

If Judge Gorsuch fails to reach 60 votes, it will not be because Democrats are being obstructionists, it will be because he failed to convince 60 Senators that he belongs on the Supreme Court.

My friend the majority leader made the decision to break 230 years of Senate precedent by holding this seat open for over a year. If the nominee cannot earn the support of 60 Senators, the answer is not to break precedent by fundamentally and permanently changing the rules and traditions of the Senate; the answer is to change the nominee. This idea that if Judge Gorsuch doesn't get 60 votes, the majority leader has to inexorably change the rules of the Senate—that idea is utter bunk.

It is the free choice of my colleagues on the other side of the aisle to pursue a change in rules if that is what they decide. And I would remind the majority leader that he doesn't come to this decision with clean hands. He blocked Merrick Garland for over a year. We wouldn't even be here if Judge Garland had been given fair consideration. That is why we are here today—not because of any Democrat.

BORDER WALL

Mr. SCHUMER. Mr. President, finally, on the wall—a place where there may be more agreement between some of us than on Judge Garland—last night we learned that the Trump administration will be seeking deep cuts to critical domestic programs in order to pay for a border wall. The administration is asking the American taxpayer to cover the cost of a wall—unneeded, ineffective, and absurdly expensive—that Mexico was supposed to pay for. He is cutting programs that are vital to the middle class in order to get that done.

They want to cut the New Starts Transportation Program and TIGER grants. These are the lifeblood of our road and tunnel and bridge building efforts. Build a wall or repair or build a bridge or tunnel or road in your community? What a choice. They want to cut off NIH funding for cancer research to pay for the wall. How many Americans would support that decision? They want to cut programs that create jobs and improve people's lives—all so the President can get his "big, beautiful wall"—a wall that we don't need and that will be utterly ineffective. Think about that. The President wants to slow down cancer research and make the middle-class taxpayer shoulder the cost of a wall that Mexico was supposed to pay for. He wants to cut funding for roads and bridges to build a wall that Mexico was supposed to pay for.

The proposed cuts the administration sent up last night will not receive the support of very many people, I believe, in this Chamber. These cuts would be bad for the American people. They are not what the American people want, and they are completely against one of the President's core promises in his

campaign. I believe they will be vigorously opposed by Members on both sides of the aisle.

Mr. President, I yield the floor.

RESERVATION OF LEADER TIME

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

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

EXECUTIVE SESSION

PROTOCOL TO THE NORTH ATLANTIC TREATY OF 1949 ON THE ACCESSION OF MONTENEGRO

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to executive session to resume consideration of Executive Calendar No. 1, the Montenegro treaty, which the clerk will state.

The senior assistant legislative clerk read as follows:

Treaty document No. 114-12, Protocol to the North Atlantic Treaty of 1949 on the Accession of Montenegro.

Pending:

McConnell amendment No. 193, to change the enactment date.

McConnell amendment No. 194 (to amendment No. 193), of a perfecting nature.

The PRESIDING OFFICER. The majority whip.

THE PRESIDENT'S BUDGET

Mr. CORNYN. Mr. President, I came to the floor to talk about the nomination of Judge Gorsuch to serve as the next Supreme Court Justice, and I happened to walk in while the Democratic leader was speaking. In the brief time I heard him comment this morning, I concluded that basically the Democrats are against everything. They are against everything. He knows as well as anybody that when the President sends over a budget, it is a proposal by the President that Congress routinely changes, arriving at its own budget priorities, working with the White House.

NOMINATION OF NEIL GORSUCH

Mr. President, before I get too distracted by the minority leader's opposition to anything and everything, let me comment a little bit on the Gorsuch nomination.

We will meet next week, on April 3, to vote Judge Gorsuch's nomination out of the Senate Judiciary Committee, at which time his nomination will come to the floor. The world had a chance to see—and certainly all of America—during the 20 hours that Judge Gorsuch testified before the Judiciary Committee that he is a superb nominee. He is a person with a brilliant legal mind. He has an incredible educational resume and extensive experience both in the public sector—working at the Department of Justice—and in private practice and then for the last 10 years, of course, serving as a

Federal judge on the Tenth Circuit Court of Appeals out of Denver.

I believe he is one of the most qualified nominees in recent history, to be sure, and you might have to go back into our early history to find somebody on par with Judge Gorsuch in terms of his qualifications for this important office. Unfortunately, in spite of this, we are seeing the minority leader threatening to filibuster this incredibly well-qualified judge. I hope other Democrats will exercise independence and do the right thing.

I was glad to see just yesterday our colleague, the former chairman of the Judiciary Committee, the senior Senator from Vermont, say that he had a different take. He was quoted in a Vermont newspaper—perhaps it is a blog—it is called VTdigger.org. Senator LEAHY, the former chairman of the Judiciary Committee, said: "I am not inclined to filibuster."

Just for the benefit of anybody who might be listening, let me distinguish between the use of the filibuster as opposed to voting against the nominee.

It is a fact that there has never been a successful partisan filibuster of a Supreme Court nominee in American history—never.

The only time cloture was denied on a bipartisan basis of a nominee to the Supreme Court was in 1968, when Abe Fortas was nominated by then-President Lyndon Johnson. Mr. Fortas, then serving as an Associate Justice on the Supreme Court of the United States, had a number of problems, one of which was that he was still advising President Johnson while he was a sitting member of the U.S. Supreme Court. He was basically giving political advice from the bench to the President of the United States, with whom he had a long-established relationship.

Then there was a suspicion that Earl Warren, the Chief Justice of the United States, had cut a deal with the President such that he would resign effective upon the qualifying of his successor. So there wasn't any literal vacancy to fill. The President would then nominate Abe Fortas, then an Associate Justice, and he would then nominate Homer Thornberry, then a judge on the Fifth Circuit Court of Appeals, to fill the Fortas Associate Justice slot. There were a couple of embarrassing items to Judge Fortas that caused a bipartisan denial of cloture, or the cutting off of debate, after which his nomination was withdrawn after 4 days of floor debate.

I mention all of this because sometimes people want to lead you down this rabbit trail, claiming that what they are doing is something that is well established in our history and in this precedence of the Senate when that is absolutely not true. There has never been a partisan filibuster of a Supreme Court nominee that has been successful in denying that Justice to the Supreme Court's nomination to be confirmed—never. What Democrats are threatening to do next week when

Judge Gorsuch's nomination comes to the floor is unprecedented. It has never happened before.

I am glad to hear some voices of sanity and wisdom from people like Senator LEAHY, who said he was not inclined to join in that filibuster. I also saw that our colleague from West Virginia, Senator MANCHIN, has said he will not filibuster the nominee. It is totally a separate issue as to whether they vote to confirm the nominee ultimately because, as we all know, in working here in the Senate, in order to get to that up-or-down vote, you have to get past this cloture vote, which requires 60 votes, and it has been traditional that we have not even had those cloture votes with regard to Supreme Court nominations.

As a matter of fact, there have only been four of those in our history. Two of them were with regard to William Rehnquist when nominated as Associate Justice to the Supreme Court and then when he was nominated to be Chief Justice of the Supreme Court. With Samuel Alito, there was cloture obtained. Ultimately, he won an up-or-down vote and got a majority of votes on the Senate floor. Then, of course, there was the Fortas nomination, which I mentioned earlier. In none of those four cases was there a partisan filibuster that denied an up-or-down vote to the nominee. Again, the only one that is a little of an outlier is the Fortas nomination, which was ultimately withdrawn, so the Senate did not have the opportunity to come back and revisit that initial failed cloture vote because of the ethical problems that led Judge Fortas to resign from the Supreme Court and return to private practice.

Let me talk a minute about the excuses our Democratic colleagues have given in opposing Judge Gorsuch.

First, they said they would fight a nominee who was not in the mainstream.

I believe that out of the 2,700 cases Judge Gorsuch has participated in, 97 percent of those have been affirmed on appeal—97 percent. He has only been reversed in maybe one case. I believe there was a discussion about it. There was even an argument as to whether that was an outright reversal. It is very unusual, in my experience, to see a judge who enjoys such a tremendous record of affirmance on appeal and such a very low record of reversal, particularly for an intermediate appellate court like the Tenth Circuit Court of Appeals.

After they realized this “out of the mainstream” argument wouldn’t work, they then moved the goalpost. Some of my friends on the other side of the aisle have implied they might oppose Judge Gorsuch because of his refusal to answer questions about issues that could come before him on the Court. In doing so, the judge was doing exactly what is required by judicial ethics. In other words, how would you feel if the judge before whom you appeared had

previously said “If I get confirmed, I will never vote in favor of a litigant with this kind of case”? Judges do not do that. Judges are not politicians who run for office on a platform. In fact, judges are supposed to be the anti-politician—ruling on the law and the facts. It is not based on a personal agenda or a political agenda at all, and our colleagues know that.

This is the same rule that was embraced by Ruth Bader Ginsburg—someone whom our friends across the aisle admire on the Court. Elena Kagan did the same thing in refusing to comment or speculate, saying that it would be improper for them to prejudge these cases or to campaign, basically, for a lifetime appointment on the Supreme Court. Judge Gorsuch did the same thing as Justices Ginsburg and Kagan, and he fulfilled his ethical obligations as a sitting judge and preserved the independence of the judiciary by keeping an open mind as to cases that come before him.

When they failed to make the case that Judge Gorsuch was somehow out of the mainstream, when they failed to make the case that he somehow was being nonresponsive in his answering questions by the Judiciary Committee, the goalpost moved yet again. Last week, some suggested that Judge Gorsuch never ruled in favor of the “little guy.” This was following a line of arguments peddled by some outside groups who were trying to paint Judge Gorsuch as unsympathetic to the litigants who appeared in his court.

Fortunately, Judge Gorsuch set the record straight. He made clear that his motivation in each and every case is to follow the law wherever it may lead and to reach a decision based on where the law stands, not on his personal opinion or emotions. Again, a good judge does not judge the litigants but, rather, the case at hand.

I should point out, as I did with regard to the more than 2,700 cases Judge Gorsuch has decided, that virtually all of them have been affirmed, meaning that every judge on the panel, including those nominated by Democrats, reached the same conclusion that he did, and they were approved, or affirmed, by the higher court, certainly not reversed.

I think our colleagues are making a tragic mistake by denying this President his nominee for the Supreme Court of the United States. If Judge Gorsuch is not good enough for them, they will never vote to confirm any nominee from this or any other Republican President of the United States. What would happen if that view were to prevail? I think we would see the Supreme Court essentially become nonfunctional and shut down, and litigants who were hoping to get access to a hearing before the Court would have nowhere to turn. It is not acceptable.

Some of our colleagues remind me of the old story about the child who murders his parents and then comes before the court and asks for leniency, saying:

I am an orphan. This is a situation of their own making.

I really regretted hearing the Democratic leader talk about a case in which somehow there was the argument that because the judge followed the precedent that then existed but that a future decision in a Supreme Court case changed that precedent—that the judge should have anticipated it and somehow failed to follow the current precedent because the Supreme Court at some later date might change that precedent. It makes absolutely no sense.

So what our colleagues are doing is basically saying that no nominee of President Trump’s or any Republican nominee is going to get confirmed to the Supreme Court because it is going to require 60 votes to do so. This would be unprecedented in our Nation’s history. I think it will be an abuse of the power we have in the Senate of encouraging debate, which is the cloture vote, by filibustering this outstanding nominee.

I have said it before and I will say it again: Judge Gorsuch is going to have his day on the Senate floor. We are going to have a fulsome debate. We are going to give our Democratic colleagues a chance to do the right thing and to vote at some point to cut off debate and then have an up-or-down vote to confirm the nominee, just as has happened in every single case before, with the possible exception of the Fortas nomination, which I described earlier, which was ultimately withdrawn and the judge resigned because of an ethical scandal.

I hate to see our colleagues taking us down this path, but they are determined to oppose anything and everything these days. We used to say there was a difference between campaigning and governing. Basically, they are so upset with the outcome of the election that they are continuing the political campaign now and making it impossible for us to do our work here in the Senate. It is a crying shame.

I can only hope that cooler heads will prevail and that others in the Democratic caucus will listen to Senator LEAHY and others who say they are not inclined to filibuster. Whether they decide to vote against the nominee is entirely up to them, but denying the majority in the Senate a chance to vote to confirm the nominee is simply unacceptable, and it will not stand.

I yield the floor.

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.

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

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

Ms. COLLINS. Mr. President, confirming a Supreme Court nominee is one of the Senate’s most significant constitutional responsibilities. I come

to the floor today to announce that I shall cast my vote for Judge Neil Gorsuch to be a Justice of the U.S. Supreme Court. In making my decision, I evaluated Judge Gorsuch's qualifications, experience, integrity, and temperament. I questioned him for more than an hour in a meeting in my office, evaluated his record, spoke with people who know him personally, and reviewed the Judiciary Committee's extensive hearing record. While I have not agreed with every decision Judge Gorsuch has made, my conclusion is that he is eminently well qualified to serve on our Nation's highest Court.

Judge Gorsuch has sterling academic and legal credentials. In 2006, the Senate confirmed this outstanding nominee by a voice vote to his current position on the U.S. Court of Appeals. A rollcall vote was neither requested nor required.

Judge Gorsuch's ability as a legal scholar and judge has earned him the respect of members of the bar. The American Bar Association Standing Committee on the Federal Judiciary has unanimously given him its highest possible rating of "well qualified." President Obama's former Acting Solicitor General testified before the Judiciary Committee in support of Judge Gorsuch, praising him as fair, decent, and committed to judicial independence.

I have also received a letter signed by 49 prominent Maine attorneys with diverse political views, urging support for Judge Gorsuch's nomination. They wrote:

Gorsuch's judicial record demonstrates his remarkable intelligence, his keen ability to discern and resolve the central issues at dispute in a legal proceeding . . . and his dedication to the rule of law rather than personal predilections. His judicial record also confirms that he is committed to upholding the Constitution, enforcing the statutes enacted by Congress, and restraining overreach by the executive branch.

In my view, these are precisely the qualities that a Supreme Court Justice should embody.

I ask unanimous consent that this letter be printed in the RECORD following my remarks.

Our personal discussion allowed me to assess the judge's philosophy and character. I told him that it was important to me that the judiciary remain an independent check on the other two branches of government as envisioned by our Founders. Therefore, I asked him specifically whether anyone in the administration had asked him how he would rule or sought any commitment from him on any issue. He was unequivocal that no one in the administration had asked him for such promises or to prejudge any issue that could come before him. He went on to say that the day a nominee answered how he would rule on a matter before it was heard or promised to overturn a legal precedent, that would be the end of an independent judiciary.

During the Judiciary Committee hearings, when Senator LINDSEY GRA-

HAM asked him a similar question about whether he was asked to make commitments about particular cases or precedents, he gave the same answer. In fact, Judge Gorsuch notably said that if someone had asked for such a commitment, he would have left the room because it would never be appropriate for a judge to make such a commitment, whether asked to do so by the White House or a U.S. Senator.

Neil Gorsuch is not a judge who brings his personal views on any policy issues into the courtroom. If it can be said that Judge Gorsuch would bring a philosophy to the Supreme Court, it would be his respect for the rule of law and his belief that no one is above the law, including any President or any Senator.

I am convinced that Judge Gorsuch does not rule according to his personal views, but rather follows the facts and the law wherever they lead him, even if he is personally unhappy with the result. To paraphrase his answer to one of my questions about putting aside his personal views, he said that a judge who is happy with all of his rulings is likely not a good judge.

The reverence that Judge Gorsuch holds for the separation of powers, which is at the core of our American democracy, was also evident in our discussion. As he reiterated throughout his confirmation hearing, the duty to write the laws lies with Congress, not with the courts and not with the executive branch. Members of this body should welcome his deep respect for that fundamental principle.

Judge Gorsuch's record demonstrates that he is well within the mainstream of judicial thought. He has joined in more than 2,700 opinions, 97 percent of which were unanimously decided, and he sided with the majority 99 percent of the time.

I asked Judge Gorsuch how he approaches legal precedents. I asked him if it would be sufficient to overturn a long-established precedent if five current Justices believed that a previous decision was wrongly decided. He responded: "Emphatically no." And that, to me, is the right approach. He said a good judge always starts with precedent and presumes that the precedent is correct.

During his Judiciary Committee hearing, Judge Gorsuch described precedent as "the anchor of the law" and "the starting place for a judge." He has also coauthored a book on legal precedent with 12 other distinguished judges, for which Justice Stephen Breyer wrote the introduction.

Now, there has been considerable discussion over the course of this nomination process about the proper role of the courts in our constitutional system of government. It is also important for us to consider the roles that the executive and legislative branches play in the nomination process.

Under the Constitution, the President has wide discretion when it comes to nominations to the Supreme Court.

The Senate's role is not to ask, Is this the person whom I would have chosen to sit on the bench? Rather, the Senate is charged with evaluating each nominee's qualifications for serving on the Court.

I have heard opponents of this nominee criticize him for a variety of reasons, including his methodology and charges that he is somehow extreme or outside of the mainstream. But I have not heard one Senator suggest that Judge Gorsuch lacks the intellectual ability, academic credentials, integrity, temperament or experience to serve on the U.S. Supreme Court. Yet it is exactly those characteristics that the Senate should be evaluating when exercising its advice and consent duty.

This is especially true when Senators contemplate taking the extreme step of filibustering a Supreme Court nomination. As you well know, unfortunately, it has become Senate practice of late to filibuster almost every question before this body simply as a matter of course. But that would be a serious mistake in this case, and it would further erode the ability of this great institution to function. In 2005, when the Senate was mired in debate over how to proceed on judicial nominations, a bipartisan group of 14 Senators proposed a simple and reasonable standard. That group—of which I am proud to have been a part—declared that for Federal court nominations a Senator should only support a filibuster in the case of extraordinary circumstances.

Since coming to the Senate, I have voted to confirm four Justices to the Supreme Court. Two were nominated by a Democratic President, and two were nominated by a Republican President. Each was confirmed: Chief Justice Roberts by a vote of 78 to 22, Justice Alito by a vote of 58 to 42, Justice Sotomayor by a vote of 68 to 31, and Justice Kagan by a vote of 63 to 37.

Before I became a Senator, this body confirmed Justice Kennedy, 97 to 0; Justice Scalia, 98 to 0; Justice Thomas, 52 to 48; Justice Ginsburg, 96 to 3; and Justice Breyer, 87 to 9.

Note that two of the current members of the Supreme Court were confirmed by fewer than 60 votes, but consistent with the standard that we established in 2005, neither one was filibustered.

Even Robert Bork, whose contentious confirmation hearings are said to have been the turning point in the Senate's treatment of Supreme Court nominations, was rejected by a simple failure to secure a majority of votes—42 yeas to 58 nays—not by a Senate filibuster. In fact, the filibuster has been used successfully only once in modern history to block a Supreme Court nomination. That was an attempt to elevate Justice Abe Fortas to be Chief Justice in 1968, nearly half a century ago. In that case, Justice Fortas ended up withdrawing under an ethical cloud.

The result of the votes on Justice Alito's nomination are also illuminating. In 2006 Senators voted to invoke cloture by a vote of 75 to 25. That is considerably more Senators than those who ultimately voted to confirm him, which was accomplished by a vote of 58 to 42. Here again, Senators proceeded to a "yes" or "no" vote on the nomination.

Let me be clear. I do believe strongly that it is appropriate for the Senate to use its advice and consent power to examine nominations carefully or even to defeat them. In fact, I have voted against judicial nominees of three Presidents. But playing politics with judicial nominees is profoundly damaging to the Senate's reputation and stature. It politicizes our judicial nomination process and threatens the independence of our courts, which are supposed to be above partisan politics. Perhaps most importantly, it undermines the public's confidence in the judiciary.

Since the Founders protected against the exertion of political influence on sitting Justices, the temptation to do everything in one's power to pick nominees with the right views is understandably very strong. But the more political Supreme Court appointments become, the more likely it is that Americans will question the extent to which the rule of law is being followed. It erodes confidence in the fair and impartial system of justice, and it cultivates a suspicion that judges are imposing their personal ideology.

The Senate has the responsibility to safeguard our Nation against a politicized judiciary. The Senate should resist the temptation to filibuster a Supreme Court nominee who is unquestionably qualified, the temptation to abandon the traditions of comity and cooperation, and the temptation to further erode the separation of powers by insisting on judicial litmus tests. It is time for the Senate to rise above partisanship and to allow each and every Senator to cast an up-or-down vote on this nominee.

This nomination deserves to move forward, as the dozens of distinguished Maine attorneys who wrote to me in support of his nomination said:

In sum, during his tenure on the U.S. Court of Appeals, Judge Gorsuch distinguished himself as a judge who follows the law with no regard for politics or outside influence. We could not ask for more in an associate Justice.

I agree, and I look forward to the confirmation of Judge Neil Gorsuch to be a Justice of the U.S. Supreme Court.

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

MARCH 23, 2017.

Re: Nomination of Judge Neil Gorsuch.
Hon. SUSAN M. COLLINS,
U.S. Senator, Dirksen Senate Office Building,
Washington, DC.
Hon. ANGUS S. KING,
U.S. Senator, Hart Senate Office Building,
Washington, DC.

DEAR SENATORS COLLINS AND KING: The undersigned Maine attorneys respectfully re-

quest that you support the confirmation of Judge Neil M. Gorsuch as Associate Justice of the United States Supreme Court.

Our practices are varied by geography, practice area, size of firm, and type of clients we represent. We also hold a diverse set of political views. Nonetheless, we agree that Judge Gorsuch is exceptionally well qualified to join the Supreme Court.

As members of the Maine legal community, we have an interest in the nomination of Judge Gorsuch. While most of us will never have the opportunity to appear before the United States Supreme Court, each of us has a strong interest in supporting the confirmation of highly qualified jurists who will maintain the Supreme Court's commitment to the rule of law. The precedents established by the Supreme Court affect each of us and the fellow Mainers whom we serve as our clients.

As you have surely found during the nomination process, Judge Gorsuch is eminently qualified to serve as Associate Justice. His qualifications were recently confirmed by the American Bar Association, which rated him as "well qualified," its highest rating. Judge Gorsuch's judicial record demonstrates his remarkable intelligence, his keen ability to discern and resolve the central issues at dispute in a legal proceeding, his notably clear and concise writing style, and his dedication to the rule of law rather than personal predilections. His judicial record also confirms that he is committed to upholding the Constitution, enforcing the statutes enacted by Congress, and restraining overreach by the Executive Branch. He voted with the majority in 98 percent of the cases he heard on the Tenth Circuit, and was frequently joined by judges appointed by Democratic Presidents. Seven of his opinions have been affirmed by the Supreme Court—four unanimously—and none reversed.

In sum, during his tenure on the U.S. Court of Appeals, Judge Gorsuch distinguished himself as a judge who follows the law with no regard for politics or outside influence. We could not ask for more in an Associate Justice and we ask for your strong support of him and vote of confirmation.

Sincerely,

John J. Aromando; Brett D. Baber; Shawn K. Bell; Daniel J. Bernier; Fred W. Bopp III; Timothy J. Bryant; Aaron D. Chadbourne; John W. Chapman; Michael J. Cianchette; Roger A. Clement, Jr.; Randy J. Creswell; Christopher M. Dargie; Avery T. Day; Bryan M. Dench; Thomas R. Doyle; Michael L. Dubois; Joshua D. Dunlap; Charles S. Einsiedler, Jr.

James R. Erwin; Kenneth W. Fredette; Justin E. French; Benjamin P. Gilman; Kenneth F. Gray; P. Andrew Hamilton; Jeffrey W. Jones; Ralph I. Lancaster, Jr.; Ronald P. Lebel; Tyler J. LeClair; Scott T. Lever; William P. Logan; Holly E. Lusk; Chase S. Martin; Sarah E. Newell; Bradford A. Pattershall; Dixon P. Pike; Gloria A. Pinza; Susan J. Pope; Michael R. Poulin; Norman J. Rattey; Daniel P. Riley; Adam J. Shub; Joshua E. Spooner; Robert H. Stier, Jr.; Patrick N. Strawbridge; Alexander R. Willette; Timothy C. Woodcock; Eric J. Wycoff; Sarah S. Zmistowski; Thad B. Zmistowski.

Ms. COLLINS. I yield the floor.

Seeing no one seeking recognition, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. FLAKE). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

The Senator from Missouri.

Mr. BLUNT. Mr. President, I come today to talk about the nomination of Judge Neil Gorsuch to serve on the U.S. Supreme Court. Once again, throughout the hearings last week, Judge Gorsuch proved that he has the knowledge, he has the temperament, and he has the experience to serve on our Nation's highest Court. He laid out a clear judicial philosophy that adheres to what I think most Americans want to see happen today on the Court and what clearly the Framers of the Constitution thought would happen.

In his own words, Judge Gorsuch said: "I have one client, it's the law." That is the way the Founders saw the Supreme Court. They didn't see it as a legislative body. All good judges had to do was to read the law. They didn't have to be happy with the law. They didn't have to approve the law. They didn't have to determine that the law and the Constitution met their exact standard. They just had to determine what the law and the Constitution said. In fact, the first Supreme Court had six judges. There was no thought that it was a legislative body that had to have a tie-breaking judge so you could legislate.

They thought six judges were plenty. By the way, they thought they needed six circuits. Each of those judges rode a circuit. So even when there was an appeal to the Supreme Court, one of the judges had already heard the case at the lower level. That judge heard the case again and then listened to see if that judge heard anything new, something that might change their mind. The other five of them were sitting there with the appeal of one of their colleagues, and nobody saw that as a problem because the Court wasn't about legislating.

The Court was about determining what the law should say. Again, Judge Gorsuch said: "I have one client, it's the law." It is not the little guy. It is not the big guy. It is not the medium-size guy. It is the law. He was asked over and over: Are you going to find for the little guy or the big guy? Well, that is not the judge's job. The judge's job is to read the law so both the little guy and the big guy know when they are in court that this is a country where the rule of law matters. They know, when they enter into a contract, that if you and your lawyer have read the law right, there shouldn't, at the end of the day, be very much gray space about what that contract said.

Throughout his career, Judge Gorsuch has demonstrated his commitment to interpret the Constitution as it is written, applying the rule of law and not legislating from the bench. "Judges are not politicians in robes." I think that may be another Gorsuch comment: "Judges are not politicians in robes." If he didn't say it, his career as a judge shows that he believes it. Unfortunately, some of my colleagues have shown that their deference to the Constitution is not the same when it

comes to the Senate's role to advise and consent.

I am particularly dismayed by the Democratic leader's intention to filibuster Judge Gorsuch's nomination. Republicans have never filibustered a Democratic nominee, yet colleagues across the aisle appear willing to do just that. Such a maneuver would only be an affront to our national norms.

I don't know in the history of the country—I think there was one filibuster led by Democrats against a nomination by a Democrat President when Lyndon Johnson nominated Abe Fortas to move from Associate Justice to the Chief Justice's role. It didn't happen in 1968 because it was a Presidential year and Justices don't get confirmed in the Supreme Court in a Presidential year in vacancies that hadn't even occurred yet. No. 2, it was led by Democrats in a Senate that had an overwhelming Democratic majority. There has never been a partisan filibuster effort involving any Justice on the Supreme Court until right now—until right now—and I am disappointed that that is what the Democratic leader of the Senate says he wants to do.

According to Robert David Johnson, a Brooklyn College history professor, "The chances of success" of a partisan filibuster "are basically zero." So my thought would be: Why pursue it?

Kim Strassel recently wrote in the Wall Street Journal: "Never in U.S. history have we had a successful partisan filibuster of a Supreme Court nominee."

In the last half century, only three Supreme Court Justices have even faced a filibuster. The most recent, Justice Alito, was ultimately confirmed when 19 Democrats refused to back the filibuster of his nomination. He had the full vote, and he got a majority vote.

One would think that if Senate Democrats are willing to upend Senate tradition to block this nomination, they would have an unassailable reason to block it. They would be saying this judge is not qualified. This judge hasn't served his time. We don't know what he would do as a judge. He has been on the circuit court of appeals for a decade, and when looking at case after case, appeal after appeal, we see his unbelievably fine record as a judge.

In announcing his intention to mount this filibuster, the leader of the Democrats in the Senate said that Judge Gorsuch "was unable to sufficiently convince me that he'd be an independent check" on the executive branch. The American Bar Association unanimously gave Judge Gorsuch's nomination their highest rating. They disagree. As they explained, "based on writings, interviews, and analyses we scrutinized to reach our rating, we discerned that Judge Gorsuch believes strongly in the independence of the judicial branch of government, and we predict that he will be a strong but respectful voice in protecting it."

This is from the American Bar Association, which many of my colleagues

on both sides of the aisle have said over and over again is the ultimate test of qualification for the Court.

When I met with the judge last month, he left no doubt in my mind that he would uphold the judiciary's unique constitutional role in our system of checks and balances.

Let me go back to the other quote here for a minute. What was it that the Senator from New York said? "Judge Gorsuch was unable to sufficiently convince me that he'd be an independent check" on the executive branch. I am not even sure I know where in the Constitution that is the job of the judge. The job of the judge is to read the law and look at the Constitution. The job of the Congress is to pass the law. The job of the President is to sign the law. Unless there is some constitutional problem with that law, it is not the judge's job to decide whether the law is right or not, unless there is a constitutional reason to do that.

Last week, I mentioned Judge Gorsuch's qualifications for the bench, but I think they bear repeating as we enter the next few days. As a graduate of Columbia University, a graduate of Harvard Law and Oxford University, his academic credentials are at the highest level. Judge Gorsuch has served his country admirably as a Supreme Court clerk, first for a Democrat on the Court, Byron White, who had been appointed by President Kennedy, and for a Republican appointee, Anthony Kennedy, appointed by President Reagan. He has been the principal Deputy Associate Attorney General of the United States at the Department of Justice, and in 2006, George W. Bush nominated him to serve on the Tenth Circuit Court of Appeals. The Senate unanimously confirmed his position at that time. Every single Democrat—12 of them now serving in the Senate who were in office, supported his nomination in 2006. In the decade that he served on the Tenth Circuit Court, he has shown independence, integrity, and he has shown a mainstream judicial philosophy.

He has demonstrated a legal capacity that makes him a worthy successor to Justice Scalia on the Court. There is no precedent for requiring a 60-vote threshold to confirm a Supreme Court Justice, and Judge Gorsuch has given this body no reason to demand one now.

I look forward to supporting his nomination. It will reach the Senate floor, I believe, after the Judiciary Committee deals with it early next week. I hope by the time we leave here a week from Friday that Judge Gorsuch is on his way to join the Supreme Court as an Associate Justice. By the way, if he does that, he will be the first Associate Justice ever to serve on the Court with a Justice for whom he clerked two decades or more ago. When he and Justice Kennedy get a chance to serve together—I look forward to seeing that happen.

ORDER FOR RECESS

Mr. President, I ask unanimous consent that the Senate recess from 12:30

p.m. until 2:15 p.m. today for the weekly conference meetings.

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

Mr. BLUNT. 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. DURBIN. 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. DURBIN. Mr. President, I rise to speak on the nomination of Judge Neil Gorsuch to serve on the U.S. Supreme Court.

It is important to reflect for a moment on how we have reached this moment. It has been more than a year since the untimely passing of Justice Antonin Scalia in February of 2016. Under article II, section 2 of the U.S. Constitution, President Barack Obama had a duty to make a nomination to fill that vacant seat. He met that obligation by nominating Chief Judge Merrick Garland in March of 2016.

Yet the leader of the Senate Republicans, Majority Leader McCONNELL, announced that, for the first time in the 230-year history of the Senate, he would refuse the President's nominee, Judge Garland, a hearing and a vote. Senator McCONNELL further said that he would refuse to even meet with Judge Garland. It was a transparent political decision made by the Republican leader in the hopes that a Republican would be elected President and fill the vacancy. It was part of a broader Republican political strategy to influence, if not capture, the judicial branch of government on every level of the court system.

Not only did the Senate Republicans keep a Supreme Court seat vacant for over a year, they turned the Senate's Executive Calendar into a nomination obituary column for 30 other judicial nominees who had been reported out of the Judiciary Committee with bipartisan support. They were hoping a Republican President would fill all of those seats, and they were prepared to leave them vacant for a year or more to achieve that end.

What kind of nominees were they hoping for? Nominees who had been blessed by special interests, by big business, and by Republican advocacy organizations.

It was last year that then-Candidate Donald Trump released a list of 21 potential Supreme Court candidates who were handpicked by two Republican advocacy groups—the Federalist Society and the Heritage Foundation. I am not speculating on the fact that they were chosen by those two groups, as President Trump publicly thanked the groups for giving him a list of names with which to fill the vacancies on the Supreme Court. It was unprecedented for anyone, including a candidate for President, to outsource the judicial selection process to special interest