

in making a decision based on that advice is that judges at all levels, up to the Supreme Court, will look at the law as hopefully your good attorney did and say: This is what this law means. If you make this decision based on what the law says, the courts in the United States of America will reach that same, likely, conclusion. Your attorney might say that the law is not clear on this issue, and that is a different scenario. But the judge's job is not to decide what is the right thing. The judge's job is not to decide what the law should say. The judge's job is not to decide what the people who wrote the Constitution should have written or should have meant if they had known everything we know today. The judge's job is to look at the law and look at the Constitution and decide that is what it said.

Nothing would be a better example of Judge Kavanaugh's philosophy than the 300 opinions he has issued as a judge. There is a lot of discussion: Well, there is not enough material out there. We haven't seen everything. We haven't seen everything that went through the White House when he was the Staff Secretary for President George W. Bush. We haven't seen all of that.

Of course, that is not the case. There is plenty to be seen. In fact, there is more paperwork available to look at from Judge Kavanaugh than from the last five Supreme Court Justices put together. I will state that if you are looking for paper, you have paper. If you are looking for the judge's position, you also have 300 cases, some of which were appealed to the Supreme Court. Thirteen of his opinions—and I think some of them were when he was in the minority on the circuit court bench—became the opinions that the Supreme Court essentially adopted almost exactly as Judge Kavanaugh had written them.

What we are trying to do is put somebody on the Supreme Court for a lifetime appointment. This individual happens to be somebody who for 12 years has been on what is often described as the second most important court in the country.

Why would the DC Circuit—that is the court of appeals for the DC area—be the second most important court in the country? The reason is that most of the cases that involve new Federal law, that involve expansive Federal law, wind up right here. For 12 years, Judge Kavanaugh has been one of those judges.

Believe me, if the Supreme Court had said over and over again, when there was an appeal from the DC Circuit, that Judge Kavanaugh's opinion really makes no sense or that Judge Kavanaugh's opinion wasn't based on the law, the facts, and the Constitution, we would have heard about that. In 300 opinions, we would have heard about that if that had been the case, and we have not heard that. In fact, what we have heard over and over

again is about the job this judge has done and the skill he brings to the court.

Going back to the idea that a judge's goal is not to decide what the judge would like the outcome to be but what the law says, Justice Scalia, who was replaced last year by Judge Gorsuch, said that "the judge who always likes the results he reaches is a bad judge." Why would you be a bad judge if you always liked the decisions you reached? The reason is that you couldn't have always been looking at the law. The judge doesn't write the law. The judge doesn't come up with the law. The judge doesn't even have to agree with the law. The judge's job is to decide what the law says. If you look at every case before you and evaluate it based on the facts and apply the rule of law, you are going to come up with a conclusion you won't always like, but you will come up with a conclusion that the people who are in the case will understand as far as how you came up with it because you came up with it based on the law and the facts.

Judge Kavanaugh's credentials have been discussed before. Frankly, they are not being very widely discussed this week because the hearing—at least half the time—appears not to have much to do with Judge Kavanaugh at all but whether there is enough paperwork to look at or whether a judge would have reached a different conclusion than he reached. But his qualifications are pretty significant. He is a graduate of Yale Law School. He clerked for three Federal judges, including the Justice he is about to replace. Of course, being a clerk for a judge means that you have graduated from law school. Someone has looked at all the applicants to be their clerk, and—it is almost like graduate work after you have graduated from law school—you are chosen to be that clerk. So that happened three times with Judge Kavanaugh, including for Justice Kennedy. He clerked for Justice Kennedy alongside Justice Gorsuch.

In 2006, President Bush nominated him to serve on the DC Circuit Court of Appeals. In addition to that, since 2009, he has been the Samuel Williston Lecturer on Law at Harvard Law School. He was hired by Justice Kagan before she was nominated to the Court by President Obama and who was then dean of Harvard Law School. He has the interesting opportunity to be confirmed to the Court—and I believe he will be—and to be sitting on the Court with a Justice nominated by President Obama who hired him to be a lecturer at Harvard Law School.

In addition to his legal career, he has devoted himself to his community. He coaches his daughter's basketball team with some pride, Coach K—not always the Coach K I would think of but the Coach K the girls on that team think of when they think of Coach K. He is a church volunteer. He has mentored

people at schools. He has been widely supported by those who have dealt with him—his classmates, colleagues, clerks, and legal scholars.

This week, he received a unanimously "well qualified" rating from the American Bar Association. That is the very highest rating they can give, and it was unanimous. That is a pretty good signal that he must have been well prepared as a lawyer to be a judge.

The Judiciary Committee has received letters from more than 140 law professors, more than 40 members of the Supreme Court Bar, 34 of his former law clerks, 80 former Harvard Law students, 31 Governors, and many more.

His nomination isn't just widely supported, it is thoroughly vetted. There are 480,000 pages of documents and, in 300 cases, the opinions he has written.

I continue to believe that the Supreme Court is one of the longstanding and most important legacies of a President, but it is also one of the important legacies of the Senate. The Constitution says the President nominates but the Senate advises and consents. This is not just about advice, it is about becoming a partner in that process of becoming a member of the Supreme Court for as long as you live, unless you decide to leave earlier than that.

I am disappointed that almost half of this Senate announced they wouldn't be for Judge Kavanaugh before his confirmation hearings. At least one-fourth of the Senate announced they wouldn't be for Judge Kavanaugh before he was nominated. No matter who was going to be nominated, one-fourth of the Senate was not going to be there.

I think we will find that a majority of the Senate will be there later this month. I think we will find the majority of the Senate will be there before the first Monday in October, which is the day the Court starts to hear cases for the coming year.

I think Judge Kavanaugh is going to serve our country well and, I hope, long. I look forward to his confirmation later this month.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Washington.

#### APPROPRIATIONS PROCESS

Mrs. MURRAY. Madam President, I come to the floor today to join the vice chairman of the Appropriations Committee, who will be joining me shortly, in urging our colleagues to avoid a completely unnecessary crisis and work together with us to get out our spending bills and get all of our spending bills signed into law.

We should be able to do this. I am very proud of the work we have done so far. Under the leadership of the chairman and vice chairman of the Appropriations Committee, we have been able to negotiate and pass bills under regular order in a way we have been unable to do for years.

We did this by rejecting the awful and counterproductive budget ideas from President Trump and his administration and by pushing aside poison pill riders that would derail this process—such as attacks on healthcare, higher education, public schools, patient protections, workers' rights, and more.

I am particularly proud that we were able to work together and negotiate and pass our LHHS bill through the full Senate, something that has not been done in over a decade.

Our bill makes strong investments in families, patients, students, workers, and the middle class, and it rejects poison pill riders. It builds on the strong work we have done to increase access to childcare and early learning and includes targeted funding to address the opioid epidemic, especially in our underserved areas. It includes significant new resources to address the truly alarming issues of maternal mortality, to help us understand why so many women in our country are dying as a result of childbirth and pregnancy and prevent this from happening. The list goes on and on.

We still have some work to do, but we should be able to get this done in the coming days. I am going to keep working until we do. However, I am very concerned that President Trump continues to threaten to refuse to sign these bills and shut down the government.

Just this week, we saw new reports that he is talking, once again, about shutting down the government to try to get the money for his ill-advised and wasteful border wall. President Trump told his voters that Mexico was going to pay for his wall, so maybe he is talking about shutting down the Mexican Government so that he can get money in Mexican spending bills. But if he is talking about trying to get American taxpayers to foot the bill, that is not going to happen.

I hope Republicans in Congress will continue to stand with us to stay the course on these bipartisan bills. We have come far in this process by putting families first and rejecting attempts to insert partisanship and poison pill riders in all of our spending bills. We need to get this done.

Thank you, Madam President.

I yield the floor.

I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The senior assistant legislative clerk proceeded to call the roll.

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

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. LEAHY. Madam President, in the last few months, the Senate has achieved record progress in going through our appropriations bills. As we return from the Labor Day weekend, the Senate has already passed 9 of the 12 Appropriations bills by over-

whelming bipartisan margins. The Appropriations Committee has reported the remaining three bills, again, with bipartisan support. The end of the fiscal year is only a few short weeks away, but looking at the record pace of our work here in the Senate, there is no reason we can't conference all of these bills with the House and send all nine to the President's desk before October 1.

It would be quite an accomplishment. It would show the American people that when it matters, Congress can come together and do the job we were sent here to do. That includes passing responsible, thoughtful, and well-considered appropriations bills on time and on budget.

When I became vice chairman of Appropriations, with Senator SHELBY as chairman of Appropriations, we pledged to each other and the Senate that we would move these bills in a way they had not been moved in years and that we would do it in a bipartisan way.

It is important that we conference all of the bills we have passed in the Senate so far and then send them to the President's desk. We cannot just pick and choose and say: We will do this one based on political expediency but not this one. That would put us right back in the trap in which we had been in past years. We have to show the American people that the Senate actually knows how to do its work. The hard work has been done. We know the issues we need to resolve, so now we ought to take these bills across the finish line.

It may sound archaic, but let me talk about minibus No. 1, which contains the Energy and Water Development appropriations bill, the Military Construction and Veterans Affairs and Related Agencies appropriations bill, and the Legislative Branch appropriations bill. It provides much needed resources for the support and care of our Nation's veterans and their family members, and it makes critical investments in our country's water infrastructure and energy programs. Yesterday, we held a public conference with the House of Representatives on the first minibus, and I am pleased to report that we have made some significant progress.

One of the reasons we are successful in moving bills in the Senate is that we advance appropriations bills that are free of poison pill policy riders from either the left or the right. In fact, my experience and the experience of many others tell us that is the only path to success in the Senate, where we rightfully need 60 votes to advance legislation, and it is the only path to success for conferring the three minibuses bills. I challenge the House Republicans to come to terms with that reality. No one should mistake—and I want to emphasize this—Democratic cooperation in the Senate for a sign that we will support a conference report that contains poison pills. We will not.

Minibus No. 2 contains four appropriations bills—the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies appropriations bill; the Interior, Environment, and Related Agencies appropriations bill; the Financial Services and General Government appropriations bill; and the Transportation, Housing and Urban Development appropriations bill. The House plans to appoint conferees to this minibus later this afternoon, and I encourage the Senate to follow soon thereafter. Let me take these one by one.

The Agriculture appropriations bill is a win for farmers, families, and rural communities. Every State in this Nation has rural communities—the Presiding Officer does; I do; every State does—and farm economies that benefit from these important programs. From clean water programs to investments in rural broadband and from rural housing assistance to agricultural research, this bill touches millions of Americans all across the country. In the wake of the uncertainty and chaos that has been caused by trade wars and unnecessary tariffs, our farmers and rural communities deserve better than inaction on appropriations. Both the House and the Senate have passed their versions of the bill. So let's just get to work and send the conference bill to the President.

The same goes for the Transportation, Housing and Urban Development appropriations bill, which makes critical infrastructure investments across the Nation, and we desperately need them. Improving the Nation's infrastructure was one of President Trump's key campaign promises, but instead of proposing realistic solutions, he has criticized the very budget deal that has made increases in infrastructure possible. Instead of improving our infrastructure, he has proposed cutting—not increasing—funding in his budget for infrastructure programs. Here we have an opportunity to invest in our country and to start addressing our crumbling bridges and roads. We cannot and should not kick the can down the road. There is not a single Senator here who cannot point to the needs of the bridges and roads in his or her State.

Then we have the Interior bill that makes critical investments in programs that help to ensure we have clean water to drink and clean air to breathe and that funds our national parks and other public lands. The Financial Services bill funds regulatory agencies that U.S. citizens rely on to protect them from unfair, unsafe, or fraudulent business practices, like the Consumer Product Safety Commission and the Federal Trade Commission.

Congress now stands poised to deliver to the American people, but we have to get moving. Leaving these important agencies to limp along in a continuing resolution is unwise and unnecessary. We have laid the groundwork to finish these bills. Now we just need the will to do it.

This brings me to minibus No. 3, which contains the Defense appropriations bill and the Labor, Health and Human Services, and Education appropriations bill. It funds our national security and many of our domestic priorities, and it demonstrates the importance of the bipartisan budget agreement that was reached earlier this year. In this combination of bills, we see the priorities that are outlined in that agreement made into real policy to improve the lives of the American people. It is not empty rhetoric but real policy, and that is why so many Republicans and so many Democrats voted for it.

As a result of the bipartisan budget deal, the Senate's Defense appropriations bill provides the men and women of our Armed Forces with the resources they need to carry out their missions effectively and safely. This is a goal that Republicans and Democrats share as Americans, and I know that in working with our House counterparts, we can produce a good bill for our troops and our Nation.

Then there is the Senate's Labor, HHS, and Education appropriations bill. I think of the way Senator PATTY MURRAY has worked so hard with Republicans and Democrats—with all of us—to put together a bill that reflects the interests of all of the country.

Look at the investments in healthcare and education. It increases funding for the National Institutes of Health by \$5 billion over fiscal year 2017. The NIH, the National Institutes of Health, is one of the treasures of America. It backs our commitment to increase access to higher education by increasing college affordability spending by \$2.3 billion over fiscal year 2017. My family came to Vermont in the mid-1800s. I was the first Leahy to get a college degree—my sister, the second. Then, when our children came along and our grandchildren, we never doubted it; of course, they would go to college. Yet that is not the same for an awful lot of people in this country, so we need this bill. It also increases access to childcare by \$3.2 billion over fiscal year 2017, and it invests nearly \$3 billion to combat the opioid crisis that has plagued communities across this country.

The House did not follow the Senate's bipartisan efforts. The House produced a partisan Labor-HHS bill that shortchanged programs for working Americans and was loaded with poison pill riders that could never pass in this body—from attacks on the Affordable Care Act to restrictions on family planning.

My staff and Senator SHELBY's staff—several of us—have been working days and weeks and weekends, and we will continue to do that in order to work out these differences. The differences are challenging but are not insurmountable. The reason we have to have a compromise is we have to get 60 votes in the Senate, and with this hodgepodge of poison pills that the House has passed there are not 60 votes.

I have said many times that if we are to have a strong national defense, we need to have a strong economy, an educated and healthy citizenry, and an able workforce. The programs that are funded in the Labor, HHS, and Education appropriations bill are critical to doing that. The deep ties that run between defense and nondefense priorities make it fitting that we have packaged these two bills together, but they have to stay together if we are going to get them across the finish line by October 1. If they are decoupled, it will destroy the bipartisan process we have worked so hard to establish, and it will not go through. It is possible that the CR will be included in this bill, so it is essential that it be bipartisan and free of any controversial matter.

Again, the reason we have been so successful in this Senate in moving appropriations bills is that we have worked together. Chairman SHELBY as chairman and I as vice chairman have worked together. Republicans and Democrats alike who are on the Appropriations Committee have worked together. We have cooperated with each other. We have met over and over again. Each side has shown restraint in pursuing issues we have felt strongly about because to have done so would have imperiled the whole process. There are certain things that I would have liked in this bill, and there are certain things my Republican counterparts might have liked in the bill, but we all know that the bill would not have gone anywhere if we had done that. Instead, we have come together on those things that can pass. Both sides have had to trust the other, as we have done, so we could reach agreement to move these bills forward.

Let's finish what we have started in the way we started it—through bipartisanship and cooperation. That means the Defense and Labor-HHS bills must remain together in one package. We cannot drop one and finish the other. That is a nonstarter. Everybody knows that. It also means the Senate must stand together if the House insists on producing partisan conference reports that contain poison pill riders. They cannot pass. Finally, it means we have to remain committed to finishing all three packages of bills and sending them to the President.

If House Republicans decide to delay minibus No. 2 until after the election and drop the Labor, HHS, and Education bill from minibus No. 3, it will mean the \$18 billion increase for Defense that is assumed in the bipartisan budget agreement will be enacted while the \$18 billion increase of nondefense programs could be left in the dust—a clear violation of the bipartisan budget agreement that was based on parity between defense and nondefense programs agreed to by both Republicans and Democrats. I predict it could not pass.

Funding the government is one of our most basic constitutional responsibilities. Americans expect us to work together, as the U.S. Senate did, and

across the aisle to reach agreement on these bills. The programs funded in these bills make a real difference in people's lives, and they should not be held up due to partisan differences. Let's do what we were sent here to do and pass these bills before the start of the new fiscal year. We can do it, and we have shown how to do it.

I yield the floor.

The PRESIDING OFFICER (Mr. SASSE). The Senator from Oregon.

#### NOMINATION OF BRETT KAVANAUGH

Mr. MERKLEY. Mr. President, the most important words of our Constitution are the first three—"We the People." It is the mission statement of our Nation—a nation of the people, by the people, for the people, as President Lincoln so eloquently stated, not a nation of, by, and for the powerful and the privileged.

Yet the powerful and the privileged are working overtime to undermine our Constitution. Ironically, they are using the courts to do it. We have seen it happening all week long as the Judiciary Committee has barreled ahead with hearings on Judge Brett Kavanaugh's nomination to the U.S. Supreme Court. This is the same Judge Kavanaugh whose record from 5 years of serving in a Presidential administration is still being hidden from the Senate and from the people of the United States of America.

For 5 years, Brett Kavanaugh had the ear of the President on a number of critical issues—on how we treat enemy combatants, conduct wars in Iraq and Afghanistan, use and expand Executive power through signing statements, or how the authorization for the use of military force is utilized. For 5 years, in the inner circle of America, he had been engaged in policy after policy after policy. Yet Chairman GRASSLEY and the committee Republicans are unwilling to allow that record of insights on his views to be shared with Senators under advice and consent responsibility.

Then there is this parallel process in which the documents that are being made available are first being vetted by Bill Burck. Who is Bill Burck? He is a partisan Republican lawyer who used to work for the nominee. He is the one who has the final say over what the Senate sees. He is the one who has the final say over what documents are released, not just to the Senate but to the American people.

He is the one who decided to release 42,000 pages of documents—not the ones from those 5 years we are talking about—just hours before the hearing began. Who could possibly review 42,000 pages the evening or the night before the hearing occurs? It is humanly impossible. There we are with a process normally headed by the nonpartisan National Archives, which is still trying to do its work but can't do its work until the end of October to vet these