

[Congressional Record Volume 159, Number 63 (Tuesday, May 7, 2013)]  
[Senate]  
[Pages S3104-S3108]

EXECUTIVE SESSION

---

NOMINATION OF DAVID MEDINE TO BE CHAIRMAN AND MEMBER OF THE PRIVACY AND  
CIVIL LIBERTIES OVERSIGHT BOARD

The ACTING 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 bill clerk read the nomination of David Medine, of Maryland, to be Chairman and Member of the Privacy and Civil Liberties Oversight Board.

The ACTING PRESIDENT pro tempore. Under the previous order, there will be 1 hour for debate equally divided in the usual form.

The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I oppose the nomination of David Medine to be the Chairman of the Privacy and Civil Liberties Oversight Board, which is commonly referred to as the PCLOB.

Mr. Medine was nominated for this position during last Congress and the Judiciary Committee, where I serve as the ranking member, held a hearing on his nomination in April 2012.

At the hearing, I asked a number of questions about the various national security statutes that the Board is tasked with overseeing. This included questions about the Foreign Intelligence Surveillance Act and the PATRIOT Act.

Specifically, I asked for his views on these laws. Unfortunately, the responses I received failed to provide his views. He simply stated that he would balance the views of the government against the Board's mandate to review privacy.

I also asked Mr. Medine about his views on the use of law enforcement versus military authorities for combatting terrorism.

I was disappointed that he failed to answer a basic yes-or-no question about national security law: "Do you believe that we are engaged in a war on terrorism?"

Instead, of a simple yes or no, he opted for a more limited answer that military power is permissible in appropriate cases.

This technical answer gives me pause especially in light of the continued threat we face from international terrorist organizations.

Perhaps the most concerning response he provided was to another simple constitutional law question. I asked all the Board nominees a important question about the use of profiling based upon country of origin for immigration purposes.

The Constitution provides broad discretion to the government for purposes of immigration. Each year the government places quotas or c on how many and what types of visas are allowed for each particular country.

For example, if we face a threat from an unfriendly nation, it is important that we have the ability to limit immigration from that country. At the least, immigration and customs agents and consular officers should be able to make decisions of admissibility solely on country of origin.

I asked this same question to the other four current members of the Board--two Democrats and two Republicans. They all answered the same way, that foreign nationals do not have the same constitutional or statutory rights as citizens and therefore U.S. officials should be able to use this as a factor in admissibility determinations.

In contrast to the other four nominees, Mr. Medine argued that use country of origin as the sole purpose was ``inappropriate.''

Specifically, Mr. Medine noted that it would be ``inappropriate'' the Federal Government to profile foreign nationals from high-risk countries based solely upon the country of origin. This is troubling

As the other four nominees noted, foreign nationals do not have the same constitutional or statutory rights as U.S. persons and the government may, lawfully and appropriately, use country of origin as limiting factor for purposes of admission to the United States.

I think this is especially concerning given the recent attacks in Boston and the concerns surrounding potential holes in our immigrati system related to student visa overstays.

[[Page S3105]]

What if our government learns of a terrorist plot undertaken by individuals from a specific country. Under the view advocated by Mr. Medine, excluding all individuals from that nation, even for a defin period of time, would be ``inappropriate.''

Instead, under his view, even faced with this threat, it would only justify ``heightened scrutiny of visitors from that country'' when t individual was ``linked to other information about the plot.''

This a dangerous view of our government's authority to control admission into the country.

Terrorism is fresh on everyone's mind following the recent attacks Boston, but the need to remain vigilant against a terrorist threat should not rise and fall based upon our proximity to an attack.

The terrorist attacks on 9/11 changed the way the government views terrorism and those who want to kill Americans.

We are now nearly 12 years removed from 9/11. Some may believe that we now have the means in place for restricting admission based only upon specific intelligence of a plot. But that view is the type of thinking that allows us to let down our guard.

Those who seek to kill Americans are not letting down their guard. They are always looking for ways to attack Americans and our way of life.

We can see this with the new tactics that they use, such as the failed underwear bombing, the attempted Times Square bombing, and the recent attacks in Boston.

It is through this lens that I view Mr. Medine's answer and why I oppose his nomination to a board overseeing critical national security laws.

While I agree we should always work to ensure that intelligence information is utilized in a manner most likely to achieve the desired result, there are scenarios where we may need to block entry to all members of a certain country.

For example, would Mr. Medine's view apply to wartime situations?

Would we have to admit those whose country was at war with the U.S?

I think his answers point to a dangerous worldview that is out of touch with the threat we face from global terrorist organizations that seek to kill Americans.

It is thinking that deviates from basic constitutional principles that the government was founded on; namely, the ability to protect our citizens by limiting entry into the country.

This is a very serious matter given the Board's oversight of national security law.

Given these concerns, I joined my colleagues in opposing Mr. Medine's nomination when the Judiciary Committee voted on him in February. That party-line vote mirrored the same party-line vote from the previous Congress--even though the committee now has different members.

Above all, I fear that a nomination that is as polarizing as this could cloud the legitimate work of the Board.

This Board is tasked with reviewing some of the most sensitive national security matters we face.

If the Board issues a partisan decision, led by Mr. Medine, it will be discredited because of these controversial fundamental beliefs Mr. Medine holds.

These national security issues are already polarizing--just look at any debate in Congress on FISA or the PATRIOT Act. Adding partisan fueled reports to the fire would only exacerbate these difficult matters.

Given these concerns, I oppose Mr. Medine's nomination and urge my colleagues to do the same. A vote against this nominee is a vote to preserve the legitimate tools to help keep America safe.

I yield the floor and suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.  
The assistant legislative clerk proceeded to call the roll.

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

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

[...]

Mr. LEAHY. Mr. President, I am glad the Senate is finally confirming David Medine as Chairman of the bipartisan Privacy and Civil Liberties Oversight Board, PCLOB. The confirmation of this nominee is a significant victory for all Americans who care about safeguarding our privacy rights and civil liberties. The American people now have a Privacy and Civil Liberties Oversight Board that is at full strength. This Board should help ensure that we honor our fundamental values as we implement a strategy to keep our Nation safe. Today's victory is also a reminder of the challenges we face, and the commitment we must keep, to protect personal privacy as new technologies emerge. Last month, the Judiciary Committee unanimously reported bipartisan legislation that Senator Lee and I authored to update the Electronic Communications Privacy Act. I hope that the Senate will promptly consider and pass this good privacy bill, as well.

The Judiciary Committee favorably reported this nomination last May along with a bipartisan group of nominees to serve as members of the Board. This nomination should not have taken a year to be considered and confirmed by the Senate. The Senate finally confirmed all of the other individuals, those nominated to serve as members of the Board, last August. Republican Senators refused to vote on the chairman's nomination. This was a needless delay and prevented the Board from functioning at full strength. This is reminiscent of how they have obstructed this President's nominees to the National Labor Relations Board and the Consumer Financial Protection Bureau, as well as so many of his judicial nominees. Now, after a year of obstruction, the Senate will finally vote on the nomination, and the Privacy and Civil Liberties Oversight Board we in Congress worked so hard to establish will finally be able to begin to carry out its important work on behalf of the American people.

The Privacy and Civil Liberties Oversight Board is a guardian of Americans'

[[Page S3108]]

privacy rights and civil liberties as well as an essential part of our national security strategy. When we worked to create this Board in the wake of the Nation's response to the terrorist attacks on September 2001, we did so to ensure that our fundamental rights and liberties

would be preserved as government takes steps to better secure our Nation. In the digital age, we must do more to protect our Nation from cyber attacks. But we must do so in a way that protects privacy and respects our fundamental freedoms.

Protecting national security and protecting Americans' fundamental rights are not in conflict. We can--and must--do both. The Privacy and Civil Liberties Oversight Board should help ensure that we do now that the Senate has finally been allowed to act on the nomination of Chairman Medine.

With that, I yield the floor and suggest the absence of a quorum.

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

The assistant legislative clerk proceeded to call the roll.

Mr. UDALL of New Mexico. Madam President, I ask unanimous consent order for the quorum call be rescinded.

The PRESIDING OFFICER (Ms. Heitkamp). Without objection, it is so ordered.

The question is, Will the Senate advise and consent to the nomination of David Medine, of Maryland, to be Chairman and Member of the Privacy and Civil Liberties Oversight Board?

Mr. GRASSLEY. 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 bill clerk called the roll.

Mr. DURBIN. I announce that the Senator from New Jersey (Mr. Lautenberg) and the Senator from West Virginia (Mr. Manchin ) are necessarily absent.

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

The result was announced--yeas 53, nays 45, as follows:

[Rollcall Vote No. 114 Ex.]

YEAS--53

Baldwin  
Baucus  
Begich  
Bennet  
Blumenthal  
Boxer  
Brown  
Cantwell  
Cardin  
Carper  
Casey  
Coons

Cowan  
Donnelly  
Durbin  
Feinstein  
Franken  
Gillibrand  
Hagan  
Harkin  
Heinrich  
Heitkamp  
Hirono  
Johnson (SD)  
Kaine  
King  
Klobuchar  
Landrieu  
Leahy  
Levin  
McCaskill  
Menendez  
Merkley  
Mikulski  
Murphy  
Murray  
Nelson  
Pryor  
Reed  
Reid  
Rockefeller  
Sanders  
Schatz  
Schumer  
Shaheen  
Stabenow  
Tester  
Udall (CO)  
Udall (NM)  
Warner  
Warren  
Whitehouse  
Wyden

NAYS--45

Alexander  
Ayotte  
Barrasso

Blunt  
Boozman  
Burr  
Chambliss  
Coats  
Coburn  
Cochran  
Collins  
Corker  
Cornyn  
Crapo  
Cruz  
Enzi  
Fischer  
Flake  
Graham  
Grassley  
Hatch  
Heller  
Hoeven  
Inhofe  
Isakson  
Johanns  
Johnson (WI)  
Kirk  
Lee  
McCain  
McConnell  
Moran  
Murkowski  
Paul  
Portman  
Risch  
Roberts  
Rubio  
Scott  
Sessions  
Shelby  
Thune  
Toomey  
Vitter  
Wicker

NOT VOTING--2

Lautenberg  
Manchin

The nomination was confirmed.

The PRESIDING OFFICER. Under the previous order, the motion to reconsider is considered made and laid upon the table. The President will be immediately notified of the Senate's action.

---