

The Senate should do its job and carry out its mission to fill vacancies of the Supreme Court, so that Americans will have confidence that the Supreme Court decides cases based on the law, Constitution, and facts of the case and so that politics does not play a role. The American public supports Congress doing its job and giving Judge Garland the hearing he deserves.

The stakes at the Supreme Court can involve matters of life and death. In death penalty cases, if the Court splits 4 to 4, a defendant would be put to death even though the Court decision did not definitively resolve the legal issue in the case.

Chief Judge Garland is a nominee for the Supreme Court and should be dealt with in this term of Congress. It is not a matter for the next President or the next Congress. There are 9 months left in this year, and to suggest that we don't have the time and the President doesn't have the authority to appoint a nominee is absolutely outrageous. It is an affront to the Constitution.

We need to go through the process and give Chief Judge Garland a chance. I have met with Chief Judge Garland and believe he is eminently qualified to be a Supreme Court Justice. But before the Senate makes a final decision, we need to do our job and vet the nominee, hold a hearing, and hold a vote that puts all Senators on the record. How can Senators in good conscience reject this Supreme Court nominee without a fair vetting and hearing or process? I think it is hard to understand how you can be excused from doing your job for 9 months by not having a confirmation hearing and vote. The President did his job, and it is now time for the Senate to do its job.

The American people want to see nine justices on the Supreme Court when it convenes its new term in October. The Senate now has the responsibility and duty to respect the independence of the Federal judiciary, the authority of the President to nominate Justices, and the powers of the Senate to advise and consent on nominations.

Let's remember our oaths to support the Constitution. Let's do our job. Let's take up the Garland nomination. 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. CARDIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

ENERGY AND WATER DEVELOPMENT AND RELATED AGENCIES APPROPRIATIONS ACT, 2016

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of H.R. 2028, which the clerk will report.

The senior assistant legislative clerk read as follows:

A bill (H.R. 2028) making appropriations for energy and water development and related agencies for the fiscal year ending September 30, 2016, and for other purposes.

Pending:

Alexander/Feinstein amendment No. 3801, in the nature of a substitute.

Alexander amendment No. 3804 (to amendment No. 3801), to modify provisions relating to Nuclear Regulatory Commission fees.

Alexander (for Hoenen) amendment No. 3811 (to amendment No. 3801), to prohibit the use of funds relating to a certain definition.

The PRESIDING OFFICER. The Senator from Maryland.

AMENDMENT NO. 3811

Mr. CARDIN. Mr. President, I understand that shortly we are going to be voting on the Hoenen amendment. The Hoenen amendment would prevent the clean water rule from going into effect.

In 1972, Congress passed the Clean Water Act in response to what was happening around this country. We saw rivers literally catch on fire as a result of polluted waterways. We had Lake Erie, which was considered dead. The Chesapeake Bay was one of the world's first marine dead zones. That is nothing to be proud of. The environment and status of our water was a national disgrace, and through congressional leadership, we passed the Clean Water Act. We did that because we understood that the status of upstream water affects the status of downstream water—that we are all in this together. We understood that having clean water was a public health issue, from swimming in the water to the source of our drinking water supplies. One third of our drinking water supplies come from regulated waters.

We also understood it was important for our economy. The status of tourism very much depended upon the quality of our water. Literally, people were concerned about going close to some of our inner harbor water areas. The Baltimore Inner Harbor is a tourist attraction, as are the inner harbors of many of our cities. It is important for our economy for agriculture. Agriculture depends upon clean water. We understood that when we passed the Clean Water Act in 1972. And we also understood it was a matter of quality of life for the people in our country. From those who hike and do bird watching to those who enjoy fishing and hunting, the status of clean water very much affects the way we enjoy life.

As Senators from Maryland, Senator MIKULSKI and I both understand the importance of clean water for the Chesapeake Bay. The Chesapeake Bay is a national treasure and the largest estuary in our hemisphere. It was at great risk because of waters coming in

from other States into the Chesapeake Bay watershed, affecting the quality of water of the Chesapeake Bay.

It was for all those reasons that we passed the 1972 Clean Water Act. We understood the enforcement of the waters that were regulated under the 1972 Clean Water Act. It was based upon best science.

Science told us what we needed to do in order to have clean water—clean water for our environment, clean water for safe drinking water—and it was well understood until a Supreme Court decision. That decision in 2006, known as the Rapanos decision, was a 5-to-4 decision of the Supreme Court, which remanded the case, but it was a 4-to-4 decision on the merits of the case. Since that time, there has been uncertainty as to what bodies of water can be regulated under the Clean Water Act. So this was a situation caused by the ambiguity of the Supreme Court case. It is interesting that the decision on the merits was 4-to-4, as we are now debating whether we are going to have a full Supreme Court in order to make decisions that affect the clarity of law in this country.

The Rapanos decision sent back to the lower courts a decision on how to decide this. Since that time, there has been uncertainty as to what bodies are legally regulated under the 1972 Clean Water Act. Remember, this was 2006. The easiest way to resolve this was for Congress to pass a law clarifying the Clean Water Act, but Congress has chosen not to do that. So the Obama administration has done what it should do, using its power to promulgate a regulation that would provide clarity as to which bodies of water are regulated. Guess what. They have done that in a way that is consistent with how the law was enforced prior to the Rapanos decision—without much complaint before the Rapanos decision. It basically goes back to best science and tells us logically what needs to be regulated. That is what this rule would do: Protect our clean water.

There is a lot of misinformation that has been given about the clean water rule. Quite frankly, normal farming activities don't require any permits under the Clean Water Act. If we listen to some of the arguments against the Clean Water Act, we would have a hard time comparing that to what, in fact, is in the bill.

The Clean Water Act would reestablish the well-thought regulatory framework for protecting our clean water so that we don't return to the days of jeopardizing the Chesapeake Bay or jeopardizing our rivers or jeopardizing our clean water supplies or our environment.

Tomorrow is Earth Day. Forty-six years ago, our colleague Senator Gaylord Nelson established Earth Day. What will this Congress's legacy be? What will we be remembered for in regards to protecting this planet, protecting our country, and protecting our environment for future generations? I