

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