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## House of Representatives

The House was not in session today. Its next meeting will be held on Thursday, June 5, 2014, at 3 p.m.

## Senate

WEDNESDAY, JUNE 4, 2014

The Senate met at 9:30 a.m. and was called to order by the Honorable EDWARD J. MARKEY, a Senator from the Commonwealth of Massachusetts.

### PRAYER

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

Let us pray.

Holy, holy, holy, Lord God almighty, who is and who was and who is to come, through Your wisdom all things are governed, and through Your grace all things are sustained. Give our Senators the power to serve You. As they labor to do Your will, provide them with the wisdom to discern Your precepts and obey Your commands. Lord, help them to see that to know You is life, to serve You is freedom, and to praise You is joy. Let them experience You in the center of their being, finding delight in Your presence.

We pray in Your majestic Name. 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 assistant legislative clerk read the following letter:

U.S. SENATE,  
PRESIDENT PRO TEMPORE,  
Washington, DC, June 4, 2014.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable EDWARD J. MARKEY, a Senator from the Commonwealth of Massachusetts, to perform the duties of the Chair.

PATRICK J. LEAHY,  
President pro tempore.

Mr. MARKEY thereupon assumed the Chair as Acting President pro tempore.

### RECOGNITION OF THE MAJORITY LEADER

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

### BIPARTISAN SPORTSMEN'S ACT OF 2014—MOTION TO PROCEED

Mr. REID. Mr. President, I now move to proceed to Calendar No. 384, S. 2363, the Hagan sportsmen's legislation.

The ACTING PRESIDENT pro tempore. The clerk will report the motion.

The assistant legislative clerk read as follows:

Motion to proceed to Calendar No. 384, S. 2363, a bill to protect and enhance opportunities for recreational hunting, fishing, and shooting, and for other purposes.

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

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

The assistant legislative clerk proceeded to call the roll.

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 I ask unanimous consent that the order for the quorum call be rescinded.

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

### RECOGNITION OF THE MAJORITY LEADER

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

### SCHEDULE

Mr. REID. Following my remarks and those of the Republican leader, the Senate will be in a period of morning business until 11 a.m., with the Republicans controlling the first 30 minutes and the majority controlling the final 30 minutes.

At 11 a.m. the Senate will proceed to executive session and begin a series of up to four rollcall votes. The first three will be votes on confirmation of U.S. district court judges and the last vote will be a cloture vote on the nomination of Sylvia Burwell to be Secretary of Health and Human Services.

There will be a Senators-only briefing at 5:30 p.m. today.

### RECOGNITION OF THE MINORITY LEADER

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

### UNANIMOUS CONSENT REQUEST—S. 2414

Mr. McCONNELL. I had indicated to the majority leader I was going to have a unanimous consent request. I am going to propound that now.

I ask unanimous consent that the Environment and Public Works Committee be discharged from further consideration of S. 2414, the Coal Country Protection Act and the Senate proceed

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



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to its immediate consideration. I further ask consent that the bill be read a third time and passed and the motion to reconsider be considered made and laid upon the table.

The ACTING PRESIDENT pro tempore. Is there objection?

The majority leader.

Mr. REID. Reserving the right to object, the rule will not become effective for a long time. The normal period of time to make comments when rules are being promulgated is 60 days. This one is 120 days. The reason for that is Members of my caucus want to weigh in on this to try to improve the suggested rule that has come from the EPA.

I am waiting to read the proposed regulation myself, which I have not done. I have been briefed on it by my staff, and I will read this closely, as I am sure every Senator will.

I know the importance of this issue, and I will be as cooperative as I feel is appropriate with the Republican leader. But at this time I object.

The ACTING PRESIDENT pro tempore. Objection is heard.

MEASURE PLACED ON THE CALENDAR—S. 2422

Mr. REID. Mr. President, there is a bill, S. 2422, that is at the desk and due for a second reading.

The ACTING PRESIDENT pro tempore. The clerk will read the bill by title for the second time.

The assistant legislative clerk read as follows:

A bill (S. 2422) to improve the access of veterans to medical service from the Department of Veterans Affairs, and for other purposes.

Mr. REID. I would object, Mr. President, to any further proceedings with regard to this bill at this time.

The ACTING PRESIDENT pro tempore. Objection is heard. The bill will be placed upon the calendar.

U.S. MILITARY

Mr. REID. Mr. President, the late military historian John Keegan once said:

Soldiers, when committed to a task, can't compromise. It's unrelenting devotion to the standards of duty and courage, absolute loyalty to others, not letting the task go until it's been done.

The integrity of the American soldiers safeguards our American democracy. Their devotion to duty, even in the face of difficult, trying circumstances, is what protects this Nation.

We have seen that up close the last 10 years or so with the war in Iraq and the conflict in Afghanistan. So I am very thankful for members of the U.S. Armed Forces and that they do not compromise their honor.

This past weekend our military refused to abandon its duty, instead fulfilling its obligation to never, ever, leave a soldier behind.

The release of American prisoner of war SGT Bowe Bergdahl was the culmination of heroic efforts by our military, our government, and our President.

President Obama, as Commander in Chief, acted honorably in helping an

American soldier return home to his family. Sergeant Bergdahl's release is the answer to many Americans' prayers. I can't imagine how relieved his parents and family must feel.

It is my understanding that the wait for the parents has been really unrelenting and difficult. We have seen his dad with his long, flowing beard. He decided to grow that beard as long as his son was gone. His son is home now—or almost home.

Unfortunately, though, opponents of President Obama have seized upon the release of an American prisoner of war, using what should be a moment of unity and celebration for our Nation as a chance to play political games.

The safe return of an American soldier should not be used to score political points. When a man or woman puts on a uniform as a U.S. serviceman, they have America's uncompromising support.

Only a couple of weeks ago, the junior Senator from New Hampshire released a statement touting her diligence in calling upon the Department of Defense to "do all it can to find Sergeant Bowe Bergdahl and bring him home."

In April, the Republican leader and the junior Senator from Pennsylvania sponsored a resolution "to express the sense of the Senate that no member of the Armed Forces who is missing in action should be left behind."

Senator INHOFE, the senior Senator from Oklahoma, even said that the United States "must make every effort to bring this captured soldier home to his family."

President Obama and his team did just that. They made every effort and brought this young man home. The request was made by the Senator from New Hampshire, the Republican leader, the junior Senator from Pennsylvania, and the senior Senator from Oklahoma.

Yet some of these Senators are now denouncing the very same efforts that secured Sergeant Bergdahl's release. It is clear they are worried his release could be seen as a victory for President Obama. As the President said, this is not a victory for him; it is a victory for the United States military and our country.

Let me put that notion to rest then. It is not a victory for President Obama. It is a victory for our soldiers, their families, and our great country. No member of the Armed Forces should be left behind, and President Obama saw to that.

There are questions regarding Sergeant Bergdahl's disappearance and whether or not military code was violated. These are issues that will be resolved by the U.S. Army, not Monday morning quarterbacks on Capitol Hill.

But let me just say this. For the sake of argument, let's assume that Bergdahl did violate his sworn oath. What do we do? Do we mete out justice to an American soldier—us, our country? As the Chairman of the Joint Chiefs of Staff has said yesterday, or

the day before, if he has done something wrong, military justice will step in and take care of that violation—if, in fact, there was one.

I don't know, but certainly that is a better approach than having the Taliban do it. I will choose the justice system, the U.S. Army, American justice, every time.

We have seen the brutality of the Taliban. Whatever the results of the military's inquiries, it doesn't change the fact that one more American soldier is home safely.

What was the alternative?

Would any American honestly prefer that a U.S. soldier remain in captivity until all the questions have been answered? Of course not. In the United States we rescue our soldiers first and ask questions later.

This is what RADM John Kirby said in a quote that is so powerful:

When you are in the Navy, and you go overboard, it doesn't matter if you were pushed, fell or jumped. We're going to turn the ship around and pick you up.

That is what Rear Admiral Kirby said—again:

When you are in the Navy, and you go overboard, it doesn't matter if you were pushed, fell or jumped. We're going to turn the ship around and pick you up.

I am grateful for the many people who refused to forget about Sergeant Bergdahl and worked tirelessly to secure his release.

America is glad he is home.

The ACTING PRESIDENT pro tempore. The Republican leader.

COAL COUNTRY PROTECTION ACT

Mr. MCCONNELL. President Obama's new energy regulations would shift middle class jobs overseas, splinter our manufacturing base, and boost energy costs for struggling families.

The regulations could also lead to a reduction of nearly half a million jobs, according to an AFL-CIO union estimate. The union's leader characterized the job loss as "long term and irreversible." He noted that the President's regulations would not achieve "any significant reduction of global greenhouse gas emissions"—this is an AFL-CIO union leader—in other words, lots of pain for minimal gain.

The President's energy regulations would hurt the poor, the unemployed, seniors, and especially families in Kentucky. Kentucky coal sector employment has collapsed by about 7,000 jobs since President Obama took office.

Eastern Kentucky just saw a 3-percent reduction in coal jobs in the first quarter of 2014. At least three additional Kentuckians lose their paychecks indirectly for every mining job that is lost.

As one coal leader noted, the administration's proposed regulations would only add to the economic challenges facing Kentucky—especially in Eastern Kentucky, which is ground zero for what is happening in coal country.

The Coal Country Protection Act is cosponsored by several Senators, including Senator RAND PAUL, and is supported by the Kentucky Coal Association.

It would require that simple but important benchmarks be met before the President's new rules could take effect. No. 1, the Secretary of Labor would have to certify that the regulations would not generate a loss of employment.

No. 2, the Director of the Congressional Budget Office would have to certify that the regulations would not result in any loss in American gross domestic product.

No. 3, the Administrator of the Energy Information Administration would have to certify that the regulations would not increase electricity rates.

No. 4, the Chair of the Federal Energy Regulatory Commission and the president of the North American Electric Reliability Corporation would have to certify that electricity delivery would remain reliable. So the Coal Country Protection Act is just common sense.

Moments ago the majority leader blocked consideration of this measure. Unless we take this up, debate it, and pass it, the President's rules will cause job loss, utility rate hikes, and potentially brownouts. The President's regulations will actually increase energy prices and create job loss.

Opponents of this bill will be supporting job loss in Kentucky, our economy being hurt, and seniors' energy bills spiking for almost zero meaningful global carbon reduction.

So the majority leader and the Democrats in this body need to listen. And even if they won't, Kentuckians should know I will keep fighting for them.

Mr. President, I yield the floor.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

#### MORNING BUSINESS

THE ACTING PRESIDENT pro tempore. Under the previous order, the Senate will be in a period of morning business until 11 a.m., with Senators permitted to speak therein for up to 10 minutes each, with the time equally divided between the two leaders or their designees, with the Republicans controlling the first 30 minutes and the majority controlling the next 30 minutes.

The Senator from Nebraska.

#### WATERS OF THE UNITED STATES

Mr. JOHANNIS. Mr. President, I rise today to discuss EPA's joint proposed rule redefining waters of the United States.

Claims to the contrary notwithstanding, EPA has once again thrown down the gauntlet with this massive expansion of Federal jurisdiction. This new rule in its essence declares almost every body of water to be within Federal regulatory jurisdiction. By con-

juring up even the most remote connection to a navigable body of water, EPA is now claiming they can regulate ponds, ditches, and even low-lying areas that are actually dry during most of the year. EPA seems to think it has jurisdiction if there is just a chance that a speck of dirt can travel through a stream, a pond, or even a field to traditional navigable water, and that is clearly not what Congress intended. But the EPA, the Army Corps of Engineers, and even the USDA are touting that they listened to agriculture and that farmers' and ranchers' concerns were, in fact, reflected in this proposal. But if this 370-page rule actually provides certainty and maintains exemptions for farmers, as EPA claims, then why are most farm groups so opposed to it?

We have seen EPA become better and better at messaging to farmers, but unfortunately the actual language of the regulations—their very aggressive approach—really hasn't changed one bit. While EPA has shown a willingness to meet and to listen, the reality is that the words on paper really are what matter.

When Administrator McCarthy came before an appropriations subcommittee a few weeks ago, I pushed her on this issue. Not surprisingly, she told me they are really trying to get this right and listen to agriculture's concerns across the country. But as it stands right now, folks in farm country are justifiably alarmed.

EPA will point to a few exclusions in the rule, but if you look closely, these exemptions are so very narrowly crafted that very few waters actually would escape EPA's regulatory grasp and overreach. For example, under the proposed rule, waters that are perennial, intermittent, or ephemeral can be subject to EPA regulation. That is right—EPA is trying to regulate bodies of water that only have water in them when it is raining. That is just one of the many examples in this rule where it is clear that EPA is trying to push the envelope—and push it as far as they can.

In its so-called fact sheet on the benefits of the rule for agriculture, EPA touts that exemptions are, in fact, preserved for agriculture. Not only that, but according to the fact sheet, EPA will now exempt 56 conservation practices from permitting requirements. It says this will provide certainty and predictability. That all sounds good as messaging until you actually examine the claims. These exemptions only apply to dredge and fill permitting. All other Clean Water Act permitting requirements do not have exemptions for agriculture. So whether a permit is required for other provisions of the act is simply a function of whether the related waters are Federal waters. Thus, because EPA vastly expanded the definition of Federal waters, farmers are going to get a rude awakening when they are told they need a 402 permit before applying pesticides or when they

realize this rule may require them to have a spill prevention, control, and countermeasure plan in place or when they realize their farm pond is not exempt simply because they allow livestock to drink from it. Imagine the dismay of farmers when they realize that the much-touted exemptions are essentially meaningless and that they are subject to fines of tens of thousands of dollars per day.

Nonetheless, the Obama administration continues to tout this list of 56 conservation practices that they are proposing to exempt as if farmers should fall silent in gratitude. It is the classic smoke and mirror approach that has led to the tremendous mistrust of this administration. They say one thing while putting policies in place that dictate something entirely different.

Consider this: Even these narrow conservation exemptions are wrapped in fine print and redtape. EPA also says that in order to be exempt, a conservation practice must specifically comply with USDA standards. Again, it sounds reasonable, except that these standards, which were developed for voluntary conservation programs, were never intended to be the only means of avoiding a regulatory hammer. These are gold-plated standards. They are also very prescriptive. That may be fine for voluntary programs that come with compensation for compliance. It is not fine if farmers must follow them or face huge fines. There is nothing voluntary about that.

Can these farmers be sued because they didn't follow supposedly voluntary USDA standards? Can EPA take action against these farm families? Who will enforce compliance with those conservation practices? Will it be the USDA or will it be the EPA? Farmers generally trust USDA's voluntary approach to conservation efforts, but what happens to that trust if USDA is suddenly thrust into the business of enforcing EPA regulations on the farm? Conversely, is EPA going to hold any sway over USDA's voluntary conservation standards? Since they are planning to use those standards to regulate farms, this is a great concern.

Let me mention one additional cause for concern. These supposedly exempt practices are not even in the proposed rule; they are in a separate document from the rule, and that document can change on the whim of the EPA without warning and with no opportunity whatsoever for public comment. So ranchers doing a practice consistent with the list may get the rug pulled out from under them.

EPA claims this rule will provide certainty and predictability, and in one respect they are right. As a constituent of mine from Ogallala rightly put it, "The only clarity the proposed rule provides is to put me on notice that everything is a water of the U.S. and that I need a permit to do anything."

So it appears that in an effort to provide clarity, EPA has very much done