



# Mark Kelly

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## Freedom Index 118-1 | Score: 10%

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Our first look at the 118th Congress shows how every member of the House and Senate voted on key issues such as the bipartisan debt-limit deal, ending the Covid national emergency, and ESG.

### ESG Fiduciary Rule

**Constitutional Vote: Yes | Vote Cast: No**

H. J. Res. 30 would reverse the December 2022 Labor Department rule modifying standards under the Employee Retirement Income Security Act to allow retirement-plan fiduciaries to consider environmental, social, and governance (ESG) factors in making investment decisions and exercising shareholder rights, including when voting on shareholder resolutions and board nominations.

The Senate passed H. J. Res. 30 on March 1, 2023 by a vote of 50 to 46 (Roll Call 35). We have assigned pluses to the yeas because “woke” ESG policies, which corporations and governments are increasingly embracing, are aligned with the United Nations’ Agenda 2030. The UN’s Agenda 2030 is inherently contrary to the Constitution, and ESG promotes leftist policies including radical environmentalism, gun control, and the LGBT agenda. Plus, the U.S. Constitution does not authorize the federal government to regulate retirement plans.

### 2001 AUMF Repeal

**Constitutional Vote: Yes | Vote Cast: No**

During consideration of the bill (S. 316) to repeal the 1991 and 2002 authorizations for the use of military force against Iraq, Senator Rand Paul (R-Ky.) offered an amendment to repeal the 2001 Authorization for Use of Military Force. Enacted in the wake of the 9/11 terrorist attacks, the 2001 AUMF authorized the president to use military force against the terrorists involved, including those who aided and harbored them, and was used as the legal authority for U.S. military entry into Afghanistan. But that was more than 20 years ago. Since that time, the 2001 AUMF has been used by presidents as a blank check for military interventions in more than 20 countries, from Afghanistan to Libya, Somalia, and Yemen.

The Senate rejected Paul’s amendment on March 22, 2023 by a vote of 9 to 86 (Roll Call 65). We have assigned pluses to the yeas because the Constitution does not give the president a blank check to go to war without congressional approval.

## WHO Pandemic Treaty

During consideration of the bill to repeal the authorizations for the use of military force against Iraq (S. 316), Senator Ron Johnson (R-Wis.) introduced an amendment that would require any convention or agreement about pandemic prevention, preparedness, and response reached by either the World Health Assembly or the International Negotiating Body of the World Health Organization (WHO) to be deemed as “a treaty that is subject to the requirements of article II, section 2, clause 2 of the Constitution of the United States,” according to the text of the amendment.

The Senate rejected Johnson’s amendment on March 28, 2023 by a vote of 47 to 49 (Roll Call 71). We have assigned pluses to the yeas because in recent decades both the Executive Branch and Congress have regularly skirted the constitutional requirement in Article II, Section 2 of the U.S. Constitution that treaties have to be made with the “Advice and Consent of the Senate ... provided two thirds of the Senators present concur.” Instead of recognizing agreements as treaties, they unconstitutionally designate them as “executive agreements,” thereby enabling the president and Congress to avoid seeking the advice and consent of the Senate and pass them by a simple majority of the House and Senate, rather than the more rigorous threshold of two-thirds of the senators present.

**Constitutional Vote: Yes | Vote Cast: No**



Photo taken on Feb. 14, 2020, shows the headquarters of the World Health Organization in Geneva. (Kyodo via AP Images) ==Kyodo

## Federal Water Rule

H. J. Res. 27 would disapprove of a rule submitted by the Department of the Army, Corps of Engineers, Department of Defense, and Environmental Protection Agency on January 18, 2023 that again revises the definition of the “Waters of the United States.” During House debate on the bill, Representative Tracey Mann (R-Kan.) declared, “Agricultural producers have been forced to operate their businesses under three different definitions of water in the last 10 years, and this most recent rule removes long-standing bipartisan exemptions for common water features like ponds and streams found on family farms and other private property. With this vote, Congress has a golden opportunity to stand up not only for people who feed, fuel, and clothe us all, but also for all Americans whose businesses and private lives will be affected by this Big Government encroachment onto their property.”

The Senate passed H. J. Res. 27 on March 29, 2023 by a vote of 53 to 43 (Roll Call 79). We have assigned pluses to the yeas because both federal water regulations and the EPA are unconstitutional, and if the latest Biden administration rule were allowed to stand, activities such as farming and real estate development would be greatly hampered, since farmers and developers would be subject to increased unconstitutional permit requirements and fines concerning their treatment of almost any body of water, no matter how small.

**Constitutional Vote: Yes | Vote Cast: No**

## Terminate Covid-19 National Emergency

According to H. J. Res. 7, “the national [Covid-19] emergency declared by the finding of the President on March 13, 2020, in Proclamation 9994 ... is hereby terminated.”

The Senate passed H. J. Res. 7 on March 29, 2023 by a vote of 68 to 23 (Roll Call 80). We have assigned pluses to the yeas because it is unconstitutional to suspend the Constitution by declaring national public-health emergencies.

**Constitutional Vote: Yes | Vote Cast: Yes**

## Abortion

**Constitutional Vote: Yes | Vote Cast: No**

S. J. Res. 10 would reverse the September 2022 Department of Veterans Affairs rule allowing medical benefit coverage for abortion counseling and procedures. This rule overturned longstanding VA regulations excluding abortion from its coverage.

The Senate rejected S. J. Res. 10 on April 19, 2023 by a vote of 48 to 51 (Roll Call 90). We have assigned pluses to the yeas because taxpayers should not be required to subsidize abortion services. The Declaration of Independence affirms the right to life as the most fundamental, God-given, and inherent right, which is further protected by the Fifth and 14th Amendments of the U.S. Constitution.

## Federal Firefighter Grants

**Constitutional Vote: No | Vote Cast: Yes**

**Cost per Family: \$1**

S. 870 would authorize \$95 million annually through fiscal 2030 for the U.S. Fire Administration, increasing the agency's funding levels by 24 percent. Among other provisions, S. 870 would authorize \$3.4 million to create standards for assessing new firefighting technologies, reauthorize through fiscal 2030 two Federal Emergency Management Agency grant programs assisting local fire departments, and ban Chinese entities from receiving any of these funds.

The Senate passed S. 870 on April 20, 2023 by a vote of 95 to 2 (Roll Call 94). We have assigned pluses to the nays because Article I, Section 8 of the Constitution does not authorize any federal spending for firefighting. Furthermore, the strings that come attached to grants for local fire departments move the United States closer to federalizing firefighting.

## Equal Rights Amendment

**Constitutional Vote: No | Vote Cast: Yes**

This resolution (S. J. Res 4) purports that the Equal Rights Amendment "is valid to all intents and purposes as part of the Constitution, having been ratified by the legislatures of three-fourths of the several States."

The Senate did not vote directly on S. J. Res. 4, but on a motion to invoke cloture (and thus limit debate) so the bill could be voted on. The motion to invoke cloture was rejected on April 27, 2023 by a vote of 51 to 47 (Roll Call 99; a three-fifths majority of the entire Senate is required to invoke cloture). We have assigned pluses to the nays because the claim that the ERA is a "valid ... part of the Constitution" is a sham. When Congress submitted the ERA to the states for ratification in 1972, it set a seven-year ratification period that ended on March 22, 1979. During that period, 35 states ratified the ERA, but four of those states reconsidered and rescinded their ratifications. This left the ERA seven states short of the three-fourths majority (38 states) needed to become part of the Constitution. Prior to the deadline, when it became apparent the 38-state threshold would not be reached, Congress extended the deadline to June 30, 1982. This legally dubious extension caused a fifth state to rescind, and during the extension period no new states ratified. In recent years, three new states have ratified the ERA. But to claim that this makes the ERA part of the Constitution is to ignore the long-expired deadlines, as well as the five states that rescinded.

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## Spending Reductions

**Constitutional Vote: Yes | Vote Cast: No**

**Cost per Family: \$+6,860**

During consideration of the bipartisan debt-limit deal (H.R. 3746), Senator Rand Paul (R-Ky.) offered a substitute amendment to increase the debt limit by \$500 billion (rather than suspend the limit through January 1, 2025) and limit federal outlays to \$4.8 trillion for fiscal 2024, decreasing this limit annually by five percent through fiscal 2028, at \$3.9 trillion. Among other provisions, Paul’s amendment would require the Office of Management and Budget to report annually whether actual outlays exceeded these limits and, if so, require the president to issue a sequestration order to cut spending by the same amount as the excess spending.

The Senate rejected Paul’s amendment on June 1, 2023 by a vote of 21 to 75 (Roll Call 136). We have assigned pluses to the yeas because runaway, deficit-laden federal spending, most of which is unconstitutional, must be brought under control, and Paul’s proposal would have been a step in the right direction.