south of our border in Mexico, too, with drug cartels and criminal syndicates that don't like the scrutiny that a free press provides on their illicit activities.

According to organizations like Reporters Without Borders, 2017 was perhaps the most dangerous year on record for journalists, and 2018 is not expected to be any different. We need to be aware of this and constantly vigilant to do our part to ensure journalists' safety and the flourishing of freedom of the press everywhere it can possibly exist.

So, to Austin's parents, I pledge: I will never give up until we find your son and bring him home safely. This week, we will pass another milestone—6 years—but hope that in the near future, the next milestone will be the day that marks Austin's return to the United States and to his family.

NOMINATION OF BRETT KAVANAUGH

Madam President, on a separate note, this week, we will continue the confirmation process for the nominee to fill the vacancy left by the retirement of Justice Anthony Kennedy from the U.S. Supreme Court. Of course, I am talking about Judge Brett Kavanaugh.

This last weekend, the Senate Judiciary Committee released to the public

another enormous batch of records from Judge Kavanaugh's service as a lawyer in the George W. Bush White House. It also released another 21,000 pages just last night. The office of President Bush has now produced more than 174,000 pages of material to the committee, and, of course, that is on top of the judge's judicial record, which has already been produced to the committee.

According to the Wall Street Journal, the White House has turned over more than 195,000 documents on Judge Kavanaugh—significantly more than were produced for either Justice Kagan or Justice Gorsuch. As Chairman GRASSLEY has pointed out, it is the largest cumulative production of executive branch material ever received in the course of evaluating a Supreme Court nominee.

These records, of course, are being reviewed as they are produced, in addition to the 307 opinions or cases in which Judge Kavanaugh wrote an opinion as an appeals court judge, as well as the hundreds more opinions that he joined as a member of the panel.

Once upon a time, our Democratic friends said that these opinions and cases were what mattered the most—not extraneous paper that bears no relevance to the judge's qualification or that he even had any input in. Perhaps our friend, the Democratic leader, remembers the standard he set with regard to documents during Justice Sotomayor's confirmation. He appropriately pointed out, "It is the judicial record, more than speeches and statements, more than personal background, that most accurately measures how modest a judicial nominee will be."

Of course, at the time, the discussion was whether judges respected their unique role in our government, one that came to be described as a modest role—in other words, not primarily as a policymaker. The point is, I agree with the comments made by our friend Senator SCHUMER that it is the judicial record that tells us the most about how a judge will perform once elevated to the U.S. Supreme Court.

At another point, the Democratic leader said, with regard to then-Judge Sotomayor that "we've heard precious little about the body and totality of your 17-year record on the bench, which everybody knows is the best way to evaluate a nominee." Again, I agree with him.

In one final instance, addressing Judge Sotomayor, he said: "I want to turn to your record on the bench, which I believe is the best way to get a sense of what your record will be on the bench in the future." Again, that is common sense.

Well, you heard it: The best way to get a sense for how a judge will perform in the future is how he or she has performed on the bench in the past, and that is according to our friend, Senator SCHUMER—not me, although I agree with him.

As I said, Democrats have 12 years' worth of cases and opinions from Judge Kavanaugh, and I hope they have started to look at them, but I am not so sure that is the case. I believe 20 Democrats have already come out against the nominee, so, apparently, they don't need to see anything else in order to reach a conclusion, and, as I have noted in the past, five of them came out against the nominee before he was even nominated, indicating, of course, that they would oppose anyone nominated by this President.

Now they have turned their tactics to making requests for more and more documents, even while the Washington Post describes their campaign to block Kavanaugh as "fizzling." The article said that our Democratic colleagues have all but acknowledged they are unable to prevent the confirmation, so you might ask: Why the paper chase?

The real answer is, that is all they have left. The Archivist, appointed by former President Obama, has stated that he cannot, nor can any current Archivist, change the law or longstanding and consistent practices when it comes to document production. There is no end run around this process. Of course, the Senate already has most, if not all, of the documents we need—many more, as I mentioned, than they had for either Justices Gorsuch or Kagan. What is going on exactly? I think I have indicated my opinion. It is all they have left.

During the time we were away from Washington this last week, Chairman GRASSLEY said the confirmation hearing for Judge Kavanaugh will begin on September 4, which will be 57 days after President Trump's announcement of the nomination. This is entirely consistent with Justices Sotomayor, Kagan, and Gorsuch. Hearings for those nominees occurred 48 or 49 days after the President's announcement.

We continue to hear new lines of attack developing or, I should say, trying to develop. One I have heard involved Judge Kavanaugh's role as Staff Secretary in the White House—an important job, to be sure, but one more like a traffic cop—in this case, for documents—than a substantive policymaker. As Staff Secretary, he didn't contribute to the documents. He didn't make the policy articulated in the documents. He just made sure they made their way, properly vetted, through the White House, to the President's desk for his signature. That is what the Staff Secretary does.

Others have said they wonder what role Judge Kavanaugh played in developing administration policy regarding detention and interrogation of suspected terrorists. I will answer that for them. The answer is none.

We have heard a few other objections being tossed around, and I will continue to address those in the coming days and weeks. Today I think the last word should go to a self-described liberal, feminist lawyer—that is what she called herself—who has argued more

cases before the U.S. Supreme Court than any other woman. In *POLITICO*, she wrote recently, with regard to Judge Kavanaugh, “Sometimes a superstar is just a superstar.” She said our Democratic colleagues should “stop pretending that Kavanaugh or his record is the issue.” She went on to say he is well-qualified, brilliant, has integrity, and is within the mainstream of legal thought.

Her last words were the most emphatic. She said: “Democrats should quit attacking Kavanaugh—full stop.” She said their behavior is “unbecoming,” and I don’t disagree with her.

We know many on the other side are not particularly interested in the nominee’s qualifications. As I said, for some, the fact that President Trump nominated Judge Kavanaugh is all they need to know. They are opposed to anybody and everybody this President might nominate. Others have now come out in opposition before they have examined these, perhaps approaching, 1 million pages of documents that will be produced. Again, it is obvious it is not material to their decision because they have already announced their opposition. They don’t even want to wait until the hearing where the judge will be questioned and provide answers to the committee’s questions.

We know there is not much to attack when it comes to the judge’s long judicial record of objectivity and fairness on the DC Circuit. They are trying to dig through other people’s emails and conduct a government-sponsored, taxpayer-funded fishing expedition through the records of the entire Bush White House: If we can’t find anything wrong with the nominee, let’s distract people by raising other issues by digging through the papers of the Bush White House.

As I said, I call this the great paper chase. It may result in a never-ending tower of cardboard boxes. Ultimately, it gets us nowhere, and it costs all of us a great deal of time and effort and accomplishes nothing.

The truth is, Judge Kavanaugh is eminently qualified and well respected by everybody who knows him. Having met the judge in 2000, when I served as attorney general of Texas, where he helped me get ready for my oral arguments before the U.S. Supreme Court, I have known the judge and followed his career since that time.

I agree that he is not only eminently qualified, but he is well respected by all those who know him, including me. I look forward to confirming Justice Kavanaugh before the Supreme Court begins its next term at the beginning of October.

I yield floor.

RECESS

The PRESIDING OFFICER. Under the previous order, the Senate will stand in recess until 2:15 p.m.

There being no objection, the Senate, at 12:36 p.m., recessed until 2:15 p.m.

and reassembled when called to order by the Presiding Officer (Mr. COTTON).

The PRESIDING OFFICER. The Senator from Wyoming.

ENDANGERED SPECIES ACT

Mr. BARRASSO. Mr. President, I would like to spend time this afternoon talking about something I continue to hear about in Wyoming. I heard about it a lot over the past week. I heard about it last night in Sundance, WY. It is the Endangered Species Act.

The Endangered Species Act became law in 1973. That was 45 years ago. It was a bipartisan vote. The law has resulted in a lot of great work to save species from extinction. We have seen species such as the bald eagle come back from the brink of being almost completely wiped out. That is a great example of what this law was intended to do—to identify species in danger and to help them recover.

The problem is that there aren’t enough examples like the bald eagle to point to because the goal of the law was to help species get to the point where they no longer needed the protection of the Endangered Species Act. We would put them on the list, they would recover, and then they would come off the list. That was the goal of the bipartisan legislation. That is how it was supposed to work.

Let’s look at what has actually happened. Since the law was put on the books, Washington has put 2,424 different species of plants and animals on the list. Only 54 have ever come off the list because they actually recovered. That is just 54 species in 45 years. That is less than 3 percent. I am a doctor. As a doctor, if I were to admit 100 patients to the hospital and only 3 out of every 100 I admitted recovered enough to be discharged, maybe those patients ought to look for a different doctor. We are now in the same situation the Endangered Species Act.

When it comes to the Endangered Species Act, the status quo is not good enough. We need to do more than just put species on the list and leave them in the intensive care unit without a plan for recovery; we need to see them actually recover. That is the whole point.

The Endangered Species Act has not been substantially amended or updated in 30 years. That is a long time for a law to stay on the books without actually trying to improve it—and improvement is necessary. Americans across the country are telling us it is time. The Endangered Species Act needs to be modernized. As a former Governor of Wyoming, Dave Freudenthal, who came back to testify in front of the Environment and Public Works Committee, said, “It just has too much sand in the gears.”

Well, maybe the problem with the Endangered Species Act doesn’t seem so clear to bureaucrats in Washington, DC, but when you go out West to places like my home State of Wyoming, the problems are obvious. We see how the law is failing to help species. We see it

every day in Wyoming, and it comes up continually in my discussions with folks at home. We see how it is failing the communities—communities that suffer under the law’s ineffective and burdensome redtape. That is why States in the West are tackling this issue when Washington, DC, has done so very little over the last decades.

Three years ago, the Western Governors’ Association—a bipartisan group—began looking at ways to modernize the law to help the Western States. The chairman of the group was Matt Mead, our Governor in Wyoming. He set up a special bipartisan initiative that has been working on this issue all of that time. They talked with people across the political spectrum—liberals, conservatives, Republicans, Democrats—people from all different backgrounds, and they came up with some practical and sensible policy recommendations.

Last month, I released a discussion draft of legislation based on the principles from the Western Governors’ Association and the policies that they are promoting and recommending to help all of the States in the West. It is an effort to recreate what the Western Governors’ Association’s bipartisan process has done and recreate it right here in the Senate. I received a supportive letter from the group that was signed by its Republican chairman and its Democratic vice chairman, Governor Dugaard of South Dakota and Governor Ige of Hawaii—both supporting our initiative. I think it shows we are on the right path.

We also based this discussion draft on input from two hearings that I chaired in the Committee on Environment and Public Works. We heard from a diverse and bipartisan group of witnesses. We heard from Dave Freudenthal, the Democratic former Governor of Wyoming, and from Fish and Wildlife directors from across the country. Most said that the principles set forth by the Western Governors’ Association were a good starting point for modernizing the Endangered Species Act.

One important step that we take in this draft legislation is to elevate the role that States actually play in implementing the law. We make them full partners with Washington, DC. It is necessary and the time is right because when the law was written, States didn’t have the conservation capacity they have today. Over the last 45 years, States have dramatically expanded their expertise and their ability to manage species. They have done a remarkable job over the past 45 years. State and local experts are the ones on the ground. They understand the situation, and they work with the species on a daily basis. They know the needs of these species and the unique challenges they face, the habitats, and the threats to the species.

My draft bill gives States the opportunity to lead wildlife conservation efforts because they are the most prepared and the most able to do it. States