The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 118) condemning hate crime and any other form of racism, religious or ethnic bias, discrimination, incitement to violence, or animus targeting a minority in the United States.

There being no objection, the Senate proceeded to consider the resolution.

Mr. GARDNER. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, and the motions to reconsider be considered made and laid upon the table with no intervening action or debate.

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

The resolution (S. Res. 118) was agreed to.

The preamble was agreed to.

(The resolution, with its preamble, is printed in today's RECORD under ''Submitted Resolutions.'')

ORDERS FOR THURSDAY, APRIL 6, 2017

Mr. GARDNER. Mr. President, I ask unanimous consent that when the Senate completes its business today, it recess until 10 a.m., Thursday, April 6; further, that following the prayer and pledge, the time for the two leaders be reserved for their use later in the day; further, that following leader remarks, the time until the cloture vote on the Gorsuch nomination be equally divided between Senators GRASSLEY and FEINSTEIN or their designees; finally, that the mandatory quorum call with respect to the cloture vote be waived.

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

EXECUTIVE SESSION

EXECUTIVE CALENDAR—Continued

Mr. GARDNER. Mr. President, I ask unanimous consent that the Senate resume executive session to consider the nomination of Neil Gorsuch.

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

ORDER FOR RECESS

Mr. GARDNER. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that it stand in recess under the previous order, following the remarks of Senator CANTWELL for 10 minutes, Senator FRANKEN for 30 minutes, Senator MURPHY for 30 minutes, and Senator HIRONO for 30 minutes.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Ms. CANTWELL. Mr. President, I rise to oppose the nomination of Neil Gorsuch and to oppose cloture on this nomination.

I take seriously the responsibility to give advice and consent, and I take seriously the President's remarks that he planned on nominating someone to the Court who would overturn Roe v. Wade.

A U.S. Supreme Court nominee requires 60 votes, and if a nominee can't clear 60 votes, then I agree with my colleague, the Senator from New York, that it is the nominee who should be changed and not the Senate rules.

If confirmed, Judge Gorsuch will have a lifetime appointment to the U.S. Supreme Court and have an impact on many, many Americans' lives. When people say lifetime, I think that doesn't quite accurately reflect this issue and nomination. Lifetime, in this case, may mean 30 to 35 years.

It is hard for me in an information age to think of all the issues that are going to occur in the next 30 to 35 years and what issues this nominee might rule on. But I know this: Right now, privacy rights and how they affect the lives of many Americans are critical, not just to my constituents but to people all over the country.

Judge Gorsuch is commonly referred to as a proponent of originalism and textualism. He believes the U.S. Constitution should be interpreted by the original intentions of those who drafted it as closely as possible. As someone who knows well the record of the former Supreme Court Justice who wrote the Griswold v. Connecticut decision, I doubt that one would say that he was an originalist.

Some legal scholars have even called Judge Gorsuch a selective originalist, favoring some textual provisions while overlooking others. And while no one expects Judge Gorsuch to reveal how he would vote on a particular case. During his Senate confirmation hearing, he did not give Senators enough background about his judicial philosophy. In our private meeting, he did not give me enough of an assurance of his philosophy as it relates to these issues on privacy for my constituents in Washington.

Whether we are talking about access to healthcare or we are protecting individuals' privacy rights from unwanted corporation or government intervention, these issues are critically important. Judge Gorsuch told the Senate Judiciary Committee that he does recognize privacy rights. However, his earlier writings on unenumerated constitutional rights contradict this statement. This contradiction raised questions with me, and I worked to try to further clarify his judicial philosophy on this issue.

I told him that my State had actually codified the rights of women to have access to reproductive healthcare.

He said: Oh, you mean your State legislature did that.

And I said: No, Judge Gorsuch, I mean the people of Washington voted on these issues and voted to protect a woman's right to access to reproductive healthcare.

When it comes to the right to privacy, I work hard to understand where our judiciary is coming from, and if it is for the next 30 to 35 years, I guarantee you these privacy rights are going to be of critical importance.

In the longstanding precedent known as the Chevron doctrine, judges should defer to reasonable agency interpretations of ambiguous statutory language. It allows agencies to get expert input on their decisions and regulations. By overturning this doctrine, it could make it easier for courts to challenge important agency decisions protecting health and the environment. This issue is also important to my State. We fought the Enron case to make sure that the Federal energy regulators did their job in protecting the ratepayers of Washington from, at the time, what was, in my opinion, a violation of the Federal Power Act on just and reasonable rates. We had to go to a great extent to make sure that the agencies' decisions were carefully considered to make sure we didn't become the deep pockets.

Making sure that this doctrine is continued and not overturned is important. I find it troubling that Judge Gorsuch concluded that this precedent from Chevron v. the Natural Resources Defense Council should be overturned.

Also, yesterday was Equal Pay Day, and there was a lot of discussion about how women still face unequal wages. What would Judge Gorsuch do about equal pay?

As a professor, he told his students that women manipulate family leave policies for their own benefits. As a judge, he frequently ruled against women and their rights. In Hobby Lobby v. Sebelius, a privately held company, which was a store chain, challenged the Affordable Care Act's birth control benefit. The Affordable Care Act required health insurance plans to provide women with birth control coverage with no cost sharing.

Judge Gorsuch joined the Tenth Circuit majority, holding that an employer's religious beliefs could override an employee's right to birth control coverage. Judge Gorsuch also supported an effort to defund Planned Parenthood, an important provider of women's health services. In Planned Parenthood Association of Utah v. Herbert, the Tenth Circuit upheld an injunction to prevent the Governor of Utah from defunding Planned Parenthood. However, Judge Gorsuch dissented and pushed for a rehearing of this case by the full court.

Judge Gorsuch has had a narrow interpretation of the laws meant to protect workers against discrimination. In another case, a worker alleged that she had been unlawfully discriminated against based on gender because she took 2 weeks of leave under the Family

Medical Leave Act. She claimed that her employer had a higher performance standard for women than for her male coworkers. The Tenth Circuit ruled in her favor and found that the employer had discriminated against her. However, Judge Gorsuch dissented, arguing evidence of discrimination was entirely absent.

These issues and rulings make me concerned about Judge Gorsuch's judicial philosophy as it relates to what I now believe is an accepted standard.

Judge Gorsuch has also ruled against LGBTQ individuals seeking fair and nondiscriminatory treatment. Lambda Legal and other groups have called his record openly hostile toward the LGBTQ community. Judge Gorsuch has held that a transwoman's constitutional rights were not violated, citing the absence of any medical evidence.

Also, as many of my colleagues have talked about, Judge Gorsuch has had a pattern of ruling against the little guy. My colleague from Hawaii noted that he seems to favor corporate interests over workers' rights and private interests over public interests.

Look at the outcome in many of these cases, which have been cited frequently since his nomination—none more than the case involving the Individuals with Disabilities Education Act. I think it is so important that it needs to continue to be talked about.

This case, which was recently rejected by the U.S. Supreme Court, limited the opportunities for children with disabilities. Judge Gorsuch had concluded that to comply with the law, the school's responsibility to the student was to make progress that was ''merely more than de minimis.'' That is to say that those children in our education system who have a special need, whether it be autism or something else, through our education system need to make progress, and it could be no more than de minimis.

This ruling impacts hundreds of thousands of students all across America, including in the State of Washington. He wrote the majority opinion and used the word ''merely.''

I asked Judge Gorsuch about this because of the cases I mentioned earlier on Federal energy regulators and the fact that we needed strong anti-manipulation laws, and we needed people to interpret the standards to make sure that they were upholding the interests of the public. We had quite a long discussion about this issue. Judge Gorsuch suggested that he was bound by a previous decision.

I know some of my colleagues have also noted this, but when Justice Roberts wrote the unanimous opinion rejecting these ''merely more than de minimis'' standards that Judge Gorsuch used, Justice Roberts said: ''When all is said and done, a student offered an educational program providing merely more than de minimis progress from year to year can hardly said to have been offered an education at all.'' On this point, I agree with the Chief Justice.

Not having a deeper understanding about his judicial philosophy and given my great concerns for the right to privacy issues that will remain constant in our society for the next 30 years and given these issues around regulatory standards that are so important, I cannot support this nomination nor support cloture to move ahead.

I yield the floor.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

CHEMICAL ATTACK IN SYRIA

Mr. FRANKEN. Mr. President, before I begin my remarks on Judge Gorsuch, I just want to take a minute to talk about the chemical attack in Syria.

Words cannot describe these vicious attacks against civilians. We have all seen the horrific footage of the victims, many of whom were children. These are innocent men, women, and children who, through no fault of their own, are caught in the middle of a bloody civil war, stuck between a brutal regime, armed groups, and foreign powers. My heart goes out to the victims and their families.

The world has come together and unequivocally condemned these acts and their perpetrators. We must work together to find a path toward peace and stability in Syria, and the United States must take a leadership role in that effort.

Mr. President, I rise in opposition to the nomination of Judge Neil Gorsuch to serve as an Associate Justice on the Supreme Court. After meeting with the nominee, carefully reviewing his record, and questioning him during his confirmation hearing, I have come to the conclusion that elevating Judge Neil Gorsuch to the Supreme Court's bench would merely guarantee more of the same from the Roberts Court—a sharply divided, already activist Court that routinely sides with powerful corporate interests over the rights of average Americans.

I think it is important to start by acknowledging just exactly how it is that Judge Gorsuch came to be before the Senate; namely, this body's failure to fulfill one of its core functions. Immediately following the death of Justice Scalia, in a move as cynical as it was irresponsible, Senate Republicans announced that they would not move forward with filling the vacancy until after the Presidential election. Before President Obama had even named a nominee, the majority leader said: ''The American people should have a voice in the selection of their next Supreme Court Justice.'' The only problem with the majority leader's reasoning was the American people did have a voice in the decision; they had voted to make President Obama the President of the United States. Nonetheless, Republican members of the Judiciary Committee gathered behind closed doors and vowed to defy the eventual nominee a hearing. Many Republicans refused to even meet with the nominee. They said it didn't matter who the President nominated; they said this was about principle.

But Senate Republicans had a difficult time justifying their obstruction—that is, until they decided to mischaracterize a speech delivered by former Judiciary Committee chairman Joe Biden in June of 1992. In that June of 1992 speech, then-Senator Biden discussed the possibility of a Supreme Court Justice resigning in an election year in order to ensure that a President of the same party could name a replacement. Under those circumstances, he said, the President should refrain from nominating a replacement and the Senate should not hold confirmation hearings until after the election.

My Republican colleagues seized upon this small portion of Senator Biden's speech and dubbed it the ''Biden rule.'' Chairman GRASSLEY said the Senate ought to abide by the Biden rule, which he said holds that there are ''no presidential Supreme Court nominations in an election year.''

The majority leader said: ''As Chairman GRASSLEY and I declared . . . the Senate will continue to observe the Biden Rule so that the American people have a voice in this momentous position.'' So in order to justify a truly unprecedented act of obstruction, my Republican colleagues pointed to the so-called Biden rule and said they were standing on principle. That was the principle. But my Republican colleagues chose to overlook a few important details.

First of all, the scenario Senator Biden described in his 90-minute speech was not the situation our country faced last year. No one strategically resigned last year. A Justice died. No one dies to game the system.

Second and most importantly, my Republican colleagues ignored the actual point that Senator Biden made in that speech. If they had bothered to read the entire speech—and I suspect they actually had—they would have found that further down, Senator Biden said—and this is important. This is what Senator Biden said in the speech used as the justification not to take up Merrick Garland. Senator Biden said in that speech, ''If the president [then George H. W. Bush] consults and cooperates with the Senate or moderates his selections absent consultation, then his nominee may enjoy my support, as did Justices Kennedy and Souter.''

Allow me to dwell on that for a moment. Senator Biden said that if a Supreme Court vacancy arose during an election year and the President consulted with the Senate or, absent consultation, put forward a moderate, consensus candidate, that candidate

should enjoy the support of the Judiciary Committee's chairman. That is the Biden rule. That is the Biden rule.

If Senate Republicans had actually followed the Biden rule, we wouldn't be here today. Merrick Garland would be sitting on the Supreme Court bench.

Over the past few days, I have heard my Republican colleagues denounce Democratic opposition to Judge Gorsuch by claiming that there never has been a partisan filibuster of a Supreme Court nominee. But if the shameful and unprecedented obstruction that Republicans used to effectively block President Obama from appointing a Supreme Court Justice wasn't a partisan filibuster, then I don't know what is.

Perhaps my Republican colleagues were concerned that President Obama would seek to replace Justice Scalia—a reliably conservative member of the Court—with a jurist whose view would place him or her on the opposite end of the ideological spectrum. That seems to be the concern that my good friend Senator HATCH expressed when he said:

> [T]he President told me several times he's going to name a moderate, but I don't believe him. [President Obama] could easily name Merrick Garland, who is a fine man. He probably won't do that because this appointment is about the election. So I'm pretty sure he'll name someone the [Democratic base] wants.

But as it turns out, in recognition of the forthcoming election and the Republican-controlled Senate, President Obama did exactly what then-Senator Biden said a President should do: He named a moderate, consensus candidate. He named Merrick Garland.

Judge Garland was supremely well qualified for the job. Here is a guy who was his high school's valedictorian, who attended Harvard on a scholarship, won clerkships with legal legends like Second Circuit Judge Henry Friendly and Supreme Court Justice William Brennan, and left a partnership at a prestigious law firm to become a Federal prosecutor during the George H.W. Bush administration. He later joined the Justice Department, where he prosecuted the men responsible for bombing the Oklahoma City Federal Building in 1995, and Merrick Garland kept in touch with the survivors' and the victims' families. That is the reason why one of the very first of three Republicans agreed to meet with Judge Garland—Senator JIM INHOFE of Oklahoma, a staunch conservative—because people of Oklahoma had such regard for Merrick Garland.

After Judge Garland was confirmed to the DC Circuit in 1997, he earned a reputation for working with his colleagues from across the ideological spectrum to identify areas of agreement and to craft strong consensus opinions, often by deciding a case on the narrowest grounds possible.

Judge Garland was the right choice at the right time. He wasn't a partisan warrior or a partisan political animal; he was a judge's judge, and everyone knew it. That is why my Republican colleagues had to hide behind new and misleading so-called rules in order to deny him a hearing and a vote.

Judge Gorsuch is no Merrick Garland. Judge Gorsuch is a creature of politics. That is not what Judge Gorsuch told me when I met him earlier this year. I asked Judge Gorsuch if he was bothered by the way the Senate treated Merrick Garland. He responded by telling me that he tries to stay away from politics. But documents that the Judiciary Committee received from the Department of Justice, including emails between Judge Gorsuch and Bush administration officials, show that Judge Gorsuch was very heavily involved in politics. A resume he sent to President Bush's political director in November 2004—back when Judge Gorsuch was looking for a job—detailed his work on Republican political campaigns dating back to 1976 and highlighted an award he received from Senate Republicans for his work to advance President Bush's judicial nominees. Ken Mehlman, the former chairman of the Republican National Committee, later recommended Judge Gorsuch for a post at the Justice Department and described him as a ''true loyalist.''

Understand, being politically active or being a Republican is not a disqualifying characteristic in a Supreme Court nominee, at least not in my book, but Judge Gorsuch's resume is relevant here because, contrary to what he told me, his resume establishes that he is not just intimately familiar with politics; he knows the politics of the judicial nominations process and he knows it well. Let me explain why I think that is important.

During the campaign, then-Candidate Trump spoke openly about his litmus test and what kind of a judge he would appoint to fill Justice Scalia's seat on the Court. He said that he would ''appoint judges very much in the mold of Justice Scalia.'' During the final debate, he said, ''The justices that I'm going to appoint will be pro-life. They will have a conservative bent.''

Part of the reason that then-Candidate Trump could say that with such conviction is because he had already outsourced the job of coming up with a list of potential nominees to the Federalist Society and the Heritage Foundation, both rightwing organizations. The groups produced a list of 21 conservative judges for then-Candidate Trump, a list that included Judge Gorsuch. Presumably, the Federalist Society and the Heritage Foundation knew something about the judicial philosophy of the men and women who it had decided to include on that list, given Judge Gorsuch's previous work to push judicial nominees through the Senate. I am sure he knew a thing or two about the Heritage Foundation and the Federalist Society, as well.

In fact, Judge Gorsuch first learned that he was under consideration for the vacancy from the Federalist Society's vice president, who was working with the transition team. Judge Gorsuch went on to interview with a host of other members of the transition team, including now-White House Chief of Staff Reince Priebus and Chief Strategist Stephen Bannon. Weeks later, President Trump had officially nominated Judge Gorsuch. Both Mr. Reince Priebus and Mr. Bannon appeared before rightwing activists at CPAC and talked about his nomination. Mr. Priebus told the crowd that Justice Gorsuch would bring about ''a change of potentially 40 years of law.'' He said: ''Neil Gorsuch represents . . . the type of judge that has the vision of Donald Trump, and [his nomination] fulfills the promise that he made to all of you,'' gesturing to a crowd of conservative activists.

So whether Mr. Priebus was suggesting that, if confirmed, Judge Gorsuch would unsettle 40 years of precedent—like Roe v. Wade or Chevron—or whether he was suggesting that Judge Gorsuch would be a reliably conservative vote for the next 40 years, it seems clear to me that confirming Judge Gorsuch is central to President Trump's political agenda.

Now, my Republican colleagues would have you believe that nothing could be further from the truth. In their view, they say that judges call balls and strikes—nothing more, nothing less. Earlier this week, for example, Senator CRUZ said: ''Conservatives understand that it is the role of a judge, and especially the role of a Supreme Court Justice, simply to follow the law.'' He said that Senate Republicans ''are not confirming someone who will simply vote with our team on a given issue.'' It is Democratic judges, according to Senator CRUZ who, ''by and large view the process as achieving the result they want and view the process of adjudicating a case as a political process.''

Let me explain why I take issue with that. If my Republican colleagues truly believe that a judge's proper role is to call balls and strikes and to decide cases narrowly, they would have confirmed Merrick Garland, a judge with a proven track record of crafting consensus opinions built on narrow holdings. But a judge who calls balls and strikes isn't really what my colleagues want. Contrary to what Senator CRUZ said, what my Republican colleagues want is a results-oriented judge. Why else would they hold open a seat on the Supreme Court bench? Why else would they turn to the Heritage Foundation and the Federalist Society for candidates? Why else would they trample on the traditions of the Senate? What my Republican colleagues really want is a judge who will vote with their team, and that is the judge they will get by confirming Neil Gorsuch. That is what this is all about. That is what this is about.

Unlike Merrick Garland, Judge Gorsuch has little interest in reaching consensus or in citing cases narrowly.

Now, Judge Gorsuch took great pains to paint himself as a mainstream nominee. He pointed out that the Tenth Circuit ruled unanimously 97 percent of the time, and that he was in the majority 99 percent of the time, but that is not unusual, and it doesn't provide any insight into his approach to being a judge. After all, the Courts of Appeals are required to follow Supreme Court precedent in all circuits around the country, and the vast majority of their cases are decided unanimously.

So in order to really understand Judge Gorsuch's approach to deciding cases—in order to really understand how he views the law—it is critically important to look at the cases where he chose to write separate concurrences or dissents. These concurring and dissenting opinions offer the clearest window into how he really thinks. Judge Gorsuch tends to write a lot of concurring and dissenting opinions. Even when Judge Gorsuch agrees with the majority and joins their decision, he frequently writes his own concurrence, setting out his own views. Judge Gorsuch has done this 31 times, including writing two concurrences to majority decisions that he, himself, had written. That is not seeking out consensus. That is holding his nose to join a consensus opinion, and then writing separately in order to point the way to broader, more sweeping rulings that other courts might issue in future cases—other courts like the Supreme Court, which doesn't have to follow precedent, which he is now poised to join and where he will not be restrained by precedent.

Judge Gorsuch is a results-oriented judge, and his record demonstrates that he approaches cases with a very specific outcome in mind. Contrary to what my Republican colleagues would have you believe, he doesn't hide that judicial philosophy. Whether it is his concurrence in Hobby Lobby or his dissent in TransAm Trucking, Judge Gorsuch wears that philosophy on his sleeve. It only underscores a disturbing pattern: siding with corporate interests over average Americans.

That philosophy was on full display in the dissent that Judge Gorsuch wrote in TransAm Trucking. It seems clear to me that Judge Gorsuch approached this case with a specific outcome in mind, which was siding with a company over a worker. And in order to just justify that outcome in his dissent, Judge Gorsuch twisted himself into a pretzel.

You may have heard this story, but I want to lay it out as efficiently as possible because I think it reveals a great deal about Judge Gorsuch's philosophy, and it helps to explain exactly why I am voting against him. In this case, trucker Alphonse Maddin is driving a rig on the interstate through Illinois. He is pulling a long trailer that is fully loaded. He makes a stop. He takes a break. Then, at 11 p.m., he is about to pull back onto the interstate, but discovers that the brakes on his trailer are locked. It is 14 below zero out. These brakes are literally frozen. So he calls his dispatcher to ask for repairs. And he waits.

While he is waiting, the heater in his cab stops working, and he falls asleep and is awakened by a call from his cousin. When Maddin sits up to answer the phone, he realizes that his torso is numb, and that he can't feel his feet. He is having trouble breathing. His cousin later says that Maddin's voice is slurred, and he wasn't tracking. According to the Mayo Clinic, these are all symptoms of hyperthermia. Maddin calls into the dispatcher again. He is told to hang on. He says: I can't. His boss tells him he has two choices, wait there until the repair truck comes, or he can take the whole rig on the road, including the trailer with frozen brakes. Those are the two options he is given by his boss. Maddin knows that if he waits, he may very well freeze to death. That is his first option, or he can go out on the interstate at 2 o'clock in the morning, dragging a fully-loaded trailer with frozen brakes at 10, maybe 15 miles per hour max, posing a safety hazard to other drivers at the interstate. Remember, it is 2 o'clock in the morning. It is dark. It is probably icy. Imagine a car going 80, 85 miles per hour—as people do at 2 o'clock in the morning on an interstate—coming up over a hill behind that rig, and then coming down and seeing this rig going 10 or 15 miles per hour, where you are going 80, 85. That would be like suddenly coming down on a stopped tractor trailer while you are going 70 miles per hour. That is his second option.

Instead, Maddin does what any of us would do. He unhitches the trailer and drives down the interstate to find someplace warm, and he does get warm. Then he returns to the trailer when the repair truck finally shows up, and he is fired. He is fired for abandoning his cargo. Now, there is a law to protect people in Maddin's situation. So he files a case. When it gets to the Tenth Circuit, a three-judge panel agrees with him, with Maddin. They find that the trucking company shouldn't have fired Mr. Maddin, but one judge dissented—Judge Neil Gorsuch.

So during my question, I asked Judge Gorsuch a very simple question: What he would have done if he had been the truck driver; if he had been driving that truck. I asked: Which would you have chosen? What would you have done? And here is Judge Gorsuch's response: ''Oh, Senator, I don't know what I would have done if I were in his shoes.''

Now, is there anyone here who would not have done what that driver did? I don't think so. Of course, you would unhitch the trailer and find someplace warm as quickly as possible—of course. But Judge Gorsuch said he didn't know what he would have done? Is that possible?

I asked him if he had even thought about what he would have done if he were Maddin. You know, he had heard the case. He did not answer. So I asked him again. I asked him, given the choices of sitting there and possibly freezing to death or going on the road with an unsafe vehicle, or doing what Mr. Maddin did, and Judge Gorsuch responded: Senator, I don't know. I was not in the man's shoes.

Judge Gorsuch said he decides cases based on the facts and the law alone. ''I go to the law,'' he said. But so, in fact, did the majority. Here is the operable law. Here is the law: ''A person may not discharge an employee who refuses to operate a vehicle because the employee has reasonable apprehension of serious injury to the employee or the public because of the vehicle's hazardous safety or security condition.''

The majority ruled that the company could not fire the truckdriver because he had refused to operate the rig, the entire rig, because it was unsafe. But Judge Gorsuch said no. While operating the cab, he was operating the vehicle. Therefore, he did not refuse to operate a vehicle.

Judge Gorsuch said he made that decision by applying the plain meaning rule. I pointed out that the plain meaning rule has an exception: ''When using the plain meaning rule would create an absurd result, courts should depart from the plain meaning.'' It is absurd to say that this company was within its rights to fire him because he refused to choose between possibly dying by freezing to death or possibly killing other people by driving a semi on an interstate at 10 miles an hour at 2 in the morning. Frankly, the company is fortunate that Mr. Maddin made the choice he made because otherwise they may very well have faced a wrongful death claim.

Everyone who was in the hearing knows what Judge Gorsuch would have done in Alphonse Maddin's situation. If Judge Gorsuch had answered honestly, he would have said that he would have done exactly, exactly what the driver did. Everyone would. Judge Gorsuch just did not want to admit it. That is because there is no good answer.

If Judge Gorsuch said that he would do the very same thing that Mr. Maddin did, that would make his dissent look pretty bad. But if he had said ''I would have done what the company told me to do,'' that would be an absurd answer. That would make you question the man's judgment. No one would believe it. So, instead, Judge Gorsuch said: I don't know what I would have done. But of course he did. He just was not being honest. Judge Gorsuch approached Mr. Maddin's case with an outcome in mind, siding with the corporation, and the dissent that he wrote makes that perfectly clear.

When I joined the Senate back in 2009, I arrived here in June, a little later than the rest of my class. Just a few days later, my fifth day in office, Judge Sonia Sotomayor appeared before the Judiciary Committee for her

first day of her confirmation hearings for the Supreme Court. I have been thinking a lot about Justice Sotomayor's hearings because the concern I expressed about the direction of the Court back then is just as relevant as today. Back then, almost 8 years ago, I voiced concern about it becoming more difficult for Americans seeking a level playing field to defend their rights and get their day in court, from bringing a discrimination claim to protecting their right to vote.

Back then, I said: ''I am wary of judicial activism and I believe in judicial restraint. Yet looking at recent decisions on voting rights, campaign finance reform, and . . . other topics, . . . there are ominous signs that judicial activism is on the rise.''

That was my first opening statement, the first opening statement that I ever delivered at the first confirmation hearing that I ever attended. But in the years that followed, my concerns have proved to be justified in one 5-to-4 decision after another. We have seen the Roberts Court go out of the way to answer questions not before it, to overturn precedents, to strike down laws enacted by Congress, and to do all of this at great cost to consumers and to workers and to small businesses and to middle-class Americans.

In decisions such as Shelby County, the Court gutted one of our landmark civil rights laws, 5 to 4. During the oral argument, Justice Scalia suggested that when the Voting Rights Act had last been passed 97 to 0 in the Senate, the Senate had done it because of the name of the Voting Rights Act. How could you vote against the Voting Rights Act? What a great name. He was showing contempt for this body. What is more judicially active than overturning a law voted on unanimously in the Senate because the Senate just liked the name?

Of course what that did was get rid of preclearance. What is preclearance? Preclearance said that those States that had a history of suppressing the votes of minorities had to preclear any new voting law with the Justice Department.

These were States that had a history of suppressing the votes of racial minorities. Well, that gets overturned. Boom. States like North Carolina, Texas, start passing new laws—voter ID laws. The second section of the Voting Rights Act still stayed, so you could appeal to a Federal court. But it takes a while to work its way through.

So finally, in early 2016, a circuit court, the Fourth Circuit I believe, ruled that North Carolina had targeted African Americans with almost surgical precision to suppress their votes. That is why you have preclearance. That is why you want preclearance. But in a 5-to-4 vote, preclearance was struck down. That is one 5-to-4 case. Concepcion, a 5-to-4 decision, allows corporations to force consumers into mandatory arbitration. There are a whole host of 5-to-4 decisions that make it impossible for people to get into the courts.

But the most egregious of all 5-to-4 decisions was Citizens United—another 5-to-4 decision that paved the way for individuals and outside groups to spend unlimited sums of money in our elections.

In each one of those 5-to-4 decisions Justice Scalia sided with the majority. So now this body considers replacing him with Judge Gorsuch. I think it is important to understand the extent to which he shares Justice Scalia's views. Judge Gorsuch's record demonstrates that he is, in President Trump's words, a judge very much in the mold of Justice Scalia.

During his time on the Tenth Circuit, Judge Gorsuch has consistently ruled in favor of powerful interests. He has sided with corporations over workers, corporations over consumers, and corporations over women's health.

A study published in the Minnesota Law Review found that the Roberts Court is the most pro-corporate Supreme Court since World War II. If the Senate confirms him, Judge Gorsuch guarantees more of the same from the Roberts Court, and I do not believe that is a Court that our country can continue to afford.

So I oppose Judge Gorsuch's nomination. I urge my colleagues to take a close look at his record of siding with powerful corporate interests over average Americans, to consider carefully how he stands to impact the Court, and to reject his nomination.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. KENNEDY). The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

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

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

Mr. MURPHY. Thank you, Mr. President.

Mr. President, confirming a Supreme Court Justice is one of the if not the most important responsibilities we have as Senators. It is a vote we cast knowing full well that the tenure and the influence of the nominee who is before us will likely be greater and much more long-lasting than our own in the Senate.

After meeting with Judge Gorsuch and reviewing hours of his testimony before the Judiciary Committee, I have decided to oppose his nomination, and I come to the floor this evening to talk about the reasons why.

I am deeply concerned about the politicization of the Supreme Court and its recent capture by corporate and special interests. I am convinced that Judge Gorsuch would exacerbate that slide and continue the activist bent of the existing Court, and for that reason I won't be supporting him in the vote tomorrow.

There is no doubt that Neil Gorsuch is a well trained, very intelligent lawyer who likely has the right disposition to serve on our Nation's highest Court, but that is not the end of the analysis that I or any of us are required to conduct. I am concerned about Judge Gorsuch's record of putting corporate interests before the public interests. His past decisions demonstrate a resistance on his part to put victims' and employees' needs above those of large corporations. He has regularly sided with employers over workers, corporation's rights over the rights of employees to make personal healthcare decisions. While he admirably claims to rest his decisions on the law rather than his political views, his consistent support for the powerful over the powerless doesn't seem coincidental.

The Roberts Court, in my mind, has swung dramatically in favor of the rights of corporations and special interests over those of individual Americans. I would have supported a mainstream nominee, but the risk that Judge Gorsuch will inject his political judgment over a process that already too often favors the rights of corporations over individuals is too great a risk for him to earn my support. That was the statement I released upon making my decision. I wanted to begin my remarks with it.

I want to talk a little bit about the elements inherent in my decision to vote against Judge Gorsuch because I don't take that decision lightly. I have said throughout the beginning of President Trump's tenure that I do believe we owe some degree of deference to a President in making choices as to who will serve him in his administration, and I think that likely applies to the question of whom a President chooses for the Supreme Court as well. I think I voted that way. I certainly voted against many of President Trump's nominees, but I voted for many of the nominees with whom I had very deep disagreements with over policy as well. So it is not a question of whether Judge Gorsuch would be my choice; it is a question of whether I think he is going to be in the mainstream on the Supreme Court or whether I think he is going to be an outlier and bring potentially radical views into the courtroom.

But it is kind of silly for us to pretend this debate is happening in a vacuum. I am making my mind up on Judge Gorsuch, as I will try to outline this evening, based upon my review of his record and my belief about who he will be as a Justice.

We would all be lying if we said as Democrats that we don't remember what happened on the floor of the Senate all throughout 2016. Merrick Garland should be on the Supreme Court today, or if not Merrick Garland, someone else who was nominated by President Barack Obama. The Supreme Court vacancy occurred with nearly 12 months left in his term—25 percent of a term that he was elected to by the people of the United States. The Constitution doesn't allow for 3-year terms. It

doesn't say the President becomes illegitimate once he hits the final 12 months. The Framers of our Constitution were hopeful that the President would be President for all 4 years. That last year was robbed not just from President Obama but from the American people by Republicans in the Senate when they treated Judge Garland with such disrespect.

It would have been one thing to simply vote against him because you didn't want to let the President of an opposing party fill that seat, but to not even give him a hearing, to not give him a vote, to not even take meetings with him, which was the decision of many Republican colleagues, that was a show of disrespect to Judge Garland that I don't think any of us could have imagined. It was a show of disrespect to this Chamber, to the traditions of this body that those of us who may have supported Judge Garland remember. That bad taste still sits in our mouth.

So I am here to state that my vote against Judge Gorsuch is not payback for the way in which Merrick Garland was treated, but I remember what happened.

To the extent that my Republican colleagues are suggesting that we should vote for Judge Gorsuch or at least vote for cloture tomorrow as a means of upholding the traditions of the Senate—spare me. Spare me. There isn't a lot of interest on this side of the aisle in upholding the traditions of the Senate if we are the only ones doing it.

Some people say: Well, if you voted for cloture on Gorsuch tomorrow and let it go to a final vote, then maybe Republicans would keep the rules as is.

That is belied by the facts. Last year, the Republican majority made it pretty clear that they were willing to break all tradition, all precedent, and all comity in the Senate in order to get their person on the Supreme Court. That wasn't just a 2016 issue; that is the new normal for Republicans in the Senate. So whenever Democrats raised an objection to a nominee to the Supreme Court, the rules were going to change because Republicans made it clear that their first priority is to get their people on the Supreme Court and their second priority is to think about and try to preserve the way in which the Senate has run.

I am not voting against Neil Gorsuch because I am mad about what happened, but to the extent that I have heard Republicans in the Senate lecture us about violating the traditions of the Senate, it makes my blood boil because I was here in 2016. I saw what the Republican majority did to Merrick Garland.

Maybe we can sit down after this is done and talk about how the Senate just doesn't get into a giant vortex of devolvement, tit for tat, such that all of the reasons why people run for the Senate—the individual prerogatives that Senators have, the demand to find consensus in a way that doesn't exist in the House—all vanish. Merrick Garland is still here, and it would be silly for us to try to pretend he isn't.

One of the reasons I am so worried about Judge Gorsuch is because of his enthusiasm for a brand of judicial interpretation called originalism. It doesn't sound that radical, right, originalism? The idea is that one interprets the Constitution as the Founding Fathers intended it to be; one doesn't place it in the context of today. Simply think to yourself, what would those White men who wrote those words—what would they think about the case before us? What did they mean back in the late 1700s? On its face, it is an absurd way to think about judging cases because so much of what is before a Justice had no relevance and did not exist back in the 1780s, so questions about what these men thought about various questions regarding technology or civil rights are irrelevant because the Framers of the Constitution simply weren't thinking about the same things we are thinking about today.

One of our most famous jurists understood this right from the outset. Justice John Marshall wrote in McCulloch v. Maryland: ''We must never forget that it is a Constitution we are expounding, intended to endure for ages to come and consequently to be adapted to the various crises of human affairs.''

Even those who were judging the Constitution at its outset understood that, as the questions presented to this country changed, originalism—the idea that you only look to the thoughts and words and deeds of the Founding Fathers—probably wouldn't be an efficient way to decide cases.

Justice Brennan gave a wonderful speech at Georgetown in 1985 that is worth reading tonight. Justice Brennan said:

> We current Justices read the Constitution in the only way that we can: as Twentieth Century Americans. We look to the history of the time of framing and to the intervening history of interpretation. But the ultimate question must be, what do the words of the text mean in our time? For the genius of the Constitution rests not in any static meaning it might have had in a world that is dead and gone, but in the adaptability of its great principles to cope with current problems and current needs.

He went on to say:

> Time works changes, brings into existence new conditions and purposes. Therefore, a principle to be vital must be capable of wider application than the mischief which gave it birth.

It is a wonderful turn of phrase.

He said:

> This is peculiarly true of constitutions. They are not ephemeral enactments, designed to meet passing occasions. They are, to use the words of Chief Justice John Marshall, ''designed to approach immortality as nearly as human institutions can approach it.''

He said:

> Interpretation must account for the transformative purpose of the text. Our Constitution was not intended to preserve a preexisting society but to make a new one, to put in place new principles that the prior political community had not sufficiently recognized.

Senator KLOBUCHAR asked Judge Gorsuch at his hearing if, because the Constitution only uses the word ''he'' or ''his,'' it meant that a woman could not be President. Well, the Constitution doesn't specifically speak to this question, but if you were an originalist, I can imagine how many of those Founding Fathers would have answered that question. Why? Because they didn't believe that women deserved the right to vote, so why on Earth would they believe that a woman should be President? At the time, Blacks were considered to be subhuman. They were granted three-fifths status in the Constitution. They were slaves. To read a document only through the lens of a group of White males who did not believe that a woman should be allowed to vote, who did not believe that Blacks were human beings and on equal footing with the rest of us, is to freeze this document in a time and ask us to, consequently, freeze ourselves in that time as well. If you do not allow the document to move, then you do not allow the rest of us to move either.

Originalism is a fraud, and what it has become is a mask for politics.

Now, what do I mean by that?

When you insist on interpreting the Constitution based only on the ways in which the writers of that document viewed the world, you have no way to base decisions in current times that are based on any real text or set of historical facts because, of course, the Founding Fathers had given no thought to many of the most important questions that are presented to us today—for instance, questions about what rights individuals have with respect to government surveillance over their cell phones, which is a question that the Founding Fathers—the Framers of the Constitution—could never have considered. It allows you to, essentially, make it up for yourself because there is no way that you can find a quote from any of the signers of the Constitution as to what they thought about these modern questions. You can spin it any way that you need to.

Originalism is an invitation to bring politics onto the Court because anybody can make up a reason as to why the people who wrote the Constitution would, ultimately, have decided the way that that jurist wants the decision to turn out.

It connects with other troubling writings of Judge Gorsuch's. He proudly calls himself an originalist. Historically, if we look at the broad swath of jurists who have gotten on the Supreme Court, it is not a mainstream school of judicial interpretation, but he has other radical views as well.

The Chevron deference standard is named for a 1984 case in which the Supreme Court held that it should defer to regulatory agencies when they interpret ambiguous laws that are passed

by Congress. We pass ambiguous laws, sometimes on purpose and sometimes by accident. But we often do it on purpose because we, ultimately, leave it to the regulator to fill in the details—to proffer regulations, to work out the details of enforcement. We often do not define every single term, in part, because we know that there is going to be the executive branch and people working for an elected official—the President of the United States—who are going to carry out that act and, ultimately, be responsible to the people.

What Judge Gorsuch has suggested is that maybe it is time to overturn the Chevron deference standard. Maybe we should not give any deference to administrative agencies any longer. Maybe the Supreme Court, on every single law, should do a de novo review of its constitutionality and give no deference to the executive branch.

First of all, that would be pandemonium. It would greatly accelerate the number of cases that come before the Supreme Court and the number of major—potentially life-changing—decisions that the unelected Court is making. Why? Because we are always passing statutes here that leave room for interpretation. Again, we do it many times intentionally and sometimes unintentionally, but it happens every single month here that we pass statutes that leave room for interpretation.

We often do that knowing, as I said, that the Executive will make some of those secondary interpretations. We are comfortable with that because, if his interpretation goes wrong, then that Executive is never more than about 3½ years from an election.

The executive branch is responsible to the people. The courts are not. These are lifetime appointments that we make. If every single statute that we pass is interpreted from the foundation by the Supreme Court and if they get it wrong, there is no way to get rid of them. There is no way to roll that interpretation back. In fact, that is one of the reasons for the Chevron deference—the reluctance of the Court to make itself an active political player in the process of interpreting statutes.

So it is radical that Judge Gorsuch is suggesting that, if he were put on the Supreme Court, he would overturn that 1984 case. Justice Scalia was one of the primary defenders of Chevron for that very reason, in that he saw that the legitimacy of the Court—indeed, the legitimacy of the entire judicial system—would be put in jeopardy if it inserted itself as the primary arbiter of ambiguous statutes, of statutes that needed interpretation.

Originalism is an invitation to take your politics onto the Court. The evisceration of the Chevron deference would, inherently, make the Court a political body. If you combine the two together, you will start to see a Justice who will likely continue this trend line of its being an activist Court that makes political decisions in substitute of the Congress.

We have all seen it happen, whether it be in the voting rights case, in which the unelected Supreme Court decided that racism was not something that we had to think about any longer due to their vast experience in the South and in dealing with cases of voter suppression, or in their arbitrary decision that corruption should be very narrowly defined and that we need not pay attention to the slow, creeping corruption that happens when donors get access to the political process through donations of thousands and tens of thousands and hundreds of thousands and millions of dollars. The Supreme Court is telling the people of this country and this Congress what corruption is and what it is not.

Those are political decisions that the Court has made—an activist Court—that now may have among its members a Justice who has, effectively, advertised himself as being willing and eager to join that trend line on the Court.

Individual cases raise concerns as well. In Riddle v. Hickenlooper, Judge Gorsuch expressed an openness in providing a higher level of constitutional protection to a donor's right to make political contributions than the Court currently affords the right to actually vote—donors having more rights than voters have.

As for the result of applying strict scrutiny, which is the term that he is referring to with regard to political donations, we do not exactly know what would happen, but it likely would have the consequence of making it almost impossible to regulate campaign finance. Ninety-three percent of Americans, in a recent poll, think that government should be working to limit the impact that big donors have on politics today. Yet Judge Gorsuch has suggested that, as a Supreme Court jurist, he may move the law in the opposite direction, robbing from both of us—Republicans and Democrats—the ability to do what 93 percent of Americans want us to do, which is to restrict the ability of a handful of billionaires to affect the political process.

In the Hobby Lobby decision, yet again, Judge Gorsuch suggests that corporations, in this case, have more rights under the Constitution than do the individuals who work for them—that the religious freedom rights of the corporation trump the religious freedom rights of employees. Once again, it ruled that those with power—big donors or corporations—have more rights than those with less power—ordinary voters, employees of these big companies.

Years ago, Judge Gorsuch wrote in a complaint, according to him, that liberals were using the Court to try to push their political agenda rather than to bring it here to the Congress. The reality is that, over the course of the Roberts Court, the exact opposite has happened. It has been Conservatives who have brought their complaints to the court system—their complaints about voting rights, their complaints about campaign finance, their complaints about the Affordable Care Act—rather than to have brought them to the floor of this body.

As the House of Representatives abandons, for the time being, the repeal and replacement of the Affordable Care Act, their allies continue to push cases through the court system that would attempt to unwind it. Judge Gorsuch has been, in his writings at least, blind to this idea that Conservatives have spent just as much time over the past 20 years in trying to push their agenda in court as have Progressives. Progressives have done that as well.

Clearly, we have full marriage rights in this country because of court cases that Progressive groups push. I am not denying that there is not this trend line on both sides of the political spectrum, but Judge Gorsuch seems to only recognize it in his writings when it comes to the liberals who are pushing these causes.

These are the most important decisions we make. Many of us may only get to vote on a Supreme Court Justice once or twice. This is my fifth year in the Senate, and this is my first vote. My first vote should have come in 2016, but it is coming now in 2017. I do not take it lightly, but there is a reason—when you go back to your apartment here in Washington—that you are watching TV commercials that are paid for by big corporations and billionaires who support Judge Gorsuch's nomination.

He says that he is going to play it straight. He says that he is not going to be affected by his political agenda. I hope that he is right, but the folks who are fronting the money for these ads do not believe him. They think they know how he is going to rule. Believe me. They would not be putting up all of this money on TV if they did not think that Judge Gorsuch was going to be a friend to the big companies, to the billionaire donors who want more and more protection through the court system.

Donald Trump was right about something when he ran for President. He was not right that elections are rigged, but he was right that, in general, the system—our economic state of affairs—does seem to be pretty rigged against regular people. Economic mobility, which is how we define ourselves as a country, is further away from the people whom I represent in Connecticut than ever before, and the statistics bear that out.

Your ability to move from poverty to prosperity is less today than it has been at any point in our lifetimes. It does feel like the powerful and the rich have recovered very nicely from this recession and that nobody else has. It feels like they have a voice here in Washington that no one else has either.

If you are President Trump, having run on this promise to unrig the system, boy, this doesn't seem like the person you should be sending to the

bench, somebody who has openly advertised his enthusiasm for voting with billionaires, with corporations, with folks who have lots of political power already.

The TransAm case, which has been talked about enough on the floor, is a unique one. It is the case of a trucker who was being potentially left to die by his employer on the side of the road, who left his truck to save his life and potentially the lives of others on the road, had he chosen instead to operate it. Judge Gorsuch ruled with his employer, effectively suggesting this man should have risked his life or the lives of others to comply with the strict letter of the law.

Judge Gorsuch was asked in the Judiciary Committee what he would have done: What would you have done if you had two options—sit in that truck and face death or put it back on the road and potentially kill others? What would you have done? Judge Gorsuch said that he hadn't thought about it.

I don't want my Supreme Court Justices to be political. I don't want them to be us. It really is our job to think about, in a real, tangible, grassroots way, the effect of our laws on their lives. But I don't want a Justice who doesn't even contemplate the answer to that question, the impact of the law on regular people. I don't want a Justice who views the law only through the eyes of a group of White men who lived in a fundamentally different world. I don't want a Justice who isn't thinking about how the law applies to people who need a statute's protection, rather than thinking about those who, frankly, don't need the protection of statute because they have been handed a pretty good lot in life from the start.

I am going to oppose cloture tomorrow, and if we eventually get to a vote, I will oppose Judge Gorsuch on final passage.

My final comment is this: When that moment comes, I do hope that our colleagues will think twice about changing the rules of the Senate. They had already broken with precedent once in 2016 in a way that I think is unforgiveable. To do it twice in a 24-month period puts this place on a downward spiral that I am not sure we can recover from. If we just want to be the House of Representatives, let's just do it. But there is another way to go, to select a nominee who could truly get bipartisan support.

As my colleague TIM KAINE is fond of saying, there is only one appointment by the President of the United States that needs 60 votes. There is only one person the President picks who needs to get more than 60. That is the Justice of the Supreme Court because it is permanent, because it is important, because it lasts longer than we do. There is probably good reason for that.

Precedent and comity were broken in 2016. I will never, ever forget the disrespect shown to Judge Garland and to everyone in this body, but to double down on that break with precedent, on that break with tradition, by changing the rules of the Senate permanently with respect to Supreme Court Justices—I know they can say that Democrats did it a few years ago. That is true. But the Supreme Court is a different animal entirely, and the decision is one I hope my Republican colleagues will rethink.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Hawaii.

Ms. HIRONO. Mr. President, when Senate Republicans executed their unprecedented block of President Obama's nominee Merrick Garland, the well-credentialed, well-respected, moderate chief judge of the DC Circuit, they knew what they were doing. They were willing to set aside the history and practice of the Senate to make sure no nominee of President Obama's would fill the vacancy created by Justice Scalia's death.

As fate would have it, a Republican won the Presidency and then, the majority leader's path was clear. This is exactly what happened: President Trump selected Neil Gorsuch from a list put together for him by the ultra-conservative Heritage Foundation and Federalist Society. These organizations selected Judge Gorsuch because they want to preserve the conservative 5-to-4 majority of the Roberts Court.

This majority has done terrible damage to many laws Congress has passed to protect ordinary Americans, and has made it more difficult for us to pass new laws. My colleagues and I have shined a spotlight on these rightwing organizations and the $10 million campaign they have run on Judge Gorsuch's behalf because they believe his view of the law matches theirs. And therein lies our concern.

These organizations have spent so much money and worked so hard on Judge Gorsuch's behalf because they could trust, perhaps not 100 percent of the time, but enough of the time, that Judge Gorsuch would decide cases in ways they would agree with and support.

Judge Gorsuch is an Ivy League educated lawyer with 10 years on the Federal bench. He is not naive. Even if he refused to acknowledge the fact that these groups are supporting him, Judge Gorsuch knows as well as we all do that politics have a real impact on the kinds of nominees selected to serve on the Supreme Court.

We know he understands this because he said so in his 2005 National Review Online article, which was entitled ''Liberals'N'Lawsuits.'' In that article, he wrote that because Republicans had won elections for the Presidency and for control of the Senate, the Republicans were in charge of the judicial appointment process. As a result, he said, ''the level of sympathy liberals pushing constitutional litigation can expect in the courts may wither over time, leaving the Left truly out in the cold.''

This article demonstrates that Judge Gorsuch understands that judges appointed and confirmed by Republicans will have less sympathy for, as he put it, ''liberals pushing constitutional litigation.'' Clearly, judges do not make decisions divorced from their personal and philosophical leanings. However often or however loudly they might protest, conservatives understand that their arguments about the narrow role of judges—their claims that Justices are there only to modestly apply the law and adhere to the Constitution—are bunk. And Judge Gorsuch must know this too.

Nowhere is this brand of conservative judicial activism clearer than in the actions of the Roberts Court to reach into our elections to tilt the political landscape—with a significant impact on whose votes are heard in our political process and who is able to take part in our elections.

Based on his writings, Judge Gorsuch clearly understands the relationship between politics and the courts. I am convinced that adding Judge Gorsuch to the Roberts Court will only continue the Court's intervention into politics.

The actions of the Roberts Court are clear. This Court has issued a series of decisions that have made it easier for conservative organizations to spend unlimited and unregulated dark money on elections, and that may have made it harder for people to vote, harder for people to participate and have those voices heard in the political process. These decisions have changed who is able to participate in the democratic process, who gets elected, and, in turn, who gets nominated to the Supreme Court.

Justice Felix Frankfurter's famous admonition that ''Courts ought not to enter this political thicket'' captures the challenges for courts treading into politics. Of course there are times when the courts must do so—to ensure one person, one vote, for example. But courts must also be careful when wading into politics because the legitimacy of the court is itself put at risk.

The most memorable example, of course, came when the Court effectively decided the 2000 Presidential election in Bush v. Gore.

In the Citizens United and Shelby County decisions, we have seen the tremendous damage the Court can do to democracy when it tilts the electoral process so heavily against ordinary Americans.

In the 2010 Citizens United decision, the Roberts Court struck down bipartisan laws limiting campaign contributions that went back more than a century. This decision opened an unrestrained flow of money and potential corruption that has dominated our politics and drowned out the voices of ordinary Americans ever since.

The Court's decision in this case was not an accident. Chief Justice Roberts engineered the decision in that case by steering it away from the narrow question before the Court about how to apply a particular law and into a broad constitutional question. His efforts

demonstrate that the Supreme Court has broad power and latitude to push and shape the law.

This kind of conservative judicial activism directly contradicts what Justice Roberts famously said during his confirmation hearing. He said the job of a Justice is to simply call balls and strikes.

Jeffrey Toobin, in a 2012 article in the New Yorker entitled, ''Money Unlimited: How Chief Justice John Roberts orchestrated the Citizens United decision,'' and in his recent book, ''The Oath,'' recounts very clearly how Chief Justice Roberts engineered this campaign spending decision.

The question originally presented to the Supreme Court in Citizens United, according to Toobin's account, was a narrow one. It involved whether one of the provisions of the bipartisan McCain-Feingold campaign finance law applied to a documentary criticizing a candidate and not just to television commercials. In fact, Ted Olson, the well-known conservative lawyer representing Citizens United, the organization that wanted to run the documentary, made a narrow argument that the McCain-Feingold law was not meant to apply to that kind of documentary. This was an argument based not on the Constitution, but on deciding the case before the Court in the narrowest possible way. Such a decision would have been restrained.

It became clear during oral arguments that the conservatives on the Court had the opportunity not just to apply the law, but to change it entirely. Chief Justice Roberts and the other conservative Justices on the Court began to do this by aggressively questioning the government's lawyer on issues not then directly before the Court. As Toobin describes, ''Through artful questioning, Alito, Kennedy, and Roberts had turned a fairly obscure case about campaign-finance reform into a battle over governmental censorship.''

Now that it was clear to Chief Justice Roberts that there was a majority on the court for making a broader constitutional decision, he ordered that the case be reargued, rather than simply deciding the narrow question argued by both Olsen and the government's attorney. Chief Justice Roberts wanted the Court to take head-on a question that was not in fact before it and which the Court had decided the opposite way only 6 years before. When the Roberts Court decided Citizens United the following year, after reargument, it did so on the broadest possible ground—unconstitutional grounds—and found that corporations, like people, have First Amendment rights. It found that these rights could be violated by limits on campaign contributions.

Again, this outcome did not happen by accident; Chief Justice Roberts engineered the result. According to Toobin's account, Chief Justice Roberts chose to assign the opinion for the majority to Justice Kennedy, who was known to be very skeptical of campaign finance laws and believed that limits on campaign spending violate free speech. By doing so, Chief Justice Roberts ensured that the Citizens United decision would be a broad one, and it was.

The way the Court chose to reach out and change the law was wholly unnecessary to decide the case at hand. And it certainly was not judicial restraint; it was judicial activism. The Court in Citizens United reached out to overturn precedent and upend laws dating back more than a century to find new rights for corporations to funnel untold millions into our political system.

This decision also severely limited the ways in which Congress could take action to continue to pursue the aims of campaign finance laws to limit political corruption.

In his article, Mr. Toobin said:

> [Citizens United] reflects the aggressive conservative judicial activism of the Roberts Court. It was once liberals who are associated with using the courts to overturn the work of the democratically elected branches of government, but the current Court has matched contempt for Congress with a disdain for many of the Court's own precedents.
>
> When the Court announced its final ruling on Citizens United, on January 21, 2010, the vote was five to four and the majority opinion was written by Anthony Kennedy. Above all, though, the result represented a triumph for Chief Justice Roberts. Even without writing the opinion, Roberts, more than anyone, shaped what the Court did.

But the Roberts Court was not done with its activism to radically change the landscape of our elections. In another narrow 5-to-4 decision in Shelby County in 2013, the Court substituted its conclusions for that of Congress and gutted core protections of the Voting Rights Act—protections which were essential for the right to vote for millions of Americans. Again, this was not a decision the Court needed to or should have reached. And again, it was a decision engineered by Chief Justice John Roberts and the conservative majority on the Supreme Court.

Back in 1982, Chief Justice Roberts—then a special assistant to the Attorney General—was the point person for the Reagan administration's opposition to strengthening the Voting Rights Act. At that time, Congress acted to fix a hole in the Voting Rights Act that the Supreme Court had opened in a 1980 decision. John Roberts was opposed to these efforts to make clear that election practices or procedures that result in discrimination, not only those with the intent to discriminate, violate the Voting Rights Act.

In 1982, Congress successfully passed their fix over the objections of John Roberts and the Reagan administration. If you look at John Roberts' memos and articles from that period of time—in which he was a strong advocate within the administration for the position it took—his view of the Voting Rights Act was clear. It was a view he would apply years later as Chief Justice of the Supreme Court when he led a 5-to-4 majority to gut section 5 of the Voting Rights Act.

The preclearance provisions of section 5 mandated that any changes to voting laws in States with a long history of discrimination have to be approved in advance—or precleared—by the Justice Department or by the DC district court. These provisions, passed a century after the conclusion of the Civil War, for the first time effectively guaranteed the rights protected by the 14th and 15th Amendments in many parts of the country. Section 5 changed the landscape of our democracy and opened the door for millions of people to exercise their right to vote.

These provisions of the Voting Rights Act were reauthorized nearly unanimously by Congress in 2006. Before reauthorizing the Voting Rights Act, the Senate Judiciary Committee alone held nine hearings on it. The thousands of pages of material the Senate reviewed, together with the record developed in a dozen hearings in the House, clearly established why it was so important to maintain preclearance in order to protect the right to vote in jurisdictions with a long history of voting discrimination.

Yet, in Shelby County, the Roberts Court ignored this evidence and the Court's long precedent. The Court made its own determination about the value of the extensive evidence reviewed by Congress and struck down these core provisions. The Court refused to defer to the extensive findings and determination of Congress even though Congress is expressly charged by the 14th and 15th Amendments to enforce the guarantees of those Amendments—the guarantee of the right to vote. The Court did what John Roberts fought to do years before and weakened the Voting Rights Act. So much for judicial restraint. So much for just calling balls and strikes.

A Justice and a Court devoted to judicial restraint, with an understanding of the separation of powers, never would have ignored Congress acting at the height of its constitutional powers and its factfinding capacity. Yet Chief Justice Roberts and the narrow conservative majority on the Court chose to act—to reach out and to gut one of the core protections of the fundamental right to vote.

We now know that Congress got it right and the Supreme Court got it wrong in its judgment about the continuing need for section 5 of the Voting Rights Act. Immediately after the Shelby County decision, numerous States previously covered by section 5 immediately passed onerous voter ID laws and other barriers that affected the right to vote of millions of people. Some of these laws were even enacted with discriminatory intent, not just discriminatory effect—in other words, they were blatantly meant to discriminate in voting.

These newly raised barriers had a clear impact in last year's elections.

For the first time in two generations, thanks to the actions of the Roberts Court, we risk unraveling the progress my friend JOHN LEWIS fought for alongside so many others during the civil rights movement.

During his confirmation hearing, I asked Judge Gorsuch about the Shelby County decision, since he often explained the constraints on his approach to judicial decision making in terms of the separation of powers. He said several times that judges make terrible legislators, that courts lack the staff, capacity, and training to do the kind of factfinding that is an essential part of the legislative process. Yet, when I asked him whether the Court's decision in Shelby County raised the kinds of concerns he had noted about the limits of judges as policymakers and legislators, he declined to answer.

But this is about more than Judge Gorsuch's refusal to answer. It is about more than the narrow view he expressed of the role of a judge or, particularly, a Justice—a narrow view that is not a reflection of the real world. Both the process and the outcome in Shelby County and in Citizens United raised exactly the kinds of concerns that make it so important for the Senate to understand Judge Gorsuch's judicial philosophy before putting him on the Supreme Court. Judge Gorsuch would become part of a newly empowered 5-to-4 conservative majority on the Roberts Court, which has been anything but restrained in moving the law for the benefit of corporations and against individual rights.

Taken together, these two decisions, Citizens United and Shelby County, have made it harder for millions of Americans to have their voices heard in our election process and their votes counted at the ballot box. Since Citizens United, the floodgates have opened to unfettered corporate money in our elections. Since Shelby County, 13 States have enacted laws placing limitations on voting. Many of these are in States that would have been prevented from doing so in the first place before the Court gutted section 5 of the Voting Rights Act. After Shelby County, these States could pass such laws, and they did, disenfranchising tens of thousands of voters in the process.

My Democratic colleagues and I asked Judge Gorsuch many questions to try to understand his pattern of narrowly interpreting laws meant to protect individual rights or worker safety in ways at odds with the law's purpose. For example, the narrow interpretation Judge Gorsuch took on the Individuals with Disabilities Education Act, IDEA, would have left Luke Perkins and thousands of special needs children like Luke without a chance to make educational progress. His interpretation was so at odds with the purpose of the IDEA law that the Supreme Court unanimously rejected and criticized Judge Gorsuch's narrow standard in a case they decided just a few weeks ago.

Time and again, Judge Gorsuch threw up his hands and told us that if we disagreed with this narrow reading of the relevant law, that Congress should do better. In his view, the problem was not the Court—which he seemed to cast as an innocent bystander—but, rather, the way Congress had written the law.

By tilting the political playing field so heavily toward corporations and unfettered dark money and against individuals, the Roberts Court has impacted the composition of who is in Congress. The Court has made it even harder for Congress to take meaningful action to, say, pass laws to protect workers' safety or the access of students with special needs to an education. In turn, these decisions have had a real-world impact by changing who gets to participate in the political process and therefore who gets elected and who has input on the kinds of laws that are passed—and, of course, who gets nominated to the U.S. Supreme Court.

The actions of the Roberts Court in Citizens United and Shelby County make clear the stakes of the Gorsuch nomination. They make clear what the Senate Republicans had in mind in their unprecedented and arrogant refusal to consider President Obama's nomination of Merrick Garland to the Supreme Court. They wanted, instead, a Justice like Judge Gorsuch who would continue the rightward march of the 5-to-4 conservative majority on the Roberts Court. And the United States Senate should not allow this brazen gambit to succeed.

I urge my colleagues to oppose this nomination.

I yield the floor.

RECESS UNTIL 10 A.M. TOMORROW

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until 10 a.m. tomorrow.

Thereupon, the Senate, at 11:28 p.m., recessed until Thursday, April 6, 2017, at 10 a.m.