Senate Democrats confirm drone memo author for second-highest US court

Patrick Martin
23 May 2014

The United States Senate voted Thursday to confirm David Barron, the former Obama administration official who drafted the legal justification for assassination by drone-fired missile, to a lifetime seat on the First Circuit Court of Appeals. It was a near-party-line vote, 53-45, with every Republican voting against, joined by only two Democrats.

Every prominent liberal in the Senate voted to rubber-stamp the nomination. Those voting for Barron including the self-proclaimed "socialist," independent Bernard Sanders of Vermont, as well as Elizabeth Warren of Massachusetts, promoted as a potential presidential candidate by the *Nation* magazine and other liberal groups.

Also supporting Barron were Tammy Baldwin of Wisconsin, hailed by the pseudo-left as the first openly lesbian senator, Al Franken of Minnesota, and the three supposed critics of NSA spying, Mark Udall of Colorado, Martin Heinrich of New Mexico and Ron Wyden of Oregon.

The unanimous liberal support for Barron was all the more revealing because the vote came only one day after Obama administration officials staggered a Senate subcommittee hearing by declaring the president had the constitutional authority to order drone missile assassinations, air strikes, detention of prisoners, even full-scale invasions, regardless of any congressional authorization. (See "Obama administration asserts unlimited war powers without congressional authorization .")

Most of the Republicans who voted against Barron did so not do so because of his role in justifying drone killings, but because he is a liberal law professor from Harvard, and, at 46 years old and on the second-highest US court, is well positioned to become a Supreme Court nominee under a Democratic president.

Barron stepped down from the Justice Department's Office of Legal Counsel (OLC) in 2012 to return to Harvard Law School. While at the OLC, he was responsible for drafting the legal memos that argued that President Obama had the constitutional authority to order the killing of an American citizen, without any judicial proceeding or review.

The memos have never been released, but the arguments in them were paraphrased by Attorney General Eric Holder, in his notorious public defense of the drone assassination program, including his claim that the constitutional requirement of due process does not require judicial process, but could be satisfied by an internal discussion at the White House—in other words, a death sentence could be imposed by executive fiat.

Senate action on the Barron nomination was delayed for several weeks as a group of liberal and conservative senators demanded that the White House agree to release the actual texts of the memos justifying drone assassinations.

Last week, White House counsel Kathryn Ruemmler went to the Senate to push for the nomination and allowed senators to see the drone memos in a secure briefing room. Afterward, Mark Udall and Ron Wyden both declared themselves in agreement with the memos and with the targeting of Anwar al-Awlaki, a US citizen turned Islamic cleric in Yemen, who was killed by a drone-fired missile in September 2011.

On Wednesday, the Barron nomination cleared its final procedural hurdle, with a 52-43 vote to move to the final confirmation vote.

In his remarks on the Senate floor, Senator Ed Markey of Massachusetts spoke for all the liberal Democrats when he argued that Barron should not be held accountable for the drone program despite his drafting the legal rationale for a presidential "right" to

© World Socialist Web Site

assassinate an American citizen.

"Let's be clear: Barron is...certainly not responsible for the administration's drone policy or the decisions to authorize an attack," Markey said. "He is a lawyer who was asked to do legal analysis for his client: the president of the United States." The same argument was made in defense of the German jurists who did the bidding of Adolf Hitler.

The lockstep support of the liberal Democrats allowed right-wing Republican Rand Paul to posture as the Senate's defender of the Bill of Rights and constitutional liberties. In a speech on the Senate floor, Paul declared, "I rise today to oppose the nomination of anyone who would argue that the president has the power to kill an American citizen not involved in combat and without a trial."

Paul pointed to the hypocrisy of the Democrats, noting, "During the Bush years, most of President Obama's party, including the president himself, argued against the detention—not the killing—they argued against the detention of American citizens without a trial. Yet now, the president and the vast majority of his party will vote for a nominee that advocates the killing of American citizens without trial."

Paul also revealed some details of the Barron memos, which have not been made public despite being shown to senators last week. He said the memos did not argue any legal precedent for killing an American citizen by drone missile, but rather "create out of whole cloth a defense for executing American citizens."

The American Civil Liberties Union (ACLU) did not oppose Barron's nomination, but urged senators not to bring it to a vote until they could review the drone memos. The ACLU has filed a Freedom of Information Act request for the documents, and the Justice Department signaled Tuesday that it would drop its appeal of a court order to release redacted versions of the memos. The full text will still remain classified.

To contact the WSWS and the Socialist Equality Party visit:

wsws.org/contact

© World Socialist Web Site