

So here we are today, with no other option but to invoke this so-called nuclear option to put an eminently qualified individual on the U.S. Supreme Court. Judge Gorsuch is the definition of a mainstream judge. In more than 2,700 cases in which he has participated in the Tenth Circuit, 97 percent of them have been decided unanimously; in fact, he was in the majority 99 percent of the time. Yet Senate Democrats would rather play politics and place the demands of extreme liberal interests over ensuring regular order.

Let's talk about what we are and what we are not doing. We are in the Senate, a Chamber I am honored to serve in, representing more than 1 million Montanans. We operate on a set of Parliamentary criteria based on things that have happened before. Therefore, we are going to establish a new precedent; we aren't changing the rules. This isn't happening for the first time. Let us remember that in November of 2013, Senate majority leader Harry Reid established a new precedent of how many votes are necessary on executive branch nominees, with the exclusion of Supreme Court picks.

What is even more shocking to me is that over the past few weeks, through the hearing process, through the debate and discussions about Judge Gorsuch on the floor, and with support from across my State of Montana—let me just name some of those organizations and people in support of Judge Gorsuch: the Montana Chamber of Commerce; four of Montana's Tribes—the CSKT, the Crow Tribe, Fort Belknap and Fort Peck; the Montana Farm Bureau, Judge Russell Fagg of the 13th judicial district, Judge Jeffrey Langton of the 21st judicial district, Judge John Larson of the 4th judicial district, State senator Nels Swandal, retired judge of the 6th Judicial District; the Montana NRA members; the Montana Grain Growers Association and the Montana Wool Growers Association; the Montana Stockgrowers Association; our attorney general in Montana, our auditor in Montana, our speaker of the Montana House. This is a very mainstream group of Montanans, leaders back home who are in support of Judge Gorsuch. Yet my colleagues are rejecting the will of the American people, rejecting the will of Montanans, filibustering this nomination, and not even allowing for an up-or-down vote.

The American people deserve a Supreme Court Justice who upholds the rule of law and will follow the Constitution. The American people deserve a Supreme Court Justice who doesn't legislate from the bench. The American people deserve Judge Neil Gorsuch to serve on the U.S. Supreme Court.

Thank you, Mr. President.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. TESTER. 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. TESTER. Mr. President, I ask unanimous consent to be allowed to speak for up to 3 minutes.

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

INTERNET PRIVACY RIGHTS

Mr. TESTER. Mr. President, I rise today with a warning about S.J. Res. 34. This measure undermines the privacy of all Montanans and all Americans. It is a measure I strongly oppose because it takes the refs off the field, leaving consumers at the whim of internet service providers. It allows these companies to sell our data—to sell my data—and to snoop through your search history and to track the sites we visit. In other words, it allows internet companies to make a profit by invading your privacy. It gives them the ability to collect and sell your physical location, information about your children, your health, finances, Social Security number, and web browsing history. In fact, this legislation even extends to apps and your social media accounts.

Following the vote that we had here on this floor, a Republican State senator from Buffalo, MT, proposed an amendment to our State budget to push back against this irresponsible resolution. In my home State of Montana, folks on both sides of the aisle are deeply concerned about their right to privacy. Now folks you don't even know can have access to the websites you visit, and they can have this access without your consent.

This is another troubling step that folks in Congress have taken this year to violate the rights of privacy of law-abiding citizens. We already have a CIA Director who has advocated for the most intrusive acts of the PATRIOT Act. We have a Supreme Court nominee before us who supports the government's ability to reach into the private lives of law-abiding Americans. Now Congress is rolling out the red carpet for major corporations to collect and sell our personal online information.

Enough is enough. I am here today to provide a voice for all Montanans and all Americans who value their right to privacy, who expect their elected officials to defend civil liberties, to stand up for constitutional rights, and who do not want private information collected and shopped around like a used book on Amazon.

When the President decided to sign this resolution last night, he ushered in the latest significant threat to our right to privacy. Now it is the responsibility of service providers to protect our personal information online.

I think folks in Montana and across this country have the right to question the priorities of those who supported this resolution. Everyone has a fundamental right to privacy, and the government shouldn't be in the business of

violating those individual rights, especially when doing the bidding of big companies looking to make more profits at the expense of people's privacy.

I want it to be known in this body that Montanans don't want anyone snooping around in their private lives, neither the government nor corporations. It is fundamental to our Montana values. Protecting online privacy is critical to the integrity of basic, fundamental freedom, of fundamental civil liberty. I urge all my colleagues to make their voices heard on this critical issue.

I yield the floor.

The PRESIDING OFFICER. The Senator from Wyoming.

(The remarks of Mr. BARRASSO pertaining to the introduction of S. 826 are printed in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. BARRASSO. I yield the floor.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the Duke nomination?

Mr. BARRASSO. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The senior assistant legislative clerk called the roll.

Mr. CORNYN. The following Senator is necessarily absent: the Senator from Georgia (Mr. ISAKSON).

The PRESIDING OFFICER (Mr. CRUZ). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 85, nays 14, as follows:

[Rollcall Vote No. 103 Ex.]

YEAS—85

Alexander	Flake	Perdue
Baldwin	Franken	Peters
Barrasso	Gardner	Portman
Bennet	Graham	Reed
Blunt	Grassley	Risch
Boozman	Hassan	Roberts
Brown	Hatch	Rounds
Burr	Heitkamp	Rubio
Cantwell	Heller	Sasse
Capito	Hirono	Schatz
Cardin	Hoeven	Schumer
Carper	Inhofe	Scott
Casey	Johnson	Shaheen
Cassidy	Kaine	Shelby
Cochran	Kennedy	Stabenow
Collins	King	Strange
Coons	Klobuchar	Sullivan
Corker	Lankford	Tester
Cornyn	Leahy	Thune
Cotton	Lee	Tillis
Crapo	Manchin	Toomey
Cruz	McCain	Van Hollen
Daines	McCaskill	Warner
Donnelly	McConnell	Whitehouse
Durbin	Moran	Wicker
Enzi	Murkowski	Wyden
Ernst	Murray	Young
Feinstein	Nelson	
Fischer	Paul	

NAYS—14

Blumenthal	Harris	Murphy
Booker	Heinrich	Sanders
Cortez Masto	Markey	Udall
Duckworth	Menendez	Warren
Gillibrand	Merkley	

NOT VOTING—1

Isakson

The nomination was confirmed.

The PRESIDING OFFICER. Under the previous order, the motion to reconsider is considered made and laid upon the table and the President will be immediately notified of the Senate's action.

RECESS

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until 2:15 p.m.

Thereupon, the Senate, at 12:33 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. PORTMAN).

The PRESIDING OFFICER. The majority leader.

LEGISLATIVE SESSION

Mr. McCONNELL. Mr. President, I move to proceed to legislative session.

The PRESIDING OFFICER. The question is on agreeing to the motion. The motion was agreed to.

MOTION TO PROCEED TO EXECUTIVE SESSION

Mr. McCONNELL. Mr. President, I move to proceed to executive session to consider Executive Calendar No. 33, the nomination of Neil Gorsuch to be Associate Justice of the Supreme Court of the United States, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to the motion.

The clerk will call the roll.

The senior assistant legislative clerk called the roll.

Mr. CORNYN. The following Senator is necessarily absent: the Senator from Georgia (Mr. ISAKSON).

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 55, nays 44, as follows:

[Rollcall Vote No. 104 Leg.]

YEAS—55

Alexander	Fischer	Paul
Barrasso	Flake	Perdue
Bennet	Gardner	Portman
Blunt	Graham	Risch
Boozman	Grassley	Roberts
Burr	Hatch	Rounds
Capito	Heitkamp	Rubio
Cassidy	Heller	Sasse
Cochran	Hoeven	Scott
Collins	Inhofe	Shelby
Corker	Johnson	Strange
Cornyn	Kennedy	Sullivan
Cotton	Lankford	Thune
Crapo	Lee	Tillis
Cruz	Manchin	Toomey
Daines	McCain	Wicker
Donnelly	McConnell	Young
Enzi	Moran	
Ernst	Murkowski	

NAYS—44

Baldwin	Cardin	Duckworth
Blumenthal	Carper	Durbin
Booker	Casey	Feinstein
Brown	Coons	Franken
Cantwell	Cortez Masto	Gillibrand

Harris	Menendez	Shaheen
Hassan	Merkley	Stabenow
Heinrich	Murphy	Tester
Hirono	Murray	Udall
Kaine	Nelson	Van Hollen
King	Peters	Warner
Klobuchar	Reed	Warren
Leahy	Sanders	Whitehouse
Markey	Schatz	Wyden
McCaskill	Schumer	

NOT VOTING—1

Isakson

The motion was agreed to.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

The PRESIDING OFFICER. The clerk will report the nomination.

The senior assistant legislative clerk read the nomination of Neil M. Gorsuch, of Colorado, to be an Associate Justice of the Supreme Court of the United States.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, before I start, I ask unanimous consent that the debate time on the nomination of Judge Gorsuch during Tuesday's session of the Senate be divided as follows: the time until 3:30 p.m. be under the control of the chairman of the Judiciary Committee; the time from 3:30 p.m. until 4:30 p.m. be under the control of the minority; the time from 4:30 p.m. until 5:30 p.m. be under the control of the majority; the time from 5:30 p.m. until 6:30 p.m. be under the control of the minority; and finally, that the time from 6:30 p.m. until 6:45 p.m. be under the control of the majority.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. GRASSLEY. Mr. President, today we will continue to debate the nomination of Judge Neil M. Gorsuch to serve as Associate Justice of the Supreme Court of the United States.

The Judiciary Committee held four full days of hearings last month. The judge testified for more than 20 hours. He answered more than 1,000 questions during his testimony and hundreds more questions for the record. We have had the opportunity to review the 2,700 cases he has heard, and we have had the opportunity to review the more than 180,000 pages of documents produced by the Bush Library and the Department of Justice. Now, after all of this, my Democratic colleagues unfortunately appear to remain committed to what they have been talking about for a long period of time: filibustering the nomination of this very well qualified jurist.

Even after all of this process, there is no attack against the judge that sticks. In fact, it has been clear since before the judge was nominated that some Members in the Democratic leadership would search desperately for a reason to oppose him.

As the minority leader said before the nomination: "It's hard for me to

imagine a nominee that Donald Trump would choose that would get Republican support that we could support." That is the end of the quote from the minority leader.

He said later, and I will continue to quote him: "If the nominee is out of the mainstream, we'll do our best to hold the seat open."

Then the President nominated Judge Gorsuch. This judge is eminently qualified to fill Justice Scalia's seat on the Supreme Court, and there is no denying that whatsoever.

Let me tell you some things about him. He is a graduate of Columbia University and Harvard Law School. He earned a doctorate in philosophy from Oxford University and served as a law clerk for two Supreme Court Justices.

During a decade in private practice, he earned a reputation as a distinguished trial and appellate lawyer. He served with distinction in the Department of Justice. He was confirmed to the Tenth Circuit Court of Appeals by a unanimous voice vote in this body.

The record he has built during his decade on the bench has earned him the universal respect of his colleagues both on the bench and the bar. This judge is eminently qualified to do what the President appointed him to do.

Faced with an unquestionably qualified nominee, my friends on the other side of the aisle, my Democratic colleagues, have continually moved the goalpost, setting test after test for this judge to meet. But do you know what? This judge has passed all of those tests, all with flying colors, so the people on the other side of the aisle—the Democrats in the minority—are left with a "no" vote in search of a reason.

Let's go through some of their arguments. First, the minority leader announced that the nominee must prove himself to be a mainstream judge. Is he a mainstream judge or not? Well, consider his record: Judge Gorsuch has heard 2,700 cases and written 240 published opinions. He has voted with the majority in 99 percent of the cases, and 97 percent of the cases he has heard have been decided unanimously. Only one of those 2,700 cases was ever reversed by the Supreme Court, and it happens that Judge Gorsuch did not write the opinion.

Then consider what others say about him. He has been endorsed by prominent Democratic members of the Supreme Court bar, including Neal Katyal, President Obama's Acting Solicitor General. This Acting Solicitor General wrote a New York Times op-ed entitled "Why Liberals Should Back Neil Gorsuch." Mr. Katyal wrote: "I have no doubt that if confirmed, Judge Gorsuch would help to restore confidence in the rule of law."

He went on to write that the judge's record "should give the American people confidence that he will not compromise principle to favor the President who appointed him."

Likewise, another well-known person, David Frederick, a board member