

116TH CONGRESS  
2D SESSION

# S. 4836

To prevent efforts of the Department of Justice to advocate courts that an individual exercising the authority of the head of an agency for more than a year, regardless of their title, is not in violation of the Federal Vacancies Reform Act of 1998.

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## IN THE SENATE OF THE UNITED STATES

OCTOBER 21 (legislative day, OCTOBER 19), 2020

Mr. TESTER (for himself, Mr. VAN HOLLEN, Mr. WYDEN, Ms. ROSEN, and Mr. MERKLEY) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To prevent efforts of the Department of Justice to advocate courts that an individual exercising the authority of the head of an agency for more than a year, regardless of their title, is not in violation of the Federal Vacancies Reform Act of 1998.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Public Lands Leader-  
5 ship Act of 2020”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

1           (1) William Perry Pendley is not an appropriate  
2 choice to lead, work in, or advise any public land  
3 management agency due to his record prior to his  
4 employment at the Bureau of Land Management,  
5 and his continuing work there;

6           (2) Mr. Pendley has a lengthy and public record  
7 supporting the transfer and privatization of public  
8 land, including the 245,000,000 acres and  
9 700,000,000 subsurface acres he oversaw as de facto  
10 Acting Director of the Bureau of Land Manage-  
11 ment;

12           (3) Mr. Pendley has pursued the development  
13 of natural resources on public lands at the expense  
14 of Tribal consultation, public comment, and reason-  
15 able oversight;

16           (4) Mr. Pendley has professionally advocated  
17 for oil and gas leases issued in the Badger-Two  
18 Medicine area, despite the leases being issued with-  
19 out consultation with the Blackfeet Nation, and de-  
20 spite the later decision of the Department of Interior  
21 to cancel the leases;

22           (5) Mr. Pendley has opposed and litigated pub-  
23 lic access to streams and rivers in Montana through  
24 his professional opposition to the Montana Stream  
25 Access Law;

1           (6) Mr. Pendley has expressed public support  
2 for armed insurrection against the agency he  
3 oversaw as de facto Acting Director of the Bureau  
4 of Land Management;

5           (7) Mr. Pendley has publicly opposed bedrock  
6 public lands laws that protect the land he oversaw  
7 as de facto Acting Director of the Bureau of Land  
8 Management;

9           (8) Mr. Pendley has made disparaging racial  
10 comments, indicating he does not intend to serve the  
11 entire citizenry equitably and without prejudice;

12           (9) Mr. Pendley has openly mocked the cultures  
13 and traditions of Tribal nations, demonstrating his  
14 inability to serve as a reliable Federal partner for  
15 Tribes and to uphold the trust and treaty respon-  
16 sibilities of the Federal Government;

17           (10) Mr. Pendley has reversed course on dec-  
18 ades of collaborative efforts by private landowners,  
19 ranchers, State and local governments, and other  
20 stakeholders to protect rangeland ecosystems and  
21 the greater sage grouse;

22           (11) Mr. Pendley has issued problematic Re-  
23 source Management Plans in Montana and other  
24 States that fly in the face of large-scale public oppo-

1 sition to prioritizing energy development over col-  
2 laborative conservation efforts and other activities;

3 (12) despite his problematic record, Mr.  
4 Pendley served in the top leadership role at the Bu-  
5 reau of Land Management for over a year, and con-  
6 tinues to be retained in a senior position;

7 (13) Mr. Pendley served as Deputy Director for  
8 Policy and Programs exercising the authority of the  
9 director of the Bureau of Land Management for 424  
10 days;

11 (14) Mr. Pendley was the de facto Acting Di-  
12 rector of the Bureau of Land Management during  
13 this period, regardless of his specific title;

14 (15) the extended role of Mr. Pendley at the  
15 Bureau of Land Management is a clear violation of  
16 sections 3345 through 3349d of title 5, United  
17 States Code (commonly known as the “Federal Va-  
18 cancies Reform Act of 1998”), as determined by the  
19 United States District Court for the District of  
20 Montana, and undermines the constitutional respon-  
21 sibility of the Senate to review nominations for agen-  
22 cy leadership;

23 (16) on September 25, 2020, the United States  
24 District Court for the District of Montana ruled that

1 the lengthy tenure of Mr. Pendley as de facto Acting  
2 Director was illegal;

3 (17) Mr. Pendley continues to operate in a sen-  
4 ior leadership role at the Bureau of Land Manage-  
5 ment;

6 (18) the Department of Interior continues to  
7 employ Mr. Pendley, and has publicly stated its in-  
8 tention to contest the court ruling; and

9 (19) the failure of the President to advance a  
10 formal nominee for the position of the Director of  
11 the Bureau of Land Management for congressional  
12 review and confirmation over the past 3½ years sig-  
13 nificantly undermines the constitutional responsi-  
14 bility of the Senate to provide advice and consent on  
15 all offices of the United States.

16 **SEC. 3. PROHIBITING DOJ EFFORTS TO ADVOCATE COURTS**  
17 **TO PROTECT THE ROLE OF WILLIAM**  
18 **PENDLEY AS DE FACTO ACTING DIRECTOR.**

19 The Department of Justice may not, in *Bullock v.*  
20 *United States Bureau of Land Management*, No. 4:20–  
21 *cv-00062-BMM*, 2020 WL 5746836 (D. Mont. Sept. 25,  
22 2020), advocate that an individual exercising the authority  
23 of the head of an agency, regardless of their title and serv-  
24 ing without congressional consent for over a year, is not  
25 in violation of sections 3345 through 3349d of title 5,

1 United States Code (commonly known as the “Federal Va-  
2 cancies Reform Act of 1998”).

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