

we have a bit of a reprieve, but we still have a threat.

Since 2019, railroads and unions have been negotiating a new contract. Two months ago, President Biden appropriately appointed members of what is called the Presidential Emergency Board. This Board recommended the largest pay increase in industry history at 24 percent, in addition to an annual bonus and healthcare changes.

President Biden promised to be the “most pro-union president” in history, but even President Biden’s recommendations weren’t enough for these unions. A few unions continued to hold out and, in fact, took us to the verge of a nationwide strike.

A railroad strike would really plunge us back into the supply chain issues that have just now started to somewhat improve. These trains that would be stopped actually carry the food we eat, the gas for our tanks, and the energy that heats our homes.

Already, I am hearing from grain elevator operators in my State that they are having trouble transporting their grain. Hazardous cargo, like the chlorine cities need to purify drinking water, stopped moving earlier this week. Amtrak has canceled long-distance routes. Maybe they are going to be up and running now, but at least they were getting ready to stop.

But what I just described is the tip of the iceberg unless these unions agree to a long-term deal. The last thing we need is for grain shipments to grind to a halt right as farmers are going to the fields to harvest their grain. Iowa corn and soybeans can’t feed the world if they are stuck on the farm or in the local elevator.

That is why I cosponsored Senator BURR’s joint resolution to prevent all of this. The resolution would mandate that both sides adopt the recommendations of President Biden’s emergency Board. Then, of course, if we pass that, the trains would keep running.

We are just learning about a tentative deal that would let unions back away from the cliff. If they don’t, then Congress must step in and pass the joint resolution to keep our economy going. The alternative is unacceptable.

I yield the floor.

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. DURBIN. 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 President, I ask unanimous consent that the order for the quorum call be rescinded.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. DURBIN. Mr. President, I ask unanimous consent that I be permitted to complete my remarks before the rollcall.

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

E-CIGARETTES

Mr. DURBIN. Mr. President, September 9, 2021, over a year ago, was supposed to be a historic day in Amer-

ica’s efforts to stop the purveyors of candy- and fruit-flavored e-cigarettes from preying on America’s kids. September 9, 2021, was the deadline, and it was set by a Federal judge for the U.S. Food and Drug Administration to finally—finally—clear its enormous backlog of applications from e-cigarette companies seeking to sell their products in America.

Companies that can prove that their vaping products are, in fact, “appropriate for the protection of public health,” they can go ahead and sell their products legally, but e-cigarette products can’t meet that standard. They can’t demonstrate a benefit to public health. Vaping, as we know, is dangerous and addictive, and these companies, like the tobacco companies of years gone by, are preying on our children.

FDA had a legal mandate to ban these products from U.S. markets on September 9, 2021, but the Food and Drug Administration failed to meet the deadline—not by 1 day, not by 1 week, not even by 1 month. Last Friday marked the 1-year anniversary of the FDA’s failure to meet this Federal court order.

As of today, the FDA has completed reviews of about half of these e-cigarette products that represent a large share of the market. As a result of FDA’s inaction, dangerous, kid-friendly e-cigarettes remain available on store shelves without FDA review or authorization. The cops are not on the beat.

There are consequences to this action. The Truth Initiative is a non-profit consortium of health groups that aims to protect young people from using tobacco. It estimates that, in the year since the FDA missed the court-ordered deadline to approve or reject e-cigarette applications, nearly 2½ million kids in America started using vaping products. Many of these young people will go on to develop nicotine addictions, with serious harm to their health. That is the human cost of this FDA failure.

Now the FDA says: Well, we might be able to finish this by 2023, 2 years after the Federal court-ordered date. And that is not the only deadline the FDA has blown when it comes to protecting kids from nicotine. After parents and public health groups demanded the FDA take action against candy-flavored, nicotine-spiked e-cigarettes, the vaping industry came out with a brandnew miracle product designed to evade FDA jurisdiction: synthetic nicotine. Products like Puff Bar are incredibly popular with middle and high school students. These new synthetic nicotine products include all the health dangers of traditional e-cigarettes, none of the regulation. When Congress learned about this loophole, we changed the law to say that the FDA had jurisdiction over synthetic nicotine products.

To make matters worse, even when the FDA does review a product and

issues a denial, many e-cigarette companies just ignore them. It has reached a point that they are not viewed seriously. The No. 1 regulator of food and drugs in America, when it comes to protecting our kids from these deadly, addictive products, isn’t viewed seriously.

The FDA has the legal right and the legal authority to do so. They can pull these products off the shelves tomorrow. Yet, with respect to illegal e-cigarettes, they do nothing—nothing.

Look, I understand they are understaffed. I understand they are underresourced. FDA is not currently authorized to collect user fees for e-cigarettes, as it does for so many other products. And Congress fails to appropriate the funds many times that they need.

These are real problems, but they do not absolve the FDA of its repeated failure to effectively regulate e-cigarettes. I am at my wits’ end when FDA continues to miss these court-ordered deadlines, fails to enforce orders, and shows a lack of urgency when it comes to vaping products.

Last week, I asked Health and Human Services Secretary Becerra to step in. If FDA cannot or will not do its job, then it is time for the lead Agency, Health and Human Services, to take a more active role. The FDA cannot continue to let unscrupulous e-cigarette companies flout the law and put their own profits ahead of the health of our kids. This has to stop.

DIETARY SUPPLEMENTS

Mr. President, on a related matter, Congress has a big decision to make in the next few weeks. Every 5 years, Congress must reauthorize FDA user fee programs. These programs authorize FDA to collect user fees from companies they oversee: prescription drug companies, medical device companies. These fees help provide the funding that FDA needs for staff.

In fact, almost half of their funding comes from user fees. But we shouldn’t settle for a clean authorization of FDA user fees. We should give FDA the authority to collect user fees from e-cigarette companies, and we should provide FDA with new authority to protect America’s health by better regulating the dietary supplement industry.

I want to thank the members of the Senate HELP Committee, especially its chairman, Senator PATTY MURRAY, for including my proposal for better regulation of dietary supplements in the committee-passed bill.

But I fear this commonsense proposal may be lost in the sauce in the closing days of this fiscal year.

Many people are surprised to learn that today dietary supplement companies are not even required to register their products with the FDA. They aren’t required to tell the FDA even the ingredients of their products.

If you are going to put a product on the shelf in America, most Americans walking into that drugstore or that vitamin shop believe that there has been

some government review of the product, some inspection, some standards. Not the case. When it comes to prescription drugs, they have to be proven to be safe and effective. Not so for dietary supplements. These products can hit the shelves and make outrageous claims and not be regulated in any way, like prescription drugs.

What our bill says is that each of the companies selling these products has to register with the FDA the name of the product and the ingredients in the product. So if something goes wrong and people start getting sick, we at least have the most basic information to protect Americans.

The FDA is one of the most important Agencies in the Federal Government. It has fallen on hard times. It is there to protect the health of families across the country, especially our children. Whether it is dietary supplements or tobacco or e-cigarettes, we need to make sure the FDA not only has the tools for the job but uses them.

CONFIRMATION OF SARAH A.L. MERRIAM

Mr. President, today, the Senate will vote to confirm Judge Sarah Merriam to serve on the Second Circuit Court of Appeals.

Judge Merriam was confirmed last year as a U.S. District Court Judge for the District of Connecticut. She received a bipartisan vote on the Senate floor, which reflects not only her qualifications, but her impartiality as well.

Prior to her appointment to the district court, Judge Merriam served as a U.S. magistrate judge for the District of Connecticut from 2015 to 2021.

Throughout her time on the Federal bench, Judge Merriam has presided over hundreds of matters, including five trials that proceeded to final judgment.

This significant judicial experience has undoubtedly prepared Judge Merriam to serve on the Second Circuit.

Judge Merriam also has extensive experience in Federal court as an advocate. For the bulk of her career as a practicing attorney, she served as an assistant Federal defender, representing clients who could not otherwise afford adequate legal representation.

Notably, 24 former Federal prosecutors in Connecticut—including three former U.S. attorneys appointed by Presidents of both political parties—support Judge Merriam's nomination to the Second Circuit.

This broad, bipartisan support is a testament to her fairness and evenhandedness, both as a jurist and as an advocate.

The American Bar Association unanimously rated Judge Merriam “well qualified” to serve on the Second Circuit, and she has the strong support of Senators BLUMENTHAL and MURPHY.

Judge Merriam has shown that she has the qualifications, experience, and fidelity to the rule of law needed to administer justice on the Second Circuit. I will be supporting her confirmation and urge my colleagues to do the same.

I yield the floor.

VOTE ON MERRIAM NOMINATION

The PRESIDING OFFICER. Under the previous order, all postclosure time is expired.

The question is, Will the Senate advise and consent to the Merriam nomination?

Mr. DURBIN. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The senior assistant executive clerk called the roll.

Mr. THUNE. The following Senators are necessarily absent: the Senator from North Dakota (Mr. CRAMER), the Senator from Texas (Mr. CRUZ), and the Senator from Kansas (Mr. MORAN).

The result was announced—yeas 53, nays 44, as follows:

[Rollcall Vote No. 337 Ex.]

YEAS—53

Baldwin	Heinrich	Peters
Bennet	Hickenlooper	Reed
Blumenthal	Hirono	Rosen
Booker	Kaine	Sanders
Brown	Kelly	Schatz
Cantwell	King	Schumer
Cardin	Klobuchar	Shaheen
Carper	Leahy	Sinema
Casey	Luján	Smith
Collins	Manchin	Stabenow
Coons	Markley	Tester
Cortez Masto	Menendez	Van Hollen
Duckworth	Merkley	Warner
Durbin	Murkowski	Warnock
Feinstein	Murphy	Warren
Gillibrand	Murray	Whitehouse
Graham	Ossoff	Wyden
Hassan	Padilla	

NAYS—44

Barrasso	Hagerty	Romney
Blackburn	Hawley	Rounds
Blunt	Hoover	Rubio
Boozman	Hyde-Smith	Sasse
Braun	Inhofe	Scott (FL)
Burr	Johnson	Scott (SC)
Capito	Kennedy	Shelby
Cassidy	Lankford	Sullivan
Cornyn	Lee	Thune
Cotton	Lummis	Tillis
Crapo	Marshall	Toomey
Daines	McConnell	Tuberville
Ernst	Paul	Wicker
Fischer	Portman	Young
Grassley	Risch	

NOT VOTING—3

Cramer	Cruz	Moran
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The nomination was confirmed.

The PRESIDING OFFICER (Mr. SCHATZ). Under the previous order, the motion to reconsider is considered made and laid upon the table, and the President will be immediately notified of the Senate's action.

EXECUTIVE CALENDAR

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to the consideration of the following nomination, which the clerk will report.

The legislative clerk read the nomination of David P. Pekoske, of Maryland, to be Administrator of the Transportation Security Administration for a term of five years. (New Position)

The PRESIDING OFFICER. The Senator from California.

TRIBUTE TO VANESSA VALDIVIA

Mr. PADILLA. Mr. President, I rise today because today is a bittersweet day for me. I rise to recognize and express my gratitude for the outstanding work of Vanessa Valdivia, who has served as my communications director since my first day here in the Senate. I speak for everybody in my office when I say we are going to miss her.

But I am also proud. Next week, she will begin work at the White House as Special Assistant to the President and as Press Secretary to the First Lady. I have no doubt that she will do great things in her new role.

Since our first days in the Russell basement, in an office I had when I was transitioning, Vanessa has brought her incredible experience, her unique personality, and her tremendous passion to the job in helping me communicate our work to the people of California. From my maiden speech here on the Senate floor, during the depths of the COVID-19 pandemic, to crisscrossing the State on an infrastructure listening tour as we were negotiating the Infrastructure Investment and Jobs Act here in Washington, to ensuring that Californians were consistently informed of the historic progress that we have made in this Congress, Vanessa has been a key leader in my office and an adviser to me.

She is a California native and is the proud daughter of Mexican-Nicaraguan immigrants. Now, some of you may remember some of my remarks during the confirmation hearings of now-Justice Ketanji Brown Jackson when I said that, often, Americans of color needed to work twice as hard to garner half the respect. Well, it comes as no surprise that Vanessa has gained the utmost respect from her former bosses and colleagues on the various Presidential and Senate campaigns that she has been a part of and from the Senate offices that she has worked in, including those of Senators BOOKER, HEINRICH, and PETERS in addition to mine, and I have no doubt that she will bring the same work ethic and savvy to serving the First Lady and the Biden administration.

Mr. President, I ask unanimous consent to deliver the next part of my remarks in Spanish.

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

Mr. PADILLA. (English translation of statement made in Spanish is as follows:)

Vanessa, I wish you all the luck in your next chapter. Don't forget your friends here in the Senate. I have no doubt that you will continue to do great things working for the First Lady and the Biden administration. Thank you for your work for all of California.

Mr. President, let the record reflect that Vanessa Valdivia will be deeply missed and that the State of California and the U.S. Senate thank her for her service.

I yield the floor.

The PRESIDING OFFICER. The senior Senator from Texas.