

I predicted then that we would see many on the left “[try] to paint whom-ever is actually nominated in apocalyptic terms.” It “doesn’t matter who this Republican President nominates,” I said then. It “doesn’t matter who any Republican President nominates, really,” I continued. No matter the nominee, I said back before we had the nominee, “we can expect to hear a lot of end-times rhetoric from the left . . . [and] [i]n fact, we already have.”

I was alluding then to the fact that, sight unseen, we had already begun hearing from those on the far left who vowed to oppose anyone—anyone the President nominated. The Democratic leader even joined in, saying he would oppose anyone from the President’s list of candidates and would “fight it tooth-and-nail, as long as we have to” in order to keep Justice Scalia’s seat open, even for the entirety of the President’s term.

Remember, that was before Judge Gorsuch was even selected, before we knew his credentials, before we had heard from the current and former colleagues of his, before we had examined his judicial record, and well before his hearing before the Judiciary Committee.

Our friends across the aisle made it clear then that their opposition to this nominee would have nothing to do with the nominee himself. In fact, I said we could expect to hear a number of convoluted excuses as to why they wouldn’t support the President’s yet-to-be named nominee—excuses that would amount to little more than their dissatisfaction with the outcome of the election.

Sure enough, that is just what we have seen over the past few weeks. They are opposing this well-qualified nominee despite his impressive credentials, bipartisan support, and excellent testimony before the committee.

Judge Neil Gorsuch is such an outstanding candidate, so noncontroversial, so well-esteemed by people across the political spectrum that Democrats have been forced to talk about pretty much anything: President Trump, think tanks, you name it—anything but the nominee himself.

Yesterday’s comments by the Democratic leader are a good example. He gave a lengthy speech about why he wouldn’t support Judge Gorsuch, but when you boil it down, his remarks had little to do with Judge Gorsuch at all.

Essentially, he concluded that because Judge Gorsuch had earned the praise of legal groups like the Federalist Society, Democrats should not support him. By the way, all current sitting Justices have participated in events with this same organization. Let me say that again: All current sitting Supreme Court Justices have participated in Federalist Society activities. That includes Justices who were nominated by Democratic Presidents, including President Clinton and President Obama.

So, yes, Judge Gorsuch has received high praise from a number of conserv-

atives—he certainly has—just as he has earned the support of centrists and leftists as well.

As I have pointed out on several occasions, many long-time Democrats you might not expect have even complimented Judge Gorsuch—people like President Obama’s former Acting Solicitor General Neal Katyal, President Obama’s legal mentor, Professor Laurence Tribe, President Carter’s district court appointee, Judge John Kane, President Clinton’s appointee to the Tenth Circuit and former chief judge of that court, Judge Robert Henry, and liberal Harvard Law Professor Noah Feldman, and so many more.

Judge Gorsuch has such a proven record of judicial independence and impartiality that people from the left to the right and everywhere in between have voiced their confidence in his fitness to serve on the High Court. That would explain why the American Bar Association—which, according to the Democratic leader and former Democratic Judiciary chairman, is the “gold standard” for evaluating judges—gave Gorsuch its highest rating possible: unanimously “well qualified.”

So let’s be clear. The support for Judge Gorsuch is anything but one-sided.

The Democratic leader also noted his concerns yesterday about the process by which we arrived at this point. As we all know, this Supreme Court nominee process has been historically transparent. Here is what I mean. Months and months ago, then-Presidential Candidate Trump took the unprecedented action of compiling a list of potential nominees he would consider nominating to the Supreme Court. These potential nominees were made public for the American people, including every Senator, to review.

Before making his selection, now-President Trump’s White House consulted on a bipartisan basis with each and every Democrat on the Senate Judiciary Committee, as well as numerous other Senators. The President followed through with his pledge, selecting from that public list Judge Neil Gorsuch of Colorado, who we can all agree is well qualified to serve on the Supreme Court and whom the Senate confirmed to his current position without a single vote in opposition.

Since being nominated, Judge Gorsuch has continued this transparent process by meeting face-to-face with nearly 80 Senators—from both parties, obviously.

So you see, this process has been as straightforward and bipartisan as possible from the very beginning—before we even knew that the President would, indeed, be making this nomination.

Only in the upside-down world of my Democratic colleagues is telling the entire world months before one is even elected President the list of people he would choose from, if he became the President, a “secret” process. I can’t think of anything less secret than put-

ting out that list in the middle of a hotly contested Presidential election process.

So, look, it is time to move beyond this hollow rhetoric and get back to the serious business of governing. Confirming Judge Gorsuch would mark a significant step in that direction. He has proved himself a worthy successor to the Supreme Court. He has earned high acclaim along the way from various news publications and lawyers and judges and clerks who represent all walks of life and all political ideologies.

People like David Frederick, a long-time Democrat and board member of the left-leaning American Constitution Society, may have summed it up best in a recent Washington Post op-ed. Here is what he said: “The Senate should confirm [Gorsuch] because there is no principled reason to vote no.”

No principled reason to oppose him, none.

As this American Constitution Society member says, there is not one single principled reason to oppose Judge Gorsuch, so it makes sense that Democrats can’t come up with a single substantive reason to oppose him either.

I suggest the absence of a quorum. The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SCHUMER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

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#### RECOGNITION OF THE MINORITY LEADER

The ACTING PRESIDENT pro tempore. The Democratic leader is recognized.

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#### NOMINATION OF NEIL GORSUCH

Mr. SCHUMER. Mr. President, as we prepare to consider the nomination of Judge Neil Gorsuch for the Supreme Court, I would like to take a moment this morning to discuss the false choice Republicans are presenting about his confirmation.

The Republican majority wants everyone to believe that by the end of next week one of two things must happen: Either Judge Gorsuch will pass with 60 votes or they must exercise the nuclear option and change the rules of the Senate so that he can pass on a simple majority vote. As Republicans tell it, one inexorably follows from the other. They are talking about next week as if they have no choice but to go nuclear if Judge Gorsuch doesn’t earn 60 votes.

It is absolutely false. It is complete hokum. This is not some inevitable showdown. The Republicans control this body. They can choose to go nuclear or not. The ball is entirely in

their court. In the past, when a President's nominee didn't get enough support for confirmation for whatever reason, the President just picked another nominee. If it comes to that, that is what this President should do. If Judge Gorsuch fails to garner 60 votes, the answer isn't to irrevocably change the rules of the Senate, the answer is to change the nominee. It is not Gorsuch or bust.

The Republicans are playing a game of unnecessary and dangerous brinksmanship. If it comes to a rules change—and I sincerely hope that it does not for the sake of the grand traditions of this body, for the sake of the advice and consent clause of the Constitution, but if it does—it will be squarely on the shoulders of the Republican Party and the Republican leader—a Republican Party that broke 230 years of precedent when it refused to even consider President Obama's nominee, Chief Judge Merrick Garland, with almost a year left in Obama's Presidency. There was no vote—not even a hearing—and Republicans accuse Democrats of the first partisan filibuster of a Supreme Court nominee? What Republicans did to Merrick Garland was worse than a filibuster. They didn't even grant him the basic courtesy of a filibuster. Merrick Garland actually was a consensus nominee with Republican buy-in for the Supreme Court.

Second, President Trump totally dispatched with the notion of "advice and consent" by pledging, before he was even elected, to nominate a Supreme Court Justice off of a preapproved list of hard-right, conservative judges put together by the Heritage Foundation and the Federalist Society. Contrast that with Bill Clinton, who sought and took the advice of the Republican Judiciary Chairman, ORRIN HATCH, in nominating Justices Ginsburg and Breyer. He did not pick his first choice, Bruce Babbitt, because ORRIN HATCH said that would be a bad idea and could not bring the kind of unity we needed. How about Democratic President Obama, who took, again, the advice of ORRIN HATCH when he picked Merrick Garland. There was bipartisan consultation. That is why the process worked. There is none now. The Heritage Foundation and the Federalist Society are not simply mainstream organizations, as every Republican knows, but they are organizations on the hard-right of the Republican side who often threaten Republicans if they don't vote the right way—the far-right way. So we are not talking about "advise and consent." We are talking about something that was done without any consultation and a political move by a President to shore up his base with the hard rightwing.

What President Trump did was worse than simply ignoring article II of the Constitution. President Trump actively sought the advice and consent of rightwing special interest groups instead of the Senate. That is another

Supreme Court-related precedent that the Republicans discard. Because President Trump made that choice, now Republicans are saying they have no choice but to change the rules? It is illogical and self-serving. For all the handwringing of my friends on the other side of the aisle that they cannot imagine Democrats voting against Judge Gorsuch, I would like to remind them that only three of the current Senators on the Republican side voted for either of President Obama's confirmed nominees. Let me repeat that. Only three of the current Senators on the Republican side voted for either one of President Obama's confirmed nominees. Most voted for neither, and every single one of them lined up to conduct an "audacious" partisan blockade of Merrick Garland.

It is true the norms and precedents and traditions have been eroded by both sides. We changed the rules for lower court nominees in 2013 after years of unprecedented obstruction by Republicans on routine circuit and district court judges. Still, I am on the record as regretting that decision. But this is in an order of magnitude much greater than that. This is the Supreme Court. This is the Court that is the final arbiter of U.S. law and the Constitution. We Democrats have serious principled concerns about Judge Gorsuch, his record, his long history of ties to ultraconservative interests, and his almost instinctive tendency to side with special power interests over average citizens. We have principled concerns about how Judge Gorsuch was groomed by hard-right conservative billionaires, like Mr. Phillip Anschutz. We have principled concerns about how Judge Gorsuch was selected off a preapproved list of conservative judges made by organizations who spent three decades campaigning to move our judiciary far to the right.

Judge Gorsuch had a chance to answer these concerns in his hearings. We were all waiting and hoping, but our questions were met with practiced evasions. He couldn't even answer whether *Brown v. Board* was decided correctly.

Instead of considering the possibility of another nominee should Judge Gorsuch fail to reach 60 votes, our Republican friends are threatening to press the big red button for him.

Again, the Republicans are creating a false choice—Judge Gorsuch or the nuclear option—in an attempt to avoid the blame if they change the rules, and it just doesn't wash. The Republicans control this body. They are in the driver's seat, and they are the only reason that we are here today. They held this seat open for over 1 year so that this President could install someone hand-picked by the Heritage Foundation and the Federalist Society—a lifetime appointment for this President, whose campaign is under investigation by the FBI for potential ties to Russia.

I just repeat to my Republican colleagues: You don't need to change the rules if Judge Gorsuch doesn't get 60

votes. You are not required to do so. You just need to change the nominee and do some bipartisan consultation as Presidents of both parties have done in the past.

#### AFFORDABLE CARE ACT

Mr. SCHUMER. Now on the ACA, Mr. President. The HHS Secretary appeared before the House appropriators yesterday and testified that, under his direction, the Department of Health and Human Services may try to undermine our Nation's healthcare system in several ways. Specifically, he hinted that he might make it easier for insurers to offer coverage without certain essential benefits and refused to say if he would continue certain programs that stabilize our healthcare markets. That is in line with steps this administration has already taken to undermine the healthcare law, such as when they discontinued the public advertising campaigns that encouraged people to sign up for insurance. All of these things harm our Nation's healthcare system, and they should be ceased immediately.

I yield the floor.

#### RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

#### CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Morning business is closed.

#### DISAPPROVING A RULE SUBMITTED BY THE DEPARTMENT OF LABOR

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of H.J. Res. 67, which the clerk will report.

The legislative clerk read as follows:

A joint resolution (H.J. Res. 67) disapproving the rule submitted by the Department of Labor relating to savings arrangements established by qualified State political subdivisions for non-governmental employees.

The ACTING PRESIDENT pro tempore. Under the previous order, all time is expired.

The joint resolution was ordered to a third reading and was read the third time.

The ACTING PRESIDENT pro tempore. The joint resolution having been read the third time, the question is, Shall the joint resolution pass?

Mr. RUBIO. I ask for the yeas and nays.

The ACTING PRESIDENT pro tempore. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.