

has been nurtured by a far-right billionaire and corporate titan, Philip Anschutz, who has gone out of his way to fund hard-right judicial causes, including the Federalist Society and the Heritage Foundation. President Trump outsourced his choice of a Supreme Court nominee to these organizations, and they recommended Judge Gorsuch.

Neil Gorsuch represented Mr. Anschutz's firm as a young lawyer. He has earned his favor and patronage ever since. It was Anschutz's top lawyer, someone who represented Anschutz here on the Hill, who lobbied for Gorsuch to get the spot on the Federal appeals court. Judge Gorsuch has been partners in an LLC with two of Anschutz's top advisers, building a vacation home together. Of course, there is no problem with that. Anyone can be partners. But it goes to show the long-standing intertwined ties between one of the leading advocates for a hard-right pro-corporate agenda, Mr. Anschutz, and Judge Gorsuch. The long history of ties between Judge Gorsuch and Mr. Anschutz suggests a judge whose fundamental economic and judicial philosophy is favorable to the wealthy and the powerful and the far right.

Judge Gorsuch may sometimes express sympathy for the less powerful verbally, but when it comes time to rule, when the chips are down, he has far too often sided with the powerful few over everyday Americans trying to get a fair shake. He has repeatedly sided with insurance companies that want to deny disability benefits to employees. In employment discrimination cases, Bloomberg found he sided with employers 66 percent of the time. In one of the few cases where he sided with an employee, it was a Republican woman who alleged she was fired for being a conservative.

On money in politics, the scourge, the poison of our political system—undisclosed dark money—Judge Gorsuch seems to be in the same company as Justices Thomas and Scalia, willing to restrict the most commonsense contribution limits.

Judge Gorsuch's record demonstrates he prefers CEOs over citizens, executives over employees, corporations over consumers.

Later this morning, I will be meeting with people who have personally experienced the real-life implications of Judge Gorsuch's decisions: Alphonso Maddin from Michigan, a truckdriver who was fired because he left his vehicle when freezing; Patricia Caplinger from Missouri, who sued Medtronic after being injured by a medical device implanted in a non-FDA-approved manner; David Hwang and Katherine Hwang, whose late mother, Proffer Grace Hwang, sued Kansas State University after being fired following a 6-month leave for cancer and requesting to work at home because of a flu epidemic. Their stories illuminate the real-world effects of a judge who sides with Anschutz-like interests over ev-

eryday Americans like Mr. Maddin, Ms. Caplinger, and the Hwang family.

My colleague, my friend, the Republican leader, said there is no principled reason to be opposed to Judge Gorsuch. Yes, if your principles say the law should be used time and time again to support powerful corporate interests over average Americans, maybe there is no principled objection. But for most Americans, the overwhelming majority of whom want the Court to bring justice to the people who have less power—and the Court is their last resort—there are plenty of principled reasons to vote against Judge Gorsuch.

Because of starkly unequal concentrations of wealth and ever-increasing corporate power, aided and abetted by decisions like Citizens United, because they have skewed the playing field even more decisively to special interests and away from the individual citizen, we need a nominee who would reverse that trend, not exacerbate it.

Donald Trump campaigned on helping average people. His nominee sides with corporate interests against average people like Mr. Maddin, Ms. Caplinger, and the Hwang family over and over again. From all indications, Judge Gorsuch is not the kind of nominee who has sympathy and helps average Americans when it comes to judging and the law.

I yield the floor.

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#### RESERVATION OF LEADER TIME

The PRESIDING OFFICER. Under the previous order, the leadership time is reserved.

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#### CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

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#### EXECUTIVE SESSION

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##### EXECUTIVE CALENDAR

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to executive session to resume consideration of the following nomination, which the clerk will report.

The legislative clerk read the nomination of Daniel Coats, of Indiana, to be Director of National Intelligence.

The PRESIDING OFFICER. Under the previous order, the time until 10 a.m. will be equally divided in the usual form.

The Senator from North Carolina.

Mr. BURR. Mr. President, I rise today to support Senator Dan Coats, our former colleague and a friend, as the President's nominee to be the next Director of National Intelligence. Dan Coats has been asked to lead our Nation's intelligence community of over 100,000 individuals during, I think, the most profound period of threats and change. Let me say to my colleagues,

it is a job that Dan Coats is well prepared to do.

After graduating from Wheaton College, Dan served honorably in the U.S. Army before serving the State of Indiana as a House Member, as a Senator, and for not only Indiana but this country as Ambassador to Germany.

While in the Senate, Dan was engaged and was a valuable member of the Senate Intelligence Committee. He dedicated countless hours to understanding and overseeing the intelligence community—in essence, one of 15 people who certified for 85 others and for the American people that we do everything we can to keep America safe but we do it within the parameters of the rule of law. He is well versed in the operational capabilities and authorities. He understands the threat we are facing at home and abroad. He understands that we need to improve our ability to collect against our adversaries, and Dan will be a forceful advocate for intelligence collection but, again, never jeopardizing that line of what is legal and what is not.

Dan's legislative experience also translates to his understanding and his appreciation of the need for transparency with the appropriate oversight committees and, more importantly, with the Congress and the American people.

Dan's intellect, his judgment, his honorable service, and his commitment to the workforce make him a natural fit as Director of National Intelligence. I have absolute trust that he will lead the community with integrity, and he will ensure that the intelligence enterprise operates lawfully, ethically, and morally.

So today I rise in this austere body to urge my colleagues to support the President's nominee for Director of National Intelligence. We are now in March. We have gone from January until March with one of the most important posts of this administration unfilled. Congress must act quickly, and it is my hope that Members, before the end of this day, will make sure we have a Director of National Intelligence in place.

I urge my colleagues to support this nomination.

I yield the floor.

I suggest the absence of a quorum.

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

The legislative clerk proceeded to call the roll.

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

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

#### CLOTURE MOTION

The PRESIDING OFFICER. 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 Daniel Coats, of Indiana, to be Director of National Intelligence.

Mitch McConnell, Michael B. Enzi, David Perdue, Bob Corker, John Hoeven, Lamar Alexander, Bill Cassidy, John Barrasso, Dan Sullivan, Tim Scott, James Lankford, Tom Cotton, Mike Rounds, James M. Inhofe, Chuck Grassley, Roy Blunt, Richard Burr.

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 Daniel Coats, of Indiana, to be Director of National Intelligence, shall be brought to a close?

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The senior assistant legislative clerk called the roll.

Mr. CORNYN. The following Senator is necessarily absent: the Senator from Georgia (Mr. ISAKSON).

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 88, nays 11, as follows:

[Rollcall Vote No. 88 Ex.]

YEAS—88

Alexander	Flake	Nelson
Barrasso	Franken	Perdue
Bennet	Gardner	Peters
Blumenthal	Graham	Portman
Blunt	Grassley	Reed
Boozman	Hassan	Risch
Brown	Hatch	Roberts
Burr	Heinrich	Rounds
Cantwell	Heitkamp	Rubio
Capito	Heller	Sasse
Cardin	Hirono	Schatz
Carper	Hoeven	Schumer
Casey	Inhofe	Scott
Cassidy	Johnson	Shaheen
Cochran	Kaine	Shelby
Collins	Kennedy	Stabenow
Coons	King	Strange
Corker	Klobuchar	Sullivan
Cornyn	Lankford	Tester
Cortez Masto	Leahy	Thune
Cotton	Lee	Tillis
Crapo	Manchin	Toomey
Cruz	McCain	Udall
Daines	McCaskill	Van Hollen
Donnelly	McConnell	Warner
Durbin	Menendez	Whitehouse
Enzi	Moran	Wicker
Ernst	Murkowski	Young
Feinstein	Murphy	
Fischer	Murray	

NAYS—11

Baldwin	Harris	Sanders
Booker	Markey	Warren
Duckworth	Merkley	Wyden
Gillibrand	Paul	

NOT VOTING—1

Isakson

The PRESIDING OFFICER. On this vote, the yeas are 88, the nays are 11.

The motion is agreed to.

The Senator from Virginia.

Mr. WARNER. Mr. President, first of all, I thank my friend the Senator from Texas for giving me the courtesy of letting me get in my comments about the nomination of former Senator Dan Coats to serve as the fifth Director of National Intelligence, a position recommended by the 9/11 Commission and established by the Intelligence Reform and Terrorism Prevention Act of 2004.

Dan Coats is a friend of mine and many in this body. He represented Indiana in both the U.S. House and for separate terms in the U.S. Senate. He was also U.S. Ambassador to Germany from 2001 to 2005. As mentioned, for 6 years I served with the nominee on the Senate Select Committee on Intelligence. I have always found Dan to be fair-minded and know him to be an advocate for strong oversight of the intelligence community. He believes in the need for intelligence that is timely, relevant, and free of political interference.

During my private meeting with him, as well as during his confirmation hearing, Senator Coats committed to find and follow the truth, regardless of where it leads, agreeing that his primary job will be “to speak truth to power,” to the President, to policy and military leaders, and to Members of Congress. I know these are traits he will continue to employ if confirmed as the next Director of National Intelligence.

During James Clapper’s most recent tenure as the DNI, in 6 years he put in place some fundamental changes in how the Intelligence community operates. He reoriented the Office of the DNI to focus on intelligence integration with an emphasis on mission. He often was willing to roll up his sleeves and take on the hard challenges of trying to get the intel community to operate on the same IT backbone systems. If confirmed, I have encouraged Senator Coats to build upon former Director Clapper’s efforts, which are critical to ensuring that policymakers, warfighters, law enforcement, and national security officers receive intelligence products that are timely, relevant, and objective.

Of course, if confirmed, Director Coats will take on the job as the Nation’s chief intelligence officer, leading the intelligence community during a very difficult time because unfortunately this President, along with his closest advisers, has repeatedly and unfairly disparaged the professionalism and actions of the Nation’s intelligence professionals. These are men and women who maintain the highest standards of professionalism and integrity. They anonymously sacrifice for the country, often in the face of grave personal danger.

As DNI, Senator Coats is committed to defending the values and integrity of the men and women of the intelligence community, even when the White House may not like to hear it.

Another challenge Senator Coats will face on his first day on the job is to effectively support the Senate Intelligence Committee’s ongoing investigation into Russian interference in the 2016 Presidential election. Last week, I went to CIA headquarters in Langley, along with a number of other Members of the committee, to review the beginnings of the raw intelligence that led the community to conclude that Russia massively interfered in our last

Presidential election. Both in public and in private, Senator Coats has promised he will support the committee’s investigation to the fullest. We will hold him to that commitment.

On this topic, I want to reiterate on the Senate floor what I have already said numerous times. This investigation is not about being a Democrat or Republican nor about relitigating the 2016 election. The investigation is about upholding the core values and sanctity of democracy that all Americans hold dear. It is also about holding Russia accountable for their improper interference in our elections and arming our allies—one of which has an election today—with information about the means employed by Russia in our elections so they can use that information to protect the integrity of their own electoral process.

We will work to ensure that this critical investigation is done right, done in a bipartisan manner, free of any political interference, and as the chairman and I have both reiterated, that it follows the facts wherever they may lead.

I have every reason to believe Senator Coats will be forthcoming in supporting this investigation. If at any point it becomes clear to me that the Senate Intelligence Committee is unable to keep up these commitments, I am prepared to support another process.

Finally, let me acknowledge two other things.

During Senator Coats’ confirmation hearing, he was asked about his role on the National Security Council, including the Principals Committee. He assured us that he will be attending these meetings and participating in them despite the confusion created by an Executive order that appeared to disinvite the DNI from these meetings. If he is not included in these meetings, I will expect to know about it and the reason why.

Senator Coats has also committed to me personally and to the committee that he will not support the return of waterboarding and other so-called enhanced interrogation practices, nor will he support reestablishing secret detention sites into the activities of the intelligence community. He reassured the committee that he will follow the law as it now stands and that he will not advocate for changes to the law or recommend a reinterpretation of the law based on any personal beliefs. The law is clear: No interrogation techniques outside the Army Field Manual are allowed.

Finally, Senator Coats has also reassured me and all of the members of the committee that if confirmed, he will always present to the President, to his Cabinet advisers, and to those of us in Congress the unvarnished facts as represented by the best judgments of the intelligence community whether or not that analysis is in agreement with the views of the President, with ours in Congress, or with anyone else’s who might receive them.

For these reasons, I support the movement. I was glad to see 88 Members of this body support Dan's movement forward. I believe he will be a great fifth Director of National Intelligence.

I thank my friend the Senator from Texas for giving me time.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. Mr. President, I thank my friend, the Senator from Virginia, who is the vice chair of the Senate Select Committee on Intelligence, for his remarks.

I, too, support the nomination of Dan Coats to serve as the next Director of National Intelligence and succeed James Clapper, who has been in the intelligence business for 50-plus years. He has big shoes to fill, but I have every confidence Dan Coats can do that.

One of the things I hope he looks at is that post-9/11, when the Office of the Director of National Intelligence was created, we basically created another layer in the intelligence community. As the Presiding Officer and other Members know, the DNI—the Office of the Director of National Intelligence—has grown by leaps and bounds. I just hope he takes a good, hard look at the layers we have created, perhaps at the duplicative functions that do not necessarily make our intelligence any better but that do create more problems in managing what is a very important office to our national security and certainly to the intelligence community.

#### SUNSHINE WEEK

Mr. President, on another matter, in spite of the snow yesterday, I recognize the fact that this is Sunshine Week. Sunshine Week is a movement that was created to highlight the need for more transparent and open government. Justice Brandeis is also often quoted when one talks about transparency in government and its importance to a functioning democracy when he said that sunlight is the best disinfectant.

As a conservative, I would much rather have people change their behavior in their knowing that their actions are going to be public rather than to pass new laws and new regulations. To me, knowing that the public is going to be aware of what one is doing causes people, typically, to be on their best behavior. I think that is the reason I support Justice Brandeis' comment that sunlight is the best disinfectant. I believe that is true.

I have done my best to keep that sentiment in mind to create legislation that presses our democracy toward more openness in the Federal Government, not less. That is because I believe our country grows stronger when operating under the principle that an open government is the basic requirement for a healthy democracy. Of course, when voters know and understand what their government is doing, they are in the best position to change its direction if they disagree with it or to reaffirm that direction by casting their votes as informed members of the electorate.

Democracy can only work when the public knows what government is doing and can hold it accountable, so I am glad that at this time of year, we can look back at the successful efforts we have made to promote transparency while looking ahead to do more.

Last Congress, I introduced the Freedom of Information Act Improvement Act. It is a law that strengthens the existing Freedom of Information Act, which is the country's chief open government law, by requiring Federal agencies to operate under a presumption of openness when considering whether to release government information in their custody.

We passed it last summer, and President Obama signed it into law. This important new law accomplishes some of the most sweeping and meaningful reforms in its history to the Freedom of Information Act, and it is already making a direct impact by helping the public access more information.

Because of the Freedom of Information Act Improvement Act, last October, the CIA released a portion of its official history of the Bay of Pigs invasion, which has been kept classified for decades. This is a critical part of our Nation's history that is worth knowing, and I believe it is no longer necessary to keep it under wraps in order to protect America's national security.

This serves as an example of what we are trying to accomplish with this law and others like it so as to build upon the idea the Founding Fathers recognized hundreds of years ago; that a truly democratic system depends on an informed citizenry to hold its leaders accountable. That is an idea everyone in this Chamber, on both sides of the aisle, can agree upon.

I am thankful to the senior Senator from Vermont, Mr. LEAHY, for working with me on the Freedom of Information Act Improvement Act and making it a priority. As a matter of fact, Senator LEAHY has been my partner on a number of our efforts in this important area over the years that we have both been in the Senate.

I also appreciate Chairman GRASSLEY's leadership, the chairman of the Senate Judiciary Committee, for stewarding this bill through the committee, and I appreciate Leader MCCONNELL for making sure this was a priority for this Chamber.

In looking ahead, I will continue working with Chairman GRASSLEY to make sure the Federal agencies are implementing this law in a timely manner, and I look forward to doing more to strengthen greater government transparency measures in the future.

#### NOMINATION OF NEIL GORSUCH

Finally, Mr. President, next week, the Judiciary Committee will take up the nomination of Neil Gorsuch for the U.S. Supreme Court so he may fill the seat that was vacated by the death of Justice Scalia. That process, of course, begins with hearings to consider his qualifications and his credentials, but heading into next week, we already know a lot about his record.

He has been praised by people across the political spectrum—from liberals to conservatives—as a highly qualified and exceptional judge with impeccable integrity. He served with great distinction on the Tenth Circuit Court of Appeals, based out of Denver, for the last 10 years, after having been confirmed by this Chamber unanimously. His hometown newspaper, the Denver Post, encouraged the President to nominate Judge Gorsuch before his nomination was even announced. This, of course, was the same newspaper that endorsed Hillary Clinton for President. Clearly, Judge Gorsuch has won the respect of those across the political spectrum and on both sides of the aisle. Last week, the American Bar Association announced its unanimous decision to grant Judge Gorsuch the highest rating available; that of "well qualified" as a nominee to serve on the Supreme Court of the United States.

I should point out that both the minority leader and former chairman of the Judiciary Committee—the senior Senator from Vermont—have called the American Bar Association's rating system the "gold standard" when it comes to assessing the qualifications of judicial nominees.

Judge Gorsuch will also bring decades of experience on the bench, as I mentioned a moment ago. He has also served in private practice, as an attorney with the Justice Department, and, of course, as a Federal judge.

It is time to move forward with the President's nominee to fill the seat that was left open by the death of the late Justice Scalia, and I believe Judge Gorsuch is just the man to fill it. I look forward to hearing from him next week as we consider his nomination to this important position.

I express my gratitude to Chairman GRASSLEY and the ranking member, Senator FEINSTEIN, for their efforts thus far in putting these hearings together, and I look forward to working with the rest of my colleagues on the Judiciary Committee to consider the nomination of Judge Gorsuch, starting next Monday, March 20.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Mr. President, I know both sides are working on trying to get an arrangement for the vote.

Mr. President, I also want to tell my colleague from Texas that I listened very carefully to his remarks with respect to transparency in government. He has had a long interest in the Freedom of Information Act and the like. I noted that he made a comment about the Bay of Pigs, about which information is still classified, and I know something about this because my dad wrote a book about the subject. My hope is that my friend from Texas and his interest in transparency will also extend to some other areas.

As I indicated, I am very familiar with my colleague's record with respect to Freedom of Information Act issues, which really is impressive. I

hope to get him involved in some other areas of transparency—perhaps in campaign finance reform and the issue I am going to be speaking about today, that of getting the American people the information—after 6 years of stonewalling—on how many lawful Americans are getting swept up in what will be Dan Coats' top priority, that of the reauthorization of the Foreign Intelligence Surveillance Act.

I want my colleague to know, in my being very much aware of his good work on the Freedom of Information Act issues, that we are going to try and conscript them into some other transparency issues as well.

Mr. CORNYN. Mr. President, may I ask the Senator to yield to consider a couple of brief consent requests?

Mr. WYDEN. Mr. President, of course.

I will tell my colleague, as to what the majority and the minority have agreed to, as soon as those consent requests are ready, then we will take a time out from my remarks and make sure that matter is resolved.

As we wait for the matter Senator CORNYN has mentioned, I will begin the discussion of the nomination of Dan Coats to be the Director of National Intelligence.

I have known Senator Coats for many years. He has been the lead co-sponsor of the bipartisan Federal income tax reform proposal, which has been a special priority of mine. I do not know of a single U.S. Senator who does not like Senator Coats. He is honest, a straight shooter, and gracious. My remarks are not about my personal affection for Senator Coats.

The reason I am voting against the nomination is due to the matter I just touched upon with the Senator from Texas, which is, for 6 years, it has been impossible to get the intelligence community to provide the Congress and the American people information that is absolutely critical to the debate on reauthorizing the Foreign Intelligence Surveillance Act. For 6 long years, Democrats and Republicans, both in this body and in the other body, have been trying to get this information.

So this morning, given the fact that this legislation would be the top priority of Senator Coats, as he said in the Intelligence Committee, I want the Senate and the country to understand why this issue is so important.

First, I am happy to yield to my friend from Texas.

The PRESIDING OFFICER. The Senator from Texas.

#### ORDER OF PROCEDURE

Mr. CORNYN. Mr. President, I thank my colleague for yielding for a brief UC request, as I think this would be in the best interests of the entire Senate.

I ask unanimous consent that notwithstanding rule XXII, the cloture motion on Executive Calendar No. 19, the McMaster nomination, be withdrawn; that the time until 1:45 p.m. be equally divided in the usual form on the Coats and McMaster nominations

concurrently; and that at 1:45 p.m. the Senate vote on the Coats nomination, followed by a vote on the McMaster nomination; and that, if confirmed, the President be immediately notified of the Senate's actions, with no intervening action or debate. I further ask that 1 hour of minority debate time be reserved for Senator WYDEN.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. CORNYN. Mr. President, I also ask unanimous consent that following morning business on Tuesday, March 21, the Senate proceed to executive session for the en bloc consideration of the following nominations: Executive Calendar Nos. 21 and 22. I ask unanimous consent that the time until 12 noon be equally divided and that following the use or yielding back of time, the Senate vote on the nominations, en bloc, with no intervening action or debate; that, if confirmed, the motions to reconsider be considered made and laid upon the table, en bloc, and the President be immediately notified of the Senate's action; that no further motions be in order; and that any statements relating to the nominations be printed in the RECORD.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. CORNYN. Mr. President, I thank my friend and colleague for yielding for those unanimous consent requests.

Mr. WYDEN. I thank my colleague.

Now, as we consider the nomination of Senator Coats, and recognize that his top priority, by his admission, would be the reauthorization of the Foreign Intelligence Surveillance Act—particularly section 702—I want to begin this discussion by saying that it is because the intelligence community has stonewalled Democrats and Republicans in both this body and in the other body for 6 years on the information that we need to do good oversight that I have come to the floor to outline what I think the central issue is all about.

I am going to begin my remarks by way of saying that, at a time when Americans are demanding policies that give them more security and more liberty, increasingly, we are seeing policies come from both this body and the other body that provide less of both.

A good example would be weakening strong encryption. Weakening strong encryption is bad from a security standpoint, and it is bad from a liberty standpoint. When government creates policies that give the American people less of both—less security and less liberty—obviously, the American people are not going to react well.

My view is that when the government—particularly intelligence agencies—don't level with the American people about large-scale surveillance of law-abiding Americans, our people are justifiably angry. When the government tries to keep this information secret—as I have pointed out on this

floor before—in America, the truth always comes out. Leveling with the American people is the only way for agencies to have the credibility and the legitimacy to effectively do their jobs. They have critically important jobs in keeping our people safe from threats.

Now, with respect to Senator Coats, at his confirmation hearing, since he said the Foreign Intelligence Surveillance Act would be his top priority, I asked our former colleague how many Americans—innocent, law-abiding Americans—have actually been swept up in the surveillance program known as section 702 of the Foreign Intelligence Surveillance Act. Under section 702, the government conducts warrantless surveillance of foreigners who are reasonably believed to be overseas. It does this work by compelling telecommunications companies and internet service providers to provide the content, phone calls, and emails, and other individual communications.

Now, there are several different ways this happens, and I will get to that in the course of these remarks. What we are talking about—what I want people to understand—is that this goes to the content of communications. This is not about metadata collection. Congress, as the Senate knows, reformed that in the USA FREEDOM Act. This is surveillance without any warrants, and once the FISA Court signs off on the overall program, the details are up to the government.

Now, this was not always the case. For decades, individual warrants were required when the government needed the assistance of the country's telecommunications firms. Then the Bush administration created a secret, but legal, warrantless wiretapping program.

After the program was revealed, the government then went to the Foreign Intelligence Surveillance Act Court to get approval. But when the government ran into some trouble with the court, the Bush administration argued that the Congress should create the current program. It was first passed in 2007 under the name Protect America Act. That became the Foreign Intelligence Surveillance Act Amendments Act of 2008.

Now, fortunately, the Congress included a sunset provision, which is why it was up for reauthorization in 2012, and that is why it is up for reauthorization this year. This year it is Senator Coats' top priority, if confirmed. Whoever is the head of the intelligence community will be the point person for this legislation.

I want it understood that the reason that I am going through this background is that I believe the American people deserve a fully informed debate about the Foreign Intelligence Surveillance Act reauthorization. You cannot have that debate—you cannot ensure that the American people have security and liberty—unless you know the impact of section 702 of that bill on the constitutional rights of law-abiding Americans.

So for 6 years, in this body, Democrats and Republicans—and in the other body, Democrats and Republicans—have been asking the same question: How many law-abiding Americans are having their communications swept up in all of this collection? Without even an estimate of this number, I don't think it is possible to judge what section 702 means for the core liberties of law-abiding Americans. Without this information, the Congress can't make an informed decision about whether to reauthorize section 702 or what kind of reforms might be necessary to ensure the protection of the individual liberties of innocent Americans.

At Senator Coats' nomination hearing before the Senate Intelligence Committee, I asked Senator Coats whether he would commit to providing Congress and the public with this information. I will say, because of my respect for Senator Coats and our long-time cooperation on issues like tax reform and a variety of others, I hoped that Senator Coats would be the one—after 6 years of struggling to get this information—to make a commitment to deliver it to the Senate Intelligence Committee before work on the reauthorization began. Instead, Senator Coats said: "I will do everything I can to work with Admiral Rogers at the NSA to get you that number."

If confirmed, I hope that happens. But after asking for the number of law-abiding Americans who get swept up in these searches for years, and getting stonewalled by the executive branch, hoping to get the information we need to do real oversight is just not good enough.

The problem—the lack of information on the impact of this law on the privacy of Americans—goes all the way back to the origins of the authority. In December of 2007, the Bush administration, in its statement of administration policy on the FISA Amendments Act, stated that it would likely be impossible to count the number of people located in the United States as communications were reviewed by the government. In April of 2011, our former colleague Senator Mark Udall and I then asked the Director of National Intelligence, James Clapper, for an estimate. In July of that year, the Director wrote back and said: "It is not reasonably possible to identify the number of people located in the United States whose communications may have been reviewed under the authority of the Foreign Intelligence Surveillance Act."

He suggested reviewing the classified number of disseminated intelligence reports containing a reference to a U.S. person, but that is very different than the number of Americans whose communications have been collected in the first place. And that is what this is all about: How many law-abiding Americans—innocent, law-abiding Americans—are getting swept up in these searches? It will be an increasingly important issue as the nature of tele-

communications companies continues to change, because it is now a field that is globally interconnected. We don't have telecommunications systems just stopping at national borders. So getting the number of Americans whose communications have been collected in the first place is the prerequisite to doing real oversight on this law and doing our job, at a time when it is being reauthorized and the American people want both security and liberty and understand that the two are not mutually exclusive.

So Director Clapper then suggested reviewing the classified number of targets that were later determined to be located in the United States. But the question has never been about the targets of 702, although the mistaken targeting of Americans and the people in our country is another serious question. The question that Democrats and Republicans have been asking is about how many Americans are being swept up by a program that, according to the law, is supposed to only target foreigners overseas.

So let me repeat that. That is what the law says. The Foreign Intelligence Surveillance Act says that the targets are supposed to be foreigners overseas, and Democrats and Republicans want to know how many law-abiding Americans, who might reside in Alaska or Oregon or anywhere else, are getting swept up in these searches.

(Mr. SULLIVAN assumed the Chair.) So this bipartisan coalition has kept asking. In July of 2012, anticipating the first reauthorization of section 702 of the Foreign Intelligence Surveillance Act, I and 11 other Senators from both parties wrote to Director Clapper. This bipartisan group wrote:

We understand that it might not be possible for the intelligence community to calculate this number with precision, but it is difficult for us to accept the assertion that it is not possible to come up with even a rough estimate of this number. If generating a precise estimate would require an inordinate amount of labor, we would be willing to accept an imprecise one.

We asked about imprecise estimates, just a ballpark: How many law-abiding Americans are getting swept up in these searches that the law says are designed to target foreigners?

We asked about orders of magnitude: Is the number closer to a hundred or a hundred thousand or a hundred million?

We still got no answer, and section 702 was reauthorized without this necessary information. So last year, looking at the prospect of the law coming up, there was a renewed effort to find out how many law-abiding Americans are getting swept up in these searches of foreigners.

In April 2016, a bipartisan letter from members of the House Judiciary Committee asked the Director of National Intelligence for a public estimate of the number of communications or transactions involving U.S. persons collected under section 702 on an annual basis. This letter, coming from

the House—Democrats and Republicans—again asked for a rough estimate. This bipartisan group suggested working with Director Clapper to determine the methodology to get this estimate. In December, there were hints in the news media that something might be forthcoming. But now, here we are, with a new administration, considering the nomination of the next head of the intelligence community, who has said that reauthorizing section 702 is his top legislative priority, and there is no answer in sight to the question Democrats and Republicans have been asking for over 6 years: How many innocent, law-abiding Americans are getting swept up in these searches under a law that targets foreigners overseas?

Having described this history, I want to explain why this issue is so important, starting with the many ways in which innocent Americans can be swept up in section 702 surveillance.

The first are targeting mistakes in which, contrary to the law, the target turns out to be an American or someone in the United States. The full impact of these mistakes on law-abiding Americans is not readily apparent. The most recent public report on section 702 noted that there were compliance incidents involving surveillance of foreigners in the United States and surveillance of Americans. This is in violation of the law, and it happens.

The second way in which Americans can be swept up in section 702 collection is when they communicate with an overseas target. This is usually called incidental collection and is often mischaracterized. I have heard many times that the program is intended to find out when Americans are communicating with "bad guys"—and I want it understood, I am not interested in some kind of "bad guys caucus." I know of no Senator who is not interested in protecting our country from those kinds of threats. If a known terrorist overseas is communicating with someone in the United States, we ought to know about it. But section 702 is not just a counterterrorism program. The statute requires the collection be conducted "to acquire foreign intelligence information." As implemented, the standard for targeting individuals under the program is that the government has reason to believe those persons possess, are expected to receive, or are likely to communicate foreign intelligence information. Obviously, that is broad. It doesn't even require that a target be suspected of wrongdoing. So if someone tells you that your communications will be collected only if you are talking to al-Qaida or ISIS, that is just factually wrong.

It is also important to note that the government is prohibited from collecting communications only when the sender of an email and everyone receiving that email are in the United States. So an American in the United States could send an email to another American in the United States, but if

the email also goes to an overseas target, it is going to be collected.

That then brings us to the different kinds of collection under section 702 and how they affect the liberties of our people in different ways. In one form of collection known as PRISM, the government orders an internet service provider to provide the government with messages to and from a specific email address. Then there is something known as upstream collection, which is when the communications are collected off the telecommunications and internet backbones. In other words, phone calls and email messages are collected in transit. This kind of collection raises a number of other reasons to be concerned about how many law-abiding Americans are getting swept up. For one, it is through upstream collection that the government can collect emails that are neither to nor from a target. The email merely has to be about a target, meaning, for example, it includes a target's email address in the content. In other words, the government can collect emails to and from Americans, none of whom are of any interest to the government whatsoever, so long as the target's email address is in the content of the email. The law requires only that one of the parties to the communication, who, again, could be another American, is overseas, and even that requirement is harder for the government to meet in practice.

The implications here ought to be pretty obvious. You don't even have to be communicating with one of the government's targets to be swept up in Foreign Intelligence Surveillance Act collection. You don't even have to be communicating with a foreigner. You or somebody emailing you just needs to reference a target's email address.

I have now mentioned that this target is not necessarily a terrorist because the law allows for surveillance "to acquire foreign intelligence information." That has been interpreted to allow the targeting of individuals who the government has reason to believe possess, are expected to receive, or are likely to communicate foreign intelligence information. It is a broad standard, and the government could then collect the communications of all kinds of foreigners around the world. Think about how easy it would be for an American business leader to be in contact with the broad set of potential targets of this program. Consider how easy it would be for Americans, communicating with other Americans, to forward the emails of these people. All of this could be collected by the government.

The upstream collection also includes the collection of what are called multicomcommunications transactions. This is when the NSA collects an email that is to, from, or about a target, but that email is embedded among multiple other communications that are not. These communications may have nothing to do with the target, but the government just kind of, sort of ends

up with them—and some of them are sent and received entirely within the United States.

These are the ways in which law-abiding Americans—innocent, law-abiding Americans who have done absolutely nothing wrong, both overseas and in the United States—can have their communications collected under the Foreign Intelligence Surveillance Act. These are law-abiding Americans, innocent Americans, not necessarily suspected of anything, and it is their privacy and their constitutional rights that have caused Democrats and Republicans in this body and in the other body to seek the actual numbers of how many law-abiding Americans are getting swept up in these searches that are supposed to target foreigners overseas.

The reason this is important is that the program is getting bigger and bigger. The exact numbers are classified, but the government's public reporting confirms steady increases in collection. At some point, the size of the program and the extent to which Americans' communications are being collected raises obvious concerns about our Fourth Amendment. The question is not if the program raises constitutional concerns, but when. And that gets to the heart of what our bipartisan coalition has been concerned about: If it is not possible for the Senate to know as part of reauthorizing this law how many Americans are being swept up by this program, we cannot determine whether the government has crossed a constitutional line.

The Privacy and Civil Liberties Oversight Board, an agency the Congress has tasked to look at these issues, has raised the very same concerns I am outlining this morning. In the 2014 report by the Board—the nonpartisan organization tasked by the Congress—concluded that the lack of information about the collection of the communications of law-abiding Americans' communications under section 702 "hampers attempts to gauge whether the program appropriately balances national security interests with the privacy of U.S. persons."

They went on to say:

The program [is] close to the line of constitutional reasonableness. At the very least, too much expansion in the collection of U.S. persons' communications or the uses to which those communications are put may push the program over the line.

They recommended exactly what our bipartisan coalition has been calling for—that the government provide to the Congress and, to the extent consistent with national security, that the public and the Congress get data on the collection of these communications of law-abiding Americans.

The most frequently heard argument against what our bipartisan group of House and Senate Members has been calling for is that, whatever number of communications are being collected on law-abiding Americans, it is minimized, which implies that information about Americans is hidden.

This is a particularly important issue. I have heard my colleagues on the other side say frequently: Well, if law-abiding Americans are having their communications swept up, we shouldn't get all concerned about that because this array of Americans' communications is being minimized. Somehow that means it is not getting out; it is being hidden. That is not necessarily what happens. To begin with, all that collection does not stay at the National Security Agency. All the emails collected through the PRISM component of section 702 go to several other agencies, including the CIA and the FBI. Then we have those three agencies, in particular, authorized to conduct searches through all the data for communications that are to, from, or about Americans: Look for an American's name, telephone number, email address, even a key word or phrase. They can do that without any warrant. There doesn't have to be even a suspicion—even a suspicion—that an American is engaged in any kind of wrongdoing. The FBI's authorities are even broader. The FBI can conduct searches for communications that are to, from, or about an American to seek evidence of a crime. Unlike the National Security Agency and the Central Intelligence Agency, the FBI doesn't even report how many searches for Americans it is conducting. Moreover, neither the FBI nor the CIA reports on the number of searches for Americans that it conducts using metadata collected under section 702.

The authority to conduct searches for Americans' communications in section 702 data is new. Before 2011, the FISA Court prohibited queries for U.S. persons. I am going to repeat that. Under the Bush administration and in the first 2 years of the Obama administration, it was not possible to conduct these backdoor, warrantless searches of law-abiding Americans. Then the Obama administration sought to change the rules and obtained authority to conduct them.

In April 2014, the Director of National Intelligence's response to questions from me and Senator Mark Udall publicly acknowledged these warrantless searches. By June the House voted overwhelmingly to prohibit them. That prohibition didn't become law, but I can tell you that it is sure going to be considered in the context of this reauthorization. The House voted overwhelmingly to prohibit these warrantless searches.

So the question really is this: What exactly is the privacy impact of these warrantless searches for Americans? In 2014, I managed to extract from the intelligence community some, but not all, necessary information about how many Americans had been subject of the searches. That was a step forward, but what the data doesn't tell us is who the subjects of these searches are. More to the point, it doesn't tell us how many Americans are potentially the subject of these searches. If the number

is small, the potential for abuse, obviously, would be smaller. If the number is large, the potential for abuse is much greater. Without an understanding of the size of the pool from which the government can pull the communications of law-abiding Americans, there is just no way of knowing how easy it would be for the government to use this law as a means to read the emails of a political opponent, a business leader, a journalist, or an activist.

I now want to turn to the ultimate form of abuse, and that is something called reverse targeting. It is prohibited by law and defined as collection “if the purpose of the acquisition is to target a particular, known person reasonably believed to be in the United States.” This prohibition also applies to U.S. persons. The question, though, is how this is defined and how the public can be assured it is not happening.

If you look at the language, you can see why there has been bipartisan concern. The collection is only prohibited if the purpose is to get the communications of Americans. The question obviously has risen: What if getting the Americans’ communications is only one of the purposes of collecting on an overseas target? What is actually acceptable here?

This issue was concerning in 2008, when the Foreign Intelligence Surveillance Act Amendments Act passed with a prohibition on reverse targeting. But that was before the country knew about the collection of emails that are only about a foreign target and that could be to and from Americans. That was before the Obama administration sought and obtained authority to conduct warrantless searches for communications to, from, and about Americans out of section 702 PRISM collection.

That makes an important point to me. This bipartisan coalition—of which I have been a part—has fought back against executive branch overreach, whether it is a Democratic administration or a Republican administration. I cited the fact that President Obama brought back something with the great potential for abuse and that President Bush said he wanted no part of. As we look at these issues, it is important to understand exactly what the scope of the problem is. Each of the agencies authorized to conduct these warrantless searches—the NSA, FBI, CIA—are also authorized to identify the overseas targets of section 702. The agencies that have developed an interest in Americans’ communications, which are actually looking for these communications, are the same agencies that are in a position to encourage ongoing collection of those communications by targeting the overseas party.

I believe our bipartisan group believes that there is very substantial potential for abuse. Because of these decisions taking place in the executive branch without any judicial oversight,

it is possible that no one would ever know.

To quote the Privacy and Civil Liberties Oversight Board: “Since the enactment of the FISA Amendments Act of 2008, the extent to which the government acquires the communications of U.S. persons under Section 702 has been one of the biggest open questions about the program, and a continuing source of public concern.” The Board noted that the executive branch has responded with any number of excuses for why it couldn’t provide the number of how many innocent law-abiding Americans get swept up in these searches. One excuse has been the size of the program. But as Members—Democrats and Republicans—have said repeatedly, an estimate, perhaps based on a sample, is sufficient. Nobody is dictating how this be done.

Another excuse has been that determining whether individuals whose communications have been collected are American would itself be invasive of privacy. Now this is something of a head-scratcher. I will just say that, as to the value of knowing how many law-abiding Americans get swept up in these searches, privacy advocates have stated that this far-fetched theory, this far-fetched excuse for not furnishing it, doesn’t add up in terms of the benefit of finding how many Americans are swept up in these warrantless searches.

The government is genuinely concerned about the privacy implications of calculating the number. I and many of my colleagues, both Democrats and Republicans, have been willing—and we renewed this in the last few weeks—to have a discussion about the methodology under consideration.

In the months ahead, the Senate is going to be debating a number of issues relating to this topic, such as U.S. person searches, reverse targeting, and the collection of communications that are just about a target. The Senate is going to discuss how to strengthen oversight by the Foreign Intelligence Surveillance Court, the Congress, and the privacy board. The Director of National Intelligence will be right in the center of the debate.

There is more information that the American people need. There is more information that this body needs in order to carry out its responsibility to do real oversight here. The center of these discussions about the reauthorization of the Foreign Intelligence Surveillance Act involves one question: How many innocent, law-abiding Americans have been swept up in this program that has been written and developed to target foreigners overseas? Congress’s judgment about the impact of section 702 depends on getting this number. An assessment of the program’s constitutionality rests on the understanding of the impact it has on Americans. A full grasp of the implications of the warrantless searches of Americans requires knowing how many Americans’ communications are being searched through. Countless questions

related to the reauthorization of the program all require that the public have this information.

I am just going to close by way of saying what those questions are because if you want to do real oversight over a critically important program, you have to have the information to respond to these questions. The questions are these: Should there be safeguards against reverse targeting? Should Congress legislate on “upstream” collections and the collection of communications about targets, which raises unique concerns about the collection of the communications of law-abiding Americans? Are the rules related to the dissemination, use, and retention of these communications adequate? Should there be limits on the use of these communications by the FBI for non-intelligence purposes?

Just think about that one for a minute. What does it mean to people in our part of the world where people feel that liberty and security are not mutually exclusive, but they are going to insist on both? What does it mean to them on the question of whether there ought to be limits on the use of this information by the FBI for non-intelligence purposes? That is exactly the kind of question that people are going to ask.

I am heading home today for town-hall meetings in rural areas, and those are exactly the kind of questions that Oregonians ask. People understand this is a dangerous time. That is not at issue.

I serve on the Intelligence Committee, along with Senator FEINSTEIN, and I have been one of the longer serving members. The fact that this is a dangerous world is not a debatable proposition. There are a lot of people out there who do not wish our country well. But what I say to Oregonians and what I will say again this weekend is this: Any politician who tells you that you have to give up your liberty to have security is not somebody who is working in your interest because smart policies give you both.

That is why I started talking about the benefits of strong encryption—critically important for security. These questions are ones that I don’t think are particularly partisan. That is why a big group of Democrats and Republicans here and in the other body have been seeking the information about how many law-abiding Americans get caught up in these efforts to target a foreigner overseas. We are now at a critical moment. A government surveillance program, with very obvious implications for privacy and constitutional rights, is up for reauthorization by the end of the year. While more information may be part of the answer, we have to have the best possible estimate to answer those questions that I just outlined.

The American people want Congress to get to the bottom of questions that go right to the heart of our having

policies that promote both their security and their liberty. I think the public expects a full debate. You can't have a full and real debate over the Foreign Intelligence Surveillance Act unless you have some sense of how many law-abiding Americans are getting swept up in these searches of foreigners.

I believe the American people expect serious oversight over it. They want assurances that their representatives in Congress have a sense of what is actually being voted on. After years of secret surveillance programs being revealed only in the news media, I think the public has rightly insisted on more openness and more transparency.

So getting the information that I have described today, which will deal with Senator Coats' top priority of reauthorizing the Foreign Intelligence Surveillance Act, is a critical first step. Once the Senate knows the impact of this program on Americans, then you can have a full and real discussion—a real debate in Congress—with the public and with the Director of National Intelligence.

I took the view in the committee, despite very much liking Dan Coats and his being the bipartisan cosponsor of what is still the only Federal income tax reform proposal we have had in the Senate since the 1986 law was authored, I said that I cannot support any nominee to be the head of national intelligence if that nominee will not guarantee that before this reauthorization is brought before the Senate and brought before the Intelligence Committee, that we have the information needed to do our job, to do real oversight, to show the American people it is possible to come up with policies that promote security and liberty. For that reason, despite my friendship with Senator Coats, I cannot support the nomination.

I yield the floor.

Mr. VAN HOLLEN. Mr. President, never before has a sitting President so maligned our intelligence community. President Trump has repeatedly belittled and ridiculed the work of intelligence officials, calling their assessments of Russia's hack into U.S. elections "fake news." Over Twitter, President Trump accused intelligence officers of executing a Nazi-like smear campaign against him. President Trump has sided with the likes of Julian Assange and Vladimir Putin over our own intelligence community.

More disturbingly, President Trump seems to hold shallow views on critical intelligence questions like torture. On the campaign trail, Mr. Trump constantly vowed to reinstate torture, asserting that only "stupid people" would think otherwise. In an interview with the New York Times, Mr. Trump admitted that he was "surprised" that Defense Secretary Mattis opposed torture, while adding that he would be "guided by" mass sentiments on torture. Mr. Trump's pronouncements on torture are dangerous, irresponsible, and rally our enemies.

Senator Dan Coats has an enormous challenge ahead of him. President Trump removed the Director of National Intelligence from the National Security Council, marginalizing the intelligence community's essential role in informing national security decisions. President Trump reportedly plans to hire a New York billionaire with close ties to Steve Bannon to conduct a review of the intelligence agencies, a core responsibility of the Director of National Intelligence, and Senator Coats' hardline assessments of Russia may meet with skepticism in a White House that views Putin so favorably.

I am encouraged by Senator Coats' willingness to work with the Congress in a bipartisan manner, particularly on probes related to Russia's hack into our election. I expect Senator Coats to maintain his commitment to follow the law on enhanced interrogation techniques and not to seek to change them. For these reasons, I support his nomination to the Office of the Director of National Intelligence.

#### NOMINATION OF HERBERT MCMASTER

Mr. CARDIN. Mr. President, I have a tremendous amount of respect for Lieutenant General McMaster and a great deal of admiration for his willingness to answer the call of service for his Nation as National Security Advisor.

So I want to be clear that none of my comments are intended as a reflection on General McMaster himself.

But I am greatly concerned about the current state of the organization that General McMaster is being asked to run and that the way in which the President and his senior advisers appear to be running it is creating great risk for our Nation.

The President's first National Security Advisor, who lasted less than a month in office, had failed to register as a foreign agent, a job that he held throughout the Presidential campaign and into the transition—so much for America first.

The initial Executive order structuring the National Security Council system for the new administration deliberately omitted the Chairman of the Joint Chiefs and the Director of National Intelligence from the Principals Committee—in other words, a National Security Council without the insight and guidance of our intelligence community or military.

Every administration can structure the White House as it sees fit, but national security without intelligence or military advice is, frankly, mind-boggling.

At the same time, the NSC was to include Steve Bannon, the President's political adviser. Although previous White Houses have had staff from outside the NSC sit in on NSC meetings on occasion and as appropriate, never before has an administration suggested that the NSC's work of safeguarding our Nation be subordinate to the political goals of safeguarding a President's

political position and public opinion ratings.

Alongside the NSC, this White House has established a so-called Strategic Initiatives Group under Mr. Bannon, which is reportedly undertaking strategic reviews of U.S. policy on sensitive issues—including U.S.-Russia relations. Running a shadow NSC with crossing lines of jurisdiction and authority seems like a recipe for disaster.

So all of this has created an environment of dysfunction and an organization in severe distress. It is one thing to run a family real estate company this way, but this is our national security that is at stake.

If there is a crisis tonight—on the Korean Peninsula, with Russia, in the Middle East or Persian Gulf—it is far from clear that the NSC is in a position to provide our senior policymakers with the options they need and the decision-space necessary to safeguard America in a dangerous and unpredictable world.

I wish General McMaster all the best, but hope that he is approaching the challenges of his job with clear-eyed conviction.

Mr. VAN HOLLEN. Mr. President, in a few short months, President Trump has undermined U.S. credibility and our standing abroad. He has called for a nuclear arms race, asserted the United States should invade Iraq to take its oil, lavished praise on Vladimir Putin, and slandered stalwart allies like Australia and Germany. He has issued two Muslim bans—a move lauded by the Islamic State and condemned by top military, intelligence, and diplomatic officials of both parties.

President Trump has put our national security apparatus under enormous stress. He has appointed Steve Bannon, an extremist with the explicit ambition to "destroy the state," to the National Security Council—the highest body charged with protecting the state. He has failed to nominate officials for dozens of crucial national security positions, hobbling our ability to respond to a future national security crisis. He has repeatedly denigrated our intelligence agencies, rejecting findings that clearly demonstrated Russia's role in his election. He has accused the FBI of breaking the law by wiretapping Trump Tower, a groundless claim for which he has offered no proof.

LTG H.R. McMaster is a respected military strategist with a reputation for an independent mind. He has demonstrated throughout his career that he is willing to challenge and criticize U.S. leadership, irrespective of party. He does not appear to be sympathetic to the view of President Trump or Steve Bannon that the United States is at war with the entire Muslim world. Instead, while commanding U.S. forces in Iraq, General McMaster told his soldiers: "Every time you treat an Iraqi disrespectfully, you are working for the enemy."

I am concerned with General McMaster's handling of sexual assault

allegations against two of his cadets at West Point. McMaster's reluctance to interfere with the training of these cadets, despite allegations of sexual assault, was in violation of Army policy. I am a strong supporter of efforts to reform the military's handling of sexual assault, which is why I cosponsored legislation in the House to pass new legal protections for victims of assault in the military.

While I remain deeply concerned with the large number of military officials in senior positions in the Trump administration, I support General McMaster's retaining his rank while he serves as National Security Advisor. I do so with the hope that General McMaster will remain faithful to his reputation for dissent, will challenge President Trump when he takes a dangerous approach to the world, will restore order to the National Security Council, and will steward a foreign policy that makes America safer.

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

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

#### FREEDOM OF THE PRESS

Mr. UDALL. Mr. President, this week is Sunshine Week, a week when we applaud open government and when we celebrate the institutions that hold government accountable. Throughout our Nation's history, one of the most important has been the press, the free press. Donald Trump, as candidate and President, has repeatedly attacked the press. He has called it the "enemy of the people," he has labeled the national media outlets as "fake news," and he has criticized respected reporters who have reported for years.

He has singled out mainstream newspapers like the New York Times, Politico, and the Los Angeles Times, and television outlets like ABC, NBC, CBS, CNN. That is how this President operates. He acts like a bully, and not just with the media. He attacks the courts when article III judges disagree with him, and when they find he is breaking the law. He attacks sitting judges for deciding against him, even those appointed by Republican Presidents.

Without basis, he attacks our intelligence agencies, and he even demeans career public servants who risk their lives to keep our Nation safe. The President's goal is obvious, to undermine the institutions in our country who threaten him, who criticize him. Authoritarians have used this strategy for centuries and continue to do so today in countries where democracy is weak or nonexistent and where autocracy or kleptocracy is strong.

But this is the United States. We are an example to the world of democratic principles and action. The President's

repeated attacks on our democratic institutions need to stop and they need to stop now. A free and robust press is critical for democracy to work, period, end of story. Our Nation's history of a free press dates back to our founding. Free press in the colonial United States developed in reaction to severe restrictions on free speech in England.

During the latter half of the 17th century, all books and articles were required to be licensed by the government to be published. Then, "seditious libel"—bringing "hatred or contempt" upon the Crown or the Parliament by written word—was a criminal offense. So to speak against the Crown was a criminal offense. Truth was not a defense.

No publication could criticize the Crown or the government, even if it was accurate. The first newspapers in the Colonies operated under licenses from the colonial Governor. But by 1721, James Franklin, Benjamin Franklin's older brother, was publishing one of the first colonial independent newspapers, the New England Courant, in Boston.

Ben Franklin was his apprentice, typesetter, and sometimes contributed under pen names. Several years later, Ben Franklin began publishing his own independent newspaper, the Pennsylvania Gazette. His newspaper became the most popular in the Colonies and was published until 1800.

By 1735, the tenets of seditious libel were coming undone. John Peter Zenger, the publisher of the New York Weekly Journal, ran articles harshly critical of the colonial government. Zenger was arrested and tried for libel. While he admitted he published the articles, his lawyer argued truth was a defense. The press, the lawyer argued, has "a liberty both of exposing and opposing tyrannical power by speaking and writing the truth."

The judge, however, instructed the jury as to the law at the time, that Zenger must be found guilty if he published the articles, whether truthful or not, but after 10 minutes of deliberation, the jury acquitted Zenger. These were some of the beginnings of a free press in our Nation.

The first rights in the Bill of Rights are freedom of religion, the press, speech, petition, and assembly. The press, as an institution, is expressly protected by the Constitution. In 1789, the drafters of the Bill of Rights understood that a free press was essential to the growth and success of our new democracy. They understood that debate, disagreement, the free flow of ideas, make an informed public, that the press helps educate voters.

They understood all too well that government power needed to be checked and that the press holds the powerful in check by investigating and exposing arbitrary conduct, abuse, and corruption. A democracy cannot exist without a free press. It is as simple as that, but our President does not seem to understand this or he does not care.

According to him, the press is "dishonest," "not good people," "sleazy," and, "among the worst human beings." Those are all quotes by our President.

Established press organizations are the "fake news," and a few weeks ago he declared the press "an enemy of the people." We have not heard attacks like this since Watergate, and even then, it wasn't so much so fast. The President's subordinates are now given license to accuse and to limit press access.

Chief Strategist Steve Bannon said the press should "keep its mouth shut and just listen for a while." This quote from Mr. Bannon has extra significance today because he is no longer the head of a rightwing media company. In a controversial move, President Trump issued an Executive order to add him to the National Security Council's Principal's Committee.

Today, we are going to vote on the nomination of General McMaster to retain his three-star general status while serving as the head of the National Security Council. I do not believe a political extremist like Mr. Bannon should serve on the Council. At a minimum, General McMaster should direct Mr. Bannon to stop attacking the free press while serving on the Council.

Senior adviser Kellyanne Conway called for media organizations to fire reporters who criticized Candidate Trump. Press Secretary Shawn Spicer barred the New York Times and the Los Angeles Times, BuzzFeed, and Politico from a press conference, and the Secretary of State will now travel without the press corps, disregarding a decades-old practice.

Now, don't get me wrong. The press does not always get it right. They make mistakes. News organizations have their biases. Mistakes should be corrected and bias should be tempered by using accepted journalistic methods and professional judgment and following journalism's ethics code.

Mistakes and the exercise of professional judgment are not the same thing as reporting "fake news." The President's Republican colleagues have been too silent in the face of attacks. Few in Congress have stood up against the President's hostility to the press. Government officials are afraid to disagree. Just last week, at a Senate Commerce Committee hearing, I asked the FCC Chair, Mr. Pai, a yes or no question, does he agree with the President that the press is the enemy of the people.

He did not engage. He would not answer. He let stand the President's remarks. The President's characterization of the press as the enemy is reminiscent of President Nixon, when Nixon said: "Never forget. The press is the enemy. The press is the enemy," as recorded on his secret tapes.

The press was Nixon's enemy because the press exposed his criminal conduct which led to his resignation. The press is Trump's enemy because the press exposes his and his associates' ties to

Russia, the President's myriad Trump organization conflicts of interest, his constant barrage of misrepresentations of fact.

Nixon's Press Secretary called the Washington Post investigative reporting shoddy and shabby journalism. Like President Trump's accusation of fake news, that same Post reporting won the paper a Pulitzer Prize.

Watergate was a break-in of the Democratic National Committee during the Presidential campaign. Nixon ordered his Chief of Staff to have the CIA block the FBI's investigation into the source of the funding for the Watergate burglary. During this last Presidential election, we had a cyber break-in of the DNC. Even after 17 U.S. intelligence agencies concluded Russia hacked the DNC to sway the election, Candidate Trump refused to accept their analysis.

The President's Chief of Staff pressured the FBI to publicly deny that Trump associates had contact with the Russians, while his Chief Counsel reportedly breached the firewall seeking information from the FBI about an investigation into the President and his associates. Since the press began to look hard at the ties between President Trump and the Trump organization, his associates and Russia, the President has not let up on his criticism. Just last week, the President threatened by tweet as follows:

It is amazing how rude much of the media is to my very hard working representatives. Be nice, you will do much better!

The job of the press is not to be nice. It is to gather the facts and report them. Now that the President of the United States has called the reputable U.S. news organizations fake news, others are doing the same. Russia's Foreign Ministry spokesman recently accused a CNN reporter of spreading "fake news" because the reporter asked about accusations from U.S. officials that the Russian Ambassador is a spy.

This is a dangerous path. Putin has throttled an independent press in the Russian Federation, imposing restriction after restriction on the news media. Reporters have been harassed, threatened, and jailed. The numbers of truly independent media organizations in Russia have been reduced to a very few, and they have been replaced by state-owned, state-run news media, like RT, formerly known as Russia Today, a propaganda bullhorn for Putin, according to Secretary John Kerry.

The President admires Putin as a—and I will quote the President here—"strong leader." Putin has used his strength to silence an independent press. We do not want our press silenced.

Justice Brandeis, in a famous defense of free speech in a 1927 First Amendment case, said: "[T]hose who won our independence by revolution were not cowards. They did not fear political liberty."

Does President Trump fear political liberty?

The irony of the President's accusations of "fake news" is that he himself has spread misinformation and fanned the flames of internet-driven lies, from questioning President Obama's citizenship, to his frivolous claim that millions of people committed voter fraud and that he really won the popular vote—that is the President's claim, that he really won the popular vote—to President Trump's unsubstantiated accusation that President Obama wiretapped Trump Tower.

We have entered into an era in U.S. politics never seen before in my lifetime. We cannot allow this to be sanitized or explained away. The phrase "alternative facts" has become a national joke because it sounds like something from George Orwell's "1984."

It is not acceptable for a President to falsify, misrepresent, or flatout lie. The President's party in Congress should not allow this. They should not look the other way and continue to profess that the emperor's clothes are grand.

Reacting to Mr. Trump's attacks on the press, President George W. Bush responded:

I consider the media to be indispensable to democracy. We need an independent media to hold people accountable. Power can be very addictive and corrosive . . . and it's important for the media to hold to account people who abuse their power—whether it be here or elsewhere.

That was President George W. Bush's recent comment.

President Bush's prescription for democracy in 2017 is the same as the drafters of the First Amendment in 1789: A free and independent and robust media is essential to democracy, and any broad-based attack on the press is an attack directly on our democracy.

There is one thing President Trump must understand: The press won't go away. They won't stop reporting on the actions he takes and on the decisions he makes. He can spend the next 4 years attacking the press, but they will still be there—just as they were after Nixon resigned.

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. SULLIVAN. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mrs. ERNST). Without objection, it is so ordered.

TRIBUTE TO PASTOR EVELYN ERBELE

Mr. SULLIVAN. Madam President, every week for the past few months, I have been coming down to the Senate floor to recognize a special Alaskan, someone who makes my State—what we believe is the most beautiful and unique State in our country—a better place for all of us. I call this person our Alaskan of the Week.

Last week, I had the opportunity to recognize Glen Hanson, who volunteers his time by flying in what we refer to as the Iditarod Air Force—members of the Alaska volunteer community pilots who fly supplies in for the Last Great Race.

I know the pages are really interested in the Last Great Race. So, just as a quick update, we had a winner. It is still going on, but one musher, Mitch Seavey, crossed the finish line in Nome, AK, in record time. I congratulate Mitch and all of the members of the Iditarod Air Force who are still out there, flying, when it is 30, 40, below zero. It is a tough race, a real tough race. Iowans, I am sure, could do well in it but not a lot of other Americans.

Today, I want to take my colleagues and viewers to a very different place in Alaska—about 1,300 miles southeast of Nome, where all the Iditarod action is going on, really almost a world away—to a beautiful city called Ketchikan, AK.

Ketchikan is the first port city that people will visit when they take the Alaska Marine Highway's Inside Passage up to Alaska. It is a trip that I encourage everybody to take. It is beautiful. Flanked by the towering Tongass National Forest, it is a place full of life and spirit, mountains, forests, lots of rain, lots of salmon, and lots of jaw-dropping scenery.

Yet, like most places across our country, it has its challenges, and it has a challenge with homelessness, like many communities in America and Alaska. Luckily, for all of us, Ketchikan is also home to a very caring community that has set its sights on helping its fellow Alaskans. One of these people is Pastor Evelyn Erbele, our Alaskan of the Week, who has dedicated her life to helping others.

Evelyn is the copastor with her husband Terry of the First United Methodist Church of Ketchikan. There is a day shelter in the church's social hall, which provides a hot meal, shower, clean clothes, and a place for the community's homeless to go every day of the week.

Oftentimes when we think of homelessness, we think of people not having a place to sleep, but it is also important to remember that being homeless means having no place to go during the day. First City Homeless Services—Day Shelter gives people a place to go during the day. Pastor Evelyn oversees that day shelter. According to the manager of the shelter, Chris Alvarado, who himself has been homeless, she does so with commitment and with kindness and with compassion.

"She has a heart of gold and gives 100 percent," said one resident of Ketchikan about Evelyn.

Evelyn met her husband Terry in Seward, AK, where she was a nurse in 1976. From Seward, they set out on a journey to help people around the world—Nigeria, Lithuania, Russia.

In 2009, Evelyn—now with a Ph.D. in theology and ordained by the Methodist Church—went up the Alaskan

Highway from Bellingham to Ketchikan with her husband. She didn't know when she accepted the job at the Methodist Church in Ketchikan as copastor that she would be overseeing the day shelter. At first, according to her, the work was a bit unsettling. "I never intentionally walked side by side with people who are homeless," she said. She continued: "Initially, I may have been biased. I was using the word 'them' when I would describe the people I was working with. One day, the Lord said to me, Evelyn, you are them. You are my child no less or no more than they are." She said that after hearing that voice, she realized she wasn't working with "them" anymore. "I was working with men and women who were in a place that I easily could have been."

In her years working to help the homeless in her community in Ketchikan, she realized that not everybody who is homeless fits neatly into "one basket." There are lots of reasons for homelessness, she said, and the homeless may have many, many faces: men, women, children, families, the old, and the young.

As the Presiding Officer knows, homelessness is a big challenge across our Nation. On any given day, tens of thousands of Americans—hundreds of thousands—don't have a permanent place to call home. Of course, the best way to address this is to have a strong economy and job opportunities, and that is what we need to be focusing on here in the Senate. But we also need people like Pastor Evelyn not only in Alaska but across the country, who are tireless advocates for helping the homeless. I thank all of them. I especially thank her, and I thank her for being our Alaskan of the Week.

Madam 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. SCHUMER. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

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

#### NOMINATION OF HERBERT MCMASTER

Mr. SCHUMER. Madam President, since coming to office, the President's National Security Council has experienced more turmoil than any in history at this stage in a Presidency. The President's first National Security Advisor and head of the NSC, Michael Flynn, was fired after only a month in his position. The Council itself has been reshaped in ways that concern all of us. Permanent postings for the Chairman of the Joint Chiefs of Staff and the Director of the National Intelligence Agency have been removed and a permanent seat has been installed for White House Political Adviser Steve Bannon.

This organization is a disturbing and profound departure from past administrations. On the most sensitive matters

of national security, the President should be relying on the informed counsel of members of the intelligence and military communities, not political advisers who made their careers running a White nationalist website.

The Chairman of the Joint Chiefs of Staff is the President's primary military adviser and, along with that of the Director of National Intelligence, is the only independent, apolitical voice on the NSC. President Trump's move to strip them of their seats is baffling and potentially endangers our national security. The President has installed in their stead one of the most strident, ideological voices in his orbit.

On the most sensitive issues of national security, we have to have fact-based decisions. The President has to get the most dispassionate and accurate advice. With all due respect, that is not Mr. Bannon's forte. His installation on the principals list of the NSC moves it further away from what it needs to be and closer toward a shadow council of a dangerously ideological West Wing.

The bottom line is, this decision was poorly thought out and ill-conceived. It puts a filter on the information going to the President and will make us less safe. My concerns are shared by Members on both sides of the aisle. I know that from conversations I have had with some.

It has special relevance today because we are about to vote on reappointing H.R. McMaster to lieutenant general, who will be the next head of the NSC. General McMaster, by all accounts, will have a grounding presence in the national security apparatus of the White House. I have met him. I have a great deal of respect for both his integrity and his abilities, but I remain deeply concerned that General McMaster's judgment may not be followed and instead the fevered dreams of Mr. Bannon will influence the most sensitive national security discussions and decisions. It has been reported he doesn't want to see NATO exist or the European Union. Those are political decisions in a body charged with giving the President advice on security.

So this should concern all of us, especially Lieutenant General McMaster.

Madam President, I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER. (Mr. STRANGE). Without objection, it is so ordered.

#### NOMINATION OF NEIL GORSUCH

Mr. FLAKE. Mr. President, as I did 2 weeks ago and will continue to do until he is confirmed, I rise to support the nomination of Neil Gorsuch to serve on the Supreme Court. Judge Gorsuch is an accomplished, mainstream jurist, and I look forward to helping to make

sure that he receives an up-or-down vote on the Senate floor.

Next week, my colleagues and I on the Judiciary Committee will hold confirmation hearings on Judge Gorsuch. I look forward to hearing his testimony. I am confident that he will impress the country with his knowledge of and respect for the law, just as he has impressed me and my colleagues.

But before the hearings get under way, I thought I would use this opportunity today to highlight an additional aspect of his life and his jurisprudence that make him an ideal nominee to serve on the High Court. So far I have spoken on the floor about his fitness to fill Justice Scalia's seat, as well as his defense of the separation of powers and his support for religious liberty. Today I would like to discuss a more personal aspect of Judge Gorsuch's background—the fact that he is a westerner. As an Arizonan, I cannot overstate how important it will be to have a fellow westerner serving on the Supreme Court.

Where you are from influences your understanding of cultural and regional sensitivities. When you look at the current makeup of the Supreme Court, there is an unmistakable lack of geographic diversity. Of the eight current Justices, five of them were born in New York or New Jersey, and that number was six before Judge Scalia's passing. Granted, Justice Kennedy is from Northern California, but to be frank, much of Northern California is about as culturally western as Justice Breyer's hometown of Boston.

The Supreme Court is in desperate need of a western perspective. Judge Gorsuch fits that bill. When I had the opportunity to meet Judge Gorsuch in my office last month, we discussed our respective western backgrounds. I talked to him about my days growing up on a cattle ranch in rural Arizona. He told me that his heart has always been in the American West. You can learn a lot about a person by how they spend their time with their friends and their family, and there is no mistaking this aspect with Judge Gorsuch. He is a westerner through and through.

He told me about his home outside of Boulder, where his daughters raise and show chickens and goats. I was pleased to learn that each year he takes his law clerks to the National Western Stock Show in Denver, one of the Nation's largest rodeos. By now, I think we have all seen the picture of him fly fishing with Judge Scalia. While all this demonstrates how much he has embraced the western lifestyle, what makes Judge Gorsuch a true westerner is more than just where he lives or where his personal interests are. Judge Gorsuch's western values are evident in his jurisprudence, which reflects a strong commitment to public service. Arizona has had its share of distinguished public servants. In fact, it was from this very desk that the late Barry Goldwater, one of Arizona's favorite sons, steered the public policy debate

for years after he chose to leave a successful career in the private sector. Judge Gorsuch's career reflects the same ethos.

Early on, a young Neil Gorsuch rocketed to the top of the legal profession, becoming a partner in one of Washington's most elite law firms. But instead of enjoying the comforts of a lucrative private sector career, he left it all behind for a high-responsibility, low-profile job at the Department of Justice.

After his time at DOJ, Neil Gorsuch could have easily retired or returned to a white-shoe legal practice. Instead, he returned to his home State of Colorado to serve as a judge on the U.S. Court of Appeals for the Tenth Circuit. Throughout his tenure on the Federal bench, Judge Gorsuch's western disposition has shone through in his jurisprudence.

I have already spoken of his skepticism toward the administrative state, with its executive bureaucracies, which, he cautions, "swallow huge amounts of core judicial and legislative power and concentrate Federal power in a way that seems more than a little difficult to square with the Constitution of the framers' design."

He shares a healthy skepticism over an overly intrusive and heavy-handed bureaucracy with millions of his Federal westerners. Judge Gorsuch recognizes how Federal regulations interfere with the ability of Western States to govern themselves, whether it is a former administration's Clean Power Plan, its ozone rules, or even management of the Mexican gray wolf.

In numerous opinions, Judge Gorsuch has given voice to many of the frustrations experienced by his western neighbors. From his criticism of an overly assertive DC court that often feels compelled to intervene from 2,000 miles away to his recognition of excessive litigation that arises from the complexities of split-estate property rights out West, he speaks our language.

These are perspectives any westerner is familiar with, but they may not be obvious to others, including folks from New York and New Jersey. If confirmed, Judge Gorsuch will already bring generational and religious diversity to the Court. Perhaps more than anything, it will be his western perspective that most enriches the debate in the years to come.

As I have said before, Judge Gorsuch deserves fair consideration by those who serve in this body, and he deserves an up-or-down vote on the Senate floor. He should be confirmed overwhelmingly, and I am confident that he will be.

Joining us on the floor today are several members of the Senate from Western States. I see that the Senator from Wyoming has joined us. I think he has some thoughts about Neil Gorsuch and his nomination to the Court.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. BARRASSO. Mr. President, joining my colleague here on the floor, I

agree with all of the comments the Senator from Arizona has made. They are interesting because as to the history of the State of the Senator from Arizona and his family history, Judge Gorsuch has a similar history, to the point that his great-grandfather built a hotel in Wyoming called the Wolf Hotel, in Saratoga, WY. I found a picture of that hotel from 1878, which was 12 years before Wyoming became a State. I got that picture from the American history museum at the University of Wyoming and got a copy of the picture and gave it to Judge Gorsuch.

In front of the hotel in 1878, there was a stagecoach with six horses lined up ahead of it. The Wolf Hotel was a halfway stop on the stagecoach line between a couple of communities in Wyoming. They were about 40 miles apart. So that is the heritage from which Judge Gorsuch comes.

I think that western heritage is important. But I think that additionally important is what the Senator referred to—his judicial temperament, being such a mainstream member of the judiciary, and this general belief inherent within him that the role of a judge is to apply the law, not to legislate from the bench.

We have seen so much legislating from the bench. I think you just don't get that if you take somebody from the Rocky Mountain West who has this view of the Nation and an understanding of the rule of law and the Constitution.

So I think we are going to see that when the Senate Judiciary Committee begins its hearings next week on Judge Gorsuch's nomination to the Supreme Court. I visited with him, reviewed his writings, and then compared it to what I saw when I visited with Justice Scalia when he came to Wyoming. The Senator from Arizona mentioned the picture of the two working together, fishing together.

I just think he is the right person to continue that incredible legacy of Justice Scalia.

Mr. FLAKE. Will the Senator yield?

Mr. BARRASSO. Yes.

Mr. FLAKE. You point out the sensitivities that you have when you come from the West. A lot of it has to do with, if you are in a rural area in particular, you are—as my family grew up—working on the land. Much of that land is either owned by or controlled by the Federal Government, the State government, or Tribal governments in Arizona's case. In fact, 85 percent of the State of Arizona is publicly owned. So when you live in the West and you work the land on a ranch or farm, you are dealing specifically with Federal regulators and Federal property managers. I think those who were raised in the West and have lived here understand the impact of the Federal Government's decisions. The administrative state has an outsized impact on those who live in the West, and I think that is evident in the jurisprudence you see from Judge Gorsuch.

How much of Wyoming is publicly owned?

Mr. BARRASSO. Well, it is about 50-50. But when you talk about the heavy hand of a bureaucratic government and the impact on the lives of the people who live there, it is dramatic. It can be very punishing, as we have seen over the last 8 years with regulations that have come out of agencies—sometimes, I believe, in defiance of the law, sometimes reversed by the Supreme Court.

That is why I think it is critical to have Neil Gorsuch on the Supreme Court, because he is someone who realizes that the Constitution is a legal document—not a living document, not built for flexibility, but really a rigid legal document. That is where I believe he stands. That is what his writings indicate. It is the sort of thing we have seen from him. I visited with him, and other Members have. These are the things we read about.

With regard to his writings over the years, this is a judge who has faithfully applied the law—applied the law, focusing on the Constitution. He has not been afraid to rule against the government or for unpopular parties when the law demands it because he is going to go right back to the law. I believe his opinions show great reverence for all of the Constitution—a key respect for the importance of the separation of powers.

I support his nomination completely. It is interesting, because when he was nominated for the position he currently holds, the Democratic Senator from Colorado—and I am expecting Senator CORY GARDNER to be here in a little bit to talk about the quote from Ken Salazar, the former Senator from Colorado, who talked about what a wonderful man Judge Gorsuch was and how he should be put onto that bench. He was unanimously confirmed here in the Senate.

I have full confidence in Judge Gorsuch as a son of the West, as the only Justice from the Rocky Mountain West who would be on the Court. Specifically, though, I would support him no matter where he was from because of his belief that it is the role of a judge and a justice to apply the law, not to legislate from the bench, which I think goes above and beyond where someone is from, what their background may be. But I will just tell you that his background, combined with his philosophy and mainstream approach to the law, is exactly what we need now in 2017 on the U.S. Supreme Court. I believe he deserves an up-or-down vote. I believe he will be confirmed as people get a chance to see him, get to know him better.

I see I am joined on the floor by another colleague, also from the Rocky Mountain West, the Senator from Montana. You have heard from Arizona, Wyoming, and now Montana. I would ask him about his thoughts about this nomination by President Trump of Neil Gorsuch to the Supreme Court.

The PRESIDING OFFICER. The Senator from Montana.

Mr. DAINES. Mr. President, I want to thank my esteemed colleague from Wyoming, Senator BARRASSO, for his comments. He shared many of the same views I have.

As I think about the job I do as a Senator—perhaps one of the most important jobs we have as Senators is approving a Supreme Court Justice. An Associate Justice of the Supreme Court can serve an average of 27 years. We think about Justice Scalia; he served 30 years. Neil Gorsuch is 49 years old. God willing, he probably will serve 30 years or more, perhaps. Think about that. My wife and I have four children. They are going through the college years and so forth. They are in their early and midtwenties. They will likely be grandparents when Judge Gorsuch wraps up his career on the Supreme Court, assuming he is approved. That is why a decision like this about whom to vote for, whom to stand behind, whom to stand with is so important. It is not just for today, it is for our children and our grandchildren.

The people want a Supreme Court Justice who does not legislate from the bench. The people want a Supreme Court Justice who upholds the rule of law and follows the Constitution. The people want a Supreme Court Justice with a record of constitutional jurisprudence and legal restraint to match what we saw from Justice Antonin Scalia. The people want a Supreme Court Justice with the academic credentials, who is well prepared to serve the American people on our highest Court, to wrestle with some of the most complicated issues that the High Court wrestles with.

When President Trump announced that he was appointing Judge Neil Gorsuch to the U.S. Supreme Court, the American people knew he was truly a supreme pick. He has a brilliant legal mind. He understands the role a judge plays in our judicial system—to interpret the law and not to legislate from the bench. In fact, on the night he was announced, when President Trump revealed his pick, I was at the White House, and I heard Judge Gorsuch say: “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.” That is the humility of a great judge.

Judge Gorsuch has impeccable legal qualifications that demonstrate he will be the type of Justice every American deserves to have on the highest Court. He graduated from Harvard Law School. He was a Harry Truman Scholar, graduated with honors in 1991. He earned his law degree and then attended Oxford University as a Marshall Scholar and received his doctorate degree in 2004 from Oxford.

As we say out West, and as a Montanan, I have to say I am thrilled to see somebody from Colorado be nominated for the Supreme Court. We say out West: Go get a good education and then get over it. And he brings that kind of humility to the bench. He un-

derstands that he is beneath the law, he is subject to the law. He is there to interpret the law, not to make the law.

He clerked for Justice Byron White. He clerked for Justice Kennedy of the Supreme Court of the United States. In fact, in 2006, Judge Gorsuch was nominated by then-President Bush to the Tenth Circuit in Denver, CO. He was confirmed without any opposition, including the support of 11 current Democratic Senators. In fact, some of those Democrats included Harvard Law classmate Barack Obama, Vice President Joe Biden, and the current minority leader, CHUCK SCHUMER. During his time as a judge on the Tenth Circuit, he has built a solid reputation as a respected jurist with a very distinguished record.

One thing about serving on the Tenth Circuit Court for 10 years: You can run, but you can't hide. He has left a track record. It is an impressive track record. It is a consistent record of defending the Constitution, including respecting the separation of powers and respecting federalism and the Bill of Rights to protect every American from government overreach and government abuse.

When I had the opportunity to sit down with Judge Gorsuch, it was back in early February. We spoke about the role of government and federalism. We spoke about the Second Amendment. We spoke about protecting life and upholding our civil liberties. We spoke about our shared western values, mine as a native Montanan, his as a native Coloradan, both of us westerners. I know he understands our way of life. He understands Montana values. In fact, his face lit up as we talked about the love of the outdoors and his passion for hiking and fishing.

As chairman of the Western Caucus, it is important to me to have someone who understands western values, someone who understands the impact the law and his decisions will have on the West.

As westerners, we fight to protect our Fourth Amendment rights. We champion federalism so that power not expressly given to the Federal Government in the Constitution is returned back to the States and to the people. We will tirelessly fight to protect the Second Amendment. These are western values.

By the way, the Second Amendment is not primarily about hunting. Our Founding Fathers were not thinking about deer hunting or elk hunting when they were discussing the Second Amendment. It was about liberty. It was about freedom. These are western values. Judge Gorsuch's background and record strongly suggest that he recognizes and adheres to these values. He will uphold the law. He will rightfully check the administration and Congress when their actions are not done under the law, like President Obama's EPA power plan or the WOTUS rule. These are actions that cripple western economies, and they are politically charged.

I would also like to mention that Senator CORY GARDNER of Colorado and I were just at the White House meeting, just an hour ago. We were at the White House meeting with over a dozen Tribes who represent hundreds of other Tribes. We were there to discuss our support for Neil Gorsuch to be a Supreme Court Justice. I can tell you, it was great to be there with one of my hometown Tribes from Montana, the CSKT. They have endorsed Neil Gorsuch. They understand that we need a mainstream, commonsense westerner on the Supreme Court.

By the way, when you look at Neil Gorsuch's record on Indian Country issues, as a member of the Tenth Circuit Court for 10 years, he has a track record of ruling on some very complicated issues that face Indian Country. He understands sovereignty. That is very important. That is why you are seeing Tribes endorsing Judge Gorsuch.

More importantly, the American people deserve nine members on the Supreme Court. Neil Gorsuch is the mainstream judge the American people want and deserve to fill out the Court.

I am looking forward to what will happen next week in those hearings. You are going to see a very, very bright, a very, very thoughtful, a very, very kind, and a very, very humble jurist who understands and upholds the rule of law. I am excited for our country that we have such a phenomenal nominee. I look forward to casting my vote to confirm him to the highest Court in our great country.

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

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

Mr. MCCAIN. Mr. President, what is the parliamentary situation right now?

The PRESIDING OFFICER. The Senate is considering the Coats nomination.

Mr. MCCAIN. Mr. President, I understand that we will be voting in about 10 minutes; is that correct?

The PRESIDING OFFICER. That is correct, sir.

Mr. MCCAIN. Mr. President, I have had the great honor and privilege of knowing the nominee to be our Director of National Intelligence for many years. In fact, I came to the House of Representatives in the election of 1984, and I had the honor of knowing Dan Coats beginning at that time.

As is well known, Dan Coats left the Senate and became our Ambassador to Germany, where he did an outstanding job. He came back to the U.S. Senate and served in this body with distinction and honor. Now he goes on to serve as the Director of National Intelligence.

I could argue that a dedicated, experienced, knowledgeable, and courageous Director of National Intelligence

is now needed more than at any time that I can remember in the last many years.

With divisions within the intelligence community, there are challenges to the credibility of the intelligence community along the lines that I have never seen. There are questions about the activities of the intelligence community. For example, the President of the United States alleges that Trump Tower was “wiretapped,” in his words, by the previous administration, and we see the former Director of National Intelligence both before the Congress and on national television stating that those allegations are not true.

There are probably more questions and more controversy surrounding our intelligence services than at any time since anyone can remember, since Watergate. So this is a perfect time, in my view, for Dan Coats to assume the highest responsibilities of our Director of National Intelligence. He has the respect and indeed affection of Members on both sides of the aisle because of his successful efforts at working in a bipartisan fashion. He served on the Intelligence Committee. He served on that committee in a very dedicated and knowledgeable fashion.

I hope my colleagues will unanimously vote in favor of our former colleague. Both sides of the aisle know him, and we know him well. I wish I had some of his qualities of congeniality and pleasantry. He has always been respectful of other views. Even in the fiercest debates that we might have, he has always been respectful of those who disagree. So he comes to the job with the much needed credibility that will make him immediately effective.

Let’s be frank. The intelligence communities are probably under greater attack in a whole variety of ways, both on whether the American people trust them to do the job that they are doing or whether they have become a partisan organization. I think that with the respect and appreciation and affection that those of us who had the privilege of knowing him—on both sides of the aisle—and knowing what an honorable and decent person he is, he will not only serve as an effective Director of National Intelligence, but he will serve to restore credibility.

God knows we need credibility at this time, as we see the Russians trying to affect the outcome of our election, as we see today the Russians trying to affect the French election and possibly the German election, as we see unprecedented cyber attacks—more than at any time in the past. With the challenge of cyber alone, where our adversaries or our potential adversaries are equal to or even, in some cases, more capable of exercising their abilities and capabilities in the cyber realm, then we are in a very difficult and challenging struggle.

That is why I think that many times in history, not only does the man make the job but the job makes the man. I

am confident, in the case of Senator Dan Coats, that will be the case.

I thank the Democratic leader for allowing this vote to take place so Dan Coats can get to work immediately.

I urge my colleagues to offer their support with their vote for this nomination of a great and good and gentle man who has again volunteered to serve his Nation, for which all of us should be appreciative, and I am sure we are.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

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

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

The question is, Will the Senate advise and consent to the Coats nomination?

Mr. BARRASSO. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The assistant bill clerk called the roll.

Mr. CORNYN. The following Senators are necessarily absent: the Senator from Tennessee (Mr. ALEXANDER), the Senator from Tennessee (Mr. CORKER), and the Senator from Georgia (Mr. ISAKSON).

Further, if present and voting, the Senator from Tennessee (Mr. ALEXANDER) would have voted “yea” and the Senator from Tennessee (Mr. CORKER) would have voted “yea.”

The PRESIDING OFFICER (Mr. COTTON). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 85, nays 12, as follows:

[Rollcall Vote No. 89 Ex.]

YEAS—85

Barrasso	Franken	Nelson
Bennet	Gardner	Perdue
Blumenthal	Graham	Peters
Blunt	Grassley	Portman
Boozman	Hassan	Reed
Brown	Hatch	Risch
Burr	Heinrich	Roberts
Cantwell	Heitkamp	Rounds
Capito	Heller	Rubio
Cardin	Hirono	Sasse
Carper	Hoeven	Schatz
Casey	Inhofe	Schumer
Cassidy	Johnson	Scott
Cochran	Kaine	Shaheen
Collins	Kennedy	Shelby
Coons	King	Stabenow
Cornyn	Klobuchar	Strange
Cortez Masto	Lankford	Sullivan
Cotton	Leahy	Tester
Crapo	Lee	Thune
Cruz	Manchin	Tillis
Daines	McCain	Toomey
Donnelly	McCaskill	Van Hollen
Durbin	McConnell	Warner
Enzi	Menendez	Whitehouse
Ernst	Moran	Wicker
Feinstein	Murkowski	Young
Fischer	Murphy	
Flake	Murray	

NAYS—12

Baldwin	Harris	Sanders
Booker	Markey	Udall
Duckworth	Merkley	Warren
Gillibrand	Paul	Wyden

NOT VOTING—3

Alexander	Corker	Isakson
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The nomination was confirmed.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I move to reconsider the vote, and I move to table the motion to reconsider.

The PRESIDING OFFICER. The question is on agreeing to the motion. The motion was agreed to.

Mr. MCCAIN. Mr. President, I ask unanimous consent to address the Senate for 1 minute.

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

NOMINATION OF HERBERT MCMASTER

Mr. MCCAIN. Mr. President, I urge my colleagues to render an “aye” vote for the nomination of Herbert McMaster to remain in active duty at the three-star level. He is experienced. He is talented. He knows what it is like to be in combat with the enemy, and I believe he is badly needed in this important position.

I urge my colleagues to render an “aye” vote.

#### EXECUTIVE CALENDAR

The PRESIDING OFFICER. The clerk will report the nomination.

The bill clerk read the nomination of Lt. Gen. Herbert R. McMaster, Jr., to be Lieutenant General in the United States Army while assigned to a position of importance and responsibility under title 10, U.S.C., section 601.

The PRESIDING OFFICER. Under the previous order, the cloture motion is withdrawn.

The question is, Will the Senate advise and consent to the McMaster nomination?

Mr. TOOMEY. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The senior assistant legislative clerk called the roll.

Mr. CORNYN. The following Senators are necessarily absent: the Senator from Tennessee (Mr. ALEXANDER), the Senator from Wyoming (Mr. BARRASSO), the Senator from Tennessee (Mr. CORKER), and the Senator from Georgia (Mr. ISAKSON).

Further, if present and voting, the Senator from Tennessee (Mr. ALEXANDER) would have voted “yea,” the Senator from Wyoming (Mr. BARRASSO) would have voted “yea,” and the Senator from Tennessee (Mr. CORKER) would have voted “yea.”

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 86, nays 10, as follows: