

nominees, they just try to pretend it does not exist. The American people know better, and they deserve better.

Americans are rightfully proud of our legal system and its promise of access to justice and speedy trials. This promise is embedded in our Constitution. When overburdened courts made it hard to keep this centuries-old promise, the Senate should work in a bipartisan manner to fill judgeships and to create and fill new judgeships. That is what Senate Democrats did when Ronald Reagan, George H.W. Bush, and George W. Bush were President. Since the American people elected President Obama, Senate Republicans have determined that they are no longer interested in whether or not our courts are able to meet this fundamental guarantee. They have decided that it is acceptable for hardworking Americans to wait two months for "urgent" hearings, and that the ten additional judicial emergency vacancies they could fill right now should remain vacant for no good reason. The American people deserve better.

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will now return to legislative session.

Mr. REID. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

EUROPEAN UNION EMISSIONS TRADING SCHEME PROHIBITION ACT OF 2011

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 484, S. 1956.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 1956) to prohibit operators of civil aircraft of the United States from participating in the European Union's emissions trading scheme, and for other purposes.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Commerce, Science, and Transportation, with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

S. 1956

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "European Union Emissions Trading Scheme Prohibition Act of 2011".

SEC. 2. PROHIBITION ON PARTICIPATION IN THE EUROPEAN UNION'S EMISSIONS TRADING SCHEME.

(a) IN GENERAL.—The Secretary of Transportation shall prohibit an operator of a civil air-

craft of the United States from participating in the emissions trading scheme unilaterally established by the European Union in EU Directive 2003/87/EC of October 13, 2003, as amended, in any case in which the Secretary determines the prohibition to be, and in a manner that is, in the public interest, taking into account—

(1) the impacts on U.S. consumers, U.S. carriers, and U.S. operators;

(2) the impacts on the economic, energy, and environmental security of the United States; and

(3) the impacts on U.S. foreign relations, including existing international commitments.

(b) PUBLIC HEARING.—After determining that a prohibition under this section may be in the public interest, the Secretary must hold a public hearing at least 30 days before imposing any prohibition.

SEC. 3. NEGOTIATIONS.

The Secretary of Transportation, the Administrator of the Federal Aviation Administration, and other appropriate officials of the United States Government—

(1) should, as appropriate, use their authority to conduct international negotiations, including using their authority to conduct international negotiations to pursue a worldwide approach to address aircraft emissions; and

(2) shall, as appropriate, take other actions under existing authorities that are in the public interest necessary to hold operators of civil aircraft of the United States harmless from the emissions trading scheme referred to under section 2.

SEC. 4. DEFINITION OF CIVIL AIRCRAFT OF THE UNITED STATES.

In this Act, the term "civil aircraft of the United States" has the meaning given the term under section 40102(a) of title 49, United States Code.

Mr. THUNE. Mr. President, I would like to thank my colleague from Oregon, Mr. MERKLEY, for working with the Senator from Missouri, Mrs. MCCASKILL, and me today to address his concerns with our bipartisan bill, S. 1956, the European Union Emissions Trading Scheme Prohibition Act. The amendment, which he has filed for consideration and which is currently running through the hotline process, reconfirms that the Secretary of Transportation's responsibility to determine there is a public interest before taking any action does not end after the first determination. Instead, it is an ongoing responsibility.

The amendment that Mr. MERKLEY has filed, and which I support, clarifies that it is the Secretary's right to reassess the public interest determination. Additionally, the amendment clarifies that if the EU ETS is amended, if there is an international agreement on aviation emissions, or if a Federal public law is enacted that addresses aviation emissions, that the Secretary will again revisit the public interest determination.

Again, I would like to thank the Senator from Oregon for working with me, and I look forward to passage of S. 1956.

Mr. REID. Mr. President, I ask unanimous consent that the committee-reported amendment be considered, the Cardin and Merkley amendments at the desk be agreed to, the committee-reported amendment, as amended, be agreed to, the bill, as amended, be read a third time and passed, the motion to reconsider be considered made and laid

upon the table, and any statements relating to this bill be printed in the RECORD.

I would also extend my appreciation to all Senators who have been involved in this contentious issue—for a while, at least—and especially Senator THUNE, who has helped us work through this and a number of other things.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendments were agreed to, as follows:

(Purpose: To prohibit the use of taxpayer dollars to pay taxes and penalties imposed on United States air carriers pursuant to the European Union emissions trading scheme)

Beginning on page 5, strike line 14 and all that follows through page 6, line 2, and insert the following:

SEC. 3. NEGOTIATIONS.

(a) IN GENERAL.—The Secretary of Transportation, the Administrator of the Federal Aviation Administration, and other appropriate officials of the United States Government—

(1) should, as appropriate, use their authority to conduct international negotiations, including using their authority to conduct international negotiations to pursue a worldwide approach to address aircraft emissions, including the environmental impact of aircraft emissions; and

(2) shall, as appropriate and except as provided in subsection (b), take other actions under existing authorities that are in the public interest necessary to hold operators of civil aircraft of the United States harmless from the emissions trading scheme referred to under section 2.

(b) EXCLUSION OF PAYMENT OF TAXES AND PENALTIES.—Actions taken under subsection (a)(2) may not include the obligation or expenditure of any amounts in the Airport and Airway Trust Fund established under section 9905 of the Internal Revenue Code of 1986, or amounts otherwise made available to the Department of Transportation or any other Federal agency pursuant to appropriations Acts, for the payment of any tax or penalty imposed on an operator of civil aircraft of the United States pursuant to the emissions trading scheme referred to under section 2.

(Purpose: To provide for the reassessment by the Secretary of Transportation of a determination that it is in the public interest to prohibit operators of civil aircraft of the United States from participating in the European Union's emissions trading scheme)

On page 5, between lines 13 and 14, insert the following:

(c) REASSESSMENT OF DETERMINATION OF PUBLIC INTEREST.—The Secretary—

(1) may reassess a determination under subsection (a) that a prohibition under that subsection is in the public interest at any time after making such a determination; and

(2) shall reassess such a determination after—

(A) any amendment by the European Union to the EU Directive referred to in subsection (a); or

(B) the adoption of any international agreement pursuant to section 3(1).

(C) enactment of a public law or issuance of a final rule after formal agency rulemaking, in the United States to address aircraft emissions.

The committee-reported amendment in the nature of a substitute, as amended, was agreed to.

The bill (S. 1956), as amended, was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 1956

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “European Union Emissions Trading Scheme Prohibition Act of 2011”.

SEC. 2. PROHIBITION ON PARTICIPATION IN THE EUROPEAN UNION'S EMISSIONS TRADING SCHEME.

(a) IN GENERAL.—The Secretary of Transportation shall prohibit an operator of a civil aircraft of the United States from participating in the emissions trading scheme unilaterally established by the European Union in EU Directive 2003/87/EC of October 13, 2003, as amended, in any case in which the Secretary determines the prohibition to be, and in a manner that is, in the public interest, taking into account—

(1) the impacts on U.S. consumers, U.S. carriers, and U.S. operators;

(2) the impacts on the economic, energy, and environmental security of the United States; and

(3) the impacts on U.S. foreign relations, including existing international commitments.

(b) PUBLIC HEARING.—After determining that a prohibition under this section may be in the public interest, the Secretary must hold a public hearing at least 30 days before imposing any prohibition.

(c) REASSESSMENT OF DETERMINATION OF PUBLIC INTEREST.—The Secretary—

(1) may reassess a determination under subsection (a) that a prohibition under that subsection is in the public interest at any time after making such a determination; and

(2) shall reassess such a determination after—

(A) any amendment by the European Union to the EU Directive referred to in subsection (a); or

(B) the adoption of any international agreement pursuant to section 3(1).

(C) enactment of a public law or issuance of a final rule after formal agency rule-making, in the United State to address aircraft emissions.

SEC. 3. NEGOTIATIONS.

(a) IN GENERAL.—The Secretary of Transportation, the Administrator of the Federal Aviation Administration, and other appropriate officials of the United States Government—

(1) should, as appropriate, use their authority to conduct international negotiations, including using their authority to conduct international negotiations to pursue a worldwide approach to address aircraft emissions, including the environmental impact of aircraft emissions; and

(2) shall, as appropriate and except as provided in subsection (b), take other actions under existing authorities that are in the public interest necessary to hold operators of civil aircraft of the United States harmless from the emissions trading scheme referred to under section 2.

(b) EXCLUSION OF PAYMENT OF TAXES AND PENALTIES.—Actions taken under subsection (a)(2) may not include the obligation or expenditure of any amounts in the Airport and Airway Trust Fund established under section 9905 of the Internal Revenue Code of 1986, or amounts otherwise made available to the Department of Transportation or any other Federal agency pursuant to appropriations Acts, for the payment of any tax or penalty imposed on an operator of civil aircraft of

the United States pursuant to the emissions trading scheme referred to under section 2.

SEC. 4. DEFINITION OF CIVIL AIRCRAFT OF THE UNITED STATES.

In this Act, the term “civil aircraft of the United States” has the meaning given the term under section 40102(a) of title 49, United States Code.

Mr. REID. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER. Without objection, it is so ordered.

MORNING BUSINESS

Mr. PRYOR. Mr. President, I ask unanimous consent the Senate proceed to a period of morning business, with Senators permitted to speak therein for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

CHANGES TO THE SENATE RULES

Mr. LEVIN. Mr. President, the institution of the Senate is unique in its robust protections of the rights of the minority. In establishing our democracy, our Founders warned of the dangers of a tyrannical majority, and through our history as a country the Senate has stood, often alone, against that threat. One of the essential aspects of the Senate is the ability of 41 Senators, a minority, to defeat a measure if they are willing to talk and there are not 60 Senators who will vote to end the talking. Throughout the history of the Senate, the minority has usually used its right to thwart the will of the majority judiciously and only on measures of the greatest importance. Without that self-restraint, we would be exchanging a tyranny of the majority for a tyranny of the minority, and, indeed, that could mean a tiny minority.

That important quality of self-restraint is essential for the proper functioning of the Senate. With this quality, the Senate can debate, negotiate, and compromise; and without it, the result is gridlock. In a legislative body where extended debate is a central principle, self-restraint is what allows the gears of government to eventually turn. The Senate cannot operate without it.

It is that self-restraint that is too often missing in today's Senate. It is one reason for the low public approval of Congress. In fact, scholars of the Congress have noted an unprecedented change in the functioning of the Senate. In his testimony before the Senate Rules Committee on May 19, 2010, Norm Ornstein said:

The sharp increase in cloture motions reflects the routinization of the filibuster; it's used not as a tool of last resort for a minor-

ity that feels intensely about a major issue but as a weapon to delay and obstruct on nearly all matters, including routine and widely supported ones. It is fair to say that this has never happened before in the history of the Senate.

Wait, some might say, the Senate seems to have plenty of debate, perhaps too much. But the sad fact is, in today's Senate, a small minority of Senators routinely block the Senate from even beginning debate on legislation by filibustering or more accurately, perhaps, threaten to filibuster the motion to proceed to legislation. Without 60 votes to end debate on the motion to proceed, the Senate is routinely blocked from even beginning debate on critical legislation, making negotiation and compromise on legislation far more difficult.

Mr. Ornstein is right. The routine threat of a filibuster is an abuse of the rules. Just consider the number of filibusters of the motions to proceed. From the time the cloture rule was first extended to cover the motion to proceed in 1949 to 1990, 41 years, the Senate saw a total of 53 filibusters on the motion to proceed. During those years, Senate minorities would filibuster no more than a handful of motions to proceed during any single Congress. In recent years, the numbers of filibusters have exploded. Now, it is not uncommon for the Senate to see dozens of filibusters of the motions to proceed during any single Congress, as has been the case in the last 2 years. Where is the self-restraint?

Why is this so important? Why should the country care if a small group of Senators block the Senate from doing its work? What is at stake? In my opinion, the stakes could not be higher.

Over and over again, the Senate is forced to waste time just on the question of whether to begin debate on a bill. The process of threatening a filibuster and requiring cloture on every motion to proceed, including the mandatory postcloture debate time of 30 hours under the Senate rules, can consume a week of the Senate's time. That is a full week of the Senate's time consumed just by the question of whether to begin debate on a bill. Where is the self-restraint?

Does self-restraint mean that Senators must abandon long-held positions or violate principle? Of course not. Throughout the history of the Senate, Senators have fought fiercely for their positions and beliefs. Still, at some point, the fighting stopped and agreements were struck. That is the way of every legislative body. The majority's ability to act is what allows other legislative bodies to function. Self-restraint is what separates a functioning U.S. Senate from a broken one. It is what separates a Senate that is capable of doing the Nation's business from a Senate that is prevented from even beginning a debate on that business. The lack of self-restraint is the root of the problem the Senate faces.