

amendment in order be Marshall-Lee No. 4868; that Senator LEE be recognized to speak for up to 10 minutes and that, following his remarks, the Senate vote on the Marshall amendment; that upon disposition of the Marshall amendment, the bill shall be considered read a third time and the Senate vote on passage of the bill, as amended, if amended, with 60 affirmative votes required for passage; that there be 6 minutes for debate equally divided in the usual form prior to each vote, all without further intervening action or debate.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

GOVERNMENT FUNDING

Mr. SCHUMER. Mr. President, I am pleased to announce that an agreement has been reached between Democrats and Republicans that will allow the Senate to take up and pass the continuing resolution to fund the government through February 18. With this agreement, there will be no government shutdown, and I appreciate the work of my colleagues from both sides of the aisle, including Leader McCONNELL, to reach this point. The good, bipartisan work that produced this agreement will give appropriators in both parties and in both Chambers time to reach a comprehensive agreement on appropriations by February 18 of next year.

I am glad that, in the end, cooler heads prevailed. The government will stay open. I thank the Members of this Chamber for walking us back from the brink of an avoidable, needless, and costly shutdown.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

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

LEGISLATIVE SESSION

FURTHER EXTENDING GOVERNMENT FUNDING ACT

The PRESIDING OFFICER. Under the previous order, the Senate will resume legislative session and proceed to the consideration of H.R. 6119, which the clerk will report.

The bill clerk read as follows:

A bill (H.R. 6119) making further continuing appropriations for the fiscal year ending September 30, 2022, and for other purposes.

The PRESIDING OFFICER. The Senator from Utah.

AMENDMENT NO. 4868

Mr. LEE. Mr. President, 45 million Americans, 45 million hard-working moms and dads, neighbors, and friends are being threatened right now with

losing their jobs. They are being threatened not due to cyclical economic conditions, not because jobs aren't available, not because of some war or other calamity; their jobs are being threatened by their own government—a government that has chosen to tell them if they don't comply with a Presidential medical orthodoxy, they will be fired.

This is unfortunate. This is most unfortunate. It is most unfortunate that this power has been exercised this way. The President doesn't have that power. Congress hasn't given the President that power. Congress doesn't have that power to begin with. This is not a power that belongs in the Federal Government to begin with.

As a result of that, 45 million Americans are being threatened with their jobs. They are being forced to choose between an unwanted medical procedure and losing their job.

Look, I want to be very clear. I have been vaccinated. My family has been vaccinated. I believe the development of the vaccine is something of a modern medical miracle. I am grateful for the vaccine. I think the vaccine is helping Americans be safe from the effects of COVID. It is not the government's job. It is not within government's authority to tell people that they must be vaccinated, and if they don't get vaccinated, they will get fired.

It is wrong. It is immoral. You don't tell someone that if they don't do exactly what you want them to do, that they are going to lose their job. The American people overwhelmingly agree.

In fact, according to a recent Axios poll, only 14 percent of all Americans agree with the President of the United States that if someone declines to get the jab, they should lose their job.

Now, this is a huge percentage of the workforce in many States—most States, in fact. Somewhere between a quarter and a third of all workers are now being faced with the possibility of losing their job because of these vaccine mandates. This, at a time when Americans are struggling just to put food on the table, in part, because we have a government that is spending too much money it doesn't have.

It is churning up money, printing it, in effect, in a way that results in rampant inflation; in a way that makes limited paychecks go less far, less capable of buying bread to put on the table. And amidst all of this government-manufactured crisis, government is making it worse; threatening to not just make that paycheck go even less far than it already does because of government but to take it away altogether. That is not kind; that is not the neighborly way in which we like to do things; it is not moral; and it is not constitutional.

Look, it is tragic that this many Americans have to have their jobs threatened as a result of a Presidential temper tantrum. There is nothing about it that is OK. Deep down, we all know that it is not OK.

I will tell you, there is another thing that is not OK. It is not OK that those who want to take away those jobs, those who are just fine with the President exercising this authority fought tooth and nail to prevent the U.S. Senate from taking the vote that we are preparing to take tonight, a simple vote—a simple vote that simply allows us to weigh in and decide whether or not we are going to fund that part of government, that feature of our government that is going to enforce the vaccine mandate.

Those in this Chamber who shamefully were refusing over and over again to let us even cast a vote on that simple measure threatened to shut down all of government because they didn't want to have us have a chance, as the people's elected lawmakers, to decide whether or not we should proceed with vaccine mandate enforcement. They would rather shut down the government and make everything worse than they would stand accountable for what they are doing.

Fortunately, this part of the story at least has a happy ending. We are going to be able to vote on that tonight. We are going to be able to vote on whether or not we fund vaccine mandate enforcement at the Federal level.

This is wonderful. This is fantastic. It should not have resulted in days and days of shutdown threats and days and days of deflection, accusing other people of wanting to shut down the government when all we wanted to do was have a vote, to give a chance to the hard-working mom or dad, soldier, sailor, airman, or marine struggling to put food on the table. That is all we wanted. And all they wanted to do is use it as an excuse to deflect onto others that which they are doing.

We can do better than this. We must do better than this. The American people deserve better than this. That is why I am so glad and grateful that we will be casting this vote tonight.

But know this: This issue is not going away. I hope with everything in me that when we cast this vote tonight, that a majority of us will do the right thing and that we will vote the way that we know we should vote; that we will stand with those people who may lose their jobs. Thirty-one percent of the workers in my State—and in other States, it is higher. Thirty-nine percent of the workers in West Virginia stand to lose their jobs, 37 percent of the workers in Alabama, 33 percent of the workers in Georgia. In State after State, you see hard-working moms and dads being threatened.

This isn't right. It is not even an authority that the President has. It is not authority that the Congress has. We shouldn't be doing this. Deep down, we all know that is right. We also know that some of these problems result from the fact that when we fund the government, we have made significant mistakes as a result of the fact we have allowed so many spending decisions to be concentrated in one vote on one bill,

such that all of government tends to be funded or none of it gets funded.

Sometimes the only opportunity we have to weigh in on a particular matter of public policy, one affecting 45 million American workers in this instance—the only chance we have to do that is on a spending bill, and we don't even get that chance unless we agree we can vote on an amendment on that. That should never result in a shutdown threat.

When those threats are made, we should acknowledge who is making them. Never once has any one of us wanted to shut down the government. We wanted to give the American worker a chance for us to vote for them, a chance for us to stand with them.

I urge—I implore—my colleagues: Please join me in voting to protect the American worker. Don't take away the job of hard-working Americans. Don't fire people because they are not inclined to adhere to Presidential medical orthodoxy. Please support me in this amendment.

The PRESIDING OFFICER. The Senator from Kansas.

AMENDMENT NO. 4868

Mr. MARSHALL. Mr. President, I call up my amendment No. 4868 and ask that it be reported by number.

The PRESIDING OFFICER. The clerk will report the amendment by number.

The bill clerk read as follows:

The Senator from Kansas [Mr. MARSHALL] for himself and for Mr. LEE, proposes an amendment numbered 4868.

The amendment is as follows:

(Purpose: To prohibit the use of Federal funds for implementing or enforcing COVID-19 vaccine mandates)

At the appropriate place, insert the following:

SEC. ____ PROHIBITION ON FUNDING FOR COVID-19 VACCINE MANDATES.

None of the funds appropriated or otherwise made available under this Act may be obligated or expended to—

(1) implement or enforce—

(A) section 1910.501 of title 29, Code of Federal Regulations (or a successor regulation);

(B) Executive Order 14042 of September 9, 2021 (86 Fed. Reg. 50985; relating to ensuring adequate COVID safety protocols for Federal contractors);

(C) Executive Order 14043 of September 9, 2021 (86 Fed. Reg. 50989; relating to requiring Coronavirus Disease 2019 vaccination for Federal employees);

(D) the interim final rule issued by the Department of Health and Human Services on November 5, 2021, entitled "Medicare and Medicaid Programs; Omnibus COVID-19 Health Care Staff Vaccination" (86 Fed. Reg. 61555); or

(E) the memorandum signed by the Secretary of Defense on August 24, 2021, for "Mandatory Coronavirus Disease 2019 Vaccination of Department of Defense Service Members"; or

(2) promulgate, implement, or enforce any rule, regulation, or other agency statement, that is substantially similar to a regulation, Executive Order, rule, or memorandum described in paragraph (1).

The PRESIDING OFFICER. There will now be 6 minutes of debate equally divided prior to a vote on amendment No. 4868.

Mr. MARSHALL. Mr. President, this amendment is simple. It prohibits moneys from this bill to be used to fund or enforce the White House's COVID vaccine mandates on the American people for the duration of the CR.

As a physician, I have always supported the vaccine, and I encourage Americans to talk to their doctor about getting vaccinated and about the booster. But whether to receive the vaccine or not is a personal choice. It should not be mandated via unconstitutional Executive actions that the administration acknowledged earlier this year they didn't have the authority to put in place.

No precedent exists in American history for punishing private employers who don't enforce government vaccine edicts. As we all know, multiple Federal courts have put a stop to the OSHA mandate, as well as the Federal contractor and CMS mandates.

What is more, thank goodness, the White House even delayed implementing their mandate for Federal workers until after the holidays. This is an opportunity to right a wrong—for each Member in this body to right a wrong. Let's get employers certainty and employees peace of mind that they will still have a job this new year.

Make no mistake, these vaccine mandates are not about public health or science. If they were, the White House would recognize the 92 percent of Americans—92 percent of Americans—who already built up immunity to this virus between vaccines and natural immunity.

Beside me is a photo of upset union workers in Topeka, KS. These are people who keep our electricity on and houses warm in the winter. These are hard-working Americans who put their lives on the line throughout the pandemic. Tonight, I am their voice. I am their voice and I am proud to be here to keep fighting for them, for their families, and their right to earn a living in this greatest country in the world.

Tonight, I ask my colleagues to join me in this fight and support our amendment and avoid an economic shutdown, avoid brownouts, further supply chain disruptions, labor shortages, higher inflation, and weakening our national security.

I yield the floor.

The PRESIDING OFFICER. The Senator from Washington.

Mrs. MURRAY. Mr. President, COVID-19 has killed over 780,000 people in our country. This pandemic has a higher body count than any war we have ever fought in, and it is not over.

We should be doing everything we can to stop this virus. We should be using every tool to keep America safe. We all know the damage this virus can do to our communities and to our economy. That is why the Biden administration has taken steps to urge employers to make sure their employees are fully vaccinated or test negative for COVID-19 before they come to the

workplace. That is a move that is widely popular with the American people. No one wants to go to work and be worried they might come home to their family with a deadly virus.

Even businesses support this step. The Chamber of Commerce is urging businesses to comply with the administration's emergency temporary standard. Perhaps, more importantly, it is a move that will save lives. We have already seen these requirements have a huge impact. In fact, many businesses with vaccine requirements have seen vaccine rates rise well above 90 percent. OSHA estimates that the Federal standard—which Republicans are fighting to undermine—will help protect 84 million workers, prevent thousands of deaths and over 200,000 hospitalizations from COVID-19.

I do not understand why—after all families have been through, after all we have lost and all the hard work we have done to rebuild—would anyone want to throw that in jeopardy and throw away one of the strongest tools we have to get people vaccinated, keep them safe, and end this pandemic once and for all. It is senseless. It is reckless. I urge my colleagues to vote against it.

I yield the rest of my time to the Senator from Virginia.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. Kaine. Mr. President, I rise to support the position of my colleague.

When you are unwilling to describe something accurately, it betrays a weakness in your position. I heard my colleagues complain about the vaccine mandate. It is not a vaccine mandate. It is a vaccine or testing mandate. If you don't want to get a test—if you don't want to get a vaccine, don't get a vaccine. Get a test so you can go to work each week without infecting your colleagues with the deadly disease.

What my colleagues are asking is that people be protected so that they can go to work with a deadly disease, infect coworkers, and still get a paycheck—and still get a paycheck. If you don't want to get a vaccine, get a test. If you are unwilling to protect your coworkers, don't demand a paycheck.

I urge my colleagues to oppose this amendment.

The PRESIDING OFFICER. The Senator from Utah.

Mr. LEE. If you don't want to get the virus, get the vaccine.

The answer to someone not agreeing to your medical advice is not to fire them. It sure as heck isn't to have the President of the United States fine every employer in America that doesn't want to do this, whether they have religious objections or otherwise. This is wrong. We know it is wrong. We can stop this right now.

Please join me in opposing and taking down and refusing to fund for the duration of this continuing resolution that part of government charged with enforcing this immoral, indefensible, unconstitutional, and illegal mandate.

VOTE ON AMENDMENT NO. 4868

The PRESIDING OFFICER. The question is on agreeing to the amendment.

Mr. MARSHALL. 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 bill clerk called the roll.

Mr. BARRASSO. The following Senators are necessarily absent: the Senator from Tennessee (Mr. HAGERTY) and the Senator from South Dakota (Mr. THUNE).

The result was announced—yeas 48, nays 50, as follows:

[Rollcall Vote No. 476 Leg.]

YEAS—48

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

NAYS—50

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

NOT VOTING—2

Hagerty Thune

The amendment (No. 4868) was rejected.

(Mrs. MURRAY assumed the Chair.)

The PRESIDING OFFICER (Mr. KING). The clerk will read the bill by title for the third time.

The bill was ordered to a third reading and was read the third time.

The PRESIDING OFFICER. There will be 6 minutes of debate equally divided prior to a vote on the passage of the bill.

The Senator from Vermont.

Mr. LEAHY. Mr. President, I will be very brief.

I will note that, as chairman of the Appropriations Committee, this bill was negotiated on a bipartisan-bicameral basis to keep the government open and operating until February 18.

I urge every Member to vote "aye." We have to pass it tonight, but I warn and remind every Senator: It is not a substitute for doing our work. We have to use the next 2 months to negotiate and enact full-year appropriations

bills. I hope my Republican friends will come to the table to negotiate topline. The Democrats have made a fair offer, a strong offer, and we need a response.

So I thank Vice Chairman SHELBY for his cooperation and hard work on this bill. I look forward to working with him, as I did earlier today, and will continue to until we get an agreement on a topline and all 12 appropriations bills by February 18.

Let's get to work and show the country the Senate can do its work.

I yield the floor.

VOTE ON H.R. 6119

Mrs. GILLIBRAND. Mr. President, I ask unanimous consent that all time be yielded back.

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

With all time having been yielded back, the question is, Shall the bill pass?

Mrs. GILLIBRAND. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. The yeas and nays have been requested.

Is there a sufficient second?

There is a sufficient second.

The clerk will call the roll.

The senior assistant legislative clerk called the roll.

Mr. BARRASSO. The following Senators are necessarily absent: the Senator from Tennessee (Mr. HAGERTY), the Senator from Oklahoma (Mr. INHOFE), and the Senator from South Dakota (Mr. THUNE).

The result was announced—yeas 69, nays 28, as follows:

[Rollcall Vote No. 477 Leg.]

YEAS—69

Baldwin	Heinrich	Portman
Bennet	Hickenlooper	Reed
Blumenthal	Hirono	Rosen
Blunt	Hyde-Smith	Rounds
Booker	Kaine	Rubio
Brown	Kelly	Sanders
Burr	Kennedy	Schatz
Cantwell	King	Schumer
Capito	Klobuchar	Shaheen
Cardin	Leahy	Shelby
Carper	Lujan	Sinema
Casey	Manchin	Smith
Cassidy	Markey	Stabenow
Collins	McConnell	Tester
Coons	Menendez	Tillis
Cornyn	Merkley	Van Hollen
Cortez Masto	Moran	Warner
Duckworth	Murkowski	Warnock
Durbin	Murphy	Warren
Feinstein	Murray	Whitehouse
Gillibrand	Ossoff	Wicker
Hassan	Padilla	Wyden
Heinrich	Peters	Young

NAYS—28

Barrasso	Fischer	Risch
Blackburn	Grassley	Romney
Boozman	Hawley	Sasse
Braun	Hoeven	Scott (FL)
Cotton	Johnson	Scott (SC)
Cramer	Lankford	Sullivan
Crapo	Lee	Toomey
Cruz	Lummis	Tuberville
Daines	Marshall	
Ernst	Paul	

NOT VOTING—3

Hagerty Inhofe Thune

The bill (H.R. 6119) was passed.

The PRESIDING OFFICER. The majority leader.

Mr. SCHUMER. Mr. President, I am happy to let the American people know the government remains open.

(Applause.)

Mr. SCHUMER. Thank you.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. SCHUMER. Mr. President, I move to proceed to executive session to consider Executive Calendar No. 567.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

The PRESIDING OFFICER. The clerk will report the nomination.

The senior assistant legislative clerk read the nomination of Jessica Rosenworcel, of Connecticut, to be a Member of the Federal Communications Commission for a term of five years from July 1, 2020. (Reappointment)

CLOTURE MOTION

Mr. SCHUMER. Mr. President, I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The senior assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the nomination of Executive Calendar No. 567, Jessica Rosenworcel, of Connecticut, to be a Member of the Federal Communications Commission for a term of five years from July 1, 2020. (Reappointment)

Charles E. Schumer, Richard Blumenthal, Richard J. Durbin, Angus S. King, Jr., Chris Van Hollen, Elizabeth Warren, Debbie Stabenow, Gary C. Peters, Tammy Baldwin, Maria Cantwell, Mark R. Warner, Benjamin L. Cardin, Tammy Duckworth, Tina Smith, Margaret Wood Hassan, Tim Kaine, Patty Murray.

LEGISLATIVE SESSION

Mr. SCHUMER. Mr. President, I move to proceed to legislative session.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. SCHUMER. Mr. President, I move to proceed to executive session to consider Executive Calendar No. 480.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

The PRESIDING OFFICER. The clerk will report the nomination.

The senior assistant legislative clerk read the nomination of Deirdre Hamilton, of the District of Columbia, to be a Member of the National Mediation Board for a term expiring July 1, 2022.

CLOTURE MOTION

Mr. SCHUMER. Mr. President, I send a cloture motion to the desk.