

The question is, Is it the sense of the Senate that debate on the nomination of John K. Tien, of Georgia, to be Deputy Secretary of Homeland Security, shall be brought to a close?

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The senior assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from New Jersey (Mr. BOOKER) and the Senator from Michigan (Mr. PETERS) are necessarily absent.

Mr. THUNE. The following Senators are necessarily absent: the Senator from North Dakota (Mr. CRAMER) and the Senator from Kansas (Mr. MORAN).

The yeas and nays resulted—yeas 63, nays 33, as follows:

[Rollcall Vote No. 240 Ex.]

YEAS—63

Baldwin	Heinrich	Romney
Bennet	Hickenlooper	Rosen
Blumenthal	Hirono	Rounds
Blunt	Johnson	Rubio
Brown	Kaine	Sanders
Cantwell	Kelly	Schatz
Capito	King	Schumer
Cardin	Klobuchar	Scott (SC)
Carper	Leahy	Shaheen
Casey	Lujan	Sinema
Collins	Manchin	Smith
Coons	Markey	Stabenow
Cornyn	Menendez	Tester
Cortez Masto	Merkley	Tillis
Duckworth	Murkowski	Van Hollen
Durbin	Murphy	Warner
Feinstein	Murray	Warnock
Fischer	Ossoff	Warren
Gillibrand	Padilla	Whitehouse
Graham	Portman	Wyden
Hassan	Reed	Young

NAYS—33

Barrasso	Grassley	McConnell
Blackburn	Hagerty	Paul
Boozman	Hawley	Risch
Braun	Hoeven	Sasse
Burr	Hyde-Smith	Scott (FL)
Cassidy	Inhofe	Shelby
Cotton	Kennedy	Sullivan
Crapo	Lankford	Thune
Cruz	Lee	Toomey
Daines	Lummis	Tuberville
Ernst	Marshall	Wicker

NOT VOTING—4

Booker	Moran
Cramer	Peters

The PRESIDING OFFICER. On this vote, the yeas are 63, the nays are 33.

The motion is agreed to.

EXECUTIVE CALENDAR

The PRESIDING OFFICER. The clerk will report the nomination.

The senior assistant legislative clerk read the nomination of John K. Tien, of Georgia, to be Deputy Secretary of Homeland Security.

The PRESIDING OFFICER. The Senator from New York.

Mrs. GILLIBRAND. Mr. President, I ask unanimous consent that I be allowed to complete my remarks prior to the recess.

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

UNANIMOUS CONSENT REQUEST—S. 1520

Mrs. GILLIBRAND. Mr. President, I rise again to call for this entire body to vote and consider the Military Justice Improvement and Increasing Preven-

tion Act. This commonsense reform would ensure that people in the U.S. military who have been subjected to sexual assault and other serious crimes get the justice that they deserve.

I began calling for the full floor vote on this bill on May 24. That was 24 days ago. Since then, an estimated 1,344 servicemembers will have been raped or sexually assaulted. Two in three of those survivors will not even report it because they know that they are more likely to face retaliation than receive justice.

This is a scourge that we have been looking at for over 8 years. We have passed nearly 250 measures to address sexual assault in the military, to address retaliation, to address prevention, and none of them have dented the numbers. In fact, our estimated cases are at about 20,000 cases, and among those, only about 200 have gone to courts-martial and ended in conviction. It is not enough. We aren't moving the numbers in the right direction. They are, in fact, going in the wrong direction.

We also have a reform that we have looked at for 8 years. It creates a bright line at all serious crimes to handle two issues: one, the bias we see in sexual assault in the military; that if you are a servicemember who reports sexual assault, it is unlikely that you will get justice, and it is likely that you will be retaliated against.

And after we have made retaliation a crime three times in a row, we have only seen one court-martial for retaliation. That is outrageous.

And so now is the time that we bring this measure to the floor. It does not cost a lot of money. It is something that uses the existing infrastructure, the existing lawyers, the existing infrastructure around the lawyers.

Two, it does not take a long time to implement because, in fact, after the military police complete their investigation and have their recommendation, basically, they send that recommendation to the prosecutor, as opposed to the commander. So after the review by the prosecutor, it goes right back to the commander if that prosecutor declines to prosecute.

So, ultimately, it changes the system in a very small but powerful way, and the reason why this change is recommended by all military experts is three reasons: One, the bright line creates a justice system for all plaintiffs and all defendants. And since we have bias with regard to women in the military and we have bias with regard to Black and Brown servicemembers, this change will remove bias and professionalize the system for everyone.

Second, our allies have done this. Our allies have done it—UK, Israel, Germany, Australia, Netherlands. They have done it over the last 40 years for defendants' rights, to make sure we have a system that is fair to everyone. When they put this change in place, they reported to our panel that, No. 1, they saw no diminution in command

control; and, No. 2, they saw no undermining of good order and discipline. So for those reasons, that is why we need to pursue this legislation, a bright line.

And then, last is the question that the chairman always raises, that this must go through the committee. The committee has been looking at this for 8 years. We have had multiple hearings on this topic. We have had the data. We have talked about it with every service Secretary for the last decade I have been on the committee. We have talked about it with each of the services for the last decade that I have been on the committee, and we have tried to get a vote on this measure, unsuccessfully, for the past 5 years. We have been denied a vote every time in the last 5 years.

So to say now that only the committee can have jurisdiction is not true. They have had their chance, and they have passed close to 250 measures. Those measures have not moved the needle. Those measures are ones that the DOD was comfortable with. They have never wanted this measure. Now we have agreement by the chairman, by this panel, by many of the service Secretaries that, OK, fine, we are with you; we will take sexual assault out of the chain of command.

While that is good, it is not enough because it will create two systems of justice, and you should not privilege just one set of plaintiffs to have a positive, professional, unbiased system.

And given all of the data we have about race and bias against Black servicemembers and Brown servicemembers being punished up to 2.5 times more than White servicemembers, you need to fix the system for everybody.

So back to the argument of our allies, that is why they did their bright line at serious crimes—the equivalent of felonies—so that they could have a justice system that is worthy of the sacrifices that the men and women in our armed services make.

So I ask once again that we can have a vote on this floor. We now have 66 cosponsors of this legislation, widely bipartisan. How many bills in this Chamber are supported by LIZ WARREN and TED CRUZ at the same time? How many pieces of legislation have been voted on by both CHUCK SCHUMER and MITCH MCCONNELL? Very few. But the reason we have such bipartisan support is we have two female command veterans in this body. One is a Republican, JONI ERNST. One is a Democrat, TAMMY DUCKWORTH. They are both on this legislation. They have served as commanders, and they understand the importance of the commander's roles. But they also have seen that nothing has gotten better. They saw the report from Fort Hood that said the command climate was so toxic that it was permissible for sexual assault and sexual harassment. And so they have said enough is enough.

And so when you have so many former commanders and sexual assault survivors from this Chamber supporting this legislation, it is time that

it does not need to go through the committee. More than half of our committee supports this. But when we take issues like this to the committee, they have been taken out in conference.

Despite winning the vote in the Senate, despite winning the vote in the House, our bill in 2019 to make sure that a servicemember could come forward and not be prosecuted for minor related offenses, like drinking or being off base—that bill passed in the Senate, passed in the House, and was taken out in conference because the DOD didn't like it.

So I promise you, if we pass this bill in our committee, in the House and the Senate—I promise you—it would be narrowed just down to sexual assault because that is what the DOD will agree to.

I am tired of doing only what the DOD will agree to. It is not our job to defer to the DOD. It is our job as U.S. Senators to provide oversight and accountability over the administration and over the entire Department of Defense.

When we abdicate that responsibility, what we have is what we had for the last 10 years, failure—failure in the committee because we only put forward items the DOD was comfortable with.

I just don't know how much longer we want survivors to have to wait. We have considered this legislation together. We have, every year, sat down, discussed it—pros, cons. Are other reforms working?

I have done that with every one of the 100 Senators in this Chamber every year for the last 10 years. It has been intensely considered, and I spend an extra amount of time with committee members because they are interested.

So this is not new. It doesn't need to go through the committee. We have been denied a vote and filibustered a vote for 8 years and denied a vote for the last 5 years. So I don't know why the committee gets sole jurisdiction. I don't understand.

And, again, how many measures does this Chamber have that have 66 cosponsors?

It is also a generational shift. And when you have something of such import, it comes to the floor. We repealed don't ask, don't tell on the floor. We had two floor votes. The majority leader at the time gave us those votes, and it passed on the floor. It did not go through the committee.

It is time to bring a justice system that is worthy of the sacrifice that the men and women make every day. And you need to have that bright line so it is a justice system that works for women and servicemembers of color because right now we have data and evidence that there is bias against those individuals.

Mr. President, as if in legislative session, I ask unanimous consent that at a time to be determined by the majority leader in consultation with the Republican leader, the Senate Committee

on Armed Services be discharged from further consideration of S. 1520 and the Senate proceed to its consideration; that there be 2 hours of debate, equally divided in the usual form; and that upon the use or yielding back of time, the Senate vote on the bill with no intervening action or debate.

The PRESIDING OFFICER (Mr. KING). Is there objection?

The Senator from Rhode Island.

Mr. REED. Mr. President, once again, I object to the request from the Senator from New York for the reasons I previously stated. I will repeat again: I support removing prosecution of sexual assault and related crimes from the chain of command, but we must take care that we do it thoughtfully, in a manner that does not stress the military justice system or distort it in a way that would affect the efficiency and operation of the military. The best way to do that, in my view, is to consider these matters in the context of the annual Defense bill, which we will be marking up in a month.

Mr. President, I would also point out that this week, Jeh Johnson, who served under President Obama as the Department of Defense general counsel, and then Secretary of Homeland Security, wrote an article addressing the scope of Senator GILLIBRAND's bill, urging caution that we focus on legislative solutions tailored to address the problem we are trying to solve. And to remind my colleagues, as the DOD general counsel, Secretary Johnson oversaw all legal services performed within the Department of Defense. He advised the Secretary and all government officials on military justice matters and oversaw the annual review of the Manual for Courts-Martial. He is an informed and expert voice on these matters.

During his tenure as DOD general counsel, he was no stranger to momentous change, leading the implementation of the repeal of don't ask, don't tell. As he states in his article, he has long supported moving charging decisions over sex offenses out of the chain of command.

Mr. President, I ask unanimous consent to have printed in the RECORD this article.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From LAWFARE, June 16, 2021]

THE MILITARY JUSTICE IMPROVEMENT AND INCREASING PREVENTION ACT: ARE THE SOLUTIONS COMMENSURATE WITH THE PROBLEM?

(By Jeh Johnson)

The Military Justice Improvement and Increasing Prevention Act of 2021 is legislation pending in Congress to reshape the manner in which the U.S. military prosecutes sexual assault within its ranks. This is reform that is much needed and long overdue. Notably, however, the bill in its current form reshapes military justice far beyond the context of sexual assault. Congress should take care to fashion a solution commensurate with the problem at hand, and not go too far.

Senator Kirsten Gillibrand (D-NY), the principal sponsor of the bill, S. 1520, deserves

credit for her heroic and persistent campaign over the years to highlight the problem of sexual assault in the military. Few others in Congress today could have assembled such a broad bipartisan coalition of 64 co-sponsors behind such an important, substantive piece of legislation, while moving (or, to put it more appropriately, dragging) the top brass at the Pentagon to the same place. From my experience 10 years ago preparing the military for the repeal of Don't Ask, Don't Tell, I know how resistant to change that community can be.

I support Senator Gillibrand's effort to move charging decisions for sex offenses in the military to an independent, trained group of military lawyers. I said as much publicly in 2013. Likewise, almost all retired general and flag officers I speak with today agree that the male-dominated chain of command has failed the victims of sexual assault in the military. They accept the need for change.

But, in its current form, the changes contemplated by S. 1520 are not limited to sex-related offenses. The bill would create an independent body of lawyers, outside the chain of command, to make charging decisions for a broad range of offenses punishable by more than a year's confinement. These include murder, manslaughter, child endangerment, larceny, robbery, fraudulent use of a credit card, kidnapping, arson, housebreaking, extortion, bribery, perjury, subornation of perjury and obstruction of justice. (Notably, other offenses such as receipt of stolen property, forgery and conduct unbecoming an officer are excluded from the bill's reach, but the logic for the distinction is unclear.) In all, if enacted, the legislation would constitute the largest change to military justice since the enactment of the Uniform Code of Military Justice in 1950.

Why are offenses ranging from murder, arson to perjury included in the bill's reach? What is the justification for so large an overhaul? Where is the congressional finding that, when it comes to the broader range of offenses, the chain of command in the U.S. military has failed in its duty to carry out military justice?

Supporters of the bill argue that, once Congress goes down the road of creating an independent body to make charging decisions for sex crimes, it cannot stop; that to limit the creation of an independent body for sex crimes would also create the stigma of "pink courts" that appear to exist for the benefit of women. In my view, the exception is warranted, perceptions can be addressed, and the exception should not swallow the rule. In both civilian and military life, the reality is the sex offenses are different, in the manner in which they are reported, investigated, and prosecuted. It should also be noted that victims of sexual assault are both men and women.

Here are several other considerations:

First, as written the bill appears to require a whole new bureaucracy to implement and execute the changes contemplated. No one should be under the illusion that the broad mission contemplated by the bill can be carried by a small band of elite JAGs in a suite someplace in northern Virginia. The bill would require that an independent group of lawyers make charging decisions for a vast range

Mr. REED. I think given the wise comments of not only Mr. JOHNSON but also the pending recommendations by the Department of Defense concerning this issue, again, the best place to have a thorough, lively debate and amendments, by the way, which are precluded in this unanimous consent, would be in the Armed Services Committee in the

context of the annual defense authorization bill. That is where we have confronted and decided these issues historically.

And with that, I would reiterate my objection to the Senator from New York's request.

The PRESIDING OFFICER. Objection is heard.

Mrs. GILLIBRAND. Mr. President, two issues: First, the op-ed by Jeh Johnson was not in reference to my legislation. In fact, he conflated my legislation with recommendations from the IRC. He mentioned lawyers in Virginia having to make the decisions. That is not what my bill says. It has never said that, and it is not how it is organized. In fact, my bill is organized by services to adjudicate these cases, as they are doing today.

Right now, prosecutors prosecute these cases, and the decision making of whether to proceed to trial would be given to them in the first instance. If they decline to prosecute, it goes right back to the commander. So, for example, if there wasn't enough evidence to prosecute the case, it would go back to the commander, who could then use a special court-martial or he could use nonjudicial punishment for related or lesser offenses. That is typically what the commanders do in these cases.

So very little changes. But what does change is the perception of the victim who is asking for unbiased review by someone who is highly trained to do that review. It also gives assurance to defendants' rights that the person making the decision is unbiased and is highly and professionally trained.

Those changes change everything. It changes the perception that our military justice is blind, fair, and professional. And that is not the impression of servicemembers today. Both women and men and survivors of sexual assault do not believe that justice is possible for them, and Black and Brown servicemembers do not believe the justice system is fair to them either.

This solution makes sense, and I do not think that we should defer again our responsibility to one op-ed by one former SecDef. That is not our job, and that is not how we should be responding.

RECESS

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until 1:45 p.m.

Thereupon, the Senate, at 1:15 p.m., recessed until 1:45 p.m. and reassembled when called to order by the Presiding Officer (Mr. KING).

EXECUTIVE CALENDAR—Continued

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the Tien nomination?

Mr. KENNEDY. Mr. President, 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. BOOKER) and the Senator from Michigan (Mr. PETERS) are necessarily absent.

Mr. BARRASSO. The following Senators are necessarily absent: the Senator from North Carolina (Mr. BURR), the Senator from North Dakota (Mr. CRAMER), the Senator from Kansas (Mr. MORAN), and the Senator from South Dakota (Mr. THUNE.)

The result was announced—yeas 60, nays 34, as follows:

[Rollcall Vote No. 241 Ex.]

YEAS—60

Baldwin	Heinrich	Reed
Bennet	Hickenlooper	Romney
Blumenthal	Hirono	Rosen
Blunt	Johnson	Rounds
Brown	Kaine	Sanders
Cantwell	Kelly	Schatz
Capito	King	Schumer
Cardin	Klobuchar	Scott (SC)
Carper	Leahy	Shaheen
Casey	Lujan	Sinema
Collins	Manchin	Smith
Coons	Markey	Stabenow
Cortez Masto	Menendez	Tester
Duckworth	Merkley	Van Hollen
Durbin	Murkowski	Warner
Feinstein	Murphy	Warnock
Fischer	Murray	Warren
Gillibrand	Ossoff	Whitehouse
Graham	Padilla	Wyden
Hassan	Portman	Young

NAYS—34

Barrasso	Hagerty	Risch
Blackburn	Hawley	Rubio
Boozman	Hoeven	Sasse
Braun	Hyde-Smith	Scott (FL)
Cassidy	Inhofe	Shelby
Cornyn	Kennedy	Sullivan
Cotton	Lankford	Tillis
Crapo	Lee	Toomey
Cruz	Lummis	Tuberville
Daines	Marshall	Wicker
Ernst	McConnell	
Grassley	Paul	

NOT VOTING—6

Booker	Cramer	Peters
Burr	Moran	Thune

The nomination was confirmed.

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

The Senator from Maryland.

MORNING BUSINESS

Mr. CARDIN. Mr. President, I ask unanimous consent that the Senate be in a period of morning business, with Senators permitted to speak therein for up to 10 minutes each.

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

HELSINKI COMMISSION

Mr. CARDIN. Mr. President, I take this time as the Chair of the Commission on Security and Cooperation in Europe, better known as the Helsinki Commission, as we celebrate our 45th anniversary.

The Helsinki Commission is the vehicle for U.S. participation in the Organi-

zation for Security and Co-operation in Europe, representing 57 states that have come together under the OSCE, all the countries of Europe, all the countries of the former Soviet Union, including those located in Central Asia, the United States, and Canada.

Mr. President, this is a unique body in that it represents both the executive and legislative branches of government. The executive branch has representatives on the Helsinki Commission, and both the House and Senate have Senators and Representatives that serve on the Helsinki Commission.

I am very pleased to have as my co-leader Senator WICKER from Mississippi as the Republican leader in the Senate on the Helsinki Commission.

The Helsinki Commission has been responsible for elevating our moral dimension to U.S. foreign policy. Its principles point out very clearly that you cannot have security without dealing with good governance and human rights; you cannot have economic progress unless you have governance that respects the rights of all its citizens.

That is why I was so pleased when President Biden announced that his foreign policy would be value-based, that as we participate in our foreign policy challenges, it will always be wrapped in our values, and his recent trip to Europe underscored that important lesson. And then he issued, not 2 weeks ago, the statement that corruption is a core national security threat and that we have a responsibility to fight corruption in order to protect our national security.

I am so pleased of the accomplishments of the Helsinki Commission, particularly from the human rights and human dimension. I go back to my early days in the House of Representatives, when the Soviet Union still existed and the challenges of Soviet Jews trying to emigrate from the Soviet Union. It was the Helsinki Commission that was one of the leading voices to help deal with Soviet Jews.

I think about trafficking in persons, modern-day slavery, and the efforts that the United States did in leading that effort, including passing landmark legislation in trafficking in persons and establishing a rating system where every country in the world is rated on how well they are dealing with fighting trafficking. Now this has become the model, and so many countries have acted. It was the U.S. Helsinki Commission that led the effort for what Congress was able to pass and the international effort in order to fight trafficking in persons.

I think about the perpetrators of war crimes and crimes against humanity and genocide, and recognize that it was the Helsinki Commission that pushed to hold those who were responsible for these atrocities accountable, particularly as it related to the Balkan conflict.

Then I think about the landmark legislation that was passed in the Congress that deals with sanctions against