

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

there, hours and hours with border security. I was on shallow draft boats. I was on horseback. I have been on ATVs. I spent a lot of time down at the border, and the one thing I will tell you is that the President is absolutely right. There is a crisis on the border—and not only on the southern border, but I will state that ranchers on the northern border also believe they have challenges that this President is right to address.

I also happen to agree with a good portion of how the President is going to do it after Congress failed to do its job. Keep in mind that over the last year, we have had on this floor Democrats and Republicans voting for as much as \$25 billion for border security—Democrats and Republicans—and now we are fighting over a fraction of that.

The President needs to act. He got an appropriation of about \$1.5 billion through the negotiated settlement a couple of weeks ago, and now he is taking the only action he can until Congress acts, and that is to figure out other sources of funding that he believes he can use within current statutory limits. The way he has done that is he has first taken the \$1.3 billion that Congress did appropriate. He has another \$2.5 billion and another \$600 million that I believe he is right to reprogram, send to the southern border, and probably make some investment in the northern border.

Here is where I have a respectful difference of opinion with the President and the administration: It is the emergency order, that under the emergency powers act, he is using his authority to appropriate the remaining funds.

First off, those funds will come what we call the MILCON budget. That is military construction. Right now, we are trying to find out what that means—which projects we think are critical to help the readiness of our soldiers, sailors, airmen and marines; which investments that we were going to make, that we have already determined we should make in military construction, are going to be put on hold while we reprogram those dollars to go to the southern border.

The real problem I have is that this is only a fraction of what we all know we need to secure the border.

I want to go back to the humanitarian crisis, though. My wife and I had an interesting discussion the other night. She wasn't too happy when I took this position originally. I am still not sure if she is happy.

But to understand why I respectfully disagree with the President, you have to understand, again, as I started this discussion, that there is a crisis. There are people dying. There are millions of doses of poison coming across the border every single year that are killing tens of thousands of people. That is a crisis. There are thousands of people crossing the border and dying. They have what they call coyotes, human traffickers who will get them across

the border, get people who will pay thousands of dollars to cross the border, and then they will say: Civilization is just an hour away.

It is an hour plane ride away. Most people don't understand the sheer size and scale of Texas, particularly those crossing the border in the dead of night, working with basically organized crime. You have to pay a toll to get through the so-called plazas that run the northern border of Mexico.

My problem right now has to do with an Executive order, the emergency declaration that the President intends to send to Congress.

My wife and I were having a discussion. She said: You just said you agree with the President that there is a crisis on the border; you agree with the President that we need to send resources down to the southern border and work on the northern border; you agree that Congress has failed to act; and you agree that if you were President, you would do exactly what he is doing.

I said yes.

She said: Why don't you support it?

I said: Because I am not the President. I am a Member of the U.S. Senate. I am a Member of a coequal branch who actually believes that this action falls within our purview. Now we are going to find out because I am sure we are going to be challenged in the courts. But I also worry not so much about this one—frankly, even the way this money is going to be programmed, I agree with. What I worry about are future Presidents and what they may do if we set this precedent going into the future.

We actually have a Democratic candidate running for President—this is one hypothetical. There have been some far-flung ones that I am not sure I completely agree with, but let me give this one. It relates to border security. We have someone who is a Member of this body who has publicly said that their priority, if they were elected to be President, would be to tear down borders, tear down walls, build bridges, and open the borders. Well, if you argue that there is a humanitarian crisis—and I have said there is already is one—what would prevent that President from issuing an Executive order that would divert military construction funding to tear down the walls that are going to be built now? If we give this President—a President I support and a President whose policies and priorities I agree with—that authority, that could be aiding and abetting a future President and empowering them beyond what I believe their authorities are, vested in the Constitution in article II.

So I have come here today in part to maybe take another stab at explaining to my wife why I have taken this position but also to explain to the American people and folks in North Carolina and across this country. I agree with the President. I know we have a crisis we have to take care of. We have a na-

tional security crisis, a homeland security crisis, and a humanitarian crisis. It is not the end; it is a portion of the means.

I applaud the President for taking the action up here and getting things going. I hope that over time, we can find a way to fully fund the border strategy on a bipartisan basis and also address other immigration issues that I believe are pressing for this Nation.

Madam President, thank you for allowing me to come to the floor and explain my position.

If anybody in North Carolina has any questions, I know they know how to get ahold of me because my phones are blowing up right now. But I do want to explain it to them in a way that makes sense. I am a steward of the U.S. Senate. I am a steward of the article I branch. That matters to me.

Thank you, Madam President.

The PRESIDING OFFICER. The Senator from Minnesota.

NOMINATION OF ERIC D. MILLER

Ms. KLOBUCHAR. Madam President, I rise today to join many of my colleagues who have come to the floor and to express my opposition to the nomination of Eric Miller to be U.S. circuit judge for the Ninth Circuit. I have already expressed that opposition in my vote in the Judiciary Committee, but I would like to explain this in more detail.

There are several troubling aspects of Mr. Miller's background, particularly his consistent opposition to Tribal interests and women's reproductive rights.

My State of Minnesota has a large and diverse Tribal population. I have always believed that our State history has been drawn from the culture and traditions of our Native Americans.

As a member of the Judiciary Committee, I know that Tribal sovereignty is a fundamental tenet of our laws. The Ninth Circuit is home to more federally recognized Tribes than any other circuit—more than 425. So many of the cases that come before the court involve Tribal issues. I am concerned that Mr. Miller has a history of representing interests that have sought to undermine Tribal sovereignty. For example, in a brief he filed before the Supreme Court, he urged the Court to adopt a standard that would have undermined the legitimacy of many federally recognized Tribal governments.

The National Congress of American Indians and the Native American Rights Fund have come out against his confirmation. I know the Senator from New Mexico, Mr. UDALL, is here and understands the major concerns, since he is the ranking member of the Indian Affairs Committee, and how important that concern is. It is only the third time in the history of these two organizations—the National Congress of American Indians and the Native American Rights Fund—that they have opposed a judicial nominee.

In their letter to the Senate Judiciary Committee, they wrote that Eric