

happy to support it, provided it doesn't take effect until 2021. Well, that certainly concedes the reasonableness of what we are going to achieve later today.

Because bringing the Senate nomination process permanently back to Earth right now would help the Republican administration, they weren't interested in doing the right thing—what they did in 2013, what they are whispering in our ears now: Oh, no, we cannot do it now because we don't like who is in the White House.

Republicans remain committed to reform. Look at the nomination currently before us—a textbook case study on the shameful state of the current process. Jeffrey Kessler of Virginia was first nominated as Assistant Secretary of Commerce in November of 2017. It took 7 months before Democrats on the Finance Committee allowed his nomination to be considered. When it was, he was reported out on a unanimous vote. Nobody opposed him in the Finance Committee.

The familiar story continues—another 6 months of inaction. The nomination was sent back to the White House at the end of the last Congress. So the process started all over again. This time he got a voice vote out of the Finance Committee. Everybody just said aye. Yet here on the floor, inexplicably, it still required a cloture motion to break through the obstruction and give this nominee, whom no one voted against, a vote.

Later today, it appears that at long last we will be able to take action to finally advance Mr. Kessler's nomination, to do the responsible thing, to begin to unwind this partisan paralysis for the good of the Senate and for the future of the constitutional order each of us has pledged to protect.

RESERVATION OF LEADER TIME

The PRESIDING OFFICER. Under the previous order, the leadership time is reserved.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to executive session to resume consideration of the following nomination, which the clerk will report.

The senior assistant legislative clerk read the nomination of Jeffrey Kessler, of Virginia, to be an Assistant Secretary of Commerce.

ORDER OF BUSINESS

The PRESIDING OFFICER. Under the previous order, the time until 2

p.m. will be equally divided between the two leaders or their designees.

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

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

S. RES. 50

Mr. THUNE. Yesterday afternoon, Senate Democrats voted against a rules change that would have reduced needless delay in the Senate and ensure that future Presidents of both parties could staff their administrations in a timely fashion.

Democrats chose partisanship over principle and political advantage over the well-being of the Senate. How do I know that this was a partisan decision on Democrats' part and not a principled one? Because 34 currently serving Members of the Democratic caucus supported a very similar rules change measure when President Obama was in office. Yet not one Member—not one Member of the Democratic caucus—voted in favor of the rules change yesterday.

Worse, privately, many Democrats had indicated a willingness to support the rules change but only if the effective date were pushed to 2021, when Democrats hope they will have a Democrat in the White House. Apparently, it is reasonable for Democratic administrations to be staffed up in a timely fashion, but Republican administrations should have to suffer endless partisan delays. That is a pretty offensive position.

It is disrespectful to the American people, who deserve a fully staffed administration, even when their choice of President isn't the Democrats' choice. It is disrespectful of our system of government.

Democrats apparently think the system should be rigged in favor of their party, no matter what election results say. Don't like the fact that a Republican President got to choose Supreme Court Justices? Pack the courts. Don't like the fact that your candidate didn't win the election? Change our electoral system.

In a democracy, you win some elections and you lose some elections. Sometimes you like the individual in the White House, and sometimes you don't. Sometimes you succeed in passing your legislation, and sometimes you just don't have the votes. That is the nature of life in a democracy.

No one likes being in the minority. It is not fun to lose votes or elections, but that is the price of freedom. That is the price of democracy.

The other option is for one party to try to rig the system in its favor so that everything goes its way no matter what election results say. There is a name for that. It is called tyranny.

Back in 2013, a majority of Republicans, including the Republican leader and me, supported a rules change to streamline the process of approving lower level administration nominees, such as district court judges and assistant secretaries. We voted for this rules change even though we knew it would benefit only President Obama since it would expire at the end of the 113th Congress, but we signed on because we supported the principle behind the change. We believed that Presidents should be able to staff their administrations in a timely fashion, yes, even if they weren't Presidents from our party. We believed that whether the President was a Republican or Democrat, the American people deserved a fully functioning executive branch. So we worked with Democrats to streamline consideration of lower level administration nominees.

I am deeply disappointed that Democrats chose to betray their principles yesterday for short-term partisan gain, and I hope the Democrats here in the Senate will think better of their vote and work with Republicans to speed up consideration of lower level nominees before Democrats' historic level of obstruction becomes a permanent standard here in the U.S. Senate.

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

The PRESIDING OFFICER (Mr. ROMNEY). Without objection, it is so ordered.

Mr. WYDEN. Mr. President, I am going to use my time on the Senate floor to address two related subjects.

The Republican leader is reportedly on the verge of going nuclear to speed through the confirmation of more far-right nominees. He says Democrats are guilty of extreme, unprecedented obstruction, and he claims that his hand has been forced and that is why he is required to change the Senate rules. In the real world, I want to make clear that I believe the facts tell a different story, and I am going to lay out briefly why I think this is the wrong way to go.

When you look at the numbers, you see that the Republican leader's argument is a fantasy. Let's look at judges, and let's compare the Trump administration to the Obama administration. The Obama administration started with 53 judicial vacancies; the Trump administration started with 112. That increase didn't occur because a whole lot of judges somehow magically qualified for Social Security and quit sometime in 2016; it was because Republicans blocked nominees for years at a time, and they kept those seats open. Senate Republicans even blocked their own judicial selections during the previous administration. Put your arms

around that. Senate Republicans even blocked their own. Only 22 judicial nominees were confirmed in the final 2 years of the Obama administration—the fewest in a Congress since Harry Truman was President.

In 2015 and 2016, the Judiciary Committee considered only five circuit court nominees. It considered that many in December of 2017 alone. There were nearly twice as many circuit judges confirmed in the first 2 years of the Trump administration as there were in President Obama's entire first term. Nominees are moving nearly twice as quickly under this President.

Republicans even blew up a century-old bipartisan practice of seeking input from Senators on judicial nominees from their home States. It is based on what has come to be known as the blue slip to consent to a hearing and a markup of a nomination. It is a tradition, by the way, Republicans fought to protect when a Democrat was President and they were in the minority. Under this President, they threw the blue-slip tradition out the window.

Republicans are also moving nominees in huge batches and at paces that prevent serious debate on their qualifications. A few months ago, the Judiciary Committee held a markup and voted out 46 nominees, including 44 judicial nominees. That had never been done before. It is a head-scratcher how that can meet any reasonable definition of "advice and consent."

The way my colleagues on the other side talk about the issue, you would think Democrats delayed every nomination for as long as possible. That just doesn't remotely resemble the truth.

Setting judges aside, what about the executive branch? The President and his advisers will tell you right out in the open that they don't want to nominate anybody. They have chosen to leave those positions vacant. That certainly doesn't meet a textbook definition of "Democratic obstructionism." I am the ranking Democrat on the Senate Finance Committee. Our committee has zero nominees ready for a committee vote. It is not because anybody is blocking them; it is because the Trump administration seems uninterested in putting nominees forward. Our committee, on a bipartisan basis, has done its job.

So, colleagues, you can't look at the record of nominees over the last 2 years, particularly on judges, and conclude that the Democrats have broken the Senate. It is just not true. I believe a number of my colleagues on the other side know it. When they want to go nuclear and change the rules, we get a parade of horror stories about how Democrats are obstructionists. It is a totally different story when they prefer to tout their record on nominations.

Let's hear from Republicans, from the President on down.

Here is the President tweeting in late 2017: "Judges at a record clip. Our courts are rapidly changing."

The President at a rally last year: "We have the best judges. We put on a

tremendous amount of great Federal district court judges. We'll be setting records. We are setting records. Appeals court judges. A Supreme Court judge—fantastic."

The Vice President, March 2018: "The President . . . set a record for the most court of appeal judges confirmed in the first year of an administration in American history."

Leader MCCONNELL said it all, speaking about the confirmed judges. He said "including a record number of circuit court judges for a President's first year."

More recently, Leader MCCONNELL said: "We confirmed every circuit judge. We've now done 29 circuit judges. That's a record for this quick in any administration in history."

After November's elections, when Democrats won control of the House, Leader MCCONNELL said: "I think we'll have probably more time for nominations in the next Congress than we've had in this one, because the areas of legislative agreement will be more limited between a Democratic House and a Republican Senate. . . . I don't think we'll have any trouble finding time to do nominations." That is Leader MCCONNELL. "I don't think we'll have any trouble finding time to do nominations."

Leader MCCONNELL said: "We intend to keep confirming as many as we possibly can for as long as we're in a position to do so."

My colleagues on the other side can't have it both ways, constantly talking about Democratic obstructionism and then, in effect, making all these statements about how they are setting records for getting people through. You can't have it both ways.

I am going to close on this. I am not going to apologize for opposing nominees who are unqualified, corrupt, or simply outside of the mainstream.

I opposed the nomination of Ryan Bounds to the Ninth Circuit because he concealed hateful writings to a bipartisan committee—since I became the State's senior Democrat, and now as the senior Senator, I have continued this committee. We have had a bipartisan selection committee that vets candidates. We had it when my former colleague, Senator Smith, who I know is a friend of the Presiding Officer's, was here. We always worked in a bipartisan way to address these issues. This was a nominee who concealed hateful writings from the bipartisan selection committee that vetted his candidacy, and he was forced to withdraw.

I opposed Neomi Rao because she also had put extreme views in writing, and those views closely mirrored the work she had done as a Trump appointee attacking protections for women's health, for sexual assault victims on campus, and for vulnerable communities across the country.

I opposed the nomination of Thomas Farr because he ruthlessly attacked the voting rights of people of color.

I opposed the nomination of Tom Price to lead the Department of Health

and Human Services because I thought he was just about as corrupt as they came and seemed to be laser-focused on taking away people's healthcare.

I opposed the nomination of Steven Mnuchin to be Treasury Secretary because I believed a history of profiting off of the suffering of millions of Americans ought to be disqualifying for that job.

Now, what has been the record? Multiple members of the Trump Cabinet have resigned under an ethical cloud. The rule change for which the Republican leader is pushing will cause the rushing through of even more unqualified and corrupt nominees at the sub-Cabinet level.

The bottom line is that all of the doomsday talk about the Democratic obstruction that is forcing the Republican leader's hand is simply out of touch with the facts. The Trump administration will find more support among the Democrats when it picks better nominees. It is a quaint idea—pick better nominees, and then you will get support. Instead, the nuclear option Leader MCCONNELL is set to trigger this week is a strategy that will take us in the opposite direction. It is going to make it easier to rush unqualified and extreme nominees through the Senate before anybody notices.

I oppose this change. I urge more of my colleagues on the other side to do the same.

NOMINATION OF DAVID BERNHARDT

Mr. President, I conclude my remarks by turning briefly to a related subject that deals with, I believe, compromised, corrupt Trump nominees.

The Energy and Natural Resources Committee is scheduled to vote tomorrow on the nomination of David Bernhardt to be the Interior Secretary, but there is developing news—news revealed just last night—that ought to be enough to put this flawed nomination on hold.

According to the Washington Post, "[t]he Interior Department's Office of Inspector General is reviewing allegations that acting secretary David Bernhardt may have violated his ethics pledge by weighing in on issues affecting a former client, the office confirmed Tuesday."

I made it clear in Mr. Bernhardt's hearing last week that I believed he had ethics problems owed to the appearance that he had been working on behalf of former clients while he had served as a public official. I am also very concerned about the real possibility that Mr. Bernhardt made false statements under oath in his nomination hearing last week. I asked the Interior Department's inspector general to look into these matters, but she has not had time to respond to my request. The fact is that the inspector general is just at the very outset of this process.

Here is the prospect this body faces. The Senate could be on its way to installing an Interior Secretary who