organizations have described as being politically motivated sentences.

In 2014, President Elsisi issued a decree that expanded the jurisdiction of military courts over civilians. According to Human Rights Watch, since the decree was issued, the military courts have tried over 7,400 Egyptian civilians.

Additionally, individuals who have been victims of enforced disappearances in Egypt have claimed that they were tortured and subjected to other forms of abuse when they were taken. There has been little accountability for this excessive use of force.

Egypt's repression is not limited to its own citizens. There are currently a number of Americans who are jailed in Egypt. There is one American in particular whom I would like to raise: the case of American-Egyptian citizen Aya Hijazi.

Aya was arrested in May of 2014, along with her husband and other members of her organization, which is called the Belady Foundation, which works with abandoned and homeless youth and rescues these young children off the streets. Three years ago, she was arrested and charged with ridiculous allegations, including sexual abuse and paying the children to participate in demonstrations against the government. To date, no evidence has been provided to back these horrible allegations. Almost 3 years later, this American citizen remains in prison.

Throughout that time, I and others here in the Senate have been calling for her release, and it is time that the charges against her be dropped and her husband and the other workers be released immediately because her case and many others like it are an obstacle to better relations.

The Egyptian people deserve better than the brutal treatment they are receiving at the hands of their government. All human beings do. It is incumbent upon us, the elected representatives of the American people, to make clear to friends, allies, partners, and foes alike that no matter what issues we are working with you on, negotiating a resolution to, or dealing with you on in some other way, we are not going to look the other way when human rights are being abused. We are going to encourage you to reform because in the long run, that is in your interest and ours.

We have seen in recent history the consequences when governments do not respect their citizens. It creates instability in those countries. Instability is the breeding ground of terrorists and radical elements around the world. Ultimately, those terrorists train their sights on us.

As I told President Elsisi today, Egypt is a nation rich in culture and history and has made extraordinary contributions to the world. It has played a leading role in fostering peace with Israel. But it faces a dangerous future if it does not create the conditions within the country in which its people can live peacefully and securely without fear. Otherwise, Egypt remains vulnerable to the kind of instability we have seen in Syria, Libya, and other countries. That is why it should matter to the American people.

I am disappointed that this issue of human rights did not come up publicly when the President met with the President of Egypt. I hope that will change in the weeks and days and months to come, for it is in our national interest to further these goals. Otherwise, sadly, we could very well have yet another and perhaps the most important country in the region destabilized and ultimately left vulnerable to becoming a breeding ground for terrorism that ultimately targets our people and our Nation.

EXECUTIVE SESSION

EXECUTIVE CALENDAR—Continued

Mr. RUBIO. Mr. President, I ask unanimous consent that the Senate resume executive session and then resume legislative session following the remarks of the Senator from Oregon, Mr. MERKLEY.

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

Mr. RUBIO. Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. MERKLEY. Mr. President, I rise to address the nomination of Neil Gorsuch. I will start by noting that just moments ago the majority leader was on the floor and did something that has never before been done in U.S. history; that is, on the first day—indeed, in the first hours of debate on a Supreme Court Justice on this floor, the majority leader filed a petition, called a cloture petition, to close debate. So here we are on the first day, just hours into the debate, and the majority leader has said: Enough. We do not want to hear any more about this topic. We are going to shut down debate.

The rules provide some protection for this, and that is that it cannot be voted on until Thursday. So there is time between now and Thursday for us to air our views. Historically, often debates went on for a substantial amount of time—a week, some for many weeks—with no cloture petition being filed, with no closing of the debate. Certainly, never before has the majority leader shut down debate, filed that petition on day one in his trying to ram this nomination through.

This is just a continuation of firsts—first events that do absolutely no credit to this institution, no credit to the Supreme Court, no credit to our Nation. In fact, they pose a substantial danger.

It was February 13, a little over a year ago, that Supreme Court Justice Scalia died. Almost immediately, the majority leader indicated that when the nomination came down from President Obama, this Chamber would not exercise its responsibility of advice and consent under the Constitution in that it would not provide an opportunity for Merrick Garland to be able to appear before a committee and answer the questions of the committee members, the questions of Republicans and the questions of Democrats, so that they could assess whether that individual was appropriate to serve in a Supreme Court seat.

The majority leader made it clear that there would be no committee hearing and no committee vote and no opportunity to come here directly to the floor, bypassing the committee. In other words, he closed off every opportunity for the President's nominee to be considered. This is the first time—this is the only time that has happened in our Nation's history when there was a vacancy in an election year.

What is the essence of this extraordinary and unusual action when this Chamber fails to exercise its advice and consent responsibility under the Constitution? Were we at a time of war, like the Civil War, in which the Capitol at times was under assault? Were we at a moment in which the building was aflame and we had to flee or there was some other significant threat to the functioning of this body? Was there some extraordinary set of circumstances—perhaps a massive storm headed for the Nation's Capital—that led the Senate for the first time in U.S. history to say that it could not take the time to exercise its constitutional advice and consent responsibility? There was no storm. There was no fire. There was no threat. There was no earthquake. There was nothing that would have prevented this Chamber from doing its responsibility.

The President has a responsibility under the Constitution when there is an open seat, and that is to nominate. He proceeded to consult with Members on both sides of the aisle, and he nominated an individual, Merrick Garland, who had an extraordinary reputation and who essentially was considered to come straight down the Main Street of judicial thought, with opinions that were neither labeled ''progressive'' nor ''conservative.'' They were straight down the middle.

The President made that nomination on March 16, which was a month and 3 days after the seat became vacant, but that was the last action to occur, the last action this Chamber took. A few individuals did courtesy interviews, knowing that it would lead to no committee hearing and no committee vote because the majority team in this Chamber decided to steal a Supreme Court seat. Again, such a theft never, ever has happened in the history of our Nation.

There have been a substantial number of seats that have come open during an election year—16. There have been a substantial number of individuals who were confirmed to those 16

seats, and there were individuals who were turned down by this Chamber. Yet, in all of the 15 cases that preceded the death of Justice Scalia, the Senate acted. The Senate exercised its responsibility.

But this time was different. This time, the majority said: We intend to pack the Court of the United States of America—not by adding seats to it; that would not work under a Democratic President who could then nominate more individuals—to pack the Court by taking a seat, failing to exercise the responsibility that each of us has under our oath of office of advice and consent, and send it in a time capsule into the next administration, hoping that time capsule would be opened by a conservative President who would nominate someone who was very conservative, indeed, to create a 5-to-4 bias. What was that bias the majority was looking for? It was not a bias toward ''we the people''; it was a bias toward the powerful and the privileged.

If you take a look at our Constitution, that initial opening of our Constitution, it does not say ''we the privileged'' and ''we the powerful.'' It lays out a vision of a form of government with checks and balances to be designed to function of, by, and for the people. The majority was afraid that Merrick Garland would be just that kind of judge, one who would call the balls and strikes under the Constitution in support of the constitutional vision of ''we the people.'' They did not want a judge who would call the balls and strikes under our Constitution; they wanted someone who would find a way to twist a case in favor of the privileged and the powerful.

Tonight, I will lay out a lot of how they knew that was important both from the perspective of the decisions of the 5-to-4 Court that preceded the death of Justice Scalia and also Merrick Garland's writings and decisions, who found every opportunity to take a case and find some word, find some phrase, find some idea—''to operate is not to operate,'' ''to drive is not to drive,'' which is just language from one case—in order to find some way to find in favor of the powerful over the people. Merrick Garland's nomination lasted 293 days. That is the longest time in Supreme Court history.

Now I am going to turn and go through the election-year vacancies because I do not want folks to take my word for the case that the Senate has always done its job. For more than 200 years, it has done its job—until now. Let's take a look at those vacancies.

There were a couple of cases—three cases in which there was an election-year nominee and the vacancy occurred after the general election. This happened when President Adams was in office, when President Grant was in office, and when President Hayes was in office. So there was very little time left in the Presidents' terms. In a number of these cases—all three—the President did not change office until March of the following year, but the Senate did not even need those extra 2 months that it had before we amended the Constitution.

President Adams nominated John Jay. He nominated him 3 days after the vacancy occurred in the year 1800, and the Senate confirmed the nominee. Here is an interesting twist: The nominee then declined the position. You do not see that very often in the history of the Supreme Court.

Then you go to 1872 when President Grant was President. He had a vacancy occur on November 28, which was just a month before the end of the year and a few months before the Presidency would turn over. It was following the election. He nominated Ward Hunt. The Senate acted in a little more than a week, and they confirmed him. They vetted him. They exercised their advice and consent responsibility, and they said: Yes, this individual is appropriate to serve on the Court.

Then there was President Hayes. A vacancy occurred in December 1880, and he nominated William Woods. Here we have a nominee being put forward very shortly afterwards and confirmed.

Those were the first three. That is the set of cases in which the vacancies occurred after the November elections in election years.

Let's look at the next set of vacancies. In these cases, the vacancy occurred before the elections, but the nominees were not nominated by the Presidents until after the elections. So, again, the Senate had a relatively short period of time in which to act.

We have the August 25 vacancy of 1828 with President Adams. He nominated quite a few months later—almost 4 months later—John Crittenden. In this case, the Senate acted, but they acted to table the nomination, so he was turned down.

Then we have President Buchanan in 1861, who nominated Jeremiah Black. This is a little strange to us because we think of the Presidency as changing in January, but the Presidency did not change until March. The nomination occurred in February, and the motion to proceed was rejected by the entire body. So that nominee was rejected.

Then we turn to President Lincoln. The vacancy occurred in the month preceding the election. President Lincoln nominated Salmon Chase just after the election, and the Senate said: There is plenty of time. We will review that. And he was confirmed.

Then we can turn to Eisenhower. Once again, the vacancy occurred in the month before the election, just 3 weeks before the election. Eisenhower didn't put a nomination to the Senate until January, but the Senate said: We have a responsibility of advice and consent. We will review it, we will vet the nominee, and we will vote. And they voted to confirm.

That is the second set of nominations. Those are 7 of the 16 nominations, so there are still 9 to go. Let's take a look at those.

In this case, the Senate had more time to act. The vacancy occurred before the general election. The nomination occurred before the general election.

Before I go through them, let me just note that of these nine, the Senate acted to confirm in 1804, to table in 1844, to table in 1852, to confirm in 1888, to confirm in 1892, to confirm in 1916, to confirm again 6 months later—still before the election; two in the same year—and then finally, in 1932, the Senate confirmed a nomination made in February. On February 15, the Senate acted.

Of these nine individuals, we have six who were confirmed and two were tabled. But I have left one out. There is one more nomination that occurred in an election year—just one more—and that happened last year. President Obama—we go back to Antonin Scalia dying on February 13 and Merrick Garland being nominated on March 16. So of those 16 we have looked at, the previous 15, the Senate acted each and every time because they had taken an oath of office to uphold the Constitution that has a requirement that the Senate participate in advice and consent. But this time, no action. No action. No committee hearing, not a set of committee hearings, not even one. No vote in committee. No effort or acceptance of moving the nomination to the committee of the whole, which would be here on the Senate floor. For the first time in U.S. history, the Senate stole a seat from one President in order to pack the Court.

I have to tell my colleagues that it isn't just a clever new tactic. It isn't just an excessive exercise of partisanship. This is a crime against our Constitution and the responsibilities of this body. This effort to pack the Court is a major assault on the integrity of the Court.

For every 5-to-4 decision that we see in the future, everybody is going to look and say: Five-four. How would that be different? And it will always be different if the stolen seat and the judge who fills it is on the right side because that side would otherwise have lost. The tie goes to the lower court's decision.

So what this does is not only change the trajectory of our Constitution from one where it is designed for ''we the people'' to a different vision of government by and for the people—it doesn't just change that trajectory, but it draws into question everything the Court does in the future.

Wouldn't it have been incredible if President Trump's nominee—knowing the constitutional responsibility for the Senate to act, knowing that the Senate seat had been stolen from a previous President, knowing that it would bias all the outcomes of the Court in the future—had stood up and said ''I will not participate in this crime against the Constitution'' and declined the nomination? Wouldn't that have been an act of integrity? Well, we

didn't get that act of integrity from President Trump's nominee, so here we are today, on the first day of the Senate deliberation on this nominee, and just moments ago was the first time in U.S. history that the majority has exercised a petition to close debate on the first day of a Senate debate on a Supreme Court Justice. Why is the majority in such a rush? Why is the Senate majority determined to push this through so quickly, in contravention of the tradition of due deliberation on this floor?

I know that if the circumstances were reversed and the Democrats had participated in stealing a seat from a Republican President, my colleagues would be screaming on this floor, and they would be fully justified. I am proud that my colleagues on this side of the aisle have never participated in such an assault on our Constitution or a failure to exercise our responsibilities under our oath of office or a theft of a Supreme Court seat or an effort to pack the Court, but if we had, my colleagues across the aisle would absolutely be standing and saying what I am saying tonight—that this is wrong, this is destructive, this is damaging, and we should stop and rethink this.

There is really only one nominee who would be a legitimate nominee for President Trump to make—only one way to heal this massive wound, this massive tear and rip in the heart of our Constitution, this massive failure of this Senate body to do its job. There is only one way to heal that, and that is for President Trump to nominate Merrick Garland and for him to get that committee hearing, for him to get that committee vote, for him to get that deliberation here on the floor. Maybe he would be approved and maybe he wouldn't, because that is what we see every time the Senate has acted. It has not always been to confirm a nominee, but it has acted and deliberated and voted and decided, as the Constitution calls upon it to do. That would be a healing of the wound. It would be a healing of the wound if the Senators were to vote the same way they would have voted last year had there been a completely legitimate, ordinary consideration. Then we could go forward without this damage.

So I call upon my colleagues, who I know have—each and every one of them—considered that it is their responsibility to build up and strengthen our institutions of government, not to tear them down. Therefore, I call upon them to reverse this deed before the dark act is completed of stealing a seat and packing the Court.

I wish to turn to consider another piece of this puzzle. If the seat had not been stolen and we were simply considering President Trump's nominee under ordinary circumstances, what would we find? We would find a far-rightwing judge completely outside of the mainstream.

Why is it that throughout its history, this body has honored the rule of having a supermajority needed to close debate on a Supreme Court Justice? It has been to send a message to the President that you must nominate someone who is in the judicial mainstream, not way out in one direction or another, with bizarre findings that would undermine the integrity of the Court, not a pattern of attempting to twist the law so that we the people lose and we the powerful win time after time after time—no, someone in the middle of the judicial mainstream.

Well, that is certainly where Merrick Garland was, but that is not where Neil Gorsuch is. He is a lifelong conservative activist, rewriting the law to make it something that was never intended to be. A Washington Post analysis of his decisions that have been considered by the Supreme Court found that he would be, by far, the most conservative member of the Court—not where Scalia was, not where Justice Thomas is, not where Justice Alito is; he would be the most conservative member of the Court, to the right of Justices Alito, Thomas, and Scalia.

Quote:

> The magnitude of the gap between Gorsuch and Thomas is roughly the same as the gap between Justice Sotomayor and Justice Kennedy. In fact, our results suggest that Gorsuch and Scalia would be as far apart as Justice Breyer and Justice Roberts.

That is the Washington Post. It is a pretty big gap, way to the right.

Let's take a look at some of the cases that lead to this conclusion. There is a case known simply as the frozen trucker case. Alphonse Maddin, the trucker, was fired for refusing to freeze to death. After waiting more than 3 hours with a disabled trailer on the side of the road, he unhooked the trailer and he started up the cab and he went to get warm before he could return to meet the repairman for the truck. Now, why couldn't he just carry the trailer with him? The brakes were frozen. Why was he himself freezing? Because the heater on the truck was broken. He fell asleep for some hours, woke up, and his body was numb. He became concerned about his life, so he unhooked the trailer, went to get warm, and came back to meet the repairman.

The Labor Department determined that under the Surface Transportation Assistance Act, he was wrongly fired because that act is designed to say that if you refuse to operate a truck in a fashion that is unsafe for you, the driver, or unsafe for others, you can't be fired for that. Safety comes first. The whole message of the act: Safety comes first. But in this case, Neil Gorsuch dissented. He wasn't writing the majority opinion. He went out of his way to write the minority opinion.

The Tenth Circuit upheld the fact that he was correctly operating the truck, leaving the trailer behind. You could ask, Was he operating the full truck or part of the truck? The point is that the Tenth Circuit said yes; the firing was wrong. They upheld the Labor Department under the surface transportation act, and said: He did exactly what the act had intended. You have to restore his job. The Tenth Circuit said yes, absolutely. But Judge Gorsuch went out of his way to write a dissent, saying no. It is completely taking words out of context and twisting them. I encourage others to read it for themselves because it is truly a bizarre opinion, an effort to find a way—some way, some path—to find for the company instead of the trucker, who was protected by the laws written and passed in this Chamber and the House and signed by the President. That is how far out of common sense and theory of the law Neil Gorsuch is.

Let's turn to a case often referred to as the autism case, Thompson R2–J School District v. Luke P. This case says a great deal because in this case Judge Gorsuch tried to rewrite a law referred to as the IDEA law—Individuals with Disabilities Education Act—to effectively invalidate the law. The law written here was to ensure that individuals with disabilities were provided an education by the school district, not babysitting but an education. Neil Gorsuch rewrote that law to say that babysitting is OK.

Despite years of special education in a public school, Luke P. wasn't showing any progress at home. His parents enrolled him in a private school that specializes in autistic children, where he made advances—because the school district was only babysitting him. They fought to get the school district to reimburse them. Gorsuch ruled in favor of the school district. The standard he put forward was the standard that babysitting is OK, even though the law was written to do the opposite.

This decision that Gorsuch wrote is so far out of the mainstream, it is so far out of common sense, it is so contrary to the law written here in this Chamber that the Supreme Court—yes, our Supreme Court, our eight-member Supreme Court—proceeded to say, 8 to 0: That is absurd and wrong, Neil Gorsuch. And they reversed him.

When have we had a nominee reversed 8 to 0? When have we had cases like the frozen trucker case and the autistic child case, where he went to great lengths to find for the powerful over the individual?

We can turn to the Utah en banc request in a case called Planned Parenthood Association of Utah v. Herbert. ''En banc'' means that the entire bench hears a case. Neil Gorsuch was such an activist, so committed to undermining an organization—Planned Parenthood—that he took the extreme step of initiating, himself, an en banc review of a decision to block a Utah defunding effort. Governor Herbert of that State had used the cover of false and misleading videos to strip Utah's clinics of their funding. The Governor later made clear in testimony that he was in fact punishing Planned Parenthood for its constitutionally protected advocacy and services and that the organization had not done anything wrong.

The Tenth Circuit granted a preliminary injunction against Utah for violating the organization's—Planned Parenthood's—constitutional rights. The Tenth Circuit decided this, but Neil Gorsuch—ever the activist judge, rewriting law to make it say the opposite of what was intended—sought to have a review by the entire bench. Let me explain, that is not normal. Other people may call for an en banc review because they don't like the outcome, but to have a participating judge on the Tenth Circuit initiate it is unusual. It is a message to the world: Everyone, pay attention to me. I am an activist, far-right judge, and if you like that—someone who is going to find for the powerful and the privileged over ordinary people—pay attention. That is who I am. It is kind of like trying out for a future Supreme Court opening.

Gorsuch's entire adult life has been a mission to revoke a lot of the norms we have come to embrace in our pursuit of the transitions in our society and in our government as we pursue that constitutional vision of equality under the law, protections to vulnerable populations, to workers and to kids and to women and to minorities. But Neil Gorsuch doesn't like that arc of seeking to provide the protections our constitutional vision laid out. As far back as college, he was an ideological warrior who championed a severely reactionary worldview.

In a conservative newspaper article, he characterized efforts to fight racism as ''more a demand for the overthrow of American society than a forum for the peaceable and rational discussion of these people and events.'' That is a very strange way to characterize efforts to fight racism. Racism, discrimination, is to slam the door of opportunity on American citizens because of their gender, because of their race, because of their ethnicity, because of their sexual identity—slam the door and disrupt that opportunity for each and every citizen to be treated equally under the law.

He also used the opportunity to advocate for social inequality, saying that ''men . . . of different abilities and talents to distinguish themselves as they wish, without devaluing their innate human worth as members of society,'' and arguing that a responsible system required a governing class of men of exceptional political ability to make the big decisions for society. Well, there is not much equality and opportunity in that statement.

As a judge, in case after case, he finds expansive rights for corporations at the expense of their employees, consumers, and the public interest. We have talked about the frozen trucker case and the autistic child case. There is also the electrocuted mine construction worker case. A worker started at a project a week after it begun and wasn't trained on how this should be done. It was a training that was really required because of the highly dangerous circumstances. When you are operating equipment near power lines, that is just a setting that everyone in the construction industry knows is extraordinarily dangerous. If you connect that equipment to the power line, perhaps somebody has their hand on the side of the equipment, and the next thing you know, they are electrocuted. The worker mistakenly brought a piece of equipment too close to that overhead power line, and it was the worker himself who was electrocuted and killed. The Occupational Safety and Health Review Commission fined the employer for not properly training the worker under these dangerous circumstances. The Tenth Circuit took a look at it and said: Yes, the company failed to do the proper training, and the result was that someone lost their life. But Judge Gorsuch dissented. He said that there was no evidence the company had been negligent. Really? Failure to train in a highly dangerous situation that results in loss of life—there is no problem there. Why should we require companies to train people in dangerous circumstances? Again, there was a complete lack of common sense, a determination to overturn what a review board had found, what the circuit court had found.

We can turn to the Hobby Lobby case. In this case, Neil Gorsuch found that closely held, for-profit corporations have the right to choose the contraception coverage, or lack thereof, for their employees if doing so conflicted with the corporation's religious beliefs. Now, we didn't actually have corporations—in the sense that we have them now—when our Nation was founded. There were some charters, but not the modern corporation in the sense that we have. Yet Neil Gorsuch said: We will just give this corporation personhood, and we will let the corporation exercise religious beliefs that overrule the religious beliefs of the individuals. But it was the individuals the Constitution was written to defend. It was the individuals' religious beliefs the Constitution and the Bill of Rights were laid out to protect—not a corporation. But in a never-ending quest to find for the corporation, to find for the powerful, to find for the privileged, Neil Gorsuch twisted the law, found that path, and laid it out.

In writing a brief as a lawyer in 2005, Neil Gorsuch urged the court to ignore the statutory and legislative history of the Securities Exchange Act, advocating that the court limit the ability of those defrauded by corporations to band together to seek redress. This really goes to the difference between ''we the people'' and ''we the powerful.''

We have a nominee before us right now who doesn't like the idea of individuals being able to operate with a class action suit against the predatory actions of a powerful corporation. In an article about the case, he launched into an attack on the lawyers for providing the ability for individuals to challenge the very powerful corporation, and he said these are frivolous claims—frivolous claims—that take an enormous toll on the economy. They put a burden on every public corporation in America. I will quote: ''frivolous claims that impose an enormous toll on the economy, affecting virtually every public corporation in America at one time or another and costing business billions of dollars in settlements every year.'' He didn't like this burden on corporations to respond when they were challenged for predatory practices.

Often, the transactions between a company and an individual are quite small. Maybe they involve a monthly fee to access telecommunications services. Maybe they involve a purchase of a single consumer item that costs $50. But the corporation misrepresented what that item was or didn't disclose that it had dangerous paint on it or some other feature. The only way that ordinary people, ''we the people,'' can challenge the predatory practice of a powerful corporation is to put their cases together in a class action suit so that everybody—the thousands of people who bought that $50 item—can say: You are doing something wrong. You are selling something dangerous and not telling us. You are selling something our children will choke on and not telling us. You are defrauding us in any of a whole series of possibilities. Perhaps it is in stock cases or other financial transactions. Perhaps it is the way mortgages are constructed. But the individual couldn't possibly take on the powerful companies' roomful of top-notch lawyers to reclaim that $50 or that small modest sum, so a class action is the tool through which the people, ''we the people,'' proceed to take on the powerful, and Neil Gorsuch doesn't like that.

He doesn't like workers having the chance to confront corporations on the issues of sexual harassment.

In Pinkerton v. Colorado Department of Transportation, Judge Gorsuch joined an opinion discounting Pinkerton's evidence of discrimination and concluding that Pinkerton's performance—not discrimination—resulted in her termination. Judge Gorsuch dissented from an opinion—by its very nature saying dissent—where the majority found a different path, holding that Pinkerton provided ample evidence that she was regularly outperforming her male colleagues yet was treated less favorably than them. The list goes on and on—removing Federal Government protections in a variety of cases.

But there is a third big problem with the fact that we are here tonight considering this nomination. The first big problem was that the seat was stolen by the Republican majority. That is the first time a theft like that has happened in the history of our Nation in an effort to pack the Court. That is a big deal. The second is that Trump nominated somebody completely outside the judicial mainstream. The third is something that should give every American pause, and that is that at this very moment, investigations are taking place into the conversations, into the meetings between the Trump campaign and the Russians.

Now, we know it is very public that the Russians conspired to affect the outcome of our Presidential election. We know the tactics they used. They wrote false news stories. They proceeded to have a building with hundreds—I am told a thousand people in a

building—doing social media commentating to try to have people in America see those comments and go: Oh, my goodness, isn't that Democratic nominee terrible? Look at what happened. It was an effort to give, in other words, some sort of validation to the false news stories that they were creating and to spread those false news stories via social media.

We know that Russia used a series of bots—basically, computers—around the world designed to reply automatically on social media and Facebook and to do so in order to make it look like there were more than a thousand—millions of people out there—commenting on how terrible the Democratic nominee was.

So they amplified this message with the goal of causing the algorithms used by companies like Facebook—affecting those algorithms so Facebook would start streaming the false news on their Facebook site. You see that and go: Oh, my goodness, it must be true; it is on Facebook. That was the core strategy the Russians used.

I am not sharing with you anything that is classified. I am also on the Intelligence Committee. All of this is in the public realm, the FBI is investigating not whether all that took place—they continue to look to see what else there is and the details of that—but whether there was coordination or collusion with the Trump campaign in how they did this.

Let's be clear. The investigation is not concluded. We don't know the answer. We don't know if the Trump campaign coordinated with the Russians. But let's also be clear about this: Anyone on that campaign who collaborated with the Russians to affect the outcome of the U.S. elections has committed a treasonous act.

So we have this cloud of this investigation over us right now. We find out in a few weeks if there were treasonous acts that completely delegitimize the election that put Donald Trump in the Oval Office. Will we find that? We don't know. We don't know the answer to that.

What we do know is that we have a risk of being in a situation where a swing vote on the Supreme Court is coming from a team that is being investigated. Let's get to the bottom of that and, therefore, know whether there is an issue of illegitimacy before we complete this conversation about filling this Supreme Court seat.

There is an enormous amount of evidence that the Trump campaign was familiar with the efforts of a foreign power to alter the outcome of the election. The names have come up with the press. Paul Manafort, Michael Flynn, Roger Stone, and other figures in the Trump orbit are under scrutiny for that—several of them. The communications have been articulated where and how, and that cloud is very real.

We had the unusual event a week ago Monday in which the Director of the FBI came here to Capitol Hill to talk to the House and to say that it is not normal to confirm that our investigations are under way but that he thought, under this circumstance, it was appropriate that he do so.

So those are the three big issues that we are facing. It is why every Senator who values this institution, each Senator who has pondered their responsibility under advice and consent and the theft of the Supreme Court seat last year recognizes that the administration is under a big cloud and that cloud has not been resolved in terms of the legitimacy of the election or whether there was collusion with a foreign power.

I said that if there was collusion, it was a traitorous act. Here is why. Attacking the integrity of our elections, as Russia did, is an act of war on the United States of America. It is attacking the fundamental institutions of our democracy, of our democratic Republic. We must never let this happen again. We must work with other democratic republics to make sure that Russia isn't able to do it in other countries, which we know they are attempting to do in other elections. But we should absolutely get to the bottom of it before this Chamber takes a vote on whether to close this debate or before it takes a vote on whether to confirm the Justice.

So that is the very broad presentation of the three big reasons we should pull the plug on this nomination or at least put it in deep freeze until such a time as the Russia investigation is completed. And we have already considered Merrick Garland. That is what we should do.

I am going to spend considerable time going into more detail about these three issues because in my time in the Senate, there has not been an issue that has had such grave consequences for the integrity of our Nation, the integrity of our Senate, the integrity of the Supreme Court, and, quite frankly, the integrity of the Presidency, as well. It affects all three branches because this crime of stealing a seat couldn't be completed without the direct involvement of the executive branch's nominating Neil Gorsuch. So I will go back over each of these in much greater detail.

I was pondering why I feel so strongly about this—apart from the reasons I have already laid out—and it is that for generations to come, this Chamber will be compromised. For generations to come, the Supreme Court will be compromised. If we act together, if we hit the pause button, perhaps we can prevent that.

So I feel more compelled to be here, to raise my voice, and to call for those who care about our Nation to stop the insanity of this judicial nomination discussion here on the floor of the Senate. That is why I am going to go on for some time exploring this.

I think back to when I came here in 2009. When I came to the Senate, my memories were of the Senate from the 1970's and 1980's, which now makes me really an old guy. I was able to come here as a 19-year-old, as an intern for Senator Hatfield. At that point in time, there wasn't a camera on the floor of the Senate and there wasn't email, and it wasn't easy to get a document across Capitol Hill in a short time. Interns were put to work running paperwork around the Hill. But I will tell you that the institution was in a very different place.

So I came here. I was the third of three interns to arrive that summer of 1976, our bicentennial summer. The most recent intern is put to work opening the mail each morning.

So I came in early. We had about 100 letters in envelopes. You would run them through a machine that sliced the envelopes opened. You would stack up all the letters, start going through them, and say: This one is on this topic, and this goes to this legislative correspondent. This one is on this topic, and it goes to that legislative correspondent. I think there were three or four in the office of Senator Hatfield. You would go through those 100 letters and put them on the desk of the legislative correspondent.

Those correspondents had the newly developed electronic memory typewriters. They had written paragraphs to respond to different topics, and they would mark on the letter the different paragraphs that should go here. This is the introductory paragraph we will use. We need to address this issue in this letter and use paragraph 56 from the memory bank, and we use number 84 to address another issue.

Then, those letters, all marked up, would go to the typing team that would run those memory typewriters, and get responses out before the day was over. I saw a lot of it that summer. It was possible to actually get mail to come directly in because we didn't worry about white powder being inside the envelopes.

Now if you write an actual physical letter to a Senator in this Chamber, it goes through a warehouse. It goes through a warehouse where they have to examine it and check it for poisons before it can be delivered to Capitol Hill. It will take weeks. People knowing this often choose to write by email. So a lot of the mail—most of the mail—comes in electronically.

But that summer, one of the legislative assistants was leaving for an extended period for a vacation in South America. He was looking to have someone take over the Tax Reform Act of 1976. I was asked to take over working on that act. So what that involved was that you would look at all the mail that came in on that tax topic. You would research those issues and you would draft responses. Those draft responses would go up and be approved or modified by the legislative director and by the Senator. Then you would make sure those got into the database and people got their questions answered.

I learned a lot about taxes that summer of 1976. I must say, when I was

first asked to work on taxes, I was kind of disappointed because I thought: Well, it will be really interesting to work on education; it will be really interesting to work on healthcare; it will be really interesting to work on the environment; it will be really interesting to work on jobs policy. Taxes? Not so interesting.

So the next few days, as I threw myself into responding, drafting responses to these issues being raised in letters, I was transformed in my opinion about working on tax issues because the taxes affect everything in our body of law. Taxes have environmental consequences, or they may be an environmental incentive, such as the provisions we have in the Tax Code to encourage people to insulate their homes or to drive a non-fossil-fuel burning car. They affect health, such as the provisions we have in the Tax Code that proceed to say that if your employer provides health insurance, it is not considered taxable income. It affects job incentives. It affects everything.

There were farmers writing in about tax issues that were being raised. There were teachers writing in. The teachers were concerned that there was a home office deduction that was on the chopping block. What this means is if you used a bedroom in your home or a study in your home as your office to work as an elementary teacher or a high school teacher, you could deduct the cost or the value of that portion of your house as a work expense.

Well, often, when there is an opportunity like that, some people expand the definition of the office to a point in which it is ridiculous, and there were some individuals who were saying: Well, now my entire home is my office. I will deduct the entire cost of my home, which was never the intention.

But teachers were concerned that, in the course of correcting that, that they might lose the deduction that was a legitimate work expense. There are dozens and dozens of these things. So the bill happened to come up on the floor of the Senate, in this Chamber right here. Because I was working that bill, I was assigned to come over and follow the debate. I was up in the seats up above. We considered amendment after amendment after amendment. Now, there was no negotiation between the two sides over what amendment would come up next.

Once one amendment was finished, there would be a group of Senators trying to get the attention of the Presiding Officer. Whoever got that attention first, whoever was fastest or loudest and was called on, their amendment was next. They presented it, and the staff hovered around following it and tried to get a copy of it and tried to analyze it. Then we would run down when the vote was called and meet our respective Senators coming out of those elevators that are just through those doors right there—those beautiful double doors of the Senate.

I would stand there, and out would come Senator Church, and out would come Senator Goldwater, and out would come Senator Humphrey, and out would come Senator Kennedy and Senator Inouye, and then my Senator could come out. I would say: OK, here is the story. Here is the amendment. Here is what it does. Here is what people have said about it. He would come in here and vote.

That was a very lucky set of circumstances that I had, but it allowed me to sit up in the Chamber and watch this Senate. You did not have a cloture petition on anything—a cloture petition meaning a petition to close debate. Now, there was mutual respect. There was a determination of this body to give people a chance to say what they wanted to say, but very rarely did people go on at length, and more rare than that would be a case where a petition was filed to shut down debate.

You know, the principle, the idea that originated with our original Senate, was that there is time for everyone to make their views known to each other so we can benefit from their insights, so that we can benefit from their life experience, and then we can make the decision. So it was a mutual courtesy among Senators at the very start of our democratic Republic. I saw that courtesy here on the floor as an intern 41 years ago.

What a difference it is today, where today, for the first time in U.S. history, the majority filed a petition to shut down debate on the first day of a debate over a U.S. Supreme Court seat, under circumstances that are more complex and more disturbing than virtually any circumstances we have seen in more than 200 years over the nomination of a Supreme Court justice.

It is the first time in U.S. history that a nominee in an election year was not accorded any consideration, the first time a seat was stolen, perhaps the first time that a cloud hung over a nominating President—President Trump and his team—because of the way the campaign was conducted and the possible collaboration with Russians. Certainly, it one of the first times.

Since the analysts have found that the views of Neil Gorsuch are to the extraordinary far right, that too adds a certain change from the tradition of the supermajority of the President nominating from the judicial mainstream.

So we have these complex sets of circumstances that should be thoroughly vetted. This should be a situation where no Member of this Chamber would even think about filing a petition to close debate and would not even consider the possibility of trying to cut off debate.

Debate has gone on for Supreme Court folks for weeks and weeks and weeks without a petition being filed. Sometimes, that nominee was confirmed and sometimes the nomination was withdrawn, and in the course of it, the American people learned a great deal, and they were riveted to that conversation.

But this time, the majority said that 200 years of history—that 200 years of developed comity here in the Senate Chamber, the traditions that were still here when I was an intern 4 decades ago—we are going to wipe that away. Well, that is a great concern. After I was here for a summer, I was very intrigued by the beauty of what we do on Capitol Hill, the profoundness of what we do on Capitol Hill.

We can make a policy that can destroy home ownership for literally millions of families, or we can make a policy that creates the opportunity of fair home ownership for millions of families. That is the power of the discussions that take place on this floor of the Senate, of this Chamber, and the Chamber on the other side of Capitol Hill.

So, during that summer, I was wrestling with a question, and that question was: My talents are in math and science. But is there a way to pursue a career dedicated to making the world a better place? Is there a way to actually pursue public policy as a career? I didn't know the answer to that question. I went back to college for 1 trimester out in California.

At the end of that trimester, President Carter was going to be inaugurated in January of 1977. I thought: You know, it will be very interesting to see what a new President does. Let's see what policies he puts forward, how he builds his Executive team, how he delivers his ideas to Capitol Hill, how he works with Capitol Hill.

So in January, I took a Greyhound bus across the Nation. I arrived here and proceeded to work on a variety of internships while also waiting tables and washing dishes. I worked as a hotel desk clerk up on 14th Street on Thomas Circle. I worked washing dishes and waiting tables for a Lums Restaurant, which is kind of a sit-down hamburger joint.

But it was all so I could be here and see the magic of public policy and the work done that could affect millions of lives here in this Chamber, the work done on the far side of Capitol Hill that would affect millions of families—to the better or to the worse. In the course of that year, I interned for a group called New Directions. It was an environmental nonprofit working on the Law of the Sea.

There was a question on the outside of our territorial boundaries: Will the nations cooperate so that we don't destroy the resources in the international space of the oceans? How far should our national space extend? How do we write those rules so that our Continental Shelf is clearly under our control? These are the sorts of questions considered. That treaty, the Law of the Sea Treaty, has never made it here to Capitol Hill. Every time there is a new Presidency coming in, someone says: Hey, remember that treaty

from four decades ago? It might really strengthen U.S. control of our offshore areas, and maybe we should bring it up for discussion. It still hasn't been discussed here.

But I also went door to door for a group called Virginia Consumer Congress. They were working to create attention to consumer protection issues in the State capitol in Virginia. They would go door to door. They would have a team go door to door. You would proceed to explain the issue that you were working on—the bill you were working on, that the organization was working on—and ask ordinary citizens to sign a petition in support of that bill being considered at the State capitol.

You would ask: Would you like to support the work of this organization so we can keep doing it? If they made a donation, that helped strengthen the organization. This was the model that became the Public Interest Research Group model, or the PIRG model.

Specifically, the issue we were working on as we went door to door was to say: We can save consumers a huge amount of money if we can simply implement peak-load pricing.

Now, what is peak-load pricing? What it means is that you have a meter so that when there is a huge demand for electricity, it charges a higher price. By so doing, it alerts the consumer: Hey, don't use electricity now; use it at another time.

Now, why would that save consumers millions of dollars? Well, here is why. The electric power company wanted to build a nuclear powerplant to meet just the peak load. So they wanted to build a very, very expensive nuclear powerplant, which they would then charge all the utility customers for, and a lot of utilities—it is kind of written in the law—receive an automatic 8-percent return on whatever they invest. So there is an incentive for them to invest more. The more they invest, the bigger their revenue stream is. That revenue stream is paid for by the citizens who buy electricity.

So few could convince the utility, instead of building a nuclear powerplant, to put in meters that would tell people: Hey, don't use your dryer now because it is more expensive, and shift that peak load. Then everybody benefitted. You did not have to have the risk of a nuclear powerplant.

At that point we had a lot of concerns. We had had a lot of difficulties in some of our plants with near meltdowns. The idea that you could have a radioactive cloud or a China syndrome occur somewhere near a metropolitan area was a very scary thing. So you simultaneously greatly improved public safety while saving people a huge amount of money.

So that is what we were petitioning people for door to door. It was my first introduction to a legislative process that was happening outside the national legislative process. I must say, when you go to door to door, you have so many interesting experiences. You never know what is going to happen when you walk through that door and start to explain to people what you are fighting for and they start sharing their stories.

The president of the board of VEPCO, Virginia Electric Power Company—I went to his and his wife's house. I did not know it was their house at the time—a huge, huge house in suburban Virginia. The wife greeted me. She talked with me about these issues. She said: You know, my husband is president of the board of VEPCO, but, as to the issues you are raising, I never hear them raising those issues, and these are good points you are making. So I want to buy the Virginia Consumer Congress newsletter. It was a $15 donation. That was the biggest donation at the door I ever had while I was working there. There were many, many other conversations.

But the reason I came back to be here for those first 9 months of the Carter administration was to continue to see: How does Capitol Hill work? How do nonprofit advocacy groups work? How does a new administration work? How does the Senate work? The Senate was so near and dear to my heart after the internship with Senator Hatfield.

In the course of that year, I came to believe that there was a path to work on public policy. Specifically, I decided to work on third-world economic development. Part of the reason that I choose that area was that, when I was in high school, I had a chance to be an AFS exchange student in Ghana, West Africa. There were only six exchange students sent to Africa outside of apartheid South Africa.

Of those six, five went to cities and one went to a modest town with a family of very modest means. I was the student who was sent to that very modest town to the family of modest means. The experience was such that I was surrounded by people barely able to afford to eat or sometimes not able to afford to eat.

My host family was middle class. My host father was a schoolteacher, and my host mother was also a schoolteacher. One was in a public school, and one was in a private school. Because of the connection to the public school, my host father, who, if I recall right, had a sixth grade or ninth grade education—that was enough to be a teacher because they didn't have enough people who were high school graduates or college graduates.

He was afforded a government-built house that had three concrete rooms and screens over the windows to keep out the mosquitoes. There was electricity in the house, an outlet. The family had one appliance, and that appliance was an iron to iron clothes. Every night, my host father would take the clothing that had been washed that day and he would iron the clothing. Nobody else could touch that iron because that was an incredibly valued appliance.

They had one other thing that was considered a real amazing thing for a family to have, and that was a bicycle. They had a bicycle. I wanted to borrow the bicycle to go outside this town and visit some very tiny villages. My host father was so afraid that I was going to break this bicycle, that I wasn't going to be careful, that I was going to go through potholes, that I was going to dent the rim, because it was such a valued commodity to the family.

I decided in college, after my time here in 1976 and 1977, that I would work on economic development overseas because I had seen the families who surrounded my host family often earning just a dollar a day and trying to feed a family of six or seven. The children couldn't go to school because they had to go down to the main street, running through town to try to sell things through the windows. The only way for the family to eat was for every child to be working.

(Mr. ROUNDS assumed the Chair.)

Well, I tell you this because it is all tied in to how I view the sanctity of this room, this Senate Chamber, because the events that were to transpire unexpectedly brought me back to Capitol Hill after graduate school.

I pursued that path of working on third-world economic development, and I thought I was going to spend my life overseas. When I graduated from college, I was hired for a job to work for the United Nations in the Philippines. My job was going to be going throughout the region to evaluate U.N. development projects. What a perfect position, to be able to be in multiple countries—it would have been in Malaysia, the Philippines, Vietnam, a whole host of nations—to evaluate projects on the ground, giving reports on what was working and what was not working and why. It was a 2-year post. I was so excited about doing this. It just seemed like all life had come together. I was going to have a job after I got out of college, and I could start repaying those student loans. I felt like I was landing on my feet.

I went down to the organization, the nonprofit at my university that would set up these jobs. The individual who ran it said: Jeff, come here. I have a letter for you to read.

The letter said: The United Nations has just eliminated the position to evaluate those projects in the Philippines. So suddenly, before I ever got on the plane, my job was gone. I didn't get to go. Again, I was very worried. Well, what am I going to do after I graduate?

I proceeded to go down to Mexico and work in a village with the American Friends Service Committee. Then I went to New York and worked an internship with the Carnegie Endowment for International Peace. I worked on a variety of international issues. Then I decided to join a friend, and we went and bought the cheapest bus available from California to Costa Rica. We proceeded to go through country after

country—Mexico and Guatemala, Honduras. We bypassed El Salvador. We got off the Pan-American Highway because in Salvador, in 1980, people were being pulled off of the buses and shot. The other nations were in turmoil. It was the year after the Sandinista Revolution in Nicaragua.

In Guatemala, there was an army group who was going from village to village killing the young men. There was a war between one group and another group. There was a lot of chaos there. But we went all the way through to Costa Rica. Then I worked in a village again on an environmental project. I had a chance to work in India.

I expected the whole time that I was going to be going overseas for my life. You never know what door is going to close and what door is going to open.

After I got out of graduate school and was ready to go fulfill this vision that I developed back in 1977 when I extended my stay here in DC and was doing these internships, I was at the World Bank. I was hired at the World Bank, but I didn't want to be at the World Bank for long doing mathematical modeling. I was doing the shadow pricing of petroleum products.

If that doesn't sound very interesting, well, it kind of is, actually, if you love how numbers can give you a vision of what is going on and how the imports and exports of oil products were right or wrong and expensive. By understanding shadow pricing, you could understand the challenges various developing nations faced. Still, it was working with mathematical formulas and data here in DC, and I wanted to be in the field. So I was preparing to go to southern Africa, where I had not been. In that preparation, I was also applying for a Presidential fellowship in foreign relations. One of those openings was at the Office of the Secretary of Defense.

Each year, the Office of the Secretary of Defense would have 5 openings for Presidential management fellows, and there were 12 finalists for this. They called us in, and they had this big kind of arc of the high-ranking folks, civilian and uniform, from the team of the Secretary of Defense. Then they had a chair in kind of the middle of that arc. I just remember thinking it felt like we were going to be interrogated, and it was kind of an interrogation.

This is the first question I was asked: We see here that you interned for Senator Hatfield, and he votes against all of the defense appropriations. You worked for the American Friends Service Committee. They are an arm of the Quaker Church, and the Quaker Church has a peace testimony. Why would we ever hire you here in the Office of the Secretary of Defense?

I thought that was a very good question. I was kind of surprised that I was a finalist for a position, but I responded that national security is so much broader than simply military money, that it involves an understanding of culture, an understanding of history, an understanding of economic dynamics, an understanding of the things that trigger dissent and how it might be responded to, an understanding of alliances, and that all these things put together enable us to have a foreign policy that is part and parcel of our national security. Well, I probably said a more complex version of that, but that was the gist of it, and they hired me.

The reason I took that job rather than heading off to Africa was because at that moment, the biggest threat to the world was nuclear power—not nuclear power electricity but nuclear weaponry, atom bombs. The fact is that we were concerned that there might be a nuclear war that would destroy the planet as we knew it—certainly destroy the Soviet Union and the United States. Since that was the biggest threat to the world, I felt compelled to pivot from third-world poverty to work on nuclear weapon policy, and I did that through the 1980s, first for the Secretary of Defense and then for Congress, which now completes why I was telling you that story, because that brought me back to be in regular contact with this Senate, with this Chamber, with the folks who work here, who are trying to figure their way through a series of difficult issues involving nuclear weapons.

Outside of this Chamber, in the path walking between the Russell Office Building, a curved path, and coming into the outside doors that are outside of these double Senate doors, there is a tree. That tree is known as the peace tree. It is directly connected to the work that was being done in this Chamber on nuclear weapon policy.

Senator Hatfield and Senator Kennedy were working together. A Republican and a Democrat were working together to try to address the risk of nuclear weapons. Well, in 1985, there was an intern walking with Senator Hatfield. He liked to walk outside on that curved path back to the Russell Office Building. It is a path on which I have had the chance to walk with him a number of times. He talked about the different trees along the way. I remember in particular his lecture on the ginkgo tree. There are several ginkgo trees out there between here and the Russell Office Building.

I was relaying this to a 1985 intern of Senator Hatfield's named Sean O'Hollaren. Sean said: You know, I had those same walks with Senator Hatfield, and he gave me the same stories about the tree. He was interested in that.

Sean O'Hollaren said to Senator Hatfield—Sean O'Hollaren obviously was much quicker to seize the moment. It never even occurred to me. He said: Senator Hatfield, you love these trees so much, why don't you plant one?

Senator Hatfield said: Sean, that will be your intern project.

So Sean worked on that.

Senator Hatfield wanted to plant a tree that doesn't fit the Olmsted plan for the landscaping of the Capitol. The problem is that the Olmsteds, who had designed Central Park and Forest Park in Oregon and much of the DC landscape here on the Capitol grounds, had in mind broadleaf trees, not the type of tree Senator Hatfield wanted to plant.

What did he want to plant? There is a very interesting story here because in the Pacific Northwest—of course Oregon is part of the Pacific Northwest—there used to grow millions and millions of a cousin of the grand sequoia and the coastal redwoods. This cousin was different in that it lost its needles during the winter. It went extinct. It was out-competed by the cedars and the Douglas firs and the regular redwoods and so on and so forth. It went extinct, but its fossils are everywhere in the Northwest.

How could Senator Hatfield plant this tree when it had been extinct for millions of years in North America? He could plant it because in the late 1940s, a small grove was found in China of this particular tree—the only place on the planet where it still existed. So he arranged to get one of those trees. He was going to plant it there.

At that moment, as they were getting ready to plant, his team saw Senator Kennedy's team and said: Senator Kennedy, you should come out and join Senator Hatfield.

They went out by this walkway between here and Russell. Senator Kennedy said: In honor of the work we are doing together, this bipartisan work on nuclear weapons, this should be known as the peace tree.

They were working on the zero option, the nuclear freeze movement—let's not add any more nuclear weapons to the world; they are already dangerous enough. They did a lot of work on nuclear weapons, and I must say I was reminded of it.

When I came here, John Kerry and Dick Lugar—a Republican and a Democrat—were working on New START together. They considered that treaty here on the floor of the Senate, but it became much more difficult now than then to have this sort of bipartisanship work.

At any rate, please take a walk, if you are here in DC and on the grounds of the Capitol, and take a look at that peace tree. That peace tree is just on the verge of becoming the tallest tree on the grounds. It is now 32 years old. Let's hope that as it becomes the tallest tree, it will have kind of a Biblical influence and bring more peace to a world in desperate need of it.

We need more of that peace tree influence here in this Chamber. That influence is sorely lacking. The type of cooperation between Democrats and Republicans that existed doesn't exist today, and we are here at this very moment on a tragic course to destroy the centuries-old tradition of a 60-vote, bipartisan majority to proceed to approve a nominee to the Supreme Court.

That tradition ensures that Presidents don't nominate extremists and hopefully ensures that the folks who serve will serve the Constitution, the ''We the People'' Constitution, not some ideological extreme to the right or to the left.

So I want to go back to the core premises of why I am here tonight talking to the Chamber, sharing these thoughts with all those who are watching the Chamber, and that is we must recapture the type of cooperation and bipartisanship that made this Chamber able to address the problems facing America. Mahatma Gandhi said that to simply operate by the premise of an ''eye for an eye only . . . [makes] the whole world blind.'' Well, if we operate on the premise of the Senate that we are never going to work together to solve problems because we are of different parties or a different party than the President, and we want to make sure the President doesn't get any credit for having helped improve a situation, then all of us suffer from the broken existing policies, the dysfunction of existing policies, the poison of the superpartisanship.

Let's go back to the basic premises that we need to address—the three premises. The first is that this seat is a stolen seat—and if we could put up the chart with the nine Justices. Here is the story in a nutshell: 16 times in our history there was an open seat during an election year, 15 times the Senate acted, 12 of those times they confirmed the Justice, and 3 of those they rejected the Justice. But the point is, in 15 out of 15 times before Antonin Scalia died and Merrick Garland was nominated by President Obama, the Senate acted. Here are nine of those. These are the nominations that occurred, like Merrick Garland's, in which the vacancy and the nominations occurred before the election. So they are most similar to the situation of Merrick Garland.

Then there were another seven under more difficult circumstances where the nomination did not occur until after the election, and the Senate had very little time in which to vet and make a decision, but they did make a decision in each and every case until last year, when the majority said: We will not consider the President's nominee. We will not hold a hearing, we will not hold a vote, we will discourage folks from even talking to him, and we will not exercise our advice and consent responsibility. That is the first big issue.

The second big issue is that the nominee himself is from the extreme right. There is a chart that shows—and we don't have it with us; maybe we will have it later tonight. There is a chart that shows the distribution of decisions, and it has basically two curves with a big kind of bell curve with a big gap in between. So it goes up, it comes down, and it goes up and it comes down, and it reflects the ideological division of the Court from decisions they have made. On this chart the folks analyzing these decisions said: Where would Neil Gorsuch be? Would he be in the ''we the people'' bell curve of decision making? Would he be in the ''we the privileged and powerful'' bell curve? They found that not only would he be in the ''we the powerful'' bell curve, but his position on the curve would be to the far right of the curve.

I mentioned earlier the analysis by the Washington Post. This is an individual who was rated by the professional analysts as being more conservative than anyone who serves on the Court. I went through a series of cases, and I will be going through them again as the night wears on, in which he twisted the law to find for the powerful over the individual time and time and time again. Someone who is way outside the judicial mainstream and who twists the law to find for the powerful over the people doesn't belong in the Supreme Court of America. So that is the second big problem.

The third big problem is that the President's team is under investigation for collaborating with the Russians interfering in our November general election. This is a very serious question. There is a very dark cloud over the legitimacy of the election and therefore the legitimacy of this President. If President Trump worked to conspire with the Russians or his team conspired with the Russians at his direction or his knowledge, that is traitorous conduct because the Russians attacked the fundamental institutions of our country. Trying to delegitimize and change the outcome of our election and conspiring with a foreign power to attack the foundation of our Democratic Republic—that is traitorous conduct. We have to get to the bottom of it, and we shouldn't be considering on this floor a nominee under that set of circumstances. Let's complete the investigation, find out what went on, and if the cloud clears, then we can proceed.

So those are the three substantial issues for why we should not be here considering this nominee.

The stories I was sharing with you about how I first came to the Senate as an intern for Senator Hatfield and then came back to Capitol Hill working for a think tank sponsored by Congress, the Congressional Budget Office—my responsibility was to analyze the impacts of various potential strategies in the development and deployment of our strategic triad, our nuclear triad. We have air-delivered and ballistic missiles, land-based ballistic missile delivered weapons, and marine weapons—that is the triad. That was my job, to consider the implications of the path we might go to. What were the budgetary implications, what were the performance implications, what were the implications for deterrence or the circumstances that might trigger a nuclear war. So I was back here on Capitol Hill in that capacity. What I saw was a Senate fundamentally different than the one we have today.

I was reminded of this when, back in 2013, I was working to bring a bill to the floor called the Employment Nondiscrimination Act. This is an act that Senator Ted Kennedy had sponsored, and if I recall right, it was first sponsored in 1994. Then, 2 years later—I believe it was in 1996—it was considered on the floor of the Senate, and it lost by one vote. It lost 50 to 49. The Senator who was missing, it was believed, would have voted for it, and the Vice President breaking the tie would have voted for it, but people felt, well, it will be back up before the Senate soon enough.

The point here is that the vote was a simple majority in that setting, and the filibuster was reserved for very rare circumstances. This happened to be a bill related to ending discrimination for our LGBT community in employment, and anything involving what some may construe as a social issue is one that many people have politicized greatly. This was simply an issue of fairness in employment, but nobody required a simple majority to close debate. They reserved the simple majority for profound principles. It was so that this body can function because it was primarily a simple-majority organization.

When I was covering the Tax Act of 1976, the issues on these amendments came up one after another—what seemed like every hour—were simple-majority votes with a lot of bipartisan cooperation. We have become so polarized, we have become so divided, and this nomination and this hearing right now are going to reverberate through the decades to come as the lowest point, the biggest failure of this institution. We do have the power to prevent that from happening because we haven't yet voted on closing debate. Yet we have just a short period of time to set this nomination aside.

Set it aside. Tell the President we need to heal this institution and the Court by nominating Merrick Garland. Set it aside because the nominee, Neil Gorsuch, is from the radical rightwing fringe, out of the tradition of having mainstream Justices. Set it aside because there is an enormous cloud over President Trump as to whether he is a legitimate President, given the investigations into the conspiracy with Russia. For all those reasons, set it aside.

Also set it aside because never before has a majority leader tried to shut down this debate with a petition to close debate on the very first day. It takes 2 days for that petition to ripen. There are folks who have said that almost never is a Supreme Court nominee filibustered. Well, it gets a little confusing because what does filibuster mean? Does it mean deliberation at length? In this case, we have had a lot of nominees filibustered because they have been deliberated at length. Does it mean that we vote on a petition to close debate? Well, that really changes the analysis because we have rarely had a petition to close debate on a Supreme Court nominee, and we have never had a petition to close debate filed on the first day of debate because

of the mutual respect that all the voices would be heard, and with someone who was controversial enough for people to want to talk for days and days and days, this body heard them out. The American people heard that conversation and responded to it, and trends developed. People said: Do you know what? No, this person really is suitable. And they were confirmed. Sometimes they were withdrawn by a President. The point is, in rare cases was a petition filed to close debate. Yet here we have for the first time in U.S. history—it just happened a couple hours ago—shutting down the debate as fast as they can. That is the opposite of a deliberative body.

When I was back here as an intern, we had that age-old saying about the Senate being the world's greatest deliberative body. I saw that body. I saw people here on the floor talking to each other, listening to each other, holding a debate, voting on amendments and immediately going to the next amendment.

I remember on one occasion—I mentioned that once an amendment was done, there wasn't another one negotiated between the Democrats and Republicans, so there were long periods of silence, the way we operate now. No, it was the next person recognized by the Chair, and the Chair heard a lot of people at once, probably working to send one amendment to the left side of the Chamber and one to the right side of the Chamber, one to a senior Member, maybe one to a more junior Member, but eventually, because of the expeditious consideration, everyone got to have their idea considered and pretty much voted on by a simple majority.

How different that is from what is happening right now at this moment in this Chamber when we are at the very peak of pointed partisanship coming from my colleagues across the aisle. They have stolen a seat for the first time in U.S. history. They have proceeded to put it on the floor and, for the first time in history, they have filed immediately a petition to close debate. Every 5-to-4 vote from here on until who knows when—our children's children—will be looked at, and people will ask: Is this a decision because of the stolen seat? Would this have been a ''we the people'' decision rather than a ''we the powerful'' if not for that stolen seat? That is a huge erosion of the legitimacy of the Court.

Do Members of this Chamber really want to do that kind of profound damage? They will do that profound damage if the current direction continues over the next couple of days, and that is a place in which I do not want us to be. Therefore, this is kind of my own, personal protest of where we have come, and it is my own request that we change direction. I plan to keep speaking for quite a while longer, as long as I am able. That will, hopefully, be, at least, a couple of more hours. I am going to go into more depth about these issues that I have laid out, and I am going to start by going through each piece in a lot more detail.

Where do we start?

This journey began with Justice Scalia's death on February 13, which was a little over a year ago. Then it was a month later that the President fulfilled his responsibility under the Constitution and nominated Merrick Garland. There were still 10 months left in the administration at that time.

Earlier, I heard the majority leader say that no one has ever filibustered a Supreme Court nominee. That is not quite true. There have been some filibusters, more or less, if I can find them. Yet what happened last year was a 293-day filibuster of Merrick Garland by my Republican colleagues. It was not just an ordinary filibuster but a special sort of failure to exercise their constitutional responsibility of advice and consent. It was the first time in our history that a nominee was not acted on when the nominee was being considered for a seat that came open during an election year.

There are a few of my colleagues who like to say that the former Vice President, Joe Biden, gave a speech and said—it was theoretical because there was not an open seat—if a seat comes open in the summer of an election year, maybe we should not consider it until the intensity of the campaign has passed, meaning after the election.

We saw earlier, when we put up the chart—and I will put it up again—that there were seats that opened up before an election. On these seats here—these four seats—the vacancies were before the elections. They were in August, May, October, and October. The nominations did not come until after the November elections—in December and February or in December and January. Yet the Senate acted in those situations.

No matter how you slice it, 15 times there have been open seats. Some occurred after the elections, and the Senate acted on the nominees. Some occurred before the elections, but the nominations did not occur until after the elections. The Senate acted in these cases. Then there were another nine cases in which the nominations opened up before the elections.

Biden made the simple point that, if the seat opens in the heat of the summer, before the November election, maybe it would make sense to hold off considering the nominee until after the election. That is completely consistent with our history. My colleagues tried to twist it into something else—as an argument that we should not consider a nominee during an election year. Of course, that is not what Biden said at all. It was not even close.

Let me tell you, when you have to try to find one sentence from 20 years ago from one of the people who has served in the Senate and when that is the only evidence you can find to back up your case, you are not just on thin ice. You have fallen through the ice and into the pond. Your argument is that weak and that terrible. Whenever you hear my colleagues ask: Didn't the Vice President, when he was a Senator, suggest a theory that we should not consider a nominee during the heat of the campaign right before an election? Yes, he said you should wait until after the heat of the campaign. It was one sentence, 20 years ago, from one Senator. If your argument is that weak, please try to find some better argument to make.

We are not here considering something of small importance. We are here, considering an issue that has profound consequences for the integrity of the Senate because it is the first time in U.S. history that a Supreme Court seat has been stolen. It has a huge impact on the integrity of the Supreme Court because this is a court-packing scheme. If the Court is packed, it delegitimizes its decisions. Let's not pack the Court. That is why I am here, speaking tonight.

On February 13, the very same day that Antonin Scalia passed away, the majority leader came to the floor and released a statement that read, essentially: We intend to steal this seat.

Here is what Majority Leader MCCONNELL said:

> The American people should have a voice in the selection of their next Supreme Court Justice. Therefore, this vacancy should not be filled until after we have a new President.

He reiterated opposition to any Obama nominee on the day that President Obama fulfilled his constitutional responsibility by standing in the Rose Garden and nominating Merrick Garland. When our majority leader reiterated his opposition, what did he quote? He quoted the one passage that was taken out of context from Biden's speech from 20 years ago.

That was the foundation on which he based a proposition to forgo our responsibility as a Senate to provide advice and consent under the Constitution—one sentence out of context. He turned the meaning on its head of a former Senator from 20 years ago. That is how weak the case was that the majority leader presented for failing to perform our constitutional responsibility. That was how weak the case was that he presented for stealing a Supreme Court seat in a court-packing scheme.

He said to give the people a voice. The American people voted overwhelmingly for Hillary Clinton. She won by more than 3 million votes. She would have won by a lot more if it were not for voter suppression. We have one party that generally believes in voter empowerment—that the foundation is ''we the people'' and that part of citizenship is to vote. We have one party that has resorted to trying to prevent people from voting—voter suppression, gerrymandering, changing the shape of a district to deprive people of having a voice here in Congress, changing the dates in which early voting can occur so that people have less of an opportunity to vote, changing the locations of precincts, which is where your voting takes place.

Some of the voter suppression tactics involve things that are just misinformation—false information—and telling people that the vote has already occurred or the location has been moved when it has not or that the votes are going to close earlier than they are actually scheduled to close—or a whole host of things.

The majority leader said to give the people a voice. The people voted overwhelmingly for Hillary Clinton. So it would follow that the majority leader would come to this floor and say: The people voted overwhelmingly, by 3 million votes, and it would have been a lot more. So we will now consider Merrick Garland because he was the nominee from a Democratic President—the seat he stole. The people have spoken. The majority has said that we do not want the Republican, that we want the Democrat. So we will go ahead and hear the Democratic nominee, and we will vet and vote on Merrick Garland.

But it is a funny thing in that that did not happen because the goal was not to give people a voice. The goal was to steal the seat and deliver it to a Republican President who would nominate someone from the extreme right and pack the Court, undermining ''we the people'' in favor of ''we the powerful and the privileged.''

The Democrats did not politicize the Court. The Republicans politicized the Court. The American people did have a voice in Garland's nomination. They had a voice by their voting twice for President Obama. Throughout our entire history, the Senate has considered the nominee from the President in power, when the vacancy occurs—even when it is an election year—because that is what the Constitution tells us to do—not to steal the seat, not to pack the Court.

This politicization, this gamesmanship, this hypocrisy is so extreme and so dangerous. I heard that some of my colleagues were asked if they would want their election year rule to apply to President Trump—that he could not fill a seat that would come open in the fourth year of his Presidency. That was the principle they advocated for last year. Their answer was no because there was no principle to the position. It was a warfare tactic of partisanship to pack the Court. It was the end justifies the means even if the means violates the core premise of the Constitution and does deep damage to the Senate and does deep damage to the Court.

Just this past Sunday, while speaking to Chuck Todd on ''Meet the Press,'' the majority leader began to walk back his past statements that a Supreme Court vacancy should not be filled in an election year.

Todd asked:

Should that be the policy going forward? Are you prepared to pass a resolution that says: In election years, any Supreme Court vacancy will not be filled, and let it be a sense of the Senate resolution that no Supreme Court nominations will be considered in an even numbered year?

The majority leader responded:

That is an absurd question.

Why is it an absurd question given that it is the principle that election year nominations should go to the next President? I will tell you why it is absurd. It is absurd because it is contrary to the Constitution.

MITCH MCCONNELL, the majority leader—my majority leader, the majority leader of the Senate, the top person in charge—was right when he said it was absurd because, of course, we should not abandon our constitutional responsibilities. It is an absurd argument to make today, and it was an absurd argument when he made it last year. If it were only absurd and not deeply damaging, then we could all perhaps not be so deeply, deeply concerned about the situation.

Merrick Garland's record. Judge Garland had more Federal judiciary experience than any Supreme Court nominee in our Nation's history. So the nominee put forward by President Obama had more Federal judiciary experience than any nominee in our Nation's history. He graduated summa cum laude and valedictorian from Harvard College.

After graduating, he clerked for Judge Henry J. Friendly in the U.S. Court of Appeals for the Second Circuit. He clerked for Justice William Brennan, Jr., in the U.S. Supreme Court. He was in private practice at Arnold & Porter, focusing on litigation and pro bono representation of disadvantaged Americans. He left his partnership for a low-level prosecutor position in the administration of George H.W. Bush.

In 1993, Merrick Garland went to the Justice Department as Deputy Assistant Attorney General in the criminal division, and that is where he oversaw prosecutions in the Oklahoma City bombing, helping bring Timothy McVeigh to justice. He helped oversee prosecutions in the case against Ted Kaczynski, the Unabomber, and the Olympics bombing committed by Eric Robert Rudolph that killed 1 person and injured 111.

He made a name for himself in these cases by being a strictly by-the-book prosecutor. He insisted on obtaining subpoenas, even when companies volunteered to hand over evidence. He insisted on keeping victims and relatives informed as the cases developed. He served for 19 years on the DC Circuit Court.

That is a lot of experience. And all that happened before he was nominated by President Bill Clinton in 1995 for the DC Circuit Court.

He received a confirmation hearing in the Senate Judiciary Committee in December of that year, but Republicans did not schedule a floor vote on his confirmation because of a dispute over whether to fill the seat. So President Clinton renominated Merrick Garland for the circuit court on January 7, 1997, and he was confirmed on the Senate floor by a vote of 76 to 23 that year, in March.

At the time of the consideration of Merrick Garland on the floor, my colleague from Utah, Senator HATCH, had very flattering things to say about Merrick Garland. He said:

To my knowledge, no one, absolutely no one, disputes the following: Merrick B. Garland is highly qualified to sit on the D.C. circuit. His intelligence and his scholarship cannot be questioned.

He continued:

I do not think there is a legitimate argument against Mr. Garland's nomination, and I hope our colleagues will vote to confirm him today.

Then he said:

In all honesty, I would like to see one person come to this floor and say one reason why Merrick Garland doesn't deserve this position.

The Senator went on to suggest that his colleagues who were blocking the confirmation vote were trying to obstruct his confirmation and were ''playing politics with judges.''

I so respect the statement that my colleague from Utah made in 1995, admonishing his colleagues to quit playing politics with judges.

But what has happened between 1995 and 2017, over these last 22 years? A huge amplification of playing politics to the point that when Merrick Garland came back before this body, only a couple of Republicans were willing to stand up and say: Let's quit playing politics. And they were quickly silenced.

During his 2005 confirmation hearing, Chief Justice John Roberts remarked about serving on the Circuit Court with Merrick Garland: ''Any time Judge Garland disagrees, you know you are in a difficult area.''

So here is the Chief Justice, considered one of the conservatives on the Court, who is saying that if you disagree with Merrick Garland, you are in a difficult area. You have to go and figure out why you would disagree because he is so good at working his way through the law and coming to a position of calling the balls and strikes.

That is the type of respect there was for Merrick Garland. And this respect and admiration continued right up to his official nomination on March 11, 2016. Five days before his nomination, my Senate colleague—my colleague from Utah—told a reporter that if President Obama named Judge Garland, ''who is a fine man,'' to fill Scalia's seat, he would be a ''consensus nominee,'' and there would be no question of his receiving a bipartisan confirmation—five days before the President nominated Merrick Garland.

The President recognized that the Senate was controlled by the Republican majority. He consulted on both sides of the aisle. He chose a nominee admired on both sides of the aisle.

Standing in the Rose Garden on March 16 of last year, President Obama officially nominated Judge Garland to replace the late Justice Antonin Scalia, and President Obama called Merrick Garland the right man for the job: He deserves to be confirmed.

His nomination had endorsements from a broad range of organizations and individuals. The American Bar Association, the Hispanic National Bar Association, eight former Solicitors General, including Neal Katyal, Gregory Garre, Paul Clement, Theodore Olson, Seth Waxman, Walter Dellinger, Drew Days, and Kenneth Starr. You recognize some of those names. Some come from the right side of the spectrum, some from the left. The point was that eight former Solicitors General—Ken Starr, 1989 through 1993, and Drew Days who followed him, and Dellinger, who followed Days, and Waxman, who followed Dellinger, and Olson, who served from 2001 to 2004, and Clement, who followed Olson, and Garre, who followed Clement, and then Neal Katyal, who served in 2010 and 2011.

Endorsement from the American Bar Association Standing Committee on the Federal Judiciary rated him ''well qualified'' as a Supreme Court nominee, the highest rating they can give, and their evaluation of his record stated that Judge Garland ''meets the very highest standards of integrity, professional competence, and judicial temperament.''

So there we have our President, President Obama, last year consulting in a bipartisan fashion, choosing a nominee who had been highly complimented by Senators on both sides of the aisle, seeking to find someone straight down the judicial mainstream, and what was the response of the majority leader of our body, our assembly here? His response was: We are going to steal this seat. It doesn't matter that this nominee is highly qualified. It doesn't matter that Democratic and Republican Senators have complimented him highly and have high respect for him. It doesn't matter that the Chief Justice has enormous respect for his judicial thinking. We are going to steal this seat in hopes of being able to pack the Court. That is what happened later in the day, after Merrick Garland was nominated.

The Senate has always functioned by cooperation, with a big element of tradition thrown in. A defining feature of the Senate is a commitment to the traditions of fair play, allowing us to continue functioning to solve America's problems in politicized circumstances. This is enormously important to the success of this Chamber.

I had heard when I was running for the Senate in 2007 and 2008 that something terrible had happened with this Chamber in the years that I had been back in Oregon and that a group had decided that they would use this Chamber as a weapon against any Democratic President rather than as a forum to solve America's problems. I didn't believe it. I didn't believe that the Senate I saw as an intern in 1976; that I saw when I was volunteering for organizations and working here in DC, washing dishes and waiting tables in 1977; that the Senate I saw when I was a Presidential fellow with a Republican Defense Secretary, Caspar Weinberger; that the Senate I saw when I worked for Congress in a think tank on strategic nuclear weapon policy for the Congressional Budget Office—I couldn't believe that a group of Senators had decided to use this Chamber as a weapon against the executive branch, if the executive branch happened to be from the other party. I didn't believe it. I dismissed the commentary I was hearing about what was occurring in this Chamber.

Then I arrived in 2009, and I quickly saw that I was wrong; that the stories about this Chamber being taken over by an urge to use it as a weapon against Democratic Presidents had, in fact, been true. We all were nearly knocked over when the majority leader announced that his goal was to make sure—his top goal, his determining vision—was to use this Chamber to prevent President Obama from being reelected. And we are sitting here going: Let's work together on healthcare policy. Let's work together to make a fair tax system. Let's work together to develop the infrastructure that is so needed because the infrastructure our parents built is wearing out. Let's work to develop that infrastructure because we have new demands of a different economy. We need better bridges and better railways and better ports and better electric transmission lines, and we certainly need better broadband, or at least broadband of some kind, as a starting point in rural America. Those are the challenges we face. Let's work together.

And then I watched as a key issue was turned into a political weapon against the President, rather than working to solve problems here in America, and that issue was healthcare.

In April 2009, I was handed a brief written by Frank Luntz, who was a strategist for the Republican team, and that brief said, Whatever ideas that the Democrats work to pursue on healthcare, here is our strategy: Don't cooperate; call it a government takeover—whatever they do.

I came to the floor of the Senate, and I gave a floor speech in 2009. I waved around the Frank Luntz memo, and I said: This is what is wrong with America. We have millions and millions of people without access to healthcare in America, and instead of working together, the Republican strategist is saying, Whatever ideas to improve the healthcare system they come up with, oppose them and call it a government takeover.

Democrats said: You need bipartisan cooperation to get a healthcare bill through here. So they held 5 weeks of hearing in the HELP Committee—Health, Education, Labor, and Pensions Committee. I was assigned to that committee. Senator Ted Kennedy had assigned me to be on that committee, in partnership with Majority Leader Harry Reid. I was so happy to be on that committee. For 5 weeks around a square table, I saw idea after idea presented as amendments were discussed, debated, and voted on. Approximately 150 Republican amendments were adopted. Imagine a committee adopting today, under the control of the Senate, 150 Democratic amendments on a major bill—adopting, not just considering. Democrats went through every title, with television there and all of America watching for 5 weeks.

That was just for the HELP Committee. Then there was a whole other process with the Finance Committee in which Senator Baucus led a group with Senator GRASSLEY, if I am not mistaken. They had three Democrats and three Republicans, and they worked on the finance side to come to a bipartisan conclusion. But eventually Frank Luntz's vision won out: Whatever is suggested, oppose it and call it a government takeover. That would do the most damage to the President. That was the strategy.

Democrats said: Well, it looks like we are going to have to take the Republican healthcare plan.

What was the Republican healthcare plan? The Republican healthcare plan was to use a marketplace in which private companies would offer their insurance. Compare the insurance, one policy to the other, to find out which one best suited your family, and then based on income, you could get tax credits to be able to afford to acquire that insurance policy, so that essentially we would have a pathway to healthcare for every American citizen, for the millions and millions of people who didn't have that pathway. That was the Republican plan. It came out of the American Enterprise Institute as the marketplace solution for healthcare. It wasn't a public option. It wasn't, let's lower the age of Medicare. It wasn't single buyer. It was the Republican marketplace plan. It was already one that had been tested by a Republican Governor in Massachusetts. It was known as RomneyCare. So it was a Republican think tank plan and a Republican Governor-tested plan.

Democrats said: OK, let's go that way. We think there are better pathways, but we will go with that because we need to be able to bring this Chamber together.

But my colleagues across the aisle, under this vision of using the Senate as a weapon against a Democratic President, decided they were going to oppose it just like Frank Luntz laid out in those first few months of 2009.

We see that same profound partisanship in this first-ever theft of a Supreme Court seat. We see that same profound partisanship in the strategy behind that theft, which is to pack the Court. We see that same profound strategy in the action that happened a couple hours ago. That was the first time in U.S. history a motion to close debate was filed on the first day of a Senate debate.

So turn the clock back to those first 13 States and 26 Senators trying to figure out how the Senate would operate. They weren't really planning on it being a public forum, but they did have this sense that it would be wrong to close debate before every Senator had shared from their experience. So they had a rule. In their initial rules of the Senate, they had a rule to close debate. They never used it. They never used it, as far as we know, not once, because they wanted to give everyone the chance to be heard. Of course, the Senate was only a quarter of the size—26 Senators instead of 100 Senators.

When they rewrote the rules of the Senate, they said: We don't need to have a rule for closing debate by simple majority called to question, if you will. We don't have to have it because we are going to hear everybody out before we vote. So that kind of launched that tradition of hearing each other out.

Later, when the Senate restored a rule in which a supermajority could close debate, it took a supermajority. At another point, the Senate said: We need to have a little smaller supermajority.

The reason that triggered, going back to having a strategy for closing debate—and I know historians will correct me if I have this wrong—in World War I, the President wanted to put military defenses on some of the commercial ships to fend off the threat from the Germans. There were Senators who said: This will draw us into war. We are not in the war yet. This will draw us into war by weaponizing our commercial ships.

There was a date set for the Senate to adjourn. They proceeded to keep talking until that time arrived so the Senate could not act to pass that law, which the vast majority of the Senate thought was appropriate.

They said: Well, we can't have just a small group, which basically would be the tail that wags the dog. That denies our ability to make decisions. So we will have to have a strategy for closing debate.

So they established that strategy. The general principle behind it was most of the time you hear people out here in the Senate rather than closing debate. But what we saw tonight for the first time in U.S. history—a cloture petition filed on the very first day.

James Madison, speaking to the Constitutional Convention, remarked that the Senate was a necessary fence to protect the people from the transient impressions into which they themselves might be led. It was a reason for the longer terms for the Senate. They have 2 years in the House; we have 6 years in the Senate. The Senate rotates so a third are elected every 2 years for 6-year terms.

There is a saying attributed to President Washington—as far as we know, he never said it, but still it was clever enough that it has reverberated on down through the centuries—that the Senate would be the cooling saucer, so that you had your tea and it was too hot, and you poured it into the cooling saucer until it was just right. You don't act impulsively because you have 6-year—longer—terms and a smaller body who can ponder the issues more carefully.

So here is the Senate, intended to be the cooling saucer, but what do we have right now? We have the stove turned up to the highest possible temperature. There is no stepping back from this course of undermining the integrity of the Senate and the integrity of the Court. It is full steam ahead. File the petition on the first day of debate so we can close this debate and have this vote done by Friday, the majority leader said. Vote on Thursday. Somehow we are going to maybe change the rules and vote on Friday if there are not enough votes to close debate.

Back in 2013, there was an enormous blockade using the advice and consent power to obstruct both executive branch nominees and judicial nominees. This enormous blockade was used by colleagues across the aisle as a weapon against the judiciary and executive branch.

When the conversation occurred back among the Founders, they said: Advice and consent power won't have to be used very often to turn down a Presidential nominee because just the very fact that the Senate can serve as a check on a Presidential nomination will cause a President to make wise appointments.

They had actually wrestled with how to construct this situation. How do you construct this check and balance?

Some said: The executive branch—why don't we have the President head it but have the positions filled by Congress?

Others said: That is not such a good idea because one Senator's friend will be nominated for this position in exchange for another Senator's friend being nominated for that position, and the people will never really know who, where, why. There is no accountability.

That is what it came down to.

So we will have a single person—the President—nominate for the executive branch. Plus, that way the President can nominate people to help fulfill the vision the President campaigned on, which makes a lot of sense. The people didn't just elect a name; they elected a vision for the country. And the person responsible for helping to implement that—the executive branch—the President, should have a team who can go forward with that vision.

Then the crafters of the Constitution said: But what if the President goes off track and starts nominating people who don't actually have the skills to fill the positions to which they are nominated? What if the President nominates people because they have done some favor for the President in the past, so that there is a conflict of interest? What if the President nominates someone of poor character? Shouldn't there be a way to put a check on a deeply misguided nomination?

The founders said: Yes. We will create an advice and consent power for the U.S. Senate to be a check on misguided nominations.

So here we are looking at that original philosophy of the Senate and the responsibility to stop misguided nominations through advice and consent, and we have had two profound betrayals of that responsibility last year and this year. The betrayal last year was that the Senate refused to exercise its responsibility at all. It stalled the seat. It sought to pack the Court. Now we have a deeply misguided nomination before us, an individual who is from the extraordinary right, not from the mainstream, who has twisted the law time and time again to find for the powerful and the privileged over ''we the people,'' and yet that nomination is here on the floor, not a single vote in the Judiciary Committee from across the aisle.

This chart reflects the distribution of Federal judge ideology. If we had been putting up this chart decades ago, we would have probably seen a single bell curve. There would be folks on the right and folks on the left. But now we have the twin peaks chart of judicial decisionmaking. So the decisions are falling more and more into a ''we the people'' camp that says ''Let's fulfill the vision of our Constitution'' and a ''we the powerful'' camp that says ''Let's turn the Constitution upside down and run this country by and for the powerful.'' Where does this nominee fall? Not into the ''we the people'' vision of our Constitution and not even within the left side of that ''we the powerful'' twin peak but to the right side of it. That is where we are.

The supermajority to close debate—commonly referred to as the filibuster—is a power we have sustained in order to have nominees who are not from the ideological extremes. But now we have one. We have one who, when a trucker was protected by the law—because of his personal safety, and he was freezing in subzero temperatures and had to go get warm and come back, and the law protected him from getting fired—he got fired. The court said: Absolutely, you can't fire someone for protecting their safety or others. Judge Gorsuch found a way to turn that on its head.

When we wrote a law to say that you have to provide an education to disabled children, Judge Gorsuch said that babysitting is fine, as long as there is basically—not exact words, kind of mere fringe of advancement—something that was essentially equivalent to babysitting. And the Supreme Court, all eight Justices occupying both of those peaks, said that was absurd, and they overturned Judge Gorsuch, 8 to 0.

We have this role from our Founders of being the cooling saucer. We have

this role of being a check on the abuse of or misguided Presidential nominations, and we failed it last year by not doing our job. We fail it this year by considering anyone other than Merrick Garland. And we certainly fail it in the context of closing—considering the possibility of closing debate. That is the conversation that the majority leader has been invested in—that if this judge is so extreme as to not to get the 60 votes to close debate, we will change the rules.

Well, how about we change the nominee? How about we save the integrity of the Senate? How about we save the integrity of the Supreme Court? Change the nominee. Ideally, put Merrick Garland up, because that way we solve the problem of the stolen seat—this enormous court-packing plan that is unfolding right before our eyes. And if the schedule on which the majority leader has said he wants to complete this court-packing occurs by Friday, it will be too late. We will have done the damage.

George Washington shared his view of the Senate's role. The story goes that Thomas Jefferson returned from France to take on the duties as our first Secretary of State. He was having breakfast with President Washington and called for the President to account for having supported an unnecessary legislative Chamber in the Senate of having this conversation. That is when that conversation came up. We believe it to be apocryphal, but still the response, as written down at some later point in time, was that Washington asked: Why did you now pour that coffee into your saucer before drinking?

Jefferson responded: To cool it. My throat is not made of brass.

Washington said: Even so, we pour our legislation into the Senatorial saucer to cool.

Is there a way that we can avoid what is unfolding now, this tragic miscarriage of the Senate's responsibilities?

Whether that conversation took place, as I mentioned, is not actually known, but the fact that the story is still here means that it had some power behind it, whether it took place or not. And that was that for 200 years and counting, the government has counted on the Senate to pause, to not give acceleration to the momentum of the day, but to pause and be thoughtful in considering the integrity of our institutions. And that integrity, that moment when we need to be the cooling saucer, is now.

Unanimous consent has been a tool that the Senate has used. Many times, if you are watching the Senate, you will hear ''unanimous consent'' to do this or that. Earlier, the majority leader came and spoke. He said: ''I ask unanimous consent,'' and he laid out a plan for tomorrow about how this debate would proceed. That unanimous consent—each and every one of those represents a form of cooperation, often the last vestige of cooperation. It also goes to this observation that the Senate is about hearing each other and working together.

Robert C. Byrd once remarked:

> That is what the Senate is about. It's the last bastion of minority rights, where the minority can be heard, where a minority can stand on its feet. One individual, if necessary, can speak until he falls.

Well, you can't keep speaking if a cloture petition has been filed. So come Thursday, the phrase is the ''petition ripens,'' which means that it will be voted on, and generally it is 1 hour after we convene after an intervening day. So tomorrow, Wednesday, is the intervening day, and the vote will occur on Thursday. That is the opposite of what Senator Byrd was referring to because at that point, anyone who wants to be heard, can't be heard.

The tradition of having weeks and weeks of conversation about a nomination that creates complexities or has complexities behind it—that is being destroyed. That comity permeated many controversial debates the Senate has had over time. That willingness to hear each other and to vote is something that was embedded in the Senate as I saw it four decades ago and later in my life when I was working for Congress.

There is no denying that the Supreme Court nominations have always been subject to a certain level of politics, but there has also been a certain level of cordiality to the process. Daniel Patrick Moynihan, in a debate on the nomination of Ruth Bader Ginsburg back in 1993, said:

> [The Senate] is perhaps most acutely attentive to its duty when it considers a nominee to the Supreme Court. That this is so reflects not only the importance of our Nation's highest tribunal but also our recognition that while Members of the Congress and Presidents come and go . . . the tenure of a Supreme Court Justice can span generations.

We are not here on the floor debating who will serve in some office in the executive branch for the next couple of years. We are here debating the nomination for the highest Court that could ''span generations,'' in the words of Daniel Patrick Moynihan.

So what else would we consider more important than a Supreme Court nomination to adhere to the traditions of the Senate and to honor the 60-vote requirement in our rules? We don't always like the nominee the other side has selected. We question them vigorously in confirmation hearings, and we end up voting against them. But until the situation last year with the death of Antonin Scalia, every vacancy in an election year for which a President proposed a Justice who has made a nomination—every time, the Senate did its job. It confirmed most. It rejected a few, but it did its job.

Over the course of our Nation's history, there have been a total of 164 Supreme Court nominations; 124 of those were confirmed, roughly 3 out of 4, including elevating current Justices to Chief Justice. There have been 112 individuals who have served on the Supreme Court, and 39 Presidents to date have appointed at least one Supreme Court Justice. But only once—last year—has the majority conspired to reject its responsibility to consider a nominee for a position that opened in an election year. Only once has the majority conspired to steal an election-year Senate seat and send it to the next President and pack the Court.

The action last year is different from anything that has occurred before. There were some individuals—some colleagues across the aisle—who advocated for the Senate fulfilling its constitutional duty in the case of Merrick Garland and for continuing the traditions of this great institution.

One of my colleagues told a townhall audience last year—one of my Republican colleagues said:

> I can't imagine the President has or will nominate somebody that meets my criteria, but I have a job to do. I think the process ought to go forward.

Another colleague sat down and met with Judge Garland, even knowing that the Republican leadership was saying that he would not get a hearing. That colleague declared, and I quote, that colleague was ''more convinced than ever that the process should proceed. The next step, in my view, should be public hearings before the Judiciary Committee.''

So I pause to thank my Republican colleagues who worked to stand up for the integrity of the Court and the integrity of the Senate and for due deliberation on a Presidential nomination during an election year. Thank you to my colleague from Kansas. Thank you to my colleague from Maine.

There may have been others I didn't hear about, and I imagine there were because I think Members of this body take their responsibility extremely seriously. They take their oath of office seriously, and they were put in an impossible position when their leadership asked them not to exercise their advice and consent responsibility under the Constitution. That is where we were last year.

Here we are, on the brink of doing devastating damage to the Court. Shouldn't we pause and be the cooling saucer? Shouldn't we send this nomination back to the President and ask for him to put forward Merrick Garland or someone who basically is on the same path that Merrick Garland was on—the path that was so honored and complimented by Senators on both sides of the aisle?

Shouldn't we address this before we set the precedent of a stolen seat? Think about what this precedent means going forward. A few years from now, there may well be another vacancy, and this vacancy may be under a Republican President, and maybe the Democrats control this Chamber. At that point, do they say: We are going to rectify the wrong in the past and restore the integrity of the Court by taking that seat and forwarding it to the next President, hoping that it will be a

Democratic President, and there will be a nominee who will restore the integrity of the Court because there will be a nominee more like Merrick Garland? Or will there be future leadership that says: Hey, their team stole a seat that occurred—an opening that occurred in January of election year. Let's steal one that happens in October the year before the election to balance it out. If you can steal it for 12 months, why not steal it for a few more? Where does that end? What good does that do to our institution? What honor does that give to the 5-to-4 decisions of the future?

That is where we are headed. We are headed to a place that is breaking two centuries' worth of tradition and establishing a precedent that will do enormous damage to the Senate and to the Presidency and to the Court. That is why I am here addressing it at length tonight. I did find that when the majority leader didn't want to put into a resolution that the same rule he advocated for last year should apply to this President, it was clear—as clear as you could possibly make it—that what happened last year had no principle in it; it was an issue of partisan tactics to amplify the strength of one party and one vision—that of government by and for the powerful—at the expense of the other vision. Don't we owe more in our role as Senators, especially on something as important as the Supreme Court and the integrity of the Court, than just another partisan strategy?

I will tell you, I think about why it is that we are at this place right now. There are a couple of things that are very, very different from the Senate I first saw four decades ago and the America of four decades ago. One of those is that Senators four decades ago lived here with their families. They had a Monday-to-Friday workweek. They had evenings to build relationships, and they had weekends to do things with other colleagues across the aisle. They took a lot of bipartisan congressional delegations. They all knew each other well as friends.

But now the Senate comes in on Monday night for a vote at 5:30 p.m. and we leave after a vote at roughly 3:30 p.m. on Thursday. So it is 3 days—Monday afternoon to Thursday afternoon. We don't have the time in the evenings because of that compressed schedule. We don't have the time on the weekends because we are back in our home States or traveling somewhere else. So we don't have the relationships. We just don't have the common activities.

There used to be lunches where the Democrats and Republicans ate together. Now there is a partisan Republican lunch, three out of three lunches and two out of three for the Democrats. We don't have that meal together to get to know each other, so you have to work extraordinarily hard to set up a meeting to try to work with a colleague on a topic. If it is something larger than you can discuss here during the middle of a vote, it can take a month to get a 20-minute meeting to ponder with a colleague how we might work together on a problem.

So that is a change in this Chamber, but there is another big change. That second big change is related to the role of the media. We had big issues in our country decades ago, but we also had community newspapers, and we had three network television stations that essentially provided a foundation of information. We might have had different views about that information and different views about what we should do in the future, but we had a common foundation of information. Now we don't have a common foundation of information. Information flows in every possible direction, much of it made up.

I was very struck when—I hold a lot of townhalls. My first summer as a Senator—2009—I was out holding townhalls. I do one in every county every year. Folks said: You know, why are you supporting this Senate healthcare bill that has a death panel in it? That was one of those false news stories.

What was the real story? The real story is that a Republican Senator from Georgia had proposed—a Republican Senator had proposed that we pay doctors for the time they spend with their patients informing them about how to do a living will so that if they were incapacitated in the future, their desires would be followed, not someone else's desires—not a death panel, their desires would be followed. That is as American as apple pie.

We were going to make sure that we could control, each of us, our own future. It was a Republican proposal, a good proposal, a proposal that made a lot of sense so that people could have control over their future medical decisions if they were incapacitated. But for partisan political reasons, a candidate had twisted that into a death panel and turned it on its head, that someone else would make the decisions instead of you making the decisions for yourself, which is what it was all about.

So I was at this townhall, and a constituent, an Oregon citizen, raised this issue.

I said: You will be happy to know that they don't exist. You will be happy to know that the idea from which the false news story began was about empowering you to make your own decisions. Don't you feel better now knowing that the conversation in the Senate was about you controlling your own destiny?

The woman said to me: I don't believe you.

I said: Well, you don't have to believe me; I have the text right here that was proposed.

I had heard about this issue, and so I wanted to make sure that people knew about it and that I could answer if asked. So I shared the text with her.

She said: Well, I don't believe you. Who am I going to believe—a U.S. Senator or a television policy analyst?

She meant Glenn Beck. Glenn Beck and others were simply making stuff up and putting it on their television show or their radio show, designed to infuriate people by setting up this false story—this false story that there was a government takeover and this false story that there was a death panel.

If you want to understand what happened 2 weeks ago in the House when the House failed to pass a healthcare bill to replace ObamaCare, it is a story about false news. It is a story about partisanship over policy. It is a story about a year-plus of bipartisanship being trumped by Frank Luntz's vision of whatever is proposed, call it a government takeover. Even if—his memo didn't say this, but as it turned out, even if it was the Republican strategy of having a marketplace for people to get their health insurance, call it a government takeover.

So when the Republicans said they were going to replace ObamaCare, the problem was that ObamaCare was the Republican plan, so they did not have anywhere to go. They could either tear down healthcare completely and put 24 million people on the ice—that is, out of reach of healthcare—by the way, not just individuals but rural healthcare institutions because the rural clinics were powerfully strengthened through the Affordable Care Act. The rural hospitals were powerfully strengthened through the Affordable Care Act. There was so much uncompensated care previously that hospitals and clinics had to give away for free, and now they were getting paid because people had insurance, so they were much stronger. So it was about 24 million people, but it was also about a vast healthcare infrastructure in rural America that the Republican plan would destroy.

But they could not propose their own plan because their own plan had been adopted in 2009—marketplaces with private companies competing against each other, tax subsidies, tax credits so people could afford to buy those policies. That was the American Enterprise Institute plan. That was the Republican Governor's plan. That was RomneyCare. So where do you go if your plan has already been enacted into law? If 150 of your amendments were accepted as part of that process, where do you go when you have used a false story, a false commentary to the American people year after year after year saying that something is some terrible thing that it is not? Well, where you go is the process blew up. That is where it went because it was based on a false foundation, the entire 8 years of attack on the Affordable Care Act—a false premise just like Sarah Palin's death panels were a false attack.

We can't keep going through this extreme partisanship and save the Senate at the same time.

Another challenge we have—in addition to the fact that the friendships that cemented the Senate together are not as developed as they were decades

ago because we are not here and we don't spend enough time with each other—another problem is that we have all of these false stories being generated continuously to make people angry with each other. Those are certainly problems, but we have another big problem, and that problem is the concentration of campaign money, the dark money, the Citizens United money that is corrupting our political system.

I can't convey how much damage this has done. Let's just review the biggest example of this strategy. The Koch brothers decided in 2013 that they wanted to have a legislature that would support their extraction and burning of fossil fuels. There was this pesky little problem threatening the entire planet called global warming in which the burning of those fossil fuels was polluting the air, raising the temperature of the Earth, and having profound consequences.

So people were talking about, how do we transition off of fossil fuels?

The Koch brothers said: Well, that is our business. We can't let that happen. We have to have control of the House and Senate.

So the story with the Senate is they decided to spend a vast sum of money on the campaigns of 2014. The result was that they influenced the elections and had a positive outcome, from their point of view, in Louisiana, Arkansas, North Carolina, in Iowa, Colorado, and Alaska. There were a few other States that they came to that year, including Oregon, my home State. So they won most of those campaigns. They put the Republican majority into office so they would have a Senate that would not be discussing the biggest threat to our planet—carbon pollution and global warming—and instead would have one that would sustain tax breaks to accelerate the extraction and burning—the profitability of extracting and burning fossil fuels.

Then they did something that should be recorded as a significant moment in U.S. history. In January, as the Senate was coming in with this new Republican majority, they did not say: Well, that is great. We have a Republican majority, and now we have folks who will support our fossil fuel extraction and combustion. We will make a lot of money. They will keep the tax breaks in place for us.

No, they didn't say that. They said: Pay attention.

This was January 2015, 2 months after the election, and we were just coming in. The Republican majority was just coming in.

The Koch brothers said: Pay attention. We are committing to spend the better part of $1 billion in the next election 2 years from now.

I don't know that such a statement has ever been made by a body in the United States, a similar statement. Next election—we had just had this election—next election we are going to spend almost $1 billion.

They wanted everyone in this new Republican-majority Senate to know who was in charge. The Koch brothers are in charge. They paid for the third-party ads that put your election in the victory column.

You will pay attention—at your own risk if you don't.

A number of my colleagues shared that this was a very real threat, that the Koch brothers would be happy to find a primary opponent and not just undermine them in the general election or fail to fund them in a general election—and the first bill up was one of the Koch brothers' top priorities, the Keystone Pipeline. So we now have a body about which, at least, you can say that a very significant behind-the-scenes force of this body is the Koch brothers. Well, how does this tie in with what happened in 2016 when Antonin Scalia died and there was an open Senate seat?

Here is how it ties in: You had a 5-to-4 Supreme Court that had decided that it was OK for groups like the Koch brothers to spend billions of dollars in dark money, third-party campaigns, eviscerating the opponents on the other side of the issue.

Four Justices had said no. In our ''we the people'' Republic, having that concentration of power is a corrupting force. It is an attack on the very design of our country, but you had five others who said: No, no, no, it is OK.

That makes me think about a letter that Jefferson wrote. Jefferson was writing to a friend, and he said: There is a mother principle, a mother principle in our design of the government. He said: That is that decisions will only be made in the interest of the people if each person carries an equal voice.

He recognized in using the term ''voice,'' something broader, more powerful than just a vote. That is why I said ''voice.''

What has happened with Citizens United, with respect to the five Justices, is that it is OK to have some individuals who have a voice in our campaign that is equal to thousands or tens of thousands or even 100,000 other citizens.

We didn't have such a way to amplify one's voice—not anything close to that amplification when the Founders designed our government. Yes, you could put an article in the newspaper. Yes, you could hand out pamphlets. But with the growth of radio and television and now the internet and all the strategies through social media and internet advertising, through all of that, money can amplify one's voice. You can have the equivalent of a stadium sound system that drowns out the voice of the people. That is the opposite of Jefferson's mother principle, Jefferson's principle that we will only be a government that pursues the will of the people if each citizen has an equal voice.

Now, granted, we all know that vision was flawed. Women weren't given the vote. Many minorities were excluded. But we have worked overtime toward that vision of inclusion, opportunity, and equality, and we have come a long way. But in one case, we have gone in the opposite direction, and that is the Citizens United concentration of money corrupting our elections, undermining the legitimacy of this Chamber and undermining the legitimacy of the House Chamber. Instead of being elected to do government of, by, and for the people, it is the product of an enormous concentration of power by and for the few. You can see it in the policies that are pursued.

Three decades after World War II, we had an economy that worked really well for working America. American workers participated in the wealth that they were creating, and the result was that families had a leap forward.

My parents have lived under humble circumstances. I had a grandmother who at one point had lived in a railroad car. I had a grandfather who put all the children into a car and drove from Kansas to Arizona with all of the individuals in the family and their possessions in a single car, going west, trying to find work and find a future. Those were incredibly hard times. Folks were living in shacks.

Then, after World War II, we had these three decades when we had this big leap forward in the standard of living, as workers shared in the wealth they were creating.

From about the time I got out of high school, which was 1974, in the middle of that decade—let's call it 1975—and in the next four decades, virtually all of the new income in America has gone to the top 10 percent, which means that 9 out of 10 Americans have been left behind in this economy.

I live in a blue collar community, the same community I have lived in since third grade. I was there from third grade through graduating from high school. I moved back into that community the year my son Jonathan was born 20 years ago.

It is a blue collar community. It has changed over time. It has become much more of a diverse community. There are many ethnicities from all over the world, and a lot of languages are spoken in the school. It is a blue collar, working community.

Folks there say: My parents were able to buy a house in this community, but the only way I am going to own a house in this community is to be able to inherit it from my parents because of the disappearance of living-wage jobs.

That is what has been going on in this economy. We provide these enormous, enormous tax breaks for the best off in our society.

Well, there is a concept referred to as the Buffett rule. Warren Buffett said: Why should I, a billionaire, be taxed at a lower rate than my secretary? Why does my secretary pay a higher rate than I do?

So every now and then, we have had on the floor of the Senate an effort to

correct that and say: Hey, a billionaire should pay at least the same tax rate as the secretary or the janitor. But we haven't corrected it because the vast influence of funds in this Chamber are working on behalf of the privileged and the powerful.

So here we are, trying to figure out why last year we had, for the very first time, a majority leader who engineered the theft of a Supreme Court seat from the Obama administration to another administration. It was the first time in U.S. history. To understand 2016, you have to understand 2014, when the Koch brothers invested this vast sum in all the campaigns so they could control the Senate. You have to understand that in January 2015, the Koch brothers sent a message that you had better pay attention. You have to understand that the Koch brothers' strategy is based on the dark money, third-party campaigns that Merrick Garland might possibly have voted against—a 5-to-4 Citizens United decision that Merrick Garland might have found 5-to-4 in the other direction. We don't actually know where he stood on this.

He was so square down the middle and so complimented by people on the right as well as the left. We don't know how he would have voted on that. But in order to ensure that the dark money could continue, in order to ensure that decisions would be made by and for the powerful, to ensure that the fossil fuel companies could be swept clear of regulations that would diminish the amount of fossil fuels they could extract out of the ground and sell for combustion, in order to ensure the profits of the Koch brothers, that drove this unique case of the theft of the Supreme Court seat last year.

There was that effort to pack the Court by sending that seat to the next President in the hopes that it would be a conservative President and then to have that nominee say: I will only nominate somebody who comes off a list from two conservative groups on the far right—boy. That was exactly the vision. It has unfolded exactly as—I guess you could say—those in that powerful group wanted it to unfold.

We have a different responsibility. We don't have a responsibility to a ''we the powerful'' vision. We don't have a responsibility to a ''we the privileged'' vision. We have a ''we the people'' Constitution.

We have Jefferson's mother principle that says: We should be in a situation, if we want the will of the people to be enacted, in which people have an equal voice. There is this third-party, dark money that is corrupting America, our fundamental institutions, our election institutions. It is corrupting this institution—both sides, the House and the Senate. That is why I hope there is a Supreme Court that eventually says this is wrong; this is out of sync with our constitutional vision.

The Court said: We think transparency will do the job. They kind of assumed that there would be transparency in where the money came from and where it went.

It used to be that colleagues on the right side of this Chamber would say: Oh, we love transparency. Transparency will be the sunlight that disinfects the potential corruption of campaign donations. We love transparency.

Many of those who opposed McCain-Feingold caps on donations said: We love transparency, the sunlight, the disinfectant. Won't that be wonderful.

Then, we had a transparency bill on the floor and said: People have to know where every donation comes from so there is not this dark money, unidentified money surging through the veins of the American campaign system, surging through the arteries. Suddenly they say: Oh, wait; we don't like transparency so much because that might hurt the prospects for the powerful folks who got us elected.

So then you have the picture of why this unique circumstance occurred and why we are where we are and how much damage it is going to do and how it undermines the legitimacy of the Court.

Merrick Garland's treatment is unprecedented in the history of Supreme Court nominations. There was a hastily fabricated pretext that we shouldn't do a normal process under our advice and consent responsibilities in the final year of a Presidency or the fourth year of a Presidency.

Now, you can read the Constitution from one end to another, but you won't find that principle in the Constitution—that suddenly we can ignore our responsibility in the fourth year of a Presidency.

The responsibility to be here in the Senate Chamber doesn't end in a fourth year. No other responsibility ends.

The responsibility of the President to nominate for empty positions doesn't end, but that pretext was one which was so quickly concocted. The foundation was so quickly destroyed, and it was just revealed for the destructive partisan tactic that it was—this Court-packing tactic.

One colleague said: We have 80 years of precedent of not confirming Supreme Court Justices in an election year. That is an exact quote.

One colleague came to the floor—a colleague, by the way, who ran for President—and said: We have 80 years of precedent not confirming a Supreme Court Justice in an election year. Wrong. There have been 15 vacancies in an election year, and 15 times the Senate acted, and in most of those cases, it was to confirm the Justice. We could even look at the fact that there were some vacancies that occurred before an election year and were confirmed in an election year, just like the nomination of Anthony Kennedy—who sits on the Supreme Court today—in 1988.

To my colleague who said we have 80 years of precedent of not confirming a Supreme Court Justice in an election year—that is his exact quote—not only is that not true, if you look at history, at every single nomination vacancy that occurred in an election year—and most were confirmed, but the Senate always acted—it is simply not true, if you look at Justice Anthony Kennedy, who sits on the Court a few yards from here, who confirmed just a few years ago—in 1988—within the memory of most Members who serve in this Chamber.

If you go back just one more election—let me put it differently. Until Merrick Garland's nomination last year, we hadn't had an election-year vacancy for a sizeable period of time. That is why I am going to have these three charts put back up. If we look at these charts here in this situation, these are some vacancies that occurred in an election year.

Look at this group here—in 1928, 1860, 1864, and 1956. Well, 1956 was a good period of time ago. That was about 60 years ago, 61 years ago. That is quite a while.

Let's look at the next chart. Well, vacancies in an election year—year 1800, year 1872, year 1880. They happened a long time ago.

How about the last chart of nine. Again we see a lot of 1800s—1804, 1844, 1852, 1888, 1892, in 1916 twice, and 1932. The point is taken that it has been quite a long time since we have had a vacancy in an election year.

So if you concoct a premise within an hour or two of a Supreme Court Justice dying and get it wrong—but then there is also a colleague who had the time to look up the facts who got it wrong as well.

In the 1932 election between Franklin Roosevelt and Herbert Hoover, we did have an election of a Supreme Court nominee. Hoover nominated Benjamin Cardozo to succeed Oliver Wendell Holmes. On February 24, 9 days later, the Senate confirmed Cardozo. That was the last time we had a Supreme Court seat open up in an election year, except for the Eisenhower occasion.

Why don't we go back to Eisenhower. The seat opened up 1956, an election year, and it was the following January that he was confirmed.

So we can look to the fact that the Senate acted on all 15 of the 15 election-year vacancies, confirming most of them. Here we see two out of the four confirmed, and of these eight before Merrick Garland, we see six of the eight confirmed. Then the other group of three were the folks where the vacancy occurred after the general election, but the Senate still confirmed all three, whether up or down.

So if you look to history, my colleague who said that we were in a situation where we had been in the tradition of not confirming people during an election year, 80 years of precedent not confirming a Supreme Court Justice in an election year, well, that is a phony, phony, incorrect, fallacious—insert your own adjective here—argument because in our entire history, every single seat that became vacant in an election year was actually done by the

Senate before the next President took office.

Three vacancies occurred after the general election. We saw the three in this chart here. John Jay in 1800, with the Adams administration, was nominated to be Chief Justice on December 18 after Chief Justice Oliver Ellsworth retired. Jay was the first Chief Justice but retired in 1795 to serve as the second Governor of New York for two terms. After that, Jay's nomination was confirmed in the Senate, and he ended up declining the position and retiring from public life instead.

For those of you who are thinking about political trivia, who was the election-year nominee confirmed by the Senate? The vacancy occurred late in December. He was confirmed 3 days later and declined it. Now you know the answer. It is the nominee John Jay, who had served as Governor of New York for two terms.

Adams was more successful when his second choice, John C. Marshall, was confirmed on January 27. That confirmation happened after the term.

In 1872 Ward Hunt was nominated by Ulysses Grant a month after easily winning reelection, on December 3, 1872, to replace the retiring Justice Samuel Nelson. Hunt was confirmed by the Senate 8 days after being nominated.

William Woods was nominated by Rutherford Hayes in 1880. He was nominated to replace William Strong, who was stepping down while still in good health at the age of 72. That set an example for several infirm colleagues who refused to do the same. I hope his influence was substantial because that is one of the challenges of having a lifetime appointment—sometimes the Justices stay in office beyond their ability to exercise clear reasoning. It is a good example that William Strong set.

As a member of the U.S. circuit court, Justice Woods was easily confirmed by the Senate 39 to 8 on December 21, 1880. He was the first person to be named to the Supreme Court from a former Confederate State. So there is another little bit of Supreme Court trivia.

There were four vacancies that occurred before the general election but the nomination didn't occur until afterward. Why did Presidents delay until afterward? This probably is a different story in each case.

We see basically a four-month delay with J.Q. Adams. We see it delayed another 9 months with President Buchanan. There was a delay of a couple months by Lincoln and 3 months by Eisenhower. One reason might have been to clear from the heat of the election season. That would be interesting because that is essentially what Biden referred to when he said if a vacancy occurred in the heat of the election season in the summer, we should perhaps wait to act on it until after the election season is over, until after the election.

John Crittenden was nominated in 1828 by John Quincy Adams. In 1828, a month after losing his bid for reelection, President Adams nominated Mr. Crittenden to replace Justice Robert Trimble, who had died in August from malignant bilious fever. On February 12, the Senate voted to table his nomination, but they acted. They acted in their advice and consent role, unlike what happened last year. Although President Adams' nominee was not confirmed, he did receive a fair shot when the Senate voted on his nomination on the Senate floor.

Jeremiah Black was nominated in 1961 by President Buchanan. On February 5, 1861, President Buchanan nominated his Secretary of State, Jeremiah Black, to fill the seat of Justice Peter Daniel, who had passed away at the end of May. On February 21, 16 days later, the Senate rejected Mr. Black's nomination, and they rejected it by a single vote. They did so not by tabling the nomination but by rejecting the motion to proceed to the nomination.

There has been a change in Senate rules in regard to that motion to proceed to a nomination. But again, even though his nomination was rejected by a single vote, Jeremiah Black still received the treatment of the Senate. The Senate acted. They considered and they acted.

Salmon Chase in the Lincoln administration, 1864. Chief Justice Roger Taney passed away October 12, 1864, and 2 months later, on December 6, 1864, after winning his reelection in a landslide, President Lincoln nominated his Treasury Secretary, Salmon Chase, to fill Chief Justice Taney's seat. Well, in this case, on the same day he was nominated, December 6, 1864, the Senate confirmed him and confirmed him by a voice vote. Well, I don't think we are going to see another Senate or another Supreme Court nominee confirmed by a voice vote for a very long time to come.

William Brennan, Jr., was nominated by President Eisenhower in 1956. On October 15, just 2 weeks before the general election, Justice Sherman Minton stepped down because of his declining health. On that very same day, Eisenhower named William Brennan, Jr., as his nominee. Then on January 14, the recently reelected Eisenhower officially nominated Justice Brennan to the Supreme Court. First he was nominated as a recess appointment—another interesting piece of Supreme Court trivia—but then in January he was renominated as a regular nominee to be considered by the Senate. The Senate was back in session, and his nomination—that is, the President's nomination—did face opposition from the national news. They were worried that, as a Catholic, he might rely more on religious beliefs than on the Constitution. That is an interesting conversation that is hard for us to identify with today.

Justice Brennan was opposed by Senator Joseph McCarthy because he made a speech decrying the overzealous Communist investigations as ''witch hunts.'' But on March 1957, Justice Brennan was confirmed by the Senate almost unanimously. The only ''no'' vote was Senator McCarthy.

Let's take another look at those vacancies that occurred before the general election where the nomination also occurred before the general election.

We have William Johnson in 1804, who was nominated by President Jefferson. On January 26, Justice Alfred Moore had stepped down because of declining health, and 2 months later, President Jefferson nominated William Johnson. Two days after that nomination, he was confirmed to the Senate by a voice vote.

Then we turn to a couple of nominations the Senate considered, but they rejected them through votes to table the nomination. President Tyler nominated Edward King in 1844. Justice Henry Baldwin passed away on April 21, and on June 5, President Tyler nominated Edward King to fill the seat. But the Senate did deliberate on that nomination and decided to reject it. They tabled it. Later that year, Tyler renominated King to fill the vacancy, but the Senate again voted to table the nomination. They said: What was said before still goes.

Mr. King did not make it to the Supreme Court, but he did have the opportunity to present his case and have the Senate act on his nomination, not once but twice.

In 1852 Edward Bradford was nominated by the Fillmore administration. Edward Bradford was nominated on August 16, about a month after Justice John McKinley passed away. He too had his nomination tabled by Members of the Senate—by the full Senate—voting and saying no, but they did act. They did vote—Melville Fuller under Cleveland. Now we get into a whole series in which the Senate said yes, not only in reacting but in ''we think you are qualified to serve on the Court.'' They made it not just from the advice stage but to the consent stage.

(Mr. SCOTT assumed the chair.)

Justice Morrison Waite passed away in March of 1888, and President Grover Cleveland nominated Melville Fuller to fill the vacancy on April 30. Over the course of his nomination, Fuller faced opposition because he had avoided military service during the Civil War, and he had tried to block wartime legislation as a member of the Illinois House of Representatives.

Those were the flaws that the Senate found as they vetted his nomination. He did not receive every vote in the Senate, but the Senate did act. The Senate voted, and they voted 41 to 20, by a 2-to-1 margin. The Senate looked at his record and said: Yes, it has flaws, but on balance, it is qualified and appropriate. And they confirmed him.

President Harrison nominated George Shiras in 1892. Earlier in the year, in January, Justice Joseph Bradley had died, but it was not until July

19 that Harrison nominated George Shiras to fill that seat, which was still before the election. In spite of the 6-month period between the vacancy and the nomination, Shiras was confirmed, yet again, by a voice vote in the Senate one week after being nominated.

Now we turn to the 20th century, the 1900s. President Wilson nominated Brandeis. This seat was open because, in January, Justice Joseph Lamar had died. Because Brandeis' nomination was bitterly contested, it became the first time in American history that the Senate Judiciary Committee had held a public nomination hearing. Today, we think of the fact that nominations have always gone to the Judiciary Committee when, in fact, the Senate used to serve as a Committee of the Whole. The nomination came to the floor and was considered by the entire Senate—debated by the entire Senate—without there being a previous committee action, committee hearing. Brandeis was the first for whom the Judiciary Committee held a hearing. He was denounced by a number of folks because they argued that he was unfit to serve. There was, by many people's estimations, a heavy dose of anti-Semitism at work. Despite that, Justice Brandeis was confirmed by the Senate by a vote of 47 to 22.

Then we turn to John Clark—also in 1916. Justice Charles Hughes had resigned from the Court in June of that year in order to run for President against the sitting President, Woodrow Wilson. He is the only Supreme Court Justice ever to resign from the Court and run against a sitting President. In fact, as far as I know, he is, perhaps, the only one to resign from the Court and run for President at all. A month later, on July 14, Wilson nominated John Clark to fill the open seat. On July 24, 10 days later, the Senate confirmed him.

This brings us to Benjamin Cardozo in 1932. Benjamin, prior to Scalia's dying, was the last of this group of nominees who had the vacancy occur before the election and the nomination occur before the election. Benjamin Cardozo was nominated on February 15 by President Herbert Hoover to replace retiring Justice Oliver Wendell Holmes. Because he was a Democrat who was appointed by a Republican President, his nomination is considered to be one of the few Supreme Court appointments in which one could find no trace of partisanship. On February 24, 9 days after the nomination, Justice Cardozo received a unanimous voice vote by the Senate.

So there are the 15 times that there has been a vacancy in an election year, and in all 15 times, there was action by the Senate until last year. That brings us to 2016 when the vacancy occurred, the nomination was made, and the Senate chose not to act.

We certainly have entered new territory with this decision to amp up partisan tactics to pack the Court by stealing a Supreme Court seat. No one in this Chamber should be comfortable with that. For any of my colleagues who are feeling comfortable with it, just pause for a moment and ask yourself: Would you feel comfortable if the parties were reversed? If this were a Democratic majority stealing a Supreme Court seat from a Republican President, I ask you: Would you feel comfortable if the tables were reversed?

I think, probably, every Member on the Republican side of the aisle would say it would be outrageous if the Democratic majority stole a seat—a tactic never before used in our history—to deliver it to a future Democratic President. That would be unacceptable. That is the ability to walk in someone else's shoes and to look at an issue from the viewpoint of our obligation to the institution rather than from simply advancing the desires of the short-term political rewards, if you will.

For 293 days, no action was taken on the nomination. It was a complete break with Senate tradition, with Senate precedent, with U.S. history. There were 16 nominations to fill a Supreme Court seat that became vacant in an election year, and only one seat was stolen—the seat that opened up when Antonin Scalia died and Merrick Garland was nominated.

Among the hastily crafted pretexts for stealing this seat—and I mentioned this earlier, but I will mention it again—some raised the so-called ''Biden rule.'' There is no such rule in our rules, and there is no such speech that presented a rule. There was a speech in which Vice President Biden said that if there is an open seat, the Senate might be wise in an election year not to consider it in the heat of the election. That is simply a statement of respect for the Senate's ability to be the cooling saucer, to have thoughtful dialogue that maybe could not take place in the final months of a Presidential campaign.

I think most of us would say, if we had a nomination and we were coming together in September or October of an election year to consider it, maybe it would be better to wait until after the election in November to be able to have that thoughtful dialogue then. That is really merited by the importance of a Supreme Court vacancy and nomination.

Virtually everyone here would agree with the comment that Senator Biden made, but recognize this: His comment was in the abstract. There was no open seat. His comment was in the context of a speech in which he went on to say shortly thereafter, with regard to his theoretical situation in which he would consult with both sides of the aisle, if the President were to nominate somebody in the mainstream, he would probably win his vote, which was conveniently left out by my colleagues who referred to this.

The idea that we try to depoliticize and thoughtfully consider, which was the gist of Biden's comment, is one we should all respect. If you have to go back to a comment that was made in a speech many, many years ago by one Senator in order to justify the stealing of a Supreme Court seat and if you ignore history, ignore precedent, and ignore the Constitution in order to do so, you really know that your argument is not just on shaky ground, but it has no grounds.

I will read a little bit of what this was all about. These are the remarks I have that were given back then.

It begins:

> Given the unusual rancor that prevailed in the (Clarence) Thomas nomination, the need for some serious reevaluation of the nomination and confirmation process and the overall level of bitterness that sadly affects our political system and this Presidential campaign already, it is my view that the prospects for anything but conflagration with respect to a Supreme Court nomination are remote.
>
> In my view, politics have played far too large a role in the Reagan-Bush nominations to date. One can only imagine that role become overarching if choices were made this year, assuming a Justice announced tomorrow that he or she was stepping down.
>
> Should a Justice resign this summer . . . actions that will occur just days before the Democratic Presidential Convention and weeks before the Republican Convention, it is a process already in doubt in the minds of many and would be become distrusted by all. Senate consideration of a nominee under these circumstances is not fair to the president, to the nominee, or to the Senate, itself.

There it is. Depoliticize the debate that we are to have. Move that debate outside of the context of the heat of a campaign.

He went on to say:

> President Bush should consider following the practice of [some] predecessors and not . . . name a nominee until after the November election is completed.

Get the nominee out of the heat of the political campaign. That was actually something that we saw in a couple of these nominees. These are cases in which the vacancies occurred before the elections, and the Presidents waited until after the elections to name the nominees. That is the essence of what Biden was referring to: Get the nomination out of the heat of the campaign.

I do think that you have such an imbalance in this argument to anyone who opens his eyes to the conversation. You have, on the one side, our history of 15 vacancies during an election year, when the Senate acted on all 15 before Antonin Scalia died. On that same side of the scale, you have our constitutional responsibility to provide advice and consent. On the other side of the scale, you have a comment by former Senator Biden, then Vice President Biden, who was saying, actually, take a nomination out of the heat of political passion for it to be considered, which is completely consistent with our history.

It is the Constitution and our history versus an out-of-context comment made by a former Senator, in a theoretical situation, but he actually did

not say what folks said he said. It is clear where the weight of this argument lies. That is what makes it such a transparent transgression against our Constitution, a transparent transgression against the integrity of the Senate because the majority leader asked the Senators not to do their constitutional responsibility to provide advice and consent, a transgression against the Supreme Court because we now have a stolen seat and a precedent that will haunt the legitimacy of the Supreme Court for decades to come should we proceed down this route, should we continue with this conversation, should we have a vote, and should we—and I so hope we do not conclude with this theft being fully accomplished this week. It is such significant damage to everything—our institutions, the credibility of the Court, our responsibilities.

Well, some have said: Why filibuster? Every time I say ''filibuster'' it gets very confusing because it is hard for people to think—what does ''filibuster'' mean? Is it speaking at length? Well, yes, it is. In some historical context, speaking at length has delayed action. It was the set of speeches when Woodrow Wilson wanted to arm commercial ships before World War I that prevented the Senate from acting to approve that. Those speeches were around the clock.

By the way, the term ''filibuster,'' where does it come from? What does it mean? Well, it is, I guess, an evolution of the word ''freebooter.'' A freebooter was a pirate, so I guess you could say piracy. The folks who spoke at length to stop consideration of putting arms on our commercial ships took over the Senate and didn't let it act. But that is one way to view it.

Another way of viewing it is that we had the courtesy of hearing everyone in the original Senate. The Senate got rid of the direct motion to close debate because they didn't need it, because they wanted to hear from everyone. It is a tradition of letting everyone be heard and protecting that tradition.

So now that we have restored this motion to close debate, where the Senate rules require a supermajority, they were basically saying most of the time we are going to hear everybody out. It will take the large bulk of the Senators to close debate. That was used in a very few circumstances—almost never on a motion to proceed, almost never on an amendment, and rarely on final passage of a bill because it was considered that the Senate needs to act. It is a legislative body. On the other hand, we don't want to have this place be paralyzed.

To use the analogy of George Washington's cooling saucer, he said the Senate should be a cooling saucer, not a deep freeze. But too often, the abuse has resulted in the Senate being unable and paralyzed to act.

So here we stand with this concept that it is hard to put your hands around, and many of us are saying we should not close the debate on this nominee, if such a debate—if such a vote is held on Thursday, we should vote against closing debate. In the modern Senate rules, that is what a filibuster is; you are voting against closing debate. It comes down to this: 60 Senators have to be supportive for someone to be on the Supreme Court. That is to protect the integrity of the Court so that you don't have nominees from the extreme edges. The President, knowing that the Senate might not have 60 votes for someone from extremes, is thereby encouraged to produce a nominee that is someone from the mainstream. That is the power of the supermajority. And having people from the mainstream of judicial thought sustains the integrity of the Court in the eyes of the citizens. That is why many of us believe that we should vote against closing debate.

If we close debate on Thursday—and let me repeat again that this is the first time in U.S. history that the majority leader has filed a petition to close debate on the very first day of debate, the first time another of this stream of incredibly partisan tactics designed to pack the Court—the first time in U.S. history.

It takes two days before the vote can actually be held. The majority leader announced to file the petition earlier today, and the vote cannot be held until Thursday. When that vote is held, there will be at least 41 Senators who say we should not close debate. In other words, there will not be a supermajority of 60 necessary to close debate. That is what I am predicting. That is what my crystal ball says.

Why do I believe that there will not be 60 Senators to vote to close debate? Well, I will tell you now that I can say that is very likely because at least 41 Senators have announced that they will vote against cloture. They have made their announcements.

Turn the clock back to when I first stood up and said: This seat is stolen, and we should not vote to close debate. We must filibuster, which means the same thing under the rules of the Senate. I said this in order to stop the theft of Supreme Court seat-stealing. If this theft is successful, it will damage the Court forever, and it will result in not just the integrity of the Court being damaged, but the different decisions—a different set of decisions because, while we don't know exactly how Merrick Garland and Neil Gorsuch would vote on any individual case, we know from their records that one is straight down the middle and the other is on the very, very far right from a list vetted by two rightwing Republican organizations.

So we can ask: Did the President ask the nominee how they would vote on this case or that case?

Take, for example, the right of a woman to reproductive health that she feels is correct, keeping the politicians out of the exam room. Well, what we know is that the nominee before us at this moment came through a process of rightwing vetting through two organizations before being put on a list that was sent to the President. So we have a pretty good idea of how the nominee is going to vote on this issue.

The nominee wouldn't answer any questions before the Judiciary Committee. It was pretty much what you would call a farce: a question asked, a question not answered; a question asked, a question not answered; a question asked, a question not answered.

A number of my colleagues went into that Judiciary Committee hearing feeling they were really open to hearing the judicial thought and seeing if this nominee was really as far off the charts as everything else indicated. And the fact that he refused to answer a question over a week of hearings basically said to them, yes, now we know; now we know the answer.

So it is to protect the integrity of the Court that we must not close this debate on Thursday. That is why we want to insist on keeping the 60-vote standard. That is why the 60-vote standard exists.

There are some who have said: Hey, maybe we should try to figure out a way that we can preserve the 60-vote standard by not really using it as a tool for this particular nominee, and by not making it an issue, we have a tool for their future. It is kind of like coming into a confrontation and a person has a confrontation and they pull out their swords, and then say: I am going to lay down this sword and let you have your way until next time because that way I will still have my sword when I come back again. So you come back again next time: Oh, I have to lay down my sword again.

What are they confronting? Why are they saying we should perhaps consider not honoring the tradition of utilizing the 60 votes when there is a cloud over a nominee—not utilize the filibuster? There is this goal of saying: Well, that way maybe we keep the rule as it is. And why are they worried about that? Because the majority has said that they will consider changing the rule.

Well, many of us have a message for the majority—a message based on the way the Senate has acted over hundreds of years. If you don't have the votes, change the nominee, not the rule. That is the way it has been done time after time after time. On those 15 occasions when there was an open seat prior to Antonin Scalia passing away, the Senate didn't approve every nominee; they rejected several of them, but they considered every single one. And when they were rejected, they didn't change the rule; the President changed the nominee. That is what should happen in this case.

Some have said: Well, we have seen such disrespect for the Constitution. We have seen the urging of the majority leadership to not exercise our advice and consent responsibility under the Senate last year, and they made it happen. They enforced it. We have seen

the first-ever filing of a cloture petition to close debate on a Supreme Court nominee on the first day of a Senate debate; it has never happened before, to ram this through in a way never seen before in U.S. history. And is it too much to imagine that the Senate majority would also, instead of following Senate tradition when a nominee doesn't have the votes and telling the President to change the nominee, would instead change the rules? Yes, it is possible, when you look at that. But that is a decision that we can't control on our side.

When we looked at the tremendous obstruction that was being used for executive nominations and lower court nominations, we had to find a way to quit having advice and consent being used as a tool of legislative destruction against the other branches of government.

Our whole Constitution was founded on three coequal branches of government, but you can't have three coequal branches if one branch wields a tool—a tool that was intended to be used very rarely—of rejecting nominees when nominees weren't suitable, using it as a wholesale power to destroy the executive branch and undermine the judiciary. So we addressed that in 2013, but we left in place the supermajority for the Supreme Court. In some ways, you can think of the fact that, well, we tolerate a wide range of positions coming out of the lower courts. There is a check and balance there. It is called the Supreme Court. But there is no check to the Supreme Court. They are the final decision maker. That is why you leave in place the supermajority requirement to tell a President: Do not nominate from the extremes.

We have a President who likes to, well, I would say run counter to tradition. So that is maybe part of the appeal and why he is in the office. He looked at the power of the Senate, and we don't know if he even actually understood any of the background as to why we had a supermajority to close debate, why we had a 60-vote requirement. He said that he didn't care; he was going to nominate from the extreme anyway. And having nominated from the extreme, now the same groups that want extreme rulings for the powerful and the privileged are pushing tremendously hard, just as they did last year, for the majority to steal the seat in the first place.

But aren't we 100 individuals who could possibly set aside those tremendous pressures from those powerful dark-money interests and actually do the right thing for the Constitution and the Senate and the Supreme Court? Don't we have the ability, the soul, the insight to defend this institution at this moment? What everyone here must understand is that when people look back—if the decision this week is to destroy the 60-vote requirement that tempers the nominations to the final decider about what our Constitution needs—this is stripping away a key element in protecting the integrity of the Court, and it will be looked on as a very, very dark moment in which the Senate failed in its responsibility.

Let us not fail. Let's have some Senators who will remember that they stood up on that podium and they took an oath of office, and that had to do with advice and consent which was violated last year. Embedded in that was the responsibility to protect this institution and the rest of the other two branches of government, so they could function in a way our Founders intended them to.

I know that come Thursday, if there is a motion to change the interpretation of the rule—the way this works is that the majority won't actually change the rule. They will change the interpretation of the rule. For all practical purposes, it is basically the same thing. At that moment, we are going to be put to the test.

The reason it is called the nuclear option is because changing a rule—a basic function of the Senate, designed to protect the integrity of the Supreme Court—and undermining and damaging the integrity is like blowing up the institution. That is why it is nuclear. It is the big bomb. It is the most destructive weapon known in the legislative arsenal.

There will be some Members, I know, who will hesitate, some from the viewpoint that they have a responsibility to protect the institution. There will be others who will hesitate from political expediency. They will say: Yes, this is a pretty good deal to get the justice in place that our backers want. But on the other hand, the shoe might be on the other foot in 4 years. There may be a Democratic President, and maybe that President gets three nominations. If we blow up this rule, there will be nothing to temper the type of appointment made by that future President. That is something I am sure people will consider.

Apart from the out-of-context, standing-on-its-head example from Vice President Biden's speech, the other argument was: Well, let's let the American citizens decide. That was the second excuse for stealing the seat. Well, the people did speak. They spoke when they elected Barack Obama in the first election, and they spoke again when they elected him for the second election. They didn't elect him to serve 3 years out of 4, but to serve 4 years out of 4. They didn't elect him to execute his constitutional responsibilities 3 years out of 4. They elected him to serve his responsibilities, including nomination responsibilities, for 4 out of 4. He won that second term by a margin of over 5 million votes. That is a big margin. President Trump lost the citizens' vote by a margin of over 3 million votes. That is a pretty big disparity. It is an 8 million vote disparity between Obama's victory and Trump's loss of the citizen vote. So if we want to have the people have a voice, they have weighed clearly and President Obama considered his nominee. As to the fact that they wanted the people to weigh in, they weighed in and said they trusted Hillary Clinton more than Donald Trump to execute the responsibilities of office. That is the citizen vote by more than 3 million.

When the President campaigned, he said: I am going to drain the swamp, I am going to take on Wall Street, and I am going to help out workers. We have seen quite the opposite. The very first action he made—the very first action—was to make it $500 a year more expensive for families of modest means to buy a house. How does that possibly fit with fighting for working Americans? How does that possibly fit with that?

Then he put forward a plan on healthcare—TrumpCare—in partnership with Ryan. Ryan wants it to be called TrumpCare; Trump wants it to be called RyanCare. Neither one wants their name on it because it takes away healthcare from 24 million Americans. It makes healthcare out of reach for working Americans. That certainly wasn't fighting for working Americans, stripping healthcare. It is, basically, a weapon that hurts in two ways: If you don't have access to healthcare, you are worried that your loved one won't get the care they need. Then you are worried that if you do find access by basically paying much higher rates than anyone with insurance has, you will be bankrupt, and America had this vast number of bankruptcies.

So Trump, who campaigned on helping workers, said: I am going to strip away your healthcare. I am going to take away your peace of mind that your loved one will get care. We are going to return to a world where, if you do find care, you will be bankrupt. How do you like that plate of potatoes? Working America didn't like it. They called Capitol Hill and said: Stop this diabolical plan to undermine healthcare. Stop this plan. They said it on phone calls, they said it on emails, they said it at the townhalls, and the House abandoned the plan due to the outcry of workers across America who had finally—finally—found access to healthcare, thanks to the Affordable Care Act.

Then President Trump sends his anti-worker budget—what they called the skinny budget, the outline of the budget—over here to Capitol Hill. I was out doing townhalls in rural Oregon, and I think I got much the same reaction that probably everyone else did across the Nation. This wasn't America first. This was rural America last, including rural workers—especially rural workers.

The President campaigned for workers. He makes buying a home more expensive. He tries to strip away their healthcare, and, then, he hits them with a budget in rural America that will devastate their communities. You have a challenge with affordable housing? I am going to take away a good share of the housing grants used as a

flexible tool. You have other challenges in your community that you use community development block grants for. We are going to strip those as well.

Your rural county has a lot of Federal land? This is probably more true in the West, where I come from, than in many other States. Your rural county has a lot of Federal land so you are compensated through Payment in Lieu of Taxes, the PILT Program? I am going to devastate that program.

Your rural community has essential air service? Well, we don't need that. Let's take that away. We don't need air service in rural America.

It made me think about the airport in Klamath Falls, in my home State. Klamath Falls is not on an interstate. I–5 goes down through Medford and goes through Ashland. So it travels further west, on into California, not through Klamath Falls.

We have some very substantial manufacturing capability in Klamath Falls. We have an F–15 base. Both of those are essential to the community. But to keep that manufacturing there, to keep those companies there, to keep that airbase there, we have to have a functioning airport. The company that was servicing that town stopped, moved their assets somewhere else, and left that town stranded.

I immediately called the mayor and called the House Member representing that district and said: We have to get air service back. The managers of the manufacturing capability in doors and windows are not going to want to have their operation in a place they can't fly into. Flying into Medford and driving a dangerous, winding mountain road for well over an hour—often impassable or very dangerous in winter—is not going to cut it. We have to restore that air service. We went to work and we teamed up. We teamed up with colleagues across the aisle. Why did we undertake this? Because air service was essential to that economy. So here is President Trump, sending a ''rural America last'' budget which devastates rural air.

Let's talk about the Coast Guard. Oregon is a coastal State. My colleague presiding is from a coastal State. Our Coast Guard is pretty important to our States. But President Trump said: Let's savage the Coast Guard. Here is the thing. The Coast Guard actually stops a lot of bad things from happening along our coastlines. They save lives, and they stop drug traffickers. Ere is Trump's anti-worker budget: Let's take away the wall along the ocean—the Coast Guard—which stops drugs and other bad things from happening, and rescues people, and spend it on a wall on the southern border. What? I thought, Mr. President, you said the wall on the southern border was going to be paid for by some other country—that country on the southern side of the border, not the American taxpayers. You are going to essentially take away that virtual wall of defense along our coastlines in order to build this wall on the southern border?

I went down on a congressional delegation to meet with Mexican officials in Mexico City. We met with the Attorney General. We met with the head of their economic policy. We met with a whole group of Mexican senators, and we heard a lot. But what I found even more interesting was going to the border on the American side and talking to the American experts on the border. We asked them: How do drugs come across the border?

They said: Well, they come through freight. There is so much freight moving. You can tuck drugs into a freight truck. We find some of them but not most of them.

They said: Second of all, it comes across in tunnels. The tunnels are very expensive to build. They are often very long, well-engineered, and very expensive. You don't use them for people because they would be easily detected then and shut down and you would lose your investment. You use them to bring drugs into the country.

The point the border experts made is that the wall will be useless against stopping drugs from coming into our country because the drugs come through freight and they come through tunnels, but they don't come through backpacks. OK. That was interesting for the President to argue that was something he was going to address, to stop this massive inflow of people coming from Mexico to the United States. We looked at statistics, and it turns out that over the last 8 years, the net flow has been out of our country to Mexico, not into our country from Mexico—by a million people.

So that is really a situation where you have the triple threat against workers that President Trump is applying—making home ownership more expensive, proceeding to take healthcare away from millions of American families, and putting forward a budget that savages rural America in method after method after method. I am sure my colleagues will work on both sides of the aisle to stop the savaging of rural America, but clearly that is the President's vision. That was the worker part.

Then you had the ''I am going to take on Wall Street'' part. What did he do? He put the economy under the control of Wall Street. He had attacked a colleague here in the Senate from Texas during the primary campaign for his ties to Goldman Sachs. He attacked his general election opponent, Hillary Clinton, for ties to Goldman Sachs. Then he puts Goldman Sachs in charge of our economy, Treasury Secretary, strategic adviser. The list goes on and on. So much for taking on Wall Street.

Then there is the ''drain the swamp'' proposition. Well, big, powerful, fabulously rich folks deeply connected to those interests—that is the Cabinet. So you have Big Oil and big banks and billionaires. That is the Cabinet. That is the swamp Cabinet.

So all three promises the President made, after he lost by 3 million votes, he has gone on to devastate over the last few months. That is the foundation for saying ''Let the people speak''? The people spoke against—they voted majority against this President. They voted vastly for the election of Barack Obama, and the vacancy occurred on Obama's watch. This is a seat stolen from one Presidency and shipped to another with the packing the Court and a flimsy excuse from a quote from Biden taken out of context, a flimsy excuse of ''Let the people speak.'' When the people spoke, they supported President Obama by this vast number of popular vote. And Trump lost. So I guess the people did speak, but they spoke to the opposite side. So much for the foundation for this crime against our Constitution.

Speaking of the President, it is unacceptable that we are considering this nomination at this moment. At this moment, when the Trump campaign is under investigation—an investigation being conducted by the FBI, another investigation by the House Intelligence Committee, and another investigation by the Senate Intelligence Committee—it is unacceptable that we are considering this nomination at this moment when there is a cloud over the Presidency because of the conduct during the campaign.

We know some things, and we don't know others. We know that Russia sought to influence the U.S. election. We know they used an extraordinarily intense, carefully crafted strategy to influence the American election. What we don't know is the full extent of the conversations between the Trump campaign and the Russians who sought to get Trump elected. We don't know that. That is why we are having investigations.

If those investigations find that there was collaboration between the Trump campaign and the Russian Government, that is traitorous conduct—conspiring with an enemy to attack the institution at the foundation of our democratic republic, our elections. That is a very big deal, and that is why this debate should not be here on the Senate floor until that issue is fully addressed. We should not have the sitting President's nominee debated with the potential of being put on the Supreme Court when many questions remain about whether they conspired with a foreign government to undermine and tip the election we held in November.

Then there is the fact that the nominee is an extreme far-right nominee, even further right than Justice Scalia or Justice Thomas.

Analyzing the opinions of the Tenth Circuit since Judge Gorsuch joined in 2006, the Washington Post found that Gorsuch's actual voting behavior suggests that he is to the right of both Alito and Thomas, and by a substantial margin. The magnitude of the gap between Gorsuch and Thomas is roughly the same as the gap between Justice Sotomayor and Justice Kennedy during

the same time. In fact, our results suggest that Gorsuch and Justice Scalia would be as far apart as Justices Breyer and Chief Justice Roberts.

Gorsuch has advocated far-right conservative positions—not ''we the people'' positions, ''we the powerful'' over the people positions—positions even Scalia has opposed.

This nomination matters. Are we going to have decisions that reflect our Constitution, ''we the people'' decisions, or decisions that turn our Constitution on its head and create a government of, by, and for the powerful? We have a 4–4 split—the analysis of decisions to concede the twin peaks. Decades ago, we would have probably seen a single bell curve, not twin peaks, but what used to be here has migrated. Half of the Court migrated over there, as the Court has gotten further and further away from the fundamental vision of the five-vote majority. The Court now, without Scalia, is split 4 to 4, so this nominee will change the balance of the Court.

There is certainly an opportunity to put in somebody who is straight down the middle. We didn't really know exactly where Justice Merrick Garland would end up, and by all counts, it was anticipated he would be right down the middle. We know something different about Neil Gorsuch. The Court is split 4 to 4 now, and this nomination will change that balance. That is a very important reason that accentuates why this nomination should be set aside until we know if the President's team conspired with the Russians. We should clear up that cloud first.

I am going to go back and review some of the cases that give us substantial concern. I am going to try to locate more details. Meanwhile, I will just share a little bit about the record of 5-to-4 decisions.

Senator WHITEHOUSE has proceeded to do an analysis—or shared an analysis done by others—to look at 5-to-4 decisions of the Court and what has happened in recent memory. Were those decisions designed to accentuate the ability of powerful special interests that changed the makeup of the body? Was it that sort of interference? Was it interference that favored corporations or decisions that favored corporations over people? If I can get the details, I will go through it in detail.

What this analysis found was that the previous decisions of the Court with Scalia on it made campaign finance decisions and other decisions related to things like the Voting Rights Act that made it harder to have the elections that really reflected the voice of the people.

Let me give some context. The Voting Rights Act was passed in 1965. It was passed because different groups around America were messing with the elections to try to keep people from voting. There were elements of this that went way back in our history. There were tests that were applied, constitutional tests. African Americans might try to seek to register to vote and would be given a test that was an impossible question to answer. The same test would be given to White voters. There were all sorts of strategies to try to bias the election process.

So it was a big deal in 1965, and the Senate and the House said: No, we are not going to allow these types of tactics to be developed and utilized because they are an attack on the rights of Americans—the fundamental right to vote, to have a voice, and to help direct the direction of our country by campaigning and voting for those who have a better vision of where we are going to go.

So Congress acted and did so by saying: If you have new strategies for how you are going to control the elections, you are going to have to get those strategies preapproved because the record in your particular State has been that you abused those strategies to suppress the fundamental right of individuals to vote.

So one of those decisions was to say by a 5-to-4 decision: We are going to take away the power of the Voting Rights Act—which is almost unexplainable. The argument was more or less a version of, we don't need this anymore. We moved past that. We don't have the same problem. So we should have the same rules for all the States.

But what we immediately saw with the lifting of the Voting Rights Act was that those States that were under the Voting Rights Act immediately started working to do voter-suppression tactics—efforts to prevent individuals from voting in all kinds of ways—phony ID strategies, all sorts of manipulation of the precincts.

(Mr. CRAPO assumed the Chair.)

So it matters. The fifth seat on the Court matters a great deal. We have six decisions that have flooded the elections with special interest money and affected access to the ballot. In these 5-to-4 decisions, the people have lost in all six cases. So I am going to share those. Then there are 16 cases in which there have been 5-to-4 decisions. In all 16, the 5-to-4 Court ruled in favor of the corporations over the people. So in terms of campaign shenanigans, we have lost in 5-to-4 decisions 6 to 0. When I say ''we,'' I am talking about the American people who care about the integrity of elections have lost all six times under the Court that Scalia was on. On corporations over people, we have lost 16 to 0. I will start sharing these cases to show how much this matters.

Let's look at the issue of unleashing corporate spending. Citizens United v. the FEC in 2010. Under the First Amendment, donations and political contributions are considered free speech. The government does not have the right to keep corporations from spending money on political candidates. Money may not be given directly to candidates but instead may be spent on any other means necessary to persuade the public.

The decision held that political speech is crucial to a democracy and that it is equally as important when coming from corporations. So it essentially said: Look, if we translate that, what that means is that you have a group who was designed to take small amounts of investments from many, many people and combine them together to create the ability to take on larger commercial enterprises. That is a corporation. They sell shares. People provide funds through those shares. They provide those funds to the corporation by buying the shares, and the corporation can take on the big projects.

Out of those sometimes hundreds of thousands of shareholders, there is a small group, a board who decides how that money is spent. So you don't have the shareholders deciding how that money is spent; you have the small board. They aren't spending their own money; they are spending other people's money without asking their permission.

Are you kidding me? This entity didn't exist in this form. The Constitution didn't say that corporations are people and that these entities that really didn't even exist then have the same rights of ''free speech.'' The Constitution didn't say money is speech. No. Remember Jefferson's mother principle, which was that we will only make decisions and be successful as a democratic republic if each citizen has its equal voice. Citizens United is the opposite. It says: Those who sit on the board of gazillion-dollar corporations get a voice that is a gazillion times larger than the voice of an ordinary citizen. It is a complete contravention of the Constitution, and it is deeply corrupting and damaging our Nation. That is the 5-to-4 Citizens United case.

Then there was the American Tradition Partnership v. Bullock case in 2012. That overturned a Montana Supreme Court decision that banned corporations from spending money on political candidates and campaigns and found that political speech is protected regardless of the source, even when it comes from a corporation. In other words, Citizens United applies to this case as well.

The four dissenting judges did not believe that the Court was ready to review the same issues as discussed in Citizens United in spite of the fact that Montana's Supreme Court had noted the extreme power of corporations in politics.

OK, what is the story behind this? Montana was controlled by the copper kings. Back about 100 years ago, the people said: Enough. We want Montana to be controlled by the people of Montana, not by this vast concentration of special interest money that is making all the decisions.

So they passed a law, and they kept corporate money out of their elections to restore the integrity of elections. The Supreme Court turned a deaf ear on that case.

How about McCutcheon v. Federal Election Commission in 2014, which eliminated aggregate campaign limits. The decision found that aggregate campaign limits are invalid under the First Amendment because they restrict political expression. Aggregate limits do not further the government's interest in preventing the appearance of corruption—one of the main goals under the Bipartisan Campaign Reform Act.

They also found that corporations cannot be limited in the number of political candidates they donate to, as this restricts the influence of the corporations which they were equating to free speech.

So this was another erosion of the effort to have the vision Jefferson spoke to, the mother's principle that the government would express the will of the people. That is the same basic idea that Lincoln had when he phrased it in his famous address and said ''government of the people, by the people, for the people.'' But if you allow this vast concentration of money to be spent on campaigns to corrupt those campaigns, it is not government of, by, and for the people. It is like the copper kings. It is the fossil fuel kings. It is the Koch brothers running it.

In the Copper King case in the State of Montana, which Montana shrugged off and reclaimed and restored their government—versus the situation we have at the national level now with a similar parallel—the fossil fuel kings, the coal kings, the oil kings putting vast sums in—to Citizens United.

There was a case that had to do with whether laws were OK that restricted judicial candidates from directly soliciting donations for their campaign. My memory is that the Court said: You know what, it is OK to restrict judges who are directly soliciting donations because that would affect and bias their decisions and it would create the appearance of bias. So there was the reality of bias and the perception of bias. In other words, it would corrupt the courts.

So on an issue involving Justices, that ''we the powerful'' group—Roberts, Alito, Thomas, Scalia, Kennedy—that group said: Do you know what? No. No, we can't let money corrupt the election of judges.

But none of them have served in the Senate or the House, and they couldn't translate the fact that they wanted to defend the integrity of judges and that that was important under the Constitution and allow restrictions on how campaigns were done—they couldn't translate that to the bias and the corruption of what happens here.

I mean, anyone looking at the United States can see that a few years ago, we had a whole host of Republican environmentalists who cared about the next generation and the generation after and fought for clean air and fought for clean water. It was President Nixon who put forward the Clean Air Act and the Clean Water Act. It was President Nixon and the Republicans who proceeded to create the Environmental Protection Agency.

But what happened when the fossil fuel money fueled the campaigns that created the new Republican majority in the Senate? All concern for the environment was gone. That is corruption, plain and simple.

The Supreme Court—five Justices—proceeded to rubberstamp that it is OK to have that corruption—the complete opposite of the vision of our Constitution. They understood it when it was for judges, but they found for the powerful and the privileged and supported the corruption when it came to this body and the House.

Then there is the suppression of access to the ballot box. The Shelby County v. Holder decision of 2013 struck down section 4 of the Voting Rights Act, which included a suspension on many of the prerequisites or tests to vote. The Court held that this part of the Voting Rights Act no longer reflects the current conditions of voting. The formulae for determining whether a State can change its voting laws should no longer be federally reviewed, the Court said.

The decision declares that this section puts undue burden on local government during elections. Really? We saw how the fundamental right of citizens to vote was savaged in these States before the Voting Rights Act, and we have seen how those practices have returned after the Supreme Court struck down section 4 of the Voting Rights Act. That is why it matters.

Let's take a look at Bartlett v. Strickland in 2009, a case that affirmed the North Carolina Supreme Court decision that the State's redistricting plan does not violate the Voting Rights Act section 2. State officials do not have to ensure that minority voters have the opportunity to join with crossover voters to elect a minority candidate.

In this case, the Court found that the vote would not be diluted because the minority was comprised of less than 50 percent of the voting population. Due to the fact that the African-American minority was only 39 percent on the voting population, State officials had no requirement to redraw district lines.

What are we talking about here in real terms? Is gerrymandering OK to change the outcome of the congressional delegation? And the Court said it is OK.

Then there was Vieth v. Jubelirer—redistricting of a Pennsylvania congressional delegation from a Republican-controlled State legislature to favor Republican congressional elections. The Pennsylvania General Assembly was challenged by Vieth—that is the name of the challenger—that the redrawing of the lines was political gerrymandering, violating Article I and the equal protection clause in the 14th Amendment.

The opinion of the lower courts was affirmed, and Scalia wrote the four-member plurality which dismissed the case due to the fact that the Justices could not agree on an appropriate remedy for political gerrymandering. Scalia wrote the four-member plurality. Kennedy wrote a concurring opinion—so it is 5-to-4—but sought a narrow ruling so that the Court would still seek a solution.

Well, the bottom line is that in a 5-to-4 Court, that fifth vote matters. In these six cases, the decisions were all in favor of undoing the vision of voter empowerment and supporting the strategy of voter suppression, undoing the restrictions on gerrymandering to change the makeup of the congressional delegation or the makeup of State delegations and supporting such bias being written into the system.

These 5-to-4 decisions were all about allowing the most powerful, richest people to have a voice equivalent to a stadium sound system that drowns out the people in a position completely contrary to the equal-voice premise that Jefferson called the mother's provision, the foundation for whether or not our government would be able to make decisions that reflected the will of the people.

Then there is a set of decisions 5-to-4 opinions that were relevant to corporations over individual rights, and some of those overlap: Citizens United, McCutcheon, the American Tradition Partnership v. Bullock that we have already covered. Let's look at some of the others.

How about Burwell v. Hobby Lobby. Fighting to require corporations to provide female employees free access to contraceptives violates the Religious Freedom Restoration Act. The Court held that Congress intended RFRA to be applied to corporations. Corporations face a significant burden if they are forced to fund an action that goes against the corporation's religious beliefs. So let's give corporations a soul that has a religious belief. So not only has the Court extended the vision to corporations that they are somehow the equivalent to a super-rich bazillionaire individual, but they also have a soul and a religious belief. So concentrating this fantastic concentration of power and realizing that if the corporation made the decisions on the basis of the stockholders, with all of them having, essentially, input—but they don't because that is not the way a corporation works. You have a very difficult time trying to influence the thinking of a board of directors. You can make efforts. Rarely you might have a successful vote by a group of shareholders who take something to the annual meeting. But in general, that board operates in a world all its own, and they are spending the money—not their own money; they are spending the money of the stockholders without disclosing it to them. They actually steal the political speech by using the money in political speech without disclosing what it is. But that was the decision in Burwell

which gave a corporation the ability to follow its religious choices—that is, the board's religious choices—over the workers' religious choices in an area as sensitive as women's access to reproductive birth control.

Let's turn to Walmart v. Duke in 2011, a class action lawsuit brought by six women against Walmart claiming that Walmart policies resulted in lower pay and longer time for women to acquire a promotion—lower pay and longer time to get a promotion.

The Supreme Court found that the six women who were applying could not represent a class of the 1.5 million women employed by Walmart. They found that the employment decisions for this large number of people did not have enough commonality to be represented in one case—a 5-to-4 decision.

In a class action lawsuit, you have principals, and they represent a class of folks who have been treated similarly. Certainly this is an example of where in general you would expect that the experience these women had could represent the experience that women were getting at Walmart as employees, but the Court turned them down 5-to-4. Four said these women and other like-treated individuals deserve a hearing, and the majority of five said: No, no, no, let's protect Walmart.

Let's look at American Express Company v. Italian Colors Restaurant. Several merchants of the American Express credit card company brought individual cases alleging that the company's card acceptance agreements violate antitrust laws. The Supreme Court found that the American Express clause prohibiting class action lawsuits is enforceable. The high cost of bringing cases forward on an individual basis, which is impossible for an individual to do, was not a sufficient reason for the Court to override the company. Federal antitrust law does not guarantee a cost-effective process.

So here you have a 5-to-4 decision in which, again, you have individuals who have been on the receiving end of bad practices or at least alleged bad practices by a financial company saying: We were shorted a few dollars or maybe a few hundred dollars, but we can't possibly take on this powerful company's enormous office building full of lawyers unless we have a class action where we have everyone who has been similarly affected able to bring their case at one time, with one set of representatives, so that maybe there will be a little bit of a fair playing field.

You can't hire lawyers. It will cost you $1 million to hire lawyers to pursue a $100 issue. So unless there is a class action, there is no justice. It is justice denied and a green path for predatory practices by the large and powerful. Five-to-four decisions matter.

Comcast Corporation v. Behrend. SCOTUS ruled that a district court is not allowed to certify a class action lawsuit without acceptable evidence that the damages can be measured on a class-wide basis. They found that the lower court failed to properly establish the impact of the damages on all of the plaintiffs. Courts must find that the model to prove damages are class-wide and quantifiable.

Let's translate this. What does this mean? The Court, on a 5-to-4 basis, is setting very high standards for establishing the legitimacy of a class action lawsuit. You have to be able to prove that the entire class is affected, not just probably, and it is quantifiable. So they are making it very difficult.

Four Justices said: No, that is ridiculous. That is absurd. That is a standard that makes no sense. But the five ruling for the powerful and privileged said: OK, we can tighten this up and make it harder to challenge predatory actions by large corporations.

We have AT&T v. Concepcion. Customers of AT&T brought a class action claiming that the company's offer of a free phone was a scam because they were still charged the sales tax on the new phone. It wasn't free; they had to pay a tax.

SCOTUS found that the Federal Arbitration Act displaces State law stopping companies from offering contracts that do not allow class action lawsuits. Therefore States cannot make laws that allow companies to prohibit their customers from bringing forward class actions. But the bottom line is that the way this was framed, it had an impact of a 5-to-4 decision with corporations over people.

Janus Capital Group v. First Derivative Traders in 2011.

Most folks didn't even know there were these many cases affecting powerful corporations and their predatory practices and the ability of ordinary people to take them on, but here they are one after another.

Janus Capital Group created Janus Capital Management as a separate entity from Janus Capital. The plaintiffs claimed that JCG should be held liable for misleading statements by JCM regarding various funds, most notably the market timing of the fund's practice of rapidly trading in and out of a mutual fund to take advantage of inefficiency in the way the funds are valued.

This was not permitted. The Fourth Circuit Court found in favor of the plaintiffs because the investors would have inferred that even if JCM had not itself written the alleged statements, JCM must have approved the statements. After all, JCM was created by JCG. But SCOTUS reversed the circuit court's finding that the false statements were made.

So each of these cases involved efforts to tighten or narrow the channel through which ordinary people can challenge the conduct of the powerful. The powerful can use a series of strategies—in this case, creating a subsidiary—to bypass responsibility for misleading statements.

Ashcroft v. Iqbal in 2009. The case concerns the arrest and subsequent treatment of Javaid Iqbal at the Metropolitan Detention Center in Brooklyn, NY. Iqbal and several thousand other Arab Muslim men were arrested as a part of the investigation into the then recent September 11 terrorist attacks. Upon his release, Iqbal brought suit alleging discrimination and 21 constitutional rights violations by the Department of Justice, Bureau of Prisons, and FBI. The defendant argued that their official government roles protected them from suit.

The U.S. district court denied the defendants' motion to dismiss—that is, protected the ability of the suit to be brought—and supported their qualified immunity defense. The U.S. Court of Appeals for the Second Circuit affirmed the district court's ruling with one exception: They ruled that under the defendant's qualified immunity defense, it was not a violation of due process given the context of the terrorist attacks' unique circumstances. The Supreme Court then upheld the finding of the Second Circuit.

Again, each case is a narrowing and a finding of individual against a corporation or a larger entity in a 5-to-4 decision.

These cases—I don't think I will go through all of these remaining six cases, but I think you get the general idea. The bottom line: In 5-to-4 opinions, corporations won 16 times and ordinary people won zero times.

So I want to go back to the fact that Gorsuch himself is an extreme judge, and I think it is important to talk about the cases he was involved in directly. What I have just been laying out is that a 5-to-4 Court makes an enormous difference. Is the Court going to look for every possible way to deny the opportunity for ordinary citizens to take on the powerful and the powerful to get away with predatory practices, or are they going to honor the vision of government of, by, and for the people? That is the fundamental question in a 5-to-4 Court. And Gorsuch fits right into that because the vision of honoring the ability of people to take on the powerful in a system of justice versus a system that perpetrates injustice by allowing the powerful to get away with predatory practices against ordinary people and constrains the right of individuals and expands the rights of corporations—that turns corporations into predator superhumans with more money than any one individual and more power than any one individual and more campaign cash than any one individual. In fact, a corporation will often have more cash to be spent in a campaign than the rest of America—perhaps the entire rest of America put together.

When the Koch brothers said in January 2015 that they were going to spend nearly $1 billion in the next election, do you think there were many Americans who said: Well, well, I can do that. No. That would represent the political spending by virtually all the rest of America. That is the challenge of the concentration of power in our country.

We have seen that there are a whole series of cases that allow gerrymandering and voter suppression and campaign spending and dark money designed to corrupt the ''we the people'' elections, the foundation of our democratic Republic. We saw a whole series of cases that involve finding for the powerful corporations in restricting the rights of people to band together to challenge them through class action lawsuits. That is the difference between these two parts of the judicial decisions, and Neil Gorsuch is way to the right.

So let's look at the preamble to our Constitution: ''We the People of the United States, in order to form a more perfect union, establish justice''—those are the next words, ''establish justice.'' What kind of justice is there if the Court continuously allows the corruption of our elections? What kind of justice is there if the Court continually restricts the power of ordinary people to bring a case against a predatory practice of a powerful institution? That is the question.

Our Constitution that starts out with those three beautiful words that I quoted many times tonight, ''We the People,'' also has a vision of establishing justice. How is it that this group of Justices has forgotten that our Constitution was about establishing justice? Well, that is a big concern.

However, what we find is that Neil Gorsuch is coming to his court decisions and to his writing from a viewpoint of how to arrange the details to help the powerful come out on top.

(Mr. STRANGE assumed the Chair.)

Let's look at the frozen trucker case. Anphonse Maddin was transporting cargo through Illinois when the brakes on his trailer froze because of subzero temperatures. Maddin did the responsible thing: He didn't move the trailer anymore because without brakes, he would have been endangering the lives of everyone on the road. So to protect others, he refused to operate the truck. After reporting the problem to the company, he waited 3 hours in freezing temperatures for a repair truck to arrive. He could not even wait in the cab of his truck to keep warm because the auxiliary power unit was broken.

After waiting 3 hours in subzero temperatures, his torso went numb, and he began having difficulty breathing. He could not feel his feet. He felt his life was at risk. He unhitched the disabled trailer with its frozen brakes because he thought it was absolutely dangerous to drive with a full load without brakes, and he drove the cab to a place where he could get warm.

Even as he was driving away, even after he had reported his numbness and difficulty breathing, the company was still radioing Alphonse Maddin to wait in the dangerous, frigid condition or to drive with a full load and frozen brakes. The company wanted him to drive with frozen brakes. The company wanted him to drive in those temperatures, with ice on the road, and with a full load. Help arrived about 15 minutes after Maddin made the decision to leave. As soon as he heard that, he turned around, and he returned to the trailer, but TransAm Trucking fired him for leaving the trailer unattended.

The argument that TransAm Trucking had used for firing Alphonse Maddin was, instead of remaining in the dangerous, freezing conditions and refusing to drive because of there being a disabled trailer, he drove away without the disabled trailer. In the company's mind, Maddin had two choices: one, freeze to death or, two, drive the disabled vehicle with the frozen brakes and trailer attached, putting other people's lives at risk. He had two choices: Put his own life at risk or put everyone's life at risk.

The Department of Labor looked at this and said that the truckdriver was fired in violation of the Surface Transportation Act's protections and that he should be reinstated with back pay.

The case made its way up to the Tenth Circuit. The Tenth Circuit said: Absolutely, the law is written so that truckdrivers will not operate under dangerous conditions in order to protect their safety and the safety of the public. That is the way the law is set. The Tenth Circuit said: Yes, that is the way the law is set. That is what is written in the law.

Judge Gorsuch wrote a dissent. He twisted and strained the statute. He wanted to find ways to minimize the word ''health'' and the word ''safety'' and stated that the finding for the driver was improper because it used the law as a springboard to combat all perceived evils, which is a quote: ''as a sort of springboard to combat all perceived evils.''

No, the law was designed to protect against a specific evil, which is people operating vehicles in a manner that endanger themselves or others. You cannot be fired as a truckdriver for operating a vehicle in order to protect the lives of others. The truckdriver, who was operating responsibly—Alphonse Maddin, who was operating responsibly—said: I am not going to endanger others.

He was fired for it. The Department of Labor said: No, you cannot fire him. That is why the law is written that way. The Tenth Circuit said: No, you cannot fire him. That is why the law is written that way. Yet Neil Gorsuch found some way of twisting the words to say: Huh, let's find a way to make this work for the corporation rather than the individual.

Even the law says that you are protected from being fired for refusing to operate a truck that endangers yourself or others. Even the law says that. Let's find a way to go the other direction and find on the side of the company.

Gorsuch wrote that his employer gave him the very option the statute it must. Once he voiced safety concerns, TransAm expressly permitted him to sit right where he was and wait for help. They gave him two choices: Sit and freeze in the cab, even though his torso had gone numb and at his own risk to his own health, or drive the trailer and endanger everybody's life—a lose-lose proposition. Gorsuch ignored the side of the statute that involved the safety of the driver as well as of the people.

He dismissed the Department of Labor's view in saying that there is simply no law that anyone has pointed to us giving employees the right to operate their vehicles in ways their employers forbid.

Yes, there is. The law says that you cannot fire someone for driving or for refusing to operate a vehicle in a manner that endangers other people's lives.

The majority of the court that supported the Labor Department's reasoning called Gorsuch's reasoning ''curious.'' That is the polite way of saying that we have no idea how he could possibly have twisted the law in this fashion. If Gorsuch had gotten his way, there would have been no justice for Alphonse Maddin—a pure decision of the frozen trucker, a decision devoid of common sense, totally detached from the law as written. That is the frozen trucker case.

Let's look at the autistic child case of Thompson R2–J School District v. Luke P. Because he is a youngster, his last name was not used. It was a 2008 case.

Luke P., a young child with autism, began receiving special education services in kindergarten at his public school. He had an education plan that was specific to his needs as was required by the Individuals with Disabilities Education Act, or IDEA.

In early grades, he had made progress in skills related to communication, self-care, independence, motor skills, social interactions, and academic functioning, but he was not making progress in generalizing his skills and applying skills learned in school to other environments, such as his home life.

Despite the situation at school, there were a lot of problems in his conduct, and the public school's inability to meaningfully improve Luke's ability to generalize basic life skills beyond the walls of the school posed significant limitations on his future.

The basic story is this: The school was failing to provide the type of education that was necessary for Luke to gain the ability to operate in life. They found a school that could provide that ability. They said: To save our child, we will transfer him to that residential school near Boston that specializes in serving children with autism. It was a great opportunity for him to learn, and he got in and began to flourish—a huge change.

Luke's parents, in their knowing that IDEA entitles children with disabilities to a free education, applied to the school district for reimbursement of the tuition. The school district refused.

The long and short of it is that, at a State-level hearing, Luke's parents prevailed. The case went to the Federal district court, and his parents prevailed under the Individuals with Disabilities Education Act. At each level, a hearing officer or judge determined that Luke was not getting the help he needed at his public school. They concluded that the school district had failed to provide him the free and appropriate education that was entitled to him under the law.

You have decisions made at multiple levels that the school district was not meeting the standard of the law. Each declared that only a residential school could provide Luke with the education he needed. Therefore, the reimbursement of the tuition to the family was necessary and appropriate under the law.

The school district appealed all the way up to Judge Gorsuch on the Tenth Circuit Court. In writing the opinion for the majority, Judge Gorsuch—and they reversed the lower court's ruling—stated that the educational benefit that was mandated by IDEA must be ''merely more than de minimis.''

Here is the new judge's—Neil Gorsuch's—law. He is rewriting the trucker law so that truckers can be fired for protecting their safety and the safety of others. He is rewriting Individuals with Disabilities Education Act so that, instead of having an education that is appropriate to the student, in fact, all that is required is ''merely more than de minimis.''

''De minimis'' means the minimum—like nothing, like babysitting. Gorsuch said that the benefit provided to Luke—essentially, the babysitting—satisfied that standard. In effect, Judge Gorsuch argued that, under IDEA, all the school system had to do was to provide disabled children with the bare minimum, which is an incredibly low bar.

I will tell you that the whole intent of IDEA—the whole debate held here in the Senate, the whole debate held in the House, the signing, the whole framework for this act—was that we have to do right by our disabled children. Therefore, schools were mandated to provide appropriate education. The whole of Gorsuch's finding was to say: No, I am rewriting the law—minimal, babysitting, ''merely more than de minimis.'' It is merely more than nothing when translated.

What would be enough? It is as if the whole debate had never occurred over the vision of requiring schools to provide an appropriate education to students.

This is not just an example of some narrow reading of the law. This is judicial activism—rewriting the law to a completely different thing than it was intended to say.

How could Judge Gorsuch argue putting disabled children like Luke in a room and giving him nothing other than merely more than nothing after having met the standards of a substantial act of Congress that was fully designed to give an appropriate education for disabled children? How do those things even come close to equating? ''Merely more than nothing'' versus ''you must provide an appropriate education''—how do you square those two things? How do you have a judge completely rewrite the law and say that he is qualified to sit on the Supreme Court?

We can tell you that the High Court disagreed completely with Judge Gorsuch. We can tell you this because, just this year—just a few days ago—the Supreme Court ruled on this case, and they overturned Judge Gorsuch. They did so not by 5 to 3; they did so by 8 to nothing—8 to zero.

Eight Justices—four conservative, four liberal—looked at this and said that the law says ''appropriate education.'' Judge Gorsuch said ''merely more than nothing.'' That is not the law as written. That is rewriting the law to find on behalf of the powerful, the larger—in this case, the school district—over the individual. It is a pattern we see in his rulings time and time and time again.

That is why, if you do nothing about the fact that this seat was stolen for the first time in U.S. history—a seat stolen for the Supreme Court from one administration and sent forward in an effort to pack the Court—and if you did not know anything about that and if all you knew was this set of decisions, you would ask: How can we possibly put on the Supreme Court an individual who rewrites the law to mean the opposite of what it is written to say—that black is white and white is black; that ''do something significant'' means ''do nothing'' or ''merely nothing''; that protecting those drivers who operate in safety for themselves or safety for the people on the road—Judge Gorsuch says to strip away that protection.

NOMINATIONS

Executive nominations received by the Senate:

DEPARTMENT OF THE TREASURY

SIGAL MANDELKER, OF NEW YORK, TO BE UNDER SECRETARY FOR TERRORISM AND FINANCIAL CRIMES, VICE DAVID S. COHEN, RESIGNED.

HEATH P. TARBERT, OF MARYLAND, TO BE AN ASSISTANT SECRETARY OF THE TREASURY, VICE MARISA LAGO.

IN THE AIR FORCE

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES AIR FORCE UNDER TITLE 10, U.S.C., SECTION 624:

To be colonel

PATRICK M. ALBRITTON
MONA E. ALEXANDER
JEFFREY T. ALLISON
CLARK L. ALLRED
KEVIN D. ALLRED
JUAN A. ALVAREZ
JEREMY S. ANDERSON
NEIL E. ANDERSON
STEVEN C. ANDERSON
TANYA J. ANDERSON
SHAWN E. ANGER
RICHARD L. APPLE
CLAUDE M. ARCHAMBAULT
MICHAEL C. ARNDT
MICHAEL J. ARTELLI
JACK R. ARTHAUD
JON C. AUTREY
JASON B. AVRAM
LISLE H. BABCOCK
JOHN E. BAQUET
MARK E. BARAN
CHRISTOPHER T. BARBER
KATHARINE G. BARBER
CLAYTON B. BARTELS
JOHN V. BARTOLI
ROBERT C. BEARDEN
KEVIN R. BEEKER
TIMOTHY E. BEERS
CASSIUS T. BENTLEY III
WILLIAM A. BERCK
CHRISTOPHER C. BERG
SCOTT D. BERNDT
WILLIAM L. BERNHARD
WILLIAM B. BLAUSER
DEREK S. BLOUGH
THOMAS T. BODNAR
ELIZABETH C. BOEHM
JOHN M. BOEHM
KENNETH R. BOILLOT
SEAN P. BOLES
ERNEST L. BONNER
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