

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.