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## Senate

(Legislative day of Monday, June 23, 2008)

The Senate met at 10 a.m., on the expiration of the recess, and was called to order by the Honorable JON TESTER, a Senator from the State of Montana.

### PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Grant, O God, that our lawmakers may move forward today as those who are heirs of eternal life. Give them the wisdom to learn contentment with Your purposes, enabling them to experience the eternal here and now. As they move through this day with its shades and shadows, give them freedom—not from difficulties but strength for the challenges that greet them. As they encounter setbacks, may they trust the unfolding of Your loving providence. In the face of misfortunes, empower them to surrender to Your will. Lord, give them the humility to be more concerned about being on Your side than recruiting You to be on their side.

We pray in Your sovereign Name. Amen.

### PLEDGE OF ALLEGIANCE

The Honorable JON TESTER led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

### APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. BYRD).

The assistant legislative clerk read the following letter:

U.S. SENATE,  
PRESIDENT PRO TEMPORE,  
Washington, DC, June 24, 2008.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable JON TESTER, a Senator from the State of Montana, to perform the duties of the Chair.

ROBERT C. BYRD,  
President pro tempore.

Mr. TESTER thereupon assumed the chair as Acting President pro tempore.

### RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

### PROGRAM

Mr. REID. Mr. President, we have a very busy schedule this week. We have some work we need to complete. We have, of course, FISA, the Foreign Intelligence Surveillance Act; we have the supplemental appropriations bill; we have the tax extenders; we have Medicare we need to complete; and, of course, we are on housing today. Regarding that, following any remarks I make and those of the Republican leader, we will return to the House message to accompany H.R. 3221, the housing reform legislation. There will be up to an hour of debate equally divided and controlled between the two leaders or their designees prior to a vote on the motion to invoke cloture on the Dodd-Shelby substitute with respect to the housing reform bill. Senators have until 10:30 a.m. today to file amendments to the Dodd-Shelby substitute.

By virtue of the previous order, the Senate will be in recess from 12:30 until 2:15 today for our weekly business luncheons.

Mr. President, let me say a couple of other things. We are going to do a

number of judges this afternoon, the exact number of which we don't have worked out just yet, but we are going to do three circuit court judges and some district court judges. I have to confer with Senator LEAHY on the number of district court judges.

I would also say to my friend the distinguished Republican leader that I spoke to Senator FEINGOLD this morning regarding the FEC nominations, and it appears very clear we should be able to do them today. In regard to that, I wish to underscore my desire—our desire—to constitute the Federal Election Commission so it is working.

Just a brief history, Mr. President. Before Memorial Day, there were four FEC nominations pending—two Republicans, two Democrats. At that time, we offered to confirm those nominees by unanimous consent. The Republicans did not take me up on that offer. There would have been five FEC Commissioners today had that been done. In fact, it would have been prior to that recess. There would have been enough to conduct all official business. There was a thought, I assume, on the part of the Republicans that they wanted a full six, and I understand that. So they rejected the offer I made. They wanted to wait until a replacement for the failed nomination of Hans von Spakovsky was received in the Senate. I told the Republicans in December that von Spakovsky would not be approved by this body. Someone should have been cleared to replace him long before now. Nonetheless, I pledged to swiftly move that new nominee, and we have done that. I implored my Republican colleagues to confirm the four who were ready to go so there would be five to restore the agency so it would be workable. That offer was not accepted. The new nominee has now been nominated, and we have waived both the hearing and the markup to speed this up. That makes good

• This “bullet” symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.



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on the pledge we made to swiftly review the nominee, and we did that, again without a hearing and without a markup.

As I discussed on Friday, Senator FEINGOLD—I didn't mention his name at the time, but it is out in the press since then—would like to meet with each of the nominees. That will be completed today. These meetings are important to the Senator. He has the right to do that. I certainly compliment him for caring so much. Four of the five FEC nominations now pending are relatively new to the Senate, and it is certainly within Senator FEINGOLD's right to speak with them prior to their confirmation. This is not unusual. So I look forward to completing that, unless something comes up that I don't understand, and we should be able to do that today. It is very important.

There has been some concern raised by my colleagues on the other side of the aisle that the Democrats have set out to delay this FEC being reconstituted so that the Democratic National Committee's lawsuit against Senator MCCAIN may be heard in the court. The DNC sued MCCAIN, alleging that he violated campaign finance laws in the treatment of his primary campaign funding. The court dismissed that suit without prejudice, saying the DNC needed to give the FEC 120 days to act on its complaint before coming to court. The 120 days expires today, June 24.

There is simply no truth to the argument that we are playing this game with the FEC. Democrats have been trying to get the FEC running since it went dark in December. Repeatedly, the Republicans have objected to consent request after consent request. This lawsuit of the DNC's has been out there many months. The decision for setting the deadline for FEC action was made prior to our Memorial Day recess, and the offer to confirm the pending nominations was made before that time.

What this means is that Democrats offered to confirm the four pending FEC nominees—which would have stopped the DNC suit—before Memorial Day. If we were trying to help the DNC's suit, would we have made that offer? I don't think so. Would we offer to waive the hearing and the markup for both Republican nominees so it would be moved quickly? The answer would be no. Of course we wouldn't have done that, Mr. President. As I have told my colleagues, Democrats want a functional agency as soon as possible. That could have happened in May. It could happen today. We want to do everything we can to reconstitute the FEC. It is extremely important to do that.

I have mentioned the matters we need to complete, and, of course, the one thing I didn't mention was the FAA extension. I asked unanimous consent to do that, and that was objected to yesterday by my friend Sen-

ator KYL on behalf of Senator DEMINT. I hope we can get that done. The House is going to pass that today as a temporary extension.

We also are going to bring before the body, within the next 24 hours, the PEPFAR legislation. What is that? It is the AIDS legislation that the President is in favor of and which we have been trying to move. It has been held up on the other side by a Senator or two, and we hope we can complete that. Again, I will ask unanimous consent that be passed today. It is my understanding, having spoken with Senator ENZI, that he and Senator BIDEN have worked something out on that, and hopefully the Senator on the other side who is objecting to this will no longer object to it.

#### RECOGNITION OF THE MINORITY LEADER

The ACTING PRESIDENT pro tempore. The Republican leader is recognized.

#### FEC NOMINATIONS

Mr. MCCONNELL. Mr. President, with regard to the Federal Election Commission, let me first say that my good friend the majority leader is correct that I was not inclined to reconstitute the FEC with a three-to-two Democratic majority, and that would have been, of course, the case had we gone forward on some but not all of the FEC nominations back before Memorial Day. So it is a fact that, in addition to objecting to Republican nominees of the FEC, which has become something of a tradition around here, there was an additional attempt to gain a majority on the FEC by acting prematurely, before we could confirm a full complement.

Now we have the opportunity to confirm a full complement, and there have been various efforts, it appears, to delay in order to give the DNC an opportunity to file a lawsuit today. Maybe I will be proven wrong today. Maybe they won't file that lawsuit, and then I will feel comforted that the effort to delay confirming all six—or the four additional FEC members whom we are confirming—was not somehow related to litigation being proposed by the DNC. So I hope they will not file that lawsuit, and I guess that will be the best evidence of whether there was an effort underway here to delay it.

I am encouraged by the fact that the majority leader indicates we can confirm these nominees today, and I have given him advance notice that I would like to propound a unanimous consent agreement that we do just that.

Mr. President, I ask unanimous consent that the Senate proceed, at some point today mutually agreeable to the majority leader and the Republican leader, to executive session for the consideration of the following Federal Election Commission nominations: Calendar No. 306, Steven T. Walther;

Calendar No. 624, Cynthia L. Bauerly; Calendar No. 625, Caroline C. Hunter; and Calendar No. 626, Donald F. McGahn; and the nomination of Matthew S. Petersen, which is to be discharged from the Rules Committee.

I would further ask unanimous consent that the nominations be confirmed en bloc, the motions to reconsider be laid upon the table, the President be immediately notified of the Senate's action, and finally, the Senate return to legislative session.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. REID. Mr. President, reserving the right to object, I hope in a matter of hours that we can agree to the consent request proposed by my friend, the distinguished Republican leader. I don't know what time the last meeting is that Senator FEINGOLD has with the last individual, but as soon as I get word on that, I will immediately come to the floor and accept the offer of the distinguished Republican leader. So I object.

The ACTING PRESIDENT pro tempore. Objection is heard.

Mr. MCCONNELL. Mr. President, I appreciate the comments of my good friend the majority leader, and I hope we will be able to confirm these nominees today. Also, hopefully the lawsuit by the DNC will not be filed today, further raising the suspicion that the delays of the majority were related to facilitating that legal action.

Mr. President, let me say with regard to this week that this is a week when the Senate, hopefully, can make significant progress. There are three very significant pieces of legislation we hope to deal with this week, as the majority leader indicated.

After a failed attempt to address the housing crisis without Republican input, Democrats finally agreed last week to allow our input. As a result, we now have a bipartisan housing bill that addresses many of our concerns. I think it could be made even better with some further amendments, which I am hopeful we will have an opportunity to offer, even if cloture is invoked, because as much as I would like to see this bill move forward, there are some housing-related amendments that have been shut out of the process so far, and I am hoping the majority leader and I can discuss how we might be able to dispose of those expeditiously before we clear that bill here in the Senate this week.

We must also complete two important and long overdue national security measures—the supplemental troop funding bill that the President first requested more than 500 days ago and an updated terrorist surveillance bill that the Senate first approved last August but which expired more than 4 months ago, after House Democratic inaction. It is worth noting that on both national security measures, Democrats will be approving something Republicans have supported all along.

Regarding the supplemental, Republicans have argued for the past year