

the Senate confirmed Justice Kennedy, someone who is currently serving on the Supreme Court, a current member sitting on the Supreme Court, someone who makes decisions every day. When was he confirmed? He was confirmed in the last year of Ronald Reagan's Presidency. And guess what. The Senate was controlled by Democrats. So we had the exact opposite situation. Now we have a Democratic President and we have a Senate that is in the control of Republicans. Back then we had a Republican President and a Senate that was in the control of Democrats. People say: Well, what does history show us? What do we know? To me, that is the best example of history. And we know what happened: Justice Kennedy was confirmed, on Ronald Reagan's nomination, by a Democratic Senate in an election year unanimously—unanimously.

The Senate has taken such action more than a dozen times in our Nation's history, and there is no reason to abandon that precedent now. I am talking about when a Justice position opens up during an election year. We have that precedent, which I think is important. Again, I think the most important precedent, the most important example for historians, is what I led with: the fact that we have to go back to the Civil War to find a time when we left a vacancy on the Supreme Court open for a year. Think about that. Through World War I, through World War II, through huge tumult in this country, we always made sure we had a fully staffed Supreme Court.

It would be unprecedented to deny a Supreme Court nominee fair consideration in the U.S. Senate. In the last 100 years, the Senate has taken action on every Supreme Court nominee regardless of whether the nomination was made in a Presidential year. It is now February, which gives us plenty of time to consider and confirm a nominee. Let's go to that next.

People say: When will we have the time to get that done? I would submit that we do. We have hundreds of days before us. In fact, the Senate has taken an average of only 67 days. Let's make it easier: 2 months—about 2 months. That is the average since 1975 from the date of the nomination to the confirmation vote—2 months. That means that if the President offers a nomination, say, in the month of March—that sounds like a good month to have a nominee—that nominee would receive a vote in the Senate by Memorial Day. There are our 2 months. And if we even wanted to add a little time on, we would certainly do it by the Fourth of July, which is a very good holiday for those who believe in the Constitution and in the words of the Constitution.

Until we confirm a nominee, the Court is left with only eight Justices. A split decision will prevent the Supreme Court from making critical decisions and leave lower courts without a precedent to follow. A major responsibility of the Supreme Court is to re-

solve disagreements among lower courts. A failure of the President or the Senate to meet its constitutional obligations would cause the Supreme Court to be unable to fill its constitutional obligations.

These Supreme Court Justices aren't elected directly; they have lifetime appointments. Their job is to be insulated from elections and politics, and that is why we have these strict and straightforward words in the Constitution that say that the President shall nominate someone for the job, and they also say that the Senate will advise and consent. We have those words in place in the Constitution, in that incredibly important document that guides us in this Chamber every single day, just for a situation such as this one, just for situations such as these.

In closing, I remind my colleagues of the important work the people have sent us here to do. Yes, we have major disputes every day. That happens every day. We get into arguments about issues. There are political campaigns going on. But we have always at least followed the Constitution. That is what this is about today.

As soon as we have a nominee, as soon as the President exercises his constitutional duty and puts someone in place, we should follow the Constitution and our longstanding traditions and the history of this country and uphold that duty. We should diligently consider the President's nominee to be the next Supreme Court Justice. As members of the Judiciary Committee, we must have the confirmation hearing. We must do our jobs.

Thank you, Mr. President, and I yield the floor.

The PRESIDING OFFICER. The Senator from Florida.

Mr. NELSON. Mr. President, I am here to talk about Takata airbags, but I want to say to the Senator from Minnesota that she is so right on. The Constitution, article II, says that the President "shall nominate" and the Senate "shall confirm." It doesn't say "may" or "wish." It says "shall." It is a constitutional responsibility of our duties.

Just do your job, U.S. Senate. Just do the job, and we will see, once the President comes forward with a nominee. Let's see. Are we going to have committee hearings? Let's see if we are going to have open and bipartisan discussion on the merits of the nominee that is put forth. Let's see if the Constitution is trashed or whether the Constitution is upheld in the process put out to us in the third branch of government. I thank the Senator from Minnesota.

TAKATA AIRBAGS

Mr. President, I came here to speak about something else—something that looks very sinister. As a matter of fact, I ask unanimous consent to have two items to show to the Senate with regard to the Takata airbag crisis.

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

Mr. NELSON. It looks kind of sinister, unfortunately, because it is. It is supposed to save lives, not kill. This is an airbag. It obviously has already been inflated. It goes right in the steering wheel, so when you get in an accident, this inflates and fills up with gas within a split second, and that protects your head and your torso from coming forward and being injured.

What happens if this malfunctions, and what happens if the very manufacture of it causes it to malfunction under conditions? Let me show you what happens.

I said these things look pretty sinister. Indeed, this is pretty sinister because this is a fragment that was in the metal casing in one of these airbags in Florida that, when it malfunctioned, caused the explosive force of the ammonium nitrate gas. It was so explosive that it ripped apart the metal casing, and this part that I am showing came flying into the face of the driver, severely injuring the driver. In this case it hit the forehead.

I have told the Senate on many occasions that fragments of metal like this have come out just within the Orlando area of my State. They found a woman in the middle of an intersection where she had a collision, and when the police arrived, they found out that she was dead. She had bled to death. They looked at her neck and it was slashed. The police's immediate response was that this was a homicide. Upon reflection, she had a collision in the intersection that otherwise would have been a major fender bender, but because of a defective Takata airbag, it sent a piece of metal like this into her neck and cut her jugular vein.

Near Orlando, a firefighter—a big, strapping, 6-foot-4 hunk of a man—doesn't have an eye anymore because a piece of metal fragment like this one from a Takata airbag came out when there was nothing more than a fender bender. When this bag exploded, it sent out a piece of metal. In his case, that firefighter doesn't have the sight in one eye because this piece of metal fragment hit him.

Unfortunately, this has happened all over the country. Unfortunately, it has happened with a great deal of, shall we say, dragging of feet, coverup, and obfuscation. These airbags are supposed to save lives, but when they fail, they rupture violently and they send metal fragments right at the driver or the passenger.

These Takata airbags have such an explosive force. What is behind it? Well, our staff on the Commerce Committee has just produced a report which this Senator is releasing today. It is an update on this report which found, through a review of recently obtained internal documents in the Takata Corporation, that Takata employees routinely manipulated safety testing data. That would be bad enough, but let's see the consequence of this drip, drip, drip approach to now a substantial number of recalls. There

were a million vehicles recalled in 1 week, a million more the next, and there is no end in sight.

A few days ago, there was a Reuters report that said that in addition to the already 20-plus million recalls of Takata airbags, an additional 70 to 90 million Takata airbags may have to be recalled right here in the United States. Can you imagine what that is going to do to all these poor auto dealers? I mean, don't even speak about the person who is in the greatest jeopardy, the one who is behind the wheel of a car with an explosive grenade right in front of their face, and the grenade may go off. But can you imagine the poor auto dealers, the Toyotas, the Hondas?

Let me tell you about the last person killed. He was in a Ford F-150 pickup truck, and it was in South Carolina. By the time people got to the truck after the crash that would not have killed him, he was dead because of a fragment like this. I wish you could see this fragment. I wouldn't want that hitting me with an explosive force that inflates the airbag in less than 1 second. That is why the Commerce Committee has decided to jump all over this. We have been doing it for the last 2 years. We had a hearing on this 2 years ago.

On the current recall, I said it was in excess of 20 million. It is actually 29 million with these defective inflators. That is because nine people are dead and dozens are injured. We find out now that in all, there may be 120 million airbags that eventually in the United States alone will have to be recalled. If you want a shocking figure, there may be in excess of 260 million airbags recalled worldwide.

Knowing of all these problems, it is puzzling that the consent order that the National Highway Traffic Safety Administration signed with Takata allows the continued production of ammonium nitrate-based inflators indefinitely. Then they said that certain ones had to be phased out by 2018. Why isn't the NHTSA taking a more aggressive approach? What is going on after all of these inflators, based on what we see with ammonium nitrate, have exploded?

The essence of this and of the report we are releasing today as an addendum to the previous report is that the current recall may have to be redone. Why? Because auto manufacturers are installing new live grenades into people's cars as replacements for the old live grenades.

According to Reuters and the New York Times, there are also internal documents that show Takata officials were aware of these consistent problems at its manufacturing plants. These reports claim that officials knew of manufacturing issues that could lead to moisture contamination, contaminating the ammonium nitrate wafer inside of the airbag inflator. This just adds all the more to the finding of evidence.

Last June, the oversight and investigations staff of the Commerce Com-

mittee released a report on the Takata airbag fiasco showing that the company knew there were serious production and testing issues dating back more than one decade. That is why we wanted to release this report today. Through a thorough review of recently obtained internal documents at Takata, it was discovered that Takata employees continually manipulated the safety testing done. For example, in this report, in a 2005 memo to the Takata vice president, an engineer at Takata explained that "the integrity of the validation reports . . . is in serious question."

That engineer continued: "These are not trivial changes in that the data clearly in violation of the customer specs is altered to meet the customer specs." The engineer called that "a clear misrepresentation of the facts."

That is what the Takata engineer said to one of the Takata vice presidents back in 2005. That was 11 years ago.

In a 2006 email, a different engineering manager explained that testing reports were "cherry picked" and a Takata employee was "schmoozed" to accept deviations in the data.

So was he schmoozed or intimidated? Whatever it was, it was altering what was the truth. The manager concluded—this is the Takata manager in 2006, which was 10 years ago—that "the plant should have been screaming bloody murder long ago."

Well, if I were a lawyer making a case to a jury, I would rest my case right now. The fact is, we are not lawyers arguing to a jury. As Senators, we are here to try to protect the American people. And this data manipulation has continued. Even after the recalls had been announced and the rupturing inflators had caused deaths and injuries, the data manipulation continued.

I will give an example. A 2010 presentation explains that an experimental inflator was experiencing a significant safety and weld quality issue. According to that presentation, "[Takata Japan] was informed of these results, but altered them and reported good results to Honda." Furthermore, even when these issues were raised to senior Takata employees, no action was taken.

In a Takata director's notes from 2013, he explains that he shared his view that the range of a certain recall might be a "violation of our moral obligation to protect the public." Let me repeat that. A "violation of our moral obligation to protect the public"—that came from a Takata director. Wow.

The engineer raised these concerns with Takata's senior vice president of quality assurance, but the vice president failed to take action to address it.

These new documents that we note in this report from the committee speak for themselves. Takata failed to prioritize the safety of its products, and as a result, nine people are dead and dozens were injured. And even after exploding Takata airbags killed

these innocent people, company employees continued to manipulate safety testing data. This is not only inexcusable, it is reprehensible.

We have these thousands of automobile dealers around the country who have sold vehicles with the Takata airbags. They cannot sell a new vehicle if that vehicle is under recall because of a Takata airbag. Under law, they cannot sell that new vehicle. Also, rental car companies that have more than 15 cars cannot rent cars if they are under recall. But used car dealers can sell used cars that have a defective Takata airbags in them that is under recall—without fixing it.

I really feel for our automobile dealers. I really feel for our automobile dealers also because what in the world are they going to do with the customers now screaming "Replace this airbag" when, in fact, there are not enough replacement airbags? In fact, because the National Highway Transportation Safety Administration has allowed some of these replacements to go in with this ammonium nitrate, this is a horrendous situation.

So I come to the floor today—this has been going on for over 2 years. We brought this out in a hearing in the Senate Commerce, Science, and Transportation Committee. And today I urge Takata and NHTSA to do what should have been done long ago: Stop producing these ammonium nitrate airbags and get them out of people's vehicles. And by the way, give your automobile dealers some relief. And how about giving the American driving public, which is driving around with one of these things in their face, some consideration and put them first? Hopefully, we will see some more action on this.

I yield the floor.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. ROBERTS. Mr. President, I ask unanimous consent that I may proceed for 15 minutes as in morning business.

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

GUANTANAMO DETAINEES

Mr. ROBERTS. Mr. President, I rise today to speak about President Obama's plan to move Guantanamo Bay terrorists to the United States. However, it is not much of a plan. With all due respect, it is more of a failed attempt to fulfill a campaign promise and, in my view, what he believes will secure his legacy.

Fortunately for us—those who believe that moving dangerous enemy combatants within our communities is dangerous, irresponsible, and an illogical idea—the President's plan contains nothing really substantive. In fact, it fails to recommend an alternative location to any current facility at all. As a matter of fact, I call that a win.

The plan does not provide any intelligence to substantiate the President's claims, nor does it even provide a chart or a graph to support the mathematics on the alleged cost savings, and there is no estimate regarding the cost to