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## Senate

The Senate met at 10 a.m. and was called to order by the Honorable PETER WELCH, a Senator from the State of Vermont.

### PRAYER

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

Let us pray.

Spirit of love, enlarge our horizons. Give to us this day perspectives that go beyond pessimism and negativity. Lord, enable us to lift our eyes to You, our provider, sustainer, and friend. May we refuse to permit today's challenges to make us forget how powerfully you have led us in the past.

Bless our legislative branch today with Your wisdom. Help our Senators to follow the path that leads to the fulfillment of Your purposes. Inspire our lawmakers to focus on the priorities that will cause justice to roll down like waters and righteousness like a mighty stream.

We pray in Your marvelous 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 (Mrs. MURRAY).

The senior assistant legislative clerk read the following letter:

U.S. SENATE,  
PRESIDENT PRO TEMPORE,  
Washington, DC, January 31, 2023.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby

appoint the Honorable PETER WELCH, a Senator from the State of Vermont, to perform the duties of the Chair.

PATTY MURRAY,  
President pro tempore.

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

### 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, with Senators permitted to speak therein for up to 10 minutes each.

### RECOGNITION OF THE MINORITY LEADER

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

### JUDICIAL NOMINATIONS

Mr. McCONNELL. Mr. President, the Constitution charges the Senate with giving advice and, if we choose, providing our consent to the President's judicial appointments.

The President nominates somebody whom he thinks ought to serve on the Federal bench, and then the nominee comes here to the Senate for a job interview. Sometimes these job interviews make news because they go spectacularly well.

When the Judiciary Committee subjected now-Justice Amy Coney Barrett to a battery of questions a little over 2 years ago, she literally dazzled the country with her force of intellect. At one point, hours into a hearing, after being asked multipart questions about the finer points of constitutional law,

now-Justice Barrett was asked to hold up the notepad she had been provided to keep everything straight, and it was completely blank. She hadn't even touched it.

Justice Barrett is an intellectual outlier by any standard, but she is an appropriate stand-in for the judicial nominees whom Republican Senators confirmed from 2017 through 2020. As one left-leaning analysis admitted in 2020, "based solely on objective legal credentials"—"solely on objective legal credentials"—the last administration's average pick for the Federal bench had "a far more impressive résumé than any past president's nominees." They had more circuit court clerkships, more Supreme Court clerkships—objectively, more experience in the Federal judiciary.

Under President Biden, though, with his nominees, well, you might say things have gone somewhat differently.

Last week, our colleague on the Judiciary Committee from Louisiana, Senator KENNEDY, was quizzing a panel of President Biden's nominees, and he decided to try some very simple questions that should have been beyond basic for anybody nominated to serve as a U.S. district judge. He asked one nominee, currently a superior court judge in Spokane County, WA, to simply explain what article V of the Constitution says. That would be the article that explains how the Constitution gets amended. Here was the nominee's response:

Article V is not coming to mind at the moment.

Senator KENNEDY came back with another, even more basic question. He asked:

How about article II?

As high schoolers across America learn each year, article II sets up the Presidency and the executive branch. It establishes the President's powers, including the power to nominate the person for the vacancy in question. But this sitting judge drew another blank.

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



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Article II wasn't coming to mind either—goodness gracious.

Then she flunked yet another question about legal philosophy, and, then again, she flunked still another question about the most controversial Supreme Court case this term.

Apparently, when this particular nominee had been asked to list the top 10 most impactful cases she had litigated in court, she could only come up with 6. At no stage of her professional career has the judge focused on Federal law. At no point had she ever even appeared in Federal court.

So get this. In one of these six most significant cases she took, she lost to a defendant who forewent legal counsel and took the risky step of representing herself. This wasn't some rooky mistake either. The nominee was over a decade out of law school when she lost to an unrepresented party in one of her biggest cases.

Is this the caliber of legal expert with which President Biden is filling the Federal bench—for lifetime appointments? Is the bar for merit and excellence really set this low?

For years, now, Washington Democrats' rhetoric about judicial nominations has often treated actual qualifications as an afterthought. Democrats were not particularly impressed or moved by top-shelf professional excellence or the academic brilliance that the last Republican administration's nominees possessed, literally, in spades. And, apparently, they don't count those qualities as particularly high priorities now that they are the ones doing the nominating.

The American people deserve an impartial judiciary that is full of the finest legal minds our country has to offer. The American people deserve the best and the brightest.

Alas, but sadly, the Biden administration's questionable constitutional judgment is not limited to some of their judicial nominations. In one important constitutional case after another, the Biden administration and his lawyers have come down on the wrong side of the American people's rights and liberties and have gotten slapped down in court as a result.

This last year, for example, in the Bruen case, the Biden administration threw its weight behind unconstitutional New York State restrictions on the Second Amendment that plainly violated citizens' rights to keep and bear arms. President Biden sent one of his top lawyers to help with the oral arguments, but the Democrats got the Constitution backward and lost the case.

In *West Virginia v. EPA*, President Biden went all in trying to defend massive unconstitutional overreach by his own Environmental Protection Agency. His Solicitor General argued the case herself, but the administration lost badly. The plain meaning of our laws and our Constitution actually won out.

In *Carson v. Makin*, President Biden fought to maintain unconstitutional

anti-religious discrimination in school voucher programs. Again, he lost, and the American people and their Constitution won.

Washington Democrats had their blatantly unconstitutional vaccine mandate for the private sector tossed out by the Supreme Court. They had their obviously illegal top-down mask mandate for transportation tossed out by a district judge. Oh, and, by the way, when the judge was nominated, Democrats howled that she was unqualified. But with a Supreme Court clerkship under her belt, she had incomparably more experience in Federal court than the nominee who failed Senator KENNEDY's bar exam.

Over and over, on issue after issue, this Democratic administration sides against the American people, against the Constitution, and against the rule of law.

The American people deserve an administration that respects their rights and liberties, that understands our Constitution, and that chooses both policies and nominees accordingly.

I suggest the absence of a quorum.

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

The senior assistant legislative clerk proceeded to call the roll.

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

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

#### IMMIGRATION

Mr. THUNE. Mr. President, it only took 2 years—2 years—for the President to acknowledge the crisis that has been raging along our southern border almost since the day he took office. Over those 2 years, we have seen record numbers of migrants attempting to cross our southern border. We have seen record numbers of migrants die—attempting the dangerous crossing of our southern border. We have seen the Border Patrol overwhelmed, border cities overwhelmed, and dangerous drugs continue to flood across our border and reach communities around our Nation.

Yet, for months and months, the President did essentially nothing. In fact, he acted as if the crisis didn't even exist. I am glad that, at long last, the President seems to be acknowledging this crisis, even if his recent visit to the border was scripted and controlled.

But it is appalling to think of how much human misery could have been avoided if the President had lived up to his national security obligations and addressed the border disaster many months ago. I suppose it is not a surprise that the President wasn't eager to acknowledge just how bad things were because that might have drawn extra scrutiny to the President's border policies, policies that played a substantial role in creating this crisis in the first place.

From the moment he took office and even before, President Biden made it clear that border security was at the bottom of his priority list. On his very first day in office, President Biden rescinded the declaration of a national emergency at our southern border. He halted construction of the border wall. He revoked a Trump administration order that called for the government to faithfully execute our immigration laws. And his Department of Homeland Security issued guidelines pausing deportations except under certain conditions. And that was all on his first day in office.

Well, needless to say, the effect of all this was to declare to the world that the U.S. borders were effectively open, and we have seen the result: 2 years of soaring illegal immigration. Since President Biden took office, there have been more than 4.5 million attempted illegal border crossings. Now, to put that number in perspective, that is roughly equal to the entire population of South Dakota, plus the entire population of Delaware, Wyoming, Nebraska, and then some.

Last month, 251,487 migrants were apprehended attempting to cross our southern border, the highest monthly number ever recorded. And, of course, these numbers just refer to individuals Customs and Border Protection managed to apprehend. There have been a staggering 1.2 million known "got-aways" since President Biden took office, individuals that the Border Patrol saw but were unable to apprehend.

President Biden has talked about wanting a safe, orderly, and humane immigration system. Well, up until now, he has failed on all fronts. Encouraging illegal immigration as the President's policies have done is the very opposite of compassionate and humane. There is nothing compassionate about policies that encourage people to attempt the dangerous trip across our southern border, to run the risk of exploitation and disease and exposure and death; nor is it compassionate to condemn border cities to dealing with a never-ending flood of illegal immigration and other cross-border illegal activity.

On top of all that, the kind of unchecked illegal immigration we have been seeing is an open invitation—an open invitation—to drug traffickers, human smugglers, and other dangerous individuals.

Our Nation is currently in the midst of a serious fentanyl crisis. In fact, right now, fentanyl overdose is the leading cause of death of U.S. adults between the ages of 18 and 45. And where is all this fentanyl coming from? Well, most of it is being trafficked across our southern border. And I would be very surprised if the chaos at our southern border isn't facilitating that trafficking.

And—let's be clear—drug trafficking across our southern border doesn't just affect border States; it affects communities around our country. I have