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Senate

The Senate met at 10 a.m. and was called to order by the Honorable MIKE ROUNDS, a Senator from the State of South Dakota.

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Eternal Spirit, to whom we must give an account for all our powers and privileges, guide our steps, use us to bring healing to our Nation and world.

Give wisdom to our Senators, making them faithful stewards of Your will. As they strive to serve You, help them to remember that to whom much is given, much will be required. Open their minds and hearts to know and do Your will, relying on Your strength to empower them to serve You with honor. May they discover in their daily world the joy of partnership with You.

Lord, use them to keep America a shining city on a hill. As they delight in Your presence, plant within their hearts a greater desire to glorify You.

We pray in Your merciful Name. Amen.

PLEDGE OF ALLEGIANCE

The Presiding Officer led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. HATCH).

The senior assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, February 16, 2017.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable MIKE ROUNDS, a Senator from the State of South Dakota, to perform the duties of the Chair.

ORRIN G. HATCH,
President pro tempore.

Mr. ROUNDS thereupon assumed the Chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

NOMINATION OF SCOTT PRUITT

Mr. MCCONNELL. Mr. President, in just a few minutes we will have an opportunity to confirm the nominee for the Office of Management and Budget. I had several things to say about him yesterday. Now I want to talk about the nominee we can advance after that confirmation vote.

Let me start by saying this. We all want clean water. We all want clean air. Promoting these goals is supposed to be the mission of the Environmental Protection Agency, but under the Obama administration, the agency's leadership prioritized partisan politics instead. It pursued policies that often put political benefits ahead of environmental ones. It ignored laws. It acted beyond its authority. It even treated middle-class coal families as enemies and then attacked them without a real sense of compassion.

The nominee before us, Oklahoma attorney general Scott Pruitt, thinks it is time for the EPA to get back to the business of clean air and clean water instead, and to do so with an appreciation for the complexity of our modern world, with awareness of the broader economy, with compassion toward

those impacted, with respect for the rule of law and the rights of State and local governments.

Pruitt has earned the support of countless groups across the country, from State environmental protection officers to agricultural leaders. He has the bipartisan backing of dozens of his fellow attorneys general as well. They say he is someone who is "committed to clean air and clean water," one who is apt to "come to Congress for a solution, rather than inventing power" for himself.

What a welcome change. What a welcome change from the previous administration.

This is from a predecessor of Pruitt's in the attorney general's office, Democrat Mike Turpen:

As a Democrat, I take seriously the threats to our environment. . . . I may not agree with all the President-elect's policies or nominees, but I do know that Oklahoma Attorney General Scott Pruitt is a good choice to head up the Environmental Protection Agency.

Scott Pruitt's background in constitutional law, combined with a nuanced understanding of how environmental regulations affect the economy, mean that he will be a thoughtful leader of the EPA, and one capable of striking the balance between protecting the environment and our economy.

Here is another Democratic attorney general:

I am a Member of the Democratic National Committee and was a strong supporter of Secretary Clinton's campaign for President. I believe in the core mission of the Environmental Protection Agency.

And the nominee before us is known to him as "a staunch defender of sound science and good policy as appropriate tools to protect the environment of his State."

As one Democratic Senator put it, Scott Pruitt simply has "the right experience for the position."

He is exceptionally qualified. He is dedicated to environmental protection, and, as someone with State government experience, he understands the real world consequences of EPA actions

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.



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and knows that balance is the key to making policies that are sustainable over the long term. Pruitt is just the candidate we need at the helm of the EPA.

We should confirm him. Doing so will represent another positive change in Washington that can give hope to families in Kentucky and across the Nation who are still recovering from the last 8 years.

RESOLUTION OF DISAPPROVAL

Mr. MCCONNELL. Mr. President, here is something else that will give cheer to Kentucky families. I am pleased to report that today the President will sign a resolution identical to a proposal I introduced, a resolution that will undo a harmful regulation that could threaten nearly one-third of America's coal mining jobs. I am looking forward to attending that signing ceremony later today.

This resolution is just one of several that we hope to send to the President to begin providing the American people with relief, protecting jobs, and growing our economy. It reflects promises made and promises kept.

REPEALING AND REPLACING OBAMACARE

Mr. MCCONNELL. Mr. President, now on another matter, let me begin with a statement of the obvious. ObamaCare is a disaster, an absolute disaster. Just one in five Americans say their families are better off since it went into effect. More actually say they are worse off. And, really, is it any wonder?

Americans were promised that costs would go down, but in fact they skyrocketed. Americans were promised choice, but it shriveled. We have been warning that choices would continue their downward decline under the ObamaCare status quo, and that is just what we saw this very week. One large national insurer announced it was being forced from the marketplace altogether—meaning thousands, including many in Kentucky, will lose their current health plans, thanks to ObamaCare.

The CEO of another major insurer predicted more insurers would soon follow—meaning thousands could find themselves without a single choice of health coverage, thanks to ObamaCare. This partisan law has entered a “death spiral,” the CEO warned, and “it is not going to get any better; it's getting worse.”

This should be a wake-up call to the do-nothing crowd on the left. ObamaCare isn't working. It isn't sustainable, and it is going to continue attacking the middle class until it is repealed and replaced.

We have already begun the process here in Congress. We are going to continue working hand in hand with the administration to get it done. In the meantime, there is much the administration can do to help bring calm out

of the chaos from ObamaCare's broken promises. That is especially true of Health and Human Services Secretary Tom Price, who was finally confirmed after weeks of unprecedented obstruction from across the aisle.

We saw a great example yesterday of what he can do to help stabilize the insurance market and protect consumers. The commonsense reforms he issued can help put downward pressure on costs and help prevent the fraud and abuse that ultimately hurt everyone. I commend him for taking these important first steps. They will help provide relief for Americans as broader efforts are made to address the underlying concerns with ObamaCare.

The status quo on ObamaCare is simply unsustainable. Congress will continue working to repeal and replace it with commonsense, step-by-step reforms. As we do, I hope the administration will continue using its existing authority to protect Americans from the unnecessary harm of this broken law.

NOMINATION OF NEIL GORSUCH

Mr. MCCONNELL. Mr. President, on one final matter, Neil Gorsuch is one of the most impressive Supreme Court nominees we have ever seen. His resume is a mile long, his reputation is second to none, and his record is literally something to behold.

In nearly a decade on the circuit court, his work was so outstanding, the Supreme Court didn't need to check it very often. In fact, as we recently learned from his Judiciary Committee questionnaire, the High Court felt the need to review on the merits an opinion he offered only once in 10 years. In that one case, a broad cross section of the Justices on the Court voted to affirm his work, with Justices Ginsburg, Breyer, and Sotomayor joining Justices Thomas and Alito in affirming his opinion.

Let me put that in context. Out of 240 opinions Judge Gorsuch wrote for the Tenth Circuit or where he authored a concurrence or dissent—not to mention the 500 additional unpublished dispositions he has written—the Supreme Court reviewed only one—one of his cases on the merits, and it affirmed the one case.

As for the cases where Judge Gorsuch did not write the opinion but joined in the opinion of his colleagues, the Supreme Court reviewed five of those cases, and the Court affirmed four out of five. So even including opinions that Judge Gorsuch did not author but joined, his overall record in the Supreme Court is being affirmed in five out of six cases.

How does that record compare to some of his would-be colleagues on the Supreme Court?

Well, President Obama's first nominee, Sonia Sotomayor also was a circuit court judge before she was appointed to the Supreme Court, and she was a circuit court judge for about the same amount of time as Judge Gorsuch has been, approximately a decade.

The Supreme Court reviewed on the merits five opinions she authored as a circuit court judge. But the Court reversed her most of the time—reversing her three out of five times. And in one of those two cases that it affirmed, the Supreme Court unanimously rejected her reasoning in doing so, finding that it “flies in the face of the statutory language.”

So the Supreme Court actually rejected the approach of then Judge Sotomayor in four out of five opinions she authored.

Our Democratic colleagues are insistent that we have someone mainstream appointed to the Court, with the definition of mainstream, of course, being determined by their particular worldview. Since all of our Democratic colleagues who were here when her nomination to the Supreme Court was pending supported Justice Sotomayor, I know that they found her to be mainstream. Given that Judge Gorsuch's record before the Court he seeks to join is quite a bit better than hers, I assume they would concede, even if grudgingly, that as measured by one's record before the Supreme Court as a lower court judge, Judge Gorsuch is at least as “mainstream” as she is.

With Judge Gorsuch's impressive record before the Supreme Court and other impressive qualities, it is no wonder, then, that both sides of the political spectrum can't help but praise him. I have shared some of that praise already from those who have worked alongside him, from those who have studied underneath him, and now some thoughts from those who appeared before him.

Let me read to my colleagues from an article that appeared just a few days ago in the Albuquerque Journal:

Local attorneys from across the political spectrum who have appeared before U.S. Supreme Court nominee Judge Neil Gorsuch call him a “gentleman,” “extraordinarily affable,” and “an exceptional nomination.” As a Federal Court of Appeals judge posted in Denver for the last 10 years, Gorsuch has ruled on numerous cases from New Mexico, giving many local attorneys an up-close view of the man who could fill the seat of the late U.S. Supreme Court Justice Antonin Scalia.

Here is one local lawyer who praised his fairness:

He is an enormous intellect, a really, really bright guy. . . . He'll be one of the brightest justices on that court—if not the brightest. It was always a pleasure to be in front of him because whether you won or lost, you knew you were going to be treated fairly.

Here is another lawyer, a Democrat who appeared before him a dozen or so times, mostly on civil rights cases:

Gorsuch is not an “ideologue.” Politics aside, Judge Gorsuch would be someone good for the judiciary and the country. People should rest assured that he would always try to make the most learned and just decision and politics would not be a consideration or factor in his decisions. . . . And that's from me, and I'm a longtime Democrat.

Here is one more who noted the legacy he has already left behind:

Gorsuch has placed 11 of his (Appeals Court) clerks with Supreme Court justices,