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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.

Eternal Lord God, we rejoice because of Your power. We are dependent upon You to rescue us from ourselves and from the unseen consequences of the challenges we face.

Guide and sustain our Senators, enabling them to know the joy of having You as their sure defense. May Your unfailing love, O God, which is as vast as the Heavens, motivate our lawmakers to make faithfulness their top priority. Use them to give justice a chance to thrive in a threatening world. Lord, infuse them with the spirit of humility that seeks first to understand rather than to be understood. May they find their strength and confidence in You alone.

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 (Mrs. CAPITO). The majority leader is recognized.

NOMINATION OF NEIL GORSUCH

Mr. McCONNELL. Madam President, later today, due to the threat of an unprecedented partisan filibuster, I will file cloture on the nomination of Judge Gorsuch to be an Associate Justice of

the Supreme Court. It should be unsettling to everyone that our colleagues across the aisle have brought the Senate to this new low, and on such an impressive nominee with such broad bipartisan support.

Judge Gorsuch is independent, he is fair, he has one of the most impressive resumes we will ever see, and he has earned the highest possible rating from the group the Democratic leader called the "gold standard" for evaluating judicial nominations. No one seriously disputes his sterling credentials to serve on the Court. Yet, in the Judiciary Committee, Democrats withheld support from him. On the floor, Democrats said they will launch a partisan filibuster against him—something Republicans have never done. No one in the Senate Republican conference has ever voted to filibuster a Supreme Court nominee. Not one Republican has ever done that.

Later today, colleagues will continue to debate the nomination of Judge Gorsuch. They will discuss how completely unprecedented it would be for Democrats to actually follow through on this filibuster threat to actually block an up-or-down vote for this nominee even though a bipartisan majority of the Senate supports his nomination and what the negative consequences would be for the Senate if they succeed. I will be listening with interest. I hope Senators in both parties will listen as well.

"There has never been," as the New York Times and others reported last week, "a successful partisan filibuster of a Supreme Court nominee." Never in the history of our country. Not once in the nearly 230-year history of the Senate.

The last time a Republican President nominated someone to the Supreme Court, Democrats tried to filibuster him too. That was Samuel Alito in 2006. Fortunately, cooler heads prevailed. Even former President Obama, who as a Senator participated in that

effort, now admits that he regrets joining that filibuster effort.

Democrats are now being pushed by far-left interest groups into doing something truly detrimental to this body and to our country. They seem to be hurtling toward the abyss this time and trying to take the Senate with them. They need to reconsider.

Perhaps they will recall their own words from the last time they flirted with a partisan Supreme Court filibuster. Back then, the current top Democrat on the Judiciary Committee said she opposed attempts to filibuster Supreme Court nominees. "[Just because the nominee] is a man I might disagree with," she said, "that doesn't mean he shouldn't be on the court." She said the filibuster should be reserved for something truly outrageous.

Yesterday, the top Democrat on the Judiciary Committee announced her intention to filibuster the Supreme Court nominee before us because she disagreed with him. It is totally the opposite of what she said before. It is just the kind of thing she said the filibuster should not be used for.

This is emblematic of what we are seeing in Democrats' strained rationale for their unprecedented filibuster threat. It seems they are opposed to Judge Gorsuch's nomination because far-left interest groups are upset about other things—the way the election turned out, mostly—and threatening the careers of any Democrat who opposes blind resistance to everything this President does.

Democrats have come up with all manner of excuses to justify opposing this outstanding nominee. They asked for his personal opinions on issues that could come before him and posed hypotheticals that they know he is ethically precluded from answering. They cherry-picked a few cases out of thousands in which he has participated. They invent fake 60-vote standards that fact checkers call bogus. They are, to paraphrase the Judiciary

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



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chairman, a “no” vote in search of a reason to vote that way. What they can’t lay a glove on is the nominee’s record and independence—the kinds of things that should actually be swaying our vote—and that is really quite telling.

If Democrats follow through on their threat to subject this widely respected judge to the first partisan filibuster in the history of the Senate, then I doubt there is a single nominee from this President they could ever support—ever. After all, the Democratic leader basically said as much before the nomination was even made. But it is not too late for our friends to do the right thing.

You know, we on this side of the aisle are no strangers to political pressure. We can empathize with what our Democratic colleagues might be going through right now. But part of the job you sign up for here is to do what you know is right in the end.

When President Clinton nominated Stephen Breyer, I voted to confirm him. When President Clinton nominated Ruth Bader Ginsburg, I voted to confirm her. I thought it was the right thing to do. After all, he won the election. He was the President. The President gets to appoint Supreme Court Justices. When President Obama nominated Sonia Sotomayor and Elena Kagan, I led my party in working to ensure they received an up-or-down vote, not a filibuster.

We were in exactly the same position in which our Democratic friends are today. No filibuster. No filibuster. We thought it was the right thing to do. It is not because we harbored illusions that we would usually agree with these nominees of Democratic Presidents—certainly not. We even protested when then-Majority Leader Reid tried to file cloture on the Kagan nomination. We talked him out of it and said it wasn’t necessary. Jeff Sessions, the current Attorney General, was the ranking member of the Judiciary Committee at the time. Jeff Sessions talked Harry Reid out of filing cloture because it wasn’t necessary. We didn’t even want the pretext of the possibility of a filibuster on the table.

Well, that is quite a different story from what we are seeing today, but this is where our Democratic colleagues have taken us. Will a partisan minority of the Senate really prevent the Senate’s pro-Gorsuch bipartisan majority from confirming him? Will they really subject this eminently qualified nominee to the first successful partisan filibuster in American history? Americans will be watching, history will be watching, and the future of the Senate will hang on their choice.

RESERVATION OF LEADER TIME

The PRESIDING OFFICER. Under the previous order, the leadership time is reserved.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to executive session to resume consideration of the Duke nomination, which the clerk will report.

The senior assistant legislative clerk read the nomination of Elaine C. Duke, of Virginia, to be Deputy Secretary of Homeland Security.

The PRESIDING OFFICER. Under the previous order, the time until 12 noon will be equally divided in the usual form.

The minority whip.

Mr. DURBIN. Madam President, I ask unanimous consent to speak as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

NOMINATION OF NEIL GORSUCH

Mr. DURBIN. Madam President, there is a poem that I recall, and it goes like this:

When I was going up the stair,
I met a man who wasn’t there.
He wasn’t there again today.
I wish that man would go away.

I thought about that poem when I listened to the majority leader’s speech about how cooperative he has been when it comes to Supreme Court nominations. The name he forgot to mention was Merrick Garland—Merrick Garland, who was nominated by President Obama to fill the vacancy of Justice Antonin Scalia; Merrick Garland, the only Presidential nominee to the Supreme Court in the history of the U.S. Senate to be denied a hearing and a vote; Merrick Garland, about whom Senator McConnell said: I will not only refuse to give him a hearing and a vote, I refuse to even see him; Merrick Garland, who was found unanimously “well qualified” by the American Bar Association; Merrick Garland, the person who received bipartisan support for appointment to the DC Circuit Court of Appeals, the second highest court in the land.

So when the majority leader comes to the floor to talk about how cooperative he has been with previous Presidents when it comes to Supreme Court nominees, he conveniently omits the most obvious reason for our problems this week: the unilateral decision by the majority leader to preclude any vote on Merrick Garland to fill the vacancy of Justice Scalia.

I know Judge Garland. I have met with him several times. He is a balanced, moderate, experienced jurist who should be on the U.S. Supreme Court. We should not be entertaining Neil Gorsuch this week; we ought to be celebrating the first anniversary of

Merrick Garland’s service on the U.S. Supreme Court. The reason we are not is that Senator McConnell and the Senate Republicans refused us that opportunity. They said: No, you cannot vote on that.

Remember their logic? The logic was: Wait a minute. This is the last year of President Obama’s Presidency. Why should he be able to fill a vacancy on the U.S. Supreme Court when we have an election coming soon?

That is an interesting argument. There are two things I am troubled with.

I do believe President Obama was elected for 4 years in his second term, not for 3, which meant he had authority in the fourth year, as he did in the third year.

Secondly, the Republican argument ignores history. It ignores the obvious history when we had a situation with President Ronald Reagan, in his last year in office, with regard to a vacancy on the U.S. Supreme Court. There were Democrats in charge of the Senate and Democrats in charge of the Senate Judiciary Committee, and President Ronald Reagan, a lame-duck President in his last year, nominated Anthony Kennedy to serve on the Court. He sent the name to the Democratic Senate, and there was a hearing before the Senate Judiciary Committee and a vote that sent him to the Court.

You never hear that story from Senator McConnell. It is because it does not fit into his playbook as to why he would wait for a year and refuse to give Merrick Garland a hearing and a vote. The reasoning is obvious: Clearly he was banking on the possibility that the electorate would choose a Republican President—and that is what happened—so that a Republican President—in this case, Donald Trump—could fill the vacancy, not Barack Obama.

So when I hear the speeches on the floor by Senator McConnell about his bipartisan cooperation, he leaves out an important chapter—the last chapter, the one that brought us to this moment in the Senate.

I look at the situation before us today, and it is a sad situation for the Senate—sad in that we have reached the point in which a Supreme Court nomination has become so political, more so than at any time in history.

Where did the name “Neil Gorsuch” come from for the Supreme Court? It came from a list that was prepared by two organizations: the Federalist Society and the Heritage Foundation. These are both Republican advocacy groups who represent special interests and are funded by special interests. They came up with the names and gave them to Presidential candidate Donald Trump. It was a list of 21 names. He issued them twice—in March and in September of the last campaign year—and Neil Gorsuch’s name was on the list.

The Federalist Society was created in 1982. Nominally, it is an organization that is committed to originalism.