



United States
of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 111th CONGRESS, SECOND SESSION

Vol. 156

WASHINGTON, MONDAY, MAY 17, 2010

No. 74

House of Representatives

The House was not in session today. Its next meeting will be held on Tuesday, May 18, 2010, at 12:30 p.m.

Senate

MONDAY, MAY 17, 2010

The Senate met at 2 p.m. and was called to order by the Honorable MARK R. WARNER, a Senator from the Commonwealth of Virginia.

PRAYER

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

Let us pray.

Almighty God, we can't begin this day in the forward march of history without You. Without the power of Your providential leading, we are like ships without a sail. If You don't lead us, we are certain to stray from the right path.

Renew our Senators with help and strength, infusing them with a spirit of self-sacrifice and service. Whatever may come with this day, O Lord, help them to live with joyful appreciation of Your guidance and love. When they face situations that leave them puzzled, show them what they should do.

We pray in Your merciful Name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable MARK R. WARNER 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 legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, May 17, 2010.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable MARK R. WARNER, a Senator from the Commonwealth of Virginia, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

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

RECOGNITION OF THE MAJORITY LEADER

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

SCHEDULE

Mr. REID. Mr. President, following any leader remarks and morning business, the Senate will resume consideration of the Wall Street reform legislation. Today, the managers of the bill will continue to work toward an agreement to begin voting at 5:30 this afternoon in relation to several pending amendments. Senators will be notified when the votes are scheduled.

WALL STREET REFORM

Mr. REID. Mr. President, we all know how Wall Street brought our economy to the brink of collapse nearly 2 years ago. Our financial system let traders gamble away other people's money

with little risk and large reward. The system said to big bankers: If you win, enjoy your jackpot. If you lose, don't worry; taxpayers will bail you out. It is quite a rewarding deal for Wall Street but a pretty raw deal for everyone else. We have seen firsthand the dangers of that arrangement. When the bottom collapsed, 8 million Americans lost their jobs. The typical family lost \$100,000 in savings and home equity. The problem is that it is still the way the system works today, and every new day we don't act, we take the chance it will happen again.

The bill empowers consumers and holds Wall Street accountable to make sure history never repeats itself. Ours is a strong bill. The American people not only overwhelmingly support this legislation, it is legislation they loudly demand. But it won't do anyone any good until we send it to the President for his signature. If there is a strategy of delay involved in this—and I certainly hope there isn't—I have said before that as soon as tonight, we could file cloture and hold a final vote this week. This cannot be delayed any longer.

I appreciate the good work of so many Senators to make a tough Wall Street reform bill even tougher. I extend my appreciation to the Presiding Officer, who has been involved in a significant number of the amendments we have tried to work through. His experience in the business community has certainly strengthened the bill.

So far, the Senate has voted for amendments to strengthen the bill and has voted against efforts to weaken it. Democrats and Republicans have voted

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



Printed on recycled paper.

S3793

for each other's amendments. This is the way it should be. However, the end must come. The time has come to begin work sending this to conference so we can have a bill to go to the President.

The Senate has voted to reject loopholes for Wall Street lobbyists. We rejected an amendment that would leave the door open for more taxpayer bailouts. We denied carve-outs for those who game the system for their own financial gain.

The message is clear: We must guarantee taxpayers that they will never again be asked to bail out big banks. We must protect families' life savings and seniors' pensions. We must ensure no bank can become too big to fail. And we must make sure the system is more transparent, which will let us rein in the risky bets before it is too late.

I remind all of my colleagues that the amendment process can continue after cloture is filed and after it is invoked. I hope the two managers of this bill, Chairman DODD and Ranking Member SHELBY, can continue working on amendments that will strengthen these urgent and overdue reforms.

Another reason we have to finish sooner rather than later is that we have such important work to do this month. At the top of that list is a new jobs bill—a jobs bill that will cut taxes for middle-class families and stimulate small businesses by giving small businesses tax cuts.

Also, we have two supplemental appropriations bills. Senator INOUE and Senator COCHRAN are going to combine those, as the two managers of that legislation, so that when they come to the floor, there will only be one supplemental appropriations bill. They will join the FEMA supplemental—because of all of the natural disasters around the country—with the war funding bill we also need to do. We have scores of nominees awaiting confirmation. We hope to be able to complete some of that before we leave here for the recess, so I hope both sides can find a way to work together to get these bills done.

I repeat: We need to finish the bill that is on the floor. We need to do the war funding appropriations bill that is going to be combined with FEMA, and of course we have to do the jobs bill before the first of the month.

BP OIL SPILL

Mr. REID. Mr. President, Wall Street isn't the only place where a reckless pursuit of profits has proven destructive. In the weeks since the Deepwater Horizon explosion, as much as 20 million gallons have spewed into the Gulf of Mexico. To put that so it is more understandable, think of the Exxon Valdez. The Exxon Valdez was an awful spill, but it was only 11 million—I underline that, only 11 million—gallons. Already, the disaster in the gulf has been twice that big as far as the amount of oil spilled.

Last night's edition of "60 Minutes" reported damning evidence that the roots of this tragedy are in British Petroleum executives' efforts to pad their own wallets. The program was very direct and to the point. Their greed led to 11 horrific and unnecessary deaths. It has harmed an enormous tourism industry, weakened business at countless fisheries, and disrupted life for many along the gulf coast. As the pollution grows worse, those consequences will only compound.

It is the responsibility of Congress and the administration to investigate this disaster, and it is the responsibility of British Petroleum and anyone else found culpable to pay the price of those damages. By law, oil companies are liable for only \$75 million in damages in instances such as these. This is clearly insufficient. One way Congress can act now is by raising that limit. Some believe it should be raised to \$10 billion. Others support no cap at all. I certainly think a \$10 billion cap is inadequate.

Whatever the final figure, the catastrophe that continues to poison our gulf coast is a wake-up call. We must make sure oil companies learn their lesson. While they spend record profits on finding more oil, they also must find safer ways to drill and to handle it. They must invest in rapidly developing clean domestic energy to protect our environment and increase our energy security.

Secretary Salazar and the President deserve credit for their continued efforts to clean up the previous administration's efforts to put oil company profits before people.

In the meantime, we and the Senate must also learn from the mistakes on Wall Street to the Gulf of Mexico. We have to work as quickly as possible to protect against it ever happening again.

I note the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

RECOGNITION OF THE MINORITY LEADER

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

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

NOMINATION OF ELENA KAGAN

Mr. MCCONNELL. Mr. President, the American people are concerned with the direction the administration is trying to take this country. They are concerned about the government running banks, insurance companies, car companies, and the student loan business. And they are concerned about the way

all this is being done as exemplified by the health care debate in which the administration and its allies in Congress defied the clear will of the people by jamming this partisan bill through Congress and stifling its critics along the way.

On this last point, I am referring, of course, to the gag order the administration imposed on insurance companies that wrote letters to seniors telling them how the health care bill could affect their benefits under Medicare Advantage. In issuing this gag order, the administration relied on the flimsiest of legal arguments. It said that regulations which allowed the Department of Health and Human Services to restrict how companies marketed their products could be used to impose a prior restraint on speech about an issue of public concern—namely, the pending health care bill. But the communications in question were not commercial speech; they were issue advocacy, which is the very type of speech the first amendment is intended to protect. That is why even the Clinton administration rejected the notion that its Department of Health and Human Services could restrict this kind of speech.

Nor was this the only time the Obama administration has attempted to use the government to stifle speech. Just 1 month prior to its issuance of this gag order, I had the opportunity to sit in the Supreme Court when the Solicitor General delivered her first oral argument in any courtroom. This was the Citizens United case, the same case that prompted the President to scold the Court during his State of the Union Address in January and a case that, if it had gone the other way, could have dealt a serious blow to the first amendment right of free speech.

For those who aren't familiar with the particulars of this case, Citizens United turned on the question of whether the Federal Government could ban a nonprofit corporation from producing a movie critical of former Senator Hillary Clinton and attempting to air it just prior to the 2008 Democratic primary.

Most people would probably be surprised to learn that in America, the Federal Government could ban a group from speaking because of who the group was and because of the type of speech being uttered, but that is precisely what Federal campaign finance law prohibited. So because this law constrained the exercise of its first amendment rights, this nonprofit, Citizens United, sued the government. The case made it all the way to the Supreme Court, and because the Federal Government was the defendant, the Solicitor General's Office—Ms. Kagan's office—handled the case, arguing in favor of prohibiting the advertising and airing of the film.

There were two oral arguments in this case, and during both of them, Solicitor General Kagan's office and Ms. Kagan herself argued that the Federal