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EXECUTIVE CALENDAR—Continued

Mr. MERKLEY. Let's turn to Planned Parenthood Association of Utah v. Herbert. In August of 2015, Gary Herbert, Utah's Republican Governor, ordered the State to strip $272,000 in Federal funding from the Planned Parenthood Association of Utah in response to a series of highly edited videos that alleged that Planned Parenthood clinics were selling fetal tissue, even though Utah's clinics were not in the video then.

By the way, those videos had been found to be completely doctored, completely inaccurate, completely misleading. But despite the fact that the videos were not authentic and despite the fact that they didn't have any bearing in Utah, Governor Herbert stood by his ruling to carve out and take away funding from Planned Parenthood. So Utah's Planned Parenthood Association filed for a restraining order against the State, saying that the State was not acting justly, so they asked the Court to protect them from unjust action.

In spite of his continued claim that stripping the funding was not to punish the organization for its stance on abortion but in response to the videos—the doctored, inauthentic, discredited videos—the Governor eventually admitted, while responding to Planned Parenthood's motion for a preliminary injunction, that defense of the videos involved different affiliates—not the ones in Utah—that there was not even an accusation that Planned Parenthood in Utah had broken the law—not even an accusation. The organization didn't participate in programs that provided fetal tissue for research, so it was completely disconnected from the operation of Planned Parenthood in that State.

The background of this is that medical institutions have utilized fetal tissue and there have been charges related to the preparation of that tissue. We could have a whole debate, and we should bring in the medical professionals to understand the details. But in this case, it is irrelevant to have that debate because Planned Parenthood in Utah wasn't part of the fetal tissue research organization. So we don't have to argue over whether fees they have charged for repairing the tissue were fair or unfair because they didn't repair anything. This was all about something else, which was the Governor's decision to launch an attack on Planned Parenthood, punish Planned Parenthood for its constitutionally protected advocacy.

This issue is one which I am sure we will be talking about for years to come. But in the context of the law, a three-judge panel of the Tenth Circuit granted a preliminary injunction on Planned Parenthood, concluding that Utah's Planned Parenthood was operating lawfully and that the Governor's personal opposition to abortion as a motivation for blocking Federal funds and targeting the health organization did violate its constitutional rights.

So when this was decided, neither Planned Parenthood nor the State of Utah sought to have the Tenth Circuit rehear the case en banc, which means all the judges that serve on the Tenth Circuit. So you had a three-judge panel that made a decision. Neither side of the case—they were like, OK, we are done with this. We are done with this. The practice wasn't even relevant to the association in Utah, not just because the videos were from different States, not just because the videos were doctored and basically illegitimate, but also because they were about a fetal research program that the organization in Utah didn't participate in.

So from every possible direction, both sides said: Peace. The judge has ruled, and we understand why. We accept their ruling. But did Judge Gorsuch accept the ruling? No. He dissented from the court's denial and wanted to grant an en banc review, not at the behest of any litigant, just that Judge Gorsuch didn't like the outcome of the case and wanted to have a full panel in hopes of getting the decision that would defer to Governor Herbert, who wasn't seeking any review because he wanted to strip the organization's funding, even though the organization had done nothing wrong and didn't participate in the program at all. In other words, Judge Gorsuch was willing to ignore court practice and custom and a whole set of facts that showed that the whole decision the Governor made was on the wrong basis—wrong basis on the facts because the videos were doctored, wrong basis on the facts because it wasn't even about the State of Utah, wrong basis on the facts because Planned Parenthood of Utah didn't participate in this research program—wrong on every level.

But Judge Gorsuch wanted to ensure that he could show a case backing Utah's Republican Governor that eliminated funding for Planned Parenthood. That is judicial activism. That is rewriting the law. That is not a judge; that is a legislator. A person who wants to rewrite the law in the frozen trucker case, a person who wants to rewrite the law in the autistic child case, a person who wants to rewrite the law in the Planned Parenthood case should run for office and legislate, not use the courts as your personal strategy for judicial activism; that is, to rewrite the law, the opposite of what the law says.

In the majority's opinion, Judge Mary Briscoe wrote separately to highlight the troubling nature of Gorsuch's dissent. She noted first how ''unusual'' and ''extraordinary''—those are words that she put in—it would be for the Tenth Circuit, on its own motion, to order an en banc review when neither

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

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party to a litigation sought such a review. And then she went on, and what did she say about Judge Gorsuch's proposal? She said he ''mischaracterized this litigation and the panel decision at several turns.''

Politics should be in this room, not taking your politics and trying to change the law through judicial activism on the court by turning the law upside down and saying it means X when it clearly states Y.

An unidentified judge—we are not sure who—requested that judges be polled. Again, that would be an unusual situation, apparently, in this context. Another judge in the majority pointed out that none of the parties asked for a hearing within the time permitted, and there was no justification for polling the court on that question at all.

These types of cases give you a sense of how Neil Gorsuch has used his judicial position to rewrite laws. The law says protect the trucker. If the trucker is seeking to pursue safety, he says don't protect the trucker. The law says provide the disabled child with an appropriate education; Neil Gorsuch says no appropriate education is required.

The court says that Planned Parenthood's rights were violated because they were singled out. That is not equality before the law, a very important principle in American jurisprudence. Neither side contested the outcome. It was kind of like, yes, OK, the court got it right. Judge Gorsuch wanted to contest it so he could strip Planned Parenthood of funding on a basis that the Court found to be unconstitutional. That is yet another reason that this hearing, this review of the judge be set aside.

You have these three fundamental reasons. First, for the first time in our history, the seat has been stolen from one Presidency and delivered to another in a strategy to pack the Court, causing tremendous damage to the institution, as well as tremendous damage to this institution, because it involved not exercising our advice and consent responsibility.

By the way, one may wonder, why didn't the majority, rather than stealing the seat, putting it in a time capsule and fast-forwarding it into the next administration in hopes of packing the Court—why didn't they just bring Judge Garland up and vote him down? The Senate has acted to not confirm in roughly a quarter of the nominations that have come forward to us for the Supreme Court. In those election year cases that I put up earlier, the Senate acted in all 15 of the cases that preceded the death of Antonin Scalia, but they didn't confirm in every case; they turned several of them down. They tabled a couple of them. They defeated a motion to proceed in another. But the Senate always acted.

Why didn't the majority honor the responsibility under the law for the Senate to do advice and consent, when there was plenty of time to do so, when the entire tradition of the Senate had been to always do so, when the written responsibility under the Constitution was to do so? So why not just bring up the judge and defeat him?

The answer is in the quotation that I read earlier from my colleague from Utah, who anticipated that if only the President would nominate somebody like Merrick Garland, it would be a great thing, and we would see a quick confirmation. Merrick Garland was that acceptable. He was that down the middle. He was without the kinds of issues that raised concerns. That was Merrick Garland.

So the majority said: We can't have a debate on him because the Senate will approve him, because he is that qualified. He will get that bipartisan support.

That is the principle of the filibuster; that is, that you don't close debate unless 60 Members say you close debate. So if 41 say we are not ready for whatever reason, you keep debating. That sends a strong message for Presidents to do what President Obama did. He consulted with the Democrats; he consulted with the Republicans and chose somebody who would be acceptable to both sides. That is the way it is supposed to work. And when a President ignores that and says: I am going to support somebody from the extremes, I am going to nominate somebody from the extremes, that is an invitation for the Senate to say no. The reputation, the legitimacy of the Court matters, so we are not going to approve this judge.

That is probably what is going to happen this week. The majority here in the Senate may say they want to close debate, but will they have a supermajority, a bipartisan majority? No. A few Senators perhaps, but they will not have those 60 votes.

Obama's judges met the 60-vote standard—both of them that they put forward before the third vacancy—and nobody filed a motion to close debate. There wasn't a vote on a motion to close debate. And why was that? Because everyone knew that they would have 60 votes to close debate. So, still, even out of the context of having had a cloture vote, you have the 60-vote standard there guiding the President and guiding the selection of the nominees.

We should not go back in time to a world in which the copper barons ruled Montana, not back to a time where the railroads and the oil companies called all the shots. We need to recognize that we have come a long way in terms of fulfilling the constitutional vision that our Founders set out—this vision of equality under the law, this vision of the pursuit of justice. But with the recent decisions of the 5-to-4 Court, we have gone backward. We have gone backward by allowing gerrymandering, by allowing voter suppression, by striking down the Voting Rights Act, and, most importantly, we have gone backward by allowing this vast infusion of dark money from the very few to drive election results.

I have been sharing the many reasons this debate should be suspended: One, because the seat was stolen; two, because there is an enormous cloud over the legitimacy of the President, and there are investigations under way, and we need to get to the bottom of it before a life-tenured position is filled by this President; and, three, a judge who repeatedly has engaged in rewriting the law to find for the powerful over the people, even when the law was very clear—even to the point that the entire Supreme Court overturned him on his effort to say doing merely more than nothing is acceptable under a law that says you must provide an appropriate education.

But here is one more thing. Breaking news: A POLITICO report has just come out which says that Judge Gorsuch committed plagiarism in a book and in an academic article. Well, that is news I had not heard, so I will read the article, and we can all learn about it at the same time.

This is a report from POLITICO entitled, ''Gorsuch's writings borrow from other authors.'' It came out at 11:19, which would put it an hour ago. Since I am here and since we are talking about Gorsuch, it is probably appropriate to share this breaking news with you.

Supreme Court nominee Neil Gorsuch copied the structure and language used by several authors and failed to cite source material in his book and an academic article, according to documents provided to POLITICO.

The documents show that several passages from the tenth chapter of his 2006 book, ''The Future of Assisted Suicide and Euthanasia,'' read nearly verbatim to a 1984 article in the Indiana Law Journal. In several other instances in that book and an academic article published in 2000, Gorsuch borrowed from the ideas, quotes, and structures of scholarly and legal works without citing them.

The findings come as Republicans are on the brink of changing Senate rules to confirm Gorsuch over the vehement objections of Democrats. The documents could raise questions about the rigor of Gorsuch's scholarship, which Republicans have portrayed during the confirmation process as unimpeachable.

The White House on Tuesday pushed back against any suggestion of impropriety.

Here is what the White House said:

''This false attack has been strongly refuted by highly-regarded academic experts, including those who reviewed, professionally examined, and edited Judge Gorsuch's scholarly writings, and even the author of the main piece cited in the false attack,'' said White House spokesman Steven Cheung. ''There is only one explanation for this baseless, last-second smear of Judge Gorsuch: Those desperate to justify the unprecedented filibuster of a well-qualified and mainstream nominee to the Supreme Court.''

That was the comment from the White House. I must do a little bit of editorializing here. Having a lengthy debate on a judge is not unprecedented at all. What is unprecedented is, for the first time in U.S. history, the majority leader filed a petition to close debate on the first day of debate. That motion under our rules means, in 2 days, we will have a vote to close debate. That

is what is unprecedented and never before done in U.S. history. Quite frankly, when the White House says ''mainstream nominee,'' the analysis by the Washington Post didn't find him to be a mainstream nominee. You can call him that, but read his opinions; read his judicial activism; find how he rewrote the law so that it means the case comes out the opposite of the way the law is written. See how that happened in the frozen trucker case. See how that happened in the autistic child case. See how that happened in his pursuit of the assault on Planned Parenthood, when everyone agreed there was a fair outcome and no one was appealing the outcome, except Judge Gorsuch.

If we are going to talk about a filibuster and we want to think about it in the longer sense, we aren't even allowed to continue talking to keep this from being considered because the majority leader filed a petition to close debate, so we have to have a vote on it. But last year, for 290-plus days, the Republicans completely filibustered Merrick Garland. If we are talking about the core heart of the meaning of filibuster—piracy, freebooting piracy to take over the system—that is what they did last year. They wouldn't allow even a committee hearing or a vote also for the first time in U.S. history. That is piracy. That is a violation of our responsibility. So the White House certainly got some of this completely wrong.

The article goes on—after having cited the White House opinion that this was an unfair attack—saying:

However, six experts on academic integrity contacted independently by POLITICO differed in their assessment of what Gorsuch did, ranging from calling it a clear impropriety to mere sloppiness.

''Each of the individual incidents constitutes a violation of academic ethics. I've never seen a college plagiarism code that this would not be in violation of,'' said Rebecca Moore, a Syracuse University professor who has written extensively on the issue.

Elizabeth Berenguer, an associate professor of law at Campbell Law School, said that under legal or academic standards Gorsuch's similarities to the Indiana Law Journal would be investigated ''as a potential violation of our plagiarism policy. It's similar enough to the original work.''

She continued:

''I would apply an academic writing standard,'' said Berenguer, who teaches plagiarism and legal writing. ''Even if it were a legal opinion, it would be plagiarism under either.''

The White House provided statements from more than a half-dozen scholars who have worked with Gorsuch or helped oversee the dissertation he wrote at Oxford University that was later turned into his book. They included John Finnis, professor emeritus at Oxford; John Keown of Georgetown University, one of the outside supervisors for Gorsuch's dissertation; and Robert George of Princeton University, the general editor for Gorsuch's book publisher.

The experts offered by the White House asserted that the criteria for citing work in dissertations on legal philosophy is different than for other types of academia or journalism: While Gorsuch may have borrowed language or facts from others without attribution, they said, he did not misappropriate ideas or arguments.

''Judge Gorsuch did not attempt to steal other people's intellectual property or pass off ideas or arguments taken from other writers as his own,'' said George. ''In no case did he seek credit for insights or analysis that had been purloined. In short, not only is there no fire, there isn't even smoke.''

The article continues:

The examples at issue make up a small fraction of published works by Gorsuch, which includes hundreds of legal opinions, academic articles, news articles and his book. POLITICO did not conduct a full examination of the federal judge's writings.

Yet a review of the documents provided to POLITICO shows Gorsuch parroting other writers' prose and sourcing without citing them. Instead, Gorsuch often acknowledges the primary sources cited by those writers.

In the most striking example, Gorsuch, in his book, appears to duplicate sentences from an Indiana Law Journal article written by Abigail Lawlis Kuzma without attributing her. Instead, he uses the same sources that Kuzma used: A 1982 Indiana court ruling that was later sealed, a well-known pediatrics textbook, ''Rudolph's Pediatrics,'' and a 1983 article in the Bloomington Sunday Herald.

At one point, Gorsuch's prose mimics Kuzma's almost word for word in describing a child born with Down syndrome.

Kuzma stated that—

Some medical terms here that I won't get right—

''Esophageal atresia with tracheoesophageal fistula indicates that the esophageal passage from the mouth to the stomach ends in a pouch, with an abnormal connection between the trachea and the esophagus.''

Did everybody follow that?

Gorsuch wrote that ''Esophageal atresia with tracheoesophageal fistula means that the esophageal passage from the mouth to the stomach ends in a pouch, with an abnormal connection between the trachea and esophagus.''

That is pretty close to word for word.

Gorsuch also used similar language as Kuzma in describing ''Baby Doe's'' first days.

''Shortly after Baby Doe was born, a hearing was held at Bloomington Hospital to determine whether the parents had the right to refuse the surgery on behalf of their child. An attorney was present at the hearing to represent the parents, though no one was present to represent Baby Doe's potentially adverse interests. Six physicians attended, three of whom had obstetric privileges and three of whom had pediatric privileges at Bloomington Hospital,'' Gorsuch wrote.

Kuzma, the predecessor from which it is being argued that he has taken this virtually word for word, wrote:

''Approximately twenty-six hours after Infant Doe was born, a hearing was held at Bloomington Hospital to determine whether the parents had the right to choose a course of treatment for their child that consisted of allowing the child to die. An attorney was present at the hearing to represent the child's parents. No attorney was present to represent Infant Doe's interests. Six physicians attended the hearing, three of whom had obstetric privileges and three of whom had pediatric privileges at Bloomington Hospital.''

I believe that last sentence was virtually word for word copied from what Kuzma wrote.

Kuzma, a one-time aide to former Sen. Dick Lugar (R–Ind.), did not respond to an inquiry from POLITICO, but released a statement through Gorsuch's team. Kuzma said she does ''not see an issue here, even though the language is similar.''

''These passages are factual, not analytical in nature,'' Kuzma, now a deputy attorney general in Indiana, said. ''It would have been awkward and difficult for Judge Gorsuch to have used different language.''

But a 1983 Notre Dame Law Review article addressing the same case did, in fact, use different, plainer language to describe the issue than Kuzma or Gorsuch did. Author John M. Maciejczyk wrote that the ''infant needed surgery to correct a blocked esophagus.''

In several other examples provided to POLITICO, Gorsuch follows the fact patterns and sourcing without acknowledging them.

This article goes on for another several pages. I guess we have the time to share it in its entirety. But let's not lose the fundamental point at the start of the article; that is, the title, ''Gorsuch's writings borrow from other authors,'' and an introductory comment here:

Supreme Court nominee Neil Gorsuch copied the structure and language used by several authors and failed to cite source material in his book and an academic article, according to documents provided to POLITICO.

To continue and to share the full text here, the article continues, providing more details. Tomorrow many people will be going through these because this is information that just came out an hour ago. It makes you wonder, is the reason that we had a first-ever motion to close debate on the first day of debate—the first time in U.S. history this happened—because there is information that people are aware of, and they want to get this nomination vote concluded before this information becomes public? Is that why we are violating all the constitutional norms here? Well, I hadn't thought of that possibility until this article was put in my hands a few moments ago.

The article continues:

In several other examples provided to POLITICO, Gorsuch follows the fact patterns in sourcing of other writers without acknowledging them.

In describing euthanasia activist Derek Humphrey, Gorsuch's book tracks closely with the 2003 book titled ''A Merciful End: The Euthanasia Movement in Modern America,'' by Ian Dowbiggin.

''In 1989 Humphrey left his second wife, Ann Wickett, soon after she had undergone surgery for breast cancer. During the divorce, Wickett alleged that when Humphrey purported to help her mother commit suicide, the resulting death was not fully consensual,'' Gorsuch wrote.

Dowbiggin wrote—

In a parallel phrasing that preceded Gorsuch's writing—

''In 1989 he left his second wife, Ann Wickett, shortly after she had undergone surgery for breast cancer. Their subsequent divorce was made messier by Wickett's allegations that her mother had not died willingly when Humphry had participated in the suicide of her own parent,'' Dowbiggin wrote.

Gorsuch did not include an attribution to Dowbiggin in the passage at issue, though he did cite the author at numerous other points in the book. Dowbiggin listed his sources as ''Deadly Compassion: The Death of Ann

Humphry and The Truth About Euthanasia,'' by Rita Marker, and ''Last Rites: The Struggle Over the Right to Die,'' by Sue Woodman. The same titles were cited as sources by Gorsuch.

In the same chapter, Gorsuch appears to rely heavily on a 2002 article by Paul Lombardo of the University of Virginia about sterilization techniques used in that state in the early 20th century. Lombardo writes that a woman named Carrie Buck was sterilized after having a child and her mother was institutionalized.

''Even worse for her, officials at her mother's asylum claimed that mother and daughter shared heredity traits in feeblemindedness and sexual promiscuity,'' Gorsuch wrote.

Wrote Lombardo, ''Officials at Virginia Colony said that Carrie and her mother shared heredity traits of 'feeblemindedness' and sexual promiscuity.''

There is a bit of an echo there.

Gorsuch did not cite Lombardo despite mimicking his sentences and presenting them in virtually the same order, according to an electronic search of Gorsuch's book.

Howard, the Syracuse University professor, said Gorsuch engaged in a passage known as ''patchwriting''—essentially patching together words, fact sequences and quotes from another source, but occasionally changing up the phrases and tenses.

It is a way to copy someone else's work while making it look like it is your own.

In addition to ''heavy patchwriting,'' Howard said, Gorsuch ''hides his sources, which gives the appearance of a very deliberate method. I would certainly call it plagiarism.''

In a 2000 article in the Harvard Journal of Law & Public Policy titled ''The Right to Assisted Suicide and Euthanasia,'' Gorsuch's writing aligns closely with a 1985 Duquesne Law Review article about euthanasia in colonial America. Gorsuch describes laws in colonial Virginia, Massachusetts, Rhode Island, South Carolina, North Carolina and Pennsylvania in the same order and with similar quotations as the Duquesne article. But Gorsuch never cites the article in that passage, instead only repeating the same sources that it relied on.

Oxford's academic guidance for plagiarism states that ''paraphrasing the work of others by altering a few words and changing their order, or by closely following the structure of their argument, is plagiarism if you do not give due acknowledgement to the author whose work you are using.''

Christopher Sprigman, a New York University law professor involved in building an online standard for citation in legal scholarship, said he did not believe examples of Gorsuch's questionable writing reflected ''mendacious'' acts on the judge's part. Gorsuch's manner in attributing sources is ''a choice that you might agree or disagree with,'' Sprigman said. ''It's a little bit risky, but I wouldn't say it rises to the level of a bad act. I think some people would say it's sloppy.''

That is the conclusion of the article—again, information that just came out about 1 hour 20 minutes ago. So I recommend that folks take a look at the article. I am sure many people will be analyzing it tomorrow.

Part of the point of the lengthy debates we often had over the Supreme Court is to have a chance for all the facts to come out. And the fact that tonight—well, that is, Tuesday night; it is now Wednesday morning—Tuesday was the first time ever in our entire 200-plus years as a Senate that a cloture motion on a Supreme Court nominee has been filed on the first day of debate. Maybe that motion should be withdrawn given that there is more information now to analyze as of a few minutes ago than we had before.

The challenge this institution faces is, how do we restore it to a functioning legislative body, and how do we repair the deep divide in America? This question goes far beyond just the issue of the nomination of Neil Gorsuch; this issue goes to fundamental changes in how this Senate operates, fundamental changes in how our society receives its information. While I shared some of that previously, I think it is probably now, many hours later, worth going back through a little bit on this set of challenges the Senate faces.

When I was first here as an intern in 1976—41 years ago—the Senate was here all week long, Monday through Friday. It had a normal workweek. The Senate families were here, which meant that people had a more normal family life. During the breaks, they returned to their home States to share what they had worked on, what they were going to work on, what the Senate was working on, and generally hold townhalls and meetings and catch up on everything and then come back here after the break. That structure of families living here meant that there were connections not just between Senators but connections between them and their spouses. There were connections between their children. There were relationships formed over many evenings in which people socialized, and they had activities on weekends.

There were a lot of connections that we don't have now, four decades later, because we fly in and vote on Monday night, and then we vote on Thursday afternoon and fly out. So we don't have the reenforcement of our families being here to provide the kind of fabric in which the legislative discussion occurs, and we don't have the time to get to know each other. That is a challenge.

Plus, we have to spend a lot more time fundraising than folks in the Chamber did four decades ago. When you realize that a single individual, under the deeply mistaken decisions of the Supreme Court, can now put as much money into a campaign attack against you through a third party campaign—that they can write a check for more than the total amount you have raised for your entire campaign, it means that you are going to have to work very hard year after year to prepare for the next battle because the opposition doesn't have to prepare for the next battle. They simply have these massive amounts of funds that they can deploy at a moment's notice: Let's put $5 million in that race. Let's put $10 million in that race.

The result is, for example, in the case of the Koch brothers, that when the Koch brothers used front groups to attack various candidates across America, the candidates wrestled with whether to respond by attacking the Koch brothers, and generally, they decided not to because of the old adage ''Don't pick a fight with someone who buys ink by the barrel.'' But the modern version of that is ''Don't pick a fight with someone who has the most deeply funded super pac that exists in the United States.''

So the Koch brothers carried their fight in 2014 into the Senate race in Arkansas. They carried their battle into the Senate race in Louisiana. They carried their battle into the race in North Carolina and in Colorado and certainly in Iowa and in Alaska and my home State of Oregon. They were funding front groups to attack me with a third-party campaign. This is what people fear. The Koch brothers can write a $5 million check—they and their associates—and counter all the funds you raised.

In addition to the fact that we are here only 3 days, a portion of those 3 days from Monday night to Thursday night is given over to fundraising. So instead of being able to go to dinner with colleagues, you go to a fundraising dinner. Maybe you slip across the street to do an hour of phone calls. If you are not raising for your own campaign, you are raising for your party's Senate group—the Republican Senate campaign committee or the Democratic Senate campaign committee—or maybe you are raising money directly for your colleagues themselves, helping to make calls for an event that is upcoming.

So you have an incredible shrinking of the Senate week, combined with a huge expansion of the time dedicated to fundraising in order to prepare for the attack that may well come from deeply funded super pacs. That is not a good combination in terms of Senators getting to know each other and getting to respect each other, developing projects together.

I know that it not only damages the time people should be working together, but it also delegitimizes what this group of 100 Senators does. The minority feels almost compelled to fight the battle after having been attacked so viciously by the other side in third-party campaigns. To some degree, this probably goes both directions. So we come here brutalized by the groups who are supporting the other side of the aisle. You are not particularly in a mood to help them out.

This is why I keep coming back to this: It is easy to simply become a pure partisan in this world in which deep-funded interests make up all kinds of attacks and put them on television in an effort to elect someone who will do their bidding, but if we do that, if we don't keep coming back together with the philosophy of problem-solving, then problems will never be solved. We will never have a better healthcare system. We will never have a better public education system. We won't have a better transportation system. We won't

have better deployment of infrastructure in rural America if all we do is nurture the wounds of elections. But it also means that we need to change the dynamic that creates those wounds. That is why the Supreme Court seat matters, because the 5-to-4 Court has been doing a lot of wound infliction on our system, making it easier to gerrymander, making it easier for voter suppression, making it easier for dark-money campaigns to corrupt the election process. So we have to attack it on all fronts.

That experience of coming here 41 years ago as an intern and seeing this place operate in a very different way gives me the hope that some way, we could find our way back from the brink. I don't think we have been anywhere as deep in the pit of partisanship—to mix metaphors—as at this moment, with this stolen seat; at this moment, with a cloud over our President and, therefore, a cloud over his nomination; at this moment, with a nomination that disrespected the role of a supermajority, the role being to help encourage Presidents to make nominations from the mainstream, not from the ideological extreme. Here we are, deep, deep into the pit.

If we don't solve the dark-money problem which is very related to the Supreme Court, then we aren't going to come together to solve the other problems because we won't have people who have been elected through a ''we the people'' vision of America, where each citizen has an equal voice, Jefferson's mother principle.

So that is the challenge that we face both on the Supreme Court side of this nomination but also in terms of problem solving.

I think that article that just came out is one that should add to this conversation—this article that says there is now yet another issue, an issue that didn't come out in the Judiciary Committee deliberations.

POLITICO has prepared a side-by-side comparison, which I have on this multicolored chart so citizens can look that up and contribute to that. But it is yet another reason we should probably go a different direction.

Now I am going to turn to Gorsuch's views of expansive Executive power.

Given the need for strong judicial oversight of this administration, under the circumstances, this nominee is particularly ill-suited. He has consistently taken the position that Executive power has very few limits.

As a member of the Bush administration, Judge Gorsuch, according to the New York Times, ''was at the center of both litigation and negotiations with Congress'' regarding ''detainee abuses, military commissions, warrantless surveillance and its broad claims of executive power.''

As a lawyer at the Department of Justice, Judge Gorsuch defended President Bush's enhanced interrogation methods.

In 2005 Congress passed the Detainee Treatment Act, which was meant to ensure greater human rights for detainees held at Guantanamo Bay. Judge Gorsuch, working as a Department of Justice lawyer at the time, managed to weaken a provision in the Detainee Treatment Act permitting a civilian appeals court to review decisions by military tribunals.

The original draft let judges scrutinize whether the tribunal had applied the correct standards, but the revised language only let them look to see whether the tribunal had applied standards set by the Pentagon. That is quite a change.

After the legislation was passed, Gorsuch sent an email to a colleague in the White House in which he said he needed cheering up. In the email, he discussed successful efforts to weaken the legislation stating: ''The administration's victory is not well known, but its significance shouldn't be understated.''

After the Supreme Court issued a landmark ruling in June 2006 to find that officials involved in the use of interrogations could be vulnerable to prosecution for war crimes, Judge Gorsuch helped draft a legislative proposal to address the issue, though he left before the eventual bill, the Military Tribunal Commissions Act, was enacted.

It is clear that he played a significant role in the case of Hamdan v. Rumsfeld, which former Solicitor General Walter Dellinger called ''the most important decision on Presidential power ever.'' The case was regarding the legal process being accorded to detainees at Guantanamo Bay. His central role was made clear by a request from the Department of Justice Office of Public Affairs that he, along with the Solicitor General and his principal deputy, participate in a background media call on the day the decision was to be announced.

The Department of Justice records show that Gorsuch had been very involved in helping support the inclusion of language in the Detainee Treatment Act and the National Defense Authorization Act and bolstered the position that only the DC Circuit should be able to review complaints about the Bush military commissions.

Gorsuch repeatedly asked several DOJ colleagues in November where we stand on the legislative language and if there is anything we can do to help.

In February, a Republican Senate Judiciary Committee staffer sent Gorsuch a drafted amicus brief on behalf of Senators Kyl and GRAHAM for the administration's jurisdiction stripping arguments, a CONGRESSIONAL RECORD excerpt supporting the claim. Fortunately, the Supreme Court rejected the jurisdiction stripping Hamdan, but it was clear that Gorsuch was trying his best to enact sweeping Bush claims to unilateral authority and severe limits on judicial review.

Let me go back to the central premise here. As a member of the Bush administration, Judge Gorsuch, according to the New York Times, was at the center of both litigation and negotiations with Congress regarding detainee abuses, military commissions, warrantless surveillance, and broad claims of Executive power.

I think all of us should be more than a little disturbed by getting to the bottom line here, which is that Congress sought to ensure greater human rights for detainees held at Guantanamo Bay and Judge Gorsuch was working as a DOJ lawyer to weaken a provision in that regard and these other pieces that I have referred to.

I will turn now to an analysis of ''The Dissents of Judge Neil Gorsuch: Far to the Right and Out of the Mainstream.''

This analysis by People For the American Way goes through a number of cases, setting out the picture, if you will, of just how far out of the mainstream Neil Gorsuch is. I will just read this by Elliot Mincberg, written last month:

> Many, if not most, decisions by the Supreme Court and the court of appeals are unanimous. Reviewing the cases where an appellate judge has chosen to disagree with and dissent from his or her colleagues, therefore, can be particularly revealing. And that is precisely the case with Judge Neil Gorsuch. Judge Gorsuch's dissents from his colleagues on the Tenth Circuit Court of Appeals are consistently right-wing, generally seeking to favor big business and other authority and harm the interests of workers and those who have suffered abuse by government officials. And this is on a court which, until recently, consisted primarily of Republican appointees like Gorsuch. For example:
>
> In Compass Environmental, Inc. v. Occupational Safety & Health Review Commission, Gorsuch dissented from a decision to affirm a Department of Labor fine against a company that failed to properly train a worker, resulting in his death by electrocution. Gorsuch claimed that there was no evidence to show that industry standards would have required more training. But as the court majority and the agency found, there was ''clear evidence'' to support the ruling.

Let me say that again. Gorsuch said there was no evidence. The court majority basically found there was ''clear evidence'' to support the ruling.

> In particular, the company's own job hazard analysis found ''fatal danger'' from the high-voltage power lines involved, and recommended training for employees.

That was the company's own job hazard announcement. The company itself knew: If you are operating a piece of equipment next to a high-powered voltage line and that metal equipment touches that line, you create the possibility of an electrocution.

That training was given to some employees, but the employee who was killed did not get that training because they didn't give it to him. So the court majority said: Yes, you should have provided the training that you knew was necessary for the operation of this equipment in that setting with a high-voltage power line, but you didn't give it. Therefore, you are in the wrong. But Judge Gorsuch saw it differently.

> As a result of that negligence, the danger truly did become fatal, and the fine against

the company was clearly justified. But Gorsuch disagreed with his own colleagues—including one who, like Gorsuch, was appointed by President Bush—and argued that the corporation should pay nothing.

My father was a mechanic. He worked when he was first out of high school for construction companies on highways in Arizona, and he did a whole host of roles but mostly repairing the equipment of the shop.

In a few years, he became a journeyman, a mechanic. In the course of that work on these big machines, you come to be aware that there are a lot of hazards that need to be addressed. You know some of those hazards for the operators, some of the hazards for working on the machines themselves.

Companies know this as well. They know that if they are hiring a new employee to work in a hazardous setting, they need to train the employee so the employee doesn't get hurt.

The company didn't provide the training. The employee died. The company is fined. And Gorsuch says: No, no, no problem here.

Really? Why did the rest of the court majority find otherwise? Why did the Department of Labor find otherwise? Why did he disagree with his colleagues in order to protect a powerful corporation that had failed to provide the training that resulted in the death of a person?

That is what the requirements for training are all about—to protect individuals from situations where they are at high risk. You eliminate those risks.

(Mr. TILLIS assumed the Chair.)

The article goes on to address the issue of the frozen trucker who I discussed earlier.

In TransAm Trucking, Inc. v. Administrative Review Board, Gorsuch dissented from a decision. Here again, the majority is finding one thing, and, as you hear about this, you will realize that what the majority found was very logical, and what Judge Gorsuch found was standing everything on its head:

Gorsuch dissented from a decision to approve a Labor Department determination that a large trucking company had wrongfully fired a truck driver who had refused to drive under hazardous conditions. The trailer's brakes had frozen in subzero temperatures, and the driver waited over two hours for repair help. He reported that he was ''having trouble breathing because of the cold'' and that he ''couldn't feel his feet.'' When help still did not arrive, he unhitched the large trailer because of concerns about driving the entire load under those conditions and began to drive away in the cab. The company insisted by radio that he keep waiting in the frigid conditions or drive with the full load, even though the trailer's brakes had frozen. Although he returned when help arrived in around fifteen minutes, he was fired; the company claimed that the firing was proper because instead of remaining in the freezing conditions and not driving (which was his right), he drove off without the trailer instead of the dangerous way the company demanded. Gorsuch agreed with the company, claiming that finding for the driver was improperly using the law ''as a sort of springboard to combat all perceived evils in the neighborhood'' and that the objective to promote health and safety was just ''ephemeral and generic.'' The court majority agreed with the agency, calling Gorsuch's reasoning ''curious.''

If anyone missed the elements of this case when I spoke about it previously, as I have several times in the course of the night because I find it such an outrageous situation, you have a driver who is in an impossible situation. The brakes had frozen on a truck in subzero temperatures. Therefore, the braking ability on the trailer is compromised. So it is dangerous to drive it. Then the auxiliary heater in the cab had failed. So he is in subzero conditions in the cab, and as this relates he had conveyed that he had gone numb. He was having trouble breathing because of the cold. He couldn't feel his feet. So he did the logical thing to protect his own safety. He drove somewhere seeking to get some heat but didn't drive the trailer because to do so would have been to endanger everyone else. The Court said this all fits with the law. Gorsuch disagreed.

In Planned Parenthood Ass'n of Utah v. Herbert, a three-judge panel had issued a preliminary injunction against Utah's governor for unilaterally cutting off Planned Parenthood (PP) funding.

This is a case that I referred to earlier where you have three basic things. A Governor chooses to cut off funding, eliminating equality under the law because of some doctor videos that were released—videos that were completely discredited later on—but in this kind of political campaign he chose to discriminate against Planned Parenthood. The fact is that those videos weren't about Utah. They were about a program that wasn't even utilized by Planned Parenthood of Utah. So at every level, there was no basis for this discrimination. So the majority of the full Tenth Circuit declined to rehear the case after the preliminary injunction.

Gorsuch, however, wrote a dissent for himself and several others, and argued for deferring to the governor. An important issue in the case was the governor's intent in cutting off funding, which the panel found was retaliation for promoting access to abortion. On that issue in particular, Gorsuch argued for deference to the governor in the name of ''comity.''

In the name of comity? OK. Let's get this right. It is OK to violate the equality under the law in order to make nice with the powerful government. That is what Gorsuch argued? Well, the majority certainly disagreed, noting that nobody party to the suit had asked for a rehearing. This is where you seek a rehearing by a broader group of the panel of judges. If the defendant doesn't dispute it, why would you possibly do a rehearing except to score political points on the rightwing of the universe? That is what Gorsuch did. It shows his lack of regard for reproductive rights. It also shows that he wanted comity, that he wanted to make nice with the Governor rather than defend the rights of the organization that had been discriminated against. I think this kind of deference to executive authority is certainly something that in the context of our current situation is a dangerous tendency.

These are just a few of the dissents written by Gorsuch where his disagreements with his own colleagues, including other Republican appointees, show that he is far to the right and out of the mainstream. Altogether, Judge Gorsuch has written 35 dissents, which are in the following areas: workers' rights, abuse of government official authority, corporations and consumers, criminal law, and other constitutional issues.

So let's take a look at each of these areas. So again, these are cases where Gorsuch is disagreeing with the majority on a case.

Judge Gorsuch has written five dissents in cases concerning workers' rights.

I am reading this analysis. This analysis that has been prepared by Elliot Mincberg last month, titled ''The Dissents of Judge Gorsuch: Far to the Right and Out of the Mainstream.'' So Elliot writes:

Judge Gorsuch has written five dissents in cases concerning workers' rights. In all but one, the majority found in favor of the worker, but Gorsuch argued for a result that would have hurt the worker and helped a corporation or other employer. These include the Compass Environmental and TransAm Trucking cases discussed above.

Those we already talked about.

The two others are similarly troubling.

These are not my words. I am reading Elliot Mincberg's words.

In Strickland v. United Parcel Service, Inc., the court majority ruled that a lower court had improperly dismissed a complaint that UPS had committed sex discrimination against a fired female employee and had also violated the Family Medical Leave Act (FMLA), and sent the case to the district court so that the plaintiff could try to prove her claims at trial. Although Gorsuch agreed with the FMLA ruling, he dissented on the discrimination claim and argued that the dismissal of that claim should be affirmed. The majority was critical of Gorsuch's argument, noting that he ''fail[ed] to acknowledge'' substantial evidence that the worker was treated differently because of her gender. That evidence, the majority explained, included testimony from ''multiple co-workers'' that she was treated differently than male employees, including being required to meet 100 percent of sales goals and being subjected to ''increased oversight'' such as frequent ''negative'' meetings that ''interfered with her ability to do her job.''

Certainly, I think, in this day and age, we expect companies not to engage in discrimination on the basis of gender. Here the court found ''substantial evidence,'' including ''testimony from multiple co-workers that she was treated differently''—and not in a positive way—''than her male employees''—subjected to different sales goals, subjected to different oversight, subjected to different special meetings that interfered with her job. But Judge Gorsuch disagreed with the majority and thought that this argument of discrimination should be rejected.

The article continues:

Finally, in NLRB v. Community Health Services, Inc., Judge Gorsuch dissented from a ruling last year that upheld a National

Labor Relations Board (NLRB) decision that granted over $100,000 in back pay to hospital workers whose hours were illegally reduced, without deducting amounts that some earned elsewhere during the period that the employees' hours were improperly reduced. The Board concluded that such deductions were improper because the outside employment was important to help address additional hardship, encourage production and employment, and prevent dilatory conduct by employers in accord with law. But Gorsuch did more than dissent.

Again, I am reading now the words of Elliot Mincberg.

He excoriated the NLRB, a favorite target of many right-wing Republicans, suggesting that the NLRB's decision could have stemmed from its alleged ''frustration that it cannot pursue more tantalizing goals like punishing employers for unlawful actions.'' Interestingly, one of the judges in the majority from which Gorsuch dissented was Chief Judge Tim Tymkovich, also a Bush appointee who was on Trump's list of 21 possible Supreme Court nominees, but who obviously was not selected.

You know the NLRB, or the National Labor Relations Board, exists to protect workers by making sure employers abide by the law, and I find that Gorsuch's language here that imputes that the Board was operating not on the facts of the case but out of the frustration that it ''can't pursue more tantalizing goals like punishing employers,'' really quite bizarre.

I know that in the pursuit of protecting workers it is often frustrating to companies that they get subjected to fines for their conduct by the NLRB or are ordered to pay back pay, but isn't this now the moment in which you have a President who said he was going to fight for workers? Wouldn't he want to nominate a judge who actually wanted to have the National Labor Relations Board be able to successfully fight for fairness for workers, not someone who treated that as kind of a frivolous thing: Oh, those workers, what do they need? They are just constantly bothering our powerful corporations with things like asking for fair treatment. How inappropriate is that? I mean, that is kind of the tone of the Gorsuch approach here, and I think it is incredibly important that we have an agency that says: If you proceed to bring people in and you don't pay them for the hours they work, you must pay them. If you are supposed to pay overtime and you didn't, you have to make it up. Somebody has to hold people accountable to the law for protection and for fairness to workers.

It is not as if workers in America have been doing very well. Over the last four decades, workers have been getting the short end of the stick. The wealth in America has soared and soared and soared, and the workers, unfortunately, have received very little of that wealth. The inequality in the Nation has expanded dramatically. One way of framing this is that virtually all the new income in America has gone to the richest 10 percent of Americans. So here we have an agency that is just saying basic fairness: If you are supposed to pay overtime, pay overtime. If you bring people into the job, pay them for the time they work. If you are supposed to provide a break time, provide a break time—basic fairness for workers. But instead of having this basic fairness for workers, there is this campaign to take away the power of the agency that provides that.

This came up in the context of the challenge we faced in 2013 when the minority said: We are not going to allow anybody to be confirmed to the National Labor Relations Board. They wanted it to be dysfunctional so they couldn't protect workers. Now we have a President who was running to help workers but he is nominating a Justice who treats that like a frivolous goal—protecting workers.

Let me return to the argument here and to the topic of the ''Abuse of Government Official Authority.''

Judge Gorsuch has written four dissents in civil cases concerning claims of abuse of government official authority—three involving law enforcement officials and one involving a state's governor. In three out of four [of these cases], his judicial colleagues found that such abuse had occurred or at least the plaintiffs should have a chance to prove it. In all three of those cases, Gorsuch dissented and would have deferred to the government official.

We discussed already the most important of those dissents, which was Planned Parenthood v. Utah.

Let's go forward to consider Cortez v. McCauley.

The full Tenth Circuit considered whether a couple whose home was unexpectedly invaded by the police after midnight could bring claims of abuse to a jury. In the case, a 2-year-old girl for whom plaintiff Tina Cortez had baby-sat, said that Tina's partner had molested her, which other later investigation found to be untrue.

Based on that report alone and with no warrant, four police officers burst into the Cortez's home after midnight. Among their other actions, the police woke up the couple and shined a flashlight into Ms. Cortez's face, grabbed her by the arm, put her in the backseat of a locked police car, interrogated her, left her there for about an hour, and searched the home without a warrant even though the 2-year-old had not accused her of any misconduct.

The couple was released and was allowed back into their house after 2 a.m. after it became clear from investigation elsewhere that the claims against Mr. Cortez were false and there was no basis to proceed any further.

The majority and Judge Gorsuch were in substantial agreement on Mr. Cortez's claims of improper police conduct, but Judge Gorsuch wrote a dissent for himself and several other judges from the decision of the majority, written by another Republican appointee and joined by several others, that Ms. Cortez should be able to present her claim to a jury and that qualified immunity should not apply.

The majority criticized Judge Gorsuch because his dissent ''comes very close to saying'' that the police conduct was justified simply because the 2-year-old's claim was repeated by a nurse and her mother and was then ''acted upon by police officers,'' reflecting an extraordinary and improper degree of deference to police officials.

Gorsuch also attempted to minimize the harm to Ms. Cortez, describing it as simply a ''transient feeling'' of intimidation. But as the majority explained, Gorsuch ''disregard[ed] the emotional or psychological injury'' that a jury could well find ''resulting from intimidation, fear for personal safety,'' and ''loss of liberty and privacy'' as a result of being ''removed from the residence in the middle of the night'' and being ''locked'' in a police car and interrogated ''for over an hour.''

To get a better grip on that case, this is setting up a situation in which, on very minor information, police proceed without a warrant to burst into a home after midnight, grab a woman, throw her in the backseat of a locked police car, interrogate her, leave her there for an hour, search the home without a warrant, and so forth. Gorsuch described this as just a ''transient feeling'' of intimidation, according to this article.

I think that if most of us were ripped out of our homes in the middle of the night and were thrown into a police car and interrogated, we would find it to be something more than just a minor transient feeling of intimidation.

The point was the goal of whether she should be able to present her claim to a jury. It was not even a finding on the legitimacy of her case; it was just that she should have her day in court, that she should be able to make her claim that how she was treated was inappropriate. Gorsuch minimized the impact on her and wanted to strip her of that ability to present her case in court.

Shouldn't citizens who have gone through what they believe to be extraordinary experiences—and I believe being pulled out of your house in the middle of the night and thrown into a police car and interrogated is pretty substantial—have the ability to make their case? Maybe the judge and jury agree with you and maybe they do not. This is just a case of, do you get a chance to ask for justice? In this case, Gorsuch said no, and the majority said yes, you should have a chance.

There are issues here. There are issues of personal safety, issues of loss of liberty, issues of loss of privacy.

In another case that Judge Gorsuch decided—and I return to reading the article—Judge Gorsuch also dissented in Webb v. Thompson, in which ''the majority affirmed a lower court decision saying that county police officials were not entitled to qualified immunity from a complaint by a man arrested at a simple traffic stop and treated improperly by county police. This included being held in jail for 5 days when, according to county police, he should have been released in no more than 48 hours.''

This was, again, a man who was arrested at a simple traffic stop and was held in jail for 5 days when the policy was that he should have been released in 2 days.

The lower court had found that there was a disputed issue of fact as to whether three officers had helped cause the delay, which all

agreed was improper, and therefore ruled that the victim was entitled to present his case to a jury. But Judge Gorsuch dissented from the majority's decision to uphold that ruling, claiming that the officers did not have a personal legal duty to ensure a prompt hearing. The majority easily explained the flaw in Gorsuch's argument. Whether or not they had an affirmative duty to act, the majority explained, the officers were clearly liable if they, in fact, ''caused the delay.''

Here you have an individual who was held after a minor traffic stop—held for 5 days in jail. I do not know about any other Member of the Senate, but if a Member of the Senate were picked up on a traffic stop and held for 5 days—and while we do not have the full context of the case here, under the rules, he should have been held no more than 2—it would be pretty upsetting, and his family would be pretty upset.

Thus, there is the question of whether you get a chance to present your case. Do you, as a citizen, get a chance to present your case? The majority said: Yes, there is a reasonable basis here. You get a chance to present your case.

Gorsuch said: No, we are going to strip the individual of a chance to present his case.

It is quite a different approach, a continuous finding on behalf of the powerful, but not always. So I return to reading the article.

In one case, A.M. v. Holmes, Gorsuch dissented in favor of an individual. The primary claim in that case was against two middle school officials who had asked an Albuquerque police officer to remove a 13-year-old boy who had disrupted a physical education class and rendered a teacher ''unable to continue to teach the class.'' The student was suspended and also arrested under a State law prohibiting interference with the educational process.

When the mother sued, the lower court granted qualified immunity, a 10th Circuit panel majority affirmed, but Gorsuch dissented, suggesting that the severity of the officials' reaction was not justified. The majority also was troubled by the circumstances, but explained that it is ''not our place to question or undermine'' the state's decision to ''criminalize interference with the educational process.''

In this case, Judge Gorsuch did dispute a case and did so on behalf of an individual, giving more substantial support to the mother, who was suing.

I am reading from this article written by Elliot Mincberg. It is titled ''The Dissents of Judge Neil Gorsuch: Far to the Right and out of the Mainstream.''

The article turns to the issue of corporations and consumers.

Eight of Judge Gorsuch's dissents involved corporations, consumers, or both, including one environmental case. One dissent involved a case of two corporations pitted against each other. In all but one of the seven others, Gorsuch disagreed with his colleagues and wrote a dissent that favored corporations, harmed consumers or other citizens, or both. In the seventh, the corporation Gorsuch ruled against was an adult bookstore. This is the case of Ragab v. Howard.

Ragab v. Howard concerned the increasingly important issue of forcing individuals to go to arbitration, rather than the courts, to resolve disputes with corporations. In this case, an investment banking firm and a capital financing company tried to compel arbitration of Sami Ragab's lawsuit for misrepresentation and violation of consumer credit repair laws in connection with agreements to help him obtain financing for a new business.

Both the district court and the court of appeals majority, including a Republican appointee, ruled against the corporations. Judge Gorsuch dissented, however, arguing that even though the six different agreements among the parties contained conflicting language concerning the specifics of handling arbitration, the fact that all six called for arbitration of some sort was enough, and that the court should do a ''workaround'' so that arbitration would take place.

The majority strongly disagreed. The different provisions, the majority explained, created such ''irreconcilable'' conflicts that it was clear that there was no ''meeting of the minds,'' a basic principle of contract law. The majority pointedly noted that it would be improper for ''courts'' to effectively write in an arbitration requirement when the agreements did not ''demonstrate the parties'' intent.

Let's talk for a moment about this issue of binding arbitration. This is a situation in which consumers are involved in a transaction, and there is some fine print that says: If we get into a dispute, you must go to an arbitrator, and the outcome of that—whatever the arbitrator decides—will be the only outcome you can get.

That sounds pretty good at first. An arbitration sounds like a judicial process. Nothing about it sounds completely unbalanced. But, in fact, it is not a judicial process; it is unbalanced. The corporation hires the arbitrator.

Now, if you and I are in dispute and you are essentially hiring the referee for that dispute, wouldn't you kind of figure the system was a bit rigged, especially if there are a whole series of disputes and the referee—that is, the arbitrator—wants the business of the corporation and is only going to get that business if they find on behalf of the corporation? So you are not going to get a fair hearing. You get an unfair hearing.

The system is rigged because the individual being hired by the other party will get business only if they keep finding in that party's favor, so you enter the room knowing that you are going to be found against, except in a rare circumstance. It is a completely rigged system. It doesn't compensate at all. It doesn't replace any fair adjudication, and it allows companies to get away with predatory practices because there is no avenue through which to pursue fairness. In this case, the majority said there is no clear arbitration, but Judge Gorsuch wanted to write a requirement. He wanted to legislate.

We have seen these other cases where he wanted to legislate. He wanted to change the way the law is written to protect truckers who operate vehicles so as not to endanger others because he didn't like that. He wanted to rewrite the law in Utah so that you could ban funds for Planned Parenthood, even though it was unconstitutional to discriminate against them, and so on and so forth.

The more I read his opinions, the more I think Neil Gorsuch should run for office. He wants to change the law in case after case after case. Run for office. Theoretically, that is what legislators do, not what judges do. Judges call balls and strikes, not twist the law to mean the opposite of what it was written to be. And in this case, he is saying the court should do a ''workaround'' so that arbitration should take place, and the majority said that is not possible. These are irreconcilable conflicts between the different provisions of the different arbitration requirements. There is no meeting of the minds. It is the principle of contract law, and it would be improper for the courts to write an arbitration requirement. But that is what Judge Gorsuch wanted to do. He wanted to write an arbitration rule. He wanted to legislate. Well, run for office; don't put yourself forward to fill a stolen seat on the Supreme Court.

I know that members of the Senate Judiciary Committee followed these cases during the hearings of the Judiciary Committee and looked at them carefully. The more they saw, the more they saw not a judge but someone who wanted to legislate, who wanted to rewrite the law to help the powerful over the ordinary individual, in case after case after case.

Let's turn to another case. I will return to the article. This article by Elliot Mincberg, titled ''The Dissents of Judge Neil Gorsuch: Far to the Right and Out of the Mainstream.''

The article continues:

In Gorsuch's sole dissent on environmental issues, New Mexico Off-Highway Vehicle Alliance v. US Forest Service, he dissented from a ruling by two other Republican appointees and argued that the Sierra Club and other environmental groups should not be allowed to intervene in a lawsuit contesting Forest Service rules that expanded the number of trails and roads that were only for hikers and bikers.

So the lay of the land here: You have a really—by two Republican appointees, and you have Gorsuch arguing the opposite side, saying that the environmental group should not be allowed to intervene in a lawsuit contesting Forest Service rules.

So then the article continues:

The Alliance, a nonprofit supported by Kawasaki and other motorized vehicle companies, wanted to return to old rules allowing motorized vehicles on more trails. Even though neither the Forest Service nor the Alliance objected, the district court ruled against the environmentalists' participation in the case, and Gorsuch agreed in dissent. As the majority explained, however, other 10th Circuit decisions made clear that the environmentalists had strong reasons to be involved in the case and ''should not have to rely'' on the government to protect their interests, particularly since the government did not object to the proposed intervention. The majority specifically criticized Gorsuch for appearing to rely on the opinion of just

three judges in a previous case involving all 13 10th Circuit judges to try to reach a narrow and unfavorable result in the case.

So I know that often Neil Gorsuch liked to say: I just apply the precedents. So what does he do? He takes the opinion of three judges in a case involving 13 Tenth Circuit judges. Well, you can see a clever strategy as presented in this article, an effort to reach a narrow and unfavorable result.

The article continues:

In WWC Holding Co. v. Sopkin, Gorsuch argued that a wireless service carrier should be able to avoid the Colorado Public Utility Commission's efforts to enact state-specific consumer protection standards for wireless phone service because the company was complying with relevant federal rules. The majority in the case, including the Republican appointee, disagreed and ruled that Colorado had the authority to enact and enforce state-specific rules, including requiring free calls at libraries, in school districts, and in other community gathering places, under the ''express statutory authority'' of federal as well as state law.

So let's review that. Gorsuch wanted the company to avoid the public utility commission's requirements, and the majority said: Wait, there is express statutory authority for the State utility commission to be able to require State-specific things such as free calls at libraries, in school districts, and in other community gathering places.

This is another case where Gorsuch wanted to be the legislator. Well, go and get elected and write a law rather than writing law as a judge when you are supposed to be calling the balls and strikes.

The article continues:

Judge Gorsuch dissented in three other cases in which the majority had found in favor of individual consumers.

So the majority says the individual is right, and Judge Gorsuch said: Let me be clear. I want this case to come out on behalf of the corporation.

The article continues:

Pace v. Swerdlow, where the majority reversed the dismissal of a negligence case against an expert witness and ruled that parents should have the opportunity to prove that the expert's actions prevented them from receiving compensation related to their daughter's death.

So the argument of the parents was that there was an expert witness, and the expert witness's actions prevented them from receiving compensation relating to their daughter's death, and the case should be dismissed. So the majority reversed the dismissal, but Judge Gorsuch dissented.

The article continues:

In Salmon v. Astrue, where the majority ruled that a hearing examiner had improperly disregarded evidence reporting a claim of physical and mental disability benefits from the Social Security Administration, but Gorsuch argued in dissent that the examiner's denial met the legal test of being supported by ''substantial evidence,'' which he equated with simply being within the ''bounds of reason.''

The majority said the examiner—just to review that—had improperly disregarded evidence. Well, certainly, if I were having a family member in that situation, I would not want a hearing examiner to improperly disregard evidence related to a claim for mental and physical disability benefits. But Gorsuch argued on the other side, against the person on the minority side.

In Blausey v. Trustee, where the majority allowed a bankrupt couple to appeal an unfavorable bankruptcy court decision, the majority said the couple should be able to appeal an unfavorable bankruptcy court decision rejecting the petition, although it ultimately decided against the couple, but Gorsuch would not have accepted the appeal in the first place.

He would not have allowed that bankrupt couple to appeal an unfavorable bankruptcy court decision. The majority said: We may not find in her favor, but she deserves her day in court. Judge Gorsuch said: No day in court for her. We are not letting her even argue her case.

The article goes on to address another section involving criminal law:

Most of Judge Gorsuch's dissents have been in criminal cases, often raising constitutional issues concerning whether people have been deprived of effective assistance of counsel under the Sixth Amendment or of rights against unreasonable search and seizure under the Fourth Amendment. A number of these were habeas corpus cases, in which the federal courts undertake limited but important review concerning criminal cases tried in state courts. Gorsuch has dissented in favor of criminal defendants on five occasions. But in almost twice as many, nine, he has dissented against rulings by colleagues, many of them Republican, that vindicated important constitutional rights.

Most troubling have been Gorsuch's four dissents in cases where his colleagues found that Sixth Amendment rights were violated because individuals, usually low-income people, did not receive effective assistance of counsel. Perhaps the clearest example is provided by his two dissents in Williams v. Jones.

In the three-judge panel decision in Williams, two of Gorsuch's Republican colleagues, including the very conservative Michael McConnell, ruled that more effective relief was required for an individual who, both the majority and an Oklahoma estate appellate court agreed, was deprived of effective assistance of counsel. In this case, the state had offered Williams a plea agreement under which he would serve 10 years in jail, which Williams wanted to accept but was stopped by his counsel. The lawyer claimed that Williams would be committing perjury if he accepted the agreement and said that he would withdraw from representing Williams unless the case went to trial; short of money, Williams agreed. The trial resulted in a guilty verdict and a sentence of life without the possibility of parole. The Oklahoma court of appeals agreed that the lawyer's conduct was improper and had harmed his client, but the only relief they granted was to reduce the sentence to life with the possibility of parole. The 10th Circuit accepted a habeas petition limited to the question of adequacy of the relief provided by the Oklahoma court.

The panel majority explained that in light of the egregious conduct by counsel and the obvious consequences, the case should be sent back to the state court to provide a remedy ''tailored to the injury.''

What is the injury? Egregious conduct by counsel resulting in a massive penalty.

The panel majority explained that in light of the egregious conduct by counsel and the obvious consequences, the case should be sent back to the state to provide a remedy ''tailored to the injury,'' i.e. the loss of a ten-year sentence as opposed to a life sentence. Gorsuch not only disagreed, but would also have gone even further. He claimed that there was no Sixth Amendment violation at all, because Williams received a fair trial in which his lawyer represented him well after the plea agreement failed.

The majority was extremely critical of Gorsuch's claim. ''No federal circuit court,'' they explained, had accepted Gorsuch's view that any pre-trial Sixth Amendment violation is somehow cured if the later trial is fair. Gorsuch's claim that the Sixth Amendment is essentially limited to what happens at trial, the majority stated, has been ''rejected by the Supreme Court'' and is ''incompatible with a right to effective assistance of counsel in connection with the entire plea process.''

Let me comment here that when a person is in court and has very limited funds—unlike a very affluent person who can have a whole team of lawyers—you really depend on your lawyer representing you in an effective manner, not, as relayed here, in an egregious manner that basically undermined your path.

But Gorsuch did not stop there. He dissented from a decision by the entire 10th Circuit not to rehear the case, which included several additional Republican-appointed judges, this time also claiming that the effect of the court's ruling was to overturn the later jury verdict that had found Williams guilty.

One of the Republican-appointed judges on the original panel made short shrift of Gorsuch's arguments in a concurring opinion. It was not a federal court that had originally pointed out the Sixth Amendment violation requiring relief; it was the Oklahoma appellate court that found Williams' lawyer's conduct ''highly improper'' and ''deficient,'' and that Williams had ''indeed suffered prejudice by his trial counsel's action.'' Gorsuch's view, the concurrence explained, was ''impossible to square'' with Supreme Court and court of appeals' rulings on effective assistance of counsel. The Supreme Court denied review of the case.

So the Supreme Court sided with the majority, essentially saying Gorsuch got it wrong. This concept of effective assistance of counsel is fundamental to the notion of a fair trial system. An ordinary person can't represent themselves; they have to have effective assistance of counsel if there is to be any possibility of a fair decision.

The article continues, saying:

Other dissents by Gorsuch on findings of Sixth Amendment violations include:

Wilson v. Workman, in which the majority of the full Tenth Circuit agreed, in a decision by Judge McConnell and joined by other Republican appointees, that a death row prisoner suffered a Sixth Amendment violation because his lawyer failed to present important evidence of Wilson's poor mental health and other problems that could have mitigated against the death penalty. Gorsuch dissented and claimed that the court should defer to the state appellate court that had rejected the claims. But as the majority pointedly explained, deference was inappropriate because the state court had not considered available ''material, non-record evidence'' and thus had not truly ''adjudicated that claim on the merits.''

So here is another case of the lack of effective assistance of counsel, and all that counsel's representations were defective—''failed to present important evidence of Wilson's poor mental health and other issues that could have mitigated against the death penalty.'' Gorsuch said it doesn't matter. A majority said of course it matters. ''The state court had not considered available 'material, non-record evidence' and thus had not truly 'adjudicated that claim on the merits.' ''

Let's turn to the case of Hooks v. Workman. Again, I am reading from this article:

Hooks v. Workman, in which another Republican-appointed judge wrote a panel opinion finding that a death row prisoner's lawyer had failed to present important mitigation evidence, including concerning Hooks' brain damage, mental retardation, and a history of abuse against him. Gorsuch argued this time that even if that evidence had been presented, the jury would have sentenced Hooks to death. As the majority explained, however, the lawyer's work was demonstrably ''deficient'' and ''prejudicial,'' and there was clearly a ''reasonable probability'' that at least one juror would have refused to impose the death penalty if the Sixth Amendment violation had not occurred.

So here the majority—this is not Democratic or Republicans; it is an Republican-appointed judge—found that a death row lawyer failed to present important mitigation evidence regarding brain damage and mental retardation and a history of abuse—all mitigating circumstances. The failure to present that meant the jury sentenced him to death where they might not have otherwise. The majority made it very clear that ''the lawyer's work was demonstrably 'deficient' and 'prejudicial,''' but Gorsuch dissented.

The concept of effective assistance of counsel as presented in these cases seems to be one that Neil Gorsuch really doesn't grasp or, if he understands the concept intellectually, doesn't want to, if you will, honor the requirements of the Sixth Amendment.

Turning to motions to suppress.

Judge Gorsuch's record is mixed concerning dissents relating to motions to suppress evidence because of alleged constitutional violations by police. In U.S. v. Carloss, Gorsuch argued in dissent that it was improper for police officers to knock on a homeowner's doors as part of an investigation into illegal possession of a machine gun, without a warrant or exigent circumstances, when the homeowner had conspicuously posted ''No Trespassing'' signs on his door and around the property. Gorsuch listed this opinion as one of his ten most significant opinions in his response to the Senate Judiciary Committee questionnaire.

In three other cases not involving trespassing at home, however, Gorsuch dissented from decisions that suppressed evidence because of improper conduct by law enforcement. In US v. Benard, he dissented from a decision to suppress statements made by Benard after he had been arrested without receiving Miranda warnings. Gorsuch argued that the error was harmless, but the majority explained that they ''cannot conclude'' that was correct ''beyond a reasonable doubt,'' as the law requires.

In US v. Nicholson, Gorsuch dissented from a ruling that police officers had improperly stopped and then searched a car for an alleged traffic violation, when there was no violation at all because the driver's left turn was not illegal. Gorsuch claimed it was a reasonable mistake, but the majority explained that according to existing Circuit precedent, ''failure to understand the law by the very person charged with enforcing it is not objectively reasonable.''

To translate that, the police officer shouldn't stop somebody for making a legal left turn when the left turn is legal.

And in US v. Dutton, Gorsuch dissented from a decision by two other Republican appointees that a search warrant for a storage unit contained a ''fatal flaw'' because the application lacked ''any evidence'' that the unit belonged to Dutton. Gorsuch called it a good faith error, but the majority clearly disagreed.

So in these cases where he is dissenting, essentially the majority is saying: You have to hold our public safety officers to a standard required by law. And Gorsuch is saying: Well, it was good faith. It wasn't an error. They didn't mean to do it. He is choosing to basically say that the individuals will not be able to assert the error made on the public safety side. It gives them a great big leash area, a big, sizeable zone, and compresses the zone in which the individual is acting. That is the pattern we see in this.

Other criminal issues.

In addition to Carloss, two of Gorsuch's other dissents favorable to criminal defendants concerned prosecutions for federal firearms violations. In US v. Ford, he argued in dissent that prosecutors should have disclosed evidence suggesting that the defendant was entrapped into purchasing a machine gun, although the majority considered that evidence not material to the defense. In US v. Games-Perez, Gorsuch dissented from a decision not to rehear a case concerning a federal law prohibiting possession of a gun by a felon.

Two other Gorsuch criminal law dissents that favor defendants concerned unique issues. In US v. Nichols, he argued in dissent that the full 10th Circuit should rehear a case in which a sex offender was convicted of violating requirements of the Sex Offender Registration and Notification Act that he notify authorities when he travels to another area. Nichols had been convicted prior to the date of the Act, and Gorsuch argued that Congress had improperly delegated to the attorney general wide authority to determine to what extent the law applied to such offenders.

So apparently in that case the majority was pointing out that Nichols had been convicted prior to the date of the act, and Gorsuch was arguing that Congress had improperly delegated to the Attorney General wide authority to determine to what extent the law applied.

Gorsuch also dissented in US v. Spaulding and disagreed with a majority ruling that a lower court did not have jurisdiction to set aside a criminal judgment that contains a term of imprisonment.

In several other cases, however, Gorsuch dissented on the merits from decisions by his colleagues that disfavored prosecutors.

In US v. Rosales-Garcia, he dissented from a ruling that the trial court judge had improperly enhanced the sentence of an individual convicted of re-entering the country illegally because of a prior conviction that resulted in a severe sentence. The majority stated that ''we cannot agree'' with Gorsuch's claim that the US Sentencing Guidelines could be equally plausibly read to support the government's position. As the majority explained, the sentence on the prior conviction had been later enhanced because of the individual's re-entry, not because of the original misconduct, and thus should not qualify under the guidelines as a reason to further increase the sentence imposed.

Gorsuch also dissented in US v. Raymond, in which one of his Republican colleagues wrote an opinion affirming a lower court decision to dismiss an indictment that violated a previous plea agreement that prosecutors not bring additional charges against Raymond arising out of conduct known to the US Attorney before a specified date. Gorsuch argued that the district judge had committed an error, but the majority explained that ''we cannot disturb the district court's factual finding'' that the US Attorney did have such knowledge, based on specific testimony.

I am reading from a lengthy article prepared or at least issued under the organization People for the American Way and titled ''The Dissents of Judge Neil Gorsuch: Far to the Right and Out of the Mainstream'' by Elliot Mincberg.

The article then turns to other constitutional issues. So I will continue reading it. This article continues:

In addition to the criminal law and other cases discussed above, Judge Gorsuch has written dissents from his colleagues' opinions in three other cases related to constitutional law issues: two relating to the Establishment Clause and one relating to the Constitution's Guarantee Clause. In all three, Gorsuch's dissent was significantly to the right of even other Republican judges on the court or raised other troubling concerns.

In Green v. Haskell County Board of Comm., a three-judge panel of all Republican appointees had concluded that an Oklahoma county's decision to approve the construction of and maintain a Ten Commandments monument on its courthouse lawn violated the Establishment Clause. Judge Gorsuch wrote an opinion for himself and several other judges that dissented from a decision by the full court of appeals, including several other Republican appointees, not to rehear the case. He argued that the panel's decision was inconsistent with the Supreme Court's ruling in Van Orden v. Perry that upheld the Ten Commandments monument in Texas, and suggested that the court should not even use the establishment ''endorsement'' test to decide the case. As the panel decision explained, however, the endorsement test remained the law in the Tenth Circuit (and elsewhere), the monument clearly had the ''primary effect of endorsing religion,'' and the Van Orden decision did not apply because the case involving a monument that has stood on public property for 40 years without challenge, while the monument in Green was recently erected and challenged. The Supreme Court denied review of the case.

Another panel of three Republican-appointed judges simply ruled against the Utah Highway Patrol Association's construction and maintenance of a series of 12-foot crosses on public lands near roads to memorialize deceased officers, explaining the crosses had the ''impermissible effect'' of appearing to endorse the Christian religion. Judge Gorsuch wrote an opinion for himself and other judges that dissented from the decision of the full court of appeals, including Republican appointed judges, not to not rehear the

case. Gorsuch again asserted that the ''endorsement'' test should not be applied, and relied on a three-judge plurality in another Supreme Court case, Salazar v. Buono, that allowed a cross to remain on public property. As the panel explained, however, the endorsement test clearly remained the law of the Circuit, and the Buono case did not apply because it concerned a cross that had been on government property since the 1930s. The Supreme Court again denied review of the case—

Which means they upheld the majority and did not uphold the position that Gorsuch was taking—

Justice Thomas alone wrote a vigorous dissent, making some of the same arguments as did Judge Gorsuch.

Finally, Judge Gorsuch and several others dissented from the decision of the full 10th Circuit not to rehear a panel decision in Kerr v. Hickenlooper. The panel had upheld a district court decision to allow a claim by a number of State legislators and others that the Colorado taxpayer bill of rights, under which all tax increases must be approved in advance by voters before legislative action, violated the Constitution's Guarantee Clause. Under that clause, all States are guaranteed a republican form of government where a State legislature presumably makes such decisions. The panel did not reach the merits of the claim, but agreed that there was standing to go forward and the case should not be dismissed as raising only a ''political question.''

Gorsuch argued that the issue was an unreviewable political question because there were no ''judicially manageable standards'' to decide it. The panel disagreed, pointing out that no such standards existed in advance of the Supreme Court's decisions on the Second Amendment. In addition, Gorsuch ignored the fact, as one scholar has pointed out, that the Supreme Court itself has ruled on the merits of the Guarantee Clause claims as recently as 1992. Even more importantly, Gorsuch's dissent suggested a particularly troubling view on the subject of possible constitutional challenges to partisan redistricting.

Continuing the analysis here as presented in this particular article:

In particular, in trying to support the argument to his dissent, Gorsuch asserted that the Supreme Court had ''put to bed'' in Vieth v. Jubilerer the question of whether the partisan gerrymandering could be challenged constitutionally because of the lack of manageable standards of review. As the Campaign Legal Center has pointed out, however, that statement is flatly wrong. Although some justices argued that the issue cannot be reviewed, in his controlling opinion in Vieth, Justice Kennedy recognized the corrosive effects of partisan redistricting, and held the door open for appropriate and judicially manageable standards in the future. In fact, a recent decision from Wisconsin that articulated such standards in striking down partisan gerrymandering could well be reviewed soon by the Supreme Court. Gorsuch's suggestion that he already agrees with the justices in Vieth who claimed the issue should not be are he viewed at all is extremely disturbing.

The article then has a short conclusion that reads as follows:

This review of Judge Gorsuch's dissents yields very troubling conclusions. Consistently, he has argued in favor of corporations and government authority and against workers, consumers, environmentalists, and poor people, even when a majority of his colleagues, including other Republican appointees, disagree. In those rare instances when he does not so argue, he has frequently sided with gun and property owners. His views are clearly to the right of the Supreme Court majority—even when Justice Scalia was on the Court—on issues like the Sixth Amendment, partisan gerrymandering, the non-delegation doctrine, and the Establishment Clause. Measured against his own colleagues on the Tenth Circuit including Republican appointees, he is far to the right and out of the mainstream, and should not be elevated to the Supreme Court.

So that is the article titled ''The Dissents of Judge Neil Gorsuch: Far to the Right and Out of the Mainstream.''

Let's turn to an analysis of the ways that Neil Gorsuch threatens women's rights. This is titled ''Extreme Far Right Judge'' from the Center for American Progress. ''5 Ways the Nomination of Neil Gorsuch Threatens Women's Rights.'' It is from March 23, 2017.

The principle of equality is a cornerstone of American democracy. From our nation's earliest history to the present day, there has been a robust discussion about how to realize the promise of equality and the everyday experiences of people across the country. But equality in the United States has come with an invisible asterisk: Its principles have not been uniformly enjoyed across different segments of society. Given this reality, people who face discrimination have always depended on the courts to protect their access to equal justice.

The article continues:

For women, the ongoing quest for equality has been a deliberate—yet uneven—journey. The U.S. Supreme Court has been pivotal in determining the pace and scope of this progress. It is therefore critical that the next Supreme Court justice has an unflinching commitment to an equality that respects all women's dignity and autonomy, enables them to participate fully in society, and empowers them to make decisions about their lives that make sense for them. President Donald Trump's nominee to the Supreme Court, however, has a judicial record that suggests that he would attack—not advance—women's equality if he is elevated to the Supreme Court. A close look at Judge Neil Gorsuch's record reveals that his appointment would likely threaten women's rights in the following five ways.

The first area of the article addresses his putting employers' preferences ahead of women's rights. And then it continues:

Gorsuch favors protecting the religious preferences of employers at their employees' expense. If confirmed, he would further erode women's ability to make sound personal health decisions. In Hobby Lobby v. Sebelius, Gorsuch and his colleagues on the 10th U.S. Circuit Court of Appeals ruled that a closely held, for-profit corporation could refuse on religious grounds to comply with the Affordable Care Act, or ACA, requirement that health insurance cover contraception. Judge Gorsuch wrote a separate concurrence to the court's ruling, explaining the ACA mandate forced the corporations to violate their religious beliefs. A divided U.S. Supreme Court upheld the 10th Circuit's decision.

While conservative judges frame the case as a dispute about religious freedom, Hobby Lobby was also a case about women's equality and the rights of employees. The ability to control fertility is one of the most personal decisions a person can make; for women, it goes to the heart of whether they have an equal right to participate in the workforce and start a family. Yet, Gorsuch deems these interests secondary to a corporation's religious preferences.

The second area the article addresses is refusing to support protections from pregnancy discrimination.

Because many women will take time off from work at some point in their careers for the birth of a child, the Pregnancy Discrimination Act was enacted in 1978 to make clear that discrimination based on pregnancy or child birth constitutes sex discrimination. Yet, too many women continue to confront discriminatory, outdated attitudes about their ability and commitment to work simply because they are or might become pregnant.

Two of Gorsuch's former students at the University of Colorado Law School allege that, during a discussion about maternity leave in Gorsuch's legal ethics class, he stated that employers should ask female applicants whether they intend to start a family. He reportedly argued that women often manipulate maternity leave policies to take time off at the company's expense before leaving the company.

When asked about this at his Senate confirmation hearing, Gorsuch first denied making the comments, claiming he had merely asked students a question from a teacher's text to illustrate the prevalence of sex discrimination. But when asked about his specific views on pregnancy discrimination laws, Gorsuch raised more questions than answers. He declined to say whether questioning a female and not male applicants about their intent to start a family would violate the law. Gorsuch's unwillingness to clearly affirm protections against pregnancy discrimination is cause for concern. Women's ability to participate fully and equally in the workforce depends on fair treatment without regard to family responsibilities.

I am reading from the article, ''5 Ways the Nomination of Neil Gorsuch Threatens Women's Rights,'' March 23, 2017. The article now addresses the issue of undoing Roe v. Wade.

Throughout the Presidential campaign, Trump promised to nominate a Supreme Court justice who would ''automatically overturn Roe v. Wade. Judge Gorsuch admitted he spoke with President Donald Trump about abortion in his pre-nomination interview but claimed their conversation was limited to the issue's political impact.

Gorsuch has declined to discuss his views on Rowe at his hearing, beyond acknowledging that it is ''precedent.'' But his writings make his position clear. Gorsuch has argued against the legal principles on which Roe is founded, both indirectly in his opinions and more directly in his book criticizing assisted suicide. He is critical of the right to privacy and the substantive due process rationale used by the Supreme Court in support of this right. Without this right to privacy, there is no Constitutional right to make decisions about sex, reproduction, or even marriage without State interference. Moreover, preserving and protecting a women's constitutionally protected legal right to access abortion is critical to their individual dignity and autonomy.

That is another section in the article, ''5 Ways the Nomination of Neil Gorsuch Threatens Women's Rights.'' The next section is ''Eliminating women's access to health care.'' This will be the fourth of the five sections.

Conservatives have relentlessly attacked women's access to quality, affordable health

care, threatening their agency, health, and well-being. Among the most vitriolic and inflammatory efforts: the push to defund Planned Parenthood. Anti-abortion activists have targeted Planned Parenthood because it provides abortion services, even though those services are provided with nonfederal funds and make up only a small percentage of the services the organization provides. An estimated 2.5 million people visit one of the 650 Planned Parenthood facilities across the country each year. Eliminating funding for those health centers would devastate entire communities and dramatically reduce women's access to health care.

During Gorsuch's time on the 10th Circuit, the court upheld an injunction to stop Utah Gov. Gary Herbert . . . from defunding Planned Parenthood in response to misinformation to doctored videos that falsely accused the organization of selling fetal tissue. Gorsuch, however, took the unusual step of pushing for a rehearing by the full court, even though the Governor did not ask for a rehearing. When his colleagues declined to rehear the case, Gorsuch dissented and attempted to legitimize the governor's unsupported claims.

The fifth section in this article titled ''5 Ways the Nomination of Neil Gorsuch Threatens Women's Rights'' is the section on ''Denying women access to justice.''

No one can vindicate their rights if they cannot even make it to court. Yet, in several cases, Gorsuch has shown a conspicuous penchant for barring women from litigating discrimination claims.

In Strickland v. UPS, Carole Strickland alleged that she was discriminated against when she was held to higher performance standards than her male coworkers, even as she exceeded them in sales. The majority ruled that her case could move forward, but Gorsuch filed a dissent arguing that her evidence of discrimination, which included testimony from multiple co-workers, was insufficient.

In another case, Weeks v. Kansas, former counsel Rebecca Weeks alleged she was fired in retaliation for advocating for colleagues who experienced workplace discrimination. Upon review, Gorsuch openly ignored relevant U.S. Supreme Court precedent because Weeks failed to cite it and denied her the right to proceed with her claim. If Gorsuch is confirmed, women may face new barriers to challenging discrimination in court.

Judge Gorsuch could become a reliable vote against the critical rights essential to women's equality and women's progress—such as the ability to access reproductive health care, including abortion, and challenge different forms of sex discrimination in the workplace. Women deserve a Supreme Court justice who will not turn back the clock on their rights. The Senate should stand up for women and reject President Trump's Supreme Court nominee.

The author, Jocelyn Frye, is a senior fellow at American Progress, and coauthor Michele Jawando is vice president for legal progress at American Progress.

Let's turn now to an article on money and politics. This article by Arn Pearson appeared in the Huffington Post. It is titled ''Gorsuch Would Move the Supreme Court in the Wrong Direction on Money in Politics.''

The article starts out:

Who the Senate confirms to fill the current vacancy at the U.S. Supreme Court will determine the nature of our elections for decades to come.

The Court is closely divided on the issue of whether to further open the floodgates for unlimited and undisclosed political spending or allow limits designed to prevent corruption and keep powerful special interests from drowning out the voices of voters. The next justice will tip the scales one way or the other.

While the court may be split on what to do about the influence of big money in politics, the American people are not.

Nine out of ten voters (93 percent) want ''a Supreme Court justice who is open to limiting the influence of big money in politics,'' according to recent polling. That includes 91 percent of Trump supporters, most of whom apparently believed his populist rhetoric decrying the influence of big donors.

Unfortunately, that's not Neil Gorsuch.

Gorsuch hasn't handled many campaign finance reform cases, but everything in his background and record strongly indicates that he would favor fewer restrictions on political spending by corporations and the wealthy, not more.

The son of two lawyers, Gorsuch has spent his life moving in elite legal and corporate circles, and has been a strong ideological conservative since his early days. He attended Columbia University and Oxford, and earned his law degree at Harvard. From 1995 to 2005, Gorsuch worked at a boutique D.C. corporate law firm representing corporate clients—including the U.S. Chamber of Commerce—in anti-trust, class action, and securities lawsuits, before briefly joining the Department of Justice under George W. Bush and being nominated to the U.S. Court of Appeals for the Tenth Circuit.

The Chamber of Commerce spends more money to influence the federal government than any other organization, and was one of the top political spenders in 2016, making it among the biggest beneficiaries of the Supreme Court's 2010 ruling in Citizens United that allowed corporations to spend unlimited amounts on independent expenditures and electioneering.

Gorsuch hasn't exactly left the corporate world behind since becoming a judge, and has become a millionaire in his own right.

A recent story by the New York Times documents Gorsuch's close relationship with secretive billionaire Phillip Anschutz, who has amassed $12.6 billion in wealth through a sprawling business empire. Gorsuch represented Anschutz while in corporate law practice, and Anschutz played a key role in getting Gorsuch nominated to the federal appeals court.

I am reading from an article entitled, ''Gorsuch Would Move the Supreme Court in the Wrong Direction on Money in Politics.''

Gorsuch has been a frequently featured guest at the mogul's annual dove-hunting retreat for the rich and powerful on his Eagle Nest Ranch. At the 2010 retreat, Gorsuch spoke about the importance of judicial nominations, ''especially when we live in a system where judges have the last word'' on the Constitution and are ''empowered to strike down legislation.'' Gorsuch implored his elite audience ''to be vigilant to all threats to our prosperity.''

Not surprisingly, Gorsuch's rulings as a federal appeals court judge have consistently favored large corporations over consumers and workers, and indicate a willingness to overturn key Court precedents that have supported efforts to reign in corporate power since the New Deal.

The big question is whether Gorsuch would use his seat on the Supreme Court to further weaken anti-corruption measures when it comes to political spending.

People for the American Way joined 120 other democracy reform and advocacy organizations and 110 House members this week—

This would have been March 17—

in calling on the Senate Judiciary Committee and Senate leadership to closely scrutinize Gorsuch's views on the influence of big money in politics.

''Will Judge Gorsuch's legal philosophy lead him to strike down even more protections against the use of corporate or personal wealth to influence elections, such as candidate and party contribution limits, or will he permit sensible limits on political money in order to ensure the voices and will of all Americans are fully represented within the political process?'' the groups asked.

In Citizens United v. FEC, the 5–4 majority decreed that independent expenditures by corporations ''do not give rise to corruption or the appearance of corruption'' and that ''[t]he appearance of influence or access, furthermore, will not cause the electorate to lose faith in our democracy.'' In reaching that conclusion, the Court assumed that those expenditures would not be coordinated with candidates, and that they would be disclosed.

Almost everyone in America thinks big money in politics is a problem (94 percent) and that it ''empowers wealthy special interests over everyday Americans'' (93 percent), according to a recent poll.

Taken to its logical and legal conclusion, the reasoning in Citizens United—that corporations have the same right as people, that money is speech, and that laws can't distinguish between speakers—puts the little that remains of our nation's post-Watergate scandal reforms at grave risk. So far, the Court has rebuffed challenges to the federal ban on direct corporate contributions to candidates and to most contribution limits, but Gorsuch's confirmation could change that.

In one of his only campaign finance cases, Riddle v. Hickenlooper, Gorsuch wrote a concurring opinion that suggests he would apply the highest level of scrutiny to contribution limits that distinguish between types of contributors. To date, the Supreme Court has applied a lower level of scrutiny to contribution limits, including that reasonable limits only impose a marginal restriction on First Amendment rights.

Gorsuch's opinion signals that he might be willing to strike down a ban on corporate campaign contributions on Equal Protection grounds.

Relatedly, Gorsuch joined the majority in the controversial Hobby Lobby Stores v. Sebelius case, which relied heavily on Citizens United to extend religious liberty protections to corporations. Indeed, Gorsuch would like to have taken things even further to hold that any individual owners of the corporation could challenge laws that allegedly impinge on their beliefs.

When viewed together, those two cases support the troubling conclusion that a Justice Gorsuch would be more likely to expand on Citizens United's anti-reform rationale than to walk it back.

Outside spending has more than doubled since Citizens United and our elections are awash in cash—most of it from the super rich, and much of it secret.

According to a new study by Demos, the Supreme Court's string of decisions deregulating campaign spending over the past decade was responsible for $1.3 billion in spending on the presidential race and 77 percent of the money flowing into competitive races in 2016.

Campaign spending isn't charity. Most big donors have a stake in government decisions and want something in return. The result? Increasingly, concentrated economic power is translating into concentrated political power, and the rest of us are left on the sidelines.

By all appearances, Gorsuch's confirmation to the Supreme Court would move the country further in that troubling direction by granting corporations new rights and crippling government's ability to protect Americans from the exercise of increased corporate power. Yet three out of four voters want Congress to reject any Supreme Court nominee ''who will help the wealthy and privileged wield too much power over our elections.''

It's not hard to connect the dots. Confirming Gorsuch would take the country down a path very few of us want, with damaging results for the health of our democracy.

So that is the completion of the article entitled ''Gorsuch Would Move the Supreme Court in the Wrong Direction on Money in Politics'' by Arn Pearson from March 17, 2017, in the Huffington Post.

This issue of money in politics is a huge one for the future of our country. If we do not succeed in reversing the decisions that have unleashed a flow of largely secret money concentrated in the hands of the megawealthy into campaigns, then there is no way that you end up with a House or Senate that reflects the will of the people.

The President seemed to campaign saying that he cared about workers, about ordinary people, but he has nominated an individual who gives every indication of fully supporting the ability of money to be concentrated in campaigns by the most wealthiest individuals in our country and in fact corrupting the outcome.

I mentioned earlier that you can see this corrupting power by looking at the disappearance of the interests of my colleagues across the aisle in the environment. It used to be that Republicans were often expressing a lot of interest in the sustainable management of the environment.

It was President Nixon who created the Environmental Protection Agency and the Clean Air Act and Clean Water Act, and many colleagues expressed a lot of interest in taking on one of the most diabolical sources of pollution, carbon dioxide. But that interest has completely disappeared since the fossil fuel industry put ''bazillions'' of dollars into the Republican Senate campaigns—completely disappeared. Isn't that exactly the type of corruption that the Supreme Court said they didn't expect to see?

Let me tell you that we have seen this pollutant, carbon dioxide, surge in the atmosphere. Going back 20 to 30 years ago, there was an increase per year in the parts per million in the atmosphere of about one per year. So you might go from 350 to 351 parts per million in 1 year, and 351 to 352 the next. Now what we see is that the rate of pollution has increased, and we are seeing close to an increase of 2 parts per million. This is not at one location. This is dispersed carbon dioxide pollution across the world. This pollutant is directly the product of burning fossil fuels, coal, and gas and oil.

So we have been extracting and burning these fuels for 150 years, and they have greatly magnified the amount of work that can be done by a human. When we used to evaluate how much work you can do, we talked about horsepower—1 horsepower, 2 horsepower.

I was working in a village once where I was asked to help a man whose nephew plowed a field in a remote hilltop, and we had a 2 horsepower plow. We actually had a horse and mule pulling that plow. The man told me that that combination was very good because the horse responded to commands better and got the mule to behave, and the mule was better at pulling the plow. So that was the combination. That was 2 horsepower. But when you burn fossil fuels, you create a tremendous amount of energy. We don't talk about our cars with 1 or 2 horsepower; we talk about 100 horsepower or 200 horsepower.

Burning fossil fuels has enabled us to transform the face of this planet in a few generations. Sometimes that has been an extremely positive development—better housing, better transportation systems. But there is an enormous dark side to the burning of fossil fuels, and that dark side is the product, the pollutant, carbon dioxide. As it is accumulating in the atmosphere, it is providing the blanket that is causing the Earth to warm, and that warming is a very destructive force on our farming, on our fishing, and on our forests. We used to talk about computer models and what might happen in the future. Now we simply pick up a newspaper and every day there is a news story of some impact of global warming.

In my home State of Oregon, we have a fire season that is two months longer than it was 40 years ago, with more acreage of forests burning and more heat doing more damage. We have the spread of insects like pine beetles, which would have been killed by colder winters but are not killed by the warmer winters. We have a snowpack in the Cascades that, while it can go up and down year to year, in general has been declining, meaning less water for streams. So we have warmer, smaller trout streams, and we have less water for irrigation, and we have over on the coast a challenge with our oysters that reflects another consequence of the growing pollution of carbon dioxide. That carbon dioxide is absorbed into the ocean. A significant amount of it is absorbed into the ocean and converted into carbonic acid. This acid then, having changed the chemistry of water, makes it much more difficult for sea life to form shells.

At about the time that I was running for office—running for the U.S. Senate in 2007, 2008—there was a problem encountered by the Whiskey Creek Oyster Hatchery in that its baby oysters were not thriving, often dying, and they wondered why.

They turned to researchers at Oregon State University. They thought maybe that this was a virus, but it was not. They thought maybe this was a bacteria, and it was not a bacteria. Finally, they found something that had been staring them in the face, which was that the water was too acidic. The water they were pulling through a big pipe out of the ocean was too acidic because of the carbonic acid. The result was that the baby oysters had difficulty in forming their shells. It is not just the baby oysters, as coral reefs are being profoundly impacted across the world.

There is a researcher from Oregon State University, Professor Dickson, who has made studying coral reefs his life's work. He did a briefing here in DC. It was probably 7 or so years ago—6 or 7 years ago. He showed some slides of the coral reefs that he had been studying—what they used to look like and what they looked like today. He said: These reefs are my babies, and my babies are dying. They are dying because the temperature of the water is warmer and more acidic.

You may wonder how this affects the corals. First, as with the oyster shells, they have more difficulty in forming their bodies. Coral is an animal, and it lives in a symbiotic relationship with algae. When the changes occur in the water, the algae can multiply at a rate that is not supportable by the coral, and the coral ejects them. This is referred to as bleaching. If circumstances do not change quickly, the coral will die because it has ejected its symbiotic partner on which it depends in order to live. There are reports that, over the past few years, 80 percent of the Great Barrier Reef, off of Australia, has died.

So here we have this massive problem that is facing the planet—carbon pollution. It is having a huge impact on our farming for irrigation water. Certainly, in our fishing, it is affecting things like coral reefs and oysters and in our forests, with there being more intense forest fires. Yet we here are doing so little to face this and address this.

Why are we doing so little?

We are doing so little because the coal and oil billionaires have proceeded to invest so much money in third-party Senate campaigns to elect one side of the aisle and defeat the other side. They become the controlling power behind what happens here on the floor of the Senate.

Those interests, most prominently represented by the Koch brothers, do not want us to take on this issue of global warming and carbon pollution because to take it on means to transform our energy economy from extracting and burning fossil fuels, which they own vast amounts of, to clean and renewable energy, which does not create carbon dioxide—solar energy and wind energy. This group of companies—the Koch brothers and friends—is doing everything it can to make sure that this body sustains the subsidies we give to it and not help the success of the clean and renewable energy that might replace the fossil fuels.

Look at it this way: Imagine that you have a set of doctors and they have

an enormous disease affecting a city, but the donors behind the doctors have a big stake and do not want them—the doctors—to address the illness. That is corruption, and that is what we have right here, right now.

We have a Senate that is corrupted by Citizens United and dark money that flows through the campaigns and causes Senators who were concerned about the environment to decide that, if they want to stay in office, they had better not talk about it and they had sure better not do anything about it. In addition, this fossil fuel cartel wants to make sure it has a corps that continues this corruption. That is why they put so much pressure on Senators not to consider Merrick Garland when he was nominated last year, in 2016.

For the first time in the history of our country, when there was a vacancy during a campaign year—an election year—the Senate failed to do its responsibility under the advice and consent clause of the Constitution. There were 15 times when we had previously had a vacancy during an election year, and 15 times the Senate had responded, but not last year, not on turn No. 16. Why was that? It is because the oil and coal cartel did not want Senators to consider a Justice who might, actually, end this corrupt system of the funding of campaigns.

You can see that their influence comes on multiple levels in terms of direct pressure on policies for those who sit in the Senate but also in terms of determining who sits in the Senate to begin with. In this article, Gorsuch would move the Supreme Court in the wrong direction on money and politics. This is not just one issue among dozens of others. This is a key issue as to whether or not we have a ''we the people'' government, which we are in the process of losing. We are fighting this nomination because we are fighting to keep this vision—our constitutional vision.

Our Founders were well aware that the powerful want to have a government that serves the powerful. They saw it throughout Europe. They said: We are going to do it differently in the United States of America. We are not going to have a government by and for the powerful. We are going to have a government by and for the people.

This is where Jefferson was concerned about whether we could sustain such a government—one that would make decisions that reflected the will of the people. He noted that we must, in order to have that happen, have individuals—each citizen—have an equal voice. But Citizens United and the philosophy for the powerful of Neil Gorsuch is the opposite of Jefferson's mother principle. It is the opposite of ''we the people.'' That is why, when we come to a vote on closing debate on this nominee, at least 41 of us are going to stand up and say: absolutely not. We are going to stand for the integrity of the United States. We are going to stand for the integrity of our Constitution. We are going to stand for the integrity of the Senate, and we, certainly, are going to stand for the integrity of the Supreme Court. That vote should be 100 to zero to oppose closing debate, but at least 41 of us care about this Constitution, and we will be doing all we can to try to save our Nation.

I am going to share an article by Paul Gordon: ''Real People, Real Lives: The Harm Caused By Judge Gorsuch.'' This article was written in February of 2017.

When Donald Trump was running for president, he outsourced his future selection of potential Supreme Court nominees to two right wing organizations, the Federalist Society and the Heritage Foundation. They provided him a list of 21 people who were acceptable to them, Trump (the candidate) promised to select a nominee from the list they gave him, and they and their right wing colleagues agreed to support him. Neil Gorsuch was nominated as the product of this political arrangement.

So it is no surprise that Judge Gorsuch has a history of regularly finding ways to put corporations and the powerful first. In that way, he is much like his idol and role model Antonin Scalia and the other far right conservatives on the Supreme Court. And while this unbalanced approach to cases might make for interesting reading, the courtroom is not an academic paper. Each case involves real people with real problems. While a judicial decision might be just another day at work for some judges, it is often one of the most important and impactful days in the lives of the people involved. Below are some of the cases Judge Gorsuch has been involved with and the people who have been affected by them—people who have been victimized outside the courtroom and, to the extent Gorsuch's view prevails, are victimized again.

(Mr. JOHNSON assumed the Chair.)

The article continues by turning to the case of Pinkerton v. Colorado Department of Transportation, 2009.

How many men serving as Federal judges on circuit courts have experienced increasingly blatant sexual harassment from a supervisor over a period of weeks and months? Probably not many. Perhaps that played a role when Judge Neil Gorsuch joined Paul Kelly's opinion upholding the dismissal of a fired woman's case alleging outrageous sexual harassment and retaliation.

Betty Pinkerton experienced two months of escalating sexual harassment from David Martinez, her supervisor, at her job with the Colorado Department of Transportation. The harassment began in December 2002 when Martinez asked her, ''What does a divorced 52 year [old] lady do when she gets sexual urges?'' As she unfortunately had to do several times over the next two months, Pinkerton told him he was being inappropriate in asking such personal questions.

The harassment continued through January and February. Every time she made it clear that his comments were not welcome, but the harassment continued.

So on February 19, 2003, she reported the harassment to the office of the civil rights administrator and formally filed a written complaint on February 24. About three weeks later, Martinez was removed as Pinkerton's supervisor, and on March 21 he was formally found to have engaged in sexually inappropriate conduct with her.

But six days later, Pinkerton was fired.

She sued the Department of Transportation, claiming it was liable for the hostile work environment Martinez had imposed on her. But in Pinkerton v. Colorado Department of Transportation, Judges Gorsuch and Kelly uphold the ruling of a magistrate judge that she had waited too long (two months) to report the harassment and the claim could not go to trial.

But as the dissenting Judge, David Ebel, pointed out, there could have been justifiable reasons for the delay. Perhaps she felt the harassment wasn't sufficient enough to file a complaint until it elevated to a certain point, or maybe she thought she could get her supervisor to stop without the involvement of the civil rights office and without possibly damaging her relationships with others in the office.

In addition, although this was not mentioned in the dissent, perhaps the judges in the majority had insufficient personal familiarity with repeated sexual harassment to know the many reasons a woman might not promptly file a complaint. But instead of letting a jury decide the question of fact as to whether she waited ''too long,'' Gorsuch and Kelly took it upon themselves to be the jurors and decided this factual issue on their own.

Pinkerton also claimed that the Department of Transportation had fired her as retaliation for reporting the sexual harassment, while her employer cited poor performance as the cause, each side having supporting evidence. Here too, Judge Gorsuch took the issue away from a jury. He joined Judge Kelly's majority opinion in a detailed analysis of all the evidence (like a jury would have done at trial), decided that no reasonable jury would find the Department of Transportation fired her for any reason but poor performance, and therefore dismissed her retaliation claim.

That's the jury's job, not theirs. As Judge Ebel noted in his dissent, each side presented evidence supporting their position, and the case should have gone to trial so the jury could do what it is supposed to do: Determine the motive for the firing. Judge Ebel listed several factors that a jury might consider to determine that the employer's rationale of job performance was simply a pretext for her firing. For instance:

The State Department of Transportation director testified that the most serious error leading to Pinkerton's firing was an allegedly mishandled call from an employee's daughter that had happened about four years earlier.

The director tried to get Pinkerton another job with the state Department of Transportation only months before she was fired.

As Judge Ebel noted, ''It is a jury's function to determine whether an employer acted with a retaliatory motive.'' But Judge Gorsuch chose to join his colleague as the jury so that Pinkerton would not have the issue decided by a jury of her peers.

I am reading from an article called ''Real People, Real Lives: The Harm Caused By Judge Gorsuch,'' by Paul Gordon, March 2017.

The article now turns to the case of Caplinger v. Medtronic in 2015. The headline of this section is ''Medical Device Maker Pushes Misuse of Product: Protecting a Corporation From Its Victims.''

It starts out saying:

Illness can be frightening. We turn our health and our lives over to medical personnel and there are many devices of healing. While the physician is highly trained in

medicine, the device manufacturers are highly trained in selling their products to the physicians. Patricia Caplinger learned this the hard way.

Suffering from a degenerative disc condition, Patricia Caplinger and her doctor discussed her options. Medtronic had developed the ''Infuse Bone Graft device,'' which stimulated bone growth. The FDA had only approved its use for surgeries entering the body from the front, but a Medtronic representative recommended an ''off-label'' usage: Enter from behind to use the Infuse device. Not knowing that Medtronic had evidence that such posterior approaches could actually cause serious complications, both Caplinger and her doctor chose to follow Medtronic's advice. The company's representative was even present for the operation.

The consequences of the company's recommendation were terrible for Caplinger, because posterior use of the device resulted in too much bone growth. Two or three months after the procedure, her symptoms returned and worsened. She developed foot drop as a result, which in turn led to a knee ligament tear requiring surgery. The rapid overgrowth of new bone in her spine led to additional surgery, but the overgrowth continued nonetheless, requiring yet another surgery.

Because of the harm she suffered, Caplinger filed a complaint against Medtronic in court. In her lawsuit, Caplinger presented evidence of the lengths to which Medtronic went to facilitate off-label use of its Infuse product. These included bribing doctors, paying kickbacks for promoting such uses, and funding misleading scientific studies that provided a false impression of the safety of these off-label uses.

Nevertheless, writing for a split panel in Caplinger v. Medtronic, Gorsuch agreed with the lower court that every charge of Caplinger's state-law lawsuit was preempted by federal law. The dissenting judge agreed in part, but concluded that Caplinger's negligence and failure-to-warn claims were not necessarily preempted. He wrote: ''My disagreement with the majority opinion does not turn on the substance of federal preemption law. Instead, our disagreement turns on our respective characterization of Caplinger's pleadings and understanding of the proper burden at this stage of the litigation.''

All three judges seemed to agree that Caplinger's briefs were not written very clearly to address all the facets of the preemption issue. One judge was willing to interpret them to give her another chance to make her case, but Gorsuch chose to characterize Caplinger's pleadings in such a way as to ensure her case would be dismissed.

The executives at Medtronic were very likely very relieved.

This article, ''Real People, Real Lives: The Harm Caused by Judge Gorsuch'' now turns to address ''Gorsuch and Children with Autism: Removing the Chance to Learn Lifetime Skills.''

When Congress passed the Individuals With Disabilities Education Act, it was a major step forward in making sure children with disabilities had a free and appropriate public education. But Luke P., a child with autism living in Colorado, was denied this right by Judge Gorsuch, negatively affecting not just him but other kids throughout the Tenth Circuit.

Luke was two years old when he was diagnosed with autism, and when he entered school, he had an education plan specific to his needs, as required by IDEA. Between kindergarten and third grade, he made significant progress in skills relating to communication, self-care (including use of the toilet), independence, motor skills, social interactions, and academic functioning.

But there was an enormous problem for Luke. He was generally unable to transfer his skills into environments other than school. So when he was home or otherwise out of school, he continued to have significant problems.

Fortunately, his parents learned about a residential private school specializing in educating children with autism. If he could gain admittance, Luke would live at the school for 44 weeks of the year, and he would be supervised 24 hours a day. It was a great opportunity to not only advance in the skills learned in school, but to generalize them so they weren't place-dependent. His parents enrolled him there with updated education goals and a new plan to achieve them. They then applied to the school district to reimburse them (since IDEA promises a free education). But the district refused. They were willing to accept Luke's updated plan, but they insisted those goals could be met at the public school he'd been attending.

His parents refused to send him back to a school that had achieved some success but had also failed Luke in many important ways and continued to seek reimbursement. A hearing officer, an administrative law judge, and a federal district court judge all agreed that Luke's inability to generalize his skills demonstrated that the school district had failed to provide him with the free appropriate public education required by law. Only the residential program could do that, meaning the district needed to reimburse Luke's family.

Then Judge Gorsuch stepped in, taking away Luke's opportunities and risking his entire future.

Writing for a Tenth Circuit panel in Thompson R2–J School District v. Luke P., Gorsuch ruled in favor of the school district. They had met their obligation to Luke because all they had to do was provide an educational benefit that was more than de minimis. That is quite a low bar, one that could easily prevent Luke and other children from acquiring the critical lifetime skills they will need throughout their school years and for the rest of their lives.

Fortunately, there is hope: This term, the Supreme Court is considering a different case challenging the ''de minimis'' standard. A decision in Endrew F. v. Douglas County School District is expected by the end of June. Luke's family and families across the nation will be looking to the Supreme Court to protect their children.

What this article doesn't note is that the Supreme Court just handed down a decision 8 to 0 overturning the position Judge Gorsuch had in this case. They ruled that the IDEA Act was intended to ''provide an educational benefit that was more than de minimis.'' Merely more than nothing, I believe, was Gorsuch's standard. Merely more than nothing—if you have done that, you have met the test. The Supreme Court said: No, the whole point of the act was to provide an appropriate education. It wasn't one or two Justices rejecting Gorsuch's writing, his interpretation of the law—basically, his decision to ignore the law, which is what he did in his decision. They ruled 8 to 0. They basically kicked that decision clear out of the field of common sense or a rational interpretation of what the IDEA Act says. So that was a powerful addition to that story.

Let me return to the article. This section is called ''No Leave Extension for Leukemia Patient: Gorsuch's Cramped View of What Makes an Accommodation Reasonable.'' This is the case of Hwang v. Kansas State University, in 2013.

Grace Hwang, a longtime assistant professor at Kansas State University, received frightening news in June of 2009: Her doctors diagnosed her as having leukemia. Without aggressive chemotherapy and a bone marrow transplant, she would die. She had to spend six months in medical facilities, during which time she was on a paid leave of absence. But she made sure her work got done: She prepared the instructors who were stepping in for her, including by sharing her teaching materials, lesson plans, and syllabi. Even while she was hospitalized, she consulted with the substitutes through phone calls and e-mails.

In January, after her six-month ordeal, Professor Hwang was looking forward to returning to work. But there was a severe outbreak of swine flu on campus, and her physicians warned her that, due to her compromised immune system, she should stay away from campus. So she informed university officials that she would need some additional leave—hopefully, a short time, but potentially as long as the entire semester, depending on the flu situation and her immune system.

But the university refused to grant her additional leave. Their reason? Because they have a policy that caps a leave of absence at six months, which she had used up. Professor Hwang sued them for violating the Rehabilitation Act, which requires employers to provide a reasonable accommodation for someone's disability. She was unsuccessful before the district court.

The Rehabilitation Act calls for accommodation requests to be evaluated on a case-by-case basis. Every situation is unique, depending on any number of factors. That is why Congress chose not to set a point at which a leave of absence was no longer a reasonable accommodation.

But when Professor Hwang appealed to the Tenth Circuit, Judge Gorsuch ruled against her in an opinion very much focused on the length of time from its very opening (Hwang v. Kansas Sate University (2013)). He set Professor Hwang up to lose in the very first paragraph. He could have opened the opinion in a neutral manner by asking whether extending her leave would create an undue burden for the university. Instead, he chose to frame the legal issue from the university's perspective, casting the employer as the victim:

Must an employer allow employees more than six months' sick leave or face liability under the Rehabilitation Act? Unsurprisingly, the answer is almost always no.

Judge Gorsuch concluded that the professor simply could not perform the duties of her job without being present on campus, and an accommodation past six months was not reasonable under the Rehabilitation Act.

The Rehabilitation Act seeks to prevent employers from callously denying reasonable accommodations that permit otherwise disqualified disabled persons to work—not to turn employers into safety net providers for those who cannot work.

Since Professor Hwang performed work while hospitalized to ensure her classes were taught effectively in her absence, it is hard to imagine that she could not do any work from home. She was simply seeking a hopefully-short extension of her leave so she could do her work in person without risking her life. It is also difficult to see how her efforts to retain a job she'd excelled at for

more than a decade was just an effort to turn her employer into [as Judge Gorsuch termed it] ''a safety net provider.''

When Professor Hwang was first diagnosed, she probably had no idea that her treatment would cost her her job.

These are stories from the article, ''Real People, Real Lives: The Harm Caused By Judge Gorsuch.''

The next section is titled ''Excessive Force: Immunity For Police Officer Who Kills Young Man Over Marijuana Plants.''

Wilson v. City of Lafayette (2013).

Wendy and Jack Wilson learned about Gorsuch's approach to the law the hard way when they sought to hold police officer John Harris accountable for needlessly killing their son Ryan. Their son had been standing near an area known for growing marijuana, and he admitted the plants were his. Then he ran. Officer Harris chased him until Ryan reached a fence, where he stopped. Officer Harris saw Ryan start to reach into his pocket and warned him not to, in case it held a weapon. As Ryan turned to run again, Officer Harris shot him in the back of the head or neck with a Taser, killing him.

But in Wilson v. City of Lafayette (2013), Judge Gorsuch concluded that Harris hadn't used unconstitutionally excessive force, so the parents' case shouldn't even go to trial. Another judge observed in her dissent that Gorsuch's opinion

. . . fails to give sufficient weight to the fact that the Taser used by Officer Harris on August 4, 2006, had a targeting function, that Officer Harris fired at Ryan Wilson from only ten to fifteen feet away, and the training manual specifically warned officers against aiming it at the head or throat unless necessary.

Given all this, the Wilsons certainly had a legal argument of excessive force they should have been able to present at a trial. But Gorsuch shut that possibility down. After losing their son, they lost the opportunity to hold anyone accountable for his completely unnecessary killing.

So much for ''And Justice For All.''

The next story in this article, ''Real People, Real Lives'' is ''Worker Dies Due to Inadequate Training, but Gorsuch Tries to Rule for the Company,'' the case of Compass Environmental, otherwise known as the case of the electrocuted miner.

Chris Carder also died needlessly, but in this case it was from a workplace accident in which he was electrocuted. Carder worked as a trench hand at a mine site, which involved using rubber and metal hose with a metal nozzle to dispense grease. Since there was a live power line crossing over the construction site, the safety training everyone received warned trench hands and others to keep at least twenty feet from the powerline. However, Carder started on the job a week after everyone else and, in a decision that had tragic consequences, this safety measure was not included in Carder's individual training. An accident ensued when the nozzle was too close to the power line, and Carder was fatally electrocuted.

Looking into the accident, the Department of Labor's Occupational Safety and Health Review Commission (OSHRC) concluded that Carder could have avoided electrocution had he been adequately trained by his employer (Compass Environmental) about the highly dangerous situation he faced—training that the other on-site employees had received. OSHRC [Occupational Safety and Health Review Commission] issued a serious citation against Compass for inadequate training, and it imposed a financial penalty against the company. This was upheld by a Tenth Circuit panel, but with Judge Gorsuch in dissent.

While the majority in Compass Environmental v. OSHRC (2011) criticized Gorsuch's case analysis, perhaps most striking was Gorsuch's decision to open his dissent with an ideological criticism of federal agencies in general:

Administrative agencies enjoy remarkable powers in our legal order. Their interpretations of ambiguous statutes control even when most everyone thinks Congress really meant something else. Their regulations bind as long as they can make the modest boast that they haven't behaved arbitrarily or capriciously. Their factual findings rule the day unless someone can show they have not just erred but clearly erred.

Gorsuch wrote that this was such a case, where the agency had erred in finding Compass had violated the law. But the superfluous ideological introduction cast a shadow on his entire approach to the case and whether he analyzed it as a disinterested judge or as an anti-government conservative seeking to use his position on the federal bench to make a political point. Either way, if it had been up to Gorsuch, the company responsible for Carder's death would not have been held accountable.

Well, it wasn't up to Gorsuch, because the majority of the panel said: Yes, of course if you put a worker in a highly dangerous situation, you have the responsibility to train them about that situation. Somehow, Gorsuch managed to find the opposite conclusion: If you put a worker in a highly dangerous place and don't train them, that is OK, even if they die as a result.

I am reading stories from the article, ''Real People, Real Lives: The Harm Caused By Judge Gorsuch.'' The next section is, ''Die or Be Fired: The Case of the Frozen Trucker.'' I have relayed the facts of this several times since I began speaking a few hours ago, so I will try to do an abbreviated version of this.

TransAm Trucking v. Administrative Review Board (2016).

While Chris Carder died on the job, Alphonse Maddin was fired for not dying on the job. He was a truck driver hauling cargo in subzero weather, and the brakes on his trailer froze. He stopped, called the company to report the problem, then waited for a repair person. Unfortunately, the heater in the cab of the truck was broken, wasn't working, so after a couple of hours, his body became numb, his speech was slurred, and he couldn't feel his feet at all. He called the company two more times and reported his increasingly perilous state; he was even having trouble breathing.

Maddin unhitched the trailer from the truck. With the repair person still not there, he called the company to let them know he was leaving to get help, but he was told not to leave the trailer behind. He was given two choices: Drag the trailer despite its frozen brakes (either impossible or wildly dangerous), or keep waiting for the repair person in the cold and put his own life at risk.

Rather than die in the cold, Maddin drove off in the truck for help, leaving the trailer behind and returning with assistance in about 15 minutes. A week later, the company fired him for abandoning his cargo. The Labor Department found that the company had violated whistleblower protection regulations, since Maddin had reported a problem, not obeyed an order relating to that problem that could have killed him, and was fired for it.

Not surprisingly, . . . a panel of Tenth Circuit judges upheld the Labor Department's actions. But Judge Gorsuch dissented. The Surface Transportation Assistance Act protects a worker from refusing to operate an unsafe vehicle.

I am now interjecting—which is what he did because he refused to drive with that trailer attached with the frozen brakes, which could have endangered many people on the road.

Now I will return to the article.

. . . a panel of Tenth Circuit judges upheld the Labor Department's actions. But Judge Gorsuch dissented. The Surface Transportation Assistance Act protects a worker from refusing to operate an unsafe vehicle, but Gorsuch reasoned that the driver wasn't ''refusing to operate'' anything at all; instead, he was choosing to operate the vehicle in a way that he'd been instructed not to. And that, wrote Gorsuch, isn't covered by the law.

And that is how a person who wants to be a legislator turns the law on its head, to reverse the outcome clearly laid out in the law to begin with.

Back to the article.

So according to Gorsuch, a law passed to protect workers from being forced to drive unsafe vehicles doesn't cover workers who drive away to avoid the particularly unsafe situation of death. The law empowers companies to make workers choose between their jobs and their lives, according to Gorsuch. Fortunately, Maddin survived his ordeal and Gorsuch's analysis did not carry the day.

The next section of this article, ''Real People, Real Lives: The Harm Caused By Judge Gorsuch''—the title is ''Defer to the Governor, Facts Notwithstanding: Gorsuch Turns a Blind Eye to an Unlawful Effort to Defund Planned Parenthood.''

This is also a case that I have read a fair amount about in the course of the last few hours, so I will just summarize it.

The Governor of Utah said: Well, there is this video out, and it is about a program in which Planned Parenthood sells tissue for research. I don't like what they are doing, so I am going to refuse to provide State funds to Planned Parenthood.

Planned Parenthood basically pointed this out: Well, first, the video didn't have anything to do with Utah. Second of all, Planned Parenthood in Utah is not involved in this tissue research program, so it had nothing to do with us in that regard. And refusing to provide State funds to us is unequal treatment under the law and unconstitutional.

The case was tried, and the judges found for Planned Parenthood for all the reasons I just mentioned. Neither the Governor of Utah nor Planned Parenthood saw any reason to appeal this. Planned Parenthood had won, and the Governor recognized that there were seriously strong arguments that had been made. But Gorsuch did something very unusual: He asked the Tenth Circuit to reconsider the decision of the three-court panel en banc, which means with all the judges of the Tenth

Circuit. He essentially retried the entire case with a larger group. Gorsuch accused the majority of not showing ''the sort of comity this court normally seeks to show the States and their elected representatives.''

Let's treat the Governor nicely. The job of the court is not to treat the Governor nicely; the job is to determine whether someone's rights have been violated or whether someone has suffered damage that needs to be compensated.

One of the fellow judges in the majority criticized Gorsuch's mischaracterization of the record, and he noted that Gorsuch ''mischaracterizes this litigation and the panel opinion at several turns.''

The article continues:

It would be hard to estimate how many women would have become ill or died if Judge Gorsuch had been in the majority.

The next section of this article, ''Real People, Real Lives: The Harm Caused By Judge Gorsuch'' is titled ''No Understanding of Another's Perspective: The Department Of Motor Vehicles and the Rehabilitation Act.'' This is the case of Barber v. Colorado.

Julianna Barber and her mother, Marcia Barber, learned just how out of touch Judge Gorsuch could be . . . and the pain that he would impose on people with disabilities and their families. Fifteen year-old Julianna wanted to practice her driving. Colorado law restricted her to driving with a parent or guardian with a driver's license. Since her mother Marcia was blind and therefore didn't have a license, she asked the DMV for a reasonable accommodation: Let Julianna drive with her grandfather. After consulting with the State attorney general, the DMV refused, but suggested that Marcia could give Julianna's grandfather some form of guardianship. She refused to even discuss signing away her parental rights, and the family sued under the Rehabilitation Act.

The Barbers lost in the Tenth Circuit with a panel consisting of judges nominated by Ronald Reagan, George H.W. Bush, and George W. Bush in Barber v. Colorado. The majority acknowledged that the State had discriminated against Marcia Barber but ruled against her because she refused to negotiate with the DMV over reasonable accommodation.

But Judge Gorsuch wrote a concurrence going even further: Citing Colorado Revised Statute Section 15–14–102(4). Gorsuch pointed out that the guardian for purposes of driving does not have to be someone with full guardianship authority. He also cited Colorado Revised Statute 15–14–105's provision that a parent can delegate ''any power,'' however small, ''regarding care, custody or property'' of a child to someone else. Therefore, all Marcia Barber had to do was find a sheet of paper and write that Julianna's grandfather had the right to supervise her driving. She wouldn't need to file the paper in court or go through any other formal process. According to Gorsuch, this option is available to anyone, does not discriminate against anyone based on disability.

The DMV wasn't even required to make a reasonable accommodation for the family. At no point in the opinion is there any suggestion that Marcia Barber understood that the DMV was talking about anything but surrendering some of her parental rights, so it was not surprising that she wouldn't consider discussing it further. No reasonable judge can expect a regular person to be sufficiently familiar with the details of Colorado statutes to know everything about guardianship that he cites. How would she know this?

Gorsuch's inability to comprehend the worldview of another person is perfectly captured in the footnote to his concurrence.

The article says it is worth quoting in full. Here is that footnote:

Plaintiffs argue that, in a February 23, 2005 letter, the State misrepresented its Colorado law by asking Ms. Barber to sign a document giving full, not limited, guardianship authority to another person. The letter, however, simply stated that, for the ''youngest of drivers just learning to drive,'' State law required ''that they be under the direct and immediate supervision of someone with full parental authority.'' By definition, a limited guardian has full parental authority, albeit for prescribed purposes, sometimes even very modest purposes (such as the supervision of a minor while driving). The State thus did not misrepresent to plaintiffs the availability or nature of its limited guardianship statutes.

Perhaps 95 to 99 percent of the Nation's population, like Marcia Barber, would not know that someone with full parental authority could include someone whose only authority is permission to supervise her daughter's driving. A good judge recognizes that different people can reasonably interpret the same thing differently based on their different education, upbringings, and life experiences.

I think if somebody told me that they wanted me to grant full parental authority to someone else, I certainly would say: Hold on. That is not happening.

What Neil Gorsuch points out is that full parental authority can apply to a very small set of activities, but the phrase ''full parental authority'' implies a broad range. How would an ordinary citizen possibly know the point Neil Gorsuch is making? And therefore I think virtually everybody would respond the way she did. Full parental authority—I am going to pass that away? No, of course not. Why don't they call it limited or special cause parental authority? Then maybe an ordinary person might have some idea. But that was not the case.

The next section in ''Real People, Real Lives: The Harm Caused By Judge Gorsuch'' is titled ''Sex Discrimination: Never Mind the Evidence.''

Many of the appeals before the 10th Circuit involve plaintiffs whose cases were dismissed before trial or jury verdict because (the trial judge ruled) they had not presented enough evidence to possibly support their legal claim. That is what happened to Carole Strickland, a UPS driver who was promoted to key account executive. She presented evidence that she had been the subject of sex discrimination at the new job and quit under pressure.

Her coworkers testified that supervisors treated her differently than her male colleagues. Even though Strickland met between 93 and 104 percent of her sales quotas and was outperforming at least some of her coworkers on every measure, only she was required to attend individual meetings with the supervisors. Only she had to make written sales commitments, even though no one was at 100 percent of every sales quota. One of the men in her office had lower performances than Strickland in almost every sales measure, but he was not required to attend meetings to discuss performance, was not denied assistance, and was not counseled for failing to reach 100 percent in every sales measure.

At the same time, UPS pointed out that there was one other woman in Strickland's office, and she did not report being treated differently. In addition, there had been one man among the staff whose treatment approached that given to Strickland. The district court ruled that she didn't have a case and dismissed it.

The Tenth Circuit panel of judges who heard her appeal in Strickland v. UPS (2009) disagreed. While her employer's evidence might have undercut Strickland's case, she had nevertheless presented enough evidence for a jury to consider her arguments, consider UPS's arguments, and conclude that she had indeed been subject to unlawful sex discrimination.

That is what the 10th Circuit said.

Judge Gorsuch dissented, deciding for himself that Strickland's supervisors were not motivated by sex discrimination. Therefore, Gorsuch concluded, since no reasonable jury could agree with Strickland about the cause of her treatment, her case should be dismissed before she could make her case to a jury.

Everyone deserves their day in court. Except for some people.

In case after case that I have been talking about in the course of the last few hours, we see that the judge said: No, we are going to stop that person from ever getting their day in court. Generally, the article attacked the conduct of a powerful corporation.

The next section of ''Real People, Real Lives'' is regarding ''The Most Vulnerable: Children With Disabilities.'' This case is ''A.F. v. Espanola Public Schools (2015).''

The Individuals with Disabilities Education Act, IDEA, ensures that students with disabilities are provided ''free appropriate public education.'' Under the law, such children have individualized education programs designed to provide educational benefits. Congress included a requirement that if a parent believes their child's needs are not being addressed, . . . they must first exhaust the administrative remedies IDEA makes available before they can go to court. Congress has also passed other laws relevant to children with disabilities, some of which have remedies that IDEA lacks. They also require all IDEA administrative remedies to be exhausted first before going to court.

A.F., a child with dyslexia, had her case heard on appeal by Judge Gorsuch who read IDEA to limit parents' options to most effectively address their children's educational needs. A.F.'s mother Christine felt the school hadn't adequately assessed her daughter and created an IEP [an Individual Education Plan] for her as IDEA requires. She filed a complaint and reached an agreement in which the school recognized that A.F. had a disability. Believing she had met the requirement to exhaust IDEA's administrative remedies, she then went to court to obtain remedies available under statutes like the Rehabilitation Act and the Americans with Disabilities Act.

But in A.F. v. Espanola Public Schools . . . Judge Gorsuch shut her down. Writing for a

divided panel, he ruled that she hadn't exhausted her administrative remedies because she had reached a settlement with the school district on her IDEA case. To pursue relief available only through statutes other than IDEA, he concluded, a parent must refuse to resolve the IDEA claim.

Judge Mary Beck Briscoe pointed out the bind Judge Gorsuch was imposing on parents with children with disabilities, against Congressional intent.

Judge Briscoe wrote:

[Judge Gorsuch's] interpretation is inconsistent with the very purpose of IDEA. It forces a claimant to choose between mediating a resolution to her IDEA claim . . . and thereby obtaining some or all of the relief sought under IDEA . . . ,or forgoing any relief at all and waiting (while the child ages and potentially continues to receive something other than the requisite ''free appropriate public education'') in hopes of later filing suit and obtaining relief under both IDEA and other statutes.

So his position just places the parent in an impossible situation and obviously a good share of the panel disagreed. Of course there are parallels there on that IDEA case to the autism case that we looked at earlier. Certainly, in both cases, the judge was not sympathetic to the role of the family seeking an appropriate education for their child. In the autism case, the Supreme Court just recently overturned Judge Gorsuch and the principle he asserted, which is basically all that was required of the school district was ''merely more than de minimus,'' merely more than nothing. That is inconsistent with the whole purpose of the IDEA, which is to provide a free appropriate public education. So here again, we see much the same attitude being displayed, an attitude of rewriting the law to be something that it clearly is not.

''The Sixth Amendment: Undermining the Right to Counsel. Williams v. Jones.'' I am reading another section from ''Real People, Real Lives: The Harm Caused By Judge Gorsuch.''

Perhaps no government power is more awesome—and more dangerously susceptible to abuse—than the right to imprison someone, completely taking away their freedom. Because our liberties require robust protection, the Bill of Rights establishes certain requirements that the government must meet before it is allowed to exercise its authority to lock any of us away. Since the criminal law can be used mistakenly or even inappropriately against anyone, these procedural requirements are guarantors of our freedom.

The Founders recognized that unjustified imprisonment would be less likely if each criminal defendant had someone advocating for them who knew the law inside and out. Hence, the Sixth Amendment guarantees that the criminally accused ''shall enjoy the right . . . to have the Assistance of Counsel for his defence.'' As a constitutional provision that is part of the Bill of Rights, this indicates that, as a nation, we believe that no one should be stripped of their freedom just because they are not experts in the law.

But Judge Gorsuch appeared to disagree, as he showed in 2009 case of Williams v. Jones. In this case, Michael Williams was being prosecuted for first-degree murder. The prosecution offered him a deal which he would plead guilty to a lesser crime (second-degree murder) and he would serve ten years in prison. Williams wanted to accept. However, his attorney said that if Williams accepted the deal, he (Williams) would be committing perjury and the lawyer would withdraw from the case.

Faced with this terrible legal advice and threat from his attorney, Williams reluctantly rejected the plea deal and went to trial. He was found guilty of first-degree murder and sentenced to life in prison without parole.

At the Tenth Circuit, the panel majority addressed the appropriate remedy for the unconstitutional ineffective assistance of counsel. While the remedy was not an easy issue to address, the majority had no difficulty whatsoever in identifying the constitutional violation. Indeed, a state court in Oklahoma had already found that there was a Sixth Amendment violation in this case.

Judge Gorsuch dissented both from the panel decision and from the whole court's decision not to reconsider the case en banc. He found no constitutional violation in the first place, because he claimed that the right to effective assistance of counsel only covers the trial, not any pretrial plea bargaining. Since the trial itself appeared to be fair, Gorsuch concluded, Williams didn't have a case. He wrote that ''due process requires a fair trial, not a good bargain.''

A little commentary here: What Judge Gorsuch was doing was saying that the Sixth Amendment right to legal assistance is only in the case of the trial, not in the legal work done before the trial starts. That is what is being referred to by the panel majority as an ''extremely cramped view of the right to counsel.''

So the article continues:

The panel majority harshly criticized this extremely cramped view of the right to counsel, noting that it had been rejected by the Supreme Court and was ''incompatible with [the Supreme Court's precedents involving] a right to effective assistance of counsel in connection with the entire plea process.'' When the circuit without comment declined to reconsider the case en banc, one judge wrote . . . a concurring opinion solely to correct the errors in Gorsuch's dissent. They cited the Supreme Court's prior holdings and statements that would have made no sense if the Sixth Amendment's right to counsel didn't apply at the pretrial plea-bargaining stage.

The Sixth Amendment protects both the guilty and the innocent. Judge Gorsuch's narrow interpretation is particularly frightening in the age of Trump.

That concludes that section. But it certainly is disturbing that Neil Gorsuch made a decision that completely disregarded the Supreme Court precedents and made no sense because when you have a lawyer, that lawyer is assisting you through the legal process. Part of that is the negotiation that occurs before you are actually in court. It is all part of the process of your case being considered. To try to put up a wall and say the Sixth Amendment does not apply to any of the legal work done, including negotiations over a potential plea, makes no sense.

So you have Judge Gorsuch writing his own law, ignoring the Supreme Court precedents, and being reprimanded, in essence, by the panel majority.

Returning to the article, ''Real People, Real Lives,'' the conclusion of the article reads as follows:

These are far from being the only people who have been or could have been greatly harmed by the way Judge Gorsuch approaches cases. When Gorsuch's view carry the day right now, the damage he does is limited to States covered by the Tenth Circuit; he has also been limited by the Supreme Court precedent he may disagree with. Were he to be elevated to the High Court, however, he would be in a position to overrule precedents that have gotten in his way over the past 10 years, and the damage he would impose would be nationwide and unreviewable.

Judge Gorsuch may be affable and have many friends, but that is not at all relevant to whether he should be confirmed to the Supreme Court. Few if any of the parties Gorsuch has unfairly ruled against would feel better knowing that he is reputed to be a great guy outside the courtroom.

So, that is the article ''Real People, Real Lives: The Harm Caused By Judge Gorsuch.''

The next article is from the New York Times by Emily Bazelon and Eric Posner from April 1, 2017. No, this was not an April Fools' article. This is a serious article: ''The Government Gorsuch Wants to Undo.'' It starts out as follows:

At recent Senate hearings to fill the Supreme Court's open seat, Judge Neil Gorsuch came across as a thoroughly bland and nonthreatening nominee. The idea was to give as little ammunition as possible to opponents when his nomination comes up this week for a vote, one that Senate Democrats may try to upend with a filibuster.

But the reality is that Judge Gorsuch embraces a judicial philosophy that would do nothing less than undermine the structure of modern government—including the rules that keep our water clean, regulate the financial markets and protect workers and consumers. In strongly opposing the administrative state, Judge Gorsuch is in the company of incendiary figures like the White House advisor Steve Bannon, who has called for its ''deconstruction.'' The Republican-dominated House, too, has passed a bill designed to severely curtail the power of federal agencies.

Businesses have always complained that government regulations increase their costs, and no doubt some regulations are ill-conceived. But a small group of conservative intellectuals have gone much further to argue that the rules that safeguard our welfare and the orderly functioning of the market have been fashioned in a way that is not constitutionally legitimate. This once-fringe cause of the right asserts, as Judge Gorsuch put it in a speech last year, that the administrative state ''poses a grave threat to our values of personal liberty.''

The 80 years of law that are at stake began with the New Deal. President Franklin D. Roosevelt believed that the Great Depression was caused in part by the ruinous competition among companies. In 1933, Congress passed the National Industrial Recovery Act, which allowed the president to approve ''fair competition'' standards for different trades and industries. The next year, Roosevelt approved a code for the poultry industry, which, among other things, set a minimum wage and maximum hours for workers, and hygiene requirements for slaughterhouses. Such basic workplace protections and constraints on the free market are now taken for granted.

But in 1935, after a New York City slaughterhouse operator was convicted of violating the poultry code, the Supreme Court called into question the whole approach of the New

Deal, by holding that the N.I.R.A. was an ''unconstitutional delegation by Congress of a legislative power.'' Only Congress can create rules like the poultry code, the justices said. Because Congress did not define ''fair competition,'' leaving the rulemaking to the president, the N.I.R.A. violated the Constitution's separation of powers.

The court's ruling in the Shechter Poultry Corp. v. the United States, along with another case decided the same year, are the only instances in which the Supreme Court has ever struck down a federal statute based on this rationale, known as the ''nondelegation doctrine.'' Shechter Poultry's stand against executive-branch rulemaking proved to be a legal dead end, and for good reason. As the court has recognized over and over, before and since 1935, Congress is a cumbersome body that moves slowly in the best of times, while the economy is an incredibly dynamic system. For the sake of business as well as labor, the updating of regulations can't wait for Congress to give highly specific and detailed directions.

The New Deal filled the gap by giving policy-making authority to agencies, including the Securities and Exchange Commission, which protects investors, and the National Labor Relations Board, which oversees bargaining between unions and employers. Later came other agencies, including the Environmental Protection Agency, the Occupational Safety and Health Administration (which regulates workplace safety) and the Department of Homeland Security. Still other agencies regulate the broadcast spectrum, keep the national parks open, help farmers and assist Americans who are overseas. Administrative agencies coordinated the response to Sept. 11, kept the Ebola outbreak in check and were instrumental in the last financial crisis. They regulate the safety of food, drugs, airplanes, and nuclear power plants. The administrative state isn't optional in our complex society. It's indispensable.

I am reading from the article ''The Government Gorsuch Wants to Undo'' by Emily Bazelon and Eric Posner. It continues:

But if the regulatory power of this arm of government is necessary, it also poses a risk that federal agencies, with their large bureaucracies and potential ties to lobbyists, could abuse their power. Congress sought to address that concern in 1946, by passing the Administrative Procedure Act, which ensured a role in the judiciary in overseeing rule-making by agencies.

The system worked well enough for decades, but questions arose when Ronald Reagan came to power promising to deregulate. His EPA sought to weaken a rule, issued by the Carter administration, which called for regulating ''stationary sources'' of air pollution—a broad wording that is open to interpretation. When President Reagan's EPA narrowed the definition of what counted as a ''stationary source'' to allow plants to emit more pollutants, an environmental group challenged the agency. The Supreme Court held in 1984 in Chevron v. Natural Resources Defense Council that the EPA and any agency could determine the meaning of an ambiguous term in the law. The rule came to be known as the Chevron deference: When Congress uses ambiguous language in a statute, courts must defer to an agency's reasonable interpretation of what the words mean.

Chevron was not used as a left-leaning decision. The Supreme Court decided in favor of the Reagan administration, after all, voting 6 to 0 (three justices did not take part), and spanning the ideological spectrum. After the conservative icon Justice Antonin Scalia reached the Supreme Court, he declared himself a Chevron fan. ''In the long run Chevron will endure,'' Justice Scalia wrote in a 1989 article, ''because it more accurately reflects the reality of government, and thus more adequately serves its needs.''

That was then. But the Reagan administration's effort to cut back on regulation ran out of steam. It turned out that the public often likes regulation—because it keeps the air and water clean, the workplace safe, and the financial system in working order. Deregulation of the financial system led to the savings and loan crisis in the 1980s and the financial crisis a decade ago, costing taxpayers billions.

Businesses, however, have continued to complain that the federal government regulates too much. In the past 20 years, conservative legal scholars have bolstered the red-tape critique with a constitutional one. They argued that only Congress—not agencies—can create rules. This is Shechter Poultry all over again.

And Judge Gorsuch has fortunately joined in. Last year, in a concurring opinion in an immigration case called Gutierrez-Brizuela v. Lynch, he attacked Chevron deference, writing that the rule ''certainly seems to have added prodigious new powers to an already titanic administrative State.'' Remarkably, Judge Gorsuch argued that Chevron—one of the most frequently cited cases in the legal canon—is illegitimate in part because it is out of step with (you guessed it) Shechter Poultry. Never mind that the Supreme Court has not since relied on its 1935 attempt to scuttle the New Deal. Nonetheless, Judge Gorsuch wrote that in light of Shechter Poultry, ''you might ask how is it that Chevron—a rule that invests agencies with pretty unfettered power to regulate a lot more than chicken—can evade the chopping block.''

At his confirmation hearings, Judge Gorsuch hinted that he might overturn Chevron without saying so directly, noting that the administrative state existed long before 1984. The implication is that little would change referring to the E.P.A.'s or Department of Labor's reading of a statute. Judges would interpret the law. Who would object to that?

But here's the thing: Judge Gorsuch is skeptical that Congress can use broadly written laws to delegate authorities to agencies in the first place. That can mean only that at least portions of such statutes—the source of so many regulations that safeguard Americans' welfare—must be sent back to Congress, to redo or not.

On the current Supreme Court, only Justice Clarence Thomas seeks to strip power from the administrative state by undercutting Chevron and even reviving the obsolete and discredited nondelegation doctrine, as he explains in opinions approvingly cited by Judge Gorsuch. But President Trump may well appoint additional justices, and the other conservatives on the court have expressed some uneasiness with Chevron, though as yet they are not on board for overturning it. What would happen if agencies could not make rules for the financial industry and for consumer, environmental and workplace protection? Decades of experience in the United States and around the world teach that the administrative state is a necessary part of the modern market economy. With Judge Gorsuch on the Supreme Court, we will be one step closer to testing that premise.

That is the conclusion of the New York Times article ''The Government Gorsuch Wants to Undo'' by Emily Bazelon and Eric Posner, dated April 1.

The next article I will share with you is an editorial from November 7, and I believe the other is from December 24 of 2016. This is by the editorial board of the New York Times, and it reads as follows:

People don't usually remember it this way, but on December 13, 2000, Vice President Al Gore gave one of the most important speeches in American history. Mr. Gore had contested initial results of the Florida vote count and prevailed in Florida State courts, but the Supreme Court had voted 5-to-4 the day before to end the recount and effectively hand the presidency to George W. Bush.

''Now the U.S. Supreme Court has spoken,'' Mr. Gore said. ''Let there be no doubt, while I strongly disagree with the court's decision, I accept it.'' The frenzied battle over a few hundred votes had spawned intense anger across the country—but it had been resolved ''as it must be resolved, through the honored institutions of our democracy.''

Mr. Gore's concession that night still stands as the most powerful reaffirmation in modern times of the Supreme Court's unique and fragile role in the American system of government. Millions of people were furious in the justices' decision in Bush v. Gore—many believed it was the result not of legal reasoning but of rank partisanship—and yet virtually everyone followed Mr. Gore's selfless lead, accepted the court as the final arbiter of the dispute, and moved on. There were no riots in the streets, no attempted coups, no ''Second Amendment solutions.'' There was, instead, a peaceful transfer of power: the hallmark of a civil society operating under the rule of law.

Sixteen years later, the Supreme Court sits crippled, unable to resolve the most pressing legal questions before the country. Two events—the sudden death of Justice Antonin Scalia in February and the unprecedented refusal of Senate Republicans to even consider President Obama's pick to fill the vacant seat—have converged to throw the court's future as a functioning institution into doubt.

This scenario would have seemed unimaginable a year ago. But Tuesday's vote—for president and for control of the Senate—will determine whether the court remains shorthanded for months or, as Republicans are now threatening if they hold the Senate, for years.

Last month, Senator Richard Burr, of North Carolina, told supporters that if Hillary Clinton wins, ''I am going to do everything I can to make sure four years from now, we still got an opening on the Supreme Court.'' Senator Ted Cruz of Texas suggested he was happy with the current situation, and said, ''There is certainly long historical precedent for a Supreme Court with fewer justices.'' Even Senator John McCain, who once joined with Democrats in an effort to depoliticize the judicial nomination process, recently told a radio show, ''I promise you that we will be united against any Supreme Court nominee that Hillary Clinton, if she were President, would put up.''

Step back for a moment and consider the radical absurdity of this position. Senate Republicans first justified their refusal to hold hearings or a vote on Mr. Obama's nominee before the presidential election because ''the people's voice'' needed to be heard. That was always a transparent lie. Now, apparently believing their candidate, Donald Trump, will lose, they are acting as though the Supreme Court is the property of the Republican Party.

This mind-set isn't just a matter of a few senators going rogue. Leading conservative groups are embracing the argument, happy to destroy a principle of American politics—

to privilege partisanship over the Constitution itself. Ilya Shapiro, a senior fellow at the influential Cato Institute, wrote two weeks ago that ''it would be completely decent, honorable, and in keeping with the Senate's constitutional duty to vote against essentially every judicial nominee'' a President Clinton would name. Last Thursday, the Vice President of Heritage Action for America, a top conservative think tank, said Senators McCain, Burr and Cruz were taking ''exactly the right position,'' and that an effective, long-term blockade of the court will require ''an immense amount of willpower'' from Senate Republicans.

A small number of Republican senators have expressed discomfort with this idea, but when was the last time public interest won out in today's Republican Party?

The indefinite blockade not only hobbles the justices' ability to resolve current cases, it takes open aim at the court's legitimacy as the sole unelected branch of government. Because the court ''has no influence over either the sword or the purse,'' as Alexander Hamilton wrote in the Federalist Papers, its legitimacy and authority depend entirely on the shared public acceptance of its verdicts.

Today's Republicans are essentially saying the court is nothing but another political body, and that justices should be treated as ideological sock puppets of the president who nominated them. Yes, the justices come with political beliefs and backgrounds, but that makes it all the more important to demand that they work harder than the rest of us to struggle and preserve their independence. This is why, for instance, Justice Ruth Bader Ginsburg was wrong to comment on Mr. Trump's candidacy—words for which she later apologized.

Until this year, no one disputed that the president should have wide latitude in picking justices. In 1993, Senate Republicans voted overwhelmingly in favor of Justice Ginsburg, President Bill Clinton's first nominee. And even though they voted in large numbers against Mr. Obama's first two nominees, Sonia Sotomayor and Elena Kagan, they did not try to block those nominations from going forward. Senate Democrats voted unanimously to confirm Ronald Reagan's choice of Justice Scalia in 1986 and allowed full votes on Robert Bork and Clarence Thomas, both of whom they strongly opposed.

In 2016, Republicans have blown this delicate balance to pieces, all to keep a conservative majority. Of course, the court has had a majority of Republican-appointed justices for nearly half a century, through the normal processes of advice and consent. But now, Republicans want to maintain that majority, even if that means tossing out all political norms. This majority, they hope, would promote a world view where fewer people have rights, where women do not have reproductive choices, where lawmakers can make it harder for minorities to vote, where religious people are free to disregard laws protecting people they don't like. Such a court could use a severe interpretation of the Constitution to ensure that American politics can be flooded with unlimited money, that reasonable gun restrictions are struck down, that corporate interests prevail over those of consumers, and that basic environmental regulations are turned back.

Make no mistake: That is the court Americans would get under a President Trump. Still, Senate Democrats would have an obligation to consider and vote on his nominees, just as Republicans would have that obligation to Mrs. Clinton's choices. No doubt, there would be Democratic voices demanding that their Senators mimic the Republicans' shameful example. But the Constitution asks more of us than that. In the next Congress, regardless of who wins on Tuesday, the very survival of the court as an independent body will be at stake.

I certainly agree that the very survival of the Court as an independent body is at stake right now. That is why I am here on the floor at 4:20 in the morning. It is because so much is at stake in terms of the legitimacy of the Court.

This is probably a good moment to return to the central premise of where we are. Where we are is that for the first time in U.S. history, a seat has been stolen from one President and delivered to another in a Court-packing scheme. If that were to succeed, it would set a precedent that would haunt the Court for decades to come, and it will haunt this body, the Senate, because if a theft succeeds, then it changes the analysis of every future Supreme Court vacancy.

If there is a vacancy and it is an opportunity for the Democrats to steal a seat back and deliver it to a future President who might be a Democrat, will they do so, and would they be right in doing so—to rebalance the Court after a seat has been stolen? We should never have to ask these questions—questions such as, if you can steal a seat and get away with it, when a seat becomes vacant a year before a President leaves office, can you do it 2 years before the President leaves office? Can you do it for 3 years? Can you keep a seat vacant for 4 years, as suggested by the article I just read and the comments of some of my colleagues in that they would be determined to reject any nominee put forward by Hillary Clinton? These questions are being asked because of this crime against our Constitution—the crime of stealing a Supreme Court seat in an effort to pack the Court.

The second big issue we are facing is the investigations underway of the Trump campaign and its possible coordination with the Russians to change the outcome of the election.

We know a lot about what the Russians did. We know they created false news stories. We know they had a team estimated to be 1,000 individuals in a building, doing social media to amplify the impression that Americans were writing negative comments about Hillary Clinton. We know they had a system of bots—a botnet, if you will—to use computers to respond and add commentary on comments people were making on social media so that it looks like there are far more people—far more disgruntled individuals—who were criticizing the Democratic nominee. We know that their strategy involved trying to influence the outcome in terms of groups like Facebook, identifying something as ''trending'' and then putting it up as ''trending news'' so that the false news, now being driven by the thousand social media folks in some building and the botnet, is amplified to the degree that it is now scrolling on your Facebook, looking like very legitimate news. We know the Russians broke into computers to obtain information and worked to release it in a fashion that was designed to damage the Presidential nominee from the Democratic Party.

That is a pretty comprehensive strategy of fake news and fake social media comments and botnet-generated comments and breaking into computers to secure information and release it in a fashion to damage the Democratic nominee, Hillary Clinton. We will learn more about all of those things, but that is a pretty good list of serious attacks on the United States of America, attacks on the integrity of our electoral system.

What we do not know—and why there are investigations underway—is how much the Trump campaign communicated with and conspired with that Russian operation. Each day, drip by drip, we hear more about some contact. This morning, it was the media and the Seychelles that we did not know about previously. Every day, it seems like there is one little additional piece, and we do not know where it will all lead to, if anywhere. Maybe it leads nowhere, but we must pursue it because if anyone conspired with the Russians to undermine the integrity of our elections and change the outcome of the elections, that is traitorous conduct, and it must be prosecuted to the full extent of the law.

Right now, we do not know a lot about how much communication and how much potential collaboration or conspiracy there was, so we have investigations to get to the bottom of it. The FBI has an investigation into it, as well as the House Intelligence Committee and the Senate Intelligence Committee, and we should not be considering this nomination while those investigations are underway.

Of course, a third significant reason that we should not be pursuing this is that the President failed to recognize the role of the supermajority requirement—the 60-vote requirement—that anyone who serves on the Supreme Court should be able to get bipartisan support from 60 Members. Therefore, nominating somebody from the far right, the extreme right, and all of the opinions we have talked about over the last many hours are related to crushing the rights of individuals and helping the most powerful. Certainly an individual who is at that far point in the spectrum is not from the mainstream of judicial thinking. It is another reason this should be set aside.

Then we have that information that came out at about 11 p.m., earlier this evening, Tuesday time. Now we are 5½ hours later, but the information was about the number of cases in which Neil Gorsuch had lifted passages from others virtually word for word without giving them credit. That is known as plagiarism. Hopefully, that issue will get a fair amount of attention and be examined closely.

The next article I am going to read is in the Sunday Review, December 24,

2016, entitled ''The Stolen Supreme Court Seat.''

Soon after his inauguration next month, President-elect Donald Trump will nominate someone to the Supreme Court, which has been hamstrung by a vacancy since the death of Justice Antonin Scalia in February. There will be public debates about the nominee's credentials, past record, judicial philosophy and temperament. There will be Senate hearings and a vote.

No matter how it plays out, Americans must remember one thing above all: The person who gets confirmed will sit in a stolen seat.

It was stolen from Barack Obama, a twice-elected President who fulfilled his constitutional duty more than nine months ago by nominating Merrick Garland, a highly qualified and widely respected federal appellate judge.

It was stolen by top Senate Republicans, who broke with longstanding tradition and refused to consider any nominee Mr. Obama might send them because they wanted to preserve the court's conservative majority. The main perpetrators of the theft were Mitch McConnell, the majority leader, and Charles Grassley, chairman of the Judiciary Committee. But virtually all Republican Senators were accomplices; only two supported holding hearings.

The Republican Party line—that it was an election year, so the American people should have a ''voice'' in the selection of the next justice—was a patent lie. The people spoke when they re-elected Mr. Obama in 2012, entrusting him to choose new members for the court. And the Senate has had no problem considering and usually confirming election-year nominees in the past.

Of course, Supreme Court appointments have always been political, and the court's ideological center has shifted back and forth over time. But the Senate has given nominees full consideration and a vote even when the party in power has opposed a president's choice. That is, until this year, when Republicans claimed that though the Constitution calls for the Senate's ''advice and consent,'' Senators aren't obligated to do anything. This is a bad-faith reading of that clause, even if there is no clear way to force a vote. It certainly obliterates a well-established political norm that makes a functioning judicial branch possible. As Paul Krugman wrote in his column on Monday, institutions are not magically self-sustaining, and they ''don't protect against tyranny when powerful people start defying political norms.''

This particular norm is of paramount importance because the court's institutional legitimacy depends on its perceived separation from the elected branches—a fragile concept in the best of times. By tying the latest appointment directly to the outcome of the election, Mr. McConnell and allies took a torch to that idea—an outrageous gambit that, to nearly everyone's shock, has paid off. But while Republicans may be celebrating now, the damage they have inflicted on the confirmation process, and on the court as an institution, may be irreversible.

The slope is both slippery and steep. If Republicans can justify an election-year blockade, what's to stop Democrats in the future from doing the same? For that matter, why should the party controlling the Senate ever allow a President of the opposing party to choose a justice? Indeed, in the weeks before the election, Senate Republicans were threatening, with the encouragement of leading conservative thinkers, never to confirm anyone to fill the vacancy if Hillary Clinton won.

Can anything be done to repair the harm? One step—as obvious as it is unlikely—would be for Mr. Trump to renominate Mr. Garland. Conservatives will scoff, but they know he is as qualified for the job as anyone in the country. When Mr. Garland was floated as a possible choice for the Supreme Court in 2010, Orrin Hatch, the senior Republican Senator from Utah, called him a ''consensus nominee'' and said there was ''no question'' that he would be confirmed with bipartisan support. That's partly why Mr. Obama nominated him this time, and also why Mr. McConnell denied him a hearing—he knew he couldn't prevent a Senate vote once Americans saw an eminently qualified and reasonable jurist testify on live TV.

At the very least, Mr. Trump could follow President Obama's example and pick a centrist—someone who commands wide respect and operates within the bounds of mainstream legal thought. That would be an appropriate gesture from a man who lost the popular vote by more than 2.8 million votes and will enter office with the lowest approval ratings in recent history.

The shameful, infuriating actions of the Senate Republicans won't be ignored in the history books. In a desperate effort to keep a conservative majority in the court, they rejected their own professed values of preserving American institutions. There's little hope they will come to their senses now, but they and Mr. Trump have the power and the obligation to fix the mess they have created.

That is the article ''The Stolen Supreme Court Seat,'' an editorial from the Sunday Review of the New York Times.

I do hope that there is a path in which this damage can be avoided because it is enormously significant to confirm a Justice when the seat has been stolen. It is enormously damaging to confirm a Justice when the President's team is under investigation for possible collusion with the Russians. It is enormously a big deal to confirm someone way out of the mainstream of judicial thought in America.

So should this progress, should we find that there are 41 individuals who will stand up for our institutions and block this nomination under the filibuster tradition, the 60-vote tradition—60 votes required to proceed—we will have the question of whether we are going to change the rule or change the nominee. And always in the past, when the Senate rejected in any fashion, including closing debate on a motion to proceed, a nominee by tabling them—rejected a nominee by voting them down—the answer was to change the nominee, to protect the integrity of the Court.

I think the advice in the December 24 editorial, ''Stolen Supreme Court Seat,'' which calls on the President to nominate a centrist, is terrific advice because it may give a chance for healing to take place. But there will be no healing if the seat is filled by Neil Gorsuch—a seat that belonged to President Obama under the Constitution of the United States of America, a seat that was stolen for the first time in U.S. history. That dynamic will haunt us for a very, very long time.

This editorial is from January 31 from Time Magazine, entitled, ''Sorry, Neil Gorsuch, the Supreme Court Vacancy was Already Filled,'' and written by Geoffrey Stone:

If Antonin Scalia died today, and Donald Trump thereafter nominated Judge Neil Gorsuch as his successor, I might support Judge Gorsuch's confirmation. Although Judge Gorsuch has not yet established himself as a jurist of any distinction, he is generally regarded as a capable judge with good character. Moreover, although he is a very conservative jurist, he will be replacing a justice with a similar ideological disposition. In such circumstances, just as I supported the confirmation of Judge John Roberts to succeed Chief Justice William Rehnquist, so too would I be inclined to support the nomination of Neil Gorsuch to succeed Antonin Scalia, even though I strongly disagree with Gorsuch's very conservative ideology.

But Antonin Scalia did not die today. He died almost a year ago, and President Barack Obama nominated Judge Merrick Garland to succeed him. Chief Judge Garland is a jurist of impeccable credentials and personal character who is widely celebrated for his moderate approach to the law. President Obama nominated Garland not only because of his distinguished reputation as a jurist, but also because as a relatively moderate judge, he should have been more than acceptable even to the most conservative Senate Republicans. In typical Obama fashion, Garland's nomination was an effort to compromise in order to win the support of Senate Republicans.

Chief Judge Garland should have been confirmed easily. Indeed, every Supreme Court nominee in living memory with anything approaching Chief Judge Garland's impeccable credentials and record of moderation has been easily confirmed by the Senate, without regard to whether the Senate was controlled by the President's party or by the opposing party. This was true, for example, of such Republican nominees to the Court as Warren Burger, Harry Blackmun, Lewis Powell, William Rehnquist, John Paul Stevens, Sandra Day O'Connor, Anthony Kennedy, and David Souter. Even the extremely conservative Antonin Scalia was confirmed by a vote of 98–0.

But not Merrick Garland. In a completely unprecedented abuse of power, Senate Republicans, under the ''leadership'' of Senate Majority Leader Mitch McConnell, refused to confirm, or even to consider, Judge Garland's nomination. This unconscionable maneuver was nothing less than a dishonorable and dishonest effort to steal this seat on the Supreme Court for the right wing.

Senator McConnell had the audacity to maintain that the ''people'' should decide who should fill this particular vacancy. By employing his duplicitous strategy, he managed to shift this appointment from a President who had won the popular vote by a margin of five million votes in 2012 to one who lost the popular vote by a margin of three million votes in 2016. This crass and unprincipled manipulation of our democracy should not be allowed to succeed.

Anyone who cares about the proper and legitimate functioning of our American democracy must oppose Judge Gorsuch's nomination, not because he is necessarily unqualified, but because of the undermining of our American democracy by Senate Republicans. Anyone who cares about the rule of law must oppose this nomination. If we fail to take this stand, the Senate Republicans will have succeeded in placing a justice onto our highest Court who has no business being there. They will have undermined the credibility of the Supreme Court as an institution, an institution that is critical to the functioning of our Constitution.

Judge Gorsuch's nomination should be withdrawn, and the President should nominate in his place a genuinely moderate justice who is acceptable to Democrats and Republicans alike. Only then can we move on

with a sense of institutional integrity. Short of that, every decision of the Court decided by a margin of five-to-four with Neil Gorsuch in the majority will justifiably be castigated as fundamentally illegitimate.

That was in Time Magazine, by Geoffrey Stone, and op-ed opinion editorial entitled, ''Sorry, Neil Gorsuch, the Supreme Court Vacancy Was Already Filled.''

This commentary is from Rolling Stone, entitled, ''Grand Theft Judiciary: How Republicans Stole the Supreme Court.'' It is subtitled: ''Pray that Ruth Bader Ginsburg and her fellow liberal justices stay healthy and don't retire,'' by David Cohen, written in November of 2016.

The Republicans just pulled off one of the greatest heists in American political history—they stole a Supreme Court justice.

Since 1789, there have been 112 justices on the Supreme Court. Having the opportunity to appoint a new justice is one of the prize opportunities for a president. With the right young justice, a president can influence American law and society for decades to come. For instance, Anthony Kennedy, the current ''swing justice'' on the Court, was appointed by President Reagan. Since he sits in the ideological middle of this current court, Kennedy's views on the law often determine how American justice work. And for that, we owe thanks to a president who was last elected 32 years ago and has been dead since 2004. That's the power of a Supreme Court appointment.

These opportunities are often completely unpredictable. Justices are appointed for life, so they leave their position only when they retire or die. Sure, a president can make an educated guess about particular justices' life expectancies or end-of-career plans, but knowing exactly when a justice is going to leave the Court is out of the president's control.

When Justice Scalia died suddenly in February, President Obama was gifted the opportunity to fill his third seat on the Court. He had previously replaced David Souter with Sonia Sotomayor and John Paul Stevens with Elena Kagan. Neither of those appointments shifted the Court's ideological balance, as in each case Obama replaced, broadly speaking, a judicial liberal with another liberal. Replacing Scalia, on the other hand, was going to be a monumental shift in the Court. Scalia was one of the most conservative justices in the history of the Supreme Court. An Obama replacement would give the Court its fifth liberal and shift it to the left in historically significant ways. President Obama and Democrats were salivating at the opportunity.

The Republicans, though, were having none of it. Through unflinching and unified obstructionism combined with Tuesday's election of Donald Trump, they succeeded in stealing a seat right out from under President Obama's nose. It was a staggering case of grand theft judiciary.

This all started almost immediately with Scalia's death, with the Republicans claiming a new theory that a president should not be able to appoint a justice during an election year; rather, the people should be allowed to speak and decide on the direction of the Court, they said. Never mind that justices have been confirmed regularly throughout history in election years, and that presidents have constitutional authority to appoint judges to the federal judiciary in all four years of their terms, not just their first three, and that the Court would have to (and continues to) function with only eight justices. The Republicans understood the stakes of shifting the Court's ideology, so they put up a united obstructionist front and never wavered in saying they would not confirm an Obama appointee this year.

President Obama, as he often does, thought he could break through the Republican wall by trying to appease them. Instead of nominating a young liberal firebrand or a judicial first, he nominated a well-respected but moderate, not-young white male: Merrick Garland. Obama thought Garland, who had been praised throughout his career by politicians on both sides of the aisle, would be unobjectionable and would break the logjam.

The president couldn't have been more wrong. Without any interest group to cheerlead his cause, Garland was quickly forgotten and faded into the distant background of American politics. As a result, there was no movement whatsoever, and Garland's nomination has lingered with no action longer than for any nominee in history.

During the campaign, Democrats occasionally brought up this issue, trying to paint Republican senators as obstructionist and against good government. But the issue never stuck in Senate races, and Hillary Clinton never really led the charge over the Supreme Court either. As a result, according to an ABC exit poll, of the 21 percent of Americans who said the Supreme Court was the most important factor in their vote, 57 percent of them voted for Trump and only 40 percent voted for Clinton.

Now that Trump is president-elect, he's going to have the opportunity to fill Justice Scalia's seat; even though it means the Supreme Court will remain short-handed for months longer, there's no chance in hell Republicans will do anything to move Garland's nomination between now and inauguration day. They want their stolen prize, and they'll wait for it.

Trump has given a list of 21 possible justices he would nominate, all of whom have varying pedigrees as conservatives. If he follows through and nominates someone from that list, the Democrats could respond with a similar blockade. Though the Republicans still control the Senate, and thus would be able to move the nominee through the judiciary committee to a floor vote, Democrats could try to filibuster. A filibuster requires 60 votes to break, so the 52 Republicans in the Senate would not be able to stop it.

There are two problems with this plan, though. First, Democrats have been less unified in the past when it comes to opposition than the Republicans have been, and the Democrats would need to make sure no more than seven Senators broke ranks. With several Dems up for reelection in 2018 in very conservative states, that's something that may be more difficult than it should be.

Second, the Republicans may opt to get rid of the filibuster altogether. This option, commonly referred to as the ''nuclear option,'' would eliminate the filibuster as a tool for Supreme Court nominees. Because of Republican opposition during the Obama years, the Democrats eliminated the filibuster for lower court justices when they controlled the Senate. However, they kept it for Supreme Court nominations because they understood just how controversial and serious such a move would be.

The author continues:

I have no expectation that the Republicans would do the same. They have been laser focused on wrestling this nomination away from President Obama and are not going to let the Democrats ruin their fun. The Senate rules allow the filibuster to be eliminated with a majority vote, and the Republicans will probably do so very soon after Trump nominates his justice and the Democrats announce their filibuster.

What will this mean for the Supreme Court? Filling this seat will put a younger conservative in Justice Scalia's seat. It will dash liberals' hope of a new progressive Supreme Court and likely continue its recent history as one of, if not the most, conservative Courts in American history.

However, the Court will still have Justice Kennedy as the swing justice.

Obviously, this was written before the nomination of Neil Gorsuch. It notes that if Republicans go nuclear, there is almost nothing the Democrats can do to stop it. That is certainly true. We don't have a mechanism that can prevent this body from reinterpreting the application of its rules.

It happens in a very simple fashion. A Member asks for a ruling of the Chair on whether the super majority provision to close debate applies to closing debate on Senate nominees. The Chair consults with the Parliamentarian and probably says: Yes, it does clearly apply. Then the majority leader challenges the ruling of the Chair. If 51 folks vote to overturn the ruling of the Chair, that is it. The precedent is then set. The supermajority does not apply to Supreme Court nominees, to closing debate on Supreme Court nominees. It is that simple. It is not a change in the rules. The Senate rules require a supermajority to change the rules. It has just not always been helpful. It has meant that the Senate has not adjusted to the changing culture of the Senate to keep it functional. A lot of the time, State legislatures are far more functional than the U.S. Senate because when they have problems develop as the culture changes or people develop new tactics for obstruction, they adjust the way they operate in order to make sure they can keep making decisions.

It is not unusual in my home State in Oregon for us—that is, the body in the house or the senate in Oregon—to consider 8 or 10 bills in a day. With a bill raised, everybody who wants to speak to it for 5 minutes or less gets to speak to it. Then there is a vote, it is decided, and we go on to another. There is more conversation sharing of viewpoints on the floor of the Oregon House in the course of a single day than there is a sharing of views and debate on the floor of the Senate in an entire year. We have, basically, completely lost anything resembling a conversation about any issue before the Nation here on the floor of the Senate. That is a tragic situation. It could be changed if we changed the way that we operate.

(Mrs. ERNST assumed the Chair.)

The L.A. Times editorial board wrote an essay titled: ''It's not Neil Gorsuch's fault, but we can't support his ascension to a stolen Supreme Court seat.''

As we can see from this series of articles, no one will ever forget that, for the first time in U.S. history, the majority is stealing a seat from one President and delivering it to another in an audacious effort to pack the Court. No one should ever forget that, and we should come to our senses and end this

before the theft is completed by confirming the nominee to this seat.

This article in the L.A. Times, by the editorial board, says:

A decade ago, The Times urged the Senate to confirm John Roberts to the U.S. Supreme Court even though he was a conservative judge nominated by a conservative president and was likely to pull the court to the right for decades to come. We backed him, despite our disagreements with his judicial philosophy, because we believe that presidents—Democrats and Republicans alike—are entitled to significant deference when they nominate justices to the high court, so long as the nominees are well qualified and scandal-free, respect precedent and fall within the broad mainstream of judicial thinking.

Under normal circumstances, that same reasoning would lead us to support the nomination of Judge Neil Gorsuch. Like Roberts, he is conservative but competent, with more than a decade of experience on the appellate bench and a ''well-qualified'' rating from the American Bar Assn.

But these are not normal times.

Not after the outrageous obstruction of Judge Merrick Garland's nomination for 10 full months by Senate Republicans. That debacle began in March 2016, when President Obama nominated Garland, a moderate and well-respected appeals court judge, to fill the seat on the court that had become vacant with the death of Justice Antonin Scalia. Instead of doing what the Constitution requires and offering their advice and, if merited, their consent, Senate Republicans refused even to engage in the process. They denied Garland a confirmation hearing and in many cases wouldn't even meet with him—on the hastily fabricated pretext that a president in his final year of office shouldn't be allowed to name a new justice because . . . well, it was never really clear what the supposed principle was behind this self-serving position.

They stonewalled the nomination until Obama was safely out of office and a Republican had won the election. And now, with Gorsuch subbed in for Garland, their cynical and dishonorable strategy is about to deliver its rewards.

Some people think it's hyperbolic to suggest that a seat was ''stolen.'' But how else to describe it? Republicans took the opportunity to fill the vacancy away from Barack Obama without justification and delivered it up instead to Donald Trump. Gorsuch could now tilt the balance on the increasingly polarized Supreme Court for the next 30 or more years, influencing rulings on free speech, gay and transgender rights, campaign finance, abortion and gun laws, among other subjects. He may not be outside the mainstream of judicial thinking, but he is a textualist, an originalist and a likely ally of the court's conservative justices.

The Republicans' underhanded ploy to subvert the Garland nomination has put the Democrats in an untenable position. They can now do what would ordinarily be the right thing do—by going high after the Republicans went low. They could grumble a little bit but then decline to filibuster, or they could even vote in favor of Gorsuch—effectively capitulating in the quixotic hope that an act of good faith would encourage the Republicans to behave more honorably in the future.

Alternately, they can go down kicking and screaming. We say ''go down'' because no matter how hard they kick or how loud they scream, they seem unlikely to win this battle. The reality is that without filibustering, they don't have the votes to defeat Gorsuch. And if they do mount a filibuster, Senate Republicans can vote to do away with the filibuster for Supreme Court nominees entirely. Under either scenario, Gorsuch gets his job.

To be clear, Democrats and Republicans share the blame for the long roll down the slippery slope of polarization and dysfunction of the judicial selection process. (Some Democrats have even suggested in the past that presidents shouldn't fill Supreme Court seats in election years.) As that selection process has become increasingly politicized, the court itself has become more ideologically driven as well. Although there are differences between Roberts and Justice Samuel Alito, for example, on some important 1st Amendment issues, it's also true that in recent years, justices appointed by Democratic presidents have tended to vote for ''liberal'' outcomes and justices appointed by Republicans for ''conservative'' outcomes. That polarization is a bad trend.

The judicial system works best when justices are neither rigidly ideological nor biased along partisan lines. To get there, we need a less highly politicalized selection process, along with a measure of cooperation, compromise and civility in Congress.

For the moment, though, it is imperative to remind the world of what the GOP did. By all means, let's hear a cri de coeur from Democrats, even if it is in vain. The Republican misuse of power took partisan obstructionism to an extraordinary new level and must not be ignored now as if it never happened. President Obama's nominee was robbed of his right to a hearing, and the Senate Democrats are under no obligation to be complicit in the theft.

I do believe it is our responsibility to cry out from our hearts that this is wrong. Stealing a Supreme Court seat is wrong. Having this deliberation while the President is under a cloud for his team's potential collaboration with Russians is wrong. And while this article described Gorsuch as a bit more mainstream, as people have become familiar with his opinions—opinions that were widely criticized by other Republican jurists, and, in one case, overturned by the Supreme Court on an 8-to-0 vote—they have come to the recognition that he is way far out on the fringe, not in judicial mainstream.

So how do we fix this? We fix it by each Senator asking what they would do if the tables were turned and the Democrats had stolen a seat. The Republicans would cry out: It was wrong. They would ask Democrats to join them in rejecting that theft. I invite my colleagues to go through that exercise. How would you respond if a seat had been stolen from a Republican President and delivered to a Democratic President? How would you respond if that Democratic President was being investigated for potential collaboration with the Russians to sway the outcome of our elections? How would you respond if the nominee was not from the mainstream, but from the far edge? I am quite confident about how each person would respond because that situation would be outrageous.

We must be able to step into each other's shoes and say: If we are going to preserve this institution, we have to be willing to recognize when it has gone off course, and it has gone dramatically off course this last year.

This article is by Dawn Johnsen and is titled: ''Trump's Nominee Shouldn't Get a Hearing Until Merrick Garland is Seated.''

There really is—as several of these articles have mentioned—a path to righting this wrong, and that is to go back in time, to recognize that Merrick Garland was not considered by the Senate, and that we need to tell the President that we are not entertaining any person other than Merrick Garland to be in the seat. We will debate whether he should be in the seat. We will vote on whether he should be in the seat, and thereby rectify this theft—this stolen seat theft that will otherwise haunt this body and haunt the Supreme Court for the rest of our lives and maybe well through our children's lives. But we haven't committed the crime yet. This theft has not been completed. So we should all be pondering how to prevent that from happening.

The article starts out:

As President Donald Trump's nominee for the vacant Supreme Court seat receives public scrutiny in the coming days, it's incumbent for us to remember one thing: This seat was not Trump's to fill.

In fact, the U.S. Senate should refuse to confirm anyone President Trump nominates to the Supreme Court—until Trump renominates and the Senate confirms Judge Merrick Garland.

It then refers to a Senate filibuster as the only correct approach.

To recap: The Senate failed to fulfill its constitutional responsibility with this unprecedented refusal even to consider President Obama's nomination of Garland. Obama made the nomination with about a year left in his presidency, but from day one the Republican Senate leadership insisted it would permanently block it.

No one ever questioned Garland's qualifications—an impossibility for this brilliant, dedicated public servant. The obstruction constituted an insulting challenge to Obama's legitimacy, accompanied by calls for the people to decide via the election of the next President. The Republicans effectively have attempted to steal this Supreme Court seat. If this effort succeeds—as has appeared likely ever since Trump's surprise election—it will create a fundamental imbalance in the third branch of our federal government, the independence and integrity of which is vital to our constitutional system. An essential role of the federal judiciary is to check unlawful actions of the political branches—Congress and the president. When political actors conspire to distort the makeup of the court, as they did in denying President Obama his basic constitutional role, we the people must demand that the balance be restored.

The confirmation of Garland to the court would provide perfect justice. This may not be quite so far-fetched as it might seem initially. President Trump is likely to have the opportunity to make more than one Supreme Court appointment. As Trump is not nominating Garland this time, the Senate should keep the current vacancy open until a second seat becomes vacant. It should then confirm Garland, followed by the consideration of the Trump choice. The only appropriate alternative—given the constitutional stakes—would maintain an eight-person or fewer court for four years.

I don't suggest this lightly: I experienced firsthand—

Again, I am reading this article. So the ''I'' is the author. The author is Dawn Johnsen.

I don't suggest this lightly: I experienced firsthand the personal toll of the Senate refusing to vote on my nomination to head the Department of Justice's Office of Legal Counsel in 2009 and 2010. One Republican senator sought to reassure me it wasn't personal; it was politics, how the game was played: ''You do it to us; we do it to you.'' My husband, two sons, and I spent more than a year in confirmation limbo, in a rented house far from home, awaiting the Senate vote repeatedly predicted for the next week, next month—but that never came.

Of course, the politicization of a presidential appointment is wrong. Each of the president's nominations ordinarily should be assessed on its individual merits. Notwithstanding Trump's awful first 10 days in office, the Senate should continue to offer the president's executive branch nominees this same fair standard of treatment. In particular, Trump's nominee to head the Office of Legal Counsel—the office to which President Obama nominated me and the same office I headed for part of the Clinton administration—should be confirmed expeditiously, as long as the nominee is personally qualified. This president is in desperate need of good legal advice.

But this Supreme Court vacancy is different. It exists only as the result of the wrongful denial of the legitimacy of Obama's presidency. It is the breakdown of the very function of our democracy and a slap in the face to constitutional norms. It is an attempted theft that, if permitted, would bring longstanding consequences. Its end was to prevent the court from having a majority of justices appointed by Democratic presidents for the first time since 1969. That's almost half a century with a court majority appointed by Republican presidents, a striking imbalance that does not reflect the presidential vote: Since 1961, Democratic and Republican presidents have served equal numbers of years.

The flimsy and transparently specious argument Republicans offered was: ''Let the people decide.'' Of course, the people decided when they elected President Obama to a second four-year term. And 3 million more Americans decided they preferred Obama have a Democratic successor rather than Trump make this appointment. Those who value an independent judiciary, and a Senate committed to democracy, can fix this constitutional problem by insisting on Merrick Garland's appointment to the seat he already should be occupying. The pick after that can belong to President Trump.

I think that accurately sums it up. There is an idea embedded in there of saying: How about this? How about this, fellow Senators—that we suspend the consideration of Neil Gorsuch at this point in time until there is another Supreme Court seat that opens up, and at that time, Merrick Garland gets at least considered for the first seat, the seat that he was rightly nominated for. President Trump has his person rightly considered for the second seat. That would be a way to heal the mess that has been created through the theft of the Supreme Court seat: We have stolen it, but we will not act on it, and so eventually we will enable the same nominee to be considered for that seat. That is an interesting idea, a face-saving idea, an idea that gives President Trump the opportunity to make the nomination that corresponds to a seat that comes open during his administration, and President Obama's nominee to be considered for the seat that came open under President Obama's control of the Presidency—his time in office.

The LA Times January 31 editorial said—the title kind of sums it up: ''When the GOP stole Merrick Garland's Supreme Court seat, they set the stage for a miserable battle.'' That is pretty much the situation we are in. The previous article I read laid out an idea of a way around it at this point, in which we leave the Scalia seat empty until there is a second seat, and then Merrick Garland gets considered for the first seat, and if the President wants his nominee to be considered for the second seat, he would have to make that nomination, and then the President gets his nominee considered for the seat that came up under his administration, so suddenly there is no longer a stolen seat, and we are on the path to a future in which the Supreme Court's integrity is not completely decimated.

This article starts out as follows:

The outrageous obstruction of Merrick Garland's nomination to the Supreme Court—the 10-month-long stonewall by Senate Republicans that not only stymied the high court's ability to do its job but effectively stole the nomination of a new justice from President Obama—is now delivering its rewards to the cynical politicians who carried it out.

Having denied Garland even a committee hearing from the time of his nomination in March until Obama was safely out of office, the GOP-controlled Senate is now smugly offering that opening to President Trump to fill. The new president, who has repeatedly promised to select a new justice in the mold of the late conservative Justice Antonin Scalia, has said he will announce his nominee Tuesday evening.

This was written just before the President announced Neil Gorsuch as his nominee. The article continues:

It's hard to express how head-shakingly unfair this is. Trump will now have an opportunity to affect the balance of the increasingly polarized court for the next 30 or 40 years—influencing rulings on abortion, the rights of gay and transgender people, free speech, corporate and union spending on elections, labor issues, the separation of church and state, the ubiquity of guns, criminal justice reform and endless other hot button subjects.

But Trump never should have been handed this opportunity. The seat was Obama's to fill subject to Senate ''advice and consent,'' and he fulfilled his constitutional responsibility in good faith, only to be kneecapped by a body that would neither advise nor consent but merely gummed up the machinery in a transparent effort to preserve the court's conservative majority. The GOP's feeble justification for its behavior—that an appointment made by a duly elected president was somehow illegitimate because he had only 10 months remaining in office—was believed by no one.

The Senate's misbehavior affected more than just the court. It also constituted a new low in the tit-for-tat cycle of dysfunction in Congress, in which each side obstructs its opponents wherever possible even if that produces a stalemate that brings the operation of government to a halt. Working cooperatively across the aisle to solve the nation's problems has gone out of fashion.

The Democrats have been put in a terrible bind. Do they take the Republican bait, declare the seat stolen and launch a filibuster? Or do they roll over, brand themselves patsies and allow Trump to appoint a Scalia clone? What message do the Democrats send if they allow themselves to accept this theft supinely without exacting any punishment? How should they fight if the nominee is truly outside the mainstream? And what if he or she is a conservative who is well-respected and competent—what strategy makes sense then? It's an awful predicament and it's hard to see how it ends well.

Frankly, the Democrats are not in a terribly strong position. They don't have a majority in the Senate, and though they can filibuster for a while, most Senate Republicans would sooner do away with the filibuster for Supreme Court justices than allow the seat to sit empty indefinitely. That's the so-called nuclear option.

At the end the day—

Says this article—

Senate Majority Leader Mitch McConnell will probably win this round, thus ensuring the long roll down the slippery slope of polarization and dysfunction continues at an ever-accelerating speed. He should be, but presumably is not, ashamed of that contribution to history. His obstructionism exacerbated the weakening of governmental institutions and continued the erosion of bipartisan cooperation and civility. Yet if democracy is to work and the nation is to prosper, the political system must allow for compromise and rationality even among determined opponents.

For now, another Justice Scalia or someone even more extreme will probably be enstooled, potentially endangering the rights of women and non-whites, threatening backward movement on same-sex marriage and abortion, offering more protection for powerful businesses and less for the environment. Even in these difficult days, this disgraceful move by Senate Republicans to manipulate a U.S. Supreme Court seat for partisan purposes stands out as sad and egregious.

Well, that was the LA Times article from January 31: ''When the GOP stole Merrick Garland's Supreme Court seat, they set the stage for a miserable battle.''

In the course of conversing about the dilemma we face, I have noted that there are three big problems. The first is that the seat has been stolen from one President and delivered to another in an effort to pack the court.

The second is that the nominee from President Trump is way outside the judicial mainstream. I have gone through many of the cases.

The third is that there is a big cloud hanging over this administration. The Trump administration's connections to Russia during the campaign and throughout the transition are numerous, and we keep learning about pieces of the puzzle every day.

Contact between the campaign and Russians or dialogue in itself is not necessarily wrong. But it is wrong if that dialogue was about how to coordinate, to basically tilt the playing field in favor of Donald Trump and against Hillary Clinton.

The Russian activity was designed to change the outcome of the election. So, that in itself is a problem we have to pay a lot of attention to. We have to understand every piece of how the Russians operated. We have to convert

that knowledge into a strategy that prevents it from happening again.

We certainly have to work with our allies to make sure that we help all of the democratic Republics of the world resist such meddling by the Russians. So far, we have a pattern of a lot of contacts. That pattern of Trump associates misleading the public about meetings and relationships with Russian officials does raise red flags. If meetings were innocent, why not be forthcoming? That is why we have to have a strong set of investigations to get to the bottom of this.

We have to understand and recognize that what Russia did in their strategy was equivalent to an act of war on the United States. They were attacking our core institution, the bedrock of our democratic Republic, our election system. That is unacceptable.

If anybody conspired with the Russians, that is treasonous conduct, and we have to get to the bottom of it. We certainly should get to the bottom of it before this Supreme Court seat conversation continues. The subsequent handling of the investigation by the House Intelligence Committee and the actions taken by the chair of that committee, Representative NUNES, underscore how serious the situation is. We definitely have to get to the bottom of what happened.

That fact only emphasizes how seriously the Senate needs to consider slowing down, setting aside, pressing the pause button on the debate regarding the nomination of Judge Neil Gorsuch. Until the FBI and Congress complete the investigation of these contacts, the ongoing coverup confirming President Trump's lifetime appointment to the Court is premature.

On top of possible collusion, it is also worth remembering why it is so troubling that President Trump has gushed about Putin's leadership while turning some of our longest and most strategic relationships on their heads. Putin operates a repressive regime, one that cracks down on freedom of expression and whose opposition leaders frequently perish in mysterious and suspicious ways. Someone carrying an item up to their apartment magically falls and dies or is shot down near the Kremlin or a whole host of different ways.

The actions of Putin are not the actions of a friend of America. The actions of Putin are not actions that reflect the values shared by the American people. They are not values honored in our tradition. They are not values embedded in our Constitution.

The Putin strongman model is very contrary to our system of government. There are no checks and balances. Those who rise up in the streets are likely to be cut down in the streets. Those who cry out for justice are likely to be silenced. Those who march to improve things may well find themselves behind bars. That is Putin. That is Russia.

We should not have a significant improvement in our relationship with Russia unless there is a vast improvement in the fundamental values of a free and fair society within Russia.

There is an enormous amount of evidence that the Trump campaign was familiar with and in conversation with Russia. If we pursue the investigations aggressively, we will find whether there was collusion.

Paul Manafort, a Republican strategist and longtime Washington operator, joined Trump's campaign team last spring. He was elevated to be campaign manager after Corey Lewandowski was fired in June. But with just 3 months to go until the Presidential election, Manafort resigned amid questions over his campaign role and his extensive history of lobbying overseas, particularly in Ukraine, where he represented a pro-Russian interest.

Manafort also worked as an adviser on the Ukrainian Presidential campaign of Viktor Yanukovych and his Party of Regions during the same time span—from December 2004 until February 2010, the Ukrainian Presidential election—even as the U.S. Government opposed Yanukovych because of his ties to Russian leader Vladimir Putin.

Manafort was hired to advise Yanukovych months after massive street demonstrations, known as the Orange Revolution, overturned Yanukovych's victory in the 2004 Presidential race. According to a 2008 U.S. Justice Department annual report, Manafort's company received about $64,000 from Yanukovych's Party of Regions over a 6-month period for consulting services. That was in 2008.

In 2010, under Manafort's tutelage, the opposition put the Orange Revolution on trial, campaigning against its leader's management of a weak economy.

Returns from the Presidential election gave Yanukovych a narrow win over Prime Minister Yulia Tymoshenko, the leader of the 2004 demonstrations. Yanukovych owed his comeback in the Presidential campaign to a drastic makeover of his political persona, and this makeover is credited to Paul Manafort.

From 2007 to 2008, Manafort was involved in investment projects with Russian oligarch Oleg Deripaska and Ukrainian oligarch Dmitry Firtash. The Associated Press reported that Manafort negotiated a $10 million annual contract with Deripaska to promote Russian interests in politics, business, and media coverage in Europe and the United States. We are talking about 2005.

In 1980, Manafort, along with Roger Stone, were founding partners of the Washington, DC-based lobbying firm Black, Manafort, Stone and Kelly.

Roger Stone—what do we know about him? He is a former Trump adviser, a self-described master of political dark arts, and has been labeled as the dirty trickster of delegate fights. He has worked with the campaigns of Richard Nixon and George H.W. Bush and Ronald Reagan.

Stone repeatedly claimed throughout the final months of the 2016 campaign that he had back-channel communications with WikiLeaks founder Julian Assange, and he knew of the forthcoming document dumps, which disseminated materials that were hacked by Russia from Democratic computers.

He admitted in March 2017 that during August of 2016, he had been in contact with Guccifer 2.0, who was believed to be tied to Russian intelligence and was claimed to be behind the hack of the DNC.

August 10, Stone tells a local Republican Party group in Florida: I have actually communicated with Julian Assange.

August 12, Stone says on a podcast that he believes Assange has emails deleted by Clinton aides Huma Abedin and Cheryl Mills. He adds that he knows he has them, and they should be expected to drop in the next 3 months. ''In fact, I know [Assange] has them,'' Stone said, ''and I believe he will expose the American people to this information within the next 90 days.''

August 14, Stone engages in direct messages with the DNC hacker, Guccifer 2.0, according to direct messages reported by the Washington Times and the Smoking Gun. Stone tells the hacker he was delighted that Twitter had reinstated his account.

A day later, Stone says that he has communicated with Assange, and forthcoming material will be related to the Clinton Foundation.

A day after that, Stone tells radio host Alex Jones that he has back-channel communication with Assange, who has political dynamite on the Clintons.

August 18, Stone says in an interview on C–SPAN that he has been in touch with Julian Assange through an intermediary, someone who is a mutual friend. WikiLeaks would later tweet in response: ''We are happy to hear true information from everyone. But so far, we have not heard from Mr. Stone.''

On August 21, Stone tweets that it will soon be Podesta's time in the barrel. Stone later says his tweet was about Podesta's business dealings. On the same day, Stone denies that Guccifer 2.0 is connected to the Russians.

August 26, in an interview with Breitbart radio, Stone says: I'm almost confident Mr. Assange has virtually every one of the emails that the Clinton henchwomen, Huma Abedin and Cheryl Mills, thought that they had deleted, and I expect that he's going to drop them at strategic times in the runup to this race.

On the 29th, Stone says on local Florida radio of Assange and the Clinton Foundation: ''Perhaps he has the smoking gun that will make this handcuff time.''

September 16, Stone says on Boston Herald radio that he expects Assange and WikiLeaks to ''drop a payload of new documents on a weekly basis fairly soon. And that of course will answer the question of exactly what was

erased on that email server.'' Assange has been in touch with them through an email intermediary.

October 1, Stone tweets: Hillary Clinton is done.

You go back to the comments he was making, where he seemed to know what was going to happen before it happened, and we saw it happen. It clearly suggests, from this public record, the appearance there—it is hard to imagine with these conversations that there wasn't some form of collaboration about what was going on. That is why we need to get to the bottom of it. Was there collaboration? Those kinds of comments are deeply, deeply disturbing.

We have Carter Page, who worked for 7 years as an investment banker at Merrill Lynch. His biography said—took him to London, New York, and Moscow for 3 years in the mid-2000s before Trump last year listed him as a foreign policy adviser in response to a question from the Washington Post.

Page has regularly espoused views at odds with much of the foreign policy community in Washington in particular, questioning the U.S. approach toward Russia and calling for warmer relations between the two countries. He has expressed views in support of Vladimir Putin and harshly criticized U.S. policy. He is frequently quoted on Russian television as a famous American economist.

In September of 2016, U.S. intelligence officials investigated alleged contacts between Page and Russian officials subject to U.S. sanctions. Page rejected the accusations and said he would take a leave of absence from the Trump campaign.

In January of 2017, Page's name appeared repeatedly in the leaked Donald Trump-Russia dossier containing contract intelligence from the former British intelligence operative Christopher Steele in the employ of a private American firm.

In January of 2017, Page is under investigation by the FBI, CIA, NSA, and ODNI. Page contends that he has done nothing wrong.

In February 2017, Page said that he had not met with Russian officials in 2016, but 2 days later, he appeared to contradict himself and stated he did not deny news reports that he met with Russian Ambassador Sergey Kislyak during the Republican National Convention in Cleveland, OH.

This month, Page was called on by the Senate Intelligence Committee investigating the links between the Trump campaign and Russian dealings.

Michael Flynn attended a gala in Moscow in honor of Russia Today, now known as RT, a Russian Government-owned English language media outlet on which he made semiregular media appearances as an analyst after he retired from U.S. Government service.

Flynn was paid $45,000 by Russia Today for the 2015 talk and provided an all-expense-paid 2-day trip paid by Russia. National Security Adviser Michael T. Flynn was forced to resign once it was revealed that on December 29, 2016, the day Obama announced sanctions against Russia, Flynn discussed the sanctions with the Russian Ambassador to the United States. Flynn had earlier acknowledged speaking to the Ambassador but not discussing the sanctions.

The New York Times, on March 2, reported that Kislyak had met with Michael Flynn and Jared Kushner in December 2016 to establish a line of communication with the Trump administration.

This is just a series of contacts. What we need to know is: Did these contacts involve communications for coordinating campaign tactics? Did Russia release information on Hillary at a time suggested by the Trump campaign? Was there any form of coordination? That is why we need this robust investigation now.

We have the investigation in the House Intelligence Committee. That investigation has sputtered and has all the appearance of going nowhere, and it has been compromised by the comments of the House chair.

There is another investigation on the Senate side, with Senator BURR as the chair and Senator WARNER as the ranking member, and they are working pretty well together. We hope that continues. I know that they believe that we have a responsibility to get to the bottom of this issue, and I know there are many Members on both sides of the aisle who put a high priority on getting to the bottom of this issue.

I applaud the work the Senate committee is doing, but we all know that the Intelligence Committee is a hard place to get information out of. For example, when the torture report was completed, it was extraordinarily difficult to get that into the public's hands. This should not be the only strategy.

Certainly, we have another strategy with the FBI, and we had the briefing on the Hill. The FBI Director, a week ago Monday, came to speak to the House, and he shared a fair amount in terms of confirming that the investigations are underway, and it is important that the FBI use its talents and assets and connections to find out what really went on in order to get to the bottom of this.

I would like to also see us have a special prosecutor who pursues this, who puts together a team and specifically drills in to get to the bottom of this. I would like to see a bipartisan commission—a Watergate-style commission—so that some of this could be done in the public realm and not hidden behind the veil of classifications. Of course, I would like to see a robust investigation by the press—by the fourth estate. If all of those things happen or if some do not happen but the others are done well, we will get to the bottom of this—and the sooner the better.

I am going to continue by sharing some comments that the Senate Democratic leader made in a floor speech on February 16. These are excerpts of Senator SCHUMER's floor speech:

> The recent reports about General Flynn detailing constant high-level contact between members of the Trump administration and the Russian Government raise serious doubts about this administration's competence in the realm of foreign policy and national security and even graver doubts about the sanctity of our democratic process.
>
> We do not know all the facts, and in the coming days and weeks, more information may well surface about these disturbing revelations, but we already know that something is rotten in the state of Denmark.
>
> All of us can agree that right now what are required are the facts. We have to evaluate the scope of Russia's interference in our election and assess if agents of their government have penetrated to the highest levels of our government. Throughout the process, we have to avoid jumping to conclusions or engaging in wild speculation. We must seek the truth, the whole truth, and nothing but the truth. Once we have the facts at our disposal, Democrats and Republicans alike can debate what to do next.
>
> Senate Democrats are faithfully committed to keeping this issue above partisan politics. The gravity of this issue demands nothing less . . . I am very hopeful the other side wants to get at all the facts, just as our side wants to get at all the facts.
>
> This is an issue on which patriotism must prevail over politics because before we are Democrats or Republicans, we are Americans, with respect for the rule of law.

Those are excerpts of Senator SCHUMER's floor speech on February 16, and I certainly, passionately, agree with him.

This investigation of what went on in the election is one in which patriotism must prevail over politics because, above all, we are Americans with respect for the rule of law.

I will add that, as leaders in America, here in this Senate Chamber, we have a huge responsibility to get to the bottom of this, to urge forward the investigation by the Senate Intelligence Committee to make sure the results, as appropriately compiled and vetted to protect confidential sources, are shared with the American public so that the American public can know what transpired and so that we, then, act on that information. If that information shows that there have been treacherous acts of collaboration with the Russians to undermine the integrity of our elections, we must pursue it to the full extent of the law.

This next excerpt is from Senator SCHUMER's speech, on March 6, which called for a special prosecutor:

> So my Republican colleagues should understand that what they know in their hearts is the right thing to do. Do a strong, impartial investigation and get to the bottom of this. That is where the American people want them to go. The American people disagree with President Trump and want a thorough and impartial investigation—even 43 percent of the Republicans. They are right.
>
> A special prosecutor is the best way to ensure that an investigation proceeds impartially for several reasons.

In a conversation with POLITICO, our Democratic leader said on March 21:

You can bet if the shoe were on the other foot and a Democratic President was under investigation by the FBI the Republicans would be howling at the Moon about filling a Supreme Court seat in such circumstances.

It is unseemly to be moving forward so fast on confirming a Supreme Court Justice with a lifetime appointment while this big, gray cloud of an FBI investigation hangs over the Presidency.

The Washington Post notes it is unseemly to confirm Gorsuch amidst an FBI probe of the Trump campaign.

I would like to point out that it is the height of irony that Republicans held the Supreme Court seat open for nearly a calendar year while President Obama was in office but are now rushing to fill the seat for a President whose campaign is under investigation by the FBI. It is unseemly and wrong to be moving so fast on a lifetime appointment in such circumstances.

On March 21, a report on the Hill by Jordain Carney said:

Senate Minority Leader Charles Schumer is urging Republicans to delay a vote on Neil Gorsuch, President Trump's Supreme Court nominee, because of an ongoing investigation into potential ties between Trump officials and Russia.

''It is unseemly to be moving forward so fast on confirming a Supreme Court Justice with a lifetime appointment while this big, gray cloud of an FBI investigation hangs over the Presidency,'' the Senate's top Democrat said, echoing language used the day before by Republican House Intelligence Committee Chairman Devin Nunes.

Schumer's request, which is unlikely to gain traction with Republicans, comes as Gorsuch is into his second day before the Judiciary Committee . . . but the New York Democrat argued that it was ''the height of irony'' that the Republicans blocked then-President Obama from filling the Supreme Court seat left vacant by Antonin Scalia's death . . . but are now rushing to confirm Gorsuch.

Just before I started speaking yesterday evening, the majority leader came to the floor, gave a short speech, and said he was filing a petition to close debate. That is the first time in U.S. history that a petition to close debate has been filed on the first day of a Senate debate. Generally, the Senate will, if people have more to say, go for many days—go for weeks—without somebody's filing a petition to close and shut off debate.

Why are we rushing into the completion of this nomination in this extraordinarily inappropriate, condensed, accelerated fashion when there is so much to consider?

This is not a nomination in normal times. This is a nomination for a seat that has been stolen from one President and delivered to another. It is the first time it has happened in U.S. history. This is a nomination during a moment in which the President making the nomination has a team that is under investigation for potentially conspiring with the Russians to change the outcome of the Presidential election. That is the big cloud that must be dispelled and resolved and should be resolved before this conversation on the floor continues.

This is a nominee who comes from the far right of the spectrum, with case after case after case—the frozen trucker case, the autistic child case. There is case after case in which he finds a way to turn the law to do the opposite of what the law was written to do.

As I have read through those cases over the course of the nearly, roughly more than 11 hours, you will see the pattern of decision after decision being made for the powerful and the privileged, of his writing a dissent from the majority that says this decision by a labor board was very reasonable and in compliance with the law because it exactly fits the law. Yet Neil Gorsuch wrote a dissent because he wanted to find a way to find for the powerful organization.

Here we have these three big factors. This is a time when there should never be a petition to close debate because people have a lot to say, and there are 100 Members of this body. When they expend their energies and they are through with their conversations, then ask the question: Are people ready to close debate? At that moment: Are there 60 votes for this nominee?

This effort to ram this through not only does not fit the tradition of the Senate or fit the circumstances, but it raises a question: Is there an effort to put this through before information comes to the surface that might change the outcome?

At 11 o'clock last night, we got this posting—or, I guess, it was posted at 11 p.m. and we got it at about midnight here on the floor—of the article by POLITICO. It laid out a side-by-side comparison of language that Gorsuch had used that was, essentially, lifted from other people's writings without attribution. Several experts have said that this meets the standards of plagiarism because the language was lifted without attribution, and that is what plagiarism is. Others said maybe not. Maybe it does not quite meet that standard.

Is this one of the reasons that we are trying to shove this nomination through in such an extraordinary way when it is under such a cloud to begin with? Is there more information like this that needs to come out?

This is a guarantee that Senators would vote against closing debate if there is the possibility that this is trying to be done fast—to have a vote—before significant information is put into the public realm.

(Mr. GARDNER assumed the Chair.)

The New York Times had an article on March 29, 2017: ''Senate Intelligence Committee Leaders Vow Thorough Russian Investigation'':

Senators leading the investigation into Russia interference in the November election pledged on Wednesday to conduct an aggressive inquiry, including an examination of any ties to President Trump, as they sought to distance themselves from the flagging efforts in the House.

In a conspicuous show of bipartisanship during a fractious time at the Capitol, the top Republican and Democrat on the Senate Intelligence Committee vowed to forge ahead by interviewing key players connected to Mr. Trump and pressing intelligence agencies to provide all relevant information.

But their display of collegiality seemed intended primarily as a contrast to the explosive and often bewildering statements in recent days from the Republican chairman of the House Intelligence Committee, Representative Devin Nunes of California, whose perceived closeness with the Trump White House has raised doubts about his ability to conduct an impartial investigation.

The chairman of the Senate Intelligence Committee, Richard M. Burr, a Republican from North Carolina and a supporter of Mr. Trump during the campaign, suggested on Wednesday that he would not retreat from a process that could damage the reputation of a Republican President. ''This investigation's scope will go wherever the intelligence leads,'' Mr. Burr said during a rare joint news conference.

Asked later whether he had encountered any direct links between Mr. Trump and Russia's interference, Mr. Burr was stern. ''We know that our challenge,'' he said, ''is to answer that question for the American people.''

The Senate investigation amounts to a credibility test for Republicans under the Trump administration—a chance to prove their willingness to ask uncomfortable questions of a Republican President, even if the answers might weaken his or the party's standing.

Democrats are skeptical. But they are also mindful that the Senate most likely remains their best hope on Capitol Hill for gathering information, making them disinclined to abandon the Senate Intelligence Committee's investigation. The F.B.I. is also investigating.

On Wednesday, Mr. Burr and his Democratic counterpart on the committee, Senator Mark Warner of Virginia, offered some evidence of what they had reviewed so far, saying they had begun to schedule the first of at least 20 interviews.

Mr. Warner drew attention to reports of perhaps 1,000 internet trolls in Russia generating fake news stories and targeting them in swing States like Wisconsin, Michigan, and Pennsylvania. ''Russia's goal, Vladimir Putin's goal,'' said Mark Warner, ''is a weaker United States.''

Mr. Burr noted that the Russians were now ''actively involved'' in the French elections. On Thursday, the committee will hold a public hearing on Russian influence on campaigns broadly.

The two also left little doubt that they viewed the House's unruly process as an afterthought, one that should not reflect on their own efforts.

''Let me set the ground rules real quick,'' Mr. BURR said, ''before taking questions. We will answer anything about the Senate Intelligence Committee's investigations. We will not take questions on the House Intelligence Committee.''

Mr. Burr could not suppress a smirk. Mr. Warner laughed outright.

But the drama in the House has already complicated the Senate's task, according to Senate committee members, leading the public to question congressional inquiries across the board.

''I worry that the chaos on the House side has affected the public's view on whether Congress can credibly investigate this matter,'' said Senator Susan Collins, a Republican from Maine and a committee member. ''I believe the answer to that is still yes, and the Senate is the place.''

Lamenting the ''debacle'' in the House, Senator Kamala Harris, Democrat of California and another committee member, said she believed ''the public is now shifting to us.''

The Congressional investigations are not related, but their focuses overlap, leaving the Senate panel to defend itself in the face of Mr. Nunes's assorted claims. While a vast majority of Republicans in the House have stood by Mr. Nunes amid calls for him to recuse himself, his furtive maneuvering—including bypassing the committee to brief the White House about relevant intelligence—has placed House committee members in a difficult spot.

And at least one Republican lawmaker, Representative Charlie Dent of Pennsylvania, suggested on Wednesday that the Senate should take the lead on Congress's investigation into ties between the President's orbit and Russia.

The Senate majority leader has long resisted calls for a special prosecutor or select committee, saying the Senate can do the job through regular protocol.

On the House side, a string of perplexing decisions by Mr. Nunes has threatened to unravel the panel's investigation altogether. Last week, he abruptly announced that he had obtained information indicating that people associated with the Trump transition may have ''incidentally'' been caught up in legal surveillance of foreign operatives. He also bypassed the committee's top Democrat, Representative Adam B. Schiff of California, to brief Mr. Trump.

The President seized on the information, misleadingly, as evidence for his thoroughly debunked claim that President Barack Obama had wiretapped Trump Tower—an allegation dismissed not only by senior law enforcement officials like the F.B.I. Director James Comey, but also by the heads of the House and Senate investigations, including Mr. Nunes.

Another obstacle to bipartisanship came on Monday, with the revelation that Mr. Nunes had viewed what he characterized as ''dozens'' of reports containing classified information on the grounds of the White House.

Democrats fumed, their suspicions fueled by speculation that the source of Mr. Nunes's information was a Trump administration official and that Mr. Nunes may have even coordinated with the White House. While Mr. Nunes defended him by saying he needed to be at the White House to view the sensitive documents in question, one can peruse sensitive information at the Capitol and at other spots around Washington.

The story of the House investigation melting down continues, and it really emphasizes how important the Senate investigation is. I have been very impressed by Senator BURR and Senator WARNER working together to pursue that investigation. I feel that more needs to be done. Yes, the FBI needs to investigate, and the Senate Intelligence Committee, and the press, but we should also have a special prosecutor. We should also have a bipartisan commission. But if each part of this puzzle pursues their work aggressively and in good faith, we may get to the bottom of what went on. It is so important to hold people accountable, and if traitorous crimes have been committed, they need to be pursued to the full extent of the law.

The article goes on:

Democrats have also chafed at Mr. Nunes's shuffling of the hearing schedule. Earlier this month, with Mr. Schiff by his side, he announced plans for three former officials to testify, a group that would include Sally Q. Yates, who briefly served as acting Attorney General and alerted the administration that Michael Flynn, Mr. Trump's former National Security Adviser, appeared to have lied about his contact with Russian officials.

Last week, Mr. Nunes scrapped that public hearing, arguing that the committee first needed more time to question intelligence leaders. But on Tuesday he said this hearing had been postponed as well—as the Washington Post reported that White House officials had tried to stymie Ms. Yates's testimony. Democrats have accused Mr. Nunes of trying to stall not only the investigation but also the committee as a whole.

Mr. Warner said on Wednesday he would ''like to see Ms. Yates at some point'' before his committee.

At the same time, the Senate investigation has not been blemish-free.

Well, this can be summed up by saying that each of them are saying that they are partners and they are working on this together. And I urge them to continue that work aggressively.

''I'll do something I've never done: I'll admit I voted for him,'' Mr. Burr said of Mr. Trump. ''But I've got a job in the United States Senate.''

And we have a job to address. We are here at this critical moment, wrestling with what to do with this stolen Supreme Court seat, knowing that if we confirm a nominee to this seat and confirm and complete the theft, it will damage the Court through the rest of our lifetimes. It will set a precedent that will cause more turmoil, more politicization. It will call into question every 5-to-4 decision of the Court. That is our responsibility, to figure our way out of this.

One of the articles I read earlier suggested a path out of this. It said to keep this seat empty. Set this aside until there is a second seat, and then the nominee, Merrick Garland, who should have been considered for the first seat, would be considered, and the second nominee would be whoever President Trump wants to put forward, and maybe that is the same nominee we have now. Maybe it is Neil Gorsuch; maybe it is somebody else. But the point is you eliminate the stolen seat syndrome.

Maybe there are other pathways out of this, but proceeding to the completion of this week, in confirming Neil Gorsuch, that is where this week ends. It is truly deeply damaging to the Supreme Court for the balance of our lives. Let us not be partners to such a destruction of a key branch of our government.

The damage won't just be to the Supreme Court. It is also to this body. Because once this body conspired in the theft, the wounds here are deep and will continue to cause tremendous acrimony as we go forward, and it will lead to future acts in the Senate—perhaps balancing out the first theft with a second theft—and so on and so forth, in which nobody wins.

So let us come to our senses and not have this week end in the manner in which it has been predicted that it will.

NPR wrote, or it has a piece done by Philip Ewing: ''4 Unanswered Questions About the FBI's Russia Investigation,'' March 20.

FBI Director James Comey lit the fuse Monday on a political time bomb and no one—including him—knows how long it will take to burn or what kind of damage it may cause when it goes off.

Comey confirmed to Members of Congress that his investigators are looking into possible collusion between the campaign that elected President Trump and the Russian government. In fact, he said, the FBI has been doing so since last July.

The signs had been there, from press reports to the announcement by Attorney General Jeff Sessions that Sessions would recuse himself from any such probe. Now, Comey's disclosure to the House Intelligence Committee removes all doubt that the FBI believes there is sufficient evidence to look into the connection between Trump's one-time political aides and the Kremlin.

The case that Russia interfered in the presidential campaign has been made. The U.S. intelligence community laid out an unclassified version in December, and then President Barack Obama responded by expelling a group of Russian spies and sanctioning some of its key officials.

But details about the role Trump's team might have played in the making of that mischief still are murky, and Monday's hearing did not include much explosive new information. In fact, the panel's chairman, California Representative Devin Nunes, who served on Trump's transition team, and his fellow Republicans, spent as much of their time as they could drawing the focus away from the Russian collusion narrative.

The real outrage, Republicans argue, is the leaking of classified information to the Washington Post and other newspapers, especially the identity of former lieutenant general Mike Flynn as having been swept up in U.S. Government surveillance of Russian ambassador Sergei Kislyak.

I am sure I will be corrected on that later, with the correct pronunciation.

Flynn resigned after a brief stint as Trump's National Security Adviser and has since retroactively registered as a foreign agent for his work representing Turkish interests. Democrats revealed on Friday that Flynn had also taken more than $50,000 in payments from Russian government entities.

Democrats, led by ranking member Adam Schiff, also of California, used their time on Monday to put Trump and the Russians together as closely as possible, including in an extended opening statement by Schiff that laid out his theory of the case.

Much of Schiff's statement, however, relied on information that is already publicly available, which has been called into question. Monday's session did not include major new details about the alleged ways that the Trump camp may have worked with the Russian intelligence services.

But it did raise new questions about the imbroglio—some of which lawmakers may answer at a second session now scheduled for March 28, and some of which might not be cleared up until the FBI announces the results of its investigation.

The first question:

1. How much evidence is still to be discovered? And how reliable is what's now public?

Schiff crafted a narrative about the Russians' first exploration of the presidential candidates to a critical period from July to August of 2016. If Moscow began by trying simply to learn more about the potential next U.S. president, it shifted to trying to hurt the likely Democratic nominee, Hillary

Clinton, and then helping her opponent—or so the argument goes.

Schiff relied on information that has appeared in press reports and some that appears in a controversial dossier passed from a former British intelligence officer to Comey by Sen. John McCain, R-Ariz. NPR and other news organizations have refrained from reporting such details because of the unknown providence of the dossier—but does Schiff's use of it in the public hearing indicate that at least some of the information has been verified?

The Democrats' case also rests on conversations between Trump advisers and people connected to the Russian military intelligence service, the GRU, or other top Russians. But how much more detail exists about what was said in those meetings? How much effort are congressional or FBI investigators making to interview Trump's campaign advisers?

So the first question in the NPR report is, How much evidence is still to be discovered and how reliable is what is now public?

The second question in this report:

2. Might Trump aides have colluded with Russia without knowing it?

One new thread that emerged from Monday's hearing came as part of an exchange between Comey and Illinois Democrat Mike Quigley, who asked whether it's possible for Americans to help a foreign power and not know about it.

Yes, Comey answered cautiously—an American might give information to someone he legitimately believes is a Chinese researcher and isn't aware is actually a Chinese intelligence officer. Or an America might fall in love with someone and not realize he or she is in a relationship with a foreign agent: ''Romance could be a feature,'' he said.

That could explain denials by people at the center of the Trump-Russia imbroglio, including former Trump campaign manager Paul Manafort, who resigned after reports about his connections to pro-Kremlin government factions in Ukraine. The New York Times referred to Manafort in a story in February about U.S. intelligence officers documenting many alleged connections between the Trump camp and Russians.

Manafort called the report ''absurd'' and told the newspaper: ''It's not like these people wear badges that say, 'I'm a Russian intelligence officer.' ''

Manafort's comment caused head-scratching at the time it appeared, but Comey and Quigley's exchange on Monday created the prospect for a story about Russia not necessarily using Trump campaign aides as agents, but dupes.

The third question in this NPR article:

3. What did Trump know—and when did he know it?

If Comey's investigation results in no charges or no new information about ties between Trump's camp and Russia, the White House would get rid of an albatross that has been around its neck for months. But if the FBI charges former Trump campaign officials or reveals links between the Trump camp that haven't already been aired publicly, that could escalate quickly and land the president or his top campaign aides in hot water.

Trump never retreats and never apologizes and so far has mounted a brash defense. He flits between sometimes acknowledging the Russian mischief during the presidential race and sometimes dismissing it as a fiction created by Democrats to excuse their loss. That strategy has continued to be workable, and Republican aides on Capitol Hill have shown continued willingness to carry water for the White House in responding to press reports or handling inquiries like those on Monday.

But charges against Trump aides, or new revelations about collusion between the campaign and Russian agents, would change all that—and fast. Democrats may never forgive Comey for revealing just before Election Day that the FBI had resumed inquiries into Hillary Clinton's private email server, which Clinton and Democrats say threw a close election to Trump. Now the president, the White House and their Republican allies on Capitol Hill are under a similar Sword of Damocles.

The fourth question:

How will Russia respond to the investigations and their outcome?

Comey, National Security Agency Director Michael Rogers and other top U.S. intelligence officials have taken care not to say whether they believe Russia succeeded in influencing the outcome of the 2016 election—only that they're confident Moscow conducted an influence campaign.

Will Russian President Vladimir Putin turn out to have invested wisely or to have been the dog that caught the car? If Putin wanted the U.S. to relax the Obama-era sanctions imposed after Russia's invasion of Ukraine, that ship may have sailed—the scrutiny of Trump's connections to Moscow may have now made even the appearance of any deal impossible.

And American military deployments in Eastern Europe, including of armored units along NATO's frontier with Russia and ships with aircraft in the Black Sea, have continued.

None of this means, however, that Putin is finished meddling in American politics, Comey warned. He told members of Congress on Monday that the Russians, for their own purposes, likely are satisfied with their work—having sowed confusion and undercut faith in the U.S. democratic process—and may try it again.

''We have to assume they're coming back,'' he said.

We have to assume they are also working to undermine the elections in other democratic countries, and we need to be working with our allies and fellow democracies to fully understand and thwart this Russian strategy of undermining the foundation for our democratic Republic's elections.

The NPR article raised very good questions—questions to which we don't have answers. But just the breadth of the questions shows how significant this situation is.

I understand the Sun is coming up behind the Supreme Court. I was struck just how beautiful the weather was yesterday, while the weather inside this building was so dark and gloomy. Mother Nature gave us a beautiful, beautiful day. The partisan politics gave us a very, very ugly setting here in the Senate Chamber as we started debating over a nominee nominated to fill a seat which did not open up under President Trump's watch and which he has no right to propose a nominee. This is a seat stolen from the Obama administration, delivered to President Trump.

Wouldn't it have been something if President Trump said: I talked a lot about bringing this country together, and that starts by honoring our institutions. So I am going to heal this rift. I am going to end this theft by nominating Merrick Garland. Sixteen times—the President could have said—16 times in the history of our country, there has been an open seat during an election year on the Supreme Court. And we already know the past; that is, 15 times the Senate considered the nominee and either confirmed or rejected them but always considered them—except with Merrick Garland.

We are going to heal that damage, the President could have said, and so first we will put forward Merrick Garland. Then when a seat opens legitimately on my watch, I will put forward a nominee I would choose according to the principles I laid out in my campaign. But I am not going to damage the Supreme Court for generations to come by participating in this strategy of packing the Court.

If the President had given that speech, that would have been an impressive moment—a moment of bringing this country together, of saying that he is the President not of the Republican Party but of the United States of America, which has these beautiful key branches of government, coequal branches—the executive branch, the legislative branch, the judicial branch—bringing all three of those together in that conversation and saying: What the legislative branch did sets the stage to damage the Supreme Court, and as President, I won't participate in it. I will solve it. I will bring people together. I am the great negotiator. I know how to make a deal. Right now, the only deal is a bad deal that damages all three branches, a deal that was crafted within a few minutes following the death of Antonin Scalia, on the same day the majority leader came to the floor and said: We are going to do something never done before in American history. We are going to steal a seat.

Of course, those are not the words he used. His words were: We are not going to have any Senate action on this nominee, the nominee the President will put forward for this seat.

If only at that moment the Senate had been the cooling saucer. That is the idea that Washington reputedly put forward, considered to be apocryphal, but it is a nice image that sums up the difference between the House and the Senate—the Senate elected for 6 years, seats rotating every 2 years. And when there are wild ideas crafted in the passion of the moment, the Senate comes along and says: We will bring a little more experience and thoughtfulness. We will bring a little more deliberation, and we will craft something that will strengthen America, strengthen our institutions, not destroy them.

But we didn't have that reaction on that day when Antonin Scalia died. Instead, we had not the cooling saucer, but we had the immediate rush to a principle that will do so much damage. And I say ''principle'' only in the context of an asserted argument; that is,

an argument that, well, it is an election year, so we really shouldn't consider someone. It should go to the next President. There was no principle behind it and no history behind it. As I pointed out, 15 seats were open during the election year in the history of our country, and the Senate acted on every one until the 16th, when Antonin Scalia died, and within just a couple hours, the majority leader announced that we will do what we never did, and that is, fail to honor the advice and consent responsibility of the U.S. Senate.

Mr. DURBIN. Mr. President, will the Senator from Oregon yield for a question without yielding the floor?

Mr. MERKLEY. I will do so.

Mr. DURBIN. As I recall, there was a moment in 1988, in the last year of President Reagan's Presidency, when there was a vacancy on the Supreme Court. This Republican President was in his last year—his so-called lame-duck year, as many Republicans have now characterized it. At that time, the Senate was in the control of the Democratic Party. Of course, the Senate Judiciary Committee, I believe, was chaired by Joe Biden at that time in 1988.

President Reagan sent the name ''Anthony Kennedy'' to the Senate to fill a vacancy on the U.S. Supreme Court and the Democratic Senate held a hearing and a vote and sent Anthony Kennedy to serve on the U.S. Supreme Court, where he continues to serve. So those who argue on the other side that everybody is doing it, that ''you would do the same thing, if you could'' and that sort of thing, I believe that is belied by the history—the recent history—when the Democrats were in the majority in this Chamber.

So the Senator from Oregon is saying that this is not the only time in history this has occurred, and Senator MCCONNELL ignored this and decided not to even have a hearing or vote on Merrick Garland—something that has never been done in the history of the Senate, which brings us to this moment. Is that the point the Senator is making?

Mr. MERKLEY. My colleague from Illinois is absolutely right. In the middle of the night somewhere, a few hours ago, I pointed out that this evidence of different style of action didn't just depend on the history books because you can look a few hundred yards here from the Senate out at the Supreme Court, where Justice Kennedy sits and had gone through the process, just as the Senator had described.

Mr. DURBIN. I would ask the Senator from Oregon, as well, through the Chair, in this situation where Senator MCCONNELL, as the Republican Senate leader, has exercised his so-called nuclear option to stop Merrick Garland, President Obama's choice, from filling the vacancy on the Supreme Court, does the Senator from Oregon believe, as I do, that this is part of a concerted effort by the Republicans to take control of the Federal judiciary, the fact that we left the end of the last year with 30 Federal judicial nominees on the Senate calendar, nominees who had received a bipartisan vote in the Senate Judiciary Committee? They were left unresolved, unvoted on, when the Senate went out of session. Does the Senator from Oregon see as I do, a pattern of conduct on the Republican part when it comes to filling the courts?

Mr. MERKLEY. As my colleague has pointed out through his question, the challenge we have with the appropriate treatment of our advice and consent responsibility isn't simply a problem with the Supreme Court nominee, but with strategies to prevent the consideration of judges from our former President—both at the district court and at the circuit court levels—leading to the circumstances you describe.

Mr. DURBIN. Is the Senator from Oregon aware of the fact that President Trump, during his campaign, released the list of 21 names of potential nominees for the Supreme Court, and then thanked the Federalist Society and the Heritage Foundation for preparing that list? The Federalist Society—a Republican advocacy group here in Washington, DC—now brags that every member of the Supreme Court appointed by a Republican President has either been a member of or cleared by the Federalist Society before they took the bench.

Mr. MERKLEY. I am aware of that, and it disturbs me that the responsibility of the President to find the right person to place on the Court was farmed out, essentially, to these two groups the Senator mentioned.

While often people will say: Did the President ask the nominee a particular question about how they might rule on XYZ, I am sure that it is quite likely that these groups did ask all sorts of questions in developing their list of 21 potential Justices.

Mr. DURBIN. I wonder if the Senator from Oregon will yield for another question through the Chair.

I ask, when it comes to the Federalist Society—of course, like so many of these dark money organizations, they refuse to fully disclose their donors. They say it is to protect their identity from harassment. It is also protecting the American people from the truth.

Three that we do know have been actively involved would be the Koch brothers—a well-known group supporting Republican candidates—the Richard Mellon Scaife family foundation, as well as the Mercer family, now merging with millions and millions of dollars supporting these Republican causes.

I ask the Senator: Is it a leap of faith for me to think that they would not be working so hard to put someone on the Court, unless they felt that person was going to rule along the lines that they believed?

Mr. MERKLEY. I think that would not be a leap of judgment or analysis. Clearly, the groups like the Koch brothers believe that their interests are deeply connected to the decisions made in this body. And they have invested vast resources into the campaigns, so it is not just that they said: Well, let's go down and talk to people in the Senate about our particular interests as coal and oil billionaires. No, they decided to change the makeup of who sits in this body. In 2014, the investment involved going into Louisiana and Arkansas and North Carolina and Iowa and Colorado and Alaska and several other States, including my State, the State of Oregon. And they won most of those States that they invested in.

Then they sent a message in January 2015 by saying: In the next election, we are prepared to spend the better part of a billion dollars. That was heard very loudly in this Chamber, and the first bill up was a Koch brothers' bill. You see their influence in all kinds of ways, indeed.

I believe the reason we are here today in this conversation is in large part because those who invested in creating the majority that we now have in this Chamber wanted to make sure that there was a Supreme Court that would sustain the Citizens United ruling that allows this dark money of which the Senator speaks.

Mr. DURBIN. I ask the Senator from Oregon through the Chair again: During the course of the Senate Judiciary Committee hearing, Senator SHELDON WHITEHOUSE raised this question about dark money with Neil Gorsuch, the nominee for the Supreme Court, and asked if he was aware of the fact that millions were currently being spent on ad campaigns and mail campaigns across the United States to promote his nomination—and whether Neil Gorsuch felt that the source of this money should be disclosed. As far as we could bring the judge on this subject, he said: Well, someone should ask about where the money is coming from. That, I guess, is a pretty bold statement because many Republicans don't believe that it is fair to even ask where the money is coming from.

There was a time when even the Senate majority leader used to say: I am not going to complain about the amount of money. I just want to make sure it is all disclosed. Well, he is completely vacating that position. He doesn't want disclosure. He doesn't want the American people to know where the money is coming from.

I don't know if the Senator from Oregon noticed the television advertising here in Washington, where there is a lot on an issue like this before us. But the television screens—at least for those morning talk shows—were inundated with advertising in favor of Neil Gorsuch from groups like the 45 Committee, Judicial Justice Committee. They make up these names right and left.

I ask the Senator: When it comes to decisions like Citizens United, does

that give us clear evidence of why the Republicans are fighting so hard to make sure they put the right person on the Supreme Court?

Mr. MERKLEY. I say to my colleague from Illinois that the entire situation we are in revolves around the issue of dark money and having a person on the Court who will sustain that flow. That Citizens United decision was a 5-to-4 decision. Four Justices laid out the case that these unlimited funds—and often secret funds—are corrupting our American political system. And if one wants an example of that corruption, simply look at the vast change—within a short period of years—of the position of our colleagues on the right side of the aisle in regard to the environment.

We had many colleagues who were very concerned about carbon pollution coming from the extraction and burning of fossil fuels. They wanted to make sure that we had a sustainable planet to pass on to our children—our children's children. It was following a Republican tradition of being involved in things like the Environmental Protection Agency creation with President Nixon and the Clean Water Act and Clear Air Act.

In a short period of time, like a shallow pool beneath a hot sun, it just evaporated. That concern for the environment just disappeared and dissipated. The result is that today, we have virtually no support to take on this major environmental threat in a bipartisan fashion, and that corresponds to this flow of dark money from the oil and coal billionaires into the campaigns for the Senate in the United States of America.

So it is a deeply disturbing situation in which absolutely a lot of the explanation as to why we have a stolen Supreme Court seat and why we have this nominee and why he is being rushed through in a way that no Supreme Court seat had been rushed through ever before.

Yesterday—Tuesday—just shortly before I started speaking last night, the majority leader came to the floor and said that he was filing a petition to close debate. That is the first time in U.S. history that has been done on the first day of the debate. That is the type of, I guess, completely focused effort to complete the theft that began last year.

Mr. DURBIN. I ask the Senator from Oregon if he will further yield.

Neil Gorsuch, the judge from the Tenth Circuit who has been nominated for the Supreme Court, has had some noteworthy opinions. One was the Hobby Lobby case. It is an interesting parallel between Hobby Lobby and Citizens United. In Citizens United, the Supreme Court said: We believe that money is speech. And we believe that the protections of the First Amendment extend to corporations who should be treated like persons when it comes to their right of free speech.

In the Hobby Lobby case, Neil Gorsuch, who is headed for the Supreme Court, reached a parallel decision, giving good credibility to the argument that the Republicans know why they are pushing for this man to go to the Court because this was a case where the Hobby Lobby company, which has stores across the United States owned by the Green family—the Green family had their own special personal religious beliefs when it came to family planning and birth control. So they refused to provide for their 13,000 employees across the United States any health insurance plan that provided for methods of birth control, which they found personally offensive. They said that this was a corporate position they were taking—a company position.

So it was Neil Gorsuch, with others on the Tenth Circuit Court, who decided to expand the definition of personhood—again to include closely held corporations like Hobby Lobby. The net result was that the owners—the Green family—were able to say: We are going to stand up for our religious beliefs when it comes to family planning. And to say to 13,000 employees that those employees' personal beliefs—the religious beliefs of each employee—really made no difference from the viewpoint of Judge Gorsuch. Once the owners of the company had decided what was good, principled religious conduct, they could impose that on their employees.

So there is a parallel here where Citizens United said a corporation is a person. Judge Gorsuch and Hobby Lobby said that a closely held corporation is a person. And in the Citizens United case, he said this person—corporation person—has the right of free speech. In the case of Hobby Lobby, Judge Gorsuch said this corporation has the right of freedom of religion to exert their sincerely held religious beliefs.

So I say to the Senator from Oregon: It is clear to me that they tested Judge Gorsuch in the Tenth Circuit, and he came out ahead when it came to the basic principle that corporations should somehow be treated as persons when it comes to rights under the Constitution. That to me is hard to imagine.

I just can't fathom how they could stretch the meaning of person to include corporations when it doesn't say so expressly in any of the statutes that were referenced here. I haven't seen a lot of corporations pleading guilty and being sent to prison. It doesn't happen much.

So my question to the Senator from Oregon is, when it comes to the clearance of Neil Gorsuch for the Supreme Court seat—this open seat on the Supreme Court—whether they found the Hobby Lobby decision something that said to them: This man would believe in Citizens United had he been on the Court at the same time.

Mr. MERKLEY. I say to my colleague from Illinois that we will probably never know the full vetting that took place and the conversations that took place, but your observation that Hobby Lobby involves a parallel with Citizens United is absolutely right. In Citizens United, the Court said: The corporation gets these political rights; that is, the ability to spend money in campaigns, unlimited funds. And in Hobby Lobby, the corporation gets religious rights, if you will—the right to overrule, not just express them through the benefits they provide to their employees, but to trump the religious choices of their employees. It is kind of a super religious power, if you will, choosing the corporation over the people. In both cases, there is this element of choosing the corporation, promoting it, exalting it, over the rights of individuals.

Jefferson made a comment in a letter where he talked about the philosophy of the mother principle. The mother principle said that the only way our government will proceed to fulfill the will of the people is if each citizen has an equal voice—not vote, but voice. ''Vote'' was a big piece of that, but he chose the word ''voice,'' as did President Lincoln on another occasion. The point he was making is that you have to have a place where everyone can weigh in, more or less, in equal fashion.

The opposite of that is Citizens United, where an individual who is a multibillionaire can weigh in massively by buying up the air waves, the radio waves, the television waves, the web advertising, the social media, scrolling and so forth—all of these tools that didn't exist at the time they were formed. So there is this ability for the wealthiest to do a citizen sound equivalent of a stadium sound system that drowns out the voice of the people, just as you have this situation in Hobby Lobby where the religious preference of the corporate entity can trump the religious preferences of the employees.

Mr. DURBIN. If the Senator from Oregon will yield further, when I started trying to find out the source of the money for these television ads that support Neil Gorsuch for the Supreme Court, I went to something—the 45 Committee, I mentioned to you. I had never heard of it before. I looked it up. There was a committee that sounds just like this. It is hard to keep track of them. The largest donor by far in terms of money was Sheldon Adelson, a man out of Las Vegas who has become rather celebrated, if not notorious, for putting millions of dollars into those political efforts on behalf of candidates from the right—some say from the extreme right.

I would also ask the Senator from Oregon if, during the course of his review of Judge Gorsuch's record, he came across the TransAm Trucking case, which was really explored at length in the Senate Judiciary Committee. Many of us felt this was such a clear definition of the values of Neil Gorsuch, who tends to rule on the side of big business and corporate elites over and over again.

The case involved a truck driver who was driving near Chicago on Interstate 88 in January a few years ago during a bitterly cold period of time. He had trouble with his trailer. He pulled it off to the side of the road and realized the brakes on the trailer were frozen. So he got on his cell phone and he called his dispatcher, and his dispatcher said: Whatever you do, stay with that truck and trailer. The repairman is on the way.

So he waited a while. No one showed up. He fell asleep. By the time he woke up to a phone call from a member of his family, his legs were numb and he was having trouble breathing. It turned out there was no heater in the cab of the truck. So there he was, facing hypothermia and freezing in his truck. Again, the dispatcher told him: Stay there. Don't leave the truck.

He decided that the idea of dragging this trailer down the interstate was dangerous and the idea of staying in this truck could threaten his own life, so he made what I consider to be a reasonable decision: He unhitched the trailer, took the truck to the gas station, filled it with gas, warmed up, and came back to the trailer. For that conduct, he was fired by TransAm Trucking. Because he was fired, he was blackballed from ever driving another truck.

This man, whom I happened to meet in my office a few weeks ago, Alphonse Maddin, then did not know which way to turn. He couldn't make a living. He was a hard-working fellow out of Detroit.

Somebody said: You can go to the Department of Labor, and you can file a complaint for unfair dismissal.

I see the Senator has a photograph of Mr. Maddin there.

He told me he went to the Department of Labor. They handed him the form. With a ballpoint pen, he filled it in as to what happened to him, protesting this dismissal and firing. He said he was shocked a few months later to get a letter in the mail that said: You win. You are right. They shouldn't have fired you.

Well, he thought that was a pretty good thing and that he would get some backpay out of it. But then the appeals started, and it went in the Federal court system. By the time it got to the Tenth Circuit, where Judge Neil Gorsuch sat, seven different court judges and administrative judges had considered the case of Alphonse Maddin as to whether it was fair to fire him under these circumstances. Only one judge out of the seven said it was the right thing to do—Neil Gorsuch, the man who aspires to be on the Supreme Court.

One of my colleagues—and I think it was Senator FRANKEN—said to Judge Gorsuch: What would you have done if you were sitting in that truck? What would you have done if you faced freezing to death or dragging a disabled trailer out on a busy interstate, endangering the lives of others?

Judge Gorsuch replied: I never really thought about it.

He never really thought about it. To me, that really gets to the heart of what we are talking about here. He thought about it enough to rule against that truck driver who faced that terrible choice in his life, but he did not think for a moment what a reasonable, ordinary man would do under the circumstances. He reduced the situation to the absurd and decided to rule for the trucking company, for the corporation.

When you consider that this Roberts Supreme Court has ruled on the corporate side, the U.S. Chamber of Commerce side, 69 percent of the time, it is pretty clear why they have this fond feeling for Neil Gorsuch as the next Supreme Court Justice.

Does the Senator from Oregon see the linkage here between what the Republicans are looking for in a Supreme Court nominee and what they would find in this TransAm Trucking decision?

Mr. MERKLEY. My colleague from Illinois brings up the frozen trucker case, as it has often been referred to, and how it demonstrates an effort to really twist the law away from its original purpose in order to find for the powerful over the individual.

In this particular case, when he wrote his viewpoint, Neil Gorsuch revealed a whole lot because here was a law specifically crafted to protect truckers from being fired if they operated for personal safety or the safety of the public.

Clearly, for him to have driven that trailer down the road, a fully loaded trailer without brakes because the brakes were frozen, would have been incredibly dangerous to all kinds of people. To stay in that cab freezing to death was dangerous to him. You can interpret the concept of operating a truck, and the law said refusing to operate a truck. Well, does refusing to operate a truck mean that you refuse to operate it in exactly the manner that you were told to? Does it mean driving the cab without the trailer or the cab with the trailer?

Gorsuch zeroed in on the fact that, well, he did not refuse to operate because he drove the cab. He was operating. Well, no, he was not operating in any common person's understanding. He left the trailer there. He wasn't driving it down the road. But he searched for that slight little way that he could say: Well, that does not quite fit, and therefore I can find for the corporation.

It just fits case after case after case in which the nominee who is before us now stretched the law, twisted the law, tortured the law, in order to try to find a victory for the powerful over a person.

Mr. DURBIN. I thank the Senator from Oregon for yielding for questions.

Mr. MERKLEY. I thank my colleague from Illinois for coming down to help focus on some of those cases. I appreciate the great knowledge he brings to Senate issues and the deliberations in the Judiciary Committee. I am not a member of the Judiciary Committee, so, as I listened to my colleagues commenting on the questions that were being raised and how they were being answered, I saw in the course of those hearings a trajectory in which many colleagues found, as they looked into the heart of these decisions, that there was an absence of heart reflected in the decisions.

The ability to understand the full context of which something happened is so important. When I was a freshman in college, I had a course, a freshman seminar, and that seminar was taught by an esteemed professor of the law school. She would have us read the circumstances of a case, and then say: How would you have ruled on this case? We would write up our little memos, our short little memos, not really based on law because we didn't know the law but on common sense or whatever life experience would have brought to bear.

Then the next week, we would read the Justice's opinions, their decisions on what they had found to be the case—did they sustain the argument for the defense or otherwise, and what arguments did they bring to bear?

I was always struck that William O. Douglas seemed to have the best grip on being able to place himself into the mindset and the situation of folks who were bringing grievances forward to be addressed. I think a lot of that came from his life experience and the life experience in which he had basically lived in the wilderness part of the time. He had hung out with hobos, and he had ridden the rods underneath the railroad cars to get from one place to another. He had experiences that were not just inside the bubble—the billionaire bubble, the elite bubble, the gated community.

The opposite of that is the situation when I was in New York back in 2008 and I was speaking to someone about campaigning for the Senate. The individual said: I don't understand why you are so concerned about healthcare. Everybody has healthcare—everybody. Well, in his world, in his bubble, everybody had healthcare and everybody was wealthy, but that is not the entirety of the world.

So it is so important to have people on the Court who can get inside the experience that others have and that diverse experience. You don't see that reflected in decisions that have been written by Neil Gorsuch.

I thank my colleague from Illinois.

The Guardian wrote an article titled ''The Guardian view of Trump's Russia links: a lot to go at.'' I will share this particular article, but before I do so, let us remember that we are here at this moment with three substantial issues.

One issue is the fact that for the first time in U.S. history, a Supreme Court seat has been stolen from one President and delivered to another—the first

and only time. Sixteen times we have had a vacancy in a Presidential year, and 15 times the Senate has acted to consider the nominee, in some cases rejecting them, in some cases—in most cases confirming them, but always acting until last year.

The second big issue is this Russia investigation, the investigation of the links between the Trump campaign and the Russians, this big cloud hanging over the legitimacy of the Presidency. It needs to be resolved. That certainly affects whether it is legitimate to be considering at this moment the President's nominee before that cloud is dissipated or resolved because this individual, whoever is confirmed for this seat, will quite likely serve for many decades. When it is a younger nominee, as it is with Neil Gorsuch, that could be five decades. It could be an extensive length of time with decisions that stretch far into the future.

Rather than rush through this in a few days, we should be setting this aside until these issues are resolved to make sure that we have established the legitimacy of the President's role in office and gotten rid of this cloud hanging over him.

The third, of course, is the nominee himself. I so much appreciate my colleague from Illinois proceeding to, through his questions, raise a number of the points about Neil Gorsuch's record. There is the case of the frozen trucker. We did not talk about the case of the autistic child, but that is very similar, where the law—and it is similar in this sense—the law was quite clearly written to promote a particular resolution of a challenge, and that is that every child, despite their disability, would have the opportunity to have an appropriate education. Neil Gorsuch managed to reduce that down to mere improvement over de minimus; that is, basically a tiny little bit of improvement over doing nothing. That was the Neil Gorsuch standard.

That standard went to the Supreme Court. The Supreme Court just recently issued its decision, and it was not a confirmation that it is OK to have just a mere improvement over doing nothing, it was a wholesale rejection, because the law is very clear, and Neil Gorsuch tormented it and twisted it and tortured it to produce a position that you can do nothing and meet the standard of the law that says you have to do quite a bit.

So it was 8 to 0. It was not six out of eight or seven out of eight, but eight out of eight. Every Justice, no matter where they were in the ideological spectrum, said: That is an absurd finding and overthrew the Neil Gorsuch decision.

(Mr. BARRASSO assumed the Chair.)

So we have these three substantial, major issues to consider, and that is why this conversation should be set aside until we resolve the Russia investigation.

I will read ''The Guardian view of Trump's Russia links.'' It says:

> Why days before the presidential election did the FBI announce it was reopening an investigation into Hillary Clinton—when it was silent about its probe into Mr. Trump's Russia ties?
>
> When the president's own staff turn up in Washington to publicly rebut his accusations that he had been wiretapped by his predecessor, it's not good news for the White House. Yet the longer the director of the Federal Bureau of Investigation, James Comey, and MIKE ROGERS of the National Security Agency appeared in front of a committee of Congress, the worse it got. Since last July, Mr. Comey said, the president's campaign has been investigated for colluding with Russia to influence the 2016 election. Donald Trump's election machine is coating his White House with sewage.
>
> Yet Donald Trump, with the insouciance of a Bourbon monarch, shows no sign of taking any notice of the facts. Nor, it seems, will he retract false claims, nor will he be held accountable for his dissembling. Mr. Trump is prepared to carry on in disgrace. He spent the minutes after his own intelligence officers called him out for peddling falsehoods by trying to create a bizarre counter narrative with the @POTUS twitter account that stretched his credibility so far it snapped.

Well, this article continues to go into how just an amazingly absurd situation this is at this moment.

I was really struck that what seemed to have transpired just a few days ago was that the White House, some key advisers in the White House, some very top advisers, called up the chair of the House Intelligence Committee and said: Hey, come over here to the White House. We want to brief you on some information that shows that maybe there was some intelligence picked up on Trump in the course of other intelligence activities.

So the chair goes over to the White House, gets briefed, comes back to the House, holds a press conference, and says that he has this information from a whistleblower, and he has to go back over to the White House to brief the President.

The whole thing was phony. The information came from the White House. The whole thing was set up to look as though there was some magnificent new information that somehow confirmed some theme or line the President was advocating. I mean, this was Keystone Cops. That is the place we have come to in this administration. So those are certainly the concerns that I have.

I think it is important to continue focusing on the Gorsuch nomination. Let us recognize the setting in which this is happening.

Certainly we have a nominee who seems to want a 19th century judicial philosophy for the 21st century. The preamble to our Constitution states: ''We the People of the United States, in Order to form a more perfect Union, establish Justice.'' That is a vision that reminds us that we are a nation of laws, where individuals like the frozen trucker can go to the authorities and get a fair, square deal, a deal that reflects the fact he was unfairly fired, but he didn't get that from Neil Gorsuch. The type of system where an autistic child who, under the law, is supposed to be receiving an appropriate education receives that education, but he didn't get that fair square justice from Neil Gorsuch.

We are a nation of laws, but we are also a nation of justice, and it sets us apart from so many other countries—that concept that average citizens, ordinary people have a way to pursue justice.

During his confirmation hearing last month, Judge Gorsuch put on a great show, kind of a friendly, everyday-man show, but when it came to making decisions, the ordinary person lost out on these decisions time after time after time.

We have a far right, extremist judge outside of the mainstream who, in case after case, has twisted the laws to deny average Americans the justice they deserve. He is so far out of the mainstream that he would be the most conservative Justice on the Supreme Court—further to the right than Justice Antonin Scalia or Justice Clarence Thomas, according to an independent analysis by the Washington Post. The Post came to this conclusion by examining the Tenth Circuit's opinions that have been delivered since Gorsuch joined the Court in 2006. The Post concludes:

> The magnitude of the gap between Gorsuch and Thomas is roughly the same as the gap between Justice Sotomayor and Justice Kennedy during the same time period. In fact, our results suggest that Gorsuch and Justice Scalia would be as far apart as Justices Breyer and Chief Justice Roberts.

We can see this extremism by examining some of Judge Gorsuch's significant cases.

Earlier, my colleague from Illinois came in and spoke about the frozen trucker case. Alphonse Maddin was a truckdriver who was transporting cargo through Illinois when the brakes on his trailer froze because of subzero temperatures, and he did the responsible thing. He got off the road. He pulled over. He refused to drive under hazardous conditions, and he called for help.

After reporting the problem to the company, he waited 3 hours in freezing temperatures for a repair truck to arrive. He couldn't even wait in the cab of his truck to keep warm because the auxiliary power unit was not working. After those 3 hours, his torso went numb, and he began having difficulty breathing. He couldn't feel his feet. So he unhitched the truck—that is the trailer, the loaded trailer, and left it there. He drove the cab, seeking to find a place he could get warm, and then he returned to the truck when the repairman was arriving.

The law is specifically written to say that you can't fire a truckdriver for refusing to operate a truck in a fashion that will cause dangers to others. And that is what he did; he refused to keep driving with those frozen brakes in order to avoid causing danger to others.

Neil Gorsuch looked for a way to twist that, to say: Well, he didn't refuse to operate the truck. He drove the cab, and that is kind of like operating the truck.

Well, I would tell Neil: It is not. Operating a cab unhitched from a trailer is not the same as operating a truck with the trailer. The purpose of the driver is to deliver the goods.

So, quite frankly, he did exactly what he should have done for his personal safety and the safety of others. He was fired for it, which is what the law is written to stop. Everyone else got this, but not Neil Gorsuch.

Neil Gorsuch looked for a strategy that he could possibly find to favor a company over an individual, and that is really of great concern.

In his dissent—Neil Gorsuch was not in the majority. He wasn't making the decision. He wasn't writing the majority opinion. He had a dissent.

He strained the reading of the statute. He went out of his way to minimize the words ''health and safety'' in the law. He stated that finding for the driver was improperly using the law ''as a sort of springboard to combat all perceived evils lurking in the neighborhood'' and that the objective to promote health and safety was ''ephemeral and generic.''

Well, clearly the finding that a trucker who was fired because he refused to operate the truck—the cab and the trailer—in unsafe conditions because the brakes were frozen, when the law says you can't fire a trucker for refusing to operate a truck in unsafe conditions—that is about not providing a very specific danger to the community.

How do you get from that to say that finding for the driver was a framework ''to combat all perceived evils lurking in the neighborhood''? As if somehow deciding the case on the pure merits and the pure law, finding a case on behalf of an individual was somehow opening a Pandora's box of bad decisions that would affect other situations where maybe corporations that made a mistake would have to pay a fine. That would be unacceptable.

I don't know what he meant by ''a sort of springboard to combat all perceived evils,'' but I know it is totally disconnected from the pure facts of the frozen trucker case and the law that guided it, and that is why the court found in the trucker's favor.

In short, in reaching his conclusion, Judge Gorsuch took an extremely narrow view of the statute, remarking that it only forbids them from firing employees who refuse to operate a vehicle out of safety. That is exactly, of course, why he did it.

I think that all along that case, you saw common sense, a clear view of the facts, and a clear view of the law on everyone's behalf, except for one individual, and that individual was Neil Gorsuch, who is before us.

Let's turn to the case of the autistic child. Luke P, a young child with autism, began receiving special education services at his public school in kindergarten in 2000. He had an education plan specific to his needs, as required by the Individuals with Disabilities Education Act, the IDEA.

The problem was that he wasn't making progress in generalizing skills, applying skills he learned at school to other environments. Despite his appropriate social interactions at school, he often had severe behavioral problems at home and public places, including violence. The public school's inability to meaningfully improve Luke's ability to generalize basic life skills put enormous stress on the family and exposed the limitations of what the school was able to provide.

His parents found a program designed for children with this form of autism, a place that specialized in that, a place that knew how to approach it. They worked at getting him admitted, and they succeeded. It was a great opportunity for Luke to not only learn important life skills but to be able to apply them outside the classroom. Luke got in, and he began to flourish, getting the attention and specialized instruction that his condition merited.

So Luke's parents, knowing that the IDEA requires that children with disabilities are entitled to a free education, applied to the school district for reimbursement of the new school's tuition, but the school district said they wouldn't fund that because they could meet the goals of Luke's updated education plan. But the problem was, they couldn't. That experience had already occurred, and the district had fallen short.

At the due process hearing, the State level hearing, Luke's parents prevailed. They laid out their case. The hearing compared the situation to the law and the requirements in the law, and Luke's parents won.

It went up to the Federal district court. Again, looking at the case, looking at the law, the parents prevailed. At each level, a hearing officer judge determined that Luke wasn't getting the help he needed at the public school. They concluded that, by failing to help him generalize his skills, they failed to provide him with the free appropriate education he was entitled to under the law.

Each looked at the facts and said: Only the specialized residential school could provide the education he needed, and the school district must reimburse the family.

Well, the school district appealed all the way up to the Tenth Circuit—Judge Gorsuch's Tenth Circuit. And what happened on the Tenth Circuit? Well, writing the opinion for the majority, Judge Gorsuch stated that ''the educational benefit mandated by IDEA must merely be more than de minimis.'' A way to translate that, ''merely more than de minimis'' means a tiny bit more than nothing. That is the standard. That is the Gorsuch standard. In effect, Judge Gorsuch argued that you meet the law designed to insist that disabled children get an appropriate education with a little bit more than nothing.

Well, this was then appealed up to the Supreme Court, and what happened here just days ago? On March 22, Judge Gorsuch's ruling was overturned by the eight members of the Supreme Court. It wasn't a 5-to-3 or 6-to-2 or 7-to-1 decision; it was 8 to 0.

They felt that the standard Gorsuch put forward was totally incompatible with the way the law was written. That is a very telling situation to have eight Justices, through a large spectrum, see that the world is quite different from the world of Neil Gorsuch, where the law gets twisted to find for the powerful over the individual.

Judge Gorsuch's ruling was overturned through a unanimous vote in the case of Endrew F. v. Douglas County School District during the final days of Judge Gorsuch's confirmation hearings, March 22. In that case, another autistic child, who also has attention deficit disorder, had been removed from public school since the fifth grade. Like Luke, he went on to make great progress in a private school. His parents said the education plan that the public school created was not helping, and they sued the school district to compel them to pay for the private tuition. It was basically a mirror example of Luke's case.

In speaking for the Court, Chief Justice John Roberts said that Judge Gorsuch's de minimis standard was too low and that the Federal law demands more, that it requires an educational program that is reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances.

Chief Justice John Roberts went on to say in his majority opinion that it cannot be right that the IDEA generally contemplates grade level advancement for children with disabilities who are fully integrated into the regular classroom but is satisfied with merely more than de minimis progress.

No. The IDEA contemplates grade level advancement, and it cannot be squared with the standard that Neil Gorsuch put forward in his saying ''merely more than de minimis.''

Speaking in front of the Court, the Solicitor General specifically noted that Judge Gorsuch's interpretation of the IDEA's requirement is not consistent with IDEA's text or structure with this Court's analysis or with Congress's stated purposes. Basically, that is the outline of the autistic child's case.

Let's turn to the Utah en banc request, the Planned Parenthood Association of Utah v. Herbert.

In August of 2015, Gary Herbert, Utah's Republican Governor, ordered the State to strip $272,000 in Federal funding from the Planned Parenthood Association of Utah in response to a series of hidden camera videos that were released by the Center for Medical Progress. They were attacking Planned

Parenthood's program for providing fetal research tissue to research institutions. These videos were found to have been doctored and the footage was inaccurate. The entire premise was debunked.

Despite the fact that the videos had no merit, Governor Herbert stood by his order to cut Planned Parenthood's funding. Utah's Planned Parenthood Association decided to fight back by filing for and temporarily receiving a restraining order against the State.

In spite of his continued claim—that is, the Governor's claim—that stripping funding was not to punish the organization for its stance on abortion but was in response to the videos, Governor Herbert eventually admitted, while responding to Planned Parenthood's motion for a preliminary injunction, that the events in the videos involved other Planned Parenthood affiliates in other States, not Planned Parenthood in Utah. There was not even an accusation that Planned Parenthood in Utah had strayed beyond the law.

The organization in Utah does not participate in that research program that was attacked in that video. There was no connection—not geographically to Utah and not through the substance issue of a tissue research program. None of the Federal funds that go through the State's health department to Planned Parenthood fund abortions, which is an important point.

Let me reemphasize that the accusations made by the videos about Planned Parenthood and its affiliates were false.

What the Governor's response has made clear is that he was, in fact, punishing Planned Parenthood of Utah for its constitutionally protected advocacy and its services that include abortion. That is a very, very small part of what it does.

A three-judge panel on the Tenth Circuit Court of Appeals granted a preliminary injunction to Planned Parenthood, concluding that Utah's Planned Parenthood was operating lawfully and that the Governor's personal opposition to abortion could likely be demonstrated as a motivation for blocking Federal funds. Therefore, the Governor was targeting a health organization, in violation of its constitutional rights.

We have these basic concepts, like equality under the law. You cannot just choose and pick, basically, whom you like and dislike.

Here is what happened. In spite of that Tenth Circuit's finding of those three judges, who all found on the side of Planned Parenthood, Judge Gorsuch dissented from the court's denial and requested that it be considered en banc—that is, by the entire Tenth Circuit set of judges. This is very unusual because the Governor who lost the case was not asking for it to be reconsidered, and Planned Parenthood was not asking for it to be reconsidered. It was a done deal. The arguments that the Governor had brought basically fell apart upon examination—each and every argument. Planned Parenthood of Utah was not in the videos. The videos themselves were edited to create a false story. They did not even participate in the same research program and so forth—I mean, every piece of it. Yet Judge Gorsuch said: No, we should have the entire group of judges reconsider this—a judge pushing this forward when the defendant did not even push it forward. He was willing to ignore court practice and custom, to mischaracterize facts in law to ensure that Utah's Republican Governor could eliminate funding for Planned Parenthood.

He made a reference to kind of the deference to elected opinion. That, in itself, is very strange. Isn't your job to find out whether the circumstances fit the law and, if someone has been shortchanged, to rule for him and not to defer to someone because he has the title of ''Governor'' before his name?

In the majority's opinion, Judge Mary Briscoe wrote separately to highlight the troubling nature of Judge Gorsuch's dissent. She noted first how unusual and extraordinary it would be for the Tenth Circuit to have one of its own make a motion for an en banc review when neither party to the litigation sought such a review. Second, Judge Briscoe emphasized that Judge Gorsuch repeatedly mischaracterized this litigation and the panel at several turns.

Another judge in the majority pointed out that none of the parties asked for a rehearing within the time permitted and that there was no justification for polling the court on that question at all. Apparently, an unidentified judge had requested that the judges be polled.

So we have here—as we have in the case of the autistic child, as we have in the case of the frozen trucker—another case of twisting the law to try to come out with an outcome that is not merited by the facts of the case or the plain language of the law. That really is a significant concern.

Judge Gorsuch has been a lifelong ideological warrior. The quote from Henry Kissinger that he used in both his high school and Columbia yearbooks might have been intended as joke, but it warrants some consideration in light of his record:

> The illegal we do immediately. The unconstitutional takes a little longer.

In light of these cases, where in case after case he stretched the law, tortured the law, twisted the law to find for the powerful—the Constitution has a vision of equality before the law. Our Constitution has this vision of justice for all so that when a judge does not pursue equality before the law, does not pursue justice for all, then that really is kind of a venture into the unconstitutional. That is exactly what happened in the case of the autistic child, where the Court said: Your decision was unconstitutional. Your decision to say that a little bit more than nothing meets the standard of the IDEA is wrong. That is unconstitutional. That is wrong for the law.

Indeed, it almost makes the hair on your neck stand to realize that he was writing that the unconstitutional takes a little longer.

His world view really began to take shape at Columbia when he cofounded the Federalist, which was the school newspaper, and a magazine called the Morningside Review. In writing for the publications, Judge Gorsuch defended social inequality, saying it allows men of different abilities and talents to distinguish themselves, as they wish, without devaluing their innate human worth as members of society and arguing that a responsible system requires a governing class that is comprised of men of exceptional political ability and spirit of concern who craft laws and run the government.

When I read this, it made me think of Plato's ''Republic.'' In Plato's ''Republic,'' he lays out a vision of the guardians, kind of this superior group of men who find just the right solutions. It sure sounds like that—a responsible system that requires a governing class that is comprised of men of exceptional political ability, spirit, and concern, who craft the laws and run the government—in other words, a government by the elite. Through his decisions, we see that it is not just by the elite and by the powerful, it is for the elite and for the powerful. That is a long way from equality under the law, and that is a long ways from justice for all. And he characterized efforts to fight racism as ''more demand for the overthrow of American society than the forum for the peaceable and rational discussion of these people and events.''

We have a substantial amount of racism still embedded in our Nation, and we see it come out in unexpected ways. The first I was really aware of the racism that we have in our society was when I was a 19-year-old and I was an intern for Senator Hatfield here. I was assigned to open all of the letters each morning because I was the last of the three summer interns to arrive, and that job went to the last person. I started opening these letters, and the job was to sort them, to get them into different piles according to topic for the different corresponding legislative correspondents who would then write replies. But as I read the letters, I would read one letter and there would be an attack on Seventh Day Adventists. In another there would be an attack on African Americans. In another, there was an attack on immigrants, and so on and so forth. There were attacks on Mormons. There were attacks on every possible group.

It made me think about how Oregon was at one time a territory that excluded African Americans, and at a later date it came to have the largest Ku Klux Klan in the Nation—Oregon. You wouldn't imagine that. I saw no signs of this racism growing up in the suburbs of Portland or down in

Roseburg, but these letters that people were writing were full of racism.

We can't simply pretend that it doesn't exist. Over the course of this last year, we have seen this time and again. We have seen groups that kind of are still deeply wedded to racism and discrimination, and they have kind of come out and made themselves more publicly available. They have kind of shared their thoughts more readily, and they have engaged in more racist acts against others.

So we have more people who have been attacked in parking lots because of their race, or we have more situations where graffiti has been scrolled on the side of buildings. We have mosques that have been burned. We have synagogues that have been defiled. We have individuals who look to be Middle Eastern being attacked because they are looking like they are Middle Eastern.

So, clearly, as to racism, we are not discussing this challenge in America, pondering how we come to a full respect for each and every individual in our country. That cannot be characterized as a demand for the overthrow of American society, unless your concept of American society is one that is a White supremacist viewpoint, and then respect for everyone else perhaps is an overthrow of society.

Now, I am not saying that Neil Gorsuch was coming from that particular viewpoint, but he certainly shows in his quote that he has great difficulty considering a conversation about racism to be a legitimate and important conversation for making America a better place, embracing the strengths of all of our citizens who come from diverse backgrounds. It can't be that this is ''more demand for the overthrow of American society than a forum for rational discussion of these people and events.'' It is a discussion that we need to have.

Judge Gorsuch is absolutely coming into the Court with a view of expansive rights for corporations.

For a long time in our Nation's history, our biggest businesses and corporations certainly ruled the roost, and we had the barons who came from Big Oil and Big Railroad and Big Copper, and their wealth and their station in life ensured that they really had a lot of power over the people around them. Over time, we gave and developed standards so that people couldn't be exploited to the extent that they were exploited under these barons. We had developed labor and safety standards, and we had developed minimum wages and 40-hour workweeks and overtime—really quite an amazing transformation of the workplace. We made great strides in the course of the 20th century. We recognized that American workers are entitled to be treated with respect in a safe working environment.

But there are other cases other than the frozen trucker case where Judge Gorsuch has put the interest of the company or the corporation above the safety of the American worker. One of those is the case of the electrocuted construction worker, the mining construction worker.

Encompass Environmental. The Occupational Safety and Health Review Commission fined employer Encompass Environmental because the company failed to properly train Chris Carter, a worker who was electrocuted. He did not recover. He died.

Chris joined the construction project a week after it had begun. Because he was not trained in that specific work, he brought a piece of equipment in contact with an overhead line. This was specifically something the company had trained others to avoid, but he wasn't trained in it, and the result is he died.

The Tenth Circuit on which Neil Gorsuch serves upheld the fine against the company for the failure to train, saying that it was ''undisputed that Encompass did not give this employee any instruction on the fatal danger posed by the high voltage lines located in the vicinity of the work area.''

The company's own job hazard announcements found a fatal danger from the high-voltage power lines involved and recommended training for employees that would instruct them to keep at least 20 feet away from those power lines. A lot of the employees got that training, but Chris Carter didn't, and he died.

While all of the Tenth Circuit upheld the fine against the company, Judge Gorsuch dissented. He said that, as to the Occupational Safety and Health Review Commission, which fined the employer, that fine was yet another example of an administrative agency wielding remarkable powers and penalizing a company where no evidence existed. If it had been up to Neil Gorsuch, Encompass Environmental would not have had to pay this fine. It would never have been accountable for the negligence that ended in this tragic, unnecessary death.

It is striking to me that despite the fact that the company itself knew about this hazard, and the company itself trained other employees to avoid the hazard but failed to provide the training in this case, Neil Gorsuch really somehow believes that there was no error made by the company; that, somehow, it is unfair if you are penalizing the company.

The ultimate example of Gorsuch's efforts to expand the rights of corporations came in the Hobby Lobby case, which held that corporations are persons exercising religion under the purposes of the Religious Freedom Restoration Act. Therefore, according to the ruling, closely held, for-profit secular corporations could deny their female employees the legal right to contraceptive coverage as part of their employer-sponsored health insurance plans.

The Tenth Circuit upheld this position, but that wasn't enough. In a separate opinion he couched this expansion of corporate rights in a blanket of religious freedom writing:

> All of us face the problem of complicity. All of us must answer for ourselves whether and to what degree we are willing to be involved in the wrongdoing of others. For some, religion provides an essential source of guidance both about what constitutes wrongful conduct and the degree to which those who assist others to commit wrongful conduct themselves bear moral culpability.

What that case really amounted to was saying that religious preferences of the employer—a corporation—trumped the religious choices of the employees—the individuals. That is the scary thing about Hobby Lobby—giving corporations expansive control while you diminish the realm of private rights.

The Hobby Lobby decision has already been invoked—not only supporting curtailing employees' access to reproductive healthcare but also to justify noncompliance with child labor laws, anti-kidnapping laws, and anti-discrimination laws.

As a lawyer, Neil Gorsuch wrote a brief in Dura Pharmaceuticals v. Broudo, urging the Court to ignore the statutory legislative history of the Securities and Exchange Act and advocating that the Court limit the availability of those who confronted the corporation to band together to seek redress.

In a 2005 article, Gorsuch launched into an attack on plaintiffs' lawyers for such cases. The lawyers were just looking for a free ride to vast riches, he concluded. They involved frivolous claims, taking an enormous toll on the economy and on virtually every corporation in America at one time or another, costing businesses billions of dollars in settlements.

So Neil Gorsuch has taken positions making it more difficult for class action lawsuits to proceed.

Well, what is a class action lawsuit and why is it so important in our system to have class action lawsuits? Imagine that you are in a situation where, for example, maybe a telecommunications company gets involved in slamming charges onto your bill that you never asked for, and maybe that costs you $10 a month for some service put on your long-distance bill or on your cable bill or on your worldwide net band bill, and you proceed to notice this, but they put this on without you authorizing it. Yet it is $10. You can't possibly afford to go to court to take on this predatory conduct of charging you for something you never ordered, but when you realize there are often tens of thousands of other people who have also been the victims of this illegal predatory action, then a class action lawsuit gives you the ability to band with those other folks to take on that predatory conduct by the corporation, and that helps to dissuade a corporation from being involved in predatory conduct to begin with.

This can be involved in all sorts of things. It could be misrepresenting a product that is being sold, a physical

product, or not warning about its having a danger that any rational person should have warned you about, or misrepresenting stocks in some type of a scheme where thousands of people are sold something, but what they buy is not what they were promised, and so forth.

So class action is a powerful tool for justice, but you see in case after case after case, complete disdain by Neil Gorsuch for class action lawsuits. He sees them as a burden on the corporate enterprise of America.

Well, I believe that it is important to stop illegal predatory conduct, and in cases where you can't possibly afford to go as an individual, class action is an important strategy.

In one case, Shook v. The Board of County Commissioners, he prevented a group of inmates with mental illnesses who were not receiving proper care from joining together to request that the jail meet its constitutional obligation to provide medical care. Shook may not have involved a corporation, but the same legal reasoning Judge Gorsuch applied in that case can be used to limit class action lawsuits brought against companies and against corporations. There were a number of other cases in that category, and there are cases that essentially highlight issues of discrimination and sexual harassment and Judge Gorsuch's views on that.

In Pinkerton v. Colorado Department of Transportation, Judge Gorsuch joined an opinion discounting Pinkerton's evidence of discrimination and concluding that her performance, not discrimination, resulted in her termination.

Betty Pinkerton was an administrative assistant. She alleged that her supervisor had made inappropriate, sexually explicit remarks to her over a period of several months and that she was fired when she reported the harassment. Pinkerton specifically alleged that her supervisor asked her whether she had sexual urges and asked about the size of things that a boss should not ask about, and he actually commented on a whole series of things which I don't think I will read into the RECORD but which were totally inappropriate in a workplace setting.

After her supervisor asked to go to her house for lunch, Pinkerton called the internal civil rights administrator and complained and then made a formal written complaint 7 days later. An investigation that followed led to the supervisor's removal, but shortly after the supervisor was fired, Pinkerton was also fired. She sued, claiming that the department of transportation was liable for the hostile work environment imposed by the supervisor and that she had been fired because she had raised this issue and this conduct.

There was a divided panel that affirmed a summary judgment in favor of the Colorado Department of Transportation, which held that Pinkerton had waited too long—2 months—to report the harassment, and Judge Gorsuch found with the majority.

Judge Paul Kelly's majority opinion concluded it was Pinkerton's performance, not discrimination, that resulted in her termination, but the dissenting opinion said that it should be a jury who decides at what point Pinkerton's failure to report the harassment becomes unreasonable, that the termination just days after the investigation was completed raised a genuine issue of fact about her claim of retaliatory discharge, especially considering that the State department of transportation testified that the most serious error leading to Pinkerton's firing was an allegedly mishandled call from an employee's daughter that happened 4 years earlier, and the director tried to get Pinkerton another job with the State department of transportation only months before she was fired. But Judge Gorsuch joined the majority and did not give Betty Pinkerton the chance to confront her employers in a court of law in front of a jury. In other words, she wanted her day in court to make the case.

The minority in that case said: Yes, she should get her opportunity to make her case. There is enough evidence, and it should be presented. She can make her case and the department can make their case—not to preempt the opportunity for her to have her day in court. But that is where Judge Gorsuch ended up.

Then there is Strickland v. United Parcel Service, UPS. In this case, Judge Gorsuch concurred in part, while also dissenting in part from an opinion holding that Strickland provided ample evidence that she was regularly outperforming her male colleagues, and yet she was treated less favorably than they were.

Carole Strickland was a female driver for UPS who alleged sex discrimination and quit under pressure. Two judges on the Tenth Circuit panel overturned a lower court decision granting UPS judgment as a matter of law. In doing so, they emphasized that Strickland provided ample evidence that she was regularly outperforming her male colleagues, and yet she was treated less favorably, including direct testimony of several of her coworkers that she was treated poorly or worse than others.

Strickland's coworkers testified that supervisors treated her differently from her male colleagues. She met 93 percent to 104 percent of her sales quotas, was outperforming some of her coworkers on every measure, and yet she was singled out to attend individual meetings—the only one who had to make written sales commitments even though no one was at the 100-percent quota level.

One of the men in her office had lower performance than Strickland in almost every sales measure but was not required to attend these meetings to discuss work performance and was not counseled on failing to reach 100 percent.

Judge Gorsuch, unlike his two colleagues, dissented from the decision. He would have decided the case could not have gone to a jury, arguing that a reasonable juror could have found that Strickland was a victim of sex discrimination. He himself decided the essence of the case rather than giving her an opportunity to have her day in court, in spite of the substantial evidence she brought forward. He would have denied an employee the opportunity to hold a corporation accountable for their mistreatment.

We see the theme in these cases, one after the other. When fellow judges found that a person had a reasonable right to make their case, he dissented and worked to block a chance for an individual to have their case heard.

There is a list of cases we have been going through, but I want to go back and recap why we are here in the Senate hearing this nomination and deciding whether to confirm this individual, Neil Gorsuch. This story is one that really begins with the death of Antonin Scalia.

Antonin Scalia died in February of last year. Within hours, the majority leader had decided to pursue a strategy of asking the Senate—really, demanding the Senate—ensuring that the Senate not fulfill its constitutional advice and consent responsibility. If only at that moment my colleague the majority leader had thought: This is a big deal. Asking the Senate to not exercise its advice and consent responsibility—that is a big deal. Maybe I should wait a day and think about this.

But no, there was a rush to the floor to lay this out, and that became the path this body has been on ever since.

A month later, in March, the President did his job under the Constitution: He nominated Merrick Garland, and it was forwarded over here to the Senate. The normal thing would be for the Senate to start hearings, but the Republican majority leadership said: No. No hearings in the Judiciary Committee.

Why not? It is our responsibility to provide advise and consent on nominations, and there is no nomination more important than the nomination to the Supreme Court of the United States of America. It isn't someone who just serves for a couple of years in the administration or maybe for a full 4 years of the administration; it is somebody who serves for life. And it is not someone like a district judge or a circuit judge who can write an opinion but then have it overturned at a higher level; the Supreme Court is the higher level. It is the highest level. The buck stops with the Supreme Court.

Given the lifetime appointment and enormous power to set precedent for what the meaning of our Constitution is makes the Supreme Court nomination fantastically important. So it is shocking that we failed to do our job as a Senate—to hold hearings, to hold a vote, and to send the issue to the floor and hold a debate on Merrick Garland.

Some Members said: This is in keeping with tradition for an election year.

Well, no, it is not in keeping with tradition. We have had 16 nominations during an election year. A few of them came after the election. Yet there was still a nomination, and the Senate still acted. On others, the vacancy occurred before the election, and the President chose not to fill or not to produce a nominee until after an election, and still the Senate said there is time to act. In nine other cases, the vacancy came before the election, the nomination came before the election, and in eight of those nine, the Senate acted. In 15 cases out of 15 cases before Antonin Scalia died, the Senate acted—confirming most, rejecting a few, but they acted. They exercised advice and consent. Then last year the Senate failed for the first time—the first time in U.S. history—to act.

We can think of this as a kind of lengthy, lengthy filibuster of a Supreme Court nominee. Some of my colleagues have said: It doesn't seem right that a minority—41 Senators—can stop us from getting to a final vote. But it is right. It is a tradition that a 60-vote standard to approve a nominee to the Supreme Court is essential to make sure that a nominee has bipartisan support, that they are from the judicial mainstream, that they have judicial temperament, and that they fit this very important role, this task which they are going to be assigned to do and which they might do for many, many decades to come. That is why we have a 60-vote standard.

What happened last year was a complete refusal to act and 290-plus days of failure to act—plenty of time to act to fulfill our responsibility. It would be different and we would be having a different discussion today if the Senate had considered the nominee and rejected the nominee.

So why didn't the majority leader simply say: We don't like this nominee, so we are going to probably have a debate and we are probably going to vote the nominee down. The reason why is everyone loved Merrick Garland. He was right down the middle. He had great quotes of support from both sides of the aisle. He didn't have a history like the history I am describing with Neil Gorsuch, which raised eyebrows time and time again, or where he was kind of legislating from the bench. He didn't do that the way Neil Gorsuch has done.

So that is the big issue, that we have a strategy of stealing a Supreme Court seat in order to pack the Court. It has never been done before, and we are in the middle of it now. And if this week goes as the majority leader said he was going to make sure that it went, then the theft is going to be completed by Friday.

So I have been here through the night talking about this, to say how important this is that we not do this—that to proceed to fill this stolen seat will damage the Court for decades to come and will damage the Senate for decades to come. If you can steal one seat and get away with it, the temptation next time is to steal another seat—either to double down on the strategy or rebalance the first crime against the Constitution. And each and every time, it will deepen the divisions, and it will diminish the legitimacy of the Court. In the 5-to-4 decisions that we see in the future from the Supreme Court, we are looking to say every single time that it is Justice Merrick Garland's stolen seat—President Obama's stolen seat. Every time that person is in the positive side—the winning side of a 5-to-4 decision—the Court would decide it differently if the seat weren't stolen, if the Court weren't packed. That decision doesn't really have legitimacy because it was the result of court-packing. That is not the way we want to be viewing the Supreme Court.

We want to have a Court of wise, thoughtful individuals with great depth and knowledge of the law, combined with a terrific diversity of life experience. They can put themselves into the position and identify with the challenges faced in an authentic manner. That is important. That strengthens the Court. But it weakens the Court to have a Court packed as a crass, political tactic and to do it through a stolen seat.

So that is why it matters—that it hurts the integrity of this body and it hurts the integrity of the Court. It involves the participation of the President because the President provided a nomination, and that hurts the integrity of the executive branch. In other words, it is a lose-lose-lose proposition. There is still time to take this train off the tracks and not result in this very unfortunate potential outcome.

The second reason we are at this point is that this nomination is just being rushed through as quickly as possible—brought to the floor immediately after the committee vote. Then, for the first time in U.S. history, not only was it brought to the floor the day after the committee vote, but it was brought to the floor and then immediately a petition was filed to close debate. For the first time in U.S. history, on the first day of debate on a Supreme Court nominee, that a petition was filed to close debate. That petition, under our rules, forces a vote on whether to close debate on Thursday, long before the Senate has had a full chance for everyone to make all of their points and thoughts.

Mr. President, a point of Parliamentary inquiry——

The PRESIDING OFFICER. The Senator will please state his inquiry.

Mr. MERKLEY. What is the agreed-upon schedule to resume the normal activities of the floor?

The PRESIDING OFFICER. The Senate has a previous order to stand adjourned when the Senator is finished speaking until 9:30 a.m.

Mr. MERKLEY. I appreciate that clarification. I am going to make this comment now, in case I might forget later. I want to give special thanks to the team of individuals who make this body work in order to provide for the opportunity for extended debate, sometimes here under extraordinary circumstances. Because I have been here through the night speaking, one of those extraordinary circumstances was this night that has just passed. The stenographers, the Parliamentarians, the pages, our doorkeepers, our caucus staff, the bill clerks, and others who staff the desks in the offices in the Democratic and Republican cloakrooms—I am excited to see the set of smiles on the pages' faces. I don't know if the same pages were here all night or not. Well, they will hopefully really get a lot out of this opportunity to serve here. But thank you to all the staff members who have labored during the wee hours of the night and into this morning.

I was summing up the issues that we labor under and noting a significant one is the stolen Supreme Court seat and the damage that completing that theft will do to our institutions. I have been going through a number of cases that are related to the far-right, anti-we-the-people vision of Neil Gorsuch, from the frozen trucker case, to the autistic child case, to the worker suffering sexual discrimination or gender discrimination at work—all of these cases that have come forward.

We have the third issue, of course, being that cloud that is hanging over the Presidency because of the investigations underway at this moment into the role the Trump campaign may have played in communicating with or collaborating with the Russians in their extensive strategy to interfere with our Presidential election. So there are a lot of concerns.

This should be the last case where we are cutting short the debate by filing a petition to close debate on the opening day, but there it is—another first, another degradation of the institution.

Dahlia Lithwick wrote in November:

> We are already hearing from Republicans and Democrats in leadership positions that it is incumbent upon Americans to normalize and legitimize the new Trump presidency. We are told to give him a chance, to reach across the aisle, and that we must all work hard, in President Obama's formulation, to make sure that Trump succeeds. But before you decide to take Obama's advice, I would implore you to stand firm and even angry on this one point at least: The current Supreme Court vacancy is not Trump's to fill. This was President Obama's vacancy and President Obama's nomination. Please don't tacitly give up on it because it was stolen by unprecedented obstruction and contempt. Instead, do to them what they have done to us. Sometimes, when they go low, we need to go lower, to protect the thing of great value.

I don't love the way that is phrased, that is for sure. Because in my mind, the point here is to guard our institutions and make them work better. That is the high road. That is not going lower; that is going higher. We must strengthen and defend these institutions that are being torn asunder by this strategy of stealing a Senate seat.

That is an article from the Slate.

The Miami Herald says: ''Supreme Court Nominations Will Never Be the Same.''

The story of the Supreme Court in 2016 can be summarized in a statistic: It's been 311 days since Justice Antonin Scalia died on February 13, and his seat remains unfilled. That is not the longest Supreme Court vacancy in the modern era, but it's about to enter second place—and it will become the longest if Donald Trump's nominee isn't confirmed about the end of March.

This striking fact will be front and center when the history of the court in 2016 is written, but what really matters isn't the length of the vacancy. It's the election in the middle of it. The Republican Senate changed the rules of confirmation drastically by refusing even to consider Judge Merrick Garland's nomination. And against the odds, it paid off for them.

It is interesting because we talk about the nuclear option of changing the rules, but in a very de facto matter, the nuclear option went off the day the majority leader came to the floor and said that we are going to conduct ourselves in a totally different way than the Senate's ever conducted itself. Unlike every other time in U.S. history, when there was a vacancy during election year and the Senate acted, we are not going to act. We are going to essentially engage in stonewalling the President's nominee—no hearing, no discussion. That was a nuclear option. So, certainly, I think that is a point well made by this article.

The history of the confirmation process is central to the history of the court. There have been some important landmarks in the last century. Louis Brandeis was the first justice to have a confirmation hearing. Felix Frankfurter was the first justice who had to testify at his confirmation.

More recently, the confirmation process for Robert Bork in 1987 had epochal consequences. For the first time, judicial philosophy was a focus.

That was 1987.

No one disputed Bork's intelligence or qualifications. Instead liberals, including law professors like my colleague Laurence Tribe, criticized Bork's conservatism, as opposition to fundamental rights.

Well, there is a whole host of commentary from all across America. Let's turn to the Pittsburgh Post-Gazette. ''The Senate's shame: Merrick Garland deserved a hearing for Supreme Court.''

Judge Merrick Garland is returning to his work on the Court of Appeals for the D.C. Circuit, his nomination for the Supreme Court killed without a vote by a Republican Senate majority more concerned with partisan politics than with doing its job.

The behavior of those who disposed of his nomination stands in sharp contrast to his own record and reputation as a nonideological judge.

Judge Garland is a moderate jurist with a reputation for careful reasoning. Mere days before President Barack Obama announced Merrick Garland's nomination, Senator Orrin Hatch, a Republican from Utah, told a conservative news site that if the President wanted to pick a moderate, he ''could easily name Merrick Garland, who is a fine man.''

But Senate Majority Leader Mitch McConnell had already announced, in February, that his caucus would block any Obama nominee. ''This vacancy,'' he said, ''should not be filled by this lame-duck President.'' So the Senate refused even to hold hearings.

Let's be clear. We have had 16 vacancies in the course of an election year during our 200-plus years of history, and never before did a majority refuse to exercise their advice and consent responsibility under the Constitution, arguing that it is a lameduck President. That is not embedded in the Constitution. It is not embedded in the Senate rules. It is not embedded in history. It is not embedded in any logic. When you elect a President, you elect him for 4 years.

Obama was elected, not by a small margin, not by an electoral victory combined with a citizen majority loss. No, he won the citizen vote massively, as well as winning the electoral college. He won it twice. You can't look for a better endorsement for the role of a President and an affirmation in the face of the determined effort to ensure he did not get a second term.

So that lameduck argument is lame. The argument that the President was a lameduck so, therefore, his Supreme Court nominee should not get a hearing is disingenuous and irresponsible. Mr. Obama had a year left in his term, and Presidents have their full constitutional authority until noon on inauguration day. They must perform all of their duties until then.

Granted, a President must nominate justices the Senate can reasonably be asked to confirm. You can't ask a Senate dominated by the other party to confirm someone whose judicial philosophy could appeal only to someone who shares the President's politics. He must, when facing such a Senate, choose someone in the middle. Mr. Obama did that. He did his job. He picked the very judge Senator HATCH said would be a moderate choice.

The Senate did not do its job. Its refusal to confirm Judge Garland was not based on any flaw in the nominee's character, any deficit in his abilities, or even any disagreement with his jurisprudence. It was pure partisan politics. Senate Republicans wanted to let a Republican President fill the vacancy, and they are going to get their way. But this refusal of the Senate to do its duty cost a good man a fair hearing, and, more importantly, it cost the Nation a potentially fine justice, one more faithful to the law than one of the political parties or particular judicial ideology.

As a result of this abdication of responsibility, it will be harder to get Justices like that in the future. Indeed, the Senate has established a terrible precedent that makes it less likely that any President will be get a Senate controlled by the other party to confirm his or her Supreme Court nominees, however wise and well-qualified.

This was a study of Washington politics at its worst—political and constitutional malpractice—and it will have a lasting consequence.

Well, there is still time to change course and not have this legacy, as characterized by the Pittsburgh Post-Gazette, of ''political and constitutional malpractice with lasting consequences''. So one question we have not talked about too much in this debate through the night is how voters view this GOP maneuvering to push through Trump's ultraconservative Supreme Court nominee. This is a national survey of likely voters by Greenberg Quinlan Rosner Research. It notes the following:

In the wake of President Donald Trump's nomination of Neil Gorsuch to the U.S. Supreme Court, a new national poll shows that voters believe that the nomination has real consequences for the direction of the country. Voters strongly oppose efforts by the Republicans to change the rules in order to push through Trump's ultraconservative nominee.

Americans see this as a fight that matters to them. When presented with potential consequences and rulings that could result from Gorsuch's confirmation, including overturning Roe v. Wade and leaving the flow of special interest money in politics unchecked, large majorities of voters say they are more likely to oppose the nominee.

Key findings from the poll conducted January 27 through 31 on behalf of NARAL Pro Choice America Foundation, Every Voice, and End Citizens United, include:

Voters overwhelmingly believe that Trump's nomination will have a real impact on the country's future. Fully 72 percent of voters think the nomination will have a big difference in the direction of the country. Voters across the political spectrum agree on the importance of this nomination, with 76 percent of Democrats saying it will make a big difference, along with 75 percent of Republicans and 64 percent of Independents.

So, in short, basically roughly three out of four Americans recognize that it is a very big deal because out of this discussion could come a confirmed nominee, a ninth vote on the Supreme Court, and that 5-to-4 votes of the Supreme Court steer the country in very different directions, depending on how that 5-to-4 voting occurs.

If you are adding to the Supreme Court spectrum of conservatives who have this view of Merrick Garland and antipathy toward the ability of citizens to pursue justice through class action lawsuits, and an effort to always kind of torture the law in order to find for corporations over the individuals, and a love of arbitration agreements, and even inventing them as we heard last night—inventing an arbitration agreement where none exists—in order to prevent an issue from going forward in the courts—all of that is a real handicap for Americans in the future. So Americans understand this is a big deal.

Americans strongly object to any GOP attempts to use political tactics to strong-arm Trump's nominee through the confirmation process. After hearing balanced messaging, seven in 10 (69 percent) oppose Republicans changing the rules to prevent a filibuster and allow the Senate to confirm a nominee with just a simple majority instead of the required 60 votes, with 54 percent strongly opposing this proposal. In fact, even 4-out-of-10 Trump voters (39 percent) oppose Republicans trying to change the filibuster rules.

Highlighting potential actions and rulings that could result from confirming Trump's Supreme Court nominee makes voters much more likely to oppose him. Large majorities of voters say they are more likely to oppose Trump's nominee when they hear a diverse set of issues that could be impacted by a nominee like Gorsuch. Actions that create strong opposition include:

Upholding the Citizens United decision to allow corporations, unions, and wealthy donors to spend more money on elections.

Overturning the Roe v. Wade decision that made abortion legal.

Eliminating or weakening environmental regulations that protect air, water, and land from pollution.

Refusing to uphold or eliminating rights and protections for LGBT individuals.

Failing to protect voting rights and making it more difficult for Americans, particularly the poor and people of color, to vote.

Weakening the ability of labor unions to organize workers to negotiate for better wages and working conditions.

Voters strongly support legal abortion and oppose a Trump nominee they believe could put that right at risk. Seven out of 10 voters (69 percent) support a woman's right to choose, and they recognize that Trump's Supreme Court nominee jeopardizes the Roe v. Wade decision that made abortion legal. More than half of voters (52 percent) think it is very or somewhat likely that Roe v. Wade will be overturned if Trump's nominee is confirmed. This possibility raises strong opposition for voters, with 61 percent who say they are more likely to oppose a nominee who wants to overturn Roe v. Wade.

Voters have strong negative reactions to a Supreme Court nominee who will continue to allow corporations and special interests to use money to gain influence and drown out the voice of individuals in politics. Opposition to a nominee who wants no spending limits for corporations and wealthy individuals in elections is broad and deep. Overall, 78 percent are more likely to oppose a nominee (56 percent much more likely to oppose), including 92 percent of Democrats, 84 percent of Independents, and 59 percent of Republicans. Three quarters of voters express a desire for their Senators to oppose a Supreme Court nominee who was ruled in favor of allowing campaign contributors to spend more money in politics.

Voters recognize this Supreme Court nomination is crucial to the direction of the country and they strongly oppose any efforts by Republicans to skirt the rules to push through Trump's ultraconservative nominee.

So the date of that Greenberg Quinlan Rosner Research poll was February 1. I think it really highlights that voters understand that what we are doing now—this process of considering the potential confirmation of a nominee—has huge consequences for this country and has a huge impact on a whole variety of issues—environmental issues, labor issues, discrimination issues, consumer issues, commerce issues, a whole host of a range of things that the Supreme Court regularly considers. So there is a lot of concern at this point.

Here is another issue, and that is the potential impact on LGBT rights. This is an article by Rebecca Buckwalter-Poza entitled: ''Judge Gorsuch Threatens the Dignity of LGBT People.''

Judges with Supreme Court aspirations tend to guard their views, avoiding stances and statements that could impede a nomination or a confirmation. Judge Neil Gorsuch has done just that, leading observers to look to his influences rather than his issuances. Among them is Justice Anthony Kennedy, for whom he clerked. While Judge Gorsuch and Justice Kennedy may share a bond, they part ways on several issues. One lesser known but critically important point of potential disagreement surrounds a somewhat nebulous legal principle critical to lesbian, gay, bisexual, and transgender, or LGBT, rights: the dignity of free persons.

For decades, the Supreme Court has repeatedly affirmed that individuals' due process right to liberty also protects their dignity—and shields them from indignity. The concept of dignity encompasses an individual's innate value as people and their right to live free of interference; their right to make important personal decisions; and their entitlement to social recognition or protection from discrimination. This notion of human dignity is at the heart of the Court's three landmark LGBT rights cases: Lawrence v. Texas, United States v. Windsor, and Obergefell v. Hodges.

Judge Gorsuch's writing—both on the bench and in his book against ''assisted suicide,'' based on his Oxford dissertation—suggests he is, at a minimum, skeptical of the principle from which the right to dignity derives: substantive due process. To be clear, substantive due process, which protects individuals from having their fundamental rights violated without justification, has been part of Supreme Court jurisprudence for more than 100 years.

In one case, Judge Gorsuch made a point of incorporating criticisms of substantive due process. He noted that ''some'' believe if such a concept existed, it would reside elsewhere in the Constitution. ''Others,'' he offered, question whether substantive due process ''should find a home anywhere in the Constitution.'' This critical aside, while mild, is unusual. Judge Gorsuch hews to precedent on substantive due process only grudgingly, after conceding that ''the Supreme Court clearly tells us'' that substantive due process does have a home in the Constitution.

In his book, Judge Gorsuch went so far as to criticize the Supreme Court for adhering to substantive due process precedent in ''case after case.'' He also proposed an alternative relevance for dignity, based in equal protection, that could restrict rather than protect individual rights. The recognition of innate human dignity is the foundation for equality, Judge Gorsuch claimed, and equality makes ''assisted suicide''—termed ''death with dignity'' in those states that permit it—unacceptable because all people created equal enjoy an inalienable right to life. This view is troubling, not only in signaling an intent to misappropriate the concept of dignity to restrict individual choice, but also because of the implications for reproductive access, rights, and justice.

This article continues:

Senators must press Judge Gorsuch to commit to upholding Supreme Court precedent based on the recognition of dignity—or admit he would not respect this long-established, critical principle.

This goes on in a somewhat scholarly fashion.

(Mr. BOOZMAN assumed the Chair.)

I want to return to the core premise and review the fact that never before have we had a stolen seat in the United States of America.

It is so important to drive this point home, that there is absolutely no foundation for what happened last year in American history. You have those 16 seats where a vacancy occurred in an election year. I am going to go through them so that it becomes absolutely clear what we are talking about here.

There were three seats where the vacancy occurred after the general election. So the general election was in early November. One seat opens in December in an election year, one in November, another in December—three seats that opened up after the election and for which the nomination was put forward.

There wasn't a lot of time. In these cases, the President was still transitioning in March, rather than in January, so there was a little more time than you might anticipate. We shortened that with a later constitutional amendment.

Here, the President put forward a nominee within 3 days. Grant put forward a nomination within about a week and just a single day for Hayes to put forward a nomination.

So here you are after the election. The passions of the campaign are starting to settle down. You know who the next President is going to be. There is not a lot of time, but there is enough time for the Senate to act, and it did in all three cases.

In all three of these cases where the seat became empty after the election, even then, the Senate found there was time enough to act. In all three of these cases, that action was a confirmation of the nominee—three out of three. So that is one set.

John Jay was nominated by President Adams. Ward Hunt was nominated by President Grant. Williams Woods was nominated by President Hayes, but in one of those interesting little twists, in this case, the nominee actually declined it after he had been confirmed. I don't know that we have seen that very often in the history of Supreme Court Justices.

Then there is that set of cases in an election year where the vacancy occurred before the election but the President, for a variety of reasons, didn't nominate until after the election. So you are kind of back in the same situation—a short amount of time. We have four cases that are in that category.

We had the first case in 1828—a vacancy before the election, a nomination afterward. The Senate acts. The Senate didn't always confirm the nomination, but they always acted. In this case, they rejected the nomination by tabling it.

Then we had President Buchanan, who nominated Jeremiah Black. In May, the seat became vacant, and the nomination didn't occur until February. The President would have transferred in March. The Senate again acted. The Senators of this body acted, and they rejected it. They rejected it by rejecting the motion to proceed.

Salmon Chase, under Lincoln—the vacancy occurred just a month before the election in October. The President put forward the nomination a month after the election in December, and the Senate confirmed him.

With Eisenhower and William Brennan, there was a vacancy a month before the election and a nomination that basically came 2 months after the election—getting very close to the transition date, yet he was confirmed.

So those are seven of the nominations, of which five were confirmed and two were rejected—tabled and the motion to proceed was rejected. Then we have the remaining nine. These nine are closer—well, one of them is the seat that became open when Antonin Scalia died, but the historic additional eight seats—those seats are a little closer to the situation we have with Antonin Scalia dying and the President nominating Merrick Garland, because the vacancy came before the election in these eight cases, and the nomination came before the election.

In fact, here we have the first case, under President Jefferson. He nominated William Johnson. But the vacancy occurred in January. The nomination occurred in March. It was pretty close to the situation we faced last year, yet the Senate acted, and they confirmed the nominee.

President Tyler nominated Edward King. The vacancy occurred in April, the nomination in June, and the Senate acted. They rejected the nomination by tabling it.

Edward Bradford was nominated by President Fillmore in July of 1852. The following month, the nomination was put forward before the election, and again the Senate acted, but they tabled it.

So they didn't confirm in every case, but they acted in every single case.

Melville Fuller was nominated by President Cleveland. There was a vacancy in March. The nomination was in May. He was confirmed.

Under President Harrison, there was George Shiras. The vacancy occurred in January. Quite a few months passed. It was almost 6 months before the nomination was put forward in July by the President. The nomination was confirmed.

Justice Brandeis was put forward by President Wilson. In this case, two vacancies occurred in an election year, both before the election—one in January, one in June. The candidate was put forward quite quickly—within the month of January and a month later in the case of John Clarke—and both were confirmed.

There was Benjamin Cardozo under President Hoover in 1932. The vacancy was in January. The nomination was in February. He was confirmed.

So those are 8 additional, and we have now a total of 14.

Then we have Merrick Garland. Obama put forward Merrick Garland. The vacancy was in February. The nomination was in March. No action. It is the only time there was no action in U.S. history.

That is why we have all of these editorials from across the country noting that this is a stolen seat, that it has never happened before, and that it sets a terrible precedent. That is the problem we are looking at.

Why is it a terrible precedent? Because once the Senate starts stealing a seat from one President and handing it to another in an effort to pack the Court, there is no end to the mischief that follows.

If you can steal a seat in which there was plenty of time to consider in the final year of a Presidency, you can do it for 2 years. We saw this in terms of many comments that were made by Republican legislators before the November election. When they thought the Democratic nominee was going to win, they were saying: We are going to make sure that for 4 years, it stays an eight-member Court, that no matter that the people will have spoken through an election, no matter that a nominee has been put forward who is credible, we are simply not going to consider it for 4 years.

This is a court-packing scheme through the theft of this Supreme Court seat. You can just think about if the Court is packed, then when the parties are reversed—and it always does go back and forth sooner or later—then does the other party say: We have to balance back out the Court, restore its integrity by stealing a seat back, stealing it 2 years into a Presidency.

It is terrible not only in terms of its impact on the Senate here because it now makes this incredibly partisan pitched battle out of what was supposed to be an advice and consent responsibility to deter a President from nominating people of unfit character—I use the phrase ''of unfit character.'' That is a phrase Hamilton used. In the Federalist Papers, he lays out what this advice and consent responsibility was supposed to be all about. They needed to have a strategy for how they put key appointments into the executive branch to basically staff the Cabinet agencies.

They thought at first: Maybe the check will be that we will have the appointments made by the Senate.

So the executive branch will be headed by the President, but the appointments will be made by, as they referred to it, the assembly.

Then they said: Well, there is a big problem with that because one Senator will get their best friend in one post in exchange for some other Senator's best friend in some other post. The public won't know why it happened. There will be no accountability. So that is not a great idea.

So they said: A better idea is to have accountability and have the President make the appointments. But there is a problem. What if the President goes off-track and starts appointing people of unfit character? Well, we need a way to put a check on that.

So they came up with this idea of the Senate's advice and consent, meaning that the Senate could block a nominee if the person was of unfit character. They anticipated this power to be used rarely because of the very nature and the very existence of the power of the Senate to block someone of unfit character would deter a President from appointing someone of unfit character.

What did they mean by unfit character? Well, it could mean a host of things—that a President might be appointing somebody who had some conflict of interest or who was unacceptable, or maybe the President was appointing someone who had absolutely no knowledge of the issues or maybe appointing somebody who had an alcohol problem and wasn't capable of responsibly executing the task, the responsibilities of the office. There were a host of possibilities, but they thought it would be rarely used; that it wouldn't be applied as a tool to conduct warfare on the executive branch; that it wouldn't be used as a tool to be conducted as warfare on the judiciary; and it wouldn't be used as a tool to pack the Court and delegitimize the Court. Yet we have been seeing all of that from the past in recent years. So that really is something that we should be deeply concerned about.

(Mr. FLAKE assumed the Chair.)

We saw, back in 2013, the growing use of the supermajority as a weapon of mass legislative destruction or government destruction in trying to prevent the President from having a team with which he could act. The National Labor Relations Board was blocked from having its positions filled, and the Labor Secretary was unable to get a floor vote, and the list just went on and on and on—tons of district court judges and circuit court judges, to the point that we had to find a way to curb that destructive strategy, and that meant that we had to go to a simple majority. But we left in place the supermajority for the Supreme Court because it has powers no other institution has. It is the decider.

One can have a district court make a decision that gets bumped to a circuit court, and a circuit court makes a decision, and it goes to the Supreme Court. They are ultimately the decider and they hold the positions for as long as they want. So they can hold it for decades. It is not an appointment to the executive branch that might be there for 2 to 4 years. That is why it is so incredibly important that we get this right and why people who are observing what is going on are so concerned about the damage that is being done.

This article is from the New York Times: ''Neil Gorsuch, the Nominee for a Stolen Seat.''

It's been almost a year since Senate Republicans took an empty Supreme Court seat hostage, discarding the constitutional duty that both parties have honored throughout American history and hobbling an entire branch of government for partisan gain.

President Trump had a great opportunity to repair some of that damage by nominating a moderate candidate for the vacancy, which was created when Justice Antonin Scalia died in February. Instead, he chose Neil Gorsuch, a very conservative judge from the federal Court of Appeals for the 10th Circuit whose jurisprudence and

writing style are often compared to those of Justice Scalia.

If Judge Gorsuch is confirmed, the court will once again have a majority of justices appointed by Republican presidents, as it has for nearly half a century. For starters, that spells big trouble for public-sector unions, environmental regulations and women's access to contraception. If Trump gets the chance to name another justice, the consequences could be much more dire. In normal times, Judge Gorsuch—a widely respected and, at 49, relatively young judge with a reliably conservative voting record—would be an obvious choice for a Republican President.

These are not normal times.

The seat Judge Gorsuch hopes to sit in should have been filled, months ago, by Merrick Garland, the chief judge of the Court of Appeals for the District of Columbia Circuit, whom President Barack Obama nominated to the high court last month. Judge Garland, a former federal prosecutor and 20-year veteran of the nation's most important federal appeals court, is both more moderate and more qualified than Judge Gorsuch.

That meant nothing to Senate Republicans, who abused their power as the majority party and, within hours of Justice Scalia's death, shut down the confirmation process for the remainder of Mr. Obama's presidency. There would be no negotiations to release this hostage; the sole object was to hold on to the court's conservative majority. The outrageousness of the ploy was matched only by the unlikelihood that it would succeed—until, to virtually everyone's shock, it did.

The destructive lesson Senate Republicans taught is that obstruction pays off. Yet they seem to have short memories. After Senate Democrats refused to attend votes on two of Mr. Trump's cabinet picks on Tuesday, Senator PAT TOOMEY of Pennsylvania said, ''We did not inflict this kind of obstructionism on President Obama.'' Even absent such dishonesty, any Democratic impulse to mimic the Republican blockade by filibustering Judge Gorsuch would be understandable. But Senate Democrats should be wary of stooping to the Republicans' level, especially because any such effort is likely to prove futile, since Republicans have the votes to simply eliminate the use of the filibuster. . . .

You know, I think about the fact that it has been bandied about with such lack of gravity that the Senate majority may change the 60-vote requirement for the Supreme Court. It is an immediate tactical victory to do so, but it may turn out to be a tactical mistake in the bit longer term. President Trump may have a single opportunity to put in place a Supreme Court Justice, and the next President, who might be a Democrat, might have many chances to nominate a Supreme Court Justice. So lowering the standard from the 60 votes designed to have a judge down the middle could lead to very different consequences depending on when various judges retire, who they are, and where they are in the spectrum—something that none of us can predict. So it is certainly a strategy that has simply just been asserted as this: Well, we will just do it.

Not only does it have high tactical risk, but it just is another blow of the ax, felling the trees in the forest of the integrity of the Court and the integrity of the Senate. It sets the stage for all these battles that are going to come over future nominees. The pure partisanship, short-term gains, grudges to be remedied rather than the advice and consent vision that was in our Constitution—the vision that Hamilton laid out which might have to be used rarely because it would deter Presidents from making nominations of people of unfit character.

I am disturbed about where we are headed. There are many policy issues that seem important at the time as they come to this floor, and they are important. They are issues related to the ability of workers to get fair wages for the value they bring to the development of the products they make. There are certainly key issues about our transportation infrastructure and key challenges on healthcare. But a single Supreme Court seat can change policy on a huge spectrum of issues with the Supreme Court as the final arbiter.

If we have a pivot point in which dark money—unlimited amounts of funds—are injected into the national campaigns forever more, well, we are never going to heal and get back to the point of the Senate being a great deliberative body, because that dark money will own this body and control this body, much as it does now after the entry of the Koch brothers into the national campaign contests.

That is the impact of a single Supreme Court decision. It has huge impact on who serves here and what decisions they make. It has huge impact on whether we are a ''we the people'' government or a government by and for the most powerful.

It might be interesting at this point to go back in time to sections of a speech by Senator Robert Byrd. Senator Byrd was still in the Senate when I came here in 2008. He was one of four Senators that were in the Senate when I was an intern in 1976.

He says in his speech, delivered December 15, 1998, in the Old Senate Chamber:

Clio being my favorite muse, let me begin this evening with a look backward over the well-traveled road of history. History always turns our faces backward, and this is as it should be, so that we might be better informed and prepared to exercise wisdom in dealing with future events.

''To be ignorant of what happened before you were born,'' said Cicero, ''is to remain always a child.''

So, for a little while, as we meet together in this hallowed place, let us turn our faces backward.

Look about you. We meet tonight in the Senate Chamber. Not the Chamber in which we transact our business daily now, but the Old Senate Chamber where our predecessors wrote the laws before the Civil War. Here, in this room, Daniel Webster—he moved about the Chamber from time to time—Daniel Webster orated, Henry Clay forged compromises, John C. Calhoun stood on principle. Here, Henry Foote of Mississippi pulled a pistol on Thomas Hart Benton of Missouri. Senator Benton ripped open his coat, and said, ''Let the assassin fire!'' And, ''Stand out of the way.'' Here the eccentric Virginia Senator John Randolph brought his hunting dogs into the Chamber, and the dashing Texas Senator Sam Houston sat over here to my right; he sat at his desk whittling wooden hearts for ladies in the gallery. Seated at his desk in the back row, Massachusetts Senator Charles Sumner was beaten violently over the head with a cane wielded by Representative Preston Brooks of South Carolina, who objected to Sumner's strongly abolitionist speeches and the vituperation that Sumner had heaped upon Brooks' uncle, Senator Butler of South Carolina.

The Senate first met here in 1810, but, because our British cousins chose to set fire to the Capitol during the War of 1812, Congress was forced to move into the Patent Office Building in downtown Washington, and later into a building known as the Brick Capitol, located on the present site of the Supreme Court Building. Hence, it was December 1819 before Senators were able to return to this restored and elegant Chamber. They met here for 40 years, and it was during that exhilarating period that the Senate experienced its ''Golden Age.''

Here, in this room, the Senate tried to deal with the emotional and destructive issue of slavery by passing the Missouri Compromise of 1820. That act drew a line across the United States and asserted that the peculiar institution of slavery should remain to the south of the line and not spread to the north. The Missouri Compromise also set the precedent that for every slave state admitted to the Union, a free state should be admitted as well, and vice versa. What this meant in practical political terms was that the North and the South would be exactly equal in voting strength in this Chamber, and that any settlement of the explosive issue of slavery would have to originate here in the Senate. As a result, the Nation's most talented and ambitious legislators began to leave the House of Representatives to take seats here in the Senate Chamber. Here, they fought to hold the Union together through the omnibus compromise of 1850, only to overturn these efforts by passing the fateful Kansas-Nebraska Act of 1854.

The Senators moved out of this room in 1859, on the eve of the Civil War. When they marched in procession from this Chamber to the current Chamber, they marked the last time that leaders of the North and South would march together. The next year, the South seceded, and Senators who had walked shoulder to shoulder here parted to become military officers and political leaders of the Union and of the Confederacy.

This old Chamber that they left behind is not just a smaller version of the current Chamber. Here, the center aisle divides the two parties, but there are an equal number of desks on either side—you will count 32 on one side and 32 on the other, not because the two parties were evenly divided, but because there was not room to move desks back and forth, depending on the size of the majority, as we do today. That meant that some members of the majority party had to sit with members of the minority. It did not matter to them. The two desks in the front row in the center aisle were not reserved for the majority and minority leaders as they are now, because there were no party leaders at that time. No Senator spoke for his party; every Senator spoke for himself. There were recognized leaders among the Senators, but only unofficially. Everyone knew, for example, that Henry Clay led the Whigs, but he would never claim that honor. Clay generally sat in the last row at the far end of the Chamber so he could talk to Senators as they came in to vote.

The Senate left this Chamber because it outgrew the space. When they first met here in 1810, there were 32 Senators. So many states were added over the next four decades

that when they left in 1859, there were 64 Senators. Yet, while the Senate increased in size, it was essentially the same institution that the Founders had created in the Constitution. Today, another century and four decades later, and having grown to 100 Senators, it is still essentially the same institution. The actors have changed; the issues have changed; but the Senate, which emerged from the Great Compromise of July 16, 1787, remains the great forum of the states. This is so, largely, because as a Nation, we were fortunate to have wise, cautious people draft and implement our Constitution. They were pragmatists rather than idealists. James Madison particularly had a shrewd view of human nature. He did not believe in man's perfectibility. He assumed that those who achieved power would always try to amass more power, and that political factions would always compete out of self-interest. In ''The Federalist Papers,'' Madison reasoned that ''in framing a government which is to be administered by men over men, the great difficulty lies in this: You must first enable the government to control the government; and, in the next place, oblige it to control itself.'' Madison and other Framers of the Constitution divided power so that no one person, no single branch of government could gain complete power. As Madison explained it: ''Ambition must be made to counteract ambition.''

However, ambition has not always counteracted ambition, as we saw in the enactment by Congress of the line-item veto in 1996. Just as the Roman Senate ceded its power over the purse to the Roman dictators, Sulla and Caesar, and to the later emperors, thus surrendering its power to check tyranny, so did the American Congress, the Senate included. By passing the Line-Item Veto Act the Congress surrendered its control over the purse—control which had been vested by the Founding Fathers here in this legislative branch.

This brings me to the first point I would like to leave you with this evening. It is this: The legislative branch must be eternally vigilant over the powers and authorities vested in it by the Constitution—eternally vigilant. This is vitally important to the security of our constitutional system of checks and balances and separation of power. George Washington in his Farewell Address of September 17, 1796, emphasized the importance of such vigilance: It is important likewise that the habits of thinking in a free country should inspire caution in those intrusted with its administration to confine themselves within their respective constitutional spheres, avoiding in the exercise of the powers of one department, to encroach upon one another. The spirit of encroachment tends to consolidate the powers of all the departments in one, and thus to create, whatever the form of government, a real despotism. . . . The necessity of reciprocal checks in the exercise of political power, by dividing and distributing it into different depositories, and constituting each the guardian of the public weal against invasions of the others, has been evinced by experiments ancient and modern. . . . To preserve them must be as necessary as to institute them.

Each Member of this body must be ever mindful of the fundamental duty to uphold the institutional prerogatives of the Senate if we are to preserve the vital balance which Washington so eloquently endorsed.

Senator Byrd continues:

During my 46 years in Congress, and particularly in more recent years, I have seen an inclination—I think I have—on the part of many legislators of both parties to regard a chief executive in a role more elevated than the Framers of the Constitution intended. We as legislators have a responsibility to work with the chief executive, but it is intended to be a two-way street. The Framers did not envision the office of President as having the attributes of royalty. We must recognize the heavy burden that any President bears, and wherever and whenever we can, we must cooperate with the chief executive in the interest of all of the people. But let us keep in mind Madison's admonition: ''Ambition must be made to counteract ambition.''

As Majority Leader in the Senate during the Carter years, I worked hard to help President Carter enact his programs, but I publicly stated that I was not ''the President's man''; I was a Senate man. For example, in July 1977, I opposed President Carter's plan to sell the AWACS (Airborne Warning and Control System) to Iran. Iran was then a military ally of the United States, but I was troubled over the potential security risks involved with the possibility of compromising highly sophisticated technology in this volatile region. I was concerned that the sale ran contrary to our national interests in maintaining a stable military balance and limited arms proliferation in the Middle East. Both Houses of Congress had to vote disapproval resolutions to stop the sale. I enlisted the support of then Republican Minority Leader Howard Baker. Senator Baker was someone who could rise above political party when he believed that the national interests required it, just as he did in the Panama Canal debates. The Carter administration chose to withdraw the sale of AWACS temporarily. Shortly afterwards, the Iranian revolution occurred and the Shah was replaced. Had that sale gone through as planned, those sophisticated aircraft would have fallen into the hands of an unfriendly government. As so often has happened in our history, individual courage and character again chartered our course.

I want to return to Senator Byrd's point about Republican Minority Leader Howard Baker. It says: ''Senator Baker was someone who could rise above political party when he believed the national interests required it, just as he did during the Panama Canal debates.'' The debate over those treaties was intense because they were a valuable asset controlled by the United States. Many thought of them as a possession of the United States, and we were turning them over to Panama after a long period of negotiations. But to be able to rise above partisanship to pursue a national interest—that is what we need now as we face the potential of this devastating change in Senate conduct over the selection of a Supreme Court nominee.

I hope we can find a way to rise above partisanship or political party and pursue the national interests because I have seen so little of the desire to strengthen our institutions. I am not optimistic, but I do think it is worth noting that it is possible. We could take this train off the tracks—because of the shadow hanging over the Presidency, because of the far-right views of Neil Gorsuch, because it is a stolen seat and we haven't remedied that situation with a plan.

Senator Robert Byrd continued:

This brings me to my second point. On the great issues, the Senate has always been blessed with Senators who were able to rise above party, and consider first and foremost the national interest. There are very worthy examples in Senate history.

When I came to the Senate in 1959, artists were at work painting five porthole portraits in the Senate reception room. The Senate had appointed a special Committee chaired by Senator John F. Kennedy to select the five most significant Senators in Senate history. This was no easy task, because there were many potential candidates.

In setting the criteria, the Committee looked to Senators who had stood firm for principle, who had not blown with the winds, and who made personal sacrifices for the national good. They were not saints, nor were they perfect men.

Daniel Webster's personal financial dealings left an eternal blot upon his record; yet, he deserved to have his portrait in the Senate reception room, not simply as a great orator, but as a man who sacrificed his own political standing by endorsing the compromise of 1850, which was deeply unpopular in his home State of Massachusetts, but which he realized was the best chance to hold the Union together.

In my almost 46 years in Congress, I have seen other courageous Senators.

I have already referred to the courage demonstrated by former Senator Howard Baker during the Panama Canal debates. Without Senator Baker's support, the Panama Canal Treaties would never have been approved by the Senate. We needed two-thirds; we were swimming uphill. The odds were against us. The killing of American servicemen in Panama would have gone on, but Senator Howard Baker threw his shoulder behind the wheel and helped to construct what he and I referred to as leadership amendments, amendments which protected U.S. interests in that region, and we both worked shoulder to shoulder against great odds, as indicated by the polls.

We did so because we believed, after careful study, that the treaties were in the best interests of the United States. There were people in my own State of West Virginia who still don't believe that. But I was convinced of it.

Howard Baker knew what my old majority leader, Mike Mansfield, and all students of the Senate's institutional role know.

Political polarization—too much emphasis on which side of the aisle one sits, is not now, and has never been, a good thing for the Senate. I am talking about politics when it becomes gamesmanship or when it becomes mean-spirited or when it becomes overly manipulative, simply to gain advantage.

I am not talking about honestly held views or differing political positions. Those things enrich our system. Americans have always loved a good debate. And that is what I believe and wish for now: More substantive and stimulating debate and less pure politics and imagery.

But I well understand history and its ebb and flow, and I well know that we live in an age of imagery. It is simply my wish that, sometime soon, the rising tide of imagery and partisanship will begin to ebb rather than to flow quite so freely.

Washington, in his farewell address, warned us against the ''baneful effects of the spirit of party'' when he said:

''. . . in governments purely elective, it is a spirit not to be encouraged. From their natural tendency, it is certain there will always be enough of that spirit for every salutary purpose. And there being constant danger of excess, the effort ought to be, by force of public opinion, to mitigate and assuage it. A fire not to be quenched, it demands a uniform vigilance to prevent its bursting into a flame, lest instead of warming, it should consume.''

So, I believe that the American people are more than tired of partisan warfare. I believe

they wish for less of it from the Congress, especially in the Senate, where more statesmanship and a longer view are still expected.

Declining participation in elections, and repeated public surveys which indicate weariness, distrust, and alienation within our system ought to serve as a harbinger to be ignored at our peril.

It must be a matter of concern to all of us that all too few Americans look to officeholders for inspiration in these troubled and turbulent times.

How can we attract the talent needed to serve in public office in future years if elected officials continue to be held in such low esteem?

Continuing to read Senator Byrd's speech in the Old Senate Chamber:

I would very much like to see a rekindling of basic faith in our leaders, and a renewal in politics and of public service. But the existence of inspiring leadership by public officials is fundamental to a shoring up of that faith.

In fact, I think the American people are in desperate need of some old-fashioned heroes. Now, it seems, today's heroes, if we want to loosely use the term, are merely celebrities—rock stars who spout deplorable messages, or sports figures who mass fortunes advertising baggy clothes at exorbitant prices.

I'm not talking about Sammy Sosa. I'm not talking about Mark McGuire. They were my heroes, too, as was Babe Ruth in 1927. Not much to look up to here, I say. Not much to build dreams on.

Look hard at the content of our popular culture. There is really nothing much to inspire and look up to. And regrettably there also is not much to counter the empty commercialism which is so prevalent today. It has become the norm.

Senator Byrd continued:

So where are we in all of this? What is our role? What part can we as Senators—authority figures, statesmen representing the people—play while we simultaneously endeavor to carry out our 200-year-old mandate, bequeathed to us by some of the most brilliant men of their age, or of any age before or since?

Well, we can show up for our roll call votes, carry out our committee assignments, issue the obligatory press releases, dutifully follow up on constituent requests, and answer our mail.

All of these are necessary and to a greater or lesser degree important.

But a reemphasis by the Senate on our strict institutional role is certainly something which I would like to see. It is a sobering and heavy responsibility all by itself, and its very weightiness tends to cool the overheated passions of political demagoguery. After all, that role is, in a constitutional sense, the reason we are here. The Framers expected a zealous defense of our powers to keep the tyrants at bay. But there is still another role—an intangible something—that we who are privileged to sit in this body, and indeed leaders in the private sector, as well as those who write and reflect upon the news, are called upon to play. I call it the duty beyond our duties.

The duty I am talking about is the duty to endeavor to inspire others and to demonstrate, through personal example, that public service of all types ought to be an honorable calling. Contrary to what many believe, it is absolutely the wrong place for the slick and the insincere.

Serving the public in a leadership role demands honesty, hard work, sacrifice, and dedication from those who dare to ask the people for such an awesome trust. Those who ask to shoulder that mantle also shoulder a much larger personal obligation than many of us may regularly contemplate.

Mr. Leader, we all have a clear responsibility to serve as role models to inspire our people, and particularly our young people, to be and to do their best.

On that score, we politicians, as a group, generally miss the mark.

Perhaps it's because power, whether it be the power of political office, or the power to run giant corporations, or the power to report and analyze events, is a very heady thing. It can lead to arrogance, self aggrandizement, disregard for playing by the rules, and contempt for the people who send us here. It can lead us to forget that we are servants, not masters.

Senator Byrd continued:

In the real world, exemplary personal conduct can sometimes achieve much more than any political agenda. Comity, courtesy, charitable treatment of even our political opposites, combined with a concerted effort to not just occupy our offices, but to bring honor to them, will do more to inspire our people and restore their faith in us, their leaders, than millions of dollars of 30-second spots or glitzy puff-pieces concocted by spinmeisters.

These are troubling times for our nation and our people on both the national and international fronts.

For our country to weather the rough seas ahead, we must use our most tempered judgment and seek out our best and most noble instincts.

Our example here can be a healing element—a balm to salve the trauma of distrust and disillusionment too long endured by good people. Let each of us follow his or her own conscience when it comes to issues, but as we do so, may we be ever mindful that our people watching us, and the people who sent us here can take us back home again.

Let us be aware of the sublimely uplifting which the example of simple dignity, decency, decorum, and dedication to duty can play in the life of a nation.

Senator Byrd had yet more words to share.

Let us also remember that even after two hundred years, the Senate is still the anchor of the Republic, the morning and evening star in the American constitutional constellation.

It has had its giants and its little men, its Websters and its Bilbos, its Calhouns and its McCarthys. It has been the stage of high drama, of comedy and tragedy, and its players have been the great and the near great, those who think they are great, and those who probably never will be great.

It has weathered the storms of adversity, withstood the barbs of cynics and the attacks of critics, and provided stability and strength to the nation during periods of civil strife and uncertainty, panics and depressions.

In war and in peace, it has been the sure refuge and protector of the rights of the state and of a political minority because great and courageous Senators have always been there to stay the course and keep the faith.

And it can do so again as long as we are ever blessed in this august body with those who hear the clear tones of the bell of duty, the Senate will continue to stand—the great forum of the constitutional American liberty!

That is a lot of good advice. As we sit here in these troubled times and ponder how we are going to rise above the passions and politics of the moment to restore the functionality of the Senate, that is the challenge we have. I believe Byrd—with his experience, with his articulate language—is calling to us from the past to say that we can do it. We can do better. We can rise above the situation in which we have put ourselves, the situation in which one team, for the first time in U.S. history, has stolen a Supreme Court seat to pack the Court.

To now be in this position of considering a Senate nomination at the exact moment that the person making the nomination and his team are under investigation for potentially traitorous conduct against the United States—but we don't have the answers yet.

(Mr. PAUL assumed the Chair.)

Here we are with a nominated judge who is way outside the mainstream, and we therefore have a challenge. It is exactly what the filibuster was designed for—to keep judges who are outside the judicial mainstream from being nominated. So that is a lot for us to wrestle with in the next few days.

The New Yorker did an analysis of where Neil Gorsuch lies. The subtitle says: ''Every sign suggests that he would be at least as conservative a judicial activist as Samuel Alito.'' This is a different source, but that is the same basic point, showing an analysis that places Neil Gorsuch to the right side of the right peak in terms of ideology.

Ruth Bader Ginsburg, the diminutive liberal colossus of the Supreme Court, has built a distinguished record as a Justice, but her legacy as a nominee is more dubious. In her confirmation hearing before the Senate Judiciary Committee, in 1993, she refused to answer most questions about how, if confirmed, she would rule. In an oft-quoted phrase, she vowed to give ''no hints, no forecasts, no previews.'' Nominees have invoked this stonewall ever since.

Last week, Neil Gorsuch, Donald Trump's choice to fill the seat of the late Antonin Scalia, proved an especially ardent follower of what has come to be known as the Ginsburg rule. Asked repeatedly by members of the committee about his views of such cases as Roe v. Wade and Citizens United, Gorsuch not only refused to answer, but went on to say that his feelings, if he had any, were of no consequence: ''It's not a matter of agreeing or disagreeing. It's a matter of it being the law, and my job is to apply and enforce the law.'' Gorsuch portrayed himself as a kind of judicial automaton, obligated to pay mindless obeisance to the Court's prior rulings.

This interpretation of the role of Supreme Court Justices is, to put it charitably, incorrect—they can and do overturn their earlier holdings. And Trump didn't nominate Gorsuch simply because he knows how to follow precedent. He nominated Gorsuch because his career resembles a lab experiment synthesizing every trend in modern conservative thought.

A ruggedly handsome Coloradan—this President cares a great deal about appearances—Gorsuch has an appealing manner and an impressive resume. He did well in good schools, held prestigious clerkships, worked at a fine law firm, took a senior post in the Department of Justice, and for the past decade has served in the Tenth Circuit Court of Appeals. From his boyhood days as a Republican Senate page to his decades of volunteer work for GOP candidates, Gorsuch has been

a strong party loyalist. (Like many Republican pols, he refers to the ''Democrat,'' rather than the Democratic, Party.)

His background also includes a dose of pro-corporate, deregulatory libertarianism, as reflected in his close relationship with the billionaire Philip Anschutz, a client turned mentor. A sampling of authoritarianism can be seen in Gorsuch's service in George W. Bush's Justice Department, where he helped craft a proposal for the treatment of detainees at Guantanamo. (The Supreme Court later ruled it unconstitutional.) There's social conservatism, too, evident in his one book, a critique of death-with-dignity laws and physician-assisted suicide. ''All human beings are intrinsically valuable,'' he wrote, ''and the intentional taking of human life by private persons is always wrong.'' It's easy to read the book as a coded attack on abortion rights.

To the extent that Gorsuch said anything of substance at his hearing, he put himself across as a mainstream figure. He said he participated in some 2,700 cases on the appeals court, and had voted with the majority in 99 percent of the them. This proves only that most cases are routine. (Even the Supreme Court issues unanimous rulings more than half the time.) The hard cases are the ones that matter, and it's reasonable to project how Gorsuch would vote in them. He would oppose abortion rights. (Trump promised to appoint a ''pro-life'' Justice.)

His predilection for employers over employees is such that it yielded a circuit-court opinion of almost Gothic cruelty. When subzero temperatures caused a truck driver's trailer brakes to freeze, he pulled over to the side of the road. After waiting three hours for help to arrive, he began to lose feeling in his extremities, so he unhitched the cab from the trailer and drove to safety. His employer fired him for abandoning company property. The majority in the case called the dismissal wrong, but Gorsuch said the driver was in the wrong.

As a Justice, Gorsuch would embrace a deregulation of campaign finance symbolized by the Citizens United decision. (He argued in an opinion that judges should evaluate limits on political contributions using the same tough standards that they apply to racial discrimination.)

His most famous Tenth Circuit decision had him taking a side in the culture wars. In Hobby Lobby Stores v. Sebelius, he ruled that a multibillion-dollar corporation could withhold federally guaranteed rights to birth control from thousands of female employees because of religious beliefs of the corporation's owners. (His position was upheld, 5–4, by the Supreme Court.)

In an embarrassing coincidence, on the second day of Gorsuch's testimony, the Court unanimously rejected one of his holdings in the Tenth Circuit, ruling that it denied adequate educational opportunities to students with disabilities.

Every sign suggests that Gorsuch would be at least as conservative a judicial activist as Samuel Alito.

It's also clear what Neil Gorsuch is not: Merrick Garland. Gorsuch's nomination is inextricable from its shameful political context. When Scalia died, more than 11 months remained in Barack Obama's Presidency, but Senate Republicans refused to give his nominee even a hearing. This departure from norms is all the more outrageous because a tactic was used to block a moderate; the Republicans denied Obama his constitutional right in order to trade a Justice who might have been less liberal than Stephen Breyer for one who might be as radical as Clarence Thomas.

Such a turnabout seems especially disturbing given that the FBI and other agencies are now investigating the very legitimacy of the Trump Presidency. Indeed, Chuck Schumer, the Democratic leader in the Senate, has called for a delay in the Gorsuch vote until there is some clarity about the Trump camp's ties to Russia. Last week, he also promised to lead a filibuster against Gorsuch's confirmation, but Republicans, in response, vowed to change the Senate rules to allow them to confirm the nominee by a simple majority.

The Supreme Court is, as political scientists like to say, a counter-majoritarian institution: The President and members of the Congress must answer to voters; the Justices, who serve for life, answer only to the commands of the Constitution. But, in doing so, it's their duty to speak for those who lack political power. The Trump era has already meant trouble for these people—the poor, the sick, the dissenters, immigrants—and Gorsuch, for all his intellectual distinction, has shown scant regard for their concerns. There's little reason to believe that he would as a Justice either.

The L.A. Times wrote the story titled ''Another judicial dirty trick from Senate Republicans.''

One of 2016's most spectacular examples of government dysfunction was the U.S. Senate's outrageous refusal to consider President Obama's nomination of Judge Merrick Garland to replace the late Antonin Scalia on the Supreme Court. That dereliction of duty by the Republican majority not only denied the sitting President his constitutional prerogative to fill vacancies in the court (so that the appointment would go instead to a hoped-for Republican successor.) It also prevented the court from resolving a handful of cases because of a 4–4 split and probably discouraged the justices from accepting other cases because of the possibility of a similar deadlock.

Less well known is the fact that the Senate also failed to hold 4 votes on 24 Obama nominees for lifetime federal judgeships who had been cleared by the Senate Judiciary Committee. They are among 59 aspiring judicial appointees whose nominations will expire when the 144th Congress fades into history this month.

Of the 24 nominees left stranded, three had been selected to federal appeals courts, two for U.S. Court of International Trade, and 19 for federal district courts. Some of the nominees have been waiting for Senate action for months, including U.S. district judge Lucy Haeran Koh, who was nominated to the San Francisco Bay's U.S. 9th Circuit Court of Appeals by Obama in February and recommended by the committee in September.

Sen. Patrick Leahy of Vermont, the ranking Democrat on the Judiciary Committee, accused Senate Republicans of setting a record for inaction on judicial nominations. Whereas the Democratic-controlled Senate confirmed 68 of George W. Bush's judicial nominees in the last two years of his presidency, only 22 nominees had been confirmed in the comparable period, Democrats note.

Republicans countered by citing other statistics, such as the fact that Obama has had more judicial nominees confirmed overall than Bush did in his two terms—329 to Bush's 326.

It is also true that the Democratic-controlled Senate ended its business in 2008 without having confirmed 26 Bush judicial nominees. Both parties have a history of refusing to act on highly qualified judicial nominees proposed by a president of the other party. Yet LEAHY's indictment is on point.

As with Senate Majority Leader MITCH MCCONNELL's stonewalling the Garland nomination, the failure to act on the lower court nominations is extreme and inexcusable.

As we noted above, it represents a partisan attempt to prevent Obama from exercising his right, as the Constitution puts it, to appoint judges by and with the advice and consent of the Senate. Sabotaging the exercise of that authority is offensive, not only because it undermines the Constitution but because it perpetuates a partisan grudge match over the Federal courts.

It would be utterly understandable if Senate Democrats now retaliated by making it difficult for President-Elect Donald Trump to win confirmation for his judicial nominees, especially those slotted for seats that Obama had every right to fill. Democrats will be especially reluctant to support a Trump nominee to the Supreme Court who likely would move the court to the right after the Republicans cheated Obama out of his opportunity to shape the Court in a more liberal direction by appointing Garland.

We recognize that the selection of Federal judges is an inherently political process, one of which both Presidents and Members of the Senate consider not only a nominee's technical qualifications and legal philosophy but also his or her ideology and party label. Even so, both parties need to eventually find a way back to a state of affairs in which a president, regardless of party, will receive prompt Senate consideration of his judicial nominees and an affirmative vote if they are well-qualified and not extreme in their philosophy (as we fear some Trump nominees might be). That should be the process, regardless of which party controls the Senate.

That is important because denying qualified judicial nominees a vote harms the federal judiciary—by denying it needed personnel and by telling lawyers who might aspire to the bench that their nominations could languish for months and ultimately perish not because of any failing on their part but because of partisan gamesmanship. And it isn't lawyers and judges who suffer. As White House Counsel W. Neil Eggleston told the Washington Post: ''There is a real impact on real people. There are people and companies who are not having their cases heard because there are no judges around.''

Trump can make a significant gesture toward restoring a measure of normality to the confirmation process. He should resubmit the names of the nominees who received bipartisan support in the Judiciary Committee but were left stranded because of the delaying tactics of his fellow Republicans.

This article is by Paul Gordon, titled ''Gorsuch and the Senate GOP's Alternative Universe.'' As I am reading these articles, let's not forget the basics. The basics are that 16 seats have become open on the Court in the history of the United States of America. Each and every time, up until last year, the Senate acted on the nominee put forward by the President. This is 9 of the 16. These are the nine that most resemble the situation we had with Merrick Garland, where the vacancy occurred before the election and the nomination occurred before the election.

For example, with Merrick Garland, the vacancy was in February and the nomination was in March. It is not so different from the first name on the

list, William Johnson, under Jefferson, when the vacancy was in January and the nomination was in March.

In each and every one of these cases—the cases that occurred where the vacancy was after the election and the nomination, obviously, was after the election as well—there were vacancies before the election but then the President waited to nominate until after the election, and those cases that are more like Merrick Garland, where both the vacancy and nomination occurred beforehand. In virtually every case—well, actually, in every case, in all 15 cases preceding the death of Antonin Scalia, the Senate acted.

Of those 15, they confirmed 11 and they defeated 4. That brought us to last year. As you can see on this chart, there is no action for the first time in U.S. history. It wasn't just an alternative way of doing things. It was a strategy to pack the Court, to try to send the nomination into the future in the hopes that there would be a conservative President who would nominate a conservative member of the Court.

I think most folks who are participating in this Court-packing scheme didn't really think it would work because it wouldn't have worked if Democrats won the Presidency or gained control of the Senate. They were considered at least to have a 50–50 shot at each. It was a surprise to everyone that suddenly we were where we are, but there was no decision even at that late date after the election that we could have had time to vet and vote on the nominee.

There is a whole set of these nominations that occurred after the election. It would have been totally possible after the November election to go ahead and still at that point consider Merrick Garland.

We wouldn't be in this deep, difficult hole right now had we done so, but we didn't. It was a deliberate strategy to pack the Court, which is now on the verge of succeeding if we go through with the vote this week and if the rules are changed.

If the rules aren't changed, then we will do what has been done over the decades. If your candidate doesn't have the votes, they get withdrawn. You change the candidate. You don't change the rules. The rule of 60 votes to close debate is designed to ensure that there is some bipartisan support for the nominees being put forward.

That is an important issue in terms of integrity of the Court. We have to resolve this stolen seat. One way we can do that is to say: Hey, we are going to put this on hold. We are going to put it on hold until the investigation is done with the President, and we are going to put it on hold until we have a second open seat. At that point, the President could propose Merrick Garland for one of the seats—the first seat where he should have been duly considered to begin with—and a judge for the second seat that is more to his liking, off of his list, if you will.

That would get us out of this quagmire. That would protect the credibility of the Senate, and it would protect the legitimacy of the Court.

This article, ''Gorsuch and the Senate GOP's Alternate Universe'' is by Paul Gordon.

In their efforts to get the ultra-conservative Neil Gorsuch onto the Supreme Court, Senate Republicans have moved beyond creating ''alternative facts.'' They've created an entire alternative universe.

If Gorsuch has earned so little bipartisan support that he cannot get the support of 60 Senators (as all six successful nominees of the past three presidents were able to do), Mitch McConnell is threatening to change the Senate rules to allow Supreme Court nominees to be confirmed by party-line majority votes. He and his colleagues portray Judge Gorsuch as mainstream, the absence of consultation as bipartisanship, and themselves as victims of unprecedented and unprincipled partisan obstruction from the Democrats. Republicans don't want to trigger the ''nuclear option,'' they claim through crocodile tears, but will have no choice but to do so if those mean Democrats insist on a 60-vote threshold.

Listening to them, you'd think they were the injured party. You'd never know that:

Republicans refused to even hold a hearing for Merrick Garland, President Obama's nominee for this very vacancy. To justify this unprecedented move, they claimed that it had been decades since any president was permitted to immediately fill a vacancy that arose in a presidential election year. They were careful not to mention the reason for that: It's rare for justices to die in office, and Justice Scalia was the only justice since 1950 to pass away during an election year. The refusal to even consider Judge Garland for the Supreme Court was unprecedented, a pure power play that drew wide condemnation.

Republicans insisted on a 60-vote threshold for three of President Obama's D.C. Circuit nominees, regardless of who they were, and even announced their demand before any nominations were made. They made it clear that they would block President Obama from filling any of the three vacancies on the 11-member court. (It was this extreme, unprecedented, unprincipled, and anti-democratic putsch that forced the Democrats to drop the 60-vote requirement for lower court nominees.)

Republicans defended the 60-vote margin during the Obama years as a safety mechanism to encourage presidents to consult with Senators of the opposing party and select judicial nominees with bipartisan support.

Conservatives claim that Democrats should support Gorsuch because his nomination was a culmination of the most transparent Supreme Court selection process in history, since Trump listed his potential nominations before the election.

In fact, this may have been the least transparent selection process in history, designed to lead to an extremist nominee rather than one who could garner bipartisan support.

Trump outsourced his Supreme Court selection to two of the most influential and well-funded right-wing ideological organizations in the country: The Federalist Society and the Heritage Foundation. Their selection process is the one that matters, and it was anything but transparent. What conversations did they have with Gorsuch that led them to include him on their list? When Sen. Blumenthal asked Gorsuch if he'd had any conversations about Rowe v. Wade or abortion in general with the Heritage Foundation, Gorsuch only said that no such conversations had occurred after the election (long after he'd been included on the list).

We have seen transparent and bipartisan selection processes before, and they looked nothing like what we have seen with the current nomination. For instance, President Clinton consulted closely with Orrin Hatch, then the ranking Republican on the Judiciary Committee, before making his two Supreme Court nominations. And that consultation was genuine: Based on Sen. Hatch's advice, Clinton passed over his original first choice, acting transparently and in a manner to encourage bipartisanship.

Republicans can posture as a principled, wounded party, forced to trigger the nuclear option, but that simply isn't reality. Since the death of Justice Scalia—indeed, since the moment President Obama took office—they have time and again escalated their partisan approach to the selection of judges. They held Obama circuit court nominees to a 60-vote threshold, then refused to allow votes at all on three D.C. Circuit vacancies regardless of who they were, and then refused to even hold a hearing for a Supreme Court nominee.

Senate Republicans did not enter this presidency with clean hands.

And while much of the GOP obstruction since 2009 had nothing to do with the nominees themselves, Democrats' opposition to Gorsuch is based on his record. Democrats have not said that they will oppose anyone who Trump nominates. In fact, as Senate Minority Leader Chuck Schumer has said numerous times, if Gorsuch cannot earn 60 votes, the solution is not to change the rules, but to change the nominee.

It's clear that Senate Republicans have created an alternative universe worthy of a Star Trek episode.

The Brennan Center for Justice published an article by Ciara Torres-Spelliscy titled ''Neil Gorsuch Understands Campaign Finance—And That's The Problem.''

It's Supreme Court prediction season with Tenth Circuit Judge Neil Gorsuch's nomination to fill the late Antonin Scalia's seat by President Trump (Or by whomever he outsourced the job. I'm looking at you, Federalist Society and Heritage Foundation.) Now everyone (including me) is poring over his past decisions to see what they could mean for the laws most in flux before the Supreme Court.

I've hunted for clues about what Gorsuch believes about money in politics. He presides at the Tenth Circuit, which covers Wyoming, Colorado, Utah, New Mexico, Kansas and Oklahoma. From a campaign finance perspective, most of the cases come from Colorado, which has tried to improve its campaign finance laws both through statute and by amending its state constitution.

Various aspects of the Colorado campaign finance laws have landed in the Tenth Circuit, which is not known for being a particularly hospitable venue for reformers. One 2014 case called Riddle v. Hickenlooper has a concurrence written by Gorsuch. So what can we learn from this opinion about his style of judging, his views of campaign finance reform, and what he might do if he is elevated to the Supreme Court?

Riddle v. Hickenlooper involved three candidates vying for a seat in the Colorado House of Representatives. There were two major party candidates and one write-in candidate. Individual contributions to the Republican and Democratic candidates were capped at $400, while the limit for the write-in candidate was $200. The reasoning for the law was that major party candidates (typically) have to go through a primary while minor and write-in candidates do not. The write-in candidates sued, claiming that the lower cap was a violation of contributors'

rights under the Fourteenth Amendment's equal protection clause. The district court dismissed the claim, saying that contribution restrictions were constitutional. But a three-judge Tenth Circuit panel (consisting of two Republicans and one Democrat) unanimously reversed the lower court, finding that the disparities in contribution limits were, indeed, a violation of the equal protection provision.

Gorsuch took the time to write a separate concurring opinion. What's encouraging about Gorsuch's opinion is that he accurately discusses complex campaign law, and this takes time and skill. Trust me, I've read plenty of lower court opinions in campaign finance cases where the lower court judges . . . can't follow the ins and outs of the exceptions to the exceptions in campaign finance law.

These details do not stump Gorsuch. He writes thoughtfully and incisively about how the Supreme Court has been unclear about exactly which level of scrutiny applies to equal protection objections to differential campaign contributions. In the end, he concludes that whether the standard is strict scrutiny or intermediate scrutiny, the Colorado law cannot justify allowing major party candidates to raise twice as much as minor party candidates.

Gorsuch also deserves credit for crafting his opinion narrowly and taking the time to note the limits of the case's holding. As he wrote, ''[h]aving said this much, it is worth pausing to emphasize what isn't said in these pages. Nothing in what I've suggested or what the court holds intimates that Colorado must adopt a per-election-cycle rather than a per-election approach to the regulation of campaign contributions.'' This limiting language appears to display sensitivity to the fact that Colorado has great latitude to choose its own means of election administration and campaign finance. This shows judicial incrementalism and a laudable degree of modesty.

But there are a few words from Gorsuch's opinion which should give campaign finance reformers pause. For one, he wrote, ''[n]o one before us disputes that the act of contributing to political campaigns implicates a 'basic constitutional freedom,' one lying 'at the foundation of a free society' and enjoying a significant relationship to the right to speak and associate, both expressly protected First Amendment activities.''

In other words, Gorsuch is maintaining the link between political money and free speech. He added, ''[t]he plaintiffs before us don't complain that Colorado's contribution limits violate their First Amendment rights because, say, the limits are too low for everyone.''

This last quote is ambiguous. It is not clear whether there is an inadvertently missing word ''they'' before ''say'' which would mean he was attributing this statement to the plaintiffs in the case. But the way it is written sounds like Gorsuch himself is saying that contributions are too low for everyone. The limits at issue were $400 for major party candidates and $200 for minor party and write-in candidates. If this is his true belief, it would demonstrate hostility to one of the basic pillars of campaign finance reform since Watergate: modest contribution limits.

So the good news is Gorsuch can navigate his way through a tangle of precedent—a basic qualification for a jurist. The bad news is he may harbor antipathy to regulating money in politics. If Gorsuch is elevated to the Supreme Court, he can help conservatives move the goal post to script scrutiny so that Colorado's and other States' attempts to temper the role of money in politics will be far more difficult to justify in court.

So let me return to where I started yesterday evening. We are facing three very significant problems. The first problem is that for the first time in history, we are considering a nominee for a stolen Supreme Court seat. That alone should be reason for everyone who cares about this institution to turn down this nominee and to convey to the President that the only legitimate nominee for this open seat is Merrick Garland, because as a Senate we have a stake in the legitimacy of our work and that of the Court. To confirm anyone but Merrick Garland to this seat confirms the Senate as the thief who took the seat for the first time in U.S. history and transported it to another President in an effort to pack the Court.

Furthermore, if there is a person confirmed to this seat other than Merrick Garland, it will cast a shadow over every 5-to-4 decision that individual participates in, in the years to come. It destroys the public credibility of the position. It makes the Supreme Court simply into a political body to which clever campaign tactics have delivered a majority for one ideological vision over another. Let's not enter into that position of destroying the credibility of the Senate process and the integrity of the Court in one fell swoop.

Second of all, we should not be considering a nominee from a President who is under investigation for conspiring with Russia to change the outcome of an election. We don't know where those investigations will lead, but what we do know is that this places a big cloud over the legitimacy of him holding the office. Let's clear up that cloud. Let's answer the questions that were raised when, a week ago Monday, FBI Director Comey came to Capitol Hill to talk to the House and say: Yes, those investigations are underway.

We know what the diabolical practices of the Russians were. We know they created fake news. We know they had a team of roughly 1,000 people sending out contrived social media messages to comment on the events of the day, to make it look like American citizens were commenting and to make one candidate look very good and the other candidate look very bad.

Finally, this is an extreme nominee from the far right who does not believe in the fundamental vision of ''we the people'' and makes decision after decision through tortured, twisted, contrived arguments to find for the powerful over the people. That is unacceptable.

The PRESIDING OFFICER (Mr. COTTON). Under the previous order, the time until 11 a.m. will be controlled by the majority.

RECOGNITION OF THE MAJORITY LEADER

The majority leader is recognized.

Mr. MCCONNELL. Mr. President, Neil Gorsuch is eminently qualified to serve on the Supreme Court. He was confirmed by the Senate to his Federal judgeship with no Democratic opposition at all—none. He participated there in more than 2,700 cases, writing in the majority 99 percent of the time and enjoying unanimous support 97 percent of the time.

He received the highest possible rating from a group the Democratic leader called the ''gold standard'' for evaluating judicial nominations—the American Bar Association. He has earned high praise from across the political spectrum, with Democrats and Republicans alike attesting to his qualifications, his fairness, and his impartiality. He also enjoys the support of a bipartisan majority of the Senate. Yet the Democratic leadership is now determined to block his confirmation with the first successful partisan filibuster of a Supreme Court nominee in American history. They proved that in yesterday's procedural vote.

Judge Neil Gorsuch is one of the most impressive nominees we have ever seen. If a widely appraised nominee like this can't get past a Democratic filibuster, then no nominee of a Republican President can. Democrats would filibuster Ruth Bader Ginsburg if President Trump nominated her. We all know why. The Democrats are bowing to hard-left special interests who can't get over the results of the election and thus are demanding complete Democratic opposition to everything—everything this President touches. As the Washington Post just reported, the Democratic leader ''seemed ready to endorse every argument activists made.''

It seems some Democrats made up their minds long ago to oppose whomever this President nominated. The Democratic leader himself indicated as much before Judge Gorsuch was even selected. He even mused on a liberal talk show about holding the seat open indefinitely. So it doesn't really matter whom this President nominates; a Democratic minority is determined to successfully launch an unprecedented partisan filibuster regardless. Perhaps that is why Democrats still have yet to put forward a cogent rationale to oppose him—not that that would be easy, you understand.

As a longtime Democratic board member of the left-leaning American Constitution Society put it, ''The Senate should confirm [Judge Gorsuch] because there is no principled reason to vote no.''

Well, if there is no principled reason to vote no on this nomination, then there is certainly no principled reason to prevent the Senate from taking a vote on it at all. But that is just what a partisan Democratic minority of the Senate is threatening to do—for the first time in the nearly 230-year history of the Senate.

Let me remind colleagues of something I said yesterday. When President Clinton nominated Justice Ginsburg, I voted to confirm her. When President Clinton nominated Justice Breyer, I voted to confirm him. When President Obama nominated Justice Sotomayor and Justice Kagan, I led my party in

working to ensure that they received an up-or-down vote—in other words, not a filibuster. I knew I would often disagree with their opinions on the Court, and I certainly wasn't wrong about that, but I thought it was the right thing to do.

I understand that our Democratic colleagues are currently under a great deal of pressure from special interests on the far left. I think everyone in elected office can empathize with this situation they are experiencing. Listening to these hard-left special interests may seem like the politically expedient thing for Democrats to do for their party today, but I would ask them to make their decision based on what they know is right for the country tomorrow.

There is still time for them to make the right choice. There is still time for them to support a nominee who even longtime Democrats have praised—or, at the very least, to not block him with the first successful partisan filibuster in American history.

So I hope Democrats reevaluate their position before the important vote we will take tomorrow. I hope they will consider what their actions would mean for future Supreme Court confirmations. I hope they will consider what their actions could mean for the future of this body more broadly, too, because, as we all know, the American people will be watching. History will record the decision Democrats make, and there is simply no principled reason to oppose this exceptional Supreme Court nominee.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, we are continuing to debate the nomination of Judge Gorsuch to serve as Associate Justice of the Supreme Court. My colleagues on both sides of the aisle have said that this is an important moment for the Senate. I couldn't agree more.

I think it is important to reflect on why we are here and how we got here. Before I turn to the Supreme Court and the current debate, let me take just a few minutes to talk about lower court nominees and provide a little bit of history and context, especially for the benefit of some of the Senators who weren't here over the last few years.

I am going to start way back in the spring of 2001. President George W. Bush had just been elected President. As we all know, it was a close election, and it was hard fought. The Senate was closely divided, with the Republicans in control. Given how close the Presidential election was, there were elements of the hard left who refused to accept the results of that election. Some blamed Ralph Nader, others blamed Governor Jeb Bush, and still others blamed the Supreme Court. Many on the hard left claimed that President George W. Bush wasn't a ''legitimate'' President. Liberal interest groups were egging on the Democratic leadership to fight the new President at every turn.

That still sounds very familiar for this year we are in.

At the same time, one major concern for the hard-left liberal interest groups was that President Bush, who they claimed wasn't legitimate, would be able to nominate conservative judges. Again, doesn't that sound familiar?

Senator CORNYN went over some of this same subject yesterday, but it deserves discussion now, and it serves as a reminder of where we have been before because sometimes the past predicts the future.

So in the spring of 2001, the hard-left interest groups went to the Senate Democratic leadership with a plan. According to the New York Times, ''42 of the Senate's 50 Democrats attended a private retreat . . . where a principal topic was forging a unified party strategy to combat the White House on judicial nominees.'' Thinking about 2017, doesn't that sound a little familiar?

At that meeting—Cass Sunstein, Marcia Greenberger, and Laurence Tribe spoke at the retreat and pitched to the Democrats who were present their idea of how this crusade could proceed.

According to one attendee, ''They said it was important for the Senate to change the ground rules, and there was no obligation to confirm someone just because they are scholarly and erudite.''

Well, let's think about that for a moment. Why do you suppose they believed they needed to ''change the ground rules'' for confirming judges? It is because up to that point you didn't filibuster judges. You just didn't. You heard the majority leader speak to that point in his short remarks this morning about how things have changed after more than 200 years.

Well, as it happened, less than a month after the caucus retreat, Senator Jeffords from Vermont switched parties and began caucusing with the Democrats. That threw the majority to the Democrats for the next 18 months. Then they lost the election of 2002, and in the spring of 2003, Republicans were back in the majority.

Now back in the minority, Senate Democrats went ahead with the plans that were enunciated at that retreat to ''change the ground rules.'' For the first time in the history of the Senate, they began to systematically filibuster circuit court nominees—not because they believed the nominees weren't qualified. The nominees were qualified. And it was not because they believed the nominees didn't have the necessary experience. The nominees did have the necessary experience. They filibustered those nominees because they believed they were conservative judges.

So with respect to appellate court nominees, Senate Democrats, at the behest of the far left, took the unprecedented step of using the filibuster in a very systematic way for the first time in Senate history. At the time, there was a lot of debate about changing the rules, dubbed the so-called nuclear option, so that nominees would be afforded an up-or-down vote, consistent with the Senate's history and practice.

Well, Republicans exercised restraint and agreed to step back. Then President Obama became President. Our side didn't like the use of a filibuster for judges, but we also didn't think there should be two sets of rules—one for a Republican President and one for a Democratic President. Common sense tells you that is a legitimate position to take.

We defeated two circuit court nominees, one to the Ninth Circuit and one to the DC Circuit. Then President Obama nominated three individuals to the DC Circuit. Our side denied cloture on those three nominees to the DC Circuit.

Well, at that point, their side didn't like playing by the rules they wrote, so then-Majority Leader Reid took another unprecedented step. In November of 2013, he utilized the so-called nuclear option to eliminate the very tactic they pioneered. The nuclear option becomes effectively the regroup.

So that is how the filibuster was first used on lower court nominees and later eliminated. Senate Democrats took the unprecedented step to utilize that. Then when it no longer benefited them, they used unprecedented means to eliminate it.

This brings me back to where we are today and the rest of this week—talking about a Supreme Court nominee, Judge Gorsuch.

Everyone knows we had a big debate last year about whether to proceed with the Garland nomination. There were 52 Republicans who believed we should follow Senate history and tradition and not proceed with the nomination in the middle of a heated election year.

I know it frustrates my colleagues to hear me say it, but fact is that in 1992, when then-Senator Biden was chairman of the Judiciary Committee, he announced that he wouldn't hold a hearing to fill a vacancy in the last year of President Bush's term. So last year, we followed the precedent that then-Senator Biden described in 1992 for all of the same reasons he discussed.

You get back to this commonsense principle: Can you have one rule for Republican Presidents and another rule for Democratic Presidents? We didn't feel you could. And, of course, everyone in this Chamber knows that if the shoe were on the other foot, the Democrats would have done the same thing, because they said they would. In fact, President Obama's former White House Counsel admitted as much. She said she would have recommended the same course of action if the tables were turned.

So now here we are, April 2017, with the nominee before us. Just as in 2001, we have just had a very contentious Presidential election. It was close. It was hard fought, and frankly, some on

the hard left refused to accept the results of the election. Once again, leftwing groups are egging on the minority leader to take another unprecedented step with respect to judicial nominations. Only this time they want him to lead the very first partisan filibuster of a Supreme Court nomination in U.S. history. Based on the vote we had yesterday, it appears 44 Democrats are prepared to follow the minority leader on this fool's errand. No Supreme Court nomination in our country's entire history has ever failed because of a partisan filibuster. There is no getting around that fact.

Abe Fortas, whom I have referred to, was subjected to a bipartisan filibuster over ethical concerns when President Johnson tried to elevate him to be Chief Justice.

Justice Thomas was confirmed by a vote of 52 to 48. I was here for that nomination. A single Senator—any Senator—could have demanded a cloture vote, but out of 100 Senators, none did. Why? For the simple, commonsense fact and 200 years of history that you don't filibuster a Supreme Court nomination.

But today is entirely different. The minority is committed to filibustering this fine nominee in the first partisan filibuster in U.S. history.

So here we are. The President has nominated an exceptionally qualified judge to take Justice Scalia's seat on the Supreme Court. The Democrats will break new ground again by conducting a partisan filibuster of the nominee. Republicans aren't the ones breaking new ground here. As a matter of fact, the Democrats' own Vice Presidential nominee last year emphatically promised that the Democrats would further change the rules to make sure an expected-President Clinton's nominees couldn't be filibustered.

So at the end of the day, the fact is that if Democrats insist on a filibuster, the Republicans will insist on following the practice that Senators have followed for more than 200 years, and that is not to have a partisan filibuster for somebody going to the Supreme Court. We don't conduct partisan filibusters of Supreme Court nominees, and we certainly are not going to start with this highly qualified nominee.

I hope those that think back 16 or 17 years—when this meeting of Democrats in retreat came to the conclusion that you had to break new ground—realize that they have poisoned the well of the comity traditional of the Senate. I think maybe a lot of them realize that was a mistake, as we realized that was a mistake, and it would be nice to get back to the comity of the Senate that existed on judges prior to 15 or 16 years ago. But that is going to take people on their side who were present at that same retreat who are still in the U.S. Senate to drill a new well, because the present one is poisoned, and we need to get back to the comity that we have had.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. BARRASSO. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. BARRASSO. Mr. President, I come to the floor today because we are at a decisive and consequential moment in the Senate. We are here to consider the nomination of Judge Neil Gorsuch to be a Justice of the U.S. Supreme Court.

Will Democrat Senators vote to have a well-qualified, mainstream Justice who stands for the rule of law, or will the extreme leftwing of that party continue to try to call the shots? That is a decision Members are going to have to make.

America needs judges who can follow the law, apply the law, have the highest ethical standards, and value the independence of our courts. To me, that is a description of Judge Gorsuch. That is him in a nutshell. We saw it throughout his career, and we saw it again at his confirmation hearings in the Judiciary Committee.

Democrats on the committee asked him to answer hypothetical questions. They asked about issues that are probably going to be coming before the Supreme Court of the land. There are ethics rules that say that judges and nominees cannot answer those kinds of questions and, of course, Judge Gorsuch followed the rules. That is exactly what other nominees have done in the past who were nominated by Republican Presidents and Democratic Presidents.

Ruth Bader Ginsburg did so in her confirmation hearing in 1993. She said: ''A judge sworn to decide impartially can offer no forecasts, no hints.'' She said this would display disdain for the entire judicial process. Of course, she was confirmed and sits on the Court today. It has been known as the Ginsburg standard, and every nominee since her nomination hearing has followed that same standard. That is what Justice Gorsuch did.

The Democrats on the Judiciary Committee tried to criticize Judge Gorsuch for some of his opinions that they didn't like. They talked about a couple of cases where the person who was on the losing side in the case was sympathetic. They suggested that the Court should have ignored the law and sided with ''the little guy'' in the involved cases. Judge Gorsuch pointed out that judges are absolutely not supposed to consider what they think is sympathetic. They are supposed to rule on the law. Federal judges actually swear an oath ''to administer justice without respect to persons, and do equal right to the poor and to the rich.''

Most Senators recognize that judges should be impartial. The minority leader, Senator SCHUMER, has actually spoken about how important this is. At the confirmation hearing for Justice Sonia Sotomayor in 2009, nominated by President Obama, Senator SCHUMER praised the way she put the ''rule of law above everything else.'' He said that she followed the texts of statutes, ''even when doing so results in rulings that go against so-called sympathetic litigants.'' That was in 2009. Now it is 2017, and that is the identical standard Judge Gorsuch has continued to follow.

Judge Gorsuch pointed out that it is his job to apply the law, not to write the law. Writing laws is the job of Congress. We are not here to select the 101st Senator; we are here to select a Justice for the Supreme Court. We are selecting a Justice for the most important Court in the land, and it is important and imperative that we take this decision seriously and that we set aside any partisan grudges.

Democrats who want to filibuster this judge are not arguing any principle here. Reasonable individuals know this nominee deserves to be confirmed.

One lawyer wrote an op-ed in the Washington Post on March 8, a board member of the very liberal American Constitution Society. He wrote that ''there is no principled reason'' to vote against Judge Gorsuch. Well, he is exactly right.

I listened to the arguments Democrats made in the confirmation hearing. I was not convinced. If any of my colleagues on the Democratic side of the aisle are undecided about how to vote, I suggest they go back and look and listen to the hearings as well and look at what other people have said about this nominee.

A Chicago Tribune editorial said that confirmation hearing revealed ''unassailable assurances by Gorsuch that he would decide each case on the merits, based on the law as written, applied to the world as it is today.''

The Detroit news agreed. It said that Judge Gorsuch showed that he is a ''deeply knowledgeable nominee who should be confirmed by the Senate.''

On Monday, USA TODAY had their own headline. It said, ''On the Merits, Gorsuch Merits Confirmation.''

The American Bar Association surveyed 5,000 people who have worked with Judge Gorsuch over the years. These people described him using words like ''brilliant,'' ''thoughtful,'' and ''really, really, really smart.''

The Bar Association also found that ''Judge Gorsuch believes strongly in the independence'' of the judiciary. This is the Bar Association. The American Bar Association predicted that ''he will be a strong but respectful voice in protecting it.'' The group ended up giving him its highest possible rating. Interestingly, Senator SCHUMER once called this group ''the gold standard'' for evaluating judges—''the gold standard,'' he called it—and they have given him their highest possible rating. So why does the minority

leader think the gold standard is not good enough anymore?

Judge Gorsuch was even introduced at his confirmation hearing by a former top lawyer for the Obama administration. Neal Katyal is a Democrat. He served as Solicitor General of the United States under President Obama. He called Gorsuch ''one of the most thoughtful and brilliant judges to have served our nation over the last century.'' Let me repeat. This is someone who served as Solicitor General of the United States under President Obama calling Judge Gorsuch ''one of the most thoughtful and brilliant judges to have served our nation over the last century.'' He even wrote an op-ed in the New York Times that predicted that Judge Gorsuch would ''help to restore confidence in the rule of law.'' Help to restore confidence. Isn't that what we want as a nation—confidence in the rule of law?

I think that any Democrat who has looked at this nominee's record will find it is an easy decision to confirm him. If there is a Democrat who reaches the opposite conclusion, I say come to the floor of the Senate and explain why you think our judges should go into a case favoring one side over another because one side is more sympathetic than the other. If there is a Member who thinks that a judge should make promises about how they will rule just to win a confirmation vote of a given Senator, I say come to the floor and make your case. If there is a Member who thinks a Justice on the Supreme Court should rule based on that Justice's own preferences and not based on the law, I would say please come to the floor of the Senate and say so.

I don't think that is what the American people want. The American people do want Justices who are smart. They want Justices who are principled, who are fair, and who know that their job is to follow the law, not to write the law and not to legislate from the bench. The American people know that Neil Gorsuch is exactly that kind of judge. He is the kind of judge we should have on the Supreme Court, we need on the Supreme Court, and we need on every court in the land. That is why I am committed to vote to confirm Neil Gorsuch to serve on the U.S. Supreme Court.

Mr. President, I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Ms. MURKOWSKI. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. SULLIVAN). Without objection, it is so ordered.

Ms. MURKOWSKI. Mr. President, like several in this Chamber, I was asked for my input to the President on whom to nominate to the U.S. Supreme Court. After much reflection, I recommended to the Vice President that Judge Neil Gorsuch of Denver, CO, should fill the Scalia seat on the Supreme Court.

I am, of course, very pleased that my advice was considered. I offered that recommendation before I had an opportunity to sit down one-on-one with Judge Gorsuch, although, in fairness, we had an opportunity in the Senate to review Judge Gorsuch and his credentials in 2006 when this body voted to confirm him by voice vote to the U.S. Court of Appeals where he now sits. After spending time with this exceptionally talented jurist and after reviewing his performance before the Senate Judiciary Committee, my level of respect for him has only grown.

Judge Gorsuch checks the box on every measure of what I am looking for in a Supreme Court nominee. Intellectual capacity, experience, independence, integrity—he has all of these. There is no question that he has the intellectual capacity to meet the challenge. Yes, we acknowledge he is an Ivy League graduate from Columbia and Harvard Law, and that actually describes many people at the top of the legal profession, but that alone is not what makes Judge Gorsuch exceptional.

Judge Gorsuch did something that most practicing lawyers don't do. He went on to earn a doctorate in legal philosophy at Oxford. I think this is one of the many illustrations of Judge Gorsuch's tremendous depth. And whatever else my colleagues will have to say about Judge Gorsuch in this contentious confirmation debate, there is no question that he is an intellectual heavyweight.

I next look to those who mentored Judge Gorsuch along the way, and one really cannot have better mentors than the late Justice Byron White and sitting Justice Anthony Kennedy. Justice Kennedy, we all know, has carved a niche for himself as the swing vote on the Supreme Court. There is a great deal of debate about whether a Justice Gorsuch will be more of a Scalia than a Kennedy or a White or whether, instead, he will be a Gorsuch. I suspect that he will be a Gorsuch, and that is fine by me.

What really matters is that Judge Gorsuch will come to the Supreme Court with a strong understanding of its dynamics, and there is no question that he will be effective from day one. There is no question that he will be his own man. I want to emphasize that point.

Judge Gorsuch made it very clear to me when we met that he has made no commitments to the President or his team. And he made it clear at the hearings that if any commitment were sought, he would have gotten up and walked out. After spending time with Judge Gorsuch, I believe him. I believe him on that. His commitment to an independent judiciary is resolute, and I think on this issue he will not bend to political expedience, as he should not.

He is not the President's man, not the party's man, nor will he represent an ideological movement on the Court. Judge Gorsuch will be his own man, following the law where it leads. That is what we should want in a Supreme Court Justice. Judge Gorsuch's unshakable integrity explains why he has earned the unanimous ''well qualified'' rating from the American Bar Association.

I am also enthusiastic about Judge Gorsuch because he brings a western perspective to a Court that is desperately in need of diversity. Mr. President, you would surely agree with that—that making sure we have those who are knowledgeable based on their experience, of what is like to live in the West is important. Six of the eight sitting Supreme Court Justices have spent their entire professional careers in the Boston-Washington corridor—six of the eight. The only sitting Justice who came to the Supreme Court from someplace other than the Boston-Washington corridor is Anthony Kennedy, who was elevated from the Ninth Circuit. Judge Gorsuch has, of course, done the ''Washington thing,'' but his home is in the West, and he served for a decade on the Tenth Circuit in Denver. I think that makes a real difference, at least in my book.

Appellate judges in the East rarely hear cases involving Federal Indian law and Native American issues. Among the hundreds of cases that Judge Gorsuch has heard, dozens involve Indians and Indian law. In deciding those cases, he has demonstrated great sensitivity to the unique role of Indian Nations under our Constitution.

I think that explains why Judge Gorsuch has been enthusiastically endorsed by the National Congress of American Indians as well as the Native American Rights Fund. NCAI is the umbrella organization for the Nation's federally recognized Tribes. NARF is an independent, highly respected public interest law firm which advocates for Native Americans nationally. Neither of these organizations—neither NCAI nor NARF—could ever be characterized as right-leaning. Yet they have endorsed Judge Gorsuch after reviewing his track record on cases involving Native rights. I think it is also important to recognize that the Central Council of the Tlingit and Haida Tribes of Alaska has also endorsed the Gorsuch nomination, which is important for Alaska Natives.

Another example: The Federal government controls vast amounts of land in the West and, of course, that includes our home State of Alaska. Public lands cases tend to originate in the West, not in the East. It is tremendously important that somebody on the Supreme Court have a familiarity with these issues, and Judge Gorsuch clearly does.

Along with the pervasive Federal presence in the West comes a huge Federal regulatory influence. Mr. President, you and I know that Alaskans

talk about the extent of Federal overreach in our State like other people talk about the weather. Alaskans will be interested to know, perhaps excited to know, that one of Judge Gorsuch's top intellectual interests is regulatory overreach. He has publicly questioned the proposition that Federal courts must defer to agency interpretation of the law when regulations are challenged. That is a very good thing because when a homeowner has to go to court to litigate the question of whether the pond in the back of his house is regulated wetland, the last thing that the homeowner wants to hear is that the scales of justice are somehow tipped in favor of the agency on accord of a principle known as Chevron deference.

I understand—and we all know—that there are some interest groups that suggest that Judge Gorsuch's views on Chevron deference means that somehow or another he stands for big business and against the little guy. To those organizations, allow me to introduce you to an Alaskan named John Sturgeon.

Mr. President, you and I know him well. Mr. Sturgeon was prohibited from taking his hovercraft, his boat, up a river in northern Alaska adjacent to National Park Service land. Mr. Sturgeon had to go all the way up to the Supreme Court to vindicate that right, and, against many odds, he won.

I think it is clear that Federal agencies can and do trample on the rights of the little guy. I will tell you, I find Judge Gorsuch's views on the question of deference highly refreshing at this point in time.

I should point out that I don't agree with all of the opinions written by Judge Gorsuch, but I don't expect that from a nominee. That is almost an impossible standard. In fact, Judge Gorsuch himself has acknowledged that. I do expect that the nominee be always true to the law, as Judge Gorsuch has demonstrated throughout his career.

Finally, from everything I know, Judge Gorsuch is a good and a decent man. He is a husband. He is a father of two girls. He is an outdoor person. He is a person who gives back to the next generation. In addition to his judicial duties, he regularly teaches legal ethics and professionalism at the University of Colorado Law School. In the classroom, he is known to have great respect for his students and their diverse views.

In endorsing Judge Gorsuch's elevation to the Supreme Court, the Denver Post suggested that ''While Democrats will surely be tempted to criticize the nomination of anyone Trump appoints, they'd be wise to take the high road and look at qualifications and legal consistency.'' That is an editorial from the Denver Post, published on January 16 of this year, 2017. Those are pretty wise words. Again, ''Democrats would be wise to take the high road and look at his qualifications and legal consistency.'' That is what we should be looking at. And I think it is so unfortunate that many of my friends on the other side of the aisle have failed to heed this advice laid down in the Denver Post earlier this year.

I have seen judicial nominees come and go over my 14 years in this body, but I will tell you, I haven't seen anyone more intriguing than Judge Gorsuch with his qualifications. He has had a stellar legal career. He is brilliant. He is a rock star among Federal judges. And that kind of judge is the one law students would compete to clerk for. If this body could step back from the politics of all this, he should be confirmed with upwards of 80 or 90 votes, not subjected to a filibuster. That is the caliber of the person we are considering. I honestly cannot fathom why an individual of Judge Gorsuch's stature would be drug through the mud. I just don't believe that reflects well on this body.

I am known within the Senate for my independence in evaluating judicial nominees. While I was not a part of the Gang of 14 back in 2005 who proposed the standard for Federal court nominees, I have pretty much chosen to live by it. Except in the most extraordinary of circumstances, I do not believe judicial nominees should be denied a straight up-or-down vote. I just don't believe they should be denied that. I have practiced that. If one were to examine my record, it is clear that I have walked that walk. Sometimes it has been a walk accompanied by my friend the Senator from Maine. In the case of Goodwin Liu's nomination to the Ninth Circuit, I was the sole Republican to stand up for this principle and vote against a filibuster. I would not have voted to confirm Mr. Liu, but I felt very strongly that he had the right to an up-or-down vote.

So we are at this place today in considering not a nominee to the Ninth Circuit but a nominee to the Supreme Court. I would ask my colleagues on the Democratic side to give the same deference to Judge Gorsuch.

I also pride myself as one who believes in the traditions of the Senate, but it is not the tradition of the Senate to filibuster a U.S. Supreme Court nominee.

I do not believe that Judge Gorsuch is getting a fair shake in today's Senate, and as deeply as I care about bipartisanship in this body, I will not acquiesce to an effort to deny Judge Gorsuch a seat on the Supreme Court.

I acknowledge my friends on the other side of the aisle who have indicated that they will not support a filibuster, and I implore those of my colleagues who have indicated that they will filibuster the nomination of Neil Gorsuch to reconsider that position.

After spending time with Judge Gorsuch, after studying his life story, I am left with the undeniable impression that Neil Gorsuch has been nominated to a position that he has prepared his whole life to assume. He is not merely a good choice, in my book, he is the best choice. He will not merely be a good Justice; I believe he will be a great Justice, perhaps a Justice of historic proportion.

So today I offer Judge Gorsuch my most enthusiastic endorsement. I have no doubt that before we leave for Easter recess, he will be confirmed as an Associate Justice of the U.S. Supreme Court.

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. MCCAIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

SYRIA

Mr. MCCAIN. Mr. President, before I get into my remarks about the impending action of the Senate with regard to the so-called nuclear option, I would just point out that the attacks yesterday on innocent men, women, and children should not have come as a surprise. It was in 2013 that the then-Secretary of State, Secretary of Defense, and the head of the CIA recommended to the President that we arm the Free Syrian Army and bring Bashar Assad's barbarity to a halt. The President of the United States rejected that. Bashar Assad used chemical weapons, and the President called me and Senator GRAHAM over to the White House and said: If they cross the redline, I am going to act. We are going to degrade Bashar Assad and upgrade the Free Syrian Army and have regime change.

Then, of course, he backed down. You know, there is one thing worse than doing nothing: It is saying you are going to do something and then not doing it. That sent a signal everywhere in the world, not just Syria. The fact is, we knew it would happen again. So we have seen this movie before. Unless we act, we are going to see it again.

I am encouraged, frankly, that General Mattis, General McMaster, and the President of the United States have said that this act of incredible barbarity and cruelty will not go unresponded to. But I can assure my colleagues this: If we don't respond to this, then there will be more use of these chemical weapons and weapons of mass destruction, and there will be more innocent people who will die.

Eight years of Obama's failure is what led to the events that just took place that horrified all of us. That requires us to stand up to this barbarity, help the Free Syrian Army, establish safe zones, and make sure that Bashar Assad, propped up by the Russians and the Iranians and the Iranian Revolutionary Guard and Hezbollah, is no longer able to perpetrate these war crimes on innocent men, women, and children.

Mr. President, it is also with some sorrow that I regret having to come to

the floor to speak once again on the issue of eliminating the 60-vote threshold on judicial nominations, specifically a nominee to the U.S. Supreme Court. It is particularly troubling to do so because the nominee in question, Judge Neil Gorsuch, has impeccable legal credentials and a strong reputation as a fair- and sharp-minded lawyer and jurist. The American Bar Association and many others of all political stripes agree that his distinguished career as a lawyer and a jurist makes him well qualified for the position of Associate Justice on the U.S. Supreme Court.

Regrettably, very regrettably, my colleagues in the minority have decided to filibuster the nomination of this good, decent, highly qualified man.

Numerous times over the years, the Senate has come to a standstill over nominees, whether they were judicial or executive branch. That gridlock has inevitably led to threats from the majority—whichever party was in the majority—to use the ''nuclear option,'' basically changing the rules of the Senate of 200 years to strip the minority party of their right to filibuster certain nominees.

I have been privileged several times to be a part of a group of Senators who were able to come together and negotiate agreements to end the gridlock surrounding nominees, avert the nuclear option, and allow the Senate to move forward with our work on behalf of the American people. My work in these groups—often referred to as gangs—has won me both praise and condemnation and has often put me at odds with some in my own party.

In 2005, I joined 13 of my colleagues in an agreement that allowed for votes on three of President Bush's judicial nominees who were being filibustered by the Democrats, who were in the minority at the time. Part of that agreement addressed future nominees. It stated:

> Signatories will exercise their responsibilities under the Advice and Consent Clause of the United States Constitution in good faith. Nominees should only be filibustered under extraordinary circumstances, and each signatory must use his or her own discretion and judgment in determining whether such circumstances exist.

In other words, if that nominee is so far out of the mainstream that it is extraordinary, only then would they seek to block the nomination and filibuster.

I have had conversations with colleagues on both sides of the aisle in an attempt to once again come up with a way forward and avoid both a filibuster of Judge Gorsuch and the nuclear option. Sadly, I learned on Monday that those efforts had failed and that the Democrats had secured the necessary votes to successfully filibuster the highly qualified Supreme Court nominee for the first time in our history. In response, the majority leader has indicated that he will move to change the Senate rules and eliminate the ability of the minority to do so.

We are in a terrible place. My colleagues should understand that this is a historic moment if we move forward with it.

In 2013, then-Majority Leader Harry Reid changed the Senate rules to eliminate the 60-vote threshold on most judicial and executive branch nominees. Those in my party, including me, were enraged—rightly so. We warned that the Democrats would not be in control of the Senate or the White House forever and that they would come to regret their actions. We were right.

Their actions came back to haunt them. I believe our actions will haunt us as well.

In an op-ed on November 27, 2012, Senator MCCONNELL, knowing of the Democrats' plans to change the Senate rules in their favor, wrote this:

> A serious threat has been quietly gathering against one of the most cherished safeguards of liberty in our government—the right of a political minority to have a voice. Until now, this has always been the defining characteristic of the Senate. That's why all Senators have traditionally defended the Senate as an institution, because they knew that the Senate was the last legislative check for political minorities and small states against the kind of raw exercise of power large states and majority parties have always been tempted to wield.
>
> The threat I'm referring to is the effort by some Democrats, most of whom have never served a day in the minority, to force a change in the Senate rules.

How soon we forget.

In fact, Chairman GRASSLEY exactly predicted what is about to happen. In November 2013, he said:

> Not too many years ago, my colleagues on the other side described their fight to preserve the filibuster with great pride. Today the other side is willing to forever change the Senate because the Republicans have the audacity to hold them, the majority party of today, to their own standard.
>
> The silver lining is that there will come a day when roles are reversed. When that happens, our side will likely nominate and confirm lower court and Supreme Court nominees with 51 votes regardless of whether the Democrats actually buy into this fanciful notion that they can demolish the filibuster on lower court nominees and still preserve it for the Supreme Court.

Senator ALEXANDER, on November 21, 2013, when threatened with the nuclear option by the Democrats, said:

> This action today creates a perpetual opportunity for the tyranny of the majority because it permits a majority in this body to do whatever it wants to do any time it wants to do it.

Senator ALEXANDER went on to say:

> In my view, this is the most important and most dangerous restructuring of Senate rules since Thomas Jefferson wrote them at the beginning of our country.

On November 21, 2013, Senator SHELBY said:

> Democrats won't be in power in perpetuity. This is a mistake—a big one for the long run. Maybe not for the short run. Short-term gains, but I think it changes the Senate tremendously in a bad way.

The same day, on the same issue, Senator THUNE said:

> I think Democrats are playing with fire. This is very dangerous in terms of what it means for the Senate. What goes around comes around. And someday, they're going to be in the minority.

Senator BURR said on that same day:

> The American people know what they get when the minority party is stripped of its filibuster rights: they get unchecked power by the executive branch.

He went on to say:

> If sweeping legislation and lifetime appointments cannot muster 60 votes in the United States Senate, then it probably is not a good idea to force either on the American people.

My own colleagues on this side of the aisle need to remember our own words and heed our own warnings. We will not control this body forever. We will not hold the White House in perpetuity. What we are poised to do at the end of this week will have tremendous consequences, and I fear that someday, we will regret what we are about to do. In fact, I am confident we will.

Having said that, it is hard for me to keep a straight face when I hear the current righteous indignation coming from the other side. After reading the comments some of my Democrat friends made in 2013, it is difficult to have much sympathy for where they find themselves today.

Senator MERKLEY, who was perhaps the biggest proponent of changing the rules at that time, said this:

> Without the nuclear option, Republicans are going to disable the executive branch.
>
> Ending the abusive filibuster on nominations is a big step toward restoring the functionality of the Senate, and that matters for all of us.
>
> This is a terrific vote for the U.S. Senate.

Senator UDALL said:

> I'm just so encouraged now that we're going to be able to—without filibusters—put people on the courts in an orderly way.

Senator WARREN said on November 13, 2013:

> We need to call out these filibusters for what they are: Naked attempts to nullify the results of the last election.
>
> If Republicans continue to filibuster these highly qualified nominees for no reason other than to nullify the President's constitutional authority, then Senators not only have the right to change the filibuster, Senators have a duty to change the filibuster rules. We cannot turn our backs on the Constitution. We cannot abdicate our oath of office.

Senator SANDERS on May 14, 2013, said:

> If we bring this nomination to the floor and there is a request for 60 votes, which we're not going to get, I think it is time for the Democratic leadership to do what the American people want, and that is to have a majority rule in the United States Senate.

I did not make up those last quotes. Those are actual quotes. This isn't fake news.

Elections have consequences, my friends. Elections have consequences.

I hope my colleagues on both sides of the aisle keep this in mind: Now that we are entering into an era where a simple majority decides all judicial nominations, we will see more and more nominees from the extremes of

both the left and the right. I do not see how that will ensure a fair and impartial judiciary. In fact, I think the opposite will be true, and Americans will no longer be confident of equal protection under the law.

When then-Majority Leader Reid changed the Senate rules in 2013, there was no one more critical of his actions than the Senator who stands before you now. I fought hard to convince my colleagues of the damage those changes would do to this body. I did so because I love the Senate. I revere this institution and the place it holds in our system of government. It is imperative that we have a functioning Senate where the rights of the minority are protected, regardless of which party is in power at the time.

While what happened in 2013 was infuriating to our side, it was also heartbreaking. It was heartbreaking because it seemed to me that the uniqueness of the Senate had been irreparably damaged and, along with it, any hope of restoring meaningful bipartisanship.

The unprecedented nature of the Democrats' filibuster of a Supreme Court nominee has left me in the difficult position of having to decide whether to support finishing what Harry Reid and the Democrats started in 2013 and eliminate the 60-vote threshold on Supreme Court nominations. I find myself torn between protecting the traditions and practices of the Senate and the importance of having a full complement of Justices on the U.S. Supreme Court.

I am left with no choice. I will vote to change the rules and allow Judge Gorsuch to be confirmed by a simple majority. I will do so with great reluctance, not because I have any doubts that Judge Gorsuch will be an excellent Justice but because of the further—and perhaps irreparable—damage that it will do to the Senate.

Mr. President, 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. SCHATZ. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

PRAYER

Pursuant to rule IV, paragraph 2, the hour of 12 noon having arrived, the Senate having been in continuous session since yesterday, the Senate will suspend for a prayer from the Senate Chaplain.

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

God of the Heavens, who guides through the boundless skies the certain flight of water fowl, we need Your guidance in our legislative branch today.

Give our lawmakers the wisdom to do what is right. May they not put party before country or partisanship before patriotism. Lord, be for them a shield so that they will have confidence in Your wisdom, even during this challenging season. Give them a reverential awe that seeks to please You in all they think, say, and do.

Lord, surround the families and victims of the Syrian chemical attacks with Your unfailing love.

We pray in Your merciful Name. Amen.

The PRESIDING OFFICER (Mrs. ERNST). The Senator from Maryland.

Mr. CARDIN. Madam President, I take this time to explain to the people of Maryland and our Nation my views on Judge Neil Gorsuch to be an Associate Justice of the Supreme Court of the United States.

There is no more important responsibility that a Member of the Senate has than the advice and consent of an Associate Justice of the Supreme Court of the United States. Of the many important responsibilities we have, this is one of the most important responsibilities.

I have taken this on to try to understand as much as I can about Judge Gorsuch, to understand the dynamics of what his membership on the Supreme Court would mean, because I recognize it is not just an appointment for this term of Congress. This is a lifetime appointment, and it is very possible that he, if confirmed, will serve on the Supreme Court for a generation. So his impact on the workings of the Supreme Court is something that is extremely important to each Member of the Senate.

I think many of us are looking for an Associate Justice who can bring about more consensus on the Supreme Court, who can try to deal with some of the great divisions in our Nation in a way that represents the values of our Constitution, that will allow our Nation to move forward in a united way.

We also recognize that the Senate must give an independent evaluation of a Supreme Court Justice. This is not because the President of your party nominated someone to the Supreme Court, whether you support or oppose; it is the independent review process that each Senator undertakes to determine whether the nominee should get our support.

So what I look at is someone who would be a mainstream jurist, who is sensitive to the civil rights of all Americans, who would understand the importance of our Constitution, which has been a Constitution that has expanded rights and not one that we would look at ways to move in the wrong direction on extending constitutional protections—that is, move backward rather than forward.

First, let me start by stating that I am troubled by the process President Trump followed in nominating Neil Gorsuch to the Supreme Court. During his campaign, he talked about a litmus test for Supreme Court Justices, that they must be pro-life in the mold of Justice Scalia. The list that was submitted to him in which Judge Gorsuch was a part was proposed by the Heritage Foundation and the Federalist Society. That is not a good way to start a process of bringing in a consensus nominee to the Supreme Court of the United States.

To my knowledge, there was no consultation with any Democrats prior to the nomination being made. The reason why consultation with all Members of the Senate is important is that if you engage in real understanding as to what the Senate—and we represent the entire country—is looking for in a Supreme Court Justice, you have a much better chance of ending up with a nominee who is going to enjoy broader support, bipartisan support, real bipartisan support in the U.S. Senate, and then the 60-vote threshold does not become a hurdle.

There is a reason we have the rules we do in the Senate, and the 60-vote concept on a controversial nominee is so that we don't end up with an extreme candidate who would end up being on the Supreme Court of the United States, that there must be that process that would generate 60 votes.

So despite my concern about the process that was initiated by President Trump in the nomination, I have tried to look at all of the opportunities to understand Judge Gorsuch's record and his likely actions as a member of the Supreme Court. I took the time to meet with Judge Gorsuch, and I found that interview, that process, to be extremely helpful in understanding his judicial philosophy. I monitored the hearings that took place in the Senate Judiciary Committee, and I found that testimony to be helpful. I reviewed the testimony of experts who had submitted both verbal and written comments in regard to Judge Gorsuch. I have reviewed his extensive legal record. We do have an extensive legal record that I am going to comment about that went into my own process in determining whether I can support him.

I came to the conclusion that I could not support Judge Gorsuch to be an Associate Justice on the Supreme Court of the United States because he is not a mainstream candidate. I am concerned that he would put corporate interests before individual rights. The strength of our Constitution is in the individual. Individual rights should be paramount to special interests or corporate interests.

I saw in his legal opinions a hostility toward environmental interests, women's health, marginalized students with disabilities, and other vulnerable types of individuals, that had me greatly concerned.

I was particularly concerned about whether he could separate his political views from his legal views. This is an extremely important point. We want our Justices on the Supreme Court not to be influenced by the politics around us.

In the legislative branch, it is perfectly legitimate to take into consideration political views. The President of the United States is nominated by a political party; that is understood. But the Supreme Court—the Justices on the Supreme Court need to leave their political views outside of their responsibilities. I was deeply troubled, after reading the opinions of Judge Gorsuch and his writings, that he would not be able to separate his political views from his legal views.

I was concerned about whether he would truly be an independent check on the Presidency. We know that President Trump is testing the constitutional reach of his office. We have seen that in some of the Executive orders he has issued. And I have little confidence by his responses at the hearings that Judge Gorsuch would be an independent voice toward the President of the United States.

Let me cite some examples to fill in the blanks on what I am saying. Judge Gorsuch challenges the Chevron deference doctrine. In the Gutierrez case, he indicates that judges rather than agencies should be basically administering our laws. The longstanding deference to agencies to interpret our law has allowed agencies to carry out their mission. Without that authority, it is extremely challenging to see how an agency can carry out the missions of laws we have passed. Judge Gorsuch raises questions as to whether that document is still relevant.

Let me make it clear. Who benefits from the Chevron doctrine? The Chevron doctrine has allowed agencies to protect workers' rights, protect our environment, protect consumers, food safety, and the list goes on and on. Each of our States has examples to show how important the Chevron doctrine has been. In my State of Maryland, the Chesapeake Bay is critically important to Maryland's economy, critically important to the character of our State we have in Maryland and our future. The protection of the public health of the Chesapeake Bay has very much been advanced by the Chevron deference doctrine.

Judge Gorsuch wrote: ''Chevron appears to qualify as a violation of the separation of powers.'' Then he argued that its ''primary rationale is no more than a fiction.'' Looking at what he has said about a fundamental document that is there to protect our environment, protect workers, protect public health, versus what Justice Scalia once explained—and I quote from Justice Scalia: ''In the long run, Chevron will endure and be given its full scope, because it more accurately reflects the reality of government and thus more adequately serves its needs.'' In the Gutierrez case, Judge Gorsuch was showing a more activist conservative agenda than Justice Scalia.

Let me move on to Citizens United. We have talked about Citizens United probably more than any Supreme Court case on the Senate floor. We know it is a 5-to-4 Supreme Court decision. We know it opened up the floodgates for dark money, allowing corporations to have constitutional rights which we thought were only for individuals.

In the Riddle case, Judge Gorsuch announced a strict scrutiny standard to political contribution limits that quite frankly would make the Citizens United case even worse and would gut campaign finance law limits. I think each of us should be concerned about that decision.

Let me move on to the Trans-American Trucking case. Here, Judge Gorsuch was in dissent. He was in the minority. What he basically said was that a truckdriver had to sacrifice his life in order to protect his job; otherwise, he could be fired. What I mean by that, as I think many of our colleagues know, but let me say to those who might not be totally familiar, the truckdriver found himself abandoned because the brakes of his trailer were frozen in subzero temperatures. He contacted his dispatcher for help and after several hours recognized that his life was in danger because of hypothermia. He did not have adequate heat in his cab.

He had one of three choices. He could try to maneuver the cab and the trailer with frozen brakes, maybe costing himself his life or the lives of other people on the road; he could remain as he was instructed by the dispatcher and perhaps freeze to death; or he could do what I think any reasonable person would do: He disconnected the cab, took care of making sure he was safe, warmed himself up, and returned to the trailer in order to complete the mission. For that, he was fired, and Judge Gorsuch said that was acceptable. That is an extreme opinion and one that gives us great pause as to how Judge Gorsuch will act on the Supreme Court of the United States.

Let me talk about NLRB v. Community Health Services, wherein Judge Gorsuch was again in the dissent. It had to do with backpay for workers. In this opinion, he showed real hostility to workers and unions—something that had me greatly concerned.

Another case that received a great deal of publicity in this body was Hobby Lobby. I raise it here for one principal reason. What the Court was saying and Judge Gorsuch was agreeing with was that the religious protection that is provided under the Constitution—that it is more important for a company to be able to exercise that religious freedom than the employees. Once again, one of my principal concerns is whether Judge Gorsuch will protect the rights of individuals or whether he will side on behalf of business. Clearly, in the Hobby Lobby case, he decided on business, to the detriment of women's rights, the LGBT community, and others.

In the Planned Parenthood Association of Utah case, he showed a direct hostility to Planned Parenthood. Quite frankly, this case is very difficult to understand because Judge Gorsuch would have allowed the Governor to cut off funds even though the case had been settled and the parties had not asked to have the case retried.

We talk about activism and that we do not want to see activist judges. To me, that demonstrates that Judge Gorsuch, indeed, will be an activist judge in his trying to move a particular political agenda.

In Endrew F. v. Douglas County School District, which is a case that came in during the confirmation hearing process, we had a severely autistic child, and Judge Gorsuch was responsible for the absurd reading of the de minimis benefit of defending against private placement. The Supreme Court rightly rejected that logic on an 8-to-0 decision.

Justice Roberts wrote the opinion about the IDEA law in that there are protections for disabled students in our school system. Judge Gorsuch would turn back the progress that we have made on civil rights and on constitutional protection.

As I mentioned earlier, I am very concerned about whether Judge Gorsuch can keep his political views separate from what he says—how he acts as a potential Justice on the Supreme Court of the United States. I go to a 2005 National Review article in which he wrote:

> American liberals have become addicted to the courtroom, relying on judges and lawyers rather than elected leaders and the ballot box as the primary means of effecting their social agenda. . . . This overweening addiction to the courtroom as the place to debate social policy is bad for the country and bad for the judiciary.

I mention that particular case and quote Judge Gorsuch because we do not want a judge to side with either being a liberal or a conservative. We do not want a judge to say: I have a responsibility to promote an agenda as a judge. We do not want a judge to be able to take a political view and take that onto the bench. Whether it is a person whom we agree with politically or disagree with politically, we want to have an independent judiciary. This National Review article causes me grave concern as to whether Judge Gorsuch can, in fact, be that neutral person on the Court.

Judge Gorsuch appears to be an activist judge and will become an activist judge and will turn back progress to protect individual constitutional rights. That is something that gives me grave concern. It is the reason I cannot support this nominee to be an Associate Justice of the U.S. Supreme Court.

Let me turn to process for one moment, because it looks as though, sometime tomorrow, we are going to be called upon to vote on a cloture motion. I want to comment on that if I might.

As I said earlier, to me, Judge Gorsuch is not mainstream. He will put

corporate interests above individual interests. He shows a hostility toward the environment and women, health, women's health, et cetera. He has political views that, I think, he would not be able to differentiate, and he would not be an independent check and balance in our political system.

For all of those reasons, it seems appropriate to me that this is why we have a 60-vote threshold—to make sure that we do not take extreme nominees and allow them to be confirmed by a partisan vote. We want to have a broader consensus, and Judge Gorsuch did not earn that broader consensus.

There are additional considerations here, and this goes back a few years with the Republican leadership. What they did to President Obama's judicial nominations must be underscored because this is not in a vacuum. We did not get to this place in a vacuum from what has happened already but in our going back to President Obama when his district court nominees were delayed—in some cases, totally blocked—and required a record number of cloture motions to have been filed and acted upon—a record number. We had, as I understand, more clotures and more filibusters of President Obama's nominees by Republicans than we did in the entire history of the U.S. Senate.

There has been a direct effort by the Republican leadership to filibuster judicial nominees. That is wrong. It should not have been done. Yes, there are reasons for some but not for the record numbers that were done. You should be able to allow for the comity.

Quite frankly, in 2013, the Republican leader told President Obama: No more DC Circuit Court judges. Let me repeat that. In 2013—this was the first year of the President's term—the Republican leader said: No more DC Circuit Court judges. We had 3 vacancies in the DC Circuit Court; 8 of the 11 had been filled, and 3 were vacant, and it had nothing to do with the nominees. They just said that they were not going to consider any of them, and they used a filibuster to block any filling of these positions.

First, I quote from Chief Judge Henry Edwards when he talked about the DC Circuit:

> The review of a large, multi-party, difficult administrative appeal is the stable judicial work of the DC Circuit. This long distinguishes the work of the DC Circuit from the work of other circuits. It also explains why it is impossible to compare the work of the DC Circuit with other circuits by simply referring to the raw data of case filings.

Chief Justice Roberts noted that about two-thirds of the cases before the DC Circuit involve the Federal Government in some civil capacity. That figure is less than 25 percent nationwide. He also described the DC Circuit's unique character as a court with the special responsibility to review legal challenges of the conduct of the national government.

My point is clear. This is the second most important court in our land, and in the first year of President Obama's term, the Republicans announced that they would filibuster any attempt to put any judge on this circuit. Then we had the ultimate filibuster by the Republicans, and that was Merrick Garland.

In February 2016, after Justice Scalia's death, a nominee was submitted to us by President Obama who was acknowledged to be mainstream, acknowledged to be well qualified, acknowledged to be a consensus nominee, and he got the ultimate filibuster. Most of the Republicans in the Senate would not meet with him. He did not have a committee hearing or a committee vote, and he did not have a floor vote. That was the ultimate filibuster. It was wrong, particularly when we know that he would have received 60 votes.

So you cannot compare Judge Gorsuch with Judge Garland because, unlike Judge Garland, Judge Gorsuch does not share the same evaluation of being able to be a consensus, mainstream candidate who would receive a 60-vote threshold.

For all of these reasons, if the majority leader is going to pursue the cloture vote on the Gorsuch nomination, I will not vote in favor of cloture. I would hope that we would be able to return to the comity that is important in the U.S. Senate, but we recognize there are times in which you should have a 60-vote threshold. When the President of the United States goes outside of the norms and the process has already been employed by the Republicans, I urge my colleagues to rethink the course that we are on.

I yield the floor.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. SCHATZ. Madam President, when our country was founded, corporations were on the minds of no one. They are not mentioned in the Constitution or the Bill of Rights, and when the topic finally came up to the Supreme Court, Chief Justice John Marshall called corporations a ''mere creature of the law.''

People have certain unalienable rights. Corporations do not. We established corporate personhood so that companies could raise capital and enter into contracts, but nobody ever thought that this term that was used—''personhood''—actually meant that corporations were people. They are not. It is not complicated. Corporations do not eat. They do not sleep. They do not worry about their children or their elderly parents. They do not get sick. They do not retire, and they do not have complex motivations. In fact, under the law, they have only one motivation, which is to maximize profits.

Any logical person knows that corporations are not people, but in Judge Gorsuch's America, they are.

There is no doubt that he is a very smart person, but he, actually, had a hand in creating this theory that corporations have the same rights as human beings—that they are, in fact, people. We are supposed to pretend that this premise is not insane, but it is crazy, and it is hurting our democracy. For the past several decades, we have increasingly limited people's rights in favor of corporate rights.

Now Republicans want us to confirm a judge who says that corporations have religious rights. Judge Gorsuch was a part of the Hobby Lobby decision that went before the Supreme Court, in which the Tenth Circuit decided that corporate personhood extends to First Amendment religious rights, and because the corporation itself—not just the people who own it—has been granted those rights by judges like Neil Gorsuch, the rights of corporations now usurp the health and the rights of American citizens. That is the problem with Judge Gorsuch's worldview.

It is not just that he is a conservative; it is that he actually thinks that corporate entities have the very same rights as American citizens—rights, by the way, that do not come with the same responsibilities that we all have as American citizens. Yet this judge wants to confer more rights onto corporations when we are already past the tipping point as a society when corporations have more power than people.

We are in the absurd position of asking: How far are these corporate rights going to extend? They have been given First Amendment rights. They have been given Fourth Amendment rights. Do they get the right to vote next? Do they get the right to keep and bear arms? How many more constitutional rights are we going to give to corporations before we say that enough is enough? We are already well beyond the point at which corporate interests beat out the individual, whether it is at the polls or in the workplace.

There are a lot of other things about Judge Gorsuch's worldview that I object to, but, at my core, I think I might be able to get around some of those things in knowing that the Constitution requires the Senate to advise and consent, not agree with. Yet his worldview regarding corporations as people embodies everything that is going wrong with our country and with the Court. By the way, it is probably fair to say that almost every nominee whom we have seen this year embodies this worldview.

Time and again, Democrats in the Senate have raised the alarm about this administration's nominees, and we have been overruled. What is the result? You have Cabinet Secretaries destroying American diplomacy. You have Secretaries trying to ban Muslims from entering the United States. You have an EPA Administrator, Scott Pruitt, leaving a dangerous product on the market that has been proven by his own scientists to hurt children. Why? Because they prioritize corporate rights over people's rights.

The problem is this: Cabinet Secretaries come and go; Supreme Court

Justices do not. Let me put it this way: This administration's Cabinet is like a date. It is a really bad date, but at least it comes to an end. A Supreme Court Justice on the other hand is not a bad date; it is a marriage. It is a lifetime appointment that will have an impact on generations of Americans.

The fact that he is out of the mainstream is absolutely essential for us to consider. The fact that he thinks corporations are people is, in my mind, disqualifying—so disqualifying that I will vote no on cloture, and I will vote no on final confirmation if it comes to that, which brings me to the question of cloture.

When the Senate votes on cloture, the question before the Senate is, Is it the sense of the Senate that debate should be brought to a close?

For the Supreme Court nominee, we have rules, and those rules say that you need 60 Senators to end debate—not 59, not 51, not 57. There are 59 Senators who do not get to decide when to end debate; 60 do. If you cannot get 60 votes to end debate, you do not have cloture.

After 2013, there is only one position—one appointed position that retains that 60-vote threshold, and that is the U.S. Supreme Court. That is for a very straightforward reason. It is that we have decided as a body that the Supreme Court needs to have bipartisan support; that if a person cannot get 60 votes, you change the nominee, you do not change the rules.

We have decided that this position—this institution, the Court itself, the highest Court in the land—should be beyond our partisan disputes and differences. That is the foundation of the U.S. Senate. It is the way this place works. Without this rule, the reality will be grim. Without this rule, if you are a Member of the minority party, the President's nominees don't have to listen to you, meet with you, think about you. Without this rule, advice and consent is rendered meaningless for whichever party is out of power.

I have been here now 5 years, about 4½ years. Even in my short time here, the door swings both ways in Washington. Remember that today, this week, for the Republicans it might feel satisfying to use power maximally, to use the greatest authority possible under the U.S. Constitution, but without this rule, the Senate itself will be undermined by its own Members. I have never seen any legislative body endeavor to diminish its own authority, and that is what is going to happen this week.

We can argue about how we got here. Was it in 1987 when the Senate rejected Robert Bork? Was it in 2013 when Leader Reid responded to historic obstructionism by eliminating most filibusters on nominees? Was it last year when Merrick Garland was not even given a hearing? We all have our talking points. At the end of the day, both sides own some of this mess. I am a Democrat. I think it is 80/20. Republicans will think it is 80/20 on the other side. The general public may think it is 60/40 or 50/50. I am not sure that matters anymore. The question of who is at fault is not the most important question. The question is, What do we do next? Will the Senate undermine its own authority and strengthen the power of partisanship?

I would say this to my Republican colleagues: Think about what you are going to do next. Think about what this is going to mean the next time you are in the minority party, because it will not be Senators DUCKWORTH and CORTEZ MASTO who can't even get a meeting with a Supreme Court nominee, it will be you.

This is about the future of the Senate and the Supreme Court. The nuclear option will mean nominees for the Supreme Court will not have to meet with or consider minority opinions. It will mean that the Senate's habit of being slow—sometimes maddeningly so, but we know it is in the best interests of the country—will go away for this appointment. That tradition allows the center to hold, and it will be undermined.

To my Republican colleagues, I am not asking you not to do this. I am asking you to take your time. In the world's greatest deliberative body, there is no reason to rush this decision. I am asking you to wait. I am asking you to take a few weeks before you decide to change the Senate forever. Take your time. This is probably one of the most consequential decisions you are going to make in the U.S. Senate because it is about the Senate itself. This is worth talking about. This is worth deliberating over. It is worth thinking over. Go home. Talk to your constituents. If you want to do this, you can do this anytime you want. You can do this the Monday we get back from our spring work period. For goodness' sake, there is no reason not to think about it for a little bit longer.

All we need are three Members of the Republican Party to go to their leader, publicly or privately, and say: We are not with you on nuclear yet; give us some time to try to save this important aspect of the Senate. Otherwise, you will make both the Supreme Court and the world's greatest deliberative body more extreme and more divided, and I believe you will regret it.

I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. MARKEY. Madam President, I rise to speak in opposition to the nomination of Judge Neil Gorsuch to serve as an Associate Justice of the U.S. Supreme Court.

Let me begin by making clear my view that the vacancy on the Supreme Court created by the death of Justice Antonin Scalia was President Obama's to fill. In an act of unprecedented obstructionism that makes a filibuster pale in comparison, Senate Republicans broke with longstanding Senate tradition and refused to hold a vote or even a hearing on President Obama's nominee, Judge Merrick Garland.

As we now consider President Trump's nominee, Judge Neil Gorsuch, we cannot ignore or forget this hyperpartisan action. We also cannot ignore how President Trump came to nominate Judge Gorsuch. President Trump went to two of the most partisan, conservative organizations he could find—the Koch brothers-supported Heritage Foundation and the rightwing Federalist Society—and said to them: Who do you want on the Supreme Court? They compiled their dream team of 21 ultraconservative candidates. President Trump looked at the names on that list and asked himself which judge could pass the rightwing litmus tests he had articulated during the campaign. His choice was Judge Neil Gorsuch.

On the campaign trail, Candidate Donald Trump made clear that he was pro-life and would appoint pro-life judges to the Supreme Court. In one interview, he was asked about his pro-life position as follows:

> So, how important is that issue to you now? When President Trump picks Supreme Court justices, would there be a litmus test?

Trump responded:

> It is. It is.

During the second Presidential debate, Candidate Trump doubled down on this issue. He was asked specifically about Roe v. Wade, the longstanding Supreme Court precedent establishing a woman's right to choose. The question to Candidate Trump was ''Do you want the court, including the justices that you will name, to overturn Roe v. Wade?''

Trump responded that he would ''be appointing pro-life judges,'' adding, ''Well, if we put another two or perhaps three justices on . . . that will happen,'' meaning Roe v. Wade will be overturned.

We know from Donald Trump's own words that he had a litmus test for Supreme Court nominees on a woman's right to choose. That litmus test is that he will appoint only pro-life Justices who are committed to overturning Roe v. Wade.

What about a litmus test on guns? During the Presidential campaign, Candidate Trump repeatedly emphasized his pro-gun views, which are in lockstep with the National Rifle Association. He was asked about a litmus test for the Second Amendment—specifically, the precedent established in the 2008 Supreme Court case of District of Columbia v. Heller. In Heller, the Justices ruled 5 to 4 that a commonsense Washington, DC, law banning handguns and requiring other firearms to be stored unloaded or locked violated the Second Amendment.

Candidate Trump was asked: ''Will you make upholding the Heller decision a litmus test in Supreme Court nominees?''

Trump answered: ''Yes, I would.''

The followup question: ''So you won't nominate somebody to the Supreme

Court unless they agree with Scalia on the Heller decision?''

Trump responded: ''Correct.''

We know from Donald Trump's own words that he had a litmus test for Supreme Court nominees on guns—his judges must support the National Rifle Association's agenda and its unreasonable and dangerously broad view of the Second Amendment.

From that list of 21 names provided to him by the Heritage Foundation and the Federalist Society, President Trump chose Judge Neil Gorsuch, apparently convinced that he was the man who would pass these litmus tests.

The Senate Judiciary Committee's hearings on Judge Gorsuch were an opportunity for him to dispel doubts about his independence that President Trump's selection process had raised. Unfortunately, Judge Gorsuch did nothing to address these concerns. In fact, his appearance before the Judiciary Committee raised more questions than it answered because Judge Gorsuch was positively sphinx-like before the Senators questioning him.

For example, when repeatedly asked about something as elementary as his judicial philosophy, Judge Gorsuch refused to answer. He declined to say whether he agreed with the Roe v. Wade decision, the District of Columbia v. Heller decision, or other controversial decisions, such as Citizens United, which opened the floodgates to unrestricted, secret money in electoral campaigns, or even the decision in Bush v. Gore, which decided the 2000 Presidential election.

Judge Gorsuch also refused to respond whether he agreed with other Supreme Court precedents on the right to privacy, the right to counsel in criminal proceedings, voting rights, or same-sex marriage. Contrast that to Justice Sonia Sotomayor, who during her confirmation hearing explained that she fully understood the individual right to bear arms that the Supreme Court recognized in the Heller decision. Contrast that with Justice Anthony Kennedy, who during his hearing praised the Supreme Court's landmark 1963 decision in Gideon v. Wainwright, which established the right to counsel in criminal cases. Even contrast Judge Gorsuch with Chief Justice John Roberts, who at his hearing affirmed that privacy is part of the liberty interest protected by the due process clause. Instead, at his hearing, Judge Gorsuch repeatedly parroted that critical Supreme Court decisions were precedents of the Court ''that he would follow unless and until they are overturned.'' He shed no light on what he felt about those precedents or whether he would be inclined or disinclined to vote to overturn them.

Only after considerable prodding did Judge Gorsuch eventually agree that the decision in Brown v. Board of Education, which did away with the doctrine of separate but equal and desegregated schools across our Nation, was correct. Having to pry out of Judge Gorsuch that concession does not inspire confidence in him.

His performance at the hearings left us with many troubling things that we don't know about Judge Gorsuch, but equally troubling about Judge Gorsuch are the things we do know about him.

We do know that Judge Gorsuch authored the Hobby Lobby decision in which he ruled that corporations are people whose religious beliefs are more important than the reproductive rights and health of women.

We do know that Judge Gorsuch has questioned the judicial doctrine of what is known as Chevron deference. That is the rule from the Supreme Court case of Chevron v. The Natural Resources Defense Council under which judges must generally defer to expert administrative agency interpretations of laws they are charged with administering. In a speech last year, Judge Gorsuch attacked the modern administrative state that has developed under Chevron, saying that it ''poses a grave threat to our values of personal liberty.''

What Judge Gorsuch is saying is not some abstract legal theorizing; he is attacking the fundamental rules that protect the health, safety, and welfare of all Americans that are put in place by agencies like the Environmental Protection Agency, the Food and Drug Administration, and the Securities and Exchange Commission. In the decades since Chevron was decided, it has been instrumental in courts upholding these agency rules that ensure that our air and drinking water are clean; rules that ensure that drugs and medicines are safe and effective; rules that ensure that our automobiles, workplaces, food, medicine, and children's toys are not dangerous; and rules that ensure our financial markets are fair and offer investors a level playing field.

Even Justice Scalia supported Chevron deference. But Judge Gorsuch has signaled that he would overturn it and instead allow pro-corporate judges to substitute their policy views for those of the agency experts. If threatening the destruction of the regulations that protect the health, safety, and welfare of Americans sounds familiar, it should. It is straight out of the alt-right, Steve Bannon playbook. And it is a fringe position that is not worthy of representation on our Nation's highest Court.

We also know that the Supreme Court just rejected Judge Gorsuch's harsh reasoning in a disabilities rights case. A few years ago, Judge Gorsuch wrote an opinion for the Tenth Circuit Court of Appeals in a case under the Individuals with Disabilities Education Act. That opinion held that schools across the country must provide educational benefits to students with disabilities that must be ''merely more than de minimis.'' But just last week, in an IDEA case, all eight Supreme Court Justices disagreed with Judge Gorsuch. Chief Justice Roberts wrote that the IDEA—the Individuals with Disabilities Education Act—is ''markedly more demanding than the 'merely more than de minimis' test applied by the Tenth Circuit,'' and added that Judge Gorsuch's approach would effectively strip many disabled students of their right to an education.

We also know that Judge Gorsuch has consistently ruled against employees in cases involving claims of unsafe workplaces and sex discrimination, and he has repeatedly sided with insurance companies that sought to deny disability benefits to employees.

Here is something else we know. If the first 75 days of the Trump administration are a preview of coming attractions, one thing could not be more clear: The U.S. Supreme Court's rule defending the Constitution will be tested as never before: conflicts of interest, emoluments, Muslim bans, rescinding LGBTQ protections. The list of constitutional rights the Trump administration is violating gets longer every single day.

Now more than ever, we need a Supreme Court Justice who is independent and not beholden to ideology. Now more than ever, we need a Justice who will stand up for the rights of all Americans against big corporate interests. A Justice who would be to the right of Antonin Scalia on the issue of Chevron deference is not a mainstream Justice. A Justice who would be to the right of Samuel Alito and Clarence Thomas by a substantial margin—as professors from Michigan State University and the University of Wisconsin concluded after examining Judge Gorsuch's opinions on the Tenth Circuit, and the Supreme Court's decisions reviewing them—is not someone within the mainstream of American jurisprudence.

Everything we have seen so far—from Donald Trump's judicial litmus tests, to the visible hand of rightwing interest groups in the selection process, to Judge Gorsuch's reticence before the Judiciary Committee, to his pro-corporate bias in cases he has decided—leads me to the conclusion that he will be neither a Justice for all Americans, nor one on whom we can count to stand up to President Trump.

We cannot let Judge Neil Gorsuch become the crucial ninth vote on the Supreme Court. One Justice matters. The list of recent 5-to-4 decisions coming out of the Supreme Court shows that one judge's vote can forever alter history. Just remember that Bush v. Gore, Citizens United, District of Columbia v. Heller, and the Affordable Care Act, were all decided by 5-to-4 votes.

I will, therefore, oppose Judge Gorsuch's nomination to the Supreme Court and support the filibuster, and I urge my colleagues to do so, as well. If Judge Gorsuch cannot muster 60 votes, the problem is not with the process, it is with the nominee. If Judge Gorsuch cannot get to the 60 votes historically required for confirmation to the Nation's highest Court, I urge President Trump to withdraw his nomination and

consult with a wide range of Senators—legal scholars and others who past Presidents have sought out before making a Supreme Court nomination—and put before us someone in the mold of Merrick Garland, who can enjoy bipartisan support and be within the broad mainstream of American jurisprudential history.

Otherwise, the consequences of forcing Judge Gorsuch's nomination through will fall squarely on the shoulders of President Trump and his Republican allies in the Senate, if they decide to exercise the nuclear option, forever changing the history of the United States Senate.

I urge a ''no'' vote on Judge Gorsuch.

I yield back to the Chair.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. KAINE. Madam President, I also rise to discuss the Supreme Court nomination of Judge Neil Gorsuch of the Tenth Circuit. I take this very seriously.

I started my legal career as an appellate law clerk in the Eleventh Circuit Court of Appeals in the South, working for a spectacular jurist, Judge R. Lanier Anderson III. He taught me about what it was to be an appellate judge: humility, not making a case a personal cause, and careful application of the law.

I then went on to practice law in the State and Federal courts, the trial and appeal courts, including the U.S. Supreme Court as a civil rights lawyer for 17 years. When I was the Governor of Virginia, I twice had to appoint members of the Virginia Supreme Court and grappled with qualifications to serve on an appellate bench.

Maybe most especially, my wife was a judge. So with a judge in the house—she was a judge for 8 years—I spent a lot of time also thinking about the characteristics of a good judge. Judge Gorsuch has some strong characteristics, educational background, and professional experience. These are characteristics that are worthy of respect. But I have decided that there is an additional characteristic that is very important—judicial philosophy.

And as I have looked at Judge Gorsuch's judicial philosophy, I have concluded that I cannot support him. I have read scores of his opinions. I met with him in my office. I am so proud of my colleagues—Democrat and Republican—because in 2 months, Judge Gorsuch has enjoyed something that Merrick Garland didn't get in 10 months. Judge Gorsuch has had meetings with virtually all Senators. He has had a Judiciary Committee hearing, a Judiciary Committee vote. He is getting floor debate, and he will get a floor vote. Those are the five things he is entitled to, and he is getting all of them.

Judge Merrick Garland was nominated. Republicans wouldn't meet with him. They wouldn't hold a hearing. They wouldn't do a committee vote. They wouldn't do a floor debate, and he wouldn't get a floor vote. He got nothing he was entitled to as a sitting judge on the DC Circuit. Also, the Senate didn't exercise the advice and consent function that is part of our constitutional job description.

Let's talk about Judge Gorsuch's record. Many of my colleagues have been speaking for hours. I want to focus on one aspect of his record. Judge Gorsuch was promoted by President Trump as not an activist. And Judge Gorsuch has written with scorn about activist judges, saying that judges who impose their moral or social preferences on others can't square their position with the Constitution. He even scorned activists in courts, saying that liberals are addicted to the courtroom, as if somehow bringing constitutional claims in courts is wrong.

So I think it is fair to look at Judge Gorsuch by his own standard. Is he an activist or not? The best definition of a nonactivist judge was the definition given by Chief Justice Roberts during his confirmation hearing. He said: I am an umpire. I have no platform. I have no agenda. I call balls and strikes without fear of any party, without favor to any party. I am an umpire.

I looked at Judge Gorsuch's record and talked about a set of cases that determine whether that is, in fact, true. And I have concluded that Judge Gorsuch is definitely an activist. He may not be an activist on everything. I don't think you have to be an activist on everything to be an activist, but I do believe he is an activist. It shows through in no area clearer than it shows through in cases dealing with women's ability to make their own decisions about their own healthcare, especially reproductive health.

There is a famous 2013 case that has been much discussed during these discussions and in committee—Hobby Lobby v. Burwell. It was a challenge brought up in the Tenth Circuit, where Judge Gorsuch now sits. The legal question before the circuit court was pretty straightforward. Under a congressional act designed to protect religious liberty—the Religious Freedom Restoration Act—a company claimed that its religious views conflicted with the contraception mandate of the Affordable Care Act. And, if so, could they gain protection for their own position?

It was sort of a controversial case because the notion that a company could assert religious views was sort of a novel theory at the time. But, with Judge Gorsuch as part of the majority, the majority in the Tenth Circuit ruled that, yes, a company could assert a claim based on sincerely held religious beliefs under the RFR statute. And they could assert that their beliefs conflicted with the ACA's contraception mandate.

Then, in 2014, that ruling was upheld by the U.S. Supreme Court—a controversial decision, but the majority agreed with the position that, yes, a company could assert that its sincerely held religious beliefs were, in fact, in conflict with the statute, and they could get relief from the statute for doing that. Judge Gorsuch joined the ruling, which was later affirmed by the Supreme Court.

What interested me about Judge Gorsuch in the case was that he chose to write a concurring opinion. Most folks know what they are. If you are not a lawyer—when a panel writes an opinion, there is a majority opinion that is the ruling in the case. If a judge feels that it is wrong, a judge will write a dissenting opinion saying: No, you are wrong, and here is why. You are dutybound, if you think the majority is wrong, to write a dissent.

A concurring opinion is about as voluntary as it gets. A concurring opinion is: I agree with the outcome, but I have a point I want to make. I can't convince the rest of the majority to go along with me, and I want to make this point.

So Judge Gorsuch wrote a concurring opinion that was incredibly revealing. It was voluntary, and that shows you a little about a person's philosophy. It was incredibly revealing for two reasons. First, Judge Gorsuch had already joined the majority opinion to say that the employer, Hobby Lobby, could challenge the employer mandate of the ACA. He had already joined that, but he stretched beyond to rule that, in addition, the individuals owning the company should be able to sue to challenge the employer mandate, even though they weren't the employer.

The ACA mandate applied only to the employer of the female employees. The employer was Hobby Lobby. But even though the mandate didn't even apply to the Green family who owned the company, Judge Gorsuch said that they should be able to challenge the ACA anyway.

I practiced law for a long time. There is a complete separation—there is supposed to be—between individuals and an incorporated company. You can run a business and not incorporate it, and in that case, there is no separation. But as soon as you incorporate it, you get all kinds of protections, especially that you can protect your own personal assets from liability for corporate actions. The Green family had done that. But Judge Gorsuch said: Even though you voluntarily separated yourself from the company and even though the mandate doesn't apply to you, you should be able to file a lawsuit to challenge the mandate. I found that to be highly unusual—a great stretch. I asked him about it when we talked. He did not give me a satisfactory answer.

Here was the thing about the Hobby Lobby case that was more notable. It was the way Judge Gorsuch described what the case was about. The majority opinion in the Tenth Circuit and the majority opinion in the Supreme Court described the case the same way. They basically said that the owners of this company claimed that the contraception mandate was contrary to their religious views. That is what the case

was about. The clash was between the owners' religious beliefs and the statute. That is what the case was about. But Judge Gorsuch described the case completely differently. Here are his words:

All of us face the problem of complicity. All must answer . . . to what degree we are willing to be involved in the wrongdoing of others.

He didn't describe it as a clash between the owners and the statute. He described it as a case about whether you are willing to be complicit in the wrongdoing of others. That wasn't the legal issue at all. In the Gorsuch concurring opinion in Hobby Lobby, what does that phrase mean—''the wrongdoing of others''? Who are the others he is talking about? He is talking about female employees of Hobby Lobby, who wish to make their own choice from among available and lawful methods of contraception. Those are the others he is referring to.

He is also referring to that choice as ''wrongdoing.'' That is a completely editorial comment that is not drawn from what a lawyer said or what a plaintiff said. That is his own characterization of the case, and it is completely irrelevant and, I would argue, insulting. It is a completely irrelevant and insulting reference to something that was not part of the case at all, except Judge Gorsuch decided to inject it into the case.

Somebody who looks at women making their own choice of contraception as the ''wrongdoing of others''—that is very telling.

The PRESIDING OFFICER. The time for the Democrats has expired.

The majority whip.

Mr. CORNYN. Madam President, if my friend the Senator from Virginia needs a minute or two to wrap up, I know it caught him midthought. I am happy to yield to him for that purpose.

Mr. KAINE. I would appreciate it. I will take 2 minutes and finish quickly.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. KAINE. I thank my friend, the deputy majority leader, the senior Senator from Texas.

I draw support for my conclusion about that language from two other cases that Judge Gorsuch was involved in in the Tenth Circuit, one case dealing with contraception and one case dealing with an effort to defund Planned Parenthood in Utah.

In both cases, the Tenth Circuit reached a decision that was pro-women's health, pro-women's health access. The parties were fine with the decisions. They were going back to the district court and they did not apply to have the cases reheard en banc. But in both those cases, Judge Gorsuch took the highly unusual step of trying to get the appeals heard anyway, even though the parties did not want to have them reheard. In my experience as an appellate advocate, that is virtually unheard of. I have talked to litigators in the Tenth Circuit, and they have said the same thing. It is highly rare. The fact that Judge Gorsuch would do it in two cases—both of which involved women's health access—is important.

Finally, in his confirmation hearing, Judge Gorsuch was asked directly whether he agreed with the decision in Griswold v. Connecticut, the 1965 decision that said married couples could not be criminalized for using contraception.

He said it was a precedent worthy of respect like all precedents, but he would not agree—he would not say he agreed with the case. Chief Justice Roberts, during his confirmation, said he agreed with the case. Justice Thomas said: I have no quarrel with Griswold. Justice Alito said he agreed with the case. But Judge Gorsuch would not.

Griswold v. Connecticut has been used repeatedly in the last 50 years to basically create a body of constitutional precedent that says the relationships of people—romantic, inmate relationships—should be free from the intrusion of Big Government. You can't criminalize somebody because of their relationship. I think somebody who is not willing to commit to that principle is somebody who has not earned my vote.

With that, I yield the floor. Again, I thank my friend from Texas.

The PRESIDING OFFICER (Mr. YOUNG). The majority whip.

Mr. CORNYN. Mr. President, Members of the Senate have been coming to the floor talking about the important vote we will be casting tomorrow and then again on Friday which will result in the confirmation of Judge Neil Gorsuch as the next Associate Justice of the Supreme Court.

Having served on the Senate Judiciary Committee since I first came to the Senate, it has been my honor to participate in the confirmation hearings in the committee on now five Supreme Court Justices, Judge Gorsuch being the latest.

What I have been struck by when it comes to Judge Gorsuch is how much our friends across the aisle—who cast a party-line vote in the Judiciary Committee against the judge on his confirmation—how much they have been struggling to come up with even one intellectually honest argument against the nominee, in spite of his obvious and tremendous qualifications and bipartisan support.

For example, I heard our colleague from Virginia, my friend Senator KAINE, criticize a couple of decisions that the judge made. What he left out is that Judge Gorsuch participated in 2,700 panel decisions on the Tenth Circuit Court of Appeals during his 10-year tenure there. Ninety-seven percent of them were unanimous. As the Presiding Officer knows, that means that each of the judges—three judges on the typical panel or in an en banc—basically that everyone agreed, whether they were nominated by a Republican or Democrat. So this whole idea of cherry-picking the judge's judicial report to try to find some straw, to grasp at some straw with which to disagree with his confirmation is pretty striking to me.

But last night we saw the latest act of desperation to try to justify the unprecedented partisan filibuster of Judge Gorsuch. For example, it was reported that a handful of lines in a 2006 book were borrowed from other sources. Well, the timing of this says it all. This book has been published for 10 years. The only reason for this allegation is a last-minute attempt to try to make something, really anything stick to tarnish the character of someone who will soon serve on the Supreme Court.

This kind of baseless attack is not only disingenuous, it is transparent and it has absolutely no merit. Even the author of the main article allegedly plagiarized has rejected that characterization. So this is the person who wrote the article who Judge Gorsuch was claimed to have plagiarized, in essence. Well, the author of the main article rejected the characterization of plagiarization. She said that under the circumstances, it would have been awkward and difficult for Judge Gorsuch to have used different language.

Other academic experts have also rejected the claim and made clear that the preferred methodology for facts is to cite original sources, which is exactly what Judge Gorsuch did. Talk about an eleventh-hour baseless attack.

The bottom line is this: Instead of evaluating the judge based on his qualifications, the sterling reputation he has among people across the political spectrum, our friends across the aisle are determined to attempt the first successful partisan filibuster of a Supreme Court nominee. That is disappointing, but it is also destined for failure.

Yesterday, I pointed out how we actually got here. Back during President George W. Bush's first term, Senator SCHUMER and others laid the groundwork and then executed a strategy for unprecedented obstruction of judicial nominees. That was in response to the election of the last Republican President. This is in response to the election of a new Republican President. I think for him, following the election of the current one, obstruction of a perfectly qualified nominee to the Supreme Court is just the next step. It actually represents the ultimate escalation of this weaponization of the filibuster used in judicial confirmations.

As I have said before, based on the merits of the nominee, the justifications for opposing Judge Gorsuch are paper thin. Our colleagues across the aisle unanimously supported Judge Gorsuch when he was confirmed to the Tenth Circuit Court of Appeals just 10 years ago. He got everybody's vote. It was a voice vote. This was to the Tenth Circuit Court of Appeals, a lifetime tenured position. All of them agreed he

should be confirmed. Well, that includes then-Senator Obama, Senator Clinton, and Senator Biden. So I would ask you, what has changed in the last 10 years that now cause them to reach deep into their bag of tricks and to filibuster this nominee for the Supreme Court? Well, it is not his track record as a judge, that is for sure. As I mentioned, of the 2,700 cases he has participated in, 97 percent were unanimous—97 percent.

One recent analysis put him in the middle of the circuit ideologically speaking, and for a decade he has done good, fair work as a judge on the Tenth Circuit—really outstanding work, to be honest. That should tell you something about this judge and this man, but it should also tell you something about the opponents of this nominee, many of whom, like Barack Obama and Hillary Clinton, as I mentioned, supported his nomination just 10 years ago. The only thing that has changed, the only thing that explains the radical shift of Democrats in opposition to this good judge, is that now President Trump is in the White House.

I honestly believe that every excuse they have come up with to engage in this unprecedented filibuster is completely without merit. What they are really upset about is what happened on November 8. I don't believe—if they won't confirm Judge Gorsuch, they will never vote to confirm any nominee of this President, period.

What we are talking about and all we are asking for is an up-or-down vote. If they want to vote against the nomination, that is their right, but, as everybody knows, to get to that, we first have to get 60 votes to close off debate and then get to the majority up-or-down vote. But they will not even allow us to move to a vote.

I hope our Democratic friends who are obstructing will reconsider. I believe there are four Democrats who are going to join all of the Republicans in voting to confirm this nominee, so he will enjoy bipartisan support, as he should.

This judge is a faithful interpreter of the law. He believes in an independent judiciary and enjoys support across the ideological spectrum. He will be confirmed as the next Supreme Court justice, but it is up to our Democratic friends to determine just how that occurs.

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. ROUNDS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. ROUNDS. Mr. President, I rise today to offer my strong support for Judge Neil Gorsuch, President Trump's pick to replace Justice Scalia on the Supreme Court. On Monday, his nomination passed out of the Senate Judiciary Committee, and we expect to confirm him before the end of the week. I am tremendously excited to have him on the bench. Throughout his career, Judge Gorsuch has proven time and again that he is exceptionally qualified to serve on the Supreme Court. He has been praised and endorsed by members on both sides of the political spectrum, the left and the right.

As a judge on the Tenth Circuit Court of Appeals since 2006, after being unanimously confirmed by this body, Judge Gorsuch has proven he is as mainstream as they come. In fact, of the 800-plus opinions that he has written for the Tenth Circuit, less than 2 percent, or 14 opinions, have drawn dissents from his colleagues. In other words, 98 percent of his opinions have been unanimous. That is even more remarkable when you look at the makeup of the Tenth Circuit—12 of the judges were appointed by Democratic Presidents, while only 5 were appointed by Republicans. It does not get much more mainstream than that.

During his confirmation hearings last month, Judge Gorsuch again proved that he is eminently qualified to serve on the bench of our Nation's highest Court. Let me share some of his quotes from his hearing:

''The Constitution doesn't change. The world around us changes.''

''I don't believe in litmus tests for judges.''

''If I'm confirmed, I will do all my powers permit, to be a faithful servant to the Constitution and laws of this great nation.''

One last quote:

> As a judge now for more than a decade, I've watched my colleagues spend long days worrying over cases. Sometimes the answers we reach aren't the ones we personally prefer. Sometimes the answers follow us home at night and keep us up. But the answers we reach are always the ones we believe the law requires. And for all its imperfections, I believe that the rule of law in this nation truly is a wonder. And that it's no wonder that it's the envy of the world.

It is clear that Judge Gorsuch is qualified to serve on the Supreme Court and that he understands the role of a judge: to interpret the law, not to make the law.

To that end, I would also like to highlight Judge Gorsuch's in-depth understanding of the separation of powers doctrine, and I am optimistic that Judge Gorsuch will carefully scrutinize cases and controversies that involve executive overreach.

The past 8 years have seen an unprecedented expansion of the administrative state. This has come at the expense of both the legislative branch, whose purpose is to make laws, and the judicial branch, whose purpose is to interpret the law and decide on a specific law's constitutionality. But more concerning than that, it has also come at the expense of American citizens.

Overreach by executive agencies has led to regulatory expansion that results in the Federal Government involving itself in nearly every facet of our lives on a daily basis. This expansion has been permitted, in part, to U.S. courts relying on the flawed Chevron doctrine to show great deference to agency interpretation of the laws passed by Congress. As a result, agencies have been able to broadly interpret laws in a way that has allowed them to expand their regulatory authority far beyond what Congress ever intended.

Fortunately, U.S. judges are beginning to question the Chevron doctrine and its impact on the separation of powers doctrine relied on by our Founding Fathers and affirmed in the U.S. Constitution. Judge Gorsuch is one of those judges. Regarding Chevron, Judge Gorsuch has written that Chevron seems to be no less than a judge-made doctrine for the abdication of the judicial duty that prevents American courts from fulfilling their constitutionally delegated duty—interpreting what the law actually intends.

Careful judicial scrutiny and interpretation of the law will allow courts to rein in agency actions that are inconsistent with the law and beyond the bounds of what Congress intended.

In his concurrence in Gutierrez-Brizuela v. Lynch, Gorsuch argues that the Administrative Procedure Act vests in the courts the responsibility to ''interpret statutory provisions and overturn agency action inconsistent with those provisions'' and questions the idea that Congress ''intended to delegate away its legislative power to executive agencies.''

Judge Gorsuch takes his duty as a judge with the utmost seriousness. He seeks to interpret the law the way Congress intended, not in the way an executive agency wants it to be.

His careful and academic approach to judicial review is well-suited for our Nation's highest Court. I am confident that Judge Gorsuch will respect and enforce the constitutionally affirmed separation of powers doctrine that in recent years has been diluted by executive agencies broadly interpreting laws, resulting in regulatory overreach. This has minimized the role of Congress in the legislative process. As a result, the voices of American citizens have also been minimized and replaced with unelected Washington bureaucrats who think they know what is best for all Americans.

Judge Gorsuch is one of the finest judges our Nation has to offer. The knowledge and careful deliberation he will bring to the Court will result in rulings that reflect justice, fairness, and an interpretation of what the law is and what Congress intended it to be, not what administrative agencies want it to be.

Despite impeccable credentials, we are in a situation today because of a precedent set in November 2013 by then-Majority Leader Harry Reid and his conference. Former Leader Reid's use of a so-called nuclear option in 2013 meant the Senate could reinterpret its rules via simple-majority vote. Former

Leader Reid accomplished this by challenging a ruling of the Chair with regard to the number of votes needed to end debate on certain nominations.

The Standing Rules of the Senate require the support of a supermajority, or 67 percent of Senators, to change the rules. To challenge the ruling of the Chair, Reid only needed a majority vote to overturn the Presiding Officer's correct interpretation of the written rule. In other words, Former Leader Reid broke the rules to change the rules and, by default, broke precedent to change the precedent moving forward as well.

Based on this new precedent set by Former Leader Reid, the Senate is likely to confirm Judge Gorsuch to the Supreme Court by a simple-majority vote. Because the Senate has always operated on precedent, we will likely follow this new precedent to approve Judge Gorsuch's nomination later this week.

When he is confirmed, Judge Gorsuch will make a tremendous addition to the Supreme Court. His lifetime of defending the Constitution and applying the law as it was written provides clear evidence that he has the aptitude for this lifetime appointment to our Nation's highest Court.

Mr. President, 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.

Mrs. FISCHER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mrs. FISCHER. Mr. President, I rise today in support of the nomination of Judge Neil Gorsuch to be our next U.S. Supreme Court Justice. Article II, Section 2 of the Constitution entrusts Members of the Senate with a responsibility vital to our democracy: providing advice and consent on the President's Supreme Court nominees.

The significance of this task cannot be overstated, and it is one that I take very seriously. Days after President Trump nominated Judge Gorsuch to fill the late Justice Scalia's seat on the Supreme Court, I shared the qualities that I wanted to see in a Justice. They included a strong commitment to the rule of law, first-rate credentials, and a solid judicial record. The time has come to determine whether the nominee meets those criteria.

After meeting personally with Judge Gorsuch, watching his confirmation hearing, and evaluating his background and legal record, I believe that answer is a resounding ''yes.'' Judge Gorsuch's credentials are exemplary. He has an extraordinary resume and a brilliant mind. For 10 years he has served on the U.S. Court of Appeals for the Tenth Circuit. The Senate confirmed him to this position by unanimous consent in 2006. No rollcall vote was needed because all 100 Members supported the nomination.

To date, Judge Gorsuch has decided 2,700 cases, and 99 percent of the time he sided with the majority. He has offered opinions in 800 of those cases, and 98 percent of the decisions in these cases were unanimous. This record tells us something important: He is well within the mainstream. It is why he has gained the respect of prominent attorneys on the right and on the left. Several of my Democratic colleagues have made similar observations.

Senator DONNELLY recently said that he would support Judge Gorsuch's nomination because ''he is a qualified jurist who will base his decisions on his understanding of the law.''

Similarly, Senator HEITKAMP indicated that she would vote to confirm Judge Gorsuch because ''he has a record as a balanced, meticulous, and well-respected jurist who understands the rule of law.''

My colleagues have it right. A Justice should be a follower of the Constitution, not a trailblazer or an advocate. His or her role is to interpret and uphold the laws, not to create them. Judge Gorsuch understands this. He takes it seriously.

In his confirmation hearing before the Senate Judiciary Committee, Gorsuch emphasized the importance of judicial precedent and a fair approach to the law. He said: ''I come here with no agenda but one . . . to be as good and faithful a judge as I know how to be.'' Similarly, in a private meeting in my office, the judge promised to ''follow the law, wherever it may lead.''

Judge Gorsuch recognizes the pivotal but limited role that the Constitution allows judges to play in our Republic. During long days of testimony at his confirmation hearing, he made clear that while legislators answer to the people, a judge answers only to the law. At the same time, Judge Gorsuch said that he interprets his judicial oath as a promise to ''make sure that every person, poor or rich, mighty or meek, gets equal protection of the law.''

''Equality before the law'' is Nebraska's State motto. It represents the commitment Nebraskans made 150 years ago when we entered the Union. That principle remains strong today. It should be a cornerstone of judicial philosophy for any nominee to our Nation's highest Court. It is why the words ''Equal Justice Under Law'' are engraved on the front of the Supreme Court. Judge Gorsuch is dedicated to this principle. He is committed to applying the laws neutrally, equally, and fairly to all people.

Some of my Democratic colleagues are saying that Judge Gorsuch is out of the mainstream. They argue that he will not look out for the little guy. They are prepared to take the unprecedented and extreme step of filibustering this nomination. This would be the first successful totally partisan filibuster of a Supreme Court Justice in the history of the U.S. Senate.

Let me share some of the facts about this institution. In our country's history, no Cabinet nominees have ever been denied their appointments by a Senate filibuster. In our country's history, no Federal district court judges have ever been denied their seats by a Senate filibuster.

The first time a filibuster was used to defeat a judicial nomination was for a Circuit Court judge, Miguel Estrada, who was nominated by President George W. Bush to the U.S. Court of Appeals for the DC Circuit.

In our country's history, the filibuster has been invoked only to block a Supreme Court nominee. It was in 1968, and a threatened bipartisan filibuster by Republicans and Democrats prevented Associate Justice Fortas from becoming Chief Justice of the Supreme Court. The nominee ended up withdrawing because of ethical concerns. Two sitting members of the Supreme Court were confirmed by fewer than 60 votes on an up-or-down vote, but neither one was the subject of a filibuster.

A filibuster of this nominee sets a dangerous precedent and undermines the reputation of this institution. Judge Gorsuch will make an excellent Supreme Court Justice. The American people deserve to have him on the bench. I look forward to voting in support of Judge Gorsuch's nomination to serve as our next Supreme Court Justice. And I urge my Senate colleagues to do the same.

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. LEAHY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. LEAHY. Mr. President, I do not see anybody on the floor, but I understand that this time has been reserved for the Republican side.

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. HOEVEN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. HOEVEN. Mr. President, I am honored to come to the floor today and join my colleagues to support the nomination of Judge Neil Gorsuch to the Supreme Court of the United States.

Judge Gorsuch is an exemplary pick for my home State of North Dakota and for our Nation as a whole. He has shown deep respect for the Constitution and has a strong record of upholding the rule of law.

If confirmed, Judge Gorsuch will take the seat that was held by the late Justice Antonin Scalia. Of course, filling that vacancy will be no easy task. Justice Scalia was a brilliant legal

mind who had earned the respect of many in the legal community during his nearly 30 years on the Supreme Court. He was a true defender of the U.S. Constitution and sought to protect it so that future generations of Americans could live and thrive in a free society. His legacy on the Court will influence American jurisprudence for generations to come.

If there is anyone who is worthy of filling Justice Scalia's shoes, it is Judge Gorsuch. Like Scalia, Judge Gorsuch is an originalist when it comes to interpreting the Constitution.

I had the pleasure of meeting with Judge Gorsuch last week to discuss his nomination, and I am confident that he will make an excellent Justice.

If you look at his background, it is clear that he is an incredibly qualified nominee. After receiving degrees from Columbia, Harvard, and then Oxford, Judge Gorsuch went on to clerk for notable Supreme Court Justices Byron White and Anthony Kennedy before entering private practice.

After 10 years of private practice, Gorsuch began his career in public service as a Deputy Associate Attorney General at the U.S. Department of Justice. In 2006, he was nominated by President George W. Bush to the U.S. Court of Appeals for the Tenth Circuit, and he was confirmed unanimously by the U.S. Senate.

Let me repeat that. He was confirmed unanimously by this body. I believe that says a lot about Judge Gorsuch as a candidate. In a body that is so often divided, a candidate who can receive unanimous support is truly noteworthy.

When nominated by the President, Judge Gorsuch said: ''A judge who likes every outcome he reaches is very likely a bad judge . . . stretching for results he prefers rather than those the law demands.'' During his tenure on the Tenth Circuit, he has demonstrated fair and prudent judgment in his opinions.

In addition to his impressive professional background, Judge Gorsuch has roots as a westerner and will bring those roots and a much needed perspective to the Supreme Court. Because decisions that come from the Court affect the lives of Americans from across the country, it is important that the Court be composed of Justices from different regions of the country. It is critical that our next Supreme Court Justice have a familiarity with the challenges Western and Midwestern States face, like my home State and others—issues such as States' rights, Second Amendment rights, land use disputes, and the complex relationship between State and Tribal governments. These are the everyday realities we face across this country that the Justices must deal with.

I expect many of these important issues to come before the Supreme Court in the coming months. In fact, just yesterday, the Court decided to move forward on litigation regarding former President Obama's waters of the U.S. rule, also known as WOTUS, which has had a significantly burdensome impact on farmers and ranchers and threatens the constitutional role of the States.

Judge Gorsuch's background also makes him a prominent voice for Indian Country. As chairman of the Senate Indian Affairs Committee, I believe it is important for our next Supreme Court Justice to have a concrete record of respecting Tribal sovereignty. I was pleased to learn that he has earned the support of a number of Native-American groups, including the National Congress of American Indians and the Native American Rights Fund.

Judge Gorsuch has had a long history of handling cases that have affected Native Americans from his time on the Tenth Circuit, and he has demonstrated a consistent understanding of the unique legal principles that are involved in Federal Tribal law. The boundary between State and Tribal authorities is often ambiguous; yet Judge Gorsuch was able to bring clarity as he diligently studied the law and respected existing precedents in Tribal sovereignty.

For example, the Ute Tribe of Utah has been engaged in legal battles with the State over the State's authority to prosecute Native Americans on Tribal land. Judge Gorsuch has consistently ruled in favor of Tribal sovereignty.

In Hydro Resources v. EPA, a case in which EPA overreach was redefining the boundaries of Indian lands, Judge Gorsuch overruled the EPA's interpretation and respected the current Tribal boundaries.

For all of these reasons, I urge a ''yes'' vote on Judge Gorsuch's nomination. As the highest Court in the land, the decisions have a widespread impact on millions of Americans.

When the stakes are this high, it is necessary that we confirm someone with a sound, fair, and prudent approach to the law. I have no doubt that Judge Gorsuch is the right person for this role. I enthusiastically support his nomination, and I urge my colleagues on both sides of the aisle to do the same.

I yield the floor.

The PRESIDING OFFICER. The Senator from Washington.

Mrs. MURRAY. Mr. President, I come to the floor to express my deep concern about the Republicans' rush to fill the vacant Supreme Court seat and about President Trump's nominee for this critical position.

I believe one of the most solemn and consequential decisions we make as Senators is whether to support a nominee to the highest Court in the country. It is a responsibility I do not take lightly. And after careful consideration, I will be voting against the nomination of Judge Neil Gorsuch, and I will be opposing a cloture motion ending debate.

I come to this conclusion weighing several things. First, a Supreme Court Justice has an enormous responsibility to uphold our Constitution and defend our democracy. The Court's decision affects every citizen in every corner of this country. At times, one Justice—perhaps this nominee—may be the only thing standing between someone's rights and an executive branch that operates as though it is above the law.

That is a real concern—one I have heard over and over from people in my home State of Washington who are frightened about the direction President Trump is trying to take our country.

Since taking office about two months ago, he has demonstrated complete disregard for the law, the Constitution, and American families. He has tried to force through un-American bans on Muslim refugees and immigrants. He fired Sally Yates, an Acting Attorney General who dared to stand up to him.

It is clear this President doesn't just think he is above the law. He has, at times, shown a true disdain for it, repeatedly insulting the men and women on the bench, even telling a crowd that perhaps the Ninth Circuit Court of Appeals—a court that didn't rule in his favor—should be broken up.

Now, we need an independent judiciary that can safeguard the rights of citizens against this executive branch, but with so much chaos created by this President, coupled with the cloud of an FBI investigation into him and his associates, I have no reason to trust that he or his administration are acting in the best interests of our country or our democracy, and I cannot support moving forward with his choice for the Court.

On top of that, I am concerned about the unprecedented pace of the Judiciary Committee process, which would rush through this nominee on the fastest time line in recent history. That is pretty striking because this same committee failed to hold a single hearing on this vacancy for 12 months following Justice Scalia's passing. It refused President Obama's nominee, Judge Merrick Garland, any opportunity to be heard, which brings me to my serious concerns about this particular nominee.

I wish to start with women's access to healthcare. President Trump campaigned on promises to overturn women's constitutionally protected rights to make their own healthcare decisions, secured by the historic ruling in Roe v. Wade. This President has broken almost every promise he has made, but one he appears to be keeping, especially in selecting Judge Gorsuch, is his promise to undermine women's health and rights.

Judge Gorsuch would have taken the ruling in Hobby Lobby to allow women's bosses to decide whether or not they get birth control to an even more extreme result. His deeply conservative record suggests he can't be trusted to stand for women's constitutionally protected healthcare rights or access to care. In fact, it seems clear he will

work to weaken those rights at every opportunity.

Since day one of this Presidency, women nationwide have made it absolutely clear they do not want to go backwards, and that is something I am going to continue to fight for.

I am also going to keep fighting for our workers, and I am troubled that as a Federal judge on the Tenth Circuit, Judge Gorsuch has a clear record of siding against workers and with corporations and big businesses.

The Associated Press said his opinions were ''coldly pragmatic and they're usually in the employers' favor.''

His history of dismissing workers' safety concerns and hostility toward upholding disability rights greatly concerns me and strongly suggests that he would join conservative Justices to undermine workers' rights.

We need a Justice on the Supreme Court who will uphold workers' protections and safety and the right to organize.

I am also deeply concerned about the potential effect on children and students with disabilities.

In a number of cases, Judge Gorsuch ruled in ways that made it more difficult for them to receive the support and services they not only deserve but are entitled to under the Individuals With Disabilities Education Act—our Nation's special education law. I strongly believe in this law, and I believe we should be doing everything to ensure individuals with disabilities can obtain their full potential by accessing meaningful, quality public education—certainly not the bare minimum.

It is notable that while Judge Gorsuch was testifying—actually, while he was testifying before the Judiciary Committee 2 weeks ago—the Supreme Court unanimously rejected his prior ruling in a case involving the rights of a student with disabilities to receive a meaningful education. It is highly troubling that when it comes to policies concerning torture, Gorsuch—as a member of President George W. Bush's Justice Department—advocated that the President has broad powers to basically ignore parts of the legal ban on torture.

This deference to Executive power is concerning, to say the least, but it also makes a whole lot more sense as to why Judge Gorsuch would be Donald Trump's No. 1 choice.

His testimony before the Judiciary Committee regarding Citizens United, in which he incorrectly stated that the Court left Congress the ability to enact commonsense campaign spending limits, strengthens my decision to vote no.

So if you believe in transparency in our elections and upholding the integrity of our democracy or you believe we need a Justice who will protect the rights of all Americans and stand with them and not with President Trump and millionaires and billionaires, this choice is clear.

As I have urged my colleagues for weeks, with so much chaos in the administration and so many questions now surrounding this President's commitment to the rule of law: Slow down. Stop playing political games. Respect the families we represent. Respect the separation of power, and stop trying to jam this nominee through.

Whatever you do, do not blow up the Senate rules for Supreme Court nominees. Invoking the nuclear option is a dangerous path to go down.

I have been in the majority and I have been in the minority. Either way, I believe when it comes to a lifetime appointment to the Supreme Court, the Senate must adhere to a higher standard and the 60-vote threshold. If you can't get that many votes for a Supreme Court nominee, you don't need to change the rules, you need to change the nominee.

I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, first I wish to commend the senior Senator from Washington State for her terrific statement.

I know, as a member of the Judiciary Committee, that we reported the nomination of Judge Neil Gorsuch by the narrowest margin—a party-line vote. The majority leader then filed cloture to cut off debate on this nominee. He has shown that he will use whatever tactic is necessary to ensure this nominee is confirmed, no matter the concern of Senators or millions of other Americans.

Today is just the 75th day of the Trump administration. After only 75 days of having a Republican-controlled White House and Congress, the Republican leader has promised to vitiate the historic rights of the minority in this institution. He is prepared to abdicate the Senate's constitutional duty to serve as a check on the President and our responsibility to protect the independence of the Federal judiciary, all in the service of Donald Trump's agenda and because, as we know, Donald Trump asked him to.

Senate Republicans seek to justify their tactics by claiming that Democrats would do no different were the shoe on the other foot. They are free to make that argument, but it is wrong. There is one claim in particular that I need to address. Some Republicans have asserted that, if President Bush had made a Supreme Court nomination in 2008, the final year of his term, Democrats would have pocket filibustered that nomination the same way that Senate Republicans did to Chief Judge Merrick Garland. Well, I was the chairman of the Judiciary Committee during that time, and I can assure them that they are wrong. Democrats did not invent an election year exception to the Constitution. Look no further than when a Democratic-led Senate confirmed Justice Kennedy during a Presidential election year.

If President Bush had made a Supreme Court nomination in 2008, that nominee would have had a hearing, and all Senators would have had the opportunity to debate that nomination on the floor. As Senator HATCH and I wrote in 2001, ''The Judiciary Committee's traditional practice has been to report Supreme Court nominees to the Senate once the Committee has completed its consideration. This has been true even in cases where Supreme Court nominees were opposed by a majority of the Judiciary Committee.'' This Senator would not have disregarded precedent and constitutional obligation because of partisan politics. Whether such a nominee would have been confirmed would have depended on his or her views, but the nominee would have been given a fair process, which Senate Republicans denied Chief Judge Garland when they pocket filibustered him.

My record in 2008 shows that I treated President Bush's nominees fairly. We confirmed 28 circuit and district nominees in 2008, including 10 in 1 day, just weeks before the election, and reduced the number of judicial vacancies to just 34. Compare that to 2016, when Senate Republicans allowed just nine circuit and district nominees to be confirmed in total. That is less than 33 percent of the 2008 number. Moreover, Republicans' pocket filibusters, even for nominees supported by home State Republican Senators, allowed the number of judicial vacancies to skyrocket over 100. Of course, they had done the same thing at the end of the Clinton administration, pocket filibustering more than 60 nominees. Those are the facts. Anyone who claims that judicial nominees were never obstructed before 2001 has conveniently forgotten those facts.

When Senate Democrats changed the cloture rule for lower court nominations in 2013, we did so reluctantly and only after Senate Republicans repeatedly abused Senate rules to wage in unparalleled obstruction of President Obama's nominees over a period of years. By November 2013, the Republican leader had orchestrated an unprecedented number of filibusters, including requiring cloture motions on 34 circuit and district nominees in less than 5 years—compared to 18 nominees who faced cloture motions during the entire 8-year tenure of President Bush.

When it comes to judicial nominations, the filibuster has been a tool to protect the independence of our courts by compelling Presidents to find mainstream, consensus nominees who do not bring an agenda with their lifetime appointments to our courts. Senate Democrats filibustered a small number of President George W. Bush's nominees, but it was not because they were conservative, or had been nominated by a Republican President. It was because we had serious doubts about their ability to put partisanship and ideology aside and be fair, neutral judges. Or it was because the President had ignored the traditional role of home State Senators when selecting the nominee. We confirmed numerous

conservative nominees, including Judge Neil Gorsuch. In fact, during the 41 months that I was chairman of the Judiciary Committee while President Bush was in office, the Democratic-majority Senate confirmed more circuit and district nominees than were confirmed during the 55 months when Republicans held the majority.

When President Obama took office, Senate Republicans imposed a new standard. Just 2 days after he was sworn in, a group of extreme conservative activists instructed Senator MCCONNELL to treat President Obama's judicial nominees in an ''unprecedented'' way, and that is what he did. For the first time, even noncontroversial district court nominees were subject to filibusters—Leader Reid was at one time forced to file for cloture on 17 of them in a single day because of Republican obstruction, even though none were particularly controversial and many actually had the support of their home State Republican Senators.

Republicans filibustered judicial nominees they ultimately supported. They stalled Senate action for weeks and months on judicial nominees who they did not oppose and who they ultimately voted to confirm once their filibusters ended. Senate Republicans kept making up new excuses for filibustering nominees that had nothing to do with the nominees themselves. They abused the Thurmond Rule to filibuster Judge Robert Bacharach, even though he had been reported almost unanimously and was supported by his two very conservative Republican home State Senators. It was obstruction for obstruction's sake.

But the final straw was when Republicans blockaded the DC Circuit. The Senate had confirmed four of President Bush's nominees to that court, but only one of President Obama's five nominees. When Senate Republicans filibustered President Obama's last three DC Circuit nominees in late 2013, they barely even bothered to pretend to find fault with the nominees themselves. These were mainstream nominees with broad support. Their only alleged flaw was that they had been nominated by President Obama. Senate Republicans unilaterally decided that President Obama should not get to make additional nominations to that court, effectively trying to nullify the results of the 2012 election—a prelude to their unprecedented treatment of Chief Judge Merrick Garland.

Compare that to the situation we are in this week. We are told that we must rubberstamp Judge Gorsuch or the majority leader will change the rules. Now, some may remember reports from last year where several Senators promised to blockade any Supreme Court nominations by one of the Presidential candidates if that candidate won the election. Of course, those were Republican Senators talking about Secretary Clinton. But that proposed blockade is not what is happening here. The fact is that there is a vacancy on the Supreme Court, and that vacancy should be filled with a qualified, mainstream judge. I know that a Republican President would probably make a different selection than the one I would make, but I have always been willing to consult with Presidents of both parties to find mainstream, consensus nominees. That is my constitutional obligation as a Senator.

Now, all Presidents, including President Trump, are entitled to have their Supreme Court nominees considered on the merits. Over my 42 years in the Senate, I have evaluated every nominee on the merits, and I have never gone to reflexive partisanship. In fact, I have voted to confirm six Supreme Court nominees of Republican Presidents. I do not know if there is any Republican in this Senate who could say that about nominees of Democratic Presidents.

Although I had concerns that Judge Gorsuch would bring a partisan agenda to the Court, I went to his hearing with an open mind. I had hoped he could convince me that he was a conservative I could support, as I did Chief Justice Roberts. I voted for Chief Justice Roberts not because I thought I would always agree with him—and I do not—but because I was able to take him at his word that he did not have an ideological agenda. I cannot take Judge Gorsuch's word that same way.

It is no secret that Judge Gorsuch is very conservative—that much was evident back in 2006 when he was confirmed to the Tenth Circuit. Back then, he did not have a judicial record, but he gave answers that were reassuring. He discussed the importance of following precedent and of judicial restraint and deference to Congress. He said, ''Precedent is to be respected and honored. It is not something to be diminished or demeaned. It is something you should try to uphold wherever you can, with the objective being, follow the law as written and not replace it with my own preferences, or anyone else's.'' He explained that judges should not be ideologues who disregard precedent ''to effect [their] own personal views, [their] politics, [their] personal preferences.'' Well, I wish that same judge were before us today, but he is not.

Judge Gorsuch has a fine resume. I do not take issue with the qualifications on paper, but my concern is that he has not lived up to his own standard. I am concerned that his personal views and his politics have permeated throughout his judicial philosophy. That is, in fact, the reason why his nomination is before us today.

To know what kind of a Justice Judge Gorsuch would be, we have to understand why he was chosen. President Trump made very clear right from the beginning that he had a litmus test: Anyone he nominated to the Supreme Court would automatically overturn Roe v. Wade. Then-candidate Trump proceeded to outsource the selection process to far-right interest groups. The leader of that unprecedented vetting process admitted they were not driven by ''Who's a really smart lawyer and who has been really accomplished?'' but by a search for someone ''who understands these things like we do.''

Let us be clear. These are not groups that support independent judges who act with restraint. These groups search for nominees who will skew the courts, who will call to reject precedent, and who will further their partisan agenda. And they gave President Trump a list and said: Here, you are allowed to pick from our people. If these groups sought a mainstream, widely respected, and independent jurist, they would have been as supportive as I was of Chief Judge Merrick Garland. Instead, they funneled money to push Senate Republicans to hold Chief Judge Garland's nomination hostage and to have the Senate defy the Constitution of the United States for the first time ever in not allowing advice and consent.

The Federalist Society's purpose statement, which is on their website, calls for ''reordering priorities within the legal system to place a premium on,'' among other things, ''traditional values.'' These groups and the billionaire donors who fund them have a clear agenda—one that is antichoice, antienvironment, and procorporate. I am not one to gamble, but in my mind they would not have gambled with millions of dollars on Judge Gorsuch. They chose and invested in him for a reason. They are supremely confident he shares their far-right agenda. So is the White House.

The White House Chief of Staff has said that Judge Gorsuch ''has the vision of Donald Trump.'' He said that, with this nomination, ''We're talking about a change of potentially 40 years of law.'' It is clear that the people who vetted Judge Gorsuch do not want a nominee who will ''call balls and strikes.'' They want a nominee who will expand the strike zone to the detriment of hard-working Americans. We should all find that concerning.

At his public hearing, Judge Gorsuch did nothing to allay my concerns. In fact, he solidified them. I cannot recall a nominee refusing to answer such basic questions about the principles underlying our Constitution. These were fundamental questions that we should ask every nominee seeking a lifetime appointment to our Highest Court, but Judge Gorsuch would not answer. Some of the questions that I asked him were not intended to be difficult. Several could have been answered by any first-year law student, with ease; yet, unless we were asking about fishing or basketball, Judge Gorsuch stonewalled and avoided any substantive response. He was excruciatingly evasive. His sworn testimony and his approach to complying with the Judiciary Committee's historic role in the confirmation process was, in my view, patronizing.

Judge Gorsuch claimed that he did not want to prejudge potential cases.

That is a valid concern, but only within reason. It should not be used to evade questions on long-settled precedent or on the meaning and purpose of constitutional provisions. Judge Gorsuch would not even state whether he agreed with certain landmark Supreme Court cases such as Brown v. Board of Education. He refused to say whether he believes that the Equal Protection Clause applies to women. He refused to say whether the framers of the First Amendment believed it permitted the use of a religious litmus test. He refused to provide information regarding his selection by extreme special interest groups and a billionaire businessman. And he even refused to confirm whether he would continue to recuse himself from matters involving that billionaire—as he has done on the Tenth Circuit—even if presented with the exact same facts.

Other Supreme Court nominees have been far more forthcoming. When asked whether he agreed with important precedents, then-Judge Alito answered the questions. When I asked then-Judge Roberts whether Congress has war powers, he said, ''Of course. The Constitution specifically gives that power [to declare war] to Congress.'' I asked whether Congress has the power to stop a war, and he said, ''Congress certainly has the power of the purse,'' but added, ''as a judge, I would obviously be in a position of considering both arguments, the argument for the Legislature and the argument for the Executive. The argument on the Executive side will rely on authority as Commander in Chief, and whatever authorities derive from that.'' It was perhaps not the answer I would have liked, but he certainly engaged with the question and showed that he understood the issue in a way that did not prejudge any potential case.

I later asked then-Judge Roberts whether ''Congress can make rules that may impinge upon the President's command functions.'' He responded: ''Certainly, Senator. The point that Justice Jackson is making there is that the Constitution vests pertinent authority in these areas in both branches. The President is the Commander in Chief, and that meant something to the Founders. On the other hand, as you just quoted, Congress has the authority to issue regulations governing the Armed Forces, another express provision in the Constitution. Those two can conflict if by making regulations for the Armed Forces, Congress does something that interferes with, in the President's view, his command authority, and in some cases those disputes will be resolved in Court, as they were in the Youngstown case.'' Whether one agrees with it or not, that was a substantive answer.

I asked Judge Gorsuch a similar question in writing—whether he agreed that ''the Constitution provides Congress its own war powers and Congress may exercise these powers to restrict the President—even in a time of war'' as the Court held in Hamdan v. Rumsfeld. Here is the totality of his response: ''I agree that Hamdan v. Rumsfeld recognized limitations on the power of the President. It is a precedent of the Supreme Court entitled to all the weight due such a precedent.'' Perhaps that is better than no response at all, but not by much.

When I asked Judge Gorsuch a straightforward question about whether the Framers of the First Amendment believed it permitted the use of a religious litmus test, he refused to answer. Any first-year law student knows the answer to that one.

I asked then-Judge Roberts a similar question—whether he would reject Korematsu and hold it unconstitutional to intern U.S. residents who ''have a particular nationality or ethnic or religious group.'' He said: ''I suppose a case like that could come before the Court. I would be surprised to see it, and I would be surprised if there were any arguments that could support it.'' I do not think he prejudged any cases, but he was still able to provide a real answer to a basic question—and he earned my support.

I had hoped that, if Judge Gorsuch was not willing to be transparent for the lights and cameras, he would at least answer written questions—given time to carefully craft answers. Again, he declined. He refused to expressly acknowledge that Congress has war powers, even though we know we do. Every high school student knows that the Constitution gives Congress the power to declare war. He again misstated the holding of Citizens United in an attempt to evade my question about Congress's ability to enact campaign finance legislation. He provided no answer at all to questions regarding the Supreme Court's decision in Shelby County to gut the Voting Rights Act or about women's rights to obtain contraception. And, again, he refused to answer whether the First Amendment prohibits the President from imposing a religious test, even when the Trump administration has adamantly claimed such a litmus test is not at issue with his travel ban.

Previous nominees respected the Judiciary Committee's constitutional role by answering questions in a substantive way, not with mere platitudes. The difference is clear to Vermonters. As an editorial in the Rutland Herald put it:

> Gorsuch's affable muteness sent a message: I am above the people and their concerns. I have no responsibility to anyone but the narrow band of millionaires and ideologues who have advanced my nomination and to the President who has declared war on the American government.

Mr. President, I ask unanimous consent to have printed in the RECORD at the conclusion of my remarks the full editorial.

Judge Gorsuch claimed that his personal views do not matter so he would not share them. But that did not stop him from speaking at length about overcriminalization and arguing that there are too many Federal criminal laws and regulations. Those of us on the Judiciary Committee know this is a substantive and controversial policy issue that has been vigorously debated in recent years. I have to wonder why this was the only issue where he put forward his actual views. That is not good enough for me. As the article by Garrett Epps in the Atlantic put it, Judge Gorsuch's refusal to answer questions implied that the role of a judge is ''a job which calls, apparently, for neither values nor any firm connection to human life as it is lived.'' The American people know better.

All of this matters because court decisions, especially Supreme Court decisions, are not simply detached applications of neutral principles. If there were, all judges would reach the same results. They do not. Legal decisions are not mechanical. They are matters of interpretation and, often, matters of justice. One Supreme Court Justice said more than a century ago: ''When we take our seats on the bench we are not struck with blindness, and forbidden to know as judges what we see as men.''

Whether he will acknowledge it or not, Judge Gorsuch's record says a lot about his judgment and his sense of justice. In a policy role at the Justice Department, he embraced broad and discredited assertions of Executive power. Judge Gorsuch once complained about liberals relying on the courts to vindicate their constitutional rights, but, once on the bench, he had no problem rubberstamping the far right's social agenda when he ruled that employers could control their employees' access to contraception. As a judge, he twisted statutory language to limit the rights of workers, of women, and children with disabilities.

Judge Gorsuch also reached for broad constitutional questions that were not before him in order to advance his agenda. Just last summer, Judge Gorsuch wrote a concurrence to his own opinion in a case called Gutierrez-Brizuela v. Lynch. His unanimous panel opinion decided the case on narrow grounds. But Judge Gorsuch nevertheless wrote a separate concurrence to argue that the Chevron doctrine should be overturned. The Chevron doctrine not only forms the basis for our modern government, but it is well-settled law and has been for decades. As Emily Bazelon and Eric Posner wrote in the New York Times, ''The administrative state isn't optional in our complex society. It's indispensable.''

Judge Gorsuch's rejection of that has shown that he is not a mainstream nominee. His judicial record demonstrates a partisan agenda—a hostility toward our government's power to enact environmental, labor, consumer rights, and other regulations that keep hard-working Americans safe and ensure a level playing field—not just for the wealthy few, but for all hard-working Americans.

Between not answering questions, Judge Gorsuch spoke repeatedly about the limited role that judges play in our democracy. His actual record belies that claim. I think that is precisely why these extreme-right interests groups selected Judge Gorsuch. That is why the President's Chief of Staff promised he will bring a change of 40 years of law, and that is why I cannot support this nomination.

It is for this nominee that Senate Republicans have brought us to this precipice, but perhaps we should not be surprised. Republican leadership has sought to govern only by simple majority since day 1 of the Trump administration. They paraded before the Senate the most extreme and partisan slate of Cabinet nominees I have ever seen. Their signature legislative goal—to repeal the Affordable Care Act—collapsed under the weight of their own intraparty infighting. Then, they dusted off the Congressional Review Act and, by party-line votes, rolled back more than a dozen environmental, workplace, privacy, healthcare, and transparency protections—all over the objections of the minority.

Think about that. Republicans have not sought compromise on anything in this Congress. That is not the way to govern. To give you one example, they repealed an important internet privacy rule that protected Americans' online activity. That means that by party-line vote, hard-working Americans will now see their private internet activity sold to the highest bidder for greater corporate profits. They are allowing these companies to basically come in and spy in your house because they are making money.

But Senate Republicans didn't stop there. They rolled back protections to ensure that all students have the same educational opportunities. They eliminated rules requiring employers to maintain records of workplace injuries so employers could avoid accountability. In other words, if you have major injuries, you do not have to keep a record of that to make sure nobody knows this is a dangerous place to work. They rolled back rules holding coal companies accountable for their pollution. Most recently, Republicans undermined healthcare access for millions of Americans, rolling back protections under the title X program. In underserved communities and rural areas like Vermont, title X is critical in making sure women have access to the basic healthcare they need.

But that is what one-party rule gets you. They are great at looking out for corporate interests. They struggle at looking out for the interests of hard-working Americans. The irony of it all is that even these partisan efforts have been too partisan for some Republicans. Three times this year—the most of any Vice President since 1911—Vice President PENCE was forced to make the trip to Capitol Hill to break a tie and ensure some of these extreme measures passed.

With the Gorsuch nomination, Republicans are proving they have no interest in playing by the rules; they prefer to break them. The unprecedented obstruction of Chief Judge Merrick Garland is going to be a permanent stain on this body. But then, days after the 2016 election—after Republicans turned their back on the Constitution for a whole year, even though they had sworn an oath to uphold the Constitution, which calls for advice and consent, they refused to advise and consent and have a vote on Chief Judge Merrick Garland—Republican leaders threatened to change the rules to get their own nominee through—before we even had a name. After disregarding his constitutional obligations for nearly a year, the majority leader now tells us we must rubberstamp President Trump's nominee or he will forever damage the Senate.

It is interesting that the majority leader's argument for obstructing Chief Judge Merrick Garland was that the American people needed to weigh in on this decision, as if they had not weighed in when they reelected President Obama in 2012. But when the American people did vote last November, nearly 3 million more of them chose Secretary Clinton over Donald Trump. In fact, Ezra Klein had it right 2 months ago when he wrote that this nomination ''makes a mockery of the popular will.''

Mr. President, I ask unanimous that the article, ''The country deserves a compromise Supreme Court nominee. Neil Gorsuch isn't one,'' by Ezra Klein, also be printed in the RECORD at the conclusion of my remarks.

Because of the divergence between the popular and electoral vote, Klein argued, ''This is a time, if ever there was one, for a compromise nominee, and Gorsuch is not a compromise nominee.'' This is exactly what the 60-vote threshold is for. It helps ensure that Presidents consult with Senators of both parties and find mainstream, consensus nominees. The filibuster protects the rights of the minority and of individual Senators; it protects the constitutional role of the Senate, and it helps us protect the independence of the Supreme Court. The Court is no place for someone with a radical, partisan agenda.

Senate Republicans are defending their threat to change the rules by claiming that Judge Gorsuch is essentially a perfect nominee and that, if Democrats filibuster Judge Gorsuch, then we would filibuster anyone. That is nonsense. We have asked only for a mainstream nominee. Perhaps they are confusing our approach with their blockade of Chief Judge Garland. Unlike committee Republicans' treatment of Chief Judge Merrick Garland, I take my constitutional duty to independently evaluate a President's Supreme Court nominees seriously. As I have said, my votes on Supreme Court nominations have never been about reflexive partisanship. I have evaluated every nominee on the merits—and I have voted to confirm six Supreme Court nominees of Republican Presidents.

If the Senate does not vote to end debate on this nomination, that is a judgment on defects of this nominee. I remind the Republicans that they do have a choice here. We can work together with President Trump to find a mainstream, consensus nominee. I expect that an actual mainstream nominee would be confirmed easily, even if nominated by President Trump. Recall the process President Obama used when he selected Chief Judge Merrick Garland. He sought advice from both Republican and Democratic Members of Congress and was told this was a person who would get a solid majority vote. He said: ''We have reached out to every member of the Senate Judiciary Committee, to constitutional scholars, to advocacy groups, to bar associations, representing an array of interests and opinions from all across the spectrum.'' President Obama nominated somebody who, in normal times, would have gotten the vast majority of votes of Republicans and Democrats. If President Trump would have followed that template, we would not be in this extraordinary place.

Let me conclude with this. In the committee, I said I respect this institution as much as anyone. I have been here for more than 42 years. I have devoted myself to the good the Senate can accomplish. We 100 Senators stand in the shoes of 320 million Americans. We should be the conscience of the Nation. First and foremost, we must do what is right by 320 million Americans. And I am not going to vote solely to protect an institution when the rights of hard-working Americans are at risk. It is for these reasons that I must oppose this nomination.

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

[From the Rutland Herald, Apr. 5, 2017]

NO TO GORSUCH

Senate Democrats are prepared to block the appointment of Neil Gorsuch to the Supreme Court, and the Republican majority is prepared to change the Senate rules to push the appointment through anyway.

Sens. Patrick Leahy and Bernie Sanders are willing to filibuster the Gorsuch nomination, offended by the candidate's evasiveness and alarmed by his ideological rigidity. Mounting a filibuster comes at a cost, however. Senate Majority Leader Mitch McConnell has said the Republicans would rewrite the Senate rules in order to prohibit the use of a filibuster to block Supreme Court nominees. As it stands the Republicans would need 60 votes to shut down debate; if the Republicans change the rules, Gorsuch would need only 51 votes to gain confirmation.

Elimination of the filibuster on high court nominations worries some Democrats. But what do they have to lose? If they give in to McConnell they will have retained the right to filibuster but would have lost the power to exercise it. Instead, they would have surrendered to one of the most egregious power grabs in the nation's history, allowing the Republicans to place their stamp on the judiciary in order to impose an agenda on the nation that the nation has shown no indication it supports.

The Republican campaign to seize dominance of the judiciary must be seen as an effort by narrow interest groups to force measures into the law that the American people would never allow the legislative branch to advance. In order to pursue this agenda, the Republicans have resorted to a contemptuous assault on the role of Congress as the body that must consent to judicial appointments.

The refusal of the Republicans to allow even a hearing on President Barack Obama's appointment of Merrick Garland to the Supreme Court showed that they were willing to scoff at their own constitutional obligations in service of their ideological and economic loyalties.

Gorsuch's refusal to answer even the most basic questions about his thinking was an expression of the same contempt for Congress that McConnell displayed in refusing to allow a hearing for Garland. Gorsuch's affable muteness sent a message: I am above the people and their concerns. I have no responsibility to anyone but the narrow band of millionaires and ideologues who have advanced my nomination and to the president who has declared war on the American government.

Much is at stake with the Gorsuch nomination. His own rulings suggest he adheres to a view that the high court went astray in the 1930s in decisions allowing the federal government to give rule-making power to agencies established to protect workers, consumers, investors, air, water, the purity of food and drugs. There is a cohort of extreme conservatives—President Donald Trump's adviser Steve Bannon is their godfather—who have declared that they want to destroy the ''administrative state.'' Gorsuch's rulings and his refusal to describe his thinking suggest he is one of them.

The filibuster is an antidemocratic tradition in the Senate that allows a minority to block action by refusing to end debate on a measure. It is usually defended as a means to demand from senators comity and a willingness to join with the other side to find middle-of-the road solutions. In normal times, the majority would nominate a centrist justice in order to draw support from both sides so that the minority would not see the need to mount a successful filibuster.

But these are not normal times. The Republicans have succeeded in getting their way by refusing to compromise, and they will continue to get their way until the Democrats stand up to them. McConnell may ditch the filibuster this time, but he may rue the day after the people revolt against the disaster of the Trump administration and elect a Democratic Senate.

Leahy and Sanders are taking a necessary and principled stand against the Republican effort to steal a seat on the Supreme Court. The Democrats may not win this battle, but they are on the right side.

[From Vox, Feb. 3, 2017.]

THE COUNTRY DESERVES A COMPROMISE SUPREME COURT NOMINEE. NEIL GORSUCH ISN'T ONE.

(By Ezra Klein)

The problem with Neil Gorsuch's nomination for the Supreme Court is not Neil Gorsuch. He is, by all accounts, a brilliant jurist and a kind man. But he is an extremely conservative judge at a moment when an extremely conservative judge makes a mockery of the popular will. For the good of the country and the Court, this moment demands a compromise nominee, and Gorsuch is not that.

Antonin Scalia's seat came open under a Democratic president and a Republican Senate. This should have led to a centrist nominee. And President Barack Obama tried to offer one: Merrick Garland, who had previously been suggested for the Court by Republican Sen. Orrin Hatch. Republicans did not oppose Garland. They refused to consider him, or anyone else, for the opening. They insisted that no opening on the Court could be filled in an election year—an absurd faux principle which implies that vacancies on the Court must be left unfilled fully 50 percent of the time.

Having blocked efforts to replace Scalia under Obama, Republicans were relieved when Trump won the Electoral College. But Democrats decisively won the popular vote and gained seats in the Senate. I do not want to overstate this: US elections are not decided by simply tallying up votes. But though the public will doesn't decide elections, it should still weigh on those who hold power. This is a time for a center-right nominee, just as Obama put forward a center-left nominee in Garland.

The choice is all the more important because the Supreme Court is, itself, a strange and undemocratic institution. It is insulated from popular opinion, and judges serve for life. Forcing it unnaturally out of step with the public is bad for both the Court and the country.

Senate Democrats have the power to filibuster nominees to the Supreme Court. I don't agree with those who think Democrats should filibuster anyone who isn't Garland, as Sen. Jeff Merkley is threatening. But Democrats should insist on a compromise nominee—it would be wise of them to offer a realistic list of more centrist candidates—and use the filibuster to give their position teeth.

It's true that Republicans could eliminate the filibuster with only 51 votes, but it's not clear why that's relevant. If the Supreme Court filibuster will be eliminated the moment it's used, then it's a fiction, and there's little cost to seeing it unmasked as such. If Republicans would prefer to destroy the filibuster than make any accommodation to the majority of voters who wanted a Democratic president to be making this pick, then that's their prerogative—at least the Democrats' base will know their legislators did their best. Democrats need not be in the business of protecting a filibuster they cannot use.

It's a mistake to see Supreme Court nominations as about the individual's résumé rather than the country's wishes. If the question is whether Gorsuch is qualified to be on the Court, of course he is. But that's not the question. The question is whether Gorsuch should be on the Court—whether he is the right pick for this moment, and for the decades in which he's likely to serve. He is not.

Republicans lost the popular vote in the presidential election preceding Scalia's death. They lost the popular vote in the presidential election after Scalia's death. The will of the people might not be all that matters in politics, but nor should it be meaningless. This is a time, if ever there was one, for a compromise nominee, and Gorsuch is not a compromise nominee. Republicans do not need to nominate a liberal, but Democrats should insist they nominate a justice more in the mold of Anthony Kennedy than Scalia.

The Supreme Court is undemocratic enough as it is. It does not need to be made more so.

Mr. LEAHY. I yield the floor.

The PRESIDING OFFICER (Mr. COTTON). The Senator from California.

Mrs. FEINSTEIN. Mr. President, how much time do I have?

The PRESIDING OFFICER. The Democrats have approximately 36 minutes remaining.

Mrs. FEINSTEIN. Mr. President, I rise today as the ranking member of the Judiciary Committee to speak about the nomination of Judge Neil Gorsuch to the Supreme Court of the United States.

In committee, at the outset of the hearings, I remarked that our job was not to evaluate legal doctrines and theories or to review Judge Gorsuch's record in a vacuum. Our job is to assess how this nominee's decisions will affect the American people and whether he will protect the legal and constitutional rights of all Americans.

I have had this in mind throughout the entire process. Let me begin with an aside. I represent a large State, and I do pay close attention to constituent letters, calls, and emails. A weekly report lets me know on what issues people are focused and what they think. I take this feedback very seriously.

In general, my barometer has been that when I receive over 30,000 calls, emails, or letters, that is when I know an issue is reasonably meaningful to many people in the State. To be clear, I don't base my final judgment on any issue or nominee solely on the numbers of calls and letters I receive. However, this is a representative democracy. I find this to be an important measure of what California constituents are thinking.

When it comes to this nomination so far, my office has received a total of 112,309 calls, emails, and letters from California constituents; and 92,799, or 83, percent, oppose this nominee and 19,510, or 17 percent, support this nominee.

Let me read a few of the emails. One constituent from Silverado, CA, wrote:

''In 1971, when abortion was illegal, I was forced to have a child at age 16. That was 46 years ago. With Gorsuch, we would step back into that world where women and girls have NO choice but an illegal and unsafe abortion OR become a mother. It is wrong. The choice is untenable and dangerous. Filibuster Gorsuch and do whatever it takes.''

I was a college student in the 1950s, and I remember very much what life was like before a woman had the right to privacy, to control her reproductive system according to Roe v. Wade.

Another constituent from San Diego emailed:

''As a beneficiary of the right to marry 3½ years ago, I personally understand how important Supreme Court decisions are. I also attended a segregated elementary school when I was a little boy. I do not trust that Neil Gorsuch would advocate for the best interests of women & minorities. Please do not confirm him.''

A woman from Richmond, CA, wrote:

''I believe that we, the people, will have a difficult time getting fair and equal treatment with Gorsuch being on the Supreme Court. He will help the rich corporations, and the poor and middle-class will suffer irreparably.''

I don't comment on any of these because none of these are sacrosanct, but they are opinions.

Brandon Gregg from Burlingame wrote:

''The republicans did not give Merrick Garland a hearing, instead waiting until Trump could propose a young right-leaning judge who will take our country backwards. Gorsuch will not advance the agenda of human rights within our Constitution, but will plunge us back into the past where minorities had little protection, women did not have equal rights, people of color were denied the right to vote, and protections for all people that we take for granted, did not exist. This is not the world I want for myself, my children, or my grandchildren. Filibuster Gorsuch's confirmation. Please.''

The bottom line is that Californians are letting me know loud and clear that who sits on the Supreme Court matters. Unfortunately, up to now, much of the press coverage on this nomination has been about politics and process.

In contrast, little has been said about how the Supreme Court affects the lives of Americans, their families, and their communities. So, let me say, in the past 24 years that I have been a member of the Judiciary Committee, I have seen that the Supreme Court is, in fact, the last word in so many areas: the personal rights of all Americans, including whom they can marry, and whether women have the right to privacy that allows them to control their own bodies.

The Supreme Court determines whether decisions about healthcare will be determined by families or businesses. The Supreme Court has the final say on whether States and localities will be able to pass laws that make it harder for low-income people, people of color, seniors and students to vote. The Supreme Court will decide whether corporations are able to pollute our air and water with impunity.

It is the Supreme Court that will be the final world on Executive authority, whether it is used to waterboard, detain individuals indefinitely, or overreach in other ways.

Each year, more than 350,000 civil and criminal cases are filed in Federal courts. The Supreme Court hears arguments for only about 80 cases a session and makes decisions on approximately 50 more cases without hearing arguments.

Now, this means the Supreme Court only hears a very small percentage of cases—less than 0.02 percent.

Before the current vacancy, the most significant questions were closely decided by 5-to-4 decisions, with five votes coming from Republican-appointed Justices.

These include important decisions that affect our elections, like Shelby County and Citizens United, decisions that weakened the power of average voters by expanding the role of dark money and gutting a key provision of the Voting Rights Act. We also saw a 5-to-4 decision in Heller that overturned 70 years of precedent on the Second Amendment and blocked the District of Columbia's commonsense gun regulations.

As my colleague Senator WHITEHOUSE outlined in the Judiciary Committee, in the last several years, this Supreme Court has issued an additional 11 5-to-4 decisions that promote the rights of corporations over the rights of everyday people, on topics as wide-ranging as age discrimination and harassment to limiting access to courts and juries.

So who sits on the Supreme Court matters. Just look at some of the key cases that have come down since this vacancy arose last year. For example, the Supreme Court deadlocked 4-to-4 on a case to determine whether unions are able to fight for fair pay and benefits for all workers by requiring them to contribute to a union's action on their behalf.

We know this issue will go back to the Supreme Court. If, next time the Court rules against unions like the California Teachers Association, it will be overturning a 40-year precedent known as ''agency shop,'' and it will permit an assault on worker's rights.

Also last year, the Supreme Court considered the case on North Carolina's law that reduced early voting days, eliminated same-day registration, and established new restrictive photo ID requirements to vote. The Fourth Circuit struck down North Carolina's law concluding it had ''targeted African Americans with almost surgical precision.'' Yet, when the Supreme Court considered it, they deadlocked 4 to 4. Who sits on that court matters.

After 4 days of hearings and reviewing Judge Gorsuch's record, we have learned that he, indeed, has strong views of what the law should be and how it should be interpreted. While Judge Gorsuch was not responsive to many questions, he did tell us that he is happy to be called an originalist, and that he embraced the term. He also stated that he believes judges should look to the original public meaning of the Constitution when they decide what one of its provision mean.

According to him, ''the Constitution isn't some ink blot on which litigants may project their hopes and dreams. . . . but a carefully crafted text judges are charged with applying according to its original public meaning.''

Original public meaning—that takes us back to 13 colonies, 4 million Americans, and 1789. I find this originalist judicial philosophy to be deeply troubling. It essentially means that judges and courts should evaluate all of our constitutional rights and privileges as they were understood in 1789. To freeze our understanding of the Constitution in 1789, I think, ignores the Framer's intent. But more importantly, it would ignore the vibrancy and growth of our Nation.

We are no longer a society that condones slavery. We no longer permit segregation. We do not allow child labor. We recognize that women not only deserve an education but can be leaders in business, government, and their homes.

We cannot turn the clock back 230 years.

As Justice Brennan said, asking judges to resolve legal questions by looking only to what people believed when our country was founded was ''little more than arrogance cloaked as humility'' that ''while proponents of this facile historicism justify it as the depoliticization of the judiciary, the political underpinnings of such a choice should not escape notice.'' After all, ''[t]hose who would restrict [legal claims] to the values of 1789 specifically articulated in the Constitution turn a blind eye to social progress. . . .''

This is Justice Brennan's speech in 1985 at Georgetown University. This is an important point that I think bears repeating. A judge's decision to adopt an originalist philosophy is inherently political because it discounts the expansion of constitutional protections beyond White men who owned property. Yes, that is the way it was back then.

The U.S. Constitution, I deeply believe, is a living document intended to evolve as our country evolves. We are not supposed to ignore social progress, and I don't believe the Founders of our country ever intended us to do so.

Another concern with Judge Gorsuch's record is his extreme, conservative view of the Federal Government. For example, he has indicated he believes the longstanding legal doctrine that allows agencies to write rules to effectively implement laws should be overturned. That doctrine, as the Presiding Officer well knows, is the Chevron doctrine. It was discussed in committee.

Chevron was itself a unanimous opinion authored by the liberal Justice Stevens and joined by conservatives, including Chief Justice Burger. This legal doctrine has been in place for decades and has been cited more than 15,000 times. If Chevron is overturned, as Judge Gorsuch has advocated, many important laws that Congress has passed would become ineffective.

I want to give a personal example.

In 2007, Senator Olympia Snowe and I finally passed legislation, thanks to Senator Ted Stevens and Dan Inouye, to increase the mileage efficiency of cars. This was critical to address because pollution was clouding up our cities, and it was important to improve the functioning of our automobiles.

Our legislation required the Department of Transportation to set standards so that fuel economy would increase at least 10 miles per gallon over 10 years—that is the time we could foresee—and continue to rise after that. We instructed the agency to achieve the ''maximum feasible average fuel economy'' and directed the Secretary of Transportation to consider ''technological feasibility, economic practicality, the effect of other motor vehicle standards of the government on fuel economy, and the need of the United States to conserve energy.'' That is directly from the bill.

Here is the result. It has just been announced that this program will raise fuel economy to more than 50-miles per

gallon by 2025. I think the specifics were 54 miles to the gallon.

This would have been impossible in 2007 when we were trying to pass the bill. We could not possibly understand, 10 years hence, technical details of specific automobile efficiency technologies and how they would develop in the decades to come.

Federal agencies simply must play a role. We need their technical expertise and ongoing involvement to ensure the legislation we pass is implemented effectively—as intended by Congress.

In committee, I discussed Judge Gorsuch's textualist view. This means that he believes statutes should be interpreted only by ''the plain meaning of the language.''

Combined, this judicial philosophy includes: One, limiting laws and statues to a dictionary definition that he selected. Two, reversing precedent to say that agencies can't interpret ambiguous laws. Three, reinstating a legal doctrine to further limit agency experts. Taken together, these three points would require Congress to pass bills so that they are either so specific that they would be very limited in effect or so broad they would actually be meaningless.

For example, Senator COLLINS and I have been working on legislation that would require the FDA to ensure the safety of personal care products such as we all use—shampoo, deodorant, cosmetics, shaving creams, lotions. The FDA does not do it in this country, but they do it in Europe. Our bill asks the FDA to evaluate the safety of the chemicals that are put in these products.

In committee, we had testimony about a shampoo that once used, hair fell out of the individual's head and many thousands of complaints had been registered.

Congress does not have the expertise to do the chemical evaluations, and without deference to the FDA, the bill would have to be thousands of pages long to cover every contingency for every product made by hundreds of companies, and that simply is not workable.

If Congress can no longer rely on Federal agencies, and if all laws can only be interpreted by limited dictionary definitions, then government would have no ability to regulate markets, defend against a financial crisis, protect workers, build safe roads, or safeguard our environment.

We depend on the scientists, the biologists, the economists, the engineers, and other experts to help ensure that our laws are effectively implemented. So this is really a dastardly controlling mechanism.

Under the arguments proposed by Judge Gorsuch, this would no longer occur.

Instead, only congressional action would be able to address these important issues. These rules that agencies would bring would have to be written by Congress. And even that would be severely limited. Such a radical change in law would hurt ordinary Americans, certainly their safety, and certainly our communities.

Let me say once again that who sits on the Supreme Court matters.

The issues facing our country are consequential, and they have a real-world impact on all of us. Justices on the Supreme Court must understand that the Court's decisions have real-world consequences for men, women, and children across our Nation.

Unfortunately, based on Judge Gorsuch's record at the Department of Justice, his tenure on the bench, his appearance before the Senate, and his written questions for the record, I cannot support this nomination.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from West Virginia.

MINERS PROTECTION ACT

Mr. MANCHIN. Mr. President, I rise today, as I have risen so many times, basically for all of us to understand that we have the greatest country on Earth, a superpower of the world.

If you want to know the backbone of the United States of America, look up in the stands. These are the United Mine Workers of America, who made us the country we are today. They gave us the life we have and our freedom, and for people not to understand that makes no sense to me at all.

All I am asking is for my colleagues to understand that the miners protection simply is this: Keep your promise, the promise that we made basically to all the miners who have given their lives. They have given everything they have—their blood, sweat, and tears basically for us to have energy for this country of ours. Now all they are asking is: Can't we at least keep our healthcare? Can't we at least keep our pensions? We have worked for that. We have negotiated for that. Every contract they negotiated basically was a give-and-take proposition so that they would be able to continue to have this after they retire.

For a lot of our colleagues and comrades who have passed away, the widows and families they leave behind are still dependent on this healthcare.

We have been fighting for this. On April 28, we are going to lose it again—April 28. I know the way things work around here. Someone will come down and say: Well, we have negotiated a little extension.

I want to make sure everyone is on notice: We will use every vehicle we can, absolutely every pathway that we can to make sure we will not leave here until we have our miners protected. Our miners will be protected with their healthcare and their pensions.

All 48 Democrats are united. Many of our colleagues on the Republican side have joined us or are willing to join us. All we are asking for is that vote.

I want to make it very clear: We will do anything and everything that we must. We have been very patient, but I am not going to have another notice sent out to our retired miners, to their families, to their widows saying: Well, we have given you another 90-day or 120-day extension. That is not going to happen this time. That is my commitment to them and their families. That is my commitment, basically, to the people who have depended on them.

Really, each and every one of us in this great country of ours should say thank you to them for the job that they have done.

We will fight this and we will continue to fight this onslaught, and I can't figure out why.

In October, 16,300 of our Nation's coal miners and their families were told that they would lose their healthcare on December 31. Then we extended it.

Can you imagine an elderly person receiving a notice the first of February, the end of January that says: Guess what, in 90 days, you are going to lose it again because we gave an extension until April of this year.

I can't understand it at all. I don't know how anybody could be that inhumane.

The cosponsors are working with us. We have held firm. The White House knows that we are serious about this. The President himself has given me his verbal support. I need him now to either tweet or call Senator MITCH MCCONNELL, our majority leader, and tell him it is time to act. It is time for Mr. MCCONNELL, the Senator from Kentucky, our friend from my neighboring State, to act. That is all we are saying.

President Trump, if you are listening to me, if you are watching, please tweet out: Mitch, help us. We need you.

RECOGNITION OF THE MINORITY LEADER

The PRESIDING OFFICER. The Democratic leader is recognized.

WELCOMING WEST VIRGINIA COAL MINERS

Mr. SCHUMER. Mr. President, before I begin the substance of my remarks, I want to first welcome our coal miners from West Virginia here, and I thank them for the hard work they have done through the years to make America the outstanding country that it truly is.

Also, I want to tell you, first, your Senator from West Virginia—you don't have a better fighter than in anyone but him. Second, I am totally committed to making this happen for you, and I will do everything in my power. Our entire caucus—all 48 of us—are completely behind you.

I thank my friend from West Virginia.

Mr. President, as each hour brings us closer to the cloture vote on the nomination of Judge Neil Gorsuch to the Supreme Court and a potential rules change if that vote fails, I rise this afternoon to entreat my friend, the majority leader, to step back from the brink.

As I and so many other of my colleagues have made clear, we Democrats have principled reasons to vote against this nominee on tomorrow's cloture vote. First, he has instinctively favored corporate interests over average

Americans. Second, he hasn't shown a scintilla of independence from President Trump. And third, Judge Gorsuch, based on his record and history, has a deeply held, far-right special interest judicial philosophy that is far out of the mainstream.

He was selected from a list developed by the very hard-right, special interest Heritage Foundation and Federalist Society. The Washington Post, after analyzing his decisions on the Tenth Circuit, concluded that Judge Gorsuch may be the most hard, conservative Justice on the bench, to the right of even Justice Thomas.

It may seem abstract to many Americans, but Judge Gorsuch's judicial philosophy matters a great deal. It will affect dozens of decisions and decades of jurisprudence that could have far-reaching consequences on the lives of average Americans.

As Emily Bazelton in the New York Times put it: ''[T]he reality is that Judge Gorsuch embraces a judicial philosophy that would do nothing less than undermine the structure of modern government—including the rules that keep our water clean, regulate the financial markets, and protect workers and consumers.''

If that philosophy becomes the majority view on the Supreme Court, average Americans are in big, big trouble.

The prospect concerns almost every Democrat here in this body, enough to prevent cloture on Judge Gorsuch's nomination tomorrow.

This leaves the majority leader and my Republican friends with a choice: Break the rules of the Senate or sit down with us Democrats and the President to come up with a mainstream nominee who can earn enough bipartisan support to pass the Senate.

We Democrats believe the answer isn't to change the rules; it is to change the nominee, as Presidents of both parties have done when a nominee fails to earn confirmation. Instead, my Republican friends seem intent on breaking the rules for Judge Gorsuch and are trying to find reasons to justify it.

The truth is, each side can blame the other. We believe they are more in the wrong. They believe we are more in the wrong. The game of pointing fingers and ''they started it'' can go back and back and back to the very founding of the Republic.

If my Republican friends think that they have to change the rules because this blame game has gotten so far out of hand that Democrats will never pass a Republican-nominated Supreme Court Justice, I would remind them of Justices Alito and Roberts, two conservatives who, nonetheless, passed the Senate, having met a 60-vote bar. That was during a pretty contentious time as well.

If my Republican friends think that what we Democrats did in 2013 was so wrong and that is the reason to break the rules, I would remind them that the only reason we changed the rules was because the Republican minority in the Senate had forced cloture petitions to be filed on more nominees under President Obama's first 5 years than in all the 225 years before him combined. They forced the majority leader to file more cloture petitions for President Obama's nominees than all the cloture petitions filed from George Washington through George W. Bush.

When we Democrats changed the rules, however, we purposefully left the 60-vote bar for the Supreme Court intact because we knew, as the Republicans know, that the Supreme Court is different. Justices on the Supreme Court don't simply apply the precedents of a higher court. They set the precedents. That is why Justices should be mainstream enough to garner substantial bipartisan support.

If the majority leader breaks the rules tomorrow—that is his choice—he would be forever unwinding that important principle, erasing the last shred of bipartisanship in the Senate confirmation process.

If my Republican friends think a filibuster on Judge Gorsuch is so wrong that they have cause to break the rules, I would remind them that almost every one of them lined up behind the majority leader when he vowed mere hours after the death of Justice Scalia that President Obama would not get to fill a Supreme Court seat, despite 11 months left in his Presidency. That was much worse than a filibuster. Even my friend, the Republican Senator from Tennessee, called it ''audacious.'' But I think Representative ADAM SCHIFF of California said it best: ''When McConnell deprived President Obama of a vote on Garland, it was a nuclear option. The rest is fallout.''

The fact is, the Republicans blocked Merrick Garland using the most unprecedented of maneuvers. Now we are likely to block Judge Gorsuch because we are insisting on a bar of 60 votes.

We think a 60-vote bar is far more in keeping with tradition than what the Republicans did to Merrick Garland. The majority leader himself has stipulated—this is MITCH MCCONNELL's quote: ''In the Senate . . . it takes 60 votes on controversial matters.'' On the other hand, there is absolutely no precedent, rule, tradition, or custom that can justify what the Republicans did to Merrick Garland, none.

The two are not equivalent. Over the long history of partisan combat over judicial nominations, of course there is blame on both sides. We don't believe the blame should be equally shared between Republicans and Democrats.

The Republican Party has been far more aggressive in employing new tactics and escalating old ones to fight the nominees of a President of the opposing party. The Republican Party has been far more aggressive in their selection of judicial candidates, picking judges who have an ideology closer to the conservative extremes of American politics, while Democrats have tended to select candidates closer to the center.

Keep this in mind: The last time a Republican-controlled Senate confirmed a Supreme Court nomination of a Democratic President was 1895.

Let me repeat that amazing fact. The last time a Republican-controlled Senate confirmed the Supreme Court nomination of a Democratic President was 1895.

So we can argue endlessly about where and with whom this all started. Was it the Bork nomination, which received a vote in a Democratic Senate, by the way? Or was it the obstruction of judges under President Clinton? Was it when Democrats blocked a few judges under President Bush or when Republicans forced Democrats to file more cloture petitions in 5 years of President Obama's Presidency than during all other Presidencies combined? Was it Judge Garland or Judge Gorsuch?

Wherever we place the starting point of this long, twilight battle over the judiciary, we are now approaching its end point. We are nearing the final hour, and the stakes are considerable.

After the cloture vote on Judge Gorsuch, Democrats will have been denied Merrick Garland due to tactics we felt were unfair and Republicans will have been denied Judge Gorsuch because of tactics they think are unfair. Our two parties have traded bitter blows. In the tortured history of the Scalia vacancy, the debate has been saturated with contradiction. But in a very real sense, even though each side thinks their side is more right than the other, neither side is happy with how we got here.

Now we are standing on the brink of an irrevocable change to the way this body conducts business. As the majority leader once said: Changing the rules is a bell that is very hard to unring.

As the clock ticks steadily toward tomorrow, what are we going to do? I, for one, would like to see us step back from the brink. As the Democratic leader, I still hope that I can sit down with the Republican leader and find a way out of this pernicious cycle. I believe that as leaders of our respective caucuses, it is at least up to us to try for the sake of the Senate. The Republican leader and I disagree on a great many things, but we agree upon the importance of the Senate in American life. We can decide today to commit to solving this problem. Each side can stop pointing fingers. Each side can lay down their arms. Each side can put aside the resentments built up after years of trench warfare on nominees. We can decide today to talk about a way out of this impasse instead of changing the rules.

We both lost Supreme Court nominees. We shouldn't also lose a longstanding rule of the Senate that encourages our two parties to work together to fulfill one of the Senate's most important functions.

So the option to sit down with us Democrats and talk about a new nominee who can gain sufficient bipartisan

support remains on the table right now. I hope my friend the Republican leader thinks about where we are headed and takes a moment to let reason and prudence prevail over rancor and haste.

Just as the majority leader holds the power to exercise the nuclear option, he also has the power to avoid it. If the majority leader is willing to cooperate in a bipartisan way, if he is willing to sit down with us in good faith and try to find a way out, he will find an open door and an open mind, and maybe, maybe we can for the moment avoid an outcome that no Senator from either side wants to see.

I yield the floor.

The PRESIDING OFFICER (Mr. TOOMEY). The Senator from Ohio.

Mr. BROWN. Mr. President, I ask unanimous consent for 3 minutes—1 for Senator DONNELLY, 1 for Senator CASEY, and 1 for me. I thank Senator BOOZMAN for the time to talk for 3 minutes on the mine workers healthcare law.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

MINERS PROTECTION ACT

Mr. BROWN. Thank you, Mr. President.

I rise today on the seventh anniversary of the tragedy of the Big Branch Mine, where 29 mine workers were killed. There is no better way to ask this Senate to do the right thing on extending healthcare for mine workers permanently.

We have seen far too many times where mine workers in Ohio, West Virginia, Kentucky, and all over this country, the retired mine workers or their widows get a letter in the mail saying their healthcare is about to be canceled. We kick the can down the road for 3 or 4 months at a time. That is not acceptable.

It is up to this Senate this month to make sure that we fix this once and for all so that mine workers who did so much for their communities and their families and their country can be assured that they will have healthcare for the rest of their lives as President Truman promised.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. CASEY. Mr. President, I want to add to the remarks of Senator BROWN.

We had a process; the Presiding Officer was a part of this, as well, in the Finance Committee getting the Miners Protection Act through the Finance Committee, 18 to 8. It should have been voted on by the end of the year so these miners could have certainty with regard to healthcare and pensions, and our government could keep our promise to those miners.

Our government has not kept its promise to coal miners, and some of them are here today in Washington. It is about time our government kept our promise. They kept their promise to their company, to their country, and every promise that they have been asked to keep. It is time that we did our job here in the Senate. Get this legislation passed in the month of April.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. DONNELLY. Thank you, Mr. President.

For the third time in the last year, I stand on the Senate floor in support of thousands of retired coal miners and their families across Indiana and the United States. If Congress doesn't act, many of the miners will lose their health benefits at the end of this month.

There are a lot of important issues facing us here, but few have such high stakes. Retirees are receiving letters telling them that their health insurance will soon run out. This is a promise that was made and a promise we have to keep. We have less than 30 days.

Let's do the right thing. Let's do the right thing and enact a permanent solution. I strongly urge my colleagues to take action immediately and ensure that our retired miners receive the health benefits that were promised to them by the U.S. Government.

I yield back, Mr. President.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. BOOZMAN. Mr. President, the Senate is at a crossroads. Senate Democrats at the behest of far-left activist groups are leading the charge to break a 230-year-old precedent of confirming Supreme Court nominees by a simple majority vote. Why?

Well, when you go down the list, there is only one reason. That reason is not based on substance or reality; it is purely partisan. Judge Gorsuch is eminently qualified. That does not seem to be in dispute. His credentials are exceptional. His resume is impressive. His judicial demeanor, professional competence, and integrity all exceed what you expect in a nominee for the highest Court in the land.

Judge Gorsuch checks every box, so much so, that the American Bar Association gave Judge Gorsuch its highest rating. The ABA's assessment, mind you, has been referred to by the minority leader as the ''gold standard'' when it comes to evaluating a nominee's fitness to serve on the Court. Senate Democrats must be concerned about Judge Gorsuch's past then. Again, that is not the case. No one was able to dig up anything remotely resembling a scandal in Judge Gorsuch's past during this process. You can't manufacture a controversy where none exists. Nothing about Judge Gorsuch has come to light during this confirmation process that could conceivably merit blocking a vote on the nominee.

I have heard some Democrats try and argue that Judge Gorsuch is out of the mainstream. That hasn't stuck, either. This is a judge who has been with the majority of the Tenth Circuit Court of Appeals 99 percent of the time, and 97 percent of his decisions were unanimous. Judge Gorsuch is about as mainstream as you are going to find.

Editorial boards from newspapers across the country, including USA Today, have written in support of his nomination. Does anyone honestly believe that USA Today, which is far from a conservative newspaper, would support confirming Judge Gorsuch to the Supreme Court if he were out of the mainstream?

Now Senate Democrats are seemingly creating new standards out of thin air to justify this blatantly partisan action. According to the talking points, the nominee is now expected to tell the Senate and the American people exactly how he or she would rule on matters that may come before the Court, especially the instances where the activist base has a very keen interest. As the Judiciary chairman rightly pointed out, the standards set by Justice Ginsburg in her confirmation hearings that it would be inappropriate for a nominee to offer hints or make commitments on matters that may come before the Court have been adhered to ever since.

This leaves Senate Democrats with a filibuster that lacks a reason. The minority leader has suggested that the Senate abandon Judge Gorsuch's nomination if cloture is not agreed to and ask the President to submit a new nominee. This demand rings hollow. Here is the truth: If this nominee cannot get the Senate Democrats' blessings for a vote, then no nominee put forward by the President can.

Again, we are talking about a top rung in his profession. Judge Gorsuch is well qualified, and he was unanimously confirmed to the Tenth Circuit Court of Appeals. As I mentioned earlier, he received the highest possible rating after an exhaustive evaluation from the American Bar Association.

Senate Democrats failed to create outrage and controversy over Judge Gorsuch's nomination because there is simply none to be found, but that didn't stop them. They made this amazing 180-degree turnaround. Senate Democrats who just last year pushed for an immediate vote at the height of a contentious Presidential election now appear to be fine with leaving that seat vacant literally for years. Just last year the minority leader sounded the alarm about the judicial chaos a deadlocked Court could lead to. He appears to be no longer concerned about that. By this logic, a vacancy on the Supreme Court for a few months would be a devastating blow to democracy, but one held vacant for years would be acceptable. This makes absolutely no sense. The only explanation for it is that Senate Democrats expect to be voting on a nominee put forth by a Democratic administration, not one put forth by President Trump.

Judge Gorsuch will be confirmed to the Supreme Court this week. It is unfortunate that we may have to break longstanding precedent to do so, but Senate Democrats actually are to blame for that.

With that, Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. SCOTT. Mr. President, we heard famously that elections have consequences, and over the next few days we will have an experiment in what I call ''the physics of politics.''

For every action, there is an equal and opposite reaction. If the Democrats use for the first time a partisan filibuster of a Supreme Court nominee, we will have an equal and opposite reaction. An unprecedented action is going to evoke an unprecedented reaction.

Neil Gorsuch deserves to be confirmed, and I want to share for the next few minutes why. For more than 2 months since the nomination was first announced, we have seen that Judge Neil Gorsuch possesses the qualifications and the temperament to serve as our next Supreme Court Justice.

While all nominations carry enormous responsibility, this is arguably the most important position we are tasked with filling. We need someone who is extraordinarily qualified, someone who will respect the foundation of our country, someone who has the mental resilience to stay above the political fray. Some of my friends on the left have called Judge Gorsuch unqualified, too conservative, and someone who is simply not in the judicial mainstream.

Judge Gorsuch started his legal career by earning degrees from not one, but two Ivy League schools—Columbia University for his undergrad, Harvard Law for his juris doctor, graduating cum laude. Even as a Marshall Scholar, he earned a doctorate degree from Oxford. When one takes into account these extraordinary educational achievements, it would be simply incomprehensible that anyone would consider him unqualified.

His record on the bench is just as impressive. We have heard these numbers so many times that we sometimes just gloss or glaze over these numbers, but these numbers are powerful indicators of how successful he has been as a judge. Out of nearly 2,700 cases, Judge Gorsuch has been overruled only twice—98 percent of his opinions were unanimous, further proving that he falls exactly square in the judicial mainstream. He has received ''well qualified,'' as my Senator from Arkansas just stated a few minutes ago, from the American Bar Association, the highest rating available for a Supreme Court Justice.

Judge Gorsuch is also not new to the nomination process. Just a few years ago, in 2006, Judge Gorsuch was unanimously confirmed by the U.S. Senate to the Tenth Circuit.

Let me say that one more time because so seldom do we see the Senate acting in a unanimous fashion. This, perhaps, is a moment of reflection that Judge Gorsuch, in just 2006, received a unanimous vote for the Tenth Circuit. Every single Democrat who was serving in the Senate at that time voted in support of Neil Gorsuch, including 12 Members who are still serving in this Chamber today. His bipartisan support has not stopped there.

Senator BENNET from Colorado says that Judge Gorsuch represents the best qualities of Colorado and that we need to fulfill our responsibility to this nominee.

Senator DONNELLY, from Indiana, has said: ''I believe he is a qualified jurist who will base his decisions on his understanding of the law and is well respected among his peers.''

From West Virginia, Senator MANCHIN acknowledged that, while he may not agree with future decisions that will be made by Judge Gorsuch, he also said, without question, that he has ''not found any reason why this jurist should not be a Supreme Court Justice.''

Senator HEITKAMP, from North Dakota, said, during her meeting with our Supreme Court nominee, that Judge Gorsuch reinforced the importance of a judiciary that remains independent from the executive and the legislative branches of government.

Neal Katyal, the former Acting Solicitor General under President Obama, said of Gorsuch that he is a first-rate intellect and a fair and decent man. The judge's work reflects his dedication to the rule of law.

Last month, throughout his 3-day confirmation hearing, Judge Gorsuch provided detailed and thoughtful responses that should have answered every concern from committee members. As I watched, I was incredibly impressed with his depth of knowledge, his genuine demeanor, and his obvious respect for the rule of law. He understands that his job is not to make the law. Let me repeat that because this seems to be an unusual experience—at least it has been for me—to hear that a judge understands and appreciates that his job is not to make the law, that his job is not to alter the law but, as he expressed time and again, that he is committed to interpreting the law as it is written.

One of his most memorable comments from his hearing has left a lasting impression on me, and I hope it does on you as well.

He said:

> A judge who likes every result he reaches is very likely a bad judge, reaching for results he prefers rather than those the law compels.

In one sentence, Judge Gorsuch eloquently summarized what we should expect from our Supreme Court Justices, and it also gives insight into how he intends to serve once confirmed.

After his extensive and exhaustive hearing, we clearly see, beyond a shadow of a doubt, that this man is more than qualified for the appointment. Any argument to the contrary is based purely on political opposition.

Today, the Senate stands on the verge of breaking historical precedence. We have let political disagreements get in the way of a judicial seat—a nomination that should stand far above political rancor.

A year ago, Judge Gorsuch was serving on the U.S. Court of Appeals for the Tenth Circuit. He had no idea that he would find himself in the midst of a partisan battle. There is no question that this man has led an exemplary life and deserves a fair vote.

We are, simply, asking for a fair vote—a vote. Let us move past these political games and confirm a man who has earned this position, with a nearly flawless record, as one of the brightest judicial minds our country has to offer.

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. ENZI. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. ENZI. Mr. President, I rise to offer my support for the nomination of Judge Neil Gorsuch to the Supreme Court of the United States of America.

Several weeks ago, shortly after President Trump announced this nomination, I came to the floor to say what an admirable choice he had made and had known him for some time.

After meeting with Judge Gorsuch to discuss his nomination and after reviewing his qualifications and after observing my colleagues on the Senate Judiciary Committee thoroughly vet him, I am all the more convinced that this man is eminently qualified to serve as America's next Associate Justice of the Supreme Court.

I was impressed that both of his Senators introduced him to the committee for the hearing. I was kind of surprised that the biggest comments that I heard about the hearing itself, were that he did not answer some of the questions directly. As with previous Justices, they do not answer questions directly when they are asked a theoretical question about some possible future case that might come before them and are without the details.

Another reason that I am convinced that he is very qualified is that the people with whom he went to school have all had good comments to say about him. The people he went to law school with have had good comments. The people who have been on the bar with him—in the legal arena—have had good comments to say about him and so have the other judges with whom he has worked through the years as he has moved up through the different processes.

I am confident that he is qualified to be our next Justice because of his extensive judicial experience, his commitment to the rule of law, and his principled character.

Neil Gorsuch's first job out of law school was a couple of blocks from here. Even back then, he was already preparing to serve his country on the

Supreme Court by learning from some of the best jurists in America. He performed clerkships first for the U.S. Court of Appeals for the DC Circuit and later for Justices Byron White and Anthony Kennedy at the U.S. Supreme Court.

After working in private practice and at the Department of Justice, in 2006 President George W. Bush nominated Judge Gorsuch to serve on the U.S. Court of Appeals for the Tenth Circuit. The Senate confirmed him by a voice vote. That is unanimous.

Let me say that again because it is relevant to the misplaced—in my opinion—partisan rancor we are hearing over this nomination. In 2006, only LINDSEY GRAHAM bothered to attend the Senate Judiciary Committee's hearing to consider Neil Gorsuch's nomination to the Tenth Circuit Court of Appeals. This body—including then-Senators Joe Biden, Hillary Clinton, and Barack Obama—was so confident about Neil Gorsuch's character and his qualifications to serve as a Federal judge that he was confirmed by the Senate without anyone even asking for a recorded vote.

With what was in essence an endorsement from three of the most influential political figures then serving in the Senate among my colleagues across the aisle, I find some of the opposition to Judge Gorsuch and the questioning of his qualifications somewhat baffling. I hope my colleagues in the Senate will put aside the political bickering and scorekeeping that have dominated Washington over the last several months and give Neil Gorsuch a fair vote, up or down, based on his qualifications and his suitability for service on the Supreme Court.

Since joining the Tenth Circuit, Judge Gorsuch has been a busy man, doing exactly the kind of work that makes him qualified for this nomination. The Tenth Circuit exercises appellate jurisdiction of Federal cases originating in eight States that cover about 20 percent of America's landmass. That jurisdiction does include my home State of Wyoming.

As a member of the Tenth Circuit, Judge Gorsuch estimates that he sat on appellate panels considering approximately 1,800 criminal cases and 1,200 civil cases. The list of citations of case decisions he has authored is a single-spaced, 21-page document. After hearing all of those cases and drafting all of those opinions, even Judge Gorsuch's detractors have criticized only a mere handful of the hundreds of opinions he has authored.

I am confident that Neil Gorsuch is qualified to be a member of the Supreme Court because of his steadfast commitment to the rule of law. The many opinions he has written are known for being clear and easy to understand. But, most importantly, his opinions reflect his respect for following the law as it is written and for applying and adhering to judicial precedent. He is a judge who applies the law to the facts of the case and reaches the conclusion that the examination yields, regardless of his own personal beliefs.

As he said, ''Personal politics or policy preferences have no useful role in judging; regular and healthy doses of self-skepticism and humility about one's own abilities and conclusions always do.''

Judge Gorsuch is an adherent to, and defender of, America's Constitution and the separation of powers that document prescribes. As he said, ''Judges must allow the elected branches of government to flourish and citizens, through their elected representatives, to make laws appropriate to the facts and circumstances of the day.''

Throughout this nomination process, during all of which Judge Gorsuch has been under a political microscope, we have seen that he is a man of admirable character with a temperament that makes him well suited to serve as a Supreme Court Justice.

We know he has a resilient character and thick skin—qualities important to any Justice—because we have seen his demeanor and response to the criticism of his career and negative characterizations about some of his previous decisions—very few of them, I should add. We have seen his reaction in the face of accusations about his judicial independence. In the face of that—biting disparagement about the work he has spent his life trying to perfect—Judge Gorsuch has been respectful, remarkably patient, and resolutely committed to upholding the ethical canons and conduct demanded of him as a jurist.

We have glimpsed Judge Gorsuch's character as he has spoken about the people he values and those he strives to emulate. His legal heroes are people like Justice White, who he said ''followed the law wherever it took him without fear or favor to anyone''; Justice Anthony Kennedy, who, Judge Gorsuch said, ''showed me that judges can disagree without being disagreeable''; and Justice Scalia, who reminds us ''that the judge's job is to follow the words that are in the law—not to replace them with words that aren't.''

Neil Gorsuch has told us that he has also looked closer to home, to his family, to shape his character: his mother, who he said ''taught me that headlines are fleeting, but courage lasts''; his father, who he said showed him that kindness ''is the great virtue''; his paternal grandfather, who Judge Gorsuch said taught him that ''lawyers exist to help people with their problems, not the other way around.''

Neil Gorsuch has demonstrated his commitment to the law, his scholarship, and his temperament befitting that of a judge. He is eminently qualified to be a member of the Supreme Court—not in my opinion—that is what the judges have said.

I am not the only one who believes this. My office has received hundreds of calls and letters from my constituents in Wyoming urging the confirmation of Judge Gorsuch. He has a lot of support from folks in the Wyoming legal community, from both parties, whom I know and trust and whose opinions I value.

Judge Gorsuch has earned a ''well qualified'' rating—the highest rating they award from the American Bar Association. To give him this rating, the ADA's Standing Committee on the Federal Judiciary conducted a peer review of Judge Gorsuch's integrity, professional competence, and judicial temperament.

As children we all learn that you might be able to fool your parents or our teachers, but you can never fool your peers. You especially cannot fool ones with whom you have worked long hours like most judges and lawyers are known to do. You can't fool your peers. They are the ones who see you at your best and at your worst. That is why it is so remarkable that dozens of Neil Gorsuch's Harvard Law School classmates—people representing many different political and philosophical persuasions and who have known him for more than a quarter of a century—signed a letter supporting his nomination to the Supreme Court.

Among our most important duties as Members of this body is to carefully vet all nominees who come before us. Never is that responsibility so stark and so substantial than when our Nation faces a vacancy on the Supreme Court.

In November, millions of people went to the polls and rejected the kind of tired, partisan bickering when they voted for a change in Washington. Those same voters went to the polls knowing that there was a vacancy on the Supreme Court and that whoever became the next President would choose that nominee.

For many weeks now, Judge Gorsuch has been before us as that nominee. He has undergone scrutiny under which most of us would wither. We have all had time to examine his record.

I thank Chairman GRASSLEY, Ranking Member FEINSTEIN, and all of our Senate colleagues who serve on the Judiciary Committee for conducting such thorough and detailed nomination hearings that provided us ample opportunity to examine Judge Gorsuch's qualifications and temperament.

I believe there is only one logical conclusion to reach after all of this examination; that is, that Judge Neil Gorsuch is supremely qualified for and capable of the solemn and mighty task of serving as the next Associate Justice of the Supreme Court.

I urge my colleagues to join me in supporting this confirmation.

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. GARDNER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. GARDNER. Mr. President, it has been an eventful week already. We have seen a number of Members come to the Senate floor and debate the qualifications of Judge Neil Gorsuch, the President's nominee to the highest Court, the U.S. Supreme Court. Many have come to the floor talking about his high qualifications—the fact that he has the highest American Bar Association rating; the fact that he has the support of the 2008 cochair of the Democratic National Convention; the fact that Neal Katyal, a high-ranking former official in the Obama administration, supports the confirmation of Neal Gorsuch.

We have had others come to the floor, of course, and express their opposition. We have had them come and express their opposition to an individual who has proved himself to be a mainstream judge, who has proved time and again that he has the respect of his colleagues on the Tenth Circuit Court—the bench of the Tenth Circuit Court, as well as circuit courts around the country, and that he has the respect and admiration of the Justices of the U.S. Supreme Court, where Judge Gorsuch clerked for Justice White, the last Coloradan to be on the Nation's High Court, and where he clerked for sitting Justice Anthony Kennedy.

Judge Gorsuch has been known and has become known as a feeder judge—somebody who provides clerks to the Supreme Court because they understand the quality and caliber of Judge Gorsuch's work.

We know Judge Gorsuch was a part of 2,700 opinions—decisions decided 99 percent of the time with the majority of his court; we know that 97 percent of that time, these decisions were unanimous. We know about his record as it relates to being reversed or overturned.

We know that our colleagues who, for some reason, are opposing Judge Gorsuch continue to come to the floor and talk about the reasons they apparently can't support Judge Gorsuch: because he will not violate judicial ethics—the ethics judges are expected to keep; because he will not preview how he would rule under a certain fact circumstance. George Washington himself could come down from a mountaintop and would be rejected by the U.S. Senate to be a Supreme Court Justice.

It is pretty incredible to see and hear the arguments that have taken place—some lasting all night—because some of these arguments are nothing more than sour grapes. Some of these arguments are nothing more than that two wrongs must make a right, in their minds. They criticize Republicans for invoking the Biden rule or the Schumer rule, and then they decide because of that, they are going to demand the seat be held open—not confirmed—because they believe it was taken from them. In their mind, if you do two things that are wrong, it must be a right. We have taught our children that is not true.

We know, in this instance, that the American people decided who the Supreme Court Justice would be.

In 2006, Judge Neil Gorsuch was nominated to serve on the Tenth Circuit Court. A dozen sitting Members of this Chamber didn't object to his nomination then. They didn't oppose him. They didn't come and register their ''no'' vote. In fact, nobody even showed up at his confirmation. LINDSEY GRAHAM was the only one. That is how objectionable he was then. So either of a couple of things has happened: Nobody did their work then to find out what kind of judge he was going to be or they have decided that the politics have changed.

To me, the most egregious part of this debate is that the politics of the time are demanding that there be absolute obstruction for the first time in over 230 years of a Supreme Court Justice, trying to defeat a Supreme Court Justice with a partisan filibuster for the first time in two centuries, of a judge who agreed 99 percent of the time with the opinions of the court. Ninety-nine percent of the time, his opinions were made with a majority of the court; 97 percent of the time, they were made unanimously.

This is an individual who has outstanding legal credentials: Harvard, Columbia, and, most importantly, time spent at the University of Colorado.

He is a fourth-generation Coloradan. I think an old joke of the late Justice Scalia was that four of the five boroughs in New York have their own Supreme Court justice. Wouldn't it be nice if we had a Supreme Court Justice from west of the Mississippi River, another western voice on the Supreme Court, a judge who comes from a circuit court that represents 20 percent of the landmass? If you are a Westerner and you have a choice of putting a judge on the Supreme Court who is familiar with Tribal law issues, a judge who is familiar with water issues, a judge who is familiar with public land issues, that is a pretty good pick for the High Court, to represent a vast part of America that is underrepresented on the Nation's High Court.

This institution can seem pretty puzzling at times because you consistently hear the outcry for bipartisan support: Let's work together. Let's have bipartisan support. Then the President nominates a judge who has strong bipartisan credentials from the people who know him the best. Look, most people in Washington, DC, most people in this Chamber have known Neil Gorsuch for just a couple of months since the time of his nomination. Most conversations people in this Chamber have had with Judge Gorsuch have consisted of an hour or two at a judicial confirmation hearing or perhaps when he visited the office prior to the hearing. That is the extent of their relationship and their knowledge and their understanding of Judge Gorsuch.

But the people who know him best—the people out in Colorado, Republicans, Democrats—believe he is well qualified and should be confirmed, that he deserves an up-or-down vote. People like Democratic Governor Bill Ritter believe that Judge Gorsuch should have an up-or-down vote and be confirmed.

Some people find Judge Gorsuch to be so unreasonable or so unfit to serve on the High Court, they might find it hard to believe that the 2008 cochair of the Democratic National Convention is supporting Judge Gorsuch's confirmation.

Jim Lyons, an attorney and close friend of President Bill Clinton, supports the confirmation of Judge Gorsuch.

They know his record. They have reviewed the cases that the opposition has stated that they find so egregious, and they still believe he is worthy of confirmation to the Court.

The standard that has been set by those who oppose Judge Gorsuch is a standard that simply says: No Justice could be confirmed. Why? We know that because Judge Gorsuch's credentials, his academic background, his judicial history, his temperament, his qualifications, his ratings show that he is more than able to serve and deserving to serve on the Supreme Court.

There is a certainly a difference in philosophy that has been presented here, a difference of philosophies that some people believe that a judge should just be a judge who follows the law or rules and makes a decision based on where the law takes them, but there are people who believe that a judge somehow has to be maybe a focus group of opinion or policy preferences, that a judge should be somebody who puts their thumb on the scale of justice to reach an outcome that is preferred by a political party. That is not what our Founders had in mind when they wrote the Constitution. That is not what justice is about.

Judge Gorsuch believes that you take an opinion, you take a decision where the law takes you, where the law leads you as a guardian of the Constitution.

He understands the separation of powers, but apparently that is not good enough for some. They want an activist judge, but I hope that over the next several hours and the next few days that our colleagues will come realize that those who know him best believe that he is qualified, that he deserves an up-or-down vote, that a judge who votes 99 percent of the time in the majority agrees with them.

I look forward to our conversations as we confirm Judge Gorsuch at the end of this week.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. REED. Mr. President, there are few moments in the life of a nation when the people are presented with a single choice that directly affects what equality before the law will mean for the next generation. The opportunity to grant a lifetime appointment to the Supreme Court of the United States is

one of those moments. The next Supreme Court Justice will break the 4-to-4 deadlock that has constrained the Court since the passing of Justice Scalia and this body's unprecedented refusal to act on Chief Judge Merrick Garland's nomination to fill that vacancy during the final year of President Obama's second term.

Before discussing the pending nominee's merits, we must consider this nomination in its historical context. Chief Judge Garland, I believe, was one of the most qualified nominees for the Supreme Court in generations. After meeting with him and reviewing his record, I had no doubt that he easily would have earned bipartisan support and cleared the 60-vote threshold, as did each of President Obama's prior nominees to the Court. Yet my colleagues on the other side of the aisle refused even to meet with him. His treatment was disgraceful.

Rejecting the treatment Chief Judge Garland received, I met with Judge Neil Gorsuch and shared a thoughtful conversation. I found him to be intelligent and articulate but at the same time, he was not particularly forthcoming about his judicial record, which contains many distressing examples of inconsistency and ideological rigidity. Nothing in our conversation or his testimony before the Judiciary Committee convinced me that he plans to moderate his positions to dispense equal justice under the law. I am deeply concerned that granting him a lifetime appointment to be a final authority on the meaning of the Constitution would further tip the scales of justice in favor of corporations and the powerful at the expense of working people and the powerless. Therefore, I cannot support Judge Gorsuch's nomination to the Supreme Court of the United States.

This is a pivotal time for our Nation, when the people's trust in the judiciary is in decline, attributed by many to the streak of 5-to-4 decisions of the Roberts Court that have consolidated corporate power. Given how radically the Court has changed many of our institutions over just the past decade, it is difficult to overstate the importance of understanding a nominee's judicial values and the human element the nominee will bring to the Court.

I have applied the same, simple test to each Supreme Court nominee throughout my time in this body. It is not enough for a nominee to display intellectual gifts or to possess a textbook understanding of American history and jurisprudence. Judicial decision making at the Supreme Court is not an assembly line where mechanical application of the law will resolve every dispute.

Rather, the nominee must demonstrate that she or he will use judicial discretion to give meaning to the text and spirit of the Constitution.

Justice Harlan Fiske Stone laid the foundation for this model of judicial review in United States v. Carolene Products Co. He wrote that judges must enforce the specific text of the Constitution, but he went further than that, urging judges to apply stricter scrutiny to laws that impede the effective operation of government and channels of political participation. Judges should likewise demand the most compelling justifications for laws that single out powerless, discrete, and insular minorities. These principles deeply influenced future scholars and judges and laid the groundwork for modern constitutional law as we have understood it since the Warren Court.

These are the decisions that struck down race and gender segregation, proclaimed the rule of ''one person, one vote,'' enshrined the right to remain silent and to counsel in police custody, and recognized the fundamental right of a person to marry for love, regardless of race or gender.

This tradition stands in stark contrast to the new wave of hyper-partisan legal activism we have seen manifested in our courts in recent years. This judicial activism attempts to disguise judges' personal political agenda by arguing that they are merely applying pure, indisputable, mechanical logic. This philosophy goes by varied names: textualism, originalism, strict constructionism, and so forth. But in the main, it is an ideological prism to disguise traditional judicial discretion, expand the law without limits to benefit politically powerful majority groups and corporations, and constrict the law for the minorities, workers, and the politically powerless.

We know too well the devastating effects of this line of thinking as it has manifested itself in the Roberts Court. In the case of Shelby County, the Court disregarded congressional intent and ruled 5 to 4 that the preclearance formula that helped millions of African Americans secure the vote in States with a history of discrimination was no longer necessary. This freed several States to enact severely restrictive election laws that clearly benefit one party and racial group at the expense of another, and courts are still working to resolve these imbalances.

In Hobby Lobby, with an intellectual framework formed in part by Judge Gorsuch, the Court ruled 5 to 4 to give for-profit corporations religious rights to opt out of providing comprehensive health coverage for their employees. This has opened the door for corporate religious challenges to an untold number of duly enacted restraints on corporate excess, from child labor laws to basic protections against employment discrimination.

In Citizens United, as we all too well know, the Court broke with decades of precedent, the facts of the case, and common sense to create a constitutional right for corporations to spend unlimited money on our elections. Indeed, our political system is still reeling from billions of dollars in anonymous political expenditures, and we are only now beginning to recognize the national security concerns that have resulted, with hostile powers, such as Russia, seeking to influence our democracy. In order to satisfy partisan, ideological ends, the Court has left us powerless to limit the purchase of political influence or even to know who is spending all this money on our politics.

Judge Gorsuch's record strongly suggests that he would contribute to the Roberts Court's partisan, pro-corporate orientation. Indeed, the very same business groups that spent $7 million in dark money to block Chief Judge Garland's nomination to this seat also spent $10 million on ads and lobbying efforts to support Judge Gorsuch's nomination. It stands to reason that these groups believe that Judge Gorsuch shares their right-wing beliefs and will benefit their interests.

The Judiciary is supposed to be above politics. Judges write opinions to satisfy due process and establish precedents that will guide future decisions. The opinion-writing process is not intended to be an arena for judges to pursue self-serving or ideological ends. That is why I am deeply concerned with Judge Gorsuch's clear willingness on the Tenth Circuit to go beyond precedent and the facts of a case before him to advance arguments designed to bend the law to his ideology.

In Riddle v. Hickenlooper, Judge Gorsuch joined a panel decision that struck down uneven contribution limits in Colorado election laws. He then wrote separately to advocate that all campaign finance laws should be subject to greater constitutional questioning. This was both unnecessary to decide the case, and a clear signal by Judge Gorsuch that he would work to abolish what remains of laws limiting the flow of anonymous corporate money into our elections.

Judge Gorsuch has reached furthest beyond precedent when doing so would deconstruct Federal agencies that constrain corporations, and protect workers, consumers, and the environment. This confirmation process has introduced many to a relatively obscure doctrine of administrative law called Chevron deference. The Chevron case stands for the essentially uncontested proposition that, when someone sues a Federal agency and a reasonable person could read the statute at issue more than one way, the court should defer to the agency's reasonable interpretation of the law it is charged with enforcing. This case has long been a target for attacks by corporations and their advocates because it levels the playing field in cases between massively well-funded corporate lawyers who want no regulations, and agencies charged with bringing big business into compliance with the law. Judge Gorsuch has written strongly against this principle, but even Justice Scalia acknowledged the sound reasoning behind the Chevron case.

Judge Gorsuch would seemingly return us to the old days when powerful

companies could pollute the environment, scam their customers, and discriminate against their employees as long as they could pay enough lawyers and get the right judge when the Federal agency sues. In the case of Gutierrez-Brizuela v. Lynch, he took the very unusual step of writing a concurrence to his own majority opinion in order to attack Federal agencies and make the case that decades of Chevron precedent should be overturned. It is highly unusual, after you have written the majority opinion at the circuit level deciding the case, that you would then step aside and write a separate epistle advancing your ideas.

He wrote in language that is familiar to those of us in the political branches of government, but out of the ordinary for a Federal judge. He compared Federal agencies to a ''tyrannical king'' and a ''behemoth'' and a ''colossus'' and laid out his constitutional theory for challenging Chevron in the Supreme Court. None of this analysis was necessary to the case before Judge Gorsuch. Yet in writing this and similar opinions, Judge Gorsuch signaled his willingness to break from precedent and contort the law to fit his ideological vision of how the system should work to benefit the powerful and his preferred interests.

My colleagues on the Judiciary Committee spent a great deal of time and effort questioning Judge Gorsuch and trying to elicit responses about his basic judicial philosophy. Unfortunately, his answers were largely nonresponsive and failed to address many of our concerns about his record.

Judge Gorsuch's record and writings shows he believes judges should always interpret the Constitution and other laws from the perspective of those who first drafted the law, regardless of how the world looks today.

The Founders and Framers, however, did not leave us a blueprint to answer every new question of law. Nor did the delegates to the Constitutional Convention demand that all future judges be ''originalists.'' The laws and values of 1789 would shock and alienate—as they should—many Americans today, particularly women and racial and other minority groups. Worse yet, a judge attempting to resolve a case as if it were the 18th, 19th, or even 20th centuries may wittingly or unwittingly use that construct to inject into the case the judge's own view of how the government ought to work.

The Hobby Lobby case is a key example of this ideological inconsistency at work to the detriment of less powerful Americans. This case concerned, as I noted earlier, whether a for-profit corporation could refuse to comply with the Affordable Care Act's mandate that employers provide health coverage, including contraceptives, to over 23,000 employees on the ground that doing so would conflict with the corporation's purported religious rights under the Religious Freedom Restoration Act, or RFRA.

The text of RFRA provides that the ''government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability.'' The legislative history of RFRA is both recent and clear. In the case of Employment Division v. Smith, decided in 1990, the Supreme Court rejected two peyote users' claim of a religious right to consume the drug on grounds that the Constitution permits some burdens on religion if the aim of the law is secular and generally applicable. When Congress debated RFRA in 1993, the House and Senate reports showed explicitly that Congress's aim was ''only to overturn the Supreme Court's decision in Smith'' and to require courts considering RFRA cases to ''look to free exercise cases decided prior to Smith for guidance.''

No Supreme Court case prior to this time had ever granted corporations religious rights and nothing in RFRA's legislative history suggested that Congress's intent was to do so. Notwithstanding these facts, Judge Gorsuch joined his colleagues to hold that a for-profit corporation's religious beliefs may overcome its employees own consciences and rights to comprehensive health coverage. He relied on an 1871 law called the Dictionary Act, which provided that in certain circumstances, Congress's use of the term ''person'' can also mean businesses, ''unless the context indicates otherwise.'' This reference to context means that Judge Gorsuch had discretion to use history and common sense to reach the conclusion that corporations don't have religious views, but people do, and RFRA was enacted to protect real people's rights. But instead, he took this opportunity to endow corporate entities with religious rights that could help them escape the law in untold circumstances.

Let's explore for a moment Judge Gorsuch's belief that judges should always give meaning to the original intent of a law's draftsmen. In this case, what is a corporation and how does it operate? In 1787, there were roughly six non-bank corporations in America, and their powers were severely restricted in the wake of colonists' experiences with the abusive practices of the Crown and royal English corporations. Around the time that Congress passed the Dictionary Act, corporations were harshly regulated by law to achieve specific commercial ends and nothing more. There were legal limits on the capital they could raise. Many could not operate outside their state of incorporation. They were often prohibited from owning property that was not necessary for specific commercial activities. Most were even forbidden to engage in any activity that was not explicitly enumerated in their corporate charters, and a real person could sue to render a corporation's action a legal nullity if it were not expressly in furtherance of the corporation's business mission. The idea that a corporation in this context could exercise fundamental religious rights, much less that its religion should excuse it from complying with duly enacted laws that protect real people, would have been outrageous to the Framers and the Congress that passed the Dictionary Act.

Judge Gorsuch knew or should have known the ahistorical nature of his decisions. We have yet to see the full scope and consequences of his vision of a near-unlimited right of corporations to opt out of our laws, but we can imagine the harmful choices and difficult litigation on this point that may lie ahead. I, for one, have deep concerns about any judicial philosophy that bends so far in the direction of corporate interests and completely ignores tens of thousands of real people in the process.

For as much as Judge Gorsuch's record shows that he is willing to entertain new or arcane legal theories to reach a better outcome for corporations and the powerful, it is also clear that he will go to no such length to vindicate the rights of minorities, the disabled or workers.

One example highlighted during Judge Gorsuch's confirmation hearing is his record on lawsuits under the Individuals with Disabilities Education Act, or IDEA. The purpose of IDEA is to ensure that students with disabilities receive a public education that is tailored to their special individual needs. In the 2008 case popularly referred to as the Luke P. case, however, Judge Gorsuch ruled against the parents of a severely autistic child who sought reimbursement for the cost of a specialized school because their son was not making appropriate progress in the public school. In denying the parents relief, Gorsuch reinterpreted IDEA to require that public schools need only provide de minimis, or nonzero educational progress to children with disabilities. Not only did Judge Gorsuch go beyond the facts of the case to close any path to relief for the family, but in this and similar cases, he attempted to set a legal precedent for future cases that effectively eviscerated the meaning and protections of IDEA.

Fortunately, the Supreme Court intervened. In a rare unanimous decision released, ironically, on the second day of Judge Gorsuch's confirmation hearing, the Court rejected Judge Gorsuch's narrow reading of the law. In fact, the Chief Justice did not mince words when it came to Judge Gorsuch's lower bar for schools. He said Judge Gorsuch's model would hardly provide ''an education at all'' for children with disabilities, and that ''receiving instruction that aims so low would be tantamount to 'sitting idly . . . awaiting the time when they were old enough to drop out.' '' This stark, unanimous rebuke of Judge Gorsuch's view of the law in the middle of his confirmation hearing was yet another reminder that this nominee is outside of the judicial mainstream.

But Judge Gorsuch has not just restricted his reading of the law in the educational context. In TransAm Trucking, Inc. v. Administrative Review Board, a majority of the Tenth Circuit held that a truck driver was wrongfully fired when he drove away from his trailer to find help after being stranded for hours in subzero temperatures in a vehicle with no heat and a rig with failed brakes. Judge Gorsuch disagreed so sharply that he penned a dissent. Under his strict textualist view of the law, the driver was protected from firing for ''refusing'' to operate in dangerous conditions, but the word ''refusing'' could not be interpreted to include driving away to get potentially lifesaving help, rather than freezing to death. Again and again, Judge Gorsuch's record shows he is capable, but either unwilling or unable to give the same benefit of the doubt to average working people as he does to their employers, their landlords and the most powerful among us.

Mr. President, Constitutional law is not concerned with easy cases or simple answers. We have constitutional guarantees to inalienable rights because we know that majority rule sometimes gets it wrong, particularly when it comes to the rights of the minority. That is what makes the qualifications for a seat on the Supreme Court fundamentally different from any other Federal or State court in the Nation. A judge's job is to apply precedent, be faithful to the law, and exercise measures of empathy and common sense to dispense justice. A Supreme Court Justice's job is to decide when the law is wrong and must be changed in order to fulfill the promise of the Constitution. The Supreme Court cannot perform this function unless the individual Justices bring to it the values and willingness to be the last resort for the powerless when the system fails. They must be able to make unpopular decisions and side against political and cultural majorities. They must be able to reject precedent when the established way of doing things no longer safeguards the fundamental protections to which every American is entitled. They must do this for the least and most derided among us, because if they do not, there is nowhere else to turn. They have the final word on the meaning of the law.

I take Judge Gorsuch at his word that he respects the law and approaches this nomination with seriousness and a sense of responsibility. A thoughtful reading of his work as an advocate and a judge reveals that he has a consistent predisposition to favor corporations and the powerful over human beings and the powerless. To be sure, there is nothing inherently wrong when a corporation, or a landlord, or an employer or a President of the United States wins a case in a court of law. The system often works as it should even when it hands new victories to those who seldom lose at anything. But at this moment in the life of our Nation, it is vital that the next Justice of the Supreme Court be willing and able to elevate the rights of the people above the prevailing political view of the wealthiest and most powerful when the two are in conflict. I cannot conclude that Judge Gorsuch meets this standard. Therefore, I will oppose his nomination and I would urge my colleagues to do the same.

With that, I yield the floor.

The PRESIDING OFFICER (Mr. GARDNER). The Senator from New Mexico.

Mr. UDALL. Thank you, Mr. President.

We have many important responsibilities as U.S. Senators. We often have to make very difficult decisions. Deciding to vote against cloture and confirmation for Judge Gorsuch has been a tough decision.

Since coming to the Senate, I have been a strong advocate for reforming the rules, to curb abuses to ensure the body can function, and to make sure that the President's nominees are treated fairly. I believe our constitutional duty to provide advice and consent is one of the most important of all of our responsibilities as Senators, especially for nominees to our Nation's highest Court, and I believe that withholding consent should be rare—rare but not unheard of. Sometimes circumstances will be so extraordinary that filibustering a Supreme Court nominee is necessary. The gang of 14 knew this. That was the group of 14 Senators who forged a compromise in 2005. Three of them are still in the Senate. Their agreement allowed some controversial judicial nominees to be confirmed to appellate courts, but it also allowed the Senate to avoid triggering the nuclear option, and it addressed how they would weigh future nominations.

The gang of 14 agreed to the following: ''Nominees should be filibustered only under extraordinary circumstances and each signatory must use his or her own discretion and judgment in determining whether such circumstances exist.''

I think that is a good standard, to only filibuster a nominee under extraordinary circumstances. Unfortunately, in my evaluation of Judge Gorsuch's nomination to the Supreme Court, I can't think of more extraordinary circumstances.

First, this wasn't President Trump's seat to fill. Justice Scalia died on February 13, 2016. President Obama still had nearly 1 year at that point to serve in his term. So President Obama fulfilled his constitutional duty. He nominated one of the most qualified nominees in the history of the Court, Judge Merrick Garland. Shortly before Judge Garland was nominated, Senator HATCH, one of our most respected Republican colleagues on the Judiciary Committee, said Judge Garland would be a great pick. Senator HATCH went on to say that President Obama ''probably won't do that because this appointment is about the election.'' But President Obama did do it. Judge Garland is not just a fine jurist, he is an exceptional human being. Judge Garland's lifelong commitment to public service is well known. He deserved far better treatment by the Senate majority.

Judge Garland was denied a hearing. Many of my Republican colleagues wouldn't even give him the courtesy of a meeting, and he never got a vote, which was a disgrace. It is an injustice that needs to be remedied before I could ever consider voting for Judge Gorsuch.

President Trump could fix this. He could make a commitment to nominate Judge Garland to the next vacant seat on the Court. It would be the right thing to do. I have been very open that I believe the Senate has become dysfunctional, but what the majority did last year was unprecedented. Things went from bad to rock bottom.

Being senatorial used to mean something. The Republican majority has shattered that tradition for purely partisan reasons. In fact, the majority leader has publicly stated: ''One of my proudest moments was when I told Obama 'you will not fill this Supreme Court vacancy.'''' That is a violation of the U.S. Constitution's requirement that the Senate provide advice and consent.

Now, in 2017, Senator MCCONNELL has guaranteed Judge Gorsuch's confirmation, even before he had his hearing. For him the outcome has been a foregone conclusion. So we see there is no advice and consent now, either, just the exercise of power to block a nominee from another party. But President Trump could help heal that deeply partisan wound inflicted by his party. There is still time for both sides to come together and work out an agreement with bipartisanship and fairness first, and put aside the bitter partisan fighting that has divided the Congress and our Nation.

There is also a pragmatic reason for President Trump to appoint Judge Garland to the next seat. President Trump needs to ask himself if he wants to be subject to the McConnell precedent. Is he willing to accept that he only gets to appoint Justices for 3 years? If a Supreme Court vacancy occurs in 2020, does President Trump understand that it is not his vacancy to fill? That is the absurd standard that Leader MCCONNELL has established. If the Republican majority is dead-set on changing the rules to jam this nominee through after all that has happened, then we need to talk about this.

Perhaps the best thing to do in order to ensure the President understands the gravity of the Republicans' obstruction of his predecessor is to go ahead and put the McConnell rule in place for President Trump. Let's establish in our rule that President Trump only gets 3 years to appoint Justices. We can do this with a simple standing order. The majority leader believed President Obama should only have 3

years to appoint Justices, certainly the same standard must apply to President Trump. If the Republican majority thought that their policy in 2016 was good for President Obama, it should be good for President Trump. What is fair is fair.

I have a standing order drafted that would do that, and I hope an agreement can be reached to rectify the injustice that was done to Judge Garland, and I hope that Republicans will decide against using the nuclear option. But if that doesn't happen, I will call on the Senate to adopt this standing order so that President Trump was bound by the same restrictions as President Obama.

If we are going to change the rules tomorrow, then let's get the Republican majority on record. Are they prepared to hold President Trump to the same unjust standard as President Obama? We can find out.

Mr. President, I ask unanimous consent to have printed in the RECORD the text of my standing order at the end of my remarks.

Unfortunately, Judge Garland's unacceptable treatment isn't the only concern that guides my decision to vote against Judge Gorsuch. Like many things in the Trump administration, there is no shortage of extraordinary circumstances. Perhaps the most serious is the cloud of suspicion over his Presidency.

U.S. intelligence agencies have concluded that the Russian government interfered in the U.S. Presidential election and that it interfered to help Candidate Trump. There are unexplained ties between the President, his campaign staff, his associates, and Russian officials. People close to the President had meetings and telephone calls with Russian officials during the campaign and transition, and, most critically, the FBI and the Department of Justice are investigating whether the President and his associates coordinated or conspired with the Russian Government to interfere with the Presidential election. It is an investigation that began last July and is likely to continue for months.

If the President or his close advisers worked with Russia to help him win the U.S. election, do we really want to let him appoint a Justice to the Supreme Court, someone who could be on the Court for 30 years or more? There is no reason to rush this nomination.

Remember, Republicans had no problem letting Judge Garland's appointment languish for 293 days, and President Obama wasn't under investigation. Judge Gorsuch was nominated just 64 days ago. If Republicans had treated Judge Garland's nomination with the same expediency, he would have been confirmed last May when President Obama still had 8 months in office. The unacceptable treatment of Judge Garland and the investigation into Russia's influence in the election are reasons enough to vote against Judge Gorsuch.

But there is one more critical issue: the nominee himself. I have met with Judge Gorsuch and followed the hearing in the Senate Judiciary Committee. I carefully studied his record, and based on all of this information, I can't support his confirmation. The Supreme Court changes people's lives. Its decisions stand for generations. It is essential that Justices understand not only how these issues impact our democracy but how they affect people's lives, and that they consider them free of ideology.

Our meeting and the Senate hearings were Judge Gorsuch's opportunity to convince me that he will be an independent mind on the Court. He failed to answer questions that were critical for me—his position on the rights of working mothers, whether women can choose their own health care decisions, LGBTQ rights, and dark money in our elections, just to name a few. But what I found most troubling is that he failed to convince me that he would be an independent voice on the Court.

In just the last couple of months, the President has taken constitutionally questionable actions affecting Muslim immigrants, freedom of speech, and religion. The FBI is investigating his campaign, and he faces scrutiny about whether his company is benefitting from his office. All of these issues could well come in front of and before the Supreme Court. It is more important now than ever before that we have a neutral, clearminded Justice sitting on the bench. After carefully considering all these issues, I cannot support Judge Gorsuch's confirmation. It is not an easy decision, but I believe it is the right one for our country.

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

RESOLUTION

Title: Prohibiting consideration of a nomination to the Supreme Court of the United States during the final year of the term of office of the President.

Resolved,

SECTION I. PROHIBITION ON CONSIDERING NOMINATIONS TO THE SUPREME COURT OF THE UNITED STATES DURING THE FINAL YEAR OF THE TERM OF OFFICE OF THE PRESIDENT.

During the period beginning on January 20, 2020 and ending at noon on January 20, 2021, it shall not be in order in the Senate to consider the nomination of an individual to the position of Chief Justice of the United States or a position as a justice of the Supreme Court of the United States.

Mr. UDALL. With that I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. PETERS. Mr. President, the U.S. Supreme Court is a pillar of our Nation's democracy, and I take very seriously the Senate's responsibility to advise and consent on nominees to serve in this revered institution. Our constitutional democracy is a system of checks and balances with three coequal branches of government. Each branch is intended to serve as a check on the other two.

If congressional Republicans are unwilling or unable to check President Trump, this leaves our courts as the last line of defense against an administration that is committed to expanding the already vast power that is provided to the Executive.

We have seen this play out over the past 2 months as President Trump has twice rolled out unconstitutional travel bans only to have Federal courts stop their implementation. The President's reaction was telling. He lashed out at the ''so-called 'judge' '' and urged his Twitter followers to blame not only the judge who stayed a travel ban but the entire Federal court system should an attack occur.

Judge Gorsuch wants us all to know that he found these attacks on the judiciary ''disheartening.'' He told me as much when we met. He made a point to use the same language when in meetings with a number of my colleagues. Personally, I would say that these attacks on the judicial branch are more than disheartening—they are appalling, and I would say they are dangerous.

Judge Gorsuch is, by all accounts—and in my opinion—a good man, but as I have reviewed Judge Gorsuch's record and previous rulings, I have to say that I find them disheartening.

I find it disheartening that he has regularly sided against everyday Americans' rights, including women's reproductive rights, workers' rights, and civil rights. I find it disheartening that, instead of allowing women access to basic healthcare, Judge Gorsuch authored a concurring decision that argued that corporations have religious beliefs.

Yes, we all know that corporate law creates a legal fiction of personhood, but let's be real. Corporations are not people. They are not humans, and I have never sat next to a corporation at church. Corporations do not have religious beliefs. To say otherwise defies common sense.

Judge Gorsuch's ruling and the subsequent Supreme Court decision in Burwell v. Hobby Lobby Stores, Inc., is a dangerous step backward for women's health. This ruling puts corporations before people and could leave women in Michigan and across the country without access to essential healthcare services. This decision is a step backward for women. It is, instead, a step forward for the growing power that corporations have in this country. Courts not only serve as a check against a powerful executive branch, but they are supposed to put individuals on a level playing field against large, powerful corporations.

I am disheartened that Judge Gorsuch was the only Tenth Circuit judge to rule against a Detroit truck-driver who was unfairly fired for not staying in his disabled trailer after waiting for hours in dangerously cold weather. In a 2-to-1 decision in TransAm Trucking v. DOL, Judge Gorsuch ruled that TransAm Trucking

was in the right when it fired Alphonse Maddin for walking away from his disabled semi instead of risking death by hypothermia.

I am also disheartened by Judge Gorsuch's ruling on accommodations for disabled students. In Thompson R2–J School District v. Luke P., Judge Gorsuch ruled that schools only need to provide meager accommodations to satisfy the Individuals with Disabilities Education Act.

During Judge Gorsuch's confirmation hearing, the Supreme Court handed down a decision that ruled unanimously against his position. Even the most conservative judges on the Court overruled him.

Chief Justice John Roberts powerfully wrote:

> When all is said and done, a student offered an educational program providing ''merely more than de minimis'' progress from year to year can hardly be said to have been offered an education at all.

Whether it is ruling against children who want an equal opportunity to get a quality education or women who want access to healthcare or a truckdriver who simply wants to make it home safely at the end of his shift, I am disheartened that Judge Gorsuch often fails to take into account the human face behind each case.

The U.S. Supreme Court is often the last line of defense for everyday Americans, and Judge Gorsuch's previous rulings indicate he believes that corporations have greater rights than individuals. As millions have been spent by the corporate elite in support of his nomination to the Supreme Court, the judge has failed to acknowledge how deeply the Citizens United decision has corrupted our government by opening the floodgates for special interest money to pour into our elections.

My colleagues on the other side of the aisle will tell you that Judge Gorsuch is a mainstream judge. I would argue that most Michiganders do not consider the Koch brothers or the Heritage Foundation to be mainstream. Mainstream Michiganders would tell you that our winters can be bitter cold and that you cannot sit in a stalled vehicle for hours without risking life and limb. They would tell you that corporations are not people and, therefore, do not have religious beliefs. They would tell you that all children deserve a chance at a quality education.

A lot of my colleagues will be discussing Senate procedures and rules and precedent in the coming days, and I will simply say this: Michiganders and all Americans deserve a true mainstream, consensus Supreme Court Justice who can earn broad bipartisan support and not merely squeak by.

Now, more than ever, we need the Supreme Court to be our Nation's North Star, not a weathervane that responds to rapidly shifting political winds.

Serving on the Supreme Court requires more than education, more than experience, and more than a pleasant demeanor. A Supreme Court Justice must have sound judicial philosophy and the ability to interpret the law as intended by the Constitution and by the Congress.

I am extremely concerned that Judge Gorsuch's judicial approach is out of step with mainstream Michigan values, and I urge my colleagues to join me in opposing his nomination.

Mr. NELSON. Mr. President, will the Senator yield?

Mr. PETERS. I yield the floor.

The PRESIDING OFFICER. The Senator from Florida.

Mr. NELSON. Mr. President, I thank the Senator for yielding.

Mr. President, deciding whether to confirm a President's nominee for the highest Court in the land is a responsibility I take very seriously. Over the past few weeks, I have met with Judge Gorsuch, listened to the Judiciary Committee's hearings, and reviewed his record with an open mind. I have real concerns with his thinking on protecting the right to vote and allowing unlimited money in political campaigns. In addition, I am concerned that the judge will not protect the rights of the everyday average citizen when they come up against large corporate interests. Judge Gorsuch has consistently sided with corporations over employees, as in the case of a freezing truck driver who, contrary to common sense, Judge Gorsuch would have allowed to be fired for abandoning his disabled rig during extreme weather conditions.

I will vote no on the motion to invoke cloture and, if that succeeds, I will vote no on his confirmation.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. VAN HOLLEN. Mr. President, I rise today to speak about one of the most important responsibilities we have here in the U.S. Senate: considering the President's nominee to the Supreme Court.

It is a vote with consequences that will far outlast this Presidential administration. It is a vote with implications that will outlast all of our time here in the Senate. It will certainly be one of the most consequential decisions each one of us makes.

That is because any one of the nine individuals named to the Supreme Court with a lifetime appointment can change the course of our Nation. In just the past few years, we have seen that. We have witnessed a series of 5-to-4 decisions that changed the trajectory of our society—decisions that gutted section 4 of the Voting Rights Act and resulted in numerous States enacting discriminatory laws designed to limit access to the ballot box, especially for African-American and minority voters.

The 5-to-4 Citizens United decision overturned the law of the land and Supreme Court precedent in order to empower corporations to spend unlimited sums of money in support of candidates for public office, corroding the fabric of our democracy. There were decisions that limit a woman's access to safe and affordable birth control and reaffirm the legal fiction that for-profit corporations should have the same rights as real people. There was a decision that upheld the Affordable Care Act, and a decision that—with a single vote—gave every American the right to marry the person they love.

The decision of a single Supreme Court Justice can indeed change the trajectory of our judiciary and of our society for generations.

Now my Republican colleagues rightly note that this weighty decision begins with the President. They have routinely said it is the President's right to choose his judicial nominees, and that is true. I have one question for them: Where were they last year when President Obama nominated Merrick Garland to the Supreme Court of the United States? They were AWOL.

Shortly after Justice Scalia passed away and before President Obama even named his nominee, the Senate Republican leader announced that he would leave the seat open—and he did—for an unprecedented 293 days. For 293 days, one of the most qualified and mainstream nominees in our history languished without even a hearing. Many Senators refused even to meet with him. For 293 days, Democrats in this Chamber and people from all over the country called upon this Senate to do its job and consider the nomination of Judge Merrick Garland. The response? Nothing—a total abdication of this Senate's constitutional responsibility of advice and consent.

But, unfortunately, this Chamber's failure to live up to its responsibility to consider the Garland nomination is just one piece of a larger assault on the independence of our judiciary.

President Trump has made it clear that he sees our Nation's judges not as a separate and coequal branch, but an unwelcome challenge to his power. He has called the courts broken and political. When he faced trial for scamming thousands of students at Trump University, he charged that the Federal judge overseeing that case could not be impartial. Why? Because, he said, he was Hispanic—a charge that was, in the words of the Speaker of the House PAUL RYAN, the ''textbook definition'' of racism.

When the Trump administration first tried to impose its Muslim ban, only to be blocked by a Federal court, did President Trump display respect for the rule of law? No. He fired his acting Attorney General, Sally Yates and accused her of having ''betrayed'' the Department of Justice. He went on to say that if any future harm occurs, it is the fault of the courts, and called them obstructionists for not bending to his will. They are not supposed to bend to the will of the Executive.

President Trump's disdain for the courts makes it all the more important that the open seat on the Supreme Court be filled by somebody who is

seen as an impartial administrator of justice—someone who does not have a set political ideology.

Unfortunately, Neil Gorsuch does not meet that important test.

His record and his testimony shows that he applies a very cramped reading of the law and consistently—time and again—sides with powerful corporate interests against the rights of workers, consumers, and individuals. When he had an opportunity during the hearings to explain that bias, he chose instead to evade the questions and answer with platitudes, not substance. While he is undoubtedly a skilled lawyer, his record reveals that he is outside of the judicial mainstream. His decisions have closed the doors of justice to working people, to people with disabilities, and to individuals seeking to protect their rights.

In one opinion, Judge Gorsuch was the only judge who thought that TransAm Trucking company was right when they fired a driver whose only offense was finding safety when the heat in his truck broke down in subzero temperatures, and he began to show signs of hypothermia. The driver said he could not feel his lower body, his fingers were becoming numb, and he experienced slurred speech while waiting for hours for help from his company. Judge Gorsuch was the only judge who thought that Federal regulations protected the trucking company and not the truckdriver trying to avoid freezing to death. It makes me doubt that Judge Gorsuch considers the real-world consequences of this ruling.

Judge Gorsuch also sided against working people and defended powerful corporations. In his opinion in Hobby Lobby, he came down on the side of corporate power against the rights of workers. He argued that not only do corporations have rights to religious liberty, but those rights can supersede—can trump—the rights of ordinary working Americans. He was the architect of an opinion that severely limited a woman's access to basic reproductive healthcare.

In yet another ruling, Judge Gorsuch prevented an autistic child from getting a proper public school education. His opinion on the Individuals with Disabilities Education Act severely limited the options for parents of children with disabilities and the quality of public school education they could receive. His reasoning in that case was overturned by the Supreme Court literally as he was testifying in the Senate Judiciary Committee.

Not merely was his decision overturned, it was overturned unanimously—eight to nothing. According to the justices that Judge Gorsuch hopes to serve with, his standard would have cut children with disabilities out of high-quality education.

As the Supreme Court said in that case: ''For children with disabilities, receiving instruction that aims so low would be tantamount to sitting idly, awaiting the time when they were old enough to drop out.''

That is what the Court said. Fortunately for children with disabilities and their families, and for the sake of justice, they did not adopt the Gorsuch reasoning.

Finally, Judge Gorsuch has spent his career arguing against the so-called Chevron standard. In essence, this means that when it comes to Federal rules designed to protect the public health and safety, he believes that the opinions of judges like himself should outweigh the opinions of experts in these subjects in our civil service. This view was rejected by none other than Judge Scalia. It is much more in line with the thinking of Steve Bannon, a man whose stated goal is to deconstruct the Federal rules that protect the health and safety of the American people. Again, Judge Gorsuch is not in the mainstream.

And let's make no mistake, he was never intended to be a mainstream nominee. Candidate Trump established several litmus tests. He said he wanted a nominee who was opposed to a woman's right to reproductive choice and someone who would have the support of the NRA. Donald Trump then subcontracted out the nomination process to rightwing conservative groups like the Heritage Foundation and the Federalist Society. He asked them to compile a list of nominees who they liked. Neil Gorsuch was on that list.

So it should be no surprise that an analysis that appeared in the New York Times concluded that Neil Gorsuch would be the second most conservative member of the current Supreme Court, and an analysis in the Washington Post concluded he would be the most rightwing member of the Court.

And once President Trump selected Neil Gorsuch, the rightwing money machine went into action. Since that moment, money has flooded our airwaves, with more than $10 million spent in support of this nomination. Never before has our country witnessed a multimillion dollar campaign for the Supreme Court.

When pressed, Judge Gorsuch said he had no idea who or why anybody would spend that much money to make sure he sits on the highest Court. I think we know why from looking at his record. They want someone who consistently rules in favor of large corporate special interests against the rest of us.

There is a better way. Typically, the White House will consult with Members of both parties, Republicans and Democrats, before settling on a nominee. This time that courtesy was not extended to Democrats. If it had been, we could be talking today about a bipartisan nominee—someone who would uphold equal justice under the law for every American. The rules do not need to change; the nominee needs to be changed.

Our Nation's independent judiciary is under attack. Our President demonizes judges whenever he feels challenged, and now special interest groups have begun funding millions of dollars into a campaign, reducing our solemn constitutional duty to a set of slick campaign ads. That is why we need a new nominee—one who has the support of 60 members of this Chamber.

I will oppose this nomination and insist that this nominee be held to the 60-vote standard to show he can get a consensus of this body.

I yield the floor.

The PRESIDING OFFICER. The Senator from New York.

Mrs. GILLIBRAND. Mr. President, one of the most important constitutional duties we as Senators have is to decide whether a Supreme Court nominee is the right person for the job.

When we make a decision, we should always consider what is best for the people of this country. Three branches of government were created to serve the people, so no matter what we do—whether it is here in the Senate, whether it is in the White House, or whether it is across the street in the Supreme Court—the American people should always come first. And our rights—our individual rights should never be subordinate to the rights of corporations.

The Supreme Court is supposed to be the ultimate protector of our individual rights—the ultimate arbiter of justice for our citizens.

Unfortunately, Judge Gorsuch, over the course of his career, has made it clear that he thinks the rights of corporations are more important than the rights of individuals.

For someone who describes himself as a strict constructionist—as a so-called textualist—his judicial ruling on corporate rights in the Hobby Lobby case is one of the biggest distortions of our sacred principle of individual rights that I have ever seen.

And now President Trump has nominated Judge Gorsuch to the Supreme Court, where he could end up ruling on many more cases related to individual rights.

In my State, just like in many of yours, there are thousands and thousands of families who will be directly affected by the decisions the Supreme Court makes in the next few years: voting rights, workers' rights, reproductive rights.

The PRESIDING OFFICER. The time of the Senator has expired.

Mrs. GILLIBRAND. I ask unanimous consent for 1 additional minute.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mrs. GILLIBRAND. In my State, just like many others, there are thousands of families who will be directly affected by the decision the Supreme Court makes in the next few years—even our First Amendment speech rights, which President Trump has threatened by saying he wants ''to open up our libel laws'' against the press.

If any of these cases make it to the Supreme Court, they will all be decided in part by the next Supreme Court Justice, and Judge Gorsuch's record does

not give me confidence that he will be a Justice whose rulings would bolster those individual rights.

On the issue of changing the rules to the filibuster, I strongly oppose changing these Senate rules for President Trump, to give him special help with Judge Gorsuch.

So I urge my colleagues to think about the potentially far-reaching and damaging consequences to our democracy if they vote to eliminate the filibuster for Supreme Court nominees. Fundamentally, changing the rules for President Trump is a historic mistake.

We must stand up for individuals' rights over corporations, and I urge my colleagues to vote against this nominee.

The PRESIDING OFFICER (Mr. LEE). The Senator from Alaska.

Mr. SULLIVAN. Mr. President, I, too, wish to spend some time talking about the confirmation and upcoming vote on Judge Neil Gorsuch. As many of my colleagues have noted, this is certainly one of the most important responsibilities we have in this body—to confirm the next Supreme Court Justice.

As the Presiding Officer noted in remarks made a few days ago about Judge Gorsuch, he is an exceptionally well-qualified candidate for the U.S. Supreme Court. I will go briefly into his bio.

First of all, he has a sterling academic reputation and credentials. He graduated from Columbia, Harvard, and Oxford. He clerked for two Supreme Court Justices. He worked at the Justice Department. Very importantly—and we are not hearing a lot about it from our colleagues on the other side—he was unanimously confirmed for a U.S. court of appeals job for the Tenth Circuit in 2006. Senators such as Hillary Clinton, Barack Obama, and Joe Biden all voted for him, as well as many of my colleagues in this body on the other side of the aisle who are still serving.

He is a westerner. We know that right now the U.S. Supreme Court, with the possible exception of Justice Kennedy, has no westerners. Geographical diversity on the Court is very important. This morning, my colleague Senator MURKOWSKI talked about how the current Supreme Court is occupied by Justices who have spent almost their entire lives in the Boston, New York, DC corridor. That is not America. That doesn't represent the whole country. Judges in Western States focus on issues like Native-American law, lands issues, oil and gas issues. It is very important, certainly for my State of Alaska, to have a judge with that kind of background.

But it is more than facts on a page that make Judge Gorsuch such a strong candidate for the High Court. During Senate Judiciary Committee hearings last week, his temperament was also tested and his judicial philosophy was articulated. It was clear during those hearings that Judge Gorsuch will bring a commitment to following the rule of law and that he believes no one, including the President of the United States, should be above the law. He reveres the separation of powers and the fundamental principle that it is the Congress of the United States, not the judiciary, that makes our laws.

He performed exceptionally well. He answered question after question with consistency and displayed a legal philosophy well within the mainstream of judicial thought within the United States.

As the Presiding Officer knows, it is not just Members of this body who are talking about Judge Gorsuch and how well qualified he is; commentators across the country have focused on how qualified Judge Gorsuch is to be our next Supreme Court Justice. Let me highlight just a few of their quotes.

This is from an editorial from the Chicago Tribune:

> Here is a judge who knows the law and knows the role of the judiciary: He isn't on the bench to make law, he's there to interpret it faithfully.
>
> Neil Gorsuch should be confirmed.

The Detroit News:

> After two days of often hostile hearings, Supreme Court nominee Neil Gorsuch is proving himself an even-tempered, deeply knowledgeable nominee who should be confirmed by the United States Senate.

The Denver Post said:

> [Judge Gorsuch] possesses the fairness, independence and open-mindedness necessary to make him a marvelous addition to the Supreme Court.

USA TODAY's editorial board declared: Gorsuch merits confirmation. This Supreme Court nominee is qualified within the broad judicial mainstream of America.

In fact, we looked to see if there was any major paper across the country or commentator who is opposed to Judge Gorsuch's nomination. It was hard to find any. It was hard to find any in any part of the country. Two former chief justices of the Tenth Circuit Court of Appeals—both appointed by different Presidents of different parties—stated that Judge Gorsuch ''represents the best of the judicial tradition in our country.''

Even one board member of the liberal American Constitutional Society who said he supports Democratic candidates and progressive causes declared: ''There is no principled reason to vote no on Judge Gorsuch's confirmation.''

He received the highest rating from the American Bar Association. And it is not just the ABA, there is a long list of different groups across the country, many representing minority groups in America, who have supported Judge Gorsuch—the National Congress of American Indians, the Native American Rights Fund, the Hispanic Leadership Fund, the Central Council of Tlingit and Haida Tribes in Alaska. The list goes on and on and on.

Given the broad-based support—from the left, from the right, from the center—why would my colleagues on the other side of the aisle threaten the traditions of this institution and not even allow an up-or-down vote on Judge Gorsuch? Well, I have been listening. I have been listening to the speeches to see what they are saying. It seems that some of my colleagues are focused on this vague notion of vagueness—literally, vagueness. If we listen to their comments, they talk about Judge Gorsuch's supposed ambiguity, his vagueness, his evasiveness, that he won't answer questions on how he would rule on specific cases, so they are going to oppose him because of this. Well, these are curious and, to be frank, unconvincing reasons to oppose Judge Gorsuch.

First, as we know, a nominee is typically not expected to say how he or she would rule on future cases. Judicial nominees, whether appointed by Democratic or Republican Presidents, have said this repeatedly. I will provide a quote from a prior nomination hearing by one of our current Supreme Court Justices. She stated:

> Because I am and hope to continue to be a judge, it would be wrong for me to say or to preview in this legislative chamber how I would cast my vote on questions the Supreme Court may be called upon to decide. Were I to rehearse here what I would say and how I would reason on such questions, I would be acting injudiciously.

That was what Justice Ruth Bader Ginsburg told the Senate Judiciary Committee in 1993. She continued during her confirmation hearing:

> A judge sworn to decide impartially can offer no forecasts, no hints, for that would show not only disregard for the specifics of the particular case, it would display disdain for the entire judicial process.

Many have called this the Ginsberg standard, one that Justices have followed in front of the Judiciary Committee during their confirmation hearings and one that Judge Gorsuch also followed. Indeed, during his hearing, Judge Gorsuch stated that if the President or others had asked such a specific question on how he would rule on a particular case, ''I would have walked out'' of the room.

So my colleagues on the other side of the aisle can't have it both ways. They say they want an independent voice on the Court, but they are also opposing Judge Gorsuch because he won't tell them how he would rule on certain cases. This is a new standard and an impossible standard to meet.

The second reason the vagueness standard of many of my colleagues on the other side of the aisle in their opposition to Judge Gorsuch is unconvincing is that it ignores the fact that this is a judge with a record. They say: He is vague. We are not sure what his views are.

Judge Gorsuch has decided roughly 2,700 cases, over 800 of which he authored. There is nothing vague about that. In 97 percent of the time in those cases, he reached a unanimous decision with the other panelists on the Tenth Circuit. These are not vague decisions. His judicial philosophy and temperament are on full display in literally

tens of thousands of pages of decisions in his own words. There is nothing vague about them.

My colleagues can challenge him on his mountain of legal opinions, but please, with all due respect, let's drop the facade of opposing him because of vagueness, and that they don't know what the issues are is not an argument that has much merit.

So despite widespread acclaim from groups across the country, representing a broad spectrum of liberals and conservatives, and despite a tenured, concrete record as a judge on the U.S. court of appeals, my colleagues on the other side of the aisle appear to want to engage in a partisan filibuster of Judge Gorsuch's nomination.

What exactly does this mean? The language, I admit, can be confusing—cloture, filibuster, 60-vote threshold. In plain English, what is really going on? It means that the minority leader right now wants to prevent the Senate from having an up-or-down vote on the merits of this Supreme Court nominee. In other words, no vote ever on the qualifications of Judge Gorsuch. We will just filibuster.

I have been watching a number of my colleagues come to the floor and talk about what they are planning on doing. The minority leader has essentially been saying: We all do this. We are all guilty. Nothing new here. This is just a little bit of payback. This is how this place operates.

In many ways, these arguments are almost cavalier in what they are about to do. But we shouldn't buy that. I have been in the Senate only 2 years—a mere blink of an eye compared to others—and I missed a lot of the other nominations and debates in 2013, the Gang of 14 many years ago. But I like to read a lot of history, and here are some facts that are important to understand as we debate the Gorsuch confirmation:

First, there has never been a partisan filibuster of a new President's nominee for the Supreme Court—never.

Second, it has been the custom, always, of the U.S. Senate to give a new President's nominee an up-or-down vote. For example, Republicans gave this courtesy to President Clinton when he nominated Ruth Bader Ginsburg in 1993 and Stephen Breyer in 1994 and President Obama with his first-term nominees, Sonia Sotomayor in 2009 and Elana Kagan in 2010. They all got up-or-down votes.

Third, there has never been a 60-vote requirement for any Justice on the Supreme Court during the confirmation process in the U.S. Senate—never.

Let me go through the votes of the current Supreme Court Justices: Justice Kennedy, 97 to 0; Justice Thomas, 52 to 48; Justice Ginsburg, 96 to 3; Justice Breyer, 87 to 9; Chief Justice Roberts, 78 to 22; Justice Alito, 58 to 42; Justice Sotomayor, 68 to 31; Justice Kagan, 63 to 37.

Incidentally, Justice Scalia, whom Judge Gorsuch would be replacing, passed the vote in the U.S. Senate 98 to 0. Note that two of the current members of the Supreme Court were confirmed by fewer than 60 votes.

Bottom line: There has never been a 60-vote requirement in the U.S. Senate or a partisan filibuster of a Supreme Court nominee during a President's first term—never.

Here is another fact equally as relevant to Judge Gorsuch's confirmation: More than any other President, more than any other Presidential election in recent memory, the one last year was clearly about the U.S. Supreme Court. Republicans in the Senate and Candidate and now President Trump told the American people: There is an open seat on the U.S. Supreme Court. This is an important issue. Let the people decide.

And they did. Polls show that millions of Americans ended up voting for President Trump and against Hillary Clinton based, at least in part, on which candidate they believed should nominate our next Supreme Court Justice and whether they wanted the Court to act as a superlegislature, interpreting a living Constitution, or whether they wanted a Justice in the mold of Justice Scalia, with a more modest view of how the Court should view its station in our constitutional order.

The American people, including my constituents, spoke loudly in November on this issue of the U.S. Supreme Court by voting against Hillary Clinton and for Donald Trump. And to his credit, President Trump kept his word on this important issue by putting forward an extremely well-qualified candidate who will be a worthy successor to Justice Scalia.

Despite all this—an extremely well-qualified nominee and a national election that focused on who should fill the vacancy of the Supreme Court—it appears that the minority leader of the Senate is going to ignore the will of the American people and set a precedent dating back to our Nation's founding by leading a filibuster against Judge Neil Gorsuch. We shouldn't allow this to happen, and we won't.

I hope my colleagues who are contemplating this will change their minds because in going forward with this filibuster, who are they really punishing? They are punishing the American people, as well as undermining the traditions of this body—a body with rules crafted carefully over the last two centuries.

As I mentioned, we need to work together in this body. In my 2 years in the Senate, I have tried hard to work with my colleagues on bipartisan issues. I have also tried hard to show all my colleagues the respect they deserve as duly elected Senators of this important body. Whatever the outcome of this vote on Judge Gorsuch, I certainly want to make clear that we need to continue respectfully working across the aisle for the sake of our Nation, and we need to rebuild trust in the Senate. But at the same time, I believe strongly that Judge Gorsuch deserves to get an up-or-down vote. I certainly encourage my colleagues to bring that vote forward and to confirm this exceptionally well-qualified candidate to be our next Supreme Court Justice. And the American people deserve as much, as well.

I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I rise today to speak out against the abuse of the Executive authority. Before I do, I want to compliment the distinguished Senator from Alaska for his cogent remarks here today on the floor. He is one of the great new additions to this body, and he ought to be listened to. I personally respect him and appreciate the words he said here today.

ANTIQUITIES ACT

Mr. President, I rise today to speak out against the abuse of Executive authority under the Antiquities Act.

Over the last two decades, past Presidents have exploited the law in the extreme, using it as a pretext to enact some of the most egregious land grabs in our Nation's history. My home State of Utah has been hit especially hard by this Federal overreach. Time and again, Presidents have abused their power under the Antiquities Act to proclaim massive monument designations—to lock away millions of acres of public land.

My State has fallen victim to not one but two catastrophic monument designations. These designations were made unilaterally, without any input whatever from our congressional delegation or even the local Utahans whose lives would be directly affected by such decisions. Rather than advancing the important cause of conservation, these national monuments have come to symbolize Washington at its worst.

How did we get here? How did a century-old law, which is intended to give Presidents only limited authority to designate special landmarks, become a blunt instrument for Executive overreach? In answering this question, some background is necessary.

In 1906, Congress passed the Antiquities Act, which granted the President limited authority to establish national monuments to protect areas containing ''historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest.'' The Antiquities Act was a well-intentioned response to a serious problem: the looting and destruction of cultural and archaeological sites.

When applied as intended, the law has been indispensable in preserving our Nation's rich cultural heritage. But the law has not always been applied as intended; rather, it has been abused, exploited, and distorted beyond all recognition. It has been hijacked by past Presidents not to preserve archaeological features but to satisfy special interests and to advance a radical political agenda—all at the expense of States' rights.

By signing their authority under the Antiquities Act, past Presidents have seized millions of acres of public land, violating both the spirit and arguably the letter of the law. We need only look at the history of the Antiquities Act and its enactment to see how far we have come and how far we have strayed off course.

As with any law, congressional intent is key. On this point, I would like to refer to the House CONGRESSIONAL RECORD dated June 5, 1906. When asked how much land would be taken off the market in the Western States by passage of the Antiquities Act, Congressman John Lacey, the bill's lead sponsor, gave a simple response: ''Not very much.''

The bill provides that it shall be the ''smallest area necessary for the care and maintenance of the objects to be preserved.'' ''The smallest area necessary.'' These words are damning in light of recent monument designations which, far from regulating the smallest area necessary, have sought to restrict the largest area possible. I wonder what Congressman Lacey would say today if he could see how his bill has been manipulated for extreme partisan ends. I wonder what he would say if he could see how his legislation has been exploited by past Presidents to lock up entire sections of State land—all without congressional approval. And I wonder what he would say about the two most recent monuments designated in Utah: Bears Ears and the Grand Staircase-Escalante monuments. Together, these two monuments encompass 3.25 million acres—an area roughly the size of the State of Connecticut. To say that Congressman Lacey and his colleagues would be disappointed is an understatement.

In passing the Antiquities Act more than 100 years ago, Congress did not intend to cede undo authority to the executive branch, and they certainly did not intend for future Presidents to proclaim the massive land grabs of the recent past. They intended to give Presidents only limited authority to designate special landmarks, such as the unique national arch or the site of old cliff dwellings. Yet today, when it comes to the Antiquities Act, there is a shocking disparity between what Congress intended and what has actually happened.

As a case in point, look no further than my home State of Utah, where President Obama's last-minute, lame-duck monument designation at Bears Ears is wreaking havoc on the local population. In the parting shot of his Presidency, President Obama defied the entire Utah congressional delegation and the will of his own constituents when he declared the Bears Ears a national monument. With the stroke of a pen, he locked away an astonishing 1.35 million acres—a geographic area larger than the total acreage of all five of Utah's national parks combined.

If that is not enough, consider that Utah's second most recent national monument, the Grand Staircase-Escalante, spans 1.9 million acres. That is an area double the size of all of Utah's national parks combined. When President Clinton proclaimed the Grand Staircase-Escalante a national monument more than 20 years ago, I remember standing on this very floor and speaking out then, just as I am speaking out now. My words back then are just as applicable today. I said:

> While the 1906 Antiquities Act may indeed give the President the literal authority to take this action, it is quite clear to me that in using this authority, he is violating the spirit of U.S. environmental laws. Real damage has been done here. The failure even to consult prior to making this decision should be considered devastating to representative democracy.

To this day, the Grand Staircase proclamation remains among the most flagrant abuses of Presidential power I have ever seen. Without so much as a ''by your leave'' from Utahans, this unilateral action cut off access to millions of acres of land, suffocating economic development and uprooting the lives of thousands of Utahans who relied on the region's resources for their very survival. And just like Bears Ears, this designation came with no input from Utah's Governor, the Utah congressional delegation, or even local communities.

The Grand Staircase monument designation exemplified Executive overreach of the worst kind. Even Democrats were stunned by this shocking power grab, and many of them conceded to me privately when I was then shouting publicly that the President was never meant to set aside millions of acres through the Antiquities Act.

Even the San Francisco Chronicle—by no means a conservative newspaper—panned President Clinton's Grand Staircase proclamation. In 1996, the editorial board stated:

> The question is whether a decision of such magnitude should be carried out by Executive order. We think not. This may well be a worthy idea, but it deserves a fair hearing. It deserves to go through public deliberations, as slow and messy as democracy may be, to fully air the concerns.

That was more than 20 years ago. In the intervening period, nothing has changed. Bears Ears was Grand Staircase all over again. When President Obama declared the Bears Ears a national monument in the twilight hours of his Presidency, he ignored the years of work Utah's congressional delegation had spent fighting to pass legislation to protect the region via a fair and open process. He ignored the State legislature and the Governor. He ignored the stakeholders and even local Utahans who were all working together to find a workable solution. He ignored the best interest of Utah and cast aside the will of the people, all in favor of the top-down unilateral approach meant to satisfy the demands of far-left interest groups. This is Executive hubris at its worst. It was never supposed to be this way.

Congress, not the President, is solely responsible under the Constitution for the management of property and land within the Federal domain. Only through passage of the Antiquities Act can Congress grant authority to the President to make limited monument designations. Congress entrusted the executive branch with narrow authority, but the executive branch has violated that trust time and time again.

For years, I have fought to check the abuse of Executive power under the Antiquities Act. As far as back as 1997, in the aftermath of the Grand Staircase proclamation, I introduced legislation requiring an act of Congress before the President could establish any national monument of more than 5,000 acres. As early as last year, in anticipation of the eminent Bears Ears debacle, I wrote a bill prohibiting any further extension or establishment of national monuments in Utah without express authorization from Congress.

Most recently, I have been working closely with the Trump administration from day one to right the wrongs of previous administrations. Within days of his nomination, I indicated to Secretary Ryan Zinke that undoing the harm caused by the Bears Ears and Grand Staircase monument designations was among my top priorities.

In a private meeting in my office, I even told Secretary Zinke that my support for his nomination would depend largely on his commitment to this cause. After gaining assurances from Secretary Zinke that he would work with us in this effort, I was eager to support his confirmation. I probably would have supported it anyway because he is a fine man. But I am really pleased that he agreed with me on the injustices that have occurred in Utah.

Just 2 weeks later, I found myself in the Oval Office where I engaged President Trump for over an hour on a wide-ranging discussion that focused specifically on the public lands issue. I have to say that I was amazed at the President's willingness to help. He listened intently as I relayed the fears and frustrations of thousands in our State who have been personally hurt by the Bears Ears and Grand Staircase monument designations.

I explained the urgency of addressing these devastating measures. I asked for his help in doing so. I was encouraged that, unlike his predecessor, President Trump actually took the time to listen and understand the heavy toll of such overreaching actions. Our President even assured me that he stands ready to work with us to fix this disaster. More than any of his predecessors, President Trump understands what is at stake here.

I was really buoyed up by the conversation with him in the Oval Office. Indeed, in all my years of public service, I have never seen a President so committed to reigning in the Federal Government and so eager to fix the damage done by these overbearing monument designations. We are fortunate now to have the White House at our side in the fight for local control.

There are many areas in this country that merit protection. I welcome the opportunity to work with my colleagues to further that cause. But the process to determine how best to protect these areas is equally important. That is why, for decades now, I have vehemently opposed unilateral actions to restrict the use of entire landscapes without even the charade of a public process.

Using the Antiquities Act to protect our public lands, we must set a new precedent of collaboration and trust between the States and the Federal Government. I look forward to working with President Trump to establish this new precedent.

Mr President. I will turn to another matter of pressing importance, the confirmation of Judge Neil Gorsuch to be a Justice on the U.S. Supreme Court. I have been in a lot of these battles over the years. I have to say, this one bothers me as much as any battle we have had.

In early January of this year, the Democratic leader issued a warning to then-President-Elect Donald Trump regarding the President-elect's anticipated selection of a Supreme Court nominee. Even before President Trump took the oath of office, the Democratic leader was already threatening the soon-to-be-President to either pick a ''mainstream and independent'' nominee or the Democrats would oppose the President-elect's choice ''with everything we have.''

Well, President Trump did exactly what the Democratic leader asked when he nominated Judge Neil Gorsuch to the Supreme Court. Not only is Judge Gorsuch a mainstream and independent judge, he is easily one of the finest and most qualified nominees to the High Court that I have seen in all my 40 years in the Senate. His selection was also the result of the most transparent Supreme Court nomination process in American history.

President Trump and Hillary Clinton both made the Supreme Court a centerpiece of their campaigns and spoke at length about the type of judge they would appoint to replace Justice Scalia. Candidate Trump even made the novel pledge to nominate someone from a list of judges his campaign released to the public. This gave the American people the opportunity to vet the list and to discuss more generally the proper role of judges in our system of governance.

When the American people elected Donald Trump to be our next President, they ratified his list of candidates. When President Trump subsequently selected Neil Gorsuch from that list to be his nominee, he kept his promise to the American people. That is who I expected him to select at that time.

Judge Gorsuch's judicial record on the Tenth Circuit paints a clear picture of the judge's judicial temperament and philosophy. Of the more than 2,700 cases Judge Gorsuch has participated in on the Tenth Circuit, 97 percent of them were decided unanimously. Judge Gorsuch voted with the majority on that court 99 percent of the time, even though the majority were Democrats.

In the 1 percent of the cases in which Judge Gorsuch dissented, he did so with almost the same frequency, whether the majority opinion was written by a judge nominated by a Republican or a Democrat President. Additionally, Judge Gorsuch has gained bipartisan support, including from President Obama's former Solicitor General, Neal Katyal, a man whom I respect, said that Judge Gorsuch is committed to the rule of law and the judiciary's independence.

Judge Gorsuch was described by six former Solicitors General appointed under four different Presidents as, ''highly respected'' and ''admired by his colleagues appointed by Presidents of both parties and law clerks of all political stripes.''

The American Bar Association gave Judge Gorsuch its highest rating of ''well qualified'' to be an Associate Justice on the Supreme Court. I think we can all agree that this is a far cry from the profile of an extreme or activist judge. It is a far cry from that. That needs to be pointed out. I want to know how anyone can, while keeping a straight face, honestly make the case that Judge Gorsuch is anything but mainstream.

In reality, quite the opposite is true. Judge Gorsuch is exactly the kind of judge we need on the Supreme Court. He is an impartial, thoughtful man with tremendous judicial experience, a person that you can't help but respect. He has been educated at some of the best schools in the world and has excelled at every stage of his career.

He has served with character, courage, and integrity for more than a decade on the Federal bench. It would be hard to even imagine a better, more suitable choice for the Supreme Court than Judge Gorsuch. After seeing the judge sit through several grueling days of confirmation hearings and nearly 20 hours of questioning before the Senate Judiciary Committee, my confidence in Judge Gorsuch has only been solidified.

Despite the Democrat's best efforts before and during the hearings to distort his record, he demonstrated time and again that his judicial philosophy is to impartially interpret and apply the law and the Constitution wherever it might take him.

Now we are about to witness something unprecedented in the history of our Nation. The partisan minority is going to block a vote on a Supreme Court nominee. In all of the Senate's 228-year history, that has never happened before. Three Supreme Court nominees have faced filibusters in our Nation's history. The first, Abe Fortas, faced a bipartisan filibuster by Senators of both parties concerned about Fortas's questionable ethics background.

The second and third, William Rehnquist and Samuel Alito, endured partisan filibusters by Democrats who disagreed with these nominee's judicial philosophies. The filibuster against Fortas succeeded, in part, because Fortas lacked a clear majority support, and, in part, because he was ethically compromised. The filibusters against Rehnquist and Alito, by contrast, failed. Rehnquist and Alito both enjoyed clear majority support and both were confirmed. But that was a different Senate at the time. There was a lot more open mindedness about the qualifications of these judges and their right to sit on the bench.

I regret to say that we are likely to add a fourth filibustered Supreme Court nominee, Neil Gorsuch. Like Justices Rehnquist and Alito, Judge Gorsuch enjoys clear majority support. Like Justices Rehnquist and Alito, Judge Gorsuch faces opposition from Senate Democrats who don't like his judicial philosophy. Why, I will never understand. In particular, they object that Judge Gorsuch takes the law as he finds it, rather than trying to bend the law toward liberal social ends.

Unlike Justice Rehnquist and Alito, however, Judge Gorsuch is apparently not going to clear the 60-vote threshold for cloture. This is because Senate Democrats, with only a few exceptions, have concluded that no nominee who does not subscribe to their views of hot-button social issues should be allowed to serve on the Supreme Court. Never, never, in the history of this body has the Senate allowed a partisan minority to defeat a Supreme Court nomination for which there is clear majority support.

The only successful filibuster of a Supreme Court nominee in our Nation's history was bipartisan, and it involved an ethically compromised nominee, Abe Fortas, who resigned from the bench shortly after his nomination failed rather than face impeachment for serious conflict-of-interest violations. Those circumstances are not even remotely comparable to the situation we face today.

The filibuster of Judge Gorsuch, should it go forward, will be entirely partisan. It will have nothing to do with Judge Gorsuch's ethics or character, which are above reproach, and it will occur in the face of clear majority support for the nominee.

Senate Democrats' decision to block Judge Gorsuch should come as no surprise to anyone who has been following the confirmation wars for more than the last 5 seconds. My Democratic colleagues will no doubt shout to the hilltops—some of them. There are some that are standing up here too. But they will shout to the hilltops that Republicans are ruining the Senate if we decide to put a stop to their unprecedented obstruction of this nominee.

They will no doubt cry that the 60-vote threshold for cloture on Supreme Court nominees is sacrosanct and that by putting an end to Democrats' unprecedented obstruction, Republicans are somehow undermining this institution's ideals.

When the American people hear these claims, when they hear Senate Democrats argue that Republicans should respond to their unprecedented obstruction by allowing a nomination with clear majority support to fail, they should recognize these arguments for what they are: hypocrisy. The fact is, we are only in this situation, forced to choose between rewarding Democrat obstructionism and changing the Senate's rules, because of Democrats and the campaign they have waged against qualified judicial nominees for the past 30 years.

Every single escalation of the confirmation wars can be laid at the feet of Democrats. This is a simple truth, and nothing my colleagues on the other side of the aisle can say can change it. I speak from experience. I have been here for through all of it. I was here in 1987 when Democrats started the confirmation wars with their disgraceful treatment of Robert Bork, one of the greatest lawyers in the country and a person who was supremely qualified to be on the Supreme Court.

I remember vividly the day the late Senator from Massachusetts came to this floor and smeared Judge Bork as a man would somehow turn back the clock to darker days in our Nation's past. I have to say, Senate Democrats twisted Judge Bork's words, misrepresented his record, and in sum, did their best to turn a good and decent man into some sort of a monster.

In their scorched-earth campaign against Robert Bork, Senate Democrats sowed seeds of destruction that are coming now to full fruition.

Next came Clarence Thomas. My Democratic colleagues learned from their Bork experience that fabrications and misinterpretations can bring down even the most qualified nominee, so they set to work on Judge Thomas. Not satisfied merely with denigrating Judge Thomas's professional qualifications, they set out to destroy him personally as well.

I have been in the Senate for 41 years, and never in all my time have I seen a lower moment than the way the Senate Democrats treated Clarence Thomas. No baseless allegation, no lurid lie was too low for my Democratic colleagues' attention. To his great credit, Judge Thomas endured this slander with dignity and respect and was confirmed by a slim 52-to-48 margin.

Thankfully, after the Thomas ordeal, we stepped back from the brink. When Bill Clinton became President and had two Supreme Court vacancies early in his term, Senate Republicans did not play tit for tat. Instead, we gave Justices Ginsburg and Breyer fair hearings and confirmed them overwhelmingly. And how did Senate Democrats pay us back for our fair treatment of President Clinton's nominees? They filibustered President George W. Bush's nominees.

I have used the word ''unprecedented'' to describe Democrats' expected filibuster of Judge Gorsuch. Well, what the Democrats did to President Bush's judicial nominees was also unprecedented. For the first time in history, Senate Democrats successfully filibustered 10 court of appeals nominees. These were nominees with majority support in this body. These were nominees who would have been confirmed had they gotten an up-or-down vote. I cannot overstate how dramatic a change this was to Senate norms and procedures. For the first time in history, Senate Democrats created an effectual 60-vote threshold for judicial nominees. Remember that Clarence Thomas was confirmed with only 52 votes. Had Senate Democrats filibustered his nomination, it would have been defeated. But they didn't because partisan filibusters of nominees with majority support were simply not in the accepted playbook. What Senate Democrats did during George W. Bush's Presidency changed the Senate forever.

Next up was Samuel Alito. Like Chief Justice Rehnquist, Justice Alito faced a partisan filibuster by Senate Democrats. Like Chief Justice Rehnquist, he overcame that filibuster. But what is notable about Justice Alito is he received fewer than 60 votes for confirmation. He overcame the filibuster because 19 Senate Democrats voted to end debate on his nomination even though only 4 ultimately voted for confirmation. Fifteen Senate Democrats chose not to filibuster Justice Alito even though they opposed his nomination because they recognized that filibustering a Supreme Court nominee with clear majority support had no precedent in this body's norms or history.

What happened when Barack Obama became President and Republicans had an opportunity for payback? Did they filibuster Sonya Sotomayor and Elena Kagan? Of course not. Indeed, many Republicans voted against Justice Sotomayor and Justice Kagan, but no Republican tried to prevent their nominations from coming to a vote. Once again, Senate Democrats escalated confirmation wars, and Senate Republicans chose not to reciprocate.

How did Democrats pay us back for our restraint on Justices Sotomayor and Kagan? They nuked the filibuster for lower court nominees. The irony of this move is really something. It was the Democrats who, 10 years earlier, for the first time in Senate history, began the practice of filibustering courts of appeal judges in an effort to stop President Bush's nominees. When Senate Republicans then had the gall not to roll over for President Obama once the shoe was on the other foot, Democrats simply changed the rules back to what they were in practice 10 years prior. Democrats, that is, raised the effectual confirmation threshold to 60 votes by instigating filibusters to block Republican nominees and then lowered it back down to 50 votes to push through Democratic nominees. They did so after only seven failed cloture votes. The Republicans, by contrast, endured 20 failed cloture votes during President Bush's term and never changed the rules.

That brings us to today. Having Borked Judge Bork, smeared Justice Thomas, instigated the filibuster for lower court nominees when it was in their interest, filibustered Justice Alito, and then eliminated the filibuster for lower court nominees when it was in their interest, Senate Democrats now expect Republicans to drop our hands and allow them to block Judge Gorsuch—an unquestionably qualified nominee with broad support from across the legal community and the country as a whole.

Enough, Mr. President. Enough.

We have let our Democratic colleagues get away with their games for too long. They were for the filibuster before they were against it before they were for it. They were the ones who created an effectual 60-vote threshold for judicial nominees. They were the ones who then undid that threshold to assist their short-term political interests when they were in power. They are the ones who now, for the first time in history, are seeking to block a Supreme Court nominee with clear majority support.

To put the matter bluntly, my Republican colleagues and I are fed up with these Democratic Party antics. We will no longer be bound by their games and petty partisanship. We will no longer allow them to dictate the terms of debate in ways that always advantage their side and always disadvantage ours.

I regret deeply the point we have arrived at. I am an institutionalist. I love the Senate and what it represents. I love my Democratic colleagues, and they know it. I have been very fair to them through the years, and I continue to be. I value debate, and I honor bipartisanship. But 30 years ago, my Democratic colleagues sent us down this path, and they have done nothing in the years since to turn us from this course. To the contrary, they have only hastened our descent.

If Democrats will filibuster a person like Judge Gorsuch, they will filibuster anyone—anyone—who holds to the traditional judicial values Republicans embrace. Neil Gorsuch is as good as they come. If he is not good enough for Democrats, no one will be.

Democrats demand that Republicans choose a nominee they would choose if they held the White House, when that has never been the standard for Supreme Court nominees and defies all logic and common sense. They demand the power to veto President Trump's choice even though the Supreme Court was, in all likelihood, the issue that won him the election. And I believe that. And they demand that Republicans keep the rules sacrosanct when they have changed the rules and changed the rules and changed the rules.

I am not happy that we are where we are, but I can say without reservation

that we are here because of what Democrats have done over the past 30 years to poison the confirmation process.

I am about to change the rules if necessary to put Neil Gorsuch on the Supreme Court. I won't be happy about that, but I will do it because Judge Gorsuch deserves confirmation and because I refuse to reward Democrats for 30 years of bad faith in blocking, stalling, and smearing Republican nominees.

Enough, Mr. President. Enough.

I hope my colleagues will come to their senses and realize that we ought to be working to support people of the quality of Judge Neil Gorsuch. There will come a time when they are going to have nominees before this body—I kind of hope that doesn't happen, but I think it is bound to happen—and when they do, I hope my fellow Republicans won't treat their nominees the way they are treating ours. It is abominable, it is abysmal, it is wrong, and I think it is time for everybody in this country to know that.

Mr. President, I used to try cases in Federal court, in Pittsburgh and in Utah. I had tremendous respect for Federal court judges. Mainly the judges in Pittsburgh were all Democrat. The judges in Utah more often were Democrats, some Republicans. But I have got to say that they were good judges, and I was very proud to be able to present my cases in front of them.

All I can say is that in all my years of working on the Judiciary Committee, trying cases before I came here, having an AB rating, the highest rating that Martindale-Hubble grants to attorneys for ability in both Pittsburgh and Utah, I have to say that I am very disturbed by the arguments made against Judge Gorsuch, and I have to say that I don't think you can find a better more qualified person to be on the Supreme Court.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. TILLIS). The clerk will call the roll.

The senior assistant legislative clerk proceeded to call the roll.

Mr. BLUMENTHAL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. BLUMENTHAL. Mr. President, we will vote today and tomorrow on the Supreme Court nominee, Neil Gorsuch, in the midst of a looming constitutional crisis. Only in the past few weeks, the Director of the FBI has confirmed that his agency is investigating ties between President Trump's associates and Russian meddling in our recent election.

The urgent need for an impartial investigation and the possibility of the Supreme Court's having to rule on a subpoena directed to the President of the United States is very real. The repeat of United States v. Nixon is far from idle speculation. The independence of our judicial branch has never been more important. It has never been more threatened.

When the story of this constitutional crisis is written, I believe that the heroes will be an independent judiciary and a free press. An independent judiciary is the bulwark against overreaching and autocratic tyranny, and the free press has uncovered much of the facts that have prompted the FBI investigation and, I hope, eventually—sooner rather than later—an independent prosecutor because only a special prosecutor can bring criminal charges that will hold accountable wrongdoers who have broken our criminal laws.

In this constitutional crisis, respect for an independent judiciary is more important than ever before, but it is threatened by forces that are powerful and undeniable. It was threatened first by the denial to Merrick Garland of a hearing and a vote, relying on an invented principle found nowhere in the Constitution that the President of the United States—then Barack Obama—somehow lost his power to appoint Justices during the fourth year of his term. That act of political expediency demeaned this institution, the U.S. Senate, and it also disrespected our judiciary. It dragged the Supreme Court into the partisan mire that has caused such drastic dysfunction in this branch of government.

President Trump demonstrated his own disrespect for the judiciary through his constant, repeated, relentless attacks, calling one member of the bench a ''so-called judge'' simply because he ruled against him and struck down on constitutional grounds President Trump's illegal travel ban—really a Muslim ban. His demeaning and disparaging comments have attempted to shake the foundation of respect for judicial rulings that have held him accountable and potentially every President accountable to the American people, along with the Senate and the House of Representatives. He has attempted to convince his audience that judges who rule against him are not only wrong but illegitimate—in one case, because of a judge's ethnic heritage.

I would have thought that there would have been bipartisan shock and outrage at such suggestions, but the silence across the aisle has been deafening. Such a campaign by the Executive against the judicial branch would be extraordinarily disturbing regardless of the circumstances but particularly so now in the midst of this constitutional challenge.

President Trump's disrespect for the judiciary was emphasized, as well, by how he selected his nominee for the Court and how he established a litmus test for that nominee. He proudly proclaimed that litmus test, declaring on multiple occasions that his nominee would automatically overturn Roe v. Wade and strike down gun violence prevention measures. He outsourced that selection process to extreme rightwing groups, like the Heritage Foundation, choosing from their list, from their preapproved selectees. Against this backdrop, President Trump nominated Neil Gorsuch to the Supreme Court.

I want to make clear that despite my outrage about what happened to Merrick Garland, which was far worse than a filibuster—one of my colleagues has termed it the ''filibuster of all filibusters''—and despite my deep concern over a nomination from a President who so disrespects the judicial branch, I was prepared to give Judge Gorsuch a fair hearing. I believe my colleagues on the Judiciary Committee and I provided that hearing, and we will provide a vote.

I strongly believe that during this process, Judge Gorsuch had a special obligation to be forthcoming. I want to be clear that that is not opining on cases or controversies that may come before him or issues that may be before his Court if he is confirmed. Unlike prior nominees, he absolutely refused to say whether he agreed with core principles and precedents, well-established and long-accepted decisions of the Supreme Court that embody and enshrine principles that the American people have accepted and that they expect the Supreme Court to implement.

There is no tradition of a Supreme Court nominee's refusing to answer every question posed to him as Neil Gorsuch did, even questions about iconic cases. Justice Kennedy and Chief Justice Roberts answered unambiguously that they believed that Brown v. Board of Education was rightly decided. Justice Roberts also said of the decision in Griswold v. Connecticut: ''I agree with the Griswold Court's conclusion.'' On the related case of Eisenstadt v. Baird, Justice Alito said: ''I do agree with the result in Eisenstadt.'' Such statements do not prejudice any litigants or prejudge any cases; instead, they provided Senators and, more importantly, the American people with the confidence that these Justices adhere to long-settled legal principles that have formed the basis of critically important cases that came afterward. How far these principles may extend is a live issue, but their underlying legitimacy is not and should not be.

Unfortunately, at his hearing, Judge Gorsuch would tell us only that Griswold and Eisenstadt were precedents—or decisions—of the Court, and he doubled down on his evasiveness in response to written questions that were submitted just last week. There was no reason for him to diverge from the kinds of answers that were provided by Justice Roberts and Justice Alito unless he, unlike them, disagreed with the reasoning that was used in these cases.

These cases go to the core of the right to privacy and equal treatment under the rule of law. The constitutional right to privacy underlies not

just the rights of couples to use contraception, which was the issue in Griswold and Eisenstadt, but the right of women to control their own bodies, as established in Roe v. Wade, and couples of different races to marry, as established in Loving v. Virginia, or the right of same-sex couples to equal treatment, as established in Lawrence v. Texas and Obergefell v. Hodges. Justice Brandeis, in one of the original privacy decisions, called this right to privacy ''the right to be left alone,'' and it is a core constitutional principle that Chief Justice Roberts endorsed as well.

If Judge Gorsuch does not believe in this fundamental right or equal protection under the rule of law, the American people deserve to know it. Unfortunately, his continued evasion of my questions and those of others tells a different story. I am left with the inescapable conclusion that Judge Gorsuch passed the Trump litmus test—an automatically anti-choice, pro-gun conservative and an acolyte of hard-right special interests who screened and selected his name. Yet I am equally and maybe more concerned by Judge Gorsuch's approach to cases dealing with worker safety and consumer rights, issues relating to clean air and water and the fundamental role of the public sector in protecting individuals and putting their rights above corporate interests.

The important concerns my colleagues and I have raised have been caricatured by some Senate Republicans to a belief that judges should always rule for sympathetic plaintiffs, and that is simply not so. The TransAm Trucking case, which has been discussed at length on the floor and in committee, is of concern not because of the individual but because of the reasoning he used. He relied on a handpicked dictionary definition to rule against a worker who left his truck as he was under threat of grave physical peril and perhaps death, and he distorted the meaning of the statute, leaving aside basic common sense and feeling. He called Congress's declared statutory purpose—protecting health and safety—too ''ephemeral and generic'' to provide an interpretive guide. That is how he characterized our purpose here in protecting the safety of workers. This approach shows that Judge Gorsuch looks for guidance not in the words that Congress has chosen but in his own dictionary. And it may not even be Webster's; it may be the dictionary that is in his head or is in the heads of the rightwing groups who screened and proposed his name.

Then there is Judge Gorsuch's open hostility to the Chevron doctrine, which is a term that was likely meaningless and incomprehensible to most Americans before these proceedings and may be again after we are done. Yet it is a profoundly important principle of law that essentially stands against judicial activism—the very defect that many of our Republican colleagues believe is too characteristic of the courts today.

The structure of our government depends on the flexibility of these agencies that protect the purity of our drinking water, the safety of workers on construction sites, the integrity of our financial markets, and much, much more, so that it may do its job and enforce rules and laws that provide not only protection for ordinary people, everyday Americans, but also a level playing field for the good guys who want to do the right thing, and they are the majority of businesses in this country.

The proposed abandoning of the Chevron doctrine that Judge Gorsuch supports would eviscerate the enforcement of these basic rules that protect workers and consumers—people who drink water in their homes and breathe the air and go to work every day and expect to come home safely, as well as people who invest their money in a way that is protected against fraud.

As Emily Bazelon and Eric Posner wrote this Sunday in the New York Times:

> Judge Gorsuch is skeptical that Congress can use broadly written laws to delegate authority to agencies in the first place. That can only mean that at least portions of such statutes—the source of so many regulations that safeguard Americans' welfare—must be sent back to Congress, to redo or not.

I ask unanimous consent that the article be printed in the RECORD.

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

[From the New York Times, Apr. 1, 2017]

THE GOVERNMENT GORSUCH WANTS TO UNDO

(By Emily Bazelon and Eric Posner)

At recent Senate hearings to fill the Supreme Court's open seat, Judge Neil Gorsuch came across as a thoroughly bland and nonthreatening nominee. The idea was to give as little ammunition as possible to opponents when his nomination comes up this week for a vote, one that Senate Democrats may try to upend with a filibuster.

But the reality is that Judge Gorsuch embraces a judicial philosophy that would do nothing less than undermine the structure of modern government—including the rules that keep our water clean, regulate the financial markets and protect workers and consumers. In strongly opposing the administrative state, Judge Gorsuch is in the company of incendiary figures like the White House adviser Steve Bannon, who has called for its ''deconstruction.'' The Republican-dominated House, too, has passed a bill designed to severely curtail the power of federal agencies.

Businesses have always complained that government regulations increase their costs, and no doubt some regulations are ill-conceived. But a small group of conservative intellectuals have gone much further to argue that the rules that safeguard our welfare and the orderly functioning of the market have been fashioned in a way that's not constitutionally legitimate. This once-fringe cause of the right asserts, as Judge Gorsuch put it in a speech last year, that the administrative state ''poses a grave threat to our values of personal liberty.''

The 80 years of law that are at stake began with the New Deal. President Franklin D. Roosevelt believed that the Great Depression was caused in part by ruinous competition among companies. In 1933, Congress passed the National Industrial Recovery Act, which allowed the president to approve ''fair competition'' standards for different trades and industries. The next year, Roosevelt approved a code for the poultry industry, which, among other things, set a minimum wage and maximum hours for workers, and hygiene requirements for slaughterhouses. Such basic workplace protections and constraints on the free market are now taken for granted.

But in 1935, after a New York City slaughterhouse operator was convicted of violating the poultry code, the Supreme Court called into question the whole approach of the New Deal, by holding that the N.I.R.A. was an ''unconstitutional delegation by Congress of a legislative power.'' Only Congress can create rules like the poultry code, the justices said. Because Congress did not define ''fair competition,'' leaving the rule-making to the president, the N.I.R.A. violated the Constitution's separation of powers.

The court's ruling in Schechter Poultry Corp. v. the United States, along with another case decided the same year, are the only instances in which the Supreme Court has ever struck down a federal statute based on this rationale, known as the ''nondelegation doctrine.'' Schechter Poultry's stand against executive-branch rule-making proved to be a legal dead end, and for good reason. As the court has recognized over and over, before and since 1935, Congress is a cumbersome body that moves slowly in the best of times, while the economy is an incredibly dynamic system. For the sake of business as well as labor, the updating of regulations can't wait for Congress to give highly specific and detailed directions.

The New Deal filled the gap by giving policy-making authority to agencies, including the Securities and Exchange Commission, which protects investors, and the National Labor Relations Board, which oversees collective bargaining between unions and employers. Later came other agencies, including the Environmental Protection Agency, the Occupational Safety and Health Administration (which regulates workplace safety) and the Department of Homeland Security. Still other agencies regulate the broadcast spectrum, keep the national parks open, help farmers and assist Americans who are overseas. Administrative agencies coordinated the response to Sept. 11, kept the Ebola outbreak in check and were instrumental to ending the last financial crisis. They regulate the safety of food, drugs, airplanes and nuclear power plants. The administrative state isn't optional in our complex society. It's indispensable.

But if the regulatory power of this arm of government is necessary, it also poses a risk that federal agencies, with their large bureaucracies and potential ties to lobbyists, could abuse their power. Congress sought to address that concern in 1946, by passing the Administrative Procedure Act, which ensured a role for the judiciary in overseeing rule-making by agencies.

The system worked well enough for decades, but questions arose when Ronald Reagan came to power promising to deregulate. His E.P.A. sought to weaken a rule, issued by the Carter administration, which called for regulating ''stationary sources'' of air pollution—a broad wording that is open to interpretation. When President Reagan's E.P.A. narrowed the definition of what counted as a ''stationary source'' to allow plants to emit more pollutants, an environmental group challenged the agency. The Supreme Court held in 1984 in Chevron v. Natural Resources Defense Council that the E.P.A. (and any agency) could determine the

meaning of an ambiguous term in the law. The rule came to be known as Chevron deference: When Congress uses ambiguous language in a statute, courts must defer to an agency's reasonable interpretation of what the words mean.

Chevron was not viewed as a left-leaning decision. The Supreme Court decided in favor of the Reagan administration, after all, voting 6 to 0 (three justices did not take part), and spanning the ideological spectrum. After the conservative icon Justice Antonin Scalia reached the Supreme Court, he declared himself a Chevron fan. ''In the long run Chevron will endure,'' Justice Scalia wrote in a 1989 article, ''because it more accurately reflects the reality of government, and thus more adequately serves its needs.''

That was then. But the Reagan administration's effort to cut back on regulation ran out of steam. It turned out that the public often likes regulation—because it keeps the air and water clean, the workplace safe and the financial system in working order. Deregulation of the financial system led to the savings-and-loans crisis of the 1980s and the financial crisis a decade ago, costing taxpayers billions.

Businesses, however, have continued to complain that the federal government regulates too much. In the past 20 years, conservative legal scholars have bolstered the red-tape critique with a constitutional one. They argued that only Congress—not agencies—can create rules. This is Schechter Poultry all over again.

And Judge Gorsuch has forcefully joined in. Last year, in a concurring opinion in an immigration case called Gutierrez-Brizuela v. Lynch, he attacked Chevron deference, writing that the rule ''certainly seems to have added prodigious new powers to an already titanic administrative state.'' Remarkably, Judge Gorsuch argued that Chevron—one of the most frequently cited cases in the legal canon—is illegitimate in part because it is out of step with (you guessed it) Schechter Poultry. Never mind that the Supreme Court hasn't since relied on its 1935 attempt to scuttle the New Deal. Nonetheless, Judge Gorsuch wrote that in light of Schechter Poultry, ''you might ask how is it that Chevron—a rule that invests agencies with pretty unfettered power to regulate a lot more than chicken—can evade the chopping block.''

At his confirmation hearings, Judge Gorsuch hinted that he might vote to overturn Chevron without saying so directly, noting that the administrative state existed long before Chevron was decided in 1984. The implication is that little would change if courts stopped deferring to the E.P.A.'s or the Department of Labor's reading of a statute. Judges would interpret the law. Who could object to that?

But here's the thing: Judge Gorsuch is skeptical that Congress can use broadly written laws to delegate authority to agencies in the first place. That can mean only that at least portions of such statutes—the source of so many regulations that safeguard Americans' welfare—must be sent back to Congress, to redo or not.

On the current Supreme Court, only Justice Clarence Thomas seeks to strip power from the administrative state by undercutting Chevron and even reviving the obsolete and discredited nondelegation doctrine, as he explains in opinions approvingly cited by Judge Gorsuch. But President Trump may well appoint additional justices, and the other conservatives on the court have expressed some uneasiness with Chevron, though as yet they are not on board for overturning it. What would happen if agencies could not make rules for the financial industry and for consumer, environmental and workplace protection? Decades of experience in the United States and around the world teach that the administrative state is a necessary part of the modern market economy. With Judge Gorsuch on the Supreme Court, we will be one step closer to testing that premise.

Mr. BLUMENTHAL. His philosophy represents the height of activism, because it would allow courts to substitute their policy judgments for agency expertise. Abandoning the Chevron doctrine and the principles it represents invokes a desire to destroy a broad array of rules that protect critical rights. One such rule was issued by the Occupational Safety and Health Administration in the aftermath of a Connecticut tragedy at L'Ambiance Plaza decades ago when a collapse killed 28 workers in Bridgeport, CT. The rule prohibiting the use of the lift slab construction technique that led to L'Ambiance's collapse has now saved the lives of others. But would it have survived a review by Judge Gorsuch? My fear is that he would have struck it down and substituted the activist instinct of a judge instead—protecting the corporations that might use it.

Today we still know very little about Judge Gorsuch's core beliefs because he evaded so many questions. But here is what we do know. We know that the man who hired him has said he passes his rightwing litmus test. We know that conservative organizations have spent millions of dollars on the prospect that he will move American law dramatically to the right. And we know that he will not answer questions that his Republican-appointed predecessors answered about core tenets of American jurisprudence. In short, he has left us with substantial doubt.

Let me conclude on this note—that doubt. Important and critical doubt that should preclude us from confirming him today leaves women wondering how long they will have autonomy over their healthcare decisions, same-sex couples questioning whether they might be denied the right to marry the person they love, workers and consumers doubting their rights, and Americans fearing the Court will abandon protections of privacy, equality, and the rule of law.

That is why I cannot support this nomination and why I urge my colleagues to support a filibuster to block it.

I yield the floor.

The PRESIDING OFFICER. The majority leader.

UNANIMOUS CONSENT AGREEMENT—EXECUTIVE CALENDAR

Mr. MCCONNELL. Mr. President, I ask unanimous consent that following leader remarks on Monday, April 24, the Senate proceed to executive session for consideration of Calendar No. 31, the nomination of Sonny Perdue to be Secretary of Agriculture. I further ask that the time until 5:30 p.m. be equally divided in the usual form and that at 5:30 p.m., the Senate vote on confirmation with no intervening action or debate, and that if confirmed, the President be immediately notified of the Senate's action.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. WHITEHOUSE. Mr. President, I ask unanimous consent to speak for up to 20 minutes as in morning business.

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

CLIMATE CHANGE

Mr. WHITEHOUSE. Mr. President, this is my 163rd ''Time to Wake Up'' speech. I persist in the hope that one day these little water drops will ultimately cut through the stone of fossil fuel intransigence.

Last week our new President, Donald Trump, announced an Executive order aiming to wipe out many of his predecessors' climate change measures. So I would like to take some time this evening to examine his Executive order—which is, in many respects, a sham—and show how very far away it is from the actual wishes of the American people.

So to set the scene, exactly as the big polluters wanted, the Trump Executive order purports to roll back climate protections. It seeks to change rules for how industry controls methane leaks from natural gas extraction and to lift a ban on new coal leases on our Federal lands. It signals an effort to unwind the Clean Power Plan, which has helped put us on track to sharply reduce carbon emissions over the next decade. Typical for this insider-friendly administration, it is a polluter's wish list, but terrible for the American people—sad, as the President would say.

President Trump promises that this will revitalize the coal industry, but it won't. Appalachian coal is being crushed in the market by Wyoming coal, and cheap natural gas is crushing both Appalachian coal and Wyoming coal, and ever-cheaper renewables are catching up on them all. So like so much of what this Oval Office does, this was political theatrics, not real policy.

The Clean Power Plan is going nowhere because America is not, despite Trump's best efforts, a banana republic. The administrative agencies that Trump directed to stop taking action on climate change are actually obliged to follow the law, and they will be held to the law. Under the Administrative Procedures Act, these agencies have to follow real facts, not conjure up ''alternative facts'' from the fever swamp of the Breitbart imagination. Their record and their decisions will be reviewed by courts—not ''so-called'' courts, real courts. Administrative agencies cannot make decisions that are, to use the standard of administrative law, arbitrary and capricious. This is an Oval Office that lives by being arbitrary and capricious, but administrative agencies cannot be, or their work will be thrown out in court.

The question of carbon dioxide as a pollutant has been settled by the U.S. Supreme Court. Even Administrator Pruitt seems to recognize the folly of trying to undo the EPA carbon dioxide endangerment finding. So we have, as a matter of law, a dangerous pollutant, and under the law, it must be regulated. So this performance of the Trump Show is a waste of time because ultimately lawyers and courts will give the law—the law—the final say.

Courts are actually pretty good places for addressing climate change. It is very hard for the lies that are at the heart of climate denial to withstand judicial scrutiny. Smelly conflicts of interest can be exposed, and administrators with those smelly conflicts can be removed or recused. Judges aren't supposed to be influenced by campaign contributions or political threats. The law, and real facts, not alternative facts, prevail.

In litigation like the cases in New York and Oregon, the fossil fuel industry will face discovery, testimony, and cross-examination. Lawyers and courts will ultimately force things back on track. In the meantime, this Trump show makes losers of the American people. The Clean Power Plan is a reasonable approach to confronting our carbon problem. It gives States flexibility, and it would save American families $85 a year on energy costs once fully implemented. Good luck making a better plan.

I represent Rhode Island, a downwind State prone to air pollution from out-of-State smokestacks. We are also a coastal State, where rising seas driven by climate change threaten our coastal towns. I am sure the Presiding Officer can sympathize with the risk to coastal communities as the sea levels rise.

Just this past week, our Providence Journal had a story that said there are seven water treatment plants that are in danger of inundation in a 100-year storm, which, of course, is becoming more and more likely each year. So for Rhode Island, reducing carbon pollution and other greenhouse gases is part of preserving the map of the State we love and protecting the health of our people.

We need EPA, because our State environmental agency can't regulate out-of-State pollution. That brings me to the man standing next to the President as he signed this order, EPA Administrator Scott Pruitt. He is a man who built his career raising money from the industry, and for years lent his badge of office to the industry-enabled legal assault on the Clean Power Plan. As you might imagine, he beamed as President Trump passed him the pen used to sign the Executive order.

Years ago, in Central and South America, fruit company puppets ruled banana republics. They wore ostentatious uniforms and enjoyed the trappings of power, but it was the fruit company backers who really called the shots. That is why banana republics are called banana republics. The fossil fuel industry is well on its way to try to turn America into a banana republic, but it won't work. It is a stain upon the Senate that Pruitt actually got through the Senate without ever having to disclose who funded his political dark money operation. That is a first. That is a first. The Republican majority would not have those questions answered because they were so eager to shove this fossil fuel operative into the Administrator's seat at EPA. Inconvenient questions like that wouldn't get answered in banana republics, either.

While fossil fuel interests have been calling the shots in Washington, the American people have been of an entirely different mind. Let me show several polls that have come out over the past few weeks documenting public concern about climate change.

The Gallup poll shown here found that 71 percent of the American people believe climate change is happening—71 percent. Seventy-one percent trust scientists that, in fact, climate change is happening; 68 percent believe that global warming is caused by human activities; 62 percent believe we are already feeling the effects of climate change in our lives; and 45 percent worry a great deal—worry a great deal—about global warming.

A recent poll indicates that climate change is the top worry for 66 percent of Democrats.

Yale's program on Climate Change Communication recently launched an extensive interactive map. It was featured recently in the New York Times. It shows that Americans all over the country overwhelmingly believe that climate change is real and support a variety of actions to address it. So let's start with what Americans believe. Seventy percent believe that global warming is happening, and 53 percent believe it is caused mostly by human activities. Most scientists think that global warming is happening—that is a near majority—and 71 percent trust scientists about global warming. That, by the way, compares to 9 percent of the Republican Senate caucus when we called a vote on the issue last Congress. So if we are looking for who is out of step here, it is the Republican Senate caucus that is very out of step with the public.

And when you go on to solutions, 82 percent of Americans want research into renewable energy sources; 75 percent want to regulate CO_2 as a pollutant; and 69 percent want to set strict CO_2 limits on existing coal-fired powerplants.

Actually, the Clean Power Plan was a good deal softer than strict CO_2 limits, and even then, 69 percent of Americans support it, and 66 percent of Americans support requiring utilities to produce 20 percent of their electricity from renewable sources.

So my colleagues from Republican States might think this data is representative of people living in their districts, that this is being biased by concern from blue States. Well, here is a State-by-State look. So these are all the States. The colors reflect the percentage of Americans who think that climate change is happening. The break point from blue to tan is the 50-percent break point. So in every single State in the Union, no matter how red, a majority of Americans understand that climate change is happening. How that 50 percent ends up being 9 percent on the Senate floor is a story that I have told in other speeches. But we will see that at 45 percent, it is just pale blue. There is not a bit of pale blue anywhere. The entire country is above 50 percent.

So the next item this allows us to look at is Americans who support funding for research into renewables. Now, the lowest color here is the kind of deep orange and that comes in at 75 percent. That is the lowest point of any State in wanting support funding for research into renewables—75 percent—and it goes all the way up into the 90s.

For renewable research in coal country, we see 82 percent support in Wyoming; 81 percent support in West Virginia; 79 percent support in Kentucky; and the same in the oil patch—79 percent of Texans support renewables. Despite this support, President Trump recently proposed massive cuts, showing once again that the Trump show is not the America show even in fossil fuel States.

The support for carbon dioxide limits on existing coal-fired plants is also widespread. In all 50 States—in all 435 red, blue, and purple congressional districts—there is majority support, every single place. So what did President Trump and the fossil fuel operative at EPA do in the face of this? Signed this silly Executive order purporting to undo the Clean Power Plan.

Yale's map allows us to do some interesting stuff. It is interactive, so we can zoom in. Let's take a quick zoom in Oklahoma, Administrator Pruitt's home State.

As we can see, in every congressional district, a majority of Oklahomans believe climate change is happening, trust climate scientists about climate change, support regulating carbon dioxide as a pollutant, and support setting strict carbon dioxide limits on existing coal-fired powerplants—even in Oklahoma.

So who is Scott Pruitt representing? Because he is certainly not representing any State in the country, any congressional district in the country, certainly not representing Oklahoma or any congressional district in Oklahoma.

Interestingly, not too long ago, President Trump and his children were on the same page as those majorities of Oklahomans and Americans. I have shown this before: In 2009, Donald, Ivanka, Donald Junior, and Eric Trump supported meaningful and effective measures—in an ad in the New York Times to fight climate change—calling

climate change ''scientifically irrefutable'' and warning that its consequences would be ''catastrophic and irreversible.'' So 7 years ago, the entire Trump family recognized that climate change was based on scientifically irrefutable evidence and had catastrophic irreversible consequences.

Despite the popularity of getting something done on climate change in every single congressional district in the country, we do nothing. What is up with that, if not politics—fossil fuel industry politics? The most voracious special interest in American politics, the fossil fuel industry, has captured the Trump show, installed its flunkies at the EPA, and hopes to unwind environmental and public health safeguards that the public supports.

So I have to keep asking the fossil fuel guys: How do you think this ends? Are you delusional enough to believe that you can defeat real science and ignore both the laws of nature and the will of the American people?

It is bonkers. It is political power run amuck.

We have a chance to push back a little bit. Scientists will be marching in Washington, DC, and around the country on April 22 to reject the phony-baloney alternative facts of President Trump. Please join them wherever you can. The following weekend, people from around the country are coming to DC—April 29—for the People's Climate March. I was in the People's Climate March in September 2014 with more than 400,000 other concerned Americans, and it was a heartening and energizing experience. So mark your calendars for April 22 and for April 29, and come to DC or to the satellite marches being held around the country.

As these maps have shown, you are not alone in seeking climate action. Every single congressional district in the country wants climate action. It is only the death grip of the fossil fuel industry on this building that prevents that from happening.

So help make these the last days of denial by this dirty industry and its rightwing climate denial fanatics. As days and months slip by, we lose precious time to address both the harm to Mother Earth of climate change and the harm to America of being made ridiculous around the world by our obeisance to the fossil fuel industry. We are supposed to be the city on the hill, not fossil fuel's banana republic.

It is time for America to begin leading again on climate. It is time to wake up.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. BENNET. Mr. President, our founders knew that ''while history does not repeat, it does rhyme.'' That is why they mined the politics of ancient Greece and Rome for lessons about the promise and the perils of self-government. In their wisdom, they placed those lessons at the heart of the American political experiment. Two hundred thirty years later, that experiment has exceeded their wildest hopes, in no small part because generation after generation of Americans—including elected officials, including Members of this body—understood that our government is far more than the sum of our laws or the letter of our Constitution. Our system is also held together by rules, written and unwritten, that help elected officials resolve their differences without unleashing a downward spiral of recrimination that could endanger the Republic itself.

They understood, for example, that while civility, compromise, and cooperation are not required by law, laws cannot pass without them. They recognized that while the majority may have the power to rule on its own, it should not trample over the minority. They understood that, at some point, partisanship should give way to patriotism.

Throughout history, including moments far more difficult than our own, these principles were the quiet guardrails of our politics, keeping dysfunction at bay. But in recent years, we have begun tearing these guardrails down, and in doing so, we risk the revenge of history by ignoring it.

There is a tendency around here to think that our problems are unique and that the consequences of our actions are fleeting.

Some 2,400 years ago, the ancient history of Korsia was consumed by civil war. According to Thucydides, both sides spared ''no means,'' he wrote, ''in their struggles for ascendancy. . . . In their acts of vengeance they went to even greater lengths, not stopping at what justice or the good of the state demanded, but making the party caprice of the moment their own standard.''

As the civil war intensified, both sides struggled to end it because ''there was neither promise to be depended upon nor oath that could command respect; but all parties dwelling rather in their calculation upon the hopelessness of a permanent state of things, were more intent upon self-defence than capable of confidence.''

The Founders read Thucydides. They knew that once factions cross the line, once they violate tradition in an escalating retaliation, it becomes very hard to turn back.

James Madison in particular understood the peril of faction. He wrote how people with ''a zeal for different opinions concerning religion, concerning government, and many other points'' have ''divided mankind into parties, inflamed them with mutual animosity, and rendered them much more disposed to vex and oppress each other than to cooperate for their common good.''

They also feared that, once in power, majority factions would abuse that power to run roughshod over the minority. In a country with such diverse beliefs and traditions, doing so could threaten the very stability of the Republic.

For these reasons, the Founders embedded checks in the design of our government. That is why in the Senate we represent entire states, not gerrymandered districts. Colorado, for example, has roughly equal numbers of Democrats, Republicans, and Independents. That is why the Senate gives smaller States disproportionate representation, with Colorado receiving the same votes as California.

That is why traditions of the Senate hand the minority tools to encourage consensus between political parties. The filibuster is one of those tools, and it has been used for good and for ill throughout our history. By requiring the consent of 60 Senators to proceed on key votes, the filibuster ensures that the legislation we pass and the nominations we approve reflect at least a modest level of consensus. The filibuster is meant as a tool of last resort, but in recent years it has become yet another weapon in our endless partisan warfare. It was not always that way.

From George Washington to George W. Bush, the filibuster was used just 68 times against Presidential nominees. But during just the first 5 years of the Obama administration, Republicans used the filibuster 79 times against his nominees. That was my first term in the Senate, and at that time, I saw the filibuster the way many Americans still do—as an undemocratic tool for delay and gridlock. So in 2013, after unprecedented Republican obstruction of highly qualified nominees, I voted with the Democratic majority to end the 60-vote threshold for most Presidential nominations, invoking what is known as the nuclear option.

Although Republicans were wrong to abuse the rules, Democrats were wrong to change them. Even as we changed the rules, however, we made a point to retain the filibuster for Supreme Court nominations, recognizing their profound influence on our country's laws.

Last year, dysfunction in the Senate reached a new low when Senator MCCONNELL denied Judge Merrick Garland, President Obama's nominee for the vacancy left by the late Justice Scalia, the courtesy of even a hearing, to say nothing of a vote. That was an offense to the traditions of this body and our Constitution.

I recognize that it is impossible to separate politics from the courts, but at the same time, we must not allow the judiciary—and especially the Supreme Court—to become a pure extension of our partisan elections and politics. Alexander Hamilton wrote that ''liberty can have nothing to fear from the judiciary alone, but would have everything to fear from its union with either of the other departments.'' Continuing, he wrote that because of ''the natural feebleness of the judiciary, it is in continual jeopardy of being overpowered, awed, or influenced by its coordinate branches.''

Our actions over the last few years—and I would say over the last few days—jeopardize not only the Senate,

but also the judiciary. Today, some of my colleagues plan to filibuster President Trump's Supreme Court nominee, Judge Neil Gorsuch. The Republican leadership has responded by threatening to invoke the nuclear option, which would eliminate for all time the 60-vote threshold for Supreme Court nominees and allow them to confirm Judge Gorsuch with the narrowest partisan majority. This is precisely the outcome our Founders feared, when lifetime appointments to our highest Court, which touches every aspect of American life, become just another partisan exercise. We must not go down this road.

This President may have several more opportunities to nominate a Supreme Court Justice during his term. If that happens, Republicans would face enormous pressure to nominate an extreme candidate, knowing that they could confirm them without a single Democratic vote—indeed, that they would be expected to confirm them without a single Democratic vote. And to those who believe that President Trump could not nominate someone more outside the mainstream than Judge Gorsuch, I would say to just look at some of President Trump's Cabinet nominees, some of whom are among the least qualified and most radical ever confirmed by this body. By the way, under the change to the rules that we made, it is the first Cabinet to be confirmed requiring just 51 and not 60 votes.

Not to put too fine a point on it, but if you don't like the ring of Judge Gorsuch, how do you feel about Justice Pruitt, who doesn't believe in climate change, or Justice Sessions, who has a record of opposing civil rights and equality? If we continue down this path, both of those could be confirmed with a slim majority vote.

With respect to Judge Gorsuch, I am proud he is from Colorado. But I am concerned by his judicial approach, which too often seems to rely on the narrowest interpretation of the law with little appreciation for its context. In particular, I believe he has far too much confidence in the original meaning of the words in legislation or, for that matter, even the Constitution. Having worked on legislation for nearly a decade now, I know these words, so often written in the dead of night in meager attempts to let everybody go home, cannot be explained without reference to the legislative context or human history or lawmakers' intent. Sometimes a comma really does end up in the wrong place.

Although I have reservations about his approach to the law, I do not have reservations about his qualifications for the Court. He is a committed and honorable public servant, and that is why so many members of the Colorado bar and bench support his nomination. Qualified nominees deserve an up-or-down vote. That is the tradition of this body. How members vote is a matter of conscience for each of us.

For all of these reasons, and in the hope of preserving the minority's voice in our government, which so many generations before us have done, I will oppose efforts to filibuster this nomination. If we go down this road, we will undermine the minority's ability to check this administration and all those who follow.

Today we have a President who does not appreciate the separation of powers and who has made unprecedented attacks on the free press and the judiciary. The country needs an empowered Senate minority right now, more than ever. More than that, the country needs a Senate that can forge a consensus about our future, rather than carrying on the bitter and tired divisions of the past. I know it can be hard. I have been here long enough to know it can be hard for both sides to see beyond the partisan tactics of the moment. Lawmakers will never lack for an excuse to break with custom or change the rules to their benefit. They may even argue, as some recently have, that the damage is not that bad—that everything can continue on as normal.

We should know better than that. Our Founders certainly did. They would recognize our path today in the currents of history. The Roman Republic endured for nearly 500 years, but it was brought low by events that should seem eerily familiar to people in this Chamber.

In 60 BCE, the Roman Senate was consumed by a controversial land reform initiative. One side was led by a Senator named Cato; the other, Julius Caesar. To stop land reform and other initiatives, Cato employed delay tactics similar to the filibuster, freezing the Roman Senate for months. While the action was within the rules, it broke with Senate custom. Caesar vowed to press forward. Cato's allies responded by declaring a religious holiday for the rest of the legislative calendar, stopping the reform effort in its tracks.

In a further break with precedent, Caesar bypassed the Senate and took the bill to the people's assembly for approval. Furious, Cato's allies boycotted the government and postponed the next election by 3 months. While Caesar eventually triumphed, the incident intensified a cascade of recrimination that the Roman Senate struggled to escape. Legislative strikes, delayed elections, and believe it or not, shutdowns grew in frequency. Manufactured crises became routine.

As the dysfunction grew, the Senate became increasingly irrelevant, as power flowed to Caesar and military leaders. Even as Senators recognized the danger, they failed to correct course. Too much damage had been done. Centuries-long custom had been broken. Trust among Senators had eroded. Confidence in the body collapsed.

As dysfunction in the Senate rose, so did popular calls for a strongman to clean up the mess. Within a decade, Caesar crossed the Rubicon with an army, and the Republic soon gave way to tyranny. It would take 1,300 years for another large Republic to emerge—this time in the United States of America.

Unlike us, our Founders knew this history as well as their own. But they could not guarantee that we would heed its lessons. That is why they built institutions to check the worst impulses of faction, to help us navigate profoundly consequential decisions—like confirmations for the Supreme Court—without tearing each other apart. But the Founders also placed their faith in the willingness of elected officials to resist the lure of narrow interests or passions of the moment and rise up to defend their institutions and our traditions, especially in hard times. We must not betray their faith.

With each escalating crisis, we damage not just the Senate, but the Republic. The Rubicon may be far, but with each rule and custom broken, we draw nearer. Choices on both sides have brought us to this low point, but I have faith that we can choose—and we should choose—a different path. We can choose to step back from the brink to find common ground, to fulfill our obligation in the time we are serving here to sustain the American experiment for the next century and beyond.

I yield the floor.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. BROWN. Mr. President, I always appreciate the remarks—the well-thought-through remarks of my colleague, and the history lesson putting it into context is always so important and something we should do more of in this body.

I thank Senator BENNET for his words.

The Supreme Court, as we know, has tremendous influence over the lives of our country, the lives of Ohioans, my State, and the lives of so many. Nominees must defend the rights of all Americans to make their own healthcare decisions, to collectively bargain for safe workplaces and fair pay, and to be protected from discrimination and Wall Street greed.

Unfortunately, Judge Gorsuch is simply not that nominee. His record is clear. He has ruled that corporations are people. I am not a lawyer, but I understand that it is a relatively recent concept in American jurisprudence to equate corporations with people. When you do that, you simply give corporations more rights than individuals have. When you come from that position, it means that judges repeatedly rule to choose corporations over workers; they choose polluters over communities; they choose Wall Street over consumer protections; they choose special interest money over our citizens. We have seen too much of that in this country.

We have seen a decline of the middle class, in part because the Federal judiciary is choosing corporations over

workers. If chosen, polluters over communities; if chosen, Wall Street over consumer protections; if chosen, special interest money over citizens—that is the Court we have seen in far too many 5-to-4 decisions, as Senator WHITEHOUSE has pointed out so effectively on this floor.

The misguided idea that corporations are people is far outside the mainstream of what most Ohioans believe. It may work for graduates of Harvard and Yale Law School. Interestingly, if Judge Gorsuch is approved, all nine of the Supreme Court Justices will have attended Harvard or Yale Law School. I don't know what is wrong with Ohio State or the University of Toledo or Akron University or University of Cincinnati or Case Western or Michigan or Chicago or anywhere else. That is whom Presidents have chosen; those are the people we seem to confirm.

But this view that corporations are people simply doesn't wash with the American people. It is how we got rules that allow Wall Street banks and hedge funds to wreak havoc on ordinary working people and ordinary working families, with no consequences.

Judge Gorsuch himself has argued against the rights of working Americans to band together to hold Wall Street and corporations accountable. He ruled against children with autism. He ruled against students with disabilities. We have a President in the White House who makes fun of disabled people. Now, we are going to put a Justice on the Court who rules against students with disabilities. We have a Secretary of Education who barely knew what IDEA was—the provision of the law that guarantees disabled students an education.

Why we are moving in this direction, I think, amazes most people in this country, whether you have a disabled person in your family or not. His views of protecting students with disabilities are so outside the mainstream that last month, the Supreme Court unanimously rejected his reasoning.

A boy with autism, Luke, wasn't making progress in school, and it was recommended that he be placed in a residential program. An impartial hearing officer and two different judges agreed. But Judge Gorsuch disagreed. He said that, as long as a student with a learning disability is making ''merely . . . more than de minimus'' progress in his or her education, the school district didn't have to do anything else. Think of that. That student, he counts a little bit, but he really doesn't count that much. He doesn't count as a full human being with full rights and full citizenship in this country.

If your disabled child is getting more than nothing, I guess that is good enough, according to Judge Gorsuch. Luckily, this Supreme Court, as conservative as it usually is, overturned Judge Gorsuch's precedent that denied a real education to students like Luke. Again, they overturned him unanimously. Chief Justice Roberts noted that a student offered an educational program providing merely more than de minimus progress from year to year—this is Justice Roberts, a very conservative Chief Justice—can hardly be said to have been offered an education at all.

In other words, what Judge Gorsuch thinks and thought about this case was that doing only a little bit for this student was meeting the obligation of this civilized society that we are proud of. Fortunately, the eight members of the Supreme Court—four Republican conservative nominees, four more moderate to liberal nominees from the Democrats—unanimously came together and disagreed with Judge Gorsuch.

But think about what can happen the next time. If an Ohio family has a child with a learning disability and struggles with that school system, they won't find sympathy from Justice Gorsuch. In fact, forget sympathy. They can't count on him to protect their child under the law.

Take a look at the case of Alphonse Maddin, the truckdriver from Michigan. He was hauling meat through Illinois when he stopped to refuel. His brakes froze. He was stranded. He called for help, for a company repair unit. He waited for hours for help. He nearly froze to death. He couldn't feel his legs. It was 14-degrees below zero in the truck. He needed to get to shelter or risk losing his limbs or worse.

But his company fired him. They claimed he abandoned his cargo. Mr. Maddin later returned to get the cargo and completed his job. But it just did not matter to the company. To the company, the cargo was more important than Mr. Maddin's life. To Judge Gorsuch, that company's interests were more important than Mr. Maddin, more important than his health, more important than his life.

Imagine that. That is what we mean when we say he puts corporations ahead of workers. At the beginning, you remember I said there is this relatively new idea in American jurisprudence that corporations are individuals and people are corporations. When you say that, it means that you side with corporations over workers. You side with polluters over communities. You side with Wall Street over consumer protections. You side with big, dark money from billionaires in Citizens United over citizens.

Take a look at the case of a mother who had leukemia and had to take time off for treatment. After the treatment was over, her doctors advised her not to return to work quite yet. There was a flu epidemic. Her immune system was compromised from chemotherapy. But her employer told her she needed to show up within a week or they would fire her despite 15 years of dedicated service. Guess who Judge Gorsuch sided with? It was not the worker suffering from cancer, who had dedicated a decade and a half of her life to her employer and who wanted to return to work, but she simply was advised against it by her doctor.

This woman's daughter, Katherine, said that when Judge Gorsuch issued his ruling, ''he didn't even think about the impact that this had on our family.'' She said his ruling ''set the precedent that a company's needs come before workers like her mother.''

At a time when Americans work longer and harder than ever before, when we devalue work in this country, when workers' wages—for huge percentages of workers in this country—are stagnant, when people work longer and harder with less and less to show for it, the last thing we need to do is elevate someone who sees workers as nothing more than a cost to be minimized.

That is what is at stake here. We are talking about putting someone on the Court who wants to give corporations special rights, but he has a record of ignoring the rights of ordinary citizens, choosing corporations over people, saying that corporations are, in fact, people. That means that he is almost always, in his cases, choosing corporations over workers, choosing polluters over communities.

Judge Gorsuch's record makes clear that he would turn back the clock on a woman's right to make her own healthcare decisions, or LBGT rights, or clean air and clean water, or safe food and medicine.

That is what is at stake here. If the Senate does not reject his nomination, the decisions Judge Gorsuch hands down will haunt our Nation for generations. My opposition to this nominee has nothing to do with what has occurred in the Senate over the past 8 years, as despicable as it has been. It has everything to do with what could happen over the next 100.

This is about our children and our grandchildren. Seven of the eight current justices have met the 60-vote benchmark. In other words, seven of the eight justices on the Court right now were fairminded enough and centrist enough and agreeable enough that far more than 60 Senators—people in both parties—came together to confirm those nominees.

With so much at stake, it is up to Judge Gorsuch to earn the votes of 60 Members of this body. I do not believe someone who fundamentally wants to give and has given corporations more rights than individual citizens has earned that broad support. The solution is not to change the rules; it is to change the nominee.

That is what we mean by advice and consent. The American people need a Supreme Court Justice who looks out for the interests of all Americans, not just the 1 percent, not just the most powerful, not just the most privileged. That is why I oppose Judge Gorsuch's confirmation to the U.S. Supreme Court.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. PORTMAN. Mr. President, I spoke on the Neil Gorsuch nomination

last week, and I intend to speak on it again tomorrow. Let me just say that I support Neil Gorsuch as the nominee to the Supreme Court. He is a good man. He is a mainstream jurist, incredibly qualified. I am happy to strongly support him for the Court.

OPIOID EPIDEMIC

Tonight, Mr. President, I want to talk about another issue, one that I hope can continue to bring us together here in this body and also bring our country together. I rise today to talk about what a lot of experts say is the worst drug crisis in the history of our great country—the worst. It is the opioid epidemic. This is the addiction to heroin, prescription drugs, synthetic heroins like fentanyl. The newest threat, this synthetic fentanyl, is coming into our communities from other countries, particularly China.

There are laboratories in China where evil scientists are putting together these concoctions and sending them through the U.S. mail system into our communities.

China is doing it on a scale that is devastating to our communities. As a result, I have urged President Trump to prioritize this issue in his meeting with President Xi in Florida later this week. China has banned one synthetic form of heroin, carfentanil, recently, but there is a lot more to do. I am urging President Trump to make it clear to President Xi that we will do everything we need to do to keep this poison out of our communities.

This epidemic is affecting every single one of the States represented here in this body. I know the Presiding Officer knows that because I know he has been involved in his own State. It is affecting your home town, whoever you are and wherever you are in the United States. Unfortunately, it is affecting people you probably know.

Every day we are now losing 144 Americans to drug overdoses, most of which are from overdoses of opioids. That is one American life lost every 12 minutes. That will be about the length of this speech. Look at your watch. In the next hour, five Americans will die of a drug overdose.

I have been working on this issue for a long time. I first got involved over 20 years ago when I was in the House of Representatives and a constituent came to me because her son had died of a combination of smoking dope and huffing gasoline. She came to me and said: What are you doing about it?

I was ready. I talked to her about the fact that we had $15 billion devoted to interdicting drugs and incarcerating people and so on.

She said: What are you doing to help me and my community? I have gone to my church. They are in denial. I have gone to the school, and they say it is not a problem here. I have gone to my neighbors, and they won't come together and talk about it.

So we got involved in this issue, and I set up our own community coalition back in my home town of Cincinnati and chaired that for 9 years. I am still very involved with that group, but I also got involved with legislation to try to do things to actually reduce the demand for drugs, because that is so important.

Here we are again. The crisis we had then was mostly crack cocaine, marijuana. Then it was methamphetamines, bath salts. But I have never seen anything like this. This is the worst. If you don't think it is the worst drug crisis we have ever faced, then think about this. Look at this chart of drug overdose deaths in America.

Drug overdoses are now the leading cause of accidental death—the leading cause—in my home State of Ohio, and probably in your State and in our country. This is from 2015, the most recent year for which we have complete data. Nearly two-thirds of the deaths were because of the prescription painkiller heroin-fentanyl issue, or synthetic forms of heroin.

Drug overdoses are not now just the leading cause of death. Overdoses kill more Americans than guns do. This next chart will show that, according to the Centers for Disease Control and Prevention, more Americans died from drug overdoses in 2015 than died from HIV/AIDS at the height of that epidemic. The peak of the AIDS epidemic was 1995. This is 2015 with regard to drug overdoses.

According to an article in the New York Times, more than four times as many people are dying every day from this epidemic than were dying at the peak of the crack epidemic. In the last 3 years, more Americans have died of drug overdoses than died in the Vietnam war.

Unfortunately, we have reasons to believe that this crisis is getting worse, not better. According to recent figures, fatal overdoses due to prescription painkillers, heroin, or synthetic heroin in 2016 alone went up 26 percent in Connecticut, 35 percent in Delaware, and 39 percent in Maine. During the first three quarters of 2016, deaths from overdoses in Maryland increased 62 percent. In Ohio they increased 20 percent the last 2 years in a row.

So we have seen this huge spike here in deaths from overdoses, starting in about 2010 and going up. This is with regard to heroin. This is with regard to non-methadone synthetic opioids—in other words, fentanyl, carfentanil, U4, and other synthetic heroins.

This is a crisis. It is one that, unfortunately, is affecting every single community—whether you are in an urban, suburban, or rural community, whether you are young or old, regardless of your walk in life.

The issue, of course, is much bigger than just the tragedy of overdose deaths. It is also about people whose lives have gotten off track because of these drugs and because of the addiction. There are 200,000 people in Ohio alone who are living with an addiction to these drugs. By the way, if you are addicted, you are much more likely to be committing crimes, fraud, and theft to pay for that habit.

In my State of Ohio—and I will bet in your State—the No. 1 cause of crime is opioids. A lot of these people have lost a job or can't get a job. I talked to some business folks over the weekend in Ohio who talked about regulations and taxes. They said: You know, this drug issue is affecting every single one of us. We can't get people to pass a drug test. We have employees who are now addicted to prescription drugs or heroin and their absenteeism and inability to come to work is affecting our economy.

So this is something that is affecting all of us. Of course, many have broken relationships with their families and their loved ones. I cannot tell you the number of people who have told me, and I have probably met with 1,000 addicts or recovering addicts over the last few years. I can't tell you how many people have told me: Drugs became everything, and I pushed my family out, and pushed my friends out, and pushed my job away, and it left me in a situation where I was broken.

But living without hope is something that we can deal with, because there are ways for us to get people into treatment and to get people into recovery to help them. We are in a crisis. Some have asked me: Well, how did we get here? That is usually a good start to this: How do we get out of it? How did we get here is complicated. But according to the Centers for Disease Control and Preventions, those who are addicted to prescription painkillers are 40 times more likely to be addicted to heroin.

Let me look at this a different way. Four out of five heroin addicts started with prescription drugs. So this issue of prescription drugs, overprescribing, is a huge part of how this happened in the first place. Increasingly, what we have seen in all of our States is addiction starting with these drugs and then switching to cheaper and more accessible heroin, and then switching again to sometimes more powerful forms of heroin like carfentanil, maybe 30 to 50 times more powerful than heroin. That is what is taking so many lives at such an alarming pace. The epidemic started with overprescribing. The United States uses more prescription pain killers than any other country in the world. It is not even close. Look at these numbers here. This is the daily opioid dose for over a million people. Look at the United States as compared to every other country in the world.

This is using 2014 data, and the numbers may have gotten better because of the work being done to cut back on painkillers. But according to the American Society of Interventional Pain Physicians, we consume nearly 70 percent in this country—5 percent of the world's population and nearly 70 percent of the world's painkillers.

In 2012, that number was 75 percent. It is still not even close on a per-person basis. For every American, there are 50

pain pills in this country, and second place is Canada with 30 pain pills.

According to the National Institute on Drug Abuse, painkiller prescription sales nearly quadrupled from just 1999 to 2014. That number finally peaked in 2012, by the way, and since then has come down slightly. In 2012, there were more prescriptions for painkillers in Ohio than there were people in Ohio. There were more prescriptions for painkillers—not pills, prescriptions—than there were people in Ohio. By the way, that was also true in 11 other States.

Fortunately in Ohio, we have made some progress under the leadership of Governor Kasich, Lieutenant Governor Taylor, Attorney General DeWine, and the State legislature. They have taken some important steps to cut back on painkiller prescriptions. We have cut them back by about one-fifth, about 20 percent since they peaked in 2012, but that number is still way too high. According to the Ohio Board of Pharmacy, 631 million pain pills were prescribed to Ohioans last year. We are also still dealing with the consequences of a lot of the addictions that got started in 2011, 2010, or before.

The number of prescriptions has risen, just as the addiction to opioids has risen. Drug cartels have followed this prescription drug epidemic, bringing in heroin. Those drug cartels flooded my State and probably a lot flooded a lot of your States with this cheaper, more accessible heroin, now synthetic heroin.

According to the National Institute on Drug Abuse, Mexican heroin production alone increased sixfold in just 4 years—from eight metric tons in 2005 to 50 metric tons in 2009. That number is now 70 metric tons, and it just keeps rising.

According to the Office of National Drug Control Policy, here in this country, Mexican opium poppy planting increased by 64 percent just from 2014 to 2015. So it is getting worse, not better.

According to the Congressional Research Service, virtually all of the heroin produced in Mexico is consumed here in the United States of America.

According to the Centers for Disease Control and Prevention, heroin use among young people has doubled in the last decade, among young people 18 to 25 years old.

This affects all of us. It knows no ZIP Code. It certainly knows no walk of life.

Since 2010, heroin overdose deaths have doubled among Hispanic Americans, African Americans, Native Americans, and Whites.

A lot of the people who are addicted to prescription drugs have switched to heroin instead. Now we are seeing that heroin addicts are switching also, even if they don't know they are doing it. They are switching to fentanyl and carfentanil. Again, it could be up to 50 times more powerful than heroin. Sometimes they don't know it because the traffickers are sprinkling the fentanyl in other drugs—heroin, of course, but also, we know now, cocaine. They are mixing it with marijuana, mixing it with other drugs, and not letting people know.

We had a 14-year-old girl recently die in Dayton, OH. She was with her friends, snorting what she was told was heroin. She had done it before. But this was fentanyl, and it killed her instantly.

More than 1,000 Ohioans were killed by fentanyl in 2015—more than double the previous year and more than 10 times the number in 2013. In Cleveland, for example, there have been more overdoses from fentanyl in the past 10 months than there had been in the past 10 years. In Columbus, there have already been half as many fentanyl overdoses in the first 3 months of this year as there were all of last year. This is why I say fentanyl is the new risk, the new danger.

As one father who lost his son to an overdose told me: Every time you engage in taking drugs, you are playing Russian roulette because you don't know what is in it.

In my hometown of Cincinnati, fentanyl deaths now surpass heroin deaths. Drug overdose deaths in Cincinnati increased by 40 percent from 2014 to 2015. Over that same timeframe, in just 1 year, heroin overdoses increased 12 percent, while fentanyl overdose deaths increased 153 percent. These numbers are very disturbing. They are discouraging, too, because it seems like we just can't turn the tide. It is easy to feel as though we just can't do anything, that we are paralyzed, but there is actually a lot we can do to help, and we can and should.

Here in the Senate, we have already taken some very important steps in the last year. About 9 months ago, we passed legislation called the Comprehensive Addiction and Recovery Act, CARA. Last year, we passed the 21st Century Cures Act. Those two together provide much more funding for this issue. The Cures Act alone is $500 million more this year going back to the States to provide funding primarily for treatment for this increase in overdose deaths. There will be $500 million authorized again next year. We have to be sure that gets into the appropriations bill.

We also have seen, I think much more importantly in a way, through the Comprehensive Addiction and Recovery Act—separate legislation—that we are beginning to fund directly programs that work. We spent 3 years looking around the country and had five conferences here in Washington, DC. We brought experts in from all over the country who told us what the best practices were. What is the best prevention technique that is working? How do we get kids not to make these decisions? What is the best thing that is happening in terms of treatment, and then longer term recovery, what works and what doesn't work. Is medication-assisted treatment better? Is it better? Does it rely more on longer term recovery? Have they had more success there?

All of this has led us to put together this legislation, the Comprehensive Addiction and Recovery Act, that actually funds programs like drug courts that are working around the country. They take people, diverting them from prison, and say: As long as you stay clean, you can stay out of jail, because you are a user, you are not a pusher. But you have to stay clean.

Then they provide them alternatives, including using drugs that reduce the cravings. If you reduce the craving for opioids, that is proving to be very, very successful in some cases. Dimitrol is the drug they use mostly in Ohio to do that. There are some great examples of people who have gone through the drug court process who have now been clean for a few years. They are back to work. They are back with their families. They are back as contributing members of society. So there is hope. We have seen how it can work.

CARA is the first legislation Congress ever passed to promote long-term recovery. Why? Because we have looked around the country and had experts here. We figured out that the treatment programs are important, and before that, the detox program is important. But what is leading to more success is longer term recovery programs.

As an example, think about being in detox for a week and then maybe a couple weeks in a treatment program and then going into a sober housing arrangement where you have regular meetings, where you are getting support from fellow recovering addicts. That seems to work longer. You are there. It seems to work better for most Americans.

Unfortunately, we do not have all of CARA's legislation fully implemented yet. Only three of its eight programs have been implemented. It has been a while. It has been about 9 months. It is time to push all of those programs.

I pushed the Obama administration on this. I am now pushing the Trump administration. Last week, I was delighted that the Trump administration announced the creation of a commission on the opioid epidemic, led by New Jersey Governor Chris Christie, who has a real passion for this issue. I commend the President and Governor Christie for their commitment to making progress on the issue. Their leadership and their partnership with Congress will make a difference.

Today I talked to General Kelly, the new Secretary of Homeland Security. He is going to be on the commission. He said they are going to report about the problem within 90 days. We know a lot about the problem. We also have to be sure we are seeing some action.

What I would suggest today is that the administration work hard to implement the remaining five CARA grant programs that are not yet up and running. For example, it has been 8 months, almost 9 months, since CARA

was signed into law. Yet we still don't have the grant for naloxone up and running. Our States and local communities need this Narcan on the street to save people's lives, because this is a miracle drug that reverses the effects of an overdose, but we also need to get more training for some of our first responders so they can administer it more effectively, which is particularly more important right now with this new drug, the fentanyl, the synthetic drug coming in, because synthetic heroin requires sometimes not one, not two but four or five uses of Narcan—maybe more—to save someone's life. So our first responders are asking for this help.

We still don't have the grant for medication-assisted treatment up and running. We still don't have the grant for pregnant and postpartum women's treatment providers up and running. This will help to ensure we have fewer babies who are born with this addiction. Let's get going on these.

For all of us here in Congress, let's be sure that we fully fund CARA. It is $182 million a year, every year, in addition to what we were spending on opioids. We need to be sure that funding is there, that these programs are working, and that our communities begin to get more of the help they need. These evidence-based programs that work are what we ought to be supporting, and that is exactly what the legislation does.

I thank Vice President PENCE, who was in Ohio on Saturday. It was a meeting about the economic issues we faced as a country. He talked about tax reform and regulations and skills training, but he also talked about this issue. I think it is important that we are all talking about this issue back home and raising awareness hopefully to save lives, to keep people from going down this path but also to ensure that our fellow citizens know the importance of Congress and State legislatures and local communities getting engaged with it all. Everyone must get involved.

I was in Youngstown, OH, on Friday, and I held a roundtable at the Neil Kennedy Recovery Center. This is one of the first programs of its kind in the country. It started in the late 1940s. It focused more at that time on alcoholism. Executive Director Carolyn Givens was there with her staff. They are incredibly compassionate people. She told me a lot of stories.

I was able to meet with some of the recovering addicts at the center. One told me his name was Michael. He told me that center saved his life. It saved his life. This is a guy who worked for years at utility companies. He is a skilled worker. He got involved with prescription drugs because of an accident or an injury, and then he ended up moving to heroin, which was cheaper and more accessible. Then he found his life spinning out of control. Now he is there, and he is getting back on track.

Everybody, by the way, at the roundtable who was there—the staff and community leaders who were involved—they all said: Get this legislation implemented. We need it.

On Friday afternoon, I went to Cleveland and toured the St. Vincent Charity Medical Center with addiction specialist Dr. Ted Parren. What an amazing guy he is. This is in a hospital setting where they have a detox unit and a treatment center, which is very unusual. I think it is the only one of its kind in Cleveland, and it is one of a few in the country where, within a hospital setting, these people are getting everything they need. It is a very comprehensive approach. They deal with mental health issues, of course, but also other physical issues people have, and it is helpful to have it all together there at that center. I thank the sisters for what they are doing because they are supporting this, and sometimes it is quite expensive to have a treatment program. At St. Vincent's, they are doing an awesome job.

Everyone there told me the same thing that I hear across Ohio—that their services have, unfortunately, never been in greater demand. They have a waiting list. They say the situation is getting worse, not better. I think that is true in your State, too, because according to the Substance Abuse and Mental Health Administration, SAMHSA, 9 out of 10 of the 22 million Americans who are suffering from addiction are not getting the treatment they need—9 out of 10. CARA and the Cures Act will help change that.

People need to change that in their own hearts. They need to step forward and seek the treatment they need. We need to take away the stigma of addiction because it is an illness. We need to treat it as an illness because that would help people come forward, admit they have a problem, and get the treatment they need. Their families and their communities are desperate for that to happen. CARA and Cures will help change all that.

I applaud my colleagues here, Republican and Democrat alike, for moving forward on this legislation over the last year, but there is a lot more work to do. We should continue to address the underlying issue of overprescribing. It started this epidemic in the first place. We talked about the number of prescriptions that are still out there.

Last week, I joined with my colleague Senator AMY KLOBUCHAR to introduce bipartisan legislation called the Prescription Drug Monitoring Act to keep better track of prescription painkillers, keep them out of the wrong hands, and identify an addiction as early as possible so that it can be treated.

This goes to the pharmacist. You will have to report when someone gets a pain pill prescription. They have to put it on the Prescription Drug Monitoring Program.

It goes to doctors. They have to be sure that when they are prescribing medication, that that is part of the drug monitoring program. They have to access the drug monitoring program before they give a prescription to be sure the person isn't filling the prescription with them that they have already filled somewhere else. Unfortunately, there is a lot of that abuse still out there. Sometimes it is across State lines, which is why Federal legislation is required. Our legislation requires that States work better together to ensure that the Prescription Drug Monitoring Programs are talking to each other.

By the way, if people don't do this under our legislation—the pharmacists, the doctors, and the States—then they have their Federal funding pulled back that we talked about earlier on the CARA legislation.

If you see a sign of addiction starting, our legislation requires that you let the patient's doctor know that so we can begin to identify the people who have an addiction and get them the treatment they need.

I think this is going to be a good bill because it will lead to a smarter and more effective use of taxpayer dollars, and more importantly, of course, it is going to prevent a lot of new addictions from starting in the first place. That, of course, would save lives.

Congress can also do something else that is really important, and that is to give law enforcement better tools to be able to keep some of this poison out of our communities. So the prevention and the treatment and the recovery and Narcan for our first responders—they are all very important, but let's also keep some of this out. Let's do a better job of stopping the heroin at the southern border. Let's do a better job of stopping the fentanyl, which is this new synthetic heroin we are talking about that is causing so many overdoses and deaths. Let's do a better job of keeping that out.

This should be a no-brainer, in my view, because it is coming in through the U.S. mail system. We know this. All the studies show this. Most of these synthetic drugs are being made in labs in China, and they are shipped by mail to traffickers in the United States, sometimes to Mexico as well. Typically that is done through the Postal Service. Why? Because the private carriers like UPS or FedEx or DHL and others require, when you ship something, that you have advance information provided to the Customs and Border Protection and to others as to where the package is from, what is in it, where it is going. The post office doesn't require that. Is it any wonder that traffickers are using the Postal Service rather than one of these private carriers?

Law enforcement came to us and told us that they could use this data—it is electronic data provided up front—because that would enable them to determine the suspect packages. Of the millions of packages that come into our country, they have to know how to find that needle in the haystack. That is why they want the ability to find these

packages, to scan these packages, and to be able to stop some of this poison that is coming into our communities.

The legislation we have with regard to this issue is called the STOP Act. I recently introduced it again this year with Senator KLOBUCHAR, Senator RUBIO, Senator HASSAN, and many others here in the Chamber. It is a bipartisan bill, called the Synthetic Trafficking and Overdose Prevention Act, or the STOP Act. It closes this loophole we talked about within the Postal Service and requires the post office to obtain advanced electronic data on packages before they cross our borders, just like the private carriers have to do.

It is not a new idea, by the way. In 2002, Congress placed this requirement on private carriers. That is when it started. It also required that the post office review this and look into this. So, in 2002, this Congress was smart enough to say: This seems to make sense. Let's require the post office to look into it. We have seen the results. The results are that traffickers stay away from the private carriers because they know they can use the Postal Service and get away with it.

Traffickers are lacing the heroin on the streets of America with these synthetic drugs to make them stronger and more addictive. They are getting more people addicted. Fentanyl is also so powerful that it only takes a couple of milligrams—the equivalent of a pinch of salt—to kill you. They say that three flakes can kill you. The fact that heroin is now being laced with fentanyl, of course, makes it much more likely for you not only to have an overdose, because of the strength of this synthetic heroin, but also that you will die from that overdose. Again, it is much harder to use Narcan and to begin to save lives by using that and to reverse the effects of the overdose.

So the STOP Act, to me, again, is something that we definitely ought to do in this Chamber. It would restrict the supply of these dangerous drugs, raise the prices of these drugs, and would make them harder to get. That is going to save lives.

Support for the STOP Act is growing. Our bill has now been endorsed by the Fraternal Order of Police and by the Major County Sheriffs of America. They are convinced that this tool will work. Last Friday, I was in Columbus, OH. I met with Franklin County deputy sheriff Rick Minerd, also the deputy chief of the Columbus Police, Mike Woods. We had the Cincinnati and Columbus directors of the Customs and Border Patrol—the chiefs—there to talk about it, and we had the Drug Enforcement Agency's special agents in charge there with us. We also had people who were on the investigative side of the Customs and Border Patrol. The deputy attorney general of Ohio was there, Steve Schumaker, and others. All of these law enforcement people said: Give us this legislation. It is a tool that we need.

We had a hearing today on the Homeland Security and Governmental Affairs Committee, and General Kelly was there. He is the new Secretary of Homeland Security. He agreed with me that the STOP Act would ''help [Customs] officers target illegal shipments . . . reduce the ability for the post office to be used for the illicit shopping of all kinds of contraband . . . [and] be helpful to be able to identify packages'' of synthetic drugs. He is right. We need the administration's help and push for this legislation as well. Let's get this done.

President Trump, by the way, endorsed this idea last year when he said during the campaign:

> We will close the shipping loopholes to China that others are exploiting to send dangerous drugs across our borders and into the hands of our own Postal Service. These traffickers use loopholes in the Postal Service to mail fentanyl and other drugs to users and dealers in the United States. [The] Trump administration will crack down on this abuse and give law enforcement the tools they need to accomplish this mission.

Let's get it done.

Again, I have asked President Trump to raise this issue with President Xi Jinping because China can do a lot more to try to shut down these laboratories in China, to try to stop some of the materials that are coming into the laboratories that make up this fentanyl. By the way, it is in China's interest to do so.

I have received information recently that there is leakage. What does that mean? That means that some of this fentanyl is going out to the countryside, to the suburbs of China, and to the cities of China, and it is affecting their population.

This legislation already has a companion bill in the House. So this is not an issue in which the Senate can act and then we cannot get it through the process because we cannot get it through the House and the Senate. PAT TIBERI and RICHARD NEAL have introduced companion legislation—TIBERI, a Republican from Ohio, and NEAL, a Democrat from Massachusetts. It is bipartisan. It is the kind of legislation that should draw bipartisan support, and we should get it done.

Is it a silver bullet? No, we do not have a silver bullet. There is not one silver bullet. There is a comprehensive approach here, and these two bills that I have talked about are new steps that we should take.

I urge my colleagues to continue to support the CARA legislation. Let's provide full funding. Let's support the Cures legislation in the upcoming appropriations process. Let's continue to engage the good folks back home who are trying, at the tip of the spear, to do all that they can in terms of providing better treatment opportunities and longer term recoveries and who are going into our schools and talking about prevention so as to do all we can to keep people from going into that funnel of addiction.

Let's pass this legislation. Join us in keeping better track of painkiller prescriptions so that potentially addictive drugs do not end up in the wrong hands and so that addictions get treated early. That legislation is important.

Join me and join the 10 other Senators in pushing back against poisonous synthetic heroin, which is coming into our communities, by supporting the STOP Act as a cosponsor so that we can get this bill to the floor and get it to the President for his signature.

I believe these two pieces of legislation, if allowed on the floor, will pass overwhelmingly. I believe the President would sign them. Most importantly, I believe they would begin to save lives in the communities we all represent.

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. DAINES. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

NATIONAL PARK WEEK

Mr. DAINES. Mr. President, as a fifth-generation Montanan who grew up just a short drive from our Nation's first national park, Yellowstone National Park, and as chair of the Senate Energy and Natural Resources Subcommittee on National Parks, the resolution before us is critically important to reassure the public that the U.S. Senate recognizes the remarkable value our national parks bring to our national heritage.

I especially want to thank my good friend from Hawaii, Senator HIRONO, who serves as ranking member of our subcommittee, for her partnership on bringing this resolution to the floor here this evening. She has been invaluable in working together to bring us to this moment.

In fact, 33 of our colleagues joined us in submitting this resolution—nearly half Republican and half Democrat—including Alaska, Washington, Tennessee, New Mexico, Oklahoma, West Virginia, Missouri, Minnesota, Florida, Michigan, Colorado, Virginia, Louisiana, Ohio, California, Wyoming, Rhode Island, Maine, Arkansas, Wisconsin, and New Hampshire. There are small States and large States, States that boast vast landscapes and big game like Alaska and Montana, diverse ecosystems like the oceans of Hawaii or the Florida Everglades. Other States boast historic and cultural treasures, like our hallowed battlefields in Virginia.

At a time when our country and Congress seem to be torn, it is only fitting that tonight our national parks are going to bring us together for a moment, to bridge this political divide, to bring remarkable opportunities for cultural education, outdoor recreation for

our families and for people around the world to enjoy, and, frankly, to bring us together as family and friends.

As the National Park System begins its second century this year, we have seen record visitation, with 331 million visits in 2016, but record visitation also brings additional strain to our national parks and strain to our infrastructure.

I am hopeful that with the adoption of this resolution, we can all be reminded of the importance of continued investment in our national parks to ensure their legacy truly endures for our children, grandchildren, and for generations to come.

Mr. President, as in legislative session, I ask unanimous consent that the Senate proceed to the consideration of S. Res. 117, submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The senior assistant legislative clerk read as follows:

A resolution (S. Res. 117) designating the week of April 15, 2017, through April 23, 2017, as ''National Park Week.''

There being no objection, the Senate proceeded to consider the resolution.

Mr. DAINES. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, and the motions to reconsider be considered made and laid upon the table with no intervening action or debate.

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

The resolution (S. Res. 117) was agreed to.

The preamble was agreed to.

(The resolution, with its preamble, is printed in today's RECORD under ''Submitted Resolutions.'')

Mr. DAINES. Mr. President, 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.

Ms. STABENOW. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

EXECUTIVE CALENDAR—Continued

Ms. STABENOW. Mr. President, I rise this evening to talk about an issue that will affect families all across Michigan, which is the nomination of Judge Gorsuch to the Supreme Court. He has a long record of siding with special interests and institutions instead of hard-working Americans, and this is of great concern to me. That matters.

I am concerned with his rulings that fail to protect children and students with disabilities in schools, and I am worried that he will limit access to critical healthcare for women and that he is not a mainstream candidate. I can't support a nominee whom I believe is disconnected from the challenges faced by families in Michigan and across America every day.

There is one important example which relates directly to someone from Michigan that Judge Gorsuch has ruled on. People from Michigan have been hurt by Judge Gorsuch's narrow judicial philosophy.

In 2009, a Michigan truckdriver named Alphonse Maddin was trying to complete a shipment driving all night, and his brakes froze in subzero temperatures—which we have. The heater in his cab broke as well. He called his company to report the issue and waited for help to arrive.

While he was waiting for hours in the freezing subzero temperatures, he realized he was having trouble breathing and his body was going numb. He called his company to report that he needed to get somewhere warm, but they told him he needed to either wait for the repair person, or drag his trailer even though the brakes were frozen. Worried he might freeze to death, he finally unhitched the trailer from his truck. Mr. Maddin drove off to seek help, returning in just 15 minutes with assistance. He did what any of us faced with a life-threatening situation would do.

A week later, Mr. Maddin was fired from his job, even though he was transparent in his actions and completed his delivery. He completed his delivery, despite the issues caused by his frozen brakes and the broken heater.

Two different entities within the Department of Labor ruled that what the trucking company did was illegal, and that Mr. Maddin was protected under Federal law because his life was in danger. Thankfully, a majority of the Tenth Circuit judges agreed. Judge Gorsuch, however, disagreed, arguing the law did not protect workers who drove away to avoid freezing to death.

According to Judge Gorsuch's interpretation, Mr. Maddin would have had to choose between his job and his life. What is deeply concerning to me is that when he was asked at his nomination hearing what he would have done, he said he really hadn't thought about it. Judges should think about what is happening to people in situations as they are ruling in a fair and impartial way. This does not look like the ruling of a mainstream nominee.

His rulings don't only affect Michigan workers. I am very concerned about Judge Gorsuch's rulings on legal protections for individuals with disabilities. We passed the Individuals with Disabilities Education Act to make sure that children with disabilities got the education they deserved, and that the education would be free and available to all children.

Luke, a young boy from Colorado with autism, was not able to receive the education he needed from his public school. His parents were able to enroll him in a private residential program specializing in children with autism that was more suitable for his needs so he could get what he needed for his development.

His parents applied to the school district for reimbursement, as was appropriate, but the school district refused. His parents went to court, and an administrative judge and a district judge both ruled that the school did not provide Luke with the necessary education to meet the needs that IDEA required. However, Judge Gorsuch ruled in favor of the school district, saying that all the school district had to do was provide an education that was more than just the bare minimum—just the bare minimum. He set a very low bar for Luke and for students like Luke, like my nephew Barry.

Just to show how disconnected Judge Gorsuch is from the lives of everyday Americans, look at the Supreme Court ruling which occurred at the same time as Judge Gorsuch's confirmation hearings. In a different case on the very same issue, the Supreme Court challenged and rejected the standard and interpretation that Judge Gorsuch believed should be provided for children and students with disabilities. They unanimously rejected the standard that he approved. This is not the view of a mainstream nominee. This is not the view of a mainstream nominee.

I am also deeply concerned about Judge Gorsuch's opinions and how they could affect women's access to healthcare. In the Tenth Circuit's Hobby Lobby decision, Judge Gorsuch endorsed the idea that corporations can deny their employees access to essential healthcare services, including birth control. His concurring opinion suggested that he supported the notion that for-profit corporations have the right to deny women insurance coverage or any form of contraception an employer disagrees with. This is both alarming and unacceptable. It once again shows how disconnected Judge Gorsuch is from what women in Michigan and around the country experience.

Judge Gorsuch did not recognize the impact of denying coverage to women employees and their families, and putting those decisions in the hands of their employers. Women in Michigan should not have to pay higher costs for healthcare than men, and they should not be denied essential healthcare services. These dangerous interpretations will continue to take us down a path of permitting and protecting discrimination by corporations and institutions over the rights of workers and consumers. Again, that is not a mainstream nominee.

When it comes to supporting women—not just in healthcare, but in the workplace—Judge Gorsuch has had some extremely troubling rulings. In 2003, a woman named Betty Pinkerton experienced several instances of disgusting sexual harassment from a male supervisor at the Colorado Department of Transportation. Every time she made it clear his comments were not acceptable in any way, they continued over the course of months.

She went to her office's civil rights staff and submitted a written complaint, and he was removed as her supervisor. She was fired about a week

later. She sued. But Judge Gorsuch upheld a ruling that claimed she waited too long—she waited too long to report harassment—and believed that Pinkerton's firing was performance based—How often do we hear that in these situations?—despite not being able to produce any real evidence that this was the case. He ruled that she couldn't go to trial and present her case in front of a jury.

So when it comes to protecting women in the workplace, we know that Judge Gorsuch has come up short. This is not a mainstream position and not acceptable, in my judgment, for any Supreme Court nominee, and not acceptable for what I want to see happen for the people in Michigan.

I wish to end my speech on the importance of consensus because that is what we should do here. That is how we get things done.

For decades, we have confirmed our Supreme Court nominees with consultation and consensus. We have said—and I think it is the right thing—that we should have to have more than just a simple majority to confirm judges to the highest Court in the land for a lifetime appointment. So it makes sense that we come together to do that. In fact, seven of the eight current U.S. Supreme Courts Justices on the bench today received 60 votes or more somewhere in their process—both President Bush's and President Obama's nominees, as well, those now on the Court.

President Clinton, President Bush, and President Obama talked to Senators from both parties about their picks to get input as to whom would likely be supported and not supported. This did not happen with Judge Gorsuch. President Trump had a list chosen by very narrow special interests and did not ask opinions of key people on our side of the aisle as to what would make sense to get the consensus to get 60 votes.

I do not believe Judge Gorsuch will be fair and impartial, giving a fair shot to the workers and families in Michigan as well as around the country. My test is very much about what is best for the people I represent in Michigan. Who will be fair and impartial and give them a fair shot?

Because I do not believe he can do that, I cannot support his nomination. He is not the right choice for this vacancy. We can come together. I urge my colleagues to go back to the drawing board and bring in a consensus mainstream nominee.

In the past, we have basically had a practical rule of saying if the nominee cannot get 60 votes, we change the nominee. We don't change the rules. It is extremely concerning that this would not be the approach at this time.

I urge that we come together, get a mainstream nominee, and be able to work together to get this done.

The PRESIDING OFFICER (Mr. GARDNER). The Senator from Pennsylvania.

Mr. CASEY. Mr. President, I rise this evening to speak about the nomination of Judge Gorsuch to be an Associate Justice of the U.S. Supreme Court.

Every Member of the United States Senate has an obligation to review this nomination thoroughly and to make a determination. I believe the advice and consent duty of a Senator—certainly in my case, when I make decisions about any judge for confirmation, but especially for the Supreme Court—has to be a decision grounded in a review of a number of considerations. I think they are generally the same no matter who the nominee is, but sometimes they can vary. I think in this case there are probably additional considerations that I weighed.

Of course, we want to look at the nominee's character and their integrity, certainly their judicial temperament. Someone can be very capable as a judge and very learned in the law, but they may not have the temperament or the integrity.

I don't think there is any question that there is nothing in the record that indicates that Judge Gorsuch doesn't have the experience or the character and integrity to do this job, and to do it with the kind of temperament we have the right to expect from any judge.

I also believe at the same time, though, that you have to do a review of the cases decided by the nominee—in this case, a judge on the Tenth Circuit Court of Appeals, a very similar kind of job to that which the Supreme Court Justice does. You are reviewing cases on appellate court. In Judge Gorsuch's case, it is the Tenth Circuit—not the Supreme Court, but still appellate court decisions.

Part of that inquiry I believe is a review of an assessment, really, of this individual's judicial philosophy. That is where I will spend most of my time tonight. I will also talk about the rule change that might be upon us.

While reading Judge Gorsuch's opinions, I developed very serious concerns about his rigid judicial philosophy. Judge Gorsuch's opinions indicated, in my judgment, an extremely conservative judicial approach. This leads him to come down disproportionately on the side of powerful interests, against workers in many cases, and consumers in other cases—a cause for particular concern at a time when the Supreme Court itself, under Chief Justice Roberts, has become an ever more reliable ally to big corporations.

A major study published by the Minnesota Law Review in 2013, found that the four conservative Justices currently sitting on the Court are among the six most business friendly Supreme Court Justices since 1946. A review by the Constitutional Accountability Center shows the consequences of the Court's corporate tilt, finding that the national Chamber of Commerce has had a success rate of 69 percent in cases before the Roberts Court, a significant increase over previous courts. These are cases of serious importance to everyday Americans—cases involving rules for consumer contracts, challenges to regulations, ensuring fair play in labor standards, and attempts by consumers to hold companies accountable for product safety and much more.

Another concern I have about his nomination is that at some point in the campaign of last year, the Republican nominee was given a list of names from which he should choose, were he to be elected President. I would hope that there would be a list of names that any President would consider beyond what we are told in published reports was just 21 names, developed by organizations on the far right. And that fact alone causes me great concern—that the President is permitted, according to this arrangement, this understanding, only to consider a list of 21 names that those organizations developed.

The record of this judge indicates also that he would only exacerbate the problem that I pointed to with regard to the corporate tilt of the current Roberts Court. In my judgment, by doing so, it would further stack the deck against ordinary workers and families. It starts with his basic judicial philosophy. He employs the narrowest possible reading of Federal law and shows extreme skepticism—even hostility—toward executive agencies or what some might call administrative agencies, agencies that carry out the law in areas like labor or consumer protections and the like.

Many have expressed concerns about his opinion in the Hobby Lobby case, where Judge Gorsuch endorsed the idea that owners of for-profit corporations can assert corporate religious liberty rights, opening the door potentially to widespread discrimination against LGBT Americans and other Americans as well. But a variety of other cases are equally illustrative of Judge Gorsuch's troubling approach to the law.

I will give you just a few examples. One case involved the tragic death of a trench hand who was electrocuted while working as part of an excavation crew. The court reviewed a ruling by the Department of Labor, punishing the mining company for failing to provide proper safety training to the worker. Judge Gorsuch mocked the Department of Labor's ruling as nothing more than a ''Delphic declaration'' devoid of necessary proof, and he concluded that the agency was wrong to penalize the company following the worker's death. Fortunately, a majority of the Tenth Circuit disagreed and affirmed the Department of Labor's ruling.

Another case involved a truckdriver who was stranded on the side of the road at night in subzero temperatures, with the brakes on his trailer frozen and the heater in his cab broken. He called dispatch for help multiple times, but after hours of waiting in the freezing cold, this truckdriver was having

trouble breathing, and his torso and his feet were numb. Worried about his safety, he unhitched his trailer, drove the truck away, and then later the company fired him for abandoning the trailer.

Three different authorities within the Department of Labor ruled against the company. Judge Gorsuch disagreed, parsing a Federal statute to argue that the driver was not protected in his decision to drive away, despite the risk of freezing to death if he stayed put. Again, fortunately, the majority of the Tenth Circuit Court disagreed, describing the judge's labored interpretation of the statute as ''curious,'' and ruling in favor of the truckdriver.

I have a basic disagreement with Judge Gorsuch's rulings regarding the legal protections for individuals with disabilities, especially students with disabilities. In one case, he ruled against parents who believed their autistic child was not receiving an adequate education at his public school. A hearing officer, an administrative law judge, and a U.S. district court all found in favor of the family, ruling that they were entitled to reimbursement for tuition at a residential program tailored for children with autism.

Judge Gorsuch reversed the rulings and, instead, articulated an extremely narrow interpretation of Federal law—this particular Federal law that protects students with disabilities, the IDEA law, the Individuals with Disabilities Education Act.

In 2004, Congress amended the IDEA, in part, based upon findings that its implications have been ''impeded by low expectations.'' Nevertheless, Judge Gorsuch ruled that because the student in this case made some progress in public school, even though he could not generalize his learning to settings outside of school—which is the goal of the Individuals with Disabilities Education Act—the family, the judge believed, was not entitled to tuition reimbursement. That decision happened a number years ago.

It just so happens that the U.S. Supreme Court, the current Court with only 8 members, voted 8 to 0 against the basic position that Judge Gorsuch had in that education case—a different case but the same question about what is the duty owed by a school district to a child with a disability. That ruling happened to be announced during the week that Judge Gorsuch was in front of the Judiciary Committee—in fact, on one of the very days he was in front of the committee. A unanimous Court disagreed with his approach to those kinds of cases involving children with disabilities in a public school.

These cases and others are illustrative of a broader trend in the judge's jurisprudence, whether it is a case involving an employee seeking redress for work place discrimination, hospital staff fighting for back pay after an unlawful reduction in the work hours, or a victim of improper conduct by a medical device company looking for justice. Judge Gorsuch's approach produces rulings disconnected from the lived experience of those they impact.

Therefore, after review of many of his cases, after consideration of his judicial philosophy, and after a review, as well, of the current state of this Court—especially the corporate tilt of this current Roberts Court—I have concluded that I could not support Judge Gorsuch's nomination to the Supreme Court.

I wanted to add some comments before concluding tonight about what this vote may mean to the Senate and the rules of the Senate. It is my belief—others, of course, disagree—but it is my belief that if you seek to become an Associate Justice on the most powerful Court in the world, you ought to be able to garner the support of at least 60 members of the U.S. Senate. If your nomination to the Court is the subject of such consensus, you ought to be able to get 60 votes in the U.S. Senate. If both your nomination and your judicial philosophy is seen as such a mainstream nomination, you ought to be able to get 60 votes. Despite that, it is a point in time when we are having a debate about how we arrived at this question of a potential change in the rules. I believe that the reason we got here is because of substantial and unyielding obstruction by Republicans in the U.S. Senate over a number of years.

Just consider this: From the founding of our Nation, through President Obama's first term when Senate Republicans were in the minority, cloture—the motion to cut off debate and proceed to a final vote—has been filed in a total of just 147 nominations. Just 147 times in the total history of the U.S. Senate, the minority forced the majority to file cloture. Of all the Presidents before President Obama combined, cloture needed to be filed only on 68 of these nominations, but in President Obama's first term before Republicans took the majority of the Senate, Republicans refused to consent to votes and forced the Democratic leader to file cloture on 79 nominations—over 50 percent of all the cloture motions ever filed on nominations in the history of the U.S. Senate. So half of those cloture petitions were filed just in the last couple of years. That doesn't even include what I think was an outrageous obstruction that continued once Republicans took the majority, culminating, of course, in their refusal to consider Judge Merrick Garland's nomination. So Judge Garland, of the District of Columbia Circuit, the chief judge who had great support, I think, on both sides of the aisle—Judge Garland had maybe a few meetings, no vote, and not even a hearing before the Judiciary Committee.

According to the Congressional Research Service, President Obama is the only one of the five most recent Presidents whose first term was marked by nominations that languished for over half a year on average. Also in his first term, he was the only President of the previous five under whom the district court vacancies increased, unaccompanied by the creation of new judgeships to meet the demand. In fact, President Obama's district court nominees, during his first term, waited an average of 60 days longer for confirmation than those of President George W. Bush.

I think the evidence is overwhelming. Senate Republicans' obstruction of judicial nominations reached historic levels under President Obama. So we are here at this point, and we have to make a decision. My vote will be to insist on 60 votes; therefore, I will be voting no on cloture and also voting no on the nomination of Judge Gorsuch.

I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota.

Ms. KLOBUCHAR. Mr. President, I come to the floor to join my colleagues in speaking on the nomination of Judge Neil Gorsuch to serve as an Associate Justice on the Supreme Court. As you know, Senators have a solemn obligation to advise and consent on a President's nominee for the Supreme Court, and I take that obligation very seriously.

My goal during the hearing as a member of the committee was to understand the judge's view on the law, his judicial record, and his philosophy. We needed to know what kind of Justice he would be and what that would mean for Americans.

Although many cases decided by the lower courts are less complicated, even though some of them are complicated, many of them are more straightforward than the ones that come before the Supreme Court. The cases that go before the Supreme Court are the hardest cases. They involve the most complicated legal gray areas.

I have heard my colleagues many times talk about some of the unanimous decisions that the judge was involved in. I know that. But when I look at the kinds of cases that come before the Supreme Court, those are different kinds of cases. As I looked over the judge's record, I tried to focus on situations where he faced hard cases like those he might decide as a Supreme Court Justice. In my mind, the question was this: What would Judge Gorsuch do if he were appointed to the Supreme Court? What kind of philosophy would he have?

In difficult cases, one judicial approach is to try to find consensus by ruling on the narrowest possible grounds. Judge Merrick Garland, who was nominated last year, was known and praised for that approach by Senators on both sides of the aisle.

Congress actually provides a helpful analogy. When Democrats and Republicans pass legislation, we try to find common ground. We often have different views, but we do find areas of consensus. Sometimes that ground is narrow, but we can find agreement and then come together.

In reviewing the judge's record, I saw that he often took a different approach, one where he often tried to go a step further than the consensus opinion, sometimes really further than the consensus opinion by suggesting a provocative change in the law or by making a broader ideological leap, which I felt was not consistent with the precedent and was not consistent with the kind of philosophy of a judge that, regardless of their political beliefs—I did not expect to agree with everything he said or how he answered the questions, but what I saw was a strikingly different philosophy.

Many of the judge's opinions presented opportunities for narrow judicial consensus, but the judge decided more than the case in front of him. That is what concerns me if he were to be confirmed to the Supreme Court, where he would have to decide the toughest cases and hardest legal questions facing our country.

So after thorough examination and consideration of his answers and the record, I have decided not to vote in favor of the judge's nomination. His judicial approach and his record on critical cases, including the rights of children with disabilities, campaign finance, and preserving health and safety protections, have led me to conclude that I cannot support his nomination to the Supreme Court.

Let me make this clear. Again, I did not expect to agree with every opinion he wrote or everything he said. I certainly did appreciate the introductions of the Presiding Officer, as well as Senator BENNET, and the support he had from Colorado. That meant something to me. But then when I looked at the record, what I saw time and time again was a judge who clearly demonstrated the contrast between a narrow consensus-based approach and a more far-reaching one.

One area where the judge has gone further to issue broad rulings that would have profound consequences on people's lives is in the case he decided on children with disabilities. During the hearing, because this case had been decided by the Supreme Court right before I got to ask questions, I asked a lot of questions about this case on the IDEA, also known as the Individuals With Disabilities Education Act.

The IDEA was passed to ensure that students with the disabilities are supported in school. In my State, 124,000 children rely on this critical protection. I occupy the Senate seat once held by Minnesota's own Hubert Humphrey—someone who, of course, was never at a loss for words. In fact, this very desk that I am standing behind was the desk Hubert Humphrey signed and used. He delivered a speech 40 years ago, and one line of that speech is just as appropriate today as it was back then.

He said: ''The moral test of government is how that government treats those who are in the dawn of life: the children; those who are in the twilight of life: the elderly; and those who are in the shadows of life: the needy, the sick, and the disabled.''

The Supreme Court has honored that principle. On the day of the judge's hearing, the Supreme Court, in an 8-to-0 unanimous decision, ruled against the narrow interpretation of the IDEA embraced by Judge Gorsuch—an interpretation that limited the educational opportunities of children with disabilities. I could not agree with the 8-to-0 decision more.

All children, particularly those with disabilities, deserve the tools they need to succeed in life, and every Justice on the Supreme Court has a duty to protect these kids. So when the Supreme Court ruled that morning and overturned the standard that the judge had embraced in this Tenth Circuit case, I asked him about his ''merely more than de minimus'' standard that he wrote into that opinion back in 2006.

In explaining his ruling, the judge said that he was bound by precedent to use the narrow standard that he used in that case. He cited a 1996 case from the Tenth Circuit—his circuit—that he said he was bound to follow. Now, he was not on the court back in 1996, but when he did the case in 2006, he used that 1996 case. So I looked at that case.

During the hearing and at the Judiciary Committee business meeting earlier this week, my Republican colleagues repeated those words. They said that the judge was bound by precedent to use his narrow, ''merely more than de minimus'' standard that had, in fact, been rejected by the Supreme Court just this past month. So I looked to see if, in fact, that was true. Was he truly bound by precedent? That is pretty important to me. There have been a number of decisions where he has gone much further than he needed to, where he, in my mind, has abandoned precedent.

I thought, well, here we have a case that is fresh, right before us, and he has said that he was simply following the precedent, that he had no choice at all. Here is what I found: While the 1996 case made a number of findings and concluded that the school district satisfied the requirement in the IDEA statute of providing an appropriate education, the case never actually turned on the standard that the judge said he was bound by, that the judge said was precedent. Here is why: The 1996 case only mentioned the de minimus standard once. It was a passing reference. Even in that mention, the de minimus language is from a different circuit; it was from the Third Circuit.

In that 1996 case that he claimed he was bound by and that my Republican colleagues keep mentioning that he was bound by, there is no discussion about whether the benefits provided to the high school student satisfied that standard. The case simply did not turn on the de minimus language. I know this seems in the weeds, but the court in 1996 never relied on the de minimus standard to reach the result that it did.

Was that enough? No. In the one passing mention in the 1996 case, which was not binding, the language actually says ''more than de minimus,'' but the judge went out of his way to add the word ''merely'' to that standard, which had never even been in the case that was not binding on him to begin with. So he changed it and said ''merely more than de minimus,'' that that is all the kind of education a kid with disabilities in that school district in Colorado would have to get. This is like if you say more than empty—the gas tank is more than empty, which means it could be a lot more than empty. Adding ''merely'' puts it closer to empty. You just say it is merely more than empty. The addition of a single word made it more difficult for children with disabilities to get help at school.

That is why it is hard for me to understand why the judge said that the ''merely more than de minimus'' standard was binding on him when he wrote that opinion in 2006. It was not. He added the word ''merely,'' and then he used a standard that did not even decide that 1996 case; that was from a different circuit.

When interpreting the IDEA, the judge once again went a step further instead of deciding the case on a narrow ground. That matters because decisions like this have a dramatic impact on the lives of children and families, which is exactly what Justice Roberts noted when he wrote the opinion 8-to-0 rejecting the standard that Judge Gorsuch had used.

I have heard from families in my State, and so many of them tell me how IDEA has made a real difference for them.

My mom taught second grade in the Minnesota Public Schools until she was 70 years old. I know from her how much she worked with those kids with disabilities and how much she cared about them.

Here is an example I just learned about from my State. A mom from Watertown, MN, told me about her son, who was born with Down syndrome. She is so thankful for IDEA because its protections ensures that he can have everyday life experiences. IDEA allows her son to be fully integrated with the rest of the students in his school. As a result, he has made many friends and built a strong social network. When she asks her son whether he likes school, he always says, in a resounding voice: Yes. Those are the stakes of this legal debate.

Second, I wanted to focus on campaign finance. In my view, one of the most troubling court decisions in recent years is Citizens United. Since Citizens United, dark money has been spent in extraordinary sums, adding up to an estimated $800 million in just the past 6 years. This continues to have an outsized influence on our politics, distorting our representative democracy and hurting, in my mind, campaigns on both sides of the aisle.

How does this apply to the judge? It applies to the judge because of an opinion he wrote that is very relevant to this area of the law. That case, which is called Riddle v. Hickenlooper, is a narrow case about how campaign finance laws apply to certain kinds of contributions in Colorado, about if they are a major party or not major party.

The judge again decided that a narrow consensus decision was not enough. It was part of that decision, but then he went out of his way to write a separate concurring opinion to suggest that the court should, in fact, apply strict scrutiny to laws restricting campaign contributions. If the Supreme Court adopted the approach in the judge's opinion, it would compromise the few remaining campaign finance protections that are still on the books, and it would make it even more difficult for Congress to pass future reforms.

The notion that Congress has little or no role in setting reasonable campaign finance is in direct contradiction with where the American people are. In recent polls, over three-quarters of Americans have said that we need sweeping new laws to reduce the influence of money in politics. While polls may not be a judge's problem and should not be a judge's problem, democracy is. When unlimited, undisclosed money floods our campaigns, it drowns out the people's voices, and it undermines our elections and shakes the public's trust in the process.

My colleagues and I repeatedly asked the judge about his views on campaign finance laws and public disclosure requirements. He declined to tell us what the proper legal standard would be for evaluating campaign finance laws. He also would not give us a real sense of his views on public disclosure of campaign contributions, although a majority of current Justices support this.

During our exchange on campaign finance, I was reminded of Justice Scalia's support for greater public disclosure and his comments on that topic. Justice Scalia said:

> Requiring people to stand up in public for their political acts fosters civic courage, without which democracy is doomed. For my part, I do not look forward to a society which, thanks to the Supreme Court, campaigns anonymously and even exercises the direct democracy of initiative and referendum hidden from public scrutiny and protected from the accountability of criticism. This does not resemble the Home of the Brave.

The most striking example of a judge choosing not to decide a case narrowly based on the facts was the one last year in which he wrote the opinion and then wrote a concurrence to his own opinion. As I noted at the Judiciary hearing, it is better to write a concurrence to your own opinion than write a dissent to our own opinion. But still he felt compelled to write a concurrence to what was an opinion that he wrote. Mostly, judges are happy when they get their peers to agree to a decision, but in this case, he went a step further.

In Gutierrez—the name of the case—the judge went beyond the facts to suggest overturning the long-established precedent of Chevron.

Chevron is a 33-year-old Supreme Court case that ensures that the most complex regulatory decisions are made by the experts who are best equipped to handle them, not by judges or lawyers without any relevant technical knowledge.

Justice Scalia again embraced the Chevron doctrine, and it has been used in more than 13,500 decisions. Chevron ensures that Federal health, safety, and education rules stay on the books. These rules protect everyone, from the hard-earned pension of an hourly Minnesota grocery store worker, to the clean water in our Great Lakes, to the difference between life and death for Minnesota iron ore workers.

The judge's approach would have titanic, real-world implications on the daily lives of Americans. When the judge wrote an opinion that suggested it might be time to ''face the behemoth,'' he suggested a change in the law that would jeopardize countless rules, compromise important protections, and create widespread uncertainty in our laws.

I asked the judge about the uncertainty that would result from overturning Chevron. I asked what he would replace it with. I didn't get a direct response. The judge even said that he ''didn't know what all the consequences would be'' and that he ''wasn't thinking about being a Supreme Court justice'' when he was writing the decision.

So what does all of this mean? It means that the judge has repeatedly gone beyond the facts of the case, issuing separate concurrences with far-reaching effects or, as in the disability decision, writing opinions with profound consequences.

When I read these opinions, I am reminded of Justice Byron White, who I know Judge Gorsuch clerked for and greatly admired. Justice White has been described by many as a Justice who was focused on deciding only the case in front of him. Here is a quote: ''Time and again, Justice White avoided broad, theoretical bases for a decision, when a narrow, fact-specific rationale would suffice.''

There is a reason we have judges to apply the law to the facts of a case. It is because answers aren't always as clear as we would like them to be, and sometimes there is more than one reasonable interpretation of the law. The cases that get to the Supreme Court are not the ones where everyone agreed at the lower court level. They are the really hard cases.

It is that discretion in making those decisions that makes it so critical that Justices interpret the law evenly, without fear or favor and with the humility to recognize the gravity of the office, to respect the role of the judiciary, and to understand the impact of their decisions on people's lives.

As I look back at the judge's record and his answers in the hearing, I am again reminded that it wasn't a law professor or a Federal jurist who was helped by a court's reliance on Chevron in interpreting a Labor Department rule. It was an hourly Minnesota grocery store worker who got to keep his hard-earned pension after the Eighth Circuit Court relied on Chevron.

When the Supreme Court stripped away the rules in the Citizens United case that opened the door to unlimited super PAC spending, it was not the campaign financiers or the ad men who get paid to write these ads who were hurt. It was the grandma in Lanesboro, MN, who actually thought it mattered when she sent her Senator a $10 campaign contribution.

When Chief Justice Roberts wrote the unanimous opinion just this past month, rejecting the ''merely more than de minimis'' standard that Judge Gorsuch had used to limit the help kids with disabilities can get at school, the Justice said: ''When all is said and done, a student offered an educational program providing 'merely more than de minimis' progress from year to year can hardly be said to have been offered an education at all.'' That is what the Supreme Court said about how the standard that Judge Gorsuch wrote in his opinion in the Tenth Circuit affected students with disabilities.

In the end, I believe we need Justices who understand that the law is more than a set of dusty books in the basement stacks of a law library. It is the bedrock of our society. Above all, we need Justices who understand and will uphold the motto on the Supreme Court building, to ensure all Americans achieve ''Equal Justice Under Law.''

That is why I won't be supporting the judge's nomination to be an Associate Justice of the Supreme Court.

I yield the floor.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. SCHATZ. Mr. President, what is the purpose of the Senate? The authors of the Constitution laid the foundation of the Senate without really knowing what it would look like once it was standing. They knew it would rival and restrain the House of Representatives. After all, the Senate has a higher age requirement, Members serve 6-year terms, and they have to represent not just a district but an entire State. But it was clear from the beginning of the formation of the Senate that it would take time before the purpose of this body was truly realized.

For several decades in our Nation's history, it was the House of Representatives—not the Senate—that hosted the great debates and introduced major legislation. It wasn't until the Nation began to splinter in the shadow of slavery that the Senate came into its own. While the rules of the Senate gave us its basic structure, it was the Members of the Senate—the people who made up this body—who had to stand up and lead. We remember them today as lions

of the Senate: Daniel Webster, John Calhoun, and Henry Clay. This body owes its status to them and their leadership because they began to define the Senate in a way that no one had before.

Over time, this place became one that valued bipartisanship, deliberation, and compromise. It has become a Chamber that balances the right to debate with demands for action.

In some of the toughest moments in our history, the Members of the Senate have used this body to lead, particularly when the President has faltered.

Take President Nixon. The Watergate scandal had weakened the Presidency in ways that do-nothing Presidents never had. But the Senate, led by a Member of the President's own party, didn't stand by and watch the void, unmoved. They filled the vacuum for the good of the country.

It is this kind of history that has shaped the Senate into what it is today, a body that examines, considers, and protects.

Senator Byrd, the longest serving Senator in U.S. history once said: ''The Senate is a source of wisdom and judgment—both on the actions of the lower house and on the executive.''

That is what the Senate is for. That is our purpose. We achieve that purpose through customs and traditions; through members who serve 6-year terms and represent whole States; through rules that force bipartisanship, deliberation, and compromise.

Now the majority leader has placed one of those rules on the chopping block because they can't get to 60. He can't find the 60 votes needed to end debate on the President's nomination to the Supreme Court.

We shouldn't be surprised to find ourselves here because, after all, back in February, President Trump told the majority leader to change the rules if he had to. Now, as this administration closes in on its first 100 days without passing a single piece of major legislation, the Senate majority leader is ready to fulfill the President's request and change the rule, instead of changing the nominee.

The question I have for this body is this: Should we change the rules in order to give the President a win before spring break? Should we be weakening the Senate at a time when the executive branch is so weak? Isn't it our obligation to assert ourselves into this void, instead of receding from responsibility?

I can think of no instance in the history of any great legislative body in which a legislature decides to diminish its own power. This is beyond strange in the world's greatest deliberative body, in the world's most powerful legislative Chamber. For what good reason would we give up our own prerogatives?

This administration has been ineffective. Now the Senate majority leader is suggesting that the Senate respond to this executive weakness by weakening ourselves. This is wrong. The purpose of the Senate is achieved through bipartisanship, deliberation, and compromise. The 60-vote threshold for Supreme Court nominees preserves these ideals. Changing this rule will make it harder to get there.

Look at the House of Representatives. Look at the way the House Intelligence Committee has dissolved so quickly into partisanship, unable to do its job.

Look at the country. Look at the campaign last year. We are a country divided. Polarization is at an all-time high. Now is not the time to crush a cornerstone of the Senate's foundation.

I don't think this is inevitable. This is not unstoppable. This is up to all of us. It is up to the Members of the Senate to decide if we are going to damage the world's greatest deliberative body at a time when the country needs us the most.

The Senate has always been defined by its Members. The rules, the customs, and the traditions—they help. But at the end of the day, it is the Members of the Senate—like Calhoun, Webster, Clay, Kennedy, Inouye, HATCH, MCCAIN—who make the Senate relevant and necessary.

We are going to find out who we are, as Senators. I would ask that at a minimum, the Senate take its time on this decision. Don't rush. That is not who we are. That is not how we get to the best decisions. This is about the future of the Senate and the future of the Court. The nuclear option will mean nominees for the Supreme Court won't have to even meet with the minority party to be confirmed. It will mean that the Senate's habit of being slow—sometimes maddeningly slow—will go away. That tradition that allows the center to hold—not just in this Chamber but across the country—will be undermined.

So to my Republican colleagues, please take a few weeks before you decide to change the Senate forever. Take your time here. This is probably one of the most serious decisions that you are ever going to make as a Senator because it is about the Senate itself. This is worth talking about. This is worth deliberating over. It is worth thinking over.

Go home and talk to your constituents. If you want to do this, you have the votes. You can do this three Mondays from now, anytime you want. But for goodness sake, there is no harm in thinking about it. All we need are three members of the Republican Party to go to the majority leader—either publicly or privately—and say: Give us some time to find another way to do this. Otherwise, you will make the Supreme Court, this place, and this country more extreme and more divided. You will answer this difficult moment in history by weakening one of the last bastions of bipartisanship, and I believe you will regret it.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SULLIVAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

REMEMBERING DAN FAUSKE

Mr. SULLIVAN. Mr. President, for months, I have been coming down to the floor every week to recognize someone in my State who has made a difference to our communities in Alaska, someone who has devoted time and energy to making my State a better place to live. I call these individuals our Alaskan of the Week.

As I have said repeatedly to all of my colleagues and to those watching on TV, I am a little biased here, but I believe my State is the most beautiful in the country and, I would argue, in the world. I urge everybody in this room, everybody watching on TV, to come to see for yourself. Take a trip to Alaska. It will be the trip of a lifetime. I guarantee you.

It is the people who truly make my State unique, people who are helping each other, strong-willed, warm-hearted, tenacious people who have worked tirelessly for years for all of those who live in Alaska.

This week I would like to honor Dan Fauske, one of the strongest willed, warmest hearted people I have ever known. All he has done for us has made Alaska a better place for literally thousands of people throughout our State.

Dan came to Alaska in 1974 after serving in the Army, as so many Alaskans do. Like so many Alaskans, he arrived with a glint of steel in his eye and a mission to help build our State. Alaska is full of natural wonders, but our manmade wonders are also marvels, and Dan wanted to be part of building more of those marvels for our State and for our country.

He first arrived in the North Slope Borough—the top of the world—to help the community build up their infrastructure and strengthen the Alaskan Native villages in the area. It was a time of enormous change for all of Alaska, particularly the North Slope. Oil from the North Slope Prudhoe Bay, the largest oilfield in North America, had recently begun to flow down the Trans-Alaska System for 800 miles. The largest land claims act in U.S. history, the Alaskan Native Claims Settlement Act, had recently passed, and the governments in rural Alaska were being formed and reformed to take advantage of these opportunities.

After Dan went back to school to receive a master's degree in business administration from Gonzaga, he made his way back to Alaska again to serve as chief financial officer and chief administrative officer for Alaska's North Slope Borough, where he launched an ambitious and ultimately successful capital plan to provide basic necessities that so many Americans take for granted, like running water and sewer,

those kinds of services, to the villages throughout the North Slope Borough, again, on the top of the world.

According to Bill Tracey, Sr., from Point Lay, which is one of the villages there, who was a coworker at the time, ''Dan's excellent work ethic and skills earned him the respect of the North Slope leaders. . . . His accomplishments were remarkable.''

With his beautiful and spirited wife Elaine always by his side, Dan then moved his family to Anchorage to head up the Alaska Housing Finance Corporation. For 18 years, he managed HFC's nearly $5 billion in assets. It is not an overstatement to say that he revolutionized that agency, doing remarkable things, including and most importantly helping thousands of Alaskans—thousands of our constituents, our fellow Alaskans—pursue their dream of buying an affordable home. There is nothing more important than that.

The Alaska Legislature just passed a bill to name the Alaska Housing Finance Corporation the Daniel R. Fauske Building, and the dedication ceremony will take place in Anchorage on Saturday.

As his bio indicates, there is no doubt that for decades Dan Fauske served Alaska with his hands, his heart, and with his head. But a bio on paper can only tell you so much about a person; to really appreciate him, you would have to have been with him and watched the energy and can-do spirit radiate from Dan Fauske. You had to watch him talk to people with respect and humor and understanding and a very keen intelligence. He had a big laugh—a very big laugh—and he told great stories. He also had that rare ability to genuinely connect with everybody he met, it didn't matter who. He was able to speak the language of a businessman, a builder, a veteran, a public servant. He spoke the language of a father, a husband, a friend, and a true Alaskan. In doing so, he gained the respect of everybody, and I mean everybody, in my State—politicians, State workers, military members, people from all across Alaska, people from all across the political spectrum. If you wanted something done and if you wanted it done right in Alaska, you asked Dan Fauske to help you do it. People trusted him. I trusted him.

Most importantly, Dan was a great father to three great boys, D.J., Scott, and Brad, and two daughters, Marcy and Kathy, and he was a great husband to his incredible, vivacious, and very strong wife Elaine.

Mr. President, Dan Fauske passed away this afternoon with his family and friends by his side. Our prayers and the prayers of so many Alaskans go out to all of them during this very difficult time. For anyone watching, I humbly ask that you say a prayer too.

For all he has done for all of us, all his memory will continue to do for all of us, Dan Fauske is our Alaskan of the Week. He was also my very good friend. My wife Julie and I will miss him greatly.

I yield the floor.

The PRESIDING OFFICER (Mr. SCOTT). The Senator from Colorado.

LEGISLATIVE SESSION

Mr. GARDNER. Mr. President, I ask unanimous consent to proceed to legislative session.

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

MORNING BUSINESS

CONGRESS WEEK

Mr. MCCONNELL. Mr. President, I wish to recognize that, 228 years ago this week, Congress achieved its first quorum. The House of Representatives attained its quorum on April 1, 1789, and the Senate reached that goal on April 6, 1789. The Association of Centers for the Study of Congress celebrates this anniversary by observing Congress Week, an annual weeklong event that highlights the resources available for the study of Congress and features commemorative events at member institutions across the country.

The Association of Centers for the Study of Congress is composed of more than 40 universities and historical societies, including the McConnell Center at the University of Louisville, that work to preserve the historical collections of Members of Congress and encourage their use for educational purposes. The organization's goal is to promote public understanding of the legislative process by focusing on the history of the Senate and the House representatives and Congress's role in our constitutional system of government.

Congress Week is designed to spark a closer examination of the first branch of government, to encourage schools to develop programs to highlight the work of Congress, and to stimulate more scholarly research into Congress and its history.

Emphasizing the historical importance of Members' records, H. Con. Res. 307 was passed unanimously in 2008. This resolution recommends that Members' records be properly maintained, that each Member take all necessary measures to manage and preserve them, that they arrange for the deposit or donation of their records with a research institution that is properly equipped to care for them, and that they make them available for educational purposes at an appropriate time. Members of Congress are responsible for preserving their own records of public service.

Members' collections are essential for public understanding of the vital role that Congress plays in our democracy. As primary source materials, they contain the most authentic record of cause and effect of what happened and why. Their study leads to greater understanding of the issues we have faced and how they were resolved.

As Senate majority leader, I encourage my colleagues to follow the advice of H. Con. Res. 307, to preserve the records of your service, both paper and digital, so that the full history of the Senate may be appreciated and understood. Last year, when we observed Congress Week 2016, our President pro tempore, Senator HATCH, stated ''Serving as a member of the world's greatest deliberative body is no small honor; it is a tremendous privilege that none of us should take for granted. The American people have placed their confidence in our ability to effect meaningful change for the good of the country. May we honor this sacred trust by keeping detailed archives of the work we do here.''

I join my esteemed colleague in that sentiment and also ask my colleagues to preserve their archival legacy.

NATIONAL CRIME VICTIMS' RIGHTS WEEK

Mr. GRASSLEY. Mr. President, millions of Americans and thousands of Iowans annually fall victim to senseless acts of crime. In their honor and in honor of the thousands of advocates, first responders, crisis hotline volunteers, and others who work tirelessly on their behalf, I introduced a resolution to commemorate National Crime Victims' Rights Week.

I thank Senators LEAHY, CRAPO, and FEINSTEIN for joining me as cosponsors of this important resolution. In 2017, National Crime Victims' Rights Week takes place from April 2 through April 8. We have commemorated the week every April since 1981.

Here in Washington, DC, and across the Nation, activities are being organized to highlight and promote this year's theme: ''Strength. Resilience. Justice.'' The theme for 2017 recognizes the strength of individual victims. It highlights the resilience of survivors as well as the victim assistance organizations who support survivors in their efforts to heal. And it reflects the importance of securing justice for crime victims.

During this week, we also highlight the contributions of the crisis hotline volunteers and staff, victims' rights attorneys, advocates, sexual assault nurse examiners, police officers, and other emergency responders who provide critical assistance to survivors of crime in communities across the United States. On Friday, several of these individuals will receive awards during a ceremony hosted by the Office for Victims of Crime at the U.S. Department of Justice. I extend my gratitude to those award recipients for their work to assist victims of crime.

Many of us in this Chamber have championed landmark legislation to enhance the rights of crime victims. For example, I was an original cosponsor of the 1984 Victims of Crime Act,

which established the Crime Victims Compensation Fund. I also joined my colleagues in supporting the 1994 enactment of the Violence Against Women Act. This landmark legislation enhanced penalties for sex offenders and made hundreds of millions of dollars available for activities and programs to respond to the needs of domestic violence survivors.

The Judiciary Committee, which I chair, has continued to make the protection of victims' rights a top priority. Two years ago, we approved the Justice for Victims of Trafficking Act, which makes new resources available to help survivors of human trafficking. We also approved the Survivors' Bill of Rights, which establishes new rights for survivors of federal crimes of sexual violence. We cleared the Justice for All Reauthorization Act, which enhances crime survivors' ability to seek restitution and improves victims' access to legal services. And we approved the Emmett Till Unsolved Civil Rights Crimes Reauthorization Act of 2016.

Supporting and protecting victims of crime will again be an important priority this year in the Judiciary Committee. Last week, I convened a hearing to examine allegations that dozens of young athletes experienced sexual abuse at the hands of coaches, instructors, and others.

Senators FEINSTEIN, COLLINS, and I also recently introduced a bill, the Protecting Young Victims from Sexual Abuse Act, to ensure that sexual assault allegations by young athletes will be reported and investigated promptly. This year, we also will make it a priority to extend and update programs authorized under the Trafficking Victims Protection Act.

In closing, crime victims and survivors in the United States deserve our assistance in helping them cope with the often devastating consequences of crime. That is why it is so important that we support the mission of National Crime Victims' Rights Week. I urge my colleagues to join me in supporting passage of this important resolution.

REMEMBERING DAVID CULP

Mr. MARKEY. Mr. President, I was deeply saddened to learn of the passing of my dear friend David Culp in early February. As one of the leaders of the arms control community for decades, David was an indefatigable advocate for reducing the threat of catastrophic nuclear war and stopping the proliferation of nuclear weapons. In particular, David's work was critical for Senate ratification of the New START Treaty, which established limits on the number of deployed strategic nuclear weapons in the United States and Russia.

More recently, David worked closely with my staff on a number of arms control initiatives, including my efforts to scale back the Pentagon's trillion-dollar nuclear spending spree, restrain excessive and destabilizing missile defense systems, and cancel a new nuclear-armed cruise ''missile that would make Americans less safe.

I will miss David's wisdom, humor, and strategic insight, but I am comforted to know that his legacy lives on in the robust and committed arms control community he helped lead. I will continue to be inspired by David's memory, and I offer my deepest condolences to his friends and his family.

ADDITIONAL STATEMENTS

TRIBUTE TO JAMES C. FOX

• Mr. BURR. Mr. President, I want to honor the work of the Honorable James C. Fox, who retired last month after over 35 years of service on the Federal bench.

Judge Fox was born in Kansas but has spent most of his life in North Carolina, graudating from the University of North Carolina with both his undergraduate and law degrees. Following law school, he clerked for the Honorable Don Gilliam in the U.S. District Court for the Eastern District of North Carolina. After time in private practice and as the county attorney for New Hanover County, Judge Fox was nominated by President Reagan to serve where he had previously clerked: the U.S. District Court for the Eastern District of North Carolina.

Judge Fox served chief judge from 1990–1997, and while he took senior status in 2001, he maintained a significant caseload until his retirement last week. His dedication to the law is to be commended and is exceeded only by his dedication to his family. I wish him all the best in retirement as he spends time with his wife, Kate, and his children and grandchildren, and I am grateful for his service.•

MESSAGE FROM THE HOUSE

At 10:28 a.m., a message from the House of Representatives, delivered by Mr. Novotny, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 1343. An act to direct the Securities and Exchange Commission to revise its rules so as to increase the threshold amount for requiring issuers to provide certain disclosures relating to compensatory benefit plans.

The message further announced that the House agrees to the amendment of the Senate to the bill (H.R. 353) to improve the National Oceanic and Atmospheric Administration's weather research through a focused program of investment on affordable and attainable advances in observational, computing, and modeling capabilities to support substantial improvement in weather forecasting and prediction of high impact weather events, to expand commercial opportunities for the provision of weather data, and for other purposes.

MEASURES REFERRED

The following bill was read the first and the second times by unanimous consent, and referred as indicated:

H.R. 1343. An act to direct the Securities and Exchange Commission to revise its rules so as to increase the threshold amount for requiring issuers to provide certain disclosures relating to compensatory benefit plans; to the Committee on Banking, Housing, and Urban Affairs.

MEASURES READ THE FIRST TIME

The following bills were read the first time:

H.R. 1301. An act making appropriations for the Department of Defense for the fiscal year ending September 30, 2017, and for other purposes.

S. 861. A bill to provide for the compensation of Federal employees affected by lapses in appropriations.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC–1172. A communication from the Senior Official performing the duties of the Assistant Secretary of the Army (Manpower and Reserve Affairs), transmitting, pursuant to law, a report on the mobilizations of selected reserve units, received in the Office of the President of the Senate on April 4, 2017; to the Committee on Armed Services.

EC–1173. A communication from the Acting Secretary of the Army, transmitting, pursuant to law, a report entitled ''Annual Report to Congress on the Activities of the Western Hemisphere Institute for Security Cooperation for 2016''; to the Committee on Armed Services.

EC–1174. A communication from the Chief Counsel, Federal Emergency Management Agency, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Final Flood Elevation Determinations; St. Charles County, Missouri and Incorporated Areas'' (Docket No. FEMA–2016–0002) received in the Office of the President of the Senate on March 29, 2017; to the Committee on Banking, Housing, and Urban Affairs.

EC–1175. A communication from the Chief Counsel, Federal Emergency Management Agency, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Final Flood Elevation Determinations; Washington County, Oregon and Incorporated Areas'' (Docket No. FEMA–2016–0002) received in the Office of the President of the Senate on March 29, 2017; to the Committee on Banking, Housing, and Urban Affairs.

EC–1176. A communication from the Deputy Assistant Secretary for Export Administration, Bureau of Industry and Security, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Removal of Certain Persons from the Entity List; Addition of a Person to the Entity List; and EAR Conforming Change'' (RIN0694–AH30) received in the Office of the President of the Senate on March 30, 2017; to the Committee on Banking, Housing, and Urban Affairs.

EC–1177. A communication from the Deputy Assistant Secretary for Export Administration, Bureau of Industry and Security, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled

''Removal of Certain Persons from the Entity List'' (RIN0694–AH28) received in the Office of the President of the Senate on March 30, 2017; to the Committee on Banking, Housing, and Urban Affairs.

EC–1178. A communication from the Assistant Director for Legislative Affairs, Consumer Financial Protection Bureau, transmitting, pursuant to law, a report entitled ''Consumer Response Annual Report''; to the Committee on Banking, Housing, and Urban Affairs.

EC–1179. A communication from the Secretary, Securities and Exchange Commission, transmitting, pursuant to law, the report of a rule entitled ''Inflation Adjustments and Other Technical Amendments Under Titles I and III of the JOBS Act'' (RIN3235–AL38) received in the Office of the President of the Senate on April 4, 2017; to the Committee on Banking, Housing, and Urban Affairs.

EC–1180. A communication from the Executive Director, Comptroller of the Currency, Department of the Treasury, transmitting, pursuant to law, the Office of the Comptroller's 2016 Office of Minority and Women Inclusion Annual Report to Congress; to the Committee on Banking, Housing, and Urban Affairs.

EC–1181. A communication from the Chief Counsel, Federal Emergency Management Agency, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Final Flood Elevation Determinations; Otsego County, New York'' (Docket No. FEMA–2016–0002) received in the Office of the President of the Senate on March 30, 2017; to the Committee on Banking, Housing, and Urban Affairs.

EC–1182. A communication from the Chairman, Federal Financial Institutions Examination Council, transmitting, pursuant to law, the Council's 2016 Annual Report to Congress; to the Committee on Banking, Housing, and Urban Affairs.

EC–1183. A communication from the Acting Deputy Assistant Administrator for Regulatory Programs, Office of Sustainable Fisheries, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Rehabilitation of the Jetty System at the Mouth of the Columbia River; Jetty A, North Jetty, and South Jetty, in Washington and Oregon'' (RIN0648–BF95) received in the Office of the President of the Senate on April 3, 2017; to the Committee on Commerce, Science, and Transportation.

EC–1184. A communication from the Attorney-Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Recreational Boat Flotation Standards—Update of Outboard Engine Weight Test Requirements'' ((RIN1625–AC37) (Docket No. USCG–2016–1012)) received in the Office of the President of the Senate on April 4, 2017; to the Committee on Commerce, Science, and Transportation.

EC–1185. A communication from the Acting Chairman, Federal Maritime Commission, transmitting, pursuant to law, the 55th Annual Report of the activities of the Federal Maritime Commission for fiscal year 2016; to the Committee on Commerce, Science, and Transportation.

EC–1186. A communication from the Regulations Coordinator, Centers for Medicare and Medicaid Services, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled ''Medicare Program; Advancing Care Coordination Through Episode Payment Models (EPMs); Cardiac Rehabilitation Incentive Payment Model; and Changes to the Comprehensive Care for Joint Replacement Model; Delay of Effective Date'' ((RIN0938–AS90) (CMS–5519–IFC)) received in the Office of the President of the Senate on April 4, 2017; to the Committee on Finance.

EC–1187. A communication from the Regulations Coordinator, Centers for Medicare and Medicaid Services, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled ''Medicaid Program; Disproportionate Share Hospital Payments—Treatment of Third Party Payers in Calculating Uncompensated Care Costs'' ((RIN0938–AS92) (CMS–2699–F)) received in the Office of the President of the Senate on April 3, 2017; to the Committee on Finance.

EC–1188. A communication from the Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting, pursuant to the Case-Zablocki Act, 1 U.S.C. 112b, as amended, the report of the texts and background statements of international agreements, other than treaties (List 2017–0050—2017–0068); to the Committee on Foreign Relations.

EC–1189. A communication from the Board of Trustees, National Railroad Retirement Investment Trust, transmitting, pursuant to law, the annual management report relative to its operations and financial condition for fiscal year 2016; to the Committee on Health, Education, Labor, and Pensions.

EC–1190. A communication from the Secretary of the Federal Trade Commission, transmitting, pursuant to law, the Commission's fiscal year 2016 annual report relative to the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act); to the Committee on Homeland Security and Governmental Affairs.

EC–1191. A communication from the Acting President and Chief Executive Officer, Overseas Private Investment Corporation, transmitting, pursuant to law, the Corporation's fiscal year 2016 annual report relative to the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act); to the Committee on Homeland Security and Governmental Affairs.

EC–1192. A communication from the Diversity and Inclusion Programs Director, Board of Governors of the Federal Reserve System, transmitting, pursuant to law, the Board's fiscal year 2016 annual report relative to the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act); to the Committee on Homeland Security and Governmental Affairs.

EC–1193. A communication from the Staff Director, Federal Election Commission, transmitting, pursuant to law, the Commission's fiscal year 2016 annual report relative to the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act); to the Committee on Homeland Security and Governmental Affairs.

EC–1194. A communication from the Equal Employment Opportunity Director, Farm Credit Administration, transmitting, pursuant to law, the Farm Credit Administration's fiscal year 2016 annual report relative to the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act); to the Committee on Homeland Security and Governmental Affairs.

EC–1195. A communication from the General Counsel, Administrative Conference of the United States, transmitting, pursuant to law, the fiscal year 2016 annual report relative to the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act); to the Committee on Homeland Security and Governmental Affairs.

EC–1196. A communication from the Assistant Director for Legislative Affairs, Consumer Financial Protection Bureau, transmitting, pursuant to law, the Bureau's fiscal year 2016 report relative to the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act); to the Committee on Homeland Security and Governmental Affairs.

EC–1197. A communication from the Equal Employment Opportunity and Inclusion Director, Farm Credit System Insurance Corporation, transmitting, pursuant to law, the Farm Credit System Insurance Corporation's fiscal year 2016 annual report relative to the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act); to the Committee on Homeland Security and Governmental Affairs.

EC–1198. A communication from the Acting Director of Equal Employment Opportunity, Securities and Exchange Commission, transmitting, pursuant to law, the Commission's 2016 annual report relative to the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act); to the Committee on Homeland Security and Governmental Affairs.

EC–1199. A communication from the Acting Assistant Attorney General, Office of Legislative Affairs, Department of Justice, transmitting, pursuant to law, the Department's fiscal year 2016 annual report relative to the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act); to the Committee on Homeland Security and Governmental Affairs.

EC–1200. A communication from the Director, Equal Employment Opportunities and Diversity Programs, National Archives and Records Administration, transmitting, pursuant to law, the Administration's fiscal year 2016 annual report relative to the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act); to the Committee on Homeland Security and Governmental Affairs.

EC–1201. A communication from the Associate General Counsel for General Law, Department of Homeland Security, transmitting, pursuant to law, two (2) reports relative to vacancies in the Department of Homeland Security, received in the Office of the President of the Senate on March 29, 2017; to the Select Committee on Intelligence.

EC–1202. A communication from the Secretary, Judicial Conference of the United States, transmitting, a report relative to bankruptcy judgeship recommendations and corresponding draft legislation for the 115th Congress; to the Committee on the Judiciary.

PETITIONS AND MEMORIALS

The following petition or memorial was laid before the Senate and was referred or ordered to lie on the table as indicated:

POM–15. A joint resolution adopted by the Legislature of the State of Nevada relative to their ratification of the proposed amendment to the Constitution of the United States providing that equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex; to the Committee on the Judiciary.

SENATE JOINT RESOLUTION NO. 2

Whereas, Both houses of the 92nd Congress of the United States of America, by a constitutional majority of two-thirds, adopted the following resolution proposing to amend the United States Constitution:

Resolved by the Senate and House of Representatives of the United States of America in Congress Assembled (Two-Thirds of Each House Concurring Therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be

valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission by the Congress:

ARTICLE

Section 1. Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex.

Section 2. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

Section 3. This amendment shall take effect two years after the date of ratification; and

Whereas, The 95th Congress of the United States amended the resolution of the 92nd Congress to extend the time for ratification to June 30, 1982, thereby indicating its continued support of the amendment: and

Whereas, The Congress of the United States adopted the 27th Amendment to the Constitution of the United States, which was proposed in 1789 by our First Congress but not ratified by three-fourths of the States until May 7, 1992, and, on May 18, 1992, certified as the 27th Amendment; and

Whereas, The restricting time limit for ratification of the Equal Rights Amendment is in the resolving clause and is not part of the amendment which was proposed by Congress and which has already been ratified by 35 states; and

Whereas, Having passed a time extension for the Equal Rights Amendment on October 20, 1978, Congress demonstrated that a time limit in a resolving clause may be disregarded if it is not part of the proposed amendment; and

Whereas, The United States Supreme Court in *Coleman v. Miller*, 307 U.S. 433 (1939), recognized that Congress is in a unique position to judge the tenor of the nation, to be aware of the political, social and economic factors affecting the nation and to be aware of the importance to the nation of the proposed amendment; and

Whereas, If an amendment to the Constitution of the United States has been proposed by two-thirds of both houses of Congress and ratified by three-fourths of the state legislatures, it is for Congress, under the principles of *Coleman v. Miller*, to determine the validity of the state ratifications occurring after a time limit in the resolving clause, but not in the amendment itself; and

Whereas, The Legislature of the State of Nevada finds that the proposed amendment is meaningful and needed as part of the Constitution of the United States and that the present political, social and economic conditions demonstrate that constitutional equality for women and men continues to be a timely issue in the United States: Now, therefore, be it

Resolved by the Senate and Assembly of the State of Nevada, Jointly, That the proposed amendment to the Constitution of the United States of America is hereby ratified by the Legislature of the State of Nevada; and be it further

Resolved, That the Secretary of the Senate shall prepare and transmit a copy of this resolution to the Secretary of State who shall keep it as a true record of the official acts of the Legislative Department of the State Government pursuant to Section 20 of Article 5 of the Nevada Constitution; and be it further

Resolved, That the Secretary of the Senate shall prepare and transmit a certified copy of this resolution, duly authenticated, to the Archivist of the United States at the National Archives and Records Administration pursuant to 1 U.S.C. §§106b and 112, which shall serve as official notice that the proposed amendment to the Constitution of the United States of America is hereby ratified by the Legislature of the State of Nevada; and be it further

Resolved, That the Secretary of the Senate shall prepare and transmit a copy of this resolution to the Vice President of the United States as the presiding officer of the United States Senate, the Speaker of the House of Representatives and each member of the Nevada Congressional Delegation; and be it further

Resolved, That this resolution becomes effective upon passage.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. THUNE, from the Committee on Commerce, Science, and Transportation, with an amendment in the nature of a substitute:

S. 102. A bill to direct the Federal Communications Commission to commence proceedings related to the resiliency of critical communications networks during times of emergency, and for other purposes (Rept. No. 115–24).

By Mr. HATCH, from the Committee on Finance:

Special Report entitled ''Report on the Activities of the Committee on Finance During the 114th Congress'' (Rept. No. 115–25).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of nominations were submitted:

By Mr. McCAIN for the Committee on Armed Services.

Heather Wilson, of South Dakota, to be Secretary of the Air Force.

By Mr. THUNE for the Committee on Commerce, Science, and Transportation.

*Jeffrey A. Rosen, of Virginia, to be Deputy Secretary of Transportation.

*Nomination was reported with recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

(Nominations without an asterisk were reported with the recommendation that they be confirmed.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. PAUL (for himself and Mr. BOOKER):

S. 827. A bill to provide for the sealing or expungement of records relating to Federal nonviolent criminal offenses, and for other purposes; to the Committee on the Judiciary.

By Mr. ROUNDS (for himself, Mr. WARNER, Mr. TESTER, Mr. SCOTT, Mr. DONNELLY, Ms. HEITKAMP, Mr. COTTON, Mr. TILLIS, Mr. VAN HOLLEN, Mr. KENNEDY, and Mr. SCHUMER):

S. 828. A bill to amend the Federal Deposit Insurance Act to require the appropriate Federal banking agencies to treat certain municipal obligations as level 2B liquid assets, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. McCAIN (for himself, Mr. TESTER, Ms. COLLINS, and Mr. CARPER):

S. 829. A bill to reauthorize the Assistance to Firefighters Grants program, the Fire Prevention and Safety Grants program, and the Staffing for Adequate Fire and Emergency Response grant program, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

By Mr. CASSIDY (for himself, Mr. CARPER, Mr. GRASSLEY, Mr. COONS, Ms. MURKOWSKI, Mr. HEINRICH, and Mrs. CAPITO):

S. 830. A bill to amend title XVIII of the Social Security Act to provide for the coordination of programs to prevent and treat obesity, and for other purposes; to the Committee on Finance.

By Mr. TOOMEY (for himself and Mr. CASEY):

S. 831. A bill to designate the facility of the United States Postal Service located at 120 West Pike Street in Canonsburg, Pennsylvania, as the ''Police Officer Scott Bashioum Post Office Building''; to the Committee on Homeland Security and Governmental Affairs.

By Mr. CARDIN (for himself, Mr. ISAKSON, and Mr. COONS):

S. 832. A bill to enhance the transparency and accelerate the impact of programs under the African Growth and Opportunity Act and the Millennium Challenge Corporation, and for other purposes; to the Committee on Foreign Relations.

By Mr. TESTER (for himself, Ms. MURKOWSKI, Ms. HARRIS, Ms. KLOBUCHAR, Mrs. MCCASKILL, Mrs. MURRAY, Mr. KING, and Mr. BLUMENTHAL):

S. 833. A bill to amend title 38, United States Code, to expand health care and benefits from the Department of Veterans Affairs for military sexual trauma, and for other purposes; to the Committee on Veterans' Affairs.

By Mr. MARKEY (for himself, Mr. SCHUMER, Mrs. GILLIBRAND, Mr. DURBIN, Mr. WHITEHOUSE, Mr. REED, Mr. BLUMENTHAL, Ms. WARREN, Ms. DUCKWORTH, Mr. CASEY, Mrs. MURRAY, Mr. WYDEN, Mr. MURPHY, Mr. KAINE, Mr. SANDERS, Mr. SCHATZ, Ms. HIRONO, Ms. BALDWIN, Mr. BROWN, Mr. CARPER, Mr. VAN HOLLEN, Mr. CARDIN, Mr. COONS, Mr. BOOKER, Ms. HARRIS, Mr. MENENDEZ, and Mrs. FEINSTEIN):

S. 834. A bill to authorize the appropriation of funds to the Centers for Disease Control and Prevention for conducting or supporting research on firearms safety or gun violence prevention; to the Committee on Health, Education, Labor, and Pensions.

By Mr. MURPHY (for himself, Mr. BLUMENTHAL, Mr. WHITEHOUSE, Mr. MARKEY, Ms. HIRONO, Mr. DURBIN, and Mr. MERKLEY):

S. 835. A bill to require the Supreme Court of the United States to promulgate a code of ethics; to the Committee on the Judiciary.

By Mr. WYDEN (for himself, Ms. MURKOWSKI, Ms. WARREN, and Mr. MARKEY):

S. 836. A bill to amend the Federal Credit Union Act to exclude a loan secured by a non-owner occupied 1- to 4-family dwelling from the definition of a member business loan, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. HATCH:

S. 837. A bill to provide for the conveyance of certain land to Washington County, Utah, to authorize the exchange of Federal land and non-Federal in the State of Utah, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. COTTON (for himself, Mr. BOOZMAN, and Mr. RUBIO):

S. 838. A bill to amend the Truth in Lending Act to include retrofit loans such as property assessed clean energy loans, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. WICKER (for himself, Mrs. CAPITO, and Mr. INHOFE):

S. 839. A bill to allow for judicial review of any final rule addressing national emission standards for hazardous air pollutants for brick and structural clay products or for clay ceramics manufacturing before requiring compliance with such rule; to the Committee on Environment and Public Works.

By Mr. PORTMAN (for himself and Mr. WARNER):

S. 840. A bill to amend the Higher Education Act of 1965 to allow the Secretary of Education to award Early College Federal Pell Grants; to the Committee on Health, Education, Labor, and Pensions.

By Mr. PORTMAN (for himself and Mr. BROWN):

S. 841. A bill to designate the Veterans Memorial and Museum in Columbus, Ohio, as the National Veterans Memorial and Museum, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. BOOKER (for himself, Mr. JOHNSON, Ms. BALDWIN, Mrs. ERNST, Mr. BROWN, and Mr. PORTMAN):

S. 842. A bill to prohibit Federal agencies and Federal contractors from requesting that an applicant for employment disclose criminal history record information before the applicant has received a conditional offer, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

By Mr. BENNET (for himself and Mr. PORTMAN):

S. 843. A bill to amend the Internal Revenue Code of 1986 to provide for the issuance of exempt facility bonds for qualified carbon dioxide capture facilities; to the Committee on Finance.

By Mr. WYDEN (for himself, Mr. BOOZMAN, and Mr. MARKEY):

S. 844. A bill to amend title 38, United States Code, to consider certain time spent by members of reserve components of the Armed Forces while receiving medical care from the Secretary of Defense as active duty for purposes of eligibility for Post-9/11 Educational Assistance, and for other purposes; to the Committee on Veterans' Affairs.

By Mr. BLUMENTHAL (for himself, Ms. HIRONO, Mr. FRANKEN, Mr. KAINE, Mr. MERKLEY, Mrs. GILLIBRAND, Ms. HARRIS, Mr. MARKEY, Mr. BOOKER, Ms. WARREN, and Mr. WYDEN):

S. 845. A bill to protect sensitive community locations from harmful immigration enforcement action, and for other purposes; to the Committee on the Judiciary.

By Mrs. SHAHEEN (for herself, Mr. WHITEHOUSE, Ms. HASSAN, Mr. KING, and Mr. CASEY):

S. 846. A bill to direct the Secretary of Transportation to assist States to rehabilitate or replace certain bridges, and for other purposes; to the Committee on Environment and Public Works.

By Ms. BALDWIN (for herself, Ms. COLLINS, Ms. DUCKWORTH, Mrs. FEINSTEIN, Mrs. GILLIBRAND, Ms. HARRIS, Ms. HASSAN, Ms. HEITKAMP, Ms. HIRONO, Mrs. MCCASKILL, Mrs. MURRAY, Mrs. SHAHEEN, Ms. WARREN, Ms. CANTWELL, Ms. STABENOW, and Ms. KLOBUCHAR):

S. 847. A bill to establish a commission to ensure a suitable observance of the centennial of the passage and ratification of the 19th Amendment to the Constitution of the United States providing for women's suffrage, and for other purposes; to the Committee on the Judiciary.

By Ms. HASSAN:

S. 848. A bill to amend the Higher Education Act of 1965 to encourage entrepreneurship by providing loan deferment and loan cancellation for founders and employees of small business startups, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. KING (for himself, Mr. BURR, Mr. NELSON, and Mr. RUBIO):

S. 849. A bill to support programs for mosquito-borne and other vector-borne disease surveillance and control; to the Committee on Health, Education, Labor, and Pensions.

By Mr. DURBIN (for himself and Mr. CASSIDY):

S. 850. A bill to amend the Higher Education Act of 1965 to establish fair and consistent eligibility requirements for graduate medical schools operating outside the United States and Canada; to the Committee on Health, Education, Labor, and Pensions.

By Mr. WHITEHOUSE:

S. 851. A bill to end offshore corporate tax avoidance, and for other purposes; to the Committee on Finance.

By Mr. CARDIN (for himself and Mr. PORTMAN):

S. 852. A bill to amend the Internal Revenue Code of 1986 to protect older, longer service and grandfathered participants in defined benefit plans; to the Committee on Finance.

By Mr. CARDIN (for himself, Mr. PERDUE, Mrs. FEINSTEIN, Mr. RUBIO, Mr. BLUMENTHAL, Ms. COLLINS, Mr. MERKLEY, Mr. BOOKER, and Mr. LEAHY):

S. 853. A bill to identify and combat corruption in countries, to establish a tiered system of countries with respect to levels of corruption by their governments and their efforts to combat such corruption, and to assess United States assistance to designated countries in order to advance anti-corruption efforts in those countries and better serve United States taxpayers; to the Committee on Foreign Relations.

By Mr. CASEY (for himself, Mr. MANCHIN, and Mr. BROWN):

S. 854. A bill to improve compliance with mine safety and health laws, empower miners to raise safety concerns, prevent future mine tragedies, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. CASEY (for himself, Mr. BROWN, Mr. MANCHIN, Mr. KAINE, and Mr. WARNER):

S. 855. A bill to ensure that claims for benefits under the Black Lung Benefits Act are processed in a fair and timely manner, to better protect miners from pneumoconiosis (commonly known as ''black lung disease''), and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mrs. MCCASKILL (for herself, Mr. HELLER, Mr. BLUMENTHAL, Mr. GRASSLEY, Mrs. GILLIBRAND, Mr. RUBIO, Mr. WARNER, Mrs. ERNST, Mr. REED, Ms. HASSAN, Mrs. CAPITO, and Mrs. SHAHEEN):

S. 856. A bill to amend the Higher Education Act of 1965 and the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act to combat campus sexual assault, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. BROWN (for himself and Mr. ALEXANDER):

S. 857. A bill to amend title 54, United States Code, to establish within the National Park Service the African American Civil Rights Network, and for other purposes; to the Committee on Energy and Natural Resources.

By Mrs. SHAHEEN (for herself, Mr. FRANKEN, Ms. STABENOW, and Ms. KLOBUCHAR):

S. 858. A bill to provide protection for survivors of domestic violence or sexual assault under the Fair Housing Act; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. PETERS (for himself, Mr. PORTMAN, and Ms. STABENOW):

S. 859. A bill to authorize the Director of the United States Geological Survey to conduct monitoring, assessment, science, and research, in support of the binational fisheries within the Great Lakes Basin, and for other purposes; to the Committee on Environment and Public Works.

By Mr. GRASSLEY (for himself, Mr. WHITEHOUSE, Mr. TILLIS, Mrs. FEINSTEIN, Mr. HATCH, Mr. LEAHY, Mr. DURBIN, Mr. CORNYN, Mr. BLUNT, and Ms. KLOBUCHAR):

S. 860. A bill to reauthorize and improve the Juvenile Justice and Delinquency Prevention Act of 1974, and for other purposes; to the Committee on the Judiciary.

By Mr. CARDIN (for himself, Mr. VAN HOLLEN, Mr. LEAHY, Mr. BLUMENTHAL, Mrs. GILLIBRAND, Mr. SCHATZ, Mr. CARPER, Mr. WARNER, Mr. MARKEY, Mr. SANDERS, Mr. UDALL, Ms. HIRONO, Mrs. SHAHEEN, Ms. BALDWIN, Mr. KAINE, Mrs. MURRAY, and Mr. BROWN):

S. 861. A bill to provide for the compensation of Federal employees affected by lapses in appropriations; read the first time.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. YOUNG (for himself and Mr. CARDIN):

S. Res. 114. A resolution expressing the sense of the Senate on humanitarian crises in Nigeria, Somalia, South Sudan, and Yemen; to the Committee on Foreign Relations.

By Mr. MORAN (for himself and Mr. ROBERTS):

S. Res. 115. A resolution commemorating the 100th anniversary of the 1st Infrantry Division; to the Committee on Armed Services.

By Mr. CARDIN (for himself, Mr. CORKER, Mr. DURBIN, Mr. RUBIO, Mr. KAINE, Mrs. SHAHEEN, Mr. UDALL, Mr. COONS, and Mr. GARDNER):

S. Res. 116. A resolution condemning the Assad regime for its continued use of chemical weapons against the Syrian people; to the Committee on Foreign Relations.

By Mr. DAINES (for himself, Ms. HIRONO, Ms. MURKOWSKI, Ms. CANTWELL, Mr. ALEXANDER, Mr. UDALL, Mr. INHOFE, Mr. HEINRICH, Mrs. CAPITO, Mr. WYDEN, Mr. BLUNT, Mr. FRANKEN, Mr. RUBIO, Ms. STABENOW, Mr. GARDNER, Mr. WARNER, Mr. CASSIDY, Mr. NELSON, Mr. PORTMAN, Mrs. FEINSTEIN, Mr. BARRASSO, Mrs. MURRAY, Mr. ENZI, Mr. WHITEHOUSE, Ms. COLLINS, Mr. REED, Mr. COTTON, Mr. TESTER, Mr. CORKER, Ms. BALDWIN, Mr. SULLIVAN, Mr. PETERS, Mr. SCHATZ, Mr. KING, Mrs. SHAHEEN, and Mr. LEAHY):

S. Res. 117. A resolution designating the week of April 15, 2017, through April 23, 2017, as ''National Park Week''; considered and agreed to.

By Ms. HARRIS (for herself, Mr. RUBIO, Mrs. FEINSTEIN, and Ms. COLLINS):

S. Res. 118. A resolution condemning hate crime and any other form of racism, religious or ethnic bias, discrimination, incitement to violence, or animus targeting a minority in the United States; considered and agreed to.

ADDITIONAL COSPONSORS

S. 175

At the request of Mr. MANCHIN, the name of the Senator from New Mexico (Mr. UDALL) was added as a cosponsor of S. 175, a bill to amend the Surface Mining Control and Reclamation Act of 1977 to transfer certain funds to the Multiemployer Health Benefit Plan and the 1974 United Mine Workers of America Pension Plan, and for other purposes.

S. 236

At the request of Mr. WYDEN, the names of the Senator from Connecticut (Mr. MURPHY) and the Senator from New Jersey (Mr. BOOKER) were added as cosponsors of S. 236, a bill to amend the Internal Revenue Code of 1986 to reform taxation of alcoholic beverages.

S. 372

At the request of Mr. PORTMAN, the name of the Senator from Indiana (Mr. YOUNG) was added as a cosponsor of S. 372, a bill to amend the Tariff Act of 1930 to ensure that merchandise arriving through the mail shall be subject to review by U.S. Customs and Border Protection and to require the provision of advance electronic information on shipments of mail to U.S. Customs and Border Protection and for other purposes.

S. 382

At the request of Mr. MENENDEZ, the names of the Senator from Virginia (Mr. KAINE), the Senator from Rhode Island (Mr. REED) and the Senator from Illinois (Mr. DURBIN) were added as cosponsors of S. 382, a bill to require the Secretary of Health and Human Services to develop a voluntary registry to collect data on cancer incidence among firefighters.

S. 459

At the request of Mr. RUBIO, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 459, a bill to designate the area between the intersections of Wisconsin Avenue, Northwest and Davis Street, Northwest and Wisconsin Avenue, Northwest and Edmunds Street, Northwest in Washington, District of Columbia, as ''Boris Nemtsov Plaza'', and for other purposes.

S. 479

At the request of Mr. BROWN, the names of the Senator from New Jersey (Mr. BOOKER), the Senator from New Jersey (Mr. MENENDEZ) and the Senator from Delaware (Mr. COONS) were added as cosponsors of S. 479, a bill to amend title XVIII of the Social Security Act to waive coinsurance under Medicare for colorectal cancer screening tests, regardless of whether therapeutic intervention is required during the screening.

S. 493

At the request of Mr. RUBIO, the name of the Senator from Utah (Mr. LEE) was added as a cosponsor of S. 493, a bill to amend title 38, United States Code, to provide for the removal or demotion of employees of the Department of Veterans Affairs based on performance or misconduct, and for other purposes.

S. 497

At the request of Ms. CANTWELL, the name of the Senator from Arkansas (Mr. BOOZMAN) was added as a cosponsor of S. 497, a bill to amend title XVIII of the Social Security Act to provide for Medicare coverage of certain lymphedema compression treatment items as items of durable medical equipment.

S. 568

At the request of Mr. BROWN, the name of the Senator from Iowa (Mrs. ERNST) was added as a cosponsor of S. 568, a bill to amend title XVIII of the Social Security Act to count a period of receipt of outpatient observation services in a hospital toward satisfying the 3-day inpatient hospital requirement for coverage of skilled nursing facility services under Medicare.

S. 569

At the request of Ms. CANTWELL, the name of the Senator from Tennessee (Mr. ALEXANDER) was added as a cosponsor of S. 569, a bill to amend title 54, United States Code, to provide consistent and reliable authority for, and for the funding of, the Land and Water Conservation Fund to maximize the effectiveness of the Fund for future generations, and for other purposes.

S. 577

At the request of Mr. LANKFORD, the name of the Senator from Kansas (Mr. ROBERTS) was added as a cosponsor of S. 577, a bill to require each agency, in providing notice of a rule making, to include a link to a 100 word plain language summary of the proposed rule.

S. 578

At the request of Mr. LANKFORD, the name of the Senator from Kansas (Mr. ROBERTS) was added as a cosponsor of S. 578, a bill to amend title 5, United States Code, to provide requirements for agency decision making based on science.

S. 579

At the request of Mr. LANKFORD, the name of the Senator from Kansas (Mr. ROBERTS) was added as a cosponsor of S. 579, a bill to require agencies to publish an advance notice of proposed rule making for major rules.

S. 584

At the request of Mr. LANKFORD, the name of the Senator from Kansas (Mr. ROBERTS) was added as a cosponsor of S. 584, a bill to amend chapter 6 of title 5, United States Code (commonly known as the Regulatory Flexibility Act), to ensure complete analysis of potential impacts on small entities of rules, and for other purposes.

S. 630

At the request of Mrs. SHAHEEN, the name of the Senator from Wisconsin (Ms. BALDWIN) was added as a cosponsor of S. 630, a bill to amend the Afghan Allies Protection Act of 2009 to make 2,500 visas available for the Afghan Special Immigrant Visa program, and for other purposes.

S. 697

At the request of Mr. DAINES, the name of the Senator from Maine (Ms. COLLINS) was added as a cosponsor of S. 697, a bill to amend the Internal Revenue Code of 1986 to lower the mileage threshold for deduction in determining adjusted gross income of certain expenses of members of reserve components of the Armed Forces, and for other purposes.

S. 717

At the request of Mr. SULLIVAN, the name of the Senator from Indiana (Mr. DONNELLY) was added as a cosponsor of S. 717, a bill to promote pro bono legal services as a critical way in which to empower survivors of domestic violence.

S. 722

At the request of Mr. CORKER, the names of the Senator from Utah (Mr. HATCH) and the Senator from Nevada (Mr. HELLER) were added as cosponsors of S. 722, a bill to impose sanctions with respect to Iran in relation to Iran's ballistic missile program, support for acts of international terrorism, and violations of human rights, and for other purposes.

S. 733

At the request of Ms. MURKOWSKI, the names of the Senator from Montana (Mr. TESTER), the Senator from Missouri (Mrs. MCCASKILL), the Senator from Virginia (Mr. KAINE) and the Senator from Minnesota (Ms. KLOBUCHAR) were added as cosponsors of S. 733, a bill to protect and enhance opportunities for recreational hunting, fishing, and shooting, and for other purposes.

S. 751

At the request of Mr. WARNER, the names of the Senator from Tennessee (Mr. ALEXANDER) and the Senator from California (Mrs. FEINSTEIN) were added as cosponsors of S. 751, a bill to amend title 54, United States Code, to establish, fund, and provide for the use of amounts in a National Park Service Legacy Restoration Fund to address the maintenance backlog of the National Park Service, and for other purposes.

S. 770

At the request of Mr. SCHATZ, the name of the Senator from New Hampshire (Ms. HASSAN) was added as a cosponsor of S. 770, a bill to require the Director of the National Institute of Standards and Technology to disseminate resources to help reduce small business cybersecurity risks, and for other purposes.

S. 782

At the request of Mr. CORNYN, the names of the Senator from Utah (Mr. HATCH) and the Senator from Rhode Island (Mr. WHITEHOUSE) were added as cosponsors of S. 782, a bill to reauthorize the National Internet Crimes

Against Children Task Force Program, and for other purposes.

S. 816

At the request of Mr. CASEY, the name of the Senator from Ohio (Mr. BROWN) was added as a cosponsor of S. 816, a bill to amend the Internal Revenue Code of 1986 to allow rollovers from 529 programs to ABLE accounts.

S. 817

At the request of Mr. CASEY, the name of the Senator from Ohio (Mr. BROWN) was added as a cosponsor of S. 817, a bill to amend the Internal Revenue Code of 1986 to increase the age requirement with respect to eligibility for qualified ABLE programs.

S. 818

At the request of Mr. CASEY, the name of the Senator from Ohio (Mr. BROWN) was added as a cosponsor of S. 818, a bill to amend the Internal Revenue Code of 1986 to allow individuals with disabilities to save additional amounts in their ABLE accounts above the current annual maximum contribution if they work and earn income.

S. 823

At the request of Mr. WYDEN, the name of the Senator from Massachusetts (Mr. MARKEY) was added as a cosponsor of S. 823, a bill to ensure the digital contents of electronic equipment and online accounts belonging to or in the possession of United States persons entering or exiting the United States are adequately protected at the border, and for other purposes.

S.J. RES. 5

At the request of Mr. CARDIN, the name of the Senator from Illinois (Ms. DUCKWORTH) was added as a cosponsor of S.J. Res. 5, a joint resolution removing the deadline for the ratification of the equal rights amendment.

S.J. RES. 6

At the request of Mr. MENENDEZ, the name of the Senator from Connecticut (Mr. BLUMENTHAL) was added as a cosponsor of S.J. Res. 6, a joint resolution proposing an amendment to the Constitution of the United States relative to equal rights for men and women.

S.J. RES. 28

At the request of Mr. INHOFE, the name of the Senator from Texas (Mr. CRUZ) was added as a cosponsor of S.J. Res. 28, a joint resolution providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Administrator of the Environmental Protection Agency relating to accidental release prevention requirements of risk management programs under the Clean Air Act.

S. RES. 99

At the request of Mr. MANCHIN, the name of the Senator from Mississippi (Mr. WICKER) was added as a cosponsor of S. Res. 99, a resolution recognizing the 11 African-American soldiers of the 333rd Field Artillery Battalion who were massacred in Wereth, Belgium, during the Battle of the Bulge in December 1944.

S. RES. 106

At the request of Mr. WICKER, the name of the Senator from Wisconsin (Mr. JOHNSON) was added as a cosponsor of S. Res. 106, a resolution expressing the sense of the Senate to support the territorial integrity of Georgia.

S. RES. 108

At the request of Mr. CARDIN, the name of the Senator from Delaware (Mr. COONS) was added as a cosponsor of S. Res. 108, a resolution reaffirming the commitment of the United States to the United States-Egypt partnership.

S. RES. 109

At the request of Mr. PAUL, the name of the Senator from Florida (Mr. RUBIO) was added as a cosponsor of S. Res. 109, a resolution encouraging the Government of Pakistan to release Aasiya Noreen, internationally known as Asia Bibi, and reform its religiously intolerant laws regarding blasphemy.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. PAUL (for himself and Mr. BOOKER):

S. 827. A bill to provide for the sealing or expungement of records relating to Federal nonviolent criminal offenses, and for other purposes; to the Committee on the Judiciary.

Mr. BOOKER. Mr. President, I rise today to introduce the Record Expungement Designed to Enhance Employment Act, or REDEEM Act. This bill would take meaningful steps towards allowing returning citizens to obtain employment. As President George W. Bush said in his 2004 State of the Union Address, ''America is the land of the second chance, and when the gates of the prison open, the path ahead should lead to a better life.'' The REDEEM Act would help provide people with that second chance after their incarceration. I thank Senator PAUL for his tireless work with me on the REDEEM Act.

In the last 30 years, the number of incarcerated people in the United States has drastically increased. Since 1980, the federal prison population alone has grown by nearly 800 percent and American taxpayers are left paying for the bill. In fiscal year 2014, the Bureau of Prisons accounted for a quarter of the Department of Justice's budget at $6.9 billion. Our bloated criminal justice system wastes priceless human potential and fails to make our communities safer. It also fails to adequately prepare the over 600,000 people each year who are released from prison for their return to the community.

A high number of Americans living in our communities have criminal convictions. About 70 million people in the United States have been arrested or convicted of a crime. That means almost one in three adults in the United States has a criminal record. In fact, in our Nation's Capital alone, an estimated 1 in 10 DC residents has a criminal record.

The American Bar Association has identified over 44,500 ''collateral consequences''—or legal constraints—placed on what individuals with records can do once they are released from prison. Of those, up to 70 percent are related to employment.

Today, a criminal conviction is a modern-day scarlet letter that, because of the so-called War on Drugs, has had a disproportionate impact on communities of color. For example, African-American men with a conviction are 40 percent less likely to receive an interview. And the likelihood that Latino men with a record will receive an interview or be offered a job is 18 percent smaller than the likelihood for white men.

To increase public safety, reduce recidivism, and protect the future of our children, I am proud to re-introduce the REDEEM Act. This bill would incentivize states to raise the age of original jurisdiction for criminal courts to 18 years old. Trying juveniles who have committed low-level, nonviolent crimes as adults is counterproductive. They do not emerge from prison reformed and ready to reintegrate into school, nor will the criminal record they have help them obtain a job.

This change in law is important for protecting our children's futures. For kids in the dozen states that treat 17- and even 16-year-olds as adults, no longer would getting into a school yard scuffle result in an adult record that could follow an individual for the rest of their life, restrict access to a college degree, limit job prospects, or lead to likely recidivism.

The bill would enhance Federal juvenile record confidentiality and provide for automatic expungement of records for kids who commit nonviolent crimes before they turn 15 and automatic sealing of records for those who commit nonviolent crimes after they turn 15.

The bill would ban the very cruel and counterproductive practice of juvenile solitary confinement that can have immediate and long-term detrimental effects on a youth's mental and physical health. In fact, the majority of suicides by juveniles in prisons occur when young people are placed in solitary confinement. Other nations even consider it torture.

The REDEEM Act would, for adults, offer the first broad-based federal path to the sealing of criminal records. A person who commits a nonviolent crime will be able to petition a court for sealing of the record, so their future job prospects are not harmed.

And the bill would enhance the accuracy of criminal justice records. Employers requesting a background check from the FBI will be provided with only relevant and accurate information thanks to a provision that will protect job applicants by improving the quality of the Bureau's background check.

Think about this: 17 million background checks were done by the FBI in 2013, many of them for private providers, and upward of half of them were

inaccurate or incomplete, often causing people to lose a job, miss an economic opportunity, and be trapped with few economic options other than to reoffend in order to feed a child or pay a debt.

The bill helps guard against gender disparities in federal juvenile delinquency proceedings. Additionally, it would ensure that programming and services are distributed evenly among male and female juveniles. Oftentimes, juvenile females receive less programming and resources than males because of the smaller size of the female prison population. This is wrong and this bill take a step forward to fix the problem.

Finally, the REDEEM Act would lift a ban on two critical Federal benefits: the Supplemental Nutritional Assistance Program and Temporary Assistance for Needy Families. The intent of those Federal programs is to keep low-income families from going hungry. Yet those convicted of drug felonies lose the right to obtain such benefits. Once an individual has paid his or her debt to society, a path to the reinstatement of those benefits should be available.

I am proud to introduce the REDEEM Act today. Again, I thank Senator PAUL for partnering with me on this bill. I urge this bill's speedy passage.

By Mr. WYDEN (for himself, Ms. MURKOWSKI, Ms. WARREN, and Mr. MARKEY):

S. 836. A bill to amend the Federal Credit Union Act to exclude a loan secured by a non-owner occupied 1- to 4-family dwelling from the definition of a member business loan, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

Mr. WYDEN. Mr. President, most of us have heard the metaphor that small businesses are the engines that power our economy. What we don't hear people talk about as much is the fuel that feeds the engines: capital. Without capital, entrepreneurs cannot see their ideas to fruition, successful business owners cannot expand to meet the needs of the market, and eager job seekers must take their skills elsewhere. Without capital, Main Street falters, and Wall Street keeps the advantage.

Today, more than 9 years after the start of the great recession and many policy reforms later, access to capital remains a challenge. This capital drought hampers small business growth, economic development, and job creation in Oregon and across the country. Despite this, government regulation continues to tie the hands of many willing small businesses lenders—namely, credit unions. According to some estimates, credit unions could lend an additional $11 billion to small businesses if Congress loosened restraints on credit union business lending.

With this in mind, I am pleased to introduce today the Credit Union Residential Loan Parity Act with Senator MURKOWSKI. This bill would increase access to capital by exempting certain loans from the member business lending cap imposed on credit unions. Currently, loans made for one- to four-person, non-owner-occupied housing are treated as business loans when they are made by credit unions. As such, these types of loans count against a credit union's business lending cap, effectively limiting a credit union's ability to provide loans to small businesses. Our legislation would address this issue by allowing credit unions to treat these types of loans as residential loans—the same treatment these kinds of loans receive when made by other financial institutions. In effect, the bill would exempt residential loans from the business lending cap. This exemption would increase access to capital for small businesses, which in turn would create jobs and grow our local economies. In addition to generally increasing credit union lending, our legislation would directly free up capital for small businesses that make much needed investments in rental housing.

I am hopeful that this legislation will be received by colleagues for what it is—a simple step to help ensure America's small businesses have access to the fuel they need to power our economy.

It is my hope that the Senate will pass this legislation swiftly.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 836

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Credit Union Residential Loan Parity Act''.

SEC. 2. TREATMENT OF A NON-OWNER OCCUPIED 1- TO 4-FAMILY DWELLING.

(a) REMOVAL FROM MEMBER BUSINESS LOAN LIMITATION.—Section 107A(c)(1)(B)(i) of the Federal Credit Union Act (12 U.S.C. 1757a(c)(1)(B)(i)) is amended by striking ''that is the primary residence of a member''.

(b) RULE OF CONSTRUCTION.—Nothing in this Act or the amendment made by this Act shall preclude the National Credit Union Administration from treating an extension of credit that is fully secured by a lien on a 1- to 4-family dwelling that is not the primary residence of a member as a member business loan for purposes other than the member business loan limitation requirements under section 107A of the Federal Credit Union Act (12 U.S.C. 1757a).

By Mr. BOOKER (for himself, Mr. JOHNSON, Ms. BALDWIN, Mrs. ERNST, Mr. BROWN, and Mr. PORTMAN):

S. 842. A bill to prohibit Federal agencies and Federal contractors from requesting that an applicant for employment disclose criminal history record information before the applicant has received a conditional offer, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

Mr. BOOKER. Mr. President, I rise today to introduce the Fair Chance to Compete for Jobs Act of 2017, also known as the Fair Chance Act. This criminal justice reform bill is designed to help returning citizens successfully obtain jobs and reintegrate into society. As the nation's largest employer, it is time the Federal Government leads by example and delays the criminal history inquiry until later in the hiring process. I thank Senator JOHNSON for his leadership on the Fair Chance Act, and I deeply appreciate Senators BALDWIN, ERNST, BROWN, and PORTMAN for joining the bill as original cosponsors.

Everyone deserves the dignity of work and the opportunity for a second chance to earn a living. But far too many Americans who return home from behind bars have to disclose convictions on their initial employment application or initial job interview that often serve as insurmountable barriers to employment. This legislation would ensure that people with convictions—who have paid their debt to society and want to turn their lives around—have a fair chance to work.

By encouraging Federal employers to focus on an individual's qualifications and merit and not solely on past mistakes, the Fair Chance Act would remove burdensome and unnecessary obstacles that prevent formerly incarcerated people from reaching their full potential and contributing to society. It would also help reduce recidivism, combat poverty, and prevent violence in our communities by helping people get back to work.

Creating employment opportunities for our returning citizens benefits public safety. With little hope of obtaining a decent paying job, returning citizens are often left with few options but to return to a life of crime. A 2011 study in the Justice Quarterly concluded that the lack of employment was the single most negative determinant of recidivism. A report by the Bureau of Justice Statistics found that of the over 400,000 State prisoners released in 2005, 67.8 percent of them were rearrested within 3 years of their release, and 76.6 percent were rearrested within 5 years of their release.

Creating employment opportunities for our returning citizens strengthens our economy. Poor job prospects for people with records reduced our Nation's gross domestic product in 2008 between $57 billion and $65 billion. With an increasingly competitive global economy and to maintain America's competitive advantage, we must promote employment of all Americans.

Today, I introduce the Fair Chance Act, which would help eliminate barriers to employment for formerly incarcerated people and bring America closer to truly being a land of opportunity for all. It would preclude the federal government—including the executive, legislative, and judicial

branches—from requesting criminal history information from applicants until they reach the conditional offer stage.

This bill strikes the right balance. It would allow qualified people with criminal records to get their foot in the door and be judged on their own merit. At the same time, the legislation would allow employers to know an individual's criminal history before the job applicant is hired.

This bill would prohibit federal contractors from requesting criminal history information from candidates for positions within the scope of Federal contracts until a conditional job offer has been extended. Companies that do business with the Federal Government and receive Federal funds should espouse good hiring practices. The Fair Chance Act would permit Federal contractors to inquire about criminal history earlier in the hiring process if the job requires a candidate to access classified information.

The bill includes exceptions for sensitive positions where criminal history inquiries are necessary earlier in the application process. Exceptions include positions involving classified information, sensitive national security duties, armed forces, and law enforcement jobs, and jobs where criminal history information is legally required.

Finally, the Fair Chance Act would require the Bureau of Justice Statistics, in coordination with the U.S. Census Bureau, to report to Congress on the employment statistics of returning citizens. Currently, no comprehensive tracking of data on the employment histories of people with convictions exists. This provision would change that and allow us to better understand the scope of the problem people with convictions face when trying to find a job.

I am proud to reintroduce the Fair Chance Act. I want to again thank the bill cosponsors and their leadership on this issue. I urge this legislation's speedy passage.

By Ms. HASSAN:

S. 848. A bill to amend the Higher Education Act of 1965 to encourage entrepreneurship by providing loan deferment and loan cancellation for founders and employees of small business startups, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Ms. HASSAN. Mr. President, I rise today to introduce my first bill in the U.S. Senate—a bill to help relieve the burden of student debt for young entrepreneurs from New Hampshire and the entire country.

Most of us have seen personally how heavily the burden of student loan debt weighs on students and families across New Hampshire. Less visible, but no less important, is how student loan debt is weighing down our economy—stifling innovation and job creation.

Student loan debt is preventing the next generation of entrepreneurs and innovators from opening their own businesses. A New York Times report highlighted that the percentage of new entrepreneurs between 20–34 years old fell to 25 percent in 2014, down from almost 35 percent in 1996. And Gallup found that 19 percent of graduates with student loan debt say they have delayed starting a business because of it.

It is time to once again unleash the entrepreneurial potential of our young people into creating the jobs of the future. That is why this week I introduced the Reigniting Opportunity for Innovators, ROI, Act, the first bill I am writing as a U.S. Senator, which would help provide the relief necessary for young entrepreneurs to start up and grow innovative small businesses.

The ROI Act will allow eligible founders and full-time employees of certified small business to defer their Federal student loan payments and interest accrual for up to 3 years while launching a startup. This will help give graduates the financial stability they need to take the risk of starting a business that can create good-paying jobs.

Additionally, this legislation provides an additional incentive for startup companies to move off the beaten path to help revitalize struggling communities. If the startup is located in an economically distressed area, founders and employees will be eligible for cancellation of up to $20,000 in student loans.

The ROI Act is an important step that we can take now to help young entrepreneurs and lay the foundation for a new generation of economic growth.

New businesses are historically the top job creators in our country, and small businesses are the driving force of New Hampshire's economy. But to get the education they need to compete for jobs in the 21st century economy, students are taking on more debt than ever before. In 2015, college graduates left school with an average of $30,000 of student loan debt, and New Hampshire students had the highest average student debt in the country.

At a roundtable discussion at Keene State College, I heard from students about the challenges posed by their student loan debt. One young woman told me that she hoped to start her own business but that she would likely have to put off that goal for another 10 years because of her student loan debt.

Any entrepreneur will tell you that getting a small business off the ground is expensive. These costs, mixed with student loan debt, make it even more daunting for young entrepreneurs to consider taking the leap of starting a new business. Student debt decreases the cash flow of potential entrepreneurs, it hurts their ability to build equity, and it can negatively affect credit scores and their ability to secure financing.

With the deck too often stacked against them, we need to be doing everything we can to support young entrepreneurs looking to start the innovative businesses that will drive job-creation and move our economy forward.

The ROI Act would work to drive our 21st century economy, but we know that we have more work to do to bring down the costs of higher education and ensure that New Hampshire students, families, and innovative businesses have the support they need. In addition to working to pass this commonsense legislation, I will continue to focus on expanding Pell grants, lowering interest rates for student loans and allowing students to refinance, and increasing apprenticeship and job training opportunities.

The ROI Act is an important step that we can take now to help young entrepreneurs and lay the foundation for a new generation of economic growth, and I look forward to working with members of both parties to pass this commonsense bill.

By Mr. DURBIN (for himself and Mr. CASSIDY):

S. 850. A bill to amend the Higher Education Act of 1965 to establish fair and consistent eligibility requirements for graduate medical schools operating outside the United States and Canada; to the Committee on Health, Education, Labor, and Pensions.

Mr. DURBIN. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 850

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Foreign Medical School Accountability Fairness Act of 2017''.

SEC. 2. PURPOSE.

To establish consistent eligibility requirements for graduate medical schools operating outside of the United States and Canada in order to increase accountability and protect American students and taxpayer dollars.

SEC. 3. FINDINGS.

Congress finds the following:

(1) Three for-profit schools in the Caribbean receive nearly ¾ of all Federal funding under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.) that goes to students enrolled at foreign graduate medical schools, despite those three schools being exempt from meeting the same eligibility requirements as the majority of graduate medical schools located outside of the United States and Canada.

(2) The National Committee on Foreign Medical Education and Accreditation and the Department of Education recommend that all foreign graduate medical schools should be required to meet the same eligibility requirements to participate in Federal funding under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.).

(3) The attrition rate at United States medical schools averaged 3.4 percent in 2014, while rates at for-profit Caribbean medical schools have been known to reach 30 percent.

(4) In 2016, residency match rates for foreign trained graduates averaged 54 percent compared to 94 percent for graduates of medical schools in the United States.

(5) On average, students at for-profit medical schools operating outside of the United

States and Canada amass more student debt than those at medical schools in the United States.

SEC. 4. REPEAL GRANDFATHER PROVISIONS.

Section 102(a)(2) of the Higher Education Act of 1965 (20 U.S.C. 1002(a)(2)) is amended—

(1) in subparagraph (A), by striking clause (i) and inserting the following:

''(i) in the case of a graduate medical school located outside the United States—

''(I) at least 60 percent of those enrolled in, and at least 60 percent of the graduates of, the graduate medical school outside the United States were not persons described in section 484(a)(5) in the year preceding the year for which a student is seeking a loan under part D of title IV; and

''(II) at least 75 percent of the individuals who were students or graduates of the graduate medical school outside the United States or Canada (both nationals of the United States and others) taking the examinations administered by the Educational Commission for Foreign Medical Graduates received a passing score in the year preceding the year for which a student is seeking a loan under part D of title IV;''; and

(2) in subparagraph (B)(iii), by adding at the end the following:

''(V) EXPIRATION OF AUTHORITY.—The authority of a graduate medical school described in subclause (I) to qualify for participation in the loan programs under part D of title IV pursuant to this clause shall expire beginning on the first July 1 following the date of enactment of the Foreign Medical School Accountability Fairness Act of 2017.''.

SEC. 5. LOSS OF ELIGIBILITY.

If a graduate medical school loses eligibility to participate in the loan programs under part D of title IV of the Higher Education Act of 1965 (20 U.S.C. 1087a et seq.) due to the enactment of the amendments made by section 4, then a student enrolled at such graduate medical school on or before the date of enactment of this Act may, notwithstanding such loss of eligibility, continue to be eligible to receive a loan under such part D while attending such graduate medical school in which the student was enrolled upon the date of enactment of this Act, subject to the student continuing to meet all applicable requirements for satisfactory academic progress, until the earliest of—

(1) withdrawal by the student from the graduate medical school;

(2) completion of the program of study by the student at the graduate medical school; or

(3) the fourth June 30 after such loss of eligibility.

By Mr. CARDIN (for himself, Mr. VAN HOLLEN, Mr. LEAHY, Mr. BLUMENTHAL, Mrs. GILLIBRAND, Mr. SCHATZ, Mr. CARPER, Mr. WARNER, Mr. MARKEY, Mr. SANDERS, Mr. UDALL, Ms. HIRONO, Mrs. SHAHEEN, Ms. BALDWIN, Mr. KAINE, Mrs. MURRAY, and Mr. BROWN):

S. 861. A bill to provide for the compensation of Federal employees affected by lapses in appropriations; read the first time.

S. 861

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Federal Employee Fair Treatment Act of 2017''.

SEC. 2. COMPENSATION FOR FEDERAL EMPLOYEES AFFECTED BY A LAPSE IN APPROPRIATIONS.

Section 1341 of title 31, United States Code, is amended—

(1) in subsection (a)(1), by striking ''An officer'' and inserting ''Except as specified in this subchapter or any other provision of law, an officer''; and

(2) by adding at the end the following:

''(c)(1) In this subsection—

''(A) the term 'covered lapse in appropriations' means any lapse in appropriations that begins on or after April 28, 2017; and

''(B) the term 'excepted employee' means an excepted employee or an employee performing emergency work, as such terms are defined by the Office of Personnel Management.

''(2) Each Federal employee furloughed as a result of a covered lapse in appropriations shall be paid for the period of the lapse in appropriations, and each excepted employee who is required to perform work during a covered lapse in appropriations shall be paid for such work, at the employee's standard rate of pay, at the earliest date possible after the lapse in appropriations ends, regardless of scheduled pay dates.

''(3) During a covered lapse in appropriations, each excepted employee who is required to perform work shall be entitled to use leave under chapter 63 of title 5, or any other applicable law governing the use of leave by the excepted employee, for which compensation shall be paid at the earliest date possible after the lapse in appropriations ends, regardless of scheduled pay dates.''.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 114—EXPRESSING THE SENSE OF THE SENATE ON HUMANITARIAN CRISES IN NIGERIA, SOMALIA, SOUTH SUDAN, AND YEMEN

Mr. YOUNG (for himself and Mr. CARDIN) submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 114

Whereas Nigeria, Somalia, South Sudan, and Yemen are all in famine, pre-famine, or ''at risk of famine'' stages in 2017;

Whereas, according to the United Nations Office for the Coordination of Humanitarian Affairs (UNOCHA), 20,000,000 people are at risk of starvation within the next six months in Nigeria, Somalia, South Sudan, and Yemen;

Whereas, on March 22, 2017, Mr. Yves Daccord, the Director-General of the International Committee of the Red Cross, testified that the crisis represents ''one of the most critical humanitarian issues to face mankind since the end of the Second World War'' and warned that ''we are at the brink of a humanitarian mega-crisis unprecedented in recent history'';

Whereas, according to the United States Agency for International Development (USAID), ''More than 5.1 million people face severe food insecurity in northeastern Nigeria'';

Whereas, according to USAID, ''An estimated 6.2 million people—more than half of Somalia's total population—currently require urgent humanitarian assistance.'';

Whereas, according to USAID, ''An estimated 5.5 million people—nearly half of South Sudan's population—will face life threatening hunger by July.'';

Whereas, according to USAID, in Yemen, ''More than seventeen million people—an astounding 60% of the country's population—are food insecure, including seven million people who are unable to survive without food assistance.'';

Whereas, according to the United Nations Children's Fund (UNICEF), ''Some 22 million children have been left hungry, sick, displaced and out of school in the four countries. Nearly 1.4 million are at imminent risk of death this year from severe malnutrition.'';

Whereas the humanitarian crises in each of these regions are, to varying degrees, manmade and preventable—exacerbated by armed conflict, disregard for international humanitarian law, and deliberate restrictions on humanitarian access;

Whereas parties to the conflicts have harassed, attacked, and killed humanitarian workers, blocking and hindering humanitarian access and depriving the world's most hungry people of the food they need;

Whereas humanitarian actors, coordinated by UNOCHA, are appealing for $5,600,000,000 in 2017 to address famines in Yemen, South Sudan, Nigeria, and Somalia, $4,400,000,000 of which is required urgently; and

Whereas Mr. Daccord testified on March 22, 2017, ''Our message is clear: immediate, decisive action is needed to prevent vast numbers of people starving to death.'': Now, therefore, be it

Resolved, That—

(1) It is the sense of the Senate that—

(A) United States national security interests and the values of the American people demand that the United States lead an urgent and comprehensive international diplomatic effort to address obstacles in Nigeria, Somalia, South Sudan, and Yemen that are preventing humanitarian aid from being delivered to millions of people who desperately need it;

(B) the President should encourage other governments to join the United States in providing the resources necessary to meet the $5,600,000,000 UNOCHA appeal to address the humanitarian crises in Nigeria, Somalia, South Sudan, and Yemen;

(C) parties to the conflicts in Nigeria, Somalia, South Sudan, and Yemen must respect fully international humanitarian law by allowing and facilitating rapid and unimpeded passage of humanitarian relief for civilians in need and respecting and protecting humanitarian and medical relief personnel and objects; and

(D) the President, working with international partners, should work to identify and document violations of international humanitarian law in Nigeria, Somalia, South Sudan, and Yemen seeking to bring perpetrators to justice where possible; and

(2) the Senate—

(A) urges the President, in close coordination with international partners, to employ every appropriate strategy to persuade the Government of South Sudan to stop blocking aid for people who desperately need it;

(B) calls on the President to notify Congress without delay if the Government of South Sudan does not immediately and fully respect international humanitarian law so that Congress can work with President to impose additional costs on the government and leaders of South Sudan for their deplorable actions;

(C) urges the President to press the Government of Nigeria to take tangible and immediate steps to ensure accountability for security forces that violate human rights and fail to cooperate fully with international aid efforts;

(D) calls on the President to send the Secretary of State or other high level representative to attend the upcoming United Kingdom's Ministerial Conference on Somalia and publicly announce a contribution to the

humanitarian assistance efforts which will help leverage other international donors; and

(E) urges the President to work urgently with stakeholders to persuade parties to conflict in Yemen to permit humanitarian groups increased access to Red Sea ports like Hodeida to deliver much-needed assistance to vulnerable communities.

SENATE RESOLUTION 115—COMMEMORATING THE 100TH ANNIVERSARY OF THE 1ST INFANTRY DIVISION

Mr. MORAN (for himself and Mr. ROBERTS) submitted the following resolution; which was referred to the Committee on Armed Services:

S. RES. 115

Whereas June 8, 2017, is the 100th anniversary of the organization of the 1st Infantry Division;

Whereas the 1st Infantry Division was established in 1917 as the First Division, the first combat division in United States history, and has been on continuous active duty since 1917;

Whereas, from the heroic start of the 1st Infantry Division, the 1st Infantry Division has played an integral part in United States history by serving in—

(1) World War I;

(2) World War II;

(3) the Cold War;

(4) the Vietnam War;

(5) Operations Desert Shield and Desert Storm;

(6) the Balkans peacekeeping missions;

(7) the War on Terror; and

(8) as of April 2017, multiple operations around the globe;

Whereas, immediately after its establishment, the First Division started to build a prestigious reputation for its service in World War I;

Whereas, in May 1918, the victory of the First Division at the Battle of Cantigny, France, was the first United States victory of World War I, and despite suffering more than 1,000 casualties in that battle, the First Division seized the village from German forces, defended the village against repeated counterattacks, and bolstered the morale of the Allies;

Whereas, after the Battle of Cantigny, the First Division played a central role in other monumental battles of World War I, such as—

(1) the Battle of Soissons;

(2) the Battle of Saint-Mihiel; and

(3) the Meuse-Argonne Offensive;

Whereas 5 soldiers of the First Division received the Congressional Medal of Honor during World War I;

Whereas the First Division—

(1) remained on occupation duty in Germany to enforce the Armistice; and

(2) in September 1919, was the last combat division to return home after World War I;

Whereas, by the end of World War I, the First Division was 1 of only 4 United States divisions to remain on active duty, which is a strong testament to its accomplishments;

Whereas, in November 1939, the 1st Infantry Division was called to action again and, in August 1942, became the first United States division sent to Europe during World War II;

Whereas, during World War II, the 1st Infantry Division fought bravely in Algeria, Tunisia, and Sicily in 1942 and 1943 before the courage and resolve of the 1st Infantry Division was tested on Omaha Beach in Normandy, France;

Whereas the 1st Infantry Division, reinforced by units of the 29th Infantry Division, made the assault landing on Omaha Beach on D-Day, June 6, 1944, which began the liberation of Europe from Nazi control;

Whereas the 1st Infantry Division continued its invaluable service throughout World War II, including in—

(1) the liberation of France and Belgium;

(2) the seizing of Aachen, the first city of Nazi Germany to fall to the Allies;

(3) the Battle of the Huertgen Forest;

(4) the Battle of the Bulge, in which the 1st Infantry Division held the critical northern shoulder at Butgenbach, Belgium;

(5) the crossing of the Rhine River at Remagen;

(6) the battles around the Ruhr Pocket in Germany; and

(7) the offensive into Czechoslovakia, where the 1st Infantry Division liberated Nazi labor camps at Falkenau and Zwodau;

Whereas 17 members of the 1st Infantry Division received the Congressional Medal of Honor for their service during World War II;

Whereas, in recognition of exemplary service during World War II, the 1st Infantry Division was the recipient of—

(1) the French Croix de Guerre with Palm and Streamers embroidered with ''Kasserine'' and ''Normandy'';

(2) the French Fourragere, embroidered with ''World War II'';

(3) the Belgian Fourragere; and

(4) the subordinate units of the 1st Infantry Division earned numerous Presidential Unit Citations and Army Valorous Unit awards;

Whereas the 1st Infantry Division guarded the Nuremburg Trials and remained on occupation duty in Germany before returning home to Fort Riley, Kansas, in 1955;

Whereas, in 1965, the 1st Infantry Division was 1 of the first 2 divisions sent to the Vietnam War, and the 1st Infantry Division remained in Vietnam for 5 years, during which the 1st Infantry Division—

(1) protected the capital, Saigon, from attack by the North Vietnamese Army;

(2) conducted hundreds of—

(A) offensive operations between Saigon and Cambodia against Viet Cong and North Vietnamese Army units; and

(B) civil action and pacification operations to protect and assist the Vietnamese people; and

(3) responded to the 1968 Tet Offensive by clearing Tan Son Nhut Air Force Base of enemy forces, securing Saigon and counterattacking vigorously;

Whereas 12 soldiers of the 1st Infantry Division earned the Congressional Medal of Honor during the Vietnam War;

Whereas, in recognition of exemplary service during the Vietnam War, the 1st Infantry Division was the recipient of—

(1) the Republic of Vietnam Cross of Gallantry with Palm for 1968;

(2) the Civic Action Honor Medal First Class;

(3) the United States Army Meritorious Unit Commendation; and

(4) the subordinate units of the 1st Infantry Division earned numerous Presidential and Army awards;

Whereas, from 1970 to 1990 the 1st Infantry Division—

(1) was a key component of the North Atlantic Treaty Organization deterrent strategy;

(2) deployed annually to Germany on major exercises that demonstrated United States resolve to friend and foe alike; and

(3) contributed directly to the peaceful end of the Cold War;

Whereas, in November 1990, the 1st Infantry Division deployed to Saudi Arabia and played a key role in the famous ''left hook'' attack of the US VII Corps through the deserts of western Iraq to destroy the Tawakalna Division of the vaunted Republican Guard of Saddam Hussein, among many other enemy forces;

Whereas the 1st Infantry Division deployed to Bosnia for 31 months between 1996 and 2000, to Macedonia for 4 months in 1999, and to Kosovo for 22 months between 1999 and 2003—

(1) to enforce international peace agreements;

(2) to halt the worst ethnic violence in Europe since the Holocaust; and

(3) to bring peace and stability to the Balkans;

Whereas, in 2004, the 1st Infantry Division deployed to Iraq in Operation Iraqi Freedom as Task Force Danger and conducted sophisticated counterinsurgency operations that led to the first free and fair elections in Iraqi history in 2005;

Whereas, between 2005 and 2014, the brigade combat teams and other major headquarters and units of the 1st Infantry Division have deployed repeatedly to Iraq and Afghanistan in Operation Enduring Freedom, Operation Iraqi Freedom, and Operation New Dawn;

Whereas Specialist Ross A. McGinnis, a 1st Infantry Division soldier, is 1 of the very few people of the United States to receive the Congressional Medal of Honor in the War on Terror;

Whereas, in the defense of United States interests, the 1st Infantry Division deployed its units and soldiers to Africa in 2015 and Kuwait in 2016;

Whereas, since November 2016, the headquarters of the 1st Infantry Division has been in Iraq, where the 1st Infantry Division is—

(1) engaged in the fight against the Islamic State in Iraq and Syria (ISIS); and

(2) providing the leadership structure for the Combined Joint Forces Land Component Command–Operation Inherent Resolve;

Whereas, as of April 2017—

(1) the Combat Aviation Brigade of the 1st Infantry Division is deployed to Afghanistan and is conducting combat aviation operations in support of the Afghan and international security forces battling the Taliban;

(2) the 1st Armor Brigade Combat Team of the 1st Infantry Division is deployed to the South Korea, where it bolsters United States deterrence against North Korea; and

(3) the 2nd Armor Brigade Combat Team of the 1st Infantry Division is at Fort Riley, Kansas, where it is honing its combat-readiness in preparation for deployment; and

Whereas, since the establishment of the 1st Infantry Division in 1917—

(1) the 1st Infantry Division has been present all over the world, assisting in combat and noncombat missions for 100 years;

(2) more than 13,000 soldiers of the 1st Infantry Division have sacrificed their lives in combat; and

(3) 35 soldiers of the 1st Infantry Division have received the Medal of Honor: Now, therefore, be it

Resolved, That the Senate—

(1) commemorates ''A Century of Service'', the 100th anniversary of the 1st Infantry Division on June 8, 2017;

(2) commends the 1st Infantry Division for continuing to exemplify the motto of the 1st Infantry Division, ''No Mission Too Difficult. No Sacrifice Too Great. Duty First!'';

(3) honors the memory of the more than 13,000 soldiers of the 1st Infantry Division who lost their lives in battle;

(4) expresses gratitude and support for all 1st Infantry Division soldiers, veterans, and their families, including 1st Infantry Division soldiers and their families of the past and future and those who are serving as of April 2017; and

(5) recognizes that the 1st Infantry Division holds an honored place in United States history.

SENATE RESOLUTION 116—CONDEMNING THE ASSAD REGIME FOR ITS CONTINUED USE OF CHEMICAL WEAPONS AGAINST THE SYRIAN PEOPLE

Mr. CARDIN (for himself, Mr. CORKER, Mr. DURBIN, Mr. RUBIO, Mr. KAINE, Mrs. SHAHEEN, Mr. UDALL, Mr. COONS, and Mr. GARDNER) submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 116

Whereas on August 21, 2013, the Assad regime launched rockets carrying sarin gas, a deadly nerve agent, against Ghouta, a rebel-held suburb of Damascus, killing 1,429 men, women, and children, according to United States Government estimates, while injuring another 3,600 people;

Whereas, on September 14, 2013, the Assad regime agreed to enter the Convention on the Prohibition of the Development, Production, Stockpiling, and Use of Chemical Weapons and on their Destruction, done at Paris January 13, 1993, and entered into force April 29, 1997 (referred to in this Resolution as the ''Chemical Weapons Convention'') and to allow a joint mission between the United Nations and the Organization for the Prevention of Chemical Weapons (referred to in this Resolution as the ''OPCW-UN'') to oversee the removal and elimination of Syria's chemical weapons program;

Whereas, on September 27, 2013, the United Nations Security Council unanimously adopted Resolution 2118, which endorsed the destruction of Syria's chemical weapons program and agreed that in the event of noncompliance, it would take action under Chapter VII of the Charter of the United Nations;

Whereas, on October 16, 2013, the OPCW-UN was formally established to investigate and destroy Syria's chemical weapons program and stockpiles;

Whereas, on June 23, 2014, the OPCW-UN announced that the last of Syria's declared chemical weapon stockpile had been shipped out of Syria for destruction;

Whereas, on September 30, 2014, the OPCW-UN announced that it had completed its mandate and officially ended operations;

Whereas on October 14, 2013, the Syria Government entered into the Chemical Weapons Convention;

Whereas the Chemical Weapons Convention has 192 member states and bans all chemical weapons;

Whereas, the Assad regime was subsequently accused of committing more chemical weapons attacks on Syrian civilians in opposition-held areas by using chlorine-based chemical weapons, in violation of the Chemical Weapons Convention;

Whereas on August 7, 2015, the United Nations Security Council adopted Resolution 2235, which established the UN-OPCW Joint Investigative Mechanism to identify which individuals and entities were responsible for the use of chlorine-based chemical weapons attacks in Syria;

Whereas, on October 27, 2016, the UN-OPCW Joint Investigative Mechanism definitively confirmed that the Assad regime was responsible for the use of chemical weapons in Syria in Talmenes in April 2014, in Qmenas in March 2015, and in Sarmin in March 2016;

Whereas, the United Nation Security Council adopted Resolution 2319 on November 17, 2016, which renewed the UN-OPCW Joint Investigative Mechanism mandate for one year;

Whereas, the Russian Federation, along with China, blocked a United Nations Security Council Resolution on February 28, 2017, which would have implemented a sanctions regime against the Assad regime for its use of chemical weapons;

Whereas, on the morning of April 4, 2017, another chemical weapons attack took place in the town of Khan Sheikhoun in Idlib Province, killing at least 58 people, including 11 children, according to the Syrian Observatory For Human Rights;

Whereas Human Rights Watch reported that dozens of people showed symptoms consistent with exposure to chemicals after aircraft attacked the town;

Whereas the Assad regime is the only entity operating in Syria that the UN-OPCW Joint Investigative Mechanism has confirmed use of aircraft to launch chemical weapons attacks;

Whereas, United States Ambassador to the United Nations Nikki Haley announced that the United Nations Security Council would hold an emergency meeting on April 5, 2017, to discuss the chemical weapons attack in Idlib province;

Now, therefore, be it

Resolved, That the Senate—

(1) holds the Assad regime responsible for war crimes and crimes against humanity, including its confirmed use of chemical weapons;

(2) condemns Russia for repeatedly blocking collective response to Bashar al-Assad's confirmed use of chemical weapons though the United Nations Security Council;

(3) calls on the United Nations Security Council to take immediate, decisive action in response to the Assad regime's continued use of chemical weapons;

(4) supports the critical work of the United Nations-Organization for the Prohibition of Chemical Weapons Joint Investigate Mechanism;

(5) expresses alarm that the continued use of chemical weapons by the Assad regime undermines the integrity of the Chemical Weapons Convention;

(6) reiterates that Bashar al-Assad has lost legitimacy as Syria's leader; and

(7) insists that Bashar al-Assad must be held accountable for his war crimes and crimes against humanity.

SENATE RESOLUTION 117—DESIGNATING THE WEEK OF APRIL 15, 2017, THROUGH APRIL 23, 2017, AS ''NATIONAL PARK WEEK''

Mr. DAINES (for himself, Ms. HIRONO, Ms. MURKOWSKI, Ms. CANTWELL, Mr. ALEXANDER, Mr. UDALL, Mr. INHOFE, Mr. HEINRICH, Mrs. CAPITO, Mr. WYDEN, Mr. BLUNT, Mr. FRANKEN, Mr. RUBIO, Ms. STABENOW, Mr. GARDNER, Mr. WARNER, Mr. CASSIDY, Mr. NELSON, Mr. PORTMAN, Mrs. FEINSTEIN, Mr. BARRASSO, Mrs. MURRAY, Mr. ENZI, Mr. WHITEHOUSE, Ms. COLLINS, Mr. REED, Mr. COTTON, Mr. TESTER, Mr. CORKER, Ms. BALDWIN, Mr. SULLIVAN, Mr. PETERS, Mr. SCHATZ, Mr. KING, Mrs. SHAHEEN, and Mr. LEAHY) submitted the following resolution; which was considered and agreed to:

S. RES. 117

Whereas, on March 1, 1872, Congress established Yellowstone National Park as the first national park for the enjoyment of the people of the United States;

Whereas, on August 25, 1916, Congress established the National Park Service with the mission to preserve unimpaired the natural and cultural resources and values of the National Park System for the enjoyment, education, and inspiration of current and future generations;

Whereas, in 2017, the National Park Service began its second century of stewardship of the National Park System after the 2016 National Park Service Centennial, which celebrated 100 years of the work of the National Park Service to protect and manage the majestic landscapes, hallowed battlefields, and iconic cultural and historical sites of the United States;

Whereas the units of the National Park System span from Maine to Hawaii and Alaska and many of the units embody the rich natural heritage of the United States, reflect a unique national story through people and places, and offer countless opportunities for recreation, volunteerism, cultural exchange, education, civic engagement, and exploration;

Whereas the national parks of the United States attracted record-breaking visitation during the National Park Service Centennial, with 331,000,000 recreational visits to these incredible places in 2016;

Whereas the dedicated employees of the National Park Service carry out their mission to protect the national parks of the United States so that the vibrant culture, diverse wildlife, and priceless resources of the parks will endure for perpetuity; and

Whereas the people of the United States have inherited the remarkable legacy of the National Park System and are entrusted with its preservation as the United States marks the beginning of the second century of the National Park System: Now, therefore, be it

Resolved, That the Senate—

(1) designates the week of April 15, 2017, through April 23, 2017, as ''National Park Week''; and

(2) encourages the people of the United States and the world to visit and experience the treasured national parks of the United States.

Mr. DAINES. Mr. President, as a fifth-generation Montanan who grew up just a short drive from our Nation's first national park, Yellowstone National Park, and as chair of the Senate Energy and Natural Resources Subcommittee on National Parks, I am excited to introduce this resolution to reassure the public that Congress recognizes the remarkable value that our National Parks bring to our national heritage. From America's hallowed battlefields in Gettysburg and Fredericksburg, to the glacial peaks, geysers, and big game in my home State of Montana, to the ancient cultural resources, volcanoes, and marine life of Hawaii and all across the plains, many of the units of the National Park System bring remarkable opportunities for cultural education and outdoor recreation for people from around the world to enjoy. I am excited to be joined by ranking member MAZIE HIRONO and over 30 of our bipartisan colleagues from Alaska to Maine and Florida in introducing this resolution. The support of this resolution is a reflection that our National Parks bridge political divides and make our Nation uniquely American. As the National Park System begins its second century this year, we have seen record visitation with 331 million visits in 2016, but record visitation also brings additional strain on the National Park Service's failing infrastructure. I am hopeful

that Congress, the Trump administration and future administrations will continue to invest in our National parks to ensure their legacy endures for our children and generations to come.

SENATE RESOLUTION 118—CONDEMNING HATE CRIME AND ANY OTHER FORM OF RACISM, RELIGIOUS OR ETHNIC BIAS, DISCRIMINATION, INCITEMENT TO VIOLENCE, OR ANIMUS TARGETING A MINORITY IN THE UNITED STATES

Ms. HARRIS (for herself, Mr. RUBIO, Mrs. FEINSTEIN, and Ms. COLLINS) submitted the following resolution; which was considered and agreed to:

S. RES. 118

Whereas, in the past several years, violent crimes, threats of violence, and other incidents of hate-motivated targeting of religious, racial, and ethnic minorities have increased across the United States;

Whereas, in 2015, hate crimes targeting Muslims in the United States increased by 67 percent, reaching a level of violence targeting Muslim Americans that the United States had not experienced since the aftermath of the September 11, 2001, attacks, according to the Federal Bureau of Investigation;

Whereas, in 2015, anti-Semitic incidents increased in the United States for the second straight year, according to the Anti-Defamation League's 2015 Audit of Anti-Semitic Incidents, which describes trends such as the tripling of assaults targeting Jews since 2012 and the rise of online harassment and hate speech directed at Jewish journalists and individuals through social media;

Whereas, in 2015, anti-Semitic incidents at institutions of higher education nearly doubled compared to the number of those incidents in 2014, and during the 2016–2017 school year there has been an increase in white supremacist activity on college campuses across the United States, according to the Anti-Defamation League;

Whereas, in 2015, among single-bias hate crime incidents in the United States, 59.2 percent of victims were targeted due to racial, ethnic, or ancestry bias, and among those victims, 52.2 percent were victims of crimes motivated by their offenders' anti-Black or anti-African American bias, according to the Federal Bureau of Investigation;

Whereas, in 2017, there have been more than 100 reported bomb threats against Jewish community centers, Jewish day schools, and other Jewish organizations and institutions in more than 38 States;

Whereas, in 2017, Islamic centers and mosques have been burned in the States of Texas, Washington, and Florida, and Jewish cemeteries have been desecrated in the States of Missouri and Pennsylvania;

Whereas, in 2017, there has been harassment and hate-based violence against individuals who are perceived to be Arab or Muslim, including members of South Asian communities in the United States, and Hindu and Sikh Americans have been the target of hate-based violence targeting religious minorities; and

Whereas, on February 28, 2017, President Donald Trump, before a joint session of Congress, acknowledged threats targeting Jewish community centers and the vandalism of Jewish cemeteries, and stated that "we are a country that stands united in condemning hate and evil in all of its very ugly forms": Now, therefore, be it

Resolved, That the Senate—

(1) affirms that the United States stands united in condemning hate and evil in all forms;

(2) rejects hate-motivated crime as an attack on the fabric of the society of the United States and the ideals of pluralism and respect;

(3) condemns hate crime and any other form of racism, religious or ethnic bias, discrimination, incitement to violence, or animus targeting a minority in the United States;

(4) calls on Federal law enforcement officials, working with State and local officials—

(A) to expeditiously investigate all credible reports of hate crimes and incidents and threats against minorities in the United States; and

(B) to hold the perpetrators of those crimes, incidents, or threats accountable and bring the perpetrators to justice;

(5) encourages the Department of Justice and other Federal agencies—

(A) to work to improve the reporting of hate crimes; and

(B) to emphasize the importance of the agencies' collection and reporting of data pursuant to Federal law;

(6) encourages the development of an interagency task force led by the Attorney General to collaborate on the development of effective strategies and efforts to detect and deter hate crime in order to protect minority communities; and

(7) calls on the executive branch—

(A) to continue to offer Federal assistance that may be available for victims of hate crimes; and

(B) to continue to carry out safety and preparedness programs for religious institutions, places of worship, and other institutions that have been targeted because of the affiliation of the institutions with any particular religious, racial, or ethnic minority in the United States.

AUTHORITY FOR COMMITTEES TO MEET

Mr. BOOZMAN. Mr. President, I have 7 requests for committees to meet during today's session of the Senate. They have the approval of the Majority and Minority leaders.

Pursuant to Rule XXVI, paragraph 5(a), of the Standing Rules of the Senate, the following committees are authorized to meet during today's session of the Senate:

COMMITTEE ON ARMED SERVICES

The Committee on Armed Services is authorized to meet during the session of the Senate on Wednesday, April 5, 2017, at 2:30 p.m.

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

The Committee on Commerce, Science, and Transportation is authorized to hold an Executive Session during the session of the Senate on Wednesday, April 5, 2017, at 10 a.m., in room 216 of the Hart Senate Office Building.

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

The Committee on Environment and Public Works is authorized to meet during the session of the Senate on April 5, 2017, at 10 a.m., in room 406 of the Dirksen Senate Office Building.

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS

The Committee on Health, Education, Labor, and Pensions is authorized to meet, during the session of the Senate, in order to conduct a hearing entitled "Nomination of Scott Gottlieb, MD, to serve as Commissioner of Food and Drugs" on Wednesday, April 5, 2017, at 10 a.m., in room 430 of the Dirksen Senate Office Building.

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

The Committee on Homeland Security and Governmental Affairs is authorized to meet during the session of the Senate on Wednesday, April 5, 2017, at 9:30 a.m., in order to conduct a hearing entitled "Improving Border Security and Public Health."

SUBCOMMITTEE ON ECONOMIC POLICY

The Committee on Banking, Housing and Urban Affairs Subcommittee on Economic Policy is authorized to meet during the session of the Senate on Wednesday, April 5, 2017 at 3 p.m. to conduct a hearing entitled "The Current State of Retirement Security in the United States."

SUBCOMMITTEE ON AFRICA AND GLOBAL HEALTH

The Committee on Foreign Relations Subcommittee on Africa and Global Health Policy is authorized to meet during the session of the Senate on Wednesday, April 5, 2017, at 2 p.m., to hold a hearing entitled "A Progress Report on Conflict Minerals."

MEASURES READ THE FIRST TIME—S. 861 AND H.R. 1301

Mr. GARDNER. Mr. President, I understand there are two bills at the desk, and I ask for their first reading en bloc.

The PRESIDING OFFICER. The clerk will read the bills by title for the first time en bloc.

The legislative clerk read as follows:

A bill (S. 861) to provide for the compensation of Federal employees affected by lapses in appropriations.

A bill (H.R. 1301) making appropriations for the Department of Defense for the fiscal year ending September 30, 2017, and for other purposes.

Mr. GARDNER. I now ask for a second reading, and I object to my own request, all en bloc.

The PRESIDING OFFICER. Objection having been heard, the bills will receive their second reading on the next legislative day.

CONDEMNING HATE CRIME AND ANY OTHER FORM OF RACISM, RELIGIOUS OR ETHNIC BIAS, DISCRIMINATION, INCITEMENT TO VIOLENCE, OR ANIMUS TARGETING A MINORITY IN THE UNITED STATES

Mr. GARDNER. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 118, submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 118) condemning hate crime and any other form of racism, religious or ethnic bias, discrimination, incitement to violence, or animus targeting a minority in the United States.

There being no objection, the Senate proceeded to consider the resolution.

Mr. GARDNER. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, and the motions to reconsider be considered made and laid upon the table with no intervening action or debate.

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

The resolution (S. Res. 118) was agreed to.

The preamble was agreed to.

(The resolution, with its preamble, is printed in today's RECORD under ''Submitted Resolutions.'')

ORDERS FOR THURSDAY, APRIL 6, 2017

Mr. GARDNER. Mr. President, I ask unanimous consent that when the Senate completes its business today, it recess until 10 a.m., Thursday, April 6; further, that following the prayer and pledge, the time for the two leaders be reserved for their use later in the day; further, that following leader remarks, the time until the cloture vote on the Gorsuch nomination be equally divided between Senators GRASSLEY and FEINSTEIN or their designees; finally, that the mandatory quorum call with respect to the cloture vote be waived.

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

EXECUTIVE SESSION

EXECUTIVE CALENDAR—Continued

Mr. GARDNER. Mr. President, I ask unanimous consent that the Senate resume executive session to consider the nomination of Neil Gorsuch.

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

ORDER FOR RECESS

Mr. GARDNER. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that it stand in recess under the previous order, following the remarks of Senator CANTWELL for 10 minutes, Senator FRANKEN for 30 minutes, Senator MURPHY for 30 minutes, and Senator HIRONO for 30 minutes.

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

Mr. GARDNER. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Ms. CANTWELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Ms. CANTWELL. Mr. President, I rise to oppose the nomination of Neil Gorsuch and to oppose cloture on this nomination.

I take seriously the responsibility to give advice and consent, and I take seriously the President's remarks that he planned on nominating someone to the Court who would overturn Roe v. Wade.

A U.S. Supreme Court nominee requires 60 votes, and if a nominee can't clear 60 votes, then I agree with my colleague, the Senator from New York, that it is the nominee who should be changed and not the Senate rules.

If confirmed, Judge Gorsuch will have a lifetime appointment to the U.S. Supreme Court and have an impact on many, many Americans' lives. When people say lifetime, I think that doesn't quite accurately reflect this issue and nomination. Lifetime, in this case, may mean 30 to 35 years.

It is hard for me in an information age to think of all the issues that are going to occur in the next 30 to 35 years and what issues this nominee might rule on. But I know this: Right now, privacy rights and how they affect the lives of many Americans are critical, not just to my constituents but to people all over the country.

Judge Gorsuch is commonly referred to as a proponent of originalism and textualism. He believes the U.S. Constitution should be interpreted by the original intentions of those who drafted it as closely as possible. As someone who knows well the record of the former Supreme Court Justice who wrote the Griswold v. Connecticut decision, I doubt that one would say that he was an originalist.

Some legal scholars have even called Judge Gorsuch a selective originalist, favoring some textual provisions while overlooking others. And while no one expects Judge Gorsuch to reveal how he would vote on a particular case. During his Senate confirmation hearing, he did not give Senators enough background about his judicial philosophy. In our private meeting, he did not give me enough of an assurance of his philosophy as it relates to these issues on privacy for my constituents in Washington.

Whether we are talking about access to healthcare or we are protecting individuals' privacy rights from unwanted corporation or government intervention, these issues are critically important. Judge Gorsuch told the Senate Judiciary Committee that he does recognize privacy rights. However, his earlier writings on unenumerated constitutional rights contradict this statement. This contradiction raised questions with me, and I worked to try to further clarify his judicial philosophy on this issue.

I told him that my State had actually codified the rights of women to have access to reproductive healthcare.

He said: Oh, you mean your State legislature did that.

And I said: No, Judge Gorsuch, I mean the people of Washington voted on these issues and voted to protect a woman's right to access to reproductive healthcare.

When it comes to the right to privacy, I work hard to understand where our judiciary is coming from, and if it is for the next 30 to 35 years, I guarantee you these privacy rights are going to be of critical importance.

In the longstanding precedent known as the Chevron doctrine, judges should defer to reasonable agency interpretations of ambiguous statutory language. It allows agencies to get expert input on their decisions and regulations. By overturning this doctrine, it could make it easier for courts to challenge important agency decisions protecting health and the environment. This issue is also important to my State. We fought the Enron case to make sure that the Federal energy regulators did their job in protecting the ratepayers of Washington from, at the time, what was, in my opinion, a violation of the Federal Power Act on just and reasonable rates. We had to go to a great extent to make sure that the agencies' decisions were carefully considered to make sure we didn't become the deep pockets.

Making sure that this doctrine is continued and not overturned is important. I find it troubling that Judge Gorsuch concluded that this precedent from Chevron v. the Natural Resources Defense Council should be overturned.

Also, yesterday was Equal Pay Day, and there was a lot of discussion about how women still face unequal wages. What would Judge Gorsuch do about equal pay?

As a professor, he told his students that women manipulate family leave policies for their own benefits. As a judge, he frequently ruled against women and their rights. In Hobby Lobby v. Sebelius, a privately held company, which was a store chain, challenged the Affordable Care Act's birth control benefit. The Affordable Care Act required health insurance plans to provide women with birth control coverage with no cost sharing.

Judge Gorsuch joined the Tenth Circuit majority, holding that an employer's religious beliefs could override an employee's right to birth control coverage. Judge Gorsuch also supported an effort to defund Planned Parenthood, an important provider of women's health services. In Planned Parenthood Association of Utah v. Herbert, the Tenth Circuit upheld an injunction to prevent the Governor of Utah from defunding Planned Parenthood. However, Judge Gorsuch dissented and pushed for a rehearing of this case by the full court.

Judge Gorsuch has had a narrow interpretation of the laws meant to protect workers against discrimination. In another case, a worker alleged that she had been unlawfully discriminated against based on gender because she took 2 weeks of leave under the Family

Medical Leave Act. She claimed that her employer had a higher performance standard for women than for her male coworkers. The Tenth Circuit ruled in her favor and found that the employer had discriminated against her. However, Judge Gorsuch dissented, arguing evidence of discrimination was entirely absent.

These issues and rulings make me concerned about Judge Gorsuch's judicial philosophy as it relates to what I now believe is an accepted standard.

Judge Gorsuch has also ruled against LGBTQ individuals seeking fair and nondiscriminatory treatment. Lambda Legal and other groups have called his record openly hostile toward the LGBTQ community. Judge Gorsuch has held that a transwoman's constitutional rights were not violated, citing the absence of any medical evidence.

Also, as many of my colleagues have talked about, Judge Gorsuch has had a pattern of ruling against the little guy. My colleague from Hawaii noted that he seems to favor corporate interests over workers' rights and private interests over public interests.

Look at the outcome in many of these cases, which have been cited frequently since his nomination—none more than the case involving the Individuals with Disabilities Education Act. I think it is so important that it needs to continue to be talked about.

This case, which was recently rejected by the U.S. Supreme Court, limited the opportunities for children with disabilities. Judge Gorsuch had concluded that to comply with the law, the school's responsibility to the student was to make progress that was ''merely more than de minimis.'' That is to say that those children in our education system who have a special need, whether it be autism or something else, through our education system need to make progress, and it could be no more than de minimis.

This ruling impacts hundreds of thousands of students all across America, including in the State of Washington. He wrote the majority opinion and used the word ''merely.''

I asked Judge Gorsuch about this because of the cases I mentioned earlier on Federal energy regulators and the fact that we needed strong anti-manipulation laws, and we needed people to interpret the standards to make sure that they were upholding the interests of the public. We had quite a long discussion about this issue. Judge Gorsuch suggested that he was bound by a previous decision.

I know some of my colleagues have also noted this, but when Justice Roberts wrote the unanimous opinion rejecting these ''merely more than de minimis'' standards that Judge Gorsuch used, Justice Roberts said: ''When all is said and done, a student offered an educational program providing merely more than de minimis progress from year to year can hardly said to have been offered an education at all.'' On this point, I agree with the Chief Justice.

Not having a deeper understanding about his judicial philosophy and given my great concerns for the right to privacy issues that will remain constant in our society for the next 30 years and given these issues around regulatory standards that are so important, I cannot support this nomination nor support cloture to move ahead.

I yield the floor.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. FRANKEN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

CHEMICAL ATTACK IN SYRIA

Mr. FRANKEN. Mr. President, before I begin my remarks on Judge Gorsuch, I just want to take a minute to talk about the chemical attack in Syria.

Words cannot describe these vicious attacks against civilians. We have all seen the horrific footage of the victims, many of whom were children. These are innocent men, women, and children who, through no fault of their own, are caught in the middle of a bloody civil war, stuck between a brutal regime, armed groups, and foreign powers. My heart goes out to the victims and their families.

The world has come together and unequivocally condemned these acts and their perpetrators. We must work together to find a path toward peace and stability in Syria, and the United States must take a leadership role in that effort.

Mr. President, I rise in opposition to the nomination of Judge Neil Gorsuch to serve as an Associate Justice on the Supreme Court. After meeting with the nominee, carefully reviewing his record, and questioning him during his confirmation hearing, I have come to the conclusion that elevating Judge Neil Gorsuch to the Supreme Court's bench would merely guarantee more of the same from the Roberts Court—a sharply divided, already activist Court that routinely sides with powerful corporate interests over the rights of average Americans.

I think it is important to start by acknowledging just exactly how it is that Judge Gorsuch came to be before the Senate; namely, this body's failure to fulfill one of its core functions. Immediately following the death of Justice Scalia, in a move as cynical as it was irresponsible, Senate Republicans announced that they would not move forward with filling the vacancy until after the Presidential election. Before President Obama had even named a nominee, the majority leader said: ''The American people should have a voice in the selection of their next Supreme Court Justice.'' The only problem with the majority leader's reasoning was the American people did have a voice in the decision; they had voted to make President Obama the President of the United States. Nonetheless, Republican members of the Judiciary Committee gathered behind closed doors and vowed to defy the eventual nominee a hearing. Many Republicans refused to even meet with the nominee. They said it didn't matter who the President nominated; they said this was about principle.

But Senate Republicans had a difficult time justifying their obstruction—that is, until they decided to mischaracterize a speech delivered by former Judiciary Committee chairman Joe Biden in June of 1992. In that June of 1992 speech, then-Senator Biden discussed the possibility of a Supreme Court Justice resigning in an election year in order to ensure that a President of the same party could name a replacement. Under those circumstances, he said, the President should refrain from nominating a replacement and the Senate should not hold confirmation hearings until after the election.

My Republican colleagues seized upon this small portion of Senator Biden's speech and dubbed it the ''Biden rule.'' Chairman GRASSLEY said the Senate ought to abide by the Biden rule, which he said holds that there are ''no presidential Supreme Court nominations in an election year.''

The majority leader said: ''As Chairman GRASSLEY and I declared . . . the Senate will continue to observe the Biden Rule so that the American people have a voice in this momentous position.'' So in order to justify a truly unprecedented act of obstruction, my Republican colleagues pointed to the so-called Biden rule and said they were standing on principle. That was the principle. But my Republican colleagues chose to overlook a few important details.

First of all, the scenario Senator Biden described in his 90-minute speech was not the situation our country faced last year. No one strategically resigned last year. A Justice died. No one dies to game the system.

Second and most importantly, my Republican colleagues ignored the actual point that Senator Biden made in that speech. If they had bothered to read the entire speech—and I suspect they actually had—they would have found that further down, Senator Biden said—and this is important. This is what Senator Biden said in the speech used as the justification not to take up Merrick Garland. Senator Biden said in that speech, ''If the president [then George H. W. Bush] consults and cooperates with the Senate or moderates his selections absent consultation, then his nominee may enjoy my support, as did Justices Kennedy and Souter.''

Allow me to dwell on that for a moment. Senator Biden said that if a Supreme Court vacancy arose during an election year and the President consulted with the Senate or, absent consultation, put forward a moderate, consensus candidate, that candidate

should enjoy the support of the Judiciary Committee's chairman. That is the Biden rule. That is the Biden rule.

If Senate Republicans had actually followed the Biden rule, we wouldn't be here today. Merrick Garland would be sitting on the Supreme Court bench.

Over the past few days, I have heard my Republican colleagues denounce Democratic opposition to Judge Gorsuch by claiming that there never has been a partisan filibuster of a Supreme Court nominee. But if the shameful and unprecedented obstruction that Republicans used to effectively block President Obama from appointing a Supreme Court Justice wasn't a partisan filibuster, then I don't know what is.

Perhaps my Republican colleagues were concerned that President Obama would seek to replace Justice Scalia—a reliably conservative member of the Court—with a jurist whose view would place him or her on the opposite end of the ideological spectrum. That seems to be the concern that my good friend Senator HATCH expressed when he said:

> [T]he President told me several times he's going to name a moderate, but I don't believe him. [President Obama] could easily name Merrick Garland, who is a fine man. He probably won't do that because this appointment is about the election. So I'm pretty sure he'll name someone the [Democratic base] wants.

But as it turns out, in recognition of the forthcoming election and the Republican-controlled Senate, President Obama did exactly what then-Senator Biden said a President should do: He named a moderate, consensus candidate. He named Merrick Garland.

Judge Garland was supremely well qualified for the job. Here is a guy who was his high school's valedictorian, who attended Harvard on a scholarship, won clerkships with legal legends like Second Circuit Judge Henry Friendly and Supreme Court Justice William Brennan, and left a partnership at a prestigious law firm to become a Federal prosecutor during the George H.W. Bush administration. He later joined the Justice Department, where he prosecuted the men responsible for bombing the Oklahoma City Federal Building in 1995, and Merrick Garland kept in touch with the survivors' and the victims' families. That is the reason why one of the very first of three Republicans agreed to meet with Judge Garland—Senator JIM INHOFE of Oklahoma, a staunch conservative—because people of Oklahoma had such regard for Merrick Garland.

After Judge Garland was confirmed to the DC Circuit in 1997, he earned a reputation for working with his colleagues from across the ideological spectrum to identify areas of agreement and to craft strong consensus opinions, often by deciding a case on the narrowest grounds possible.

Judge Garland was the right choice at the right time. He wasn't a partisan warrior or a partisan political animal; he was a judge's judge, and everyone knew it. That is why my Republican colleagues had to hide behind new and misleading so-called rules in order to deny him a hearing and a vote.

Judge Gorsuch is no Merrick Garland. Judge Gorsuch is a creature of politics. That is not what Judge Gorsuch told me when I met him earlier this year. I asked Judge Gorsuch if he was bothered by the way the Senate treated Merrick Garland. He responded by telling me that he tries to stay away from politics. But documents that the Judiciary Committee received from the Department of Justice, including emails between Judge Gorsuch and Bush administration officials, show that Judge Gorsuch was very heavily involved in politics. A resume he sent to President Bush's political director in November 2004—back when Judge Gorsuch was looking for a job—detailed his work on Republican political campaigns dating back to 1976 and highlighted an award he received from Senate Republicans for his work to advance President Bush's judicial nominees. Ken Mehlman, the former chairman of the Republican National Committee, later recommended Judge Gorsuch for a post at the Justice Department and described him as a ''true loyalist.''

Understand, being politically active or being a Republican is not a disqualifying characteristic in a Supreme Court nominee, at least not in my book, but Judge Gorsuch's resume is relevant here because, contrary to what he told me, his resume establishes that he is not just intimately familiar with politics; he knows the politics of the judicial nominations process and he knows it well. Let me explain why I think that is important.

During the campaign, then-Candidate Trump spoke openly about his litmus test and what kind of a judge he would appoint to fill Justice Scalia's seat on the Court. He said that he would ''appoint judges very much in the mold of Justice Scalia.'' During the final debate, he said, ''The justices that I'm going to appoint will be pro-life. They will have a conservative bent.''

Part of the reason that then-Candidate Trump could say that with such conviction is because he had already outsourced the job of coming up with a list of potential nominees to the Federalist Society and the Heritage Foundation, both rightwing organizations. The groups produced a list of 21 conservative judges for then-Candidate Trump, a list that included Judge Gorsuch. Presumably, the Federalist Society and the Heritage Foundation knew something about the judicial philosophy of the men and women who it had decided to include on that list, given Judge Gorsuch's previous work to push judicial nominees through the Senate. I am sure he knew a thing or two about the Heritage Foundation and the Federalist Society, as well.

In fact, Judge Gorsuch first learned that he was under consideration for the vacancy from the Federalist Society's vice president, who was working with the transition team. Judge Gorsuch went on to interview with a host of other members of the transition team, including now-White House Chief of Staff Reince Priebus and Chief Strategist Stephen Bannon. Weeks later, President Trump had officially nominated Judge Gorsuch. Both Mr. Reince Priebus and Mr. Bannon appeared before rightwing activists at CPAC and talked about his nomination. Mr. Priebus told the crowd that Justice Gorsuch would bring about ''a change of potentially 40 years of law.'' He said: ''Neil Gorsuch represents . . . the type of judge that has the vision of Donald Trump, and [his nomination] fulfills the promise that he made to all of you,'' gesturing to a crowd of conservative activists.

So whether Mr. Priebus was suggesting that, if confirmed, Judge Gorsuch would unsettle 40 years of precedent—like Roe v. Wade or Chevron—or whether he was suggesting that Judge Gorsuch would be a reliably conservative vote for the next 40 years, it seems clear to me that confirming Judge Gorsuch is central to President Trump's political agenda.

Now, my Republican colleagues would have you believe that nothing could be further from the truth. In their view, they say that judges call balls and strikes—nothing more, nothing less. Earlier this week, for example, Senator CRUZ said: ''Conservatives understand that it is the role of a judge, and especially the role of a Supreme Court Justice, simply to follow the law.'' He said that Senate Republicans ''are not confirming someone who will simply vote with our team on a given issue.'' It is Democratic judges, according to Senator CRUZ who, ''by and large view the process as achieving the result they want and view the process of adjudicating a case as a political process.''

Let me explain why I take issue with that. If my Republican colleagues truly believe that a judge's proper role is to call balls and strikes and to decide cases narrowly, they would have confirmed Merrick Garland, a judge with a proven track record of crafting consensus opinions built on narrow holdings. But a judge who calls balls and strikes isn't really what my colleagues want. Contrary to what Senator CRUZ said, what my Republican colleagues want is a results-oriented judge. Why else would they hold open a seat on the Supreme Court bench? Why else would they turn to the Heritage Foundation and the Federalist Society for candidates? Why else would they trample on the traditions of the Senate? What my Republican colleagues really want is a judge who will vote with their team, and that is the judge they will get by confirming Neil Gorsuch. That is what this is all about. That is what this is about.

Unlike Merrick Garland, Judge Gorsuch has little interest in reaching consensus or in citing cases narrowly.

Now, Judge Gorsuch took great pains to paint himself as a mainstream nominee. He pointed out that the Tenth Circuit ruled unanimously 97 percent of the time, and that he was in the majority 99 percent of the time, but that is not unusual, and it doesn't provide any insight into his approach to being a judge. After all, the Courts of Appeals are required to follow Supreme Court precedent in all circuits around the country, and the vast majority of their cases are decided unanimously.

So in order to really understand Judge Gorsuch's approach to deciding cases—in order to really understand how he views the law—it is critically important to look at the cases where he chose to write separate concurrences or dissents. These concurring and dissenting opinions offer the clearest window into how he really thinks. Judge Gorsuch tends to write a lot of concurring and dissenting opinions. Even when Judge Gorsuch agrees with the majority and joins their decision, he frequently writes his own concurrence, setting out his own views. Judge Gorsuch has done this 31 times, including writing two concurrences to majority decisions that he, himself, had written. That is not seeking out consensus. That is holding his nose to join a consensus opinion, and then writing separately in order to point the way to broader, more sweeping rulings that other courts might issue in future cases—other courts like the Supreme Court, which doesn't have to follow precedent, which he is now poised to join and where he will not be restrained by precedent.

Judge Gorsuch is a results-oriented judge, and his record demonstrates that he approaches cases with a very specific outcome in mind. Contrary to what my Republican colleagues would have you believe, he doesn't hide that judicial philosophy. Whether it is his concurrence in Hobby Lobby or his dissent in TransAm Trucking, Judge Gorsuch wears that philosophy on his sleeve. It only underscores a disturbing pattern: siding with corporate interests over average Americans.

That philosophy was on full display in the dissent that Judge Gorsuch wrote in TransAm Trucking. It seems clear to me that Judge Gorsuch approached this case with a specific outcome in mind, which was siding with a company over a worker. And in order to just justify that outcome in his dissent, Judge Gorsuch twisted himself into a pretzel.

You may have heard this story, but I want to lay it out as efficiently as possible because I think it reveals a great deal about Judge Gorsuch's philosophy, and it helps to explain exactly why I am voting against him. In this case, trucker Alphonse Maddin is driving a rig on the interstate through Illinois. He is pulling a long trailer that is fully loaded. He makes a stop. He takes a break. Then, at 11 p.m., he is about to pull back onto the interstate, but discovers that the brakes on his trailer are locked. It is 14 below zero out. These brakes are literally frozen. So he calls his dispatcher to ask for repairs. And he waits.

While he is waiting, the heater in his cab stops working, and he falls asleep and is awakened by a call from his cousin. When Maddin sits up to answer the phone, he realizes that his torso is numb, and that he can't feel his feet. He is having trouble breathing. His cousin later says that Maddin's voice is slurred, and he wasn't tracking. According to the Mayo Clinic, these are all symptoms of hyperthermia. Maddin calls into the dispatcher again. He is told to hang on. He says: I can't. His boss tells him he has two choices, wait there until the repair truck comes, or he can take the whole rig on the road, including the trailer with frozen brakes. Those are the two options he is given by his boss. Maddin knows that if he waits, he may very well freeze to death. That is his first option, or he can go out on the interstate at 2 o'clock in the morning, dragging a fully-loaded trailer with frozen brakes at 10, maybe 15 miles per hour max, posing a safety hazard to other drivers at the interstate. Remember, it is 2 o'clock in the morning. It is dark. It is probably icy. Imagine a car going 80, 85 miles per hour—as people do at 2 o'clock in the morning on an interstate—coming up over a hill behind that rig, and then coming down and seeing this rig going 10 or 15 miles per hour, where you are going 80, 85. That would be like suddenly coming down on a stopped tractor trailer while you are going 70 miles per hour. That is his second option.

Instead, Maddin does what any of us would do. He unhitches the trailer and drives down the interstate to find someplace warm, and he does get warm. Then he returns to the trailer when the repair truck finally shows up, and he is fired. He is fired for abandoning his cargo. Now, there is a law to protect people in Maddin's situation. So he files a case. When it gets to the Tenth Circuit, a three-judge panel agrees with him, with Maddin. They find that the trucking company shouldn't have fired Mr. Maddin, but one judge dissented—Judge Neil Gorsuch.

So during my question, I asked Judge Gorsuch a very simple question: What he would have done if he had been the truck driver; if he had been driving that truck. I asked: Which would you have chosen? What would you have done? And here is Judge Gorsuch's response: ''Oh, Senator, I don't know what I would have done if I were in his shoes.''

Now, is there anyone here who would not have done what that driver did? I don't think so. Of course, you would unhitch the trailer and find someplace warm as quickly as possible—of course. But Judge Gorsuch said he didn't know what he would have done? Is that possible?

I asked him if he had even thought about what he would have done if he were Maddin. You know, he had heard the case. He did not answer. So I asked him again. I asked him, given the choices of sitting there and possibly freezing to death or going on the road with an unsafe vehicle, or doing what Mr. Maddin did, and Judge Gorsuch responded: Senator, I don't know. I was not in the man's shoes.

Judge Gorsuch said he decides cases based on the facts and the law alone. ''I go to the law,'' he said. But so, in fact, did the majority. Here is the operable law. Here is the law: ''A person may not discharge an employee who refuses to operate a vehicle because the employee has reasonable apprehension of serious injury to the employee or the public because of the vehicle's hazardous safety or security condition.''

The majority ruled that the company could not fire the truckdriver because he had refused to operate the rig, the entire rig, because it was unsafe. But Judge Gorsuch said no. While operating the cab, he was operating the vehicle. Therefore, he did not refuse to operate a vehicle.

Judge Gorsuch said he made that decision by applying the plain meaning rule. I pointed out that the plain meaning rule has an exception: ''When using the plain meaning rule would create an absurd result, courts should depart from the plain meaning.'' It is absurd to say that this company was within its rights to fire him because he refused to choose between possibly dying by freezing to death or possibly killing other people by driving a semi on an interstate at 10 miles an hour at 2 in the morning. Frankly, the company is fortunate that Mr. Maddin made the choice he made because otherwise they may very well have faced a wrongful death claim.

Everyone who was in the hearing knows what Judge Gorsuch would have done in Alphonse Maddin's situation. If Judge Gorsuch had answered honestly, he would have said that he would have done exactly, exactly what the driver did. Everyone would. Judge Gorsuch just did not want to admit it. That is because there is no good answer.

If Judge Gorsuch said that he would do the very same thing that Mr. Maddin did, that would make his dissent look pretty bad. But if he had said ''I would have done what the company told me to do,'' that would be an absurd answer. That would make you question the man's judgment. No one would believe it. So, instead, Judge Gorsuch said: I don't know what I would have done. But of course he did. He just was not being honest. Judge Gorsuch approached Mr. Maddin's case with an outcome in mind, siding with the corporation, and the dissent that he wrote makes that perfectly clear.

When I joined the Senate back in 2009, I arrived here in June, a little later than the rest of my class. Just a few days later, my fifth day in office, Judge Sonia Sotomayor appeared before the Judiciary Committee for her

first day of her confirmation hearings for the Supreme Court. I have been thinking a lot about Justice Sotomayor's hearings because the concern I expressed about the direction of the Court back then is just as relevant as today. Back then, almost 8 years ago, I voiced concern about it becoming more difficult for Americans seeking a level playing field to defend their rights and get their day in court, from bringing a discrimination claim to protecting their right to vote.

Back then, I said: ''I am wary of judicial activism and I believe in judicial restraint. Yet looking at recent decisions on voting rights, campaign finance reform, and . . . other topics, . . . there are ominous signs that judicial activism is on the rise.''

That was my first opening statement, the first opening statement that I ever delivered at the first confirmation hearing that I ever attended. But in the years that followed, my concerns have proved to be justified in one 5-to-4 decision after another. We have seen the Roberts Court go out of the way to answer questions not before it, to overturn precedents, to strike down laws enacted by Congress, and to do all of this at great cost to consumers and to workers and to small businesses and to middle-class Americans.

In decisions such as Shelby County, the Court gutted one of our landmark civil rights laws, 5 to 4. During the oral argument, Justice Scalia suggested that when the Voting Rights Act had last been passed 97 to 0 in the Senate, the Senate had done it because of the name of the Voting Rights Act. How could you vote against the Voting Rights Act? What a great name. He was showing contempt for this body. What is more judicially active than overturning a law voted on unanimously in the Senate because the Senate just liked the name?

Of course what that did was get rid of preclearance. What is preclearance? Preclearance said that those States that had a history of suppressing the votes of minorities had to preclear any new voting law with the Justice Department.

These were States that had a history of suppressing the votes of racial minorities. Well, that gets overturned. Boom. States like North Carolina, Texas, start passing new laws—voter ID laws. The second section of the Voting Rights Act still stayed, so you could appeal to a Federal court. But it takes a while to work its way through.

So finally, in early 2016, a circuit court, the Fourth Circuit I believe, ruled that North Carolina had targeted African Americans with almost surgical precision to suppress their votes. That is why you have preclearance. That is why you want preclearance. But in a 5-to-4 vote, preclearance was struck down. That is one 5-to-4 case. Concepcion, a 5-to-4 decision, allows corporations to force consumers into mandatory arbitration. There are a whole host of 5-to-4 decisions that make it impossible for people to get into the courts.

But the most egregious of all 5-to-4 decisions was Citizens United—another 5-to-4 decision that paved the way for individuals and outside groups to spend unlimited sums of money in our elections.

In each one of those 5-to-4 decisions Justice Scalia sided with the majority. So now this body considers replacing him with Judge Gorsuch. I think it is important to understand the extent to which he shares Justice Scalia's views. Judge Gorsuch's record demonstrates that he is, in President Trump's words, a judge very much in the mold of Justice Scalia.

During his time on the Tenth Circuit, Judge Gorsuch has consistently ruled in favor of powerful interests. He has sided with corporations over workers, corporations over consumers, and corporations over women's health.

A study published in the Minnesota Law Review found that the Roberts Court is the most pro-corporate Supreme Court since World War II. If the Senate confirms him, Judge Gorsuch guarantees more of the same from the Roberts Court, and I do not believe that is a Court that our country can continue to afford.

So I oppose Judge Gorsuch's nomination. I urge my colleagues to take a close look at his record of siding with powerful corporate interests over average Americans, to consider carefully how he stands to impact the Court, and to reject his nomination.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. KENNEDY). The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

Mr. MURPHY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. MURPHY. Thank you, Mr. President.

Mr. President, confirming a Supreme Court Justice is one of the if not the most important responsibilities we have as Senators. It is a vote we cast knowing full well that the tenure and the influence of the nominee who is before us will likely be greater and much more long-lasting than our own in the Senate.

After meeting with Judge Gorsuch and reviewing hours of his testimony before the Judiciary Committee, I have decided to oppose his nomination, and I come to the floor this evening to talk about the reasons why.

I am deeply concerned about the politicization of the Supreme Court and its recent capture by corporate and special interests. I am convinced that Judge Gorsuch would exacerbate that slide and continue the activist bent of the existing Court, and for that reason I won't be supporting him in the vote tomorrow.

There is no doubt that Neil Gorsuch is a well trained, very intelligent lawyer who likely has the right disposition to serve on our Nation's highest Court, but that is not the end of the analysis that I or any of us are required to conduct. I am concerned about Judge Gorsuch's record of putting corporate interests before the public interests. His past decisions demonstrate a resistance on his part to put victims' and employees' needs above those of large corporations. He has regularly sided with employers over workers, corporation's rights over the rights of employees to make personal healthcare decisions. While he admirably claims to rest his decisions on the law rather than his political views, his consistent support for the powerful over the powerless doesn't seem coincidental.

The Roberts Court, in my mind, has swung dramatically in favor of the rights of corporations and special interests over those of individual Americans. I would have supported a mainstream nominee, but the risk that Judge Gorsuch will inject his political judgment over a process that already too often favors the rights of corporations over individuals is too great a risk for him to earn my support. That was the statement I released upon making my decision. I wanted to begin my remarks with it.

I want to talk a little bit about the elements inherent in my decision to vote against Judge Gorsuch because I don't take that decision lightly. I have said throughout the beginning of President Trump's tenure that I do believe we owe some degree of deference to a President in making choices as to who will serve him in his administration, and I think that likely applies to the question of whom a President chooses for the Supreme Court as well. I think I voted that way. I certainly voted against many of President Trump's nominees, but I voted for many of the nominees with whom I had very deep disagreements with over policy as well. So it is not a question of whether Judge Gorsuch would be my choice; it is a question of whether I think he is going to be in the mainstream on the Supreme Court or whether I think he is going to be an outlier and bring potentially radical views into the courtroom.

But it is kind of silly for us to pretend this debate is happening in a vacuum. I am making my mind up on Judge Gorsuch, as I will try to outline this evening, based upon my review of his record and my belief about who he will be as a Justice.

We would all be lying if we said as Democrats that we don't remember what happened on the floor of the Senate all throughout 2016. Merrick Garland should be on the Supreme Court today, or if not Merrick Garland, someone else who was nominated by President Barack Obama. The Supreme Court vacancy occurred with nearly 12 months left in his term—25 percent of a term that he was elected to by the people of the United States. The Constitution doesn't allow for 3-year terms. It

doesn't say the President becomes illegitimate once he hits the final 12 months. The Framers of our Constitution were hopeful that the President would be President for all 4 years. That last year was robbed not just from President Obama but from the American people by Republicans in the Senate when they treated Judge Garland with such disrespect.

It would have been one thing to simply vote against him because you didn't want to let the President of an opposing party fill that seat, but to not even give him a hearing, to not give him a vote, to not even take meetings with him, which was the decision of many Republican colleagues, that was a show of disrespect to Judge Garland that I don't think any of us could have imagined. It was a show of disrespect to this Chamber, to the traditions of this body that those of us who may have supported Judge Garland remember. That bad taste still sits in our mouth.

So I am here to state that my vote against Judge Gorsuch is not payback for the way in which Merrick Garland was treated, but I remember what happened.

To the extent that my Republican colleagues are suggesting that we should vote for Judge Gorsuch or at least vote for cloture tomorrow as a means of upholding the traditions of the Senate—spare me. Spare me. There isn't a lot of interest on this side of the aisle in upholding the traditions of the Senate if we are the only ones doing it.

Some people say: Well, if you voted for cloture on Gorsuch tomorrow and let it go to a final vote, then maybe Republicans would keep the rules as is.

That is belied by the facts. Last year, the Republican majority made it pretty clear that they were willing to break all tradition, all precedent, and all comity in the Senate in order to get their person on the Supreme Court. That wasn't just a 2016 issue; that is the new normal for Republicans in the Senate. So whenever Democrats raised an objection to a nominee to the Supreme Court, the rules were going to change because Republicans made it clear that their first priority is to get their people on the Supreme Court and their second priority is to think about and try to preserve the way in which the Senate has run.

I am not voting against Neil Gorsuch because I am mad about what happened, but to the extent that I have heard Republicans in the Senate lecture us about violating the traditions of the Senate, it makes my blood boil because I was here in 2016. I saw what the Republican majority did to Merrick Garland.

Maybe we can sit down after this is done and talk about how the Senate just doesn't get into a giant vortex of devolvement, tit for tat, such that all of the reasons why people run for the Senate—the individual prerogatives that Senators have, the demand to find consensus in a way that doesn't exist in the House—all vanish. Merrick Garland is still here, and it would be silly for us to try to pretend he isn't.

One of the reasons I am so worried about Judge Gorsuch is because of his enthusiasm for a brand of judicial interpretation called originalism. It doesn't sound that radical, right, originalism? The idea is that one interprets the Constitution as the Founding Fathers intended it to be; one doesn't place it in the context of today. Simply think to yourself, what would those White men who wrote those words—what would they think about the case before us? What did they mean back in the late 1700s? On its face, it is an absurd way to think about judging cases because so much of what is before a Justice had no relevance and did not exist back in the 1780s, so questions about what these men thought about various questions regarding technology or civil rights are irrelevant because the Framers of the Constitution simply weren't thinking about the same things we are thinking about today.

One of our most famous jurists understood this right from the outset. Justice John Marshall wrote in McCulloch v. Maryland: ''We must never forget that it is a Constitution we are expounding, intended to endure for ages to come and consequently to be adapted to the various crises of human affairs.''

Even those who were judging the Constitution at its outset understood that, as the questions presented to this country changed, originalism—the idea that you only look to the thoughts and words and deeds of the Founding Fathers—probably wouldn't be an efficient way to decide cases.

Justice Brennan gave a wonderful speech at Georgetown in 1985 that is worth reading tonight. Justice Brennan said:

> We current Justices read the Constitution in the only way that we can: as Twentieth Century Americans. We look to the history of the time of framing and to the intervening history of interpretation. But the ultimate question must be, what do the words of the text mean in our time? For the genius of the Constitution rests not in any static meaning it might have had in a world that is dead and gone, but in the adaptability of its great principles to cope with current problems and current needs.

He went on to say:

> Time works changes, brings into existence new conditions and purposes. Therefore, a principle to be vital must be capable of wider application than the mischief which gave it birth.

It is a wonderful turn of phrase.

He said:

> This is peculiarly true of constitutions. They are not ephemeral enactments, designed to meet passing occasions. They are, to use the words of Chief Justice John Marshall, ''designed to approach immortality as nearly as human institutions can approach it.''

He said:

> Interpretation must account for the transformative purpose of the text. Our Constitution was not intended to preserve a preexisting society but to make a new one, to put in place new principles that the prior political community had not sufficiently recognized.

Senator KLOBUCHAR asked Judge Gorsuch at his hearing if, because the Constitution only uses the word ''he'' or ''his,'' it meant that a woman could not be President. Well, the Constitution doesn't specifically speak to this question, but if you were an originalist, I can imagine how many of those Founding Fathers would have answered that question. Why? Because they didn't believe that women deserved the right to vote, so why on Earth would they believe that a woman should be President? At the time, Blacks were considered to be subhuman. They were granted three-fifths status in the Constitution. They were slaves. To read a document only through the lens of a group of White males who did not believe that a woman should be allowed to vote, who did not believe that Blacks were human beings and on equal footing with the rest of us, is to freeze this document in a time and ask us to, consequently, freeze ourselves in that time as well. If you do not allow the document to move, then you do not allow the rest of us to move either.

Originalism is a fraud, and what it has become is a mask for politics.

Now, what do I mean by that?

When you insist on interpreting the Constitution based only on the ways in which the writers of that document viewed the world, you have no way to base decisions in current times that are based on any real text or set of historical facts because, of course, the Founding Fathers had given no thought to many of the most important questions that are presented to us today—for instance, questions about what rights individuals have with respect to government surveillance over their cell phones, which is a question that the Founding Fathers—the Framers of the Constitution—could never have considered. It allows you to, essentially, make it up for yourself because there is no way that you can find a quote from any of the signers of the Constitution as to what they thought about these modern questions. You can spin it any way that you need to.

Originalism is an invitation to bring politics onto the Court because anybody can make up a reason as to why the people who wrote the Constitution would, ultimately, have decided the way that that jurist wants the decision to turn out.

It connects with other troubling writings of Judge Gorsuch's. He proudly calls himself an originalist. Historically, if we look at the broad swath of jurists who have gotten on the Supreme Court, it is not a mainstream school of judicial interpretation, but he has other radical views as well.

The Chevron deference standard is named for a 1984 case in which the Supreme Court held that it should defer to regulatory agencies when they interpret ambiguous laws that are passed

by Congress. We pass ambiguous laws, sometimes on purpose and sometimes by accident. But we often do it on purpose because we, ultimately, leave it to the regulator to fill in the details—to proffer regulations, to work out the details of enforcement. We often do not define every single term, in part, because we know that there is going to be the executive branch and people working for an elected official—the President of the United States—who are going to carry out that act and, ultimately, be responsible to the people.

What Judge Gorsuch has suggested is that maybe it is time to overturn the Chevron deference standard. Maybe we should not give any deference to administrative agencies any longer. Maybe the Supreme Court, on every single law, should do a de novo review of its constitutionality and give no deference to the executive branch.

First of all, that would be pandemonium. It would greatly accelerate the number of cases that come before the Supreme Court and the number of major—potentially life-changing—decisions that the unelected Court is making. Why? Because we are always passing statutes here that leave room for interpretation. Again, we do it many times intentionally and sometimes unintentionally, but it happens every single month here that we pass statutes that leave room for interpretation.

We often do that knowing, as I said, that the Executive will make some of those secondary interpretations. We are comfortable with that because, if his interpretation goes wrong, then that Executive is never more than about 3½ years from an election.

The executive branch is responsible to the people. The courts are not. These are lifetime appointments that we make. If every single statute that we pass is interpreted from the foundation by the Supreme Court and if they get it wrong, there is no way to get rid of them. There is no way to roll that interpretation back. In fact, that is one of the reasons for the Chevron deference—the reluctance of the Court to make itself an active political player in the process of interpreting statutes.

So it is radical that Judge Gorsuch is suggesting that, if he were put on the Supreme Court, he would overturn that 1984 case. Justice Scalia was one of the primary defenders of Chevron for that very reason, in that he saw that the legitimacy of the Court—indeed, the legitimacy of the entire judicial system—would be put in jeopardy if it inserted itself as the primary arbiter of ambiguous statutes, of statutes that needed interpretation.

Originalism is an invitation to take your politics onto the Court. The evisceration of the Chevron deference would, inherently, make the Court a political body. If you combine the two together, you will start to see a Justice who will likely continue this trend line of its being an activist Court that makes political decisions in substitute of the Congress.

We have all seen it happen, whether it be in the voting rights case, in which the unelected Supreme Court decided that racism was not something that we had to think about any longer due to their vast experience in the South and in dealing with cases of voter suppression, or in their arbitrary decision that corruption should be very narrowly defined and that we need not pay attention to the slow, creeping corruption that happens when donors get access to the political process through donations of thousands and tens of thousands and hundreds of thousands and millions of dollars. The Supreme Court is telling the people of this country and this Congress what corruption is and what it is not.

Those are political decisions that the Court has made—an activist Court—that now may have among its members a Justice who has, effectively, advertised himself as being willing and eager to join that trend line on the Court.

Individual cases raise concerns as well. In Riddle v. Hickenlooper, Judge Gorsuch expressed an openness in providing a higher level of constitutional protection to a donor's right to make political contributions than the Court currently affords the right to actually vote—donors having more rights than voters have.

As for the result of applying strict scrutiny, which is the term that he is referring to with regard to political donations, we do not exactly know what would happen, but it likely would have the consequence of making it almost impossible to regulate campaign finance. Ninety-three percent of Americans, in a recent poll, think that government should be working to limit the impact that big donors have on politics today. Yet Judge Gorsuch has suggested that, as a Supreme Court jurist, he may move the law in the opposite direction, robbing from both of us—Republicans and Democrats—the ability to do what 93 percent of Americans want us to do, which is to restrict the ability of a handful of billionaires to affect the political process.

In the Hobby Lobby decision, yet again, Judge Gorsuch suggests that corporations, in this case, have more rights under the Constitution than do the individuals who work for them—that the religious freedom rights of the corporation trump the religious freedom rights of employees. Once again, it ruled that those with power—big donors or corporations—have more rights than those with less power—ordinary voters, employees of these big companies.

Years ago, Judge Gorsuch wrote in a complaint, according to him, that liberals were using the Court to try to push their political agenda rather than to bring it here to the Congress. The reality is that, over the course of the Roberts Court, the exact opposite has happened. It has been Conservatives who have brought their complaints to the court system—their complaints about voting rights, their complaints about campaign finance, their complaints about the Affordable Care Act—rather than to have brought them to the floor of this body.

As the House of Representatives abandons, for the time being, the repeal and replacement of the Affordable Care Act, their allies continue to push cases through the court system that would attempt to unwind it. Judge Gorsuch has been, in his writings at least, blind to this idea that Conservatives have spent just as much time over the past 20 years in trying to push their agenda in court as have Progressives. Progressives have done that as well.

Clearly, we have full marriage rights in this country because of court cases that Progressive groups push. I am not denying that there is not this trend line on both sides of the political spectrum, but Judge Gorsuch seems to only recognize it in his writings when it comes to the liberals who are pushing these causes.

These are the most important decisions we make. Many of us may only get to vote on a Supreme Court Justice once or twice. This is my fifth year in the Senate, and this is my first vote. My first vote should have come in 2016, but it is coming now in 2017. I do not take it lightly, but there is a reason—when you go back to your apartment here in Washington—that you are watching TV commercials that are paid for by big corporations and billionaires who support Judge Gorsuch's nomination.

He says that he is going to play it straight. He says that he is not going to be affected by his political agenda. I hope that he is right, but the folks who are fronting the money for these ads do not believe him. They think they know how he is going to rule. Believe me. They would not be putting up all of this money on TV if they did not think that Judge Gorsuch was going to be a friend to the big companies, to the billionaire donors who want more and more protection through the court system.

Donald Trump was right about something when he ran for President. He was not right that elections are rigged, but he was right that, in general, the system—our economic state of affairs—does seem to be pretty rigged against regular people. Economic mobility, which is how we define ourselves as a country, is further away from the people whom I represent in Connecticut than ever before, and the statistics bear that out.

Your ability to move from poverty to prosperity is less today than it has been at any point in our lifetimes. It does feel like the powerful and the rich have recovered very nicely from this recession and that nobody else has. It feels like they have a voice here in Washington that no one else has either.

If you are President Trump, having run on this promise to unrig the system, boy, this doesn't seem like the person you should be sending to the

bench, somebody who has openly advertised his enthusiasm for voting with billionaires, with corporations, with folks who have lots of political power already.

The TransAm case, which has been talked about enough on the floor, is a unique one. It is the case of a trucker who was being potentially left to die by his employer on the side of the road, who left his truck to save his life and potentially the lives of others on the road, had he chosen instead to operate it. Judge Gorsuch ruled with his employer, effectively suggesting this man should have risked his life or the lives of others to comply with the strict letter of the law.

Judge Gorsuch was asked in the Judiciary Committee what he would have done: What would you have done if you had two options—sit in that truck and face death or put it back on the road and potentially kill others? What would you have done? Judge Gorsuch said that he hadn't thought about it.

I don't want my Supreme Court Justices to be political. I don't want them to be us. It really is our job to think about, in a real, tangible, grassroots way, the effect of our laws on their lives. But I don't want a Justice who doesn't even contemplate the answer to that question, the impact of the law on regular people. I don't want a Justice who views the law only through the eyes of a group of White men who lived in a fundamentally different world. I don't want a Justice who isn't thinking about how the law applies to people who need a statute's protection, rather than thinking about those who, frankly, don't need the protection of statute because they have been handed a pretty good lot in life from the start.

I am going to oppose cloture tomorrow, and if we eventually get to a vote, I will oppose Judge Gorsuch on final passage.

My final comment is this: When that moment comes, I do hope that our colleagues will think twice about changing the rules of the Senate. They had already broken with precedent once in 2016 in a way that I think is unforgiveable. To do it twice in a 24-month period puts this place on a downward spiral that I am not sure we can recover from. If we just want to be the House of Representatives, let's just do it. But there is another way to go, to select a nominee who could truly get bipartisan support.

As my colleague TIM KAINE is fond of saying, there is only one appointment by the President of the United States that needs 60 votes. There is only one person the President picks who needs to get more than 60. That is the Justice of the Supreme Court because it is permanent, because it is important, because it lasts longer than we do. There is probably good reason for that.

Precedent and comity were broken in 2016. I will never, ever forget the disrespect shown to Judge Garland and to everyone in this body, but to double down on that break with precedent, on that break with tradition, by changing the rules of the Senate permanently with respect to Supreme Court Justices—I know they can say that Democrats did it a few years ago. That is true. But the Supreme Court is a different animal entirely, and the decision is one I hope my Republican colleagues will rethink.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Hawaii.

Ms. HIRONO. Mr. President, when Senate Republicans executed their unprecedented block of President Obama's nominee Merrick Garland, the well-credentialed, well-respected, moderate chief judge of the DC Circuit, they knew what they were doing. They were willing to set aside the history and practice of the Senate to make sure no nominee of President Obama's would fill the vacancy created by Justice Scalia's death.

As fate would have it, a Republican won the Presidency and then, the majority leader's path was clear. This is exactly what happened: President Trump selected Neil Gorsuch from a list put together for him by the ultraconservative Heritage Foundation and Federalist Society. These organizations selected Judge Gorsuch because they want to preserve the conservative 5-to-4 majority of the Roberts Court.

This majority has done terrible damage to many laws Congress has passed to protect ordinary Americans, and has made it more difficult for us to pass new laws. My colleagues and I have shined a spotlight on these rightwing organizations and the $10 million campaign they have run on Judge Gorsuch's behalf because they believe his view of the law matches theirs. And therein lies our concern.

These organizations have spent so much money and worked so hard on Judge Gorsuch's behalf because they could trust, perhaps not 100 percent of the time, but enough of the time, that Judge Gorsuch would decide cases in ways they would agree with and support.

Judge Gorsuch is an Ivy League educated lawyer with 10 years on the Federal bench. He is not naive. Even if he refused to acknowledge the fact that these groups are supporting him, Judge Gorsuch knows as well as we all do that politics have a real impact on the kinds of nominees selected to serve on the Supreme Court.

We know he understands this because he said so in his 2005 National Review Online article, which was entitled ''Liberals'N'Lawsuits.'' In that article, he wrote that because Republicans had won elections for the Presidency and for control of the Senate, the Republicans were in charge of the judicial appointment process. As a result, he said, ''the level of sympathy liberals pushing constitutional litigation can expect in the courts may wither over time, leaving the Left truly out in the cold.''

This article demonstrates that Judge Gorsuch understands that judges appointed and confirmed by Republicans will have less sympathy for, as he put it, ''liberals pushing constitutional litigation.'' Clearly, judges do not make decisions divorced from their personal and philosophical leanings. However often or however loudly they might protest, conservatives understand that their arguments about the narrow role of judges—their claims that Justices are there only to modestly apply the law and adhere to the Constitution—are bunk. And Judge Gorsuch must know this too.

Nowhere is this brand of conservative judicial activism clearer than in the actions of the Roberts Court to reach into our elections to tilt the political landscape—with a significant impact on whose votes are heard in our political process and who is able to take part in our elections.

Based on his writings, Judge Gorsuch clearly understands the relationship between politics and the courts. I am convinced that adding Judge Gorsuch to the Roberts Court will only continue the Court's intervention into politics.

The actions of the Roberts Court are clear. This Court has issued a series of decisions that have made it easier for conservative organizations to spend unlimited and unregulated dark money on elections, and that may have made it harder for people to vote, harder for people to participate and have those voices heard in the political process. These decisions have changed who is able to participate in the democratic process, who gets elected, and, in turn, who gets nominated to the Supreme Court.

Justice Felix Frankfurter's famous admonition that ''Courts ought not to enter this political thicket'' captures the challenges for courts treading into politics. Of course there are times when the courts must do so—to ensure one person, one vote, for example. But courts must also be careful when wading into politics because the legitimacy of the court is itself put at risk.

The most memorable example, of course, came when the Court effectively decided the 2000 Presidential election in Bush v. Gore.

In the Citizens United and Shelby County decisions, we have seen the tremendous damage the Court can do to democracy when it tilts the electoral process so heavily against ordinary Americans.

In the 2010 Citizens United decision, the Roberts Court struck down bipartisan laws limiting campaign contributions that went back more than a century. This decision opened an unrestrained flow of money and potential corruption that has dominated our politics and drowned out the voices of ordinary Americans ever since.

The Court's decision in this case was not an accident. Chief Justice Roberts engineered the decision in that case by steering it away from the narrow question before the Court about how to apply a particular law and into a broad constitutional question. His efforts

demonstrate that the Supreme Court has broad power and latitude to push and shape the law.

This kind of conservative judicial activism directly contradicts what Justice Roberts famously said during his confirmation hearing. He said the job of a Justice is to simply call balls and strikes.

Jeffrey Toobin, in a 2012 article in the New Yorker entitled, ''Money Unlimited: How Chief Justice John Roberts orchestrated the Citizens United decision,'' and in his recent book, ''The Oath,'' recounts very clearly how Chief Justice Roberts engineered this campaign spending decision.

The question originally presented to the Supreme Court in Citizens United, according to Toobin's account, was a narrow one. It involved whether one of the provisions of the bipartisan McCain-Feingold campaign finance law applied to a documentary criticizing a candidate and not just to television commercials. In fact, Ted Olson, the well-known conservative lawyer representing Citizens United, the organization that wanted to run the documentary, made a narrow argument that the McCain-Feingold law was not meant to apply to that kind of documentary. This was an argument based not on the Constitution, but on deciding the case before the Court in the narrowest possible way. Such a decision would have been restrained.

It became clear during oral arguments that the conservatives on the Court had the opportunity not just to apply the law, but to change it entirely. Chief Justice Roberts and the other conservative Justices on the Court began to do this by aggressively questioning the government's lawyer on issues not then directly before the Court. As Toobin describes, ''Through artful questioning, Alito, Kennedy, and Roberts had turned a fairly obscure case about campaign-finance reform into a battle over governmental censorship.''

Now that it was clear to Chief Justice Roberts that there was a majority on the court for making a broader constitutional decision, he ordered that the case be reargued, rather than simply deciding the narrow question argued by both Olsen and the government's attorney. Chief Justice Roberts wanted the Court to take head-on a question that was not in fact before it and which the Court had decided the opposite way only 6 years before. When the Roberts Court decided Citizens United the following year, after reargument, it did so on the broadest possible ground—unconstitutional grounds—and found that corporations, like people, have First Amendment rights. It found that these rights could be violated by limits on campaign contributions.

Again, this outcome did not happen by accident; Chief Justice Roberts engineered the result. According to Toobin's account, Chief Justice Roberts chose to assign the opinion for the majority to Justice Kennedy, who was known to be very skeptical of campaign finance laws and believed that limits on campaign spending violate free speech. By doing so, Chief Justice Roberts ensured that the Citizens United decision would be a broad one, and it was.

The way the Court chose to reach out and change the law was wholly unnecessary to decide the case at hand. And it certainly was not judicial restraint; it was judicial activism. The Court in Citizens United reached out to overturn precedent and upend laws dating back more than a century to find new rights for corporations to funnel untold millions into our political system.

This decision also severely limited the ways in which Congress could take action to continue to pursue the aims of campaign finance laws to limit political corruption.

In his article, Mr. Toobin said:

> [Citizens United] reflects the aggressive conservative judicial activism of the Roberts Court. It was once liberals who are associated with using the courts to overturn the work of the democratically elected branches of government, but the current Court has matched contempt for Congress with a disdain for many of the Court's own precedents.
>
> When the Court announced its final ruling on Citizens United, on January 21, 2010, the vote was five to four and the majority opinion was written by Anthony Kennedy. Above all, though, the result represented a triumph for Chief Justice Roberts. Even without writing the opinion, Roberts, more than anyone, shaped what the Court did.

But the Roberts Court was not done with its activism to radically change the landscape of our elections. In another narrow 5-to-4 decision in Shelby County in 2013, the Court substituted its conclusions for that of Congress and gutted core protections of the Voting Rights Act—protections which were essential for the right to vote for millions of Americans. Again, this was not a decision the Court needed to or should have reached. And again, it was a decision engineered by Chief Justice John Roberts and the conservative majority on the Supreme Court.

Back in 1982, Chief Justice Roberts—then a special assistant to the Attorney General—was the point person for the Reagan administration's opposition to strengthening the Voting Rights Act. At that time, Congress acted to fix a hole in the Voting Rights Act that the Supreme Court had opened in a 1980 decision. John Roberts was opposed to these efforts to make clear that election practices or procedures that result in discrimination, not only those with the intent to discriminate, violate the Voting Rights Act.

In 1982, Congress successfully passed their fix over the objections of John Roberts and the Reagan administration. If you look at John Roberts' memos and articles from that period of time—in which he was a strong advocate within the administration for the position it took—his view of the Voting Rights Act was clear. It was a view he would apply years later as Chief Justice of the Supreme Court when he led a 5-to-4 majority to gut section 5 of the Voting Rights Act.

The preclearance provisions of section 5 mandated that any changes to voting laws in States with a long history of discrimination have to be approved in advance—or precleared—by the Justice Department or by the DC district court. These provisions, passed a century after the conclusion of the Civil War, for the first time effectively guaranteed the rights protected by the 14th and 15th Amendments in many parts of the country. Section 5 changed the landscape of our democracy and opened the door for millions of people to exercise their right to vote.

These provisions of the Voting Rights Act were reauthorized nearly unanimously by Congress in 2006. Before reauthorizing the Voting Rights Act, the Senate Judiciary Committee alone held nine hearings on it. The thousands of pages of material the Senate reviewed, together with the record developed in a dozen hearings in the House, clearly established why it was so important to maintain preclearance in order to protect the right to vote in jurisdictions with a long history of voting discrimination.

Yet, in Shelby County, the Roberts Court ignored this evidence and the Court's long precedent. The Court made its own determination about the value of the extensive evidence reviewed by Congress and struck down these core provisions. The Court refused to defer to the extensive findings and determination of Congress even though Congress is expressly charged by the 14th and 15th Amendments to enforce the guarantees of those Amendments—the guarantee of the right to vote. The Court did what John Roberts fought to do years before and weakened the Voting Rights Act. So much for judicial restraint. So much for just calling balls and strikes.

A Justice and a Court devoted to judicial restraint, with an understanding of the separation of powers, never would have ignored Congress acting at the height of its constitutional powers and its factfinding capacity. Yet Chief Justice Roberts and the narrow conservative majority on the Court chose to act—to reach out and to gut one of the core protections of the fundamental right to vote.

We now know that Congress got it right and the Supreme Court got it wrong in its judgment about the continuing need for section 5 of the Voting Rights Act. Immediately after the Shelby County decision, numerous States previously covered by section 5 immediately passed onerous voter ID laws and other barriers that affected the right to vote of millions of people. Some of these laws were even enacted with discriminatory intent, not just discriminatory effect—in other words, they were blatantly meant to discriminate in voting.

These newly raised barriers had a clear impact in last year's elections.

For the first time in two generations, thanks to the actions of the Roberts Court, we risk unraveling the progress my friend JOHN LEWIS fought for alongside so many others during the civil rights movement.

During his confirmation hearing, I asked Judge Gorsuch about the Shelby County decision, since he often explained the constraints on his approach to judicial decision making in terms of the separation of powers. He said several times that judges make terrible legislators, that courts lack the staff, capacity, and training to do the kind of factfinding that is an essential part of the legislative process. Yet, when I asked him whether the Court's decision in Shelby County raised the kinds of concerns he had noted about the limits of judges as policymakers and legislators, he declined to answer.

But this is about more than Judge Gorsuch's refusal to answer. It is about more than the narrow view he expressed of the role of a judge or, particularly, a Justice—a narrow view that is not a reflection of the real world. Both the process and the outcome in Shelby County and in Citizens United raised exactly the kinds of concerns that make it so important for the Senate to understand Judge Gorsuch's judicial philosophy before putting him on the Supreme Court. Judge Gorsuch would become part of a newly empowered 5-to-4 conservative majority on the Roberts Court, which has been anything but restrained in moving the law for the benefit of corporations and against individual rights.

Taken together, these two decisions, Citizens United and Shelby County, have made it harder for millions of Americans to have their voices heard in our election process and their votes counted at the ballot box. Since Citizens United, the floodgates have opened to unfettered corporate money in our elections. Since Shelby County, 13 States have enacted laws placing limitations on voting. Many of these are in States that would have been prevented from doing so in the first place before the Court gutted section 5 of the Voting Rights Act. After Shelby County, these States could pass such laws, and they did, disenfranchising tens of thousands of voters in the process.

My Democratic colleagues and I asked Judge Gorsuch many questions to try to understand his pattern of narrowly interpreting laws meant to protect individual rights or worker safety in ways at odds with the law's purpose. For example, the narrow interpretation Judge Gorsuch took on the Individuals with Disabilities Education Act, IDEA, would have left Luke Perkins and thousands of special needs children like Luke without a chance to make educational progress. His interpretation was so at odds with the purpose of the IDEA law that the Supreme Court unanimously rejected and criticized Judge Gorsuch's narrow standard in a case they decided just a few weeks ago.

Time and again, Judge Gorsuch threw up his hands and told us that if we disagreed with this narrow reading of the relevant law, that Congress should do better. In his view, the problem was not the Court—which he seemed to cast as an innocent bystander—but, rather, the way Congress had written the law.

By tilting the political playing field so heavily toward corporations and unfettered dark money and against individuals, the Roberts Court has impacted the composition of who is in Congress. The Court has made it even harder for Congress to take meaningful action to, say, pass laws to protect workers' safety or the access of students with special needs to an education. In turn, these decisions have had a real-world impact by changing who gets to participate in the political process and therefore who gets elected and who has input on the kinds of laws that are passed—and, of course, who gets nominated to the U.S. Supreme Court.

The actions of the Roberts Court in Citizens United and Shelby County make clear the stakes of the Gorsuch nomination. They make clear what the Senate Republicans had in mind in their unprecedented and arrogant refusal to consider President Obama's nomination of Merrick Garland to the Supreme Court. They wanted, instead, a Justice like Judge Gorsuch who would continue the rightward march of the 5-to-4 conservative majority on the Roberts Court. And the United States Senate should not allow this brazen gambit to succeed.

I urge my colleagues to oppose this nomination.

I yield the floor.

RECESS UNTIL 10 A.M. TOMORROW

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until 10 a.m. tomorrow.

Thereupon, the Senate, at 11:28 p.m., recessed until Thursday, April 6, 2017, at 10 a.m.

Daily Digest

Senate

Chamber Action

Routine Proceedings, pages S2197–S2381

Measures Introduced: Fifty-five bills and eleven resolutions were introduced, as follows: S. 807–861, S. Res. 109–118, and S. Con. Res. 12.

Pages S2214–15, S2362–63

Measures Reported:

Reported on Tuesday, April 4:

S. 254, to amend the Native American Programs Act of 1974 to provide flexibility and reauthorization to ensure the survival and continuing vitality of Native American languages. (S. Rept. No. 115–23)

Reported on Wednesday, April 5:

Special Report entitled "Report on the Activities of the Committee on Finance During the 114th Congress". (S. Rept. No. 115–25)

S. 102, to direct the Federal Communications Commission to commence proceedings related to the resiliency of critical communications networks during times of emergency, with an amendment in the nature of a substitute. (S. Rept. No. 115–24)

Page S2362

Measures Passed:

National Read Aloud Month: Committee on the Judiciary was discharged from further consideration of S. Res. 94, designating March 2017 as "National Read Aloud Month", and the resolution was then agreed to. **Page S2220**

Alaska Purchase 150th Anniversary: Senate agreed to S. Res. 111, celebrating the 150th anniversary of the Alaska Purchase. **Page S2220**

Gold Star Wives Day: Senate agreed to S. Res. 112, designating April 5, 2017, as "Gold Star Wives Day". **Page S2220**

University of Washington Center on Human Development and Disability 50th Anniversary: Senate agreed to S. Res. 113, recognizing and celebrating the 50th anniversary of the Center on Human Development and Disability at the University of Washington in Seattle, Washington.

Page S2220

National Park Week: Senate agreed to S. Res. 117, designating the week of April 15, 2017, through April 23, 2017, as "National Park Week".

Page S2353

Condemning Hate Crime: Senate agreed to S. Res. 118, condemning hate crime and any other form of racism, religious or ethnic bias, discrimination, incitement to violence, or animus targeting a minority in the United States. **Pages S2371–72**

Gorsuch Nomination—Cloture: Senate began consideration of the nomination of Neil M. Gorsuch, of Colorado, to be an Associate Justice of the Supreme Court of the United States. **Pages S2190–S2210, S2222–48, S2257–S2352, S2353–59, S2372–81**

Prior to the consideration of this nomination, Senate took the following action:

Senate agreed to the motion to proceed to Legislative Session. **Page S2190**

By 55 yeas to 44 nays (Vote No. 104), Senate agreed to the motion to proceed to executive session to consider the nomination. **Page S2190**

A motion was entered to close further debate on the nomination, and, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, a vote on cloture will occur on Thursday, April 6, 2017. **Page S2210**

A unanimous-consent agreement was reached providing for further consideration of the nomination at approximately 9:30 a.m., on Wednesday, April 5, 2017; that the debate time on the nomination during Wednesday's session of the Senate be divided as follows: following Leader remarks until 11 a.m. be equally divided, that the time from 11 a.m. until 12 noon be under the control of the Majority; that the time from 12 noon until 1 p.m. be under the control of the Minority; and that the debate time until 9 p.m., on Wednesday be divided in one hour alternating blocks. **Pages S2220–21**

A unanimous-consent agreement was reached providing for further consideration of the nomination at approximately 10 a.m., on Thursday, April 6, 2017; that the time until the vote on the motion to invoke cloture on the nomination be equally divided between Senators Grassley and Feinstein, or their designees. **Page S2372**

Perdue Nomination—Agreement: A unanimous-consent agreement was reached providing that following Leader remarks on Monday, April 24, 2017, Senate begin consideration of the nomination of Sonny Perdue, of Georgia, to be Secretary of Agriculture; that the time until 5:30 p.m. be equally divided in the usual form, and that at 5:30 p.m., Senate vote on confirmation of the nomination, with no intervening action or debate. **Page S2344**

Nomination Confirmed: Senate confirmed the following nomination:

By 85 yeas to 14 nays (Vote No. EX. 103), Elaine C. Duke, of Virginia, to be Deputy Secretary of Homeland Security. **Pages S2180–90, S2255**

Nominations Received: Senate received the following nominations:

Sigal Mandelker, of New York, to be Under Secretary for Terrorism and Financial Crimes.

Heath P. Tarbert, of Maryland, to be an Assistant Secretary of the Treasury.

Routine lists in the Air Force, Army, Marine Corps, and Navy. **Pages S2248–55**

Messages From the House: **Pages S2214, S2360**

Measures Referred: **Pages S2214, S2260**

Measures Read the First Time: **Pages S2360, S2371**

Executive Communications: **Pages S2360–61**

Petitions and Memorials: **Pages S2361–62**

Executive Reports of Committees: **Pages S2214, S2362**

Additional Cosponsors: **Pages S2215–16, S2364–65**

Statements on Introduced Bills/Resolutions: **Page S2216–20, S2365–68**

Additional Statements: **Pages S2213–14, S2360**

Authorities for Committees to Meet: **Pages S2220, S2371**

Record Votes: Two record votes were taken today. (Total—104) **Pages S2189, S2190**

Recess: Senate convened at 10 a.m. on Tuesday, April 4, 2017, and recessed at 11:28 p.m. on Wednesday, April 5, 2017, until 10 a.m. on Thursday, April 6, 2017. (For Senate's program, see the remarks of the Acting Majority Leader in today's Record on page S2372.)

Committee Meetings

(Committees not listed did not meet)

NATIONAL WATER HAZARDS AND VULNERABILITIES

Committee on Appropriations: Subcommittee on Commerce, Justice, Science, and Related Agencies concluded a hearing to examine national water hazards and vulnerabilities, focusing on improved forecasting for responses and mitigation, after receiving testimony from Louis Uccellini, Assistant Administrator, Weather Services, National Oceanic and Atmospheric Administration, and Director, National Weather Service; Bryan Koon, Florida Division of Emergency Management Director, Tallahassee; Antonio Busalacchi, University Corporation for Atmospheric Research, Boulder, Colorado; and Mary Glackin, The Weather Company, IBM, Washington, D.C.

U.S. STRATEGIC COMMAND

Committee on Armed Services: Committee concluded a hearing to examine United States Strategic Command programs, after receiving testimony from General John E. Hyten, USAF, Commander, United States Strategic Command, Department of Defense.

CYBER THREATS TO THE U.S.

Committee on Armed Services: Subcommittee on Cybersecurity received a closed briefing on cyber threats to the United States from Kate Charlet, Performing the duties of Deputy Assistant Secretary for Cyber Policy, Brigadier General Mary F. O'Brien, USAF, Director of Intelligence, United States Cyber Command, and Major General Ed Wilson, Deputy Principal Cyber Advisor, Office of the Secretary, all of the Department of Defense; Samuel Liles, Director, Cyber Analysis Division, Office of Intelligence and Analysis, and Neil Jenkins, Director, Enterprise Performance Management Office, National Protection and Programs Directorate, both of the Department of Homeland Security; and Tonya L. Ugoretz, Director, Cyber Threat Intelligence Integration Center, Office of the Director of National Intelligence.

BUSINESS MEETING

Committee on Banking, Housing, and Urban Affairs: Committee ordered favorably reported the nomination of Jay Clayton, of New York, to be a Member of the Securities and Exchange Commission.

MULTIMODAL FREIGHT POLICY AND INFRASTRUCTURE

Committee on Commerce, Science, and Transportation: Subcommittee on Surface Transportation and Merchant Marine Infrastructure, Safety and Security concluded a hearing to examine keeping goods moving, focusing on continuing to enhance multimodal freight policy and infrastructure, after receiving testimony from Derek J. Leathers, Werner Enterprises, and Lance M. Fritz, Union Pacific Corporation, both of Omaha, Nebraska; Michael L. Ducker, FedEx Freight Corporation, Memphis, Tennessee; and James Pelliccio, Port Newark Container Terminal, Newark,

New Jersey, on behalf of the Coalition for America's Gateways and Trade Corridors.

CYBERSECURITY THREATS

Committee on Energy and Natural Resources: Committee concluded a hearing to examine efforts to protect United States energy delivery systems from cybersecurity threats, after receiving testimony from Patricia Hoffman, Acting Assistant Secretary, Office of Electricity Delivery and Energy Reliability, and Andrew A. Bochman, Senior Cyber and Energy Strategist, National and Homeland Security, Idaho National Laboratory, both of the Department of Energy; Colonel Gent Welsh, Commander, 194th Wing, Washington Air National Guard, Camp Murray; Gerry W. Cauley, North American Electric Reliability Corporation, and Dave McCurdy, American Gas Association, both of Washington, D.C.; and Duane D. Highley, Arkansas Electric Cooperative Corporation, Littlerock, on behalf of the National Rural Electric Cooperative Association.

THE EU AS A PARTNER AGAINST RUSSIAN AGGRESSION

Committee on Foreign Relations: Committee concluded a hearing to examine the European Union as a partner against Russian aggression, focusing on sanctions, security, democratic institutions, and the way forward, after receiving testimony from David O'Sullivan, European Union Delegation to the United States of America, and Kurt Volker, Arizona State University McCain Institute for International Leadership, both of Washington, D.C.; and Daniel B. Baer, former Ambassador to the Organization for Security and Cooperation in Europe, Denver, Colorado.

SOUTHWEST BORDER FENCING

Committee on Homeland Security and Governmental Affairs: Committee concluded a hearing to examine fencing along the southwest border, after receiving testimony from David V. Aguilar, former Acting Commissioner, and Ronald S. Colburn, former Deputy Chief, Border Patrol, both of Customs and Border Protection, Department of Homeland Security; and Terence M. Garrett, The University of Texas Rio Grande Valley Public Affairs and Security Studies Department, Brownsville.

FDA USER FEE AGREEMENTS

Committee on Health, Education, Labor, and Pensions: Committee concluded a hearing to examine FDA user fee agreements, focusing on improving medical product regulations and innovation for patients, after receiving testimony from Kay Holcombe, Biotechnology Innovation Organization, David R. Gaugh, Association for Accessible Medicines, Scott Whitaker, AvaMed, and Cynthia A. Bens, Alliance for Aging Research, all of Washington, D.C.

INTELLIGENCE

Select Committee on Intelligence: Committee met in closed session to receive a briefing on certain intelligence matters from officials of the intelligence community.

INTELLIGENCE

Select Committee on Intelligence: Committee held closed hearings on intelligence matters, receiving testimony from officials of the intelligence community.

Committee recessed subject to the call.

House of Representatives

Chamber Action

Public Bills and Resolutions Introduced: 34 public bills, H.R. 1868–1901; and 7 resolutions, H. Con. Res. 43–46; and H. Res. 246–248 were introduced. **Pages H2694–97**

Additional Cosponsors: **Page H2698**

Reports Filed: Reports were filed today as follows:

H.R. 653, to amend title 5, United States Code, to protect unpaid interns in the Federal Government from workplace harassment and discrimination, and for other purposes (H. Rept. 115–78); and

H.R. 702, to amend the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 to strengthen Federal antidiscrimination laws enforced by the Equal Employment Opportunity Commission and expand accountability within the Federal Government, and for other purposes (H. Rept. 115–79). **Page H2694**

Speaker: Read a letter from the Speaker wherein he appointed Representative Graves (LA) to act as Speaker pro tempore for today. **Page H2633**

Recess: The House recessed at 10:45 a.m. and reconvened at 12 noon. **Page H2638**

Self-Insurance Protection Act—Rule for Consideration: The House agreed to H. Res. 241, providing for consideration of the bill (H.R. 1304) to amend the Employee Retirement Income Security Act of 1974, the Public Health Service Act, and the Internal Revenue Code of 1986 to exclude from the definition of health insurance coverage certain medical stop-loss insurance obtained by certain plan sponsors of group health plans, by a recorded vote of 234 ayes to 184 noes, Roll No. 212, after the previous question was ordered by a yea-and-nay vote of 232 yeas to 188 nays, Roll No. 211. **Pages H2647–51**

Suspensions: The House agreed to suspend the rules and pass the following measure:

Weather Research and Forecasting Innovation Act of 2017: Concur in the Senate amendment to H.R. 353, to improve the National Oceanic and Atmospheric Administration's weather research through a focused program of investment on affordable and attainable advances in observational, computing, and modeling capabilities to support substantial improvement in weather forecasting and prediction of high impact weather events, and to expand commercial opportunities for the provision of weather data. **Pages H2666–67**

Encouraging Employee Ownership Act of 2017: The House passed H.R. 1343, to direct the Securities and Exchange Commission to revise its rules so as to increase the threshold amount for requiring issuers to provide certain disclosures relating to compensatory benefit plans, by a yea-and-nay vote of 331 yeas to 87 nays, Roll No. 216. **Pages H2667–78**

Rejected the Swalwell (CA) motion to recommit the bill to the Committee on Financial Services with instructions to report the same back to the House forthwith with an amendment, by a yea-and-nay vote of 185 yeas to 228 nays, Roll No. 215. **Pages H2676–77**

Pursuant to the Rule, an amendment in the nature of a substitute consisting of the text of Rules Committee Print 115–11 shall be considered as adopted. **Page H2667**

Withdrawn:

Polis amendment (No. 1 printed in H. Rept. 115–75) that was offered and subsequently withdrawn that would have required GAO to report to Congress one year after date of enactment the impact of the legislation on employee ownership. **Page H2675**

H. Res. 240, the rule providing for consideration of the bill (H.R. 1343) was agreed to by a recorded vote of 238 ayes to 177 noes, Roll No. 214, after the previous question was ordered by a yea-and-nay vote of 229 yeas to 187 nays, Roll No. 213. **Pages H2641–47, H2652–53**

Senate Referral: S. 89 was held at the desk.

Senate Message: Message received from the Senate by the Clerk and subsequently presented to the House today appears on page H2641.

Quorum Calls—Votes: Four yea-and-nay votes and two recorded votes developed during the proceedings of today and appear on pages H2650–51, H2651, H2652, H2652–53, H2676–77, and H2677–78. There were no quorum calls.

Adjournment: The House met at 10 a.m. and adjourned at 7:19 p.m.

Committee Meetings

THE NEXT FARM BILL: COMMODITY POLICY PART II

Committee on Agriculture: Subcommittee on General Farm Commodities and Risk Management held a hearing entitled "The Next Farm Bill: Commodity Policy Part II". Testimony was heard from public witnesses.

THE NEXT FARM BILL: CREDIT PROGRAMS

Committee on Agriculture: Subcommittee on Commodity Exchanges, Energy, and Credit held a hearing entitled "The Next Farm Bill: Credit Programs". Testimony was heard from public witnesses.

EXAMINING FEDERAL SUPPORT FOR JOB TRAINING PROGRAMS

Committee on Appropriations: Subcommittee on Labor, Health and Human Services, Education, and Related Agencies held a hearing entitled "Examining Federal Support for Job Training Programs". Testimony was heard from public witnesses.

ASSESSING PROGRESS AND IDENTIFYING FUTURE OPPORTUNITIES IN DEFENSE REFORM

Committee on Armed Services: Full Committee held a hearing entitled "Assessing Progress and Identifying Future Opportunities in Defense Reform". Testimony was heard from public witnesses.

MISCELLANEOUS MEASURES

Committee on Education and the Workforce: Full Committee held a markup on H.R. 1808, the "Improving Support for Missing and Exploited Children Act of 2017"; and H.R. 1809, the "Juvenile Justice Reform Act of 2017". H.R. 1808 and H.R. 1809 were ordered reported, as amended.

LEGISLATIVE MEASURE

Committee on Energy and Commerce: Subcommittee on Environment held a hearing on a discussion draft of Brownfields Reauthorization. Testimony was heard from public witnesses.

CYBERSECURITY IN THE HEALTH CARE SECTOR: STRENGTHENING PUBLIC-PRIVATE PARTNERSHIPS

Committee on Energy and Commerce: Subcommittee on Oversight and Investigations held a hearing entitled ''Cybersecurity in the Health Care Sector: Strengthening Public-Private Partnerships''. Testimony was heard from public witnesses.

EXAMINING THE FEDERAL RESERVE'S MANDATE AND GOVERNANCE STRUCTURE

Committee on Financial Services: Subcommittee on Monetary Policy and Trade held a hearing entitled ''Examining the Federal Reserve's Mandate and Governance Structure''. Testimony was heard from public witnesses.

INCREASING THE EFFECTIVENESS OF NON-NUCLEAR SANCTIONS AGAINST IRAN

Committee on Financial Services: Subcommittee on Monetary Policy and Trade; and Subcommittee on Terrorism and Illicit Finance held a joint hearing entitled ''Increasing the Effectiveness of Non-Nuclear Sanctions Against Iran''. Testimony was heard from public witnesses.

DEFEATING A SOPHISTICATED AND DANGEROUS ADVERSARY: ARE THE NEW BORDER SECURITY TASK FORCES THE RIGHT APPROACH?

Committee on Homeland Security: Subcommittee on Border and Maritime Security held a hearing entitled ''Defeating a Sophisticated and Dangerous Adversary: Are the New Border Security Task Forces the Right Approach?''. Testimony was heard from Rebecca Gambler, Director, Homeland Security and Justice Issues, Government Accountability Office; and the following officials from the Department of Homeland Security: Vice Admiral Karl Schultz, Director, Joint Task Force East; Paul Beeson, Director, Border Patrol, Joint Task Force West; and Janice Ayala, Director, Joint Task Force—Investigations, Homeland Security Investigations, Immigration and Customs Enforcement.

OVERSIGHT OF THE DRUG ENFORCEMENT ADMINISTRATION AND THE BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES

Committee on the Judiciary: Subcommittee on Crime, Terrorism, Homeland Security, and Investigations held a hearing entitled ''Oversight of the Drug Enforcement Administration and the Bureau of Alcohol, Tobacco, Firearms, and Explosives''. Testimony was heard from Thomas E. Brandon, Acting Director, Bureau of Alcohol, Tobacco, Firearms, and Explosives; and Chuck Rosenberg, Acting Administrator, Drug Enforcement Administration.

FIRST AMENDMENT PROTECTIONS ON PUBLIC COLLEGE AND UNIVERSITY CAMPUSES

Committee on the Judiciary: Subcommittee on the Constitution and Civil Justice held a hearing entitled ''First Amendment Protections on Public College and University Campuses''. Testimony was heard from public witnesses.

LEGISLATIVE MEASURES

Committee on Natural Resources: Subcommittee on Water, Power and Oceans held a hearing on H.R. 220, to authorize the expansion of the existing Terror Lake hydroelectric project, and for other purposes; H.R. 1411, the ''Transparent Summer Flounder Quotas Act''; and a discussion draft of the ''Bureau of Reclamation Pumped Storage Hydropower Development Act''. Testimony was heard from public witnesses.

USE OF CONFIDENTIAL INFORMANTS AT ATF AND DEA

Committee on Oversight and Government Reform: Full Committee held a hearing entitled ''Use of Confidential Informants at ATF and DEA''. Testimony was heard from Michael E. Horowitz, Inspector General, Department of Justice; Robert Patterson, Acting Principal Deputy Administrator, Drug Enforcement Administration; and Ronald B. Turk, Associate Deputy Director and Chief Operating Officer, Bureau of Alcohol, Tobacco, Firearms and Explosives.

REVIEWING FEDERAL IT WORKFORCE CHALLENGES AND POSSIBLE SOLUTIONS

Committee on Oversight and Government Reform: Subcommittee on Information Technology held a hearing entitled ''Reviewing Federal IT Workforce Challenges and Possible Solutions''. Testimony was heard from Nick Marinos, Assistant Director, Information Technology, Government Accountability Office; and public witnesses.

BUILDING A 21ST CENTURY INFRASTRUCTURE FOR AMERICA: ENABLING INNOVATION IN THE NATIONAL AIRSPACE

Committee on Transportation and Infrastructure: Subcommittee on Aviation held a hearing entitled ''Building a 21st Century Infrastructure for America: Enabling Innovation in the National Airspace''. Testimony was heard from Shelley J. Yak, Director, William J. Hughes Technical Center, Federal Aviation Administration; and public witnesses.

AUTHORIZATION OF COAST GUARD AND MARITIME TRANSPORTATION PROGRAMS

Committee on Transportation and Infrastructure: Subcommittee on Coast Guard and Maritime Transportation held a hearing entitled ''Authorization of Coast Guard and Maritime Transportation Programs''. Testimony was heard from Admiral Paul F. Zukunft, Commandant, U.S. Coast Guard; Master Chief Steven W. Cantrell, Master Chief Petty Officer, U.S. Coast Guard; Michael A. Khouri, Acting Chairman, Federal Maritime Commission; and Joel Szabat, Executive Director, in lieu of the Administrator, Maritime Administration.

AN ASSESSMENT OF ONGOING CONCERNS AT THE VETERANS CRISIS LINE

Committee on Veterans' Affairs: Full Committee held a hearing entitled ''An Assessment of Ongoing Concerns at the Veterans Crisis Line''. Testimony was heard from Michael J. Missal, Inspector General, Department of Veterans Affairs; Steve Young, Deputy Undersecretary for Operations and Management, Veterans Health Administration, Department of Veterans Affairs; and public witnesses.

ASSESSING VA APPROVED APPRAISERS AND HOW TO IMPROVE THE PROGRAM FOR THE 21ST CENTURY

Committee on Veterans' Affairs: Subcommittee on Economic Opportunity held a hearing entitled ''Assessing VA Approved Appraisers and How to Improve the Program for the 21st Century''. Testimony was heard from Jeffrey London, Director, Loan Guaranty Service, Veterans Benefits Administration, Department of Veterans Affairs; and public witnesses.

Joint Meetings

No joint committee meetings were held.

COMMITTEE MEETINGS FOR WEDNESDAY, APRIL 5, 2017

(Committee meetings are open unless otherwise indicated)

Senate

Committee on Appropriations: Subcommittee on Transportation, Housing and Urban Development, and Related Agencies, to hold hearings to examine protecting our midshipmen, focusing on preventing sexual assault and sexual harassment at the U.S. Merchant Marine Academy, 10 a.m., SD–192.

Subcommittee on Department of Defense, to hold closed hearings to examine intelligence programs and threat assessment, 10:30 a.m., SVC–217.

Committee on Banking, Housing, and Urban Affairs: Subcommittee on Economic Policy, to hold hearings to examine the current state of retirement security in the United States, 3 p.m., SD–538.

Committee on Commerce, Science, and Transportation: business meeting to consider pending calendar business, 10 a.m., SH–216.

Committee on Environment and Public Works: business meeting to consider proposed legislation entitled, ''Wildlife Innovation and Longevity Driver (WILD) Act'', S. 518, to amend the Federal Water Pollution Control Act to provide for technical assistance for small treatment works, S. 692, to provide for integrated plan permits, to establish an Office of the Municipal Ombudsman, to promote green infrastructure, and to require the revision of financial capability guidance, and S. 675, to amend and reauthorize certain provisions relating to Long Island Sound restoration and stewardship, 10 a.m., SD–406.

Committee on Foreign Relations: Subcommittee on Africa and Global Health Policy, to hold hearings to examine a progress report on conflict minerals, 2 p.m., SD–419.

Committee on Health, Education, Labor, and Pensions: to hold hearings to examine the nomination of Scott Gottlieb, of Connecticut, to be Commissioner of Food and Drugs, Department of Health and Human Services, 10 a.m., SD–430.

Committee on Homeland Security and Governmental Affairs: to hold hearings to examine improving border security and public safety, 9:30 a.m., SD–342.

House

Committee on Agriculture, Full Committee, hearing entitled ''Agriculture and Tax Reform: Opportunities for Rural America'', 10 a.m., 1300 Longworth.

Committee on Appropriations, Subcommittee on Labor, Health and Human Services, Education and Related Agencies, hearing entitled ''Federal Response to the Opioid Abuse Crisis'', 10 a.m., 2358–C Rayburn.

Committee on Armed Services, Full Committee, hearing entitled ''Consequences to the Military of a Continuing Resolution'', 10 a.m., 2118 Rayburn.

Subcommittee on Readiness, hearing entitled ''The Current State of the U.S. Marine Corps'', 2 p.m., 2212 Rayburn.

Committee on Education and the Workforce, Subcommittee on Workforce Protections, hearing on H.R. 1180, the ''Working Families Flexibility Act of 2017'', 10 a.m., 2175 Rayburn.

Committee on Energy and Commerce, Subcommittee on Communications and Technology, hearing entitled ''Facilitating the 21st Century Wireless Economy'', 10 a.m., 2123 Rayburn.

Committee on Financial Services, Full Committee, hearing entitled ''The 2016 Semi-Annual Reports of the Bureau of Consumer Financial Protection'', 10 a.m., 2128 Rayburn.

Committee on Foreign Affairs, Subcommittee on Europe, Eurasia, and Emerging Threats, hearing entitled ''Turkey's Democracy Under Challenge'', 2 p.m., 2172 Rayburn.

Committee on Homeland Security, Full Committee, markup on H. Res. 235, directing the Secretary of Homeland Security to transmit certain documents to the House of

Representatives relating to the Department of Homeland Security's research, integration, and analysis activities relating to Russian Government interference in the elections for Federal office held in 2016, 11 a.m., HVC–210.

Committee on the Judiciary, Full Committee, markup on H.R. 1842, the ''Strengthening Children's Safety Act of 2017''; H.R. 1761, the ''Protecting Against Child Exploitation Act of 2017''; the ''Global Child Protection Act of 2017''; H.R. 1862, the ''Global Child Protection Act of 2017''; and H.R. 659, the ''Standard Merger and Acquisition Reviews Through Equal Rules Act of 2017'', 11 a.m., 2141 Rayburn.

Committee on Natural Resources, Subcommittee on Energy and Mineral Resources, hearing on H.R. 1731, the ''Revitalizing the Economy of Coal Communities by Leveraging Local Activities and Investing More Act of 2017'', 10 a.m., 1324 Longworth.

Subcommittee on Federal Lands, hearing on H.R. 218, the ''King Cove Road Land Exchange Act''; H.R. 497, the ''Santa Ana River Wash Plan Land Exchange Act''; H.R. 1157, to clarify the United States interest in certain submerged lands in the area of the Monomoy National Wildlife Refuge, and for other purposes; and H.R. 1728, to modify the boundaries of the Morley Nelson Snake River Birds of Prey National Conservation Area, and for other purposes, 2 p.m., 1324 Longworth.

Committee on Oversight and Government Reform, Full Committee, hearing entitled ''Oversight of the Federal Emergency Management Agency's Response to the Baton Rouge Flood Disaster: Part II'', 9:30 a.m., 2154 Rayburn.

Subcommittee on the Interior, Energy and Environment, hearing entitled ''Improving the Visitor Experience at National Parks'', 2 p.m., 2247 Rayburn.

Subcommittee on National Security, hearing entitled, ''Assessing the Iran Deal'', 2 p.m., 2154 Rayburn.

Committee on Small Business, Full Committee, hearing entitled ''Taking Care of Small Business: Working Together for a Better SBA'', 11 a.m., 2360 Rayburn.

Committee on Transportation and Infrastructure, Subcommittee on Highways and Transit, hearing entitled ''FAST Act Implementation: State and Local Perspectives'', 10 a.m., 2167 Rayburn.

Committee on Veterans' Affairs, Subcommittee on Disability Assistance and Memorial Affairs, hearing on H.R. 105, the ''Protect Veterans from Financial Fraud Act of 2017''; H.R. 299, the ''Blue Water Navy Vietnam Veterans Act of 2017''; H.R. 1328, the ''American Heroes COLA Act of 2017''; H.R. 1329, the ''Veterans' Compensation Cost-of-Living Adjustment Act of 2017''; H.R. 1390, to amend title 38, United States Code, to authorize the Secretary of Veterans Affairs to pay costs relating to the transportation of certain deceased veterans to veterans' cemeteries owned by a State or tribal organization; H.R. 1564, the ''VA Beneficiary Travel Act of 2017''; and a draft bill entitled ''Quicker Veterans Benefits Delivery Act of 2017'', 10:30 a.m., 334 Cannon.

Joint Meetings

Joint Economic Committee: to hold hearings to examine the decline of economic opportunity in the United States, focusing on causes and consequences, 10 a.m., 1100 Longworth Building.

Next Meeting of the SENATE

9:30 a.m., Wednesday, April 5

Senate Chamber

Program for Wednesday: Senate will continue consideration of the nomination of Neil M. Gorsuch, of Colorado, to be an Associate Justice of the Supreme Court of the United States.

Next Meeting of the HOUSE OF REPRESENTATIVES

10 a.m., Wednesday, April 5

House Chamber

Program for Wednesday: Consideration of H.R. 1304—Self-Insurance Protection Act. Consideration of the following measure under suspension of the Rules: H.R. 369—To Eliminate the Sunset of the Veterans Choice Program.

Extensions of Remarks, as inserted in this issue

HOUSE

Abraham, Ralph Lee, La., E444
Bilirakis, Gus M., Fla., E440
Burgess, Michael C., Tex., E435
Bustos, Cheri, Ill., E450
Cohen, Steve, Tenn., E445
Connolly, Gerald E., Va., E435, E436, E438, E440, E441, E442, E443, E445, E446, E447
Costa, Jim, Calif., E438, E441, E444, E445, E449
Crist, Charlie, Fla., E439
Davis, Rodney, Ill., E438, E439, E447
DesJarlais, Scott, Tenn., E436
Farenthold, Blake, Tex., E437
Gutiérrez, Luis V., Ill., E441
Hastings, Alcee L., Fla., E441
Jackson Lee, Sheila, Tex., E447
Jenkins, Evan H., W.Va., E444
Johnson, Eddie Bernice, Tex., E442
Kinzinger, Adam, Ill., E437
Long, Billy, Mo., E439
Marino, Tom, Pa., E444
Perlmutter, Ed, Colo., E435, E436, E438, E440, E441, E442, E443, E444, E446, E447
Pittenger, Robert, N.C., E441
Pocan, Mark, Wisc., E443
Reed, Tom, N.Y., E442
Roby, Martha, Ala., E436, E440
Smith, Lamar, Tex., E435, E448
Stefanik, Elise M., N.Y., E439, E443, E446, E450
Thompson, Bennie G., Miss., E437, E439, E440, E442, E444, E446, E448
Titus, Dina, Nev., E438
Tonko, Paul, N.Y., E445
Walker, Mark, N.C., E441
Young, David, Iowa, E450, E450, E450, E450, E450, E451, E451, E451

Congressional Record

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