

Merkley	Schatz	Van Hollen
Murphy	Schumer	Warner
Murray	Shaheen	Warren
Nelson	Smith	Whitehouse
Peters	Stabenow	Wyden
Reed	Tester	
Sanders	Udall	

The nomination was confirmed.

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

The Senator from North Carolina.

EXECUTIVE CALENDAR—MOTION TO PROCEED

Mr. BURR. Mr. President, I move to proceed to Executive Calendar No. 1111, Robert H. McMahon.

The PRESIDING OFFICER. The clerk will report the motion.

The senior assistant legislative clerk read as follows:

Motion to proceed to Calendar No. 1111, the nomination of Robert H. McMahon, of Georgia, to be an Assistant Secretary of Defense.

The PRESIDING OFFICER. The Senator from Mississippi.

NOMINATION OF BRETT KAVANAUGH

Mrs. HYDE-SMITH. Mr. President, this is my first time to address this body. Senate tradition is for new Senators to observe, listen, and learn before delivering a maiden speech, but there is precedent, during matters of great importance and critical times for the future of our country, to make remarks prior to a maiden speech. I will reserve my maiden speech for a future date, but today I am compelled by duty to our country and the people of Mississippi to speak in strong and unyielding support for Judge Brett Kavanaugh.

The Constitution entrusts the Senate with the duty to provide the President the advice and consent for a lifetime appointment on the U.S. Supreme Court. It is a serious responsibility, but the process has devolved into a purely political effort by those who want to keep Judge Kavanaugh off the Court by destroying his reputation and his character.

I have had conversations with several colleagues who tell me they have never seen such chaos and hatred as we are witnessing in this confirmation process. The fact that accusations against Brett Kavanaugh were suspiciously withheld until the eleventh hour really is not surprising. We expected something, but we didn't know what it would be, and we never expected the opposition to stoop to this level.

Let me articulate what is going on here.

Judge Kavanaugh, who has gone through multiple background checks over the years, was unscathed by additional vetting, 31 hours of questioning under oath, and more than 1,200 written questions—all exceeding anything ever experienced by any Supreme Court nominee. When it became clear that Judge Kavanaugh had a clear path to

confirmation, the opposition chose to introduce accusations of alleged misconduct that have yet to be backed by verified facts or any evidence. It seems that in their desperation, knowing he was about to be confirmed with no obstacle stopping him, they panicked. In the past 2 weeks, when was the last time you heard talk of federalism or philosophy of jurisprudence? They lost the fight on the issues. They had to try something else—thus, these eleventh-hour accusations.

Now, I want to be clear. My heart breaks for victims of assault and abuse. It is an issue that must never be taken lightly. That is why unproven accusations are so very unjust.

Faced with these disturbing accusations, Judge Kavanaugh quickly and convincingly refuted them without mincing any words. Throughout this exhaustive process, he has been very straightforward in shooting down these allegations—all under the penalty of law. I believe Judge Kavanaugh when he says these humiliating events never happened—not three decades ago, not ever.

It seems that opponents of Judge Kavanaugh are engaged in character assassination to destroy the reputation of a devoted public servant and a loving husband and father. I for one will not stand by and just watch this happen. It is an honor to serve in this body, and our debates should strengthen the integrity of this institution, which the American people have a right to expect.

The confirmation process is not easy. It should be comprehensive, detailed, and allow nominees to prove their worthiness. It should not be malicious. It should not be intentionally destructive. It should not be a weapon to use against a qualified nominee whose life has been given in service to our country's laws, the judiciary, and the American people.

Judge Kavanaugh is such a nominee. I have met him and reviewed his impeccable record of service and integrity. He is a disciple of the rule of law and judicial restraint. He is a champion of the Constitution. He believes, as I do, that all Americans are equal before the law and the courts.

On behalf of all future nominees, I want to applaud Judge Kavanaugh for standing firm and not allowing these tactics to derail his process. It is time to bring Judge Kavanaugh's confirmation to a vote on the floor of the Senate. He has earned my support. I encourage my colleagues to support him as well.

I yield the floor.

The PRESIDING OFFICER. The Senator from Montana.

Mr. DAINES. Mr. President, I ask unanimous consent to engage in a colloquy with colleagues.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

LAND AND WATER CONSERVATION FUND

Mr. DAINES. Mr. President, I have come down to the floor today to dis-

cuss a very important issue to Montanans and to many of my colleagues in the Senate, and that is the Land and Water Conservation Fund, also known as LWCF. I am joined by friends and colleagues—in fact, by the Senator from North Carolina, Mr. BURR, and the Senator from Colorado, Mr. GARDNER—who know like me, firsthand, the importance of LWCF. Why we are here today is because in just a few short days—in fact, on September 30—this program is going to expire. Without any action from Congress, a program that is widely supported, provides more access to public lands, conserves our public landscapes, and—I think this is probably Senator BURR's favorite comment about LWCF—costs the taxpayers nothing—I bet you will hear that from him in a moment—is going to expire.

Of the many benefits provided by LCWF, the most important one to Montanans is making public lands accessible. In fact, I brought a few maps of Montana to show some of the challenges we have.

This map shows all the public lands in our State. Anything that is colored is a public land. That is Forest Service, BLM, national parks, wildlife refuges, and State trust land. As you can see, there is a lot of public land in Montana.

Our public lands help to drive a \$7 billion outdoor economy, create tens of thousands of jobs, and supply about \$300 million in State and local tax revenues. As an avid outdoorsman, myself, I know firsthand the importance of our public lands. In fact, in August, back home in Montana, my wife and I did a 25-mile backpack in the Beartooth Wilderness, fly fishing at lakes above 10,000 feet. That is my idea of a great weekend in Montana. But public lands out of public reach benefit no one.

This next map shows a portion of the eastern side of our State. In Montana, much of our public land is checkerboarded. You can see it a little better here because these checkerboards are sectioned. There are 640 acres in square miles. This means that each one of those yellow squares are inaccessible in many cases to Montanans.

This is BLM-owned public land, but despite being owned by the Federal Government, it cannot be accessed by the public. In fact, a recent study by the Teddy Roosevelt Conservation Partnership and onXmaps, a great Montana tech company, found that there are 1.52 million acres in Federal land in Montana alone that are inaccessible. I have the onXmaps app on my phone. If you are a hunter, fisherman, or outdoorsman in Montana, you oftentimes will have that app because it tells exactly where you are and where the lands are public and where the lands are private.

Let me put this in context about the inaccessibility of our lands. In Montana, we have more inaccessible public lands to the people than the entire State of Rhode Island—about the size of Delaware—all of which Montanans

are locked out of, and public land that is only open to a select few or to none at all is really not public at all.

The next map shows the western side of Montana, where we see the same problem on Forest Service land. If you look here, you can see a piece of checkerboarded land. We are using LWCF dollars to expand public access.

In fact, the Beavertail to Bearmouth corridor is currently the highest ranking Forest Service LWCF project. This project unlocks approximately 1,900 acres of currently inaccessible public land.

As you can see on this map, there are whole sections that Montanans are locked out of. This project—like many LWCF projects—ensures that our booming outdoor economy can continue to grow. It allows hunters, anglers, and other sportsmen to have access to their public land. However, projects like this are in danger if we don't reauthorize LWCF. Luckily, very fortunately, there has been some good work done. Recently, the House Committee on Natural Resources passed a bill to permanently reauthorize LWCF.

I thank Congressman GIANFORTE from Montana, on the House side, and Chairman BISHOP of Utah for getting that pushed through. The House has done their job. The Senate Committee on Energy and Natural Resources has also passed legislation to reauthorize LWCF. We now need to get this through the full House and the Senate, and we need to do that now.

LWCF is a program that maximizes the value of public lands to taxpayers, it boosts our economy, and it has strong bipartisan support. Lord help us, we know we need some bipartisan bills right now in this city. That is why I stand here today to urge my colleagues to act and reauthorize this critical program.

Montana is not the only State that has greatly benefited from LWCF. I want to turn it over to my colleague—truly one of the warriors in LWCF—the Senator from North Carolina, Mr. BURR.

Mr. BURR. Mr. President, I wish to thank Senators DAINES and GARDNER for their critical support for backing this program. If there is only one takeaway anybody has from anything I say today, let it be this: This costs zero in taxpayer money, zero. For those who are budget hawks, it is a great bill.

In June, the three of us, along with some of our colleagues, convened in front of the Capitol to commemorate the 100th day until LWCF expires. It is unfortunate we are here today, less than a week away from its expiration, with no extension of this program.

I believe we ultimately will win this fight because our colleagues know it is the right thing to do. As Senator DAINES pointed out, the majority of the House of Representatives and the majority of the U.S. Senate is supportive of this. It costs zero in taxpayer money, and it provides so much at the State and Federal level.

I appreciate my colleague's comments on public access. That is usually the focus of my LWCF monologues. Not a lot of my constituents are thinking about outdoor recreation right now; they are dealing with Hurricane Florence and her aftermath. As you all know, North Carolina recently experienced a hurricane of epic proportion. Flooding has reached record levels. People's homes and businesses are in disrepair, and flood levels continue today at dangerously high levels in some areas.

Obviously, much of this is unavoidable. If we ensure our infrastructure is well positioned to deal with major influxes of water, we can minimize the devastating impact we saw from Florence. I am not referring necessarily just to bridges, dams, and roads; I am talking about our natural infrastructure.

If we strategically create green spaces in our cities and in our river basins, we can mitigate some of the flooding. Guess what. LWCF dollars help us do that. A great example is the South Cape May Meadows Preserve and the surrounding Cape May National Wildlife Refuge which LWCF helped create in New Jersey.

The State of New Jersey, the Army Corps of Engineers, and the Nature Conservancy have worked together to restore wetlands, which now include engineered structures, as well as natural features like marshes, dunes, and wetlands.

This wetland area has since withstood several major storms, including Hurricanes Sandy and Irene. The wetland was positioned in such a way that it was able to absorb enough of the impact and water in order to protect many of the surrounding communities.

In 2016, a study by the Nature Conservancy, in partnership with a risk modeler for the insurance industry, showed that the marsh wetlands saved over \$650 million in property damages during Hurricane Sandy alone and reduced annual property losses by nearly 20 percent in Ocean County, NJ.

This isn't just about protecting lands and public access; it is about those things we can do that provide a better community—a lower cost of insurance, a better way to mitigate some of nature's challenges.

Did I mention it is also a bird sanctuary? Did I mention it is a recreational destination? It also serves as critical infrastructure in times of disaster, like the one my State is dealing with today.

More and more, our civil engineers are incorporating these pieces of green infrastructure. At first glance, one would naturally think they are for aesthetic reasons.

In Charlotte, a series of greenways wind through the city. One of the greenways, Four Mile Creek Greenway, used an LWCF grant to develop the land into a multipurpose area, rather than actual acquisition of the land. It has trails winding through it. It is

home to hundreds of different animal species. Yet it is also used for natural drainage. It absorbs water. It slows down the water with the vegetation and the winding creekbeds.

Our cunning civil engineers have us thinking they are building a park, but what they are really building is a flood mitigation program. As you can see, LWCF is used for projects in our cities and our rural areas—big and small projects. Ultimately, the biggest filters of water in North Carolina are our own natural forest and the Great Smoky Mountains National Park.

Healthy forests in these public lands help us to slow the flow of water, and we need those units to have the integrity so they can do their job of feeding healthy river systems that are much less prone to that flooding.

In conjunction with traditionally engineered structures, preserving strategic pieces of land in their natural state or restoring others to better take in water saves us money in the long run. Ocean County, NJ, proved that.

I can go on for hours. I can go on with hundreds of examples. There aren't a lot of facts I can give you about the program that I haven't already laid out in the past opportunities to be on the floor, but I think it is useful to end my speech by restating the original mission laid out 54 years ago when LWCF was created—authorized for 25 years, reauthorized for 25 years, and then only reauthorized for 5.

What do we want? We want permanent reauthorization. It is a program that has proven to be successful, regardless of your political views, a program that uses zero in taxpayer money, a program that produces benefits to every State in America that started with this mission statement:

To assist in preserving, developing, and assuring accessibility to all citizens of the United States of America of present and future generations . . . such quality and quantity of outdoor recreation resources as may be available and are necessary and desirable . . . to strengthen the health and vitality of the citizens of the United States by (1) providing funds for and authorizing Federal assistance to the States in planning, acquisition, and development of needed land and water areas and facilities and (2) providing funds for the Federal acquisition and development of certain lands and other areas.

I am not sure you can sum up any differently what the definition of a good program is, a successful program. It is not just in the mission statement; it is in the examples of what over those 54 years we have accomplished. There are not many things I can walk away from and believe that my grandchildren and my great grandchildren will be positively impacted by, but I can assure my colleagues of this: Permanent reauthorization of LWCF is one of those things. I am committed, along with my colleagues, to make sure there is no temporary reauthorization; there is a permanent reauthorization. We have met the burden of proof as to why this should never go away and why the American people support it in overwhelming numbers.

I am grateful to my colleagues for their support and their time to be on the floor today.

I yield back to Senator DAINES.

Mr. DAINES. I thank Senator BURR.

I think it also demonstrates the diversity, geographically, that we have a Senator from North Carolina, a Senator from Montana, and a Senator from Colorado. It doesn't matter if you are a Western State or a State on the East side of our Nation. I knew Senator BURR would talk about the fact that it costs the taxpayer nothing. I hear that all the time. Members care deeply about responsible stewardship of taxpayer dollars. It doesn't cost the taxpayer anything.

There is another word I always hear from Senator BURR; that is, it is "permanent" reauthorization. This is no longer an experiment. This is proven. This is why we need to move away from this temporary reauthorization and make it permanent.

I am pleased to have another colleague of mine from Colorado, Senator GARDNER, join me now. We would be border States if it weren't for the State of Wyoming. Senator GARDNER is in the southern part of the Rockies, a beautiful State. I am grateful to have the Senator as one of the key champions in the U.S. Senate of LWCF, Mr. GARDNER.

Mr. GARDNER. Mr. President, thank you for the opportunity to be here to talk with my colleagues about the importance of the Land and Water Conservation Fund. I am pleased to be here.

Over the past several months, the press conference Senator BURR referred to marking 100 days until the expiration of Land and Water Conservation Fund—we have since come to the floor offering unanimous consent agreements. We have introduced legislation. We fought for amendments to make sure we extend not just temporarily, not just for a year or two but to make sure we fight for the permanent reauthorization of the Land and Water Conservation Fund.

I was struck by the words Senator BURR said, in particular, about the suffering in his home State of North Carolina and the aftermath of Hurricane Florence. I was reminded of a quote that Enos Mills, one of the Founding Fathers of Rocky Mountain National Park, said about our national places and spaces. I think you can apply this to public lands everywhere, the public parks, national parks, forests, you name it. He said: "Within national parks is room—glorious room—room in which to find ourselves, in which to think and hope, to dream and plan, to rest and resolve."

That is the importance of our public lands across the West, across the East, and everywhere in this country—from corner to corner—as we fight to preserve our most sacred places.

Senator DAINES, there have been valiant efforts in Montana to preserve our public lands in both of our States—pub-

lic land States. In Colorado, if you add in the State and Federal public lands, you are looking at nearly half the State of Colorado and of course the numbers you laid out earlier. These are important management issues, important issues to resolve. Then, once in a while, there is an opportunity ahead of us to preserve a parcel of land, a portion of forests for a recreational opportunity for future generations. We use the Land and Water Conservation Fund to do just that.

Teddy Roosevelt said: "There is a delight in the hardy life of the open." He went on to say: "The nation behaves well if it treats the natural resources as assets which it must turn over to the next generation increased; and not impaired in value."

That is what the Land and Water Conservation Fund allowed us to do. I want to show you a picture of an incredible, glorious space in Colorado I visited a few weeks back. This is the Black Canyon of the Gunnison National Park. It is pretty impressive. I can tell you, if you are able to go down next to the Gunnison River and enjoy that opportunity to be alone, to be in that space, you indeed will live up to Enos Mills' quote, where you will be able to find that time to think and hope, to dream and plan, to rest, and to resolve.

If you look at this canyon, you will notice some of the uplands, the flats, the rim of the canyon. You would assume that would have been a part of the national park. When they created the Black Canyon of the Gunnison National Park, there was a private holding, and you can see part of it right here.

Imagine the risk to this great national park, this great public place that could be posed by somebody who decided they wanted to develop that space, and all of a sudden that great natural wonder, the great open space this presents to not just the people of Colorado but truly people around the world would be gone, would be blemished, would be impaired.

We worked with the Land and Water Conservation Fund. In bipartisan fashion, Senator BENNET, myself, and Congressman TIPTON have had great bipartisan support from within the Colorado congressional delegation—Congressman LAMBORN, Congressman TIPTON, Congressman COFFMAN. They all strongly support the Land and Water Conservation Fund. In this case—the Western Slope of Colorado—Congressman TIPTON, Senator BENNET, and I worked with the agencies in Colorado, which do so much great work, to make a purchase of this private land using Land and Water Conservation Fund dollars. In this case, it was the conservation fund out of Boulder, CO.

If we go to the next chart, you can see where that land was. This is Bruce Noble, the superintendent of the Black Canyon of the Gunnison National Park, and he is pointing—that river is just right down here, and this is the land

the Land and Water Conservation Fund helped to purchase so that this asset will be preserved for future generations. Not just for 5 years or 10 years, but for as long as this great and halloved Nation exists, you will be able to come to the Black Canyon of the Gunnison National Park and be at one with your thoughts, your self, and you will have the opportunity to think, to resolve, to plan, to hope. That is the respite that this brings to all of us, because we are better people knowing that some of our most wild and natural places exist in truly wild and natural spaces.

To the leadership of the Conservation Fund, Christine Quinlan, and the other folks who have worked with the Land and Water Conservation Fund, thank you for making this possible. This is just one of many examples in Colorado. In fact, over \$268 million has been appropriated to Colorado through the Land and Water Conservation Fund to make purchases such as this in a recreation economy in Colorado that is responsible for over 230,000 jobs in the State of Colorado alone and an outdoor economy that is nearly \$10 billion in wages and salaries and \$2 billion in State and local tax revenues—a nearly \$30 billion outdoor economy overall in Colorado. That is what the Land and Water Conservation Fund is able to be a part of.

So this isn't just about protecting our open spaces. It is not just about protecting these great, sacred lands that we have. It is also about a thriving economy in Colorado, in Montana, and in North Carolina, and the opportunities we have to drive those outdoor economies with hundreds of thousands of jobs and billions of dollars in revenue. This Congress, in a bipartisan fashion, passed legislation to promote that outdoor economy, but it is all related back to this crown jewel of our conservation programs, the Land and Water Conservation Fund.

We are just days away from seeing the clock tick 1 day beyond what it should and what we should allow. And I think one of the reasons we are here is that we have heard the frustration of our voters back in Colorado, North Carolina, and Montana who get frustrated with Washington and are probably wondering why something that everybody agrees with can take so long to get done. Washington seems to be the only place where the more people agree with it, the longer it takes to happen. So let's fix that.

I truly am grateful to Senator BURR for the times he has come to the floor with Democrats and Republicans alike to champion this. I thank Senator DAINES for his leadership. We have days left. We have hours remaining. We should work with every moment to make sure we get this reauthorization—permanent reauthorization, full funding—across the finish line. It is an honor to be with my colleagues to fight for this great program.

Mr. DAINES. Senator GARDNER, thank you. I thank Senator BURR as

well. I think this is something that, for us, is more than a policy discussion. You can see the passion from each Member here. It is a way of life.

I come from a State—Montana—where a mom or a dad or a grandpa or grandma can still load up a son or daughter or granddaughter or grandson in the pickup and go down to Walmart and buy an elk tag or a deer tag over the counter and then head out and have access to public lands to hunt and to fish. That makes America unique. You don't see that in most places around the world, and that sets us apart as a unique people.

Mr. BURR. Will the Senator from Montana yield?

Mr. DAINES. Yes.

Mr. BURR. I want to drive home what Senator GARDNER said. This is not the first time we have been here. Almost 100 days ago, after that event we had outside, we came inside and moved to reauthorize the Land and Water Conservation Fund.

I just pulled out my drawer and found three instances. All of those speeches start like this:

"At this time, we are only 66 days until September 30."

"At this time today, we are only 45 days."

"Today, we are only 38 days until expiration."

We continue to drive this with our colleagues. Why? Because the American public supports this program so much and because this is effective and impactful in every community of every State in the country. I know my colleagues agree with me. We are going to be relentless in how many times we come to the floor.

Sometimes, Senator GARDNER, when you have been here as long as I have, you learn that sometimes you have to wear down the people who might find a reason to disagree with you. But, you know, nobody has disagreed with us because it costs money. Nobody has disagreed with us because it wasn't effective. Maybe they disagree with us because they haven't utilized it the way so many other Americans have. I can't think of a better legacy we can leave for generations to come than to permanently reauthorize that, and I believe it will happen this calendar year.

I thank the gentleman for yielding.

Mr. DAINES. Thank you, Senator BURR.

I will tell you why that permanent reauthorization is important in places like Montana, Colorado, and North Carolina. It is because it takes time to put together some of these consolidations of checkerboard lands to make this all work.

Here is an example of that right here. This is a project that was executed. And you see we are not playing checkers here; this is the way the land management works oftentimes out West. So to make all that happen, to get the parties—the State, the Federal Government, and a private landowner—together here, sometimes takes years.

What we don't need to have is the Federal Government back here—Congress—providing uncertainty about whether we are going to fund a process that oftentimes takes years, getting the landowners, the State, and the Feds together to execute a consolidation that gives the public access to those public lands. That is why permanent reauthorization is so important, to take that off the table. There are enough challenges already with the LWCF and with trying to make these transactions work without having Congress get in the way.

I thank you, Senator BURR, for your passion, for your steadfast commitment to the permanent reauthorization. And keep reminding us that it costs the taxpayers nothing. I think it is a pretty good value.

So, again, I want to thank both my colleagues here. They have been strong leaders on this issue. We are going to keep fighting. As Senator BURR just ticked down from 100 days, now we are down to 4 days. We are going to fight for this every opportunity we have. We all urge our colleagues to listen to the stories you heard today, listen to your constituents, and join us and finally reauthorize to save LWCF.

Thank you.

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

TRIBUTE TO JODI NIEHOFF

Mr. MERKLEY. Mr. President, I want to take a moment to recognize a wonderful member of my team who, after 9 years, will be leaving us at the end of this week.

For more than 9 years, Jodi Niehoff has been the heart and soul of our operation. She has been our administration and correspondence manager. She has been our intern coordinator and our unofficial planner for party events celebrating legislative victories or comings and goings of staff or birthdays. She has been the hostess and MC of our annual holiday gift swap and so many other things, adding to the esprit de corps of our team.

My team has pulled together a few stats, and these statistics indicate just some of the work she has done over these years during which I have had the privilege to work with her.

She has been a staunch believer not just in communicating with constituents but doing so quickly and in a meaningful and heartfelt way. Under her leadership, we have worked to have a substantive response to every single letter that comes into our office and try to get out that response, whenever possible, on the same day or the next day and when more research is needed, to do so within a few days. It is a huge challenge because so many people now are communicating via email, and we have weeks in which we can receive 10,000 or 12,000 or 14,000 letters. So in the course of responding to all those diverse issues that constituents have raised, Jodi has guided our team in producing 5,774 unique letters that are now in our constituent correspondence

library. That averages out to nearly two letters a day 365 days a year for more than 9 years.

During her time on our team, she has mentored 227 interns, and 14 of those interns have gone on to join our team as staff members. So helping to enable them to have a significant experience here on Capitol Hill is a real contribution to the public.

I first came here as an intern—a summer intern for Senator Mark Hatfield from Oregon—and at that time, you only had a few interns. You didn't have that much mail. There were three of us over the course of the summer. I was the last to arrive, so it was my job to come in early, run all the letters—of course they were all paper letters—run the envelopes through the cutter, take out the sheets of information, the letters, and stack them into one of four stacks for the different correspondence.

Well, that now sounds like such a simple task compared to that which Jodi has guided with more than 200 interns and more than 5,000—almost 6,000—unique letters being drafted to respond.

Thank you so much. Jodi, you will be dearly missed by everybody here in Washington, DC, who has had the pleasure to know you, to work alongside with you, to partner with you over nearly a decade. I wish you all the best as you head back home to Minnesota to begin the next chapter of your life and the next chapter of your family's life. I know that the next chapter will be one in which a new set of individuals will have the pleasure, the delight, to be able to work with you.

We invite you back here anytime. We wish you and your family all the best. Thank you, Jodi, for your service to our team and your service to our Nation.

NOMINATION OF BRETT KAVANAUGH

Mr. President, today I filed a lawsuit related to a violation of the separation of powers.

Our Constitution lays out a very clear framework in which the President of the United States nominates and the Senate proceeds to review the record of an individual in order to determine if that individual is of fit character to serve. This strategy came as our Founders struggled with how to enable staff to fill key positions in the executive branch and key positions in the judiciary, and it is something that Hamilton wrote about extensively in his Federalist Papers.

No. 76 was written in 1788 as a letter to the people of the State of New York. In it, he addressed this separation of powers at length. He said that the Founders had considered giving the assembly—that is a large group—the ability to choose those who would fill posts in the executive branch as a check and balance to the President but that they had considered the fact that Senators would probably horse trade, that one Senator from one State would want their friend in one position and another Senator from another State

would want a different person, and that that horse trading would not produce the best set of individuals to populate the executive branch or to serve as judges. So they came to rest on the idea of having one individual—the President—nominate individuals to serve.

Here is a short piece of his longer discussion. He said: “The sole and undivided responsibility of one man will naturally beget a livelier sense of duty and a more exact regard to reputation. He will, on this account, feel himself under stronger obligations and more interested to investigate with care the qualities requisite to the stations to be filled, and to prefer with impartiality the persons who may have the fairest pretensions to them.”

He goes on to applaud the many merits of having one individual bear the burden of making these nominations.

But then, of course, it is a nomination; it is not an appointment. And to be appointed, the Senate must confirm.

He addresses this question of the role of the Senate. Alexander Hamilton, writing to explain the action and the design of the Constitution in his letter to the people of New York in 1788, says:

To what purpose then require the co-operation of the Senate? I answer, that the necessity of their concurrence would have a powerful, though, in general, a silent operation. It would be an excellent check upon a spirit of favoritism in the President, and would tend greatly to prevent the appointment of unfit characters. . . .

He goes on to say that a President might be influenced by favoritism to people in his own State or favoritism to people in his family or family connections or favoritism because he had a friendship or a pursuit of popularity triumphing over professional skills. So for all of these reasons, the Senate process exists to review the record of the individual and to determine, as Hamilton put it: Is that individual a fit character or an unfit character?

Now, we all in the Senate took an oath of office to uphold the Constitution, and, certainly, that means defending and exercising our responsibility under the advice and consent clause of the Constitution. We cannot interfere in the ability of the President to nominate. That is the President's responsibility. We can give our suggestions, but in the end, whatever the President says in regard to an office, whatever person the President identifies, that is the nominee, and we cannot interfere with that. But so, too, then, the President cannot interfere in the exercise of the Senate in reviewing the record of the individual. Certainly, the President can share his or her insights on the individual and his or her encouragement to speed up the process but cannot interfere in the underlying exercise of reviewing the record.

But here we are in this extraordinary moment where the President of the United States has crossed the boundary between the separation of powers and has proceeded to interfere with the de-

liberations of the Senate, and he has done so not once and not twice but at least on three significant occasions. I will proceed to share those occasions.

The first was the President's team intervening to stop the Senate from accessing Nominee Kavanaugh's records when he served as Staff Secretary to President George W. Bush.

Senator LEAHY, the longest serving Member of the Senate and a longtime member of the Judiciary Committee notes in a letter that the committee has a “longstanding, bipartisan expectation . . . that any materials produced while a nominee was a public servant that could shed light on his or her views, thinking, or temperament, that are not privileged, should be subject to public scrutiny and carefully considered by the Senate prior to confirmation.”

Now, this was a view that was a bipartisan view. It is a view that was expressed by a senior member of the Judiciary Committee—a Republican Member. That individual, Senator CORNYN, proceeded to note that the documents that Judge Kavanaugh had “generated . . . authored . . . or contributed to” during his tenure as White House Staff Secretary should be conveyed to the Committee. This “just seems like common sense,” he added.

In other words, it just seems fundamental to our responsibility here in the Senate to review the record of Judge Kavanaugh, but just days after the senior Republican member of the Judiciary Committee expressed those sentiments, Republican Senators were summoned to the White House by the White House Counsel, Donald McGahn, and immediately following that summoning and those instructions—those directions from the White House—suddenly, Senators were being denied the opportunity to see those documents. In fact, it went so far as the chair of the Committee proceeding not to ask for the documents after this direction from the White House. So, certainly, that intervention did directly compromise our ability as Senators to review the record of the nominee and, therefore, violated the separation of powers and violated each of our abilities to fulfill our constitutional responsibilities.

The second occasion is that Defendant William Burck, who has a series of close connections to the White House, proceeded to exercise the power of executive privilege on behalf of the President to deny the Senate access to 100,000 pages of White House Counsel documents. What did this individual say when he was exercising this power of censoring the documents that would be obtained by the Senate? He said: “The White House . . . has directed that we not provide these documents. . . .”

That is a direct interference in the advice and consent deliberations of the Senate, and all of us together—Democrats and Republicans, northern Senators and southern Senators, eastern

coast, western coast, heartland—should defend our responsibility under the Constitution to provide advice and consent, which means the ability to review the record of the nominee.

Then there is a third occasion where Defendant Burck proceeded to label documents being presented to the Senate as “committee confidential.” In fact, the Committee consulted with him during the process to see what the extent of this was and why they were done.

There is no index that provides information to the Senate on why so many documents were blocked by Burck from ever getting to us. That log or that index doesn't exist saying: Yes, we looked at this, document and here is why executive power prevails. There is no record or log for why more than 141,000 pages of documents were labeled “committee confidential,” preventing Senators from proceeding to talk about the contents, to have the contents examined by experts, to have the contents examined by the public, to take feedback from the citizens of the United States, to have staff be able to look at these documents and to be able to review them, and to be able to get feedback on them to fulfill our responsibility as Senators to examine the record of the nominee.

Thus we are in uncharted territory. Never before have we seen this direct, substantial, and extensive intervention by the President in violation of the separation of powers under the advice and consent clause of the Constitution. Thus, it is important that we ask for judicial intervention.

There is no more important document to us than the Constitution—our “we the people” Constitution—of the United States of America. We will be failing if we do not aggressively pursue our responsibility to review the record of a nominee. So let us do that. Let us ask the courts for intervention to ensure that we have access to this record.

We have had over the past few days new information regarding the nominee—new information from women who have shared their difficult, difficult experiences. What would be the appropriate conduct here in the Senate? It would be for the FBI to investigate—not a criminal investigation but a background investigation. That was accorded to Anita Hill in 1991, a reopening of the background investigation to get the facts.

How is it that a Senate and a President that could support the proper role of the FBI in 1991 will not stand up today for fairness for women who are coming forward?

Why is it that the nominee, steeped in the law, who has said he wants a fair hearing—he wants a fair hearing—does not demand an FBI investigation so it is fair to him and fair to these three women—Dr. Ford, Deborah Ramirez, and Ms. Swetnick—who are coming forward? They are being treated very poorly by this institution. They are being treated as if they are a problem,

when they are, in fact, courageous Americans helping us to do our advice and consent responsibility to understand the record of the individual and whether the individual is fit or unfit.

To those who say that, well, these might not be true, wouldn't you be the first, then, to stand up and say that the FBI should reopen the FBI investigation and that nothing should go forward until the President authorizes that? If you want fairness, you want facts.

Here we are. Not only are we failing the test of 1991 in terms of the FBI investigation, but we are failing the test in terms of the witnesses. In 1991, numerous corroborating witnesses came forward to share and expand the dimensions of the events under consideration with Anita Hill. Now the Judiciary Committee is saying that we are only going to allow a "he says, she says" dynamic. This is absolutely unfair to the women who have come forward.

Now the Judiciary Committee is saying they are going to bring an individual to prosecute, as if this is a trial of the woman that is coming forward. How wrong is that to try to turn this into a trial? If you want a trial, well, then, shouldn't you have the FBI investigate and get the facts? It shouldn't be a trial. We should be listening carefully, and we should be allowing fairness to both, those with corroborating information and, certainly, for the nominee, as well as those who are sharing their experiences from the past about the nominee. Give transparency and opportunity to both but not this farce of a hearing planned by the Republicans on the Judiciary Committee.

We should be able to do so much better. We have had decades of experience since 1991, since we went through a parallel situation of allegations regarding personal conduct. How is it that now, 27 years later, we are doing so much worse in respecting women coming forward to share their stories. Why are we doing a worse job of respecting dignity, a worse process in terms of listening to facts, a worse process in terms of trying to turn it into a trial of a courageous woman who came forward to share her experiences?

Well, I have never felt so burdened by the misconduct of this Chamber as I feel right now. Let's stand up for decency and dignity and honor those who have come forward, respect them, listen to them, and explore the stories and the experiences they share so that their voices can be fairly heard before this body.

Let us not let the President of the United States trample all over the Constitution by violating the separation of powers and blocking our Chamber from receiving the documents necessary to review the record of the nominee.

The PRESIDING OFFICER (Mr. GARDNER). The Senator from Wash-

NOMINATION OF BRETT KAVANAUGH

Ms. CANTWELL. Mr. President, I am here this afternoon to join the voices of

my colleagues—Democrats and Republicans—in making sure this process that is going to continue to play out over the next several days is a fair one.

I will say to people right now that I am not for Judge Kavanaugh. I don't believe that his decisions and his views are in the mainstream of judicial opinion in the United States of America. I believe that not just about a woman's right to choose. I believe that not just about his decision on net neutrality. I definitely believe that about his decision on executive branch power.

My views are known. I would expound on them if I thought that is what we are here to debate today, and maybe that will happen in the future. But I am here this afternoon to ask my colleagues to think about this issue of sexual assault in a new way. It is not a new way that you have never thought of before, but a way that says it is time for us to slow down and have a nonpartisan investigation into the accusations that have been made by three women.

The reason that is so important is that in the last several days there have been comments that she is mixed up or confused or can't remember. I will tell you this: I guarantee you that any woman in the United States of America who has been assaulted remembers that she was assaulted. She may not remember exactly what the person was wearing, and she may not remember every person who was there, but I guarantee you it is seared into her mind, into her heart, and into her soul that she has been assaulted.

The question before us in the U.S. Senate is, Are we going to take seriously the process and not rush it to a conclusion and not join the ranks of other institutions that have swept allegations under the rug?

We all know where the Catholic Church is today, with information and documentation of accusations where people decided that, no, those couldn't be true; no, we don't have to listen; no, we can do something about it.

When I think about the fact that at least 332 victims were abused by one person in the gymnastics program at Michigan State and people said "We don't have to pay attention to that," when I think about what happened at Penn State to young boys that people deny, that this couldn't be what is happening with Jerry Sandusky—it couldn't possibly be happening—I know that this is a cultural problem.

I have heard statistics that cite that anywhere from 20 percent of women in the United States of America have faced sexual abuse to a website by the Centers for Disease Control that says it is one in three women. One in three women in the United States of America has faced sexual assault or abuse, and we don't think it is a crisis? I am pretty sure there are more women in the United States of America who have been the victims of sexual assault than of the opioid crisis, yet we call that a crisis. What are we doing to make sure

we are not like other institutions that have not fully addressed this issue?

We do not want to be the ones who rush through a process that demonstrates that the vote on the Supreme Court is more important than getting the truth. We need a nonpartisan investigation into the facts of these allegations against this Supreme Court nominee.

When I think of the tragedy that faces Native American women, it breaks my heart. Over 50 percent of Native American women have faced sexual assault and abuse—50 percent. How is that not a crisis?

So my colleagues, I know, do not think they are doing damage. They think they are sticking up for a nominee. They think they are sticking up for somebody that their team—their bench—pulled out of the ranks of their party or their backgrounds suggest that he should be the nominee. I understand their desire. But the desire today has to be that we do not make the same mistakes as other institutions, that we pay attention to these things and we take them seriously.

I implore my colleagues to do so. Why? It is because every victim in the United States of America who thinks that you are not giving these accusations their due is reoffended in the belief that society does not take this crisis seriously.

So I implore my colleagues: I know you think you are playing on a political scorecard to get something done for your party, but please make sure we have a thorough, nonpartisan investigation into these accusations so that we can tell victims of sexual assault in the United States of America that we treat these accusations seriously. We did our job. There is no rush, but for the actual facts that we can move forward on.

I know we can have more conversations about this. I know we can, and we should. We should. We had these conversations during the debate on the Violence Against Women Act, and we made sure that Native American women are covered under that law—a tricky problem in the Federal law that made a gap even worse by not having the aid and support—and now, with Federal help and support with Indian trial courts, we have created a better system to bring those perpetrators of those crimes to justice.

But we can, as an institution, also come to terms that this is a cultural problem in the United States of America, and we too must do our part. We must help. We must not keep re-injuring people by saying that we are not going to take the time to find the truth.

So I implore my colleagues, please—and for those of you who have spoken out, like my colleague from Arizona: Thank you. Thank you for helping us get to the truth in this matter. Thank you for standing up for women, for men, for Indian Country, and those who have faced this abuse. Let's make

sure that this institution moves in a serious but deliberate and cautious path and does not spend its time tomorrow prosecuting a woman but listening to the facts and information that she gives.

I thank the Chair.

I yield the floor.

The PRESIDING OFFICER (Mr. KYL). The Senator from New Hampshire.

Ms. HASSAN. Mr. President, over the past weeks, we have been reminded yet again why it is so hard for survivors of sexual assault to come forward. For far too long, women who bravely share their stories of sexual assault have been attacked, diminished, and marginalized, and I am sad to say that includes by some of my fellow Senators.

In some respects, we have seen remarkable progress since the “me too.” movement began roughly 1 year ago. More women have felt empowered and supported to speak out, and our society has begun to grapple with the horrific and widespread prevalence of sexual harassment and assault, especially in the workplace.

But, sadly, these past weeks have been a reminder that in many ways we are still stuck in 1991; 1991, of course, was when Anita Hill courageously testified before the Senate, sharing allegations of sexual harassment by then-nominee to the Supreme Court Clarence Thomas. Women and men across the country watched in horror as Dr. Hill was attacked and disrespected by the men of the Senate Judiciary Committee.

Yet, here we are, 27 years later, and Senate Republican leadership has made clear that they will do everything they can to ram Judge Kavanaugh’s nomination through. They have come up with a process that is even worse, even more disrespectful and disheartening to survivors than the one we saw in 1991.

In 1991, the FBI investigated allegations of sexual assault against Mr. Thomas. The hearings stretched on for multiple days, and some corroborating witnesses were allowed to testify.

In 2018, Republican leadership has indicated that none of those things will be allowed to happen—none of them. They have simply scheduled a check-the-box hearing, rejecting calls to ask the FBI to reopen its background investigation, refusing to allow other witnesses or evidence to be heard, and limiting the questioning from Senators.

Lawyers for Dr. Ford announced that they have submitted sworn affidavits to the Senate Judiciary Committee from four individuals whom she shared these allegations with well before President Trump nominated Judge Kavanaugh to the Supreme Court. Yet, incredibly, not a single one of these corroborating witnesses will be called to testify before the committee, nor will the witness that Dr. Ford alleges was in the room while she was assaulted, and the FBI will not be asked

to speak with these or any other witnesses either.

This process isn’t a serious attempt to get to the truth. It is a complete sham, and some of my colleagues are hardly even trying to hide the fact that this is not a serious investigation, as they pledge that these credible allegations will not stop Judge Kavanaugh’s nomination.

Some of my colleagues have complained about how unfair it is to Judge Kavanaugh that these women have dared to come forward, and they have shown little sympathy for the attacks these women are facing or interest in the corroboration they are willing to offer. They have ignored the real questions about Judge Kavanaugh’s credibility and truthfulness and his blatant disrespect for women.

Make no mistake. In 2018, survivors are still not being taken seriously, and that is despite the extraordinary prevalence of sexual assault, which is hard to even quantify, given that an estimated two out of three sexual assaults go unreported.

It is simply unacceptable that survivors are still not being listened to and taken seriously.

To President Trump and Republican leadership, I say: We will not stand for these attempts to silence women and shove them back into the dark. These allegations of sexual assault are extremely serious, and they are credible. The way that these survivors have been attacked is disgusting.

Yet even before we were aware of these allegations, it was clear that Judge Kavanaugh should not serve on the U.S. Supreme Court. I watched Judge Kavanaugh’s responses to my colleagues during his initial nomination hearings. I examined his judicial writings and past public statements. I reviewed the limited number of documents that Republicans shared about Judge Kavanaugh’s time working in the White House. What the totality of this record makes abundantly clear is that on issue after issue, Judge Kavanaugh has promoted a judicial philosophy that diminishes the rights of individuals, particularly women and people of color, puts corporations before people, and promotes a partisan rightwing ideology at odds with the will of the American people.

But in addition to a record and an outlook that is disqualifying, there is Judge Kavanaugh’s lack of credibility. Even in his initial hearings, Judge Kavanaugh raised serious questions about his credibility amid a lack of truthfulness on a range of issues stretching back to his time with the Starr investigation and his work in the Bush administration—questions about his credibility that have only been reinforced by his response to the multiple allegations of sexual assault he is now facing, as evidenced by those who knew him coming forward to dispute his statements.

The eyes of the country and the world are upon us, and I fear what they

will see in the coming days. It is not too late for the Senate to pause this sham process and make clear that this body listens to survivors and takes their experiences and their pain seriously. However, if the Senate continues on its present course, it will be an abject failure by this body that will not soon be forgotten.

I yield the floor.

The PRESIDING OFFICER (Mr. ROUNDS). The Senator from Rhode Island.

SAVE OUR SEAS ACT OF 2018

Mr. WHITEHOUSE. Mr. President, I have the happy occasion to actually pass a law. It is one that I have been working on for some time. So I have taken the opportunity to come to the floor to actually move it through myself. Yet, before I do that, there are a considerable number of thank yous that are in order.

The first and foremost thank you is to Senator DAN SULLIVAN of Alaska, who chaired the subcommittee hearing that first moved this issue before the Senate in a bipartisan fashion within the Environment and Public Works Committee. It was a really important thing for Senator SULLIVAN to have done. In part, it solved the problem between the Environment and Public Works Committee and the Commerce, Science, and Transportation Committee over jurisdiction in this area. We are very fortunate that Senator SULLIVAN served both as the chairman of the relevant Environment and Public Works Committee and also of the Fisheries Subcommittee of the Commerce Committee so that he was in a position to negotiate with himself over jurisdiction and, obviously, come to a happy conclusion.

I thank Senator INHOFE, who was an early sponsor of this legislation. He attended the hearing. I will confess that when Senator INHOFE came to our hearing on the Environment and Public Works Committee on an environmental matter, I was not convinced that it was a positive turn of events for the bill, but Senator INHOFE could not have been more gracious and took a very strong interest in this piece of legislation. He was an original cosponsor, so I thank him as well.

I thank Senator MURKOWSKI. In her being from Alaska, she joined Senator SULLIVAN. Alaska has a terrific problem with the issue that we are addressing. The issue at hand is marine plastic debris—the plastic waste with which we are filling the ocean. In Rhode Island, we do beach cleanups whereby people go up and down the beach and pick up the plastic trash that has washed ashore. We do those with trash bags. In Alaska, they do those with front-end loaders, dumpsters, and barges, because Alaska faces the Pacific, and there is far more plastic waste and trash in the Pacific. The worst sources for plastic waste and trash are Asian countries, which have