

ORDER OF BUSINESS

Mr. McCONNELL. Mr. President, we are going to move the confirmation vote back closer to noon in order to accommodate some important hearings that are going on this morning in several of our committees.

RECOGNITION OF THE MINORITY LEADER

The PRESIDING OFFICER (Mr. PAUL). The Democratic leader is recognized.

FILLING THE SUPREME COURT VACANCY

Mr. REID. Mr. President, yesterday the senior Senator from Iowa, along with other Republicans on the Senate Judiciary Committee, announced that they won't be holding a hearing on President Obama's eventual nominee to the Supreme Court. They won't give the eventual nominee the common courtesy of even a meeting—no hearings, no meeting—and this was all done even before the President sent a name to us. This is historically unbelievable and historically unprecedented.

Republicans don't know who the nominee will be, and they have already mentioned that. Already they have decided they won't even start the confirmation process. Why? Because the person was nominated by President Obama. Remember, the Republican leader said many years ago that the No. 1 goal he had was to make sure President Obama was not reelected. That failed miserably. The President won by more than 5 million votes. Everything has been done by the Republicans in the Senate to embarrass, obstruct, filibuster—anything that could be done to focus attention on President Obama, none of which has helped the country.

Senator GRASSLEY has surrendered every pretense of independence and let the Republican leader annex the Judiciary Committee into a narrow, partisan mission of obstruction and gridlock—so partisan, in fact, that the senior Senator from Iowa won't respond to a personal invitation from the President inviting him to the White House to discuss the vacancy. Think about that. The President of the United States calls a very senior Senator, and he hasn't even responded to the President. This is a sad day for one of the proudest committees in the Senate. So I ask, is this the legacy he wants? Is this how he wants his committee work remembered—as a chairman who refused his duty and instead allowed the Republican leader to ride roughshod over the Judiciary Committee's storied history?

The strength of committee chairmen in the U.S. Senate has been legendary. No majority leader or minority leader could tell a chair what to do with his committee. That was off bounds, but it doesn't appear so now.

In abdicating this responsibility, which the Senate has always upheld—never in the history of the country has a Senate simply refused to do anything, even meet with the person who has been nominated. So Republicans are setting a dangerous precedent for future nominations, not only for the Supreme Court but for the Senate itself as an institution.

Yesterday the Senate Historian's office reported that the denial of committee hearings for a Supreme Court nominee is unprecedented. If that is unprecedented, how about the fact that he won't even meet with the person who has been nominated? If that is unprecedented, how about the fact that a Member of the Senate won't even go to the White House to talk to the President about filling the Supreme Court seat?

The senior Senator from Iowa will be the first Judiciary Committee chairman ever to refuse to hold a hearing on a Supreme Court nominee. That is quite an achievement, but not one of which he should be proud. That sort of wanton obstruction is not what the American people want. It is not what the people of Iowa want. Last week no fewer than six Iowa newspapers issued scathing editorials calling on Senator GRASSLEY to change course and give the President's Supreme Court nominee the respect he or she deserves.

For example, the Mason City Globe Gazette wrote:

We were especially disappointed to see Iowa's own Chuck Grassley join the partisan crowd calling for a delay. . . . There is no constitutional or even historical precedent for such flagrant, outrageous, shameful, bald-faced partisanship.

The Gazette in Cedar Rapids, IA, wrote of Senator GRASSLEY's actions:

It's hard to conclude this is anything but political maneuvering meant to meet partisan objectives at the expense of the Supreme Court, our constitutional process and the common good.

The headline of the Des Moines Register editorial reads, "Grassley's Supreme Court stance is all about politics."

Is that the legacy the chairman wants for Iowa and our Nation? I certainly hope not. Does he want to be remembered as the least productive Judiciary Committee chairman in history? At his current pace, he will be remembered as the most obstructive chairman in history.

Instead of studying what the Vice President said a quarter of a century ago, perhaps Senator GRASSLEY should take note of what Senator BIDEN did 25 years ago or generally as a member and chairman of that committee.

In 1992, under Senator BIDEN's leadership, the Judiciary Committee confirmed 64 circuit and district court nominations. All of the judicial nominations were made by a President of the opposite party—President George H.W. Bush. In 2015, Senator GRASSLEY's first year as chairman of the Judiciary Committee, the Senate confirmed 11

judicial nominations. That was the fewest judicial nominations confirmed ever. We were a much smaller country, perhaps, so "ever" might be a little much, but certainly in the last 50 or 75 years. That is quite a comparison: BIDEN, 64; GRASSLEY, 11.

It gets even worse than that for my friend from Iowa. In the entire 102nd Congress, when JOE BIDEN was chair, the Senate confirmed 120 nominees—120 judicial nominations under BIDEN. Compare that to 16 under Chairman GRASSLEY. The difference is stunning.

I would encourage my friend from Iowa to focus on Vice President BIDEN's actions and results, rather than cherry picking remarks of 25 years ago. The Judiciary Committee of JOE BIDEN honored its constitutional obligations by considering and confirming—even visiting with nominees—in a timely fashion, even though they were a Republican President's nominees. I can't say the same for the committee today. No one can.

As chairman, JOE BIDEN did his constitutional duty and processed four nominations from Republican Presidents to the Supreme Court, including Justice Kennedy—that vote occurred in the last year of President Reagan's Presidency—Souter and Thomas.

Let us focus on Thomas just a little bit. Thomas got 52 votes. He squeaked through the Senate. Any one Senator could have forced a cloture vote. Any one Democrat could have done that. We didn't do that. It was never done until the Republicans showed up here in the last few years.

Now, Bork was a very controversial person, but he received a long, long hearing before the committee and a long debate here in the Senate. He was voted down. That is how this place is supposed to work. Other nominees have been voted down. But we didn't say we are not going to hold a hearing on Bork. We didn't say we are not going to take the committee's actions and just leave it at that. Listen to this: Bork was turned down in the Judiciary Committee by an overwhelming margin. In spite of that, we brought it to the Senate floor and it was debated, and he won by two votes—no filibusters. He was defeated in the committee. We didn't look for an excuse. That is the way it used to be done.

With the Republican leadership now they will not meet with the nominee, even though they do not know who it will be; they won't hold a hearing; and the chairman of the committee will not even go to the White House and visit with the President.

As chairman, Senator BIDEN did his constitutional duty and processed nominations, even though they were Republican nominations. So we don't have to go back to 1988 or 1992 to prove the current Judiciary Committee chairman's ineptness. Look at the spike in judicial emergencies that have occurred on Chairman GRASSLEY's watch just in the past year.

What is an emergency? It means there are not enough judges—too many

cases for a judge to do the work. A vacant judgeship is automatically declared an emergency, as it should be. When the Republicans assumed control of the Senate last year there were 12 emergencies nationwide. Today, a year later, that number has almost tripled to 31.

By nearly every metric, the Judiciary Committee under Chairman GRASSLEY is failing dramatically, setting all records of failure in this great body. The committee is failing the people of Iowa and the Nation.

To the senior Senator from Iowa, I stress, I plead, don't continue down this path. Reject this record-setting obstruction and simply do your job as a powerful chairman of the Judiciary Committee.

Mr. President, I see no one on the floor. Will the Chair announce the business of the day.

RESERVATION OF LEADER TIME

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

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 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.

Mr. REID. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. COTTON. Mr. President, I ask unanimous consent that the confirmation vote scheduled for 11 a.m. this morning be moved until 12 noon, with all other provisions of the previous order remaining in effect.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant legislative clerk proceeded to call the roll.

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

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

FILLING THE SUPREME COURT VACANCY

Mr. DURBIN. Mr. President, every Member of the Senate stands in the

well of the Senate when they are elected, takes an oath of office. That oath of office, required by the Constitution, is our statement to not only the people we represent but to the Nation, that we will uphold and defend the Constitution of the United States.

Article II, section 2 of that Constitution empowers the President. Those powers include the President's power to fill vacancies on the Supreme Court. It is not permissive language. The word "shall" can be found in this paragraph. It basically says that the President of the United States shall nominate, and by and with the advice and consent of the Senate, shall appoint judges of the Supreme Court.

For the first time in the history of the United States of America, Senate Republicans are prepared to defy this clear statement of the U.S. Constitution. What an irony that filling the vacancy on the Court by the untimely death of Antonin Scalia—filling the vacancy on the Court of a man who prided himself throughout his judicial career as being what he termed an "originalist," sticking to the strict letter of the law, as spelled out in the Constitution—in filling that vacancy, the Senate Republicans have basically decided to reach a new low; in fact, to make history in a very sad way. A seat on the U.S. Supreme Court lies vacant because of the death of Justice Scalia. The President has the constitutional obligation, as I have read, to name a nominee to fill that vacancy. Senate Republicans are now saying they will not even hold a hearing on that nominee.

If the President sends a name—and he will—to the Senate to fill that vacancy, they have said they will not hold a hearing, they will not schedule a vote, and, listen to this, yesterday Senator MCCONNELL said: I will not even meet with that person.

This is a new low. Since the Senate Judiciary Committee started holding hearings on Supreme Court nominees a century ago, the Senate of the United States of America has never—never—denied a hearing to a pending Supreme Court nominee. It has never happened, but that is what Senate Republicans are saying they will do.

This level of obstruction, of ignoring the clear language of the Constitution, is unprecedented, and it is dangerous. This goes beyond any single vote for any Supreme Court nominee. This is an abdication of the Senate's responsibility under article II, section 2 of the Constitution to provide advice and consent on Supreme Court nominations, which the President shall appoint and shall nominate.

Senate Republicans want to keep the Supreme Court seat vacant for more than 1 year. They want this vacancy to continue for more than 1 year. That will encompass two terms of the Supreme Court. This is demeaning to the institution of the Supreme Court, and unfair to millions of Americans who rely on that Court to resolve important legal questions.

In the coming days, the President will name a nominee, as the Constitution requires him to do. Senate Republicans should meet their responsibility under the Constitution, do their jobs, and give the President's nominee a fair hearing and a vote.

Yesterday, the Republican members of the Senate Judiciary Committee sent a letter to the majority leader, and here is what they said: "This Committee will not hold hearings on any Supreme Court nominee until after our next President is sworn in on January 20, 2017."

Why did they take this unusual position in defiance of the Constitution? They said: "The presidential election is well underway. Americans have already begun to cast their votes. . . . The American people are presented with an exceedingly rare opportunity to decide, in a very real and concrete way, the direction the Court will take over the next generation."

This argument is specious. The American people have already voted; they voted to elect our President, Barack Obama, and they voted to elect 100 Senators who currently serve in this body. President Obama was elected to a 4-year term, and 11 months remain. The American people voted for each of us to do our jobs for as long as we serve in office. By a margin of 5 million votes, the American people have chosen the President. Did they elect the President for 3 years, or 3 years and 2 months? No. They elected a President for 4 years, and this President's term continues until January 20, 2017.

The Republicans conveniently ignore the obvious. The will of the American people was expressed in that election, and the election of Barack Obama as President of the United States empowers him under the Constitution to fill this vacancy with an appointment. They didn't vote in that election for us to sit on our hands for over a year while the Supreme Court twists in the wind and while the Republican Senators pray every night that President Donald Trump will somehow give America a different Supreme Court nominee. Not a single American, incidentally, has yet cast a vote for President of the United States—not one—in the next election, despite the statement of the Judiciary Committee Republicans that says otherwise.

It is February of this year. The nomination conventions are scheduled for late July. The modern Supreme Court confirmation process has taken an average of 67 days. There is more than adequate time to hold a hearing on this nominee and get this done properly. All we need is for the Senate Republicans to do their jobs.

Yesterday on the Senate floor, I urged my Republican colleagues not to duck a vote on the President's nominee. They could vote yes, they could vote no, but they shouldn't abdicate their constitutional responsibility for political advantage. I am amazed that my Republican colleagues now say that