

for housing. It is open-ended for medical care. It is open-ended for educational care, and it is open-ended for legal counsel.

This is a huge shift this administration is looking for. They are not only looking for a way to facilitate more people to come in; they are looking for flexibility to take DHS dollars, which were allocated to prevent people from illegally crossing the border—to actually use those, instead, to help those who have illegally crossed the border have housing, long-term medical care, long-term educational issues, additional legal expenses—on and on and on. This is entirely new. This is not one just to slip into a bill. This is a huge change.

I am not opposed to immigration. I am opposed to illegal crossings, and I am opposed to whatever it takes to move people fast across the border to get into the interior of the country. It is not what we are supposed to do. For national security reasons, for the state of our economy, let's do immigration right. Let's honor what we have been as a nation and continue to welcome people from all over the world, but let's do it the legal way.

I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

MILITARY PROMOTIONS

Mr. LEE. Mr. President, the American people are sharply divided on some issues. One of those issues is abortion. One group of people has a different idea about when human life begins and is worth protecting. It needs to be protected under law. It is difficult to reconcile the views of those who are in sharp contrast with each other given that one group thinks that human life begins earlier—much earlier—than the other group.

As difficult as it can be to reconcile those competing viewpoints where Americans are so sharply divided, there is an issue related to abortion on which Americans are overwhelmingly and refreshingly united; that is, because both sides tend to recognize that a number of Americans are uncomfortable with abortion to the extent that we are, Americans overwhelmingly agree, with a vast supermajority being in agreement, that the Federal Government should not use U.S. taxpayer funds for abortions.

To that end, Congress has passed laws providing just that. One specific law deals specifically with the U.S. Department of Defense. Codified in 10 U.S.C., section 1093, the statute, which has been on the books for decades, says that you may not use Department of Defense funding or facilities for abortions.

Well, late last year, a rumor started circulating to the effect that the U.S. Department of Defense was considering adopting policies that would fund abortion travels, specifically allowing military personnel seeking abortions in a

neighboring State or in a different State than where they were living or stationed to receive 3 weeks of paid leave time and compensated travel—air travel or otherwise—lodging accommodations, a per diem, et cetera, specifically to have an abortion.

My friend and colleague, the distinguished senior Senator from the State of Alabama, Senator TUBERVILLE, was concerned about this. In his sitting on the Armed Services Committee in the Senate, which he does, he visited with Defense Secretary Lloyd Austin and expressed his concerns about this rumored policy.

He said: You shouldn't do this. This is inconsistent with the spirit, if not also the letter, of 10 U.S.C., section 1093. If you do this, there will be consequences, including, among other things, that I, Senator TUBERVILLE, will be forced into a position in which I will delay the confirmations of flag officer military promotions.

Regrettably, a couple of months later, Secretary Austin, in completely ignoring Federal law, in completely ignoring what Senator TUBERVILLE had told him, proceeded with the policy anyway. By so doing, he made a decision to openly flout Federal law. The sole purpose of this policy is to try to find an all-too-cute, way-too-tricky route around what Federal law requires, flatly inconsistent with the spirit, if not also the letter, of the Federal law.

Since then, there has been debate on this on the Senate floor. Words have been exchanged. People have strong views about this approach. But make no mistake, all Senator TUBERVILLE is doing is saying that in the past, I, along with every other Senator, typically moved Heaven and Earth to expedite the confirmation of these military promotions to allow them to occur quickly. Most of them are not controversial.

That is the norm, but these things require unanimous consent. And there is something about unanimous consent: It requires, as the name implies, actual unanimity, meaning any one Senator can raise an objection that makes expedited confirmation not possible. This doesn't stop the confirmation; all it does is require additional steps to be taken. It takes more time.

Yesterday, we had a statement—a statement that was unfortunate, a statement that brings me to the Senate floor today—a statement made by Secretary Carlos Del Toro, the Secretary of the U.S. Navy. Secretary Del Toro, with whom I have worked on other matters in the past and for whom I have had great respect, made a very unfortunate and inappropriate statement. Here is what he said:

I would have never imagined that one of our own senators would actually be aiding and abetting communists and other autocratic regimes around the world.

This statement, to be clear, was talking only about Senator TUBERVILLE saying: In light of this policy, which I

believe is incompatible with Federal law, I am not going to facilitate the expedited confirmation of the nominees in question.

That is all he said. Yet, for that, he was accused by the Secretary of the U.S. Navy of “aiding and abetting communists and other autocratic regimes around the world.” This is strange. This is unacceptable. And this body should emphatically, unambiguously reject the ad hominem attack against Senator TUBERVILLE by Secretary Del Toro.

Look, I get it. Sometimes passions are inflamed. Sometimes people feel really strongly about things. I hope and expect Secretary Del Toro will see the error of this and retract and apologize for this statement because he has essentially accused a Member of our body, a distinguished friend to the United States, to the people of Alabama, and to me personally, of treason, of directly jeopardizing the security of the United States and putting it at risk by aiding and abetting communist and other autocratic regimes around the world.

Personal attacks against Members of Congress or other people based on policy views, policy disagreements—here, procedural, strategic disagreements—certainly violate the high standard of decorum that has long been honored and is typically held and exhibited by the leadership of the U.S. Armed Forces.

Look, there are important things to consider when you evaluate this policy, this policy designed to flout Federal law.

We have three branches of government. One branch, where we work, makes the law. The executive branch, where the Pentagon exists and the White House exists and all the executive branch Agencies exist—they are there to enforce the law. Then you have the judicial branch across the street, headed by the Supreme Court, which interprets the law when people disagree as to the law's meaning. We are the only branch that gets to make the law.

The very, very first operative provision, the first clause of the first section of the first article of the Constitution—Article I, Section 1, Clause 1—makes clear that “all legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and a House of Representatives.”

Article I, Section 7 makes clear—even clearer—how this works. You cannot make a Federal law without passing the same legislation through the House and through the Senate—identical language—and then submitting that to the President—presenting it, as we say—for signature, veto, or acquiescence.

If you don't follow the formula of Article I, Section 7, you have not made a Federal law. Once a Federal law is made, it cannot be changed or unmade

without going through that same process. But here, the Department of Defense seems not to have gotten the memo, and by "the memo," I mean the U.S. Constitution.

This oath of office that I have right here, this is an oath of office that is a prerequisite. It is required of all those elected or appointed to civil service or uniform service, that they have to take before assuming their duties in question. Here is what it says:

I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.

That is codified in Federal law, adopted by Congress in 5 U.S.C., section 3331.

Look, by swearing to support and uphold the Constitution, as this oath requires, as is required to do under Federal statute, anyone taking this oath understands that our Constitution expressly, explicitly, unambiguously, and exclusively empowers Congress to make the laws. Only Congress has law-making power. Only Congress may change the law. Only Congress may repeal the law. The other branches can't do that.

Now, the outrage from Secretary Del Toro and, I would add, from some other Pentagon officials, including but not limited to Defense Secretary Lloyd Austin, sort of has a tendency to make it appear as though they have written a new oath, as it were.

So when we look at this, we can imagine perhaps what they might be thinking. Whether they have gone to the trouble of rewriting it in this fashion or not, essentially what they have done is to come up with President Biden's own Pentagon-specific oath of office. It is as though they are saying: I do solemnly swear (or affirm) that I will make all laws that I determine are necessary and proper; that I will bear true faith and allegiance to the same laws that I have decided to make within the executive branch; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will legislate from the E-Ring of the Pentagon, which I am about to enter. So help me God.

That, of course, is not the real oath. That oath, of course, is an abomination, and it is an affront to this body, to the other Chamber of Congress, and to the Constitution itself. This is an oath that rejects the Constitution. It empowers unelected and unaccountable officials—officials who have never been elected to make laws—as supreme law-makers.

Secretary Austin and the civilian leadership of the service branches want us to believe that the sky is falling and that the falling sky has been prompted to fall by Senator TUBERVILLE and that Senator TUBERVILLE himself is some-

how empowering communist and other autocratic regimes throughout the world, imperiling and endangering the United States. These are not just fighting words; these are words tantamount to an accusation of treason—words that are unfounded; words made with knowledge of their falsity or reckless disregard for their truthfulness; words that disregard what is actually happening here. These are not appropriate. These are way over the line.

In reality, if this is where truly aiding and abetting communist and other autocratic regimes were concerned, if that is really what we were facing, if that is really where we were and American national security was being imperiled in the manner and to the degree these people have suggested, including and especially Secretary Del Toro, we would be looking at a very different outcome here. If they really believed this—which they do not, and we know they don't believe it because if we were in that situation, there are only one, two, maybe three possible outcomes at that moment: either the Department of Defense would ideally just suspend its attempt to circumvent Federal law and end its abortion travel policy—if they suspended this right now, either indefinitely or until such time as they could change the law to do what they want to do, that is the fastest way to do that. And I have it on good authority that Senator TUBERVILLE would release his hold immediately and that these people could move forward very, very quickly on an expedited basis.

If they want these people confirmed, that is all they have to do—suspend that policy. I am willing to bet—I am not even a betting man, but I would bet here anyway—he would lift it. He would lift it today.

Option No. 2, possibility No. 2: Senator SCHUMER and the Senate Democrats—if we really were in that environment where national security were being imperiled and we were strengthening the hands of hostile regimes all over the world because of Senator TUBERVILLE; if that is really where we were just because he was requiring the whole process rather than expedited consideration of these nominees, well, then Senator SCHUMER and the Senate Democrats would take the time to bring these nominees up for a vote on the floor.

You see, there are procedures by which we can bring them to the floor even with a hold. A hold is not a death knell. It is not a veto. All it says is "I am not going to give my consent." Every Member of the United States has to consent to expedite consideration. They could still do it, but they are not.

So one of those two outcomes or some variation of them—that is what we would be facing. But, instead, what are we looking at? Well, just the day before yesterday, the Senate held its first vote in 40 days, and it appears very, very likely that within just an hour or two, maybe three, the Senate will be recessing for the weekend and

not voting again until Monday. So we have the ability to move nominees forward. Senator SCHUMER and the Senate Democrats have the ability to put them on the calendar. It would just take some additional steps. It takes time. But they are not doing it. They are not budging. Why? Because they know their words aren't true. They know their spewing of invective, unfair, defamatory accusations relates to facts that they don't even believe because if they believed them, we would be in a very different procedural posture.

Look, whether you agree or not agree with Senator TUBERVILLE's strategic decision here, whether you as a U.S. Senator or as an onlooker would have made the same decision—regardless of how you come down on that, regardless of where you are on the position of abortion or government funding for abortion, Senator TUBERVILLE is well within his rights. These are rights that each individual Senator holds and owns uniquely, personal to them. This is consistent with his assignment on the Senate Armed Services Committee. He is doing the job the way he believes he should do his job in a manner consistent with how the voters in the great State of Alabama feel.

So we have and we respect these rules, and we have respected them for centuries. Respecting the rules and the institution requires us to respect those with whom we disagree when it comes to procedural decisions like this one. We need to respect them not just in spite of a disagreement but especially in the face of a disagreement if we are going to uphold these rules, which have lasted for centuries and helped propel this body to the status that I hope it can live up to more completely, as the world's greatest deliberative legislative body.

Yet it is interesting. To show that we really are not in this place where we would be if they took these things seriously, just yesterday, Senator SCHUMER, the Senate majority leader himself, commented, when asked about or in reference to his own refusal to put the confirmation of C.Q. Brown to be the Chairman of the Joint Chiefs of Staff on the Senate floor for a vote—here is what he said:

This is a problem created by Republicans, and it's up to them to solve it. . . . We're not going to shift the burden to Democrats when this is a Republican-caused problem.

This is nuts. What he is saying here is that, yeah, in the past, we would have expected to vote on the confirmation of the Chairman of the Joint Chiefs of Staff. In fact, in the 12½ years I have served in this body, I think we have voted on the Chairman of the Joint Chiefs of Staff individually and not as part of some massive, en bloc confirmation package. Yet he is not even willing to move the Chairman of the Joint Chiefs of Staff. It is not even that long of a process to get this person on the calendar. He is not willing even to do that. Why? Well, he told us

why—because he is having too much fun blaming Republicans for it. He holds the tools to get people confirmed. He is not willing to move them. He is not willing to budge an inch.

Look, while Americans may disagree on the legality of abortion, and they do, there has long been this overwhelming, bipartisan, supermajority understanding first and foremost among the American people at large—and there has until very lately even been that bipartisan, overwhelming, supermajority consensus among Federal elected lawmakers—that Americans are against tacitly supporting abortion with their taxpayers dollars.

The last time I read the Constitution, I noticed that, as I noted earlier, it is Congress that makes the laws, not the Department of Defense. Senator TUBERVILLE is right to oppose this egregious policy, and he is well within his rights as a Member of the U.S. Senate to take this position. We should commend his courage and applaud his dedication to upholding his oath of office, his commitment to the Constitution, standing for those who cannot stand, let alone speak, for themselves.

Even if you don't agree with Senator TUBERVILLE on abortion or on Federal funding for abortion or on his particular use of this particular procedural remedy, you should at least respect it. If you can't respect him and show respect for his decision, you are showing disrespect for this institution, for its rules, and for our governing documents, including the Constitution, and for the entity, the customs and traditions that have helped preserve our unique form of constitutional representative government in America.

Let this message to Secretary Austin and Secretary Del Toro be clear: If you want to make laws, run for Congress. You can't legislate from the E-Ring of the Pentagon. Until then, stand down and leave the lawmaking to the lawmakers.

ADJOURNMENT UNTIL MONDAY,
SEPTEMBER 11, 2023, AT 3 P.M.

The PRESIDING OFFICER (Mr. FETTERMAN). Under the previous order, the Senate stands adjourned until Monday, September 11, 2023, at 3 p.m.

Thereupon, the Senate, at 4:17 p.m., adjourned until Monday, September 11, 2023, at 3 p.m.

NOMINATIONS

Executive nominations received by the Senate:

DEPARTMENT OF TRANSPORTATION

MICHAEL G. WHITAKER, OF VERMONT, TO BE ADMINISTRATOR OF THE FEDERAL AVIATION ADMINISTRATION FOR THE TERM OF FIVE YEARS, VICE STEPHEN M. DICKSON, RESIGNED.

DEPARTMENT OF JUSTICE

CHRISTOPHER CHARLES FONZONE, OF PENNSYLVANIA, TO BE AN ASSISTANT ATTORNEY GENERAL, VICE CHRISTOPHER H. SCHROEDER, RESIGNED.

IN THE AIR FORCE

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES AIR FORCE UNDER TITLE 10, U.S.C., SECTION 624:

JOANNE M. WHITLOCK

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES AIR FORCE UNDER TITLE 10, U.S.C., SECTION 624:

To be major

FREDDY R. ORELLANA

IN THE ARMY

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE ARMY UNDER TITLE 10, U.S.C., SECTION 12203:

To be colonel

ANGELA M. ALLMER
MARK W. BALES
MARIA F. COSTA
RHONDA L. GOMEZ
SHUNA L. HAMMONDSTHOMAS
LASHANDA D. JONES
TARRLEN L. KINGSLEY
ROBERT G. LONG III
AIMEE E. MANION
BRAD M. MASSEY
TINA M. MBATHA
MICHAEL T. MCNULTY
MARK L. OAKLEY
JOSEPH P. PULAFICO
CLARE B. ROMERO
PATRICK H. SMITH
JOHN M. SNEDEGAR
ALTON A. STEWART
SKIPPER K. STEWART
STEPHANIE D. TEZENOROSSYON
COTY D. WADE
BARBARA J. WEBSTER

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE ARMY UNDER TITLE 10, U.S.C., SECTION 12203:

To be colonel

CHARLES S. BENNER
PATRICIA A. BROWN
ROBERT A. DENT
RICHARD G. EMLER
BRIAN S. FISHER
JEREMY D. FRIX
CHRISTY L. GAMBILL
STEPHEN R. HONEYCUTT
BRIAN P. JACQUOT
SEAN C. KENNY
JOHN J. KNIGHT, JR.
THOMAS L. LARKIN
GLENN LITMAN
GARY W. LOUDEN
ROBYN L. MASON
MARK J. NEUMANN
CURTIS S. NIELSON
KEVIN A. ONAN
RYAN A. ONEAL
REUBEN D. RIEKE, JR.
RICHARD R. ROBIN
JERRY L. STORK, JR.
KIMBERLY A. THOME
DAN M. TZIZIK
JONATHAN R. VANHORN
PAUL T. VAUGHN
EDUARDO M. VAZQUEZ
LARRY T. WILSON

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE ARMY UNDER TITLE 10, U.S.C., SECTION 12203:

To be colonel

APOLLA A. BENITO
MARTIN R. DACUNHA
CHRISTIAN J. DEAN
CHRISTINA R. DEAN
DENA R. DIETZLER
THOMAS A. DUCI
CHE C. EISSINGER
ELIZABETH A. FOOTT
STEVEN A. GIENAPP
WESLEY L. HALL
MICHELLE E. HINOJOSA
BRADLEY M. JOHNSON
KYLE O. LYTHGOE
SHARON K. MCCARTY
SEAN M. MCCLEARY
GEORGE W. MCCOMMON
SILTINARET Z. MILES
JAMES H. MORAN, JR.
VALERIE L. PETROSKY
EDWARD H. PITTS, JR.
MONIQUE C. RUSSELL
HAJJA R. SAHIDSANOH
JOEL A. SMITH
RYAN E. SWAFFORD
CHRISTINA L. TAYLOR
CHERYL J. WACHENHEIM
BRIAN L. WHEELER
LESLIE E. WOLF
SEO Y. YANG

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE ARMY UNDER TITLE 10, U.S.C., SECTION 12203:

To be colonel

MARVIN W. ASHFORD, JR.
MICHAEL W. BERNEKING
MARCUS K. BLACKBURN

AARON C. BRINKMAN
STEPHEN A. COLE
BRIAN G. CUDDY
MARK E. DEMUTH
MARY DIGIULIO
KIM D. EDHEGARD
CHAD P. EDWARDS
JASON L. EGGERS
MICHAEL A. GARBEE
JACOB GERZENSSTEIN
MATTHEW D. HANSON
SUZANNE K. HARRIS
SEYED JALALI
PAUL M. JOHNSON
JOSEPH S. K. KUSHI
BRIAN P. LEVY
DANIEL MALLESCKE
JOHN M. MONTMINY
LUIS A. MORENO
KATHERINE G. MULLIGAN
DARIUSZ G. MYDLARZ
DANIEL V. OLEARY III
RAEHEL E. PACHECO
ZAAL H. PAYMASTER
JASON R. PICKETT
DONALD G. POLK
AARON M. PROFFITT
WILLIETTE M. ROBERTSON
PABLO SANCHEZBARRANCO
KATHLEEN E. SHARP
CHRISTOPHER D. SMELSER
PAUL A. STEPHENS
BRENT B. WARREN
KARL F. WODRICH
MATTHEW B. WOODS IV

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE ARMY UNDER TITLE 10, U.S.C., SECTION 12203:

To be colonel

CHRISTINE C. ANCAJAS
EDDIE A. ARROYOFERRER
JOEL A. BACHMAN
JASON M. BJERKETVEDT
KENNETH D. CARNEIRO
JAE W. CHUNG
STAFFORD G. CONLEY, JR.
YONGSOK DO
ELI G. EDMUNDS
DANIEL D. ESCALANTE
CHRISTOPHER A. FAUVER
GUSTAVO A. GONZALEZ
MATTHEW H. MANEELY
WILLIAM C. MANKE
JONATHAN L. MIMS
EDWARD N. MORSE
DEREK A. RENFROE
DOMINICK G. ROARKANNUNZIATO
BRIAN E. RODGERS
LEVI L. SCHANTZ
MICHAEL P. SULLIVAN
AARON C. TAFF
BLAKE D. THOMAS
WESLEY F. TILLMANN
BRIAN L. TUTTLE
ERIC G. UNKENHOLZ
MARK A. VANZANT
JENNIFER R. WATERMAN
KIRK A. YEGERLEHNER

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY NURSE CORPS UNDER TITLE 10, U.S.C., SECTIONS 624 AND 7064:

To be major

JESSICA M. ALARCON
EMMA K. ALAYON
BRIAN P. ALBRIGHT
MARI ALLEN
CHRISTAL L. ANGELOTTI
CAROLINA E. BARDALES
ROBERT D. BARNES
RICHARD F. BAUMANN, JR.
STEVEN M. BENAVIDES
KAYLA J. BENTON
LEONARDO X. BERMUDEZ
LESLIE A. BITTENBINDER
LAUREN E. BLAKE
MARIE D. BOONE
ERIC X. BRACAMONTE
MACKENZIE E. BREWER
CHELSEA K. BRINSON
MEGAN A. BUEHLERBRAZAS
CARLY A. BUGLINO
EDGAR E. CALITO
KRISTEN M. CALO
CHRISTOPHER CASTANO
JONATHAN K. CHANG
SAMUEL A. CHASE
RYAN W. CHICOINE
JUYUN CHO
KARIN J. GLUEVER
JACY P. CORRELL
AUDREANNA L. CRISTOWILLIAMS
KELLY R. DECLER
RAJESH DEVKOTA
JESSICA C. DIRKS
BRENT C. DUFFIELD
JOHNPAUL D. DUGYON
HEATHER C. EGGERT
KATRINA A. N. FARRELL
ARGELIA N. FELIXCAMACHO
ARIANNA C. FLOWERS
TIMOTHY P. FOGARTY
ADAM C. FRICKER