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Senate

The Senate met at 10 a.m. and was called to order by the Honorable GARY C. PETERS, a Senator from the State of Michigan.

PRAYER

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

Let us pray.

Gracious God, most holy, the source of our hope, keep us from dragging the honor of this great Nation in the dust.

Lord, our Senators need Your presence and help for the journey ahead. You have promised that You will never fail or forsake them. So empower them to trust You, come what may. Allow them to minister to those on life's margins, continuing Your work of setting the captives free.

Lord, give our lawmakers wisdom and courage to serve their generation in a way that honors You. May they place their lives and this Nation's future into Your all-powerful hands.

We pray in Your merciful 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, May 11, 2023.

To the Senate:

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

appoint the Honorable GARY C. PETERS, a Senator from the State of Michigan, to perform the duties of the Chair.

PATTY MURRAY,
President pro tempore.

Mr. PETERS 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.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Morning business is closed.

LEGISLATIVE SESSION

PROVIDING FOR CONGRESSIONAL DISAPPROVAL UNDER CHAPTER 8 OF TITLE 5, UNITED STATES CODE, OF THE RULE SUBMITTED BY THE NATIONAL MARINE FISHERIES SERVICE RELATING TO ENDANGERED AND THREATENED WILDLIFE AND PLANTS; REGULATIONS FOR LISTING ENDANGERED AND THREATENED SPECIES AND DESIGNATING CRITICAL HABITAT

PROVIDING FOR CONGRESSIONAL DISAPPROVAL UNDER CHAPTER 8 OF TITLE 5, UNITED STATES CODE, OF THE RULE SUBMITTED BY THE UNITED STATES FISH AND WILDLIFE SERVICE RELATING TO ENDANGERED AND THREATENED WILDLIFE AND PLANTS; ENDANGERED SPECIES STATUS FOR NORTHERN LONG-EARED BAT

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will proceed to the en bloc con-

sideration of the following joint resolutions, which the clerk will report:

The senior assistant legislative clerk read as follows:

A joint resolution (S.J. Res. 23) providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the National Marine Fisheries Service relating to "Endangered and Threatened Wildlife and Plants; Regulations for Listing Endangered and Threatened Species and Designating Critical Habitat".

A joint resolution (S.J. Res. 24) providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the United States Fish and Wildlife Service relating to "Endangered and Threatened Wildlife and Plants; Endangered Species Status for Northern Long-Eared Bat".

RECOGNITION OF THE MAJORITY LEADER

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

DEBT CEILING

Mr. SCHUMER. Mr. President, with June 1 only 21 days away, the most important thing congressional leaders can do to protect the well-being of Americans is to say, loud and clear, default is off the table.

That is the assurance the President gave 2 days ago when he met with congressional leaders. It is the assurance Leader JEFFRIES and myself gave that day at the meeting, as well. Even Leader MCCONNELL said the United States will not default on the national debt.

Speaker MCCARTHY, however, continues on a path to drive the country toward disaster. Instead of taking default off the table, Speaker MCCARTHY is taking default hostage.

Let me say that again because that sums up what is happening right now.

Instead of taking default off the table, Speaker MCCARTHY is taking default hostage.

The strategy of the hard right remains "our way or the highway." Either Americans accept devastating

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



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cuts to veterans, law enforcement, and even cancer research, or the hard right will allow default—what a terrible choice.

And that is what makes this default fight uniquely dangerous: The hard right is dominant in the House, and they seem to be ready—seem to be perfectly willing—to let the United States default.

Speaker MCCARTHY realizes his hard-right agenda—as embodied in their “Default on America Act”—cannot win support from the American people on the merits. So he and the hard right are holding the country hostage to default.

And if anyone doubts that the hard right is in control, all they have to do is watch last night’s CNN town hall, where former President Donald Trump openly called on Republicans to “do a default” if they cannot enact their hard-right agenda.

Never mind that, under Donald Trump’s watch, Republicans agreed to avoid default three times without ever getting hung up about unrelated partisan priorities. And never mind that 25 percent—a quarter—of the national debt was actually accumulated while President Trump was in office.

He is openly calling on his party to destroy the economy if they can’t pass their radical agenda.

By now, of course, it is old news that Donald Trump is about as qualified to run the country as a broken brick, but the danger here is he holds enormous sway over Speaker MCCARTHY and the hard right.

If Donald Trump says that it is better for the United States to default than it is for Republicans to compromise, that, unfortunately, only makes default more likely.

Donald Trump’s demand for default would cause tens of millions of Americans to suffer.

This isn’t difficult: Can we all clearly and unmistakably take default off the table? Will Speaker MCCARTHY take default off the table? He is the only one of the five of us who met at the White House who has not answered that.

Speaker MCCARTHY, will you allow the hard right to keep pulling the strings and push our country off a cliff, or will you make it clear that, no matter what, we will preserve the full faith and credit of the United States?

Look, we recognize that Republicans have objections about certain policies, certain spending, certain investments. We do not agree with them, but these discussions are a normal part of the budget process that both sides have engaged in for a long time. This is too important for brinksmanship and reckless ultimatums.

White House staff, along with my office, the Speaker’s office, Leader MCCONNELL, and Leader JEFFRIES, will continue to meet in an attempt to find a constructive way forward on the budget, appropriations priorities.

If Speaker MCCARTHY is willing to state that, despite what Trump says,

default is off the table, there can be real progress on the budget. Obviously, as the Speaker of the House, MCCARTHY will have some real influence in that. But that progress should not and cannot be tied to default.

I hope Americans take a moment to listen to the dangerous things President Trump has said last night about default, because he exposed just how unfit MAGA Republicans are for governing and how serious they are about their threats.

(Ms. ROSEN assumed the Chair.)

MILITARY NOMINATIONS

Madam President, now, on military holds, I want to talk about the profane and dangerous things a colleague of ours recently said on the radio. For the past couple of months, hundreds of senior military officers and their families have had their lives unnecessarily put on hold because of a Senator from Alabama.

Senator TUBERVILLE’s actions are endangering our military readiness, provoking reaction not just from the current Secretary of Defense but from seven—seven—former Defense Secretaries from both parties.

And, earlier this week, new comments of his came to light where he not only doubled down on his obstruction but also, apparently, bemoaned the military’s efforts to root out White nationalism from our Armed Forces.

Let me read the exchange with Senator TUBERVILLE because it is shocking. During the interview, the Senator was asked:

Do you believe [the Defense Department] should allow White nationalists in the military?

The Senator’s response:

Well, they call them that. I call them Americans.

Can you believe that? Revolting—utterly revolting. Does Senator TUBERVILLE honestly believe that our military is stronger with White nationalists in its ranks? I cannot believe this needs to be said, but White nationalism has no place in our Armed Forces and no place in any corner of American society. Period. Full stop. End of story.

I urge Senator TUBERVILLE to think about the destructive spectacle he is creating in the Senate. His actions are dangerous. His words are gravely damaging, and his refusal to think about the consequences of his actions on our military personnel and families is a stain upon this Chamber.

Senators are called to a higher standard of conduct, but our colleague from Alabama is dragging all of us down. And for what? To push the hard right’s party line on banning freedom of choice.

Senator TUBERVILLE needs to do two things. He needs to come out and state clearly and unequivocally that White nationalism is un-American, and he needs to drop his destructive holds on hundreds of our senior military leaders. This farce is endangering our national security and putting the lives of

men and women who have served our country for decades in real trouble, and it needs to end.

BUSINESS BEFORE THE SENATE

Madam President, now on Senate business, it has been a very, very busy week on and off the Senate floor. There is so much going on in the country that it may have overshadowed the fact that it has been an extremely busy week and much is being accomplished this week.

On the floor, we confirmed more of President Biden’s appointees to important positions across the government. And today, we will vote to advance Bradley Garcia to serve as a circuit court judge for the DC Circuit, one of the most important Federal courts in the country, teeing up his nomination for Monday when the Senate returns.

Off the floor, our committees are hard at work holding hearings and advancing important nominees and legislation. The Commerce Committee yesterday moved the Railway Safety Act, sponsored by Senators BROWN and VANCE of Ohio, out of committee and with bipartisan support. I thank the Senators from Ohio and Senators CASEY around FETTERMAN from Pennsylvania and other cosponsors for their work on this bill after the derailment in East Palestine.

I look forward to working with them to bring it to the floor for a vote. Today, the HELP Committee is holding a hearing on our bipartisan cannabis legislation, the SAFE Banking Act. We made a lot of good bipartisan progress on SAFE Banking last Congress, and the work is continuing. And there is also a markup today in the HELP Committee on legislation for PBM reform, which could lead to lower costs of insulin for non-Medicare Americans.

It has been a very busy week in the Senate on very important issues that affect us all: rail safety, SAFE Banking, making growing and selling marijuana safe, and PBM reform, which can lead to reduction of insulin costs for non-Medicare people. We will keep moving ahead with our work to support the American people and reward the trust they placed in us.

ANNIVERSARY OF BUFFALO, NEW YORK, SHOOTING

Madam President, finally, on the shooting in Buffalo a year ago, this weekend, the hearts of every single American will be with the “City of Good Neighbors,” Buffalo, NY. At 2:30 in the afternoon on Saturday, May 14, of last year, in a predominantly Black neighborhood on Buffalo’s east side, 10 lives were cut short from the worst shooting in Buffalo history—10 beautiful Americans. We will never get them back. They were parents, they were sons and daughters, friends, security guards, a policeman—all taken away from us in just minutes.

I am going to read their names: Ruth Whitfield, Roberta Drury, Aaron Salter, Jr., Heyward Patterson, Pearl Young, Geraldine Talley, Celestine Chaney, “Kat” Massey, Margus Morrisson, Andre Mackneil.

God bless their memories.

I don't know what could possess someone to bring violence to a place like that. But I do know that the Buffalo shooting was a manifestation of the original sin of this Nation, the legacy of slavery and the centuries of racial hatred that continue to poison our society.

It is also one of the worst examples in recent memory of another terrible epidemic in this Nation, the epidemic of gun violence. We have made important progress in the area of gun violence. Last year, in the wake of what happened in Buffalo and Uvalde, the Senate came together in a way that it hadn't for decades, beating back the dark forces of the NRA and passing the first gun safety bill in more than a quarter century. Some of the friends and relatives of those who passed away in Buffalo were instrumental in importing us to pass this legislation, and I thank them for it, for lighting that candle.

But we have a long way to go and a lot of work to do before our job is done. Gun violence is a shameful blemish on this Nation. We cannot allow ourselves to tolerate it. Indifference on this subject has been a death sentence for too many Americans.

Finally, Madam President, today the Senate will meet for a special caucus to talk about the next steps on gun violence. While nobody pretends progress will come easily, we have a moral obligation to keep pushing, keep fighting, keep working to rid this Nation of gun violence.

May God bless Buffalo and bless all the families impacted by the tragedy 1 year ago.

I yield the floor.

RECOGNITION OF THE MINORITY LEADER

The PRESIDING OFFICER. The Republican leader is recognized.

BORDER SECURITY

Mr. McCONNELL. Madam President, the Biden administration's reckless policies have created chaos on our southern border, and further mistakes from the Democrats are taking things from very bad to even worse.

For more than 2 years now, President Biden and Secretary Mayorkas have proven they are either incapable, unwilling, or uninterested in defending and maintaining our borders. Illegal crossings at our southern border have exploded under this administration—2.38 million in fiscal year 2022 alone. And that is just the subset of people whom the authorities actually found and stopped. It doesn't count the ones who got away.

The vast majority of these crossers are single adults—not families, not children but unaccompanied grownups.

Customs and Border Protection stopped 67 known terrorist suspects at the southern border ports of entry last year alone, but they found 98 attempting to cross the border elsewhere—more than six times as many as the previous year. As of March, authorities had already seized nearly three times

as much fentanyl this fiscal year as they had by this time last year.

All of these terrible numbers have come with a stopgap pandemic policy called title 42 actually in place. Every month of the Biden Presidency, anywhere from 20 to 75 percent of the illegal crossers have been turned right around and expelled, rather than apprehended and processed in the typical way. But the Biden administration has failed so badly that even with this stopgap in place, our border facilities have still been overwhelmed and overrun.

Now, as the Democrats finally give up the COVID state of emergency, title 42 is going away. That wouldn't pose a crisis for an administration that was willing to get tough on its own and enforce existing immigration law, but Democrats don't seem to be willing to do that—just the opposite.

President Biden's team has designed a bizarre Rube Goldberg system that amounts to a special concierge service to help even more illegal immigrants come here more easily. It is a whole parallel system with processing centers in foreign countries—not to make people come in our front door but to help even more people surge in through the back door. Now I understand there is even an official U.S. Government smartphone app to help illegal immigrants along the journey—your taxpayer dollars hard at work. Our colleague, the senior Senator from Missouri, has correctly summarized the Democrats' plan as “Ticketmaster for illegal immigrants”—“Ticketmaster for illegal immigrants.” Remember, things are already at an unacceptable level before this new craziness.

According to one public report, the authorities are already considering—listen to this—“street releases of migrants [into] communities across [the] border if NGO shelters and CBP facilities do not have the capacity to hold them . . . releases of migrants at bus stops, gas stations, supermarkets, etc., in communities across the border.”

Now, this week, some of our Democratic colleagues are feigning great angst and indignation over title 42's demise. They claim to be outraged that President Biden doesn't have a better plan. But every Senator had a chance just last year to vote to keep funding title 42 measures. Senate Republicans gave our Democratic colleagues that opportunity, and every single Democrat voted in lockstep against it. Every Senate Democrat voted in unison to let title 42 lapse with no better solution in place. So the country reaps what Democrats sowed.

NATIONAL DEFENSE AUTHORIZATION ACT

Mr. President, on another matter, the National Defense Authorization Act is a must-pass piece of legislation, but Senate Democrats have developed a bad habit of letting our national security actually languish.

Last year, the 2023 NDAA spent 5 months in limbo. Even at the eleventh hour, the Democratic leader refused to

bring the Senate's own bill to the floor. It took an informal conference between our colleagues on the Armed Services Committee and their House counterparts just to get this must-pass bill over the finish line.

Our Democratic friends like to invoke America's competition with China whenever they are seeking to justify huge outlays of domestic spending, but they push the nuts and bolts of actually defending America to the back burner. Case in point: Chairman REED just announced the Armed Services Committee will wait an entire extra month before beginning consideration of this year's NDAA. You can bet China isn't waiting around and twiddling its thumbs, but apparently Leader SCHUMER's Senate will do just that.

What would the Democratic majority have us do instead? Our colleagues are making a push for a grab bag of left-of-center domestic priorities they call another China bill.

Let's remember the last so-called China bill that we just passed last year. The Commerce Secretary and other Biden administration officials told us with great alarm that reshoring microchip production was a hugely urgent national security priority. This was last year. Now, that is a genuine bipartisan concern, and many of us Republicans actually agreed. But since then, the administration's stated urgency has all but disappeared.

President Biden's approach to implementing the law has been atrocious—atrocious. They are violating congressional intent and trying to attach extra strings to the microchip money to end run liberal social policy through the private sector.

The Biden Commerce Department has tried to say that the semiconductor companies can't get grants unless they tilt their hiring to benefit Big Labor, unless they provide all kinds of free employment benefits to the satisfaction of Washington bureaucrats—you get the picture. It reminds me of a couple of months ago when Transportation Secretary Buttigieg asserted that one important problem with building American infrastructure is the racial and demographic composition of the construction crews. For goodness' sake.

So Washington Democrats have spent trillions of dollars—trillions—on a never-ending wish list of leftwing domestic priorities, heaping historic inflation on the American economy, but not a penny of their partisan bills built up our hard power.

If my colleagues were truly serious about competing with China, first of all, they would prioritize the NDAA, not let it languish, and second, Democrats would join Republicans in pushing for the strong, commonsense policies that will actually help us build and make things.

So let's prioritize real, robust permitting reform—the Capito-Barrasso bills. Let's green-light domestic mining for our own critical minerals and

reduce our dependence on Chinese supply chains. Let's unleash America's abundant domestic energy reserves. Let's combat China's rampant espionage and theft of high-tech research and intellectual property.

If our Democratic colleagues really want us to outcompete China, then let's put first things first and stop using this issue as a Trojan horse for unrelated liberal demands.

The PRESIDING OFFICER (Mr. WARNOCK). The Republican whip.

BORDER SECURITY

Mr. THUNE. Mr. President, at a press conference on Tuesday, President Biden was asked if the United States was ready for the surge of people expected to come across the border after title 42 COVID-19 restrictions are lifted. His answer?

It is going to be chaotic for a while.

It is going to be chaotic for a while.

Well, that, unfortunately, could describe the situation at the border during his entire Presidency. The Biden administration has been defined by chaos at the border for 2 long years and counting—2 years of recordbreaking numbers of individuals attempting to cross our southern border illegally; more than 5 million attempted illegal crossings in total, an average of 6,300-some individuals per day—6,300 individuals per day. To put that number in perspective, during the last administration, the average number of illegal crossings per day was approximately 1,800.

All of these numbers just refer to individuals who were actually apprehended. There have been well over 1 million known “got-aways” during the Biden administration—individuals the Border Patrol saw but was unable to apprehend. In fact, one in five border crossers is a “got-away,” meaning that huge numbers of people are entering our country illegally, without our knowing who they are or what their purpose is in coming here.

The fact that we have seen 80 individuals on the terrorist watch list attempt to enter our country illegally via the southern border since just October is a powerful reminder that not everyone trying to enter our country illegally is simply looking for a better life. And it is profoundly troubling that so many unknown individuals are evading the Border Patrol and making their way into our country. It is a problem that has been compounded as scores of Border Patrol agents have been pulled off the frontlines to provide humanitarian assistance.

So we have had 2 years—2 years—of chaos at our southern border, 2 years of chaos that has exacted a tremendous cost. Our border communities are overwhelmed. Our Border Patrol agents are overwhelmed. And the chaos at our border is unquestioningly facilitating illegal cross-border activity, including the smuggling of deadly drugs like fentanyl into our country.

We didn't get here by accident. President Biden hasn't just happened to

have presided over a recordbreaking influx of illegal immigration at the southern border. No, sir. The chaos we have been experiencing is a direct result of the President's policies.

From his campaign on, President Biden was focused on distancing himself from the immigration policies of his predecessor and satisfying the open borders caucus that makes up a huge part of today's Democratic Party.

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. His Department of Homeland Security issued guidelines pausing deportations except under certain conditions. And that was all on his first day.

Needless to say, the effect of all of this was to declare to the world that U.S. borders were effectively open, and the President's policies since that day have done little to correct that impression, which brings us to today.

Today, the Biden administration is ending the use of pandemic-era title 42 authorities, which have enabled U.S. Customs and Border Protection to quickly turn back at least some illegal immigrants at the border. Title 42 has played an essential role in preventing the crisis at our border from becoming a full-blown catastrophe, and with its end, the flood of illegal immigrants coming across our border is expected to become a torrent.

I mentioned that during the Biden administration, we have seen an average of 6,300 migrants a day attempting to illegally cross our southern border. Well, get this: The administration is expecting that number to possibly double once title 42 is lifted, to as many as 13,000 illegal crossings per day—13,000 per day. If border communities and the Border Patrol were overwhelmed before, it is difficult to even conceive how things will be for them now.

The Biden administration is busy putting eleventh hour policy changes in place in an attempt to stem the expected surge, but how much of it will be too little, too late remains to be seen.

The President's prediction that things at the border will be chaotic for a while does not exactly inspire confidence that the administration is on top of this situation nor did the NBC article yesterday morning noting that the Biden administration is preparing to release the migrants into the United States with “no way to track them”—“no way to track them”—as a way to deal with the overcrowding at the border.

We're already breaking and we haven't hit the starting line.

That is a quote from a Department of Homeland Security official in that story.

We're already breaking and we haven't hit the starting line.

So, as I said, the Biden administration is not exactly inspiring confidence, especially since the President continues to reject commonsense measures that could actually help keep numbers down, like reinstating the Migrant Protection Protocols, often referred to as “Remain in Mexico,” which will require illegal immigrants to stay in Mexico while their asylum cases are adjudicated.

We have already seen an early surge in anticipation of title 42 ending, with the Border Patrol's apprehending more than 11,000 individuals at our southern border on Tuesday. And I am deeply concerned about the border communities and the Border Patrol agents who will have to deal with what the lifting of title 42 brings—and not just about border communities because, while border communities have to deal with the greatest immediate challenges, the consequences of unchecked illegal immigration at our southern border are felt all over the country.

New York City has seen a flood of illegal immigrants as a result of President Biden's border crisis, and New York City Mayor Eric Adams recently stated that his city is “being destroyed by the migrant crisis.” It seems that the Biden border crisis is even too much for the sanctuary cities that helped stoke it.

Our current fentanyl crisis is also a good reminder that illegal activity at our southern border affects every State in the Nation. I have talked to sheriffs in South Dakota—about as far from our southern border as you can get—who are dealing with fentanyl that has been trafficked across the border from Mexico; and as I said earlier, that trafficking is undoubtedly being facilitated by the chaos at our southern border.

Mr. President, this has been a grim speech, but it is a grim situation. It has been 2 years of crisis at the southern border under the Biden administration, and we are well on our way to catastrophe. President Biden has the power to do something about this, but after 2 years of ineffective or, simply, absent leadership from the President, my hopes that he will take the steps necessary to secure our border aren't high. We will see what the coming days will bring.

I yield the floor.

The PRESIDING OFFICER. The Senator from Wyoming.

S.J. RES. 23

Ms. LUMMIS. Mr. President, later today, we will be voting on legislation I introduced with 20 of our colleagues, S.J. Res. 23. This resolution rescinds the Biden administration's 2022 rule that rolled back a commonsense and necessary definition of “habitat” under the Endangered Species Act from the previous administration.

When Congress passed the Endangered Species Act, it granted the Secretaries of the Interior and Commerce, through the Fish and Wildlife Service and the National Marine Fisheries Service, respectively, the authority to

designate areas as “critical habitat.” Section 7 of the Act prohibits the “destruction or adverse modification” of these critical habitat designations.

There is no doubt that habitat loss is a contributing factor to species’ declines, so protecting habitat that is necessary to the survival of species is appropriate. The problem that has arisen, however, is that these designations have, on occasion, been weaponized to the detriment of landowners, the American public, and the very species we are trying to protect.

Two-thirds of all endangered species are located on private lands. For these species to be recovered, private landowners must be part of the solution and not treated as the enemy. Unfortunately, through aggressive critical habitat designations, as well-intentioned as they might be, private landowners are penalized and harmed instead of incentivized to help with species recovery.

A recent study that examined more than 13,000 real estate transactions for land within or near critical habitat for two listed species in California found that a designation “resulted in a large and statistically significant decrease in land value,” specifically 48 percent for the red-legged frog and at least 78 percent for the Bay checkerspot butterfly.

This is true across the country. Let me tell you a story from Louisiana.

In 2001, the Fish and Wildlife Service listed the dusky gopher frog as an endangered species. After litigation by the Center for Biological Diversity, in 2010, the Service proposed to designate critical habitat for the species and included 1,544 acres on a Louisiana site owned by Weyerhaeuser Company and a group of family landowners. The Service included the site even though the frog was last seen there in 1965.

Additionally, the site would require substantial modification to support a sustainable population. According to the Service’s own report, designation of the site could cost the landowners nearly \$34 million in lost development value. Weyerhaeuser sued the Fish and Wildlife Service over the designation, arguing, among other things, that the site could not be critical habitat because the frog, which did not exist at the site, could not survive there without the site’s being transformed from a closed canopy timber plantation to an open canopy, longleaf pine forest. In other words, their land could not be critical habitat for the frog because it was not habitat at all.

In a unanimous 8 to 0 decision in 2018, the Supreme Court agreed. It said the ESA “does not authorize the Secretary to designate an area as critical habitat unless it is also habitat for the species.”

Now, the problem is that the term “habitat” itself is not defined within the Endangered Species Act. Prompted by that unanimous Weyerhaeuser Supreme Court case, the U.S. Fish and Wildlife Service finalized a rule in 2020

that defined the word “habitat” for the purposes of designating “critical habitat” under the ESA.

The definition is simple: Habitat is an area that “currently or periodically contains the resources and conditions necessary to support one or more life process of a species.”

It seems pretty reasonable.

In 2022, the Biden administration caved to radical groups that wanted to return to free-for-all designations and finalized a rule to rescind this very reasonable, commonsense definition.

So we are now operating under an ad hoc system that creates decreased property values and predatory legal challenges for American families and businesses. In fact, it incentivizes landowners to make sure that their land could never be habitat for threatened or endangered species.

With the Trump-era rule rescinded, there is no regulation to bind Federal Agencies in determining the habitat of an endangered species from which critical habitat can be designated. Without the certainty of what “habitat” actually means, the development of any type can be blocked, including necessary infrastructure projects that the majority of this body recently spent hundreds of billions of taxpayer dollars to support.

It is for this reason that a huge group of outside groups endorsed this resolution, including the American Road & Transportation Builders Association, the American Farm Bureau, the National Water Resources Association, the National Association of Counties, the Public Lands Council, the National Association of Home Builders, and many others.

In closing, the only way to recover endangered species is to enlist the help of private landowners in our efforts. Overly broad critical habitat designations do just the opposite. My friends across the aisle have argued these designations are necessary for species recovery. The facts simply don’t back this up. Among the 60 species still listed from the ESA because of recovery as of July 2020, 51 of them never even had critical habitat designations.

By lowering private landowner opposition to conservation efforts, which will happen if we pass this rule, our Nation can help recover threatened and endangered species while simultaneously supporting our private landowners and public land users in their worthy goals of providing food, energy, jobs, and homes necessary for the survival of our own species.

I urge my colleagues to vote yes in support of this resolution.

I yield the floor.

VOTE ON S.J. RES. 23

The PRESIDING OFFICER. Under the previous order, the joint resolutions are considered read a third time en bloc.

The joint resolutions were ordered to be engrossed for a third reading and were read the third time, en bloc.

The PRESIDING OFFICER. The joint resolution having been read the third

time, the question is, Shall the joint resolution pass?

Ms. ROSEN. Mr. President, 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 legislative clerk called the roll.

The result was announced—yeas 51, nays 49, as follows:

[Rollcall Vote No. 122 Leg.]

YEAS—51

Barrasso	Graham	Murkowski
Blackburn	Grassley	Paul
Boozman	Hagerty	Ricketts
Braun	Hawley	Risch
Britt	Hoeben	Romney
Budd	Hyde-Smith	Rounds
Capito	Johnson	Rubio
Cassidy	Kennedy	Schmitt
Collins	King	Scott (FL)
Cornyn	Lankford	Scott (SC)
Cotton	Lee	Sullivan
Cramer	Lummis	Thune
Crapo	Manchin	Tillis
Cruz	Marshall	Tuberville
Daines	McConnell	Vance
Ernst	Moran	Wicker
Fischer	Mullin	Young

NAYS—49

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

The joint resolution (S.J. Res. 23) was passed, as follows:

S.J. RES. 23

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That Congress disapproves the rule submitted by the National Marine Fisheries Service relating to “Endangered and Threatened Wildlife and Plants; Regulations for Listing Endangered and Threatened Species and Designating Critical Habitat” (87 Fed. Reg. 37757 (June 24, 2022)), and such rule shall have no force or effect.

(Mr. SCHATZ assumed the Chair.)

(Mr. MERKLEY assumed the Chair.)

(Mr. REED assumed the Chair.)

(Mr. HICKENLOOPER assumed the Chair.)

(Mr. LUJÁN assumed the Chair.)

(Mrs. SHAHEEN assumed the Chair.)

VOTE ON S.J. RES. 24

The PRESIDING OFFICER (Mr. KING). The joint resolution having been read the third time, the question is, Shall the joint resolution pass?

Mr. CARDIN. Mr. President, I ask for the yeas and nays.

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

There appears to be a sufficient second.

The clerk will call the roll.

The bill clerk called the roll.

The result was announced—yeas 51, nays 49, as follows:

[Rollcall Vote No. 123 Leg.]

YEAS—51

Barrasso	Graham	Murkowski
Blackburn	Grassley	Paul
Boozman	Hagerty	Ricketts
Braun	Hawley	Risch
Britt	Hoeven	Romney
Budd	Hyde-Smith	Rounds
Capito	Johnson	Rubio
Cassidy	Kennedy	Schmitt
Collins	Klobuchar	Scott (FL)
Cornyn	Lankford	Scott (SC)
Cotton	Lee	Sullivan
Cramer	Lummis	Thune
Crapo	Manchin	Tillis
Cruz	Marshall	Tuberville
Daines	McConnell	Vance
Ernst	Moran	Wicker
Fischer	Mullin	Young

NAYS—49

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

The joint resolution (S.J. Res. 24) was passed, as follows:

S.J. RES. 24

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That Congress disapproves the rule submitted by the United States Fish and Wildlife Service relating to “Endangered and Threatened Wildlife and Plants; Endangered Species Status for Northern Long-Eared Bat” (87 Fed. Reg. 73488 (November 30, 2022)), and such rule shall have no force or effect.

EXECUTIVE CALENDAR

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will proceed to executive session to resume consideration of the following nomination, which the clerk will report.

The legislative clerk read the nomination of Bradley N. Garcia, of Maryland, to be United States Circuit Judge for the District of Columbia Circuit.

RECESS SUBJECT TO THE CALL OF THE CHAIR

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate stands in recess subject to the call of the Chair.

Thereupon, the Senate, at 1:16 p.m., recessed subject to the call of the Chair and reassembled at 1:45 p.m. when called to order by the Acting President pro tempore.

EXECUTIVE CALENDAR—Continued

The ACTING PRESIDENT pro tempore. The Senator from Utah.

Mr. ROMNEY. Mr. President, I yield back all time.

CLOTURE MOTION

The ACTING PRESIDENT pro tempore. Pursuant to rule XXII, the Chair

lays before the Senate the pending cloture motion, which the clerk will state.

The 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. 4, Bradley N. Garcia, of Maryland, to be United States Circuit Judge for the District of Columbia Circuit.

Charles E. Schumer, Richard J. Durbin, Sheldon Whitehouse, Martin Heinrich, Tim Kaine, Tammy Baldwin, Ben Ray Lujan, Tammy Duckworth, John W. Hickenlooper, Amy Klobuchar, Jack Reed, Jeanne Shaheen, Benjamin L. Cardin, Edward J. Markey, Alex Padilla, Margaret Wood Hassan, Catherine Cortez Masto, Gary C. Peters.

The ACTING PRESIDENT pro tempore. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on the nomination of Bradley N. Garcia, of Maryland, to be United States Circuit Judge for the District of Columbia Circuit, shall be brought to a close?

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The bill clerk called the roll.

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

Further, if present and voting, the Senator from North Carolina (Mr. BUDD) would have voted “nay” and the Senator from Kansas (Mr. MARSHALL) would have voted “nay.”

The yeas and nays resulted—yeas 54, nays 41, as follows:

[Rollcall Vote No. 124 Ex.]

YEAS—54

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

NAYS—41

Barrasso	Grassley	Romney
Blackburn	Hagerty	Rounds
Boozman	Hawley	Rubio
Braun	Hyde-Smith	Schmitt
Britt	Johnson	Scott (FL)
Capito	Kennedy	Scott (SC)
Cassidy	Lankford	Sullivan
Cornyn	Lee	Thune
Cotton	Lummis	Tillis
Cramer	McConnell	Tuberville
Crapo	Mullin	Vance
Daines	Paul	Wicker
Ernst	Ricketts	Young
Fischer	Risch	

NOT VOTING—5

Budd	Hoeven	Moran
Cruz	Marshall	

The PRESIDING OFFICER (Mr. SCHATZ). On this vote, the yeas are 54, the nays are 41.

The motion is agreed to.

The PRESIDING OFFICER. The Senator from Texas.

IMMIGRATION AND CUSTOMS ENFORCEMENT

Mr. CORNYN. Mr. President, as the whole Nation knows by now, title 42, the COVID-19 public health laws used by the Border Patrol to expel people at the southern border, will expire at midnight tonight.

At our border communities, in the 1,200 miles of our border with Mexico and Texas, they are bracing for a tsunami of humanity. As we know, over the last couple of years, title 42 has been one of the tools in the Border Patrol's toolbox to prevent the Biden border crisis from becoming the Biden border catastrophe or calamity.

To give you a sense of the impact of title 42, which will go away tonight, since President Biden took office, U.S. Customs and Border Protection has logged more than 5 million illegal border crossings—5 million. Because of title 42, the United States hasn't been required to detain, identify, and process every single person who crossed the border illegally. In fact, nearly half of those 5 million were removed under title 42, a total of almost 2.4 million people.

Consider the countless stories we have heard over the last 2 years about overcrowded detention facilities. I have seen them myself. We have all seen them on television or in the print media. We have seen these shelters bursting at the seams. That was the case when Border Patrol was detaining only roughly half of the individuals who illegally crossed the southern border because they were able to use title 42.

Starting tomorrow, agents will have to apprehend every single person under DHS's—Department of Homeland Security's—traditional title 8 authority. The problem is that law enforcement doesn't have the space to hold those individuals, not even close.

Last spring, Secretary Mayorkas, the Secretary of Homeland Security, said, Customs and Border Protection detention facilities could hold approximately 18,000 people. That sounds like a large number, until you begin to look at the number of people who are crossing the border every day.

This week, we have already seen an average of about 10,000 border crossings a day. And he says we can detain 18,000. And you are getting 10,000 a day?

Well, once title 42 is lifted, that number will climb even higher. Detention facilities, which are already overcapacity, will become even more crowded. And once they are fully maxed out, the Biden administration will simply release people into the United States, using what they call parole.