

SENATE JOURNAL
Sixty-seventh General Assembly
STATE OF COLORADO
First Regular Session

9th Legislative Day

Thursday, January 15, 2009

Prayer	By the chaplain, Rev. Paul Kottke, University Park United Methodist Church, Denver.	1
Pledge	By Senator Harvey.	2
Call to Order	By the President at 9:00 a.m.	3
Roll Call	Present--34 Excused--1, Williams.	4
Quorum	The President announced a quorum present.	5
Reading of Journal	On motion of Senator Hudak, reading of the Journal of January 14, 2009, was dispensed with and the Journal was approved as corrected by the Secretary.	6

LETTER OF RESIGNATION

December 28, 2008

Karen Goldman, MMC
Secretary of the Senate
200 E. Colfax, Room 250
Denver, CO 80203

Dear Karen:

I hereby resign the office of State Senator for the 15th District of Colorado on January 6, 2009 at 12:00 noon Mountain Standard time due to my election as Larimer County Commissioner.

Even though I am looking forward to the new challenge of serving the people of Larimer County, it is difficult to leave the Senate. During my twelve years in the Colorado General Assembly I have had the great honor of working with colleagues in both political parties on policies of major importance to the future of our state. I have made friendships with all of you that I will cherish for my whole life. And I have had the amazing opportunity to work with an incredibly gifted and dedicated staff in the Senate, House, Joint Budget Committee, Legislative Council, and Legal Services. Our state is so blessed to have so many good people in its employ.

We live in a wonderful state populated by great people with limitless opportunity. I pray that you will continue to put the welfare and the interests of the people of Colorado first and foremost at all times as you work together to make an even better future for Colorado. May God continue to bless your efforts and our state.

Sincerely,

(signed)
Steve Johnson
State Senator

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cc: President of the Senate, Senate Minority Leader, Colorado Secretary of State, Chair of the Republican vacancy Committee for the 15th State Senatorial Committee

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COMMUNICATIONS FROM THE SECRETARY OF STATE

DEPARTMENT OF
STATE

UNITED STATES OF AMERICA, ss. CERTIFICATE
STATE OF COLORADO

I, William A. Hobbs, Interim Secretary of State of the State of Colorado, do hereby certify that the attached is a true and exact copy of the Designation of Nomination by Vacancy Committee as filed in this office on the twelfth day of January, 2009, by the Republican 15th Senate District Vacancy Committee, designating the appointment of Kevin Lundberg to fill the vacancy in the office of the Colorado State Senate, District 15, for the Sixty-seventh General Assembly of the State of Colorado, caused by the resignation of the Honorable Steve Johnson.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of Colorado, at the City and County of Denver this fourteenth day of January, 2009.

William A. Hobbs
Interim Secretary of State

DEPARTMENT OF
STATE

UNITED STATES OF AMERICA, ss. CERTIFICATE
STATE OF COLORADO

I, William A. Hobbs, Interim Secretary of State of the State of Colorado, do hereby certify that the attached is a true and exact copy of the Acceptance of Designation by Vacancy Committee as filed in this office on the twelfth day of January, 2009, by Kevin Lundberg, accepting the appointment of the Republican 15th Senate District Vacancy Committee, to fill the vacancy in the office of Colorado State Senate, District 15, for the Sixty-seventh General Assembly of the State of Colorado, caused by the resignation of the Honorable Steve Johnson.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of Colorado, at the City and County of Denver this fourteenth day of January, 2009.

William A. Hobbs
Interim Secretary of State

(NOTE: On January 15, 2009, at 8:35 a.m., Kevin Lundberg of Berthoud, was sworn in to the Sixty-seventh General Assembly as Senator for Senate district 15 to fill the vacancy created by the resignation of Senator Steve Johnson. Justice Eid administered the oath of office in the Chamber of the Senate.)

COMMITTEE OF REFERENCE REPORTS

Education After consideration on the merits, the Committee recommends that **SB09-032** be referred to the Committee of the Whole with favorable recommendation.

Amend printed bill, page 4, line 13, strike "BE TO:" and substitute "INCLUDE, BUT NOT BE LIMITED TO:".

Page 5, line 3, strike "AND";

after line 3, insert the following:

"(f) IDENTIFY INNOVATIVE USES OF EXISTING SCHOOL FACILITIES IN THE STATE FOR THE PURPOSE OF COLLABORATION BETWEEN ELEMENTARY, SECONDARY, AND HIGHER EDUCATION INSTITUTIONS; AND".

Reletter succeeding paragraph accordingly.

INTRODUCTION AND CONSIDERATION OF RESOLUTIONS

SR09-006 by Senator(s) Shaffer B., Groff, Penry; --Concerning changes to the membership of certain Senate Committees of Reference.

On motion of Senator Shaffer, the resolution was **adopted** by the following roll call vote:

YES	34	NO	0	EXCUSED	1	ABSENT	0
Bacon	Y	Hodge	Y	Morse	Y	Shaffer B.	Y
Boyd	Y	Hudak	Y	Newell	Y	Spence	Y
Brophy	Y	Isgar	Y	Penry	Y	Tapia	Y
Cadman	Y	Keller	Y	Renfroe	Y	Tochtrop	Y
Carroll M.	Y	Kester	Y	Romer	Y	Veiga	Y
Foster	Y	King K.	Y	Sandoval	Y	White	Y
Gibbs	Y	Kopp	Y	Scheffel	Y	Williams	E
Harvey	Y	Lundberg	Y	Schultheis	Y	President	Y
Heath	Y	Mitchell	Y	Schwartz	Y		

SJR09-007 by Senator(s) Groff; also Representative(s) Carroll T.--Concerning the commemoration of the birthday of the Reverend Dr. Martin Luther King, Jr.

On motion of Senator Groff, the resolution was read at length and **adopted** by the following roll call vote:

YES	34	NO	0	EXCUSED	1	ABSENT	0
Bacon	Y	Hodge	Y	Morse	Y	Shaffer B.	Y
Boyd	Y	Hudak	Y	Newell	Y	Spence	Y
Brophy	Y	Isgar	Y	Penry	Y	Tapia	Y
Cadman	Y	Keller	Y	Renfroe	Y	Tochtrop	Y
Carroll M.	Y	Kester	Y	Romer	Y	Veiga	Y
Foster	Y	King K.	Y	Sandoval	Y	White	Y
Gibbs	Y	Kopp	Y	Scheffel	Y	Williams	E
Harvey	Y	Lundberg	Y	Schultheis	Y	President	Y
Heath	Y	Mitchell	Y	Schwartz	Y		

Co-sponsors added: Bacon, Boyd, Brophy, Cadman, Carroll M., Foster, Gibbs, Harvey, Heath, Hodge, Hudak, Isgar, Keller, Kester, King K., Kopp, Lundberg, Mitchell, Morse, Newell, Penry, Renfroe, Romer, Sandoval, Scheffel, Schultheis, Schwartz, Shaffer B., Spence, Tapia, Tochtrop, Veiga and White.

Senate in recess. Senate reconvened.

On motions of Senator Shaffer and Senator Harvey and with those elected to the Senate having voted in the affirmative, the remarks of Senator Groff, Senator Schultheis, Senator Lundberg, Senator Renfroe, and Senator Harvey in honor of Dr. Martin Luther King, Jr., were ordered spread upon the pages of the journal.

Senator Groff's remarks:

Thank you Madam President Pro Tempore. Members, we generally do this on the actual holiday which always falls on a Monday so I have time to actually prepare some remarks. This year I had even wondered, since we're going to the inauguration, whether we should

even do this, and recognized that because of the accomplishments of this country made on November 4. But, Speaker Carroll and I decided that it would be best to do this on his birthday. This is something we hadn't done in recent history. The body use to do that when the debate was going on over the holiday itself. Then, I struggled whether or not I should make comments and then Senator Schultheis reminded me that we are doing this today.

As you think about this, America is blessed in the fact that we have these great historical intersections. Moments in this country's history that mark historic and abrupt changes, direction, and hope. Not necessarily in a political sense, but in that quintessential American journey that we are on.

Tuesday, at noon, as prescribed by the Constitution, Amendment 20, there will be a peaceful transition. One that is looked upon throughout the rest of the world as something so unique about the greatest democracy that has ever been created. At noon, at the steps of the building built by slaves, a person of African descent will raise his hand and swear to the oath of the Presidency of the United States. A historic intersection again will occur.

At that moment, when I am sitting there with my wife, I'll probably think about 12 people. The same 12 people that I thought about on election night; the same 12 people that I thought about on August 28 when then Senator Obama accepted the nomination of my party for the Presidency of the United States. That moment in June when he stood center stage in Minneapolis to claim that nomination. I'll think of my great-grand parents some of whom were one generation out of slavery, one of whom was an actual slave. And, I will think about their parents who were at the foot of the Smokey Mountains of Tennessee under the overseer's whip on my father's side and on my mother's side who toiled under America's peculiar institution on the red clay of Georgia. I will think about how far we have come in the bridge that was built for me to stand in this body on this red carpet at the foot of our majestic Rocky Mountains and see how far America has come. So, I will think about them.

I will think about my children who didn't necessarily understand the significance of what was happening on November 4, but knew that it was critical to their parents. I'll remember when we walked in that night and it was either West Virginia or Kentucky that reported first. And, my daughter just happen to walk in at that time. I was watching MSNBC or CNN and they said John McCain had won. It must have been West Virginia and this tear came down my daughter's cheek and I looked at her and I said, "What's wrong?" She threw her head back and tears just began to roll and she said "Barack Obama lost." It was one of those parental moments where you are thinking, "How do I explain this?". She is now well-versed in the Electoral College. "No, not quite, but there are some other things that will go on." I will think about them and the bridge that was built for them on that night.

Selfishly, I will think about me, born April 21, 1963. Three days before I was born, on the south-side of Chicago in the same district represented a little bit later by a state senator named Barack Obama -- that night, three days before there was a speech by Martin Luther King that was pulled together by scraps of papers that were smuggled in to the Birmingham jail and then out of the Birmingham jail. That letter talked about the role of the civil rights movement in the faith community. Particularly, his brothers and sisters in that community who had not necessarily done what they were suppose to do. Then, I will think about how in June of 1963, Medgar Evers was slain in his driveway in Mississippi. I will think about, in 1963, how in August of that year, right after the slaying of Medgar Evers, John Kennedy said, "We need to move aggressively on civil rights legislation so I am sending a bill up Pennsylvania Avenue." That became the Civil Rights bill of 1963 that became the Civil Rights Act of 1964.

I'll think about the hundred thousand people that gathered at the Lincoln Memorial to hear about the dream that he had for America. I will think about how not three weeks later, four little girls attending Sunday school, dressed up in their Sunday finest, in the bathroom that was leading up to a stairwell where a bomb had been placed the previous evening by members of the Ku Klux Klan. I will think about how that bomb exploded. And, how those four girls were killed because of the hate that was in America.

I'll think about the bridge that has been built in just my lifetime. I'll think about Dr. King, who probably didn't think that, when he died that, in forty some odd years, a person of African descent would become President. We often think about him as this dream maker who talked about what America could be. But, now we ought to see him as a bridge builder for all of us; for my great grandparents, for my children, for me, for his grandchild who was born last year.

What an unbelievable country that we live in. I don't know the scripture and I'm going to cheat because I'm not a theologian. There is a scripture in the Book of Numbers that talks about when Kaleb and Moses were talking about the land that they were going to go into

and I think it's Numbers 13:30. This talked about how the people were silent and the fact that they were told by Kaleb, "We should go and take up the possession for the land for certainly we could do it." There are lots of different translations of the Bible. I wonder if one version of Numbers where it says, "certainly we can do it" will some day be translated as, "Yes we can."

On Tuesday at noon, that bridge that so many of us have hoped for, that so many of us have talked about from this spot, will be built. Many of us, half of us in this room, maybe didn't vote for him, but at one point and time I suspect all of us thought, "Wow, what an unbelievable country we live in. What an unbelievable country to come through the chasm of racism that we have had." We have built the bridge. What an unbelievable country that we live in where the only two African Americans in this body-- not because of our color -- but because of what our members, our colleagues, saw in us, that we could run this chamber, just two of us. I go to meetings nationally and they say how many African Americans are there in the body and I say two. They say like two on your row or two that share an office and I say no just two. But, Colorado did that and the bridge that we built for our children who will one day walk through and look at these pictures and say, "Wow, look at that." And then go up to the Presidential area where the gallery is on the third floor and say, "Wow, look at that." What a tremendous, unbelievable country that we live in. What an unbelievable state that we serve.

So, thank you all very much and on Tuesday think of those 12 people when Barack Obama says that he will "uphold the Constitution of the United States of America so help him God." Thank you all very much.

Senator Schultheis' remarks:

In 1807 the British Commonwealth abolished its transatlantic slave trade after long years of perseverance against the deep entrenchment of slavery in the economy of the Empire. Disappointing setbacks and failures were suffered on many occasions before the British parliamentarian and philanthropist, William Wilberforce, and his colleagues savored the sweet victory for which they had so long prayed, hoped, and tirelessly worked.

In his young years Wilberforce had been deeply influenced by his friendship with John Newton, former slave-ship captain turned clergyman and author of the famous Christian hymn, "Amazing Grace." In time, Wilberforce became a Christian, and it was this personal conversion experience that caused him to embark on a 20-year-long battle against the practice of slavery. He died on July 29, 1833, just three days after hearing that the passage through Parliament of the Slavery Abolition Act of 1833 was assured. The British Empire had finally rid itself of the scourge of slavery.

In three short decades, a continent away, a similar battle would be raging against the evil of slavery, but in this conflict, brothers would take up arms against brothers. Shortly before his death, William Wilberforce had penned these words: "America, as a Christian and a free country, cannot but entertain that slavery is alike incompatible with the law of God and with the well-being of man..."

Upon Civil War battlefields Wilberforce's words would be tested...but in the end, the country would prove them true...slavery puts man at war with God and with other men and would no longer be tolerated in a Christian and free America. President Abraham Lincoln issued the Emancipation Proclamation, which was followed soon thereafter by ratification of the Thirteenth Amendment. In 1865 slavery in America came to an end...but the battle for freedom was just beginning.

Sixty-four years later, Martin Luther King, Jr., was born in Atlanta on January 15, 1929. He was destined to rise up in the spirit of Wilberforce and Lincoln and take up that same banner for the cause of liberty and justice. This time the fight would be waged against segregation and racial discrimination. Dr. King went forward with unyielding conviction that God had created all men equal, taking his stand and strongly proclaimed that it was up to good men of conscience of every color to act selflessly and speak truthfully without guile in order to bring about the end of segregation in the United States.

So it is that each year on the third Monday of January, Americans commemorate the birth and life of Martin Luther King, Jr. As befits the occasion, we remember his work and influence in the civil rights arena, and we honor the man behind the deeds.

Recently, a good friend of mine urged me to read the letter, authored in 1964 by Dr. King, while he was being detained in the Birmingham jail. I commend that letter to you, as it conveys Dr. King's heart. In it he answers criticism levied against him by pastoral peers within the Christian community.

Admittedly, I had never read his lengthy letter, written from the Birmingham jail, but as I

pored over its contents, I was reminded of Dr. King's generational ties to the church...his grandfather and father were both Baptist ministers. From this legacy came the high value he placed upon freedom and equality and the reasons why he bristled at injustice. When he heard the words "liberty and justice for all," he heard a clarion call to righteous men everywhere to defend the least, the last, and the lost.

In his letter, Dr. King reflected upon the lives of great men and women of character whose words and deeds stirred within him a hope that one day from every corner coffee shop and courthouse across America, the sweet sound of "Free at last! Free at last! Thank God Almighty, we are free at last" would ring out.

While it remains true that Christians themselves have not always flawlessly embodied the ideals of their faith, their impulse to promote by effort the principles of universal benevolence and pursuit of the public good has often wrought dramatic and positive change.

So I ask, "Can we properly honor Dr. King without also honoring the principles and ideals that inspired him? Please consider this quote from Dr. King's letter:

". . . I am in Birmingham because injustice is here. Just as the prophets of the eighth century B.C. left their villages and carried their 'thus saith the Lord' far beyond the boundaries of their home town, and just as the Apostle Paul left his village of Tarsus and carried the gospel of Jesus Christ to the far corners of the Greco-Roman world, so am I compelled to carry the gospel of freedom beyond my own home town. . . I cannot sit idly by in Atlanta and not be concerned about what happens in Birmingham. Injustice anywhere is a threat to justice everywhere."

Senator Lundberg's remarks:

Dr. King continues some paragraphs later to address the characterization of his actions as "untimely," as well as his critics' assertion that he and other demonstrators were willing to break laws. Listen to the answer Dr. King gives his detractors:

"This 'Wait' has almost always meant 'Never.' We must come to see, with one of our distinguished jurists, that 'justice too long delayed is justice denied.' We have waited for more than 340 years for our constitutional and God-given rights. There comes a time when the cup of endurance runs over, and men are no longer willing to be plunged into the abyss of despair."

". . . You (speaking to his critics) express a great deal of anxiety over our willingness to break laws. One may ask: 'How can you advocate breaking some laws and obeying others?' The answer lies in the fact that there are two types of laws: just and unjust. . . One has not only a legal but a moral responsibility to obey just laws. Conversely, one has a moral responsibility to disobey unjust laws. I would agree with St. Augustine that 'an unjust law is no law at all.'

Now what is the difference between the two? How does one determine whether a law is just or unjust? A just law is a man-made code that squares with the moral law or the law of God. An unjust law is a code that is out of harmony with the moral law...Any law that uplifts human personality is just. Any law that degrades human personality is unjust. All segregation statutes are unjust because segregation distorts the soul and damages the personality...Hence segregation is not only politically, economically, and sociologically unsound, it is morally wrong and awful."

Senator Renfroe's remarks:

From Dr. King's remarks what are we to conclude about the foundations of justice? That a man's keeping or breaking of any law is subject to his own views of that law, as to whether it is just or unjust? Or does Dr. King justify acts of civil disobedience, based upon the premise that supreme Truth has been established by God and exists over and above man-made codes? It would be hard to argue, I think, that Dr. King thought anything other than that just law derives its authority from the Divine.

Dr. King continues:

"Of course, there is nothing new about this kind of civil disobedience. It was evidenced sublimely by the refusal of Shadrach, Meshach, and Abednego to obey the laws of Nebuchadnezzar, on the ground that a higher moral law was at stake. It was practiced superbly by the early Christians, who were willing to face hungry lions and the excruciating pain of chopping blocks rather than submit to certain unjust laws of the Roman Empire... In our own nation, the Boston Tea Party represented a massive act of civil disobedience...Human progress never rolls in on wheels of inevitability; it comes through the tireless efforts of men willing to be co-workers with God..."

Senator Harvey's remarks:

Martin Luther King was a man who tirelessly co-labored with God and men to win the struggle against segregation. He eventually took some satisfaction in being branded as an "extremist," for this label placed him in the company of his Lord and with men throughout the ages, whose lives had not only encouraged, but inspired him.

"Was not Jesus an extremist for love: 'Love your enemies, bless them that curse you, do good to them that hate you, and pray for them which despitefully use you and persecute you.' Was not Amos an extremist for justice: 'Let justice roll down like waters and righteousness like an ever-flowing stream.' Was not Paul an extremist for the Christian gospel: 'I bear in my body the marks of the Lord Jesus.' Was not Martin Luther an extremist: 'Here I STAND; I cannot do otherwise, so help me, God.' And John Bunyan: 'I will stay in jail to the end of my days before I make a butchery of my conscience.' And Abraham Lincoln: 'This nation cannot survive half slave and half free.' And Thomas Jefferson: 'We hold these truths to be self-evident, that all men are created equal.'

So the question is not whether we will be extremists, but what kind of extremists will we be? Will we be extremists for hate or for love? Will we be extremists for the preservation of injustice or for the extension of justice?"

". . .I am thankful to God that some noble souls from the ranks of organized religion have broken loose from the paralyzing chains of conformity and joined us as active partners in the struggle for freedom. . .they have acted in the faith that right defeated is stronger than evil triumphant. . . Abused and scorned as we may be, our destiny is tied up with America's destiny. We will win our freedom because the sacred heritage of our nation and the eternal will of God are embodied in our echoing demands."

Senator Schultheis' remarks:

Dr. King was clear about the moral things of life and was unashamed to testify to them and to God from whom he believed that moral law comes. He was careful to do not only the "right thing," but to do it for the "right reason," and he placed the cause to which he had devoted himself into the providential hands of God.

Dr. King ends his letter with these words:

"One day the South will know that when these disinherited children of God sat down at lunch counters, they were in reality standing up for what is best in the American dream and for the most sacred values in our Judeo-Christian heritage, thereby bringing our nation back to those great wells of democracy, which were dug deep by the founding fathers in their formulation of the Constitution and the Declaration of Independence. . .Let us all hope that the dark clouds of racial prejudice will soon pass away and the deep fog of misunderstanding will be lifted from our fear-drenched communities, and in some not too distant tomorrow, the radiant stars of love and brotherhood will shine over our great nation with all their scintillating beauty.

Yours for the cause of Peace and Brotherhood,
Martin Luther King, Jr. "

Perhaps Abraham Kuyper, Dutch politician, journalist, statesman, and theologian at the turn of the 20th century, sums up best the heart and mind of Dr. King and explains why he was compelled to engage the fight and take his stand:

"When the principles that run against your deepest convictions begin to win the day, then the battle is your calling, and peace has become sin. You must at the price of dearest peace lay your convictions bare before friend and enemy with all the fire of your faith."

As we honor the memory of Dr. Martin Luther King, Jr., let us dedicate ourselves to serving selflessly on behalf of those whom we represent.

May God bless America and the work of our hands!

MESSAGE FROM THE HOUSE

January 15, 2009

Mr. President:

The House has adopted and returns herewith SJR09-005.

SENATE SERVICES REPORT

Correctly Printed: SB09-086, 087, 088, 089, 090, 091, 092, 093, and 094; SJR09-005, and 006; SR09-005.
Correctly Engrossed: SJR09-005.
Correctly Enrolled: SJR09-004.

Senate in recess. Senate reconvened.

INTRODUCTION OF RESOLUTIONS

The following resolutions were read by title:

SJR09-008 by Senator(s) Veiga, Penry; also Representative(s) Bradford--Concerning the recognition of Doug Phillips' contributions to the Colorado legal system and the development of Colorado's wine industry.
Laid over one day under Senate Rule 30(b).

SR09-007 by Senator(s) Romer; --Concerning World AIDS Day.
Laid over one day under Senate Rule 30(c).

INTRODUCTION OF BILLS -- FIRST READING

The following bill was read by title and referred to the committee indicated:

SB09-095 by Senator(s) Tapia; also Representative(s) Riesberg, Benefield--Concerning payment of amounts due under a construction agreement.
State, Veterans & Military Affairs

On motion of Senator Shaffer, the Senate adjourned until 9:00 a.m., January 16, 2009.

Approved:

Peter C. Groff
President of the Senate

Attest:

Karen Goldman
Secretary of the Senate

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