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Senate

(Legislative day of Tuesday, April 4, 2017)

The Senate met at 10 a.m., on the expiration of the recess, and was called to order by the Honorable LUTHER STRANGE, a Senator from the State of Alabama.

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

O God, our help in ages past, our hope for years to come, throughout life's seasons moments of decision arrive. As our lawmakers prepare to make critical decisions, give them the wisdom to choose the more challenging right that brings the greatest glory to Your Name. Supply their needs according to Your riches in glory. Purify their thoughts as they strive to do Your will. Remind them that those who are faithful with little will be faithful with much. May they seek simply to be faithful in whatever You assign their hands to do, striving to please You with their work.

We pray in Your great Name. Amen.

PLEDGE OF ALLEGIANCE

The Presiding Officer led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. HATCH).

The senior assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, April 6, 2017.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable LUTHER STRANGE, a Senator from the State of Alabama, to perform the duties of the Chair.

ORRIN G. HATCH,
President pro tempore.

Mr. STRANGE thereupon assumed the Chair as Acting President pro tempore.

EXECUTIVE CALENDAR—Continued

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

Mr. MCCONNELL. Mr. President, the Senate has considered the nomination of Judge Neil Gorsuch for many weeks now. We have seen his impressive credentials. We have reviewed his incredible record. We have heard glowing praise on a nearly daily basis from colleagues and students, from judges and newspaper editorials, from Democrats and from Republicans.

Judge Gorsuch is independent, and he is fair. He is beyond qualified, and he will make a stellar addition to the Supreme Court.

Hardly anyone in the legal community seems to argue otherwise, and yet, our Democratic colleagues appear poised to block this incredible nominee with the first successful partisan filibuster in American history. It would be a radical move, something completely unprecedented in the history of our Senate and out of all proportion to the eminently qualified judge who is actually before us. But then again, this isn't really about the nominee anyway. The opposition to this particular nominee is more about the man who nominated him and the party he represents than the nominee himself. It is part of

a much larger story, another extreme escalation in the left's never-ending drive to politicize the courts and the confirmation process.

It is a fight they have waged for decades with a singular aim: securing raw power, no matter the cost to country or institution. It underlies why this threatening filibuster cannot be allowed to succeed or continue—for the sake of the Senate, for the sake of the Court, and for the sake of our country.

I think a look back through history will help every colleague understand why. I always had a particular interest in the history of judicial nominations. It is an interest that predates my service here as a Senator. I remember serving on the staff of a Senator on the Judiciary Committee during a time when two different judicial nominees were being considered. One, Harrold Carswell, was voted down on the Senate floor—correctly, in my view. Another, Clement Haynesworth, also failed to receive the necessary support for confirmation—but in error, I thought.

It piqued my interest on what advice and consent should mean in the Senate, and what it actually meant in practice. I would learn later that I was witnessing the nascent stirrings of what would soon become the so-called judicial wars—the left's efforts to transform confirmations from constructive debates over qualifications into raw ideological struggles with no rules or limits.

It is a struggle that escalated in earnest when Democrats and leftwing special interests decided to wage war on President Reagan's nominee in 1987, Robert Bork. Polite comity went out the window as Democrats launched one vicious personal attack after another—not because Bork lacked qualifications or suffered some ethical failing, but because his views were not theirs. The Washington Post described it at the

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



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time: "It's not just that there has been an intellectual vulgarization and personal savagery to elements of the attack, profoundly distorting the record and the nature of the man."

As NPR would later observe, the left's "all-out campaign to defeat the nomination . . . legitimized scorched-earth ideological wars over nominations at the Supreme Court."

I was there. I saw it all. I remember the viciousness of it. I also remember feeling that the Senate was reaching a turning point where a judicial nominee would no longer be evaluated on their credentials but on their ideology. That observation, unfortunately, has proven correct, with Democrats raising the stakes and moving the goalposts each step of the way.

They certainly did so under the next Republican President, George H.W. Bush. We all know what happened to Clarence Thomas. If the gloves were off for Bork, the brass knuckles came out for Thomas. Here is how left-leaning columnist Juan Williams described the situation: "To listen or read some news reports on Thomas over the past month is to discover a monster of a man, totally unlike the human being full of sincerity, confusion, and struggles whom I saw as a reporter who watched him for some 10 years."

That is Juan Williams speaking on Clarence Thomas. Williams said:

He has been conveniently transformed into a monster about whom it is fair to say anything, to whom it is fair to do anything.

By the time Bill Clinton won the Presidency, "Bork" had become a verb and "high-tech lynching" was on the lips of the Nation. Wounds were fresh and deep when this Democratic President had the chance to name two Justices of his own to the Court.

Republicans could have responded in kind to these nominees, but that is not what happened. When President Clinton nominated Ruth Bader Ginsburg, the Senate confirmed her 96 to 3. When President Clinton nominated Stephen Breyer, the Senate confirmed him 87 to 9. I, like the vast majority of Republicans, voted for both of them. We did so in full knowledge of the considerable ideological differences between these nominees and ourselves. Ginsburg, in particular, had expressed notably extreme views—even advocating for the abolition of Mother's Day. A nominee for the Supreme Court who advocated the abolition of Mother's Day was confirmed 96 to 3.

Could we have Borked these nominees? Could we have tried to filibuster them? Sure, but we didn't.

We resisted the calls for retribution and did our level best to halt the Senate's slide after the Bork and Thomas episodes. We respected the Senate's tradition against filibustering Supreme Court nominees.

Now, the tradition not to filibuster extended beyond just the Supreme Court. When President Clinton named two highly controversial nominees from California to the Ninth Circuit,

some on my side wanted to defeat their nominations with a filibuster. The Republican leadership said: Let's not do that. To their great credit, Majority Leader Lott and Judiciary Chairman HATCH implored our confidence not to do that. Senator Lott filed cloture on these nominees to advance the nomination. He, Senator HATCH, and I and a vast majority of the Republican Conference voted for cloture to give them an up-or-down vote. We didn't do this because we supported the nominees. In fact, most of us voted against their actual confirmation, but we thought they deserved an up-or-down vote. That, after all, was the tradition of the Senate.

Given that we were in the majority and these nominations were highly controversial, our determination not to filibuster but instead advance them to an up-or-down vote was not, as you might imagine, popular with our base. But we resisted the political pressure. Again, we respected the Senate's tradition against filibustering judicial nominees.

But it would matter little to our Democratic friends.

Less than a year later, President Bush 43 comes to office. Before he had submitted a single judicial nominee, our Democratic colleagues held a retreat in Farmington, PA. There, according to participants, they determined to change the ground rules for how they would handle judicial nominees.

As the New York Times reported, Democrats apparently decided "there was no obligation to confirm someone just because they are scholarly." Our friend the Democratic leader said at the time that what he and his colleagues were "trying to do was set the stage" for yet another escalation in the left's judicial wars.

Senate Democrats soon became the majority in the Senate due to then-Senator Jeffords' party switch. To help implement the imperative from their retreat "to change the ground rules," the current Democratic leader used his position on the Judiciary Committee to hold a hearing on whether ideology should matter in the confirmation process.

Now, it won't surprise you that the conclusion he and his colleagues reached was that it should. So they killed in committee, either through inaction or via committee vote, qualified judicial nominees who did not fit their preferred ideology. I know, because I was on the committee then. Eighteen months later, our Democratic colleagues lost control of the Senate, and, therefore, control of the Judiciary Committee. Our colleague, the current Democrat leader, again took center stage.

The New York Times noted that "over the last two years, Mr. Schumer has used almost every maneuver available to a Senate Judiciary Committee member to block the appointment" of the Bush administration judicial nomi-

nees. Then, in 2003, according to the New York Times, he "recommended using an extreme tactic, the filibuster," to block them.

"Mr. Schumer," it said, "urged Democratic colleagues in the Senate to use a tactic that some were initially reluctant to pursue, and that has roiled the Senate: a filibuster on the floor of the chamber to block votes on nominees that he and other Democrats had decided to oppose."

It is hard to express how radical a move that was at that time because it completely changed the way the Senate had handled these nominations for our entire history. Even filing cloture on a judicial nominee had been rare before then, and actually defeating any judicial nominee by filibuster, other than the bipartisan opposition to the nomination of Abe Fortas back in 1968, in a Presidential election year was simply unheard of.

No longer.

Democrats blocked cloture 21 times on 10 different circuit court nominees, including on outstanding lawyers like Miguel Estrada, whose nomination was filibustered an incredible 7 times.

These are not inflated statistics like the supposed 78 filibusters our Democratic colleagues are now alleging occurred during the Obama administration, which include numerous instances in which the prior Democratic leader unnecessarily filed cloture petitions. No, what I am talking about are real and repeated filibusters used by Democrats to defeat nominations.

In the face of this wholly unprecedented change in the norms and traditions of the Senate, we Republicans contemplated using the nuclear option. We decided against it. Fourteen colleagues—three of whom still serve in this body—reached an accord whereby filibusters would be overcome for 5 of the 10 nominees in question. Regrettably, Miguel Estrada was not one of them. He had withdrawn his nomination after being put through an unprecedented ordeal.

Yet, the ink was barely dry on the accord I mentioned when Senate Democrats, led, in part, by our friend the Democratic leader, again did something exceedingly rare in the nominations process: They tried to filibuster Samuel Alito's nomination to the Supreme Court. No member of the Republican Conference, by the way, has ever voted to filibuster a Supreme Court nominee—ever. Nobody on this side of the aisle has ever done that.

Again, it would have been easy for Republicans to have retaliated when President Obama took office, but just like under Clinton, that is not what happened. How did we treat Obama's lower court nominees?

At the time, our Democratic colleagues decided to "fill up the DC Circuit one way or the other," as the Democratic leader put it. Senate Republicans had defeated a grand total of two of President Obama's judicial nominees. At the time that they decided to employ the nuclear option and

fill up the DC Circuit, Senate Republicans had confirmed 215 Obama judges and had defeated just 2.

So our Democratic colleagues' decision to employ the nuclear option in 2013 was not in response to rampant obstruction but was, in the words of the Washington Post, a "power play." By the way, at the time, I don't recall the Democratic leader or any other of our Democratic colleagues repeating the refrain: If there are not 60 votes for a nominee, you don't change the rules; you change the nominee.

They were not saying that then.

What did they do? They changed the rules. It was a power play, but it was also something else. It was a tacit admission by our Democratic colleagues that the Senate tradition of up-or-down votes of judicial nominees that they had first upset back in 2003 by starting the practice of filibustering judicial nominees was a tradition they should have respected. Unfortunately, it took them 10 years to realize this and only after they captured the White House and only after Republicans also used, on a smaller scale, the tool that they, themselves, inaugurated a decade earlier.

And how did we treat President Obama's Supreme Court nominees? Did we try to filibuster them like our Democratic colleagues tried with Justice Alito? Of course not.

When President Obama nominated Sonia Sotomayor and Elena Kagan, we treated both nominees fairly, as they would later say themselves, and we secured an up-or-down vote for both. Most Republicans had significant misgivings about these nominees. Many of us voted no on the confirmations, but we did not think it would be right to deny them up-or-down votes.

I and the ranking member of the Judiciary Committee at the time, Jeff Sessions, even protested when then-Democratic Leader Reid tried to file cloture on the Kagan nomination because we were determined to prevent even the hint of a filibuster. Again, we respected the Senate's tradition against filibustering Supreme Court nominees.

I know our friends on the Democratic side will be quick to interject with a predictable protest about last year, though they seem to forget their own position on the issue. When Justice Scalia passed away, the Senate chose to follow a standard that was first set forth by then-Senator Biden, when he was chairman of the Judiciary Committee, and then was expanded upon by the current Democratic leader, himself. The Senate exercised its constitutional advice and consent role by withholding its consent until after the election so that the next President, regardless of party, could select a nominee. It is a standard I held to even when it seemed inevitable that our next President was going to be Hillary Clinton. It is also a standard that President Obama's own legal counsel admitted that Democrats would have followed

themselves had the shoe been on the other foot.

The majority of the Senate expressed itself then by withholding consent.

The majority of the Senate wishes now to express itself by providing consent to Judge Gorsuch.

The bipartisan majority that supports him cannot do so if a partisan minority filibusters. They are prepared to do so for the first time in American history, and the Democratic leader has mused openly about holding this seat vacant for an entire Presidential term.

We will not allow their latest unprecedented act on judicial nominations to take hold. This will be the first and last partisan filibuster of a Supreme Court nomination.

All of this history matters. I know the Democratic leader would rather not revisit the circumstances that brought us to this moment. I know the Democratic leader would rather not talk about it. Of course, he doesn't want to talk about it. He and his party decided to change the ground rules for handling judicial nominations.

He and his party pioneered the practice of filibustering lower court judicial nominees. He and his party launched the first partisan filibuster of a Supreme Court nominee. He and his party deployed the nuclear option in 2013. Now they are threatening to do something else that has never been done in the history of the Senate: successfully filibuster a Supreme Court nominee on a purely partisan basis.

For what reason—because he is not qualified or because he is not fit for the job? No, it is because he was nominated by a Republican President.

This is the latest escalation in the left's never-ending judicial war—the most audacious yet. It cannot and it will not stand.

There cannot be two sets of standards—one for the nominees of Democratic Presidents and another for the nominee of a Republican President. The Democratic leader, essentially, claimed yesterday that Democratic Presidents nominate Justices who are near the mainstream but that Republican Presidents nominate Justices who are far outside the mainstream.

In what universe are we talking about here?

I would say to my friend from New York that few outside of Manhattan or San Francisco believe that Ruth Bader Ginsburg is in the mainstream but that Neil Gorsuch is not.

To quote a long-time Democrat and member of the left-leaning American Constitution Society, there is simply no principled reason—none—to vote no on Judge Gorsuch's nomination, even less of one to block that vote from occurring at all.

Let me say this to my Democratic colleagues: If you truly cannot support the nomination of this eminently qualified nominee, then at least allow the bipartisan majority of the Senate who supports Gorsuch to take an up-or-down vote. You already deployed the

nuclear option in 2013. Do not trigger it again in 2017.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

The ACTING PRESIDENT pro tempore. Under the previous order, the time until the cloture vote on the Gorsuch nomination will be equally divided between Senators GRASSLEY and FEINSTEIN or their designees.

The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I was going to ask unanimous consent to that extent. I guess you have already announced that it is in place; is that right? I am going to add something to what the Acting President pro tempore just said, so let me start over again.

I ask unanimous consent that the time until 10:45 a.m. be equally divided between Senator FEINSTEIN or her designee and myself or my designee and that the time from 10:45 a.m. to 11 o'clock be reserved for Senator SCHUMER's leader remarks.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The Senator from Illinois.

Mr. DURBIN. Mr. President, I ask for a clarification. Is the remaining 17 or 18 minutes equally divided?

The ACTING PRESIDENT pro tempore. The Senator is correct.

Mr. GRASSLEY. Mr. President, that is what my unanimous consent request said.

Mr. DURBIN. Mr. President, I just wanted to get more specific. I am not questioning what the Senator asked for.

Do we have 9 minutes each or 8 minutes each?

Mr. GRASSLEY. I will probably need more than 9 minutes, but I will put the rest of my statement in the RECORD.

Mr. DURBIN. So will I.

Mr. President, I defer to the chairman of the committee if he would like to speak first.

Mr. GRASSLEY. Mr. President, within the next hour or so, we will learn whether the minority will come to their senses or whether they will engage in the very first partisan filibuster of a Supreme Court nominee. All indications are that they are committed to their course. That is unfortunate. It truly is.

The question one has to ask is this: What, exactly, is so objectionable about this nominee that he should be subjected to the first partisan filibuster in U.S. history? Is he, really, not well qualified?

He attended Columbia for his bachelor's, Harvard for law school, Oxford for his doctorate. He clerked for not one—but two—Supreme Court Justices. He has spent over 10 years on the circuit court and has heard 2,700 cases. It is clear, then, that he is extremely well qualified.

So what is it? What makes this nominee so objectionable?

The truth is, throughout this process, the minority, led by their leader, has

been desperately searching for a justification for their preplanned filibuster. Over the course of the last couple of months, they have trotted out one excuse after another, but nothing will stick.

They said he isn't mainstream, but that is not true. Everyone from Obama's Solicitor General to Rachel Maddow has said he is mainstream. They said he isn't independent, but everyone knows he is an independent judge. He is his own man, and he understands the role of a judge.

Then they roll out this ridiculous argument that he is for the big guy and against the little guy. Even liberal law professors like Noah Feldman made fun of that attack. He called it "a truly terrible idea." Then they said we should hold him responsible for the legal positions he took on behalf of the U.S. Government. The only problem there is, we have had a lot of nominees who have represented the U.S. Government. They worked for it; the government was their client. The other side certainly didn't want to hold Justice Kagan responsible for taking the truly extreme position as Solicitor General that the U.S. Government was constitutionally permitted to ban pamphlets. So that argument fell flat as well.

Then, of course, after they ran out of substantive arguments against the judge and his record, they resorted to attacks on his supporters or the President who nominated him or the selection process, anything—anything—to distract from the judge and the stellar record he has.

They trotted out this absurd claim that we should reject the judge not because of some opinion he has written but because those who support his nomination have the gall to actually speak out and make their voices heard, except they forgot to check with their own supporters first to make sure none of them are spending so-called dark money. Of course, they are spending money on issue advocacy, just as the law permits and the Constitution protects under the First Amendment.

As we all know, issue advocacy during Supreme Court nominations is absolutely nothing new. Those who are complaining about issue advocacy today don't seem to remember the TV ads the far left ran attacking Judge Bork in 1987. I remember those ads. I remember the ads the left ran against Justice Thomas as well. Of course, outside groups on the left have attacked every Republican nominee since.

So expressing selective outrage over issue advocacy doesn't advance their cause either, but they still keep it up.

Finally, the talking point we have heard repeated most often over the last 24 hours is that Candidate Trump "outsourced" his selection process to conservative groups. I must say, I find that argument the oddest of all. It is the kind of thing Justice Scalia would call "pure applesauce."

The President didn't outsource the selection process to conservative

groups. He made his list public for the entire country to review during the campaign—the first President to do that. If anything, he outsourced the selection process to whom? The voters—the American people.

So what do you do? You are out of substantive arguments from the other side. Even shots fired at the judge's supporters somehow boomerang back and hit your own advocacy groups. We have seen all of this before. I have been through a few of these debates over the years. When a Republican occupies the Oval Office, the nominees may change, but the attacks remain the same.

You will hear today the same poll-tested catch phrases we have all heard time and again. You will hear words and phrases like "outside the mainstream," "far right," and "extreme." Invariably, these are words the left tries to pin on every nominee of a Republican President and the people he submits to the Senate. With each nominee, the playbook on the left seems to be the very same. The nomination process, it seems, is a desperate attempt to retell the same old pre-ordained narrative.

As I have said, those of us who have been through a few of these episodes have heard it all before, and we are going to hear it in the next few hours again, but this time something is very different. This time, they intend to use the same old pre-ordained narrative to justify the first partisan filibuster in the 220-year history of the United States. Of course, this result was pre-ordained because as the minority leader said weeks before the President was even sworn into office, "it's hard for me to imagine a nominee that Donald Trump would choose that would get Republican support that we [Democrats] could support."

You have already committed to the far left that you will launch the first partisan filibuster in U.S. history. So you are stuck. You have to press forward, don't you, even though you know the effort is doomed to fail. You know he will be confirmed, and you know in your heart of hearts he deserves to be confirmed. That is why this is an especially sad state of affairs, and I hope my colleagues will change their minds.

At the end of the day, we are left with an exceptional nominee, with impeccable credentials and broad bipartisan support. In short, we have in Judge Gorsuch a nominee who proves without a doubt that the minority leader would lead a filibuster against anyone nominated by this President. That is unfortunate because it is not the way it has to be, but it is a situation we cannot accept.

I yield the floor.

The ACTING PRESIDENT pro tempore. The minority whip is recognized.

Mr. DURBIN. Mr. President, for 3 straight days, the Senate Republican leader has come to the floor and has given us a history of Presidential nominations to the Supreme Court, but clearly an investigation is necessary.

There must have been a hacking into his computer because he can't print the name "Merrick Garland" to include in his speech. The Senator from Kentucky, the Republican leader, has failed to mention that name because that name is the reason we are in this spot today.

When Justice Antonin Scalia passed away, President Obama exercised his constitutional responsibility to send a nominee to the Senate to fill the vacancy on the Supreme Court. For the first time in the history of the Senate—for the first time ever—this Republican-led Senate refused to give this nominee a hearing and a vote. It had never—underline the word "never"—happened before.

Was the reason that he was unqualified? Of course not; he was unanimously "well qualified," serving on the DC Circuit Court. The reason was stated clearly by Senator MCCONNELL: We are going to place a bet that the next President will be a Republican, and we will let them fill this vacancy.

When the Republicans come to the floor, as they have this morning talking about the politicization of this process, the reason we are here, when we should be celebrating the 1-year anniversary of Merrick Garland on the Supreme Court, is because they kept that position vacant so it could be filled by a Republican President. That is exactly why we are here today.

This notion that it is somehow fanciful that the choice of Neil Gorsuch was made by outside groups is belied by the very words of the President himself, who thanked the Federalist Society and the Heritage Foundation—two special interest, Republican organizations—for giving him a list of nominees for the Supreme Court. It was very open and public, and there was gratitude—political gratitude—that they came up with the name Neil Gorsuch. That is a fact.

When we look at the history that has led us to this moment, the Senator from Kentucky, the Republican leader, has to accept what is clear. In the history of the United States of America, until Senator MCCONNELL's days under President Obama, exactly 68 nominees had been filibustered. Under Senator MCCONNELL and the Republicans, 79 nominees of President Obama's were filibustered. It was an abuse of the filibuster never seen before in the history of our Nation, and it was that abuse of the filibuster and statements made that they would leave vacancies on critical courts, like the DC Court of Appeals, there forever and ever amen, that led to the decision 4 years ago to say that we would employ a change in the rules so we could finally fill these court positions—finally break the filibuster death grip—which Senator MCCONNELL brought to this Chamber in a way never before seen in history.

So the Senator from Kentucky has made history. He comes to the floor every day and tells us history. He made history in the number of filibusters he

used on this floor. He made history in denying a Presidential nominee the opportunity for a hearing and a vote, which had never—never—happened before in the history of the United States. Talk about partisanship.

When it comes to Judge Gorsuch, I read his cases. I sat through the hearings. I was in the Senate Judiciary Committee. We took a measure of the man. He was careful to avoid any question that he could when it came to his position on cases and issues and values, and that is not unusual. Supreme Court nominees do that.

So we tried to look at his cases. What do the cases that he decided reveal about the man? Two or three cases came right to the front. The first involved the sad story of a frozen truckdriver on Interstate 88 outside of Chicago in January a few years back. It was 14 degrees below zero, and the brakes on his trailer froze. He pulled to the side of the road, called his dispatcher who said: Stay with the truck. We are sending somebody. Hours passed. He was going through hypothermia. He was freezing. He called the dispatcher and said: I have to do something. He said: You either drive this disabled truck out on the interstate and take your best chances or you stick with the truck. He decided to unhitch the trailer and drive to a gas station, gas up and warm up, and come back. For that he was fired.

Seven judges looked at that case to decide whether it was fair to fire Alphonse Maddin. Six of the judges said: No, he did the right thing. One judge said: I rule for the trucking company that fired him—Neil Gorsuch, the nominee for the Supreme Court.

In the Hobby Lobby case, the decision was basic, who should decide the healthcare of thousands of workers. Well, the Green family who owns Hobby Lobby said: Our religious beliefs should dominate. We should decide family planning and birth control for our employees and their health insurance. Judge Gorsuch said: That is right because they own a corporation, and a corporation is a person, and as a corporation, they can have sincere religious beliefs. It was a choice between a corporate ownership of a family and 13,000 employees and their own personal religious rights, and Judge Gorsuch ruled for the corporation.

Kansas State University. A Kansas State University professor, Grace Hwang, after working there for many years, was diagnosed with cancer and had to go through a bone marrow transplant. She took 6 months off. Then, when she was called back to work, she called the university and said: I understand there is an influenza outbreak on campus, and I am afraid, after having just had a bone marrow transplant, to be exposed to influenza at this point. They said: You either come back and teach or you are fired. She didn't come back. They fired her. It was Judge Gorsuch who said their employer was right; Kansas State University was right.

Those are insights into the values of a man who wants a lifetime appointment to the U.S. Supreme Court, the highest Court in the land. The questions we have raised about his judgment and his values go to the heart of who we are and what we want to be. Do we want the Supreme Court to continue to be a voice for the corporations, the corporate elite, and employers? Do we want to exclude the opportunities of common people like that truckdriver, Al Maddin, to have his day in court and be treated fairly? That is what it comes down to. It is a fundamental question of fairness and justice.

I am sorry, because I love the Senate and I have spent a good part of my life here, that we have reached this moment. But it is this effort to fill the courts of this Nation with Republican appointments, even at the expense of violating Senate traditions that are over 100 years old, that has brought us to this moment.

As someone said, the nuclear option was used by Senator MCCONNELL when he stopped Merrick Garland. What we are facing today is the fallout.

Mr. President, I yield the floor.

RECOGNITION OF THE MINORITY LEADER

The ACTING PRESIDENT pro tempore. The Democratic leader is recognized.

Mr. SCHUMER. Mr. President, this past week, the American people have been exposed to a contentious debate here on the Senate floor about the nomination of Judge Gorsuch to the Supreme Court.

The American people have heard many arguments about the judge's merits and his shortcomings. They have also heard Senators litigate four decades of fierce partisan wrangling over the composition and direction of the Federal judiciary. That debate, that long debate, has informed the current one about Judge Gorsuch. Newer Members may not remember all the details. Friends of mine, like Senator HATCH, probably remember too many of them. Still, the vote on Judge Gorsuch and the decision by the majority leader to move to change the rules has roped in all of that history.

Now, how did we get here? The truth is, over the long history of partisan combat over judicial nominations, there is blame on both sides. We believe that the blame should not be shared equally between Republicans and Democrats. We believe the Republican Party has been the far more aggressive party in the escalation of tactics and in the selection of extreme judicial candidates, while Democrats have tended to select judges closer to the middle.

Keep this in mind: The last time a Republican-controlled Senate confirmed the Supreme Court nomination of a Democratic President was 1895. Nonetheless, each side comes here today in full confidence that their side is in the right. It was once said that "antagonism is never worse than when it involves two men each of whom is

convinced that he speaks for the good and rectitude." So it is today.

My Republican friends feel that they have cause to change the rules because the Democrats changed the rules on the lower court nominees in 2013. We believe we had to change the rules in 2013 because the Republicans ramped up the use of the filibuster to historic proportions, forcing more cloture votes under President Obama than during all other Presidents combined—more cloture votes under Obama than under George Washington all the way through to George Bush.

My Republican friends think they have cause to change the rules because we are about to deny cloture on the nomination of Judge Gorsuch. We believe what Republicans did to Merrick Garland was worse than a filibuster, declaring mere hours after Justice Scalia's death that they would deny the constitutional prerogative of a President with 11 months left in his term. As my colleague from Illinois noted, we did not hear two words in the long speech of Senator MCCONNELL: Merrick Garland.

We could relitigate these debates for the next hour, mentioning everything the Republican leader left out in his remarks. In fact, I am pretty sure we could argue endlessly about where, and with whom, this all started. Was it the Bork nomination or the obstruction of judges under President Clinton? Was it when Democrats blocked judges under President Bush or when Republicans blocked them under President Obama? Was it Judge Garland or Judge Gorsuch? Wherever we place the starting point of this long twilight battle over the judiciary, we are now at its end point.

These past few weeks, we Democrats have given Judge Gorsuch a fair process, something Merrick Garland was denied. My colleagues came into this debate with an open mind. I think many of them wanted to vote for Judge Gorsuch at the outset. So we met with the nominee. We consented to and participated in his hearing. But over the course of the hearing, during which Judge Gorsuch employed practiced evasions and judicial platitudes, the mood of our caucus shifted. Without so much as a hint about his judicial philosophy, without a substantive explanation of how he views crucial legal questions, all we had to go on was his record, and the more we learned about Judge Gorsuch's record, the more we didn't like.

Judge Gorsuch has shown in his rulings and in his writings to side almost instinctively with corporate interests over average Americans. He hasn't shown independence from the President, who so routinely challenges the legitimacy of the judiciary. While he has made a studious effort to portray himself as thoughtful and moderate, his record shows that, far from being the kind of mainstream candidate for the Supreme Court that could earn 60 votes, he may very well turn out to be

one of the most conservative Justices on the bench. An analysis of his record in the *New York Times* showed he would be the second most conservative Justice on the bench, and one in the *Washington Post* showed he would be the most conservative Justice, even to the right of Justice Thomas.

For these principled reasons, Judge Gorsuch was unable to earn enough Democratic support for confirmation. Because of that, the majority is about to change the Standing Rules of the Senate to allow all Supreme Court nominees to pass on a majority vote.

It doesn't have to be this way. When a nominee doesn't get enough votes for confirmation, the answer is not to change the rules; it is to change the nominee. Presidents of both parties have done so in similar situations. On several occasions, Supreme Court nominees were withdrawn because they did not have enough support; one was even withdrawn after a failed cloture vote.

So this week we have endeavored to give the majority leader and my friends on the other side of the aisle a way out of this predicament. We offered them the option to sit down with us Democrats and the President and discuss a nominee who would earn enough bipartisan support to pass the Senate, not one vetted only by far-right special interest groups.

I came here to the floor each day and made an offer to meet anywhere, anytime to discuss a new nominee. I hoped, perhaps naively, that we could discuss a way forward that both our parties could live with. Unfortunately, there were no counteroffers or discussion offered by the other side. But our offer was meant sincerely.

Democrats and Republicans are caught in such a bunker mentality on this issue that we are just talking past each other. I know that many of my Republican friends are squeamish and uncomfortable with the path we are on, as we Democrats are as well. We have reached a point where the level of distrust is so high on this issue, we can't even sit down and talk.

My Republican friends dismiss out of hand the notion that Democrats will ever vote to confirm a Republican-nominated judge, despite the fact that there were Democratic votes for both Justices Roberts and Alito to get them over 60 and despite our plangent attempts to convince them otherwise. But make no mistake about it, for all the back and forth, when history weighs what happened, the responsibility for changing the rules will fall on the Republicans' and Leader McConnell's shoulders. They have had other choices; they have chosen this one. No one forced them to act; they acted with free will. We offered them alternatives; they refused. They hardly entertained any other possibilities. It seemed that the Republican leader was, from day one, intent on changing the rules if he didn't get his way.

Frankly, this is how so many of our Republican friends have approached

the judiciary for a long time. For two decades, they have done whatever it has taken to move the bench to an ideological, far-right position. Independent experts have stated that we have a more conservative Supreme Court than we have had in a very long time. Nothing—not even the rules, not even the comity of the Senate—seems to stop them.

When the dust settles, make no mistake about it, it will have been the Republicans who changed the rules on the Supreme Court. But we take no solace that history will put it on their shoulders because the consequences for the Senate and for the future of the Supreme Court will be far-reaching. The nuclear option means the end of a long history of consensus on Supreme Court nominations. It weakens the standing of the Senate as a whole as a check on the President's ability to shape the judiciary. In a postnuclear world, if the Senate and the Presidency are in the hands of the same party, there is no incentive to even speak to the Senate minority. That is a recipe for more conflict and bad blood between the parties, not less. The cooling saucer of the Senate will get considerably hotter.

The 60-vote threshold on controversial matters is a hallmark of the Senate. The majority leader has said so himself. It fosters compromise, it fosters bipartisanship, and it makes the Senate more deliberative. Sixty votes ought to be the epigraph of the Senate. Losing that standard on the Supreme Court, a hugely controversial matter, erodes the very nature of this body.

The 60-vote bar in the Senate is the guard rail of our democracy. When our body politics is veering too far to the right or to the left, the answer is not to dismantle the guardrails and go over the cliff but to turn the wheel back toward the middle. The answer is not to undo the guardrails—the rules—it is to steer back to the middle and get a more mainstream candidate.

With respect to the Supreme Court, the 60-vote threshold operates as a guardrail against judicial extremism. When 60 votes—typically a bipartisan supermajority—are required for confirmation, nominees tend to be in the judicial mainstream. The only nominee on the Court to be confirmed with less than 60 votes was Justice Thomas, who is widely recognized to be the most ideologically extreme Supreme Court Justice. It will mean the end of any pressure on any future President to nominate someone in the mainstream.

When it comes to the courts, the guardrails are being dismantled. There will be more 5-to-4 decisions, as our ranking member of the Judiciary Committee has pointed out. There will be less faith in the Supreme Court because it will be seen as a political body, an extension of our most divisive debates. As a result, America's faith in the integrity of the Court and the trust in the rule of law will suffer.

In conclusion, I am disheartened that we are here. In the sweep of history,

the Senate has been the place where great, seemingly intractable disagreements in American politics finally give way to compromise, precisely because we have a set of rules that requires it. The story of the Senate is one of fierce debate but eventual cooperation. We tend to pull back when things get too heated because we all care about this institution and its role in our national life. In this case, the cumulative resentments from years of partisan trench warfare were too great. Instead of the Senate forcing us to change, Senators have decided to change the Senate. I worry a great deal about what that means for our future.

Twenty years ago, I think even the most partisan would say that the 60-vote threshold was basically inviolable. Today, it will be gone for all nominations, but at least not for legislation. My friend the majority leader has said he has no interest in removing the barrier for legislation.

I agree with him wholeheartedly, and I take him at his word.

I hope we can get together to do more in future months to ensure that the 60-vote threshold for legislation remains, but just as it seemed unthinkable only a few decades ago that we would change the rules for nominees, today's vote is a cautionary tale about how unbridled partisan escalation can ultimately overwhelm our basic inclination to work together and frustrate our efforts to pull back, blocking us from steering the ship of the Senate away from the rocks.

There is a reason it was dubbed the "nuclear option." It is the most extreme measure, with the most extreme consequences. While I am sure we will continue to debate what got us here, I know that in 20 or 30 or 40 years, we will sadly point to today as a turning point in the history of the Senate and the Supreme Court; a day when we irrevocably moved further away from the principles our Founders intended with these institutions, principles of bipartisanship and moderation and consensus.

Let us go no further on this path.

I yield the floor.

CLOTURE MOTION

The ACTING PRESIDENT pro tempore. Pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will state.

The senior assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the nomination of Neil M. Gorsuch, of Colorado, to be an Associate Justice of the Supreme Court of the United States.

Mitch McConnell, Mike Crapo, John Kennedy, Jerry Moran, Mike Rounds, Chuck Grassley, Jeff Flake, Todd Young, John Cornyn, Cory Gardner, Thom Tillis, Marco Rubio, John Thune, Michael B. Enzi, Orrin G. Hatch, Shelley Moore Capito, Steve Daines.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on the nomination of Neil M. Gorsuch, of Colorado, to be an Associate Justice of the Supreme Court of the United States shall be brought to a close?

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The legislative clerk called the roll.

The yeas and nays resulted—yeas 55, nays 45, as follows:

[Rollcall Vote No. 105 Ex.]

YEAS—55

Alexander Fischer Paul
Barrasso Flake Perdue
Bennet Gardner Portman
Blunt Graham Risch
Boozman Grassley Roberts
Burr Hatch Rounds
Capito Heitkamp Rubio
Cassidy Heller Sasse
Cochran Hoeven Scott
Collins Inhofe Shelby
Corker Isakson Strange
Cornyn Johnson Sullivan
Cotton Kennedy Thune
Crapo Lankford Tillis
Cruz Lee Toomey
Daines Manchin McCain
Donnelly McCain Wicker
Enzi Moran Young
Ernst Murkowski

NAYS—45

Baldwin Harris Nelson
Blumenthal Hassan Peters
Booker Heinrich Reed
Brown Hirono Sanders
Cantwell Kaine Schatz
Cardin King Schumer
Carper Klobuchar Shaheen
Casey Leahy Stabenow
Coons Markey Tester
Cortez Masto McCaskill Udall
Duckworth McConnell Van Hollen
Durbin Menendez Warner
Feinstein Merkley Warren
Franken Murphy Whitehouse
Gillibrand Murray Wyden

The PRESIDING OFFICER (Mr. SULLIVAN). On this vote, the yeas are 55, the nays are 45.

Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

MOTION TO RECONSIDER

Mr. MCCONNELL. Mr. President, I move to reconsider the vote, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to the motion.

The clerk will call the roll.

The senior assistant legislative clerk called the roll.

The result was announced—yeas 55, nays 45, as follows:

[Rollcall Vote No. 106 Ex.]

YEAS—55

Alexander Cruz Hoeven
Barrasso Daines Inhofe
Blunt Donnelly Isakson
Boozman Enzi Johnson
Burr Ernst Kennedy
Capito Fischer Lankford
Cassidy Flake Lee
Cochran Gardner Manchin
Collins Graham McCain
Corker Grassley McConnell
Cornyn Hatch Moran
Cotton Heitkamp Murkowski
Crapo Heller Paul

Perdue Sasse Tillis
Portman Scott Toomey
Risch Shelby Wicker
Roberts Strange Young
Rounds Sullivan
Rubio Thune

NAYS—45

Baldwin Gillibrand Nelson
Bennet Harris Peters
Blumenthal Hassan Reed
Booker Heinrich Sanders
Brown Hirono Schatz
Cantwell Kaine Schumer
Cardin King Shaheen
Carper Klobuchar Stabenow
Casey Leahy Tester
Coons Markey Udall
Cortez Masto McCaskill Van Hollen
Duckworth Menendez Warner
Durbin Merkley Warren
Feinstein Murphy Whitehouse
Franken Murray Wyden

The motion was agreed to.
The PRESIDING OFFICER (Mrs. FISCHER). The Democratic leader.

Mr. SCHUMER. Madam President, parliamentary inquiry.

The PRESIDING OFFICER. The Democratic leader will state the parliamentary inquiry.

Mr. SCHUMER. Madam President, is it correct that over half the nominations on which cloture motions were filed in the Senate, over the course of our entire history as a country, were filed between the beginning of President Obama's administration and November 21, 2013?

The PRESIDING OFFICER. The Secretary of the Senate's office confirms that 79 of the 147 cloture motions filed on nominations were filed between 2009 and November 21, 2013.

Mr. SCHUMER. Madam President, further parliamentary inquiry.

The PRESIDING OFFICER. The Democratic leader will state the parliamentary inquiry.

Mr. SCHUMER. Madam President, under the rules and precedents of the Senate, is the Senate prohibited from considering and voting on a nominee to the Supreme Court in the fourth year of the President's term?

The PRESIDING OFFICER. The Chair is not aware of any such prohibition in its rules or precedents.

Mr. SCHUMER. Madam President, additional parliamentary inquiry.

The PRESIDING OFFICER. The Democratic leader will state the parliamentary inquiry.

Mr. SCHUMER. Is the Chair aware of any instance in the years between the 1949 advent of routine public Supreme Court confirmation hearings and 2016 that a nominee who was not withdrawn did not receive a hearing and a vote?

The PRESIDING OFFICER. The Secretary of the Senate's office confirms that since 1949, Supreme Court nominees have routinely received public hearings. Harriet Miers, whose nomination was withdrawn, and Merrick Garland did not.

MOTION TO POSTPONE

Mr. SCHUMER. Madam President, in order to allow President Trump, Republicans, and Democrats time to come together and discuss a way forward on a Supreme Court nominee who can

meet the 60-vote threshold, I move to postpone the nomination to 3 p.m. on Monday, April 24, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the motion.

The clerk will call the roll.

The legislative clerk called the roll.

The result was announced—yeas 48, nays 52, as follows:

[Rollcall Vote No. 107 Ex.]

YEAS—48

Baldwin Gillibrand Murray
Bennet Harris Nelson
Blumenthal Hassan Peters
Booker Heinrich Reed
Brown Heitkamp Sanders
Cantwell Hirono Schatz
Cardin Kaine Schumer
Carper King Shaheen
Casey Klobuchar Stabenow
Coons Leahy Tester
Cortez Masto Manchin Udall
Donnelly Markey Van Hollen
Duckworth McCaskill Warner
Durbin Menendez Warren
Feinstein Merkley Whitehouse
Franken Murphy Wyden

NAYS—52

Alexander Flake Perdue
Barrasso Gardner Portman
Blunt Graham Risch
Boozman Grassley Roberts
Burr Hatch Rounds
Capito Heller Rubio
Cassidy Hoeven Sasse
Cochran Inhofe Scott
Collins Isakson Shelby
Corker Johnson Strange
Cornyn Kennedy Sullivan
Cotton Lankford Thune
Crapo Lee Tillis
Cruz McCain Toomey
Daines McConnell Wicker
Enzi Moran Young
Ernst Murkowski
Fischer Paul

The motion was rejected.
The PRESIDING OFFICER. The majority leader.

Mr. MCCONNELL. Madam President, our Democratic colleagues have done something today that is unprecedented in the history of the Senate. Unfortunately, it has brought us to this point. We need to restore the norms and traditions of the Senate and get past this unprecedented partisan filibuster.

Therefore, I raise a point of order that the vote on cloture, under the precedent set on November 21, 2013, is a majority vote for all nominations.

The PRESIDING OFFICER. The precedent of November 21, 2013, did not apply to nominations to the Supreme Court. Those nominations are considered under plain language of rule XXII.

The point of order is not sustained.

APPEALING RULING OF THE CHAIR

Mr. MCCONNELL. Madam President, I appeal the ruling of the Chair.

The PRESIDING OFFICER. The Democratic leader.

Mr. SCHUMER. Madam President, parliamentary inquiry.

The PRESIDING OFFICER. The Democratic leader will state the parliamentary inquiry.

Mr. SCHUMER. Madam President, did the Senate precedent established on November 21, 2013, on how nominations

are considered in the Senate change the cloture threshold for nominations to the Supreme Court?

The PRESIDING OFFICER. The consideration of nominees to the Supreme Court of the United States was unaffected by the precedent of November 21, 2013, and is as under rule XXII.

Mr. SCHUMER. Madam President, a second parliamentary inquiry.

The PRESIDING OFFICER. The Democratic leader will state the parliamentary inquiry.

Mr. SCHUMER. Madam President, in the history of the Senate, have there been any instances in which a nomination to the Supreme Court was withdrawn after cloture was not invoked on the nomination?

The PRESIDING OFFICER. The Secretary of the Senate's office has confirmed that such a withdrawal has taken place.

Mr. SCHUMER. Thank you, Madam President.

Madam President, a parliamentary inquiry.

The PRESIDING OFFICER. The Democratic leader will state the parliamentary inquiry.

Mr. SCHUMER. Madam President, of the last 26 nominations of Justices confirmed to the Supreme Court, going back to 1954, how many were confirmed without a rollcall vote or received more than 60 votes in support of their nomination either on cloture or on confirmation?

The PRESIDING OFFICER. The Secretary of the Senate's office confirms that 25 of 26 nominees were confirmed in one or another of the manner so described.

MOTION TO ADJOURN

Mr. SCHUMER. Madam President, I move to adjourn until 5 p.m., and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the motion.

The clerk will call the roll.

The senior assistant legislative clerk called the roll.

The result was announced—yeas 48, nays 52, as follows:

[Rollcall Vote No. 108 Ex.]

YEAS—48

Baldwin	Gillibrand	Murray
Bennet	Harris	Nelson
Blumenthal	Hassan	Peters
Booker	Heinrich	Reed
Brown	Heitkamp	Sanders
Cantwell	Hirono	Schatz
Cardin	Kaine	Schumer
Carper	King	Shaheen
Casey	Klobuchar	Stabenow
Coons	Leahy	Tester
Cortez Masto	Manchin	Udall
Donnelly	Markey	Van Hollen
Duckworth	McCaskill	Warner
Durbin	Menendez	Warren
Feinstein	Merkley	Whitehouse
Franken	Murphy	Wyden

NAYS—52

Alexander	Burr	Collins
Barrasso	Capito	Corker
Blunt	Cassidy	Cornyn
Boozman	Cochran	Cotton

Crapo	Isakson	Rounds
Cruz	Johnson	Rubio
Daines	Kennedy	Sasse
Enzi	Lankford	Scott
Ernst	Lee	Shelby
Fischer	McCain	Strange
Flake	McConnell	Sullivan
Gardner	Moran	Thune
Graham	Murkowski	Tillis
Grassley	Paul	Toomey
Hatch	Perdue	Wicker
Heller	Portman	Young
Hoeven	Risch	
Inhofe	Roberts	

The motion was rejected.

APPEALING RULING OF THE CHAIR

The PRESIDENT pro tempore. The question is, Shall the decision of the Chair stand as the judgment of the Senate?

Mr. MCCONNELL. Mr. President, I ask for the yeas and nays.

The PRESIDENT pro tempore. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll.

The result was announced—yeas 48, nays 52, as follows:

[Rollcall Vote No. 109 Ex.]

YEAS—48

Baldwin	Gillibrand	Murray
Bennet	Harris	Nelson
Blumenthal	Hassan	Peters
Booker	Heinrich	Reed
Brown	Heitkamp	Sanders
Cantwell	Hirono	Schatz
Cardin	Kaine	Schumer
Carper	King	Shaheen
Casey	Klobuchar	Stabenow
Coons	Leahy	Tester
Cortez Masto	Manchin	Udall
Donnelly	Markey	Van Hollen
Duckworth	McCaskill	Warner
Durbin	Menendez	Warren
Feinstein	Merkley	Whitehouse
Franken	Murphy	Wyden

NAYS—52

Alexander	Flake	Perdue
Barrasso	Gardner	Portman
Blunt	Graham	Risch
Boozman	Grassley	Roberts
Burr	Hatch	Rounds
Capito	Heller	Rubio
Cassidy	Hoeven	Sasse
Cochran	Inhofe	Scott
Collins	Isakson	Shelby
Corker	Johnson	Strange
Cornyn	Kennedy	Sullivan
Cotton	Lankford	Thune
Crapo	Lee	Tillis
Cruz	McCain	Toomey
Daines	McConnell	Wicker
Enzi	Moran	Young
Ernst	Murkowski	
Fischer	Paul	

The PRESIDENT pro tempore. The decision of the Chair does not stand as the judgment of the Senate.

CLOTURE MOTION

Pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will state.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the nomination of Neil M. Gorsuch, of Colorado, to be an Associate Justice of the Supreme Court of the United States.

Mitch McConnell, Mike Crapo, John Kennedy, Jerry Moran, Mike Rounds, Chuck Grassley, Jeff Flake, Todd Young, John Cornyn, Cory Gardner,

Thom Tillis, Marco Rubio, John Thune, Michael B. Enzi, Orrin G. Hatch, Shelley Moore Capito, Steve Daines.

The PRESIDENT pro tempore. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on the nomination of Neil M. Gorsuch, of Colorado, to be an Associate Justice of the Supreme Court of the United States shall be brought to a close, upon reconsideration?

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The senior assistant legislative clerk called the roll.

The yeas and nays resulted—yeas 55, nays 45, as follows:

[Rollcall Vote No. 110 Ex.]

YEAS—55

Alexander	Flake	Paul
Barrasso	Gardner	Perdue
Blunt	Graham	Portman
Boozman	Grassley	Risch
Burr	Hatch	Roberts
Capito	Heitkamp	Rounds
Cassidy	Heller	Rubio
Cochran	Hoeven	Sasse
Collins	Inhofe	Scott
Corker	Isakson	Shelby
Cornyn	Johnson	Strange
Cotton	Kennedy	Sullivan
Crapo	Lankford	Thune
Cruz	Lee	Tillis
Daines	Manchin	Toomey
Donnelly	McCain	Wicker
Enzi	McConnell	Young
Ernst	Moran	
Fischer	Murkowski	

NAYS—45

Baldwin	Gillibrand	Nelson
Bennet	Harris	Peters
Blumenthal	Hassan	Reed
Booker	Heinrich	Sanders
Brown	Hirono	Schatz
Cantwell	Kaine	Schumer
Cardin	King	Shaheen
Carper	Klobuchar	Stabenow
Casey	Leahy	Tester
Coons	Markey	Udall
Cortez Masto	McCaskill	Van Hollen
Duckworth	Menendez	Warner
Durbin	Merkley	Warren
Feinstein	Murphy	Whitehouse
Franken	Murray	Wyden

The PRESIDENT pro tempore. On this vote, the yeas are 55, the nays are 45.

Upon reconsideration, the motion is agreed to.

The PRESIDING OFFICER (Mrs. FISCHER). The majority whip.

Mr. CORNYN. Madam President, the Senate has just restored itself to an almost unbroken tradition of never filibustering judges.

We have actually restored the status quo before the administration of President George W. Bush. It was during that administration when some of our friends across the aisle, along with some of their liberal law professor allies, dreamed up a way of blocking President George W. Bush's judicial nominees, and that was by suggesting that 60 votes was really the threshold for confirming judges, rather than the constitutional requirement of a majority vote.

It has been a long journey back to the normal functioning of the United States Senate, and it is amazing that it

has taken a nominee like Judge Gorsuch to bring us back to where we were back around 2001.

We have been debating and discussing this nominee for a long time now, and the opponents of Judge Gorsuch have tried time and time again to raise objections to this outstanding nominee—a nomination that no one in the Senate opposed 10 years ago when he was confirmed to a position on the Tenth Circuit Court of Appeals. They claimed he wasn't mainstream enough. They said this was a seat that really should have gone to Merrick Garland. They have even accused him of plagiarism. All of these arguments have no merit whatsoever and really represent desperate attempts to try to block this outstanding nominee. Their claims were simply baseless, and that much became even clearer as folks from across the political spectrum and newspapers from across the country urged our Democratic colleagues to drop their pointless filibuster and allow an up-or-down vote.

What also came to light is the type of man Judge Gorsuch is—a man of integrity, a man of strong independence; in other words, exactly the kind of person you would want to serve on the Supreme Court.

They even claimed that Judge Gorsuch went out of his way to side with the big guy against the little guy, ignoring the fact that during his 10 years on the Tenth Circuit Court of Appeals, where these judges sit on multi-judge panels, he was part of the majority decision 99 percent of the time, and 97 percent of those cases were unanimous in multi-judge panel decisions on the Tenth Circuit Court of Appeals—hardly radical. It actually is a remarkable record of a consensus-builder, someone who uses his great intellect, his education, and his training to build consensus on a multi-judge court—exactly the kinds of skills that are going to be so important for him to use on the Supreme Court of the United States.

As I said, ultimately today was the culmination of years of obstruction by our Democratic colleagues when it came to judicial nominees.

When I came to the Senate in 2003, the Democratic strategy was well underway to obstruct lower court judicial nominees from the George W. Bush administration.

Later, in 2013, when there was a Democrat in the White House and it suited them to do so, they decided to do away with the same tool they used and went nuclear, lowering the threshold from 60 to 51 majority vote for circuit court nominees and district court nominees.

It took a Gang of 14—7 Democrats and 7 Republicans—to try to work through the differences back around the 2006 timeframe, which resulted in half of President George W. Bush's nominees to the circuit court getting confirmed and half not being confirmed. The standard was adopted by the so-called Gang of 14 that only

under extraordinary circumstances would the filibuster be used, but that agreement expired in 2013.

Well, the minority leader and his colleagues like to say that back then it was necessary to restore a majority vote. He did that just last Sunday. He said: "Our Republican colleagues had been holding back on just about all of so many lower-court judges, including the very important DC circuit" court, that they were forced to engage in the nuclear option back in 2013. But the facts really belie what the Democratic leader claimed in terms of the necessity of going nuclear back then. In fact, prior to 2013, the Senate had confirmed more than 200 of President Obama's judicial nominees and it rejected just 2—more than 200 confirmed, 2 rejected. That hardly rises to a level of extreme obstruction or partisanship. That is a 99-percent confirmation rate for President Obama.

So let's make it clear just how this began. It started with Democratic obstruction under a Republican administration in 2001, and it is been continuing now under a new Republican administration in 2017. So we really have come full circle to restore the status quo before 2001, when our Democratic friends started down this path.

President Trump has, by all accounts, selected a judge with impeccable qualifications and the highest integrity. Not one of our Democratic colleagues has been able to offer a convincing argument against him, and that is why several of our Democratic colleagues have crossed the aisle to support his nomination, and I thank them for that. I think more would join if they didn't fear retribution from the radical elements in their own political party.

So today Republicans in the Chamber are following through on what we said we would do. We said we would let the American people decide who would select the next Supreme Court nominee and then we would vote to confirm that nominee. The American people, on November 8, selected President Trump. President Trump nominated Judge Neil Gorsuch. And tomorrow we will confirm that nominee and deliver on that promise.

I yield the floor.

The PRESIDING OFFICER (Mr. SASSE). The Senator from Colorado.

Mr. GARDNER. Mr. President, over the next several hours, we will have the final opportunity to debate the confirmation of Supreme Court Justice nominee Neil Gorsuch. This has been a lengthy process this week, as we have heard from Senators on both sides of the aisle who have come to the floor and talked about their support or their opposition to Judge Gorsuch's nomination to the Supreme Court.

I have had several opportunities over the past weeks and months to personally visit and speak with Judge Gorsuch, whom I have known from Colorado, the opportunity to listen to a number of my colleagues address the

Chamber, to watch the Senate confirmation hearings in the Judiciary Committee—the day after day, it seemed, that that confirmation hearing proceeded—and of course we have gotten to know Judge Gorsuch over the past several years. We are proud that we have a Coloradan nominated to the Nation's highest Court and that he would be the second Coloradan to serve on the Supreme Court, the other one being Justice Byron White. Justice Byron White also led the NFL in rushing one year, and while Gorsuch will never live up to that part of the Supreme Court legacy for Coloradans, we know that Judge Gorsuch is an avid outdoorsman, a fly-fisher, expert-level skier, and somebody who understands public lands. I think having that kind of expertise and experience on our Nation's highest Court will serve this country well.

I think it is important to understand that his roots represent the roots that built the West. He is a fourth-generation Coloradan, somebody who hails from a State that is independent, that takes great pride in its libertarian streak, its love of the outdoors, recreational opportunities, understanding agriculture, energy. It is a State that really does have it all. From the Eastern Plains to the Western Slope, there is great beauty in our State.

Neil Gorsuch understands that. He served on a court, the Tenth Circuit Court, that is housed in Denver and represents 20 percent of the landmass of our State. Judge Gorsuch's family, as I mentioned, really does show the grit and determination of those who built the West. His grandfather was someone who worked in Union Station, someone who grew up driving trolleys back in the time when Denver was a trolley town. His other grandfather, of course, was a physician, and both were experts in their fields. One grandfather helped found a law firm, Gorsuch Kirgis, a very prestigious firm in Denver.

But it is Judge Gorsuch's experience, his high qualifications of academics that he brings to the Court, having received his degrees from Columbia, Oxford, Harvard, as I mentioned previously—the most important academic experience being the University of Colorado, where I think he spent at least some time in the summer attending, and also teaching a course as a professor at my alma mater, the University of Colorado School of Law. This has all helped him build what he is today; that is, a very mainstream jurist, an incredibly exceptional legal mind, one of the brightest jurists this country has to offer, someone who is known as a feeder judge, providing clerks to the Supreme Court, and who has the respect of the Colorado legal community.

I want to talk about some of these things because I have come to the floor multiple times, and I have talked about his qualifications. I have talked about the people who know him best,

not the people in Washington, DC, but the people who have practiced in front of his court in Denver, the people who know him personally out in Colorado.

Here is what those individuals have said. They believe that Judge Gorsuch deserves an up-or-down vote. Bill Ritter, former Democratic Governor for the State of Colorado, believes that Judge Gorsuch deserves an up-or-down vote. Now we will have it. We have invoked cloture. We will have a final debate on Friday night and a final vote on whether or not he should be confirmed.

People like Steve Farber, the cochair of the Democratic National Convention in 2008 in Colorado, have talked about the need to confirm Judge Gorsuch.

So the debate that we enter now is not one of whether he will have an up-or-down vote. He is going to have an up-or-down vote. But it is whether we should confirm him, actually give him the “yes” vote.

I urge my colleagues on both sides of the aisle to vote in favor of Judge Gorsuch’s confirmation. Some of the arguments that I have heard over the past several weeks on the floor, listening to some of the arguments on the floor—it is quite interesting to me that some of the arguments we hear seem to be at odds with each other.

Presiding over the Senate yesterday, I heard people talk about how they don’t think Neil Gorsuch will stand up to the President. They are concerned that he will not express the kind of independence the judiciary commands, that he will not be someone to stand up to the President of the United States. They often cite some of the comments or tweets that the President has made and then fail to mention the fact, though, that at the very time one of those tweets was mentioned, questioning the judiciary, Judge Gorsuch, in a meeting with one of our Democratic colleagues, actually had objections. He said he objected to the statements the President had made, expressing his independence, talking about how what he had heard was demoralizing—very much showing independence.

But the second argument you often hear, for those who have decided to oppose this mainstream jurist, is that they are afraid he won’t show enough independence from the President, and then they say they are concerned about his language as it relates to the Chevron doctrine—whether Judge Gorsuch is going to be willing to overturn the Chevron doctrine.

I find those two arguments kind of interesting because, on one hand, you have an argument saying we are afraid he is not going to stand up to the President of the United States, and then, on the other hand, you have an argument saying that we are afraid he is not going to stand up to the administrative state of the President of the United States—because that is what the Chevron doctrine does; it gives great deference to the regulatory body, to the administrative state.

Here is another irony. The Administrator of the EPA in 1984 was Neil Gorsuch’s mother, Anne Burford—the Administrator of the EPA. She was the first woman to serve as EPA Administrator who was the subject of the Chevron doctrine.

Not only is he willing to stand up to the President and the administrative state of the President, but he is willing to overturn a case that was a subject that his own mother was a subject to.

I have also heard comments from colleagues on the aisle that Judge Gorsuch is not a mainstream jurist. This argument, I think, can be dealt with in a couple of ways because there are some pretty good statistics to refute these arguments.

Ninety-seven. Ninety-seven percent is the number of times in the 2,700 opinions that he was a part of—97 percent represents the times that the decisions were unanimous. Judge Gorsuch did not serve only with conservative-appointed judges. He didn’t serve with only Republican nominees. Judge Gorsuch served with Republican and Democrat nominees, appointments approved by the Senate. In 97 percent of the cases, Judge Gorsuch ruled—decided—in unanimous decisions.

The other statistic that I think is even more revealing, of course, as to whether Judge Gorsuch is a mainstream judge is 99 percent. Ninety-nine percent is the amount of times that Judge Gorsuch ruled with the majority of the court; he made decisions—opinions—with the majority of the court.

I heard a comment yesterday from a colleague who said that Judge Gorsuch was never intended to be a mainstream nominee. If Judge Gorsuch was never intended to be a mainstream nominee, do you think we would see a judge before us that has support from the 2008 Democratic National Convention Chairman? If Judge Gorsuch was never intended to be mainstream nominee, do you think we would have decisions by the Democratic Governor of Colorado, former Democratic Governor of Colorado, to demand or ask for an up-or-down vote? If Judge Gorsuch was never intended to be a mainstream nominee, do you think that the President would have nominated somebody who agreed 99 percent of the time with his colleagues on the bench, colleagues who came from appointments given by Republican Presidents and Democrat Presidents?

The arguments over whether Judge Gorsuch is going to be with the little guy or he spends too much time defending the big guy—well, let me again go back to the people who know Judge Gorsuch the best, who have practiced in front of his court. Here is a statement from a Denver attorney and Democrat on representing underdogs before Judge Gorsuch. This is from the Denver Post: “He issued a decision that most certainly focused on the little guy.”

Yet the story from the opposition here, out of 2,700 cases, is: Oh, my gosh,

this is a person who has never defended the little guy. Well, here is somebody who has practiced in front of his court who absolutely believes he focused on the little guy.

So we have a judge who agrees with the majority of the court most of the time—99 percent of the time; 97 percent of the time it is a unanimous decision, and lawyers practicing in front of him believe that he represents the little guy. We have heard from leading Democrat voices in Colorado who support him. The ABA gave him its highest qualification, rankings, ratings. They believe it.

Then the question becomes, What are we looking for in a Justice? Maybe that is the biggest argument here. Maybe the argument should be about what are we looking for in terms of philosophy, ideology?

Well, we have seen his ideology and his philosophy in what he has testified before the Judiciary Committee, what he has stated in the past through writings. He is someone who is going to follow the law. He is someone who is going to take a decision where the law leads him, not somebody who is going to take an opinion or decision where his personal beliefs or politics take him. That is the kind of judge we want on the highest Court. That is the kind of Justice we want—someone who is not going to decide a policy preference from the bench of the Supreme Court, not somebody who is going to take a look at a public opinion poll or someone who is going to take a look at a focus group and make a decision but someone who will rule by the law.

I have heard colleagues come to the floor and talk about their experiences where they were given decisions to read without being given the law. They were given just the facts of the case. They said: How would you have decided this case? Then they showed him the actual ruling, the actual holding in the case.

Some people believe, well, that is not the way we would have decided because we don’t feel that was a good outcome; we don’t feel that was the right policy.

It is not the job of a Justice to put their thumb on the scale of policy; it is the job of a Justice to be a guardian of the Constitution, to defend the Constitution, to follow the law and to decide cases based on the law not on feelings, politics, polls, public opinion.

We have a judge, nominated for Justice, who has said that a judge who agrees with every opinion that they have issued is probably a bad judge. He is paraphrasing other judges and Justices throughout our history. It is because he knows it is not his job to issue opinions or decisions or to decide a case based on being a Republican or Democrat. It is not his job to decide a case based on whether he was nominated by President Trump or President Obama or President Bush. It is his job to look at the law, to leave policy decisions to the legislative branch. That is what we have to do. That is what Judge Gorsuch has said he will do.

So these arguments just don't hold water. It doesn't hold water that he is not looking out for the interests of our citizens, because here clearly he is. Democrats who have practiced before him in court have said as much. The argument that he will not stand up to Trump administration—we know it; he said in front of our Democratic colleagues that he would stand up to the President.

He has said that he rejected attacks on the Court. We also know that when it comes to the Chevron doctrine, which seems to be sacred ground now, that there are these ironic arguments taking place, because you want someone who will stand up to the administration, but then you are concerned that he is interested in or concerned that we have taken the Chevron deference—the doctrine of Chevron deference too far.

Now which is it? Do you want a judge who is going to stand up to the administration or do you want a judge who is not going to stand up to the administration? It sounds as though the arguments are trying to have it both ways.

The bottom line is that we know Judge Gorsuch to be a person who is eminently qualified, a mainstream jurist who has the respect and admiration of judges around the country, who has the admiration and respect of fellow jurists and legal professionals throughout Colorado, and we know that he will make this country proud. He is certainly going to make Colorado proud as he receives his confirmation to the Nation's highest Court.

I hope, as we spend these hours debating, that we can realize this Senate should operate in a bipartisan fashion, that we should confirm judges who are clearly mainstream.

I yield the floor.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. COONS. Mr. President, today is a day when many Senators are speaking about Judge Gorsuch and about the Supreme Court. As I think many know, in the last week, in the Judiciary Committee hearings and in other settings, I have announced that I will vote against Judge Gorsuch on the final vote tomorrow. I believe I have made my reasons for my opposition clear. I have thoroughly reviewed and considered Judge Gorsuch's record and where he fits within American jurisprudence, and I have no second thoughts about my decision.

As I look around at what has just happened on this Senate floor, I am sick with regret. So I rise now to speak in defense of the Senate.

The Senate has been hailed by many, including our nominee to the Supreme Court, Judge Gorsuch, as the world's greatest deliberative body. Yet today I think one more blow has been struck at that title and reality.

The late Senator Robert Byrd, who served in this Chamber for 51 years, would famously remind new Senators that “in war and in peace, [the Senate]

has been the sure refuge and protector of the rights of the states and of a political minority.”

Of course, although Senator Byrd was the longest serving Senator, as a Delawarean, I grew up in the tradition of Senator Joe Biden, a 36-year veteran of this body who left its ranks only to ascend to the Vice Presidency and spend 8 more years as its Presiding Officer.

Since I have had the honor of assuming Senator Biden's former seat, I have committed to following his example of working across the aisle, through Republican and Democratic administrations, with whoever is willing to roll up their sleeves and get to work for the American people. I know my colleagues share in this foundational commitment to serve our constituents and country.

As I look around at what just happened on this floor, with too little discussion of its lasting consequences and too little visible concern or even emotion, I must ask the question: Where are we headed?

You can't see it, but around this Chamber are white marble statues, busts of former Presiding Officers, of former Vice Presidents of the United States. They are in the halls outside this Chamber. They are at the upper level of this Chamber, in the Galleries. All the former Vice Presidents are memorialized in white marble busts.

Former Vice President Adlai Stevenson, the grandfather of the Illinois Governor who ran for President in the middle of the 20th century—former Vice President Adlai Stevenson, when he delivered his farewell address to the Senate on his last day in office as the Presiding Officer of the Senate in 1897, said:

It must not be forgotten that the rules governing this body are founded deep in human experience; that they are the result of centuries of tireless effort . . . to conserve, to render stable and secure, the rights and liberties which have been achieved by conflict.

By its rules, the Senate wisely fixes the limits to its own power. Of those who clamor against the Senate and its mode of procedure, it may be truly said, “They know not what they do.”

In this Chamber alone are preserved, without restraint, two essentials of wise legislation and of good government—the right of amendment and of debate.

It was exactly that right, those rules that were assaulted today, but they have been under assault for a long time.

In recent days, I have reached out to my Republican and Democratic colleagues, trying to see if there was some way we could reach a reliable consensus agreement to safeguard these institutional values and avoid the events of today and tomorrow.

I told my colleagues that I was not ready to end debate on Judge Gorsuch's nomination until we could chart a course for the Senate to move forward on a bipartisan basis when considering future Supreme Court nominations.

I think for us to get to any constructive conversation about moving this

Senate forward requires owning the role that all of us—each of us has played over our time here, whether a few years or decades, in bringing us to this point.

I, for one, will say I have come over time to regret joining my Democratic colleagues in changing the rules for lower court nominations and confirmations in 2013. Of course, I could give an entire speech on the obstruction that led us to that point. I could document the Republican and Democratic deeds and misdeeds of the last Congress and the Congress before that and the decade before that.

As my more seasoned and senior colleagues demonstrated in the Judiciary Committee deliberations, those who have served here longest know best the record of grievance of Congresses in decades past.

I anticipate that many of my colleagues will come to regret the decisions and actions taken today in this Congress and in Congresses ahead. Instead of focusing on that shared regret, I want to work together not to continue to tear down the traditions and rules of the Senate but to find ways to strengthen and fortify and sustain them.

I worked to try to find a solution to get past this moment on the brink. I wanted to ensure our next Supreme Court nominee would be the product of bipartisan consultation and consensus, as was safeguarded for years by the potential of the 60-vote margin. I wanted certainty that the voice of the minority would still be heard when the next vacancies arise. Among many, this effort to forge consensus was met with hopelessness or even hostility.

Back home, thousands of constituents called my office, urging a vote against Gorsuch and urging I support the filibuster. Some even urged me to stop talking about any sort of deal. In fact, back home in Delaware, some national groups ran ads against me when there was even a rumor of a hint that there might be conversations about avoiding this outcome.

There were even Senators on both sides of the aisle who told me that an agreement was impossible. They said any agreement is based on trust, and we simply do not trust each other anymore.

Given the events of the last years, the disrespect and mistreatment of Merrick Garland, the course of the confirmation of Neil Gorsuch, I can understand how there is a raw wound right now in this Chamber, where each side feels the other has mistreated a good and honorable and capable nominee for the Supreme Court.

Let me say my last point again. Senators on both sides told me we could not find a durable compromise because we do not trust each other anymore. If we cannot trust each other anymore, then are there any big problems facing this country which we can address and solve?

This morning, I gave an address at the Brookings Institution about the

threat Russia poses to our democracy, to our allies, to our national security, and to the endurance of our Republic. If that threat is not something that deserves determined, bipartisan effort, I don't know what is.

There are many threats to our future I could lay out today, but let me simply emphasize that in the absence of trust, this body cannot play its intended constitutional role, and without trust, we will not rebuild what is necessary to sustain this body.

Everyone likes to point the finger at the other side as the source of this distrust. The reality is, there is abundant blame to go around.

Folks like to remember the good old days when Justice Scalia was confirmed by this body 98 to 0, when Justice Ginsburg was confirmed 96 to 3, but if we look at our five most recent nominees to the Supreme Court who got votes, you can see a clear trend: Nine Senators, all Republican, voted against Justice Breyer. Then 22 Senators voted against Justice Roberts. Then 42 Senators, mostly Democrats, voted against Justice Alito. For President Obama's nominees, Justices Sotomayor and Kagan, more than 30 Republican Senators opposed each one. Only nine Republican Senators voted for Sotomayor, and only five Republicans voted for Justice Kagan. We have been on this trajectory—both parties—for some time.

Then, of course, we have Chief Judge Merrick Garland, the first Supreme Court nominee in American history to be denied a hearing and a vote, and we have Judge Gorsuch, the first to be the object of a partisan filibuster on this floor.

We did not get here overnight. We have become increasingly polarized. How can we work together to repair this lack of trust so we can face the very real challenges that face our Nation?

My own attempts of recent days—although I was blessed to be joined by Senators of good will and good faith and great skill in both parties—were ultimately not successful. I wish I had engaged sooner and more forcefully. I wish I had been clearer with my colleagues how determined I was to seek a result, but this doesn't mean I am disappointed that I tried, and it also doesn't mean I am going to stop. I am not going to stop trying to fix the damage that has been done, trying to find a better pathway forward.

I ask my colleagues: If you know what you have done today, then what will we do tomorrow? How could we avoid the further deepening, corrosive partisanship in this body? What past mistakes can each of us own up to? What steps can we take to mend these old wounds? What more can we do to move forward together?

We sometimes talk about the dysfunction of this body as if it is external to us, as if we bear no accountability for it, but at the end of the day, here we are: 100 men and women sent to rep-

resent 50 States of this Republic and 325 million people. In many ways, we have all let them down today.

I can tell you what I am going to do tomorrow. I commit to working with anyone who wants to join me to try to strengthen and save the rules and traditions of this body and its effectiveness as an absolutely essential part of the constitutional order for which so many have fought and died. It is what all of our predecessors would have wanted.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Georgia.

THANKING SENATORS AND STAFF

Mr. ISAKSON. Mr. President, I will be brief. I also want to make sure I don't take advantage of the personal privilege I have as a United States Senator, but I am going to anyway.

I want Senator COONS from Delaware to pause for just a second.

I want to thank every Member of the Senate, Republican and Democrat, and the staff of the Senate for the many kindnesses they have extended to me in the last 4 months during my injury and my recovery. I am on the way back home, in large measure, because of the support of the Members of the United States Senate. I am very grateful for that and the staff who have allowed that to take place. I say thank you very much.

Notwithstanding what your politics are or what your partisanship is or anything else, this is a great institution and a great body because it is made up of great people.

To that end, my friend Senator COONS from Delaware made an excellent speech, which I am going to adopt as my speech, since I don't have the strength to stand as long as I would like to, to talk about an issue so important. We do need to open all our minds and our hearts in the days ahead to make sure we know what direction we are going as Members of the Senate, regardless of our party and notwithstanding our partisanship.

Neil Gorsuch, from everything I have seen—and I probably have seen more than anybody because I have been watching it on TV while I have been recovering. You guys have had to do it in debate. I have seen the real thing.

His record, his testimony, the way he presented himself, the way Senator GRASSLEY and Senator FEINSTEIN allowed that hearing to go forth, I know we have a good man as a nominee to be a Supreme Court Justice of the United States, but the issues and the divide on the cloture, on a simple majority, and the rule change of 2013, and what has happened in the past, now has us in a position where we slowly but surely are moving to be a body that is another House of Representatives, not the United States Senate.

The majority rule is a great philosophy. The majority winning is always a great philosophy, but I used to have a teacher who taught me. She said: If four equals the majority, three equals

zero, but you always need to listen to the other three because sometimes they may be right. I think that is a good lesson for us today, and that was a grammar school teacher.

If there are seven voting members, four does equal the majority, but three doesn't equal zero because the rest still count.

As we move forward in the days ahead and judge other issues, whether they be partisan issues in terms of regular debate and general legislation, whether it be issues over the confirmation of judges or Secretaries or whatever it may be, let's be thoughtful, so that, not as a criticism of the House, but as a compliment to our Founding Fathers, we don't become a second House and later a unicameral body, majority rule and mob rule, and eventually waive rules, where passions overrule common sense and all of a sudden you find yourself digging your way out of a hole that you have created, rather than building the dreams you have always wanted to do.

I commend the leadership of both parties for exercising their political and partisan desires. I commend each Member for being here to take part in this debate today and being a part of it. That is what America is all about.

Somewhere down the line, there is going to be something that is going to happen that is going to cause a resurrection of the debate that we have had today and another road to cross on which way we go in the future. The more we move away from a Senate that is a deliberative body, that is a dignified body, to a body that makes sure it knows where it is going before it moves forward, we won't be better off. If we move toward a body that is a rubberstamp of the House or a unicameral government of legislation, we will never be the United States of America our Founding Fathers intended us to be. That is what I believe, and that is what I think the end of this will be.

To all our Members, I compliment them on everything they have had to say and have done.

Judge Gorsuch, I am so proud to have someone like that who will hopefully serve on the bench of the U.S. Supreme Court with distinction.

To all of us, our job is not finished. I look forward to being here and being a part of it.

I yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. WHITEHOUSE. Mr. President, I thank the Senator for yielding to me. I wish to say how nice it is to see the Senator from Georgia back here with us. It means a lot to all of us to have Senator ISAKSON back on the Senate floor.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Mr. President, I don't wish to turn this into a bouquet-tossing process, but I think it is very clear that Senators on both sides of the aisle are very, very pleased to see our friend

from Georgia back today. We are wishing him health and Godspeed. We look forward to his full and complete recovery. We are so glad to have him here.

I am also pleased that Senator COONS is on the floor, because I think it would be fair to say that Members on both sides of the aisle who have watched how Senator COONS has conducted himself throughout this extraordinarily contentious debate would say that Senator COONS makes all of us very, very proud.

It is no secret that he has tried repeatedly to bring both sides together, and he and I have talked often about this. I think there are going to be opportunities for finding common ground on important legislation, breaking out of this gridlock that we all understand is not what the Senate is all about and forging toward more mainstream topics. When we get there, to a great extent, it will be because of the thoughtful comments of my friend from Delaware.

Mr. President, the Senate is going to act on one of its most sacred and important constitutional duties, the advice and consent on the nomination of the next Associate Justice of the Supreme Court.

The long tails of these Supreme Court debates stretch through generations and shape our government deep into the future. The choice the Senate makes in this extraordinary debate will have a profound impact, from the broadest governing statutes down to the most specific particulars of the law that affect our daily lives.

There are several issues that are particularly relevant to this nominee that have gotten short shrift. I am talking about secret law, and warrantless wiretapping, death with dignity. I intend to discuss these issues shortly.

I would like to begin, however, by stating that whether one supports or opposes Judge Gorsuch, our job would have been easier had the judge been more forthcoming in his testimony before the Judiciary Committee. He chose, however, not to do so. So what the Senate has to go by instead is the judge's lengthy record of adhering to a rigid and far-right philosophy that is packaged in the branding of so-called originalism.

The originalist says that our rights as a people are contained within and linked to our founding documents. But that viewpoint is plainly incorrect. In practice, originalism becomes a cover for protecting the fortunate over the poor, corporations over individuals, and the powerful over virtually every other American. It is a political agenda that masquerades as philosophy, an agenda whose sole intent is reserving power for those in power and limiting the recognition of the rights reserved to the people.

Far from endorsing such a creed, our Constitution is actually a document of constraints, constraints that bind the government, not the people. The full scope of our fundamental rights as a

people, as Justice M. Harlan once wrote, "cannot be found in or limited by the precise terms of the specific guarantees elsewhere provided in the Constitution." The exact concept is written into the Bill of Rights itself. The Ninth Amendment says: "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

James Madison, the founder so significant that Americans are said to live in a "Madisonian Democracy," was outspoken about the dangers of future readers or interpreters thinking that the fundamental rights contemplated by the Framers were limited to the Constitution or Bill of Rights.

So our founding document and its Framers made clear that rights were not enumerated by the Constitution; they were retained by the people. Individual liberties, from personal privacy to a woman's right to vote, the choice of contraception and abortion, interracial marriage, same-sex marriage, equal protection of the law—these liberties and, let me emphasize, many, many, many more have always existed. In fact, the Constitution and the Bill of Rights were silent on much of what Americans consider fundamental to a free people. That silence left the door open for the courts, as we shed the prejudices of a darker age, to recognize the true meaning of the words "all men are created equal" and "inalienable rights."

The process has been painfully slow. The Constitution, like any document composed by politicians, is fraught with original sin. For example, the three-fifths compromise was a shameful device of political accommodation. Through long stretches of our history, political agendas have left many individual rights unrecognized or unprotected by the courts. They ruled in favor of the powerful and against the disadvantaged and the disenfranchised, often with the justification that their rulings adhered to the text of the Constitution.

Nowhere did the Constitution expressly deny women the right to vote, but the Supreme Court ruled against Virginia Minor in 1875. The Federal Government was not expressly granted a right to intern residents of Japanese descent, but the Supreme Court allowed it in *Korematsu*. There was no constitutional basis on which to deny people of different ethnicities the right to marry. On those issues and more, our judges were wrong. Supreme Court Justices were wrong. In the service of the economic, political, and religious powers that be, the Court has defended slaveholders, denied the franchise, permitted racial, sexual, and other discrimination, and routinely—routinely—elevated the power of the State over individual liberties. Any defense of those rulings as adhering to the text of the Constitution is just plain wrong.

Let's look more closely at women's voting rights. In *Minor v. Happersett*,

the Supreme Court found that women did not have the right to vote because that right was not expressly stated anywhere in the Constitution. In a unanimous decision, the Court took the absurd position that a document predicated on voting, organized by voting, and dependent on voting for any amendment, still did not protect the right to vote for all citizens. Such is the intellectual bankruptcy of a long legal tradition sustained by its defense of the status quo.

The 19th Amendment was a response to the abridgement of a fundamental right by political parties and their dependent courts, but it did not create a new right. It was a long overdue fix made necessary by an originalist court.

If there is a national evolution that extends protection of rights and liberties to disenfranchised and oppressed people, it is because with time, our wonderful country tends to correct its wrongs. It did so with a Civil War and the amendments that followed. It did so with women's suffrage and the Brown decision. It did so more recently with the *Obergefell v. Hodges* decision. Historically, our country has gradually recognized fundamental rights and liberties.

"Recognition"—I use that word intentionally. It is recognition because there are no new rights, *per se*. They are inalienable, and those rights are not limited to those spelled out in the Constitution. A jurist governed by that principle would respect individual rights, but that simply isn't the viewpoint taken by many so-called originalists on the far right today.

The rightwing originalism looks, in my view, a lot more like the judicial philosophy that trampled on the rights of Americans in days past—a philosophy that throughout our history has left many Americans marginalized, disenfranchised, and oppressed by the State.

Unfortunately, after listening very carefully to Judge Gorsuch present his views and after reviewing his writings, including some I will mention that specifically talk about my home State, I have no faith that Judge Gorsuch would be any different from this philosophy that I mentioned that has left so many Americans marginalized in our country.

Judge Gorsuch not only has a long record of conservative activism in the courtroom, but he has demonstrated an out-and-out hostility toward the right of individuals to make decisions about their own lives and their own families without interference from the State. In one troubling instance, he went so far as to author a book attacking death with dignity. This of course has been a matter that historically has been left to the States, and the people of my State twice approved death-with-dignity ballot measures and our death-with-dignity laws have been in place for nearly 20 years. The Supreme Court upheld it more than a decade ago in a case known as *Gonzalez v. Oregon*. But

Judge Gorsuch's record and his own words put the will of millions of Oregonians in question.

Nothing in the Constitution gives the Federal Government the power to deny suffering Oregonians the right to make basic choices about the end of their lives. There is nothing in the Constitution that gives the Federal Government a power to deny people in my State the right to make those emotional, difficult, wrenching decisions about end of life. It is a private matter between individuals and doctors, and when politicians attempt to force regulations through the back door by going after doctors and their ability to prescribe, in my view that is an obvious over-the-line Federal infringement. But my guess is there are probably going to be some folks on the far right that are going to try that route again.

Nothing Judge Gorsuch said in his confirmation hearing gave me any indication that he respects the death-with-dignity issue as settled law or that he would rule against Federal abuse of power to intrude on a private choice. The bottom line is that Judge Gorsuch is locked into an extreme rightwing viewpoint on this issue.

And there is more. As I have listened to this debate and, particularly, the number of comments that some of those who have espoused the views that concern me so much come back to, part of this is that they are always talking about States' rights. States' rights—that will be the altar that we really build our views and philosophies around. I will state, however, that when we listen to some of what they are having to say about States' rights, what they are really saying is that they are for the State if they think the State is right. That is not, in my view, what fundamental rights—particularly, ones that have been afforded to States—ought to be all about.

As I indicated, I think his views with respect to death with dignity really do involve a Federal abuse of power in its intruding on private choices, but there are other issues that concern me as well.

He has made it clear, in many instances, that he favors corporations at the expense of the working people. He has sided with insurance companies to deny disability benefits to people with disabilities, with large companies to deny employees basic job protections, and has even written that class action lawsuits are just tools for plaintiffs to get "free rides to fast riches."

No example better illustrates this tendency—and my colleagues have talked about it—than the case of the truckdriver in *TransAm Trucking v. Department of Labor*. In this case that leaves one practically speechless, Judge Gorsuch sided against a truckdriver who was fired for leaving his freezing cold truck when his life was in danger.

I have another significant concern about Judge Gorsuch that came up in the context of his confirmation hear-

ings. It is something that, I think, a lot of Americans and even those in government are trying to get their arms around. I have been on the Intelligence Committee since the days before 9/11, and one of the things we have come to feel strongly about is the danger of what I call "secret law." I want to make sure people know exactly what I am talking about when I describe "secret law."

In the intelligence world and in the national security sphere, operations and methods—the tactics used by our courageous men and women who are protecting us and who go into harm's way to protect our people—always have to be secret. They are classified. They have to be because, if they were to get out, we could have Americans die—the people who do all of that wonderful work and, possibly, millions more. Sources and methods have to be secret, but the law and our public policies ought to always be transparent.

The American people need to know about them because that is how we make informed decisions in our wonderful system of government. Voters are given enough information to make the choices. Sources and methods and operations have to be secret, but the law and political philosophies have to be public.

Judge Gorsuch, as a senior attorney in the Department of Justice, was a practitioner of secret law. As I indicated, the public is not going to know about secret operations; we protect them. But trust in government and in our legal system cannot survive when Americans understand that the law says one thing and then the government or a secret court says that it means another. Secret law prevents the people from knowing whether their fundamental rights are being infringed by an unaccountable, unconstrained government that is aided by compliant courts.

Secret law also keeps the Congress in the dark. Congress's job is to represent the people and oversee the government. Congress, barring rebellion, is the only recourse of a free people against an executive-judicial alliance of secrecy that infringes their liberties. It is my view that secret law makes a mockery of the oath that Members of Congress, Justices, and each Senator here has taken to serve, protect, and defend our Constitution. Secret law is fundamentally corrosive to the rule of law in America.

As we learned during his confirmation hearings, Judge Gorsuch was a supporter of secret law. In 2005, the CIA was conducting a secret torture program. In May of that year, the Department of Justice's Office of Legal Counsel determined, secretly, that torture techniques, such as waterboarding, were legal. Somehow, it deemed them consistent with statutory prohibitions on torture and the Constitution. This was extraordinary, willful, faulty legal analysis. It was entirely inconsistent with how the Congress and the public would read the law or the Constitution.

Then our distinguished colleague from Arizona, Senator MCCAIN, who knows a little bit about these issues in his having been subjected to them in the defense of our country, passed the Detainee Treatment Act. Senator MCCAIN understood, in having fought for our country—given fully of himself—that our government had to find a way out of this problem. The McCain law prohibits the cruel and inhumane or degrading treatment that has been at issue here.

By any measure, both the law—the language of the law, the clear intent of the Congress—and the context in which it was passed would leave every American to understand that a decision had been made by their elected officials to limit the power of government. Yet Judge Gorsuch, then an employee of the Bush administration's, had a solution.

In December of 2005, he wrote to the author of the Justice Department's opinion, Mr. Bradbury, about a Presidential signing statement that would magically transform the McCain law into an endorsement of torture. What Judge Gorsuch wrote was that the McCain amendment that prohibited cruel, inhumane, and degrading treatment was best read as, essentially, codifying existing interrogation policies. In other words, according to Judge Gorsuch, JOHN MCCAIN's law—the one that passed 90 to 9 in the U.S. Senate—endorsed torture when it did just the opposite.

The issue came up in his nomination hearing. Judge Gorsuch's explanation was that he was making the recommendation as a lawyer who was helping his client, which was the administration. I have to say, if there is one thing we have learned, this "just following orders" defense has gone on for far too long in this city. It is a small and feeble excuse and is unbecoming of a judge who has been nominated to the highest Court in the land. A judge who justifies government violations in the law and the Constitution just so his boss can say "I was following the advice of counsel" is making a choice to do wrong.

The McCain amendment—what we passed here in the Congress—did not green-light torture. It did not codify torture, period. Anybody who has ever heard JOHN MCCAIN talk about this issue and describe his personal, horrifying experiences with torture knows that it, certainly, could not have been his intent when writing the bill.

Any lawyer, especially one secretly advising the government, first has an obligation to the law and the Constitution. Judge Gorsuch's failure to recognize that principle and his choice to do wrong, in my view, disqualifies him from having a seat on the U.S. Supreme Court.

Torture is not the only illegal program on which Judge Gorsuch has left his fingerprints. After news broke of the illegal, warrantless wiretapping program, Judge Gorsuch helped prepare

testimony for the Attorney General, which asserted that these authorities are vested in the President and are inherent in the office.

It added: "They cannot be diminished or legislated away by other co-equal branches of the government."

If that were the case, then no action taken in this area by the elected representatives of the people would have any weight. The Foreign Intelligence Surveillance Act, which has existed since the 1970s, would just be some kind of advisory statement. Section 702 of the Foreign Intelligence Surveillance Act, which we are going to debate this year, would be little more than wasted paper. Then the USA FREEDOM Act, which ended the bulk collection of law-abiding Americans' phone records, might as well have never been signed into law.

Voting for those bills and voting to confirm Judge Gorsuch call into question any Member's commitment to those laws that we passed.

In response to a question during his nomination hearing, Judge Gorsuch said that he did not believe the Attorney General's testimony and that, again, he was only acting as a scribe, as a speechwriter. As such, he absolved himself of responsibility for his actions. Again, I think that it is just wrong to use this as an excuse. Like the endorsement of torture, assertions of Presidential authority to override congressional limits on warrantless surveillance rip at the fabric of the rule of law. Judge Gorsuch, a man who chose to get up and go to work every day for individuals who were violating the law, had the power to say no, but he would not make that choice.

Colleagues, the Senate is voting to confirm an individual to a lifetime position on the Supreme Court. What Judge Gorsuch has stood for and against over the course of his legal career is all we have to go on in this debate, and we will have to reflect on it. A history of support, in my view, for secret, illegal, and unconstitutional programs is an unacceptable record for someone who is seeking a place on the Supreme Court.

I have reminded this Senate of how, time and again, the Supreme Court has rubber-stamped the excesses of our executive and legislature over the years rather than defended individual liberty. That is the record—the Supreme Court rubbing-stamping the excesses of the executive and legislature rather than protecting the individual liberties of the American people.

It is my view that it is our job as Senators to ensure that the Supreme Court does not repeat the errors of yesterday—enshrining disenfranchisement and discrimination and denying equal protection of the law based on prejudice and political agendas. I believe that the only way to prevent this abuse is to appoint judges who recognize that the judiciary is a bulwark against any attempt to infringe on our unalienable rights.

The bottom line for me, colleagues, is whether Judge Gorsuch recognizes that rights are reserved for the people.

There is no respect for individual rights and liberty to be found in a viewpoint that allows for secret law to justify torture, that favors the powerful over the powerless, or that tramples on the rights of Americans to determine the courses of their own lives. Unfortunately, we have learned over the last few weeks that this is Judge Gorsuch's record.

I oppose his nomination. I urge my colleagues to do the same.

I yield the floor.

The PRESIDING OFFICER (Mr. PERDUE). The Senator from Montana.

Mr. DAINES. Mr. President, one of the most consequential votes that I will ever cast is a vote to confirm a U.S. Supreme Court nominee. It is a lifetime appointment to our Nation's highest Court. In fact, tomorrow, when I cast that vote for Judge Gorsuch, it will be the first chance I have had as a Senator to confirm a Supreme Court nominee.

As it stands today, the U.S. Senate is on the precipice of confirming Neil Gorsuch to be our next U.S. Supreme Court Associate Justice. Just a few short hours ago, my colleagues on the other side caved to the pressures of the far left and unleashed an unprecedented, partisan filibuster for the first time in 238 years of this institution.

I was honored to be at the White House's East Wing on January 31, with President Trump, when he made the announcement that Judge Neil Gorsuch would be the nominee to replace Antonin Scalia.

Judge Gorsuch's academic accomplishments are nothing short of being absolutely stellar. His decision to serve as a Justice on the highest Court in the land is a true testament to his character, his intelligence, his understanding of the law, and his commitment to the Constitution.

Judge Gorsuch was appointed by President George W. Bush to the Tenth Circuit in 2006 and was unanimously confirmed by the U.S. Senate. In fact, some of those Democrats who did not oppose Judge Gorsuch then included his Harvard Law classmate Barack Obama, Vice President Joe Biden, and Minority Leader CHUCK SCHUMER.

Of utmost importance in a Justice is the desire and the ability to apply the law as it is intended, not to legislate from the bench. So I can say that I was very thrilled to here Judge Gorsuch say this: "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."

On February 9, I met Judge Gorsuch in my office. Let me tell my colleagues, he is impressive. We discussed the Constitution. We discussed the Second Amendment. I represent the State of Montana. I can tell my colleagues that as we look at our Constitution and our Bill of Rights, the Second Amendment is very important to the people of

Montana. He will defend the Second Amendment. We also talked about the separation of powers, the role of government and federalism, and the Fourth Amendment.

Through 4 full days of hearings, Judge Gorsuch eloquently answered Judiciary Committee members' questions, and certainly, before the entire viewing audience of the American people, he showcased his brilliant legal mind.

Prior to his hearing, he met with 80 Senators. He provided the Judiciary Committee with 70 pages of written answers regarding his personal record and over 75,000 pages of documents, including speeches, case briefs, opinions, and written works going as far back as his college days. The White House archives produced over 180 pages of email and paper records related to Judge Gorsuch's time at the Department of Justice.

During the committee hearing, Judge Gorsuch sat for three rounds of questioning totaling nearly 20 hours. In fact, when Judge Gorsuch appeared before the Judiciary Committee of the U.S. Senate, it was the longest hearing of any nominee in this century. He answered nearly 1,200 questions during that hearing. By the way, that is nearly twice as many questions as Justices Sotomayor, Kagan, or Ginsburg.

Today's vote was nothing more than a campaign fundraising effort for Senate Democrats. In fact, the Democratic Members who have pledged to support him already have threats from liberals of voting them out of office. It is a sad day that this body has become so partisan that, for the first time in this body's history, we had a partisan filibuster to a more than qualified nominee.

Judge John Kane, a judge appointed by Democrat Jimmy Carter, said in an op-ed for an online legal website:

As the saying goes, we could do worse. I'm not sure we could expect better, or that better presently exists.

There is just no arguing that Judge Gorsuch a mainstream nominee.

Take the remarks of Obama's Solicitor General, Neal Katyal:

Judge Gorsuch is one of the most thoughtful and brilliant judges to have served our nation over the last century. As a judge, he has always put aside his personal views to serve the rule of law. To boot, as those of us who have worked with him can attest, he is a wonderfully decent and humane person. I strongly support his nomination to the Supreme Court.

I remind my colleagues that those are the words of President Obama's Solicitor General.

A nominee of this caliber who has undergone, as I just mentioned, rigorous vetting deserves the respect of the Members of this Chamber. Yet Senate Democrats walked down the road that their former leader did in 2013 by changing the precedent of this body and allowing the U.S. Senate to become even more partisan.

The American people want Judge Gorsuch. The polls show that. In fact,

they demanded nine Justices on the Court. Today, we are one step closer to confirming him.

Judge Gorsuch is the right replacement to honor the legacy of Justice Antonin Scalia. He has widespread support across the State of Montana, including our agriculture groups, the NRA, and leaders from across our State. Four Indian Tribes in Montana have endorsed Judge Gorsuch.

The American people deserve a Supreme Court Justice who will uphold the rule of law and follow the Constitution. The American people deserve a Supreme Court Justice who doesn't legislate from the bench. The American people deserve Judge Gorsuch to serve them on the U.S. Supreme Court.

As the American people watched Judge Gorsuch before the Judiciary Committee, they saw an exceptionally qualified nominee for the highest Court in the land. They saw someone who is bright—Columbia undergraduate, Harvard Law School, Oxford Ph.D. I would submit that Judge Gorsuch's intellectual capacities are only exceeded by the size of his heart. This is a kind man. This is a brilliant man. This is an independent jurist.

I very much look forward to casting my vote tomorrow to confirm Judge Gorsuch.

THE PRESIDING OFFICER. The Senator from South Dakota.

Mr. THUNE. Mr. President, today we are one step closer to a vote to confirm Judge Gorsuch to the Supreme Court. I look forward to the vote tomorrow. We will be confirming a Justice to the Supreme Court who is supremely qualified, who is a mainstream judge, who respects the rule of law and the Constitution, and who will rule impartially from the bench—someone who will call balls and strikes. That is what I believe the American people look for when they look for a Supreme Court Justice.

While it was always clear that some Democrats would oppose any Supreme Court candidate the President nominated, I had hoped that partisanship would be at least somewhat limited. I had hoped the Democrats would want to preserve the Senate's nearly 230-year tradition in confirming Supreme Court Justices by a simple-majority vote. And I had hoped that more than a handful of Democrats would join us to confirm one of the most, as I said, supremely qualified judges in my memory. That is not what happened. Despite Judge Gorsuch's qualifications, despite the support for his nomination from both liberals and conservatives, the vast majority of Senate Democrats were determined to block this confirmation.

Of course, it wasn't really ever about Judge Gorsuch. It is not that Democrats were determined to block his confirmation; it is that they were determined to block any confirmation.

Democrats tried to offer reasons to oppose Judge Gorsuch, but they struggled to come up with anything plausible. The Senate minority leader actu-

ally came to the floor and tried to argue that he was worried that Judge Gorsuch would not be "a mainstream justice."

Over the course of 2,700 cases on the Tenth Circuit, Judge Gorsuch has been in the majority 99 percent of the time—99 percent. In 97 percent of those 2,700 cases, the opinions were unanimous. So I would love to hear an explanation for how exactly a judge who has been in the majority 99 percent of the time is out of the judicial mainstream. Was the minority leader attempting to argue that all of the judges on the Tenth Circuit, including those appointed by Democratic Presidents, are out of the mainstream?

The fact is that Democratic opposition to Judge Gorsuch had nothing to do with his qualifications. I doubt that any of my colleagues on the other side of the aisle really think that Judge Gorsuch is out of the mainstream or that he lacks the qualifications of a Supreme Court Justice, but they opposed him anyway.

If they opposed a judge with a distinguished resume and a reputation as a brilliant jurist; if they opposed a judge who is known for his fairness and impartiality; if they opposed a judge whose nomination has been repeatedly supported by liberals, as well as conservatives; if they opposed a judge who unanimously received the highest possible rating from the American Bar Association—a rating, I might add, that the minority leader once called the "gold standard" for judicial nominees; if they opposed a judge a number of them supported 10 years ago, then it is abundantly clear that their opposition wasn't about this judge but about any judge this President nominates. Thus, Republicans were left with no real alternative but to act to preserve the Senate's tradition of giving Supreme Court nominees an up-or-down vote. This wasn't my preference. I preferred to leave room for a minority to block a judge who is truly not fit for office. But it was the only alternative we were left with if we wanted to confirm anyone to the Supreme Court.

Historically, confirming judges was not a partisan process. During the George W. Bush administration, however, Democrats decided they were going to change that. They were mad back then too—mad that a Republican President was in charge. Apparently, modern-day Democrats are not reconciled to the fact that in our system of government, it is not always the Democrats who win.

Anyway, the Democrats were mad, and they decided that the historically bipartisan process of confirming judicial nominees was going to change. Their 2003 filibuster of Miguel Estrada, who had been nominated to a seat on the Court of Appeals for the DC Circuit, was the first time a judicial nominee who enjoyed clear majority support was not confirmed because of a filibuster.

Democrats ultimately successfully filibustered no fewer than 10 Bush

nominees to appellate courts. That was a massive reversal in Senate history. Suddenly the normally smooth process of confirming a President's judicial nominee had been turned into an exercise in partisanship.

Ten years later, Democrats struck again when they employed the nuclear option to ensure that they could pack the DC Circuit—despite the fact that at the time, when the current minority leader announced that Democrats would "fill up the D.C. Circuit one way or the other," Republicans had blocked just two of President Obama's circuit nominees and had confirmed 99 percent of his judges. So 215 were confirmed out of 217 under President Obama up to that point.

And now here we are today. Democrats are again mad that they lost an election, that they can't control the nomination process, and they once again turned to "no-holds-barred" partisanship. They made it clear that no Republican nominee would ever make it to the Supreme Court; thus, we had to act to ensure that Supreme Court nominees can receive an up-or-down vote going forward.

In the Senate's nearly 230 years, the filibuster has been used to block a Supreme Court nominee exactly once—one time. Supreme Court Justice Abe Fortas's nomination to be Chief Justice of the Supreme Court was blocked by a bipartisan coalition, in part over ethical concerns. That is how strong the Senate's bipartisan tradition of an up-or-down vote on Supreme Court nominees has been—230 years, one time, and it was bipartisan. I am deeply sorry that the Democrats were determined to end that tradition.

Judge Gorsuch should never have faced the threat of a filibuster. There was no reason—no reason other than the most flagrant partisan politics—to block this supremely qualified nominee from the Supreme Court.

As I said, I look forward to tomorrow and to this final vote where we will have an opportunity to confirm to the Supreme Court this well-qualified, mainstream nominee who fundamentally respects the rule of law and the Constitution of the United States and will act impartially as a Justice for the American people.

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.

Mr. SHELBY. 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. SHELBY. Mr. President, I wish to address the Senate for a few minutes about the nomination of Judge Neil Gorsuch, which is the topic of the day and has been the topic for weeks. It probably has been said, but I am going to go through some of it again.

Judge Gorsuch is a native of Denver, CO, where he currently resides with his

wife Louise and their two daughters. He is currently 49 years old.

I want to talk about some of his credentials. Judge Gorsuch received his bachelor of arts degree from Columbia University in 1988, his juris doctor from Harvard Law School in 1991, and a doctorate in legal philosophy from Oxford University in the UK in 2004.

At Columbia, he was a member of Phi Beta Kappa, a Truman scholar at Harvard Law School, and a Marshall scholar at Oxford.

Following law school, Judge Gorsuch served as a law clerk to Federal appellate judge David Sentelle and then to Justice Byron White of the U.S. Supreme Court and Associate Justice Anthony M. Kennedy of the Supreme Court.

In 1995, Judge Gorsuch entered private practice as an associate of Kellogg, Huber, Hansen, Todd, Evans & Figel, and he was elected partner in that law firm in 1998. His practice focused on general litigation in both trial and appellate matters.

Judge Gorsuch left private practice in 2005 to serve as the Principal Deputy to the Associate Attorney General at the Justice Department in Washington.

President George W. Bush nominated Judge Gorsuch to the Tenth Circuit Court of Appeals, located in Denver, on May 10, 2006. He was confirmed in the Senate by a voice vote on July 20, 2006.

We talk about qualifications for judges. I want to share some of his. Judge Gorsuch has served over a decade on the U.S. Court of Appeals for the Tenth Circuit. He has an outstanding judicial record that speaks for itself. He has participated in over 2,700 appeals on the Tenth Circuit, and 97 percent of them have been unanimously decided. In those cases, he was in the majority 99 percent of the time.

Of the approximately 800 opinions he authored on the Tenth Circuit, 98 percent of his opinions were unanimous, even on a circuit where 7 out of the 12 active judges were appointed by Democratic Presidents. His opinions on the Tenth Circuit have the lowest rate of dissenting judges at 1.5 percent. That is unheard of. Out of the eight cases he has decided that were reviewed by the U.S. Supreme Court, seven were affirmed and one was vacated.

Judge Gorsuch's nomination to the Tenth Circuit Court of Appeals in 2006 was met without opposition, and he was confirmed by voice vote.

Notably, Senators serving during this time include a lot of my former colleagues: then-Senator Barack Obama, Senator Joe Biden, Senator Hillary Clinton, Senator John Kerry, Senator Harry Reid, and 12 other current sitting Democratic Senators in this body, including the minority leader, CHUCK SCHUMER.

In March, the American Bar Association, ABA, unanimously gave Judge Gorsuch a "well qualified" rating, their highest possible mark. Minority Leader SCHUMER and Senator LEAHY have both previously referred to the

ABA as the "gold standard by which judicial candidates are judged."

In the area of jurisprudence, Judge Gorsuch has a mainstream judicial philosophy, which he clearly articulated during the Senate Judiciary's confirmation hearing.

I believe his record is unequivocal in that he believes judicial decisions should be based on the law and the Constitution and not personal policy preferences. He has a deep commitment to the Constitution and its protections established by our Founding Fathers, including the separation of powers, federalism, and the Bill of Rights. Judge Gorsuch's decisions demonstrate that he consistently applies the law as it is written, fairly and equally to all individuals.

Additional information about Judge Gorsuch: The American people deserve to have their voices heard in selecting Justice Scalia's replacement. This is what we are doing.

Some of my colleagues intend to oppose Judge Gorsuch based solely on the fact that they disagree with the outcome of the Presidential election.

During President Trump's campaign last year, he clearly defined the type of Justice he wished to nominate to the current vacancy. He even published, as you will recall, a list of 21 judges who possessed what he believed are the necessary qualifications to serve on the U.S. Supreme Court.

Following Judge Gorsuch's nomination, he sat for over 20 hours of questioning in front of the Senate Judiciary Committee in the Senate—the longest hearing of any 21st-century nominee. Additionally, he was given 299 questions for the record by my colleagues on the other side of the aisle. This also is the most in recent Supreme Court confirmation history.

Simply put, I believe this is the most open and transparent process in choosing a Supreme Court nominee ever conducted by an administration. By filibustering this nomination, some of my colleagues are breaking a nearly 230-year tradition of approving Supreme Court nominees by a simple-majority vote.

I believe the American people spoke clearly when they elected President Trump. I believe this is the American people's seat, and I believe Judge Gorsuch is an exceptional choice for the Supreme Court. He deserves an up-or-down vote, and that is why I believe we are getting ready in the next few hours to confirm him.

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. 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, as we finished the vote just hours ago,

I could not help but notice a number of my colleagues on the other side of the aisle high-fiving each other. That image stays with me as I stand here now. It saddens me. There is no cause for celebration in what happened in the Senate just hours ago. No one should sleep well tonight. No one should underestimate the magnitude of what happened here. Damage was done to our democracy, in fact, to the institutions that are the pillars of our democracy—the United States Supreme Court and the Senate itself.

Today is, indeed, one of my saddest days in the Senate. Sadder than anything is the damage that has been caused to the Supreme Court by eroding and undermining trust and respect for an institution that has power only because of its credibility with the American people. It has no armies or police force; all it really has is the confidence and respect of the American people.

Today, raw political power has been exercised to break the rules and norms of this body so that a nominee could be confirmed. The only way that he could be confirmed was, in fact, to wreck the rules, a nuclear option that will have enduring fallout and rippling repercussions, perhaps for years come.

For myself, I would state unequivocally that I hope we will work together on issues where we have common ground, where we can reach common solutions on infrastructure, on tax reform, on immigration issues.

No one should make light of the potential fallout, as there is in any nuclear explosion, from this action today.

The Senate has broken with decades of bipartisan practice when it comes to the U.S. Supreme Court. The practice and the tradition was that Presidents of either party would consult with Members of both parties in this body before making a nomination so as to ensure a mainstream nominee, and that nominee would be in the mainstream even before his or her selection so that there was some modicum of comity and so that respect for this body, as well as the courts, would be preserved.

My concern is that the contagion of partisanship will infect the court system as a whole. All of the nominations to lower courts, as well as the appellate courts, will be affected.

My hope is that we can avoid that truly cataclysmic outcome, a nuclear explosion, in some ways even more deafening and damaging than the one used today would be because our courts are the bulwark of our democracy. An attack on our courts is an attack on the only check we have against tyranny and autocratic erosion of those rights. That is why the nonpartisanship of our courts is so important.

The Supreme Court, of all our courts, should be above politics. In fact, that is why the 60-vote rule for the Supreme Court was so important. The Supreme Court is different: nine Justices appointed for life to the highest Court in

the land. In some ways, it is an anachronism in our democracy—unaccountable, unelected, sitting for life with the power to strike down actions of elected representatives and an elected Executive by issuing words on paper without the direct means to enforce them, depending only on respect and credibility from the American people. To approve nominees by a razor-thin majority is a disservice to the Court and to our democracy.

Supreme Court Justices do more than just follow the law; they have to resolve conflicts in the law and differences among the lower courts where they disagreed and, in fact, ambiguities in the statute, where there is lack of clarity, where this body is unable to reach consensus and, in effect, decides to agree, to the extent it can, and leave some question to administrative agencies, which rightly are entitled to respect, as they implement the law.

Confidence and trust are essential, and we have undermined it today. Our Republican colleagues have gravely damaged it by the actions taken today.

I have urged my colleagues to reject Neil Gorsuch because I believe he is out of the mainstream, because he failed to answer questions about whether he agreed with established core precedents essential to rights of privacy and equality under the law, because he has a judicial philosophy that would involve substituting judgments of courts for administrative agencies and banning the Chevron doctrine, and because he favored in many of his actions, opinions, writings the interests of corporations over individual rights.

We have debated the merits of this nominee. I believe that his repeated evasion of the questions that were put to him leaves us with the inescapable conclusion that he passed the Trump test; that he is not a neutral caller of balls and strikes; that he is, in fact, an acolyte of the of the rightwing groups that screened and suggested his name; and that he would carry out not only the Trump litmus test to overrule *Roe v. Wade*, strike down gun violence provisions, but also other unknown decisions that would implement that far-right conservative agenda. We can debate whether that view is right or wrong.

Today is one of my saddest days in the Senate. It goes more to the institutions that have been demeaned and degraded: the U.S. Senate and the Supreme Court. My hope is that maybe it will be a turning point. Maybe we can reconstruct the sense of bipartisanship and comity that existed for so many years. Many of my colleagues on the other side have expressed to me their misgivings about what was done today.

The obstruction of Merrick Garland's nomination was, as one of my colleagues put it, "the filibuster of all filibusters." It was another step in a continuing progression, culminating in today's outcome that very much betrays the spirit and values of a bipartisan selection of Supreme Court nominees be-

cause the highest Court in the land is different.

I had the extraordinary honor to clerk for a Justice on the U.S. Supreme Court, Harry Blackmun, who was appointed by a Republican, President Richard Nixon. He grew as a Justice and surprised a lot of people. He, no doubt, surprised the President who appointed him. And that is what happens to really extraordinary men and women who serve on our courts as well as in the U.S. Senate; they grow in the job.

Choosing a U.S. Supreme Court Justice is one of the most solemn and important duties that a President has, and confirming her or him is one of the most important tasks we have in this body.

Even at the most difficult and contentious times, as I served then as a law clerk and as I have litigated since then for several decades, I have never doubted that judges were working in good faith to uphold the rule of law. Whether they ruled my way or not, I believed that we were working to try to be above partisan politics and uphold the rule of law and do the right thing to follow the law.

The Supreme Court does more than follow; it leads. Today's vote is a significant challenge to that principle and perhaps the most difficult that we have seen in recent history. It threatens to exact profound damage on the confidence and trust the American people have in the Supreme Court and perhaps in the courts overall, and that is a danger for all of us.

In my view, when the history of this time is written, there will be two heroes: the free press that has uncovered abuses and wrongdoing despite opposition from many powerful forces, and our independent judiciary that has upheld their right to do it and, also, the rights of countless Americans in many areas of law.

Today's action threatens those two institutions in our society. It undermines our rules. It would not have happened without a choice made by the Republican leadership that they were willing to break the rules to achieve this result.

I am determined to try to move forward in a positive way, in legislation as well as in protecting and enhancing our courts, giving them the resources they need to do their job—and law enforcement, the resources needed to uphold the rule of law.

We cannot hold the Supreme Court hostage to any ideology, and that is a lesson from today and from the past year that we should all heed.

Mr. President, I will continue to talk about this topic because I believe it is so profoundly important to our Nation, but for now, I yield the floor.

The PRESIDING OFFICER (Mr. CASSIDY). The Senator from South Carolina.

Mr. GRAHAM. Mr. President, when they write the history of our times, I am sure that when it comes to Senate

history, this is going to be a chapter, a monumental event in the history of the Senate not for the better but for the worse. After we are all long dead and gone, somebody may be looking back and trying to figure out what happened or what motivated people.

I am going to tell you what has motivated me since I have been in the Senate: an understanding that the job of a Senator, when it comes to advice and consent, is not to replace my judgment for that of the President, not to nullify the election, but to be a check and balance to make sure that the President of either party nominated someone who is qualified for the job and is capable from a character point of view of being a judge for all of us, having the intellect, background, judgment, experience to carry out the duties of a Supreme Court Justice.

When President Obama won the White House, I suspected that he would pick judges who I would not have chosen, based on our different philosophies of liberal-conservative jurisprudence.

This is what Greg Craig, the former White House Counsel in the Obama administration, said about Elena Kagan, who is now on the Court: "Kagan is . . . a progressive in the mold of Obama himself."

This is what Vice President Biden's Chief of Staff Ronald Klain said about Elena Kagan: "Elena Kagan is clearly a legal progressive . . . [and] comes from the progressive side of the spectrum."

I think that was an accurate description of her and Sonia Sotomayor, who both are progressive Justices who come from the progressive side of the judicial spectrum. Both are highly qualified, capable women who had stellar legal records. Even though they had outcomes I did not agree with, they were certainly in the mainstream. Both had been judges. I think he chose people I would not have chosen, but they were really highly qualified.

I was the only member of the Judiciary Committee on the Republican side to vote for either Justice Kagan or Justice Sotomayor because I used a standard that I thought was constitutionally sound. I am not telling any other Senator what they should do. I am just trying to explain what I did. In the *Federalist Papers*, No. 76, written April 1, 1788, Mr. Hamilton said:

To what purpose then require the co-operation of the Senate? It would be an excellent check upon a spirit of favoritism in the President. It would portend greatly to prevent the appointment of unfit characters from state prejudice, from family connection, from personal attachment, and from a view to popularity.

So, from Hamilton's point of view, it was a check and balance against a crony or unqualified person, someone who was popular but not qualified for the job, somebody who was supported because they were close to the President and not qualified for the job, someone who was appointed because they were a favorite son of a particular State. That would not be fair to everybody else. When you look at the history of the advice and consent clause,

it is pretty clear that the Founding Fathers did not have in their minds that one party would nullify the election when the President of another party was chosen by the people when it came to Supreme Court confirmations because they chose somebody they did not agree with philosophically.

I voted for Elena Kagan and Sonia Sotomayor, knowing they come from the progressive judicial pool. Neil Gorsuch is one of the finest conservatives that any Republican President could have chosen, and he is every bit as qualified as they were. His record is incredible—10½ years on the bench, 2,700 cases, and 1 reversal. He received the highest rating of the American Bar Association, “well qualified,” just like Sonia Sotomayor and Elena Kagan.

To merit the committee’s rating of “well qualified,” a Supreme Court nominee must be a preeminent member of the legal profession, have outstanding legal ability and exceptional breadth of experience, meet the very high standards of integrity, professional competence, and judicial temperament. The rating of “well qualified” is reserved for those found to merit the committee’s strongest affirmative endorsement. By unanimous vote on March 9, the standing committee awarded Judge Gorsuch this highest rating of “well qualified,” just like they did for Sonia Sotomayor and Elena Kagan. He has 2,700 court decisions, 1 reversal, and praise from all areas of the law—left, right and middle. The ABA report of 900 cases describes a very thoughtful man, an incredible judge, and a good person. So I don’t think anybody could come to the floor and say—even though they may disagree with the outcome—that Judge Gorsuch is not qualified, using any reasonable standard, to be chosen by President Trump. He is every bit as qualified as the two Obama appointments. So, clearly, qualifications no longer matter like they used to.

Antonin Scalia—whom Judge Gorsuch, hopefully, will soon replace as Justice Gorsuch—was confirmed by the Senate 98 to 0. Ruth Bader Ginsburg was confirmed 96 to 3. I would argue that you could not find two more polar opposite people when it comes to philosophy than Justice Ginsburg and Justice Scalia. They became very dear friends, but nobody in their right mind would say there is not a difference in their judicial philosophy.

Strom Thurmond, my predecessor, a very conservative man himself, voted for Ms. Ginsburg. Clearly a conservative would not have chosen her because she was general counsel of the ACLU. I can tell you that Ted Kennedy and other people on the progressive side of the aisle would not have voted for Antonin Scalia based on philosophy. Something has happened in America from 1986 to 1993. The Constitution hasn’t changed. Something has changed. I think the politics of the moment have taken the Founding Fathers’ concept and turned it upside

down. From the time that Scalia was put on the Court and Ginsburg was put on the Court, everything has changed.

I was here when the first effort to filibuster judicial nominations was made in earnest. In the first term of Bush 43, there was a wholesale filibuster on the circuit court nominees of President Bush. I was part of the Gang of 14 that broke the filibuster. We lost a couple nominees but we did move forward. We said there would be no further filibuster of judges unless there were extraordinary circumstance. That allowed Alito and Roberts to go forward. Both of them got a good vote. On Alito we had to get cloture, but we got 78 votes.

Clarence Thomas was probably the most controversial pick in my lifetime. If you can remember that hearing, it was front page news every day and on TV every night. Not one Democratic Senator chose to filibuster him. He got an up-or-down vote and he passed 52 to 48. They could have chosen to require cloture, but they didn’t.

So this is the first time in the history of the Senate that you have a successful partisan filibuster of a Supreme Court nominee. Abe Fortas was filibustered to be Chief Justice of the Supreme Court by almost an equal number of Democrats and Republicans because of ethical problems, and he eventually resigned.

So we are making history today—the first successful filibuster in the history of the Senate to deny an up-or-down vote on a nominee to the Supreme Court. It breaks my heart that we are here. I don’t know what to do other than to change the rules to have some sense of fairness. I can’t believe that Judge Gorsuch is not qualified by any reasonable standard. I voted for Sotomayor and Kagan. Nobody even asked for a cloture vote. They went straight to the floor. One got 62 votes or 63 votes, and the other got 68 votes. I don’t know why we can’t do for Judge Gorsuch what was done for Sotomayor and Kagan.

We keep hearing about Judge Garland. Judge Garland is a fine man and would have been a very good Supreme Court Justice. Justice Scalia died in February of 2016 after three primaries were already held. The nominating process was well on its way for picking the next President. So this was an election year. I remember what Joe Biden said in 1992, the last year of Bush 41’s term, when there was the suggestion that somebody might retire in the election year, and he said, basically: If someone steps down, I would highly recommend that the President not name someone, not send a name up. If he, Bush, did send someone up, I would ask to seriously consider not having a hearing on that nominee. It would be our pragmatic conclusion that once the political season is underway, and it is, action on a Supreme Court nomination must be put off until after the election campaign is over. That is what Vice President Biden said when he was

chairman of the Senate Judiciary Committee in 1992.

That made sense. President Trump put a list of names out that he would choose from if he became President, which was historic. Part of the contest in 2016 was about the Supreme Court. I have no problem at all saying that, once the campaign season is afoot, we will let the next President pick. That is no slam on Judge Garland. I have zero doubt that if the shoe had been on a different foot, there would not have been a different outcome. I can’t imagine Harry Reid being in charge of the Senate in 2008 and allowing President Bush, in the last year, to nominate somebody in the Court and that they would approve that decision once the campaign season had started in 2008. I say that knowing that it was Senator Reid who chose to change the rules in 2013, which broke the agreement of the Gang of 14 in part.

Here is what Harry Reid said in 2005:

The duties in the U.S. Senate are set forth in the Constitution of the United States. Nowhere in the document does it say the Senate has a duty to give the Presidential nominee a vote.

All I can say is that in the 100-year history of the Senate, from today going backward, there has been one person put on the Court when the President was of one party and the Senate was held by the other party and a vacancy occurred in the last year of a Presidential term.

We have done nothing that would justify Judge Gorsuch to be treated the way he has been treated, and he has been treated pretty badly. Here is what NANCY PELOSI said: “If you breathe air, drink water, take medicine, or in any other way interact with the courts, this is a very bad decision.”

All I can say is that Judge Gorsuch does not deserve that. That is a political statement out of sync with the reality of who this man is and the life he led, and it is that kind of attitude that has gotten us to where we are today.

I can also say that there is blame on my side too. Nobody has clean hands completely on this. When Justice Sotomayor was nominated, she made a speech to the effect that a White man would have a hard time understanding what life is like for minorities. That was taken to believe that she somehow could not be fair to White men. That was a speech she gave that was provocative, but I never believed it was an indication that she somehow was prejudiced against White men. The reason I concluded that was because anybody who had known her, including White men, said she was a wonderful lady.

I remember Elena Kagan. The attack on our side was that she joined with the administration of Harvard to kick the ROTC unit off campus. Somehow that made her unpatriotic. My view was that it was the position of a very liberal school called Harvard, and no one could ever convince me that Elena Kagan was unpatriotic. She seemed to be a very nice, highly qualified lady,

and that decision by Harvard could not be taken to the extreme of saying that she is not fit to serve on the Court. So I was able to look beyond the charges leveled at these two ladies on our side to understand who they really were. When you look at people who know these judges the best, they can tell you the most accurate information. In the case of Kagan and Sotomayor, there were a lot of people, left and right, who said they were well-qualified, fine ladies. When you look at what was said about Judge Gorsuch in the ABA report, it is just an incredible life, well lived.

So here we are. We are about to change the rules. Up until 1948, it was a simple majority requirement for the Supreme Court. As a matter of fact, as for most Supreme Court nominations in the history of the country, a large percentage were done based on a voice vote. It is only in modern times that we got in this political contest over the Court. It probably started with Judge Bork.

There is some blame to go around on both sides, but I can say that while I have been here, I have tried to be fair the best that I know how to be. I voted for everybody I thought was qualified. I said, as for Judge Garland, let the next President decide. At the time I said that in March 2016, I had no doubt in my mind that Donald Trump would lose and that Hillary Clinton would probably pick somebody more liberal than Garland. But it made sense to me in that stage of the process to let the next President pick.

The fact that we are filibustering this man says a lot about the political moment. If this were a controversial character, I might understand it better. When you look back and try to figure out what we did and how we got here, I can say that we took one of the best people that President Trump could have nominated—somebody I would have chosen if I had gotten to be President. I think PAUL RYAN, MIKE PENCE, or any of us would have chosen Neil Gorsuch, and he was denied an up-or-down vote. That says all we need to know about the political moment.

We will change the rules. It will have an effect on the judiciary, and it won't be a good one, because in the future, judges will be selected by a single party, if you have a majority with no requirement to reach across the aisle, which means the judges will be more ideological.

When you have to go over there to get a few votes or when they have to come over here to get a few votes, you have to water down some of your choices and the most extreme ideological picks or a party or President are probably not going to be able to make it through. Now they will. I think what you will see over time is that the most ideological people in the Senate are going to have a lot to say about who is chosen by the President. It will change the nature of the judiciary.

To the Senate itself, every Senate seat now becomes a referendum on the

Supreme Court. So when we have a contest for a Senate seat, it is not just about the Senate. It is about the seat affecting the outcome of the Court, because all you need is a simple majority. Whether or not it leads to changing the legislative filibuster, which would be the end of the Senate, I don't know, but I don't think it helps. There will be a majority around here one day, a President of the same party, with control of the House, and they will get frustrated because the other side will not let them do everything they want to do, and they will be tempted to go down this road of doing away with the 60-vote requirement to pass a bill—not appoint a judge—and that will be the end of the Senate. We have made that more likely by doing this. It was more likely in 2013. I hope I am wrong, but I think we have set in motion the eventual demise of the Senate. The one thing I can say—I am optimistic, though—is that while I will vote to change the rules for this judicial nomination, I will not ever vote to change the rules for legislation.

The reason I am voting to change the rules is that I do not know what I would go home and tell people as to how Sotomayor and Kagan got on the Court and Gorsuch could not, why President Obama was able to pick two people who were highly qualified and why Trump was not able to pick one person who was highly qualified. You just can't have it where one side gets the judges and the other side does not. To rectify that wrong, I guess we had to change the rules.

It is not a good day. I was hoping it would never come, but it has. To the extent that I have been part of the problem, I apologize to the future. I think, at least in my own mind, I have tried to do the right thing as I saw it. I took a lot of heat for voting for their judges at a time when there was a lot of heat on our side. I am glad I did.

It is not that I am not partisan—certainly, I can be. I just think history is going down a very dark path, and the Senate is going down a very dark path. There will never be another 98 votes for a Scalia or another 96 votes for a Ginsburg. That is a shame because even though they may be different, they have one thing in common: They are good people who are highly qualified to sit on the Court. I can understand why a liberal President would choose one and a conservative President would choose another. Yet what we are doing today is basically saying that in the Senate, we do not really care about election results anymore.

I yield the floor.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. KENNEDY. Mr. President, Senator GRAHAM, my fellow Senators, our constituents in the Gallery, a lot of what has gone on today may seem very complicated. We have heard a lot of terms being thrown around: cloture, the nuclear option. Yet, really, the question that we were faced with today

in the Senate was very simple, and it continues to be pretty simple and straightforward, in my judgment: Should we have an up-or-down vote on the nomination of Judge Neil Gorsuch to be an Associate Justice of the U.S. Supreme Court?

Earlier today, the Senate voted to do that. I think it is very important for the American judicial system and for the American system of democracy that the U.S. Senate be allowed to vote on Judge Gorsuch's nomination to the U.S. Supreme Court. It was not enough to only vote on a motion to end debate; we also needed to be allowed to vote on the actual nomination with "yes" or "no."

Unfortunately, our friends on the Democratic side of the aisle decided to filibuster in order to make it impossible for us to vote on this crucial nominee without modifying the rules of the U.S. Senate. That is what we did earlier today. I do not know that anybody did it happily, but certainly a majority of the Senate believed that the American people deserved an up-or-down vote, yea or nay. Stand up and be counted in front of God and country. Do you want Judge Neil Gorsuch to be on the Supreme Court, or do you not? That vote is going to take place tomorrow afternoon.

The Constitution reads that the President of the United States of America "shall nominate and by and with the advice and consent of the Senate shall appoint . . . judges of the Supreme Court." I do not need to tell you that this is an extremely important part of our separation of powers. It is vital to our protecting the integrity of the Supreme Court, the work that all of us do—not just members of the Judiciary Committee but every Member of the Senate—in vetting our nominees and making sure they are qualified and independent, as is Neil Gorsuch. He is enormously important for the protection of liberty itself.

Let's not ever forget what we are protecting. We are protecting justice, and we are protecting liberty. We are not supposed to be protecting a certain point of view. We are not supposed to be protecting a certain policy preference. We are not supposed to be protecting a certain political party.

I hope tomorrow, when we finally get the opportunity to vote up or down on Neil Gorsuch for his membership on the greatest tribunal in the history of civilization, in my judgment, the U.S. Supreme Court, that we will consider his nomination in light of how it will affect our country, not our party. When we look at his nomination from that perspective and leave the politics of the last few years in the rearview mirror, I think we can analyze his nomination with a lot more clarity.

Alexander Hamilton, whom I think most Americans admire, said in Federalist No. 78 that the Court has "neither force nor will but merely judgment." I think that is what we are all looking for—or should be—in a nominee to any court but especially to the

U.S. Supreme Court. We are not looking for somebody with a certain policy preference. We are not looking for people with ideas of how the law can be improved because the role of a judge is not to make law, it is to interpret the law as made by the legislative body as best that judge can understand it. That is why we need someone like Neil Gorsuch, in my estimation, who has good judgment.

I sit on the Judiciary Committee. I have spent 20 to 40 hours with Neil Gorsuch or with people who know him well, in hearing their testimony. I have read his opinions. As far as I am concerned, he is as good as it gets. I cannot imagine that President Trump could have picked better.

He is a thoroughbred. He is a legal rock star. If you read his opinions, you will see that he is painstaking in his application of the law to the facts before him. He writes beautifully. His communication skills are absolutely amazing. His analysis and analytical rigor are clear and concise. His decisions are wise and disciplined, and he is faithful to the law. He is an intellectual, not an ideologue. He is a judge, not a politician. He is whip-smart, has clear writing, is a strict constitutionalist, likes snow skiing, fly fishing, and is a fourth-generation Coloradan. I think he will serve every person in our country well as a member of the Supreme Court. That is why I am supporting him.

Let me say one final thing. I do not think there is any vote that will be more important than the vote we will take tomorrow on a President's nomination to the U.S. Supreme Court, so I want to choose my words carefully. Not a single, solitary vote is more important than that vote we will take tomorrow. That is not to say that there are not other important issues before this body. That is why I think it was so important today that we decided to vote up or down on Judge Gorsuch so that we can move on to those other important issues—jobs, jobs, jobs; designing a healthcare delivery system that looks like somebody designed it on purpose, which our Acting President has worked so hard on; infrastructure; elementary and secondary education; a skilled workforce. I could go on.

There is an enormous amount of pain in America today. There are too many Americans who are not participating in the great wealth of America—not economically, not socially, not culturally, and not spiritually. We have been elected in the Congress to do something about that.

I talk to people in my State every day, and I know the Presiding Officer does too. The people of Louisiana are fun-loving, God-fearing, and plain-talking, and this is what they tell me: Kennedy, this country was founded by geniuses, but sometimes I think it is being run by idiots.

They say: Kennedy, we look around our country today, and here is what we see. We see too many undeserving peo-

ple at the top—I want to emphasize “undeserving” because I don’t want to paint with too broad a brush—who are getting bailouts, and we see too many undeserving people at the bottom who are getting handouts. We are in the middle, and we get stuck with the bill. We cannot pay it anymore, Kennedy, because our health insurance has gone up, our kids’ tuitions have gone up, and our taxes have gone up. I will tell you what has not gone up—our income.

These are real people with real problems, and they sent all of us here because they are real mad and they expect us to do something about it.

The sad truth is that our children’s generation is at risk of becoming the first in America, unless this body does something, to be worse off than their parents’ generation because in our country today, for too many Americans, it is harder than ever to get ahead. That is why so many Americans feel stuck. They feel like the hope and change they were promised has become decline and uncertainty, and they are looking to us to do something about it.

So let’s vote. Let’s vote tomorrow. I understand reasonable people disagree. I understand unreasonable people can disagree too. But I am going to vote for Neil Gorsuch to be an Associate Justice of the U.S. Supreme Court. Then I am going to ask this body to move on to other important issues that are keeping moms and dads awake at night when they lie down and try to go to sleep.

Thank you, Mr. President.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. INHOFE. Mr. President, when we lost the Honorable Justice Antonin Scalia, we were all saddened, as he was such a legend on the Court, and I am very proud that President Trump nominated a successor who is worthy of fulfilling his shoes.

Judge Gorsuch has garnered respect and approval from people across the legal community, and he has unrivaled bipartisan support. It is unfortunate that the Democrats have tried to block his nomination. It is not going to work, but they have tried.

Recently, I had the honor of meeting Judge Gorsuch. It is kind of interesting because I was not on his list to visit. In fact, I had even said: Don’t waste your time on me, as I know your credentials and I am going to support you anyway, and I am not on the appropriate committees that would pass judgment. Yet he did call, and we met. I will tell you that you have to meet and talk to the guy in person to know what kind of an individual he really is.

Of course, being from Oklahoma, I am sensitive to the fact that he is the son of the West. In fact, none of our Justices up there, with the exception of California, are from what we would call the Western United States—the area where people need to be properly represented.

As a judge on the Tenth Circuit Court of Appeals, he has heard from

Utah, Wyoming, Colorado, Kansas, New Mexico, and my State of Oklahoma. He knows the issues of the Western States and what we are facing, and he has expertise to deal with them. He has handled with a lot of care and fairness the issues that have come before him. Of course, we know this because Oklahoma is in the Tenth Circuit.

His reputation is such that, regardless of party affiliation, countless groups, organizations, and individuals have come out in support of Judge Gorsuch, including Neal Katyal. Neal Katyal was the Acting Solicitor General in President Obama’s Cabinet, so he was a Cabinet member of President Obama’s. He testified before the Senate Judiciary Committee and wrote an op-ed piece in the New York Times. Keep in mind, when you listen to this—this is a quote from an op-ed piece in the New York Times, and one of the individuals from the administration of President Obama said this: “His years on the bench reveal a commitment to judicial independence—a record that should give the American people confidence that he will not compromise principle to favor the President who appointed him.”

That comes from an Obama appointee.

Not only is he well liked, but he also has an impressive resume, serving as law clerk to two different Supreme Court Justices. He attended Columbia, Harvard, Oxford, and it doesn’t get any better than that. It is clear he has the qualifications, and as recently as the last administration, that was really all you needed to be confirmed to be on the U.S. Supreme Court.

What the Democrats have done to block his nomination has never been done before. This is significant. People don’t realize—people who are maybe critical of some of the procedures that were taking place, they forget the fact that there has never been, in the history of America, a successful partisan filibuster of a Supreme Court nomination—there has never been. This will be the first time this happened.

I support the majority leader in changing the rules in the face of this unprecedented action by a minority party. There is really no reason for their filibuster of this highly qualified individual, other than partisanship and catering to their liberal base. Changing the rules for Supreme Court nominations had to be done, and if the situation were reversed, the Democrats would have done the same thing in a heartbeat, as we saw in 2013 when they did the same thing.

Judge Gorsuch deserves to be on the Supreme Court. He does not deserve to be blocked because people are upset that we observed the Biden rule; that is, not providing for any action on a nominee for a Supreme Court vacancy once the election season is underway—and they lost the election.

Now, that is Joe Biden, not JIM INHOFE.

In addition to his impeccable job and experience and educational background, he is perhaps best known for his defense of religious liberty, including a role in the dispute during the Obama administration that required employers to provide abortion-inducing drugs to their employees as part of their health insurance. One of these employers was Hobby Lobby.

Everyone knows who Hobby Lobby is, but not everyone knew them back when I knew them. I knew them back in the 1970s, when the Green family, who started Hobby Lobby, were actually operating out of their garage, making picture frames, and look at them today. I have known them for a long time. They started out their whole business with a \$600 loan. Now they have over 700 stores across the United States and are the largest privately owned arts and crafts store in the world.

Judge Gorsuch and the Supreme Court agreed with Hobby Lobby and upheld their religious liberty rights. I am going to read to my colleagues his concurring opinion. It is very profound. Judge Gorsuch wrote, after they made the determination that Hobby Lobby did not have to give these drugs to their employees:

It is not for secular courts to rewrite the religious complaint of a faithful adherent, or to decide whether a religious teaching about complicity imposes “too much” moral disapproval on those only “indirectly” assisting wrongful conduct. Whether an act of complicity is or isn’t “too attenuated” from the underlying wrong is sometimes itself a matter of faith we must respect the faith.

Now, that is what he wrote in Hobby Lobby.

In a very similar situation around the same timeframe, there was a case that is known now to be the Little Sisters of the Poor. He joined in an opinion defending the rights of nuns not to be forced to pay for abortion-inducing drugs in their healthcare plans. This is another profound statement he made. He said: “When a law demands that a person do something the person considers sinful, and the penalty for refusal is a large financial penalty, then the law imposes a substantial burden on that person’s free exercise of religion.”

It is not just petitioners of the Christian faith whom Judge Gorsuch has sided with. He upheld the religious beliefs of a Native American prisoner and of a Muslim prisoner who found their ability to practice their faith restricted in one manner or another.

He comes to his decision not because he is seeking some predetermined outcome; he comes to his decisions because that is where the facts of the law and the Constitution lead him.

For example, in the Lynch case—another Oklahoma case—Gorsuch referred to Chevron deference as “a judge-made doctrine for the abdication of the judicial duty.”

Chevron deference is the judicial rule that requires judges to defer to an agency’s interpretation—we are talk-

ing about a bureaucracy—an agency’s interpretation of the law if the law is considered ambiguous or unclear and if the agency’s interpretation is reasonable. This defense to the agency gives them a lot of authority, a lot of power. Moreover, it can provide a lot of uncertainty to the regulated community.

As Judge Gorsuch wrote, Chevron deference allows agencies to “reverse its current view 180 degrees any time based merely on the shift of political winds and still prevail [in court].”

I know a little bit about this. I spent a lot of years being the chairman of a committee called the Environment and Public Works Committee. During the Obama years, we had a bureaucracy that was trying to change the law instead of following the law. It was exactly what Judge Gorsuch was talking about in this case when he talked about the Chevron deference, giving deference to a bureaucracy. You can imagine being in business, especially a heavily regulated one, that has to worry that every 4 to 8 years the rules might change then and how do you plan to make your plans.

I think Gorsuch’s opinion on Chevron deference is an important debate to have. Do we, as a coequal branch of government, continue to give up our powers to the administrative state or do we take our power back and write laws as they should be implemented? Furthermore, does the judicial branch, as a coequal branch of government, continue to give up their power of interpretation to the administrative state?

These are important, fundamental questions that should be addressed, and I am glad the Gorsuch nomination has brought these cases to light.

Although Judge Gorsuch was nominated by a Republican President, this doesn’t mean my colleagues on the other side of the aisle should have any concern about Judge Gorsuch’s decisionmaking ability. This is important to point out because being a judge is not about making decisions that are in the best interests of any political party but really about making decisions based on facts and the law and the Constitution without bias.

During his confirmation, Judge Gorsuch stated his judicial philosophy, saying:

I decide cases . . . I listen to the arguments made. I read the briefs that are put to me. I listen to my colleagues carefully and I listen to the lawyers in the well . . . keeping an open mind through the entire process as best I humanly can and I leave all the other stuff at home. And I make a decision based on the facts and the law.

Who can argue with that? He has proven over a period of time that he will do that.

Through the whole debate, it has become evident that the Democrats were asking him to rule in favor of causes and not to follow the law, which is what a judge does and should do.

Regarding the roles and balance of our government, Gorsuch is what a

judge should be. He believes Congress should write the laws, the executive branch is to carry them out, and the judicial branch is to interpret the laws. The confirmation of Judge Gorsuch will shape our Nation for generations to come, and all of us will be able to benefit from his wise decisions.

I am looking forward to confirming Judge Neil Gorsuch. It is going to happen tomorrow, and then all of this will be over. I am proud to give him my vote. Justice will be well served as such.

With that, 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.

Mr. NELSON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

VENEZUELA

Mr. NELSON. Mr. President, I have already cast my “no” vote with regard to the judge and will so again whenever we get to final passage, but I want to take this opportunity to talk about the chaos that is going on in Venezuela.

As if there weren’t already enough chaos, last week Venezuela’s supreme court stripped its legislative branch of its powers—just stripped them of powers. Only because the court had gotten such significant criticism did it reverse its decision. Apparently even the very shaky President of Venezuela, Maduro, weighed in to get them to reverse their decision. Now, isn’t that something? This is supposed to be a democracy. Yet it is being run as a dictatorship, where even the judicial branch goes and does something crazy and the President of the country gets up and tells them: You had better reverse yourself; there is too much criticism.

This is the nonsense that is going on in Venezuela. Of course, what went on last week further undermines Venezuela’s so-called democracy, and it is only the latest in President Maduro’s creeping dictatorship. That is what it is.

He has repeatedly and violently suppressed protesters and jailed his political opponents in violation of any understanding of human rights. He has used that same Supreme Court to block members of the National Assembly from taking office, and he has used that Supreme Court as a rubberstamp to overturn the laws that the National Assembly does that he doesn’t like. Isn’t it a sad state that Venezuela has reached?

The President has also thwarted opposition efforts to recall him, President Maduro, in a national referendum. In so doing, he was able to appoint a Vice President with ties to Hezbollah, and now a Vice President it appears that he has sanctioned for drug trafficking.

Meanwhile, the poor Venezuelan people suffer the consequences of the political, humanitarian, and economic

crisis. Venezuelans are dying because of severe shortages of food and medicine and other products. The economy is in freefall, and crime and corruption are rampant.

Last year, 18,000 Venezuelans sought asylum in the United States—more than any other nationality. The United States stands clearly on the side of the Venezuelan people in calling on President Maduro to cease undermining democracy, release all political prisoners, respect the rule of law, and respect human rights.

There obviously is no sign that he is going to be doing this. What should we do? First of all, we ought to get our Secretary of State to work with the international community, including the Organization of American States, to help resolve this crisis and alleviate the suffering of the Venezuelan people.

That is the first order of business, to try to eliminate the suffering of people. It is all so true; whenever a dictator takes control, as has happened in Venezuela, it is the people who suffer first.

Additionally, I am suggesting and I am calling on the administration to fully enforce and, where appropriate, expand the sanctions on those responsible for continued violence and human rights violations that are perpetrated against the people.

It is very interesting. A lot of these so-called big guys in Venezuela love to travel. They love to have bank accounts. They love to come to Miami. They love to have U.S. bank accounts. Let's slap some severe economic sanctions on these guys. The situation is increasingly dire, and we must stand with the Venezuelan people in their struggle for democracy and human rights.

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. NELSON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

AFFORDABLE CARE ACT

Mr. NELSON. Mr. President, while we have a lull in the debate, I want to take an opportunity to talk about healthcare. Since we had an utter inability of the House of Representatives to come together on any kind of healthcare bill, this Senator would suggest that instead of the mantra "repeal and replace," since now that seems to be dead, why don't we take the existing law that has provided a lot of things for the average citizen? For the average person in my State of Florida, it means a great deal to have the availability of health insurance, which they never had and can now afford.

There need to be fixes to the law known as the Affordable Care Act that was passed several years ago. Indeed, one of those fixes could be a kind of

"smoothing fund," that as the insurance companies vie for this business on the State exchanges, they would be able to have this fund as a resource for them to get over some of the humps—also, certainly for some of the insureds.

Just because you are at 400 percent of poverty and therefore no longer eligible for some of the subsidies to enable you to buy health insurance—and, by the way, for a single individual, that is only about \$47,000 a year of income—the person who makes \$47,000, \$50,000 a year can't afford to go out and spend \$8,000, \$10,000, \$11,000 on a health insurance policy.

We need to adjust that—in other words, fix that as well. There needs to be an additional fix of a subsidy for the people who are just over 400 percent of poverty. To translate that another way, for a family of four, that is only about \$95,000 a year. On a tight budget like that, they simply can't afford health insurance. They need some help.

With a few little fixes like that to the existing law—the Affordable Care Act—we could get this thing tuned up and, indeed, continue to provide what we need in order for people to have healthcare.

One other fix: There are about 4 million people in the country who, if their State legislatures and their Governor would expand Medicaid—and some of those Governors are now expressing interest in doing this—under the Federal law up to 138 percent of poverty, 4 million more people would be covered with healthcare. In my State of Florida alone, there are 900,000 people who otherwise would be getting healthcare who do not because the government in the State of Florida has refused to expand Medicaid coverage up to 138 percent of poverty.

How much is that? For a single individual, that is someone making about \$16,000 a year. A person like that can't afford health insurance. A person like that can't afford any kind of paying for any healthcare.

What happens to them? When they get sick, they wait and wait to try to cure themselves because they can't pay a doctor. When the sickness turns into an emergency, they end up in the emergency room and then, of course, it is uncompensated care and the hospital eats it. The hospital, of course, passes that uncompensated care on to all the rest of us who are paying our premiums on health insurance.

It makes sense to do this. With a few fixes, we would be able to tune up the existing law to provide the healthcare that most of us want to provide. It seems to me that it is common sense, and it is common sense that can be done in a bipartisan way. It is my hope and my prayer that the Senate and the House will come together and ultimately do this.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. REED. Mr. President, the Senate has decided on a purely partisan basis

to resolve the impasse of Judge Gorsuch's nomination by invoking the so-called "nuclear option." For the first time in our history, nominees to the Supreme Court of the United States may advance from nomination to confirmation with a simple majority vote in this body.

I have heard many of my colleagues ascribe blame equally to both sides, and I have heard analysts and experts say the same. One can question that diagnosis, as some very respected scholars like Norm Ornstein of the American Enterprise Institute and Thomas Mann of the Brookings Institute have demonstrated that our political polarization over the last several years, and hence our current impasse, has been driven predominantly by the ever more conservative ideology of the Republican Party. Regardless, here we are.

The Gorsuch nomination lacks the traditional level of support required for a Supreme Court seat, and the majority leader has chosen a step that Democrats clearly and emphatically rejected when we needed to confirm nominees with broad support but were blocked because they were submitted by President Obama.

I had hoped it was not too late for cooler heads to prevail. Unfortunately, adherence to the principle of 60 votes for consideration of a Justice of the Supreme Court and indeed the existing rule in the Senate was ignored, and we are at this impasse.

Since many have drawn a false equivalence between the last so-called "nuclear option" vote of several years ago and what occurred today, let me take a moment to explain, for my part, why I very reluctantly supported a change to the Senate precedent for nominees other than the Supreme Court in 2013.

During President Obama's tenure, Republicans necessitated more cloture votes than were taken under every previous President combined. Let me repeat that. During President Obama's tenure, Republicans necessitated more cloture votes than were taken under every previous President combined, from George Washington to George W. Bush. In numerical terms, Republicans demanded a cloture vote 79 times over just 5 years. In contrast—from the Founding Fathers all the way through George W. Bush—the Senate only faced that situation 68 times. Republicans obstructed Obama nominees more in 5 years than the United States Senate obstructed all nominees combined over the course of more than two centuries.

The bitter irony, of course, was that after a nominee would break through, Republicans often would vote overwhelmingly to confirm the very nominee they so adamantly delayed. It was clear their sole guiding principle was obstruction and delay.

Judges nominated by President Obama faced some of the longest median and average wait times under the five most recent Presidents, and President Obama tied with President Clinton for the fewest number of circuit

court nominees confirmed during that same period. All that time, judicial vacancies stacked up. Justice was delayed and denied. Critical public service roles went unfilled, and the American public came to regard Congress as a place where nothing of substance can occur.

It was under those dire and unprecedented circumstances that I reluctantly joined my colleagues to change the filibuster rules for executive nominations and judicial nominations, other than the Supreme Court—very consciously excluding the Supreme Court, which at that time was recognized as appropriate by all my Republican colleagues. But there really is no equivalence between that decision and what the majority did today.

Even in 2013, at the height of Republicans' partisan attacks on President Obama, Senate Democrats believed the Supreme Court was too important to subject to a simple majority vote. The Supreme Court is a coordinate branch of our government, and its lifetime appointees have final authority to interpret the Constitution. We understood then—as we do now—that the traditional 60-vote threshold to conclude debate on the highest Court in our nation was too important to the consensus-driven character of this body to sacrifice.

I think we also have to acknowledge that a President already has nominated a consensus choice capable of earning 60 votes to a seat on the Court, and that nominee was Chief Judge Merrick Garland. The unprecedented treatment he received by the majority has already made this one of the most infamous and politicalized Supreme Court nominations in American history. It is all the more disconcerting that Judge Gorsuch witnessed Judge Garland be treated so poorly but now seems to feel entitled to his seat on the Court, even if the Senate must change its precedence to give it to him.

I already addressed this body about my deep concerns regarding Judge Gorsuch's judicial record of ideological activism and championing the powerful over the powerless, but it is worth going into greater detail on one of his opinions that is emblematic of this, and that has recently come to the fore.

In 2008, Judge Gorsuch heard what is referred to as the Luke P. Case. In that case, the parents of an autistic child sought reimbursement from a school district for the cost of specialized education because the school had not provided adequate accommodations for the child under the Individuals with Disabilities Education Act or IDEA. The case presented heart-wrenching facts that are too familiar for families affected by disabilities such as autism. The child, Luke, experienced severe behavioral issues in public and at home. His parents sought advice from the best sources available to create the most effective atmosphere for him to make progress in school. Ultimately, they recognized the public school Luke

had attended could not provide the learning atmosphere required by the law for Luke. So they placed him in a different school setting.

Luke's parents exercised their rights under IDEA. The Colorado Department of Education, the Colorado Office of Administrative Courts, and a Federal district court all agreed that the law entitled them to reimbursement from the school district that was not able to provide an adequate learning environment for Luke. This should have been the end of the matter, but when the school district appealed the case to the Tenth Circuit, Judge Gorsuch's decision reversed all these factfinders to hold in favor of the school district.

In order to reach his conclusion, Judge Gorsuch went to great lengths—picking and choosing passages from previous decisions—to weave a new standard that essentially eviscerated the protections under IDEA. His strict interpretation of this landmark law utterly ignored congressional intent and created a new precedent that schools need only provide “merely more than de minimis” or, in plainer terms, just a little bit more than zero educational opportunity for children with disabilities. The immediate result of this decision was to force Luke back into an inadequate learning environment and leave his parents with yet another unexpected financial hardship. At the same time, Judge Gorsuch's new legal standard threatened to degrade the quality of education for children with disabilities all across the country.

The good news for Luke's family—and for so many others—is that the Supreme Court of the United States intervened in a rare unanimous opinion, reversing Judge Gorsuch's position—ironically during his confirmation hearings. The Nation has been spared the potential harm that could have resulted from lowering expectations for schools nationwide and leaving families like Luke's without sufficient recourse.

Yet as my colleagues and I have pointed out at every turn of this confirmation process, this is far from the only decision by Judge Gorsuch that is widely outside the mainstream of modern jurisprudence. He is not—and was never intended to be—a consensus nominee to fill the vacancy on the Supreme Court. It should not come as a surprise, therefore, that this body is divided over his nomination to the highest Court in the land, and Judge Gorsuch could not earn enough support under the 60-vote threshold.

The filibuster was intended to be an institutional safeguard that protects the minority by requiring broad consensus for major decisions by this body. It should be equally apparent in this circumstance that the filibuster did its job. A large minority of this body viewed Judge Gorsuch as too extreme for the Supreme Court, and that minority blocked cloture on his nomination. There was no national emergency, no danger, no serious con-

sequence whatsoever that prevented the majority from reversing course and working with Democrats and the President to find a consensus nominee. In one day, the majority has lessened the distinction between our Chamber and our colleagues across the Capitol, all the while lowering ourselves further in the eyes of the Nation and opening the door to an even more polarized judiciary.

I regret that this is the case, and I hope this body can turn back from the course we find ourselves on today.

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. GRASSLEY. 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. GRASSLEY. Mr. President, we are now well on our way to confirming Judge Gorsuch as the next Justice of the Supreme Court. I have a few things to say about the way we have gotten here.

Earlier today, the other side—meaning the Democrats—made a very unprecedented break with Senate history and with Senate tradition. They launched the first partisan filibuster of a Supreme Court nominee in our Nation's history. For our part, we Republicans insisted that we follow the practice of the Senate. We don't engage in partisan filibusters of Supreme Court nominees.

Yesterday, I came to the floor to speak about the path that brought us to this point. As I discussed, way back in 2001, the current minority leader and some of his allies on the far left hatched a plan to, in their words, “change the ground rules” with regard to lower court nominees. I noted a New York Times article describing the Democratic senatorial caucus retreat, where the new approach to nominees was discussed; in other words, where they discussed the strategy for changing the ground rules of how judges are considered by the United States Senate.

Mr. President, I ask unanimous consent to have printed in the RECORD the May 1, 2001, New York Times article entitled “Washington talk; Democrats Ready for Judicial Fight,” and the April 5, 2017, story from the Washington Examiner entitled “The Gorsuch Plagiarism Story is Bogus.”

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

[From the New York Times, May 1, 2001]

WASHINGTON TALK; DEMOCRATS READY FOR JUDICIAL FIGHT

(By Neil A. Lewis)

President Bush has yet to make his first nominee to a federal court and no one knows whether anyone will retire from the Supreme Court this summer, an event that would lead to a high-stakes confirmation battle.

Nonetheless, the Senate's Democrats and Republicans are already engaged in close-quarters combat over how to deal with the eventual nominees from the Bush White House. Democrats in particular are trying to show some muscle as they insist that they will not simply stand aside and confirm any nominees they deem right-wing ideologues.

"What we're trying to do is set the stage and make sure that both the White House and the Senate Republicans know that we expect to have significant input in the process," Senator Charles E. Schumer, New York's senior Democrat, said in an interview. "We're simply not going to roll over."

Forty-two of the Senate's 50 Democrats attended a private retreat this weekend in Farmington, Pa., where a principal topic was forging a unified party strategy to combat the White House on judicial nominees.

The senators listened to a panel composed of Prof. Laurence H. Tribe of Harvard Law School, Prof. Cass M. Sunstein of the University of Chicago Law School and Marcia R. Greenberger, the co-director of the National Women's Law Center, on the need to scrutinize judicial nominees more closely than ever. The panelists argued, said some people who were present, that the nation's courts were at a historic juncture because, they said, a band of conservative lawyers around Mr. Bush was planning to pack the courts with staunch conservatives.

"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 or erudite," a person who attended said.

Senator Tom Daschle of South Dakota, the Democratic leader, then exhorted his colleagues behind closed doors on Saturday morning to refrain from providing snap endorsements of any Bush nominee. One senior Democratic Senate staff aide who spoke on the condition of anonymity said that was because some people still remembered with annoyance the fact that two Democratic senators offered early words of praise for the nomination of Senator John Ashcroft to be attorney general.

Senators Robert G. Torricelli of New Jersey and Joseph R. Biden Jr. of Delaware initially praised the Ashcroft selection, impeding the early campaign against the nomination. Both eventually acceded to pressure and voted against the nomination.

The current partisan battle is over a parliamentary custom that Republicans are considering changing, which governs whether a senator may block or delay a nominee from his home state. Democrats and Republicans on the Judiciary Committee have not resolved their dispute over the "blue-slip policy" that allows senators to block a nominee by filing a blue slip with the committee.

On Friday, Senator Patrick J. Leahy of Vermont, the ranking Democrat on the Judiciary Committee, and Mr. Schumer sent a letter to the White House signed by all committee Democrats insisting on a greater role in selecting judges, especially given that the Senate is divided 50-50 and that the Republicans are the majority only because Vice President Dick Cheney is able to break any tie.

Senator Trent Lott of Mississippi, the Republican leader, told reporters today that he believed "some consideration will be given to Democratic input, but I don't think they should expect to name judges from their state."

Mr. Lott said he expected that Democrats might slow the process but, in the end, would not block any significant number of nominees.

Behind all the small-bore politics is the sweeping issue of the direction of the federal

courts, especially the 13 circuit courts that increasingly have the final word on some of the most contentious social issues. How the federal bench is shaped in the next four or eight years, scholars say, could have a profound effect on issues like affirmative action, abortion rights and the lengths to which the government may go in aiding parochial schools.

Mr. Bush is expected to announce his first batch of judicial nominees in the next several days, and it is likely to include several staunch conservatives as well as some women and members of minorities, administration officials have said. Among those Mr. Bush may put forward to important federal appeals court positions are such conservatives as Jeffrey S. Sutton, Peter D. Keisler, Representative Christopher Cox of California and Miguel Estrada.

The first group of nominees, which may number more than two dozen, is part of an effort to fill the 94 vacancies on the federal bench while the Republicans still control the Senate.

But it remains unclear if there will be a Supreme Court vacancy at the end of the court's term in July. Speculation on possible retirements has focused on Chief Justice William H. Rehnquist and Justices Sandra Day O'Connor and John Paul Stevens. But in recent days, associates of Justice O'Connor have signaled that she wants it known that she will not retire after this term.

[From the Washington Examiner, Apr. 5, 2017]

THAT GORSUCH PLAGIARISM STORY IS BOGUS (By T. Becket Adams)

Supreme Court nominee Neil Gorsuch is not a plagiarist, according to the woman from whom he has been accused of lifting materials.

"I have reviewed both passages and do not see an issue here; even though the language is similar. These passages are factual, not analytical in nature," Abigail Lawlis Kuzma, who serves as chief counsel to the Consumer Protection Division of the Indiana Attorney General's office, said in a statement made available to the Washington Examiner.

Her remarks came soon after two reports alleged Tuesday evening that President Trump's Supreme Court nominee had "copied" passages in his 2006 book, "The Future of Assisted Suicide and Euthanasia." The reports alleged he also lifted material for an academic article published in 2000.

The charge, which involves Gorsuch repeating medical terms and not original concepts or ideas, is weak, at best.

"[The similar] passage are factual, not analytical in nature, framing both the technical legal and medical circumstances of the 'Baby/Infant Doe' case that occurred in 1982," Kuzma explained. "Given that these passages both describe the basic facts of the case, it would have been awkward and difficult for Judge Gorsuch to have used different language."

BuzzFeed was first to report on the similarities between Gorsuch and Kuzma. It published a story Tuesday headlined, "A Short Section in Neil Gorsuch's 2006 Book Appears To Be Copied From A Law Review Article."

Politico followed suit publishing a story titled, "Gorsuch's writings borrow from other authors."

Other newsrooms, including the Huffington Post, Business Insider and New York magazine, moved quickly to repeat the charges against Gorsuch.

Politico bolstered its charge with quotes from multiple academic experts, including Syracuse University's Rebecca Moore Howard, who, interestingly enough, is quite open about supporting former President Barack Obama.

However, several professors who worked closely with Gorsuch during the period in which he produced much of the work in question said the hints and allegations against the judge are nonsense.

"[I]n my opinion, none of the allegations has any substance or justification," Oxford University's John Finnis said in a statement made available to the Examiner. "In all four cases, Neil Gorsuch's writing and citing was easily and well within the proper and accepted standards of scholarly research and writing in the field of study in which he was working."

Georgetown University's John Keown, who reviewed Gorsuch's dissertation, said elsewhere in a statement: "The allegation is entirely without foundation. The book is meticulous in its citation of primary sources. The allegation that the book is guilty of plagiarism because it does not cite secondary sources which draw on those same primary sources is, frankly, absurd."

Indeed, the book's reliance on primary rather than secondary sources is one of its many strengths."

Further, actual attorneys disagree that Gorsuch plagiarized anything.

"People unfamiliar with legal writing, or even writing, may be unfamiliar with how citations work," Attorney Thomas Crown explained Wednesday. "When I cite to a case or statute, if I am quoting verbatim, I give a direct quotation, with apostrophes and everything, and then the source. If I am summarizing, sometimes even using the same words, I follow with the direct citation. The Bluebook, which is the legal style Bible, is for law reviews and some appellate and trial courts, and has more specific rules."

"I mention this because this is standard across numerous fields, not just law, and only illiterates . . . are shocked," he added. "Different field with different standards and forms; but even most academics believe that a good synopsis with citation isn't plagiarism."

In conclusion, he wrote, "I don't want to ruin a perfectly good five-minute hate, but this isn't even close to plagiarism."

Mr. GRASSLEY. After a brief time in the majority, Senate Democrats were back in the minority in 2003—so approximately 2 years after they had this strategy. It was at that time the Senate Democrats began an unprecedented and systemic filibuster of President George W. Bush's circuit court nominees.

Then the tables turned. President Obama was elected, and Republicans held the Senate minority. At that time, even though many of us did not like the idea of using the filibuster on judicial nominees, we also recognized that we could not have two sets of rules—one for Republican Presidents and one for Democratic Presidents.

Our party defeated two nominees for the lower courts by filibuster and denied cloture to three of President Obama's nominees to the DC Circuit Court of Appeals. But the other side did not appreciate being subject to the rules that they first established and started using in 2003 to filibuster judges. So at that point, in 2013, they decided to change the rules of the Senate.

By the way, they changed the rules by breaking the rules. I say that because the rules of the Senate say it takes a two-thirds vote to change the

rules of the Senate, but they changed it by a majority vote. Now at that time, as we all know, Majority Leader Reid changed the rules for all Cabinet nominations and lower court nominees. To say that my colleagues and I were disappointed is a gross understatement.

The majority claimed that they left intact the filibuster for Supreme Court nominees. But my view back in 2013, when they did that, was that the distinction Majority Leader Reid drew between lower court nominees and Supreme Court nominees was not a meaningful one. My view, in 2013, was that Majority Leader Reid had effectively eliminated the filibuster for both lower court nominees and the Supreme Court.

Here is the reason. There are two circumstances where this issue might conceivably arise: either you have a Democrat in the White House and a Democrat-controlled Senate or you have a Republican in the White House and a Republican-led Senate.

In the first, there was a Democrat in the White House and the party led by Leader Reid and Leader-in-Waiting SCHUMER was in the majority. If for some extraordinary reason Senate Republicans chose to filibuster the nominee, there is no question that a Majority Leader Reid or a Majority Leader SCHUMER would change the rules.

Now, I do not believe that this particular circumstance would ever arise, because our side does not believe in filibustering Supreme Court nominees. I have never voted to filibuster a Supreme Court nominee, not once. I think I have a pretty good sense of the rest of our caucus. Our side just does not believe in it. It is not much more complicated than that simple common-sense statement I just made.

Of course, even if for some extraordinary reason our side did choose to filibuster a Supreme Court nominee, we do not have to speculate as to whether the other side would have changed the precedent with respect to the Supreme Court. Last year, when everyone thought that Secretary Clinton was going to win the election, their own Vice-Presidential candidate said that they would change the rules if they needed to if we had a Republican filibuster.

Then, of course, the other circumstance where this issue would arise is what we have seen this very day—a Republican in the White House and a Republican-controlled Senate. We saw this very day that the minority was willing to take that last step and engage in the first partisan filibuster in U.S. history.

As I have repeatedly discussed, because they were willing to do it with a nominee as well-qualified as Judge Gorsuch, it proved, without a shadow of a doubt, that they would filibuster any one submitted by this Republican President. That is why, on the day that Majority Leader Reid took that unprecedented action in 2013 to break the

Senate rules to change the Senate rules, I spoke on the floor.

I concluded my remarks this way. So I want to quote myself:

So the majority has chosen to take us down this path. The silver lining is that there will come a day when the rolls 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 the lower court nominees and still preserve it for the Supreme Court nominees.

That is what I said when Reid took that extraordinary step. So though I am extremely pleased that we will confirm such an exceptional nominee to the Supreme Court in the next day or so, I am, of course, disappointed with what we were forced to do to get it done. Sadly, I cannot say I am surprised. I think my surprise, or the fact that I can't be surprised—you can tell it from what I said back there, what I just quoted from the 2013 speech that I gave.

I knew when Majority Leader Reid did it in 2013 that this is where we were headed. That is where we ended earlier this afternoon. But the bottom line is that you cannot have two sets of rules. You cannot clothe yourself in the tradition of a filibuster while simultaneously conducting the very first partisan filibuster of a Supreme Court nominee in history. You cannot demand a rules change only when it suits the Democratic Members of this body.

You just can't have it both ways. You can't use the Senate rules as both a shield and a sword. But I must say, the one thing that does not disappoint me is this: The nominee to take Justice Scalia's seat is eminently qualified. He will apply the law faithfully without respect to persons. He is a judge's judge. Come some time tomorrow, we will all start calling him Justice Gorsuch.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. BLUNT). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. WICKER. 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. WICKER. Mr. President, I rise to express my strong support for Judge Neil Gorsuch, to say that I will proudly vote in favor of his confirmation tomorrow, and to express my confidence that history will judge this nominee to be an outstanding Associate Justice of the Supreme Court. I hope he serves a long and distinguished career and believe he will. I think Justice Neil Gorsuch will turn out to be a credit to the Supreme Court, to the President who nominated him, and to the Senate that will confirm him tomorrow.

It is unfortunate that we have had quite a bit of discussion about procedure and the process that has gotten us

to this vote, which will take place tomorrow afternoon.

I had a conversation with one of my Democratic colleagues yesterday afternoon as we were leaving the Capitol Building. This is a person with whom I have worked on issues and for whom I have great regard. I asked him how he was doing, and he said: Well, OK. I am just getting ready for the United States Senate to be forever changed.

I paused for a moment, and I said: How can it be that two reasonably intelligent Senators of good will can look at the same factual situation and see it so differently? I think my colleague did agree that, indeed, the situation we have is what has led us to our proceedings today.

I do believe my colleagues on the other side of the procedural issues today are people of good will who are trying to do the right thing by their country on this issue, just as I have been.

Let's look first of all at the candidate himself, and then I might take a moment or two to talk about what we have already done. That decision has been made. Let's talk about Neil Gorsuch, about this outstanding future Supreme Court Justice who I believe will be sworn in tomorrow or the next day.

Is Neil Gorsuch qualified? Really, can anyone contest that he is highly qualified? He is perhaps one of the most qualified people ever to have been nominated by a President for the High Court. He has degrees from Columbia, Harvard Law, and Oxford University. He has received the American Bar Association's highest rating, the gold standard that we look at when it comes to judging nominees for the Federal bench up to and including the High Court. He served for 10 years with distinction on the Tenth Circuit Court of Appeals. Clearly, he has got the qualifications, and clearly, he is among that group of qualified individuals that the President promised to look at back during the campaign and promised to send that type of individual over to the Supreme Court. I really don't think there is much that can be said to contradict the fact that Neil Gorsuch is qualified and highly qualified.

So now let's ask if Neil Gorsuch is somehow out of the broad judicial mainstream. Again, I think it is clear that, based on his history, based on his testimony, and based on his rulings up until now, he is part of the broad judicial mainstream that will put him in good company on the Supreme Court and makes him a worthy successor to Justice Scalia.

First of all, he has earned the praise of both conservatives and liberals. He has even won the endorsement of President Obama's former Acting Solicitor General, who wrote in the New York Times, "If the Senate is to confirm anyone, Judge Gorsuch who sits on the U.S. Court of Appeals for the Tenth Circuit in Denver should be at the top of the list." So thank you to the

former Acting Solicitor General for going beyond ideology and political philosophy and saying a true statement that Judge Gorsuch is outstanding and should be at the top of the list.

Editorial boards across the country have touted Judge Gorsuch's credentials and temperament. The Denver Post, his hometown newspaper, wrote an editorial praising his ability to apply the law fairly and consistently. Of course, there has been newspaper after newspaper from the right and left across this country who come down on this side of the issue saying that Judge Gorsuch should be confirmed.

Let's look also—and this has been pointed out so often that you wonder if you should say it again, but Judge Gorsuch on the Tenth Circuit has participated in 2,700 cases, he has written over 800 opinions, and has been overruled by the Supreme Court one time. Is this a judicial radical? I think not.

I think this is someone who is demonstrated to be in the judicial mainstream—one reversal by the Supreme Court out of 800 written decisions and 2,700 votes cast on panels with the Tenth Circuit. He has almost always been in the majority some 99 percent of the panels he served on, he was in the majority of those opinions, and 97 percent of those decisions were unanimous. This is hardly some radical pick as some might have suggested.

Has the process been unfair? We have heard a lot about this. A lot of my dear friends on the other side of the aisle feel aggrieved for sure. They feel that Judge Garland, the nominee of President Obama in 2016, was treated unfairly. I would simply make this observation, and the American public can decide if this was unfair.

This is a vacancy that came up during a heated, hotly contested Presidential year. There is really no doubt that, under similar circumstances, had the roles been reversed and had a Republican tried to nominate a nominee in the last year of his 8-year term, that a Democrat majority in the Senate would have done exactly as we did.

I am not guessing when I say this because the Democratic leaders of previous years have said as much. No less than Joe Biden—who was a former chairman of the Judiciary Committee and later on became Vice President for 8 years—no less than Joe Biden said exactly the same. It almost became the Biden rule. Republican Presidential nominees taken up during the final year of a term will not be considered by a Democratic Senate. So the shoe was on the other foot, and we acted the same.

So we will leave it up to the American people to decide whether Judge Garland was treated unfairly. I do not believe he was. As a matter of fact, I felt very comfortable during 2016 saying that who fills a Supreme Court seat is so important, such a significant and long-lasting decision, that the American people deserve to be heard on this

issue. I felt comfortable making the Presidential election largely about what the Supreme Court would look like over the coming years.

There is no question about it, the American people got to decide in November of 2016 whether they would like a judge in the mold of Justice Scalia whose seat we were trying to fill or would they like a judge in the mold of Judge Garland who President Obama was seeking to put in place. So I make no apology for saying to the American people, You get to decide in this Presidential year what sort of Supreme Court you want. The American people made that decision, and I am comfortable with that.

I was asked today by several members of the press about the change in the rules that I voted for today. It is not a situation that makes me overly joyed. It is not my idea of a good time to overrule a precedent and to substitute another one in its place. You would rather not do that if you are a U.S. Senator; but the fact is that it puts us back into a place that we were for 200 years in this Republic.

From the beginning of this Senate, 1789 through 1889, through 1989, up to and including 2003, there was no filibuster at all on Supreme Court Justices. There was no partisan filibuster at all in Supreme Court Justices, and no judge had ever been denied his position because of a partisan filibuster at any level—Federal judge, circuit level, or Supreme Court.

That changed in 2003, and with the Miguel Estrada nomination, our Democrat friends stopped a qualified judge from going on the Federal appeals court. That was the beginning of an unfortunate 14-year experiment in judicial filibusters. It is not a filibuster that I think—it is not a precedent or experiment that I think this Senate can be very proud of, but it took place over a relatively short period of time over 14 years, and it ends it today.

As of today, the U.S. Senate is back where it was for over 200 years in the history of this Senate and the history of our Republic without the ability to stop a judge on a partisan filibuster. In fact, this fact cannot be contradicted. There has never been in the history of our country, even in this past decade and a half of having the possibilities of a Supreme Court filibuster, there has never been a Supreme Court nominee in the history of our republic stopped by a partisan filibuster.

Today that 225-year or so precedent would have ended had we not acted to change the rules back to where we are back to fundamental principles. I was not willing to see Judge Neil Gorsuch be that first nominee stopped by a partisan filibuster in the history of our country. I was simply not willing to do that.

We now must proceed to the rest of our business. We will confirm Judge Gorsuch tomorrow. I think he will serve well. Then we have work to do. We have other nominees to consider,

and then we've got an agenda that we need to tend to for our people.

I am encouraged by the exchange of the first early steps of goodwill after this divisive process. Indeed, there was an article in one of our publications today that talked about a healthy feeling now in both caucuses, that we have got to put this procedural episode behind us, this crisis behind us and legislate.

I am glad to hear that sort of bipartisan talk coming from the other side of the aisle. Another of my friends across the aisle said, "We're not looking for dilatory procedures," he said. "When there are things where we can work together, we're looking for that."

I am encouraged—even encouraged that my friend who I was talking to yesterday afternoon will conclude that we have not forever changed the Senate in a negative way, that we are, in fact, back to where we were before 2003 and getting things done.

In the end, this is about an individual who is qualified. It is about a vacancy that needs to be filled. I for one am highly comfortable that the President, in Neil Gorsuch, has put forth an outstanding, eminently qualified judge and that he will serve us well. My vote tomorrow in favor of confirmation will be cast enthusiastically and proudly, and I think that it will stand the test of time.

I thank the Presiding Officer very much, and at this time, 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. RUBIO. 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. RUBIO. Mr. President, tomorrow morning or tomorrow afternoon at some point, we will, I believe, vote to confirm Judge Gorsuch to be a Justice to the U.S. Supreme Court. There is so much that has been said about him and his qualifications. I have been listening to the speeches all week. Even headed to the committee hearing, I think so much had been said about him. This is a mainstream candidate. This is a mainstream judge. He is someone who voted with the majority 99 percent of the time during his time on the bench. He is someone who 97 percent of the time, in 2,700 cases, was a part of rulings that were unanimous. He most certainly, I believe, is someone who believes the Constitution should be interpreted according to its original intent of the writers, but he is certainly not someone outside the mainstream of American legal thinking, and he is certainly eminently qualified. It is interesting in that you see a broad array of individuals come forward and talk about his qualifications.

I also thought it was interesting that there really was no coherent reason for

opposing him. There are a lot of different opinions on the floor that claim he would not commit to certain decisions that people would like to see him make on the Court. That would be true of virtually everyone who has been nominated to the Court over the last quarter century.

There is no doubt that he is someone who has certain beliefs and views about the Constitution that are reflective of the President's party, but that is what elections are about. Obviously, the great people whom President Obama appointed reflected his thinking. That is our system.

A lot of the attention, though, in this debate has been about the process that brought us here. There has been tremendous consternation about the change that no longer would there be a requirement of 60 votes in order to end debate. I think a lot of people have a fundamental misunderstanding of what has happened and how we have gotten here, and I thought it was important for the people of Florida and others who may be interested to know how I approached it, because it was something that I am not excited about or gleeful about or happy about. I would say that is probably the sentiment of most of the people here in the Senate. Yet it happened anyway.

I saw a cartoon by one of these editorial cartoonists; I am not quite sure who it was. It had this picture of both sides basically saying: This is terrible, but we are going to do it anyway.

I think it is important to understand, first and foremost, about the Senate. It is unique. There is no other legislative body like it in the world. Unlike most legislative institutions, it does not function by majority rule. It actually requires a supermajority to move forward. That was by design; it was not an accident.

The people—the Founders, the Framers—created a system of government in which they wanted one branch of the legislature to be very vibrant, active, representative of the people. They represent districts, and they have 2-year terms. Then they created another Chamber which was different in nature. At the time, the U.S. Senate was designed, first of all, to represent the States. Where the House was the people's House, the Senate was the place the States were represented.

The other thing they wanted to design was a place that was at some level possibly immune from the passions of the moment. They wanted a place where things would slow down for a moment, where we would take a deep breath and make sure we were doing the right thing. It was a wise course.

Our Republic is not perfect, but it has survived for over two centuries. In the process, it has given us the most dynamic, most vibrant, and, I believe, the most exceptional Nation in all of human history. While not perfect, the Senate has been a big part of that endeavor.

By the way, at the time, Senators were elected by the legislature; they

were not even elected by people. Of course, that changed. I am not saying we should go back, but that is the way it was.

That Senate was also unique because it had this tradition of unlimited debate. When a Senator got up to speak, they got to debate as long as they wanted, and no one could stop them. Then, at some point, that began to get a little bit abused, so they created a rule that required a supermajority, and that supermajority was further watered down. Then we arrive here, over the last 4 years, to see what has happened.

Basically, what happens now is that there are two ways to stop debate, which is as a result of a procedure that was undertaken on the floor first by Senator Reid when he was the majority leader and now by the majority leader today on what is called the Executive Calendar, where there are nominations for the Cabinet, Ambassadors, the sub-Cabinet, courts, and now the Supreme Court. No. 1 is by unanimous consent, when everybody agrees to it, or, No. 2, through 51 votes, a majority vote.

I think that is problematic in the long term, not because of Judge Neil Gorsuch, for I believe that in any other era and at any other time, he would not have just gotten 60 votes or even unanimous consent to stop debate; I think he would have gotten 60-plus votes, maybe 70 votes, to be on the Court. I think it is problematic because we do not know who is going to be the President in 15 years or what will be the state of our country. Yet, by a simple majority, without talking to a single person or getting a single vote from the other party or the other point of view, they are going to be able to nominate and confirm and place someone on the bench of the Supreme Court—to a lifetime appointment to a coequal branch of government—without even consulting with the other side. I think, long term, that is problematic—in the case of Neil Gorsuch, not so much, but for the future of our country, I think it could be problematic.

The argument has been made that this has never been used before, so all of the stuff brings us back to where we once were. I think technically that is accurate, but this is not exactly where we once were. Where we once were was that there were people who worked here who understood they had the power to do this. They got it. They understood that if they had wanted to, they could have forced the 60 votes. They understood they had the power to do it, but they chose not to exercise it. They chose to be judicious because they understood that with the power, there comes not just the power to act but sometimes the power not to act, to be responsible, to reserve certain powers for extraordinary moments when it truly is required. And over the years, it has been abused.

This is not going to be a speech where I stand up here and say that this

is all on the Democrats, although I most certainly have had quarrels over some of the decisions that have been made by the other side of the aisle. I think it is a moment to be honest and say that we all have brought us here to this point, both sides, and it has required us to do this.

The reason I was ultimately able to vote for the change today is that I am convinced that no matter who would have won the Presidential election and no matter which party would have controlled this Chamber, that vote was going to happen. Both sides were going to do this because we have reached a point in our politics in America where what used to be done is no longer possible, and that has ultimately found its way onto the floor of the U.S. Senate.

Rules are rules, and ultimately the Republic will survive the change we have seen here today. I think the more troubling aspects are the things that have brought us to this point.

A couple of days ago, while at a lunch with my colleagues, I said that one of the things, I think, we are going to have to accept is that, quite frankly, the men and women who served in this Chamber before us—20, 30 years ago—were just better than we are. They were human beings who, quite frankly, had deeply held beliefs. I do not know of any Member of this Chamber who was more conservative than Barry Goldwater or Jesse Helms. I do not know any Member of this Chamber who was more progressive or liberal than Hubert Humphrey or Ted Kennedy or others. Yet somehow, despite their deeply held principles, these individuals were able to work together to prevent what happened here today.

The fact is, for both sides, that is not possible anymore. Today, our politics require us to use every measure possible, even if it is for symbolic purposes. That is just the way it is. That is more of a reflection of our political process than it is of the Senate.

I have seen these articles that have been written of “the end of the Senate” or “the death of the Senate.” It is a little bit of an exaggeration, but I think it is actually just reflective of the fact that this is the way politics has become, that as a nation today, we are less than ever capable of conducting a serious debate about major issues in the way we once were able to do. I think everyone is to blame.

I think the way politics is covered is to blame. Today, most articles on the issues before us are not about the issues before us; they are about the politics of the issues before us. Today, most of the work that is done in this Chamber and in the other Chamber has more to do with the messaging behind it than it does with the end result of where it will lead us. That is just the honest fact.

Before people start writing or blogging: Well, look at all of these other times when the Senator from Florida—when I did some of these things—I admit it. I do not think there

is a single person here with clean hands on any of this. I admit that I have been involved in efforts that, looking back on some of these things, perhaps, if we knew then what we know now, we would have done differently. I think it is important in life to recognize and learn from those experiences and to adapt them to the moment before us.

I think, moving forward, the biggest challenge we will face in the country is that our issues are not going to solve themselves. They will require people from very different States, very different backgrounds, and very different points of view to be able to come together and solve some pretty big deals. It is ultimately not about silencing people or having them compromise their principles but about acknowledging that in our system of government, we have no choice but to do so. We have no choice.

I think it also requires us to take a step back and understand that the people who have a different point of view than ours actually believe what they are saying. They hold it deep, and they represent people who believe what they are saying. I say this as someone who will admit that, in my time of public service, perhaps I have not always applied that as much as I wish I had. I try to. You certainly live and learn when you get to travel the country and meet as many people as I did over the last couple of years. I certainly think that impacts us profoundly.

I have a deeply held belief in limited government and free enterprise and a strong national defense and the core principles that define someone as a conservative. But I have also grown to appreciate and understand the people who share a different point of view—perhaps not as much as I hope to one day be able to understand and respect it, but certainly more than I once did, simply because the more people you meet, the more you learn about them, and the more you learn and understand where they are coming from.

Are we capable as a society to once again return to a moment where people who have different ideas can somehow try to figure out how to make things better, even if the solutions are not perfect? I hope so, because the fate of the most important country in human history is at stake. Are we capable of once again having debates, not that aren't vibrant and not that from time to time people may say things or even do things that they may regret, but certainly ones that at the end of the day are constructed for the purpose of solving a problem, not winning an election. I hope so, because if we don't, we will have to explain to our children why we inherited the greatest country in human history and they inherited one that is in decline.

I don't mean to exaggerate, because ultimately this is a rule change. We don't vote on the Supreme Court every day, every week, every month. Sometimes we don't vote on it for long periods of time. But I think it exposes a

more fundamental challenge that we face today in American politics, and that we better confront sooner rather than later, and that we should all confront with the understanding and the knowledge that none of us come to it with clean hands.

We were reminded again this week by the images that emerged from Syria of what a dangerous world we live in, and we are reminded that the threats remain.

I ask people tonight—no matter who you write for, who you blog for, what political party you are a member of, or whom you vote for in November—to ask yourself a question and to be honest about the answer. If, God forbid—and I mean this, God forbid—there were another 9/11-style attack on the United States, how would we honestly react? Because September 11 was a scary day, and on that day I remember there weren't Democrats or Republicans. Everyone was equally frightened and everyone was equally angered. There was a sense of unity and purpose that we had not seen in a long time and have not seen since.

I honestly believe, sadly, that if today there were another 9/11-style attack on America, one of the first things we would see people doing is blaming each other, saying whose fault it was. You will have some people saying: Well, this terrorist attack happened because President Obama didn't do enough to defeat the terrorists. And others would say: It happened because the Republicans and the new President, President Trump, has not done enough, or has done things to provoke them. I honestly believe that. I think that is what the debate would look like. I hope I am wrong.

Just think about how far we have come in almost 20 years, 15 years. That is the kind of debate I believe we would have. Think about how destructive that is.

I also think we would see a plethora of crazy, fake stories about what was behind it. And here is the craziest part: Some very smart and educated people would believe those stories because we have reached the point now where conspiracies are more interesting than facts.

I know that people may see this and say: Oh, I think you are exaggerating. Maybe, I hope so. But I honestly think that we are headed in a direction that is actually making us—not us the Senate, but us, Americans—incapable of confronting problems.

I will just say this. What I really hope will happen soon is that we are going to get tired of fighting with other Americans all the time, that we will finally get fatigued with all of this constant fighting against other Americans. Americans are not your enemies. Quite frankly, I hope we have no enemies anywhere in the world, other than vicious leaders, and we hope to be a part of seeing taken them out of power at some point for the horrible things they do. I hope we will reach a

point where people are saying, I am just tired of constantly fighting with other Americans. We will have differences and we will debate them. Thank God that we have been given a republic where we have elections every 2 years and where we can have these debates. But, in the interim, whether we like it or not, none of us is going anywhere.

The vast and overwhelming of majority of Americans will live in this country for the rest of their lives. This is their home and this is their country. We are going to have to figure out how to share and work together in this unique piece of land that we have been blessed with the opportunity to call home. If we don't figure out a way to do that soon enough, then many of these issues that confront America will go unsolved, and not only will our people pay a price and our children pay a price, but the world will pay a price.

So I know that is a lot to say about a topic as simple as a rule change and ultimately a vote for the Supreme Court, but I really think it exposed something deeper about American politics that we had better confront sooner rather than later, or we will all live to regret what it leads to, and that is the decline of the single greatest Nation in all of human history.

With that, I yield the floor.

The PRESIDING OFFICER. The Senator from South Carolina.

CONGRATULATING THE UNIVERSITY OF SOUTH CAROLINA WOMEN'S BASKETBALL TEAM ON WINNING THE NATIONAL BASKETBALL CHAMPIONSHIP

Mr. GRAHAM. Mr. President, on a more upbeat note, the lady Gamecocks are national champions.

On April 2, this past Sunday, the University of South Carolina women's basketball team beat Mississippi State 67 to 55 to end a magical season and become the national champions.

This is a magical year for the State of South Carolina. We have the Clemson Tigers, who are the national football champs. Coastal Carolina University is the College World Series title holder for baseball. Now we have the lady Gamecocks as the national champs and in women's basketball. Dustin Johnson is the No. 1 golfer in America, who hurt his back today and had to withdraw from the Masters. So that was bad.

This was a great year. I went to the University of South Carolina. I still have 4 years of eligibility in all sports for a reason: I was no good. My colleague who is here actually played college football, and we are both Gamecocks fans.

Coach Dawn Staley came to South Carolina in 2008. She has been on three gold medal national championship teams as a player. She is now in the Hall of Fame for basketball and is one of two African-American female head coaches to win the national title in women's basketball. She is the real deal. She is a wonderful lady.

A'ja Wilson, our dominating junior forward, was the MVP for the Final

Four and SEC player of the year, and first team All American. All the girls played really, really hard.

The men's basketball team made it to the Final Four and lost in a very tough contest. I could not be more proud of the University of South Carolina men's basketball team.

Frank Martin, the men's basketball coach, is the National Coach of the Year.

This is a special time in South Carolina. If you are a Gamecocks fan, you have been long suffering for a while, and our ship finally came in.

So congratulations to the lady Gamecocks. I can't wait until next year. We always say that with a sense of dread, but I can't wait until next year for South Carolina, Clemson, and every other sports team in South Carolina. We are doing something right. I don't know what it is, but we are all grateful in South Carolina.

I yield to my colleague, who actually played college football, and I don't think he has any eligibility left because he was good.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. SCOTT. Mr. President, just in the very few spaces that are left after we finish chatting about our great State and the great season our school had, there are two things I want to note. No. 1, Coach Frank Martin: coach of the year, a fantastic person, a great communicator, a strong, disciplined coach. It is very hard to misunderstand what he is saying.

Coach Staley: Absolutely, positively, unequivocally the best women's basketball coach, in my opinion, ever, against UCONN—ever. Dawn Staley, 20 years ago, came within a single point of winning a national championship as a player. Can you just imagine being a single point short? And this must feel like redemption for our coach.

We are so proud of the fact that both of our coaches are producing student athletes, learning academically, striving on courts but prepared for life, for living. So we are excited about that.

I want to note as well that there have only been 10 times in NCAA history—10 times—that both the women's and the men's basketball teams from the same school were in the Final Four at the same time.

It is a good time to be a South Carolinian.

The PRESIDING OFFICER. The Senator from Florida.

Mr. RUBIO. Mr. President, I have a question for the Senator from South Carolina. It is very important.

Is the Senator aware that Frank Martin, an incredible coach for the men's basketball team is from Miami, FL?

Mr. SCOTT. I am aware of that. And that is relevant to you how?

Mr. RUBIO. I just wanted you to know.

Mr. SCOTT. Will the Senator yield for a question?

Mr. RUBIO. I will.

Mr. SCOTT. What State are you from, sir?

Mr. RUBIO. Florida.

Mr. SCOTT. In what part of Florida were you born and raised?

Mr. RUBIO. South Florida.

Mr. SCOTT. Have you had any relationship with the coach before, Senator?

Mr. RUBIO. I have. Coach Martin is a good friend, and I think a testament to how much Florida has to contribute to South Carolina.

Mr. SCOTT. Having been there when you were in South Florida, I would say we made a big contribution to you too.

Mr. RUBIO. I would say to the Senator from South Carolina, South Carolina has gotten better results for Frank Martin than it did for me. But we are very proud of Coach Martin. I would just add that, given the litany of athletic success this year by the State of South Carolina, I find that to be highly suspicious. I know I just spoke about conspiracy theories, but statistically, it is very unlikely that a State would have that many championships. I am not calling for a congressional inquiry, but I think it is an interesting topic of conversation.

Mr. SCOTT. Mr. President, if my colleague will yield, I would note that Senator GRAHAM did have clarity in his purpose of identifying the fact that the State has only 4.7 million people in a country of 330 million people, and we have been able to secure the No. 1 golfer, that is true; the No. 1 baseball team, that is true; and the No. 1 football team in all of the Nation, Clemson University, that is true; and now the women's basketball champions, and that is true as well. However, I would point out that we were able to show you a wonderful experience as well in the State of South Carolina, and I hope that one day when you retire from politics, you and your lovely wife will join us and become a South Carolinian yourself. Perhaps then, and only then, will you be a successful football coach. You have a promising career in politics, but I know that you love and have passion for football, and perhaps when you retire, you too will be a national champion football coach.

Mr. RUBIO. That is highly unlikely. But in all seriousness—

Mr. SCOTT. I am serious—

Mr. RUBIO. I do want to restate that Frank Martin is really an extraordinary person. Much more, Senator SCOTT and I both had a chance to interact with him on a number of occasions. I don't mean to single them out among all of the other suspicious athletic accomplishments in South Carolina that are certainly worth noting, but I would say, with Frank, one of the things that really impresses me is not what he does with these young men on the court but the kind of influence he is in their lives off the court and the impact he has.

He was a high school coach in Miami and won State championships there. He comes from a hard-working family of Cuban exiles who made their home in

South Florida. So we are very, very proud of what he has achieved. But what I am most proud of is the way Coach Martin has been able to influence those young men.

He did defeat the Florida Gators to make it to the final four, and I was not happy about that. But I would say this—and I have said it to others—if the Florida Gators had to lose, I would want it to be to Frank Martin because of the extraordinary work he does. So I can't wait to see which Florida university hires him away.

Thank you.

Mr. SCOTT. Before Senator RUBIO walks off the floor, having had the opportunity to listen to him over a number of years, he is eloquent. He is inspiring. Sometimes he is just dead wrong. Coach Martin will be staying at the University of South Carolina, without any question at all.

Let me put the suspicions to rest. The reality of it is that good teams are made up of good recruiting. The fact that we have great recruiters in the State of South Carolina is indicative of the fact that we have a lot of titles in our State.

So I will be praying for the Senator's State to succeed during the hurricane season, without any question, and to be consistently behind the State of South Carolina in every athletic event in which we have a competition, wherever there is a competition.

Mr. RUBIO. I was going to say, I am not going to invoke that rule.

Mr. SCOTT. Rule XIX.

Mr. RUBIO. I think it is a good opportunity to say nothing—but congratulations, and we will be back.

Mr. SCOTT. In a decade. Thank you.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. LANKFORD. Mr. President, I have listened over the last several weeks to accusations and a type of smear campaign, quite frankly, of a good judge and a good man: Neil Gorsuch.

It is remarkable to me to see that the debate has become more about character destruction than it has been about policy differences. I understand there are policy differences, but why does it have to come to this?

In the past few weeks, I have heard on this floor that Neil Gorsuch shouldn't be a Justice on the Supreme Court because he has no independence from President Trump.

No. 2, I have heard he was hand-picked by far right groups like the Federalist Society, a group of legal minds committed to the original interpretation of the Constitution—clearly, a scandalous group of radicals.

I have heard that Judge Gorsuch supports torture, he is against privacy, he hates truckers, he will step on the little guy, he will help only big corporations, he is just not mainstream, and I have heard that he shouldn't be selected because he was not approved first by the Democratic Senate leadership.

All of these reasons have been given for a historic change in Senate tradition not to give a Supreme Court Justice an up-or-down vote. Block him on a procedural motion; for the first time ever, block a Supreme Court Justice on a procedural motion with a partisan vote.

Let me take these one at a time as I walk through this.

No. 1, I heard constantly that he is not independent enough from President Trump. As far as I know, he had never even met President Trump before. This didn't seem to be a standard, to be independent from the current sitting President.

Let me give an example: Justice Elena Kagan, who is clearly qualified as a legal mind, but I would say Republicans have serious policy differences with her. Justice Kagan was allowed to have an up-or-down vote. This body did not have a standard that they had to be independent from the President. If they had a standard like that, Justice Kagan would have never been on the bench. Why do I say that?

On May 10, 2010, President Obama nominated Elena Kagan to be an Associate Justice of the Supreme Court. From 1997 to 1999, she served as Deputy Assistant to the President for Domestic Policy and was Deputy Director of the Domestic Policy Council for President Clinton. In 2009, she was confirmed Solicitor General of the United States for President Obama. She worked for President Obama in the Obama White House as his Solicitor General and then was taken directly out of the White House and put on the Supreme Court.

I would say that is not independent from the President. So this mythological new standard that any Court Justice nominee needs to be independent from the President clearly wasn't in place when Elena Kagan was being heard.

It is also interesting to me that one of the most talked about decisions from Judge Gorsuch was a Chevron decision that he put out. The whole crux of that decision was the independence of the executive branch, the legislative branch, and the judicial branch. Let me just read a few paragraphs from the decision he wrote. He wrote this:

For whatever the agency may be doing under Chevron, the problem remains that courts are not fulfilling their duty to interpret the law and declare invalid agency actions inconsistent with those interpretations in the cases and controversies that come before them. A duty expressly assigned to them by the APA [Administrative Procedures Act] and one often likely compelled by the Constitution itself. That's a problem for the judiciary. And it is a problem for the people whose liberties may now be impaired not by an independent decisionmaker seeking to declare the law's meaning as fairly as possible—the decisionmaker promised to them by law—but by an avowedly politicized administrative agent seeking to pursue whatever policy whim may rule the day. Those problems remain uncured by this line of reply.

In other words, the judiciary needs to have oversight of the executive agency

in what they put out as far as agency rulings, not allowing the White House or any agency to just make any decision they like. He continued writing:

Maybe as troubling, this line of reply invites a nest of questions even taken on its own terms. Chevron says that we should infer from any statutory ambiguity Congress's "intent" to "delegate" its "legislative authority" to the executive to make "reasonable" policy choices. But where exactly has Congress expressed this intent? Trying to infer the intentions of an institution composed of 535 members is a notoriously doubtful business.

In all the accusations that he is not independent of the President, in one of his most famous opinions, he declares that we absolutely need to have independence from the White House—of any White House—and have a clear separation of powers between judiciary, legislative, and executive. That actually does not stand up to simple muster. So the first thing falls: no independence from the President.

The second issue which came up often was that he was handpicked by far-right groups. There were all these groups that handpicked him, so somehow that made it horrible that these different groups would actually try to support him.

I go back to Justice Kagan. Again, that wasn't the standard at that time, and I could use numerous judges through that process. Elena Kagan was supported by the AFL-CIO, by the Human Rights Campaign, by numerous environmental groups like WildEarth Guardians, Sierra Club, and the National Organization for Women. She had a lot of different liberal or progressive groups that were very outspoken in support of and helping to push her nomination.

There is nothing wrong with that. She was a nominee who was actively engaged in White House politics; she was actively engaged in Democratic campaigns. Before that, as far as working for the Dukakis campaign, she was a Democratic activist, and it was well known. That did not preclude her from getting an up-or-down vote for the Supreme Court because she is sitting on the Supreme Court today. There was no cloture vote mandate or requirement for a 60-vote threshold as there was pushed by this minority.

This issue that somehow you can't be handpicked or that having some groups that would support you from the outside somehow precludes you from being a serious consideration is not legitimate, and everyone knows it.

I have also heard individuals out there saying that he is for torture, he is against privacy, he hates truckers, he will step on the little guy, he is only for big corporations, and he is not mainstream.

Here is the problem: When you actually look at the history, it is very different from that. Of the 2,700 cases that Judge Gorsuch has been involved in, in the 10½ years he has been on the Tenth Circuit, he has been overturned in his opinions once—once in 2,700 cases; 97

percent of the time his cases were settled unanimously, and 99 percent of the time he voted with the majority.

Let's you don't know the Tenth Circuit as we know the Tenth Circuit in Oklahoma, because it is the circuit court for our State, the majority of the judges on the Tenth Circuit are judges selected by President Carter, President Clinton, and President Obama. They hold the majority in the Tenth Circuit. So to say that he voted with them in the majority 99 percent of the time would be to say that the Carter, Clinton, and Obama appointees also apparently had these radical ideas. It is just not consistent with the facts.

Then I have heard of late that the President should have engaged with Senate leadership on both sides of the aisle to be asked for their approval of the nominee before that nominee was ever brought. Well, I don't know if that has ever been a requirement. There have been times that Presidents in the past have had conversations with people on both side of the aisle. Fine, but it is certainly not a requirement of the Constitution, and it certainly doesn't preclude a nomination.

It is interesting to me that Judge Gorsuch offered to meet with 100 Senators one-on-one, face-to-face. Only 80 of them accepted his offer; 20 of them refused to even meet with him face-to-face. He did 4 days of hearings in the Judiciary Committee, 4 solid, long days, where he answered every possible question he could answer.

He has had extensive background checks. Everyone has gone through every piece of everything they could find that has ever been written. In fact, the latest new accusation is they found a couple of places where what he wrote seemed to look strangely like something else someone else wrote—which, when I saw it and read the side-by-side on it, I thought: He forgot to do an annotation and a footnote in the 800 opinions he has written. In the tens of thousands of annotations that he did, he didn't do a couple of them. Somehow that doesn't seem to rise to the level that he shouldn't be on the Supreme Court—that in the tens of thousands of annotations he put there, he might have missed a couple.

I would challenge anyone serving in this body, to say: You can serve only if you have never missed a single footnote on any paper you ever wrote. I would say: Those who live in glass houses probably shouldn't throw stones because we have all had times like that.

He is a solid jurist. I believe he will do a good job. In the time I sat down in his office, we looked at each other face-to-face, and I went through multitudes of hard questions with him, trying to determine his judicial philosophy, seeking one simple thing: Will you interpret the law as the law—not with personal opinion but as the law.

This body is about opinions. This body is about listening to the voices all across our States and trying to make

good policy. Across the street at the Supreme Court, it is about one thing: What does the law say and what did it mean when it was written?

The Constitution and law were not living documents. They do live in the sense that if you want to make changes in the Constitution, you amend the Constitution and you make changes to it. You can't suddenly say it meant one thing one day but culture has changed and now it means something new.

If you need new law, this body passes new law. Across the street, they read the law and ask: What does it mean? It is that straightforward.

I look forward to having a jurist on the Supreme Court as an Associate Justice who says: I may not even like all my opinions and you may not like all my opinions, but I am going to follow the law, and what the law says is what we are going to do.

I think that is the best we can ask from a Supreme Court Justice, and I think it is a fair way to be able to get him an up-or-down vote. I have to tell you, I am profoundly disappointed that the Senate, to get a simple up-or-down vote, had to go through all of this just to be able to do what we have always done. Regardless of background or preferences or policy or politics, this body has always said the President, for his nomination, should get an up-or-down vote when they go through the process.

We are going to do that tomorrow. We will put Judge Gorsuch on the bench, and we are ready for him to go to work.

Mr. President, I yield back.

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. PERDUE. 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. PERDUE. Mr. President, it is humbling to be on the floor of the U.S. Senate with colleagues like Senator LANKFORD from Oklahoma. It is an honor to listen to his words, to his heart, on an issue like today because this is, I believe, a historic day.

On January 31 of this year, I had the great honor of being invited to the White House when President Donald Trump announced his nominee for Associate Justice of the U.S. Supreme Court, Judge Neil Gorsuch. It was a professional rollout of this nomination, but it spoke more to the man, the individual, Judge Gorsuch, than it did to the circumstance surrounding it.

Today, I want to again discuss Judge Gorsuch's nomination and the 200-plus years of historical precedent put on the line today. As an outsider of this political process, it is clear to me what is going on here. It really has nothing to do with Judge Gorsuch.

The minority party today abandoned 230 years of tradition because of politics, in my opinion. Never before in the

U.S. history has a purely partisan filibuster killed a Supreme Court nomination. Never before, in the history of our country, has a partisan filibuster killed a district judge nomination. Never before, and until 2003, has a partisan filibuster killed a circuit judge nomination. Mr. President, 2003 was the first time in our history that the rules of the Senate were used in a purely partisan way to stop a judicial nomination.

In 2003, the Democratic Party threw out over 200 years of precedent when it comes to circuit judge nominees and killed a circuit judge nomination. Today they attempted to do the same thing when it comes to a nominee to the highest Court in the United States.

It should be noted Republicans did not attempt to do this to either Justice Sotomayor or Justice Kagan when they were nominated by President Obama a few years ago. Throughout our history, even the most controversial Supreme Court nominees have gotten an up-or-down vote, a simple majority vote. On that note, I also wish to point out there is no longstanding rule or tradition that a Supreme Court nominee must obtain 60 votes to be confirmed.

Judge Clarence Thomas was confirmed by a narrow 52-to-48 margin. Even though a single Senator could have required 60 votes to invoke cloture, and none did. Likewise, Justice Samuel Alito was confirmed by a 58-to-42 margin. Again, no Senator required 60 votes to invoke cloture. Neither of those nominees were filibustered to death. They got an up-or-down vote.

Mainstream media outlets have repeatedly fact-checked the minority party on this. For example, last week the Washington Post said: "Once again: There is no 'traditional' 60-vote 'standard' or 'rule' for Supreme Court nominations, no matter how much or how often Democrats claim otherwise."

Even PolitiFact has repeatedly pointed out that "Gorsuch, like all other Supreme Court Justice nominees, needs only a simple majority to be confirmed by the Senate."

Clearly, outside of this body, it is recognized in the media, and on both sides of the aisle for that matter, that there is no such thing as a 60-vote standard when it comes to the nomination and confirmation of Supreme Court Justices.

Additionally, the notion that the minority party filibustering Judge Gorsuch's confirmation is the same as our not allowing a vote last year, that logic doesn't hold up.

Last year, I joined many of my colleagues on the Senate floor in explaining why we felt it best not to give advice or consent on the nomination of a Justice to the Supreme Court during a Presidential election year. The integrity of the process, clearly outlined in article II, section 2, of the Constitution was at stake. It was about the principle, not the individual. Unlike the argument that it is tradition for a Supreme Court nominee to receive 60

votes, there is actual precedent for the position we took last year on President Obama's Supreme Court nominee.

Former Vice President Biden, former Minority Leader Reid, and many other Members of both parties have agreed that the political theater of a Presidential election year should not influence the process.

The last time a Justice was nominated and confirmed by a divided government in a Presidential election year was 1888. Clearly, there is more than 100 years of precedent for the position we took last year in not giving advice and consent.

We took a position that was consistent with more than 100 years of actions and comments from Members of both parties. Let's just get over that. This year stands on its own, independently. The time for debate on this issue has come and gone.

Furthermore, it is obvious that what is at issue here is not Judge Gorsuch's qualifications. In 2006, Judge Gorsuch was confirmed to the Tenth Circuit Court of Appeals by a voice vote in this body with no opposition. Again, no opposition on the floor of the U.S. Senate, just 10 years ago.

Then-Senator Biden did not object, then-Senator Reid did not object, then-Senator Clinton did not object, and, yes, then-Senator Obama did not object. Twelve current Members of this body, including the current senior Senator from New York, the senior Senator from Illinois, the senior Senator from California, did not object to Judge Gorsuch's confirmation in 2006.

It is a simple fact, they had the opportunity to raise an objection, and they did not do it. It is obvious that what is going on here has nothing to do with Judge Gorsuch's qualifications. What is at issue is nothing but pure, unadulterated politics.

This is exactly why I ran for the U.S. Senate, having never been involved in politics. This is what makes people home very nervous about the gridlock in this body. This is why President Trump still cannot meet with his full Cabinet today, months after he was sworn in as our President. This is the very cause of gridlock that I believe is causing the dysfunction in Washington.

As I said, Judge Gorsuch was confirmed unanimously by voice vote with no opposition in 2006. Judge Gorsuch is a principled jurist who is steadfast in his commitment to defending and upholding the Constitution.

In my private meetings with him, I have been very impressed that this is his starting and finishing point: He is there to interpret the law, not to be an activist for his own personal opinion. He boasts a unanimous seal of approval from the gold standard, the American Bar Association.

Throughout his extensive career in both the public and private sectors and through hour after hour of testimony, Judge Gorsuch has demonstrated an impartial commitment to the rule of law. This is another area in which legal

minds from both sides of the aisle agree.

Harvard Law School Professor Noah Feldman, himself no conservative, called it a “truly terrible idea” to try to force Judge Gorsuch, or any judge for that matter, to base their decisions on the parties involved. Beyond a shadow of a doubt, I know that Judge Gorsuch fully understands that the job of a judge is to interpret, not make, the law.

As he himself 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.”

This commitment to impartiality, regardless of those involved in individual cases, is further evidence his nomination should be confirmed rather than filibustered to death like we have seen today.

Judge Gorsuch’s record is evidence enough that he is an impartial judge committed to the Constitution. The opposition has said he is outside the mainstream. That also doesn’t hold up.

In 97 percent of his 2,700 cases, judges who also heard the cases unanimously ruled with Judge Gorsuch. In 99 percent of his cases, he was not a dissenting vote. The other side is consistent in saying he is not mainstream. Seriously? How much more mainstream does he have to be?

To that point, Judge Gorsuch has drawn praise from both liberals and conservatives alike. Former President Obama’s Acting Solicitor General called Judge Gorsuch “an extraordinary judge and man.”

He is not alone in that assessment of Judge Gorsuch. Mainstream media outlets across the country have praised this nominee to the Supreme Court. Recently, the USA Today Editorial Board wrote: “Gorsuch’s credentials are impeccable . . . he might well show the independence the nation needs at this moment in its history.”

The Washington Post’s Editorial Board wrote:

We are likely to disagree with Mr. Gorsuch on a variety of major legal questions. That is different from saying that he is unfit to serve.

The Wall Street Journal Editorial Board wrote: “No one can replace Antonin Scalia on the Supreme Court, but President Trump has made an excellent attempt by nominating appellate Judge Neil Gorsuch as the ninth justice.”

As I have noted, the minority party’s move to filibuster Judge Gorsuch is not rooted in any actual precedent in the U.S. Senate. It also clearly has nothing to do with Judge Gorsuch himself. By any and all objective measure, he is a mainstream, well-qualified nominee to the U.S. Supreme Court.

That is a point agreed upon by liberals and conservatives alike. Yet here we are still today throwing out almost 230 years of tradition, purely because of politics. This body must rise above the self-manufactured gridlock.

Our last President, according to constitutional law professor Jonathan Turley, created a constitutional crisis. It was caused by shutting down the Senate and creating the fourth arm of government, the regulators, and threatening the very balance of our three-branch system. It allowed the former President, through regulatory mandates and Executive orders, to basically fundamentally change the direction of the country without Congress.

Given this threat to the Constitution, at this point in our history, we absolutely need a jurist on the Supreme Court who will bring a balanced view and impartial commitment to the rule of law. It is imperative we confirm Judge Neil Gorsuch tomorrow—a principled, thoughtful jurist—to the U.S. Supreme Court.

If we can’t confirm this individual, who is absolutely in the middle of the profile agreed to by past Democrats and Republicans alike, who in the world will we ever be able to confirm?

Seriously, if we can’t get together on this individual, who is in the mainstream in the middle of the profile? How in the world are we ever going to save Social Security, Medicare, all the other critical issues that are before this body? Bipartisan compromise is what this body was built on. I call on my colleagues to put self-interest and even party interest aside for the Nation’s interest.

I count it an honor to be in this body. It is a sobering responsibility, but I am very optimistic when men or women of the character of a Neil Gorsuch are willing to go through this grueling exercise that we put them through in order to serve. Because of that, I am proud tonight to be a part of a majority that stood up and precluded this from happening.

I am so excited that tomorrow we will confirm Judge Neil Gorsuch as the next Associate Justice to the United States Supreme Court.

I yield back my time.

The PRESIDING OFFICER (Mr. YOUNG). The Senator from Ohio.

Mr. PORTMAN. Mr. President, I rise today to express my strong support again for Judge Neil Gorsuch. I spoke on the floor the other day about Judge Gorsuch. I just heard my colleague from Georgia talk about him, and he did a terrific job.

This guy, Neil Gorsuch, is the right person for the job. He is qualified. He is smart and he is fair, and a bipartisan majority of the Senate will vote for this worthy candidate tomorrow. Let me underscore that. A bipartisan majority of the Senate will vote for this worthy candidate tomorrow. He will end up getting on the Court.

I must tell you that I regret that some of my colleagues on the other side of the aisle refused to provide him that up-or-down vote without going through the process we had to go through today. As someone who has gone through two Senate confirma-

tions myself, I know they are not always easy. But I will tell you, it is a whole lot better for this institution and our country when we figure out ways to work together—in this case, to continue a Senate tradition of allowing up-or-down votes.

I like to work across the aisle. I have done that through my career. I can point to 50 bills I authored or co-authored that have become law in the last 6 years. They were bipartisan, by definition, because they got through this body and were signed into law by President Obama. I have voted for President Obama’s nominees before President Trump. When President Obama had a well-qualified judge here on the floor, I voted for that judge. I voted for Loretta Lynch. That was not an easy vote. I took heat for it back home because I thought she was well-qualified. I think that is what we ought to do in this body.

I am disappointed in the situation we are in. I think we could have followed more than 200 years of Senate tradition and not allowed for a partisan filibuster to try to block this nomination. We chose not to do that in this body. Never in the history of this body has there been a successful partisan filibuster of a Supreme Court judge—never. Some of my colleagues said: How about Abe Fortas? That was several decades ago, and that was bipartisan. Abe Fortas was a Supreme Court Justice who had some ethics issues, and he actually dropped out of trying to get the nomination because of it. But never have we stood up as Republicans—or stood up as Democrats—and blocked a nominee by using the filibuster. It has just not been the tradition.

Instead, it has been to allow an up-or-down vote—a majority vote. There are two Justices on the Supreme Court right now who got confirmed with less than 60 votes. One is Clarence Thomas—probably the most controversial nominee in the last couple of decades, I would say. I wasn’t in the Senate then, but I was watching it, as many of you were. It was certainly controversial, yet he got to the Court with 52 votes. Justice Alito was confirmed by 58 votes only 10 years ago. So these nominees were not filibustered.

By the way, President Obama’s nominees, Elena Kagan and Justice Sotomayor, were not filibustered by Republicans. They were given an up-or-down vote. In the history of the Senate, 12 nominations have been defeated on the floor, but, again, never a successful partisan filibuster. Even Judge Robert Bork—some of you remember that nomination. It was very controversial. His nomination was defeated in 1987. He was a Reagan appointee. But he wasn’t filibustered. They had an up-or-down vote, and he was voted down.

So what are these objections to Judge Gorsuch that would rise to that level where we want to say that over 200 years of Senate tradition ought to

be shunted aside and we ought to stop this man? What are those objections? I must say that I have listened to the floor debate and talked to some of my colleagues on the other side of the aisle. I made my case. They made their case. I just don't see why this man is not qualified. He was a law clerk for two Supreme Court Justices. He served in the Justice Department and had a distinguished career there. He was also a successful lawyer in the private sector. And of course, he has been a Federal judge for a decade. So we can look at his record.

My colleague from Georgia just talked about that record. It is why the American Bar Association—a group not known to be a conservative body—decided that he was “well qualified.” They unanimously declared him to get their highest rating of “well qualified.” This is what they said about him. They said:

Based on the writings, interviews, and analyses we scrutinized to reach our rating, we discerned that Judge Gorsuch believes strongly in the independence of the judicial branch of government, and we predict that he will be a strong but respectful voice in protecting it.

That is why the American Bar Association gave him their highest rating. Not qualified? By the way, nobody objected—nobody—for any reason, to his nomination to serve as a Federal judge, to be a circuit court judge, a level right below the Supreme Court, back in 2006. Not a single Senator objected. By the way, those Senators included Senator Hillary Clinton, Senator Barack Obama, Senator Joe Biden, and a number of Senators, of course, who are still here today with us, who chose to filibuster this nomination. So I don't know.

I heard some of my colleagues talk about some of his decisions. They have picked one or two of his decisions as judge over the past 10 years and said they didn't like the outcome, and that is why he is not qualified to sit on the Supreme Court. I have a couple of concerns with that argument. One, Judge Gorsuch has decided over 2,700 cases. I am sure we can all find one or two of these we didn't like. That is true for any judge. As I said, I voted for a number of President Obama's nominees, and I voted against others based on the merits and based on their qualifications. It didn't mean I agreed with them—trust me—or disagreed with them on everything. The odds are very good that you agree with Judge Gorsuch's decisions a lot more than you disagree with them. You know why I say that? Because the odds are really good that you agreed with them. Let's try 97 percent, because 97 percent is the number of his decisions that were unanimous with the other judges on a three-judge panel. So 97 percent of the time, his decisions were unanimous.

Who is on these three-judge panels? Well, it is usually bipartisan in the sense that it is nominees who have been nominated by different Presidents

of different parties. In the case of his circuit court, there is Judge Paul Kelly, who was appointed by President George H.W. Bush. There have also been several of his colleagues who were appointed by President Bill Clinton. Judge Gorsuch even mentioned in his testimony that he was on judge panels. He presided with Judge William Holloway, who was appointed by President Lyndon B. Johnson. So these three-judge panels tend to have judges that were appointed by Republicans and Democrats alike—97 percent of the time unanimous. And 98 percent of the time, his decisions were in the majority.

So again, I think the odds are pretty good that we are going to agree with Judge Gorsuch a lot more than we disagree when we look at his cases. He is a consensus builder. He is a guy who figures out how to come to a decision people agree with on different sides of the aisle, and from different points of view. That is what his record is. Actually, that doesn't surprise me at all, because he clerked in the Supreme Court for two Justices. One was Byron White and the other was Justice Anthony Kennedy. Those are two Justices who get a lot of heat. Byron White did, and Anthony Kennedy does—from both sides. Why? Because they tend to be in the middle. They write a lot of decisions that are consensus decisions. They tend to be that fifth vote on a 5-to-4 decision. That is whom he clerked for.

To note that somehow this guy shouldn't be confirmed for the Supreme Court because of one or two decisions just doesn't seem to be legitimate to me. This is a guy who had thousands of decisions, and the vast majority were 98 percent or 97 percent unanimous. He had one decision that was appealed to the Supreme Court because the litigants must have thought he was wrong. They took it to the Supreme Court to correct him. What happened? The Supreme Court affirmed it. They agreed with Judge Gorsuch.

I don't know whom you could find out there among judges who has a stronger record. In every case, somebody wins and somebody loses. I get that. Think about this: Out of Judge Gorsuch's 180 written opinions, only one has ever been appealed to the Supreme Court—wow. And they agreed with his ruling.

He made it clear he makes decisions not based on the outcome he likes, but based on what the law says. He thinks his job on the court for the last decade—and going forward—is to actually look at the law and decide what the law says and what the Constitution provides, not what he wants.

I think that is the kind of judge we would want—particularly those of us who are lawmakers, right? We are the ones writing the laws. We would hope that would be respected and that judges wouldn't try to legislate. This is what he said in his testimony:

A judge who likes every outcome he reaches is very likely a bad judge. . . . I have

watched my colleagues spend long days worrying over cases. Sometimes the answers we reach aren't ones we would personally prefer. Sometimes the answers follow us home and keep us up at night. But the answers we reach are always the ones we believe the law requires.

Interesting perspective. He is saying: Hey, if you like all your decisions, you are probably not a very good judge because your personal beliefs aren't always going to be consistent with what the law says or the Constitution says.

He goes on to say:

I've ruled for disabled students, for prisoners, for the accused, for workers alleging civil rights violations, and for undocumented immigrants. Sometimes, too, I've ruled against such persons. My decisions have never reflected a judgment about the people before me, only a judgment of the law and the facts at issue in each particular case.

Again, it seems to me that is the kind of person you want on the court. Making a decision as a judge is not about ruling in favor or against somebody because you like them or don't like them. It is about applying what the law says. As he said in his testimony recently, his philosophy is “to strive to understand what the words on the page mean . . . [to] apply what the people's representatives, the lawmakers, have done.” That is us. That is the House. That is people who are elected back home by the people who expect us to be the elected representatives and to listen to their concerns and then vote. Those laws should not be rewritten by the judiciary. That is the approach he takes. I would think any legislator would want to ensure the laws we pass are applied as written. Much more importantly, that is what people want too. That is what people should insist on. We want our votes to count. We want our voices to be heard.

President Lincoln warned in his first inaugural address that if judges legislate from the bench, “the people will have ceased to be their own rulers.”

“The people will have ceased to be their own rulers” if judges legislate from the bench.

I think President Lincoln was right. When judges become legislators, the people do have less of a voice. Judge Gorsuch himself summed it up. He said: “If judges were just secret legislators, declaring not what the law is but what they would like it to be, the very idea of government by the people and for the people would be at risk.” I think that is the deeper issue here.

Again, I think he is the kind of judge we should want. Judge Gorsuch and I had the chance to sit down and talk about this philosophy. We talked about his background and his qualifications. I asked him some very tough questions, as he got asked during the Judiciary Committee nomination process. His hearings were something that all Americans had the opportunity to watch. He did a great job, in my view, because he did focus on how he believes that his job is not to allow his personal beliefs to guide him but, rather, upholding the law as written and the Constitution.

I think that approach is a big reason he has earned the respect of lawyers and judges from across the spectrum, by the way. If you look at the people who say this guy is a great judge, it goes all the way across the political spectrum.

Professor Laurence Tribe of Harvard Law School, an advisor to former President Obama, said Judge Gorsuch is “a brilliant, terrific guy who would do the Court’s work with distinction.” Those of you who know Laurence Tribe, he is well-regarded, considered to be a liberal thinker on many issues. But he has looked at the guy, and he has looked at his record. He knows him. He says he is brilliant, terrific, and will do the Court’s work with distinction.

Neal Katyal—you have heard about him. He was the Acting Solicitor General for President Obama, a guy who knows a thing or two about arguing before the Supreme Court. He said Judge Gorsuch’s record “should give the American people confidence that he will not compromise principle to favor the President who appointed him. . . . He’s a fair and decent man.”

This goes to what the ABA said about him: Independent. He will protect the independence of the judiciary.

Look, he is smart, no question about it. You saw him answer those questions. You have seen his record. He is qualified, as we talked about. He is certainly a mainstream judge, when you look at his opinions—98 percent of the time in the majority, 97 percent of the time unanimous. Three-judge panels. He has the support—the bipartisan support—of a majority of the Senate.

By the way, the American people, as they have plugged into this, also think he ought to be confirmed. There is a recent poll by the Huffington Post, which is not considered a conservative newspaper or entity. They said the people want us to confirm Neil Gorsuch by a 17-point margin. Why? Because they watched this. They looked at the guy. They saw the hearings. They looked at his record. People believe he is the right person to represent them on the Supreme Court.

So, again, while I am disappointed this process has become so polarized and divisive here in this body, I am glad to see this good man take a seat in our Nation’s highest Court. I believe he deserves our support.

I yield the floor.

The PRESIDING OFFICER. The majority leader.

LEGISLATIVE SESSION

MORNING BUSINESS

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Senate be in a period of morning business, with Senators permitted to speak therein for up to 10 minutes each.

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

TRIBUTE TO FREY TODD

Mr. MCCONNELL. Mr. President, today it is my privilege to celebrate the retirement of Frey Todd, the “Mayor for Life” of Eubank, KY.

In the last census, Eubank was home to fewer than 400 Kentuckians, but despite their small number, the Eubank community is proud of their town and their mayor.

Since the 1960s, Todd has served his community on the town board. He spent 10 years as the chair of the board, and when Kentucky reorganized municipal governments in 1982 and the position of mayor became available, he proudly was elected its first mayor. And every 4 years since, Todd has been elected by his constituents to be their mayor.

Over his 35-year tenure as mayor, Todd has overseen major projects like the construction of the senior citizens center and the Eubank Water System.

In a small town like Eubank, the people and their government are almost as close as family. Throughout his entire career, Mayor Todd has shown his passion for his constituents, and they have returned the affection.

At the age of 82, Todd announced his retirement from public service. I would like to join with all the people of Eubank to thank him for his years of dedication and congratulate him on an impressive career.

ARMS SALES NOTIFICATION

Mr. CORKER. Mr. President, section 36(b) of the Arms Export Control Act requires that Congress receive prior notification of certain proposed arms sales as defined by that statute. Upon such notification, the Congress has 30 calendar days during which the sale may be reviewed. The provision stipulates that, in the Senate, the notification of proposed sales shall be sent to the chairman of the Senate Foreign Relations Committee.

In keeping with the committee’s intention to see that relevant information is available to the full Senate, I ask unanimous consent to have printed in the RECORD the notifications which have been received. If the cover letter references a classified annex, then such annex is available to all Senators in the office of the Foreign Relations Committee, room SD-423.

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

DEFENSE SECURITY
COOPERATION AGENCY,
Arlington, VA.

Hon. BOB CORKER,
Chairman, Committee on Foreign Relations,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 16-80, concerning the Army Corps of Engineers’ proposed Letter(s) of Offer and Acceptance to the Government of Kuwait for airbase construction and services estimated to cost \$319 million. After this letter is deliv-

ered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

J.W. RIXEY,
Vice Admiral, USN, Director.

Enclosures.

TRANSMITTAL NO. 16-80

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Government of Kuwait.

(ii) Total Estimated Value:
Major Defense Equipment* \$ 0 million.
Other \$319 million.
Total \$319 million.

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:

Non-MDE: Design, construction, and procurement of key airfield operations, command and control, readiness, sustainment, and life support facilities for the Al Mubarak Airbase in Kuwait. The U.S. Army Corps of Engineers (USACE) will provide project management, engineering services, technical support, facility and infrastructure assessments, surveys, planning, programming, design, acquisition, contract administration, construction management, and other technical services for the construction of facilities and infrastructure for the airbase. The overall project includes, among other features, a main operations center, hangars, training facilities, barracks, warehouses, support facilities, and other infrastructure required for a fully functioning airbase.

(iv) Military Department: U.S. Army Corps of Engineers (USACE) (HBE).

(v) Prior Related Cases, if any: N/A.

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None.

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: None.

(viii) Date Report Delivered to Congress: April 6, 2017.

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Government of Kuwait—Facilities and Infrastructure Construction Support Service

The Government of Kuwait has requested possible sale for the design, construction, and procurement of key airfield operations, command and control, readiness, sustainment, and life support facilities for the Al Mubarak Airbase in Kuwait. The U.S. Army Corps of Engineers (USACE) will provide project management, engineering services, technical support, facility and infrastructure assessments, surveys, planning, programming, design, acquisition, contract administration, construction management, and other technical services for the construction of facilities and infrastructure for the airbase. The overall project includes, among other features, a main operations center, hangars, training facilities, barracks, warehouses, support facilities, and other infrastructure required for a fully functioning airbase. The estimated total cost is \$319 million.

The proposed sale will contribute to the foreign policy and national security of the United States by supporting the infrastructure needs of a friendly country which has been, and continues to be, an important force for political stability and economic progress in the Middle East.

The facilities being constructed are similar to other facilities built in the past by USACE in other Middle Eastern countries. These facilities replace existing facilities and will provide autonomous airbase operations to the Kuwait Air Force. The new airbase will ensure the continued readiness of