

SUBCOMMITTEE ON SOCIAL SECURITY, PENSIONS,
AND FAMILY POLICY

The Subcommittee on Social Security, Pensions, and Family Policy of the Committee on Finance is authorized to meet during the session of the Senate on Wednesday, July 11, 2018, at 2:30 p.m., to conduct a hearing entitled "Examining the Importance of Paid Family Leave for American Working Families".

PRIVILEGES OF THE FLOOR

Mr. MERKLEY. Mr. President, I ask unanimous consent that my intern, Whitney Wagner, have privileges of the floor for the remainder of the day.

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

ORDERS FOR THURSDAY, JULY 12,
2018

Mr. MCCONNELL. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 10 a.m. on Thursday, July 12; further, that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and morning business be closed; further, that following leader remarks, the Senate proceed to executive session and resume consideration of the Ney nomination; finally, that notwithstanding rule XXII, all postcloture time on the nomination expire at 1:30 p.m.

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

ORDER FOR ADJOURNMENT

Mr. MCCONNELL. If there is no further business to come before the Senate, I ask unanimous consent that it stand adjourned under the previous order, following the remarks of Senators RUBIO and MERKLEY.

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

The Senator from Florida.

ENVIRONMENTAL CRISIS IN
FLORIDA

Mr. RUBIO. Mr. President, my home State of Florida is once again experiencing an environmental and economic catastrophe—a real crisis. It is a crisis that was caused extending back decades—decades of bad decisions, decisions made on things people didn't think about, neglect, and myopic water management. Nowhere is that crisis more acute and more apparent than at Lake Okeechobee, the liquid heart of the Everglades, and our surrounding communities, including the city of Stuart, which is on the verge of seeing conditions very similar to what they experienced in the year 2016.

That is what this picture here is about. What we see on this photo is

algae—thick, toxic algae—that was gathering underneath that bridge back in 2016.

This really goes back decades. The historic Florida Everglades—the head waters began in Lake Okeechobee. This massive lake, this reservoir, is right in the center of our State. What would happen is when rainfall would come in and when water would overflow, it would just continue to flow south into the Everglades and down into the Florida Bay. But then people began to move in and develop Florida, and therefore there was a need for the Army Corps to step in and carefully script the flow of water in the southern half of Florida.

This all began since the construction of something called the Herbert Hoover Dike and then, subsequently, the development beginning in 1948 of the Central and South Florida projects to manage flood risks. Unfortunately, this flood control system that was designed to keep the water from coming out of Lake Okeechobee and flooding communities to the south of it has significant limitations and neglects to use the Everglades' natural flow wave. That is why Everglades restoration is something that, apart from ecosystem and wildlife benefits, is so critically important for our Nation and for my State of Florida. Everglades restoration is not simply about restoring a national treasure, it is also about allowing much more flexibility for water management at greatly reduced costs and at reduced harm to coastal communities.

The best way to understand it for those who are new to this issue is that we have this massive lake. The lake used to overflow, and when it did, the water would flow down. Communities and agriculture moved into the southern part of the State, just south of that lake; therefore, there was a need to construct a dam to hold back the water and prevent the flooding and loss of life, which is natural, and then a canal system to allow the waters to flow east and west.

The problem that has developed over the years is what we are dealing with now, and that is that as of today, when water levels in Lake Okeechobee rise too high, that water must be released in massive quantities. Today, the water levels are over 4½ feet deep—a full 2 feet higher than the Corps would prefer at this time of year as the rainy season kicks in. So they look at the dike and they look at its capacity and they worry that, knowing it is going to continue to rain throughout the summer, if the water levels get too high, we could have the dike compromised, and we could have flooding and loss of life. Therefore, they are forced to release water.

Last year, as an example, we saw large amounts of water and rainwater. Among other causes, of course, was Hurricane Irma, which caused Lake Okeechobee to rise to record-high levels. Again this year, Florida has experi-

enced large amounts of rain. This rainfall carries nutrients into the lake from upstream.

The lake is in the center part of the State. Just north of it are areas such as Kissimmee and Orlando and population. People move in and fertilize their lawns, and all kinds of nutrients get into the groundwater. It rains, and it flows into Lake Okeechobee. The more it rains, the more it flows out. So the water level of the lake gets higher, and the nutrient flow into the lake also gets higher.

As we can see from these time-lapse images, when that nutrient-rich water flows in on top of the nutrient-rich water that is already there—and heat comes into play—the result is algae blooms. That is where it was on the 12th of June. This is where it was on the 20th. All of that red represents algae. This is where it was on the 21st and then on the 24th. If you looked at an image of this today, almost the entire lake is covered by thick, toxic algae.

To make sure there is no damage or threat to the dike, which itself is being worked on in order to strengthen it, the U.S. Army Corps of Engineers releases water from the lake to the east to the St. Lucie River and to the west to the Caloosahatchee River. We remember it used to flow south, and now it has been diverted into these canal systems to the east and to the west. So if you are living to the west or if you are living to the east, what you know is that when these releases happen, all of that algae you see here and all of that green algae I just showed you in that picture, which is toxic and kills life, not to mention—it is harmful to people who come into contact with it, potentially even breathe it in, and all of that stuff is headed your way when those releases happen.

Unfortunately, those discharges have a catastrophic impact on the environment and on the Floridians living along our coastal ecosystems. They are especially destructive when these releases export, as I said, nutrient-rich waters with toxic blue-green algae blooms from the lake to the waterways and the estuaries that are downstream because there, those blooms—that algae, which kills fish, fouls the water, and shuts all sorts of small businesses along the coast, has a tremendous negative impact on property values, the real estate market. It creates respiratory irritation for people as well as contact dermatitis for residents who get too close to it.

Imagine you live in this area. Maybe you are a small business that depends on visitors. Maybe you invested a lot of money to retire near the water. Maybe you grew up there or lived your entire life there or spent summers there, or maybe your greatest memories are of times your family spent on the water, and this is headed your way. I assure you that this does not increase your property values; it collapses them. I assure you that it does not encourage

visitors to come to your area. It not only discourages them from coming now, but the reputation gets out, and all of these small businesses that depend on access to the water are now being threatened by that as well.

We see this picture here, this green. That is all toxic algae—all of that—on one of the waterways. That is not Chicago on St. Patrick's Day. That is not food coloring. That is toxic algae in the Caloosahatchee River. Images like this are becoming all too common for the residents in this area.

The picture does not do it justice. This is not just the color of the water; this is thick algae of a kind that is inches deep. You can imagine that everything underneath that is not just being cut off from sunlight and oxygen, but it is toxic. It is killing everything underneath it as well. You can't go underneath that water, you can't touch it, and everything that is in it is going to struggle to survive.

Over the weekend, particularly on Sunday morning, I began to raise concerns and the concerns of our coastal communities that were on the receiving end of this. Imagine if you live in one of these communities. You see the pictures of the lake that is basically all green, and you know that on Monday morning, they are going to open it up, and all of this stuff is going to come pouring down in your area. They are frightened. It is like impending doom.

We reached out to the President. We reached out to the administration. Thankfully, they acted quickly. They called the Army Corps, and the Army Corps paused the discharges that were scheduled for Monday. So on Monday—Sunday night, early Monday morning—people woke to the positive news that these releases were not going to start on Monday.

By the way, if you go over to the release points where the water is let out, it is all backed up with this algae. All you have to do is stand there and see it, and you know that as soon as they open it, all of this stuff is coming out and come at you.

They gave us this 3- or 4-day reprieve—however long it takes to allow water managers to conduct a full assessment of system conditions and to look for other available options for moving water.

While this was a positive response, it is not a long-term answer to this problem. At some point over the next few days, this is going to have to be released. It is going to happen. It is just a matter of time. And the result is that 2018 is shaping up to be another lost summer along the Caloosahatchee and Indian River Lagoon estuaries, just as it was in 2013 and just as it was in 2016.

I want to be frank. Over the last 20, 30, 10, and 5 years, the Federal Government has not done enough for anyone to expect that anything will change in the next 5 years.

Here is full candor. There are really no good, viable, short-term options that will fix this overnight. That is a

fact. We know that. Ultimately, no matter how much we push the Army Corps to hold back releases, at some point they will have to because we are in rainy season, and there comes a point where the risk of flood and loss of life compels them to release some of it. You hope they pulse it. You hope they spread it out. You hope they don't release more than they need to. You hope they stretch it as much as possible. But in the end, you know it is going to happen, and so do the residents in this region. What is frustrating is that not only is the release coming, but nothing seems to be happening to prevent this from continuing on forever.

That is why it is so important for us that while we work to try to spread out these releases to minimize to the extent possible the impact they have, we have to begin to work on the things that ultimately will solve this. What ultimately will solve this are the issues that we are committed to continuing to work on. It is multipronged, and it will take a number of years to get it done.

The Senate will soon take up the water infrastructure bill. That bill is going to allow us to move forward with the Everglades agriculture area reservoir. This project, by the way, is connected to the broader project called the Central Everglades Planning Project, which the Congress authorized in 2016's water resources bill. That reservoir is vital to ensuring that more water is sent south through the Everglades as nature intended.

This reservoir will basically be at pace for some of that water—instead of having to go east and west, it can go into this reservoir south of the lake; it can be cleansed of many of those nutrients; and then, instead of being released east and west, that cleaner water could be released south into the Everglades, the way some of it once was back in the historic Everglades.

That project, that piece of it—the agriculture area reservoir—was at the Office of Management and Budget. That is why we worked with them and really spoke to them a number of times to get them to quickly approve the Army Corps' review of the storage reservoir project. I am happy for the residents of Florida and particularly these impacted areas that these efforts succeeded.

Yesterday, the administration and the Office of Management and Budget approved the Corps' review of the project so that its design and construction can now be authorized by Congress. We also must continue to move with expediency to finish the rehabilitation of the dike. We fought hard to include appropriations in the most recent disaster supplemental that would provide enough funding to, once and for all, ensure this is made a priority for completion. So I appreciate the administration's heeding this request.

Just last week, the Army Corps allocated more than \$514 million for the dike. That means that with all the

money needed to complete the project now allocated, the money is now available, and the dike can be finished by 2022. What we hope that means is that now that the dike is repaired and stronger, they will be able to hold back more water for longer periods of time.

But that alone isn't going to solve the problem. It will have some impact and it certainly is important, and we certainly need to do it. We never want to see the dike compromised, but, ultimately, that alone will not be enough. We have to continue to do all the other things, including the reservoir I spoke about a moment ago.

We also have to remain focused on bottlenecks at the southern end of the flow management system to allow for increased flow of water. This includes ensuring our partnership with the State of Florida, the Army Corps, and the Department of the Interior—that we all continue to work together to meet the important timelines and project funding targets.

I have spoken to President Trump about this. I recall at some point in the summer of last year, as we flew to Miami for an event, we had a chance in our flight path to fly over part of the Everglades. The President is a part-time resident of Florida; he knows the area well. Palm Beach in particular is one of the areas impacted by all this. We talked about the opportunity the President had to be the infrastructure President and, when it comes to Florida, to be the President who actually gets this done for the Florida Everglades.

I have asked him and talked to him about doubling Federal investment in Everglades restoration infrastructure, like the Central Everglades Planning Project, to clean and store and move water into South Florida's natural flood plain and away from where people live along the coasts.

In 2000, Congress authorized the Comprehensive Everglades Restoration Plan. It was a complete framework for everything that needs to happen, and we have to continue to move forward on finally getting it done. There were too many delays. It took too long. There wasn't enough of a Federal commitment.

Hopefully now—just in the last couple of years—we have begun to make headway on it because these infrastructure projects aren't just about restoring the Everglades. This is not just an environmental project. If it were just an environmental project, that alone would justify it, but it is not just an environmental project. It is about economic development. It is about water quality and about water supply. It is about the value of property. It is about quality of life. It impacts millions of our residents and visitors.

We have to finish the projects. We have to stay focused. If we take our eye off the ball, if we divert attention somewhere else, if we interrupt the work of these projects—every one of these delays just makes more and more

of these events. If Congress in 2000 had moved at the speed we are moving now, some of this would have been avoided, and with every year that we delay—not acting—these are the real world consequences; it only gets worse, not better.

That is why I remain committed, and among my highest priorities for the State of Florida is to get this done in a timely fashion, with the Federal support and the Federal commitment necessary to match what the State has already done with great urgency. I hope we can continue to make progress on all of this. Otherwise, we are going to have more loss, and the lives of millions of people will continue to be impacted in catastrophic ways.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon.

NOMINATION OF BRETT KAVANAUGH

Mr. MERKLEY. Mr. President, the most important words of our Constitution are its first three, “We the People.” It is the mission statement of our Constitution, the mission statement of our country, a nation “of the people, by the people, for the people,” as President Lincoln so eloquently stated, not a nation by, for, and of the powerful and the privileged.

Critical to that vision of “we the people” is a strong and independent judiciary, particularly a strong and independent Supreme Court, since all the decisions from the lower courts can be appealed right on up to the very top.

Today, there is a vacancy on the Supreme Court with Anthony Kennedy’s announced retirement. On Monday night, President Trump announced his nominee to fill that seat—Judge Brett Kavanaugh.

A single vote can make all the difference in the world on the Supreme Court in protecting the freedoms we hold dear. A single vote can tip the scales toward the vision of our Constitution, the “we the people” vision of our Constitution, or it can tip the scales away from that vision toward government by and for the powerful.

We can see the impact of the single vote when we look at Justice Kennedy’s own legacy, his own record of 5-to-4 decisions. Time and again during his three decades on the Court, he made the deciding vote in a critical decision—a single vote making a big difference.

In 1992, he wrote the majority opinion in *Planned Parenthood v. Casey*, not only reaffirming *Roe v. Wade* but protecting a woman’s fundamental right to make decisions about her own healthcare. As Justice Kennedy wrote, “These matters, involving the most intimate and personal choices a person may make in a lifetime . . . are central to the liberty protected by the Fourteenth Amendment,” the amendment prohibiting States from depriving a person of liberty without due process.

In 2005, he wrote the ruling in *Roper v. Simmons*, which barred the execution of juveniles, declaring it cruel and unusual punishment banned by the Eighth Amendment, highlighting the “evolving standards of decency that mark the progress of a maturing society.” Justice Kennedy said that even when a child commits the most heinous of crimes, “the State cannot extinguish his life and his potential to attain a mature understanding of his own humanity.”

In *Boumediene v. Bush*, he appealed to the better angels of our nature and channeled the sentiment behind Benjamin Franklin’s adage that “Those who would give up essential Liberty, to purchase a little temporary Safety, deserve neither Liberty nor Safety” when he wrote the majority opinion that detainees at Guantanamo Bay had the constitutional right of habeas corpus to challenge their detention.

Certainly, in looking at Justice Kennedy’s legacy and the importance of a single vote, it is worth noting cases that involve the rights of opportunity for our LGBTQ brothers and sisters. Because of that 5-to-4 vote, our Nation declared finally that love is love and that everyone has the right to marry whomever they love, regardless of gender or sexual orientation.

In *United States v. Windsor*, he helped strike down the Defense of Marriage Act, declaring it unconstitutional under the Fifth Amendment’s due process clause after the surviving spouse of a legally recognized same-sex marriage was denied the Federal estate exemption given to all surviving spouses.

Then, in *Obergefell v. Hodges*, he wrote: “No union is more profound than marriage, for it embodies the highest ideals of love, fidelity, devotion, sacrifice, and family.” Justice Kennedy went on to say that same-sex couples who sought legal recognition of their unions in the case asked only “for equal dignity in the eyes of the law,” and that “the Constitution grants them that right.”

Think about these powers, these freedoms, these rights: due process under the 14th Amendment; protection from cruel and unusual punishment under the 8th Amendment; the right to petition for a writ of habeas corpus granted in article I, section 9 of the Constitution; due process under the 5th Amendment, all upheld by a single vote.

If there is any doubt about how much difference that vote can make, look at some of the recent decisions handed down by the court.

The *Janus* case was a 5-to-4 decision undermining the rights of workers to organize. The ability of workers to organize is a fundamental right, a key power to be able to participate in the wealth that you work to create, yet it was undermined just the week before last by a 5-to-4 court decision.

Trump v. Hawaii was a 5-to-4 decision upholding a travel ban against Muslims, effectively shutting the door of our country to a group of people simply

because of their religion. What a 5-to-4 assault that was on the freedom of religion.

Abbot v. Perez was another 5-to-4 decision green-lighting racial gerrymandering in Texas, violating the Voting Rights Act.

One case after another has come down in recent weeks against “we the people,” decided by a single vote. How many cases are we going to see in the coming years where a single vote transforms the landscape of our country as we know it, where a single vote takes away a fundamental right in the vision of a “we the people” nation? That is why this nomination is so unlike any other recent confirmation; the impacts on the court and on our Nation will reverberate for decades to come.

So many core issues are under consideration: the influence of money in politics; the power of big corporations to prey on consumers and workers; marriage equality; the right of every American to have their voice heard at the ballot box. How can you believe in the foundation and vision of a democratic republic if you don’t believe in voter empowerment? Yet we have members of the Supreme Court who don’t. The right of every American to receive a quality education, affordable healthcare and a woman’s right to choose—it is clear that the very soul of our “we the people” Nation is hanging in the balance.

But here is a certain circumstance that we may never have seen before; that is, we have a President who is under investigation for the possibility of colluding with an enemy, with an adversarial foreign power. In case after case, time after time, he has sought to make it difficult to conduct an investigation into the Presidency and the campaign that preceded it. He said in a tweet: “As has been stated by numerous legal scholars, I have the absolute right to PARDON myself, but why would I do that when I have done nothing wrong?”

I ask this: Why would he tweet that topic if he is not worried about needing a pardon? He is a President who talks openly about the possibility of pardoning himself—something there is no precedent for, which no President has considered? This is the situation we are in.

With a President at this moment nominating a Supreme Court Justice who well may have the power to determine whether it is possible under our Constitution for a President to pardon himself, who may well determine under our Constitution whether a President can fire a special counsel at will, the march to an authoritarian nation is one that should concern us at this moment because that is the issue of the expansive power of the Presidency. Is it so broad, so large that the checks and balances written into the Constitution become irrelevant? This is exactly what President George Washington warned the Nation about in his Farewell Address, when he said, “The spirit