

will come and talk about that this morning.

I just read a quote from Senator COLLINS, but she is not alone in urging the Republican leader to follow regular order. Other sitting Senators are saying the same thing. I will not read what all of them say, but there is a small nucleus of Republican Senators who believe strongly that what Senator MCCONNELL is doing is wrong.

The Republican Senator from Indiana, Senator COATS, was quoted in one interview as saying:

If the President nominates someone, which is his choice, I think that person would deserve a hearing if that person is not someone that is just obviously nominated for political purposes.

Even the Republican leader's former colleagues agree that the President's nominee deserves a fair shake. The former Senator from Indiana, Dick Lugar, is urging Senate Republicans to do the right thing and honor their constitutional duty. He served here for more than three decades. Here is what he said yesterday:

I can't understand their reluctance given the controversy that surrounds all of the debate that has already occurred. But that is not sufficient reason to forgo your duty.

But perhaps the former Republican Senator from Maine, Olympia Snowe, said it best:

I believe that the process should go forward and be given a good-faith effort.

"A good-faith effort"—it is a phrase we hear often, but it is absolutely crucial to American democracy. Our Constitution is constructed with the expectation that elected leaders would act in good faith. That is how our government operates. It should. Under the Republican obstruction, that has not been the case.

I ask my Republican colleagues, whose side do you want to be on? Whose voice are you listening to? These voices of moderation and reason coming from within your own party or the shrill voices—the shrill, shrill voices—of Trump and CRUZ? There isn't time to vacillate. Right now, before our eyes, the Republican leader is leading this conference straight to the side of Donald Trump and TED CRUZ.

It is not too late to change course. Reject the extremist approach being propagated by the likes of Donald Trump and TED CRUZ. It will only hurt our country. Put aside this unprecedented obstruction and work with President Obama to fill this crucial vacancy on the Supreme Court. Do your job. All we are saying is: Do your job. Do your job. Do your job.

Will the Chair announce the schedule for the rest of the day.

## EXECUTIVE SESSION

### EXECUTIVE CALENDAR

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

The senior assistant legislative clerk read the nomination of Robert McKinnon Califf, of South Carolina, to be Commissioner of Food and Drugs, Department of Health and Human Services.

The PRESIDING OFFICER. The Senator from Oklahoma.

#### NOMINATION OF MICHAEL MISSAL

Mr. INHOFE. Mr. President, it is quite a discussion when we talk about confirmations, one of the responsibilities this body has that the other body does not have. In the case of a U.S. Supreme Court vacancy, however, during an election year, I think it has actually been some 80 years since they have actually filled a vacancy as opposed to waiting until after the next election.

I am concerned today, though, about another confirmation. VA IG nominee Michael Missal has been nominated, and I have a hold. To explain what that means, when you have a hold, that doesn't necessarily mean you don't approve of the nominee, but it does mean there is one reason or another you don't want to go ahead and confirm that person. That happened in the case of the nominee to be a VA inspector general, Michael Missal. Actually, I am not placing a hold on him because of deficiencies in him but deficiencies in the Office of the Inspector General. Today what I am announcing is that I am lifting that hold. That means they are free to go ahead and have this nominee go forward, and I think that is the right thing to do.

At the Muskogee VA facility alone, the IG office has conducted nine investigations since 2009, and there has been little or no change in the quality of care. Right now, my office is working hundreds of cases of Oklahoma veterans facing inadequate care or blocked access to benefits. I wrote the VA IG in January of 2016 simply requesting that the VA IG—inspector general—visit Oklahoma facilities and to do so with an outside entity such as a joint commission. There is an attitude sometimes with individuals not wanting outside help, a kind of assumption that "I don't need their help." Their response letter denied my request to conduct an investigation with a third party. It is time for our VA facilities in Oklahoma to be held to those same standards as private hospitals, and I believe it would take the aid of an outside group to make this happen because right now they are not meeting that quality.

Since placing a hold on Mr. Missal, the IG office has committed to investigating Oklahoma's VA facilities with the oversight of an outside entity, and I have also had commitment from Mi-

chael Missal that he will do that. I appreciate their commitment, but our work to improve the care for Oklahoma veterans doesn't end there.

Since the VA reform bill passed Congress this last summer—and it was a good bill—it is clear our facilities in Oklahoma have continued business as usual. I haven't seen any noticeable difference in the performance and treatment of our veterans since the passage and activation of that bill. I believe the impending investigations will show it is going to require a change in the management level to bring about lasting improvements for veterans care.

That is why I, along with my junior Senator from Oklahoma JAMES LANKFORD, introduced S. 2554, the Department of Veterans Affairs Accountability Act, on February 12. This legislation is critical to providing the best treatment for our country's veterans. Building upon the comprehensive plan of the 2014 VA reform bill, our legislation grants VA leadership at the regional level the authority to fire and demote staff working in these facilities. I think a lot of them thought the reform bill did that, but it didn't. We haven't been able to do it. It also allows directors of veterans regional chapters to contract with an outside entity to conduct investigations of their VA medical facilities. As I have worked to address the many concerns I have with Oklahoma's VA facilities, I have come to trust the leadership at the regional level. One individual who has come in is Ralph Gigliotti. He has done a great job. He doesn't have the authority to do what this bill would allow him to do. Not only were intermediate surgeries suspended due to what they have now uncovered, but also the chief of staff has been temporarily removed from his position.

However, this process revealed that regional directors are not presently empowered to address staffing concerns in the facilities they oversee. We have seen this in the State of Oklahoma numerous times. Our legislation peels away the layers of bureaucracy and allows the directors and each of the regional areas to play a larger role with improving the VA system as a whole.

As we all know, freedom isn't free. Many of our veterans have paid the prices with scars, some visible and some may go unseen such as post-traumatic stress disorder—PTSD—depression, and traumatic brain injuries. In my great State of Oklahoma, there are more than 37,000 military families and roughly 340,000 veterans that call our State home, attend our churches, and contribute to our communities. On behalf of Oklahoma, I say we are humbled by the immeasurable dedication of each and every one of them. I think it is the government's duty to honor the promises made to our veterans in return for their sacrifice. I urge our colleagues to remember that.

I can remember when I was in the Army, commitments were made to me

### RESERVATION OF LEADER TIME

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

when a decision was made—actually, mine was not a decision because it was compulsory service at that time, which I think we ought to go back to. Anyway, I think this is going to be good, and this is going to give us the resources and the capability of correcting the problems as we see them. For that reason, I am lifting my hold on Mr. Michael Missal and his nomination will move forward.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

#### FILLING THE SUPREME COURT VACANCY

Mr. LEAHY. Mr. President, this past weekend the Nation honored Justice Antonin Scalia, who was laid to rest after serving on the Supreme Court for nearly three decades. Marcelle and I were home in Vermont when we learned that Justice Scalia had passed. Frankly, we were stunned by the news. I did not often agree with Justice Scalia, but he was a brilliant jurist with a deep commitment to our country and to the Constitution, and we enjoyed his friendship for decades. He will be remembered as one of the most influential Justices in modern history.

While his family and all should have had a chance to mourn his passing, I was shocked when, in the immediate wake of his death, Senate Republicans moved quickly to shut down the constitutionally mandated process to fill the vacancy left on the Supreme Court. Within hours of his death being announced, they declared they would oppose any effort to confirm the next Supreme Court Justice this year. I have served in this body longer than any Member here and I have heard some shocking things during that time, but I am surprised by the political crassness of these statements.

Before a nominee had even been named, some Republicans reflexively decided to prematurely reject anyone—anyone—nominated by the President. This impulsive rush to judgment runs completely contrary to how this body has always treated nominees—always treated nominees—to the highest Court in the land. Republicans should not allow the hyper-partisan rhetoric of the campaign trail to trump one of the Senate's most important constitutional duties.

I have talked to the President, and I know he will fulfill his constitutional duty. He will nominate an individual to bring the Supreme Court back to full strength, and of course he should. The President has already begun consulting with Members of both parties in Senate, but after a nomination has been made, we in the Senate should get to work and do our jobs—the jobs we were elected to do.

I was all over my State of Vermont last week. The Vermonters I spoke with last week reflect Americans across the country who are tired of partisan political games that are chipping away at the foundation of our constitutional democracy. I heard this from both Republicans and Democrats in Vermont.

As Oliver Goodenough, a law professor at Vermont Law School, wrote this weekend in the *Rutland Herald*, an extended Supreme Court vacancy caused by Senate inaction “would certainly create a constitutional embarrassment.”

Mr. President, I ask unanimous consent that this article be printed in the RECORD.

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

[From the *Rutland Herald*, Feb. 21, 2016]

#### COURT BATTLE—ANOTHER SHUTDOWN?

(By Oliver R. Goodenough)

Within hours of the announcement of Anton Scalia's death, one of our political parties was already trying to make points with the electorate about the process of picking his successor. At that evening's debate, the GOP presidential candidates advocated that the constitutional process should be suspended, either voluntarily by President Barack Obama or by purposeful inaction by the Senate.

Mitch McConnell, the Senate majority leader, was just as speedy, trying to warn Obama off from acting on the mandate of Article II, Section 2, which charges the president with nominating a replacement for Justice Scalia and the Senate with providing its advice and consent on the president's choice.

One can understand McConnell's disappointment. Appointments to the Supreme Court are for life, which means only resignation, impeachment or death will create a vacancy. In the somewhat ghoulish game of waiting for a slot on the closely divided Supreme Court to open up, the short-term expectations of mortality had been focused elsewhere—Justice Ruth Bader Ginsberg, in particular, has been a survivor of long-odds pancreatic cancer.

So Republicans were brought up short by the death of a conservative hero, whose replacement could shift the balance of the court. The accidents of history will do that sometimes.

The Constitution makes provision for what happens in such a case—in the kind of clear, unequivocal language that is the best target for Justice Scalia's vaunted originalism. The president nominates. The Senate, for its part, gives the qualifications of any nominee a serious vetting; it is not entitled to just ignore the nomination.

Some reports have argued that such a course of process sabotage would create a “constitutional crisis.” This is probably an overstatement; it would certainly create a constitutional embarrassment. With nearly a year left in Obama's term, waiting for his successor to name the new justice in 2017 would remove the ninth voice from the court not just for the current yearly term but also for most of the following term as well, since the replacement would arrive in the spring and miss months of argument and deliberation. For the better part of a year, the vacancy would sit like a broken tooth in the operations of the court. Close cases would often end up tied, with the result that the lower court finding would remain the binding result. Not itself a disaster, but a result that the constitutional provisions for naming a successor are designed to avoid.

The embarrassment of sabotage on judicial appointments actually already exists: Republicans in the Senate have effectively shut down the process of nominating new judges for the federal courts of appeal. The blockage isn't over qualifications—such considerations would be a proper exercise of the Senate's confirmation role, raised in committee

and on the Senate floor. Rather, the nominations are sitting in a limbo of inaction: It is simply a matter of not doing the job at all.

This is the real crisis, a state of politics where Republicans in the House and Senate are willing to derail the processes of government to thwart the actions of President Obama, good, bad or indifferent. The most obvious example was the full shutdown of government. Limited shutdowns on matters like judicial appointments are parts of the same pattern.

Of course, obstructionism is not just a Republican failing, and it can be present in both parties to some degree in the spicy stew of politics in our robust democracy. But the bottom-line commitment of all parties should be to maintaining a functioning government, structured and administered in accordance with the framework set out in our Constitution, even when it is not working to their advantage. Why is this so hard for at least some Republicans to buy into? Why the willingness, indeed eagerness, to bring down the house we all live in?

The key is a widespread denial among Republicans of the legitimacy of the Obama presidency. This is partly related to the man himself—all the blather about his birth, his religion, etc. While many Americans find it a vindication that we can elect an African-American to our highest office, for some it is an impossibility which in turn justifies the most extreme forms of resistance. Race is our original sin as a country, and its legacy haunts us still.

Republicans are also in denial over changes in the social and economic fabric of America. We are, as always, in the process of moving from what America has been to what it will be. Conservatives have a role to play, reminding us of the valuable parts of where we came from. Progressives have a role, recognizing the imperatives of the future and charting the paths of change toward positive outcomes. Politics is the sometimes rough and tumble playing field where the dialog on this goes forward.

The intransigence of shutdowns, however, whether of the full government or a critical aspect like the nomination process, exceeds the boundaries of acceptable play and hurts us all. Obama needs to make a good faith nomination to fill the vacancy on the Supreme Court. McConnell and his colleagues in the Senate majority need to review it in good faith. That is what the Constitution provides; that is what the country needs. Get on with it.

Mr. LEAHY. We must not let that dysfunction infect the Supreme Court, an independent, coequal branch of government that was designed to be above politics. The next nominee to the Supreme Court deserves full and fair consideration by the Senate. This includes a timely hearing and then having an up-or-down vote.

I am worried that even before President Obama took office, and ever since then—even after he was reelected by a 5 million-vote plurality—there has been an unrelenting and cynical campaign by some hyper-partisans to delegitimize the President's authority. There were the birthers, and there have been and still are spurious slurs of all kinds.

Outside of this body, the efforts to undermine President Obama's constitutional authority to fill this Supreme Court vacancy draws some of their vehemence and venom from these dark corners. But every one of us took an oath of office—every one of us—and we