

number of Senators made in 2005 allowed several of the most conservative judges to be confirmed to that court—very conservative people. It left a bad taste in my mouth, and I am sure in my colleagues' and in many others.

But then, when President Obama came in, they insisted on not filling any additional seats on the court—which, of course, would have been Democratic seats—and eventually held open 3 of the 11 seats on that court. They said they would not allow those seats to be filled by President Obama—an eerie precedent, which the majority leader repeated with Merrick Garland. He didn't want the DC Circuit to have Obama-appointed, Democratic-appointed nominees; he didn't want that on the Supreme Court, so he blocked Merrick Garland. He didn't want it on the DC Circuit, so they wouldn't let any of President Obama's nominees come to the floor.

Merrick Garland's nomination was not the first time the majority leader held open a judicial seat because it wasn't the President of his party, and that was not during an election year.

At the time, I spoke with my good friend from Tennessee, Senator ALEXANDER. I asked him to go to Senator MCCONNELL and tell him that the pressure on our side to change these rules—after all of these unprecedented numbers of filibusters—was going to be large. I said to Senator ALEXANDER: Let's try to avoid it. But Senator MCCONNELL and Republicans refused all of our overtures to break the deadlock they imposed.

To be clear, Democrats changed the rules after 1,776 days of obstruction on President Obama's nominees. My Republican friends are contemplating changing the rules after barely more than 70 days of President Trump's administration. We moved to change the rules after 79 cloture motions had to be filed. They are talking about changing the rules after 1 nominee fails to meet the 60-vote threshold.

So, yes, Democrats changed the rules in 2013, but only to surmount an unprecedented slowdown that was crippling the Federal judiciary, and we left the 60-vote threshold intact for the Supreme Court deliberately. We could have changed it. We had free will then, just as Senator MCCONNELL has it now. But we left the 60-vote threshold intact for the Supreme Court because we knew and know—just as our Republican friends know—that the highest Court in the land is different.

Unlike with lower courts, Justices on the Supreme Court don't simply apply precedents of a higher court; they set the precedents. They have the ultimate authority under our constitutional government to interpret the law. Justices on the Supreme Court should be mainstream enough to garner substantial bipartisan support; hence, why we didn't change the rules; hence, why we believe in the 60-vote threshold; and hence, why 55 or 60 percent of all Americans agree with the 60-vote threshold,

according to the most recent polls. To me, and I think to most of my friends on the Republican side, that is not a good enough reason to escalate the argument and break the rules for the Supreme Court.

Second, as I have mentioned, I have heard my Republican friends complain that Democrats are conducting the first partisan filibuster of a Supreme Court nominee in history, so that is the reason they can justify breaking the rules because Democrats are the ones taking it to a new level. Again, I have just two words for my Republican friends: Merrick Garland. The Republican majority conducted the first partisan filibuster of a Supreme Court pick when their members refused to have hearings for Merrick Garland.

In fact, what the Republicans did was worse than a filibuster. The fact is, the Republicans blocked Merrick Garland using the most unprecedented of maneuvers. Now we are likely to block Judge Gorsuch because we are insisting on a bar of 60 votes.

We think a 60-vote bar is far more in keeping with tradition than what the Republicans did to Merrick Garland. We don't think the two are equivalent. Nonetheless, in the history of the Scalia vacancy, both sides have lost. We didn't get Merrick Garland; they are not getting 60 votes on Judge Gorsuch.

So we are back to square one right now, and the Republicans have total freedom of choice in this situation.

Finally, Republicans have started to argue that because Democrats will not confirm Judge Gorsuch, we will not confirm anyone nominated by President Trump, so they have to break the rules right now. That is an easy one. I am the Democratic leader. I can tell you myself that there are mainstream Republican nominees who could earn adequate Democratic support.

And just look at recent history. Justices Roberts and Alito, two conservative judges who many of us on the Democratic side probably don't agree with, both earned over 60 votes. They got Democratic votes. While there was a cloture vote on Justice Alito, he was able to earn enough bipartisan support that cloture was invoked with over 70 votes. He got only 58 when we voted for him, but the key vote was the cloture vote.

Let's have the President consult Members of both parties—he didn't with Gorsuch—and try to come up with a consensus nominee who could meet a 60-vote threshold. That is what President Clinton did with my friend, the Senator from Utah, in selecting Justices Ginsberg and Breyer. It is what President Obama did with Merrick Garland.

Of course, we realize a nominee selected this way would not agree with many of our views. That is true. But President Trump was elected President, and he is entitled by the Constitution to nominate. But Judge Gorsuch is so far out of the main-

stream that the Washington Post said his voting record would place him to the right of Justice Thomas. He was selected by the Heritage Foundation and the Federalist Society without an iota of input from the Senate.

There is a better way to do this. I know it sometimes may seem like a foreign concept in our hyperpolarized politics these days, but there is always the option of actually consulting Democrats on a nominee and discussing a way forward that both parties can live with. We are willing to meet anywhere, anytime.

So my friends on the other side can dredge up these old wounds and shopworn talking points if they choose. If Republicans want to conduct a partisan, "they started it" exercise, I am sure we could trace this all the way back to the Hamilton-Burr duel. But at the end of the day, they have to confront a simple choice: Are they willing to break the rules of the Senate or can they work with us on a way forward? I, for one, hope we can find a way to compromise. Judge Gorsuch was not a compromise. He was solely chosen without any consultation. So it is not that there is a Merrick equivalency.

My friend the majority leader said: "I think we can stipulate that in the Senate it takes 60 votes on controversial matters." If anything is a controversial, important matter, it is a selection for the Supreme Court, and Senator MCCONNELL has repeatedly stood for the rightness of 60 votes on important and controversial issues.

If Senator MCCONNELL wants to change his view on the 60 votes all of a sudden and Republicans decide to go along with him, it will not be because Democrats started it, because that is not true. It will not be because Democrats will not confirm any President Trump-nominated Justice, because that is not true. It will be because they choose to do so, and they will have to bear the unfortunate consequences.

Mr. President, I yield the floor.

Mr. DURBIN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

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

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

MINERS PROTECTION ACT

Mrs. CAPITO. Mr. President, I rise today, as I have on a number of occasions in the past, to express the urgent need for action to protect the retirement security of our Nation's coal miners. Because of bankruptcies that have decimated the coal industry, we have lost over 22,000 jobs in our State, but more than 22,000 retired coal miners and their spouses are at risk of losing their healthcare benefits at the end of April.

I have visited with retired miners from all across West Virginia to discuss this situation. During the February congressional recess, I visited the Cabin Creek Health Center in West Virginia. The Cabin Creek Health Center serves hundreds of coal miners and their families. They provide pulmonary rehabilitation services for miners suffering from black lung. They also provide primary care services for miners and other members of their community. During my visit, I met with several retired miners who would lose their health insurance coverage if Congress fails to act. These individuals are suffering from serious medical conditions and were unsure how they would afford their healthcare if they were to lose their current coverage.

Just 2 weeks ago, I met with about a dozen retired miners from West Virginia who came to Washington to support the Miners Protection Act and to stand up for their hard-earned retirement benefits. Other groups of West Virginia miners have come to Washington over the past few months. All have carried one message to Congress: Keep the promise of our lifetime health benefits. On March 1, thousands of miners received notice that their health insurance would be terminated in 60 days. Most of these same people received that very same message just last October. As I listen to their stories, it is hard to imagine the worry these notices cause for miners and their families.

In December 2016, Congress included language in the continuing appropriations legislation that preserved health coverage for these retired miners for just 4 months. While that provision kept mining families from losing their health coverage—which is good—at the end of last year, a permanent solution is critically needed.

The 4-month provision from the December CR expires at the end of this month. It is vital—vital—that Congress take action within the next few weeks to provide healthcare and peace of mind for these miners in West Virginia and across coal country. Our retired miners deserve their promised healthcare coverage and should not have to receive another cancellation notice or another Band-Aid solution. We have a bipartisan vehicle for action. I have worked closely with Senator JOE MANCHIN, Senator ROB PORTMAN, and others to introduce and promote the bipartisan Miners Protection Act, which would preserve healthcare and pension benefits for our miners. Our bill passed the Senate Finance Committee last year by a bipartisan vote of 18 to 8. I also would like to thank the majority leader, Senator MITCH MCCONNELL, because he has introduced legislation that would provide a permanent healthcare solution for our miners.

With all of us pulling together and with us working together, I am confident the Senate will act before the end of this month to continue these

critical healthcare benefits for our miners. I ask my colleagues for their support in addressing this important issue for our working families.

The PRESIDING OFFICER. The Senator from Texas.

NOMINATION OF NEIL GORSUCH

Mr. CORNYN. Mr. President, yesterday the Senate Judiciary Committee voted out the nomination of Judge Neil Gorsuch to fill the vacancy on the Supreme Court left by the death of Justice Scalia. During the meeting, as the Presiding Officer knows, our Democratic colleagues trotted out the same old tired arguments we have heard time and again about Judge Gorsuch.

In the end, though, none of those arguments hold water, and of course many of them aren't even about him. Instead, these arguments reveal how our colleagues across the aisle are grasping for reasons to justify an unprecedented partisan filibuster of a Supreme Court Justice.

Some object to the nomination of Judge Gorsuch because they claim he refuses to answer specific questions. But I ask: How would any of us feel if the judge before whom we might later appear had previously, in order to get a confirmation of his nomination, made certain promises of how he would judge that case when presented at a future date? We would all feel more than a little bit betrayed and even cheated if the judge had prejudged our case before he even heard it. The judge is simply engaging in a common practice for Supreme Court nominees. They steer clear of any questions that may pertain to cases they may have to rule on later. It is a matter, as the Presiding Officer knows, of judicial ethics, and we wouldn't have it any other way.

Justice Ruth Bader Ginsburg set this precedent early on. During her confirmation hearing in 1993, she said she didn't want to give any hints or previews about how she might vote on an issue before her. So she politely and respectfully declined. Others followed her example, and Judge Gorsuch is, of course, doing precisely the same.

By any fair review, Judge Gorsuch has a history of 10 years as a judge sitting on the Tenth Circuit Court of Appeals out of Denver, CO. He has a history of interpreting the law fairly, basing his judgments on the law and the facts, without regard to politics and without respect to persons.

That brings me to this argument that somehow he is against the little guy. Clearly, a review of the records demonstrates that this is not so. But, again, how are judges supposed to perform? Are they supposed to see the litigants—the parties to a lawsuit—in their court and say: Well, you have a big guy and you have a little guy, and I am always going to vote or render a judgment for the little guy without regard to the law or the facts?

I realize that sometimes our colleagues can weave a story that seems somewhat sympathetic when it comes to the fact that not everybody is guar-

anteed a win in court. As a matter of fact, when there are two parties to a lawsuit, one of those parties is likely to be disappointed in the outcome. But that is what judges are there for. That is what they are supposed to do. They are supposed to render judgments, without regard to personal preferences or politics or without regard to their sympathies, let's say, for one of the parties to the lawsuit.

Judge Gorsuch even said this during his hearing: No one will capture me. No one will capture me—meaning that no special interest group or faction would derail him from following the law, wherever it may lead. That is why Judge Gorsuch is universally respected. That is why he was confirmed by voice vote 10 years ago to the Tenth Circuit Court of Appeals. No one objected to Judge Gorsuch's confirmation to a lifetime appointment on the Tenth Circuit Court of Appeals.

Again, as the Presiding Officer knows, the Supreme Court of the United States only hears about 80 cases, give or take, a year. Most of the hard work gets done in our judicial system at the district court level and at the circuit court level, and almost all of the cases end in circuit courts, like the Tenth Circuit Court of Appeals, on which Judge Gorsuch serves. That is not to say that the Supreme Court is not important—it is—in resolving conflicts between the circuits or ruling on important questions of law to guide all of the judiciary and to settle these issues for our country, at least for a time, and maybe even permanently when it comes to constitutional interpretation.

Judge Gorsuch enjoys broad support from across the political spectrum, especially from his colleagues and members of the bar.

For 13 years, I served on the State judiciary in Texas, with 6 years as a trial judge and 7 years as a member of the Texas Supreme Court. When I heard that Judge Gorsuch had participated in 2,700 cases on a three-judge panel and 97 percent of them were unanimous, that told me something special about this judge. It takes hard work to build consensus on a multijudge panel, whether it is three judges or nine judges, like the Supreme Court. I think what we are going to see out of this judge is not somebody who is going to decide cases in a knee-jerk fashion but somebody who is going to work really hard to try to build consensus on the Supreme Court of the United States.

That is really important to the Supreme Court's respect as an institution of our government. What causes disrespect for our judiciary is when judges act like politicians, when they make pledges of how they will decide cases ahead of time or they campaign, in essence, for votes based on ideological positions.

Judge Gorsuch is the opposite of that, and that is the kind of judge America needs right now in the Supreme Court. That is why later on this