

Texas celebrates the 183rd anniversary of its independence from Mexico.

Texas became a free republic—for 9 years our own nation—and soon after became one of these United States.

As is tradition, in commemoration of the brave Texans who fought and died for liberty and the rule of law, let us reflect a moment on the immortal words of Colonel William Travis, the leader of the besieged forces at the Alamo. His clarion call for reinforcements resounded around Texas and still rings with strength today.

Indeed, it has a special place in my heart because the very first time I spoke on this Senate floor, I read from Travis's letter from the Alamo. It was during Senator RAND PAUL's extended filibuster in defense of individual liberty. It fit then, and it fits now. It is a letter that has stood for the ages—written to us today, demanding that we stand with all good and free people against oppression and reminding us that there are some things worth dying for.

The letter reads as follows:

Commandancy of the Alamo,
Bexar, February 24th, 1836

To the People of Texas & All Americans in the World:

Fellow citizens & compatriots—I am besieged, by a thousand or more of the Mexicans under Santa Anna—I have sustained a continual Bombardment & cannonade for 24 hours & have not lost a man.

The enemy has demanded a surrender at discretion, otherwise, the garrison are to be put to the sword, if the fort is taken—I have answered the demand with a cannon shot, & our flag still waves proudly from the walls. I shall never surrender or retreat.

Then, I call on you in the name of Liberty, of patriotism & everything dear to the American character, to come to our aid, with all dispatch—The enemy is receiving reinforcements daily & will no doubt increase to three or four thousand in four or five days.

If this call is neglected, I am determined to sustain myself as long as possible & die like a soldier who never forgets what is due to his own honor & that of his country—Victory or Death.

William Barret Travis
Lieutenant Colonel Commandant

P.S. The Lord is on our side—When the enemy appeared in sight we had not three bushels of corn—We have since found in deserted houses 80 or 90 bushels & got into the walls 20 or 30 head of Beeves.

Travis

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant legislative clerk proceeded to call the roll.

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

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

NOMINATION OF ERIC D. MILLER

Mr. MURPHY. Madam President, there have been some days recently when I kind of wonder why we even show up to the Senate any longer. This job is not what it used to be.

When I get the chance to read about the history of the Senate, I read about

these things called debates that we used to have on the floor of the Senate. I read about something called an amendment, which apparently is a way that an individual Senator calls up a proposal or an initiative and puts it on the floor for an up-or-down vote.

Those things don't really happen anymore in the U.S. Senate. We don't have open-ended debates on the big policies of the day.

I get it. When Republicans control the Senate, they control the agenda. When Democrats control the Senate, they control the agenda. At the very least, I would have hoped that the Senate majority, now in Republican hands, would put their policy initiatives before the Senate so we could have an open debate. That doesn't happen any longer. All we seem to be doing these days is voting on judges.

Now, that is a really important function of the U.S. Senate, and I am glad we are doing it, but today we are going to do something truly exceptional, which causes me, once again, to wonder what my job here is and to feel a little bit of sadness as to how it has changed and how much less substantive the input of each individual Senator is in the direction of this country.

Today, for the first time in the history of blue slips, we are going to vote and, I assume, confirm a judge who didn't get one blue slip from either of the home State Senators from which that judge comes from and is going to serve.

This has never happened before. Yet today we will vote on Eric Miller's nomination to be a judge on the Ninth Circuit from Washington. He is 43 years old, so he is going to be there for an awfully long time.

Eric Miller did not get a blue slip from either of Washington's Senators. Let me say that again. That has never happened before in the Senate. In fact, the last time a judge was confirmed without both blue slips was in 1989. That was the last time before this Congress that any judge was confirmed without both blue slips.

In that instance, it was a Democratic chairman of the Judiciary Committee who was confirming a judge over the objection of another Democrat. This is very different. These are two Democratic Senators from Washington, neither of them returning a blue slip on Eric Miller. Yet the majority has decided to go ahead and proceed with this confirmation.

This is a serious break with precedent. The last time Democrats controlled the U.S. Senate, Chairman LEAHY was the head of the Judiciary Committee, and he did not hold a single hearing on an Obama nominee who did not have two blue slips—didn't hold a single hearing even when there were exceptional circumstances. There was one time when Senators initially returned the blue slips but later rescinded them. Those are two Republican Senators who submitted them, rescinded them—did not go forward with the nominee.

There was another circumstance in which Senators had recommended a nominee for the district court but then refused to submit blue slips when that judge was elevated to the appellate court. Once again, Senator LEAHY honored that precedent.

Now Republicans have already taken advantage of Senator LEAHY's decision to uphold precedent. I will just give you a couple of examples.

In the Seventh Circuit, Michael Brennan was confirmed for a seat that had been held open by Republicans since 2010. So, had Chairman LEAHY decided to move forward without blue slips, that Seventh Circuit seat could have been filled, but because he upheld tradition, it was left open, filled by Republicans.

Similarly, for a district seat in South Carolina, Marvin Quattlebaum was confirmed to a seat that had been held open by Republicans, again, since 2013.

So Republicans have already taken advantage of the fact that Democrats upheld the blue-slip precedent, but now they are taking it a step further.

In the past, when Republicans have changed the rules here, as they did on the number of votes required to elevate a judge to the Supreme Court, they claimed it was because Democrats started it. I don't agree with that rationale. If you found the change for district court nominee so objectionable, I am not sure why you would decide to go further, but there is no excuse of that kind here. This is just a brash power grab because there is no claim that Democrats, when they were in the majority, violated the blue-slip principle. This is a fresh violation of tradition here in the Senate.

There is a reason we give deference to home State Senators. In these States and in these districts, there are particular issues that are important to their constituents that may be unique to their area in which they have more knowledge than the rest of us do. Some of the reasons Senators MURRAY and CANTWELL are so concerned about this nominee are his extremist views on the issue of Tribal sovereignty, which is a very big deal in the State of Washington, and the idea that they are going to have somebody sitting in the Ninth Circuit who has these extreme views on limiting the rights of Tribes is of great concern to their constituents. That is why, traditionally, we have allowed for individual Senators to have that kind of voice and that kind of say. No longer.

I would just hope that my Republican friends understand how this works. Once the rule is gone, once the tradition is gone—listen, I am a relatively junior Senator here, so I don't want to speak for those who are going to be the chairman and ranking members of committees in the future, but I would imagine it is not coming back. I would imagine—once we get through today and Republicans have decided that individual Senators, unless they happen to be a member of the majority party,

no longer have any say in who is appointed to their circuit courts—that horse has fully run out of the barn and across the field.

I don't know if that is a good thing for this body because it is just another hit. It is just another assault on the traditions of this place in which we used to try to work things out together, in which we used to honor the role that individual Senators have some say over what happens in their own States and their own regions.

I do sometimes wonder why we all keep on showing up here if we don't really debate legislation as we used to, if we don't get to offer amendments anymore, and if we don't have any say any longer in the judges who are appointed in our States and our districts, and this is just another day that makes me question that as well.

I yield the floor.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. COONS. Madam President, I rise today to offer brief remarks on the nomination of Eric Miller to serve on the U.S. Court of Appeals for the Ninth Circuit.

I have concerns about Mr. Miller's controversial record—some of his ideas and his jurisprudence—which I have spoken to on the Senate Judiciary Committee, which informed my vote against him on the committee.

But today, I want to speak about my reservations about this body's moving forward with his confirmation, given that neither of his home State Senators have returned a blue slip.

Let me briefly talk about what a blue slip is and why it matters. It is not in the Constitution. It was not something imagined by the Founders. It was something developed by the Members of this body to put one further bumper on the power of the President to nominate Federal judges and then for the Senate to carry out its constitutional advice and consent role. For a long time, it worked fine, and I actually had a terrific experience with the blue-slip process. Don McGahn, as the White House Counsel, and my senior Senator, TOM CARPER, and I, when we had a vacancy—two vacancies, actually, in the Federal district court in Delaware—went to our local bar and asked for them to put together a committee to interview potential candidates.

We went to the White House Counsel and spoke about the importance of the Delaware district court and the process we were following, and, in the end, out of a very wide pool of initial candidates and the folks who were interviewed by a broad and nonpartisan selection committee of our local bar, we advanced three names to the White House. The White House picked two, and they were ultimately nominated, and Senator CARPER and I both returned the blue slips on them. They proceeded. They were both confirmed. They are now seated as district court judges.

That is the way this ought to work. Why does it matter? It matters because

our States are different. We are the United States, and each of our States has slightly different cultures, traditions, and communities. The point of having a Senate made up of 100 representatives of our 50 States is for each of us to come here and carry forward some of the values and traditions of our States.

I am a member of the Delaware bar. It is a bar with a great and proud tradition. It is a bar with a somewhat different culture—a much more collegial culture, I would argue, than many States around us, and it was important to me to be able to advocate to the President, to the White House, for the nomination of folks who would represent the best of our bench and bar.

Look, the President and I are in different parties. I understand that we will have different policy positions, but in order to get the absolute best and brightest of the American bar and to have them reflect the values and priorities of the State Senators are elected from, the blue slip was developed.

We have had a difficult and divisive and partisan period here in the Senate for as long as I have been here. I don't think it is because I am here, but it has been as long as I have been here—since 2010. We have had a number of regrettable changes in the policies and the practices and the culture of this place, but proceeding with a confirmation vote of a nominee who was not supported by either home State Senator for a circuit court position is unprecedented.

I think, before we proceed, this body should stop and reflect on what this means for our future. In a district as small as Delaware, it is likely the Senators actually know the nominees. In a circuit as large as the Ninth, which is the largest, geographically, in our whole country, it is almost a certainty that the Senators will not know the judges nominated by the President to represent their circuit.

The blue slip has long been a procedural barrier to the President's nominating people who did not reflect the bench and bar of the States from which they are drawn. The leader is pushing this forward, even over several other nominees pending on this floor.

One other piece of the process that brought us to today to a vote on Eric Miller's nomination for the Ninth Circuit that is worth commenting on is that the confirmation hearing on the Judiciary Committee was held while we were not in session. No Democrat was present to question this nominee. The questions that were raised and the comments that were made were only in writing and for the RECORD, and my understanding is, this questioning is very brief—just 5 minutes before just a handful of Republican Senators, I think two.

This young man is going to be given a lifetime appointment to one of the most important judicial posts in our country. Frankly, my own kids have to work longer and harder and answer

more questions to get a good grade in high school than this gentleman did in terms of the confirmation process of the Senate Judiciary Committee. I am very worried about the precedent this sets, about what it says—which is that we continue to push past norms and traditions in this body—and about where we are headed.

It is my hope that some of my colleagues on the Judiciary Committee will work with me in the months ahead to recognize that there is a long, now-bitter path of he said, she said, who shot John, who acted first, which has resulted in changes to the whole nomination process.

I think we can yet pull back to a place where those who are nominated are the best and brightest of our country, where, in the process, there are protections for the minority and the majority, and where we can all end up voting proudly for those who are nominated to serve on the Federal bench of the United States.

I increasingly hear commentators on cable talking about judges as if you can know how they will vote based on the President who nominated them. So-and-so is described as a Bush judge or a Reagan judge or a Clinton judge or an Obama judge, a Trump judge or a Bush judge, as if that tells you everything you need to know about a judge. It should not.

In my State, it doesn't, and it is my hope that we can yet pull ourselves back from the brink of one more step to a place where our judges are seen not as the black-robed individuals dispensing independent justice but as folks wearing blue and red jerseys advancing a partisan political agenda. That way lies disaster for our constitutional Republic.

Both parties have taken steps that have led us here. Both parties need to take steps that will heal this, and I intend to vote against the nomination of Mr. Miller because of my concerns about these procedural changes that I think are so destructive.

I yield the floor.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

DECLARATION OF NATIONAL EMERGENCY

Mr. TILLIS. Well, ladies and gentlemen, yesterday I took a position that I think some people consider to be unpopular—particularly some of my friends back in my State—that I thought I would come back and explain. It has to do with the President's Executive action. It also has to do with communicating an important and somber subject.

There is a crisis at the border. I have been there. I didn't read about it. I didn't watch it on TV. I didn't read a tweet about it. I invested time down