



Written by [Joe Wolverton, II, J.D.](#) on May 17, 2014

Rand Paul Will Filibuster Barron Nom. Unless Drone Memo Released

Senator Rand Paul (shown, R-Ky.) is prepared once again to stand up to his Senate colleagues and stand on his feet in defense of principles of liberty.

Thursday afternoon, the freshman senator issued a statement on his website declaring his intent to oppose the vote to confirm David Barron's nomination to a seat on the First Circuit Court of Appeals. Senator Paul wrote:



I've read David Barron's memos concerning the legal justification for killing an American citizen overseas without a trial or legal representation, and I am not satisfied. While the President forbids me from discussing what is in the memos, I can tell you what is not in the memos.

There is no valid legal precedent to justify the killing of an American citizen not engaged in combat. In fact, one can surmise as much because the legal question at hand has never been adjudicated. Therefore, I shall not only oppose the nomination of David Barron, but will filibuster.

As [The New American has reported](#), Paul maintains that anything less than full publicity of the memo authored by Barron is inadequate.

Paul isn't falling for the president's half measure and he is showing his commitment to his position by promising to filibuster Barron's confirmation. Barron is the author of a Justice Department memo purporting to provide a legal justification for the drone strike that killed Anwar al-Awlaki. Paul seems determined to not give Barron an up or down vote in the Senate until that memo is made public.

On April 21, a federal appeals court in New York ordered the Obama administration to release at least part of the memo that sets out the president's position on the constitutionality of his order to kill Anwar al-Awlaki, an American citizen. Awlaki was targeted by the president and later assassinated by a drone strike in 2011 while he lived in Yemen.

The *New York Times* reported that the three-judge panel "unanimously" reversed a lower court decision, insisting that the federal government forfeited its secrecy defense by making "numerous public statements" explaining why it is legal for the president to order that Americans be killed.

"Whatever protection the legal analysis might once have had, has been lost by virtue of public statements of public officials at the highest levels and official disclosure of the D.O.J. White Paper," Judge Jon O. Newman wrote for the panel of the U.S. Court of Appeals for the Second Circuit, as quoted in the *Times* article.

In a letter to Senate Majority Leader Harry Reid (D-Nev.), Paul referenced the appeals court decision:

On April 21, 2014, the United States Court of Appeals for the Second Circuit ordered that the Department of Justice disclose a redacted version of the Office of Legal Counsel memorandum that authorized the targeted killing of Anwar al-Awlaki. David Barron was one of the principal writers of



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this memorandum. He has spoken openly about his role in crafting the administration's legal position that it can kill Americans abroad without due process.

He continued:

It would be irresponsible for the Senate to move forward on this nomination until the Department of Justice has complied with the court order to disclose this document, which will highlight Barron's views on international law, the Fifth Amendment, and its guarantee of due process, and the civil liberties of our nation's citizens.

In February 2013, the White House claimed that killing Americans without due process is "legal," "necessary," "ethical," and "wise."

In commenting on a white paper released by the Justice Department and obtained by NBC News, White House Press Secretary Jay Carney used those words to describe the targeted assassination of American citizens overseas. That is, those marked for death by drone (i.e., those whom the president believes are collaborating — in a notably undefined manner — with "al-Qaeda and its associated forces") have no rights and can be killed at will.

In a footnote, the Justice Department explained that the "laws of war" will be used to determine whether a group is a "co-belligerent" with al-Qaeda. That is the sum of the guidance and notice given to those Americans residing overseas who might unknowingly be targets for the next Hellfire missile.

Paul's promise to prevent Barron from taking his pro-assassination attitude to the federal bench is encouraging.

In an op-ed published May 11 in the *New York Times*, Senator Paul asked rhetorically how a president could in good conscience nominate a person who believes that the federal government possesses the authority to target Americans for officially sanctioned assassination without due process of law. He wrote:

I believe that killing an American citizen without a trial is an extraordinary concept and deserves serious debate. I can't imagine appointing someone to the federal bench, one level below the Supreme Court, without fully understanding that person's views concerning the extrajudicial killing of American citizens.

But President Obama is seeking to do just that.

He continued:

I believe that all senators should have access to all of these opinions. Furthermore, the American people deserve to see redacted versions of these memos so that they can understand the Obama administration's legal justification for this extraordinary exercise of executive power. The White House may invoke national security against disclosure, but legal arguments that affect the rights of every American should not have the privilege of secrecy.

Paul then condemned the exercise of the unprecedented and unconstitutional power:

The Bill of Rights is clear. The Fifth Amendment provides that no one can be "deprived of life, liberty, or property, without due process of law." The Sixth Amendment provides that "the accused shall enjoy the right to a speedy and public trial, by an impartial jury," as well as the right to be informed of all charges and have access to legal counsel. These are fundamental rights that cannot be waived with a presidential pen.



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Barron shouldn't feel special about his treatment by the senator from Kentucky, however.

On March 6, Paul ended his ended his [epic almost-13-hour filibuster](#) of the nomination of John Brennan as head of the CIA.

Tag-teaming with more than a dozen of his colleagues, including Senators Ted Cruz (R-Texas), Mike Lee (R-Utah), and Marco Rubio (R-Fla.), Paul delivered body blow after body blow to the case made by President Obama that he has the authority — “in extraordinary circumstance” — to order a deadly drone strike to kill Americans on American soil.

During his speech, Paul called that response “frightening.” And he said, “When I asked the president, can you kill an American on American soil, it should have been an easy answer. It's an easy question. It should have been a resounding, an unequivocal, ‘No.’ The president's response? He hasn't killed anyone yet. We're supposed to be comforted by that.”

Paul makes a good point and one that seems completely ignored by all but *The New American*.

If Awlaki (or any of the other Americans Barack Obama has ordered murdered) had been an enemy soldier captured during wartime, he would have been afforded certain rights guaranteed to POWs.

Those slated for White House-approved assassination, however, are not allowed any rights — neither the due process rights given to those accused of crimes nor the rights of fair treatment given to enemies captured on the battlefield.

The president has assumed all power over life and death and created ex nihilo a new category of individual — one deprived of all rights altogether.

This time around, Paul's proposition to block Barron's nomination has bipartisan support. Senator Mark Udall (D-Colo.) has come out in favor of forcing the president to reveal the memo to the public before he gets a vote on his judicial nominee.

“Barron's nomination understandably raises key questions about the administration's legal justification for the targeted killing of Americans and about its year-old pledge of greater transparency,” said Udall, as quoted in the *Washington Post*. He is quoted as saying that the Obama administration should obey the court order “to release its redacted legal justification for killing a U.S. citizen.” He added, “Unless the White House complies, I cannot support David Barron's nomination.”

Unfortunately, rule changes made last year by Senate Majority Leader Harry Reid (D-Nev.) empower a simple majority to end a filibuster mounted against nomination of judges to federal bench below the Supreme Court. That means that to be successful, Senator Paul would have to count more than one Democrat among his allies.

The showdown is set for next week.

Photo of Sen. Rand Paul (R-Ky.): AP Images

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