ORDERS FOR THURSDAY, MARCH 3, 2016

Mr. MCCONNELL. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 9:30 a.m. tomorrow, Thursday, March 3; that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, and the time for the two leaders be reserved for their use later in the day; further, that following leader remarks, the Senate resume consideration of S. 524.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

ORDER FOR ADJOURNMENT

Mr. MCCONNELL. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that it stand adjourned under the previous order, following the remarks of Senators CASEY and BENNET.

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

The Senator from Colorado.

FILLING THE SUPREME COURT VACANCY

Mr. BENNET. Mr. President, I am here tonight to discuss the Supreme Court vacancy caused by Justice Antonin Scalia's death.

First, I think it is important to reflect on Justice Scalia's life and profound contribution and influence on the Court and our country. He was one of the longest serving Justices in our Nation's history, and, as far as I can tell, every single day he served, he applied his considerable intellect, integrity, and wit to the work before him.

Although I disagreed with many of his decisions, I never doubted his commitment to the rule of law. He was a principled originalist. He was loyal to his country. By all accounts, including moving testimony from his children, he was devoted to his family and to his friends, including to Justice Ruth Bader Ginsburg, with whom he often disagreed.

Judge Scalia's judicial philosophy was well understood when President Reagan nominated him to the Supreme Court in 1986. Many Senators then opposed his judicial approach, but in an echoing indictment of today's Senate and its partisanship, 30 years ago the U.S. Senate confirmed Justice Scalia 98 to 0—a vote that testifies to Justice Scalia's qualifications and to the integrity of Members of this body who disagreed with his vision of the Constitution but, exercising their constitutional duty, refused to withhold their support for a qualified nominee.

Here is what article II, section 2, clause 2 says about our and the President's duty: The President ''shall nominate, and by and with the Advice and Consent of the Senate, shall appoint . . . Judges of the supreme Court.''

When a vacancy arises, the President shall nominate a replacement and the Senate shall advise and consent by voting on that nominee. That is what the plain language of the Constitution requires, and that is what Presidents and the Senate have done throughout our history. That is why, in the past 100 years, the Senate has taken action on every single Supreme Court nominee—even those made during a Presidential election year. Throughout our history, there have been at least 17 nominees confirmed by the Senate in Presidential election years. The last of these was Justice Kennedy in 1988.

This history reveals that when the chairman of the Judiciary Committee said last week that ''[t]he fact of the matter is that it's been standard practice over the last 80 years to not confirm Supreme Court nominees during a presidential election year,'' he was incorrect. The fact of the matter is that since the founding of this country, the Senate has done its job even in an election year. In fact, during one election year, the Senate voted to confirm not just one but three Justices to fill vacancies on the Court. The President was none other than George Washington, and he was in the fourth year of his second term when that happened. That Senate included some of our Founders, delegates to the Constitutional Convention. But, come to think about it, what did they really know about the Constitution?

On that subject, by the way, it has been incredible in the truest sense of the word to hear people—Senators and even candidates for President who claim to be, as Justice Scalia surely was, constitutional originalists or textualists—willfully ignore the plain meaning of the Constitution in favor of this so-called standard practice. That is not a form of constitutional interpretation with which I am familiar, but it seems to be guiding the majority leader and the chairman of the Judiciary Committee away from the text they claim to revere. They wrote together in the Washington Post:

It is today the American people, rather than a lame-duck President whose priorities and policies they just rejected in the most-recent national election, who should be afforded the opportunity to replace Justice Scalia.

I have a chart. I redlined the actual words of the Constitution with the claim of the majority leader and the chairman of the Judiciary Committee. We can see they bear no relationship to one another. In fact, only seven words—the black words—remain from the original constitutional text, including in those seven words a conjunction, a definite article, and a preposition—otherwise known as ''and,'' ''the,'' and ''of.''

Oh, and by the way, if we want to talk about a real standard practice, the President becomes a lameduck only after the election that is coming up and only until the inauguration.

When we look at the history, it is telling that, unlike almost all our other work, the Senate's consideration of Supreme Court nominees has been remarkably expeditious. On average, the Senate has voted 70 days after the President's nomination. When Justice Scalia died, 342 days remained in the President's term—nearly a full quarter of his final term in office. Why has the Senate, notorious for its glacial slowness, historically acted with such deliberate speed when it comes to our consideration of Supreme Court Justices?

I suspect there are three principal reasons: first, the constitutional clarity that commands us; second, the unique nature of the responsibility—no one else, including the House of Representatives, can exercise it; and third, the essential importance of the Supreme Court's composition.

With respect to the Supreme Court's composition, no less of an authority than Justice Scalia himself explained it well. Asked to recuse himself from a case involving Vice President Cheney, Justice Scalia rejected the suggestion that he should ''resolve any doubts in favor of recusal.'' He observed that such a standard might be appropriate if he were on the court of appeals, where his ''place would be taken by another judge, and the case would proceed normally. On the Supreme Court, however, the consequence is different: The court proceeds with eight Justices, raising the possibility that, by reason of a tie vote, it will find itself unable to resolve the significant legal issue presented by the case.''

Justice Scalia then quoted the Supreme Court's own recusal policy observing that, ''[e]ven one unnecessary recusal impairs the functioning of the Court.'' If even one unnecessary recusal impairs the Court, imagine what a 14-month vacancy would do. Imagine if, in 2016, we had a repeat of 2000, when the Supreme Court decided Bush v. Gore, except with only eight Justices on the bench. Imagine the constitutional crisis our Nation would have to endure.

I know it has become fashionable for Washington politicians to tear down rather than work to improve the democratic institutions that generations of Americans have built. But to impair so cavalierly the judicial branch of our government is pathetic. It is a standard one would expect of a lawless nation, rather than a nation committed to the rule of law. It is the behavior of a petty kangaroo court, not of the U.S. Senate. And it threatens to deny justice to millions of Americans in the name of petty politics. It is time for the Senate to do its job, as every Senate before us has done.

I am not asking my colleagues to support the nominee. That is a matter of conscience for each of us. But what is unconscionable is that the majority, if it keeps its word, will have no hearing, will hold no vote, and refuse even the courtesy of a meeting with the President's nominee.