iPhone could indicate whether there were other terrorists in the United States or abroad who helped them in that attack. Yet 3 months after these murders, the FBI cannot access the contents of the iPhone because a security feature on the iPhone potentially erases its contents after 10 incorrect passwords are entered. The maker of the iPhone, Apple, says it would need to develop new software—software that it claims does not exist today—in order to disable that feature.

If this security feature were to be disabled by Apple, the FBI could use what it calls ''brute force attack,'' which is the ability to run different combinations of numbers through the iPhone in milliseconds, to try to assess the different password combinations in order to gain access to the iPhone, but they still don't have access even though the court is involved.

Last week a Federal magistrate judge ordered Apple to provide reasonable technical assistance to the FBI in order to provide access to the perpetrator's iPhone. Apple opposes this order, given the concerns that technology developed to intentionally weaken its security features could be abused if it is in the wrong hands. In other words, there would not be the privacy concern. They claim it would put smartphone users' data and privacy at risk. It is a legitimate argument. They also view the Federal magistrate judge's order as an example of government overreach.

Well, in response the Department of Justice filed a motion in district court to compel Apple to comply with the magistrate judge's order, and because of the complicated nature of the issues of national security, individual privacy, which we value, and First Amendment questions involved, there will no doubt be prolonged litigation that may ultimately have to be resolved by the U.S. Supreme Court.

I certainly understand the risk to Americans' privacy, as expressed by Apple and other technology companies, but I don't want to run the risk of letting the trail go so cold on this terrorist attack—and potentially other similar cases—that we lose this valuable information all because this is winding itself through months and years in the courts. In other words, we need to know what was behind this attack. Everybody recognizes that this was a terrorist attack. We need to obtain this information in order to get to the bottom of it and root out and see if there are other terrorists in the country planning to do the same thing so we can protect our people and our national security. There has to be a way that the FBI can get the information it needs from the terrorist's iPhone in a manner that continues to protect American smartphone users.

Now, surely common sense can prevail here. This is why this Senator urges Apple and the FBI to work together in order to resolve the stalemate.

Let me go back over this again. We have a dead terrorist. He and his wife killed 14 Americans. We have that dead terrorist's iPhone, and we have a Federal judge's order that says we have the right to get that information in order to protect the Nation and its people. It is just like if we had this terrorist, dead or alive, and we needed to get an order to invade that person's privacy to get into their home and get evidence to protect the Nation from other terrorist attacks. There would certainly be no objection to that. The judge's order would be the protector of that privacy. This is a similar situation, except the FBI has an iPhone and they still can't get the information in it.

What if this terrorist were not an American citizen and this terrorist were illegally in the United States? Would the same standard apply? I think Apple would say yes. We can draw up the different scenarios, but the bottom line is we are going to have to protect our people. That is why this Senator urges Apple and the FBI to work together in order to resolve the stalemate. I understand that consideration must be given as far as the protection of privacy in people's iPhones. We have always found a way to balance our cherished right to privacy and our cherished right of securing ourselves and our national security, and that is what is needed in this case. The safety and security of our fellow Americans depend on it. Otherwise, when the next terrorist strikes—51 percent of Americans who have been surveyed today say they feel the government needs access to this information to protect against future attacks. If the next attack happens and information is on an iPhone, that 51 percent will soar and it will be very clear that the American people support the protection of our national security.

I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa.

FILLING THE SUPREME COURT VACANCY

Mr. GRASSLEY. Mr. President, yesterday the minority leader came to the floor to disparage the work of the Senate Judiciary Committee and also disparage the work of the Senate as a whole. And, of course, as he does from time to time, he launched into a personal attack against me. Now, that is OK. I don't intend to return the favor. I love Senator REID. I don't want to talk about the nuclear option and the tremendous damage that did to the Senate, not to mention the years and years that Democratic Senators had to endure his leadership without even being able to offer an amendment. There is at least one Democratic Senator, who was defeated in the last election, who never got a chance to get a vote on an amendment during the entire 6 years he was in the Senate.

We all know that is how some people act when they don't get their own way, but childish tantrums are not appropriate for the Senate. I think if my friend Senator BIDEN had been in the Chamber yesterday, he would have said—as we have heard him say so many times—''that is a bunch of malarkey.''

I didn't come to the floor today to talk about the minority leader. However, I did want to follow up on my remarks from earlier this week on the Biden rules. Now, in fairness, Senator BIDEN didn't just make these rules up out of thin air. His speech, back in 1992, went into great historical detail on the history and practice of vacancies in Presidential election years. He discussed how the Senate handled these vacancies and how Presidents have handled and should handle them. Based on that history and a dose of good common sense, Senator BIDEN laid out the rules that govern Supreme Court vacancies arising during a Presidential election year, and of course, he delivered his remarks when we had a divided government, as we have today, in 1992.

Now, the Biden rules are very clear. My friend from Delaware did a wonderful job of laying out the history and providing many of the sound reasons for these Biden rules, and they boil down to a couple fundamental points. First, the President should exercise restraint and ''not name a nominee until after the November election is completed.'' As I said on Monday, President Lincoln is a pretty good role model for this practice. Stated differently, the President should let the people decide. But if the President chooses not to follow President Lincoln's model but instead, as Chairman BIDEN has said, ''goes the way of Fillmore and Johnson and presses an election-year nomination,'' then the Senate shouldn't consider the nomination and shouldn't hold hearings. It doesn't matter ''how good a person is nominated by the President.'' Stated plainly, it is the principle, not the person, that matters.

Now, as I said on Monday, Vice President BIDEN is an honorable man and he is loyal. Those of us who know him well know this is very true, so I wasn't surprised on Monday evening when he released a short statement defending his remarks and of course, as you might expect, defending the President's decision to press forward with a nominee. Under the Constitution, the President can do that. Like I predicted on Monday, Vice President BIDEN is a loyal No. 2, but the Vice President had the difficult task of explaining today why all the arguments he made so cogently in 1992 aren't really his view.

It was a tough sell, and Vice President BIDEN did his best Monday evening, but I must say that I think Chairman BIDEN would view Vice President BIDEN's comments the same way he viewed the minority leader's comments yesterday. He would call it like he sees it and as we have so often heard him say: It is just a bunch of malarkey. Here is part of what Vice President

BIDEN said on Monday. It is a fairly long quote.

''Some critics say that one excerpt of a speech is evidence that I do not support filling a Supreme Court vacancy during an election year. This is not an accurate description of my views on the subject. In the same speech critics are pointing to today, I urge the Senate and the White House to overcome partisan differences and work together to ensure the Court function as the Founding Fathers intended.''

That doesn't sound consistent with all of those Biden rules I shared with my colleagues on Monday. So we ask: Is it really possible to square Chairman BIDEN's 1992 election-year statement with Vice President BIDEN's 2016 election-year statement? Was Chairman BIDEN's 1992 statement really just all about greater cooperation between the Senate and the White House? When Chairman BIDEN said in 1992 that if a vacancy suddenly arises, ''action on a Supreme Court nomination must be put off until after the election campaign is over,'' was he simply calling for more cooperation? When he called for withholding consent ''no matter how good a person is nominated by the President,'' was he merely suggesting the President and the Senate work together a little bit more? When he said we shouldn't hold hearings under these circumstances—was that all about cooperation between the branches?

Since we are talking about filling Justice Scalia's seat, it seems appropriate to ask: How would he solve this puzzle? I suppose he would start with the text. So let us begin there.

In 1992, did Chairman BIDEN discuss cooperation between the branches? Yes, in fact, he did. So far, so good for Vice President BIDEN, but that can't be the end of the matter because that doesn't explain the two vastly different interpretations of the same statement. Let us look a little more closely at the text. Here is what Chairman BIDEN said about cooperation between the branches: ''Let me start with the nomination process and how the process might be changed in the next administration, whether it is a Democrat or a Republican.''

Remember, again, I emphasize that was during the 1992 election year. We didn't have to search very long to unearth textual evidence regarding the meaning of Chairman BIDEN's words in 1992. Yes, he shared some thoughts about how he believed the President and Senate might work together, but that cooperation was to occur ''in the next administration''—in other words, after the Presidential election of 1992, after the Senate withheld consent on any nominee ''no matter how good a person is nominated by the President.''

So the text is clear. If you need more evidence that this is an accurate understanding of what the Biden rules mean, look no further than a lengthy Washington Post article 1 week prior. In that interview he made his views quite clear. He said: ''If someone steps down, I would highly recommend the president not name someone, not send a name up.'' And what if the President does send someone up?—''If [the President] did send someone up, I would ask the Senate to seriously consider not having a hearing on that nominee.''

Specifically, my friend Chairman BIDEN said: ''Can you imagine dropping a nominee after the three or four or five decisions that are about to be made by the Supreme Court into that fight, into that cauldron in the middle of a presidential [election] year?''

Chairman BIDEN went on: ''I believe there would be no bounds of propriety that would be honored by either side. . . . The environment within which such a hearing would be held would be so supercharged and so prone to be able to be distorted.''

At the end of the day, the text of Chairman BIDEN's 1992 statement is very clear. So, in 2016, when he is serving as a loyal No. 2 to this President, Vice President BIDEN is forced to argue that the Biden rules secretly mean the exact opposite of what they say. Ironically, that is a trick Justice Scalia taught us all to recognize and to reject on sight. We know we should look to the clear meaning of his text, as Justice Scalia taught us. This was not a one-off comment by Senator BIDEN. It was a 20,000-word floor speech forcefully laying out a difficult and principled decision. It relied on historical precedent. It relied upon respect for democracy. It relied on respect for the integrity of the nomination process. There is no doubt what Senator BIDEN meant.

Of course there is a broader point, and I hope in the next several months we concentrate on his broader point. That is this. Words have meaning. Text matters. Justice Scalia devoted his adult life to these first principles. Do the American people want to elect a President who will nominate a Justice in the mold of Scalia to replace him? Or do they want to elect a President Clinton or SANDERS who will nominate a Justice who will move the Court in a drastically more liberal decision? Do they want a Justice who will look to the constitutional text when drilling down on the most difficult constitutional questions or do they want yet another Justice who, on those really tough cases, bases decisions on ''what is in the Judge's heart,'' as then-Senator Obama famously said.

It comes down to this. We have lost one of our great jurists. It is up to the American people to decide whether we will preserve his legacy.

More importantly, do you want a Justice who follows the text of the Constitution? Do you want a Justice who follows the text of the law?

Or, do you want a Justice who makes decisions based on his or her ''heart''? This is a debate we should have. This is a debate I hope we will have. This is a debate I hope will be part of the three or four national presidential debates between Nominee Clinton or SANDERS on one side, and whomever the Republicans nominate on the other side. The American people should have this debate. And then we should let the American people decide.

I yield the floor.

The PRESIDING OFFICER. The assistant Democratic leader.

Mr. DURBIN. Mr. President, I will thank my colleague from Iowa. I hoped to get a chance to speak to him personally about another matter, but I will call him from the floor afterward. We will get in touch. Senator HATCH is here. I don't want to delay the proceedings of the Senate, but I would like an opportunity to respond on this issue that was raised by Senator GRASSLEY.

Senator GRASSLEY of Iowa is my friend. Politicians say that sometimes and mean it, and say it sometimes and don't mean it. I mean it. We have become friends as neighboring States and sharing a lot of plane rides together, serving on the same committee, serving in the same body for a number of years, and I respect him very much. We have different points of view on many things, but we found common agreement on many other things. So I do respect him when I say that at the outset as I respond to his remarks.

What is this about? This is about the passing of Justice Scalia and whether his seat on the Supreme Court will be filled, and if it will be filled, who will do it and when. The first place for us to turn when it comes to asking questions is the one document, the only document, that matters, the U.S. Constitution. It is this document that we literally all swore to uphold and defend, every one of us, Democrat and Republican. It is this document that is explicit, not making a suggestion but really spelling out the responsibilities when it comes to a vacancy on the Supreme Court, and it is article II section 2. Article II, section 2 says that the President ''shall nominate, and by and with the Advice and Consent of the Senate, shall appoint . . . Judges of the supreme Court.'' Shall.

It is our responsibility under this Constitution to do this. It is amazing to me in the history of this Republic, guided by this great document, we have reached a point in the year 2016 where those simple words, directions in the Constitution, are being challenged and ignored by the Republican majority because, you see, there has never—underline the word never—been a moment in history when the Senate has refused to extend a hearing to a Supreme Court nominee until this moment. There has never been a moment in history, never—underline that word—when the Senate has refused a vote on a Supreme Court nominee.

I can't say never, but it is been more than 150 years since we have allowed a vacancy on the Supreme Court to go on for more than a year, as the Republicans in the Senate are determined to do here. That 150 years goes back to the Civil War. So I would say to my colleague from Iowa, you are about to

make history if you stand by this decision. If you decide the Senate Judiciary Committee will not even entertain a nomination to fill the Scalia vacancy on the Supreme Court, it will be the first time in the history of the U.S. Senate—the first. If the Senate Republican leadership makes the decision that even if a nominee is sent they will never allow a vote, it will be the first time in the history of the United States of America. That is why this is such a definitive issue. That is why the position taken by the Senate Republican majority is so different, so unusual, and in some cases so extreme.

The argument is being made on the other side—listen to this argument. This argument is being made: Well, we are in a campaign year. This is a Presidential election year. Who knows who the next President will be. Let the American people choose that President and that President choose the nominee.

It overlooks one basic fact. Three years and three months ago, the American people chose a President. By a margin of 5 million votes, Barack Obama defeated Mitt Romney for President of the United States. They made their selection. Did they elect President Obama for a 3-year term? Let me check the Constitution, but I think it was a 4-year term. Oh, was it 3 years and 3 months? No. It turns out the American people spoke in our democracy by a margin of 5 million votes and said: Barack Obama, you will be President of the United States until January the 20th, 2017. Was there a rider or some exclusion that said you can't appoint a nominee, name a nominee to fill a vacancy on the Supreme Court in the last year of your Presidency? I don't remember that. Perhaps that was the case in some States, but not in Illinois and, to be honest, in no other State.

The President was elected for 4 years. He was given the consent and authority of the American people to govern this Nation for 4 years and to fill the vacancies on the Supreme Court as he is directed to do by the U.S. Constitution.

Now the Senate Republicans have come up with a different spin: No; he may have been elected, but from their point of view, he wasn't given the full power of office. They say Barack Obama was given something less than any other previous President of the United States. They say he was not given the authority to fill a vacancy on the Supreme Court in the last year of his term.

I would like to find the constitutional precedent for that. I invite my colleagues—we have two on the floor. One is the current chairman of the Judiciary Committee, and one is the former chairman of the Judiciary Committee. I invite them to show me that historical, constitutional precedent that says Barack Obama, the President of the United States, really only has the authority of the office for 3 years—3 years and 2 months. Beyond that, he is a lame duck President. Give me the authority for that.

What do they hang their hat on? They hang their hat on a speech made by Vice President BIDEN when he served in this body 25 years ago. JOE BIDEN is truly my friend, as he is the friend of virtually every Senator from both sides of the aisle. I respect him so much. I wasn't surprised at all when I heard the Senator from Iowa say that he gave a 20,000-word speech. He gave a lot of 20,000-word speeches. I saw him deliver a few here, and they were a sight to behold. This one I think went on for 90 minutes as then Senator BIDEN shared his views on filling judicial vacancies and on recommendations. If we listen closely, we know the Senator from Iowa said that Vice President BIDEN ''recommended,'' ''should consider.'' Well, let me ask this question: Was there ever any time when Senator BIDEN was the chairman of the Senate Judiciary Committee that he denied a hearing to a Supreme Court nominee? No. Was there ever a time as chairman of the Senate Judiciary Committee when he recommended to the Senate that they deny a vote on a Presidential nomination to fill a Supreme Court vacancy? No. So whatever his theory was that he expressed on the floor of the Senate—and we all express a lot of theories—JOE BIDEN was respectful of this document. He knew what the U.S. Constitution said.

I find it hard to imagine that the Republican Senators now in the majority are going to walk away from this Constitution and turn their backs on it. I have a lengthy statement that I ask unanimous consent be printed in the RECORD following my remarks which goes into the question of why the Republican majority continues to obstruct the appointment of judges and people to serve in the executive branch of government under this President. It has been unprecedented. They decided not just on this nominee but long ago that they would not give this President the same treatment, the same respect that has been given other Presidents. Now it has been brought front and center with this vacancy, the Scalia vacancy on the Supreme Court.

I sure disagreed with Justice Scalia on a lot of things, but I do not argue with Judge Posner of the Seventh Circuit in my State when he said that Justice Scalia was a major force in terms of thinking on the Supreme Court. And what really undergirded the philosophy of Justice Scalia was what he called originalism. Some people mocked it, and some people just flat out disagreed with it. But he said time and again: Read the Constitution and read the precise wording of the Constitution. I saw different things in those words than he did, but that was his North Star when it came to Supreme Court decisions.

Well, if he read article II, section 2, which says the President ''shall nominate, and by and with the Advice and Consent of the Senate, shall appoint . . . Judges of the supreme Court''—there is little doubt—no doubt—in those words. And if he relied on the precedent of the United States, the history of the United States that the U.S. Senate has never denied a hearing to a Presidential nominee until this moment in history, has never refused a vote on a nominee until this moment in history, then he would realize that what is being done here is unprecedented and uncalled for.

If my Republican colleagues now in the majority—54 votes strong against 46 on the Democratic side—really disagree with the President's choice, his nominee, whoever it may be, they have an option. There is a constitutional option. The constitutional option is to hold a hearing, do the background check which is done, and then vote, and if you disapprove of that nominee, vote no. That is the regular order and the regular course of events. That is the constitutional way to approach this.

But they have gone even further. Senator MCCONNELL said two days ago he would not only give the President's nominee no hearing and no vote, he refuses to even meet with that person, whoever it may be. Those are the lengths they will go to to avoid facing the constitutional responsibility that every Senator has.

Senators can quote Vice President JOE BIDEN's speeches of 25 years ago as long as they want. They can read his words over and over again, but the fact is he never stopped a hearing, he never stopped a vote, and he honored the Constitution. The wording of the Constitution didn't go on for 20,000 words. It is just a handful of words that we have sworn to uphold and defend before we can become U.S. Senators.

History will not look kindly on this political decision by the Republican majority. History will not give them a pass. History will ask time and again: How could you ignore the Constitution? How could you ignore your responsibility under the Constitution? Why won't you do your job, a job you were elected to do to fill this vacancy? Is a temporary political victory worth this—to turn your back on the Constitution and the history of this country? I don't think it is.

I hope that when the Republican Senators go home and meet with their constituents over this weekend and in the days ahead, they will have second thoughts. When the President sends a nominee, I hope they will abide by the Constitution, be respectful of this document and respectful of this President, and give his nominee the same due consideration that has been given to Supreme Court nominees throughout history.

Justice Anthony Kennedy became a Justice on the Supreme Court when a Democratic-controlled Senate gave him a vote—a hearing, and then a vote in a Presidential election year much like this one. A lameduck, outgoing President appointed Justice Kennedy.

A Democratic Senate did not refuse to meet with him, did not refuse to have a hearing, did not refuse a vote, but said: We will abide by the Constitution. For that outgoing President, he had the full authority of office. President Barack Obama deserves nothing less. And we as Senators have a responsibility under this Constitution, regardless of what speech was made 25 years ago, to pay close attention to these words and to do our constitutional duty.

When the Senate majority leader said that he would not give any consideration to any Supreme Court nominee named by the President—no vote, no hearing, not even a courtesy meeting—it set a new low for the Senate. Throughout our Nation's history, no pending Supreme Court nominee who sought a hearing has been denied one. Some nominees were confirmed so quickly after their nomination that a hearing was not scheduled, and one nominee withdrew before her scheduled hearing could take place, but the Senate has never before refused a hearing to a pending nominee. Similarly, every pending nominee for an open Supreme Court vacancy has been voted upon by Senators. Some nominees were confirmed on the floor, some were rejected on the floor, some nominees were renominated before they got their vote, and some only received a vote on whether to be reported or discharged out of committee, but all of them got a vote. Yet the Senate majority leader has announced that President Obama's next nominee will get no hearing, no vote, not even a meeting.

The President is obligated by Article II, section 2 of the Constitution to send a nominee to the Senate. That is the process the Founding Fathers established. There is nothing in the Constitution that provides for this process to be abandoned in an election year. Just as the President and Senate must do their jobs in times of war and economic depression, they must do their jobs in election years.

The reality is that Republicans simply want to keep the Supreme Court seat vacant in the hopes that their presidential nominee will get to fill it. It is a purely political calculation. But Presidential politics do not trump the Constitution.

The Republican leader should do what past Republican leaders like Senator Everett Dirksen of Illinois did when a Supreme Court vacancy arose in the election year of 1968—roll up his sleeves and get to work.

Senate Republicans have come up with a number of excuses for shirking their constitutional responsibilities. But the bottom line is that there is no excuse for the Senate to fail to do its job.

The President made clear yesterday that he is taking his constitutional responsibility seriously. He wrote a piece in the website SCOTUSblog explaining the careful, deliberative process he is undertaking to choose a nominee. The President said he will select a person who has outstanding qualifications, a commitment to impartial justice, a deep respect for the role of the judiciary, and a life experience that shows integrity and good judgment.

The President is doing his job, as the Constitution requires. Senate Republicans must stop the pattern of obstruction that they have shown with so many of President Obama's nominees and do their job, too. Once the President selects a Supreme Court nominee, Senators should meet with the nominee, give him or her a fair hearing, schedule a vote, and fill the vacancy on our Nation's highest Court.

Mr. President, I yield the floor.

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

REPUBLICAN OBSTRUCTION OF PRESIDENT OBAMA'S NOMINEES, FEBRUARY 23, 2016

Senate Republicans have announced they will obstruct President Obama's forthcoming nominee to the Supreme Court without even considering the nominee's merits, simply because Republicans do not want President Obama to make the nomination.

This is far from the first time that Republicans have engaged in unreasonable obstruction of nominations made by President Obama. According to statistics from the Congressional Research Service as reported in a Jan. 5, 2016 Politico article, ''the Senate in 2015 confirmed the lowest number of civilian nominations—including judges and diplomatic ambassadors—for the first session of a Congress in nearly 30 years.'' Only 173 civilian nominees were confirmed last year.

Other examples of Republican obstruction of nominations include the following:

Judicial nominations:

D.C. Circuit: In 2013, Republicans announced they would oppose any person President Obama nominated to fill three vacancies in the D.C. Circuit Court of Appeals, simply because they did not want Obama to fill those vacancies. The President nominated three unquestionably qualified people — Patricia Millett, Nina Pillard, and Robert Wilkins, and twice Senate Republicans opposed cloture votes on Millett's nomination. This prompted Senator Reid to change Senate rules to lower the cloture vote threshold for lower court nominees to 50, and subsequently the three D.C. Circuit nominees were confirmed.

Obstruction in the current Republican Senate: Last year, Senate Republicans matched the record for confirming the fewest number of judicial nominees in more than half a century, with 11 for the entire year. Overall, in the current Congress Republicans have only allowed 16 judges to be confirmed, compared to 68 judges that were confirmed by the Democratic-controlled Senate in the last two years of George W. Bush's administration. There are 17 non-controversial judicial nominees pending on the Senate executive calendar, all of whom were reported out of committee by unanimous voice vote. Currently there are 81 judicial vacancies, including 31 judicial emergencies.

National security nominations:

Attorney General Loretta Lynch had to wait 165 days after her nomination to be confirmed by the Republican Senate in April 2015. This was far longer than other recent Attorney General nominees had to wait for a confirmation vote. By comparison, the Democratic Senate confirmed Michael Mukasey in 53 days in 2007.

Treasury Undersecretary for Terrorism and Financial Crimes: Adam Szubin was nominated on April 20, 2015 for this position, which involves tracking and blocking financing to terror groups like ISIS. Banking Chairman Shelby described Szubin as ''eminently qualified'' for the position, but he has still not received a floor vote in over 10 months.

Under Secretary of Defense for Personnel and Readiness: Brad Carson was nominated on July 8, 2015 for this position, which is responsible for ensuring our military is ready to face threats around the world. He is waiting for a hearing.

Secretary of the Army: Eric Fanning was nominated on Sept. 21, 2015 for this position, which involves overseeing U.S. Army personnel, strategy, and readiness around the world. He waited four months just to get a hearing, and now he is waiting to receive a Committee vote.

General Counsel, Defense Department: Jennifer O'Connor was nominated on Sept. 21, 2015 for this position, but she is waiting for a hearing.

Under Secretary for the Navy: Janine Davidson was nominated on Sept. 21 for the #2 position in the Navy, but she is still awaiting confirmation.

Foreign policy nominations

Ambassadors and foreign policy positions: Only 59 ambassador or other key foreign policy positions have been confirmed in this Congress with an average confirmation wait of six months. For comparison, during the 110th Congress (2007–08) when George W. Bush was President and the Democrats controlled the Senate, more than 120 nominees for key foreign policy positions were confirmed with an average confirmation wait of under three months.

Of the seven State Department nominees confirmed a few weeks ago, three were nominated in 2014 or earlier. These include Brian Egan (Legal Advisor, first nominated in 2014), John Estrada (Trinidad and Tobago, first nominated in 2013), and Azita Raji (Sweden, first nominated in 2014).

Ambassador to Mexico: Roberta Jacobson, a career nominee, was nominated as ambassador to Mexico on June 2, 2015 but she is still awaiting confirmation.

The PRESIDING OFFICER (Mrs. FISCHER). The Senator from Utah.

Mr. HATCH. Madam President, before I begin, let me note that I have been very concerned about the tenor of the debate. I am very upset that yesterday my dear friend, the minority leader, yesterday attacked my other dear friend, the chairman of the Judiciary Committee, Senator GRASSLEY, by calling him inept as a committee chairman. There is no reason for that kind of language on the floor, even if it were true, which it is not, and I think the minority leader knows it is not true.

Senator GRASSLEY is one of the most effective, hard-working, decent Senators in the U.S. Senate. He is not an attorney, and yet he has run the Judiciary Committee as well as any chairman that I recall in my 40 years here. Everybody knows he treats people fairly. So I hope we can get rid of that kind of language and start treating people with decency and with regard. We differ widely with the Democrats on this issue and on other issues, but we are not slandering them. If a Republican behaved similarly, I would stand up to him. It just shouldn't happen.

On Tuesday, I rose to honor the memory of the late Justice Antonin

Scalia, whom I knew quite well. With his passing, the Nation lost one of its greatest Supreme Court Justices ever to have served, and I lost a dear friend.

Today, I rise to make the case that the next President should chose the nominee to replace Justice Scalia. As we embark on this debate, our first task should be to situate properly the Senate's role in seating members of the judiciary as well as the reasons for the role. In doing so, let me invoke an approach that Justice Scalia himself employed to make the same point.

In addressing audiences, the late Justice often asked: What part of our Constitution was most important in protecting the liberties of the people? Invariably, audiences would provide answers such as protections for the freedom of speech, the freedom of religion, the right to keep and bear arms, the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, and the like.

Justice Scalia, like the vast majority of Americans, agreed that these protections are obviously important. I certainly do, too. Nevertheless, he always made one crucial observation: Even the most repressive dictatorships, such as the Soviet Union and North Korea, typically have provisions akin to our Bill of Rights in their Constitutions. Simply enshrining these basic rights in constitutional text does not ensure their protection.

I ask unanimous consent that I be permitted to complete my remarks.

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

Mr. HATCH. Our Nation's Founders knew, in the sage words of James Madison in Federalist 47, that ''[t]he accumulation of all powers, legislative, executive, and judiciary, in the same hands . . . may justly be pronounced the very definition of tyranny.'' They bestowed upon us the blessing of the Constitution that creates a Federal Government with limited and enumerated powers, with those powers diffused and balanced between three coequal branches of government.

The Federal judiciary occupies a unique station in this constitutional architecture. In deciding cases and controversies, it is, in the seminal words of Marbury v. Madison, ''emphatically the province and the duty of the judicial department to say what the law is.'' Unelected and armed with life tenure and salary protection, judges thereby have the power to hold the political branches to account.

This power is the source of much of the Constitution's great brilliance in its ability to restrain transient political majorities from exceeding the authority granted to government by the sovereign people; however, it is also the source of one of the great potential pitfalls of our system of government, in which five lawyers can substitute their personal policy preferences to the legitimate judgments of the executive and legislative branches, thereby usurping the powers of the self-governing people.

This tension between the stark necessity of judicial independence to preserve limited government under the Constitution and the dangers of an unaccountable judiciary shirking its duty to say what the law is—and instead saying what it thinks the law should be—makes the judicial selection process vitally important. Hewing to a careful process envisioned by the Framers that vests the Executive and legislature with critical but distinct roles is the means by which we can maintain the integrity of the judicial branch.

The appointments clause delineates these distinct roles for the President and the Senate in the appointment property. Article II, section 2 provides that the President ''shall nominate, and by and with the Advice and Consent of the Senate, shall appoint . . . Judges of the supreme Court, and all other Officers of the United States.'' By creating two separate roles in the confirmation process, the executive branch to nominate and the legislative branch to provide its advice and consent, the Framers were creating rival interests.

Alexander Hamilton cogently explained the various rationales for this particular allocation of appointment powers in Federalist 76. Following the example of the Massachusetts Constitution, the Framers vested the responsibility for nominations in one officer, the President, to ensure accountability and impartiality in selecting nominees and to guard against corruption, impropriety or imprudence that characterized the appointment process in many of the States. By concentrating the power of nomination in one person, the Framers sought to create accountability or in Hamilton's words a ''livelier sense of duty and a more exact regard to reputation.''

That said, the Framers expressly rejected the notion of vesting an unchecked appointment power in the President alone. By requiring the President to submit his nominee for the Senate's approval, the Founders sought to forestall any potential abuse of the nomination power. Hamilton argued that the requirement of advice and consent would serve as ''an excellent check upon a spirit of favoritism in the President and would tend greatly to prevent the appointment of unfit characters from State prejudice, from family connection, from personal attachment, or from a view to popularity.''

While the practice of the early Republic confirmed that the Chief Executive enjoys plenary authority over nominations, history also shows that the Senate equally possesses the plenary authority to withhold its consent the nominee for any reason. Nothing in the text of the appointment clause appears to limit the Senate's considerations. Just as the President has an unfettered right to veto legislation, the Senate enjoys complete and final discretion in whether to approve or even consider a nomination.

My colleagues on the other side of the aisle have taken up the mantra that we must ''do our job'' with respect to the current vacancy, and so we must. But our job, despite what the Democrats are saying, is not to follow a particular path found nowhere in the Constitution. Rather, it is to determine the most appropriate way to fulfill our advice and consent role for this particular vacancy. The Senate would not be doing its job if we followed a process that is not appropriate for the situation before us today.

Indeed, withholding consent can be just as valid an exercise of our role as granting it, and deferring the confirmation process for a particular vacancy may be the most appropriate and responsible exercise of the advice and consent role entrusted to us. It all depends on the circumstances.

Consider these precedents. The Senate has never confirmed a nominee to a Supreme Court vacancy that opened up this late in a term-limited President's time in office. It is only the third vacancy in nearly a century to occur after the American people had already started voting in a Presidential election, and in both the previous two instances—in 1956 and in 1968—the Senate did not confirm the nominee until the following year after the election had occurred.

It has been more than three-quarters of a century since a Supreme Court Justice has been nominated and confirmed in a Presidential election year, and the only time the Senate has ever confirmed a nominee to fill a Supreme Court vacancy created after voting began in a Presidential election year was in 1916. That vacancy arose only because Chief Justice Charles Evans Hughes resigned his seat on the Court to run against incumbent President Woodrow Wilson.

The cautiousness with which Senators in times past have approached election-year vacancies is only amplified by present circumstances. As my colleagues in the minority are fond of saying, elections have consequences, and the election of 2014 certainly had tremendous consequences.

In the last election, the American people went to the polls to register their opposition to the wide range of illegal and unconstitutional actions of the Obama administration, including: its unilateral cancellation of duly enacted law, such as with illegal immigration; its regulation contrary to the plain text of the law, such as with the Clean Power Plan; its willingness to ignore its statutory obligations without meaningful justification, such as with the President's decision to release the top five Taliban leaders in U.S. custody without notifying Congress beforehand as required by Federal law; its efforts to stretch what lawful authorities the executive branch does possess beyond all recognition, such as with its mass

clemency effort for drug offenders; and its attempt to bypass the Senate's role in the confirmation process, one of nearly two dozen times the Obama administration has lost 9 to 0 before the Supreme Court.

The American people elected our Republican Senate majority in large part to check the overreach of President Obama, and given how crucial the courts have proven in holding this administration accountable to the Constitution and the law, the Senate has every reason to approach lifetime appointments cautiously and deliberately, especially appointments to the highest Court in the land.

Moreover, leaving Justice Scalia's seat vacant until after the election would hardly result in a constitutional crisis. An even number of Justices has never inhibited the Supreme Court from functioning. An absence of this length would be far from unprecedented, as the Court has adapted to vacancies that lasted for more than 2 years in its history and as recently as 1970 accommodated a vacancy of more than a year thanks to liberal obstruction of two candidates nominated by a Republican President. Famously, when Justice Robert Jackson took a yearlong leave of absence to serve as chief prosecutor at the Nuremburg war crimes tribunal, Justice Felix Frankfurter wrote to him and advised him that having a temporary eight-member Court as a result of his prolonged absence did not ''sacrifice a single interest of importance.''

Moreover, the recusal process oftentimes requires the Court to consider various cases with a reduced number of Justices, including recent high-profile cases such as Arizona v. United States in 2012 and Fisher v. University of Texas in 2013. Consider that Justice Kagan, due to her service as Solicitor General, had to recuse herself in 38 cases. In these situations the Court has well-established rule for dealing with its cases, including 4-to-4 splits. At its discretion, the Court has the authority to hold cases over or reargue them when a new Justice is confirmed.

Indeed, the vast majority of Supreme Court decisions are unanimous, nearly so, or are split along nonideological lines. Only a relatively small minority of cases—typically less than 20 percent—are decided 5-to-4, and even fewer divide along predictable ideological lines. In the unlikely event that a tie should occur, as has occurred in only 2 of 38 of Justice Kagan's recusals, the ruling of the lower court is simply upheld. Put simply, the absence of one of the nine Justices on the Court is far from calamitous, but a hastily made appointment could be.

If the particular circumstances we face today counsel in favor of waiting until after the election, why would we act otherwise simply because the other party tells us to do so?

The minority leader made this same point in 2005 when he flatly rejected the claim that the Senate must always give nominees an up-or-down vote. In fact, he said that the very idea would be, in his own words, ''rewriting the Constitution and reinventing reality.''

He said: ''The duties of the United States Senate are set forth in the Constitution of the United States. Nowhere in that document does it say that the Senate has a duty to give Presidential nominees a vote. It says that appointments shall be made with the advice and consent of the Senate. That is very different than saying that every nominee receives a vote.''

Yesterday, I was stunned to hear numerous Democrats contradict the minority leader on this point. For example, the minority whip said that the ''clear language of the Constitution'' requires an up-or-down confirmation vote. That claim is obviously wrong on its face, since the Constitution says no such thing. By the minority leader's 2005 standard, these Democrats today are ''rewriting the Constitution and reinventing reality.'' Perhaps they received different sets of talking points.

This claim by the minority whip and others that the Constitution requires an up-or-down vote is baffling for another reason. Between 2003 and 2007 the minority whip voted 25 times to filibuster Republican judicial nominees. In other words, he voted 25 times to deprive judicial nominees of an up-or-down confirmation vote that he now says the Constitution's clear language requires.

Many of my colleagues on the other side of the aisle have also repeatedly observed that deferring the confirmation process until the next President takes office would be unprecedented. This point escapes me as well. The filibusters used to defeat Republican judicial nominees were also unprecedented, yet many Democrats voted for them anyway. While past practice matters, the ultimate question is not whether this has happened before but whether it is an appropriate step to take now.

The Senate's job is to decide how best to carry out its duty of advice and consent in the situation before us. Thankfully, we are not without guidance in making that judgment. I think back to 1992, a Presidential election year not unlike this one, in which different parties controlled the White House and the Senate. My friend, then-Judiciary Committee Chairman and now-Vice President JOE BIDEN, came to this very floor on June 25, 1992, and delivered what he said was the longest speech in his then 19 years in this body. He evaluated the state of the confirmation process, suggested reforms for the future, and made a specific recommendation. He said that if a Supreme Court vacancy occurred in that Presidential election year, President George H.W. Bush ''should consider following the practice of a majority of predecessors and not—and not—name a nominee until after the November election is completed.''

If the President did choose a Supreme Court nominee, Chairman BIDEN said: ''The Senate Judiciary Committee should seriously consider not scheduling confirmation hearings on the nomination until after the political campaign season is over.'' While Vice President BIDEN might feel differently about that today, that is what he said then as chairman of the committee.

In other words, deferring the confirmation process until the next President was in office was the most appropriate way for the Senate to fulfill its advice and consent role. Then-Chairman BIDEN listed several factors that led him to this recommendation, and every one of these factors exists today.

First, he noted that an appointment process in 1992 would take place in divided government. Different parties also control the White House and Senate today.

Second, he said that Presidents had recently made controversial Supreme Court appointments, noting that those nominees received a significant number of negative votes in the Senate. Again, the same is true today. President Obama's appointments of Sonia Sotomayor and Elena Kagan, for example, are both among the top five most opposed Supreme Court appointees in history.

Third, then-Chairman BIDEN noted that the Presidential election process had already begun. Once again, that is the case today. That is the case today, with voters in numerous States having already cast ballots.

Fourth, Chairman BIDEN said that the confirmation process itself had become increasingly divisive. This criterion strikes me as ironic, given its source. After all, Senate Democrats are responsible for provoking the so-called confirmation wars with the political and ideological inquisition used to defeat the Supreme Court nomination of Robert Bork and the despicable smear tactics used against the nomination of Clarence Thomas.

Senate Democrats have also been responsible for every major escalation in judicial confirmations since 1992.

Within 2 weeks of President George W. Bush's inauguration, the Senate Democratic leader vowed to use ''whatever means necessary'' to defeat undesirable judicial nominees.

A few months later, Senate Democrats organized a retreat with the goal, as the New York Times described it, of changing the ground rules for the confirmation process.

In January 2002, former Democratic Congressman, appeals court judge, and White House Counsel Abner Mikva urged Senate Democrats not to consider any Supreme Court nominees during President Bush's first term.

In 2003, Democrats began for the first time to use the filibuster to defeat judicial nominees who otherwise would have been confirmed.

In July 2007, Senator CHARLES SCHUMER—another friend of mine—said in a speech to the American Constitution Society that the Senate should not confirm a Supreme Court nominee during President Bush's final 18 months in

office except in what he called ''extraordinary circumstances.''

When then-Chairman BIDEN said in 1992 that the state of the confirmation process should defer consideration of any Supreme Court nominees, no judicial nominee had been defeated by a filibuster in nearly 25 years. During President George W. Bush's tenure alone, Democrats led 20 filibusters that ultimately defeated five appeals court nominees.

More to the point, in 2006, then-Senators BIDEN, Clinton, REID, LEAHY, SCHUMER, DURBIN, and Obama voted to filibuster the Supreme Court nomination of Samuel Alito. President Obama did say last week that he now regrets voting to filibuster the Alito nomination, although it took him 3,670 days to reach that conclusion. He told me that last night at the White House in a private conversation we had, and I accept his statement. I like the President personally, but the record does not support the other side's audacious claims.

Finally, after the District of Columbia Circuit Court of Appeals—a court that many of us consider nearly as important as the Supreme Court, given its role in regulatory oversight—rightfully invalidated several key actions of the Obama administration, Democrats openly sought to fill that court with compliant judges in order to obtain more favorable decisions. The President's allies in this body, in their own words, ''focus[ed] very intently on the D.C. Circuit'' to ''switch the majority'' and were willing to ''fill up the D.C. Circuit one way or another.''

In the rush to eliminate any possible judicial obstacle to the administration's overreaching agenda, Senate Democrats in 2013 used a parliamentary maneuver—the so-called nuclear option—to abolish the very nomination filibusters they had used so aggressively, but with one telling exception: They left alone the possibility of filibustering a Supreme Court nomination. Having done so, they must continue to believe the Senate's advice and consent role allows denying any confirmation vote to a Supreme Court nominee.

I am disappointed and, frankly, a little baffled at the response so far of my Democratic colleagues. Now-Vice President BIDEN and President Obama himself have both said that he was speaking in 1992 about a ''hypothetical vacancy.'' Of course he was, and his purpose in doing so was to outline what the President and Senate should do if that hypothetical vacancy materialized. Well, that vacancy is no longer hypothetical; it is very real. Yet the Vice President now says the Senate should not take his advice after all.

Vice President BIDEN has also said that his words from 1992 are being taken out of context. We have all faced the inconvenient truth of our past words—especially in these areas—and the go-to objection is often about context.

I have two suggestions. First, my colleagues should read then-Chairman BIDEN's speech for themselves. It takes up 10 full pages in the CONGRESSIONAL RECORD, so there is as much context as anyone could possibly want to consider. A second option is to consider how the media had described that speech. One CBS news story, for example, has the headline: ''Joe Biden Once Took GOP's Position on Supreme Court Vacancy.'' Perhaps they, too, are contextually challenged.

This is what the Washington Post said about the speech: ''But Biden's remarks were especially pointed, voluminous and relevant to the current situation. Embedded in the roughly 20,000 words he delivered on the Senate floor that day were rebuttals to virtually every point Democrats have brought forth in the past week to argue for the consideration of Obama's nominee.''

The constant refrain of Senate Democrats and their media allies over the past few days is that the Senate should just ''do its job.'' Of course, what they really mean is that the Senate should do what they want the Senate to do. Then-Chairman BIDEN believed in 1992 that the Senate would be doing its job by deferring the confirmation process for a Supreme Court nominee. Senate Democrats presumably believed the Senate was doing its job by denying confirmation votes to judicial nominees under President George W. Bush. The minority leader presumably believed the Senate would be doing its job by not voting on nominations since, as he said in 2005, the Constitution does not require it to do so. And I can only assume that the senior Senator from New York believed the Senate would be doing its job if it followed his 2007 recommendation and refused to consider Supreme Court nominees in a President's final 18 months.

Perhaps the most audacious claim trafficked by the other side of the aisle over the past few days is, as the senior Senator from New York has said, ''It doesn't matter what anybody said in the past,'' or, as President Obama put it, ''Senators say stuff all the time.''

In response, consider this point: Benjamin Franklin wrote in 1789 that ''in this world, nothing can be said to be certain except death and taxes.'' I would like to add one more thing to that list: It is equally certain that if a Supreme Court Justice beloved by the left passed away in the final year of a Republican President's tenure, a Democratic-controlled Senate would not only refuse to consider any nominee of the lame-duck President but would also extensively cite then-Chairman BIDEN's 1992 speech and other such clear statements for support. No one should have any doubt about that.

Indeed, my friends on the other side seem to have fallen into the trap identified by Justice Scalia in his opinion in the Noel Canning case in which he warned that ''individual Senators may have little interest in opposing Presidential encroachment on legislative prerogatives, especially when the encroacher is a President who is the leader of their own party.''

Before I conclude, I cannot let pass the disturbing comments yesterday by my friend the minority leader about Judiciary Committee Chairman CHUCK GRASSLEY. I have served with Senator GRASSLEY for nearly 25 years on the Finance Committee and for 35 years on the Judiciary Committee. If there is anybody in this body who knows his own mind and makes his own decisions, it is CHUCK GRASSLEY.

I was flabbergasted by the minority leader's statement that Chairman GRASSLEY has allowed the majority leader to ''run roughshod'' over him. If the minority leader's case for committee action depends on grasping at such unwarranted and unjustified personal attacks, then he has simply exposed the weakness of his own position.

Under Chairman GRASSLEY's leadership, the Judiciary Committee has reported 21 bipartisan bills. Five of them have become law—the same number as during the entire 113th Congress under Democratic leadership. This record contrasts quite favorably to the senior Senator from Nevada's abysmal record in the last Congress as majority leader, in which the Senate set a record for bills that bypassed committee consideration and voted on only 15 amendments in all of 2014.

I know there are different opinions about whether or how to address filling the vacancy left by Justice Scalia's death, and I appreciate that. And I appreciate that Senators and others feel strongly about these issues. Nevertheless, it is absolutely disingenuous for the minority leader, who today demands the same up-or-down confirmation vote he 25 times tried to prevent for Republican nominees, to suggest that Chairman GRASSLEY is doing anything other than what he believes is right. Senator GRASSLEY is one of the great Senators here. He is totally honest, and we all know it. He speaks his mind, and we all know that, too.

I have served longer on the Judiciary Committee than any other current Member of this body. During these past four decades, including during my more than 8 years as chairman of the committee, I have strived to develop a record of true fairness toward the nominations made by Presidents of each party. I have absolutely no doubt that my treatment of this vacancy fits squarely within this record of fairness.

The bottom line is simple: The Constitution obliges the Senate to take its role seriously as a check on the President in the consideration of lifetime appointments to the Federal courts, especially the Supreme Court. With voting already underway to replace our lame-duck President, delaying consideration of a nomination until after the election comports not only with historical practice but also with the prescriptions of key Democrats in the Senate and the White House over many years. By protecting the integrity of the Supreme Court from this environment, Senate Republicans are unquestionably doing the job the Constitution charges

us to do. We can have differences, no question about it, but the Senate Republicans are acting responsibly.

Madam President, I yield the floor.

The PRESIDING OFFICER. The Senator from Washington.

WOMEN'S REPRODUCTIVE RIGHTS

Mrs. MURRAY. Madam President, next week the Supreme Court is going to hear oral arguments in Whole Woman's Health v. Hellerstedt. This is a case that could not mean more to a woman's ability to exercise her constitutionally protected health care rights. As this case now moves forward, I want to take a few minutes today to explain how much is at stake and why it is so critical that Texas's extreme anti-abortion law be treated as exactly what it is: unconstitutional.

Madam President, in Texas and across the country, extreme rightwing conservatives continue to try and turn back the clock on American women. Just yesterday, the Fifth Circuit allowed a Louisiana law to go into effect. That law would leave women with only one health center where they can exercise their reproductive rights.

This debate is frustrating, it is disappointing, and, frankly, it is appalling that in the 21st century—43 years since the historic ruling in Roe v. Wade—we even have to have a discussion about whether a woman has the right to make her own decisions about her own body. But one thing that has always kept me going is seeing that when their health and their rights and their opportunities are at stake, women stand up and make it clear why reproductive freedom is so important.

As we have fought back against Texas's extreme anti-abortion law, women have explained that because they were able to plan when they had children, they were able to escape abusive relationships. They have told us that because they had control over their own bodies, they were able to break cycles of poverty generations long and give back to their communities. They have shared their experiences of making the extraordinarily difficult decision to end a pregnancy out of medical necessity. These are powerful stories about the difference self-determination makes for women. These stories are possible because of constitutional rights affirmed in Roe v. Wade and protected in Planned Parenthood v. Casey.

If Texas's extreme anti-abortion law stands, three-quarters of clinics in the State are expected to shut down—three-quarters of them. As a result, 900,000 women of childbearing age in Texas will have to drive as far as 300 miles round trip just to get the care they need. And women in States with laws like Texas will face similar barriers.

I believe strongly that a right means nothing without the ability to exercise that right. Laws like those in Texas and Louisiana, which are driven by extreme conservative efforts to undermine women's access to care, are, without question, getting in between women and their constitutional rights, especially the rights of women who cannot afford to take off work and drive hundreds of miles when they need health care.

Put simply: Texas's extreme anti-abortion law and laws like it across the country threaten women's lives. These laws are intended to take women back to the days before Roe v. Wade when women had less control over their bodies and their futures.

As a mother, as a grandmother, and as a U.S. Senator, I know that is absolutely the wrong direction for our country. Our daughters and granddaughters should have more opportunity and stronger rights, not less. That is why 163 Democratic and Independent Members of the House and Senate urged the Supreme Court in an amicus brief to stand up for women's constitutionally protected health care rights. And it is the reason that even some of our Republican colleagues are focused on doing everything they can to undermine the Supreme Court.

My Democratic colleagues and I are focused on how much the Court's decision in this case will mean for women now and for generations to come. So instead of trying to obstruct justice, we are urging the Supreme Court to ensure justice by upholding settled law. For women, being able to exercise their constitutionally protected reproductive rights means health, it means freedom, and it means opportunity. We cannot and we should not go backward.

I yield the floor.

The PRESIDING OFFICER. The Senator from Maryland.

NATIONAL CHILDREN'S DENTAL HEALTH MONTH

Mr. CARDIN. Madam President, I rise today to recognize February as National Children's Dental Health Month. Since 1981, this month has afforded us the opportunity to acknowledge the importance of children's dental health, recognize the significant strides we have made and the work that remains to be done, and renew our commitment to ensuring all children in our country have access to affordable and comprehensive dental services. To echo former U.S. Surgeon General C. Everett Koop, ''there is no health without oral health.''

Despite being largely preventable, tooth decay is the single most chronic health condition among children and adolescents in the United States. It is 5 times more common than asthma and 20 times more common than diabetes. Nearly half, 44 percent, of the children in the United States will have at least one cavity by the time they start kindergarten. Children with cavities in their primary or ''baby'' teeth are three times more likely to develop cavities in their permanent adult teeth, and the early loss of baby teeth can make it harder for permanent teeth to grow in properly.

Left untreated, tooth decay can not only destroy a child's teeth, but also can have a debilitating impact on his or her health and quality of life. Tooth and gum pain can impede a child's healthy development, including the ability to learn, play, and eat nutritious foods. Recent studies have shown that children with poor oral health are nearly three times more likely to miss school due to dental pain, and children reporting recent toothaches are four times more likely to have a lower grade point average than their peers without dental pain.

Tooth decay and oral health problems also disproportionately affect children from low-income families and minority communities. According to the National Institutes of Health, approximately 80 percent of childhood dental disease is concentrated in 25 percent of the population. These children and families often face inordinately high barriers to receiving essential oral health care, and, simply put, the consequences can be devastating.

Madam President, many have heard me speak before about the tragic loss of Deamonte Driver, a 12-year-old Prince George's County resident. In 2007, Deamonte's death was particularly heartbreaking because it was entirely preventable. What started out as a toothache turned into a severe brain infection that could have been prevented by an $80 extraction. After multiple surgeries and a lengthy hospital stay, sadly, Deamonte passed away—9 years ago today. So today we mark the ninth anniversary of his tragic death.

Since the tragic death of Deamonte in 2007, we have made significant progress in improving access to pediatric dental care in the country. For example, in 2009, Congress reauthorized the Children's Health Insurance Program—CHIP—with an important addition: a guaranteed pediatric dental benefit. Today, CHIP provides affordable comprehensive health coverage, including dental coverage, to more than 8 million children. Thanks to CHIP, we now have the highest number of children in history with medical and dental coverage. In addition, in 2010, Congress included pediatric dental services in the set of essential health benefits established under the Affordable Care Act.

I am very proud my State of Maryland has been recognized as a national leader in pediatric dental health coverage. In a 2011 Pew Center report, ''The State of Children's Dental Health,'' Maryland earned an A and was the only State to meet seven of the eight policy benchmarks for addressing children's dental health needs.

In addition, in the Maryland Health Benefit Exchange, every qualified health plan now includes pediatric dental coverage, so families do not have to pay a separate premium for dental coverage for their children and do not have a separate deductible or out-of-