

Judge Garland was denied a hearing and a vote. In fact, during the 1988 Presidential election year, Justice Anthony Kennedy was confirmed by the Senate 97 to 0—not 51 to 49, not 60 to 40, but 97 to 0. But Judge Garland was denied a hearing and a vote.

Our Constitution, the one that every Member of this great deliberative body has sworn an oath to uphold, standing right over there, requires the Senate to provide its advice and consent to Supreme Court nominees.

Over the years, there have been a lot of questions as to what advice and consent entails. Judge Garland was denied a hearing and a vote. A good man—I think an extraordinary man—was treated badly, as was our Constitution.

I believe the unprecedented obstruction our Republican colleagues mounted last year against Judge Garland was a shameful chapter for the U.S. Senate. Mr. Garland, a consensus builder, one of the most qualified judges in our country, waited 293 days for a hearing and a vote that ultimately never came. I am still deeply troubled by those 293 wasted days, and I am still deeply troubled by the way Judge Garland was treated. I believe Judge Garland still deserves a hearing and still deserves a vote.

While I do not believe that two wrongs make a right, I believe this may be our only opportunity to right a wrong and erase the enormous black mark that the Senate's failure to consider Judge Garland leaves on this chapter of American history. I think it is unacceptable to put partisan politics over fidelity to our U.S. Constitution. Confirming anyone for this vacancy other than Judge Garland would be a stamp of approval for playing politics with Supreme Court nominees.

From where I sit, upholding our oath to protect the Constitution means finding agreement on moving Judge Garland's nomination forward at the same time as that of Judge Neil Gorsuch, President Trump's nominee. When President Trump lost the popular vote by nearly 3 million votes last year and narrowly won the electoral college, he promised to be a President for all Americans. I think a fair question is, Has he upheld that promise?

Well, let's decide—an unconstitutional Muslim ban, an unnecessary and overpriced wall on the southern border, a failed healthcare bill that would have provided less coverage for more money, a rollback of environmental protections for all of us who don't want to drink dirty water and don't want to breathe dirty air. If you ask me, the President has broken the promise to be a President for all Americans. Now I realize that others may differ and disagree, but his nomination of Judge Gorsuch represents what I believe is another broken promise.

I have heard from middle-class folks, from workers up and down my State, from special education teachers, from immigrant communities, from women who depend on access to healthcare,

and my guess is my colleagues have as well. Many of them fear that Judge Gorsuch is not on their side. Despite his impressive resume, I share those same concerns.

At this time, I believe it is appropriate to hit the pause button until an agreement can be reached that provides justice for Judge Garland while restoring credibility to the U.S. Senate. I believe that is only bolstered by the cloud that lingers over President Trump's campaign.

As FBI Director Comey testified last week, there is an ongoing investigation to determine the links between Russia and the Trump campaign and whether there was any coordination between the Trump campaign and Russia to interfere in the 2016 election. It has also been widely reported in the media that officials from the upper echelon of the Trump campaign have close ties to Vladimir Putin's interests in weakening democratic governments throughout the West. There are many Americans who believe that Judge Gorsuch has been nominated for a stolen Supreme Court seat. There are also a number of Americans who believe that he has been nominated by a man whose campaign may have coordinated with foreign adversaries on stealing a Presidential election.

Let me be clear. At the moment, no evidence has been made public to indicate that this is the case, but there are few nominations that any President will make that will have more of an impact on our Constitution and on the lives of everyday Americans than the U.S. Supreme Court. To hastily move forward with Judge Gorsuch, who is 49 years old and can serve on the Supreme Court well into the middle of this century, without first getting to the bottom of the suspicious and irregular actions of the Trump campaign officials, I believe, would be a mistake.

The American people need to know that the President's campaign was above reproach before we decide whether Judge Gorsuch merits approval for a lifetime appointment.

I will close my remarks by offering a word of caution to my colleagues. We have maintained and preserved a 60-vote threshold for Supreme Court nominees to prevent Democrats and Republicans from choosing political expediency over bipartisan consensus. If Judge Gorsuch fails to obtain 60 votes on the cloture vote next week, I think it could signal one of three things. First, that Judge Gorsuch's views are outside the judicial mainstream; second, that we still have an opportunity to rectify the injustice done to Judge Garland and to our Constitution; or third, that we still do not know the nature of the relationship between the Trump campaign and Russia—a country whose leadership has ordered an attack on our election and our democracy, as well as a whole lot of other countries around the world.

If Judge Gorsuch fails to achieve 60 votes on the first try or the next try, it

does not mean that his nomination will not move forward at some point in the future. It means we have hit the pause button. It may very well be that while we pause, another vacancy on the Court could emerge. Who knows when another vacancy might occur? But if you ask me, another vacancy might present the Senate with an opportunity to right what I believe is a historic wrong, and we should see if the other objections that have been raised about Judge Gorsuch could be addressed before we change the rules of the Senate in favor of the party in power.

In closing, I will say again that Judge Garland waited 293 days for a hearing and a vote that never came. Judge Gorsuch waited 48 days for a hearing, and we will be voting on his nomination next week. Talk about a rush to judgment.

The PRESIDING OFFICER (Mr. YOUNG). The Senator's time has expired.

Mr. CARPER. I would ask the Presiding Officer for 15 seconds, please.

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

Mr. CARPER. Talk about a rush to judgment. We have time. The American people are watching us, and history will judge us. Let's make sure we get this right.

Let's make sure we get this right.

With that, I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

ISSUES BEFORE THE SENATE

Mr. HATCH. Mr. President, as we approach the end of another week in the Senate with a 2-week recess on the horizon, I think it is a good time to reflect on where we are on various high-profile efforts and to talk about the pathways forward.

As is generally the case when any new administration comes into office, the Republican majorities in both the House and Senate began 2017 with an ambitious agenda in order to make good on the promises we have made to the American people over the last several years. Many of the key items on the agenda fall squarely in the jurisdiction of the Senate Finance Committee, which I chair. That being the case, my colleagues on the committee and I have been hard at work, trying to find the right solutions on things like healthcare, tax reform, and trade policy.

I don't think I am going to surprise anyone when I say it hasn't been easy. Honestly, I think that might be the biggest understatement of the year.

Things have been difficult for a number of reasons. One reason is that we are coming off of a bitter election year, one that shocked a number of our colleagues. After a hotly contested campaign, it can sometimes take a while for things to return to normal. However, I don't think that excuses the tactics and rhetoric we have seen from our friends on the other side of the aisle.

In any of these big-ticket policy efforts, whether we are talking about repealing and replacing ObamaCare, fixing the Tax Code, or updating America's trade policy, cooperation between the legislative and the executive branches is key. My Democratic colleagues know this, which, I suppose, is probably the reason they appeared to be bound and determined to prevent any meaningful cooperation from happening.

Now don't get me wrong; I don't expect my friends to change their views and back policies that they find disagreeable. However, you would think, at the very least, that they would allow the new President to get his team in place, a courtesy that has typically been extended to past Presidents, regardless of party. Yet over the last few months, we have seen a systematic effort from our Democratic colleagues to smear, attack, and undermine the vast majority of executive branch nominees. In many cases, after the baseless attacks have failed to gain traction, they have used every procedural tool at their disposal, including surprise boycotts of committee mark-ups, in order to slow down the confirmation process.

This level of obstruction with regard to nominees is unprecedented. And I think it is safe to say that it has slowed our efforts down somewhat, which, I suppose, is the exact reason our colleagues have taken this path. Still, despite these childish tactics, the teams are coming together, and we are moving forward in a number of key areas. As I said, it still hasn't been easy, but to paraphrase a number of important figures, nothing worth doing is ever easy.

For example, on healthcare, I think it is safe to say that the ongoing effort to repeal and replace ObamaCare took a hit last week, but I don't think that has weakened anyone's resolve. ObamaCare is a disaster, and one way or another, it has to go away. The American people are demanding that we take action, and I expect that the volume of those demands is only going to go up.

I commend Speaker RYAN for his efforts thus far, and I commend all my colleagues in the House and Senate for their commitment to repealing and replacing the so-called Affordable Care Act. I remain hopeful that in the near future we can find a workable path forward, and that includes my Democratic colleagues as well.

On tax reform we have some indications that the Trump administration intends to be more actively engaged in finding and developing a path forward. I have said for years that if we are going to be successful in tax reform—a goal shared by Members of both parties—it is going to take Presidential leadership and cooperation by both parties. While President Obama was generally unwilling to meaningfully engage on tax reform, President Trump and his team appear to be anxious to drive the process, and I welcome that.

As with healthcare reform, there are some differences of opinion with regard to tax reform. Still, I think there is a remarkable amount of agreement, at least among Republicans, on the major issues we need to deal with to fix our broken Tax Code.

Overall, I would say that the Republicans in the Senate, the House, and the White House agree on about 80 percent of the major tax reform issues, and a number of key and fundamental questions are answered in that 80 percent. For example, we all generally agree on the need for comprehensive reform. We agree on the need to bring down tax rates for businesses and job creators. We agree that we need a simplified rate structure on the individual side. We agree on the need to fix the international tax rules to level the playing field for American companies and encourage more investment in the United States, and we generally agree on key process issues, including the appropriate revenue baselines and the use of macroeconomic analysis in budget scoring.

Still, that 20 percent of issues where we don't necessarily agree is not insignificant. We will need to find a consensus path forward on those issues as well. One area where we have yet to reach a consensus—and the one getting the most attention—is on the proposed border adjustment tax. People have a number of opinions about this, and I have had numerous people in my office on both sides of the issue. As I said, there are a number of opinions on this proposal, and they have been more than willing to express them publicly. As for myself, I am anxious to see what it looks like once our friends in the House put it all together.

It is too early for me to express a definitive position now. So at this point, all I will say is that I have some basic questions about the proposal.

For example, who will ultimately bear the tax? To what extent will it be borne by consumers, workers, shareholders, and, of course, foreigners?

Another question: Is the proposal consistent with our international trade obligations?

Finally, since border adjustability will likely be a significant shift in business tax policy, would it require us to make adjustments to ensure that we don't unduly increase the tax burden on specific industries? If so, what adjustments would be necessary, and how would they be structured?

I look forward to receiving more details on this proposal. However, here in the Senate, we also have some work to do, and I have been actively working with the members of the Finance Committee to find various solutions to our Nation's tax problems.

At the end of the day, I don't think it will surprise anyone to hear me say that I believe we are going to need to have a robust and substantive tax reform process in the Senate. In my view, it is not realistic to think that the Senate will simply take up and pass a

House bill without our Members having a significant input on the substance of the bill. That is how the Congress is supposed to operate, and I think that is what will produce the best result in the end.

I look forward to continuing to work with my colleagues in the House on tax reform. I also appreciate the willingness of the new Treasury Secretary and the President's National Economic Council to lead on this effort, and I look forward to continuing to work with them as well.

I will also say this: My hope is that both parties can find a way to work together on tax reform. While we have procedural tools at our disposal to get tax reform legislation through Congress with strictly Republican votes, I personally believe that it would be better to find a bipartisan path forward. A bipartisan bill would allow us to put in place more lasting reforms and give the overall effort additional credibility.

I am sure there are some who think it is impossible for Republicans and Democrats to work together on something of this magnitude, but I have been in the Senate for a long time, and I think my record for bipartisanship speaks for itself. I believe we can and should work together, and I am willing to talk and work with anyone who is willing to set politics aside and engage in good faith on these matters.

I have been banging a drum on tax reform for 6 years now, and throughout that time, I have invited my Democratic colleagues to join in this effort. I will do so again today. Hopefully, some of our colleagues on the other side will take me up on this offer.

Finally, I want to say a few words about U.S. trade policy. Trade is another area in which President Trump has some ambitious plans and in which, up to now, progress has been hindered. Before I delve into that, let me reiterate a key point.

In 2015, Congress outlined its trade priorities with our legislation to renew the trade promotion authority, which was signed into law by President Obama. The TPA statute gives clear guidance as to what a trade agreement should look like if it is going to win Congress's approval.

President Trump was fortunate to come into office with TPA already in effect, and I am committed to working with him to enact trade agreements that meet those standards established by the TPA law. When it comes to new trade agreements or revisions to modernize existing trade agreements, that is my top priority as chairman of the Senate committee with jurisdiction over trade policy. Our trade laws are designed to give Congress a voice in both the negotiation and implementation of trade agreements.

In addition to priorities and objectives outlined under TPA, there is the Office of the U.S. Trade Representative, which is intended to be the chief intermediary between Congress and, of course, the administration on trade

policy matters. In other words, in order for the two branches to effectively work together on trade, the Office of the USTR needs to be fully functional and fully staffed.

Unfortunately, up to now, some on the other side have been making unreasonable and wholly unrelated demands in relation to the confirmation of President Trump's nominee to be USTR even though he has support from Members of both parties. This is unfortunate. However, I am working with my colleagues to remove any remaining roadblocks, and I am hoping we can make progress on this very soon.

As one can see, we have quite a bit of work to do here in Congress, and I am only talking about a handful of the major issues before us. I am very concerned. There are, of course, many other priorities we need to address and matters we need to resolve. I am hoping that in the coming weeks and months, as we put more distance between us and the 2016 election, more of our colleagues on both sides will be amenable to working together to address these kinds of issues even if it means allowing President Trump to claim some successes.

I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota.

IMPROVING ACCESS TO AFFORDABLE PRESCRIPTION DRUGS ACT

Mr. FRANKEN. Mr. President, I rise to talk about a path forward on healthcare.

Last week, Republicans in the House failed to pass the American Health Care Act—a deeply flawed policy that amounted to little more than a massive tax break for the wealthy at the expense of working people. The failure of that bill means that, as Speaker RYAN put it, the ACA is the law of the land for the foreseeable future. So today I would like to invite my colleagues on the other side of the aisle to leave repeal efforts behind and instead roll up their sleeves and work with me and other Democrats to improve the system we already have, which is the law of the land for the foreseeable future. It is time to pass commonsense reforms that build on the successes of the ACA and lower healthcare costs.

In a recent HELP Committee hearing, Chairman ALEXANDER said that he wanted to work on a bipartisan basis to stabilize the individual market. Great. Let's do that. We should reinstate and strengthen programs that help insurance companies stay in the marketplace and continue to serve even the sickest patients. We should pass a public option to make sure there is competition in every market. We should provide more tax credits to more people.

While we work on those things, there is something else we should do, something that, together with a group of my colleagues, I introduced a bill about yesterday. It is time to bring down

healthcare costs for everyone by reducing the price of prescription drugs. It is time to pass the Improving Access to Affordable Prescription Drugs Act.

I think all of us would agree that no one should have to choose between affording a lifesaving drug and putting food on the table for one's family, but right now that is happening. Companies are setting prices that are beyond the reach of consumers and that are driving up costs for insurers and taxpayers.

One in five Americans says he has not filled a prescription simply because he could not afford it. Others are rationing care due to high prices. A study published just last month found that about 10 percent of cancer patients skipped their medication and about 13 percent delayed filling their prescriptions. We have all been shocked by the stories of EpiPen's prices shooting up nearly 500 percent. The price of insulin has more than doubled in the last 5 years.

Drug companies can essentially set whatever prices they want. As a result, in recent years, drug companies have secured some of the highest profit margins of any industry.

Drug prices are too high. That is why my colleagues and I are introducing comprehensive legislation to tackle prescription drug prices. We want to make sure companies cannot exploit the sick and dying to make a profit. The bill includes 17 policy changes that will improve transparency, promote affordability, spur innovation, and enhance competition. Today, I would like to highlight just three of those provisions.

First, transparency. This legislation requires drug companies to disclose how much they spend on research, manufacturing, and marketing, as well as research grants from the Federal Government, to help all of us understand why prices for lifesaving drugs are so high. It is especially galling that so many drugs that are developed with taxpayer dollars are unaffordable for so many Americans. Getting this information would help all of us hold drug companies accountable, and that can be an important step toward bringing prices down.

Second—something that President Trump called for on the campaign trail—the bill will allow Medicare to negotiate lower prices for prescription drugs. It is just common sense that the biggest buyer of pharmaceutical products in America should be able to use its negotiating clout to bring prices down.

Third, the bill would end the practice of so-called pay-for-delay. Right now, drug companies that make the expensive brand-name drugs will pay other companies that make generic alternatives to keep their products off the market. This is called pay-for-delay. It is outrageous, and it is increasingly common. This bill will stop these agreements once and for all.

There is a lot more that this bill does. It penalizes companies that price-

gouge for lifesaving medicine, and I think we can all agree on that. It puts a cap on out-of-pocket drug costs in insurance plans. It speeds up generic competition. It funds new innovation and includes a number of other provisions.

Tackling the high cost of prescription drugs is an issue many of my colleagues care deeply about. This bill reflects many of their ideas and proposals, and I am grateful for their work with me. Moreover, it is obvious that the public is ready for action on this issue. Overwhelming majorities of Americans in both parties support government action to curb out-of-control drug prices.

I am eager to hear from colleagues on both sides of the aisle and from the administration about how we can work together to pass the reforms into law. This is an area of health policy that Democrats are eager to work on, and we hope the President will stand by his promise to stand up to drug companies and reduce costs for American families. It is morally wrong that some people are denied access to lifesaving drugs because they cannot afford them, and it is something we can fix.

I am in the Senate so that I can fight for policies that improve people's lives. That is why I am here. With this bill, I am trying to do exactly that. I hope my colleagues on both sides of the aisle will join me in helping to bring down the cost of prescription drugs.

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

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

AFFORDABLE CARE ACT

Mr. DURBIN. Mr. President, for 7 years, Republicans in Congress have promised to "repeal and replace ObamaCare," but not once during those 7 years did they actually put together a piece of legislation to make good on that promise.

Not once during those 7 years did Republican leaders actually convene serious hearings and meetings with patients, hospitals, insurers, and medical groups to discuss how best to reform our healthcare system, instead preferring to just rail against the law.

Not once during those 7 years did congressional Republicans actually try to sit down with Democrats and work on a bipartisan basis to improve upon the law.

But here is what they did do: They did everything possible to gum up the works, with many Republican Governors even refusing to expand Medicaid, denying millions of their constituents access to healthcare.

They went on TV, did interviews, and held campaign rallies about how all of