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Senate

The Senate met at 10 a.m. and was called to order by the Honorable BRIAN SCHATZ, a Senator from the State of Hawaii.

PRAYER

The PRESIDING OFFICER. Today's opening prayer will be offered by Rev. Kris Holzmeyer, campus pastor of Northwoods Baptist Church in Newburgh, IN.

The guest Chaplain offered the following prayer:

Let us pray.

Omnipotent Heavenly Father, we come to You this day in a spirit of worship. You are sovereign in all things and active in the affairs of men.

We are grateful for the blessings of freedom and prosperity You have bestowed upon our country and its citizens. We acknowledge that You and You alone are the provider of those blessings.

Lord, we ask for Your forgiveness for the many sins that plague our Nation. We ask for Your divine intervention as we move forward seeking to bring You glory and honor as a people. Today, men and women will gather in this room to make decisions on behalf of the American people. All of them have left family, friends, and occupations to serve a greater cause. Will You bless them, Lord? Will You shower them with Your favor? Help them to be unified, seeking Your will first and making Your motives their own. May the decisions they reach today serve our people well but, most importantly, may they be pleasing unto You.

In the name of Jesus Christ our Lord we pray. Amen.

PLEDGE OF ALLEGIANCE

The Presiding Officer 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. LEAHY).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, July 11, 2013.

To the Senate:

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

PATRICK J. LEAHY,
President pro tempore.

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

RECOGNITION OF THE MAJORITY LEADER

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

KEEP STUDENT LOANS AFFORDABLE ACT OF 2013—MOTION TO PROCEED

Mr. REID. I move to proceed to Calendar No. 124, S. 1238, Senator REED's student loan bill.

The ACTING PRESIDENT pro tempore. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 1238) to amend the Higher Education Act of 1965 to extend the current reduced interest rate for undergraduate Federal Direct Stafford Loans for 1 year, to modify required distribution rules for pension plans, and for other purposes.

SCHEDULE

Mr. REID. Following my remarks and those of the Republican leader, the time until 12:30 today will be equally divided and controlled, with the Republicans controlling the first 30 minutes and the majority controlling the next 30 minutes.

The Senate will recess from 12:30 to 2:15 for caucus meetings.

SENATE RULES

Last month, the Republican leader spent a great deal of time talking about the importance of keeping one's word.

I agree without any question that Senators and everyone else should keep their word. I also believe a deal is a deal, a contract is a contract, an arrangement is an arrangement, a bargain is a bargain. As long as each party to such agreement holds up his end of the bargain, Senators should stick to their word.

But agreement is a two-way street. If one party fails to uphold their end, the agreement, of course, is null and void. The Republican leader wants everyone to believe—he has made many statements on the floor to which I have not responded—that I have broken my word. He neglects to recall his own commitments and his own words. Remember, an agreement is a two-way street.

Let's take a closer look at what the Republican leader committed to do. Let's look at the agreement we entered into together on the floor of this body, the Senate.

In a colloquy at the beginning of this Congress, January 24 of this year, I committed not to amend the Standing Rules of the Senate except through regular order. During that colloquy, Senator MCCONNELL also made a commitment. Senator MCCONNELL committed to end the constant Republican obstruction and return the Senate to a time when nominations were processed more efficiently.

This is what he said:

On the subject of nominations, Senate Republicans will continue to work with the majority to process nominations, consistent with the norms and traditions of the Senate.

I replied on the Senate floor:

The two leaders will continue to work together to schedule votes on nominees in a timely manner by unanimous consent, except in extraordinary circumstances.

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



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Remember, an agreement is an agreement, a contract is a contract, and a bargain is a bargain.

The Republican leader also pledged: This Congress should be more bipartisan than the last Congress. He promised "to work with the majority to process nominations." He committed that "the two leaders will continue to work together to schedule votes on nominees in a timely manner by unanimous consent, except in extraordinary circumstances."

Those were his words. Those were his commitments. Those were his promises. By any objective standard, they have been broken.

Let's take a look at the record—part of the record at least. Exactly 3 weeks after Senator MCCONNELL committed to process nominees consistent with norms and traditions of the Senate—I repeat, consistent with the norms and traditions of the Senate—he led the Republicans on an unprecedented filibuster of the Secretary of Defense, a highly qualified nominee, someone with whom we served in this body.

Nothing can be a starker violation of the commitment to a return to the norms and traditions of the Senate than launching a filibuster of the Secretary of Defense, the first ever in the history of our Republic. What is more, Republicans obstructed the nominee because of completely unrelated issues and despite the fact that nominee Chuck Hagel was a war hero of the Vietnam conflict and a former Republican Senator from Nebraska. Republicans were busy catering to the tea party by trying to inflate the Benghazi nonscandal, which was completely unrelated to Secretary Hagel. He wasn't there.

Secretary Hagel's nomination was pending in the Senate for 34 days, a record for the Secretary of Defense. The average time is about 10 days.

Confirmation of Cabinet Secretaries used to be free from obstruction. Once in a while there would be something, but not very often. But under President Obama, Cabinet nominees have faced unprecedented obstruction and significant delays in assuming their positions.

Not a single Cabinet nominee was filibustered in President Carter's administration. Not a single Cabinet Secretary nominee was filibustered in President George H. W. Bush's administration. One Cabinet Secretary was filibustered in the Reagan administration, and only one Cabinet Secretary was filibustered in President George W. Bush's administration. But already, in the Obama administration, four Cabinet Secretaries have been filibustered and more filibusters are likely. Remember, he still has 3½ years to go in his term of office. Yet the Republican leader says there is no problem; the status quo is fine.

Republicans were willing to risk national security for the sake of tea party politics when considering the Hagel nomination, and they were will-

ing to risk it again when considering the nomination of John Brennan to lead the CIA, the Central Intelligence Agency. Now we have the Secretary of Defense, and we have the CIA Director. They filibustered the nomination of a man charged with leading one of the Nation's most vital national security agencies. Yet the Republican leader says there is no problem; the status quo is fine.

In fact, Republican obstructionism has affected nearly every single one of President Obama's nominees. These obstructions continued at every level and through creative new methods.

Even before President Obama's nominations reached the Senate floor, Senate Republicans bogged them down with unreasonable demands, which are terribly time consuming. They are designed to be, if not unattainable, hard and difficult.

Tom Perez is a man who worked as a garbage man, who put himself through school. He hauled garbage. He is the President's nominee for Secretary of Labor. He received, after the public hearing, more than 200 questions for the record. These are not easy questions. They are not single-line questions.

Jack Lew, the President's nominee for Secretary of Treasury, was asked more than 700 questions before he was confirmed. Previously, Secretaries of the Treasury were just whipped through here with only a handful of questions. Now Jack Lew is being held up again for another position he wants with the International Monetary Fund. He is the Secretary of Treasury of our Nation.

Gina McCarthy—after a full hearing which took quite a while to get arranged because the chairman of the committee wanted to make sure the ranking member was satisfied with the time, witnesses, and all of that—was asked to lead the Environmental Protection Agency.

I know quite a bit about that committee. I was chairman of that committee twice. Now this is a World Series deal. This holds the record. She had more than 1,100 questions. It used to be common for nominees to be asked a handful of questions in writing after the hearing took place.

My colleague in the minority wants to claim credit for letting some nominees proceed. The fact that he seeks credit for approving some nominees only highlights the extent of the problem. Confirming nominees should be the norm, not the exception.

Remember the agreement he and I talked about on the Senate floor. The President deserves to have his or her team in place. I don't really care who is elected, whether it is Jeb Bush, Hillary Clinton, or JOE BIDEN. That person shouldn't have to go through what we have gone through in the last 4½ years. One look at the Senate's Executive Calendar shows that fundamentally nothing has changed since Senator MCCONNELL and I entered into our supposed agreement.

There are currently 15 executive branch nominees ready to be confirmed by the Senate after long stalling in many different ways. They have been waiting more than 260 days. Add it up, and that is about 9 months per confirmation.

At this point in President Bush's second term, the Senate had confirmed three times as many executives as for President Obama. By the Fourth of July of President Clinton's second term, the Senate had confirmed 80 of his executive nominees. By the Fourth of July of President Bush's second term, the Senate had confirmed 118. By the Fourth of July of this year for President Obama, 34. Remember, he has 3½ years left.

Through June of this year I have been forced to file cloture on 25 Obama executive nominees—25. This is eating up so much time. By comparison, a cloture was rarely filed during the 8 years Bush was President.

These procedural blockades are as obvious as they are unprecedented. Yet the Republican leader says there is no problem here; the status quo is fine.

This leads me to wonder what exactly does my friend—and he is my friend—Senator MCCONNELL consider an extraordinary circumstance? Is it an extraordinary circumstance when Republicans merely dislike an otherwise qualified nominee? Is it an extraordinary circumstance when Republicans simply dislike the agency the nominee will lead, 1,100 questions? Is it an extraordinary circumstance when Republicans dislike the very laws a nominee will be bound to uphold?

It is a disturbing trend when Republicans are willing to block executive branch nominees even if they have no objection about the qualification of the nominee.

They don't like the law. They don't like the agency. Instead, they are blocking qualified nominees to circumvent the legislative process, forcing wholesale changes to laws or restructure of the entire executive branch departments. They are blocking qualified nominees because they refuse to accept the law of the land.

A perfect example is Richard Cordray, former attorney general of the State of Ohio, who has been asked by President Obama to lead the Consumer Finance Protection Bureau. To give a little background, remember, this was part of the bill that was passed called Dodd-Frank. This consumer finance protection bill was the brainchild of ELIZABETH WARREN, who is now a Senator representing Massachusetts.

The reason she is in the Senate is not by chance. Don't even put her there; the President for a long time wanted her to be there. No, he can't have her, so Cordray was a replacement. He was nominated in July of 2011. It is now July 2013.

There is no doubt about his ability to do the job. He has won high praise from both Democrats and Republicans. He

has a stellar track record. If Mr. Cordray received a fair up-or-down vote, he would be confirmed immediately. But the Consumer Financial Protection Bureau continues to operate without a leader because Republicans want to roll back a law that protects consumers from the greed of the big Wall Street banks that caused us to have the meltdown we had in the first place. Republicans refuse to confirm Richard Cordray's nomination because they refuse to accept the law of the land. They do not dislike him, they dislike the law that was passed. Yet the Republican leader says there is no problem here; the status quo is fine.

This same type of blatant obstruction was applied to the nomination of Gina McCarthy to lead the Environmental Protection Agency. This is a woman who has wide-ranging support with Republicans. She served in State Republican administrations. She was nominated 130 days ago, or thereabouts, and although she has a proven track record of public service that will help her bring environmental and business groups together to tackle the serious environmental challenges facing our Nation, her nomination drags on. It just lingers. Why? Because Republicans fundamentally oppose the mission of the agency—the EPA—she will lead to keep the air we breathe and the water we drink safe from dangerous pollution. Once again, they refuse to accept the law of the land. Yet the Republican leader says there is no problem here; the status quo is just fine; nothing is wrong with the Senate and how it works.

Republicans also made clear from the start they would never confirm Donald Berwick to lead the Centers for Medicare and Medicaid Services, the agency tasked with implementing the landmark health care reform legislation. Talk about qualifications. This was a Harvard professor of medicine.

This health care law is already saving seniors money in checkups and prescriptions. Millions of seniors now have wellness checkups. Being a woman can no longer be considered a preexisting disability, as insurance companies did before. They can't do that now. Because of health care reform, insurance companies can no longer deny coverage to sick children, such as those kids I had in my office yesterday, who had juvenile diabetes. Because of health care reform, there can be no more lifetime caps. A man who was a race car driver in Nevada got in an accident—not racing, an accident in a car—and was paralyzed. He got to the \$100,000 limit and was all through; no more help from the insurance company. He went on welfare. Because of the health care reform law insurance companies can no longer discriminate against those, as I have indicated, with preexisting conditions.

Since President Obama signed that law, insurance companies can no longer put profits ahead of people. It used to be there was no limit to what they could spend on the executives of the

company, but now they are limited to 20 percent. That is why millions of people this year have gotten refunds, because the insurance company was gouging them. Republicans oppose this health care law. In the House they have scheduled another vote next week—to vote for I think the 41st time—to repeal it. Because Republicans oppose the health care law, they have done everything in their power to derail the law's implementation, including denying the CMS a leader.

Despite Dr. Berwick's stellar credentials, Republicans defamed him and destroyed his chance at confirmation because they refused to accept the law of the land. They refused to confirm Berwick, so in 2010 President Obama was forced to recess-appoint him. Berwick's term ended a year and a half later because that was done under a recess appointment, and at the end of that Congress the appointment expired. He was never confirmed to lead the CMS, although his nomination was pending for 593 days—more than a year and a half. Yet the Republican leader says there is no problem here; the status quo is just fine.

The same type of politically motivated obstruction has hobbled the National Labor Relations Board. This isn't some brand new law that Democrats came up with. This came into being during the Great Depression—not this one, but the one in the 1930s. That is when the National Labor Relations Board originated. From January 2008 to March 2010, the National Labor Relations Board has operated with just two members. Senate Republicans have refused to allow a vote on the President's nominees—refused.

In June 2010, the Supreme Court invalidated much of the NLRB's work during this period, finding three members were necessary. There was no quorum unless you had an extra one, and we didn't have one because they wouldn't let us do it. Then the President recess-appointed a bipartisan group of three members to the board so it would function. The appeals court ruled those appointments were also unconstitutional. The case will soon go to the Supreme Court about recess appointments.

As I mentioned, I had a meeting earlier with some of my Republican friends here this morning. We met in my office, and I reminded everybody when this issue came up in the past, we put people on that DC Circuit that we had to gag to vote for in an effort to avoid a problem here in the Senate, but we did. These are three we put on, the one who gave us this outrageous opinion that after 230 years as a country no longer could we have recess appointments. So it will go to the Supreme Court.

In the meantime, the term of one of the three remaining NLRB members expires next month. So at the end of August the NLRB will continue to be nonfunctioning. Republicans consider that a victory. I am not making this

up. Listen: In 2011, the senior Senator from South Carolina—and I care a great deal about this man, LINDSEY GRAHAM. He would say he is my friend and I am saying he is my friend, but listen to what he said: "The NLRB, as inoperable, could be considered progress." "The NLRB, as inoperable, could be considered progress."

Because Republicans refuse to accept the law of the land, they have denied the NLRB the ability to safeguard workers' rights and monitor unions. Workers have been illegally terminated. They have no way to appeal. The results of contested union elections? It doesn't matter; nobody is there to look it over. Labor abuse and unfair labor practices go unchallenged. Yet the Republican leader says there is no problem here; the status quo is just fine.

The Constitution gives the President, whomever that President might be, the right, the power to choose his team. It grants the Senate the right to advise and consent on those choices. But consistent and unprecedented obstruction by this Republican caucus has turned advise and consent into deny and obstruct. Republican obstruction has denied President Obama the ability to choose his team. Whether you are a Democrat, a Republican, or an Independent, we should all be able to agree that Presidents deserve the team members they want, and their nominations should be subject to simple up-or-down votes.

No President can safeguard America's national economic security to the best of his or her ability without their chosen team in place. Let's see if we can come up with an example. Davey Johnson is the manager of the Washington Nationals—his team—we are so happy to have here in Washington. He is here as manager of that team to field a winning team. He was a starring second baseman for the Baltimore Orioles when they won four American League pennants, two World Series championships, and he has managed five different baseball teams. He has been a two-time manager of the year, he led the Mets to their 1986 World Series as a manager, and last year he gave the Nats franchise their first division title since 1981.

Major League Baseball season begins about April 1. Imagine the front office of Major League Baseball calling up Davey Johnson around the 1st of April and saying: Davey, I know that first baseman you signed a week or so ago, Adam LaRoche, is a good first baseman. He is swell—a Gold Glove winner, a classic power hitter—but I am sorry to tell you that you can't play him until maybe the middle of June. Then Davey Johnson is called again by the same man who says: That third baseman, Ryan Zimmerman, I know you like him, he is a man who has won the Silver Slugger Award, he has been a Gold Glove recipient, an All Star, but tell you what, you can play him as soon as the All Star break is over.

If that were to happen, what would happen to that team? They would go on and perform, just as President Obama has done, but they would not play to their ability. And that is ridiculous. Yet that is where we are. That is exactly what Republicans are saying to President Obama: You can't have your team until we tell you everything is fine, and it is going to take a long time for us to tell you that. The gridlock the Republicans have created is not only bad for President Obama and bad for the Senate, it is bad for this country. We can have people come and give all the statistics in the world, but is there anybody out there in America who thinks this body is functioning well?

Upon examination of this record I have outlined of obstruction—of delay and filibuster—it can hardly be said Senator MCCONNELL has—to use his words—worked together to follow regular order and use his procedural options with discretion. It can hardly be said Senator MCCONNELL has worked with the majority to move nominations. It can hardly be said Senator MCCONNELL has worked with the majority to schedule votes on nominees in a timely manner except in extraordinary circumstances. But it could be said Senator MCCONNELL broke his word. That certainly could be said. The Republican leader has failed to live up to his commitments. He has failed to do what he said he would do—move nominations by regular order except in extraordinary circumstances. I refuse to unilaterally surrender my right to respond to this breach of faith. If Senator MCCONNELL wants to continue to defend the status quo of gridlock in Washington, he has that right. If Senator MCCONNELL wants to continue to believe there is no problem in the Senate, that is his choice. But the American people are fed up with gridlock, they are fed up with obstruction, and they are fed up with politics as usual. They want Washington to work again for American families.

I try every day of my life to be on the side of the American people. I wait and I wait, but I am not going to wait another month, another few weeks, another year for Congress to take action on the things we have been doing for almost 240 years.

RECOGNITION OF THE MINORITY LEADER

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

Mr. MCCONNELL. Mr. President, I sat here patiently and listened to the majority leader's speech, and I hope he will do me the courtesy to listen to mine, since this is a very important day in the history of the Senate. I want to make a couple of observations, which I hope my friend the majority leader will listen to.

First, he is trying to justify in advance what would be a very clear fail-

ure to honor his very clear commitment not to break the rules of the Senate. What he is referring to are his own statements, not mine, regarding extraordinary circumstances. He said that, not me. In other words, to justify breaking his clear commitments not to break the rules of the Senate in order to change the rules of the Senate, he is attributing to me something somebody else said, and that somebody else, by the way, is him. He is attributing to me something he said.

We need to keep our commitments around here and not break them, and we need to be honest about quoting people around here. This is about trying to come up with excuses to break our commitments. What this is about is manufacturing a pretext for a power grab.

I listened very carefully to what the majority leader had to say. What he is saying, in effect, is he doesn't want to have any controversy at all attached to any of the nominees. In other words, don't ask any questions. Advise and consent means sit down and shut up.

He was complaining about the number of questions the nominee for EPA Administrator was required to answer.

What he conveniently left out was the chairwoman Senator BOXER requested 70,000 documents. Why is it OK for the chairwoman to request 70,000 documents and somehow if the ranking member makes a lot of requests it is some violation of some comity? When the Founders wrote "advise and consent," I don't think they had in mind sit down and shut up.

It is noteworthy that all of the people he is complaining about got confirmed. So what he is saying is he doesn't want any debate at all in connection with Presidential appointments, just sit down, shut up, and rubberstamp everything, everyone the President sends up here.

On the calendar right now there are 21 nominations—21. There are 148 in committee. We don't control the committees, he does: 148 in committee, 21 on the calendar. It is pretty obvious Senate Democrats are gearing up today to make one of the most consequential changes to the Senate in the history of our Nation.

I want everybody to understand, this is no small matter we are talking about. I guarantee you it is a decision that if they actually go through with it, they will live to regret. It is an open secret at this point that big labor and others on the left are putting a lot of pressure on the majority leader to change the rules of the Senate and to do so, as he promised not to do, by breaking the rules of the Senate. That would violate every protection of the minority rights that has defined the Senate for as long as anyone can remember.

Let me assure you, this Pandora's box, once opened, will be utilized again and again by future majorities and it will make the meaningful consensus-building that has served our Nation so well a relic of the past.

The short-term issue that has triggered this dangerous and far-reaching proposal is simple enough. The hard left is so convinced that every one of the President's nominees should sail through the confirmation process that they are willing to do permanent irreversible damage to this institution in order to get their way, and it appears as if they have convinced the majority leader to do their bidding and hijack the Senate. They are not interested in checks and balances. They are not interested in advise and consent. They are not even interested in what this would mean down the road when Republicans are the ones making the nominations. They want the power and they want it now. They do not care about the consequences. The ends justify the means ethos has been resisted by basically every Senate leader in the past and it is a clear and unequivocal violation of the public assurances that the current majority leader made to the entire Senate, his constituents, and the American people just a few months ago.

What is worse is we got to this point on the basis of an absolute fairytale, a fairytale. Obviously, the left needed an excuse to justify such an unprecedented power grab, so they simply made up a story about Republicans blocking the President's nominees. The majority leader is entitled to his opinion, but he is not entitled to his facts. The facts are the facts. Here is the real story. Almost nothing about this tale so often repeated around here holds up to scrutiny.

The facts are that this President took office and the Senate has confirmed 1,560 people. The Senate has confirmed every single one of the Cabinet nominees who has been brought up for a vote—every single one. The President has gotten nearly three times as many judges confirmed at this point as President Bush in his Presidency.

Here is the point. What this whole so-called crisis boils down to are three nominees the President unlawfully appointed—as confirmed by the courts. A Federal court has held the three nominees were unlawfully appointed. Two of the three are direct parties to the litigation and the third one was appointed at exactly the same moment in the exact same way. One of these nominees has been held up by inaction over at the White House related to structural reforms that the administration and even the nominee himself, Mr. Cordray, now say they are willing to work with us on. The fact is, indisputably, we have been confirming lawfully nominated folks routinely and consistently: The Energy Secretary, 97 to 0; the Secretary of the Interior, 87 to 11; the Secretary of the Treasury, 71 to 26; the Secretary of State, 94 to 3, just a few days after the Senate got his nomination; the Secretary of Commerce, 97 to 1; the Secretary of Transportation, 100 to 0; the Director of the Office of Management and Budget, 96 to 0; the Administrator of the Centers for Medicare