

Mr. Miller has argued for an extremely narrow reading of the Indian Reorganization Act when considering the Federal recognition status of Tribes. He asserts that only Tribes that possessed federally managed lands when the act was passed in 1934 should be federally recognized. This narrow view does not acknowledge the well-established principles of Indian law and can lead to the termination of Tribal nations that do not meet his narrow and arbitrary standard.

Mr. Miller's record on Tribal issues is one-sided and extreme. His history of advocating against Tribal interests does not give me confidence that he would be a fair and impartial jurist on the Ninth Circuit Court of Appeals when Tribes come before him.

I will vote no on Eric Miller's confirmation. I urge my colleagues to do so as well.

I yield the floor.

The PRESIDING OFFICER. The Senator from Montana.

Mr. TESTER. Madam President, before I start with my comments, I want to associate my thoughts and views on Mr. Miller with Ranking Member UDALL's points on Native American sovereignty and Mr. Miller's current job and what he has done in that.

REMEMBERING JASON BAKER

Madam President, I come here today in a sad time. As I speak, about right now in Montana, a funeral is beginning for Jason Baker.

Jason was originally from Fort Benton, MT, which is a town right down the road from where I live in Big Sandy. Jason was a firefighter. Jason passed away on February 20, early in the morning. He was far, far too young—the age of 45. He had been a firefighter for 16 years with Great Falls Fire Rescue. He was incredibly talented and incredibly professional, and he was somebody who loved being a firefighter. His life of public service, whether it was helping out kids or helping out adults or helping out communities, was a part of who he was as a person.

Jason was also married to my wife's cousin Jill. They have two children, Peyton and Porter, whose hearts have to be aching. This day is a day, I am sure, that they had to have planned for the last 3 or so years after his diagnosis of stage IV lung cancer. I guess it was 2 years ago.

I have a number of memories of Jason from my days in the State legislature, when he showed up as a relatively young firefighter, to my days as a U.S. Senator, when he showed up to my offices here in Washington, DC, to advocate for firefighters' issues. More important than all of that, Jason was a friend. He happened to also be a relative. He was somebody who, when his wife's grandfather passed away and they had the funeral up in Havre, was at the height of who he was as a human being. He wasn't sick and hadn't been diagnosed with anything. He was just vibrant and full of life.

With cancer's being the disease that it is, it was a struggle for him, as it is for anybody who gets it. He was somebody who fought that disease bravely and proudly, but in the end, it took him. It took him last Wednesday, early in the morning. We were driving to Great Falls, and my wife sent a little message to Jill that read our hearts were with them because we knew that Jason wasn't good. She sent back a text with hearts, and that was it. He had already passed.

In the end, though, as I think back on Jason's life, there are some lyrics to a song that say "Only the good die young." It could not be any more true than with Jason Baker. If the world were full of Jason Bakers, this would be a better world, but life happens, and you have to get through it.

I am sure that Jill and Peyton and Porter will think back and remember their dad proudly as he served proudly as a firefighter, as a public servant—as somebody who ran to danger while other people were running away from it.

As they proceed with the ceremony today in Montana—and it is happening as I speak—just know, Jill, Peyton, Porter, and all of the firefighters who are there, that we are very proud of your dad and his service and what he fought for.

Two years ago, there was a bill in the Montana Legislature on presumptive illness for firefighters. I do not believe Jason would have contracted cancer if not for his job, if not for the kinds of fumes he breathed when he protected neighborhoods and families. I think it is only right that when people sacrifice for their communities, we sacrifice for them. Two years ago, the legislature did not pass that presumptive illness bill. I think it made a mistake.

When I gave my speech to the House of Representatives in the Montana Legislature, one of the points I made in that speech was that they needed to pass the presumptive healthcare bill for firefighters. Jason was alive when I gave that speech, and now he has passed. I think, in memory of Jason Baker, at the very least, the Montana Legislature could pass that bill. I understand it has passed one of the houses but that it hasn't passed both of them. If it passes both houses, I know Governor Bullock will sign that bill.

So, with that, we bid adieu to a great American, a great community man—somebody who literally gave it all for his country and his State and his town.

We will miss you, Jason Baker.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. BLUMENTHAL. 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. BLUMENTHAL. Madam President, we are in the midst of a stealth

campaign. Normally, we think about "stealth" as associated with bombers or submarines, weapons platforms designed to go, in effect, under the radar, to avoid detection, to escape public notice or the notice of our adversaries.

This stealth campaign is really hiding in plain sight. It is a campaign to remake our Federal judiciary in the image of the far-right extreme of the Republican Party, the far-right extreme ideologically and politically, a campaign, in effect, to outsource selections of judges to groups that reflect those extreme points of view—the Heritage Society and other such groups.

Shortly, we will consider the nomination of the latest individual nominated by the President, outsourced to those groups: Eric Miller, of Washington, to the Ninth Circuit Court of Appeals. The effort here is to drastically reshape our judiciary but, in the process, also dismantle the norms and practices critical to the health of our democracy. The judiciary is essential to the health of our democracy.

In the future, when we look back on this era—a dark and dangerous time for our democracy—the heroes will be our free press and our independent judiciary because they have been selected in the past by both Republican and Democratic Presidents based on qualities of integrity, intelligence, and independence.

That norm, common to both Republican and Democratic administrations in the past, has been broken by this one. One of the norms that has been broken in the U.S. Senate relates to the use of blue slips. Most of the public has no idea what blue slips are. They are the traditional mechanism used over decades to afford home State Senators the opportunity to express their approval or disapproval for fitness, a basic quality of a President's judicial nominee to a court that has jurisdiction over their State.

What is the reason? Well, Senators just happen to spend a lot of time talking with folks at home. We talk to farmers, businesspeople, lawyers. A lot of those lawyers know fellow lawyers. Of course, we receive the ABA qualified or unqualified ratings, but they are single words based on fact gathering that may or may not be as reliable as our colleagues—the lawyers who appear in front of judges, who go to court every day, who have settlement conferences, who rely on the word of their colleagues, which is either good or bad, who know their integrity and intelligence, who know whether they have the temperament to sit in judgment of cases that will have enduring and irreparable ramifications for the litigants who appear in front of them.

Respecting the blue-slip tradition ensures that when there is a Federal judicial vacancy—for Connecticut, for example—that the President nominate a qualified candidate from Connecticut with the advice and consent of Connecticut Senators. The same is true for the Presiding Officer's home State of

Tennessee or any of the other States involved here. I am sure my colleagues from Texas or North Carolina or wherever would want a Democratic President to consult them when making appointments to the courts that have jurisdiction over the people, the litigants, the folks who have to go to court with their grievances in their States. Blue slips may be a courtesy, but they are important to the functioning of our society.

Until the Trump administration, only five judges had ever been confirmed with only one blue slip in the last 100 years. That means one Senator from that State objected. Only five went through with that one objection and with the other Senator saying OK.

To our knowledge, no judge has ever been confirmed without having both blue slips from their home State Senators. Eric Miller would be a first.

Sometimes it is good to be a first but not so here. We are witnessing another norm being shattered in realtime. We need to know from the majority: Is this the road we really want to go down in this Chamber?

I take my constitutional responsibilities very seriously, especially when it comes to the confirmation of judges, as someone who has spent most of my professional career in the courtroom, either as a lawyer in private practice or a U.S. attorney for Connecticut or as attorney general in my State for 20 years.

This issue is important because not only is it a matter of courtesy, but it is a matter of completeness.

This nomination is a stealth nomination in a very important sense, also, as far as the process for his confirmation is concerned. Only one Senator—one Senator—has actually asked him questions on the record in public. That is because his confirmation hearing was scheduled at a time when only one Member of the U.S. Senate was there to ask him questions.

It was held during a month-long recess in October. Only two members of the committee—Senators Hatch and CRAPO—could attend the hearing. Only Senator CRAPO questioned Mr. Miller for a 5-minute round of questions.

All 10 Democratic members of the Judiciary, including me, wrote to Senator GRASSLEY to have the hearing rescheduled. We asked, and he refused. We wrote Senator GRASSLEY again to have a second hearing so that the full committee could provide advice and consent after questioning Mr. Miller's nomination. We had no success.

If Mr. Miller is confirmed, he will have been questioned by that one Senator, Mr. CRAPO—out of 100—for a grand total of 5 minutes. That is not the way this system should work.

I do take my constitutional responsibilities seriously. This process makes a sham of the obligations we all have a sworn duty to fulfill.

In conclusion, let me say that in November of 2018, the Ninth Circuit ruled against the President. He described

that case as “a disgrace.” He painted the ruling of the Ninth Circuit as biased by describing one of the judges as an “Obama judge.” President Trump ultimately stated that the Ninth Circuit is “not fair” because every case the administration files in the Ninth Circuit results in a loss.

He has made no secret of his frustration about judges generally, whether they were chosen by Republican or Democratic Presidents in the past. He has made no secret of his contempt for judges who uphold the rule of law and, as Chief Justice Roberts said, “do equal right to those appearing before them.”

Chief Justice Roberts also stated that an “independent judiciary is something we should all be thankful for.”

The nomination of Eric Miller betrays that essential principle of the American judiciary. It diminishes and reduces the independence of our judiciary at a level that we can ill afford and at a time when independence is most important. I think this nomination is particularly objectionable in light of that lack of independence.

Mr. Miller's nomination is opposed by the National Congress of American Indians, the Native American Rights Fund, Winnebago Tribe of Nebraska, and NARAL Pro-Choice America because of positions he has taken. Those positions are also objectionable to me, but what is most important is his lack of independence, the lack of proper process in his confirmation, and his lack of qualifications for this job.

I hope my colleagues will join me in voting against him today.

Thank you.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Ms. CORTEZ MASTO. Mr. President, I rise today to speak in opposition to the nomination of Eric Miller to the Ninth Circuit Court of Appeals.

As an attorney and former attorney general, like my good colleague from Connecticut, I have a deep respect and appreciation for our Federal judiciary. I believe that carefully guarding the professional reputation of our Federal bench is critical to maintaining respect for the rule of law in our country.

The American people must be able to trust that our Federal judges will be fair and neutral arbiters of any dispute before them. So in considering whether a nominee is deserving of the awesome responsibility of a lifetime appointment to the Federal bench, we must carefully evaluate their professional and personal qualifications to ensure that they are of the highest intellectual, professional, and moral caliber.

I have carefully reviewed Mr. Miller's record, and I believe that he is the wrong candidate to fill this judicial seat. I believe my Republican colleagues know it. That is why they have made every effort to jam this confirmation through.

The majority-led Judiciary Committee and Republican leadership have

taken extraordinary steps to rush this nomination. Republicans held Mr. Miller's confirmation hearing during an October recess, without the consent of minority members of the committee, questioning him for just 5 minutes and then gaveling out. As you heard, only two Senators were at that hearing. That is not regular order in the Senate.

Unfortunately, the Republican leadership continues to attack regular order in the Senate by attacking Senate precedent. This nominee, if confirmed, will be the first circuit court judge advanced without the support of either of their home State Senators. That is the blue-slip process.

The blue-slip process is an essential tradition of respecting the wishes of each nominee's home State Senators, and it is the start of the advice and consent process.

This is about our system of checks and balances, respecting one another, and the prerogatives of the Senate that ensure every Senator has a voice in the selection of judges in their home State. This institutional check has never been more important than it is today because we have a President who undermines the legitimacy and impartiality of the courts.

By bringing up this confirmation for a vote before the Senate, Republican leaders are circumventing Senators, ignoring the people we were elected to represent, and damaging our critical role in appropriately deliberating on lifetime judicial nominees and representing the will of our constituents who elected us. This is a dereliction of the Senate's duty, and it is an assault on our institutions.

If confirmed, Mr. Miller will have a lifetime appointment to one of the highest courts in America. He will make decisions on our Nation's most important issues and will have the power to change Americans' lives. Yet this Republican leadership believes a 5-minute hearing is enough for a circuit court nominee who doesn't have the support of his own home State Senators.

When the confirmation process is rushed like this, critical information about the history and character of the nominees will be missed. These lapses undermine the integrity of our confirmation process and ultimately undermine the public's faith in our Federal judiciary.

I share many of the same concerns of Senators CANTWELL and MURRAY about Mr. Miller's views on Tribal sovereignty and other critical issues. Mr. Miller's past work in undermining Tribal sovereignty and Tribal rights raises questions about how he would treat Tribes who come before him as a circuit court judge. His confirmation could have serious ramifications for Native communities in Washington, Nevada, and across the country.

Each one of us is elected to represent our State and its people. Today's move by the majority is nothing less than an assault on our oath to the Constitution and our duty to serve our constituents.

I urge my colleagues to vote no on this nomination and stand together in a bipartisan way to confirm nominees who reflect our States, our country, and respect the Senators.

Thank you.

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.

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

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

Mrs. MURRAY. Mr. President, I am here joining my colleagues on the floor to sound the alarm because right now, this Senate is being steered down a very dangerous path. I spoke last night about this and laid out my case, and I am here again to make it one more time.

Republican leaders are now barreling toward a confirmation vote on a Ninth Circuit nominee—a flashpoint that, if it succeeds, will mark a massive departure from the longstanding bipartisan process that has been in place for generations. It is a bipartisan process that has helped this Senate put consensus nominees on the bench for as long as we have all been here. This is wrong, and it is the American people who we represent who will be hurt.

Let's recap the facts. Neither I nor my colleague Senator CANTWELL returned a blue slip on the nomination of Eric Miller to serve on the Ninth Circuit court. I have deep concerns about Mr. Miller's work fighting against Tribes. Despite our objections, Republicans went ahead with Mr. Miller's confirmation hearing during a Senate recess when just two Senators—both Republicans—were able to attend, and the hearing included less than 5 minutes of questioning. It was a sham hearing. It was simply done to check the box.

For this Senate to go ahead and confirm this Ninth Circuit court nominee without the consent of or true input from both home State Senators and after a sham hearing—that would be a dangerous first for this Senate.

This is not a partisan issue; this is a question of this Senate's ability and commitment to properly review nominees.

The only logical conclusion I can draw as to why we are here at these crossroads is that Republican leaders are hoping that most Americans won't notice, that they are doing everything in their power to pander to President Trump and in doing that are trampling all over Senate norms in order to move our courts to the far right.

We are standing here today because this is too important and because the short- and long-term consequences of letting any President steamroll the Senate on something as critical as our judicial nominees are far too important.

Abandoning the blue-slip process and instead bending to the will of a President, by the way, who has demonstrated time and again his ignorance and disdain for the Constitution and rule of law is a mistake. At a time when we have a President whose policies keep testing the limits of the law—from a ban on Muslims entering the United States, to a family separation policy at our southern border, to declaring a national emergency without a real emergency—it is now more important than ever that we have well-qualified, consensus judges on the bench.

This new precedent of my Republican colleagues turning a blind eye to the blue slip and shunning longstanding bipartisan processes should stop every one of my colleagues, Republican or Democratic, in their tracks because today the two home State Senators left holding their blue slips are me and my colleague Senator CANTWELL, but in the future, it could be any Member of this body. Today it is Washington State families who are getting cut out from an important process. It is their concerns about Eric Miller's long history of fighting against Tribal rights that will be cast aside. But tomorrow it could be the concerns of any of your constituents and any of your home States that get tossed aside for a President's crusade to reshape our courts and satisfy their political base, and it could be your constituents and your home States hurt by Senate leaders unwilling to stand up for norms and precedents and our constitutional duty.

Again, I am here today to urge my colleagues to truly think about what moving ahead with this nomination means and to ask themselves, are we still able to work together in a bipartisan way and find common ground for the good of the country and the people we serve? Can we still even engage in a bipartisan process to find consensus candidates to serve on our courts, or will our work in the Senate be reduced to partisan extremes and political gamesmanship? Will Republicans accept simply being a rubberstamp for their leader in the White House? Will my colleagues be complicit in allowing our courts to be taken over by ideology alone, abandoning pragmatism and a commitment to justice for all? That is a choice every Senator faces now and, I sincerely hope, a choice for which every Senator will be held accountable.

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. McCONNELL. I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. McCONNELL. I know of no further debate on the Miller nomination.

The PRESIDING OFFICER. Is there further debate?

Hearing none, the question is, Will the Senate advise and consent to the Miller nomination?

Mr. McCONNELL. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The senior assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Arizona (Ms. SINEMA) is necessarily absent.

The PRESIDING OFFICER (Ms. MCSALLY). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 53, nays 46, as follows:

[Rollcall Vote No. 29 Ex.]

YEAS—53

Alexander	Fischer	Perdue
Barrasso	Gardner	Portman
Blackburn	Graham	Risch
Blunt	Grassley	Roberts
Boozman	Hawley	Romney
Braun	Hoeven	Rounds
Burr	Hyde-Smith	Rubio
Capito	Inhofe	Sasse
Cassidy	Isakson	Scott (FL)
Collins	Johnson	Scott (SC)
Cornyn	Kennedy	Shelby
Cotton	Lankford	Sullivan
Cramer	Lee	Thune
Crapo	McConnell	Tillis
Cruz	McSally	Toomey
Daines	Moran	Wicker
Enzi	Murkowski	Young
Ernst	Paul	

NAYS—46

Baldwin	Hassan	Rosen
Bennet	Heinrich	Sanders
Blumenthal	Hirono	Schatz
Booker	Jones	Schumer
Brown	Kaine	Shaheen
Cantwell	King	Smith
Cardin	Klobuchar	Stabenow
Carper	Leahy	Tester
Casey	Manchin	Udall
Coons	Markey	Van Hollen
Cortez Masto	Menendez	Warner
Duckworth	Merkley	Warren
Durbin	Murphy	Whitehouse
Feinstein	Murray	Wyden
Gillibrand	Peters	
Harris	Reed	

NOT VOTING—1

Sinema

The nomination was confirmed.

CLOTURE MOTION

The PRESIDING OFFICER. Pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will state.

The senior assistant bill clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the nomination of Michael J. Desmond, of California, to be Chief Counsel for the Internal Revenue Service and an Assistant General Counsel in the Department of the Treasury.

James E. Risch, Johnny Isakson, Todd Young, Mike Crapo, Pat Roberts, John Thune, Rob Portman, Roy Blunt, Thom Tillis, John Boozman, Roger F. Wicker, James Lankford, Tim Scott, Steve Daines, Michael B. Enzi, John Hoeven, Mitch McConnell.