

U.S. SENATE COMMITTEE ON FOREIGN RELATIONS
Business Meeting
Tuesday, March 29, 2022

BUSINESS MEETING

Tuesday, March 29, 2022

U.S. SENATE,
COMMITTEE ON FOREIGN RELATIONS,
WASHINGTON, DC.

The committee met, pursuant to notice, at 10:19 a.m., in Room S-116, The Capitol, Hon. Robert Menendez, chairman of the committee, presiding.

Present: Senators Menendez [presiding], Cardin, Shaheen, Coons, Murphy, Kaine, Markey, Merkley, Booker, Schatz, Van Hollen, Risch, Johnson, Romney, Portman, Paul, Cruz, Rounds, and Hagerty.

**OPENING STATEMENT OF HON. ROBERT MENENDEZ,
U.S. SENATOR FROM NEW JERSEY**

The Chairman: This business meeting of the Senate Foreign Relations Committee will come to order. Thank you for attending.

Today we are considering a handful of nominations, two legislative items, and one treaty, and I appreciate the work of the ranking member and his staff in the extensive work needed for this business meeting to get us to where we are today.

Turning first to nominations, I am pleased that we are considering four nominees today, but I am still concerned by the delays that high-caliber nominees are facing, including the months that it has taken to get votes for Deborah Lipstadt and Barbara Leaf. Our national security suffers every day that our colleagues

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continue to block nominees on the floor. I will take a minute to register my deep disappointment that we are not considering Dr. John Nkengasong today, nominated more than 5 months ago to serve as ambassador-at-large to lead our global HIV/AIDS work. He brings immense experience and expertise. At a time when a global pandemic has ravaged communities and overshadowed the fight on HIV/AIDS, it is critical that we confirm him immediately. I know the ranking member is committed to global health, but I am perplexed at the continued and unexplained delays on this particular nomination.

Turning next to legislation, we will vote on two pieces of legislation and one treaty: S. 3199, the Ethiopia Peace and Democracy Promotion Act of 2021. Today's agenda includes a critical piece of legislation on the conflict in Ethiopia. Ethiopia has seen horrific atrocities, including extrajudicial killings, gender-based violence, ethnic cleansing, and, I believe personally, genocide. Two weeks ago, Reuters reported on a video on social media showing men, some in Ethiopian military uniforms, burning civilians to death in the Western part of the country. I offered the Ethiopia Peace and Democracy Promotion Act, along with Senator Risch, to give additional tools to pressure both parties to end the conflict.

To his credit, President Biden responded to this crisis early in his tenure. He sent Senator Coons as his special representative to engage with the prime minister of Ethiopia. He appointed a special envoy for the Horn of Africa to bolster diplomatic

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efforts. The Administration has imposed visa restrictions and paused some assistance, and last September, the President issued an executive order creating a framework to sanction those prolonging the conflict in Ethiopia. And after months of negotiations, Ethiopia has lifted their state of emergency order. They have freed prominent opposition figures, thousands of Tigrayans, and hundreds of trapped American citizens can now safely return to the United States.

But for millions of Ethiopians, conditions have not changed. The government has largely stonewalled our peace initiatives, refusing to commit to a political solution to end the conflict. It has blocked humanitarian access and broken promises to secure the withdrawal of Eritrean troops. Last Thursday, Ethiopia declared an indefinite humanitarian truce, which I welcome. While a hopeful moment, I remain skeptical this will be anything more than another empty pronouncement. The government continues its humanitarian blockade of Tigray and has slated thousands detained in a state of emergency to be charged and prosecuted. I believe it is time for Congress to act.

I know that there are differing views on the utility of sanctions and other restrictions, but I firmly believe these tools can create leverage that will help push the diplomacy forward. At the same time, I am pleased that the manager's package we are voting on today incorporates the views and work of many senators on the committee. I look forward to working with all of you to do what we can to advance

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the Administration's diplomatic efforts to solve the conflict and ensure that we have a robust legislative option available if additional tools will be necessary. And I appreciate the advances made by Assistant Secretary Phee in her work. As a matter of fact, some of the changes in this legislation are specifically as a result of her insights, which we are incorporating.

And it is my hope that the legislation never has to be pushed on the floor. I hope that we will achieve a peaceful solution, and I recognize in pursuing the legislation, that there are not clean hands here on all sides. But that does not mean that we should act in abeyance of trying to move forward to send a message that the Senate is ready to act if the parties themselves cannot move forward.

Second, Russia's unprovoked and unlawful war over the past month demonstrates the critical importance of S. Res. 17 and the Senate's advice and consent on the NATO withdrawal, and the critical importance of the NATO alliance and the United States' role in it. Senate Joint Resolution 17, introduced by Senator Kaine, reiterates our unwavering commitment to NATO, and, consistent with the important role this body plays in treaty making, it ensures that no President can withdraw from NATO without the advice and consent of the Senate. I am pleased that we have a manager's amendment which makes technical changes to protect Senate equities, and I understand from some our colleagues that there is a suggestion we should look into the broader question of all treaties and whether or not

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the President should be limited in scope in terms of being able to withdraw from a treaty without the consent of the Senate, and the Senate has to consent -- advise and consent to a treaty. There are many who believe that; therefore, the Senate should also be part of the process to withdraw from a treaty. There are some who believe that should be given to the executive branch exclusively. That is a broader debate which I am happy to entertain at a future date.

Finally, I am pleased that we will be considering ratification of the tax treaty between the United States and the Republic of Chile. As only the third U.S. tax treaty with a Latin-American country, it will protect and grow U.S. foreign direct investment in Chile, and it would expand U.S. economic engagement across the region. It has broad support and twice has been reported out of this committee without objection. And there is a new president in Chile, a great opportunity to send a message that we want to engage in a direction that fosters open markets and free democratic institutions.

So with that, let me turn it over to the distinguished ranking member for his remarks.

**STATEMENT OF HON. JAMES E. RISCH,
U.S. SENATOR FROM IDAHO**

Senator Risch: Well, thank you very much, Mr. Chairman, and I concur with you that the appointment for the position for HIV/AIDS coordinator is really important. Regarding the nominee, I have said many times, and I will say it again,

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that there are members of this committee who submitted questions for the record, and I expect the nominee and the Department to provide fulsome, responsive answers.

His initial responses did not meet the threshold for responsiveness. In several cases, he provided one-word answers. I appreciate that he revised some of those answers to be more responsive after my staff sent many of them back. However, several offices have let my staff know they have additional follow-up questions. I would encourage the Department to ensure that nominees' answers are responsive the first time so we can get to avoid these kinds of delays. Again, I think this is an important nomination. I commit to the chairman to work every way I can to move forward, but we've got to have the information.

Regarding the time, I will say again, we are 17 days faster than when I was chairman of the committee. My poster child, David Schenker, was held up for over a year on a single document request, understanding that some people felt that nominations are not the same quality in this Administration as they were last time. But nonetheless, we are where we are, and members know a lot.

On today's agenda, first of all Ethiopia. Given the very real issues on the ground in Ethiopia and the problems State is having, this is really important legislation. I think everybody at this table recognizes that what is going on in the Horn of Africa is one of the most critical dust-ups that is going on around the world

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next to Yemen, and probably one of the worst humanitarian crises in the world.

While it may be true that in the months since the introduction of this bill, the conflict in Ethiopia has shifted, the core issues covered in this legislation remain the same.

This bill provides the tools to hold all parties to this conflict accountable for the many atrocities committed in the deadly humanitarian crisis. This legislation also focuses on the role of disinformation and foreign actors in this war, which have increased its lethality and persistence. The unilateral humanitarian ceasefire announced by the Government of Ethiopia late last week is a welcome signal. However, humanitarian access remains at a stalemate. Not all parties to the conflict have signed onto the ceasefire or agreed to come to the negotiating table, and the road to national reconciliation for Ethiopia is going to be long. Congress must send a strong message that we are still serious about accountability and resolving the conflict. A number of members on this committee are deeply engaged in this particular issue, and I commend them for that and hope we can all work together. Certainly this is not a partisan issue or struggle.

Regarding the NATO resolution, Senator Kaine's S.J. Res. 17 on NATO withdrawal, as I said during our last business meeting, is an important Article I versus Article II issue, and I look forward to working with Senator Kaine on this. This is the second time this resolution has been before the committee. It was voice

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voted out in 2019. Recent Russian aggression in Ukraine has only reaffirmed the importance of NATO. I strongly support where we are going here with this.

I also appreciate Senator Hagerty's amendment regarding JCPOA. What the Administration is contemplating right now with regard to sanctions relief and revocation of the designation of the IRGC as an FTO is bordering on insanity. This is exactly the kind of thing the Constitution contemplated Congress having a voice on. I support Senator Hagerty and his efforts in that regard. I really do not think we should mix the two, however, depending on where we go with this, I am not going to support it going in here. But I want Senator Hagerty and the world to know that he is really on the right path here.

On the Chile tax treaty, we are also considering a tax protocol with Chile. Tax treaties are a critical part of the U.S. tax landscape. They prevent double taxation for U.S. taxpayers, help eliminate tax certainty, and they are important instruments in fighting tax fraud. In addition, they strengthen the ability of U.S. businesses to explore new opportunities. This treaty has my full support.

Finally, we have four nominees on this agenda. I would like to renew my request from last week that we have roll call votes on Barbara Leaf and Deborah Lipstadt. As I mentioned last week, I will be opposing both of those two nominations. I did not support Ms. Leaf last year, and I have heard nothing new that would persuade me to change my vote. At the National Security Council, Ms. Leaf

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continues to execute the Biden Administration's flawed Middle East policy. My concern is that she double down on these failed policies in her new seat at the State Department.

On Ms. Lipstadt, I will say again, I think we can all agree the ambassador for antisemitism is an important issue. When I was chairman of the committee, I worked with Senator Rubio and others to ensure this position was codified into law. I supported it then. I support it now. I do not support Mrs. Lipstadt. I have real concerns about her judgment. Her prior comments and tweets about members of this committee are particularly egregious and unbecoming of a U.S. ambassador. I feel she is probably going to be confirmed. I hope that she will abandon the sophomoric efforts that she has engaged in over recent years and will rise to the level that is important for a U.S. ambassador, but I am going to be a "no" on her nomination.

Finally, I ask that members of the committee may be permitted to submit to the clerk any request to be recorded "no" any of the items on today's agenda that we don't have a roll call vote on. Thank you, Mr. Chair.

The Chairman: Without objection, that is fine.

Let me just make two comments and then we will move forward. My understanding is that on the nominee for the HIV/AIDS coordinator, that State has responded to all QFRs, that there are no pending follow-up questions that have been

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raised, so there is a disconnect between what they say they have done, which is everything being totally answered. And there are no follow ups, so we need to figure out where the disconnect is. And then secondly, we will have those, as you requested, the independent roll call votes on Lipstadt and Leaf.

I would just simply say, it cannot be serious to say that because a nominee tweeted something about whatever the subject, particularly members of this committee, that is an affront so significant that the nominee should not move forward, because in the last 2 years, we had numerous nominees who made rather appalling comments about members of this committee nominated by the Trump Administration, for which members on the Republican side voted to confirm them. So if that is not the standard, tell me something else. If you don't think the nominee is qualified for some reason that is different. But some of the statements, and I do not want to go through them, but some of the statements made about members of this committee on the Republican side by a Republican nominee were pretty appalling, but you voted for them to get them confirmed. So that is really somewhat vacuous in terms of being the standard, but everybody is entitled to change their views.

So let me start off with asking unanimous consent for en bloc for the other two nominees -- Maria Fabiana Jorge to be the United States alternate executive director of the Inter-American Development Bank, and Leopoldo Martinez Nucete to be the

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United States executive director of the Inter-American Development Bank for a term of 3 years.

Is there a motion to that effect?

Senator Cardin: So move.

Senator Cruz: Mr. Chairman?

The Chairman: So moved, and is there a second?

Senator Kaine: Second.

The Chairman: Second. Yes. Yes.

Senator Cruz: On the second nominee, I would like to be heard.

The Chairman: Of course. That was the next question. Does anyone want to be heard on these nominations? Senator Cruz.

Senator Cruz: So this is on Martinez Nucete --

The Chairman: Mm-hmm.

Senator Cruz: -- who I think is a nominee not a lot of folks have focused on, but I have to say as I have looked at his record, I have been concerned. Like Deborah Lipstadt, he has an intemperate Twitter record, to put it mildly. He has been a hard partisan on Twitter, actually attacking multiple members of this committee, and his record also demonstrates, in particular, an extreme and an unusual view and antipathy towards faith. For decades, it has been a core principle of development assistance that faith-based organizations are important partners, and, in many

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cases, critical partners in providing assistance and channeling financing all over the world.

Here is what the World Bank says about faith-based organizations: "Faith-based organizations are entities dedicated to specific religious identities, often including a social or moral component. The bank recognizes their distinct strategic value given their unique attributes, including the fact that more than 80 percent of the world's population claims religious affiliation. Faith-based organizations are found in every country and offer opportunities for partnership and advocacy in a broad range of key development issues." USAID says very similarly and so does the Inter-American Development Bank. All of those, their official statements describe faith-based organizations as really critical partners.

What is bizarre is Mr. Martinez Nucete does not agree with that, and the degree of his disagreement is unusual. So I asked him to what extent faith should be disentangled from development given the opportunities that surround communities of faith. Here was his answer: "There should be no entanglement between government and religion. That is a bedrock constitutional principle for us in America. I do not think any particular culture or religion is superior to others in terms of achieving socioeconomic development." That is an odd answer given the role of faith-based organizations in development.

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And I asked him more precisely to describe the role that faith plays in economic development as a constraint and as a contributing factor. Here was his answer: "Education and respect for human rights promoting social mobility and market economies is the key to development, not faith." That is a level of hostility to faith-based organizations that I think is inconsistent with a development role. And so I would urge members of this committee not to support this nomination.

The Chairman: Any other members seeking comments on either of these two nominees?

Senator Portman: Mr. Chairman --

The Chairman: I would just -- yes? Yes?

Senator Portman: I would like to be recorded as "no" actually for a different reason, which is his lack of a background in banking and international finance. He is a lawyer and politician, I am sure a good one, but he does not have the background that we need at the Inter-American Development Bank.

The Chairman: Okay.

Senator Romney: Mr. Chairman?

The Chairman: Yes?

Senator Romney: I will also be recorded as a "no" in that regard, in part because I heard about Mr. Nucete's concerns about the role of religion in economic development. I am not voting on the basis of his tweets. I must admit I find it hard

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to decide who to support based on tweets, so I am not going to be weighing tweets in my vote in that regard. But I will ask to be recorded as a "no."

Senator Risch: Mr. Chairman?

Voice: I would like to be a "no" also.

Senator Cruz: Mr. Chairman, I would just ask for a roll call vote.

The Chairman: When we get to a vote, we will get to that, but the question is does anybody have any comments on the nominee -- any of the two nominees.

[No response.]

The Chairman: Let me just then close on -- I think that having heard -- I did not see his statement, but having heard you read it, I think there is a difference between faith and a faith-based organizations. A faith-based organization can do an extraordinary job, and many do, in helping in development and humanitarian assistance and whatnot. It does not mean that the bedrock principle of -- keeping the separation between church and state, regardless of which faith the church represents, is a bedrock principle of the United States embedded in the Constitution.

So I do not take his statement -- that is, where I think you probably thought you were headed -- whether the weaving of faith in the pursuit of aid development is the case. As it relates to his own experience, he has decades of experience in the public and private sectors as well as academic. He has extensive experience advising Fortune 500 companies, private equity funds, international businesses, and non-

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governmental organizations. I think that is a pretty extensive background in that regard.

But with that, since there are several people who want to be recorded as a "no," I think it would be simpler just to hold a roll call vote.

On Maria Fabiana Jorge, which I have heard no one speak about, I will move on a voice vote.

All in favor will say aye.

[Chorus of ayes.]

The Chairman: All those opposed will say no.

[No response.]

Senator Risch: I would like to be recorded as a "no."

The Chairman: Okay. Senator Risch. I am sorry, who else?

Senator Hagerty: Hagerty.

The Chairman: Senator Hagerty. Who else? Senator Rounds. Senator Cruz.

Senator Cruz: Please.

The Chairman: Senator Johnson and Senator Paul. Okay. With that, the nomination is approved and sent to the Senate favorably reported.

So I think the easiest way to proceed here is now to proceed to a roll call vote on Leopoldo Martinez Nucete.

The clerk will call the roll.

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The Clerk: Senator Cardin?

Senator Cardin: Aye.

The Clerk: Senator Shaheen?

Senator Shaheen: Aye.

The Clerk: Mr. Coons?

Senator Coons: Aye.

The Clerk: Mr. Murphy?

Senator Murphy: Aye.

The Clerk: Mr. Kaine?

Senator Kaine: Aye.

The Clerk: Mr. Markey?

Senator Markey: Aye.

The Clerk: Mr. Merkley?

Senator Merkley: Aye.

The Clerk: Mr. Booker?

Senator Booker: Aye.

The Clerk: Mr. Schatz?

Senator Schatz: Aye.

The Clerk: Mr. Van Hollen?

Senator Van Hollen: Aye.

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The Clerk: Mr. Risch?

Senator Risch: No.

The Clerk: Mr. Rubio?

Senator Risch: No by proxy.

The Clerk: Mr. Johnson?

Senator Johnson: No.

The Clerk: Mr. Romney?

Senator Romney: No.

The Clerk: Mr. Portman?

Senator Portman: No.

The Clerk: Mr. Paul?

Senator Paul: No.

The Clerk: Mr. Young?

Senator Risch: No by proxy.

The Clerk: Mr. Barrasso?

Senator Risch: No by proxy.

The Clerk: Mr. Cruz?

Senator Cruz: No.

The Clerk: Mr. Rounds?

Senator Rounds: No.

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The Clerk: Mr. Hagerty?

Senator Hagerty: No.

The Clerk: Mr. Chairman?

The Chairman: Aye.

The clerk will report.

The Clerk: Mr. Chairman, the yeas are 11; the noes are 11.

The Chairman: The motion is tied. In accordance with Section 3 of Senate Resolution 27, I will transmit a notice of a tie vote to the Secretary of the Senate, thereby giving the majority and minority leader the authority to make a motion to discharge the nomination.

Okay. We will proceed to a vote on Deborah E. Lipstadt to be the special envoy to monitor and combat antisemitism with the rank of ambassador.

The clerk will call the roll.

Senator Johnson: -- Mr. Chairman, to speak to it.

The Chairman: I had asked previously if anybody wanted to speak to any of them. Go ahead. By all means.

Senator Johnson: So let me speak to why postings on social media in the case that it is not me is relevant. When Congress created this position, the special envoy to monitor and combat antisemitism -- by the way, it is a goal we all share in a completely nonpartisan manner. You know, we all are opposed to antisemitism. So

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when Congress created this position it required that the nominee, the person filling this post would be nonpartisan.

Unfortunately, this is a nominee that is anything but, and she has a history of her partisan postings to social media for all the world to see. I thought it was interesting when Majority Leader Schumer introduced her, he was talking about antisemitism and how awful it is in terms of the malicious poison of antisemitism. Well, I would argue that Dr. Lipstadt's postings on social media represent malicious poison. I think a vote for her basically acknowledges that you are okay with malicious was poison as long as it is directed at somebody that you do not agree with politically.

So I recommend all my colleagues to vote "no" on this nomination. This is not the right person for this diplomatic, nonpartisan posting.

The Chairman: Anyone else wishes to speak to this nominee?

[No response.]

The Chairman: Very briefly, Dr. Lipstadt has spent her entire life -- entire life -- fighting Holocaust denial, antisemitism, disinformation, considered by many to be the foremost expert on the issue. One thing we can and should be able to agree on is that we must call out anti-Semitic behavior and actions wherever and whenever we see them. As the Inter Jewish Muslim Alliance wrote, "Professor Lipstadt has acted without fear or favor in calling out Jew hatred from wherever place on the political

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spectrum and under whichever guise it may appear." That is what she has done regardless of party lines, regardless of titles, and so I think she's eminently qualified. I urge colleagues to support her.

If there is --

Senator Cruz: Mr. Chairman.

The Chairman: Senator Cruz.

Senator Cruz: Mr. Chairman, I will say, you know, I met with Deborah Lipstadt. I think she is a serious person and an intelligent person, and when it comes to antisemitism, I think antisemitism is an enormous evil in our society and the world. Senator Kaine and I joined together in authoring a resolution that passed the Senate unanimously condemning antisemitism when the House was not able to do so, and I think that was important.

I will tell you I was initially inclined to support this nomination, but I am troubled by her public advocacy. And, in particular, you know, Senator Romney pointed out tweets, and you are right, people can engage in public discourse. I do think there is a line that can be crossed, and in this instance, in particular, the tweet she sent about Senator Johnson where she described Senator Johnson, and her tweet says -- this is on March 14th -- "This is white supremacy/nationalism, pure and simple."

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I do not believe any senators on this committee are white supremacists or white nationalists, and there is a line that when you are making an accusation like that, that unless you can back it up, I think that undermines the effectiveness of this job when you are throwing around insults like that. –For me, that changed my vote from a "yes" to a "no" that she said this tweet about Senator Johnson.

Senator Cardin: Mr. Chairman.

The Chairman: Senator Cardin.

Senator Cardin: Well, first, let me say I really have appreciated the work of this committee, Democrats and Republicans, in fighting the spread of antisemitism. It has been strong and it has been bipartisan, and we very much appreciate that.

I am the special representative of the Organization for Security and Cooperation in Europe Parliamentary Assembly on Anti-Semitism, Racism, and Intolerance. I can tell you that Deborah Lipstadt is recognized as the leader in this country in fighting antisemitism. She has a global reputation. She has devoted her life to understanding the challenges of Holocaust denial and using that talent as a professor and in many roles to stop the spread of Holocaust denial and antisemitism. That is her career. Her reputation and credibility within the stakeholders who are fighting antisemitism in the United States and around the world is without question. She is the most qualified individual to be appointed to this position.

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I understand the sensitivity on matters that, Senator Cruz, you are referring. She handled that during the hearing, and I think the comments that were made were pretty clear about that. So I would hope that this committee would support her nomination and we could get her confirmed. I can tell you for the United States' leadership on this issue, it will not be understood, any delay in getting her confirmed. She is the right person at the right time in regards to this issue, and I urge my colleagues to support her nomination.

The Chairman: Any other members seeking recognition?

[No response.]

The Chairman: If not, the clerk will call the roll on Deborah Lipstadt.

The Clerk: Mr. Cardin?

Senator Cardin: Aye.

The Clerk: Mrs. Shaheen?

Senator Shaheen: Aye.

The Clerk: Mr. Coons?

Senator Coons: Aye.

The Clerk: Mr. Murphy?

Senator Murphy: Aye.

The Clerk: Mr. Kaine?

Senator Kaine: Aye.

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The Clerk: Mr. Markey?

Senator Markey: Aye.

The Clerk: Mr. Merkley?

Senator Merkley: Aye.

The Clerk: Mr. Booker?

Senator Booker: Aye.

The Clerk: Mr. Schatz?

Senator Schatz: Aye.

The Clerk: Mr. Van Hollen?

Senator Van Hollen: Aye.

The Clerk: Mr. Risch?

Senator Risch: No.

The Clerk: Mr. Rubio?

Senator Risch: Aye by proxy.

The Clerk: Mr. Johnson?

Senator Johnson: No.

The Clerk: Mr. Romney?

Senator Romney: Aye.

The Clerk: Mr. Portman?

Senator Portman: No.

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The Clerk: Mr. Paul?

Senator Paul: No.

The Clerk: Mr. Young?

Senator Risch: No by proxy.

The Clerk: Mr. Barrasso?

Senator Risch: No by proxy.

The Clerk: Mr. Cruz?

Senator Cruz: No.

The Clerk: Mr. Rounds?

Senator Rounds: No.

The Clerk: Mr. Hagerty?

Senator Hagerty: No.

The Clerk: Mr. Chairman?

The Chairman: Aye.

The clerk will report.

The Clerk: Mr. Chairman, the yeas are 13; the noes are 9.

The Chairman: And the nominee is favorably reported to the Senate.

Now we turn to Barbara Leaf to be Assistant Secretary of State -- and any member who wishes to speak on this nomination.

[No response.]

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The Chairman: Seeing --

Senator Cruz: Mr. Chairman?

The Chairman: Yes, Senator Cruz.

Senator Cruz: So, Mr. Chairman, this nomination, I think, is a very troubling nomination. This committee is very well familiar with the issues in the Middle East and, in particular, with Iran. Ms. Leaf has been responsible for much of the Biden Administration's policies, in particular, towards Iran. From the earliest days of the Administration, she has been the Senior Director for the Middle East, and if she is confirmed, she will be America's top diplomat in the Middle East.

In September, I asked her for written testimony to the committee on several of the most critical areas on Middle East policy, and her answers ranged from evasive to actively dishonest. I asked her about the State Department's written guidance concerning the Abraham Accords and refused to use those terms. She refused to answer those questions. I asked her about Egypt and, in particular, the State Department announcement they would temporarily withhold \$130 million in aid to Egypt over human rights concerns. They did so, demanding that Egypt drop charges against 16 unnamed individuals. They would not tell the American people who these 16 unnamed individuals were. I asked her who they were. In particular, for the ones that are not citizens, I asked if they are affiliated with "groups that promote Islamist ideologies, distribute anti-Semitic materials, or distribute political information." Ms.

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Leaf wrote back almost 1,000 words in response, not one word which answered the question about these 16 individuals in jail in Egypt that the Administration is conditioning \$130 million in aid to.

Now, it turns out that the names are in a congressional notification in the SCIF, so I have gone and read them in the SCIF. There is no reason for those names to be classified other than they are politically embarrassing. The Administration does not want the American people to see the names on that list. We just had a vote on an envoy on antisemitism. For the Administration to be actively fighting to release people who are potentially virulent anti-Semites is very disturbing, and for the Administration to refuse to acknowledge it, to try to do it secretly is even more disturbing.

But then there is Iran, and everyone knows what happened a couple weeks ago in the classified hearing on Iran. Many members of this committee were angry, and they were right to be angry. The Biden Administration has not been honest with us on this agreement. They said they would consult with Congress and shape the bill in coordination with us. They have not. They said they would bring home a stronger deal than the JCPOA. They have not. What they are prepared to present is dramatically weaker. At this point, everyone knows this, and to be honest, we knew this. It was public in February of last year.

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And I asked explicitly Ms. Leaf in writing about a so-called less-for-less agreement. Were they negotiating an agreement that was less than the JCPOA? And I am going to read the entire answer word for word -- it will not take long -- "There have been no such agreements -- deals or agreements, contemplated to reduce pressure on Iran." At the time she submitted that answer that was a flat-out lie. She knew it was a lie. Everyone involved in the process knew it was a lie because they were actively negotiating a less-for-less deal. And the reason, I presume, she lied to this committee in writing is that she and the Administration did not want to defend a deal that is markedly less than JCPOA.

If this committee is going to continue its critical role of foreign policy, we should expect nominees to answer reasonable questions. And, in particular, answering questions about what 16 prisoners in Egypt are you trying to release and what are you negotiating with Iran are questions right at the heart of this nominee's responsibility. And we are going to have a big battle over any deal as submitted under INARA. We all sat in briefings where the Administration said it would. We are now hearing more and more they do not want to do that either.

If you are concerned about congressional oversight over a deal with Iran, I think approving this nominee is a very serious mistake.

Senator Murphy: Mr. Chairman?

The Chairman: Senator Murphy.

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Senator Murphy: Thank you very much, Mr. Chairman. Not surprising, I do not share Senator Cruz's characterization of the status of the Iran talks, nor do I share his characterization of the Administration's dealings with this committee. But it is no secret that Republicans on this committee are not likely to support whatever deal is submitted if a deal is submitted to the Congress. The question is whether we are going to hold a mainstream nominee responsible for legitimate policy objections that members of this committee have with the Administration. I frankly do not love the Administration's policy on Egypt -- I have been very public with my disagreements -- but Barbara Leaf is as qualified a nominee as you get, right? She is a former ambassador in the region. She has served time all over the Middle East.

I just think it is not smart precedent for this committee to deny qualified applicants, exceptionally-qualified applicants like Barbara Leaf entry into leadership positions because of legitimate differences we have on the policy. So I do not think we can do better than Barbara Leaf, and I would hope the committee would support her today.

The Chairman: Any other comments on the nominee?

[No response.]

The Chairman: Let me just briefly say, first of all, on the question of the comments about the Abraham Accords, she was working at the National Security Council during all of this time where the Secretary of State and everyone who worked

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for him at the State Department has repeatedly referred to Abraham Accords as the "Abraham Accords." Matter of fact, the Secretary of State was just in the region holding a conference with all of the participants in the Abraham Accords directly. So I think that it does not hold much water.

With reference to the JCPOA, I may very well be on the same side as Senator Cruz when it is all over. We will see. I have not seen the agreement. Until I see an agreement, I cannot make the ultimate judgment of it. But if you want to say anything about anyone, Jake Sullivan, you know, Rob Malley, Secretary Blinken, they are the people leading the effort on the Iran agreement. It is not Barbara Leaf. And if she answered at a given time that -- going back in time that, no, there is nothing contemplated, less-or-less, then, at that point in time, that may very well be the case.

So this woman is eminently qualified, and we do not have somebody in the position, as we have not had. We do not have anybody to engage with that can deal with the very questions that the senator and others have, including myself. So I am going to support her, and I think we should move her nomination forward.

Senator Portman: Mr. Chairman?

The Chairman: Yes. Senator Portman.

Senator Portman: I voted for her by voice vote when she passed 7 years ago with many of colleagues, and then just in November, I voted for her. In this

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committee, I voted for her, and so I intend to support her again. I do share, Senator Cruz, many of your concerns about the broader policy discussions. I just do not think that she is the one who is responsible for some of those bad policy decisions. So as I supported her before, I support her now.

The Chairman: If there are no other members seeking recognition, the clerk will call the vote on Barbara Leaf to be the assistant secretary of state for Near Eastern Affairs.

The Clerk: Mr. Cardin?

Senator Cardin: Aye.

The Clerk: Mrs. Shaheen?

Senator Shaheen: Aye.

The Clerk: Mr. Coons?

Senator Coons: Aye.

The Clerk: Mr. Murphy?

Senator Murphy: Aye.

The Clerk: Mr. Kaine?

Senator Kaine: Aye.

The Clerk: Mr. Markey?

Senator Markey: Aye.

The Clerk: Mr. Merkley?

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Senator Merkley: Aye.

The Clerk: Mr. Booker?

Senator Booker: Aye.

The Clerk: Mr. Schatz?

Senator Schatz: Aye.

The Clerk: Mr. Van Hollen?

Senator Van Hollen: Aye.

The Clerk: Mr. Risch?

Senator Risch: No.

The Clerk: Mr. Rubio?

Senator Risch: No by proxy.

The Clerk: Mr. Johnson?

Senator Risch: No by proxy.

The Clerk: Mr. Romney?

Senator Romney: Aye.

The Clerk: Mr. Portman?

Senator Portman: Aye.

The Clerk: Mr. Paul?

Senator Paul: Aye.

The Clerk: Mr. Young?

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Senator Risch: No by proxy.

The Clerk: Mr. Barrasso?

Senator Risch: No by proxy.

The Clerk: Mr. Cruz?

Senator Cruz: No.

The Clerk: Mr. Rounds?

Senator Rounds: No.

The Clerk: Mr. Hagerty?

Senator Risch: No by proxy.

The Clerk: Mr. Chairman?

The Chairman: Aye.

The Clerk: Mr. Chairman, the yeas are 14; the noes are 8.

The Chairman: And the nominee is favorably reported to the Senate.

Okay. Let us now move to legislation. Without objection, we will now consider two bills and one treaty. And before I do that, let me welcome Senator Shaheen back to the committee.

Senator Risch: Hear, hear.

The Chairman: She is well and with us again.

Senator Shaheen: It is good to be back.

The Chairman: So thank you very much. Glad to have you back with us.

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Without objection, we will now consider S.J. Res. 17, a joint resolution requiring the advice and consent of the Senate or an act of Congress to suspend, terminate, or withdraw the United States from the North Atlantic Treaty. Before we go to conversation, is there a motion to adopt the manager's amendment?

Senator Cardin: So move.

The Chairman: So moved. Is there a second?

Senator Kaine: Second.

The Chairman: Okay. Are there any other amendments?

Senator Paul: I would like to speak in opposition to the bill whenever appropriate.

The Chairman: Yes. The rule of construction about other treaties, that there is -- this means no reference to the rule of construction on other treaties because we are not dealing with other treaties, is made clear so that we are not taking a position related to those other treaties, but we reserve the right to do so.

Okay. Without any other amendments, we will turn to debate.

Senator Kaine: Might I -- might I offer just --

The Chairman: Absolutely. I am sorry. Senator Kaine, the sponsor of the resolution.

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Senator Kaine: So on S.J. Res. 17, let me first thank co-sponsors Senators Rubio, Blumenthal, Collins, Coons, Duckworth, Durbin, Feinstein, Graham, King, Klobuchar, Merkley, Moran, Shaheen, Warner, Cruz, Cardin, and Romney.

This was a bill that was originally introduced in July of 2018. The sponsors at that time were Senators McCain, Cory Gardner, Jack Reed, and myself. This, I believe, was the last bill that Senator McCain introduced before he passed in August of 2018. Like a lot of good ideas, I think we all grappled with the reality that we introduce bills that are good ideas, but sometimes the timing just is not right. The bill did pass out of this committee on a voice vote in -- at the end of 2019, but it never saw floor action. The bill is currently in a very similar position to when it was originally introduced.

It does three things. It requires the President to seek the advice and consent of the Senate to terminate U.S. participation in the NATO treaty, or to receive permission via an act of Congress. It requires the President to notify the relevant committees in both houses within 48 hours if the President determines that termination of the treaty is necessary, and prohibits use of funds for such termination unless or until Congress approves. And finally, it authorizes the Senate legal counsel and general counsel of the House to represent the Congress should there be a dispute about the termination.

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I think bills happen even if they are good. We have all filed good bills. They just do not happen unless the time is right. The time is right for this bill. I do not think in my lifetime -- I am 64 -- there has been a moment where the power of NATO has been as dramatically demonstrated as in the last month, with the possible exception of NATO coming to the aid of the United States after the attack of 9/11 under the Article 5 joint self-defense obligation.

I have conversed about this bill with members of the Administration. You might think a Presidential administration would be wary about this. No, to the contrary, they were very excited about the bill because they think it could send a very strong bipartisan congressional message of support for NATO. And I have also talked, and I think many of you have as well, with many of the European ambassadors to the United States from NATO member countries, and they also view this as a very positive thing. So I think the time is finally right for this bill, and this is a bill, as the co-sponsorship demonstrates, that is very, very bipartisan. Sending a message of support for NATO would not be very good if it were just one side sending that message of support. The co-sponsorship list, I think, suggests that we can send a very clear message that Congress, both sides of the aisle, both houses, strongly support NATO in its 72nd year.

The thing I will say is this. This is a really interesting constitutional question because the Constitution is very clear about how we enter into treaties, but it is silent

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about how we get out of treaties. And that has led to a variety of actions over time -- actions taken by Presidents, actions taken by Congress. In one such case, and I mentioned it last week when, at Senator Paul's request, we held this over. I encouraged folks to go read a really interesting case of *Goldwater v. Carter*. In one case that went to the Supreme Court, this issue was raised. The Constitution is silent. In that instance, President Carter unilaterally withdrew the United States from Taiwan Defense Treaty. It is kind of interesting. We are talking so much about Taiwan now. This was in 1979.

A handful of members of Congress sued President Carter and said, hey, that was a treaty ratified by the Senate. You cannot back out of it without Senate action, and the Supreme Court in a 6-3 vote said that is a political question for Congress and the executive to work out. And they dismissed the appeal, and they noticed -- the 6-member majority noted very carefully in the opinion that, hey, Congress can act here. The President pulled out of the treaty. A handful of members sued to say the President could not do it, but the majority said, wait a minute, Congress could act. Congress could pass a statute. Congress could say they disapprove of the President's action. That did not happen.

The clear implication of that opinion is this is a matter where the executive and the legislature can work out the circumstances of when, or whether, or how a treaty can be exited. And so this is squarely within our right as Congress, particularly in

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the Senate that ratified this treaty in 1949, and I would strongly ask for my colleagues' support.

The Chairman: Senator Paul.

Senator Paul: Requiring two-thirds of the Senate for an act of Congress for any attempt to withdraw the U.S. from the NATO alliance goes against historical precedent. It also goes against the NATO treaty itself. The NATO treaty gives the President the power to enact. We gave the President two-thirds. The Congress gave the President the power to enact a treaty, which also includes in the words of the treaty, the ability to terminate the treaty.

But it is also most likely unconstitutional. This bill is an attempt to alter the Constitution by statute. The Constitution is clear that treaties are the sole purview of the Senate and the President. To allow the House to vote on changing treaties or how they are exited would clearly be a change in constitutional power. You are allowing the House to enter into something it has no role in whatsoever. It is very explicit. It may be silent on how we leave a treaty, but it is very explicit that the role in the area of treaties is the Senate and the President. The House has absolutely no role. If we give them a role in voting on it, that is, without question, going to be of dubious constitutionality.

As far as the historical precedent, beginning in 1793, even Washington said presidents are going to take this power, and he took it immediately to get out of an

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alliance we had in France, and it ended up avoiding a war and getting us in a middle of a war between France and Great Britain. The Constitution requires great deliberation before entering alliances but allows for quick withdrawal should international agreements prove potentially ruinous to a nation.

The power to enter treaties is found in Article II, which vests the President with the executive power. Unlike the legislative body, the President can act with unity and dispatch, precisely the qualities needed to negotiate a treaty or fight a war, so the founders grounded this authority in Article II. But just as we must pay careful to the text of the Constitution, so, too, we must take notice of its silence. As the Supreme Court pointed out in *United States v. Curtiss-Wright*, the powers of an external sovereignty did not depend upon the affirmative grants of the Constitution. In other words, the executive power to make international agreements would exist regardless of whether it was expressly mentioned in the Constitution.

What the Constitution does is carve away things from unlimited executive power. It says these certain powers, particularly the treaty, are not just the President's. The declaration of war is not just the President's. It is also the legislatures. So they define executive powers expansively, and then it is taken away from the President to say specific categories are Congress', but since the Constitution does not make expressly make this similar exception for treaty termination or

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withdrawal, it remains the executive power of the President. Such power is entirely consistent with the notion of a chief executive.

As the Supreme Court decided after years of debate, a president may remove executive officers without the approval of the Senate. Andrew Johnson was impeached for violating the Tenure in Office Act, but decades later, in the case of *Myers v. the United States*, the Supreme Court found that executive power includes, in the absence of express words, it does include power to unilaterally remove executive officers. In sum, the Supreme Court found that the power of removal is incident to the power of appointment, not to the power of advising and consenting to appointments, and that the executive is entrusted with the exclusive power of removal.

Similarly, legal scholars cite -- Saikrishna Prakash and Michael Ramsey argue that the President's executive power includes a general power over foreign affairs, and where the Constitution does not allocate specific foreign power to Congress or the Senate, those powers reside with the President. Moreover, most treaties, including NATO, explicitly allow for termination, so we are passing a law today that actually contravenes the NATO treaty. In the NATO treaty, two-thirds of Congress gave this power to the President to execute the treaty, which says he can terminate the treaty. You would actually be taking power away from the treaty. The argument could be made that terminating the treaty is really a president simply executing a portion of

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the treaty that two-thirds of the Senate have already affirmed. Think about it. Two-thirds of the Senate gave the President the power to exit the NATO treaty, and now a simple majority of the House and Senate are attempting to rescind that power.

Noting the constitutional problem is between changing something from a supermajority to a majority without amending the Constitution, it is hard to image the widespread support this bill has gotten, unless it is all about NATO and nothing about the Constitution.

Although it was not always the case, a unilateral Presidential treaty withdrawal is now a reasonably settled matter of historical practice. Almost all of the over 100 treaty terminations during the 20th and 21st centuries have been effectuated by presidents who acted alone. Subsequently, even the American Law Institute's restatement of foreign relations endorses the view that the President has the authority to withdraw from a treaty.

When Congress has attempted to constrain the President's authority to exercise their executive power to withdraw from treaties, Congress has typically been unable to mount a serious challenge. Recently, even when Congress sought to impose preconditions on Presidential withdrawal of certain treaties, the President simply ignored them. In the 2020 National Defense Authorization Act, Congress enacted notification requirements and extended the timelines necessary to withdraw from the Open Skies Treaty. When President Trump withdrew from the treaty, Congress took

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no action except for a few public statements of criticism. Furthermore, there is the question of whether a bicameral law, a law voted on by the House and Senate, constricts a constitutional power that is entrusted solely to the Senate and the President.

I do not know how a statute can change the treaty power. I do not know how you can change the ability to get in or out of treaties without doing a constitutional amendment. The House was given no role in treaty making or consenting. It would seem an attempt to modify this treaty power with the House on its face, would appear to be of dubious constitutionality.

Before we vote, I also ask you to think about what we invite when we presume to invade the executive powers of the presidency. Many members of this committee have argued for a unitary, all-powerful president with regard to war. While I disagree with the initiation of war being a president's prerogative, I have actually been one when the war starts and where they move troops around, you know, when they put 8,000 troops here and 5,000 troops there, there are a commander-in-chief prerogatives. This is an attempt to micromanage foreign policy.

This resolution argues for limiting the executive's power to engage in diplomacy. These views appear contradictory. On the one hand, we have people who believe in unlimited power to commit war, and they would want to restrain power to actually engage in diplomacy. This resolution would endorse the perpetuation of

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current American commitments, even if they become disastrous to American interests.

I think the vote will be on whether you like NATO or not. That is why it will overwhelmingly win. But I think we ought to also think about the Constitution, and if this power is exclusively given to us and not any of the power was ever meant to be a shared power. Thank you.

The Chairman: Thank you. Let me very briefly say that I think the question of -- no law can become more in the United States without the House and the Senate passing and the President signing it. That is limited role that is envisioned here to create a law that then gives the Senate, not the House, that is correct, Senator, okay? So it would just give the Senate the right to take a position on the question of withdrawing from this particular treaty. I think, therefore, the House will no longer be engaged in the question of a treaty other than having passed a law that gives the Senate the power to do that.

The core question is, why would I vote to allow a president to go into a treaty and then take the view that he or she could withdraw from that treaty without having any advice of consent of the Senate? If I thought it was important enough to commit the United States formally to a treaty and voted that way, and then that I could have, unilaterally, the President of the United States walk away from that treaty without any advice and consent of the Senate, to me it seems an undermining of the very

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essence of the constitutional right that was established in the advice and consent of a treaty.

Now, I appreciate the science of the senator's serious concerns about the separation of powers and whether this is an appropriate use. I personally fall on the side in this particular case that it is an appropriate use, and I will vote for the resolution. Is there anyone else seeking recognition?

Senator Risch: Mr. Chairman.

The Chairman: Senator Risch.

Senator Risch: First of all, one thing I agree with Senator Paul's analysis -- I do not fully agree with the legal analysis of it, but from a practical standpoint, this is a really important question, all right? It was so important that the founding fathers sat around a table like this and argued about it, and did not complete the argument. I guess maybe they hit 5:00 or something and it was time to go to the pub. I do not know, but it would have been real simple to say, well, this is how you get in, this is how you get it. They did not.

It would be really nice to have this debate outside of who is the President at the current time and outside of the issue of NATO that, right now, we all love and embrace and cannot wait to get on it. Nonetheless, it is in front of us. I am going to support this, but I think this really deserves a serious discussion in a more antiseptic atmosphere that is not clouded by the other issues.

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The Chairman: I appreciate that, Senator Risch, and I know Senator Paul made this argument to me, too, and I think that in a broader context, we should look at that question. And it will never be antiseptic because there will always be somebody sitting in the Office of the Presidency of the United States. Whether you like or do not like that person is another question. But to the extent that we can try to do it in a more broad -- without a topic-specific treaty, I think that may be a useful enterprise. Senator Paul.

Senator Paul: I wanted to make one final point on what the Court has said on this. Senator Kaine mentioned the *Goldwater* case -- when the President unilaterally got out of the Taiwan Defense Treaty. While the Supreme Court never really ruled on this, their ruling, I think, could arguably be said not to really be on point or on the subject, and it's not the case. They said it was a non-traditional question. But the D.C. Circuit Court did, and this is the highest court in the land that has ever written an opinion about this.

And what the D.C. Circuit Court said was, "The President's authority is at its zenith when the Senate has consented to a treaty that expressly provides the termination on 1 year's notice, and the President's action is giving the notice of termination." And this is a conundrum for those of you who really love the NATO treaty: you are actually seeking to abbreviate or constrict the treaty. You are seeking to take away by statute something that was passed by two-thirds of the Senate, and

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you are willing to simply be saying that two-thirds of the Senate, saying you can get -
- the President can execute this, and one of the things he can execute is this clause
on termination. The Senate gives it back to the President to execute the treaty. It is
in the treaty, so you are actually voting to overturn part of the NATO treaty today.

The Chairman: Any other debate?

Senator Risch: I do not want to extend this, but with all due respect to that
argument, we do not know because there has not been a definitive question of
whether the President can withdraw. If the treaty itself said he could, it would be
unconstitutional. So that part of the treaty would not be in accord with the -- with
the U.S. Constitution. So that argument, I do not think --

Senator Paul: If the treaty said what?

Senator Risch: If the treaty says the President can get out.

Senator Paul: Right.

Senator Risch: What if, although we have not -- it has not been decided yet,
but what if the actual law is that the President cannot withdraw? That provision of
the treaty would be unconstitutional. So anyway, we are arguing about how many
angels can dance on the head of a pin --

Senator Paul: That is what the D.C. Circuit Court ruled.

The Chairman: Hold on a minute. Let me turn to Senator Coons and then
Senator Romney.

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Senator Coons: I will just simply reinforce the point made by the chair and ranking member. Senator Paul raises some intriguing, engaging legal questions. I intend to ask the nominee to be the legal adviser to the State Department, who was a classmate of mine and is a scholar in this area, for her views on it and some other scholars. In the current context in which we find ourselves, I think we should proceed, and I look forward to my colleague, Senator Kaine, answering some of these questions. One of the great things about having a markup is we get to hear issues debated and discussed. I wish we had more markups. I have 10 bills that are all bipartisan and waiting for a markup. I think this is a great, frankly, opportunity for us to put things on the table and work through them, and I defer to my colleague to get this resolved. But, please, let us move forward.

The Chairman: Senator Romney.

Senator Romney: Mine was a question to Senator Risch. You said that the NATO treaty says the President may withdraw?

Senator Risch: I think that is what -- under certain circumstances.

Senator Romney: The treaty --

Senator Paul: Basically, when we pass a treaty, we pass it back off to the President who executes the treaty.

Senator Romney: I understand that argument.

Senator Paul: And that --

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Senator Romney: My point is the treaty does not say the President may withdraw. The treaty only says America may withdraw. It is up to the country to decide how that could be done.

Senator Paul: And the only person -- the only person that executes the treaty is the President. No one else actually --

Senator Romney: That is your argument.

The Chairman: Senator Romney has the floor.

Senator Romney: That is your argument and I understand that argument, and it may well be valid. But I just wanted to correct what I heard from Senator Risch, which is the treaty does not say that the President may withdraw from the treaty. It only says that America may withdraw -- any member may withdraw from the treaty. How they do so would conceivably be up to the respective countries. And you may be right that the President should have that right, but the treaty itself does not say that the President has that power.

The Chairman: Senator Cruz.

Senator Cruz: Listen, I think Senator Paul raises real and substantive concerns, and they are heartfelt on his part. I think the question of whether the President can withdraw from a duly-ratified treaty is a question on which there is constitutional ambiguity, and there are arguments that can be made on both sides. I also agree with the Supreme Court in the *Goldwater* case that that is ultimately a

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political question decided in the checks and balances and wrestling between the branches.

And when we talked last week about this resolution -- I am a co-sponsor of this resolution, and I am going to vote for it. There was some discussion last week at making it broader and saying the President cannot pull out of any treaties. I would oppose that. I think that would be far too broad. I support this because I think NATO is exceptionally important, and I think in the back and forth and the wrestling between Congress and the executive which the framers designed, this is an appropriate wrestling back to say this agreement we think is particularly important, and we are exercising our constitutional prerogatives.

But I am glad that this is limited to NATO and not sweeping in every treaty that has ever been adopted. There may well be a time when a President makes a determination and a reasonable determination to pull out of a treaty, and if we disagree with it then, we can press back and that is the give-and-take of the system.

The Chairman: Senator Paul.

Senator Paul: With regard to whether the NATO treaty gives the President the power to pull out of this, it does not say the word "president," but there is no one else who actually uses the treaty. Historically, presidents execute treaties. None of us can execute a treaty. The President, the executive branch, does, and that is what it has always been in every treaty over 250 years. So when it gives the right to

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terminate a treaty, it is giving a right to those who execute the treaty. That is the President. And so, yes, this law that you passed will contravene and contradict the actual NATO treaty because you are now limiting by majority vote something that was passed by two-thirds of the Senate.

The Chairman: All right. I think we have had a robust debate. I would just say that it could be considered that the President is acting and functioning on behalf of the United States of America when he does that, if the Senate were to agree with him. But I think we have had a robust debate. There is obviously, in the broader context, going to be future hearings.

First, a motion has been made and seconded to adopt the manager's package.

All those in favor will say aye.

[Chorus of ayes.]

The Chairman: Opposed?

Senator Paul: No.

The Chairman: The ayes have it, and the manager's package is adopted.

I will move to have a voice vote on -- Senator, do you seek a voice vote?

Senator Paul: I think we should have a roll call. We had a good debate. Let us have a recorded vote.

The Chairman: Okay. The clerk will call the roll on S.J. Res. 17, as amended.

The Clerk: Mr. Cardin?

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Senator Cardin: Aye.

The Clerk: Mrs. Shaheen?

Senator Shaheen: Aye.

The Clerk: Mr. Coons?

Senator Coons: Aye.

The Clerk: Mr. Murphy?

Senator Murphy: Aye.

The Clerk: Mr. Kaine?

Senator Kaine: Aye.

The Clerk: Mr. Markey?

Senator Markey: Aye.

The Clerk: Mr. Merkley?

Senator Merkley: Aye.

The Clerk: Mr. Booker?

The Chairman: Aye by proxy.

The Clerk: Mr. Schatz?

Senator Schatz: Aye.

The Clerk: Mr. Van Hollen?

Senator Van Hollen: Aye.

The Clerk: Mr. Risch?

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Senator Risch: Aye.

The Clerk: Mr. Rubio?

Senator Risch: Aye by proxy.

The Clerk: Mr. Johnson?

Senator Risch: Aye by proxy.

The Clerk: Mr. Romney?

Senator Romney: Aye.

The Clerk: Mr. Portman?

Senator Risch: Aye by proxy.

The Clerk: Mr. Paul?

Senator Paul: No.

The Clerk: Mr. Young?

Senator Risch: Aye by proxy.

The Clerk: Mr. Barrasso?

Senator Risch: Aye by proxy.

The Clerk: Mr. Cruz?

Senator Cruz: Aye.

The Clerk: Mr. Rounds?

Senator Rounds: Aye.

The Clerk: Mr. Hagerty?

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Senator Risch: Aye by proxy.

The Clerk: Mr. Chairman?

The Chairman: Aye.

The Clerk: Mr. Chairman, the yeas are 21; the noes are 1.

The Chairman: The majority of members present having voted in the affirmative, the yeas have it, and the legislation is agreed to and sent to the Senate.

All right. Finally, without objection, we will now consider S. 3199, the Ethiopia Peace and Democracy Promotion Act of 2021. Is there a motion to adopt the manager's package?

Senator Cardin: So move.

The Chairman: So moved. Is there a second?

Voice: Second.

The Chairman: All those in favor will say aye.

[Chorus of ayes.]

The Chairman: Opposed, no.

[No response.]

The Chairman: The yeas have it, and the manager's package is approved.

Are there any amendments?

Senator Rounds: Mr. Chairman.

The Chairman: Senator Rounds.

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Senator Rounds: I would call up Rounds 1, Degree 1.

The Chairman: Why does the senator not speak to the amendment?

Senator Rounds: Did you want me to speak to the amendment?

The Chairman: If you wish.

Senator Rounds: I would, Mr. Chairman.

The Chairman: Okay.

Senator Rounds: I was under the impression that with a voice vote, you would prefer to move on to the discussion of the bill.

The Chairman: Okay. Yes. I mean, if the senator does not wish to speak to it, I intend to accept it by voice vote.

Senator Merkley: Mr. Chairman, I would like to speak to it.

The Chairman: Yeah. Okay. So the senator is offering his amendment. It is my intention to take it by voice vote. Before that, we will entertain any debate on the amendment.

Senator Merkley: Thank you. I was actually looking forward to your presentation on it to better understand the context, and I do understand the role of the -- that Turkey is playing in this. I cannot help but reflect, though, on an experience I had early in life in living in an Ashanti Village in West Africa, and right over the hill was Capri Village, and the two tribes absolutely hated each other. Very amazingly different languages, just a small area to small area.

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In these tribal settings, when arms dealers are free to provide arms to all sides, it changes kind of traditional hatreds and fears into sometimes bloody, bloody conflicts. When I read the language-- that is why I wanted to hear your presentation on it, that this allows support for a weapon systems to go to any side. It disturbed me because so often these conflicts are amplified by arms dealers selling. I understand there is a clear context here with Turkey, but I feel like the waiver power of the President might be the appropriate way to address that rather than taking off the sanction completely. And just all around the world, we have seen -- but particularly in Africa, we have seen amplification of the arming of all sides, so that is my concern.

The Chairman: Senator Rounds, do you wish to --

Senator Rounds: Well, Mr. Chairman, just simply, with the adoption of the manager's package and with the adoption of this clarifying -- the issue regarding the -- our members, including NATO and other countries, would not be retrospectively identified as being subject to sanctions, I felt that this was something -- a clarification and we did not have a debate necessarily, with your acceptance of the -- or the motion on this with a voice vote. But if you would prefer, I would be happy to get into the substance of the amendment as well.

The Chairman: Well, we are happy to accept it. I think Senator Merkley was just looking for some information. I think the concern here, Senator Merkley, is that

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the retroactivity of some of the provisions would have involved NATO allies who are engaged with us, and for which maybe the sale of some of their equipment is desirable in some places, like in Ukraine, but maybe not elsewhere. And so the question was to leave that off the table for the moment. The Administration can still pursue its interests as it would choose to do so in this regard. And in the pursuit of the greater good that I think the bill does, I am willing to accept the senator's amendment. It does not mean we cannot --

Senator Merkley: Point of clarification. Would not the President, under the manager's package waivers, have the ability to provide those waivers from past provisions and apply them prospectively forward as needed in the judgment of the President, without creating a complete kind of sanction-free realm for providing arms to all sides?

The Chairman: I believe the answer to that question is, yes, that waiver could be used in that regard as the senator has described.

Senator Merkley: Listen, I do not mean to prolong the discussion, but I wanted to understand it better, and after we vote, I will ask to be recorded as "no."

The Chairman: All right. A voice vote is --

All those in favor will say aye.

[A chorus of ayes.]

The Chairman: All those opposed, say no.

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Senator Merkley: No.

The Chairman: The ayes have it, and the amendment is agreed to.

Voice: Mr. Chair.

The Chairman: Is there any other amendment? Senator Van Hollen.

Senator Van Hollen: Mr. Chairman, I would like to speak to the bill and --

Senator Merkley: I would like to be recorded as "no" on that vote, please.

The Chairman: Senator Merkley shall be recorded as "no."

Senator Van Hollen: Obviously what is happening in Ethiopia is a very serious situation. I am glad we are giving it this attention. This bill is also a pretty broad bill, and it states the obvious that the situation in Ethiopia is very complex, so we can spend all day going through the history that brought us to this point. There are no clean hands in this, and my biggest fear with the original bill was that we would have unintended consequences.

I think everybody here wants all sides to come to the peace table. Everybody here wants to hold everybody equally accountable. But the original bill, as I read it, applied very tough mandatory sanctions, some to everybody potentially, but some only apply to the Government of Ethiopia, so I did not think it met the standard of trying to hold everybody equally accountable. I want to thank Senator Rounds and Senator Murphy for joining me on the amendment to provide waiver authority to the

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sanctions provisions so that the President is not required to apply sanctions that can only be escaped through very tough, narrow criteria, and very rigid criteria.

I do want to point out to our colleagues the unintended consequences we often see from sanctions. So we have an AGOA provision that the Administration felt was triggered, so we now deny any kind of trade status for the products from Ethiopia. The result of that is punishing lots of Ethiopian farmers, but the day that happened, the Government of China said to the Continent of Africa, the United States is unreliable. We are going to purchase \$300 billion of products. So I think we need to be very careful as we go down this road.

I want to thank you, Mr. Chairman and Ranking Member, for accepting that amendment, and as a result, it can move forward. But let me just also mention something that we just changed last night, and this goes to the issue of, you know, just big bills before the committee. There was a big First Amendment problem here. There was a provision in this bill that essentially instructed the Government of the United States to monitor disinformation, including among American citizens, with respect to narratives that are favorable or unfavorable to either party and to report on those citizens. That is a big First Amendment problem, and it just goes, in my view, to the issue that we got to really scrutinize these bills carefully. There may be other parts of this bill that still suffer from that challenge. I am glad we removed that last

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night. If we applied the issue of disinformation standard of holding America accountable in this environment, we are all in big trouble.

Timing. Mr. Chairman, you know that the Assistant Secretary of State for African Affairs expressed concern about the timing here with respect to very sensitive negotiations. I am fine moving this bill forward, as you say, to the floor. I would, at this point, oppose trying to move forward on the floor given the very sensitive situation. I think it could be counterproductive, and she is a great diplomat and that was her assessment.

The thing I just ask and it actually goes to the amendment that Senator Rounds offered. Until last night, we were told by committee counsel that the sanctions in this bill applied retroactively to the beginning of the conduct, retroactively and potentially even before, which is why Senator Rounds has been concerned about the sanctions inadvertently even hitting the U.S., NATO partners, Israel, and others. My understanding, Mr. Chairman, and I would like to clarify this here, is that the sanctions in this bill apply only going forward from the date of enactment of the bill. That is what we have been told, and it is a very big difference in interpretation of the bill, which we learned about late last night.

The Chairman: Yes, the sanctions apply only prospectively. They cannot be imposed on acts that occurred prior to enactment.

Senator Van Hollen: Thank you.

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The Chairman: Is there any other remarks?

Senator Rounds: Mr. Chairman?

The Chairman: In a moment, I am going to acknowledge Senator Rounds -- when we want markups, which I am all for, we have to stay for the debate, and then we have to stay for votes. I need 12 members to be present in order to cast a vote. So when --

Senator Romney: So you called me back.

The Chairman: And I appreciate it very much.

Senator Romney: I have learned when you leave, leave early, number one.

[Laughter.]

Senator Romney: But number two --

The Chairman: I am just giving the broader notice to everybody for future purposes. We want markups, but we have to be able to stay.

Senator Romney: I keep asking Senator Cardin to leave. Is that --

[Laughter.]

The Chairman: Senator Rounds.

Senator Rounds: Thank you, Mr. Chairman.

The Chairman: It is the ultimate expression of bipartisanship.

[Laughter.]

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Senator Rounds: Well, first of all, let me just say thank you to Senator Van Hollen. He is the chair of the Subcommittee on Africa and Global Health Subcommittee. I am the ranking member. I do have serious concerns about S. 3199, the Ethiopia Peace and Democracy Promotion Act. I will vote "no" on this bill at this time. I have traveled to Ethiopia on multiple occasions and consider Prime Minister Abiy a friend of the United States. After 16 months of cruel civil war, it may be hard to remember Abiy's ascension to prime minister in Ethiopia in 2018, and the immediate steps he took to free political prisoners, welcome back refugees, and make peace with Eritrea. The latter action earned him the Nobel Peace Prize. I continue to believe he has the right vision for his country, one that is difficult to achieve given Ethiopia's chronic societal schisms, instability, and propensity for political violence. Under these trying circumstances, Prime Minister Abiy remains our best bet.

This bill was originally proposed in November of 2021. In November, the situation on the ground was considerably different than it is today with many observers even thinking that the TPLF might advance on Addis and topple Abiy's government. It was in November that Ethiopia declared a state of emergency and Prime Minister Abiy went to the front lines to lead the counter-offensive. On November 5th, the State Department was so concerned that the U.S. Embassy in Addis went on ordered departure. The facts on the ground have changed dramatically in Ethiopia, and the situation remains fluid.

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I understand the desire to do something and seek redress for its unfortunate victims, and I understand that the tragedy of this horrible civil war continues today. But I do not see the wisdom of injecting ourselves in the civil war at a delicate moment when parties to the conflict appear to be making some tentative, but real, steps towards peace. Just last Thursday, the Ethiopian Government announced a humanitarian truce, which the Tigray People's Liberation Front -- the TPLF -- is also observing. The State Department has also reported a renewed willingness by the Ethiopian Government to substantively engage with the United States on this issue. I have also heard that the government is in early stages of planning a national dialogue.

In light of this progress alone, I believe S. 3199 is ill-conceived and will jeopardize relations with Ethiopia. I just personally believe that this is not the right time for this bill. I think it sends a tough message to Ethiopia as China sits in the wings and watches. In closing, I believe that we should allow Prime Minister Abiy the space to continue this progress which is currently in place. So with that, I will vote "no" and would offer that I think it is appropriate that we hold this in committee until such time as we see changes in the modifications or changes in Ethiopia. Thank you, Mr. Chairman.

The Chairman: Thank you. Senator Coons.

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Senator Coons: Thank you, Chairman Menendez, Ranking Member Risch. I want to start by thanking Senator Van Hollen for his very constructive amendments and engagement on this. A year ago, I traveled to Ethiopia and met with Prime Minister Abiy, and I will agree with Senator Rounds that he is an engaging, charismatic, capable leader. Ethiopia is an ancient nation of 120 million people with very complex internal divisions of ethnicity, religion, and language, similar to the former Yugoslavia, a very complex federal republic with very complex dynamics.

After 2 days of intense conversation, he made a series of five promises to me, to our President, I would argue to us, and acted on some and failed to act on others, and ultimately, a year of brutal civil war has ensued. Rather than re-litigating any of that, let me just recognize two realities. One, Senator Rounds correctly assessed there have recently been some very encouraging developments in terms of a humanitarian ceasefire, release of prisoners, the TPLF agreeing to a ceasefire, and there being the possibility of several of those key promises around humanitarian relief and a national dialogue finally moving forward. As to the promise to have the Eritreans depart, I see no progress.

Given how rarely this committee meets in markup, I will support moving forward with this legislation today so that we have it with a full presidential waiver, so that in the event there is, again, one step forward and two steps back, and no real progress, and fighting resumes, the Administration and this Senate will have the

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opportunity to consider this legislation on the floor. On the other hand, if the recent developments continue to move forward, there will be no need for this legislation. We may be on the cusp of a balanced path forward for accountability for all parties -- TPLF, ENDF, Amhara, Eritreans, and others -- who have committed crimes against humanity. If the current progress holds, there may be a path forward on humanitarian relief, but, tragically, we have seen this moment several times in the last year, and I think we need to empower the Senate with the ability to vote on this on the floor if necessary. I pray it is not necessary and that we will finally see a resolution to this brutal civil war.

So with that, I intend to support the bill. I want to thank my colleagues for their very active and very productive engagement on this issue. I recognize Prime Minister Abiy has taken political risk in extending his hand, I recognize this is a very difficult conflict, but I think we should proceed and move forward with this bill today.

The Chairman: Thank you. Senator Merkley.

Senator Merkley: Thank you, Mr. Chairman. I really appreciate the hard work that our special envoy for the Horn of Africa has been doing -- Mr. Satterfield -- and who has remained in the region to try to push forward as well, as our Assistant Secretary, Molly Phee, and has rightly pointed out all of these steps of progress that have occurred over the past 2 months. She has also pointed out that the convoys providing food have failed month after month, and that now we are at this point. And

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I take this back from elsewhere that it is estimated 700 trucks per week are needed to reverse the famine conditions and none have progressed since December, and that there are multiple routes into the region; that the international groups that my team has spoken with do not feel like the effort to get food in Tigray has been fully, enthusiastically supported by the government. The government does point out tribal obstacles along the way. Those are real.

But my point here is that you have three-quarters of the 7.7 million people in the Tigray region who are on the brink of famine, and that it is important for us to act, to back up the notion that starving that region is unacceptable. There was supposed to today be another effort to provide a convoy. We will look and see how – whether that succeeds, but it is important to send the message that we are paying attention and really strongly encouraging the government to find a way to provide relief.

It cannot be done by air. We are told medical supplies have been provided by her, and that is one of the steps forward over the last 2 months as well as other pieces: looking at a state of emergency, release of some political prisoners. They are reducing the air operation. All those are very positive, and I do want to make sure that the Government of Ethiopia is aware that we are aware of those positive steps, but that it is extremely important that this not be the moment where those positive

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steps end, and that famine affecting men, women, and children in that region be allowed to continue.

The Chairman: Thank you. If there is no one else seeking recognition, I will just simply say I have said that the Administration has made important progress. We recognize that. I appreciate the incredible work that they are doing into that, but I do not share the view that marking up the legislation will impede the ongoing diplomatic efforts. In fact, President Abiy is aware of this legislation. The House Foreign Affairs Committee discharged its version of the bill in February and negotiations continued. It did not impede it. Maybe in some respect, it incentivizes it. The bill has been made, I think, far more flexible in terms of the issues that many members are concerned about. And even though the humanitarian ceasefire last week is very promising, I have seen breakthroughs like this in the past and not have ushered in a process forward. So I think being ready to act if that moment in time comes, from my perspective, I hope they achieve the success we all want to see and we never move the bill on the floor. But having that possibility, I think, is important.

With that, the clerk will call the roll on S. 3199, as amended. Is a voice vote acceptable here? Members can be recorded "no" if they wish.

Okay. All those in favor will say aye.

[Chorus of ayes.]

The Chairman: All those opposed will say no.

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[Chorus of ayes.]

The Chairman: No. Okay. There are two "noes" -- Senator Paul, Senator Rounds -- and the legislation will be reported to the Senate.

Finally, without objection, we will now consider the tax treaty on the agenda: the resolution of advice and consent to the ratification of the convention between the Government of the United States and the Government of the Republic of Chile. Are there any amendments to the resolution of advice and consent? Senator Paul.

Senator Paul: I have been following these tax treaties for a long time, and my biggest concern is that I think they codify or allow a transfer of information that is at a lower standard than what we provide for our own citizens in this country. So my amendment would be to the reservations, and it changes the standard. We are all familiar with probable cause as a standard. We also have reasonable suspicion. The standard in these treaties is that it should be relevant to the treaty, which I think means nothing. And so while if you are an American overseas and the Democrats abroad as well as the Republicans overseas agree that 9 million Americans are concerned about doing their banking, that "relevant to the treaty" means that the government can scoop up all of your information with no accusation and no individualization.

In our country, it does not take much to get banking records, but at least have the name, you know? They have to accuse you of something. What we are allowing

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through these tax treaties is huge bulk transfers of just pushing a button and every American's information is going to be transferred to the IRS, so I think it harms the due process protections. My amendment is to the reservation, so it does not require a renegotiation of the treaty. What it requires is, or what it would do is it would limit the American Government to either ask for or give that information, oversee that information on Americans, so it would affect the American side.

The treaty would still pass with the reservation, and if nobody complains, it becomes part of the treaty in about a year. I do not see why anybody else would complain simply because it is not affecting anything that Chile does. It is only affecting Americans' ability to act overseas. I think all Americans, whether they live here or abroad, do deserve the due process of the government not just snooping or sifting through your bank records without any kind of cause.

The Chairman: All right. I respect the senator's concern. I do not read it as he does, and I will oppose the amendment. Will you accept a voice vote or do you --

Senator Paul: I have been working on this for 10 years. We might as well all be on the record.

The Chairman: Okay. The clerk will call the roll.

The Clerk: Mr. Cardin?

Senator Cardin: No.

The Clerk: Mrs. Shaheen?

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Senator Shaheen: No.

The Clerk: Mr. Coons?

Senator Coons: No.

The Clerk: Mr. Murphy?

Senator Murphy: No.

The Clerk: Mr. Kaine?

The Chairman: No by proxy

The Clerk: Mr. Markey?

Voice: No by proxy.

The Chairman: Who is that for -- Markey? No by proxy.

The Clerk: Mr. Merkley?

Senator Merkley: No.

The Clerk: Mr. Booker?

Senator Booker: No.

The Clerk: Mr. Schatz?

Senator Schatz: No.

The Clerk: Mr. Van Hollen?

Senator Van Hollen: No.

The Clerk: Mr. Risch?

Senator Risch: No.

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The Clerk: Mr. Rubio?

Senator Risch: No by proxy.

The Clerk: Mr. Johnson?

Senator Risch: No by proxy.

The Clerk: Mr. Romney?

Senator Risch: No by proxy.

The Clerk: Mr. Portman?

Senator Portman: No.

The Clerk: Mr. Paul?

Senator Paul: Yes.

The Clerk: Mr. Young?

Senator Risch: No by proxy.

The Clerk: Mr. Barrasso?

Senator Risch: No by proxy.

The Clerk: Mr. Cruz?

Senator Risch: Aye by proxy.

The Clerk: Mr. Rounds?

Senator Rounds: No.

The Clerk: Mr. Hagerty?

Senator Risch: No by proxy.

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The Clerk: Mr. Chairman?

The Chairman: No.

The clerk will report.

The Clerk: Mr. Chairman, the yeas are 2; the noes are 20.

The Chairman: And the amendment is not agreed to.

Is there any other amendment to be offered?

[No response.]

The Chairman: If not, I would entertain a motion to approve the resolution of advice and consent.

Senator Cardin: So move.

The Chairman: So moved. Is there a second?

Voice: Second.

The Chairman: Second. All those in favor will say aye.

[A chorus of ayes.]

The Chairman: All those opposed will say no.

[A chorus of noes.]

The Chairman: The yeas have it, and a majority of the members present having voted in the affirmative, the yeas have it, and the resolution of advice and consent is agreed to.

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With that, I ask that the -- unanimous consent that staff be authorized to make technical and conforming changes.

Without objection, so ordered.

And this meeting is adjourned.

[Whereupon, at 11:48 a.m., the committee was adjourned.]