

There is no good reason to oppose Judge Gorsuch, and there is every reason to support him. It is time to confirm the supremely qualified judge to the Supreme Court.

Mr. President, I yield the floor.

(Disturbance in the Visitors' Galleries.)

The PRESIDING OFFICER. Expressions of approval will not be permitted by the gallery.

The Senator from Minnesota.

BROADBAND CONSUMER PRIVACY

Mr. FRANKEN. Mr. President, I rise today to talk about the effort by my Republican colleagues to gut critical consumer privacy protections. Last week, the Senate voted 50 to 48 to allow internet service providers such as Comcast, Verizon, and AT&T to freely collect, share, and sell its customers' private information. Later today, the House will vote on the same measure.

Let's be clear what we are talking about here. From web browsing histories to app usage information, broadband providers have easy access to a whole lot of Americans' personal information. Comcast knows exactly what ails you when you visit WebMD's Symptom Checker or that you have recently experienced a major life event when you are browsing maternity clothes on target.com. They would like the ability to use or sell this information to target advertising toward you, and they would really like to use or sell this information without first having to ask your permission.

Now, for me, the interests of consumers in Minnesota, Texas, and across our country have always come before those of big corporations. That is why I have long championed an internet that is open, accessible, and protects Americans' fundamental rights to privacy. For most Americans, I don't think those are controversial ideas.

For example, I suggest that most if not all of us in the Senate believe in the importance of ensuring that Americans have access to affordable high-speed internet. It is one of those great issues on which Members on both sides of the aisle can agree. See, we all know that Americans' cable and broadband bills are too high. The Consumer Federation of America recently reported that the average American household spends about \$2,700 a year for phone, TV, and Internet services. That is why it is so disappointing that instead of acting to make broadband more affordable and more accessible for Americans, my Republican colleagues have actually paved the way for multibillion-dollar companies to make even more money off of their consumers by monetizing some of the most intimate details of their lives. Make no mistake about it, this is purely and simply a corporate handout at the expense of Americans' privacy.

When the FCC voted to pass the broadband privacy rules, the broadband industry was quick to oppose and oppose loudly. In recent months, internet service providers have used their vast

resources to lobby the FCC and my fellow lawmakers. If House Republicans heed their call, as my colleagues in the Senate have done, companies like Comcast, Verizon, and AT&T will be free to sell their customers' personal information to the highest bidder, and importantly, they will do so without the oversight or regulation of either the Federal Communications Commission or the Federal Trade Commission.

For my part, I have long held that Americans have a fundamental right to privacy. We deserve both transparency and accountability from companies that have the capacity to trade on their private information. Should some people choose to leave their personal information in the hands of those companies, they certainly deserve to know that their information is being safeguarded to the greatest degree possible. I am going to keep fighting on behalf of consumers in Minnesota and across the country to secure these rights because I work for them and not the broadband industry.

Thank you, 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. CORKER. 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 NUCLEAR OPTION

Mr. CORKER. Mr. President, we find ourselves at an interesting point. Let me start by saying what a tremendous privilege it is to serve in this body. Every single day that I come to the building from where I live, I express that to myself—what a tremendous privilege it is for all of us to serve in this body, denoted by many as the greatest deliberative body in the world. Certainly, we find ourselves here in a place where we can effect so many things that not only affect our citizens but citizens across the world. What a privilege that is.

The Presiding Officer and I have had numerous conversations in the past. I spent a life in business before coming to the Senate, and I know the Presiding Officer did a lot of unique things as well. At the age of 25, I was fortunate enough to build a business, starting with a small amount of money. It ended up operating all around the country. One of the things we did after every project—I built shopping centers around the country—is that we would get together and analyze the things we had done well and the things we had done not so well in an effort to become better. At the end of each year, we would sit down and look at our company, which was growing very rapidly, and try to analyze those things. Sometimes we would have setbacks, but generally speaking, the company continued to operate on an upward trend.

What I find here is just the opposite. I have been here now a decade, and

what we do is just the opposite of that. What we do is we continue a downward trend because the way the two parties operate with each other is when it gets to a point where there is something very critical that has to happen, the other side says, well, if they were in power, this is what they would do, so let's go ahead and do this ourselves. So what we have in the Senate, at least since I have been here in the last decade, is instead of an escalating situation where we continue to operate better and deal with these things in a more balanced way, what we do is we are on this continual downward trend.

One of our younger Members mentioned the other day as we were discussing this—and I thought it was a great point—that what has happened in the Senate is that neither party has had the ability to withstand the pressure that is brought to them by their base in either party.

I have seen that play out right now. What happens is their base puts pressure on, and we end up breaking the traditions of the Senate. We did it legislatively with the cloture vote being the scored vote by outside groups. So that is where we find ourselves.

What is happening in our own caucus—I just realized over the weekend—is that we are now trying to figure out whom to blame. I heard a discussion last Wednesday that was totally divorced from reality as far as how we had gotten where we are today. I realized that we are getting ready to do some things here that will change the Senate dramatically. What is really happening is that both sides are trying to make sure history records that it was the other side that caused this to happen.

We are now starting to see editorials in various publications—some that we Republicans read and some that Democrats read—to try to set the story straight. I about came out of my chair last Wednesday with regard to one of the explanations as to how we got where we are today. My guess is, today at lunch on the other side of the aisle, the same thing will be taking place. Obviously, on our side, it is the other side. On their side, it is our side.

Let me go back to 2013. We had a breakdown taking place. President Obama was bringing forth some nominations, and it was right after he was elected for a second term. We went through the summer of 2013 with some of his nominees not getting cloture votes. I was called, as were a few other Senators, to make what we would call some tough votes. These were nominees whom we did not support. Cloture had again become the vote that people were scoring, but I and JOHN MCCAIN and LAMAR ALEXANDER and a few others were asked to make some votes that, candidly, were not very pleasant to keep us from getting to a place at which Senator Reid would impose the nuclear option.

We made it through the summer, and we went into the fall. We had just confirmed a new circuit court judge for the

DC Circuit, which is just below the Supreme Court relative to importance for lots of reasons. So we had a 4-to-4 balance on this circuit court. Senator Reid brought forth three more nominees, and they were not bad nominees. I think most people thought they were actually pretty decent nominees. But we did not want the balance of the DC Circuit to change; it was at 4-to-4.

We know that a lot of administrative rulings that are relative to the administration take place in the DC court, so we made the argument that there were already enough judges there and that they did not have a very good case. It was the same argument, by the way, that Democrats made back in 2006 when Bush was also trying to make some nominations. We do the same to each other. So we ended up filibustering those three nominees.

What we thought was going to take place was a negotiation on how many judges would actually go when all of a sudden Senator Reid, out of the blue, with some of his Members not realizing what had happened, did the nuclear option. He ruled and called upon the person sitting in the Chair and the Parliamentarian. All of a sudden, we destroyed what had been the case of it taking 60 votes to move beyond to an actual vote on the nominee. I was livid.

Somebody said the other day that that was fine and that we had just gotten to where we had wanted to be. Are you kidding me? We were livid. We were livid that on some circuit court nominees, Senator Reid had pulled the nuclear option.

I will tell you this: There were days—not days, months—where people who had normally worked with people on the other side of the aisle just kind of shut down. It was hard to believe the nuclear option had been invoked.

Last Wednesday, somebody acted like it was no big deal, that it had just gotten us back to where we had always been. The fact is that we have not used filibusters much—years ago. The fact is that we are using them a lot today. Look, this was a big deal.

Now we find ourselves in a situation in which we are getting ready to take the last step, if you will, on nominations. Let's face it: We have a nominee in this judge who is on the floor who is really beyond reproach.

I realize my friends on the other side of the aisle have pressures. I have talked to some of them, and I respect them. I understand that their base is saying that because of what we did last year. Remember, it had been an hour since the great Justice passed away, and we had already declared we were not going to allow another Justice to be confirmed until after the Presidential race. It was a pretty audacious move, let's face it, and obviously it created some hard feelings on the other side of the aisle after the election was determined.

Within their base, many of them are saying they are going to invoke the filibuster here. Our leadership is saying:

If that happens, then we ourselves have to invoke the nuclear option on the Supreme Court Justice.

We understand where this is going. I do not know what has been said on the floor other than during the hearings, but let's face it: One side is reacting to their base, to their pressure. They are having ads run against them if they are even considering voting to move beyond the cloture vote to an actual vote on the nominee. On our side, obviously, we are in a situation in which, if that happens, then our leader is going to call the nuclear option.

By the way, everybody says: Oh, we are never going to do it on legislation. Come on. Let me go back to that for a minute.

Back in 2010, the Democrats passed a healthcare bill with 60 votes. Then there was an election, and it took them down below 60 votes. They just needed to fix a little element on the healthcare bill with a reconciliation bill, and the Republicans went crazy over that. How many times have we talked about their passing this healthcare bill with reconciliation? It has been going on for 7 years. Now we are in the driver's seat. We have the majority. We are writing an entire bill through reconciliation because we understand the power of being able to do something with 51 votes. I understand. So what we do is we just keep upping the ante with each other. Are you kidding me?

If we continue on the path we are on right now, the very next time there is a legislative proposal that one side of the aisle feels is so important, they cannot let their base down, the pressure builds, then we are going to invoke the nuclear option on a legislative piece. That is what will happen. Somebody will do it. Somebody will say that if they were in control, they would do it. That is the way trust has gotten around here. So we ought to do it because this is our opportunity to really change history.

Look, I hope that before we move to the place that we all know we are going—I do not think anybody here would deny that pressures have built. Let's face it. If we do not have respect for the institution we serve and for ourselves, no one else will. Who will? These people know what we are getting ready to do to this place. For us to act like if we do it here, there is no way we would ever do it on a legislative piece—let me tell you this: Two years ago, after Senator Reid did what he did—a friend of mine and somebody I worked very closely with, I think most people know it took me a while to get back to normal with him. Two years ago, there would not have been a single Republican in our caucus who would have even considered voting for the nuclear option. As a matter of fact, we had discussions about changing it back. Then the election occurred, and we decided not to do that.

What it looks like to me is that there is a whole host of Republican Senators

who are willing to do that today. Everyone knows that on the other side of the aisle—maybe everyone; I don't know. Yet to say that we will never get to the point at which we will not change a legislative piece—give me a break. Somebody is not living in reality, because we each continue to take the other down.

Again, I do not really care how history writes it; I am going to tell you how I am going to write it. Neither side of the aisle has had the maturity or the willingness to stand up to the pressures and cause this institution to operate in the way it should—neither side of the aisle. As for anybody who tries to say that one side of the aisle is worse than the other, come on. It takes two of us to take the institution to the place at which we are getting ready to take it next week. That is my history. I have been here 10 years. I have watched it. Neither side of the aisle has clean hands. We have one side. They have a decision to make. Are they really going to filibuster this judge? Let's face it. If you go back and look at the principles of the Gang of 14 that were put in place back in the 2000s, when both sides came together and said: We are not going to do the nuclear option as long as a judge meets these criteria—this judge meets that criteria. It is clear. By the way, I am not criticizing; I am just observing.

We both have pressures. We know that if a filibuster takes place—and you will know that immediately; of course, it would be after a few filibuster votes just to show that it cannot happen—the leader on this side is going to invoke the nuclear option. You all know that. I do not know if people are saying that it could happen, but of course that is what is going to happen. And then the very next time another big legislative issue comes up, the same thing is going to happen unless we have the ability to sit down and talk about this. I would love to do it out on the floor. Typically, we do not do those kinds of things because things get out of control when we talk about things honestly here on the floor, but I would like for us to do that. I would love for us to have maybe a 4-hour discussion about what we are getting ready to do here in the Senate. To me, that would be a healthy thing.

I think all of these staffers who work up here, whom we respect, know exactly what is getting ready to happen here in the Senate.

I think we owe this to people who are getting ready to run for the Senate or maybe to people who are thinking about running for reelection. We should go ahead and have this discussion so that they will know whether they are running for a 6-year House term—a 6-year House term because we do not have the maturity, because we do not trust each other, because we are on this constantly deescalating deal and our leaders do not talk to each other and fight and all of those kinds of things happen, because we are getting ready to take this institution to a

place that I do not think many of us are going to be proud of. But, again, for the people who are thinking about running for the Senate, let's go ahead and clear it. Let's have a discussion about this legislative issue so that people will know, if they are seeking election to the U.S. Senate, that they are, in essence, going to sign up, possibly, for a 6-year House term.

I am at a place in my Senate life where I have tremendous respect for the people with whom I have served. Every day I come here, I look at the things I have the ability to affect as one Senator. I look at that with such honor, to be able to be in a body that debates these kinds of things and affects people in the way we do. What an honor it is to be here. I am here with no malice.

I am here, though, at a time when I see what is getting ready to happen without a lot of discussion, and I hope that somehow or another, we will have the ability to avoid what I see as something that is very, very detrimental to the Senate and, in the process, very detrimental to our country.

I yield the floor.

THE PRESIDING OFFICER. The Senator from Colorado.

Mr. GARDNER. Mr. President, I understand there is a time agreement on the recess before lunch.

I ask unanimous consent that I be allowed to finish and complete my remarks.

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

NOMINATION OF NEIL GORSUCH

Mr. GARDNER. Mr. President, I wanted to come to the floor again to express my strong support for a very mainstream, well-qualified nominee for the Supreme Court, Judge Neil Gorsuch.

Last week, this country got to watch the Senate Judiciary Committee carry out days of hearings that questioned and probed Judge Gorsuch's legal approach, that questioned his temperament to the bench, his suitability to be on our Nation's High Court. I believe every member of the Senate Judiciary Committee had at least an hour to question Judge Gorsuch, to provide lengthy opening statements, to have an extended period of time to have a back-and-forth with Judge Gorsuch in order to go over his judicial philosophy—his approach—that he would take with him from the Tenth Circuit Court to the Nation's High Court.

A number of interest groups and personal witnesses were talking about whether or not they believe Judge Gorsuch is qualified for the bench, and some were highly favorable and spoke very highly of him, and others opposed his confirmation. That is what is great about this country—to be able to come before our Congress, our government, and to testify for or against somebody who will be in that third important branch of government, the judicial branch. It is incredibly inspiring to watch this process unfold. There were

student groups around the country, classes and teachers, who were watching the confirmation hearing as a project, as an educational experience, as a lesson in civics, democracy, and government.

I mentioned, of course, that Judge Gorsuch is a judge on the Tenth Circuit Court today. He is a fourth generation Coloradan. He was confirmed to that position in 2006, 11 years ago, unanimously. He was confirmed to the Tenth Circuit Court 11 years ago unanimously. Based on some of the comments we have heard opposing Judge Gorsuch, it is hard to believe that anybody would have supported him unanimously 11 years ago—based on the things we have heard from the other side of the aisle about him. Judge Gorsuch was confirmed unanimously by 12 current Democratic Senators who did not oppose his confirmation 11 years ago and who serve in this body today.

Twelve Democratic Senators serve in this Chamber today who agreed with his confirmation or didn't oppose his confirmation 11 years ago. In fact, not a single Democrat opposed his nomination—not a single one, and his nomination was unanimous—not Minority Leader SCHUMER, not Senator LEAHY, not Senator FEINSTEIN, not Senator DURBIN, not Senator CANTWELL, not Senator CARPER, not Senator MENENDEZ, not Senator MURRAY, not Senator NELSON, not Senator Reid, not Senator STABENOW, and not Senator WYDEN. Judge Gorsuch's nomination also was not opposed by then-Senator Barack Obama. It was not opposed by then-Senator Joe Biden, and it was not opposed by then-Senator Hillary Clinton.

This level of support for the other party's nomination is almost unheard of in today's political climate. But now, these very same colleagues are vowing to break 230 years of Senate tradition, to dispense with 230 years of precedent, and to join a partisan filibuster of a nominee who has the right judicial temperament and holds mainstream views that are supported by the Constitution.

Throughout the confirmation hearing process, we heard Judge Gorsuch talk about the over 2,000 opinions that he was a part of—2,700 decisions that he was a part of—and I believe he testified before the committee that he joined in the majority in 97 percent of those opinions. That is somebody who sounds to me like the person who could have received the unanimous support of the Senate—who did receive the unanimous support of the Senate, including colleagues who serve with us today.

But, unfortunately, across the aisle, we still haven't heard a reason articulated—a compelling rationale—for why this supremely qualified nominee should be opposed. Sometimes they will reference a letter from a law student at the University of Colorado, or perhaps they will find one case out of the 2,700 cases that tugs at the heartstrings but not at the law and try

to hang their hat on that decision as to why they should oppose Judge Gorsuch. To use a baseball analogy, it is a little bit like a batting average. You would think that a professional baseball player that had a 400 batting average was a pretty doggone good baseball player, but that would mean they missed the ball a heck of a lot much of the time. It seems to me the argument they are making with Judge Gorsuch is that unless he had a perfect batting average and never missed a single pitch and had a hit every single time—that is the standard, apparently, that our colleagues are looking for. It is a standard that no one has ever met in this country before.

We are looking for mainstream judges with the right temperament and the right philosophy, and that is what Judge Gorsuch has proven time and again in the Tenth Circuit Court—that temperament that we need on the highest Court.

Our colleagues on the other side of the aisle should abandon their threats of a filibuster and allow an up-or-down vote to occur for Judge Gorsuch. It is what Senate tradition and precedent requires.

Today, though, I thought it important to talk about Judge Gorsuch's exceptionally strong record on religious liberty. Judge Gorsuch is perhaps widely known for his participation in the Tenth Circuit's Hobby Lobby case, a decision which involved the protections afforded by the Religious Freedom and Restoration Act and which was ultimately affirmed by the Supreme Court. In his concurrence, Judge Gorsuch made a number of telling pronouncements regarding religious liberty. Regarding the case, he wrote that the law in question requires the owners of Hobby Lobby to "violate their religious faith by forcing them to lend an impermissible degree of assistance to conduct their religion teaches to be gravely wrong."

Let me say that again. In Hobby Lobby, Judge Gorsuch wrote that the law requires the owners of Hobby Lobby to "violate their religious faith by forcing them to lend an impermissible degree of assistance to conduct their religion teaches to be gravely wrong."

In determining which religious beliefs are entitled to protection, Judge Gorsuch said it doesn't matter if the beliefs are contestable or even offensive. It only matters if they are sincerely held—if they are sincerely held.

He went on to stress that "it is not the place of courts of law to question the correctness or the consistency of tenets of religious faith, only to protect the exercise of faith."

It is these same constitutional principles of religious liberty that Judge Gorsuch has also used to protect religious minorities and prison inmates.

In *Yellowbear v. Lampert*, Judge Gorsuch ruled that a Native American prisoner was entitled to the use of a prison sweat lodge under Federal law.