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Senate

The Senate met at 10 a.m. and was called to order by the President pro tempore (Mr. HATCH).

PRAYER

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

Let us pray.

Lord, You are great and highly to be praised. Make Yourself known in the hearts and minds of our lawmakers. May Your presence create in them a hunger and thirst for righteousness. Help them to see the opportunities that reside in their challenges, as thoughts of Your steadfast love sustain them throughout life's seasons.

May their lips speak of Your wisdom and the meditations of their hearts earn Your sacred approval. Lord, give them the wisdom to remember how fragile life is and that when we die we leave our possessions to others. When our Senators call on You in the day of trouble, deliver them with Your mighty hands.

And, Lord, touch Senator CLAIRE MCCASKILL with Your healing hands.

We pray in Your great Name. Amen.

PLEDGE OF ALLEGIANCE

The President pro tempore led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDING OFFICER (Mr. COTTON). The majority leader is recognized.

NOMINATION OF ROBERT CALIFF

Mr. MCCONNELL. Mr. President, at a time when the prescription drug opioid epidemic is tearing families and communities apart in our country, it is clear we need strong leadership at the FDA. This is an agency that can play a leading role in addressing the crisis through its drug-approval process, but it is also an agency that has been rightly criticized for not recognizing the severity of such a significant problem and for not taking greater action to address it.

Today we will consider the nomination of someone who I think can help lead the agency in a new direction. I recently met with Dr. Califf and raised my concerns and desire for the FDA to take a more assertive role in addressing this serious epidemic. He shared with me his proposed plan for dealing with the issue and for establishing a necessary cultural shift over the agency. I plan to support his nomination today, and I look forward to working with him.

That said, I have proudly led many efforts over the years to push the FDA to take a stronger approach when it comes to ending today's prescription opioid epidemic. I don't plan to let up now. The FDA should expect continuous, rigorous oversight in the way the agency addresses this epidemic in the future.

GUANTANAMO DETAINEES

Mr. MCCONNELL. Mr. President, we understand that in just a few minutes the President is set to make an announcement on the secure facility in Guantanamo. In light of that, colleagues should consider the following things we have heard in recent weeks.

General Dunford has spoken of the need for our military to take more aggressive action against the ISIL group that is operating inside Libya.

General Campbell has spoken of the need to retain a sizable enough force in Afghanistan to accomplish the dual missions of both conducting counterterrorism operations and training and advising the Afghan security forces.

Secretary of Defense Ash Carter has issued a budget request that seeks funding for the weapons systems and programs we will need to balance against the regional ambitions of China and Russia.

In other words, some of the most senior national security officials within this administration are already working to better position the next President for the national security challenges we will face in 2017 and beyond. Yet President Obama seems to remain captured on one matter by a campaign promise he made in 2008—his ill-considered crusade to close the secure detention facility at Guantanamo.

Today we received the descriptions of where the President would like to detain terrorists within the United States—though not any actual proposed locations—despite the fact that it would be illegal under current law to transfer foreign terrorists at Guantanamo into the United States. This isn't a case where the President can even try to justify the use of some pen-and-phone strategy by claiming Congress failed to act. To the contrary, Congress acted over and over again in a bipartisan way to reject the President's desire to transfer dangerous terrorists to communities in the United States. The President signed all these prohibitions and his Attorney General recently confirmed that it is illegal for the President to transfer any of these terrorists into the United States.

We will review President Obama's plan, but since it includes bringing dangerous terrorists to facilities in U.S. communities, he should know that the bipartisan will of Congress has already been expressed against that proposal.

FILLING THE SUPREME COURT VACANCY

Mr. MCCONNELL. Mr. President, the signs of the season are all around us. Volunteers are knocking on doors,

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

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caucusers are caucusing, voters are voting, and countless ballots have been cast already in places as diverse as Council Bluffs, Nashua, and Myrtle Beach. Thousands more Nevadans are making their voices heard today, and Americans in over a dozen more States will have an opportunity to do the same next week.

It is campaign season. We are right in the middle of it, and one of the most important issues now is this: Who will Americans trust to nominate the next Supreme Court justice? The Presidential candidates are already debating the issue on stage. Americans are already discussing the issue among themselves, and voters are already casting ballots—in the case of the Democratic leader's constituents on this very day—with this issue very much in mind.

One might say this is an almost unprecedented moment in the history of our country. It has been more than 80 years since a Supreme Court vacancy arose and was filled in a Presidential election year, and that was when the Senate majority and the President were from the same political party. It has been 80 years.

Since we have divided government today, it means we have to look back almost 130 years to the last time a nominee was confirmed in similar circumstances. That was back when politicians such as mugwumps were debating policy like free silver and a guy named Grover ran the country. Think about that.

As Senators, it leaves us with a choice. Will we allow the people to continue deciding who will nominate the next Justice or will we empower a lameduck President to make that decision on his way out the door instead?

The question of who decides has been contemplated by many, including our friends on the other side of the aisle. We already know the incoming Democratic leader's view. The senior Senator from New York didn't even wait until the final year of President George W. Bush's term to declare that the Senate "should reverse the presumption of confirmation" and "not confirm a Supreme Court nominee except in extraordinary circumstances."

We also know how the current Democratic leader feels about judicial nominees from a President of the other party. This is what he said:

> "The Senate is not a rubberstamp for the executive branch," he said. "Nowhere in [the Constitution] does it say the Senate has a duty to give presidential nominees a vote. It says appointments shall be made with the advice and consent of the Senate. That's very different than saying every nominee receives a vote."

What about the views of the top officer of this body, the President of the Senate? JOE BIDEN was a Senator for many decades. He was a loyal Democrat. He developed enduring friendships in both parties, and before becoming Vice President, he served here as chairman of the Judiciary Committee. Let's consider what he said in circumstances similar to where we find ourselves today. It was an election year with campaigns already underway, a President and a Senate majority from different political parties, just as we have today. This is what appeared on page A25 of the Washington Post:

> Sen. Joseph R. Biden Jr. (D-Del.), chairman of the Judiciary Committee, has urged President Bush not to fill any vacancy that might open up on the Supreme Court until after the November election. Warning that any election-year nominee "would become a victim" of a "power struggle" over control of the Supreme Court, Biden said he would also urge the Senate not to hold hearings on a nomination if Bush decided to name someone.

The article continued, quoting then-Senator BIDEN:

> "If someone steps down, I would highly recommend the president not name someone, not send a name up," Biden said. "If he [Bush] did send someone up, I would ask the Senate to seriously consider not having a hearing on that nominee."

And then, this:

> "Can you imagine dropping a nominee, after the three or four or five decisions that are about to [be] made by the Supreme Court, into that fight, into that cauldron in the middle of a presidential year?" Biden went on. "I believe there would be no bounds of propriety that would be honored by either side. . . . The environment within which such a hearing would be held would be so supercharged and so prone to be able to be distorted."
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> "Whomever the nominee was, good, bad or indifferent," he added, "would become a victim."

As the current chairman of the Judiciary Committee, Senator GRASSLEY, pointed out yesterday, BIDEN went even further on the Senate floor. He said that "[it does not] matter how good a person is nominated by the President" because it was the principle of the matter, not the person, that truly mattered.

BIDEN cautioned that "Some of our nation's most bitter and heated confirmation fights have come in presidential election years" but also reminded colleagues of several instances when Presidents exercised restraint and withheld from making a nomination until after the election.

One of them was Abraham Lincoln. It offers an example others may choose to consider.

President Obama, like Lincoln, once served in the Illinois legislature. It is a place he returned to just the other day to talk about healing the divide in our country. He said:

> It's been noted often by pundits that the tone of our politics hasn't gotten better since I was inaugurated. In fact it's gotten worse. . . . One of my few regrets is my inability to reduce the polarization and meanness in our politics.

Well, this is his moment. He has every right to nominate someone, even if doing so will inevitably plunge our Nation into another bitter and unavoidable struggle. That certainly is his right. Even if he never expects that nominee to be actually confirmed but rather to wield as an election cudgel, he certainly has the right to do that. But he also has the right to make a different choice. He could let the people decide and make this an actual legacy-building moment, rather than just another campaign road show.

Whatever he decides, his own Vice President and others remind us of an essential point. Presidents have a right to nominate just as the Senate has its constitutional right to provide or withhold consent. In this case, the Senate will withhold it. The Senate will appropriately revisit the matter after the American people finish making in November the decision they have already started making today.

For now, I would ask colleagues to consider once more the words of Vice President BIDEN. He said:

> Some will criticize such a decision and say it was nothing more than an attempt to save the seat on the Court in the hopes that a . . . [member of my party] will be permitted to fill it, but that would not be our intention, Mr. President, if that were the course to choose in the Senate to not consider holding hearings until after the election. Instead, it would be our pragmatic conclusion that once the political season is underway, and it is, action on a Supreme Court nomination must be put off until after the election campaign is over.

That is Vice President BIDEN when he was chairman of the Judiciary Committee in a Presidential election year. Fair to the nominee, essential to the process, a pragmatic conclusion—the words of President Obama's own No. 2. What else needs to be said?

RECOGNITION OF THE MINORITY LEADER

The PRESIDING OFFICER. The Democratic leader is recognized.

WISHING WELL SENATOR CLAIRE MCCASKILL

Mr. REID. Mr. President, on behalf of the entire Senate, we acknowledge the prayer of the Chaplain today regarding CLAIRE MCCASKILL. CLAIRE MCCASKILL, as is known now, has breast cancer. She feels comfortable with the diagnosis. She is in a place where they are rendering great care in St. Louis, in the State of Missouri, so we are hopeful and very confident she is going to be just fine. But our thoughts are with her, recognizing the number of people in the Senate who have been stricken with cancer of one kind or another.

Without belaboring the point, breast cancer is personally very devastating not only to the patient, of course, but to the family who is doing everything they can in a compassionate way to support their loved one. We know Joe, her husband, is terribly concerned, but I sent a message to him that the treatment of breast cancer is so much better than it was just a few years ago and that we believe CLAIRE will be OK, and we certainly hope that is the case.