

116TH CONGRESS  
2D SESSION

**S.** \_\_\_\_\_

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

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 \_\_\_\_\_

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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 3 1/2 years  
13 significantly 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”).