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 emphathize 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 lameduck 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.

In other words, it looks to the clear meaning of the Constitution, what the Founding Fathers meant. They say that over and over again: Just look to the Constitution and read it, and then we will know what we should do. That was in a speech that was given by Edwin Meese, the then-Attorney General in 1985, who explained the Federalist Society's credo.

On its face, it sounds at least arguably defensible that there would be an organization that is so committed to the Constitution that it wants Supreme Court nominees who will follow it as literally as possible. Yet, as Justice William Brennan on the Supreme Court said, if they think they can find in those musty volumes from back in the 18th century all of the answers to all of the questions on the issues we face today—here is what he called it—that is arrogance posing as humility.

Yet that is what they said the Federalist Society was all about. If that were all the Federalist Society were about, then I guess one could argue that they ought to have their day in court, their day in choosing someone for the Supreme Court, but it is more than that. When you look at those who finance the Federalist Society—and it is a short list because they refuse to disclose all their donors—you see the classic names of Republican support: the Koch brothers, the Mercer family, the Richard Mellon Scaife family foundation, the ones who pop up over and over again. Why would these organizations be so determined to pick the next nominee to fill the vacancy on the Supreme Court? It is because there is so much at stake.

In a Judiciary Committee hearing, my colleague SHELDON WHITEHOUSE went through the box score when it came to the Supreme Court and how they ruled when given a choice between special interests and corporate elites versus average workers and consumers and families. As Senator WHITEHOUSE pointed out graphically, in detail, overwhelmingly, this Court has ruled for the special interests. Sixty-nine percent of the Roberts' Court's rulings are in favor of the U.S. Chamber of Commerce's position on issues, according to one study.

Why would a special interest organization like the Federalist Society care? It wants to keep a good thing going, from its point of view. That is why this is a different Supreme Court nominee.

I yield the floor.

RECOGNITION OF THE MINORITY LEADER

The PRESIDING OFFICER (Mr. KENNEDY). The Democratic leader is recognized.

CONGRATULATING THE SENIOR SENATOR FROM ILLINOIS

Mr. SCHUMER. Mr. President, first, I sat at the back of the room to listen to my colleague from Illinois. I know he got up because he wanted very much to respond to the majority leader, and I thought he did a great job. It was a pleasure to listen, as always, to one of the most articulate Members with whom I have ever served in any legislative body, as well as his having many other good traits.

EQUAL PAY DAY

Mr. President, today is Equal Pay Day. Unlike many holidays on our calendar, Equal Pay Day is not actually a commemoration of some achievement. Equal pay for women is still not close to a reality. Women still make 79 cents for every dollar a man makes in the same position. African-American women are making 64 cents on the dollar. Latina women are making 54 cents on the dollar. That is not right. It is holding the American dream out of reach for too many women in this country. So Equal Pay Day is not a commemoration; it is a reminder that glass ceilings are everywhere and that there are hugely consequential and tangible barriers that women face every single day that men do not.

In 2007, the Supreme Court, in a 5-to-4 decision by the conservative majority in Ledbetter v. Goodyear, ruled that Lilly Ledbetter could not pursue her claim that she was entitled to equal pay. The Lilly Ledbetter Fair Pay Act, which reversed this unfair Supreme Court decision, was the first bill President Obama signed into law in 2009.

NOMINATION OF NEIL GORSUCH

Mr. President, this leads me to the Supreme Court. It is just one of so many examples of what is at stake in the nomination of Judge Gorsuch to the Supreme Court, which we now debate here on the floor of the Senate.

I was listening to the majority leader earlier this morning, and I cannot believe he can stand here on the floor of the U.S. Senate and with a straight face say that Democrats are launching the first partisan filibuster of a Supreme Court nominee. What the majority leader did to Merrick Garland by denying him even a hearing and a vote is even worse than a filibuster. For him to accuse Democrats of the first partisan filibuster on the Supreme Court belies the facts, belies the history, belies the basic truth.

My friend Representative ADAM SCHIFF said: ''When McConnell deprived President Obama of a vote on Garland, it was a nuclear option. The rest is fallout.'' Let me repeat that. ADAM SCHIFF put it better than I ever could. ''When McConnell deprived President Obama of a vote on Garland, it was a nuclear option. The rest is fallout.''

Even though my friend the majority leader keeps insisting that there is no principled reason to vote against Judge Gorsuch, we Democrats disagree. First, he has instinctively favored corporate interests over average Americans. Second, he has not shown a scintilla of independence from President Trump. Third, as my colleague from Illinois elaborated, he was handpicked by hard-right special interest groups, not because he called balls and strikes. They would not put all of that effort and money into a caller of balls and strikes. These are ideologues who want to move America far to the right. He was picked by hard-right special interest groups because his views are outside the mainstream.

According to analyses of his record on the Tenth Circuit, which were conducted by the New York Times and the Washington Post, by experts on the Court, Judge Gorsuch would be one of the most conservative voices ever on the Supreme Court should he achieve that.

The Washington Post:

> Gorsuch's actual voting behavior suggests he is to the right of both Alito and Thomas and by a substantial margin. That would make him the most conservative Justice on the Court in recent memory.

That is why the Heritage Foundation and the Federalist Society put Judge Gorsuch on their list for President Trump.

As Emily Bazelon of the New York Times put it in a brilliant article that I would urge all of my colleagues to read:

> The reality is that Judge Gorsuch embraces a judicial philosophy that would do nothing less than undermine the structure of modern government—including the rules that keep our water clean, regulate the financial markets and protect workers and consumers.

I ask unanimous consent to have that article printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the New York Times, Apr. 1, 2017]

THE GOVERNMENT GORSUCH WANTS TO UNDO

(By Emily Bazelon and Eric Posner)

At recent Senate hearings to fill the Supreme Court's open seat, Judge Neil Gorsuch came across as a thoroughly bland and nonthreatening nominee. The idea was to give as little ammunition as possible to opponents when his nomination comes up this week for a vote, one that Senate Democrats may try to upend with a filibuster.

But the reality is that Judge Gorsuch embraces a judicial philosophy that would do nothing less than undermine the structure of modern government—including the rules that keep our water clean, regulate the financial markets and protect workers and consumers. In strongly opposing the administrative state, Judge Gorsuch is in the company of incendiary figures like the White House adviser Steve Bannon, who has called for its ''deconstruction.'' The Republican-dominated House, too, has passed a bill designed to severely curtail the power of federal agencies.

Businesses have always complained that government regulations increase their costs, and no doubt some regulations are ill-conceived. But a small group of conservative intellectuals have gone much further to argue that the rules that safeguard our welfare and the orderly functioning of the market have been fashioned in a way that's not constitutionally legitimate. This once-fringe cause of the right asserts, as Judge Gorsuch put it in a speech last year, that the administrative state ''poses a grave threat to our values of personal liberty.''

The 80 years of law that are at stake began with the New Deal. President Franklin D. Roosevelt believed that the Great Depression was caused in part by ruinous competition among companies. In 1933, Congress passed the National Industrial Recovery Act, which

allowed the president to approve ''fair competition'' standards for different trades and industries. The next year, Roosevelt approved a code for the poultry industry, which, among other things, set a minimum wage and maximum hours for workers, and hygiene requirements for slaughterhouses. Such basic workplace protections and constraints on the free market are now taken for granted.

But in 1935, after a New York City slaughterhouse operator was convicted of violating the poultry code, the Supreme Court called into question the whole approach of the New Deal, by holding that the N.I.R.A. was an ''unconstitutional delegation by Congress of a legislative power.'' Only Congress can create rules like the poultry code, the justices said. Because Congress did not define ''fair competition,'' leaving the rule-making to the president, the N.I.R.A. violated the Constitution's separation of powers.

The court's ruling in Schechter Poultry Corp. v. the United States, along with another case decided the same year, are the only instances in which the Supreme Court has ever struck down a federal statute based on this rationale, known as the ''nondelegation doctrine.'' Schechter Poultry's stand against executive-branch rule-making proved to be a legal dead end, and for good reason. As the court has recognized over and over, before and since 1935, Congress is a cumbersome body that moves slowly in the best of times, while the economy is an incredibly dynamic system. For the sake of business as well as labor, the updating of regulations can't wait for Congress to give highly specific and detailed directions.

The New Deal filled the gap by giving policy-making authority to agencies, including the Securities and Exchange Commission, which protects investors, and the National Labor Relations Board, which oversees collective bargaining between unions and employers. Later came other agencies, including the Environmental Protection Agency, the Occupational Safety and Health Administration (which regulates workplace safety) and the Department of Homeland Security. Still other agencies regulate the broadcast spectrum, keep the national parks open, help farmers and assist Americans who are overseas. Administrative agencies coordinated the response to Sept. 11, kept the Ebola outbreak in check and were instrumental to ending the last financial crisis. They regulate the safety of food, drugs, airplanes and nuclear power plants. The administrative state isn't optional in our complex society. It's indispensable.

But if the regulatory power of this arm of government is necessary, it also poses a risk that federal agencies, with their large bureaucracies and potential ties to lobbyists, could abuse their power. Congress sought to address that concern in 1946, by passing the Administrative Procedure Act, which ensured a role for the judiciary in overseeing rule-making by agencies.

The system worked well enough for decades, but questions arose when Ronald Reagan came to power promising to deregulate. His E.P.A. sought to weaken a rule, issue by the Carter administration, which called for regulating ''stationary sources'' of air pollution—a broad wording that is open to interpretation. When President Reagan's E.P.A. narrowed the definition of what counted as a ''stationary source'' to allow plants to emit more pollutants, an environmental group challenged the agency. The Supreme Court held in 1984 in Chevron v. Natural Resources Defense Council that the E.P.A. (and any agency) could determine the meaning of ambiguous term in the law. The rule came to be known as Chevron deference: When Congress uses ambiguous language in a statute, courts must defer to an agency's reasonable interpretation of what the words mean.

Chevron was not viewed as a left-leaning decision. The Supreme Court decided in favor of the Reagan administration, after all, voting 6 to 0 (three justices did not take part), and spanning the ideological spectrum. After the conservative icon Justice Antonin Scalia reached the Supreme Court, he declared himself a Chevron fan. ''In the long run Chevron will endure,'' Justice Scalia wrote in a 1989 article, ''because it more accurately reflects the reality of government, and thus more adequately serves its needs.''

That was then. But the Reagan administration's effort to cut back on regulation ran out of steam. It turned out that the public often likes regulation—because it keeps the air and water clean, the workplace safe and the financial system in working order. Deregulation of the financial system led to the savings-and-loans crisis of the 1980s and the financial crisis a decade ago, costing taxpayers billions.

Businesses, however, have continued to complain that the federal government regulates too much. In the past 20 years, conservative legal scholars have bolstered the red-tape critique with a constitutional one. They argued that only Congress—not agencies—can create rules. This is Schechter Poultry all over again.

And Judge Gorsuch has forcefully joined in. Last year, in a concurring opinion in an immigration case called Gutierrez-Brizuela v. Lynch, he attacked Chevron deference, writing that the rule ''certainly seems to have added prodigious new powers to an already titanic administrative state.'' Remarkably, Judge Gorsuch argued that Chevron—one of the most frequently cited cases in the legal canon—is illegitimate in part because it is out of step with (you guessed it) Schechter Poultry. Never mind that the Supreme Court hasn't since relied on its 1935 attempt to scuttle the New Deal. Nonetheless, Judge Gorsuch wrote that in light of Schechter Poultry, ''you might ask how is it that Chevron—a rule that invests agencies with pretty unfettered power to regulate a lot more than chicken—can evade the chopping block.''

At his confirmation hearings, Judge Gorsuch hinted that he might vote to overturn Chevron without saying so directly, noting that the administrative state existed long before Chevron was decided in 1984. The implication is that little would change if courts stopped deferring to the E.P.A.'s or the Department of Labor's reading of a statute. Judges would interpret the law. Who could object to that?

But here's the thing: Judge Gorsuch is skeptical that Congress can use broadly written laws to delegate authority to agencies in the first place. That can mean only that at least portions of such statutes—the source of so many regulations that safeguard Americans' welfare—must be sent back to Congress, to redo or not.

On the current Supreme Court, only Justice Clarence Thomas seeks to strip power from the administrative state by undercutting Chevron and even reviving the obsolete and discredited nondelegation doctrine, as he explains in opinions approvingly cited by Judge Gorsuch. But President Trump may well appoint additional justices, and the other conservatives on the court have expressed some uneasiness with Chevron, though as yet they are not on board for overturning it. What would happen if agencies could not make rules for the financial industry and for consumer, environmental and workplace protection? Decades of experience in the United States and around the world teach that the administrative state is a necessary part of the modern market economy. With Judge Gorsuch on the Supreme Court, we will be one step closer to testing that premise.

Mr. SCHUMER. There are clearly principled reasons to oppose Judge Gorsuch, and enough of us Democrats have reasons to prevent his nomination from moving forward on Thursday's cloture vote.

The question is no longer whether Judge Gorsuch will get enough votes on the cloture motion; now the question is, Will the majority leader and our friends on the other side break the rules of the Senate to approve Judge Gorsuch on a majority vote? That question should be the focus of the debate here on the floor, and it should weigh heavily on the conscience of every Senator.

Ultimately, my Republican friends face a simple choice: They can fundamentally alter the rules and traditions of this great body or they can sit down with us Democrats and the President to come up with a mainstream nominee who can earn bipartisan support and pass the Senate.

No one is making our Republican colleagues change the rules. No one is forcing Senator MCCONNELL to change the rules. He is doing it of his own volition, just as he prevented Merrick Garland from getting a vote of his own volition. Senator MCCONNELL and my Republican colleagues are completely free actors in making a choice—a very bad one, in our opinion.

I know my friends on the other side of the aisle are uncomfortable with this choice, so they are scrambling for arguments to justify breaking the rules. Let me go through a few of these justifications and explain why each does not hold up.

First, many of my Republican colleagues will argue that they can break the rules because ''Democrats started it in 2013'' when we lowered the bar for lower court nominees and Cabinet appointments.

Let's talk about that. The reason Majority Leader Reid changed the rules was that Republicans had ramped up the use of the filibuster—the very filibuster they now decry—to historic proportions. They filibustered 79 nominees in the first 5 years of Obama's Presidency. Let's put that into perspective. Prior to President Obama, there were 68 filibusters on nominations under all of the other Presidents combined, from George Washington to George Bush. We had 79. Our colleagues and Leader MCCONNELL, the filibuster is wrong? There were 79—more than all of the other Presidents put together. The shoe was on a different foot.

They deliberately kept open three seats on the second most important court in the land—the DC Court of Appeals—because it had such influence over decisions made by the government. This is the court, other than the U.S. Supreme Court, that the Federalist Society and the Heritage Foundation hate the most. The deal that a

number of Senators made in 2005 allowed several of the most conservative judges to be confirmed to that court—very conservative people. It left a bad taste in my mouth, and I am sure in my colleagues' and in many others.

But then, when President Obama came in, they insisted on not filling any additional seats on the court—which, of course, would have been Democratic seats—and eventually held open 3 of the 11 seats on that court. They said they would not allow those seats to be filled by President Obama—an eerie precedent, which the majority leader repeated with Merrick Garland. He didn't want the DC Circuit to have Obama-appointed, Democratic-appointed nominees; he didn't want that on the Supreme Court, so he blocked Merrick Garland. He didn't want it on the DC Circuit, so they wouldn't let any of President Obama's nominees come to the floor.

Merrick Garland's nomination was not the first time the majority leader held open a judicial seat because it wasn't the President of his party, and that was not during an election year.

At the time, I spoke with my good friend from Tennessee, Senator ALEXANDER. I asked him to go to Senator MCCONNELL and tell him that the pressure on our side to change these rules—after all of these unprecedented numbers of filibusters—was going to be large. I said to Senator ALEXANDER: Let's try to avoid it. But Senator MCCONNELL and Republicans refused all of our overtures to break the deadlock they imposed.

To be clear, Democrats changed the rules after 1,776 days of obstruction on President Obama's nominees. My Republican friends are contemplating changing the rules after barely more than 70 days of President Trump's administration. We moved to change the rules after 79 cloture motions had to be filed. They are talking about changing the rules after 1 nominee fails to meet the 60-vote threshold.

So, yes, Democrats changed the rules in 2013, but only to surmount an unprecedented slowdown that was crippling the Federal judiciary, and we left the 60-vote threshold intact for the Supreme Court deliberately. We could have changed it. We had free will then, just as Senator MCCONNELL has it now. But we left the 60-vote threshold intact for the Supreme Court because we knew and know—just as our Republican friends know—that the highest Court in the land is different.

Unlike with lower courts, Justices on the Supreme Court don't simply apply precedents of a higher court; they set the precedents. They have the ultimate authority under our constitutional government to interpret the law. Justices on the Supreme Court should be mainstream enough to garner substantial bipartisan support; hence, why we didn't change the rules; hence, why we believe in the 60-vote threshold; and hence, why 55 or 60 percent of all Americans agree with the 60-vote threshold, according to the most recent polls. To me, and I think to most of my friends on the Republican side, that is not a good enough reason to escalate the argument and break the rules for the Supreme Court.

Second, as I have mentioned, I have heard my Republican friends complain that Democrats are conducting the first partisan filibuster of a Supreme Court nominee in history, so that is the reason they can justify breaking the rules because Democrats are the ones taking it to a new level. Again, I have just two words for my Republican friends: Merrick Garland. The Republican majority conducted the first partisan filibuster of a Supreme Court pick when their members refused to have hearings for Merrick Garland.

In fact, what the Republicans did was worse than a filibuster. The fact is, the Republicans blocked Merrick Garland using the most unprecedented of maneuvers. Now we are likely to block Judge Gorsuch because we are insisting on a bar of 60 votes.

We think a 60-vote bar is far more in keeping with tradition than what the Republicans did to Merrick Garland. We don't think the two are equivalent. Nonetheless, in the history of the Scalia vacancy, both sides have lost. We didn't get Merrick Garland; they are not getting 60 votes on Judge Gorsuch.

So we are back to square one right now, and the Republicans have total freedom of choice in this situation.

Finally, Republicans have started to argue that because Democrats will not confirm Judge Gorsuch, we will not confirm anyone nominated by President Trump, so they have to break the rules right now. That is an easy one. I am the Democratic leader. I can tell you myself that there are mainstream Republican nominees who could earn adequate Democratic support.

And just look at recent history. Justices Roberts and Alito, two conservative judges who many of us on the Democratic side probably don't agree with, both earned over 60 votes. They got Democratic votes. While there was a cloture vote on Justice Alito, he was able to earn enough bipartisan support that cloture was invoked with over 70 votes. He got only 58 when we voted for him, but the key vote was the cloture vote.

Let's have the President consult Members of both parties—he didn't with Gorsuch—and try to come up with a consensus nominee who could meet a 60-vote threshold. That is what President Clinton did with my friend, the Senator from Utah, in selecting Justices Ginsberg and Breyer. It is what President Obama did with Merrick Garland.

Of course, we realize a nominee selected this way would not agree with many of our views. That is true. But President Trump was elected President, and he is entitled by the Constitution to nominate. But Judge Gorsuch is so far out of the mainstream that the Washington Post said his voting record would place him to the right of Justice Thomas. He was selected by the Heritage Foundation and the Federalist Society without an iota of input from the Senate.

There is a better way to do this. I know it sometimes may seem like a foreign concept in our hyperpolarized politics these days, but there is always the option of actually consulting Democrats on a nominee and discussing a way forward that both parties can live with. We are willing to meet anywhere, anytime.

So my friends on the other side can dredge up these old wounds and shopworn talking points if they choose. If Republicans want to conduct a partisan, ''they started it'' exercise, I am sure we could trace this all the way back to the Hamilton-Burr duel. But at the end of the day, they have to confront a simple choice: Are they willing to break the rules of the Senate or can they work with us on a way forward? I, for one, hope we can find a way to compromise. Judge Gorsuch was not a compromise. He was solely chosen without any consultation. So it is not that there is a Merrick equivalency.

My friend the majority leader said: ''I think we can stipulate that in the Senate it takes 60 votes on controversial matters.'' If anything is a controversial, important matter, it is a selection for the Supreme Court, and Senator MCCONNELL has repeatedly stood for the rightness of 60 votes on important and controversial issues.

If Senator MCCONNELL wants to change his view on the 60 votes all of a sudden and Republicans decide to go along with him, it will not be because Democrats started it, because that is not true. It will not be because Democrats will not confirm any President Trump-nominated Justice, because that is not true. It will be because they choose to do so, and they will have to bear the unfortunate consequences.

Mr. President, I yield the floor.

Mr. DURBIN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

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

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

MINERS PROTECTION ACT

Mrs. CAPITO. Mr. President, I rise today, as I have on a number of occasions in the past, to express the urgent need for action to protect the retirement security of our Nation's coal miners. Because of bankruptcies that have decimated the coal industry, we have lost over 22,000 jobs in our State, but more than 22,000 retired coal miners and their spouses are at risk of losing their healthcare benefits at the end of April.

I have visited with retired miners from all across West Virginia to discuss this situation. During the February congressional recess, I visited the Cabin Creek Health Center in West Virginia. The Cabin Creek Health Center serves hundreds of coal miners and their families. They provide pulmonary rehabilitation services for miners suffering from black lung. They also provide primary care services for miners and other members of their community. During my visit, I met with several retired miners who would lose their health insurance coverage if Congress fails to act. These individuals are suffering from serious medical conditions and were unsure how they would afford their healthcare if they were to lose their current coverage.

Just 2 weeks ago, I met with about a dozen retired miners from West Virginia who came to Washington to support the Miners Protection Act and to stand up for their hard-earned retirement benefits. Other groups of West Virginia miners have come to Washington over the past few months. All have carried one message to Congress: Keep the promise of our lifetime health benefits. On March 1, thousands of miners received notice that their health insurance would be terminated in 60 days. Most of these same people received that very same message just last October. As I listen to their stories, it is hard to imagine the worry these notices cause for miners and their families.

In December 2016, Congress included language in the continuing appropriations legislation that preserved health coverage for these retired miners for just 4 months. While that provision kept mining families from losing their health coverage—which is good—at the end of last year, a permanent solution is critically needed.

The 4-month provision from the December CR expires at the end of this month. It is vital—vital—that Congress take action within the next few weeks to provide healthcare and peace of mind for these miners in West Virginia and across coal country. Our retired miners deserve their promised healthcare coverage and should not have to receive another cancellation notice or another Band-Aid solution. We have a bipartisan vehicle for action. I have worked closely with Senator JOE MANCHIN, Senator ROB PORTMAN, and others to introduce and promote the bipartisan Miners Protection Act, which would preserve healthcare and pension benefits for our miners. Our bill passed the Senate Finance Committee last year by a bipartisan vote of 18 to 8. I also would like to thank the majority leader, Senator MITCH MCCONNELL, because he has introduced legislation that would provide a permanent healthcare solution for our miners.

With all of us pulling together and with us working together, I am confident the Senate will act before the end of this month to continue these critical healthcare benefits for our miners. I ask my colleagues for their support in addressing this important issue for our working families.

The PRESIDING OFFICER. The Senator from Texas.

NOMINATION OF NEIL GORSUCH

Mr. CORNYN. Mr. President, yesterday the Senate Judiciary Committee voted out the nomination of Judge Neil Gorsuch to fill the vacancy on the Supreme Court left by the death of Justice Scalia. During the meeting, as the Presiding Officer knows, our Democratic colleagues trotted out the same old tired arguments we have heard time and again about Judge Gorsuch.

In the end, though, none of those arguments hold water, and of course many of them aren't even about him. Instead, these arguments reveal how our colleagues across the aisle are grasping for reasons to justify an unprecedented partisan filibuster of a Supreme Court Justice.

Some object to the nomination of Judge Gorsuch because they claim he refuses to answer specific questions. But I ask: How would any of us feel if the judge before whom we might later appear had previously, in order to get a confirmation of his nomination, made certain promises of how he would judge that case when presented at a future date? We would all feel more than a little bit betrayed and even cheated if the judge had prejudged our case before he even heard it. The judge is simply engaging in a common practice for Supreme Court nominees. They steer clear of any questions that may pertain to cases they may have to rule on later. It is a matter, as the Presiding Officer knows, of judicial ethics, and we wouldn't have it any other way.

Justice Ruth Bader Ginsburg set this precedent early on. During her confirmation hearing in 1993, she said she didn't want to give any hints or previews about how she might vote on an issue before her. So she politely and respectfully declined. Others followed her example, and Judge Gorsuch is, of course, doing precisely the same.

By any fair review, Judge Gorsuch has a history of 10 years as a judge sitting on the Tenth Circuit Court of Appeals out of Denver, CO. He has a history of interpreting the law fairly, basing his judgments on the law and the facts, without regard to politics and without respect to persons.

That brings me to this argument that somehow he is against the little guy. Clearly, a review of the records demonstrates that this is not so. But, again, how are judges supposed to perform? Are they supposed to see the litigants—the parties to a lawsuit—in their court and say: Well, you have a big guy and you have a little guy, and I am always going to vote or render a judgment for the little guy without regard to the law or the facts?

I realize that sometimes our colleagues can weave a story that seems somewhat sympathetic when it comes to the fact that not everybody is guaranteed a win in court. As a matter of fact, when there are two parties to a lawsuit, one of those parties is likely to be disappointed in the outcome. But that is what judges are there for. That is what they are supposed to do. They are supposed to render judgments, without regard to personal preferences or politics or without regard to their sympathies, let's say, for one of the parties to the lawsuit.

Judge Gorsuch even said this during his hearing: No one will capture me. No one will capture me—meaning that no special interest group or faction would derail him from following the law, wherever it may lead. That is why Judge Gorsuch is universally respected. That is why he was confirmed by voice vote 10 years ago to the Tenth Circuit Court of Appeals. No one objected to Judge Gorsuch's confirmation to a lifetime appointment on the Tenth Circuit Court of Appeals.

Again, as the Presiding Officer knows, the Supreme Court of the United States only hears about 80 cases, give or take, a year. Most of the hard work gets done in our judicial system at the district court level and at the circuit court level, and almost all of the cases end in circuit courts, like the Tenth Circuit Court of Appeals, on which Judge Gorsuch serves. That is not to say that the Supreme Court is not important—it is—in resolving conflicts between the circuits or ruling on important questions of law to guide all of the judiciary and to settle these issues for our country, at least for a time, and maybe even permanently when it comes to constitutional interpretation.

Judge Gorsuch enjoys broad support from across the political spectrum, especially from his colleagues and members of the bar.

For 13 years, I served on the State judiciary in Texas, with 6 years as a trial judge and 7 years as a member of the Texas Supreme Court. When I heard that Judge Gorsuch had participated in 2,700 cases on a three-judge panel and 97 percent of them were unanimous, that told me something special about this judge. It takes hard work to build consensus on a multijudge panel, whether it is three judges or nine judges, like the Supreme Court. I think what we are going to see out of this judge is not somebody who is going to decide cases in a knee-jerk fashion but somebody who is going to work really hard to try to build consensus on the Supreme Court of the United States.

That is really important to the Supreme Court's respect as an institution of our government. What causes disrespect for our judiciary is when judges act like politicians, when they make pledges of how they will decide cases ahead of time or they campaign, in essence, for votes based on ideological positions.

Judge Gorsuch is the opposite of that, and that is the kind of judge America needs right now in the Supreme Court. That is why later on this

week, on Friday, Judge Gorsuch will be confirmed.

In spite of all the evidence in support of the nominee's intellect and qualifications, without regard to the bipartisan chorus urging his confirmation, the Democratic leader has decided to do everything he can to prevent us from even having an up-or-down vote on his nomination. Unfortunately, he will be making history in urging his Democratic colleagues to engage in a partisan filibuster against a Supreme Court justice. In our Nation's long, rich history, there has never been a successful partisan filibuster of a Supreme Court nominee. Now, some people want to talk about Abe Fortas back in 1968, which was totally different. But there has never been a successful partisan filibuster of a Supreme Court justice until, apparently, this week on Thursday—not one of them.

Not one of my Republican colleagues mounted a filibuster when President Obama nominated Justice Sotomayor or Justice Kagan. Both received an up-or-down vote. That is because that has been the customary way this Chamber has treated Supreme Court nominees in the past. Only four times in our Nation's history has a cloture motion actually even been filed. But cloture was always achieved because, on a bipartisan basis, enough votes were cast to allow the debate to end and then to allow an up-or-down vote on the nominee.

To show how new this weaponization of the filibuster has become, back when Clarence Thomas was confirmed to the Supreme Court of the United States, he got 52 votes—52 votes—and was confirmed and now serves on the Supreme Court. Back when he was confirmed, no one even dreamed of its use. It was theoretically possible, but no one dreamed of the idea that someone would raise the threshold for confirmation from a 51-majority vote to 60.

Our colleagues have made it quite clear that they don't want to support any nominee from this President. So it is not even just about Judge Gorsuch. It is about any nominee this President might propose to the Supreme Court. And I think what it boils down to is this: Our Democratic colleagues haven't gotten over the fact that they lost the election. I think it really isn't much more complicated than that. They adamantly resisted participating in the legislative process. They dug their feet on every Cabinet nomination and now on the Supreme Court nomination. All they know is to obstruct because they haven't gotten over the fact that Hillary Clinton isn't President of the United States.

They keep bringing up Merrick Garland's name. Judge Garland is a fine man, a good judge who serves on the DC Circuit Court of Appeals, but you would have to go back to 1888 to find a time when someone was nominated in a Presidential election year with divided government and where that person was confirmed.

What we decided to do upon the death of Justice Scalia is to say that the Supreme Court is so important that we are going to have a referendum on who gets to nominate the next Justice on the Supreme Court. Our Democratic friends thought for sure it would be Hillary Clinton. When it turned out to be Donald Trump, well, all bets were off, and they were in full opposition mode. But we would have respected the right of a President Hillary Clinton to fill that nomination because that is what we said was at stake in the election. I think it had a big impact on whom got elected on November 8 as President of the United States and who would fill that vacant seat and any future vacant seats on the Supreme Court.

So here is the problem. If Judge Gorsuch is an unacceptable nominee, can you imagine any nominee by this President being acceptable to our Democratic colleagues? I can't, because Judge Gorsuch is about as good as you get when it comes to a nominee. He is exactly the type of person we should hope to see nominated to the Supreme Court.

So it is time for our Democratic colleagues to accept reality and not to live in some sort of fantasy land and not to try to punish good people like Judge Gorsuch, who has done an outstanding job, because they are disappointed in the outcome of the election.

So here is the bottom line. Our Democratic friends will determine how we get to an up-or-down vote on Judge Gorsuch. If they are genuinely concerned about the institution of the Senate, they will provide eight votes to get cloture to close off debate, they will decline to filibuster the judge, and they will allow an up-and-down vote on this imminently qualified nominee.

I am holding out hope that more thoughtful and independent Democrats will think better of the Democratic leader's strategy. Several already have, and I commend them for it. I hope more will come around to that idea, but as I and others have said before, regardless of whether they do, Judge Gorsuch will be confirmed. But it is up to the Democrats to determine just how we get that done.

I see a friend from Vermont here. I won't take much longer. I want to take about 3 or 4 minutes, maybe 5 minutes, to debunk some of the myths about how we got here.

I have in front of me an article written by Neil Lewis dated May 1, 2001. The title of this New York Times story is ''Washington Talk; Democrats Readying for Judicial Fight.'' It is dated May 1, 2001. That was, of course, in the early days of the George W. Bush administration. What it says is that 42 of the Senate's 50 Democrats attended a private retreat in Farmington, PA, where the principal topic was forging a unified party strategy to combat the White House on judicial nominees.

Mr. Lewis goes on to quote one of the people there who said: ''They said it was important for the Senate to change the ground rules'' by which judicial nominees were confirmed. And they did as a result of that meeting, which was led by Laurence Tribe of Harvard Law School, Cass Sunstein of the University of Chicago, and Marcia Greenberger, codirector of the National Women's Law Center. Senator SCHUMER, the present Democratic leader, and others, cooked up a new procedural hurdle for President George W. Bush's judicial nominees, and we remember what happened after that. It became almost routine for our Democratic colleagues to filibuster President Bush's nominees.

Ultimately, there came a meeting of a group called the Gang of 14, where there was a deal worked out that some of President Bush's judicial nominees were confirmed and others were returned and not confirmed. There was a decision made at that time by the Gang of 14, a bipartisan group, that there would be no filibuster of judicial nominees, absent exceptional circumstances. That was the language that they used—''absent exceptional circumstances''—that let us get by that obstacle and those filibusters for a time.

The next major development occurred in 2013, when President Obama really wanted to see on the DC Circuit Court of Appeals—the primary circuit court that reviewed administrative decisions—more of his Democratic nominees on that court. So in a new and unprecedented fashion, Senator Harry Reid changed the cloture rules once again—so-called the Reid Rule. For what purpose? It was a naked power grab. It was to pack the DC Circuit Court of Appeals—one of the least busy circuit courts in the country—in order to have judges confirmed by 51 Democratic votes that would rubberstamp President Obama's administrative actions during his administration. And sadly, it worked. They did just that.

So in a way, we are coming full circle, back to what the tradition in the Senate was before the year 2000, before Democrats went to this retreat led by liberal legal activists who cooked up this idea that you could filibuster judges, and they tried to impose a requirement of 60 votes for confirmation when, in fact, the Constitution contemplates a majority vote, or 51 votes for confirmation.

Some have said this represents the end of comity in the Senate. I don't believe that. Some have said this threatens the end of the legislative filibuster or cloture requirement. I don't believe that either. There is a big difference between a nominee by a President that is an up-or-down vote—confirm or don't confirm. There is a big difference between that and legislation, which by definition is a consensus-building process by offering an amendment, by offering other suggestions to build that consensus and get it passed.

You can't amend a nominee. All you can do is vote up or down. So I don't

believe restoring the status quo ante—going back before 2000 and restoring the 200-year-plus tradition of the Senate where you don't filibuster judges—I don't see that as a bad thing. I don't see it as the end of the legislative filibuster. It is completely apples and oranges.

It is true that 51 Senators will be able to close off debate and confirm Judge Gorsuch, and we will see that happen later this week. It also means that the next Democratic President can nominate a Supreme Court nominee, and that person will be confirmed by 51 votes. Again, this has been the 200-plus-year tradition of the Senate. I don't see that as the end of the Senate. I don't see this as somehow damaging our country—the restoration of the status quo before 2000, when our Democratic colleagues decided to weaponize the filibuster and use it to block judges based on this trumped-up idea that 60 votes would be required rather than 51.

I look forward to confirming Judge Gorsuch later this week. He is a fine man and a very good judge. He has exactly the sort of record we would want to serve on the Court. No, he is not a liberal activist. Clearly, Hillary Clinton, if she had been elected, would have nominated somebody different. That is one reason why we choose whom we choose for our President, because of the kinds of nominations they will make, and I must say President Trump has chosen well in Neil Gorsuch.

I yield the floor.

The PRESIDING OFFICER (Mr. FLAKE). The Senator from Vermont.

Mr. SANDERS. Mr. President, I rise today to oppose the nomination of Judge Neil Gorsuch to the Supreme Court of the United States. After meeting with Judge Gorsuch and having a long and pleasant conversation, after hearing his testimony before the Judiciary Committee, and after carefully reviewing his record, I have concluded that I cannot support a man with his views for a lifetime seat on the Supreme Court.

The Supreme Court is the most important judicial body in this country. The decisions that it reaches, even on a 5-to-4 vote, have a profound impact on all Americans, on our environment, and on our way of life. As we decide this week as to how we are going to cast our votes regarding Judge Gorsuch, it is important to understand how that vote for Judge Gorsuch—for or against him—will impact the lives of the people of our country.

Let me give you just a few examples as to what is at stake. Seven years ago, in a 5-to-4 decision, the Supreme Court ruled in a case called Citizens United, and in that case, by a 5-to-4 decision, the Court said that billionaires and corporations could spend as much money as they wanted on the political process. This decision, as all Americans know, opened the floodgates of corporate money, of money from the billionaire class, such that the wealthiest people in our country today can now elect candidates who represent their interests and not the interests of ordinary Americans.

That decision, Citizens United, is undermining American democracy, and in my view, it is moving us toward an oligarchic form of society in which a handful of the wealthiest people in this country—the Koch brothers and others—now have the power not only to control our economy but our political life as well. In my view, Citizens United must be overturned, and we must move back to a nation where our political system is based on one person, one vote, not on the ability of billionaires to buy elections.

Based on my conversation with Judge Gorsuch and a review of his record, do I believe that he will vote to overturn Citizens United? Absolutely not. Further, I suspect that he will vote to undermine our democracy even further by supporting the elimination of all restrictions on campaign finance, something which the Republican leadership in this body wants.

What the Republican leadership is striving toward is eliminating all campaign finance restrictions, such that billionaires can say to somebody: I am going to give you $500 million to run for the U.S. Senate from California, and you work for me—no independent expenditures. I will select your campaign manager, your speech writer, your media adviser, your pollster. You are my employee.

That is what the Republican leadership here wants. They want to undermine all campaign finance laws, and I believe that Judge Gorsuch will move this country in that way, a more and more undemocratic way.

Further, when we talk about the political process, it is important to point out that in 2013, again by a 5-to-4 vote, the Supreme Court gutted the 1965 historic Voting Rights Act, a law which was passed to combat racial discrimination in voting in a number of States. What the Court said, finally, is that in the United States, you have the right to vote no matter what the color of your skin is, a historic step forward in making this country the kind of country that it must become.

Well, as a result of that 5-to-4 Supreme Court decision in 2013 gutting the Voting Rights Act, literally days after, we had Republican Governors and Republican legislatures all over this country, under the guise of fighting voter fraud, passing laws—everybody knows this—intentionally designed to make it harder for people of color, for poor people, for young people, for older people to vote in elections.

In America in the year 2017, it is not too much to ask that all of our people who are eligible to vote be able to vote without harassment, without roadblocks, without barriers being placed in front of them.

I know it is a radical idea, but it is called democracy. It is called democracy. It says that if you are eligible to vote, we want you to vote. We want you to participate. It says that in America, where we have one of the lowest voter turnout rates of any major country on Earth, we want more people to be participating in the political process, not fewer people. There is nothing I have seen in Judge Gorsuch's record or in his recent statements to suggest to me that he is prepared to overturn this disastrous decision on the Voting Rights Act.

In 1973, we all know, the Supreme Court decided Rowe v. Wade and declared that women have a constitutional right to control their own bodies. That decision has been subsequently affirmed by multiple cases as recently as last June.

In his confirmation hearings, Judge Gorsuch refused to state if he believed Roe v. Wade was good law and should be upheld. Based on his statements and general philosophy, I believe there is a strong likelihood that Judge Gorsuch would vote to overturn Roe v. Wade and deny the women of this country the constitutional right to control their own bodies. This would be an outrage. I do not want to be a party to allowing that to happen.

In addition, under Chief Justice John Roberts, the Supreme Court has time and again voted in support of corporate interests and against the needs of the working people of our country. After reviewing Judge Gorsuch's record, I believe he will continue that trend.

In a case called TransAm Trucking, Judge Gorsuch argued that a trucker was properly fired by his employer for abandoning his cargo at the side of the road after his truck broke down and he nearly froze to death waiting for help. Judge Gorsuch literally believed that this man should have had to choose between his life and his job, and by choosing his life—not freezing to death—he deserved to lose his job.

In another case, Judge Gorsuch ruled that a university was correct to fire a professor battling cancer rather than grant her request to extend her sick leave. I find these decisions troubling.

At a time of massive income and wealth inequality, when so many working people throughout this country feel powerless at the hands of the wealthy and the powerful and their employers, we need a Supreme Court Justice who will protect workers' rights and not just worry about corporate profits. I fear very much that Judge Gorsuch is not that person.

I listened carefully to what my friend, Senator CORNYN of Texas, had to say about this entire process. I have to say that in his remarks there was a whole lot of obfuscation because there is a simple reality that we are going to have to deal with in the Senate this week. Everybody knows, and Senator CORNYN made the point, that under Harry Reid, the former Democratic leader, the rules, in fact, were changed. They were changed because of an unprecedented level of Republican obstructionism, making it impossible for President Obama to get almost any of his nominees appointed.

Let's not forget that in the midst of that controversial decision—and it was a controversial decision—the Democratic leader had the power also to say that we will waive the 60-vote rule regarding Supreme Court nominees. Democrats had the power, and they chose not to exercise that power in ending that rule—although, of course, they could have done that. I think the reason was that the Democratic leadership appropriately and correctly believed that on an issue of such magnitude, the appointment of a Supreme Court Justice, it is important that there be bipartisan support. But right now, it appears that the Republican leadership is going to do what the Democratic leadership did not do; that is, waive that rule and get their judge appointed with 51 votes.

So I would suggest to the Republican leader that instead of trying to push this nominee through with 50-some-odd votes, it might make more sense that, rather than changing the rule, change the nominee, and bring forth someone who, in fact, can get 60 votes.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

FOREIGN AGENTS REGISTRATION MODERNIZATION AND ENFORCEMENT ACT

Mrs. SHAHEEN. Mr. President, last month I introduced bipartisan legislation with Senator TODD YOUNG of Indiana to create greater transparency about foreign individuals and organizations that are operating in the United States to advance the interests of foreign governments, including governments that are hostile to the United States.

In particular, our bill will give the Department of Justice new and necessary authority to investigate potential violations of the Foreign Agents Registration Act by RT America, the U.S. branch of RT News or Russia Today News.

The Foreign Agents Registration Act was passed back in the late 1930s in response to concerns about Nazi propaganda being disseminated in the United States without people knowing what it was. It is absolutely appropriate today for us to take a look at what Russia and other countries may be doing to our news.

RT America, which broadcasts from studios here in Washington and is available on cable TV across the United States and across the world, for that matter, is one of the most high-profile assets in Vladimir Putin's vast $1.4 billion propaganda machine. According to the U.S. intelligence community, the Kremlin selects the staff for RT and closely supervises RT's coverage, including disinformation and false news stories designed to undermine our democracy.

Here we have a photo that shows exactly what I believe seems to be happening with RT. This photo was taken from a declassified U.S. intelligence report, and it shows RT's editor-in-chief—and former Putin campaign staffer, by the way—Margarita Simonyan briefing Putin on RT's facilities. So clearly he is interested.

Well, I believe the American people have a right to know if a Russian Government entity is exploiting our first amendment freedoms to harm our country. It is galling that RT news has publicly—publicly—boasted that it can dodge our laws by claiming to be financed by a nonprofit organization and not the Russian Government.

Well, what my bill—our bill—would do is strengthen the Foreign Agents Registration Act by giving the Department of Justice authority to compel foreign organizations to produce documentation to confirm funding sources and foreign connections. This is investigative authority that has been recommended by the Department of Justice inspector general, the Government Accountability Office, and the Project on Government Oversight. Our bill would create transparency by giving Justice the authority it needs to investigate RT America and publicly expose its ties to the Kremlin.

The audacity of Russia's interference in Western democracies, including extensive meddling in our 2016 Presidential election, is deeply alarming, and we have learned that Russia's influence campaign reaches tens of millions of unsuspecting Americans. False news stories can end up on our Facebook timelines and our Twitter feeds. They shape the political conversations that we have with our friends at the supermarket and our colleagues at work.

These are just a few of the headlines from RT. This one is actually from Sputnik, which is another Russian news outlet. They show the extent to which these false news stories are being spread around. This one talks about how ''1,000s Turkish forces surround NATO's Incirlik air base for 'inspection' amid rumors of coup attempt,'' which suggests that we were involved in that coup attempt.

''FBI wiretapped Trump Tower in search of 'Russian mobster.' ''

''Spying on Trump: CIA Whistleblower Points Finger at Clapper, Brennan, Comey.''

''Ukrainian Su-25 fighter detected in close approach to MH17 before crash.'' You will remember that this was the plane crash over Ukraine—that the Russians shot down.

During our Presidential campaign in 2016, dozens of narratives and false news stories originated in Russia—for instance, this one, the baseless story that the Obama administration launched a coup against the Turkish Government from the U.S. airbase in that country.

Earlier, RT News ran numerous reports on supposed U.S. election fraud and voting machine vulnerabilities, claiming that the results of the U.S. elections could not be trusted and did not reflect the people's will.

Well, researchers have traced these and other stories to a common source: the Kremlin's sophisticated, multifaceted propaganda empire, which reaches some 600 million people across 130 countries and in 30 languages.

If you watch RT News, you will agree that it is not clear whether you are watching a U.S. news station or a Russian station because it has slick production values. It is arguably the jewel in the crown of this propaganda empire.

According to the U.S. intelligence community report declassified in January:

> The Kremlin has committed significant resources to expanding the [RT News'] reach, particularly its social media footprint. . . . RT America has positioned itself as a domestic US channel and has deliberately sought to obscure any legal ties to the Russian government.

A prime objective of this propaganda barrage is to influence U.S. and European public opinion, create confusion, and shape election outcomes.

The Associated Press has identified a building in Moscow where an estimated 400 internet trolls—fluent in English and well-versed in American politics—work 12-hour shifts, creating false narratives and fake news stories. These stories are then seeded on the internet, they get validated, and they get passed on by popular websites and eventually end up on our radios, TVs, and smartphone screens.

In an incident earlier this month, a discredited former CIA employee went on RT News to charge that President Obama had asked British intelligence to spy on Donald Trump. Well, this false news story was then spread by legal commentator Anthony Napolitano on the FOX News show ''Fox and Friends,'' which is regularly watched by the President. The claims were then cited by President Trump and White House Press Secretary Sean Spicer to defend the President's claims that his predecessor had wiretapped Trump Tower.

Well, we know that during testimony before Congress 2 weeks ago, the NSA Director, ADM Michael Rogers, agreed with our British allies that the original RT News story was utterly ridiculous.

At an Armed Services Committee hearing last month, Gen. Philip Breedlove, Retired, the former Supreme Allied Commander in Europe, told us that when Russian-backed forces shot down Malaysian Airlines Flight 17 over Ukraine in 2014, the Russians put out four stories within two news cycles placing the blame on the Ukrainian Government and others. This is the headline that we see from RT. The general said it took 2 years for

the West to finally debunk these false news stories.

We know that Russia interfered in our 2016 Presidential election. We know that a Russian influence campaign was one aspect of that interference. Our intelligence community has concluded that RT America is an arm of the Russian propaganda juggernaut, operating openly in our country and taking full advantage of our First Amendment freedoms.

I am sure we would all agree that everyone in the United States, in every organization, has a right to speak, write, and broadcast freely. That is what our First Amendment says. We are a resilient democracy. We are confident that our values and institutions will prevail in the free marketplace of ideas. Our Constitution protects the right of individuals and organizations to spread those Russian viewpoints, disinformation, and even outright lies, but the American people have a right to know if RT America is a Russian propaganda organ that takes its direction from the Kremlin. They have a right to know who is funding their operations.

RT has publicly boasted that it uses a shell nonprofit corporation to dodge U.S. laws. This legislation, the Foreign Agents Registration Modernization and Enforcement Act, would put an end to that charade. The legislation Senator YOUNG and I recently introduced would give the Department of Justice the authority it needs to request documentation from RT News on funding sources and foreign connections.

As we see here, clearly the legislation has hit a nerve because Kremlin spokesman Dmitry Peskov defended RT News, and Russia's State Duma is considering measures to retaliate.

What RT says about our legislation is that ''US senator wants to probe RT as a 'foreign agent' . . . What's next, public executions''? Well, that is ridiculous. The editor-in-chief at RT News has said that my legislation is a ''persecution of dissenting voices.'' As I said, that is just nonsense. I welcome dissenting voices. That is what our First Amendment and the United States are all about. But it is not reasonable or acceptable for an individual or organization working in the United States on behalf of a hostile foreign government to conceal funding and direction that it receives from that government.

Vladimir Putin is not going to stop us from enforcing our laws and protecting our country. We have a responsibility to expose RT News, RT America, and the entire panoply of tactics that Russia has used to interfere in our 2016 election and that they continue to currently use to sow confusion and distrust and spread around stories which pretend to be news but which are not accurate.

Make no mistake, the Kremlin's influence campaign is an ongoing enterprise, and to the extent that it is successful, that it can operate under the radar screen, it will become even more brazen and more aggressive in the future.

In testimony before the Senate Armed Services Committee last December, Dr. Robert Kagan of the Brookings Institution said that Russia's broader objective is to subvert Western democracies, and we see that going on now in Europe. He said: ''For the United States to ignore this Russian tactic, and particularly now that it has been deployed against the United States, is to cede to Moscow a powerful tool of modern geopolitical warfare.'' That was a direct quote.

This is a profound test for our country. Our democracy has been attacked and continues to be under attack from this kind of news that is being put out by a Kremlin-funded organization which is a hostile foreign power. We need to understand the Kremlin's tactics, and we need to expose this propaganda here in the United States, including RT America. To that end, I urge my colleagues to support the Foreign Agents Registration Modernization and Enforcement Act. Let's give the Department of Justice the tools it needs to investigate and expose RT America.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Montana.

NOMINATION OF NEIL GORSUCH

Mr. DAINES. Mr. President, today I am joining my colleagues on the floor with a bit of confusion, a bit of disappointment, and, frankly, a lot of questions. I am referring to the confirmation of Neil Gorsuch as the next Supreme Court Justice.

As a Senator, one of the most consequential votes I will cast is a vote to confirm a U.S. Supreme Court nominee. It is a lifetime appointment to our Nation's highest Court.

I recently spoke with some students back in Montana, some FFA students. The average age 17, 18 years old. God willing, Neil Gorsuch may serve on the Court for 30 or more years. These FFA students' children and perhaps even grandchildren will be part of Neil Gorsuch's time on the Court, given that he likely will serve for three decades or more.

As it stands today, the Senate is on the precipice of confirming Neil Gorsuch to be our next U.S. Supreme Court Associate Justice. However, as the news has been reporting, as our Twitter feeds are overflowing with information, it looks as though my colleagues on the other side of the aisle are caving to the pressures of the far left, and they are set to unleash an unprecedented filibuster.

I have met with Judge Gorsuch. I watched his confirmation hearings. What I have seen and what most Americans agree—Judge Neil Gorsuch has been incredibly transparent, he has been accessible, and he is the right man for the position. He is mainstream. He is a westerner. He is committed to judicial independence. He has a brilliant legal mind—that is without dispute. He is exceptionally qualified. In fact, the American Bar Association unanimously rated Judge Gorsuch as ''well qualified.'' That is its highest rating.

He has met with nearly 80 Senators. Prior to his hearing, he provided the Judiciary Committee over 70 pages of written answers about his personal record. He provided 75,000-plus pages of documents, including speeches, case briefs, opinions, and written works going as far back as his college days. The White House archives produced over 180,000 pages of email and paper records related to Judge Gorsuch's time at the Department of Justice.

Judge Gorsuch sat for three rounds of questioning, totaling nearly 20 hours, in committee. As the American people watched Judge Gorsuch before that committee, they saw an exceptionally qualified nominee for the highest Court in the land, someone who was bright, who was kind. I would argue that Judge Gorsuch's mind, his intellectual capacity, is only exceeded by his heart. This is a kind and independent jurist.

When he came before the Judiciary Committee, this was the longest hearing of any 21st-century nominee. He answered nearly 1,200 questions during his hearing, which is nearly twice as many questions posed to Justices Sotomayor, Kagan, or Ginsburg. He was given 299 questions for the record by Democrats on the Senate Judiciary Committee—the most in recent history of any Supreme Court nominee. Judge Gorsuch did all of this with the utmost integrity and with transparency and humility. Yet here we are, with Democrats engaged in unprecedented obstruction, refusing to give Neil Gorsuch an up-or-down vote.

The Senate has only ever employed a cloture motion for a Supreme Court nominee four times in modern history. We voted on cloture when Justice Alito was nominated in 2006. We did the same in 1968, 1971, and 1986. In 1991, Clarence Thomas was confirmed on a 52-to-48 vote, and in 2006, Samuel Alito was confirmed on a 58-to-42 vote. In fact, when President Obama was in the White House, Republicans did not filibuster a nominee. This body confirmed Sonya Sotomayor in 2009 by a vote of 68-to-31 and confirmed Justice Kagan by a rollcall vote of 63-to-37 in 2010. We did not filibuster.

Let me remind folks that cloture is in place to stop debate, not to stop a vote. Cloture was put in place to speed the Senate up, end debate, and move to a vote, not to stop a vote. It was never intended to be a stall tactic or something to obstruct this body.

This bears repeating. Cloture was put in place to speed up the process, to prevent obstruction.

This Chamber has never had a partisan filibuster to a Supreme Court nominee. Let me say that again. This Chamber has never had a partisan filibuster to a Supreme Court nominee.

So here we are today, with no other option but to invoke this so-called nuclear option to put an eminently qualified individual on the U.S. Supreme Court. Judge Gorsuch is the definition of a mainstream judge. In more than 2,700 cases in which he has participated in the Tenth Circuit, 97 percent of them have been decided unanimously; in fact, he was in the majority 99 percent of the time. Yet Senate Democrats would rather play politics and place the demands of extreme liberal interests over ensuring regular order.

Let's talk about what we are and what we are not doing. We are in the Senate, a Chamber I am honored to serve in, representing more than 1 million Montanans. We operate on a set of Parliamentary criteria based on things that have happened before. Therefore, we are going to establish a new precedent; we aren't changing the rules. This isn't happening for the first time. Let us remember that in November of 2013, Senate majority leader Harry Reid established a new precedent of how many votes are necessary on executive branch nominees, with the exclusion of Supreme Court picks.

What is even more shocking to me is that over the past few weeks, through the hearing process, through the debate and discussions about Judge Gorsuch on the floor, and with support from across my State of Montana—let me just name some of those organizations and people in support of Judge Gorsuch: the Montana Chamber of Commerce; four of Montana's Tribes—the CSKT, the Crow Tribe, Fort Belknap and Fort Peck; the Montana Farm Bureau, Judge Russell Fagg of the 13th judicial district, Judge Jeffrey Langton of the 21st judicial district, Judge John Larson of the 4th judicial district, State senator Nels Swandal, retired judge of the 6th Judicial District; the Montana NRA members; the Montana Grain Growers Association and the Montana Wool Growers Association; the Montana Stockgrowers Association; our attorney general in Montana, our auditor in Montana, our speaker of the Montana House. This is a very mainstream group of Montanans, leaders back home who are in support of Judge Gorsuch. Yet my colleagues are rejecting the will of the American people, rejecting the will of Montanans, filibustering this nomination, and not even allowing for an up-or-down vote.

The American people deserve a Supreme Court Justice who upholds the rule of law and will follow the Constitution. The American people deserve a Supreme Court Justice who doesn't legislate from the bench. The American people deserve Judge Neil Gorsuch to serve on the U.S. Supreme Court.

Thank you, Mr. President.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. TESTER. Mr. President, I ask unanimous consent to be allowed to speak for up to 3 minutes.

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

INTERNET PRIVACY RIGHTS

Mr. TESTER. Mr. President, I rise today with a warning about S.J. Res. 34. This measure undermines the privacy of all Montanans and all Americans. It is a measure I strongly oppose because it takes the refs off the field, leaving consumers at the whim of internet service providers. It allows these companies to sell our data—to sell my data—and to snoop through your search history and to track the sites we visit. In other words, it allows internet companies to make a profit by invading your privacy. It gives them the ability to collect and sell your physical location, information about your children, your health, finances, Social Security number, and web browsing history. In fact, this legislation even extends to apps and your social media accounts.

Following the vote that we had here on this floor, a Republican State senator from Buffalo, MT, proposed an amendment to our State budget to push back against this irresponsible resolution. In my home State of Montana, folks on both sides of the aisle are deeply concerned about their right to privacy. Now folks you don't even know can have access to the websites you visit, and they can have this access without your consent.

This is another troubling step that folks in Congress have taken this year to violate the rights of privacy of law-abiding citizens. We already have a CIA Director who has advocated for the most intrusive acts of the PATRIOT Act. We have a Supreme Court nominee before us who supports the government's ability to reach into the private lives of law-abiding Americans. Now Congress is rolling out the red carpet for major corporations to collect and sell our personal online information.

Enough is enough. I am here today to provide a voice for all Montanans and all Americans who value their right to privacy, who expect their elected officials to defend civil liberties, to stand up for constitutional rights, and who do not want private information collected and shopped around like a used book on Amazon.

When the President decided to sign this resolution last night, he ushered in the latest significant threat to our right to privacy. Now it is the responsibility of service providers to protect our personal information online.

I think folks in Montana and across this country have the right to question the priorities of those who supported this resolution. Everyone has a fundamental right to privacy, and the government shouldn't be in the business of violating those individual rights, especially when doing the bidding of big companies looking to make more profits at the expense of people's privacy.

I want it to be known in this body that Montanans don't want anyone snooping around in their private lives, neither the government nor corporations. It is fundamental to our Montana values. Protecting online privacy is critical to the integrity of basic, fundamental freedom, of fundamental civil liberty. I urge all my colleagues to make their voices heard on this critical issue.

I yield the floor.

The PRESIDING OFFICER. The Senator from Wyoming.

(The remarks of Mr. BARRASSO pertaining to the introduction of S. 826 are printed in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Mr. BARRASSO. I yield the floor.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the Duke nomination?

Mr. BARRASSO. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The senior assistant legislative clerk called the roll.

Mr. CORNYN. The following Senator is necessarily absent: the Senator from Georgia (Mr. ISAKSON).

The PRESIDING OFFICER (Mr. CRUZ). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 85, nays 14, as follows:

[Rollcall Vote No. 103 Ex.]

YEAS—85

Alexander	Flake	Perdue
Baldwin	Franken	Peters
Barrasso	Gardner	Portman
Bennet	Graham	Reed
Blunt	Grassley	Risch
Boozman	Hassan	Roberts
Brown	Hatch	Rounds
Burr	Heitkamp	Rubio
Cantwell	Heller	Sasse
Capito	Hirono	Schatz
Cardin	Hoeven	Schumer
Carper	Inhofe	Scott
Casey	Johnson	Shaheen
Cassidy	Kaine	Shelby
Cochran	Kennedy	Stabenow
Collins	King	Strange
Coons	Klobuchar	Sullivan
Corker	Lankford	Tester
Cornyn	Leahy	Thune
Cotton	Lee	Tillis
Crapo	Manchin	Toomey
Cruz	McCain	Van Hollen
Daines	McCaskill	Warner
Donnelly	McConnell	Whitehouse
Durbin	Moran	Wicker
Enzi	Murkowski	Wyden
Ernst	Murray	Young
Feinstein	Nelson	
Fischer	Paul	

NAYS—14

Blumenthal	Harris	Murphy
Booker	Heinrich	Sanders
Cortez Masto	Markey	Udall
Duckworth	Menendez	Warren
Gillibrand	Merkley	

NOT VOTING—1

Isakson

The nomination was confirmed.

The PRESIDING OFFICER. Under the previous order, the motion to reconsider is considered made and laid upon the table and the President will be immediately notified of the Senate's action.

RECESS

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until 2:15 p.m.

Thereupon, the Senate, at 12:33 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. PORTMAN).

The PRESIDING OFFICER. The majority leader.

LEGISLATIVE SESSION

Mr. MCCONNELL. Mr. President, I move to proceed to legislative session.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

MOTION TO PROCEED TO EXECUTIVE SESSION

Mr. MCCONNELL. Mr. President, I move to proceed to executive session to consider Executive Calendar No. 33, the nomination of Neil Gorsuch to be Associate Justice of the Supreme Court of the United States, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to the motion.

The clerk will call the roll.

The senior assistant legislative clerk called the roll.

Mr. CORNYN. The following Senator is necessarily absent: the Senator from Georgia (Mr. ISAKSON).

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 55, nays 44, as follows:

[Rollcall Vote No. 104 Leg.]

YEAS—55

Alexander	Fischer	Paul
Barrasso	Flake	Perdue
Bennet	Gardner	Portman
Blunt	Graham	Risch
Boozman	Grassley	Roberts
Burr	Hatch	Rounds
Capito	Heitkamp	Rubio
Cassidy	Heller	Sasse
Cochran	Hoeven	Scott
Collins	Inhofe	Shelby
Corker	Johnson	Strange
Cornyn	Kennedy	Sullivan
Cotton	Lankford	Thune
Crapo	Lee	Tillis
Cruz	Manchin	Toomey
Daines	McCain	Wicker
Donnelly	McConnell	Young
Enzi	Moran	
Ernst	Murkowski	

NAYS—44

Baldwin	Cardin	Duckworth
Blumenthal	Carper	Durbin
Booker	Casey	Feinstein
Brown	Coons	Franken
Cantwell	Cortez Masto	Gillibrand
Harris	Menendez	Shaheen
Hassan	Merkley	Stabenow
Heinrich	Murphy	Tester
Hirono	Murray	Udall
Kaine	Nelson	Van Hollen
King	Peters	Warner
Klobuchar	Reed	Warren
Leahy	Sanders	Whitehouse
Markey	Schatz	Wyden
McCaskill	Schumer	

NOT VOTING—1

Isakson

The motion was agreed to.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

The PRESIDING OFFICER. The clerk will report the nomination.

The senior assistant legislative clerk read the nomination of Neil M. Gorsuch, of Colorado, to be an Associate Justice of the Supreme Court of the United States.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, before I start, I ask unanimous consent that the debate time on the nomination of Judge Gorsuch during Tuesday's session of the Senate be divided as follows: the time until 3:30 p.m. be under the control of the chairman of the Judiciary Committee; the time from 3:30 p.m. until 4:30 p.m. be under the control of the minority; the time from 4:30 p.m. until 5:30 p.m. be under the control of the majority; the time from 5:30 p.m. until 6:30 p.m. be under the control of the minority; and finally, that the time from 6:30 p.m. until 6:45 p.m. be under the control of the majority.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. GRASSLEY. Mr. President, today we will continue to debate the nomination of Judge Neil M. Gorsuch to serve as Associate Justice of the Supreme Court of the United States.

The Judiciary Committee held four full days of hearings last month. The judge testified for more than 20 hours. He answered more than 1,000 questions during his testimony and hundreds more questions for the record. We have had the opportunity to review the 2,700 cases he has heard, and we have had the opportunity to review the more than 180,000 pages of documents produced by the Bush Library and the Department of Justice. Now, after all of this, my Democratic colleagues unfortunately appear to remain committed to what they have been talking about for a long period of time: filibustering the nomination of this very well qualified jurist.

Even after all of this process, there is no attack against the judge that sticks. In fact, it has been clear since before the judge was nominated that some Members in the Democratic leadership would search desperately for a reason to oppose him.

As the minority leader said before the nomination: ''It's hard for me to imagine a nominee that Donald Trump would choose that would get Republican support that we could support.'' That is the end of the quote from the minority leader.

He said later, and I will continue to quote him: ''If the nominee is out of the mainstream, we'll do our best to hold the seat open.''

Then the President nominated Judge Gorsuch. This judge is eminently qualified to fill Justice Scalia's seat on the Supreme Court, and there is no denying that whatsoever.

Let me tell you some things about him. He is a graduate of Columbia University and Harvard Law School. He earned a doctorate in philosophy from Oxford University and served as a law clerk for two Supreme Court Justices.

During a decade in private practice, he earned a reputation as a distinguished trial and appellate lawyer. He served with distinction in the Department of Justice. He was confirmed to the Tenth Circuit Court of Appeals by a unanimous voice vote in this body.

The record he has built during his decade on the bench has earned him the universal respect of his colleagues both on the bench and the bar. This judge is eminently qualified to do what the President appointed him to do.

Faced with an unquestionably qualified nominee, my friends on the other side of the aisle, my Democratic colleagues, have continually moved the goalpost, setting test after test for this judge to meet. But do you know what? This judge has passed all of those tests, all with flying colors, so the people on the other side of the aisle—the Democrats in the minority—are left with a ''no'' vote in search of a reason.

Let's go through some of their arguments. First, the minority leader announced that the nominee must prove himself to be a mainstream judge. Is he a mainstream judge or not? Well, consider his record: Judge Gorsuch has heard 2,700 cases and written 240 published opinions. He has voted with the majority in 99 percent of the cases, and 97 percent of the cases he has heard have been decided unanimously. Only one of those 2,700 cases was ever reversed by the Supreme Court, and it happens that Judge Gorsuch did not write the opinion.

Then consider what others say about him. He has been endorsed by prominent Democratic members of the Supreme Court bar, including Neal Katyal, President Obama's Acting Solicitor General. This Acting Solicitor General wrote a New York Times op-ed entitled ''Why Liberals Should Back Neil Gorsuch.'' Mr. Katyal wrote: ''I have no doubt that if confirmed, Judge Gorsuch would help to restore confidence in the rule of law.''

He went on to write that the judge's record ''should give the American people confidence that he will not compromise principle to favor the President who appointed him.''

Likewise, another well-known person, David Frederick, a board member