

A lot of people say: As a Democrat in the Senate, it is easy for you to say that Republicans should treat this Democratic President a little better. What if the shoe were on the other foot?

Well, we have a chance to take a look back and see exactly what happened when the roles were reversed. In 1988, during the last year of Republican President Ronald Reagan's term, we had a vacancy on the Supreme Court. He sent his nominee to the Senate, which was then controlled by the Democrats. Did we have an announcement from the Senate Democratic leadership that we will not consider any nominee sent by a Republican President in the last year of his term? Did we have an announcement by the Democratic leaders in the Senate that we won't even meet with the nominee? Exactly the opposite occurred. Anthony Kenney was given the opportunity to have a hearing, where he answered questions under oath, and had a vote which confirmed him on the Supreme Court. A Republican President, during the last year of his Presidency, filled a vacancy on the Supreme Court with the cooperation of a Democratic majority in the Senate.

The tables are turned now. We have a Democratic President with a Republican-controlled Senate, and they are ignoring the history and precedent of the Senate and they plan on ignoring this nominee. There is no basis in the Constitution for the position taken by the Senate Republicans. This is an unprecedented obstruction of a nomination to fill a key Supreme Court vacancy.

Yesterday I was across the street. It was the second time I have been honored to be included in a very small audience of about 250 people to listen to the oral arguments in a case before the Supreme Court on a critical decision that will affect the lives of millions of people in the United States. I looked up to the chairs on the Supreme Court, and obviously one was vacant. There are only eight Justices. If this Court on this case—or others—cannot resolve it with a majority and has a vote of 4 to 4 on a case, it invites confusion and chaos in one of the most critical branches of our government. It is confusion and chaos that can be avoided if the Senate Republicans simply do their constitutional duty: advise and consent.

Give Merrick Garland a hearing under oath so the American people can draw their own conclusions about whether this man is the right person for the Supreme Court, and then let's have a vote on the floor. In the past, even when the Senate Judiciary Committee rejected a Presidential nominee for the Supreme Court, the committee sent that nomination to the floor anyway for a vote so that the whole Senate could speak to the worthiness of that nominee. Merrick Garland deserves nothing less.

The Senate Republicans refusal to do their job under the Constitution has

real-world consequences. Recently the solicitor general of Illinois, Carolyn Shapiro, came to the Capitol to talk to the Senators about how the vacancy on the Supreme Court is actually hurting States by leaving important legal questions unresolved.

Madam President, I ask unanimous consent that her speech be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

STATEMENT ON THE IMPORTANCE OF A NINE-MEMBER SUPREME COURT FOR STATE AND LOCAL GOVERNMENT

[Before the Senate Democratic Steering and Outreach Committee, April 6, 2016, Carolyn E. Shapiro, Solicitor General of Illinois, Office of the Illinois Attorney General]

Good morning. Thank you very much for the opportunity to talk with you about the importance of a fully functional Supreme Court to state and local governments.

My name is Carolyn Shapiro, and I am the Illinois Solicitor General. I am also a tenured faculty member at IIT Chicago-Kent College of Law where I founded the Institute on the Supreme Court of the United States and where my research and scholarship focuses largely on the Supreme Court as an institution.

State and local governments regularly rely on the Supreme Court to provide clarity and certainty in numerous areas of law, many of which do not involve the headline-grabbing, hot-button issues we hear about on the news.

But in some of these areas, the risk of an equally divided court is real, and a Supreme Court unable to provide clarity and certainty would have very real and harmful effects.

I could talk about a variety of different areas of law, but my focus here will be on the Fourth Amendment. The Fourth Amendment of course regulates what law enforcement can and cannot do in investigating crime and it protects the privacy interests of the citizenry. It is crucial for law enforcement to know what the rules are and it is crucial for the citizenry to have confidence that law enforcement is following the rules and doing so uniformly.

These things cannot happen without the Supreme Court being able to resolve some of the difficult and contested issues in this area of law.

In the past three years, the Supreme Court has decided at least eight Fourth Amendment cases by close votes, and in several of those cases, Justice Scalia was in a five-member majority. In other words, without nine justices, the court might well have been unable to resolve the issues presented in those cases, leading to ongoing uncertainty. And some of those cases, as often happens in the Fourth Amendment area, have created new areas of uncertainty that must be resolved—but that may require a nine-member court to do so.

I will briefly mention two such areas. In 2013, the Supreme Court decided *Florida v. Jardines*, in which Justice Scalia wrote the opinion on behalf of five justice majority. *Jardines* held that when police bring a drug dog onto the front porch of a single family home, that constitutes a search for purposes of the Fourth Amendment.

This holding has led to new questions. Earlier this year, the Illinois Supreme Court held that *Jardines* extends to a drug sniff outside an apartment door in the common area of a building. But in similar cases around the country, other courts have reached different conclusions. Not only can

this lead to inconsistent law from state to state, but even within a jurisdiction. A search held constitutional in state court might be held unconstitutional in federal court in the same state. This kind of uncertainty is untenable.

A second issue involves the implications of the 2013 case of *Missouri v. McNeely* in which Justice Scalia joined a five-member majority to hold that the natural dissipation of alcohol in the blood does not in and of itself create exigent circumstances allowing the police to obtain a blood test without a warrant. This term the court is poised to hear a case, *Birchfield v. North Dakota*, about the implications of some of *McNeely's* reasoning for state statutes that criminalize the refusal to submit to a blood or breath test when pulled over for a DWI. Illinois does not have such a statute, but we do have a statute making refusal to submit to such a test grounds for the suspension of a license. And a case challenging that statute is apparently being held by the Supreme Court pending the result in *Birchfield*. So if the court is unable to resolve *Birchfield* because it is equally divided, or is unable to resolve our case, should the Court later decide to hear it, those statutes will remain under a constitutional cloud and neither law enforcement nor state legislatures will know the scope of their authority in this area.

There are of course other areas of law I could discuss, but the point I want to leave you with is that state and local governments, and the citizenry, depend on a functional court to provide clarity and certainty in areas of law that affect government officials and citizens on a daily basis.

Thank you.

Mr. DURBIN. As an example, Solicitor General Shapiro pointed out how right at this moment numerous States and Federal circuits are governed by different standards on important Fourth Amendment search and seizure issues. These cases are working their way through the courts, but only the Supreme Court can finally resolve the issues. But the Court may be unable to do that. A 4-to-4 Court with a tie will not resolve an issue. Unless the Senate Republicans do their job, the Supreme Court will be stuck with eight members for more than a year.

I have a trivia question. When was the last time the Senate left a vacancy on the Supreme Court for a year or more? During the Civil War. It took a war between the States for us to leave a vacancy that long in the Court—a vacancy which the Senate Republicans are continuing by this obstruction.

As we reflect on the anniversary of the Oklahoma City bombing, I hope my friends on the other side of the aisle will take a step back from politics. I hope they will acknowledge that Merrick Garland stepped up for this Nation, did the right thing, and proved he could do his job. Senate Republicans have no less responsibility. It is time for the Senate Republican majority to do its job.

I yield the floor.

The PRESIDING OFFICER. The majority whip.

HOUSTON FLOODING

Mr. CORNYN. Madam President, over this last weekend and through yesterday, large parts of central and southeast Texas experienced torrential

downpours. The Houston region in particular experienced so much rain, it led to widespread flooding. I know many people have seen that on TV, in news reports, or online.

Many will recall that last year over Memorial Day weekend, Harris County, which is where Houston is located, suffered from similar flooding. This year's rain seems to be even more widespread, with some areas receiving as much as 20 inches of rain in a relatively short period of time. Whole subdivisions were submerged, interstate highways were impassable, and power was knocked out, which affected more than 100,000 people at one point. Tragically, several people have died as a result of these floods.

Amidst this tragedy, Texans have been quick to help one another. Crews had performed more than 1,000 rescues as of yesterday afternoon, and even one TV reporter on location covering the story rushed to rescue an elderly man from a flooded underpass. The rescue is on YouTube. I recommend anybody who is interested to watch it. It is really quite a rescue.

This morning I spoke to County Judge Ed Emmett of Harris County, and I will continue to stay in close contact with him, as well as the chief of the Texas Department of Emergency Management, in the coming days.

The one thing I do know is that Texans are resilient. In particular, the people in the Houston region, where I happen to have been born, are used to storms that cause that kind of flooding. But the rebuilding effort will be long and one that will require support from officials at all levels.

Going forward, I will do everything I can to help mobilize Federal resources for the Houston area should the Governor determine a Federal disaster declaration is necessary. In the meantime, our thoughts and prayers are with the people of Houston and other affected areas in Texas, and we hope and pray for their safety and their fast recovery.

JUSTICE AGAINST SPONSORS OF TERRORISM ACT

Mr. CORNYN. Madam President, I will spend a few minutes talking about a piece of legislation that is bipartisan and deserves this Chamber's consideration.

Last year, around the anniversary of the 9/11 attacks, I reintroduced the Justice Against Sponsors of Terrorism Act, or JASTA. This bill makes minor adjustments to our laws to help Americans who are attacked on U.S. soil get justice from those who sponsored and facilitated that terrorist attack on U.S. soil.

When the Judiciary Committee considered this bill earlier this year, it was reported out without objection. I think the reasons for that are pretty clear. We should use every means available to prevent the funding of terrorism, and the victims of terrorism in our country should be able to seek jus-

tice from people who do fund that terrorist attack. We have to maintain our diligence to hold those who sponsor terrorism accountable, particularly on our own soil, and we must leverage all of our resources—or as many as possible—to shut off the funding sources for terrorists. Using civil liability to do so has been Federal policy for decades, and JASTA would strengthen that.

It is my hope that this legislation will serve as a defective deterrent and will make foreign governments think twice before sending money to terrorist groups who target our homeland. Our country confronts new and expanding terror networks that are focused on targeting our citizens, and we need to do everything we can to stop it, including passing this legislation.

JASTA is also important because it would help the victims of the 9/11 attacks achieve closure from that horrific tragedy.

I mentioned that this is a bipartisan bill, and I am glad to introduce it with my colleague CHUCK SCHUMER of New York. But unfortunately the President doesn't seem to share these bipartisan concerns about helping the victims of terrorism or deterring others from funding and facilitating it in the future. Unfortunately, the administration has worked to undercut progress of this legislation at every turn.

Yesterday the White House insisted that the President does not oppose JASTA on behalf of the Kingdom of Saudi Arabia even though the administration has made that argument in private. In light of his upcoming trip there this week, it appears that the Obama administration is pulling out all the stops to keep this bill from moving forward before the President's visit to Riyadh. I wish the President and his aides would spend as much time and energy working with us in a bipartisan manner as they have working against us trying to prevent victims of terrorism from receiving the justice they deserve.

I was glad to see the President abandon an argument that I always found strange, especially coming from him. He didn't seem to care that much about our relationship with Saudi Arabia when he ran through his misguided nuclear deal with Iran, running roughshod over serious concerns raised by the Kingdom. He didn't seem to care much about our relationship with Saudi Arabia when he contended that they should learn to "share the neighborhood with its mortal enemy Iran." In a very real way, the President's opposition to this bill looked like it was asking the victims of 9/11 and their families to pay some of the political price for the President's mishandling of our relationship with Saudi Arabia.

Well, yesterday the White House claimed it opposed the bill because it undermined the principle of sovereign immunity. In the past, the President said U.S. citizens could sue foreign governments and the United States would get sued abroad. Now, sovereign immu-

nity is an important principle to be sure, but the fact is, the White House is misrepresenting the law. We have had statutory exemptions to this immunity for years for business conduct, torts, and many things, including terrorism. We already had these exceptions in the law, and that has been the law for decades. The only real change is allowing victims of terrorist attacks on the homeland to sue even if the defendant is not designated by the State Department as a state sponsor of terrorism. That is right. All this would do would be to allow victims of terrorist attacks on our homeland to sue even if the sponsor of the terrorist activity was not a State Department designated state sponsor of terrorism. This is a narrow piece of legislation, and it would not upend traditional principles of sovereignty.

Yesterday a White House spokesman claimed that JASTA would lead to liability for U.S. humanitarian aid work. That is just false. I am confident that Senator SCHUMER and I can make that abundantly clear to anybody who shares that misconception.

The President's attempt so far to derail this legislation that would help the victims of 9/11 pursue justice under the law is completely unacceptable. Unfortunately, this shouldn't be a surprise. The President has steadfastly refused to declassify and release 28 pages of the "9/11 Commission Report" that pertain to allegations of Saudi Arabia's support for the 9/11 terrorists. According to some news reports, President Obama has vowed several times to release this information, but he hasn't followed through on that promise yet. His actions to shield the Saudi Government instead of advocating on behalf of his own citizens rings much louder than his words. That doesn't sound to me like the most transparent administration in American history, which is what the President promised the Nation at his inauguration.

The good news is that there is bipartisan support in this Chamber for those who will stand up for these victims of the 9/11 terrorist attacks and hold the people responsible accountable. I look forward to continuing to work with our colleagues to get this critical legislation passed.

The President has his prerogatives under the Constitution. If he wants to veto legislation passed by the Congress on a strong bipartisan vote, he can do that, but 67 Senators and two-thirds of the House can override a Presidential veto. That is in the Constitution too. So the President needs to step up, instead of trying to kill this legislation by private conversations in the Senate. The Senate needs to do its work: Pass this bipartisan legislation, help the victims of the 9/11 terrorist attacks, and hold those who fund and facilitate terrorist attacks responsible. If the President wants to get in the way, he can veto the legislation, and we can override that veto. That is the way the Constitution works.