

The senior assistant legislative clerk read the nomination of Edward Hulvey Meyers, of Maryland, to be a Judge of the United States Court of Federal Claims for a term of fifteen years.

The PRESIDING OFFICER. The majority whip.

REMEMBERING JUSTICE RUTH BADER GINSBURG

Mr. THUNE. Madam President, on Friday, we learned that trailblazing Supreme Court Justice Ruth Bader Ginsburg had died at the age of 87 from pancreatic cancer.

Justice Ginsburg embraced the law at a time when being a woman in the field meant a constant uphill battle. She had to fight for opportunities that were available to men as a matter of course.

Her work as a lawyer eventually came to focus around women's rights—or as Ruth Bader Ginsburg put it, “the constitutional principle of the equal citizenship stature of men and women.”

Before joining the Court, she argued six gender discrimination cases before it, and as a Justice, she continued to advance this cause. She served with distinction on the Supreme Court for more than 25 years—and engaged in some of the Court's most memorable exchanges over that period.

She was known for her work ethic and tenacity, as well as her kindness and good humor, and, of course, for her love of opera and her 56-year romance with her beloved husband, Marty.

She disagreed often with her good friend Justice Scalia, but they never allowed their strong disagreements to ruin their enduring friendship and mutual respect. She could dissent on the most fundamental questions, without indicting the character of those with whom she disagreed.

Her work to secure equal treatment for women has earned her a place in American history, and her courage and perseverance in overcoming significant obstacles will continue to inspire many.

My thoughts and prayers are with Justice Ginsburg's family.

SUPREME COURT NOMINATIONS

Madam President, in the wake of a Supreme Court Justice's death, the Senate has to turn its thoughts to considering the next Supreme Court nominee. The President has indicated that he expects to nominate Justice Ginsburg's successor as soon as this week. He has also made it clear he intends to nominate a woman.

Whoever he nominates, I am confident that she will be in the mode of the President's other Supreme Court appointments, a nominee with a profound respect for the law and the Constitution, someone who understands that the job of a Supreme Court Justice—or any judge—is to interpret the law, not make the law, to call balls and strikes, not rewrite the rules of the game.

Predictably, Democrats are in an uproar over the fact that President Trump will nominate a third Supreme

Court Justice. They want Republicans to refuse to consider the President's nomination before the President has even named anyone.

They claim that the fact that a Republican-led Senate did not consider the nomination of Merrick Garland during President Obama's final year means Republicans should decline to consider President Trump's nominee.

It is perfectly true that the Senate did not vote on President Obama's final Supreme Court nominee. That is something the Senate can choose to do. Any Senate, led by either party, can decline to take up a nominee. That is the Senate's constitutional prerogative.

At the time, we felt that since voters had recently chosen a Republican-led Senate, while the President was a Democrat on his way out of office, the new President should choose the next Supreme Court nominee. And we all knew at the time that very well could be Hillary Clinton. But that was wholly in line with the history of the Senate—and with the rule promulgated by Joe Biden when he was chairman of the Judiciary Committee, and endorsed, I might add, by the current Democratic leader in 2007.

As a Wall Street Journal op-ed explained:

This exception was popularized in 1992 by Sen. Joe Biden, then chairman of the Judiciary Committee. He urged President George H.W. Bush to refrain from making any Supreme Court nominations in that election year. What made 1992 different from other election years, Mr. Biden explained, was that “divided Government” reflected an absence of a “nationwide consensus” on constitutional philosophy. “Action on a Supreme Court nomination must be put off until after the election campaign is over,” the future vice president insisted. No vacancy arose until 1993, when President Clinton was in the White House and Ginsburg's nomination easily passed a Democratic Senate. But the Biden rule fit 2016 to a tee.

For the past 130-plus years, no Senate has approved a Supreme Court nominee in the final year of a President's term if the Senate majority and the President were of different parties.

On the other hand, a number of Supreme Court nominees have been confirmed during a President's final year in office when the Senate was led by the same party as the President.

There have been 15 situations in U.S. history where a Supreme Court vacancy arose in a Presidential election year, and the President nominated someone that same year. In eight of those cases, the President and the Senate majority were of the same party. And in all but one of those eight cases, the President's nominee was confirmed.

Democrats are free to disagree with Republicans' application of the Biden-Schumer rule in 2016, but no one can dispute that voting on or rejecting a nominee is the constitutional prerogative of the U.S. Senate.

There should be nothing disturbing about the Senate fulfilling its constitutional role of advising and consenting on a Supreme Court nomination.

What is disturbing are Democrats' threats as to what they will do if Republicans in the Senate don't yield to their demands. Those threats include, but are not limited to, eliminating the legislative filibuster, which is the rule we all know in the Senate that helps ensure that bills that come before the Senate require bipartisan cooperation; they threatened to pack the Supreme Court with additional Justices so that they can ensure a rubberstamp for their agenda.

Some are even suggesting—suggesting impeaching the President again. What they would impeach him for is not exactly clear. Fulfilling his constitutional responsibility to name someone to the Supreme Court?

Some Democrats have gone so far as to say that nothing is off the table when it comes to retribution for considering the President's nominee—a particularly insidious and irresponsible threat at the time when political violence is at a high in this country.

One thing I can say is that Republicans will not be deterred from performing our constitutional role by Democrats' undemocratic threats. For many of us, confirming principled judges who will uphold the Constitution and the rule of law has been a core tenet of our public service—and a shared goal of those who elected us.

We will work to fill the Supreme Court vacancy, and I look forward to receiving and reviewing the President's nomination in the near future.

I yield the floor.

The PRESIDING OFFICER. The Democratic whip.

Mr. DURBIN. Madam President, I listened to the statements made by the Republican leadership this morning on the floor of the U.S. Senate. If one has a sense of history and memory, their statements are preposterous.

The last speaker came before us and said: The Democrats are even threatening to end the filibuster in retribution.

Well, let's stop and think for a moment. Was there a filibuster affecting the Supreme Court nominees? Was there a requirement of 60-vote margins if there is controversy associated with filling the vacancy on the Supreme Court? There was until one Senator from Kentucky, Mr. MITCH MCCONNELL, eliminated the filibuster when it came to the Supreme Court.

This so-called democratic institution of the filibuster was eliminated when it came to Supreme Court nominees by that same Senator MCCONNELL, who comes to the floor and says that the Democrats have reached an outrageous position: They are threatening the future of the filibuster.

He eliminated it. When there were changes made in the filibuster on other court appointments, Senator Reid was careful not to include the Supreme Court, but Senator MCCONNELL did. Senator MCCONNELL has brought us to this moment.

Think how different it would be—how different it would be today if the nominee of this President were subject to a

filibuster. If it took 60 votes, it means the person nominated would have to be moderate in their approach. We don't expect that from this President in filling the vacancy of Ruth Bader Ginsburg.

I also read and reread one simple fact when it came to Ruth Bader Ginsburg in 1993. She cleared the Senate Chamber, at a time when the filibuster rule did apply, with a vote of 96 to 3—96 to 3.

Understand that Ruth Bader Ginsburg was a well-known person when she came before this body for approval to the Supreme Court. She had been an outspoken advocate for women's rights and equality as an attorney and advocate for groups like the American Civil Liberties Union. She had served on the DC Circuit Court of Appeals.

As well known as she was for her political beliefs, she cleared this Senate Chamber with only three dissenting votes—Senator Jesse Helms, Senator Don Nickles, and Senator Bob Smith—three Republicans. What a different time it was. Even though her stripes were clear, she was so well respected as a jurist and a person of integrity that she was approved by the Senate Chamber.

How far we have fallen. We are in a position now, at this moment, when Senator MCCONNELL, 4 years ago, established a standard. The vacancy of Scalia's seat on the Supreme Court led President Obama to nominate Merrick Garland, a well-respected judge from the DC Circuit. I remember seeing him and meeting with him after he had been proposed by President Obama. It was a sad duty to watch him as he walked the Halls of the Senate. You see, Senator MCCONNELL announced that he didn't want any Republican Senators to physically meet with Merrick Garland—not give him the recognition of even a meeting in their office, let alone a hearing. The argument that Senator MCCONNELL made—and Senator SCHUMER said this morning—was that it wasn't President Obama's place to fill that vacancy; it was the place of the next President of the United States.

Senator MCCONNELL, basically, declared President Obama was a lame-duck when it came to Supreme Court vacancies in his last year in office and that the next President, whoever that might be, would make the choice. Well, one after another, the Republican Senators marched in line behind that McConnell position, announcing that they, too, agreed that President Obama was a lame-duck when it came to filling Supreme Court vacancies in his last year in office. They didn't cite the Constitution because there is no provision in the Constitution that even comes close to that suggestion. There certainly wasn't any law, and there wasn't any precedent.

I hear the Republicans come to the floor mentioning Joe Biden's name and CHUCK SCHUMER's name. Who knows who will be next on their list? The fact

is, the Senate makes the decisions based on majority. At that point, Senator MCCONNELL had the majority, and he lined up his membership behind him.

Unfortunately, they are lining up again, but this time Senator MCCONNELL's position is the exact opposite. This time he is arguing that because there is a Republican President, he should fill this vacancy instantly: Get it done. Let's go. His Republican Senators who took the opposite position 4 years ago are finding some rationalization to follow him again.

What is at stake in this, of course, is not just the Senate, the comity of the Senate, the respect we have for one another, the respect we have for traditions one way or the other and that they be followed regardless of the President's party; what is at stake, unfortunately, is also the Supreme Court. This institution, the third branch of government, is part of a strategy that Senator MCCONNELL has been pushing forward for years now. It is the intent of the Republicans in the Senate, through Senator MCCONNELL, to take control of the third branch of government, the judicial branch. They are desperate to do it. Time is not on their side.

The demographics of America cannot be held back simply by voter suppression. They have to count on jurists from every level of the Federal judiciary to adhere to their minority point of view on so many important issues. Ironically, one of those issues is the role of women, the equality of women in America. Ruth Bader Ginsburg argued for that her whole life. She was smart enough to know she was taking her argument to a lot of male judges, so she argued for equality for men, as well as women, during the course of her career on and off the bench.

She was principled, determined, and successful. As an attorney, she argued and won multiple cases in the Supreme Court in the 1970s, eventually persuading the all-male Court to apply the 14th Amendment's equal protection clause to sex-based discrimination. Sadly, we can predict with almost 100 percent certitude that if Donald Trump and MITCH MCCONNELL choose her successor, that principle will be under fire; in fact, it may not even survive.

For all the kind speeches about this principled woman and what she gave to America—and they are well deserved about Ruth Bader Ginsburg—watch the nominee who comes from the Trump White House and you will find, I am afraid, they are not even close to the standard that she argued for and succeeded.

Today, we are 6 weeks from election day and 7 weeks from the Supreme Court taking up another case, one which I think is relevant and important to every single American. The question the Court will decide is whether the ACA—ObamaCare—will survive. President Trump and Majority Leader MCCONNELL want to rush the

nominee before the Senate before these two dates arrive.

Do you recall, not that many years ago, when the Republicans controlled the House of Representatives and voted, I believe, 50 different times to eliminate the Affordable Care Act? Were it not for a Democratic Senate, they might have achieved their goal. Each and every time they were asked: What would you replace it with? What would you say to the 20 million Americans who depend on the Affordable Care Act for their source of health insurance? What would you say to the rest of America who depend on the Affordable Care Act for fundamental protections in health insurance and protections, such as no discrimination based on preexisting conditions?

Americans understand that. Virtually every family has a story to tell of someone in their own family with an illness that could be considered a preexisting condition. The insurance industry even went so far at one point as to say being a woman was essentially a preexisting condition. Based on that, the health insurance industry would either charge higher premiums or refuse coverage.

We got rid of those days. We ended that with the Affordable Care Act. We ended it with ObamaCare. And now the Republicans, again, want the insurance industry to have that power over your life. As of this morning, 6 million Americans have been reported as diagnosed with COVID-19. Trust me, the insurance industry would make that a preexisting condition for them and for any others in the future who should turn up positive on these COVID-19 tests.

What the Republicans are seeking to do in the Supreme Court is what they failed to do on the floor of the Senate. They tried on the Senate floor many times—and the last time is well remembered—to end the Affordable Care Act. Those of us who were here that night watched as a handful—perhaps three—Republican Senators said no. We all remember that moment after he had been on the phone with President Trump when John McCain, the late Senator from Arizona, came through those doors at 2:30 in the morning and cast his “no” vote in the well of the Senate Chamber. I was there just a few feet away and watched every second of it. It was gripping. It was exciting. For many people, it was giving them another chance to protect themselves with health insurance, something the other Republicans were determined to eliminate.

John McCain said then and we say now: If you have a better idea on the Republican side—President Trump, if you have a better idea than the ACA—let's see it. How many times has this President made an empty promise: We have a substitute; I will give it to you in a week, 2 weeks, 3 weeks. They don't have one.

Recently, at a hearing before the Appropriations Subcommittee, I asked

three leading health experts and doctors in the Trump administration if any of them had worked on the so-called Republican substitute. Not a one. It doesn't exist. It is just an empty answer and an imperfect answer, at best, from this administration.

I remember February 13, 2016, when Justice Scalia just passed away in a Presidential election year and Senator MCCONNELL said, to the surprise of many of us, the following:

The American people should have a voice in the selection of their next Supreme Court Justice. Therefore, this vacancy [the Scalia vacancy] should not be filled until we have a new President.

He stated the McConnell rule in February of 2016, an election year. Here it is:

The American people should have a voice in the selection of their next Supreme Court Justice. Therefore, this vacancy should not be filled until we have a new President.

It is pretty clear, isn't it?

Well, Republican Senators all lined up behind him in this new statement of principle and denied Merrick Garland not only a hearing but even the courtesy of an office appointment for most of them. The McConnell rule is clear and unambiguous, and the 2016 Republicans dutifully fell in line behind it. They said that the American people should have the last word. An election year Supreme Court vacancy should be filled in the next Presidential term.

Senator MCCONNELL claims that his rule really had an asterisk at the end. I don't see one. He said it really depends on which party controls the Senate. Well, that is certainly a distinction without a difference. Why should the composition of the Senate dictate whether or not the American people "should have a voice in the selection of their next Supreme Court Justice"? Either the American people have a voice regarding the future of the Court when there is a vacancy in an election year or they don't.

Four years ago, Senator MCCONNELL said they do. Now he says they don't. It is a flip-flop and, oh, the painful contortions I see among most Republican Senators trying to rationalize posing for holy pictures 4 years ago, saying that the American people should have the last word and then 4 years later, completely reversing themselves—but they do.

This is not just some Washington debate. The stakes in this debate are important for every American. It isn't about who gets the last word on MSNBC or FOX; it is about who gets the last word when you learn someone in your family has a devastating illness and you are praying to God you have a health insurance plan that will cover it.

President Trump has made clear he wants to strike down the entire Affordable Care Act even without a substitute. That is the position the Trump administration took before the Supreme Court in a case that will be argued just days after this November 3 election.

President Trump has also made it clear that when he picks a new Supreme Court Justice, he wants them to agree with him when it comes to eliminating the Affordable Care Act.

I would say to people across America: Be prepared. If MITCH MCCONNELL gets his way, if Donald Trump gets his way, if they install a new Supreme Court Justice who has taken this oath—this political oath to following the Trump plan—all of America will be at risk because the protections of the Affordable Care Act will be eliminated by that Supreme Court.

In 2015, Donald Trump tweeted, as he often does: "If I win the Presidency, my judicial appointments will do the right thing unlike Bush's appointee John Roberts on ObamaCare." We certainly know what that means because at least on one occasion, John Roberts has kept ObamaCare alive.

Let's be clear. The Affordable Care Act is hanging in the balance in just a few days. The healthcare coverage and protections for preexisting conditions that millions of American families rely on are at risk. Republicans were never able to repeal the Affordable Care Act in the House or on the floor of the Senate—thank you, John McCain—so they want to do it in the Court. They are trying to accomplish in the Supreme Court what they cannot accomplish in Congress. If President Trump and Senator MCCONNELL go through with their plan to jam through a Supreme Court nominee this year, the Affordable Care Act is doomed.

Did you hear last night when the chairman of the Senate Judiciary Committee announced—I saw it this morning on television. He announced that every single Republican Senator on the Senate Judiciary Committee is going to vote for the Trump nominee for the Supreme Court. We don't have a nominee yet, do we? The President said he will not announce one until Saturday of this week. Here is this announcement by the Republican chairman of the Senate Judiciary Committee: He's counted the votes. It is a done deal.

What does it tell you? It tells you it doesn't make any difference whom the President nominates—the silence of the lambs in the U.S. Senate.

If President Trump and Senator MCCONNELL go through with this plan, America will feel it, and every family will know it. That is why my Republican colleagues refuse to give the American people the last word on November 3. They are so uncertain of the reelection of Donald Trump, they have to do this now, quickly. They are afraid he will not be renominated, that he will not be reelected, and that he will not be in a position to fill this vacancy next year. So they are breaking their own promise to the American people to respect their judgment in the selection of the Supreme Court nominee.

AFFORDABLE CARE ACT

Madam President, we know what is at stake as well in terms of this Na-

tion. There are 200,000 Americans—that number is likely to be confirmed in just a matter of hours, if not days—who have died of COVID-19.

You say to yourself: Well, it is a global pandemic, and people are dying everywhere.

That is true, but the rate of death in America, sadly, leads the world. It is not an indication of American greatness that the infection rate from COVID-19 in the United States of America is five times what it is in Germany. It is not an indication of American greatness when the infection rate in the United States is twice what it is in Canada. It is not a reflection of the greatness of America that, with 4½ percent of the global population, we have 20 percent of the people who have died from this pandemic. This President and this administration have utterly failed when it has come to this public health crisis—one of the most challenging in a century.

For the 6 million people who have been infected with this COVID virus in America, we pray that they will recover fully, but we know, in many cases, they will not. We know that, without the protection in the Affordable Care Act, many insurers will refuse to issue policies to these people in the future if the Republicans have their way and eliminate the Affordable Care Act.

Amy, of Huntley, IL, recently wrote to me:

Please save the ACA. Without it, caps will come back, and, with them, my children's mental health care coverage will essentially disappear. I have three children, each with varying mental health disabilities. Before the Affordable Care Act, our Blue Cross-Blue Shield plan had a maximum family lifetime cap of 100 mental health care visits.

A lifetime cap, she says, of 100 visits.

That is it. When the ACA was passed, it was like a tremendous weight had been taken off our family.

Young adults, incidentally, up to the age of 26 are protected by their families' health insurance under the Affordable Care Act. If the Trump administration, MITCH MCCONNELL, and the new Supreme Court nominee have their way, that would end. Insurance plans would no longer have to cover prescription drugs, maternity care, mental health, or addiction treatment. While still facing the opioid crisis, eliminating the Affordable Care Act would eliminate the guarantee that your son, your daughter, or someone in your family who is facing the addiction of this terrible drug would have coverage when it comes to addiction treatment.

Misty, of Gurnee, IL, wrote:

In a time where my husband is unemployed and I've been quarantined . . . losing our health care now would be absolutely devastating for my family. My husband and I are both on daily prescription meds, and we have two daughters who desperately need health care coverage as well. I am asking you to protect the Affordable Care Act.

Misty, I am going to protect the Affordable Care Act by opposing President Trump's Supreme Court nominee