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Senate

(Legislative day of Monday, July 15, 2013)

The Senate met at 10 a.m., on the expiration of the recess, and was called to order by the President pro tempore (Mr. LEAHY).

PRAYER

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

Let us pray.

Eternal God, You deserve the honor, the glory, and the praise from our mortal lips, for You alone are omnipotent. Shine Your light upon the challenging path which our lawmakers must walk, dispelling the shadows of doubt and division. Lord, use our Senators as instruments of Your glory, keeping their faith strong as they trust You to order their steps and choreograph their destinies. May their labors bring solace to the needy, the marginalized, the lost, the lonely, and the least. Help them to remember that they are Your servants, called to serve Your purposes in their generation.

Lord, we ask Your special blessings on our new lawmaker Senator MARKEY as he is sworn in today.

We pray in Your sacred Name. Amen.

PLEDGE OF ALLEGIANCE

The President pro tempore 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.

ORDER OF BUSINESS

Mr. DURBIN. Mr. President, the majority leader will be on the floor very briefly, but at this point I suggest the absence of a quorum.

The PRESIDENT pro tempore. 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 President, I ask unanimous consent that the order for the quorum call be rescinded.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 VICE PRESIDENT. Without objection, it is so ordered.

Mr. REID. Mr. President, what is the business before the Senate?

The VICE PRESIDENT. The swearing in of the Senator from Massachusetts.

CERTIFICATE OF APPOINTMENT

The VICE PRESIDENT. The Chair lays before the Senate a Certificate of Election to fill the vacancy created by the resignation of Senator John F. Kerry of Massachusetts. The certificate, the Chair is advised, is in the form suggested by the Senate. If there is no objection, the reading of the certificate will be waived and it will be printed in full in the RECORD.

Mr. REID. Mr. President, reserving the right to object, I know a lot of people want to say some real nice things about this good man, but we are going to have to do it later. We have a lot of things to do. As he will learn, the Senate is not always as punctual as the House. So all those who have these wonderful things to say about this good man, do it later.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

THE COMMONWEALTH OF MASSACHUSETTS
To the President of the Senate of the United States:

This is to certify that on the twenty-fifth day of June, two-thousand and thirteen Edward J. Markey was duly chosen by the qualified electors of the Commonwealth of Massachusetts a Senator for the unexpired term ending at noon on the third day of January, two thousand and fifteen, to fill the vacancy in the representation from said Commonwealth in the Senate of the United States caused by the resignation of Senator John F. Kerry.

Witness: His Excellency, the Governor, Deval L. Patrick, and our seal hereto affixed at Boston, this tenth day of July in the year of our Lord two thousand and thirteen.

By His Excellency, Governor

DEVAL PATRICK.

WILLIAM FRANCIS GALVIN,
Secretary of the Commonwealth.

[State Seal Affixed]

ADMINISTRATION OF OATH OF OFFICE

The VICE PRESIDENT. If the Senator-designee will now present himself at the desk, the Chair will administer the oath of office.

The Senator-designee, escorted by Ms. WARREN and Mr. COWAN, advanced to the desk of the Vice President, the oath prescribed by law was administered to him by the Vice President, and he subscribed to the oath in the Official Oath Book.

The VICE PRESIDENT. Congratulations, Senator.

(Applause.)

Mr. REID. Mr. President, what is the business before this body?

The PRESIDING OFFICER (Mr. MURPHY). The motion to proceed to S. 1238 is pending.

MEASURE PLACED ON THE CALENDAR—S. 1292

Mr. REID. Mr. President, I am told S. 1292 is due for a second reading.

The PRESIDING OFFICER. The clerk will read the bill by title for the second time.

The legislative clerk read as follows:

A bill (S. 1292) to prohibit the funding of the Patient Protection and Affordable Care Act.

Mr. REID. Mr. President, I object to this.

The PRESIDING OFFICER. Objection having been heard, the bill will be placed on the calendar under rule XIV.

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



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EXECUTIVE SESSION

NOMINATION OF RICHARD
CORDRAY TO BE DIRECTOR OF
THE BUREAU OF CONSUMER FI-
NANCIAL PROTECTION

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to executive session to resume consideration of Calendar No. 51.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The clerk will report the nomination.

The legislative clerk read as follows:

Nomination, Bureau of Consumer Financial Protection, Richard Cordray of Ohio to be Director.

Mr. REID. Mr. President, I ask unanimous consent that the time until 11 a.m. be equally divided and controlled.

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

Mr. REID. At 11 there will be a cloture vote on the nomination of Richard Cordray to be Director of the Consumer Financial Protection Bureau. If cloture is invoked, there will be up to 8 hours of debate on the nomination.

The PRESIDING OFFICER. Who yields time?

Mr. REID. I ask unanimous consent that the time be equally divided.

The PRESIDING OFFICER. Would the Senator withhold that request?

Mr. REID. Absolutely.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. MCCAIN. Mr. President, we are going to move forward to the Cordray nomination, which has been held up for some period of time. I would like to thank everybody on both sides of the aisle who was engaged in this debate and discussion. I would particularly like to thank all of my colleagues who engaged in a long but productive discussion last night—which is our custom—of the many issues that separate us, particularly some pending, what many of us believe to be a crisis in the history of the Senate.

I wish to thank both our leaders, Senator MCCONNELL and Senator REID, and so many others who have been actively engaged in conversations that have been going on. I look forward to a vote as soon as possible on Mr. Cordray.

I thank all of my colleagues for believing what I thought was very important in our relations with the Senate.

I yield the floor.

The PRESIDING OFFICER. The majority leader.

Mr. REID. Mr. President, we may have a way forward on this. I feel very confident, as you know. That is why we need the time. So what we are going to do is go into a quorum. I think everyone would be well advised, if they wish, to talk about substantive matters, if you wish to speak to Senator Markey. But we have a few i's to dot and t's to cross, I have to speak to the Vice President, and we are going to have a phone call to make with Senators

SCHUMER and MURRAY. So everything is going well.

I will say I hope everyone learned a lesson last night, that it sure helps to sit down, stand, whatever it is, and talk to each other. It was a very good meeting that lasted 4 hours. People were still as highly engaged at the end of that 4 hours as they were in the beginning.

I think we see a way forward that will be good for everybody. There are a lot of accolades to go around to a lot of people. I certainly appreciate my wonderful caucus.

One of my Senators, who has a lot of humility, told me this morning: It doesn't matter what you ask me to do, I will do it.

I would hope this is not a time to flex muscles, but it is a time I am going to tell one person and no one else how much I appreciate their advocacy, their persuasiveness, persistence, and—a word that truly describes this man is hard to find.

I was told by another Senator: You know what this man did? I said: You know who he reminds me of? Bob Kerrey. I hope that doesn't disparage JOHN MCCAIN. But JOHN MCCAIN is the reason we are at the point we are. A lot of people have been extremely helpful. This is all directed toward JOHN MCCAIN from me. No one was able to break through but for him. He does it at his own peril.

Everyone, we are going to have a caucus today. We will explain in more detail the direction we are headed. I think everyone will be happy. Everyone will not think we got everything we wanted, but I think it is going to be something that is good for the Senate. It is a compromise. I think we get what we want; they get what they want—not a bad deal.

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

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

Mr. ENZI. Mr. President, I wish to speak today on the nomination of Richard Cordray to be the Director of the Consumer Financial Protection Bureau. I want to speak against this confirmation.

Why is this nomination important? Once the Director is approved by Congress, by the Senate—not all the Congress, just by the Senate—we will no longer have any control over a bureau that collects everyone's financial records in detail and can cancel a loan up to 180 days even if both parties to the loan are happy.

Mr. Cordray was recess-appointed. I think it was because the President thought he would not be approved by Congress.

What I am about to tell you already is under the direction of this nominee.

That recess appointment put him in charge of the Consumer Financial Protection Bureau. It sounds like a good title, but the reason this is of utmost concern to me and has been for the past 3 years is the lack of congressional oversight and blatant privacy intrusions of the Consumer Financial Protection Bureau, the CFPB.

The Dodd-Frank Act, which created the CFPB, has been a hot topic of conversation since its passage in 2010. There are a lot of important discussions about different parts of the bill and some of the consequences we are seeing now, 3 years down the road. These are all important conversations to have, but today I am focusing on the Consumer Financial Protection Bureau.

The Bureau, as allowed by the Dodd-Frank Act, could direct up to \$600 million every year, but it is not subject to the congressional appropriations process—the same congressional appropriations process that approves the budgets of the other agencies, such as the Securities and Exchange Commission and the Federal Trade Commission. Instead, the agency is funded from revenues from the Federal Reserve—the Federal Reserve—before the revenues come to the Treasury, funds that are supposed to be remitted to the Treasury for deficit reduction.

Some might ask: Isn't there a cap to the funding available to the CFPB? Yes, there is, but here is what it looks like. The cap was 10 percent of the Federal revenues for fiscal year 2010, 11 percent for fiscal year 2012, and it will be 12 percent for fiscal year 2013, with an inflation factor each and every year after that. This means 12 percent of the combined earnings of the Federal Reserve System, which was \$4.98 billion in 2009. At that time, 10 percent would have been \$500 million. These numbers are astonishing, and anyone saying that the Bureau is not funded by taxpayers is trying to pull a sleight-of-hand. The funds may not come directly from the Treasury, but taxpayers are going to have to take up the slack for funds they are no longer receiving from the Federal Reserve. I am not sure how we do that constitutionally, to move somebody outside and still take Federal money.

In addition, the Director of the Bureau has unlimited discretion over how the agency's money—these hundreds of millions of dollars I just talked about—is spent. Let me repeat that. The Director of the Bureau has unlimited discretion over how the agency's money is spent. He doesn't submit a budget. Nothing is approved.

Not only that, the Director is allowed to put fines and penalties collected by the Bureau into a slush fund that it does not have to return to the Treasury the way other agencies have to do. Do you think that might encourage a lot of fines and penalties by this Bureau? I think it would. I don't think it ought to be done that way.