

CONFIRMATION OF DEREK KAN

Mr. THUNE. Mr. President, I have sought recognition to note last night's strong bipartisan vote of 90 to 7 to confirm Derek Kan's nomination. I am very happy that Mr. Kan is now able to take up the duties of Under Secretary for Transportation Policy at the Department of Transportation after a long, entirely unnecessary delay. As I stated on the floor last week, it is truly unfortunate that it took 4 months and the engagement of the cloture process to confirm this well-qualified nominee, who obviously has strong bipartisan support.

I hope that last night's vote will signal to those who are holding other well-qualified nominees to the Department—including the nomination of Ronald Batory to be Administrator of the Federal Railroad Administration and the nomination of Adam Sullivan to be Assistant Secretary of Transportation for Legislative Affairs—over funding for the multibillion dollar Gateway Project in New York and New Jersey that their strategy is misplaced and depriving the Department of the very expertise needed to make progress on Gateway and a host of other critical issues.

Mr. President, I have also sought recognition to voice my strong support for the nomination of Steven Bradbury to be general counsel at the U.S. Department of Transportation. Mr. Bradbury has had an extraordinary legal career in both the private and public sector, and he is well prepared to address the many challenging legal questions that will come before the Department.

Mr. Bradbury is currently a litigation partner at the Dechert law firm here in Washington, DC, and his practice focuses on regulatory enforcement and investigations, rulemakings, and judicial review of agency actions, as well as appellate cases and antitrust matters.

From 2005 to 2009, Mr. Bradbury headed the Office of Legal Counsel at the Department of Justice, the office that provides essential legal advice to the President and the heads of executive departments and agencies.

In that role, he received the Edmund J. Randolph Award and the Secretary of Defense Medal for Outstanding Public Service, among other awards. Before serving in the Justice Department, he worked in private practice for 10 years and clerked for Justice Clarence Thomas on the U.S. Supreme Court and for Judge James L. Buckley on the D.C. Circuit.

On June 28, 2017, the Commerce Committee held a hearing on his nomination, and we reported his nomination favorably on August 2. Last night, the Senate invoked cloture on his nomination.

At his nomination hearing, a number of our Democrat colleagues raised concerns over Mr. Bradbury's suitability for this position, mostly focusing on a number of opinions he wrote regarding interrogation policies while at the Justice Department.

I do not doubt the sincerity of those who question the Bush administration's approach to detainee treatment in the wake of the horrific attacks of 9/11. I know that these concerns are not limited to a single party.

Nevertheless, I would suggest that Mr. Bradbury has demonstrated a willingness to reexamine the difficult decisions made at that time in a manner that underscores the thoughtfulness he would bring to the position to which he has been nominated.

For example, after he became the head of the Office of Legal Counsel in 2004, he participated in decisions to withdraw and supersede previous legal opinions addressing interrogation policies that had been issued by his predecessors.

In response to questions for the record from some of my committee colleagues, Mr. Bradbury elaborated on this topic. Specifically, he said:

I support the McCain-Feinstein Amendment, enacted by Congress in 2015, which mandates that all agencies of the U.S. government are limited to use of the Army Field Manual in the interrogation of detainees and which prohibits the use of physical coercion. I believe the McCain-Feinstein Amendment represents a historic policy decision and a moral judgment for the United States, and it reaffirms America's leadership on interrogation policy and practice. The clear mandate of the McCain-Feinstein Amendment appropriately elevates and vindicates the compelling principle of reciprocity in the treatment of captured U.S. service men and women.

Mr. Bradbury went on to say:

Twelve years ago, when I was called upon to advise on the legality of proposed interrogation policies for use by intelligence officers, the McCain-Feinstein Amendment had not been enacted, and it was understood at that time that intelligence agencies operated under a different, less well defined, legal regime from the U.S. Armed Services. I did my best to pull back previous OLC opinions that were overly broad or otherwise flawed; to limit OLC's advice to the narrowest grounds necessary and avoid reliance on expansive interpretations of presidential power; to spell out very clearly the specific factual assumptions on which the advice depended, including the particular conditions, limitations, and safeguards that were required as part of the policies; and to describe in detail the specifics of those policies so that the senior decision makers on the Principals Committee of the National Security Council would be fully apprised of precisely what they were being asked to approve.

The OLC opinions I prepared on these issues are no longer operative, and the law has changed. I welcome the statutory changes enacted by Congress.

In sum, I believe that Mr. Bradbury has fully addressed these concerns.

It is also worth noting that Mr. Bradbury's nomination has received the endorsement of many bipartisan leaders. During his confirmation process, the committee received letters of support signed by more than 50 former government officials, including former Transportation Secretaries Rodney Slater and Norm Mineta; former Attorneys General Ed Meese, William Barr, and Michael Mukasey; former counsel to the President Fred Fielding; former National Security Advisor Stephen

Hadley; former Solicitors General Ted Olson, Paul Clement, Greg Garre; and many others. He also received the support of nearly 20 State attorneys general from across the country.

Finally, I would also like to address the concerns raised about Mr. Bradbury's representation of the U.S. subsidiary of Takata in connection with the airbag inflator ruptures before the National Highway Traffic Safety Administration.

Mr. Bradbury has agreed to go beyond the requirements of his ethics agreement to recuse himself from all aspects of the Takata airbag inflator recalls for the duration of Mr. Bradbury's tenure as general counsel at the Department of Transportation.

Because Mr. Bradbury has agreed to go well beyond what is required by federal ethics laws and regulations, and well beyond the ethics agreement he signed with the Office of Government Ethics with respect to the Takata airbag inflator recall, I am satisfied that he has more than adequately dealt with conflict of interest concerns and recusals.

Moreover, as I have noted, Mr. Bradbury has received bipartisan support for his nomination, including from former Transportation Secretary Rodney Slater and former Transportation Secretary Norm Mineta.

Accordingly, I urge my colleagues to support the nomination of Steven Bradbury to be general counsel for the Department of Transportation.

Ms. HASSAN. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

EXPRESSING SUPPORT FOR THE GOALS OF NATIONAL ADOPTION DAY AND NATIONAL ADOPTION MONTH

Mr. BLUNT. Mr. President, Senator KLOBUCHAR and I are here to talk about National Adoption Month.

I think we started a little bit late, so by unanimous consent, I ask that we be allowed to extend our closing time by the same number of minutes.

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

Mr. BLUNT. Mr. President, it is good for both of us and our colleagues to be thinking this month about National Adoption Month, to recognize the celebration of National Adoption Day, which will occur this Saturday. I have had the great privilege of serving as co-chair of the Coalition on Adoption with Senator KLOBUCHAR from Minnesota. It is an opportunity not only for us to work together in a bipartisan way, but at an event we attended just the other

day, I was told the adoption caucus in the House and Senate is the biggest caucus of either body and the biggest caucus of the Congress. Of course, it should be. It is built on the idea that kids have the need of a family and that there are families out there who want to adopt kids. Whether that is nationally, domestically, or internationally, we really work hard to try to make that more possible.

Our House cochairs have been great to work with. Senator KLOBUCHAR and I are working on several pieces of legislation right now to make it easier for families to adopt and to make sure adopted families have the support they need to stay strong.

One piece of legislation we are working on is the Adoption Tax Credit Refundability Act. It is a little bit outside the norm of the discussion of simplifying the Tax Code, but I was pleased the other day to have some important evidence put on the table when the chairman of the House Ways and Means Committee—who, by the way, is an adoptive father of two sons and an advocate for adoption and for kids—when the current adoption tax credit was not in the House bill, he said one of the reasons it is not here is so many families who adopt kids don't pay income tax because of the low level of their income. My thought was, well, that is exactly what Senator KLOBUCHAR and I were saying. That should be a refundable credit as well as a credit, but I am glad to see the current credit back in the tax bill that the Finance Committee is looking at now. We want to continue to look at not only the current credit but expanding that.

According to the Department of Health and Human Services, one-third of all adopted children live in families with an annual household income at or below 200 percent of the poverty level. It is because of that the tax burden is low. They don't pay income taxes. The adoption tax credit isn't as helpful to those families as it is to families who actually have income tax to credit it against.

More than 400,000 children now in the United States are also in the foster care system, and more than 100,000 of those 400,000 kids are ready and waiting for families they can call their own. Lots of other children need to be in families all over the world, but we can be looking carefully at the children in our system now. We both looked—and others have joined us in that—at the foster care system and ensuring behavioral health screening happens within 30 days of getting into that system. Once you get into the foster care system, often it is because of unavoidable challenges families face, and often it is because of challenges kids should never have to face. So that early evaluation of what is going on there can really make a difference in how foster kids are dealt with in the system and how they get ready—as 100,000 of them now are—to leave the foster care system and be adopted.

Before I turn to Senator KLOBUCHAR, I just want to mention some kids right now who are on what is called the Missouri Heart Gallery. More than 1,200 Missouri children are in need of permanent homes. The Missouri Heart Gallery is a place to look, as we approach the end of this year, to see what the stories of some of these kids are.

Brandon, for instance, who is 12, loves to play games. LEGO sets are his favorite toy. He likes to smile and give hugs. He probably hasn't gotten enough hugs in his life up until now, but it is possible to try your best to catch up with kids who need hugs. He needs a stable and loving family. He is often playing outside. It would be wonderful if he were playing outside a house or a home that he knew was a permanent home for him.

Shaniah and Shanae are sisters who hope to be placed together, and they hope to have a chance to maintain contact with their aunt following placement. Shaniah loves dancing and cheerleading. Her favorite color is green. She hopes to be a scientist one day. Shanae's favorite hobby is singing, and she makes friends really easily between her dancing and singing skills that she shares with her sister. Both of these girls would really bring a lot of life and vitality into what we would hope would be their family forever.

Brandon, Shaniah, and Shanae are in need of permanent and loving homes. This is a time when we ought to be thinking not only about the obstacles to adoption, the things that encourage adoption but also how we can make the support system for both adoption and foster care and adoption out of foster care work better.

I know my colleagues will be eager to join Senator KLOBUCHAR and me in marking November as National Adoption Month and by passing our resolution today.

I turn to my friend from Minnesota Senator KLOBUCHAR.

The PRESIDING OFFICER. The Senator from Minnesota.

Ms. KLOBUCHAR. Mr. President, first of all, I would like to thank Senator BLUNT for his leadership. We have worked side by side on these issues for so many years, and I am really pleased—as he noted—that there has been a lot of focus on this issue of the adoption tax credit and not only how it needs to be fixed in any tax bill and make sure it is maintained, but, in fact, it should be expanded on. I thank him. We have both been advocating for that.

One of the reasons I am so involved in this issue is, in my State of Minnesota, we have historically had a lot of adoptions. One is international adoptions. We have one of the highest rates of international adoptions in the country. We have families who have opened their hearts to kids from Vietnam to Guatemala, to Nepal, to Haiti.

I have had the opportunity to witness the power of adoption firsthand when I served for 8 years as the Hennepin

County attorney—which is the largest prosecutor's office in our State. We also have civil jurisdiction so one of the things I worked on was speeding up the amount of time it took for foster kids to get out and into permanent homes. I was able to see firsthand those loving parents who would do anything to bring these kids into their families. When you see it internationally, it just breaks your heart if it goes on for years and years and years.

Right now, domestically, over 425,000 children are living without permanent families in our foster care system. Over 110,000 of these kids are eligible for adoption. One of the reasons Senator BLUNT and I came together today is to make people aware that, yes, there is international adoption—it is so important—but there are also kids right here in America who would love to be taken in by a family. That is part of the theme of our Adoption Month for the country.

We have tackled a number of issues over the last few years, along with former Senator Landrieu of Louisiana. One of them was the International Adoption Simplification Act, which was a big help in terms of making sure that older children weren't left behind when younger siblings were adopted. I worked on that bill with Senator INHOFE; then, Senators BLUNT and Landrieu and I introduced the Accuracy for Adoptees Act, which helps greatly to ensure that families don't have to fight with foreign authorities to get their kids' documents changed.

We are also working on some of the international issues now because of the slowdown in international adoptions and the work that we can do there. We look forward to working with the State Department and other agencies on that.

One of the best parts of our job is helping a family in our home State with an adoption. Recently, I got to visit a family in the western suburbs of Minnesota. For years, they had been waiting to adopt two Ethiopian boys. We worked really hard on this, as the halt of adoptions out of Ethiopia affected more than 200 American families; one of them was David and Katie Norton. Because of the work that was done and the push that was made, a number of these kids came home to their families.

I got to swing on a tire swing with these two rather fun boys who, every day, like to put on their bicycle helmets just because they think that is cool, and they wear them around the backyard. We had a great time with them.

There are other children, and it makes you realize how close to home this is and how pleased we are to welcome these kids to American families. That is what National Adoption Month is all about. We want more kids to be able to swing on tire swings, so we will continue to work with the foster care system, as well as the international

adoption system, to make this a reality for more and more orphans across the world.

I thank Senator BLUNT for his leadership, and we look forward to working on this issue for many years to come.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BLUNT. Mr. President, I thank Senator KLOBUCHAR. We will continue to work on this. We are glad it is so well-received and these are issues our colleagues pay close attention to. Whether it is domestic or international, we are going to continue to find ways to open the doors to more homes and to get access to more tire swings. I look forward to that work.

Mr. President, as in legislative session, I ask unanimous consent that the Senate proceed to the consideration of S. Res. 331, submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The bill clerk read as follows:

A resolution (S. Res. 331) expressing support for the goals of National Adoption Day and National Adoption Month by promoting national awareness of adoption and the children awaiting families, celebrating children and families involved in adoption, and encouraging the people of the United States to secure safety, permanency, and well-being for all children.

There being no objection, the Senate proceeded to consider the resolution.

Mr. BLUNT. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, and the motions to reconsider be considered made and laid upon the table with no intervening action or debate.

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

The resolution (S. Res. 331) was agreed to.

The preamble was agreed to.

(The resolution, with its preamble, is printed in today's RECORD under "Submitted Resolutions.")

RECESS

Mr. BLUNT. Mr. President, I ask unanimous consent that the Senate stand in recess as under the previous order until 2:15 p.m. today.

There being no objection, the Senate, at 12:19 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mrs. CAPITO).

EXECUTIVE CALENDAR—Continued

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. WHITEHOUSE. Madam President, I am here to respond to the nomination of Steven Bradbury for a senior legal position in the U.S. Department of Transportation. I have had some experience with Mr. Bradbury, and in my experience, he is disqualified from serving in a legal government position of trust, such as he has been nominated for.

The Bush administration pursued a policy of detainee mistreatment that since has been acknowledged to include torture of detainees. The process that got the United States of America into a place where it was torturing detainees was a legal process that was full of mistakes and failures by the Office of Legal Counsel at the Department of Justice—by Mr. Bybee, by Mr. Yoo, and, following them, by Mr. Bradbury.

Let's start with just a word on the Office of Legal Counsel. Within the Department of Justice, the Office of Legal Counsel is seen as being the best of the best. The Department of Justice prides itself on attracting, training, and perfecting the skills of the best lawyers in America.

As a U.S. Attorney, I had the privilege of serving with a lot of absolutely spectacularly skilled lawyers and trial advocates just in the small Rhode Island U.S. attorney's office and working with others from the Department of Justice, and I have a very, very high opinion of Department of Justice lawyers and Department of Justice lawyering. But even within the expectation that the Department of Justice lawyering will be first rate, the Office of Legal Counsel is supposed to be a cut above. These are people who go into that office with the possibility that they will become U.S. Supreme Court Justices. These are people who come out of clerkships on the U.S. Supreme Court—one of the highest academic achievements a law student can have—and end up joining the Office of Legal Counsel. The Office of Legal Counsel ought to be held to a very high standard.

What happened when the Office of Legal Counsel was asked to take a look at the CIA torture program in the Bush administration was that it fell down or rolled over in virtually every respect. The factual investigation into what the CIA was actually doing was weak and ineffectual. The legal investigation into the past, into precedents, was—as I said in previous speeches at the time—fire-the-associate quality legal work. It is particularly bad coming from the Office of Legal Counsel because the Office of Legal Counsel is supposed to be the best of the best.

It is hard to say that these guys failed having tried their best. They just weren't smart enough to figure it out. They just weren't working hard enough. They just didn't know enough about legal research or scholarship. So, you know, nice try but you blew it, but no harm in it because we don't expect much of you to begin with.

That is certainly not the case with OLC. The array of memos that the OLC wrote—the Bybee, Yoo, and Bradbury memos—were calamitous failures of historical and legal research. For one thing, they failed to recognize and report that there had been prosecutions of Japanese military officers after World War II for torturing American soldiers. One of the techniques of torture for which those Japanese soldiers

were prosecuted and convicted as torturers, as war criminals, was the use of the waterboard. You may be able to say that there were some different justifications. You may be able to say that there were some different circumstances, but to not even mention that, to not even do the research to find out that had taken place is a pretty bad legal failing.

One of the reasons was that they kept it so close hold that they didn't let military lawyers know what they were doing. One could argue that there is consciousness of guilt there, that they didn't want other lawyers to know what they were doing because they knew that what they were doing was shoddy legal work and they didn't want to be caught out in it. In fact, ultimately, a lot of those opinions were withdrawn.

The fact of the matter is that it was a failure to properly inform the President of the United States about this history of our country actually prosecuting Japanese soldiers for the type of conduct that the Department of Justice was approving that the CIA engage in. It wasn't just prosecutions of Japanese soldiers by American military tribunals. There were also prosecutions of American soldiers in the Philippines by courts-martial for torture. Guess what. The conduct involved was waterboarding.

Again, perhaps you can say that there were some differences, that there were some distinctions, but the fact is, in memo after memo—including the wrapup memo that Bradbury wrote—that was not discussed. It was not disclosed, and it was not discussed.

You may say: Well, you know, it is asking an awful lot of the Office of Legal Counsel to go and look at history, to go and look at the practice of our military in prosecuting adversary officers or in prosecuting our own soldiers. After all, we are just the Department of Justice. That is the Department of Defense. What could we possibly learn from that?

Well, obviously, that would be wrong and, obviously, that would be a mistake, particularly when you look across that boundary to military law and see these examples right on point that they did not bother to discuss or disclose.

Then, it gets better still. The OLC memos failed to disclose prosecutions by the Department of Justice for waterboarding. This is not some case that never got reported someplace, that was just a trial, and you would have to look deep into your own records to try to find out what took place—perhaps, without a reported decision, just a verdict from the jury. This was a case that was extensively documented with writings by the trial court judge, a U.S. district judge in the State of Texas, that went up on appeal to the circuit court of appeals, and the U.S. circuit court of appeals wrote a decision on appeal of the district court's decision.