

BUSINESS MEETING

MEETING
BEFORE THE
COMMITTEE ON
ENVIRONMENT AND PUBLIC WORKS
UNITED STATES SENATE
ONE HUNDRED FIFTEENTH CONGRESS
FIRST SESSION

FEBRUARY 1-2, 2017

Printed for the use of the Committee on Environment and Public Works



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COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

ONE HUNDRED FIFTEENTH CONGRESS
FIRST SESSION

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BUSINESS MEETING

**WEDNESDAY, FEBRUARY 1, 2017–THURSDAY,
FEBRUARY 2, 2017**

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
Washington, DC.

The Committee met, pursuant to notice, at 10:47 a.m. in room 406, Dirksen Senate Office Building, Hon. John Barrasso (Chairman of the Committee) presiding.

Present: Senators Barrasso, Inhofe, Capito, Boozman, Wicker, Fischer, Moran, Rounds, Ernst, and Sullivan.

OPENING STATEMENT OF HON. JOHN BARRASSO, U.S. SENATOR FROM THE STATE OF WYOMING

Senator BARRASSO. Good morning. I call this business meeting to order.

I have been informed that no Democrats will be in attendance this morning, in an effort to intentionally delay and obstruct the nomination of Attorney General Scott Pruitt to be the Administrator of the Environmental Protection Agency.

It is a disappointing turn of events. But let's review some history.

On January 21st, 1993, EPA Administrator nominee Carol Browner, under Democrat President Bill Clinton, was confirmed by the Senate. This is 1 day after he took office.

On January 30th, 2001, EPA Administrator nominee Christy Todd Whitman, under Republican President George W. Bush, was confirmed by the full Senate.

On January 22nd, 2009, EPA Administrator nominee Lisa Jackson, under Democrat President Barack Obama, was confirmed by the full Senate, 2 days after he took office.

Today is February 1st, and the minority has now obstructed even having a vote in Committee on President Donald Trump's nominee, Oklahoma Attorney General Scott Pruitt. I hope this is not the new normal.

We cannot afford for the EPA to go without an Administrator for the foreseeable future. This will impact future EPA Administrator nominees. These precedents for this delay will likely have long-term impacts after today's nominee has left office.

This boycott not only affects the EPA, but it also prevents this Committee from organizing. No one can complain about the Trump administration and its policies, if they sabotage the very formation of the Committee that is supposed to conduct the oversight.

There are a number of consequences to not having a fully functional EPA and a fully functional Senate Environment and Public Works Committee. There are key issues for the EPA and the Senate EPW Committee that we could and should be working on, including Waters of the United States policy, cold war legacy pollution cleanup, addressing brownfields, and ensuring implementation of the new TSCA legislation, to name a few. None of this is made better by this boycott. This amounts to nothing more than political theater at the expense of working on issues that we care about.

The Ranking Member and the minority have complained about the nomination process. Let's set the record straight.

Attorney General Pruitt has been through an extremely thorough and fair process. I would like to read some quotes from the members of the minority who have praised the unprecedented hearing we had on the nominee while the hearing was occurring.

The Ranking Member stated, "I appreciate the way you've conducted this hearing today. I appreciate all the members coming and coming back again and again."

My colleague from New Jersey stated, "First of all, to you, sir, this is my first time going through nomination hearings. You have been very generous with the way you have been conducting these hearings. I think it is important," he said, "that we note that, and I appreciate the number of rounds that you are doing."

My colleague from Rhode Island stated, "I think that you have been fair."

These members are correct. The hearing was fair. It was historic in its length of time for member questions of the nominee.

Let's be clear. Attorney General Pruitt has answered more questions than any past EPA Administrator nominee in recent memory. He answered a total of more than 1,200 questions. He answered over 1,000 more questions than the EPA Administrator nominees for the incoming Obama, Bush, and Clinton administrations.

The letter that the Ranking Member sent me, dated January 30th, highlighted what he believed were a lack of substantive answers from the nominee. To that I would quote my colleague from Rhode Island in 2013, when he stated during the McCarthy nomination business meeting that "it is not the minority's right to get nominees to agree with them in advance." The minority may not like all of Attorney General Pruitt's answers, but he has given them answers.

Ranking Member Carper made a prescient prediction during the first nomination business meeting for Gina McCarthy in 2013 when he said, "Someday there will be a Republican president." He said, "Someday the Republicans are going to be in the majority in the Senate." He said, "And that Republican president is going to have his or her cabinet in place." He said, "I think you can nominate a Governor. A president nominates good people, honest people, hard working people. They ought to get at least a vote." He continued by saying, "They ought to get a vote, and I think they ought to get our support."

Well, Mr. Pruitt ought to get at least a vote. He ought to get a vote. He ought to get our support.

With that, I would recognize other members of the Committee who would like to speak.

Senator Inhofe.

**OPENING STATEMENT OF HON. JAMES M. INHOFE,
U.S. SENATOR FROM THE STATE OF OKLAHOMA**

Senator INHOFE. Thank you, Mr. Chairman. In case you were wondering why our audience looks a little more distinguished than normal, we are graced by the Oklahoma Wheat Growers Association, all of whom know the nominee personally.

Thank you for the chance to get on the record, as we all want to do, concerning this nominee. He is a personal friend of those of us in Oklahoma, and he has gone beyond being responsive to this Committee. And I think it is important to get into the record, because we are making the record here, what he has actually been through.

He went through four rounds of questions. That is more rounds than any other nominee in the recorded history of this Committee. In addition, he has answered 206 of our questions during that time. However, that was just the beginning of it because, once the hearing was over, our friends on the other side of the dais submitted 1,078 questions for the record.

Now, the Chairman has talked about some of the previous nominees. In this case, during the Browner nomination, she had a total of 137 questions for the record. He had 1,078. During Christy Todd Whitman, she had 178 questions for the record. And when Lisa Jackson was here, she had only 133.

So he had 1,078 questions for the record, including the extra questions from Senator Carper asked Pruitt, in his December 28th letter, as Pruitt promised he would. This means that he answered 1,000 more questions than any other Administrator nominee in the past three presidential administrations.

Last week EPW—that is Environment and Public Works—Democrats held a shadow hearing inviting partisan environmentalists to talk to each other, including a former employee of the Oklahoma Attorney General's Office under Pruitt's predecessor, who was sued and settled out of court for extreme workplace harassment. Great witness. Yet, even with all the unnecessary questions at the Democrat shadow hearing, Pruitt continued to talk with Ranking Member Carper by phone on Monday for 30 minutes, answering even more questions. I know about this phone call, and no questions were asked, none.

Ranking Member Carper asked the same recusal questions posed at the January 18th nomination hearing, even though he has a letter from the EPA Career Ethics employee stating, "Pruitt has satisfied all ethics requirements and has entered into the same recusal agreement as former Administrator Lisa Jackson."

The other side just happens not to like the answer.

Now, I am going to ask unanimous consent that we have a letter entered into the record after my remarks.

Ranking Member Carper complained that Pruitt's description of the Illinois River agreement was wrong. Pruitt has negotiated the first enforceable limit on phosphorous in the Illinois River. That is simply a fact.

He complained about Pruitt's answers on whether EPA can control mercury from power plants, alleging Pruitt opposes it simply

because he was on the winning side of the *Michigan v. EPA* legislation, where the Supreme Court found EPA didn't bother to consider the costs of EPA's own rules, contrary to law.

Finally, he complained about the answers to only 9 questions out of 1,078 questions where Pruitt had to refer to the process under Oklahoma's Open Records Act to get a comprehensive response to the questions. Here are some examples of the Democrat member's questions, and you can decide whether or not referral to the Open Records Act was appropriate.

Senator Cardin, in his 29th question, Senator Cardin, who is not here today but a member of this Committee, he said, "Please provide all communications you have had with representatives of agricultural and other companies regarding water quality litigation between Arkansas and Oklahoma."

Senator Carper's 119th question: "For each listed matter in the State of Oklahoma has been a litigant or petitioner against the EPA, please provide any and all documents, including any and all written electronic correspondence, audio tapes, electronic records, video tapes, photographs, telephone messages, voicemails, e-mails, facsimiles, daily agendas, and calendars information about meetings and/or discussions, whether in person or over the phone, agendas, minutes, and a list of participants for those meetings and/or discussions, and transcripts and notes of any such meetings or discussions from the date on which your office first began to prepare the litigation at hand to the date of the letter between you or other employees in your office and each representative of each non-governmental entity with whom you or your office communicated about the litigation." That is all in one question. They are all part of the 1,078 questions.

Senator Markey's 61st question: "For each year since 1995," that is 22 years of records, "please provide information regarding the State of Oklahoma's environmental enforcement efforts, specifically descriptions of each environmental enforcement action, including investigations and enforcement proceedings initiated by the AGs," that is Attorney General's office, "including the date of the action it was initiated, the name of the subject of the action and the nature of the action and environmental violation that led thereto, the annual budget and the number of employees, and"—this is still Senator Markey's 61st question—"describe each environmental enforcement action, including investigations and enforcement procedures that was closed, including a description of the resolution of the matter, whether a fine or penalty was levied and, if so, the amount of such fine or penalty, whether non-monetary remedies were required, and if so, what, and whether criminal prosecution was initiated in the matter, and if so, what the resolution to the prosecution was." That is the end of that question.

Senator Whitehouse's 84th and 85th questions: "Please list all matters you and your office have had with the U.S. Department of Interior or the EPA since you became Attorney General of Oklahoma. For the purpose of this and the following question's matters refer to lawsuits, including lawsuits in which your office filed a friend of the court brief, enforcement actions, investigations, rulemakings, and any other matter which included adjudication between parties."

Let me repeat that Scott Pruitt has answered 1,000 more questions than any other nominee in the last three presidential administrations, and Scott Pruitt went through four rounds of questions. That is more rounds of questions than anyone has had to be subjected to in the history of this Committee. So it is time, I think, that we move on and get him voted out, and he is going to make a great Administrator of the EPA and a refreshing change.

Thank you, Mr. Chairman.

Senator BARRASSO. Senator Inhofe, was there something you wanted to introduce to the record?

Senator INHOFE. Oh, yes. I mentioned that earlier at this point in the record, and that is the letter I referred to.

Senator BARRASSO. Without objection.

Senator INHOFE. Here it is.

Senator BARRASSO. Thank you.

[The referenced information follows:]



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

JAN 15 2017

OFFICE OF
GENERAL COUNSEL

The Honorable Thomas R. Carper
United States Senate
513 Hart Senate Office Building
Washington, DC 20510

Dear Senator Carper:

This letter responds to your inquiry of January 12, 2017, requesting specific information regarding the ethics review of E. Scott Pruitt, who has been nominated by President-elect Trump to be the Administrator of the United States Environmental Protection Agency (EPA).

Pursuant to the Ethics in Government Act of 1978 (amended by the Ethics Reform Act of 1989 and the Honest Leadership and Open Government Act of 2007), the EPA ethics team reviewed the public financial disclosure report submitted by Mr. Pruitt. We interacted with his surrogates to ensure that he reported all information necessary and required as set forth in the Ethics in Government Act. See "Contents of Report" at 5 U.S.C. app. §102 and in 5 C.F.R. Part 2634, Subpart C. Based on his submission, the EPA certified the public financial disclosure report on January 4, 2017, and forwarded it to the Office of Government Ethics (OGE), which certified it later that same day. Our certification of the report means that "the individual submitting [it] is in compliance with applicable laws and regulations." See 5 U.S.C. app. §106. In addition to certifying the report, the EPA and OGE also approved the language of Mr. Pruitt's ethics agreement, which conformed to the requirements of 5 C.F.R. Part 2634, Subpart H, Ethics Agreements, and the OGE-issued Nominee Ethics Agreement Guide (2014).

Federal ethics laws and regulations define the assets that are to be considered when assessing whether an employee or nominee has a financial conflict of interest. This assessment considers Mr. Pruitt's direct or imputed assets, which are defined to be his own interests, those of his spouse, minor child, general partner, any organization or entity for whom he serves as officer, director, trustee, general partner or employee, or any person with whom he is negotiating for or has an arrangement concerning prospective employment. See 5 C.F.R. § 2640.103(d). An employee's obligation to recuse himself from a particular matter or obtain a waiver pursuant to 18 U.S.C. §208(b) is based upon consideration of these defined interests. Interests or potential interests beyond those included in the definition are not considered and, therefore, cannot form the basis of an obligation *under federal ethics laws* to recuse oneself. For example, your letter asks whether the EPA considered potential "conflicts of interest arising from [Mr. Pruitt's] solicitation of funds for 527 and 501(c)(4) organizations." The assets of a 527 organization are

not owned directly by Mr. Pruitt or any of his imputed interests, so are, therefore, outside of the bounds of our review. Although Mr. Pruitt himself had a campaign committee for his own political campaigns for office, the EPA received confirmation from his surrogates that he is neither compensated by nor can he direct funds to himself. Further, he is not liable for the campaign's debt and is not owed any money. Mr. Pruitt's surrogates, in an email message from Mr. Adam Raviv, Special Counsel, WilmerHale, dated December 22, 2016, assured the EPA that if confirmed, the "committee will not raise additional money during his service and its only activity will be to settle any liabilities remaining from before his confirmation." We note that, as a federal employee, Mr. Pruitt would be prohibited under the Hatch Act, 5 U.S.C. § 7324, from soliciting any funds whatsoever for any partisan political campaign, group or election.

QUESTION #1: Could you provide us a complete list of matters that in your opinion will require your authorization?¹

ANSWER #1: Upon appointment, Mr. Pruitt will become an employee of the United States Environmental Protection Agency and subject to, among other things, the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. Part 2635, and the conflict of interest statutes codified in Title 18 of the United States Code. The obligation to seek authorization to participate in a specific party matter to avoid a loss of impartiality of the employee originates from 5 C.F.R. § 2635.502(a), which states:

Where an employee knows that a particular matter involving specific parties is likely to have a direct and predictable effect on the financial interest of a member of his household, or knows that a person with whom he has a covered relationship is or represents a party to such matter, and where the employee determines that the circumstances would cause a reasonable person with knowledge of the relevant facts to question his impartiality in the matter, the employee should not participate in the matter unless he has informed the agency designee of the appearance problem and received authorization from the agency designee in accordance with paragraph (d) of this section.

The regulation, which includes a definitions section, specifies that an employee has a covered relationship with, among others, "[a]ny person for whom the employee has, within the last year, served as officer, director, trustee, general partner, agent, attorney, consultant, contractor, or employee." 5 C.F.R. § 2635.502(b)(iv). As set forth in the ethics agreement, Mr. Pruitt has identified that for a period of one year after his resignation from his position as the Attorney General of the State of Oklahoma, he will have a covered relationship with the State of Oklahoma and has agreed to seek authorization prior to participating in any specific party matter in which the State of Oklahoma is a party or represents a party. Similarly, he has identified the Southern Baptist Theological Seminary, Windows Ministry Incorporated, and the Rule of Law

¹ This response differs from the long-standing agency practice of answering questions in a comprehensive narrative in light of the unique nature of the confirmation process and the importance of the federal ethics requirements to that process. In order to facilitate the approach taken, this response includes the wording of the questions contained in your letter verbatim.

Defense Fund as organizations with which he will have a covered relationship for one year from the date he resigns or resigned from his positions with those entities, and has agreed during the time he has a covered relationship with any organization to seek authorization prior to participating in any specific party matter in which any organization in which he has served as director or officer is a party or represents a party.

It is not possible to proactively identify a complete list of specific party matters that could exist across the entire agency that involve the State of Oklahoma or any of the three organizations, nor would it be possible to do so for many other employees who have covered relationships with a state or organization that the EPA interacts on a fairly regular basis. Instead, the employee ensures compliance with the ethics requirements by proactively identifying the persons with which the employee has a covered relationship and then seeking authorization each time the employee seeks to participate in a specific party matter where one of those persons is a party or represents a party.

QUESTION #2: What factors will you use to assess whether authorization will be granted? What factors will you use to determine how broadly any recusal, if required, must be drawn? For example, Mr. Pruitt has challenged EPA's carbon pollution standards for power plants. Assuming that a recusal would be required in that matter, would it be limited to decisions regarding the litigation, or to other matters considered by the Office and Air and Radiation?

ANSWER #2: For the purposes of the impartiality considerations under the Standards of Ethical Conduct, the factors the EPA's Designated Agency Ethics Official will take into consideration are set forth at 5 C.F.R. § 2635.502(d)(1) - (6):

Factors which may be taken into consideration include:

- (1) The nature of the relationship involved;
- (2) The effect that resolution of the matter would have upon the financial interests of the person involved in the relationship;
- (3) The nature and importance of the employee's role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter;
- (4) The sensitivity of the matter;
- (5) The difficulty of reassigning the matter to another employee; and
- (6) Adjustments that may be made in the employee's duties that would reduce or eliminate the likelihood that a reasonable person would question the employee's impartiality.

Should a recusal be necessary, that would prohibit participation in that specific party matter in any way, but a recusal in one specific party matter would not itself prevent participating on other specific party matters in which the "covered relationship" is a party or represents a party, or extend to matters of general applicability. Pursuant to the impartiality rules, any court case is considered a specific party matter. Thus, if the State of Oklahoma is a party or represents a party in a particular piece of litigation, Mr. Pruitt's ethics agreement includes a commitment by him to seek authorization to participate personally and substantially in that litigation. Should Mr. Pruitt

seek authorization to participate in any litigation in which a person with whom he has a covered relationship is a party or represents a party, as stated above, the EPA Designated Agency Ethics Official would consider the factors set forth at 5 C.F.R. § 2635.502(d)(1) - (6) for purposes of compliance with the federal ethics rules. Beyond the federal ethics requirements, as an attorney, Mr. Pruitt would also be subject to the rules of any relevant state bar. Those rules, however, are in addition to, and beyond the scope of, the federal ethics review and requirements discussed in this letter.

QUESTION #3: Mr. Pruitt has agreed to not participate in any particular matter involving the RLDF without prior authorization. RLDF's activities and donors are largely secret. Without more extensive disclosures about RLDF and Mr. Pruitt's role in it, how will you determine whether a particular matter involves the RLDF?

ANSWER #3: Federal ethics requirements apply first to the employee himself, and so Mr. Pruitt has agreed that, for the period of time for which he has a covered relationship with the Rule of Law Defense Fund (RLDF), he will seek authorization prior to participating in any specific party matter in which RLDF is a party or represents a party. Once he becomes a federal employee, Mr. Pruitt will have a continuing obligation to comply with the commitments made in his ethics agreement and the federal ethics requirements. In order to have an obligation to seek authorization to participate personally and substantially in a matter, RLDF must be a party or represent a party in a specific party matter. If RLDF has an interest in a specific party matter but is not itself a party or representing a party in that matter, the federal ethics requirements would not obligate Mr. Pruitt to seek authorization prior to participating in that specific party matter.

QUESTION #4: The ethics agreement entered into by former EPA Administrator Carol Browner included a clear and permanent recusal of her participation in any EPA matter in which the State of Florida was involved as a party and she was involved personally and substantially as Secretary of the Florida Department of Environmental Regulation. Our understanding of Mr. Pruitt's ethics agreement is that he has made no such unequivocal pledge. Why has EPA concluded that a more lenient arrangement for Mr. Pruitt's conflicts is appropriate?

ANSWER #4: In assisting Mr. Pruitt with his ethics agreement, the EPA followed federal ethics requirements and the most recent Ethics Agreement Guide published by the Office of Government Ethics (OGE) in 2014. Both the EPA and OGE certified Mr. Pruitt's ethics agreement as complying with all federal ethics requirements and conforming to the template set forth in OGE's Guide. Each ethics agreement is specific to the individual who is signing the agreement, and so consistency with the agreement of a former EPA Administrator is not a requirement for the agreement to be in compliance with the federal ethics rules. While the question indicated Mr. Pruitt's ethics agreement differs from the ethics agreement entered into by former Administrator Carol Browner in 1997, Mr. Pruitt's ethics agreement is very similar to the agreement entered into by former Administrator Lisa Jackson in 2009. Those comparisons do not demonstrate compliance or non-compliance with the federal ethics requirements.

QUESTION #5: Mr. Pruitt has agreed to seek your authorization for a one-year period of time. Is it your understanding that any recusal you may require of Mr. Pruitt would be limited to this one-year period? If so, how will you account for his participation in matters after that one-year period where the conflict still exists, like litigation that he has brought against the agency that has not settled or been decided by that time?

ANSWER #5: As explained above, the regulations define a person with whom an employee has a covered relationship to include "[a]ny person for whom the employee has, *within the last year*, served as officer, director, trustee, general partner, agent, attorney, consultant, contractor, or employee." 5 C.F.R. § 2635.502(b)(iv) (italics added). After one year, the covered relationship with the former employer under the federal ethics rules no longer exists. At that point in time and into the future, there is no obligation under the federal ethics rules to seek authorization to participate in the relevant specific party matters, and any disqualification on participating in those specific party matters is no longer in effect. An employee may voluntarily continue to recuse himself from such specific party matters after that point, but is not obligated to do so by the federal ethics requirements. Again, this letter discusses only Mr. Pruitt's obligations under the federal ethics laws and does not address other possible obligations such as compliance with state bar rules.

QUESTION #6: Mr. Pruitt has sued EPA on behalf of the State of Oklahoma. Before authorizing him to participate in EPA decisions involving Oklahoma, how will you determine whether Mr. Pruitt has obtained consent from his client to be released from ethical obligations he may have to it?

ANSWER #6: The federal ethics requirements ensure employees meet certain obligations on behalf of the interests of the federal government, as those interests are articulated in federal laws and regulations. Likewise, the EPA's ethics program is focused on ensuring compliance with those laws and regulations. To the extent Mr. Pruitt has ethical obligations to the State of Oklahoma or any other organization, ensuring compliance with those non-federal obligations is beyond the scope of the federal ethics requirements and the EPA's ethics program.

QUESTION #7: Many of Mr. Pruitt's lawsuits have involved multi-state coalitions. Presumably he has entered into joint prosecution agreements with his co-plaintiffs. Have you reviewed, or will you review, these agreements to assess whether Mr. Pruitt has a "covered relationship" with other states or parties in those lawsuits? Is it your opinion that he would also have to obtain consent from his co-plaintiffs to participate in matters in which EPA's position is adverse to those states?

ANSWER #7: As described above, the federal ethics regulations define persons with whom an employee has a covered relationship, and the impartiality standards do not consider that joint prosecution agreements give rise to any covered relationship with co-plaintiffs. Joint prosecution agreements would not be relevant to evaluating compliance with federal ethics requirements and the EPA has not reviewed any such possible agreements.

QUESTION #8: It is a general principle of legal ethics that an attorney may not disclose privileged information without the client's consent. Furthermore, in multi-party litigation when two or more clients with a common interest in litigation agree to exchange otherwise privileged information concerning the matter, the communication is privileged as against third persons. Have any provisions been put in place to prevent the unauthorized disclosure by Mr. Pruitt of confidential client information, either from the State of Oklahoma or other state plaintiffs in Mr. Pruitt's litigation?

ANSWER #8: The federal ethics requirements ensure employees meet certain obligations on behalf of the interests of the federal government, as those interests are articulated in federal laws and regulations. Likewise, the EPA's ethics program is focused on ensuring compliance with those laws and regulations. To the extent Mr. Pruitt has ethical obligations to the State of Oklahoma or any other state or organization, knowledge of such provisions and ensuring compliance with those non-federal obligations is beyond the scope of the federal ethics requirements and the EPA's ethics program.

QUESTION #9: Pursuant to 42 U.S.C. § 7601(d) (sic), the authority of the Administrator to issue rules related to topics listed in 42 U.S.C. § 7607(d) is not delegable. How will you address a situation where you determine Mr. Pruitt has a conflict of interest with respect to a rule covering one of these topics?

ANSWER #9: Should the federal ethics requirements preclude an Administrator from participating in a matter where the authority to take certain actions is defined by a statute or a regulation to rest with the Administrator, and where the statute or regulation specifically states that the authority may not be delegated, the Federal Vacancies Reform Act and other federal law provide a mechanism for another official of the EPA to perform such functions in an acting capacity. For example, if an Administrator is determined to have a conflict of interest and must be recused with respect to any such non-delegable statutory function or duty, he would be deemed unable to perform the function or duty and the Administrator position would be deemed "vacant" with respect to that function or duty. The Federal Vacancies Reform Act identifies the officials who would serve as the acting Administrator to perform the function or duty, and under Executive Reorganization #3 of 1970, the EPA Deputy Administrator acts as Administrator in the event of a vacancy in the office of Administrator.

QUESTION #10: If a recusal is determined appropriate in any matter, has the nominee agreed to forgo any briefings during the period of the recusal?

ANSWER #10: An employee who is recused from participation cannot be briefed on the same particular matter from which he is recused. In its advisory entitled "Effective Screening Arrangements for Recusal Obligations, DO-04-012 (June 1, 2004), the Office of Government Ethics wrote that:

Ethics officials should also counsel employees regarding the scope of their recusals, including the kinds of actions that may constitute personal and substantial participation.

For example, employees with recusal obligations should not assign covered matters on an ad hoc basis. Participating in a decision concerning who should work on a matter, how a matter should be handled, or whether a matter should be acted upon, is a form of participation in the matter. Involvement in preliminary discussions, in interim evaluations, in review or approval at intermediate levels, or in supervision of subordinates working on a matter also amounts to personal and substantial participation. Recusal means no participation in any way, including briefings.

QUESTION #11: Under what obligation is Mr. Pruitt to follow determinations made by you concerning his recusals and waivers? If he chooses not to follow your determinations, what recourse is available for EPA?

ANSWER #11: Pursuant to the Ethics in Government Act at 5 U.S.C. app. §110, Mr. Pruitt is required to comply with his ethics agreement. Pursuant to 5 C.F.R. § 2634.802(b), he is required to comply with his ethics agreement within ninety days from the date of Senate confirmation. As an employee of the EPA, Mr. Pruitt will be subject to the Standards of Ethical Conduct set forth at 5 C.F.R. Part 2635, as well as the conflict of interest statutes codified in Title 18 of the United States Code, which include specific prohibitions against financial and representational conflict of interest.

As a Presidential nominee for a Senate-confirmed position, Mr. Pruitt is required to have one hour of initial ethics training which he may complete before or after his appointment, but not later than two months after his appointment. 5 C.F.R. § 2638.304(b)(1). In addition, he is required to have an ethics briefing to discuss his immediate ethics obligations. This new training requirement, which became effective on January 1, 2017, may be combined with the initial ethics training, but must occur no later than fifteen days after appointment. See 5 C.F.R. § 2638.305(b)(1). As an employee of the EPA, Mr. Pruitt will be subject to the Standards of Ethical Conduct for Employees of the Executive Branch, which includes the basic obligations of public service set forth at 5 C.F.R. § 2635.101(b)(1) – (12).

As the head of this agency, Mr. Pruitt will be “responsible for, and will exercise personal leadership in, establishing and maintaining an effective agency ethics program and fostering an ethical culture in the agency.” 5 C.F.R. § 2638.107. In the event that an employee fails to meet the obligations of his or her ethics agreement, then the EPA may notify the Office of the Inspector General and/or the Office of Government Ethics. See 5 C.F.R. § 2635.101(b)(11), which requires employees to disclose waste, fraud, abuse and corruption to the proper authorities, and 5 C.F.R. § 2638.401, which gives the Office of Government Ethics the authority to take action with respect to deficiencies in an agency's ethics program.

In closing, thank you for your January 12, 2017, letter requesting specific information regarding the ethics review performed by the EPA with regard to the nomination of E. Scott Pruitt for the position of Administrator. The EPA recognizes the importance of the federal ethics requirements to the confirmation process, and is committed to working with the Congress, Mr. Pruitt, and future nominees to explain those requirements and how they apply to a particular situation.

Consistent with that commitment, Mr. Pruitt's representative requested a copy of the signed version of this response after it has been transmitted to you, and one will be provided to him.

If you have further questions, you may contact me at minoli.kevin@epa.gov or (202) 564-8064, or your staff may contact Justina Fugh, Senior Counsel for Ethics, at fugh.justina@epa.gov or (202) 564-1786 and copy Christina Moody of the EPA's Office of Congressional and Intergovernmental Relations, moody.christina@epa.gov or (202) 564-0260.

Sincerely,

A handwritten signature in dark ink, appearing to read "K. Minoli", is written over a faint, larger version of the same signature.

Kevin S. Minoli
Designated Agency Ethics Official
Principal Deputy General Counsel

Senator BARRASSO. Senator Capito.

**OPENING STATEMENT OF HON. SHELLEY MOORE CAPITO,
U.S. SENATOR FROM THE STATE OF WEST VIRGINIA**

Senator CAPITO. Thank you, Mr. Chairman. I am here today to strongly support Scott Pruitt's nomination to be the EPA Administrator. We need a functioning Environmental Protection Agency, and Americans deserve the change at the EPA that they voted for this fall.

The American people are being denied this because of the Democrats' decision to boycott today's Committee business meeting. As has been mentioned, Scott Pruitt has been through a very thorough—and thank you, Mr. Chairman, for that—incredibly thorough process. The gentleman from Oklahoma, I got exhausted just listening to the questions, but the Attorney General has answered over 1,200 questions by the time you add the written questions and the questions that were offered during the Committee hearing. No recent nominee for the EPA Administration has ever answered more questions, as we have heard.

And I understand that my Democrat colleagues may not agree with Attorney General Pruitt's answers or with his philosophy, but disagreement with a nominee's position cannot justify a decision to boycott a scheduled Committee vote. Democrats should, instead, give the nominee the same consideration that has been given to the other nominees from both parties.

As we heard, Carol Browner had a hearing January 11th and was confirmed on the 21st of January. Christy Todd Whitman, in 2001, had her hearing on the 17th of January, was confirmed on the 30th. And in 2009 Lisa Jackson had a hearing on January 14th and was confirmed on January 22nd, 2 days after the President's swearing in.

Scott Pruitt's hearing was 2 weeks ago. He has been very visible and very open to questions. So today here we are, February 1st, later than the date of confirmation for his recent predecessors, and his nomination is continuing to avoid action in this Committee.

And the Democrats are just wasting time with stunts like today's boycott. I found a quote that I had heard, and I kept looking it up, trying to figure out who to attribute it to, but 80 percent of life is showing up. They are living on 20 percent of life right now. They are not even showing up. If a student doesn't show up, they flunk the class. If a worker doesn't show up, they get fired from their jobs.

So our constituents elected us to do our job, and that includes coming to Committee hearings and voicing our opinions. They have had more than ample opportunity to hear from Attorney General Pruitt. Now is the time for this Committee to vote. Senators can vote yes or they can vote no; they can express their opinion. But failing to show up does not serve our constituents.

Now, I agree with Senator Sanders, who is a member of this Committee, and we probably don't agree on a whole lot of other things, but he said, in 2013, "When people have honest difference of opinion, we debate it." That is what Congress is made to do. But when the goal is simply obstructionism, I would draw this conclu-

sion: We are not responding to the needs of the American people if there is not an EPA Administrator.

So if the Democrats were present for this vote, we could debate our honest differences. I would point out, as I do every time, that there are tens of thousands of coal mining jobs in my State that have been lost in large part to EPA regulations. We could discuss the hardships of the misguided rules that have caused for farmers or natural gas workers or manufacturers. We could also talk about the great work that the EPA does to bring about clean air and clean water. And we could decide then if Scott Pruitt should be the next Administrator.

I am very disappointed we are not going to have a two-sided debate here. He has a distinguished record of enforcing our environmental laws as they are written and working to protect clean air and clean water without unduly costing jobs and economic growth.

I again commend the Chairman for the thorough confirmation process that he has conducted, and I look forward to voting in favor of Attorney General Scott Pruitt to be our next EPA Administrator.

Thank you.

Senator BARRASSO. Thank you, Senator Capito. Thank you very much.

Senator Boozman.

**OPENING STATEMENT OF HON. JOHN BOOZMAN,
U.S. SENATOR FROM THE STATE OF ARKANSAS**

Senator BOOZMAN. Thank you, Mr. Chairman. It truly is disappointing that members of our Committee are unable to come together to vote on the nomination of Attorney General Scott Pruitt for the position of Administrator of the EPA.

I understand that my friends on the other side of the aisle are not happy with the Trump administration and are doing everything possible to delay voting on many of his cabinet nominees. However, as then-Chairwoman Boxer, in 2007, stated, "Elections have consequences."

The truth is that no one has been fairer or more patient than Chairman Barrasso. I urge my Democrat colleagues of the Committee to quit stalling a vote on the nomination. Attorney General Pruitt has been through a grueling nomination process and has done everything that has been asked of him. This includes answering more questions, as we have heard, than incoming nominees for the same position in the Obama, Bush, and Clinton administrations.

Many of my Democratic friends will say he has not sufficiently answered many of their questions. I would like to point out there is a stark difference between not having a question answered and receiving an answer that you do not like or can't agree with. I would also add many of the 1,078 questions for the record, which he answered in a timely fashion, were essentially the same questions he was asked at his nearly 6-hour-long hearing 2 weeks ago. It is unreasonable for my colleagues on the other side of the aisle to expect a different answer to the same question.

Here are the answers that matter:

Attorney General Pruitt has agreed to be transparent in EPA's rulemaking process, something that the Obama administration refused to do.

He has agreed to bring stakeholders and the private sector to the table when developing rules, assuring that everyone's voice will be heard.

He has promised to be forthright with Congress and get us answers in a timely fashion whenever we have questions or concerns, something former Administrator McCarthy was unable to do while running the EPA.

And last, he has promised to follow the rule of law, ensuring that the EPA will go back to its core mission, protecting the environment by carrying out the laws developed by Congress. This will ensure that the EPA will not become a political arm of the Trump administration.

It is time for us to put aside partisan squabbles and vote on this very qualified and respected candidate to lead the EPA. Now is the time to roll up our sleeves and get to work. Attorney General Pruitt's responses to the questions put before him during the confirmation hearing earned the opportunity to be considered by the full Senate, and that begins with this Committee voting on his nomination.

I know some of my colleagues aren't happy with who is in the White House, but President Trump is not only President for Republicans; he is the President of all American citizens, and deserves to have the people in place to help him do the job he was elected to do.

In 2009 the full Senate approved seven of President Obama's cabinet nominees his first day in office. It is almost 2 weeks, and this chamber hasn't voted on seven of President Trump's nominees. Republicans have the votes necessary to confirm many of the Trump administration's nominees, and that worries the Democrats, who have fundamental differences with the new Administration.

I can honestly say I understand why Democrats are upset. I was upset when President Obama was forcing rules and regulations down the throat of Congress. But I say to my Democrat friends, being in the minority in the Senate, House, and losing the White House does not mean your job is done. You have an incredible opportunity as an EPW member to keep the new Administration in check, to ensure Attorney General Pruitt keeps his word, is transparent and available to stakeholders and Congress. We need to work together rather than obstructing the will of the American people.

Though it is not happening today, I am pleased to support Attorney General Pruitt's nomination in this Committee and allow our colleagues a vote on the Senate floor. Attorney General Pruitt is a strong candidate, and I look forward to working with him as the EPA Administrator.

Thank you, Mr. Chairman.

Senator BARRASSO. Thank you, Senator Boozman.

Senator Wicker.

**OPENING STATEMENT OF HON. ROGER WICKER,
U.S. SENATOR FROM THE STATE OF MISSISSIPPI**

Senator WICKER. Thank you, Mr. Chairman.

I, too, support Scott Pruitt, and let me just say I think objective observers who watched his testimony would have to agree that it was an impressive display of knowledge and patience. Attorney General Pruitt demonstrated that he is intelligent, articulate, thoughtful, patient, and knowledgeable. And I think because of that he will eventually be confirmed.

You know, we are going to get through this, and the people on the other side of the dais are friends of mine. I am disappointed in them today. And frankly, I was disappointed in their conduct during the hearing, taking a complicated issue and asking the witness to answer yes or no, yes or no, when we all know that those issues didn't call for a yes or no answer; putting up a poster of campaign contributors to the Republican Attorneys General Association and somehow suggesting that that impeached the ability of Attorney General Pruitt to be Administrator of the Environmental Protection Agency.

It was silly. It was beneath them. And again, we will get past this. But it was a disappointment to me, as friends of my colleagues on the other side.

This action today by the Democratic members of this Committee is not about the qualifications of Attorney General Pruitt to be head of the EPA. It is simply about their disappointment with the results of the November election, pure and simple. And I would say to my colleagues, you are making yourselves look bad. And there were other statements that I was hearing on television last night, after the President made his Supreme Court nomination.

We are ultimately going to be judged in the court of public opinion, and I think the American people are ready to put the election, the close election that we had in November, behind us, accept the results, and move forward to govern this nation. I am proud of this nominee. I am pleased that the President has put him forward. I am disappointed in my Democratic colleagues. But this nominee will be confirmed and we will move on.

Thank you, Mr. Chairman.

Senator BARRASSO. Thank you very much, Senator Wicker.

Senator Fischer, thank you so much for deferring your time to Senator Ernst, who has an unavoidable scheduling conflict.

Senator Ernst.

**OPENING STATEMENT OF HON. JONI ERNST,
U.S. SENATOR FROM THE STATE OF IOWA**

Senator ERNST. Thank you, Mr. Chair.

Thank you, Senator Fischer, very much.

I would like to echo the same sentiments of many of my colleagues that are here today, and I would like to state for the record that this Committee and all Republicans in the Senate are committed to a fair and full confirmation process, and I know Chairman Barrasso has worked really hard to make sure that that is the case for Mr. Pruitt.

Vetting nominees is an important role, and one that I take seriously, as do my colleagues. But there comes a point when vetting

has been turned into obstruction, and that is what we are witnessing here today.

Mr. Pruitt has answered more than 1,200 questions from this Committee. Twelve hundred questions. That is over 1,000 more answers than the incoming nominees for EPA Administrator from the last four administrations.

Lisa Jackson, nominated by President Obama to be EPA Administrator at the start of his presidency, and viewed as a very controversial pick by many on this Committee, was asked 202 questions; 202 questions compared to 1,200.

So I would ask my colleagues on the other side what is the true purpose of their witch hunt. Because if the answer is to get more clarity on Mr. Pruitt's policy views or positions, Chairman Barrasso has given you an unprecedented amount of time and opportunity to get those answers, surpassing Committee standards set in 2003, 2005, 2009, and 2013. In fact, some of you even publicly acknowledge that you were pleased with how this Committee conducted the confirmation hearing.

So I would remind my Democratic colleagues of their words in 2013, back when this Committee was considering Gina McCarthy and roles were reversed. Take, for example, Senator Cardin, who said, "It has nothing to do with information not made available. It has everything to do with obstructionism."

Mr. Chairman, I am going to wrap up my comments here, but I would leave my colleagues on the other side with one final thought. Will they take the blame for an EPA that is not fully operational, heaven forbid, even if we have an environmental crisis?

When people have honest differences of opinion, we debate it. But when the goal is simply obstructionism, I would draw this conclusion: "We are not responding to the needs of the American people if there is not an EPA Administrator." And folks, those are not my words, those are the words that came from Senator Bernie Sanders from 2013.

Thank you, Mr. Chairman.

Senator BARRASSO. Thank you, Senator Ernst.

Senator Fischer.

**OPENING STATEMENT OF HON. DEB FISCHER,
U.S. SENATOR FROM THE STATE OF NEBRASKA**

Senator FISCHER. Thank you, Mr. Chairman. And I thank you for your thorough hearing process that we had with Attorney General Pruitt. As you have said, we had unlimited rounds. Any number of questions were asked during the public hearing. We had given this man 1,200 questions to respond to, and he has. So I thank you for really going above and beyond what I have seen happen not just in this Committee, but any other committee here in the U.S. Senate, no matter if it is chaired by Republican or Democrat. So thank you, Senator Barrasso.

I would also like to thank Attorney General Pruitt. Throughout the hearing, if you were able to watch it, he treated this Committee and he treated this process with the utmost respect. He had a very respectful demeanor. He answered every question, I believe, thoroughly; and if he was unable to answer at the time, he provided the information later.

I know Oklahoma can be proud of the gentleman that we had before us. Not only was he respectful, but he was also articulate, and he spoke with a calmness and a surety when he gave us his answers. It was obvious how intelligent he is. It was obvious that he is well qualified for this position because of his not only vast experience, but his vast knowledge on many of these issues.

It is disappointing that our Democrat colleagues are not here today doing their job, and that job is to be able to debate with us, to be able to discuss so that we can continue this open, transparent, and accountable process that every Senate Committee hearing should be. That is what it should be, that we continue to do that. But instead we are seeing filibustering now at the Committee level.

You know, I have had many, many disagreements with the previous Administrator, but we always showed a mutual respect for each other. And when Administrator McCarthy came before this Committee, we would have frank conversations, we would have open conversations, and we did it in full view of the public so that every citizen had the opportunity to see what our discussions were. I thank our former Administrator for the respect that she showed this Committee. I thank her for the civility that all members of this Committee showed to her. And it is more than disappointing that we are not able to see that today.

I don't believe that Americans want to see this from their representatives. Americans want all of us to be able to have respectful conversations and do so in a manner that promotes the values of this country, and that is that we respect each other, we continue to have dialogue, and we continue to work for the people of this country. So I hope that our colleagues on the other side, our Democrat colleagues, will come to the Committee so that we can show that respect for each other and the respect for the process and the respect for the U.S. Senate and the Government that we have in this country. And I hope that they will come before us so that we can get to work, so that they can get to work, because that is what the American people expect us to do. They expect us to do our jobs.

Thank you, Mr. Chairman.

Senator BARRASSO. Thank you, Senator Fischer.

Senator Moran.

OPENING STATEMENT OF HON. JERRY MORAN, U.S. SENATOR FROM THE STATE OF KANSAS

Senator MORAN. Mr. Chairman, thank you very much. Thanks for calling this meeting. I am sorry for the circumstances we find ourselves in. I would just like to make three points.

First of all, I would like to compliment you and the way that you have conducted this process. I don't see how anyone could reach a conclusion that it has been anything but fair, appropriate, the way that a Senate committee should be conducted.

Second, I would like to just comment briefly on the quality of the nominee. As a Kansan from a neighboring State, we hold people from the Midwest in high regard, and I found the Attorney General to fit the qualifications of an individual that I would find great comfort in. And his testimony here showed significant knowledge, information, experience, with also a practical side of how environ-

mental regulations have huge consequences upon the opportunities that Americans have. How do we keep the American dream alive at the same time of keeping the environment clean and desirable?

Many of us choose to live in the Midwest. I choose to live in Kansas for a number of reasons, but one is because the sunsets, the sky, the water. It is a beautiful place, and we all want it to be that way. We also know that we also need economic activity. We want our kids to have a chance to be raised on a farm, but also to become farmers. We want the opportunities to be available to all, and so we have to find the right balance, and I found the Attorney General's testimony very satisfactory in that regard.

Finally, Mr. Chairman, perhaps most importantly to me today, is one more example of the dysfunction of the U.S. Senate by the actions taken by our colleagues on this Committee. I have said this numerous times, mostly to Kansans. I don't think I have ever said it in public here, but I was elected to the U.S. Senate now 6 years ago, in 2010. There is absolutely nothing in my background that would suggest I would grow up to be a member of the U.S. Senate; nothing in my family, no particular qualifications other than I am an American citizen.

And as some of you have heard me say, when I arrived at the U.S. Senate, I was welcomed to the Senate by the then-Majority Leader Harry Reid. And Senator Reid was very kind to me, welcomed me to the Senate. We were standing on the Senate floor, and he asked me how I liked being here, and I indicated to him how honored I was by Kansans giving me the chance to try to make a difference on their behalf.

But I said, you know, Leader, sir, it doesn't seem to me like we are going to do anything. And Senator Reid's reply to me was, oh, Jerry, you just need to understand we are not going to do anything. And that was very disappointing, discouraging to me, again, from a sense—I don't mean this in any kind of personal accomplishment way, but to become a Member of the U.S. Senate by the grace of God, kindness of Kansans, only to discover that the plan was to do nothing.

So for much of my time in the U.S. Senate I have been working on behalf of every Senator, Republican, Democrat, all 100 of us, to have the sense that we have jobs to do and work to be done, and we all ought to have a chance to advocate on behalf of our constituents.

I come from Kansas, and in many ways we may have different points of view than people who come from other places in the country. This country is a diverse place. The U.S. Senate is a place in which that diversity is overcome. It is a place in which the diversity of this country should be overcome. And it takes goodwill and common sense; a desire to accommodate other people's points of view; an understanding that someone may disagree with you, but it doesn't make them evil; an understanding that someone may disagree with you, but maybe you can learn something from that disagreement and modify your own position. But none of that can happen at the U.S. Senate, and today the example is this Committee doesn't function. So it is discouraging to see, once again, that we are in the mode of we are not going to do anything.

I don't expect to win every battle, and I recognize that often my points of view, coming from where I come and the philosophy that I hold, is a minority point of view. But I certainly have the responsibility to advocate and hope that someday our point of view may be something that becomes a majority point of view. I don't expect success today, but I expect the opportunity to pursue success in the future.

And if we can't even meet together, if we can't even have the debate, the discussion, ultimately votes taken, majority rules, then we never have the chance to convince each other that we are wrong or we are right, and we are missing something important to the legislative process. So it is just one more disappointment in a circumstance that we ought not face.

Finally, I would say I have tried to set the expectations that so maybe after the next election, if we can just get through an election, maybe we can set aside the differences and then come together and govern. Maybe there is something that has to happen. Early in my time in politics people would say, well, we can't do it right now, there is an election coming around the corner. Usually that was a month or a few weeks out. Then over time it has become, well, there is an election this year; and now there is an election this cycle. We can't continue to use an election as the excuse for inability to do anything.

And today we don't even have that as an excuse; the election is behind us. We have a new President to serve in office for the next 4 years, and we ought not stand for the inability for us to govern, to reach conclusions, make decisions based on the fact that this is politics. We have become, too often, governing by tantrum now, governing by sound bite, governing by press conference, and the governing needs to take place among Members of the U.S. Senate, and it can start right here with the Committee on EPW.

Mr. Chairman, again I thank you for the way you have conducted the hearing. I express my gratitude for a nominee who is willing to put himself and his family through the process of trying to serve his country. And I would ask all my colleagues, Republicans and Democrats, to find ways for us to solve problems by working together.

I thank the Chairman.

Senator BARRASSO. Thank you, Senator Moran.

Senator Rounds, thank you for your patience in deferring to Senator Sullivan.

Senator Sullivan.

**OPENING STATEMENT OF HON. DAN SULLIVAN,
U.S. SENATOR FROM THE STATE OF ALASKA**

Senator SULLIVAN. Thank you, Mr. Chairman.

Thank you, Senator Rounds.

I, too, want to express my appreciation for how you have run this hearing. I think it was probably the most thorough hearing for an EPA Administrator probably in U.S. history. It was done in a very respectful manner, and all the members, as you indicated, Democrats and Republicans, very much appreciated it.

You know, sometimes in these hearings you can't make the hearing because you are out at another hearing, but just for the record,

right before this hearing I was out in the hallway, and the vast majority of our colleagues were literally meandering in the hallway right in front of the hearing room. So I invited them to come in, and unfortunately, they politely declined. So it is not like they are busy. Literally kind of circling the hallway. A little embarrassing there.

You know, Mr. Chairman, we have differences of opinion in this Committee. That is often a good thing. We debate them; we share ideas. We give the voters the very best we have, and then we let them make their own decisions, and on election day that is what happened. The people chose President Trump over Secretary of State Hillary Clinton. And when they did that, they did so knowing that he would appoint a new cabinet. And they voted for action, and they voted for a smooth transition, and they expected us in these committees to give us an open and fair and thorough nominating process, confirmation process for the members of the cabinet, and that is what you did, and that is what we all did.

And I think as the hearing revealed, Attorney General Pruitt is highly qualified for the EPA Administrator job. The EPA needs a serious course correction after the lawless leadership of Gina McCarthy, and Mr. Pruitt has shown that he has the commitment, the intellect, the experience to lead this change, and I think that is going to be critical for America. It is certainly going to be critical for my State of Alaska.

So, Mr. Chairman, what is going on here? As I noted at the outset, my colleagues are out literally meandering in the hallway. This is simply a senatorial temper tantrum. A senatorial temper tantrum. And as all the parents here know, temper tantrums waste a lot of energy, but they don't accomplish anything. The American people deserve better, and I ask my colleagues on the other side of the aisle to come back to the Committee. Let's get to work.

And here is the important thing that I think it is really important to recognize. Sometimes this Committee is viewed as a very partisan Committee. But this is a Committee that actually gets things done. And with the new head of the EPA we can do that in a bipartisan way. I am glad to see the former Chairman is here. My first 2 years in the Senate, this Committee was the most active Committee—TSCA, the highway bill, the WRDA bill, with Republicans and a Democrat in the White House, and we still got those things passed. So I would ask my colleagues to cease the temper tantrum. Let's get back to work, because it is important for the American people and that is what they want.

Thank you, Mr. Chairman.

Senator BARRASSO. Thank you, Senator Sullivan.

Senator Rounds.

**OPENING STATEMENT OF HON. MIKE ROUNDS,
U.S. SENATOR FROM THE STATE OF SOUTH DAKOTA**

Senator ROUNDS. Thank you, Mr. Chairman. I think a lot of things have already been said today that needed to be said by members of our party, the party which is actually showing up for this particular Committee hearing.

I am going to be brief, but it comes to mind that a gentleman that led South Dakota, former Governor by the name of George

Mickelson, used to say that things get done by people that show up. He didn't say things get done by people that don't show up or that are protesting.

The reality is that our friends on the other side of the aisle—and we know them personally, they are good people—they have decided that this is a protest, and it is a protest because they are not going to receive a nominee that they wanted. When they lost the election, it was hard on them, and they are still feeling that pain, and because of that their protest here by not showing up slows down the work of the Senate. It won't stop the work of the Senate, but it does show one of the reasons why it is so hard to get lots of different things done that I think the American people really wanted to see get done.

You know, Scott Pruitt is the Attorney General. He comes in with the qualifications clearly in a position to make changes within the Environmental Protection Agency that many of us wanted to see. He believes in sound science. He is one of the guys that understands that regulations really do impact the day to day lives of American citizens. He understands that State and local units of government should have a say in how those regulations are established.

EPA, when it works correctly, works in a Federalist role, one in which they cooperate and coordinate with State and local units of government. I thought he would add value at the EPA, and I think in the future he will. Simply delaying the change in leadership at the Environmental Protection Agency does not help our country. I think for our friends on the other side of the aisle, when we were growing up, our mom and our dad used to tell us that it isn't one of those things that is appropriate to simply say, if I am mad at the game that is chosen, I will take my ball and go home, and yet that is kind of what we are seeing here. And it will change, but in the meantime, we have to work our way through this.

I think we have to be the adults in the room. We have to act like adults in the room. I think we will follow the rules, but we will eventually approve Mr. Pruitt as the next Administrator for the Environmental Protection Agency. But in the meantime it has slowed down the process within the U.S. Senate, a lot of things in which most Republicans and Democrats can agree on. Time on the floor of the Senate is extremely valuable, and it is one that I think Republicans and Democrats both agree that that time, when it is as valuable as what it is, can't be wasted.

Unfortunately, what we are seeing from our colleagues is every opportunity that they can to slow down the work in the U.S. Senate continues. They have slowed down, they have declined in many cases to give time back even when they are done with the debate, and this is just one more glaring example of a dysfunction within this body that could really work better than what it does today.

So I think rather than simply beating them up over this time and time again, we should simply remind them that I think we all know that there is a better way to get this stuff done, and simply not showing up for a Committee hearing is probably one of the more childish things and one of the more childish behaviors when it comes to protesting.

I think the value here could have been, if they were on the other side of the aisle and simply pointed out their point of view, and if they disagreed or if they had reasons why Mr. Pruitt should not be identified as the next Administrator, to be able to come in and voice those and to lay out their arguments appropriately in opposition to our arguments in favor of him would have been a healthy discussion that would have been an example to young people across this country about the way that our Government should work, and that open and public debate and discourse, that is a healthy part of this process. But simply not showing up because you lost an election is probably not the most appropriate way to set an example for the next generation.

So, with that, Mr. Chairman, I would acknowledge the way in which you have handled this series of Committee hearings, it has been fair. Mr. Pruitt has answered over 1,000 more questions than anybody else applying for this job has in the past. And it simply is clear that our friends on the other side of the aisle have chosen what I believe to be the wrong way to protest the loss of an election, and they have provided additional reasons to point out the dysfunction that sometimes occurs in what should be a very deliberative body in the U.S. Senate.

With that, Mr. Chairman, thank you for what you have done to try to move this process forward.

Senator BARRASSO. Thank you very much, Senator Rounds.

I thank all the members for being here.

I want to just close with stating that not having a vote on this nominee today, not organizing this important Committee is a shame. I believe no one is served, no environmental goal is achieved by the Democrats acting in this obstructionist way.

I want to quote one of my colleagues from Oregon, on the other side of the aisle, when he stated, in May 2013, "What we have today is an embarrassing dereliction of public responsibility." He said, "And the word embarrassing doesn't capture the grave harm that is coming from members of this body deciding to abuse the advice and consent obligation that this body has, this Senate has under our Constitution."

To the members of this Committee, I tell you I pledge to move the nomination of Attorney General Scott Pruitt to be Administrator of the Environmental Protection Agency as expeditiously as possible.

This Committee is in recess subject to the call of the Chair. Thank you very much.

[Whereupon, at 11:35 a.m. the Committee was recessed, subject to the call of the Chair.]

[Resuming Thursday, February 2, 2017]

The Committee met, pursuant to notice, at 10:45 a.m. in room 406, Dirksen Senate Office Building, Hon. John Barrasso (Chairman of the Committee) presiding.

Present: Senators Barrasso, Inhofe, Capito, Boozman, Wicker, Fischer, Sessions, Moran, Rounds, Ernst, and Sullivan.

Senator BARRASSO. The Committee is called to order.

We are reconvening our business meeting to consider the nomination of Attorney General Scott Pruitt to be EPA Administrator, the Committee funding resolution, and the Committee rules.

Yesterday, the minority members of the Committee chose to boycott this business meeting. It is disappointing that they chose that course of action, but we will not allow it to obstruct.

As I stated yesterday, this Committee has conducted an extremely thorough and fair process of reviewing Attorney General Pruitt's nomination. That includes a hearing of unprecedented length, number of questions, and timely responses from the nominee. It is unprecedented for the minority to delay an EPA Administrator for an incoming President to this extent.

We had an election last November, the people spoke, and now it is time to set up a functioning Government. That includes a functioning EPA. To do that, this Committee has to do its work.

So at this time I ask for a motion to suspend Rules 2(a), 4, and 8 of the Rules of the Environment and Public Works Committee for the duration of this business meeting.

Senator INHOFE. Mr. Chairman, I so move.

Senator BARRASSO. Is there a second?

Senator CAPITO. Second.

Senator BARRASSO. All those in favor, please say aye.

[Chorus of ayes.]

Senator BARRASSO. All opposed, say nay.

[No audible response.]

Senator BARRASSO. In the opinion of the Chair, the ayes have it, and Rules 2(a), 4, and 8 of the Rules of the Committee of the Environment and Public Works are suspended for the duration of this business meeting.

At this time, I would like to call up Presidential Nomination 44, Scott Pruitt, of Oklahoma, to be Administrator of the Environmental Protection Agency.

Could I have a motion to approve and report the nomination favorably to the Senate?

Senator INHOFE. Mr. Chairman, I so move.

Senator BARRASSO. Is there a second?

Senator WICKER. Second.

Senator BARRASSO. On this matter I ask for a recorded vote. The Clerk will call the roll.

The CLERK. Mr. Booker.

Mr. Boozman.

Senator BOOZMAN. Aye.

The CLERK. Mrs. Capito.

Senator CAPITO. Aye.

The CLERK. Mr. Cardin.

Mr. Carper.

Mrs. Duckworth.

Mrs. Ernst.

Senator ERNST. Aye.

The CLERK. Mrs. Fischer.

Senator FISCHER. Aye.

The CLERK. Mrs. Gillibrand.

Ms. Harris.

Mr. Inhofe.

Senator INHOFE. Aye.

The CLERK. Mr. Markey.

Mr. Merkley.

Mr. Moran.
 Senator MORAN. Aye.
 The CLERK. Mr. Rounds.
 Senator ROUNDS. Aye.
 The CLERK. Mr. Sanders.
 Mr. Sessions.
 Senator SESSIONS. Aye.
 The CLERK. Mr. Sullivan.
 Senator SULLIVAN. Aye.
 The CLERK. Mr. Whitehouse.
 Mr. Wicker.
 Senator WICKER. Aye.
 The CLERK. Mr. Chairman.
 Senator BARRASSO. Aye.
 The Clerk will report.

The CLERK. Mr. Chairman, the yeas are 11.

Senator BARRASSO. The nomination of Attorney General Scott Pruitt to be EPA Administrator is approved and reported.

Next, I would like to call up the Committee funding resolution, which funds the Committee from March 1st of this year through February 28th of 2019 in three financial periods reflecting the funding levels the Rules Committee assigned to the Committee.

Do any Senators seek recognition to speak about this resolution?

If not, could I have a motion to approve and report the resolution to the Senate?

Senator INHOFE. I so move.

Senator BARRASSO. Is there a second?

Senator ROUNDS. Second.

Senator BARRASSO. All those in favor, please say aye.

[Chorus of ayes.]

Senator BARRASSO. Opposed, nay.

[No audible response.]

Senator BARRASSO. In the opinion of the Chair, the ayes have it, and the Committee funding resolution is approved and reported.

[The referenced information follows:]

115TH CONGRESS
1ST SESSION

S. RES. _____

Authorizing expenditures by the Committee on Environment and Public
Works.

IN THE SENATE OF THE UNITED STATES

Mr. BARRASSO, from the Committee on Environment and Public Works, re-
ported the following original resolution; which was referred to the Com-
mittee on _____

RESOLUTION

Authorizing expenditures by the Committee on Environment
and Public Works.

1 *Resolved,*

2 **SECTION 1. GENERAL AUTHORITY.**

3 In carrying out its powers, duties, and functions
4 under the Standing Rules of the Senate, in accordance
5 with its jurisdiction under rule XXV of the Standing Rules
6 of the Senate, including holding hearings, reporting such
7 hearings, and making investigations as authorized by
8 paragraphs 1 and 8 of rule XXVI of the Standing Rules
9 of the Senate, the Committee on Environment and Public
10 Works (in this resolution referred to as the “committee”)

1 is authorized from March 1, 2017 through February 28,
2 2019, in its discretion, to—

3 (1) make expenditures from the contingent fund
4 of the Senate;

5 (2) employ personnel; and

6 (3) with the prior consent of the Government
7 department or agency concerned and the Committee
8 on Rules and Administration, use on a reimbursable
9 or nonreimbursable basis the services of personnel of
10 any such department or agency.

11 **SEC. 2. EXPENSES.**

12 (a) **EXPENSES FOR PERIOD ENDING SEPTEMBER 30,**
13 **2017.**—The expenses of the committee for the period
14 March 1, 2017 through September 30, 2017 under this
15 resolution shall not exceed \$3,060,871, of which amount—

16 (1) not to exceed \$4,666 may be expended for
17 the procurement of the services of individual consult-
18 ants, or organizations thereof (as authorized by sec-
19 tion 202(i) of the Legislative Reorganization Act of
20 1946 (2 U.S.C. 4301(i))); and

21 (2) not to exceed \$1,166 may be expended for
22 the training of the professional staff of the com-
23 mittee (under procedures specified by section 202(j)
24 of that Act).

1 (b) EXPENSES FOR FISCAL YEAR 2018 PERIOD.—

2 The expenses of the committee for the period October 1,
3 2017 through September 30, 2018 under this resolution
4 shall not exceed \$5,247,208, of which amount—

5 (1) not to exceed \$8,000 may be expended for
6 the procurement of the services of individual consult-
7 ants, or organizations thereof (as authorized by sec-
8 tion 202(i) of the Legislative Reorganization Act of
9 1946 (2 U.S.C. 4301(i))); and

10 (2) not to exceed \$2,000 may be expended for
11 the training of the professional staff of the com-
12 mittee (under procedures specified by section 202(j)
13 of that Act).

14 (c) EXPENSES FOR PERIOD ENDING FEBRUARY 28,
15 2019.—The expenses of the committee for the period Oc-
16 tober 1, 2018 through February 28, 2019 under this reso-
17 lution shall not exceed \$2,186,337, of which amount—

18 (1) not to exceed \$3,334 may be expended for
19 the procurement of the services of individual consult-
20 ants, or organizations thereof (as authorized by sec-
21 tion 202(i) of the Legislative Reorganization Act of
22 1946 (2 U.S.C. 4301(i))); and

23 (2) not to exceed \$834 may be expended for the
24 training of the professional staff of the committee

1 (under procedures specified by section 202(j) of that
2 Act).

3 **SEC. 3. REPORTING LEGISLATION.**

4 The committee shall report its findings, together with
5 such recommendations for legislation as it deems advis-
6 able, to the Senate at the earliest practicable date, but
7 not later than February 28, 2019.

8 **SEC. 4. EXPENSES AND AGENCY CONTRIBUTIONS.**

9 (a) EXPENSES OF THE COMMITTEE.—

10 (1) IN GENERAL.—Except as provided in para-
11 graph (2), expenses of the committee under this res-
12 olution shall be paid from the contingent fund of the
13 Senate upon vouchers approved by the chairman of
14 the committee.

15 (2) VOUCHERS NOT REQUIRED.—Vouchers shall
16 not be required for—

17 (A) the disbursement of salaries of employ-
18 ees paid at an annual rate;

19 (B) the payment of telecommunications
20 provided by the Office of the Sergeant at Arms
21 and Doorkeeper;

22 (C) the payment of stationery supplies pur-
23 chased through the Keeper of the Stationery;

24 (D) payments to the Postmaster of the
25 Senate;

1 (E) the payment of metered charges on
2 copying equipment provided by the Office of the
3 Sergeant at Arms and Doorkeeper;

4 (F) the payment of Senate Recording and
5 Photographic Services; or

6 (G) the payment of franked and mass mail
7 costs by the Sergeant at Arms and Doorkeeper.

8 (b) AGENCY CONTRIBUTIONS.—There are authorized
9 to be paid from the appropriations account for “Expenses
10 of Inquiries and Investigations” of the Senate such sums
11 as may be necessary for agency contributions related to
12 the compensation of employees of the committee—

13 (1) for the period March 1, 2017 through Sep-
14 tember 30, 2017;

15 (2) for the period October 1, 2017 through Sep-
16 tember 30, 2018; and

17 (3) for the period October 1, 2018 through
18 February 28, 2019.

Senator BARRASSO. Next I would like to consider the Committee rules. Do any Senators seek recognition to speak about the Committee Rules?

If not, could I have a motion to adopt the Committee rules for the 115th Congress?

Senator INHOFE. I so move.

Senator BARRASSO. Is there a second?

Senator WICKER. Second.

Senator BARRASSO. All those in favor, please say aye.

[Chorus of ayes.]

Senator BARRASSO. Opposed, nay.

[No audible response.]

Senator BARRASSO. In the opinion of the Chair, the ayes have it. The Committee rules are adopted.

[The referenced information follows:]

114th Congress }
1st Session }

COMMITTEE PRINT

{ S. PRT
{ 114-2

RULES
OF THE
COMMITTEE ON
ENVIRONMENT AND PUBLIC WORKS
UNITED STATES SENATE



ADOPTED JANUARY 21, 2015

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COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

ONE HUNDRED FOURTEENTH CONGRESS, FIRST SESSION

JAMES M. INHOFE, Oklahoma, *Chairman*

DAVID VITTER, Louisiana	BARBARA BOXER, California
JOHN BARRASSO, Wyoming	THOMAS R. CARPER, Delaware
SHELLEY MOORE CAPITO, West Virginia	BENJAMIN L. CARDIN, Maryland
MIKE CRAPO, Idaho	BERNARD SANDERS, Vermont
JOHN BOOZMAN, Arkansas	SHELDON WHITEHOUSE, Rhode Island
JEFF SESSIONS, Alabama	JEFF MERKLEY, Oregon
ROGER WICKER, Mississippi	KIRSTEN GILLIBRAND, New York
DEB FISCHER, Nebraska	CORY A. BOOKER, New Jersey
MIKE ROUNDS, South Dakota	EDWARD J. MARKEY, Massachusetts
DAN SULLIVAN, Alaska	

RYAN JACKSON, *Majority Staff Director*

BETTINA POIRIER, *Democratic Staff Director and Chief Counsel*

(II)

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Jurisdiction

Rule XXV, Standing Rules of the Senate

1. The following standing committees shall be appointed at the commencement of each Congress, and shall continue and have the power to act until their successors are appointed, with leave to report by bill or otherwise on matters within their respective jurisdictions:

* * * * *

(h)(1) Committee on Environment and Public Works, to which committee shall be referred all proposed legislation, messages, petitions, memorials, and other matters relating to the following subjects:

1. Air pollution.
2. Construction and maintenance of highways.
3. Environmental aspects of Outer Continental Shelf lands.
4. Environmental effects of toxic substances, other than pesticides.
5. Environmental policy.
6. Environmental research and development.
7. Fisheries and wildlife.
8. Flood control and improvements of rivers and harbors, including environmental aspects of deepwater ports.
9. Noise pollution.
10. Nonmilitary environmental regulation and control of nuclear energy.
11. Ocean dumping.
12. Public buildings and improved grounds of the United States generally, including Federal buildings in the District of Columbia.
13. Public works, bridges, and dams.
14. Regional economic development.
15. Solid waste disposal and recycling.
16. Water pollution.
17. Water resources.

(2) Such committee shall also study and review, on a comprehensive basis, matters relating to environmental protection and resource utilization and conservation, and report thereon from time to time.

RULES OF PROCEDURE

RULE 1. COMMITTEE MEETINGS IN GENERAL

(a) **REGULAR MEETING DAYS:** For purposes of complying with paragraph 3 of Senate Rule XXVI, the regular meeting day of the committee is the first and third Thursday of each month at 10:00 a.m. If there is no business before the committee, the regular meeting shall be omitted.

(b) **ADDITIONAL MEETINGS:** The chair may call additional meetings, after consulting with the ranking minority member. Subcommittee chairs may call meetings, with the concurrence of the chair, after consulting with the ranking minority members of the subcommittee and the committee.

(c) **PRESIDING OFFICER:**

(1) The chair shall preside at all meetings of the committee. If the chair is not present, the ranking majority member shall preside.

(2) Subcommittee chairs shall preside at all meetings of their subcommittees. If the subcommittee chair is not present, the ranking majority member of the subcommittee shall preside.

(3) Notwithstanding the rule prescribed by paragraphs (1) and (2), any member of the committee may preside at a hearing.

(d) **OPEN MEETINGS:** Meetings of the committee and subcommittees, including hearings and business meetings, are open to the public. A portion of a meeting may be closed to the public if the committee determines by roll call vote of a majority of the members present that the matters to be discussed or the testimony to be taken—

(1) will disclose matters necessary to be kept secret in the interests of national defense or the confidential conduct of the foreign relations of the United States;

(2) relate solely to matters of committee staff personnel or internal staff management or procedure; or

(3) constitute any other grounds for closure under paragraph 5(b) of Senate Rule XXVI.

(e) **BROADCASTING:**

(1) Public meetings of the committee or a subcommittee may be televised, broadcast, or recorded by a member of the Senate press gallery or an employee of the Senate.

(2) Any member of the Senate Press Gallery or employee of the Senate wishing to televise, broadcast, or record a committee meeting must notify the staff director or the staff director's designee by 5:00 p.m. the day before the meeting.

(3) During public meetings, any person using a camera, microphone, or other electronic equipment may not position or use the equipment in a way that interferes with the seating, vision, or hearing of committee members or staff on the dais, or with the orderly process of the meeting.

RULE 2. QUORUMS

(a) **BUSINESS MEETINGS:** At committee business meetings, and for the purpose of approving the issuance of a subpoena or approving

a committee resolution, seven members of the committee, at least two of whom are members of the minority party, constitute a quorum, except as provided in subsection (d).

(b) SUBCOMMITTEE MEETINGS: At subcommittee business meetings, a majority of the subcommittee members, at least one of whom is a member of the minority party, constitutes a quorum for conducting business.

(c) CONTINUING QUORUM: Once a quorum as prescribed in subsections (a) and (b) has been established, the committee or subcommittee may continue to conduct business.

(d) REPORTING: No measure or matter may be reported to the Senate by the committee unless a majority of committee members cast votes in person.

(e) HEARINGS: One member constitutes a quorum for conducting a hearing.

RULE 3. HEARINGS

(a) ANNOUNCEMENTS: Before the committee or a subcommittee holds a hearing, the chair of the committee or subcommittee shall make a public announcement and provide notice to members of the date, place, time, and subject matter of the hearing. The announcement and notice shall be issued at least one week in advance of the hearing, unless the chair of the committee or subcommittee, with the concurrence of the ranking minority member of the committee or subcommittee, determines that there is good cause to provide a shorter period, in which event the announcement and notice shall be issued at least twenty-four hours in advance of the hearing.

(b) STATEMENTS OF WITNESSES:

(1) A witness who is scheduled to testify at a hearing of the committee or a subcommittee shall file 100 copies of the written testimony at least 48 hours before the hearing. If a witness fails to comply with this requirement, the presiding officer may preclude the witness' testimony. This rule may be waived for field hearings, except for witnesses from the Federal Government.

(2) Any witness planning to use at a hearing any exhibit such as a chart, graph, diagram, photo, map, slide, or model must submit one identical copy of the exhibit (or representation of the exhibit in the case of a model) and 100 copies reduced to letter or legal paper size at least 48 hours before the hearing. Any exhibit described above that is not provided to the committee at least 48 hours prior to the hearing cannot be used for purpose of presenting testimony to the committee and will not be included in the hearing record.

(3) The presiding officer at a hearing may have a witness confine the oral presentation to a summary of the written testimony.

(4) Notwithstanding a request that a document be embargoed, any document that is to be discussed at a hearing, including, but not limited to, those produced by the General Accounting Office, Congressional Budget Office, Congressional Research Service, a Federal agency, an Inspector General, or a nongovernmental entity, shall be provided to all members of the committee at least 72 hours before the hearing.

RULE 4. BUSINESS MEETINGS: NOTICE AND FILING REQUIREMENTS

(a) **NOTICE:** The chair of the committee or the subcommittee shall provide notice, the agenda of business to be discussed, and the text of agenda items to members of the committee or subcommittee at least 72 hours before a business meeting. If the 72 hours falls over a weekend, all materials will be provided by close of business on Friday.

(b) **AMENDMENTS:** First-degree amendments must be filed with the chair of the committee or the subcommittee at least 24 hours before a business meeting. After the filing deadline, the chair shall promptly distribute all filed amendments to the members of the committee or subcommittee.

(c) **MODIFICATIONS:** The chair of the committee or the subcommittee may modify the notice and filing requirements to meet special circumstances, with the concurrence of the ranking member of the committee or subcommittee.

RULE 5. BUSINESS MEETINGS: VOTING**(a) PROXY VOTING:**

(1) Proxy voting is allowed on all measures, amendments, resolutions, or other matters before the committee or a subcommittee.

(2) A member who is unable to attend a business meeting may submit a proxy vote on any matter, in writing, orally, or through personal instructions.

(3) A proxy given in writing is valid until revoked. A proxy given orally or by personal instructions is valid only on the day given.

(b) **SUBSEQUENT VOTING:** Members who were not present at a business meeting and were unable to cast their votes by proxy may record their votes later, so long as they do so that same business day and their vote does not change the outcome.

(c) PUBLIC ANNOUNCEMENT:

(1) Whenever the committee conducts a rollcall vote, the chair shall announce the results of the vote, including a tabulation of the votes cast in favor and the votes cast against the proposition by each member of the committee.

(2) Whenever the committee reports any measure or matter by rollcall vote, the report shall include a tabulation of the votes cast in favor of and the votes cast in opposition to the measure or matter by each member of the committee.

RULE 6. SUBCOMMITTEES

(a) **REGULARLY ESTABLISHED SUBCOMMITTEES:** The committee has four subcommittees: Transportation and Infrastructure; Clean Air and Nuclear Safety; Superfund, Waste Management, and Regulatory Oversight; and Fisheries, Water, and Wildlife.

(b) **MEMBERSHIP:** The committee chair, after consulting with the ranking minority member, shall select members of the subcommittees.

RULE 7. STATUTORY RESPONSIBILITIES AND OTHER MATTERS

(a) ENVIRONMENTAL IMPACT STATEMENTS: No project or legislation proposed by any executive branch agency may be approved or otherwise acted upon unless the committee has received a final environmental impact statement relative to it, in accordance with section 102(2)(C) of the National Environmental Policy Act, and the written comments of the Administrator of the Environmental Protection Agency, in accordance with section 309 of the Clean Air Act. This rule is not intended to broaden, narrow, or otherwise modify the class of projects or legislative proposals for which environmental impact statements are required under section 102(2)(C).

(b) PROJECT APPROVALS:

(1) Whenever the committee authorizes a project under Public Law 89-298, the Rivers and Harbors Act of 1965; Public Law 83-566, the Watershed Protection and Flood Prevention Act; or Public Law 86-249, the Public Buildings Act of 1959, as amended; the chairman shall submit for printing in the Congressional Record, and the committee shall publish periodically as a committee print, a report that describes the project and the reasons for its approval, together with any dissenting or individual views.

(2) Proponents of a committee resolution shall submit appropriate evidence in favor of the resolution.

(c) BUILDING PROSPECTUSES:

(1) When the General Services Administration submits a prospectus, pursuant to section 7(a) of the Public Buildings Act of 1959, as amended, for construction (including construction of buildings for lease by the government), alteration and repair, or acquisition, the committee shall act with respect to the prospectus during the same session in which the prospectus is submitted.

A prospectus rejected by majority vote of the committee or not reported to the Senate during the session in which it was submitted shall be returned to the General Services Administration and must then be resubmitted in order to be considered by the committee during the next session of the Congress.

(2) A report of a building project survey submitted by the General Services Administration to the committee under section 11(b) of the Public Buildings Act of 1959, as amended, may not be considered by the committee as being a prospectus subject to approval by committee resolution in accordance with section 7(a) of that Act. A project described in the report may be considered for committee action only if it is submitted as a prospectus in accordance with section 7(a) and is subject to the provisions of paragraph (1) of this rule.

(d) NAMING PUBLIC FACILITIES: The committee may not name a building, structure or facility for any living person, except former Presidents or former Vice Presidents of the United States, former Members of Congress over 70 years of age, former Justices of the United States Supreme Court over 70 years of age, or Federal judges who are fully retired and over 75 years of age or have taken senior status and are over 75 years of age.

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RULE 8. AMENDING THE RULES

The rules may be added to, modified, amended, or suspended by vote of a majority of committee members at a business meeting if a quorum is present.

○

Senator BARRASSO. Let me make clear to everyone what just happened. Yesterday, the minority members of the Committee chose to boycott our business meeting because they do not support the nomination of Scott Pruitt. As we pointed out yesterday, elections have consequences, and a new President is entitled to put in place people who will advance his agenda, the agenda that the people voted for when they elected him President.

Today we suspended several of the rules of the EPW Committee for this business meeting only. We took this extraordinary step because the minority members of the Committee took the extraordinary step of boycotting the business meeting to approve an EPA Administrator for an incoming Administration.

We have been in consultation with the Senate Parliamentarian, and she has informed us that the procedure that we have followed today is proper under the Senate rules, and no point of order will lie against the Pruitt nomination. The minority has put us in this uncharted waters. Never before in the history of the EPA has a new President's incoming Administration's nominee been boycotted. The last three nominees for new incoming Administrations were all confirmed by the end of January.

Yesterday, February 1st, the minority blocked even having a vote in Committee of the nominee. Attorney General Pruitt sat through the longest EPA nomination hearing in history and answered the most questions. The complaints about Attorney General Pruitt's answers to questions is simply a smoke screen.

Let me be clear. The leadership of the minority chose to do a blanket boycott of many of the President's nominees in committees across the Senate, regardless of their merit. The minority wants political theater. The nation needs a new EPA Administrator. At the end of this meeting, the Committee rules will be back in full effect. I expect to conduct all further business of this Committee under those rules and hope that from this point forward we will be able to work together in a bipartisan manner.

Before we adjourn, it is important to note that in 2009 then-Chairman Boxer reported legislation from this Committee without meeting the quorum requirements under the Committee rules. With regard to boycott comparisons with Gina McCarthy's nomination, the EPW Republicans were not stopping President Obama from setting up his Government. Gina McCarthy was a second term nominee. President Obama's political appointees, including Gina McCarthy, were already at EPA advancing President Obama's agenda.

This concludes our business meeting. I ask for unanimous consent for staff to make any technical corrections to any of today's measures. Without objection.

This business meeting is concluded. The Committee stands adjourned.

[Whereupon, at 10:52 a.m. the meeting was adjourned.]