

Relations Committee be discharged from further consideration of S. Res. 83 and the Senate proceed to its immediate consideration.

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

The clerk will report the resolution by title.

The senior assistant legislative clerk read as follows:

A resolution (S. Res. 83) expressing the sense of the Senate regarding the trafficking of illicit fentanyl into the United States from Mexico and China.

There being no objection, the Senate proceeded to consider the resolution.

Mr. LANKFORD. I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, and the motions to reconsider be considered made and laid upon the table with no intervening action or debate.

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

The resolution (S. Res. 83) was agreed to.

The preamble was agreed to.

(The resolution, with its preamble, is printed in the RECORD of March 8, 2017, under "Submitted Resolutions.")

#### HONORING IN PRAISE AND REMEMBRANCE THE EXTRAORDINARY LIFE, STEADY LEADERSHIP, AND REMARKABLE, 70-YEAR REIGN OF KING BHUMIBOL ADULYADEJ OF THAILAND

Mr. LANKFORD. Mr. President, I ask unanimous consent that the Foreign Relations Committee be discharged from further consideration of and the Senate now proceed to the consideration of S. Res. 9.

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

The clerk will report the resolution by title.

The senior assistant legislative clerk read as follows:

A resolution (S. Res. 9) honoring in praise and remembrance the extraordinary life, steady leadership, and remarkable, 70-year reign of King Bhumibol Adulyadej of Thailand.

There being no objection, the Senate proceeded to consider the resolution.

Mr. LANKFORD. I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, and the motions to reconsider be considered made and laid upon the table.

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

The resolution (S. Res. 9) was agreed to.

The preamble was agreed to.

(The resolution, with its preamble, is printed in the RECORD of January 10, 2017, under "Submitted Resolutions.")

#### EXPRESSING SUPPORT FOR THE DESIGNATION OF MARCH 21, 2017, AS "NATIONAL ROSIE THE RIVETER DAY"

Mr. LANKFORD. Mr. President, I ask unanimous consent that the Judiciary

Committee be discharged from further consideration of and the Senate now proceed to the consideration of S. Res. 76.

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

The clerk will report the resolution by title.

The senior assistant legislative clerk read as follows:

A resolution (S. Res. 76) expressing support for the designation of March 21, 2017, as "National Rosie the Riveter Day."

There being no objection, the Senate proceeded to consider the resolution.

Mr. LANKFORD. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, and the motions to reconsider be considered made and laid upon the table.

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

The resolution (S. Res. 76) was agreed to.

The preamble was agreed to.

(The resolution, with its preamble, is printed in the RECORD of March 1, 2017, under "Submitted Resolutions.")

#### SUPPORTING THE DESIGNATION OF MARCH 2017 AS "NATIONAL COLORECTAL CANCER AWARENESS MONTH"

Mr. LANKFORD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of S. Res. 89, submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The senior assistant legislative clerk read as follows:

A resolution (S. Res. 89) supporting the designation of March 2017 as "National Colorectal Cancer Awareness Month."

There being no objection, the Senate proceeded to consider the resolution.

Mr. LANKFORD. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, and the motions to reconsider be considered made and laid upon the table with no intervening action or debate.

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

The resolution (S. Res. 89) was agreed to.

The preamble was agreed to.

(The resolution, with its preamble, is printed in the RECORD of March 21, 2017.)

#### ORDERS FOR THURSDAY, MARCH 16, 2017, THROUGH TUESDAY, MARCH 21, 2017

Mr. LANKFORD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn, to then convene for pro forma sessions only, with no business being conducted, on the following dates and times and that following each pro forma session, the Senate adjourn until

the next pro forma session: Thursday, March 16 at 11:30 a.m. and Monday, March 20 at 10 a.m.; I further ask that when the Senate adjourns on Monday, March 20, it next convene at 10:30 a.m. on Tuesday, March 21; that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, and the time for the two leaders be reserved for their use later in the day; further, that following leader remarks, the Senate be in a period of morning business for 1 hour, with Senators permitted to speak therein; finally, that the morning business hour be equally divided, with the majority controlling the first half and the Democrats controlling the final half.

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

#### ORDER FOR ADJOURNMENT

Mr. LANKFORD. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that it stand adjourned under the previous order, following the remarks of Senator HATCH.

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

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

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

#### NOMINATION OF NEIL GORSUCH

Mr. HATCH. Mr. President, I rise today to once again address the nomination of Judge Neil M. Gorsuch to be the next Associate Justice of the U.S. Supreme Court.

I am extraordinarily pleased that the President has nominated such an outstanding individual to fill the seat that was held by my friend, the late Justice Antonin Scalia, for nearly three decades.

In the weeks since Judge Gorsuch's nomination, I have done my best to make the case that he is exactly the kind of Justice that we need: one that will—in the timeless words of *Marbury v. Madison*—say what the law is, not what he wishes the law would be.

In my view, his outstanding credentials and his understanding of the proper role of a judge under our Constitution make him a choice that should command universal support. Unfortunately, this feeling does not appear to be as broadly shared as it should be.

Leftwing activists are demanding a scorched-earth approach to Judge Gorsuch's nomination, and I am afraid that some of my colleagues on the other side of the aisle appear to have been swept up in this fervor. Their opposition stems from two different

sources and has taken two different forms.

The first cause is the visceral reaction among some to our new President. After last year's bitterly fought election campaign, many on the left simply refuse to accept the legitimacy of the new administration and are dead set on all-out opposition to every initiative, every policy, and every nominee of this President. As a case in point, we are in mid-March and the President is still waiting for the Senate to confirm his Cabinet nominees. This hasn't happened, to my knowledge, in the 40 years I have been in the Senate.

Skeptical of any nominee's willingness to hold the administration that nominated him accountable to the law, they are demanding assurances about how Judge Gorsuch would rule on the administration's most controversial moves.

The Supreme Court confirmation process should not be treated as just another forum to litigate the wisdom and lawfulness of the new administration's policies. Not only does such an approach distract from the proper focus on the nominee's qualifications and judicial philosophy, but it also threatens to undermine the very independence Democrats claim to want in a Supreme Court Justice.

As I have explained in detail as recently as last week, nominees of both parties for decades have refused to speculate on cases that may come before them in order to not prejudice their potential future judgments. Moreover, as a sitting Federal judge, Judge Gorsuch is bound by the code of conduct for United States judges, one of the canons of which prohibits a judge from making "public comment on the merits of a matter pending or impending in any court."

In light of this longstanding, necessary, and, in Judge Gorsuch's case, legally mandated practice, I have found it extraordinarily disappointing to hear some of my colleagues try to turn on its head Judge Gorsuch's admirable efforts to protect his independence. For example, the minority leader has repeatedly castigated Judge Gorsuch for refusing to take a definitive stand on the legality of the new administration's policies, accusing him of "avoiding answers like the plague."

For those of us of all political stripes who want a Supreme Court Justice who decides cases on the basis of what the law commands, rather than whether the result serves a particular political or policy agenda—be it Republican or Democrat, conservative or liberal, pro-Trump or anti-Trump—Judge Gorsuch's refusal to prejudice his approach to future cases should be celebrated, not condemned.

As Justice Sotomayor said recently: "Any self-respecting judge who comes in with an agenda that would permit that judge to tell you how they will vote is the kind of person you don't want as a judge."

Put more colorfully, there is a plague threatening judicial independence;

here, this plague takes the form of the minority leader's attempt to extract these sorts of inappropriate answers, and Judge Gorsuch is wise to avoid that. The minority leader should know better.

Moreover, we know the minority leader does know better, given his many years of service on the Judiciary Committee and, in particular, how he acquiesced to the same approach when now-Justices Sotomayor and Kagan were presented with similar timely hypotheticals during their confirmation processes.

Sadly, I have little doubt that this line of attack on Judge Gorsuch will continue to infect the confirmation process, but we should be completely clear and unambiguous about what these attempts to get Judge Gorsuch to answer hypothetical questions about the legality of the administration's policies represent. They are illegitimate, partisan attempts to derail his nomination, cleverly shrouded in a cloak of alleged concern about his independence. Americans should not be under any illusions that these proper concerns about independence amount to anything else.

To turn to the second source of opposition to Judge Gorsuch's nomination, one need only examine this week's New York Times heading, which blared: "Democrats' Line of Attack on Gorsuch: No Friend of the Little Guy."

This same theme has been repeated by various leftwing interest groups and by some of my colleagues here in the Senate. They should be ashamed. As I have explained extensively in the past, the judge's critics view the judiciary as simply an extension of politics, just another forum to relitigate battles that they lost in the policymaking process. In their view, the job of a judge is not to apply the law to the facts dispassionately, but rather to pick winners and losers on the basis of the political popularity of the litigants and the policy consequences of the decision.

While such an approach is antithetical to the role of a judge under the Constitution, it has become an entrenched article of faith for most of those on the left. As such, they have approached Judge Gorsuch's nomination in a predictable manner: cherry-picking and mischaracterizing his opinions as evidence of a political agenda with total disregard of what the law commanded in each of those cases.

Simply put, this line of attack on Judge Gorsuch is ludicrous. Any reasonable analysis of his opinions shows that his decisions apply to laws enacted by the people's elected representatives, without regard to his own personal preferences. His approach manifests the Constitution's vision of the appropriate role of a judge that has been prominently embraced by Justice Scalia: "If you're going to be a good and faithful judge, you have to resign yourself to the fact that you are not always going to like the conclusions you

reach. If you like them all the time, you're probably doing something wrong."

Today, I want to examine just a few of the cases seized on by Judge Gorsuch's liberal critics to demonstrate just how unfounded their attacks are. *Compass Environmental v. Occupational Safety and Health Review Commission* involved a Tenth Circuit ruling against a firm for failing to provide adequate training to protect its employees from electric shock hazards. Judge Gorsuch did indeed rule in the firm's favor, but the case did not present the question of whether the company should do more to protect its workers. Rather, the case turned on the question of whether the Secretary of Labor satisfied the standard of showing any evidence to demonstrate that the firm in question was providing less training than what is the norm in the industry.

One need only examine the judge's opinion to understand how that specific legal burden was met, reaching the same conclusion as the administrative law judge below.

Next, *Riddle v. Hickenlooper* touches on one of the liberals' faith talking points: the supposed need to regulate political speech in order to fight money in politics. While this case has been characterized as some invitation for wealthy and large corporations to exert undue influence in politics, it actually turned on a rather narrow and technical question of whether a \$200 disparity in the contribution limits for major party and write-in candidates for Colorado's State House of Representatives amounted to an equal protection violation.

Judge Gorsuch joined the majority opinion of his colleagues—an Obama appointee, by the way—in agreeing that it did constitute such a violation, and then wrote a brief concurrence outlining how unclear Supreme Court precedent was on this particular point.

Moreover, he stated how "clear" it was that "with a little effort, Colorado could have achieved its stated policy objectives . . . without offending" the Constitution.

In essence, Judge Gorsuch adopted a particularly narrow position on a relatively minor issue in the grand scheme of campaign finance law, meriting none of his opponents' extrapolations about larger issues of political speech.

Finally, several of Judge Gorsuch's writings have called into question the so-called *Chevron* doctrine, under which Federal courts defer to administrative agencies' interpretations of the law. His opponents have seized on this skepticism to argue that Judge Gorsuch is somehow reflexively opposed to regulation. Nothing could be further from the truth.

These critics of Judge Gorsuch should recall that the *Chevron* deference first flourished as a reaction against liberal judges overturning the deregulatory actions of the Reagan administration. I myself am a skeptic of

Chevron and have led the fight to overturn it with my Separation of Powers Restoration Act. But as the name of my legislation suggests, overturning Chevron is about restoring the constitutional allocation of powers between the three branches, maintaining fidelity to the text of the Administrative Procedure Act, and ensuring that the bureaucracy abides by the law no matter its policy goals.

These are a few of Judge Gorsuch's opinions that have been most prominently mischaracterized as driven by a political agenda, when in reality their results are demanded by the law. Sadly, I expect that these mischaracterizations and inappropriate demands of Judge Gorsuch will continue to appear in this confirmation process. They don't have any better arguments, and those arguments are not only flawed, but they are wrong and inappropriate.

Let me quote from a prominent liberal law professor, Harvard's Noah Feldman, to sum up how I think we all should feel about this strategy:

I'm not sure who decided that the Democratic critique of U.S. Supreme Court nominee Judge Neil Gorsuch would be that he doesn't side with the little guy. It's a truly terrible idea. . . . [S]iding with workers against employers isn't a jurisprudential position. It's a political stance. And justices—including progressive justices—shouldn't de-

cide cases based on who the parties are. They should decide cases based on their beliefs about how the law should be interpreted.

That is a liberal law professor agreeing with me, really, and condemning these types of ad hominem attacks by people who know better or should know better.

I urge my colleagues on the other side of the aisle to resist the temptation to give in to partisan and ideological pressure to engage in these tactics I described earlier, and I hope people will pay attention to what I have suggested. These are unworthy of the Senate's role, and they are unmerited with respect to such a stellar nominee as Judge Gorsuch, a man who is clearly committed to the proper, independent role of a judge.

I urge all of my colleagues to join me in helping to ensure his speedy confirmation. This man is a decent, honorable, intelligent man who deserves the support of this decent, honorable, intelligent body. The arguments of the other side are without merit and, frankly, are really abysmal, and I sure hope they will reconsider and vote for this man who will be an excellent Justice on the U.S. Supreme Court.

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

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

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#### ADJOURNMENT UNTIL 11:30 A.M. TOMORROW

The PRESIDING OFFICER. Under the previous order, the Senate stands adjourned until 11:30 a.m. tomorrow.

Thereupon, the Senate, at 6:04 p.m., adjourned until Thursday, March 16, 2017, at 11:30 a.m.

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#### CONFIRMATIONS

Executive nominations confirmed by the Senate March 15, 2017:

##### IN THE ARMY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES ARMY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

##### *To be lieutenant general*

LT. GEN. HERBERT R. MCMASTER, JR.

OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE

DANIEL COATS, OF INDIANA, TO BE DIRECTOR OF NATIONAL INTELLIGENCE.