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EXECUTIVE CALENDAR—Continued

Mr. MERKLEY. Let's turn to Planned Parenthood Association of Utah v. Herbert. In August of 2015, Gary Herbert, Utah's Republican Governor, ordered the State to strip $272,000 in Federal funding from the Planned Parenthood Association of Utah in response to a series of highly edited videos that alleged that Planned Parenthood clinics were selling fetal tissue, even though Utah's clinics were not in the video then.

By the way, those videos had been found to be completely doctored, completely inaccurate, completely misleading. But despite the fact that the videos were not authentic and despite the fact that they didn't have any bearing in Utah, Governor Herbert stood by his ruling to carve out and take away funding from Planned Parenthood. So Utah's Planned Parenthood Association filed for a restraining order against the State, saying that the State was not acting justly, so they asked the Court to protect them from unjust action.

In spite of his continued claim that stripping the funding was not to punish the organization for its stance on abortion but in response to the videos—the doctored, inauthentic, discredited videos—the Governor eventually admitted, while responding to Planned Parenthood's motion for a preliminary injunction, that defense of the videos involved different affiliates—not the ones in Utah—that there was not even an accusation that Planned Parenthood in Utah had broken the law—not even an accusation. The organization didn't participate in programs that provided fetal tissue for research, so it was completely disconnected from the operation of Planned Parenthood in that State.

The background of this is that medical institutions have utilized fetal tissue and there have been charges related to the preparation of that tissue. We could have a whole debate, and we should bring in the medical professionals to understand the details. But in this case, it is irrelevant to have that debate because Planned Parenthood in Utah wasn't part of the fetal tissue research organization. So we don't have to argue over whether fees they have charged for repairing the tissue were fair or unfair because they didn't repair anything. This was all about something else, which was the Governor's decision to launch an attack on Planned Parenthood, punish Planned Parenthood for its constitutionally protected advocacy.

This issue is one which I am sure we will be talking about for years to come. But in the context of the law, a three-judge panel of the Tenth Circuit granted a preliminary injunction on Planned Parenthood, concluding that Utah's Planned Parenthood was operating lawfully and that the Governor's personal opposition to abortion as a motivation for blocking Federal funds and targeting the health organization did violate its constitutional rights.

So when this was decided, neither Planned Parenthood nor the State of Utah sought to have the Tenth Circuit rehear the case en banc, which means all the judges that serve on the Tenth Circuit. So you had a three-judge panel that made a decision. Neither side of the case—they were like, OK, we are done with this. We are done with this. The practice wasn't even relevant to the association in Utah, not just because the videos were from different States, not just because the videos were doctored and basically illegitimate, but also because they were about a fetal research program that the organization in Utah didn't participate in.

So from every possible direction, both sides said: Peace. The judge has ruled, and we understand why. We accept their ruling. But did Judge Gorsuch accept the ruling? No. He dissented from the court's denial and wanted to grant an en banc review, not at the behest of any litigant, just that Judge Gorsuch didn't like the outcome of the case and wanted to have a full panel in hopes of getting the decision that would defer to Governor Herbert, who wasn't seeking any review because he wanted to strip the organization's funding, even though the organization had done nothing wrong and didn't participate in the program at all. In other words, Judge Gorsuch was willing to ignore court practice and custom and a whole set of facts that showed that the whole decision the Governor made was on the wrong basis—wrong basis on the facts because the videos were doctored, wrong basis on the facts because it wasn't even about the State of Utah, wrong basis on the facts because Planned Parenthood of Utah didn't participate in this research program—wrong on every level.

But Judge Gorsuch wanted to ensure that he could show a case backing Utah's Republican Governor that eliminated funding for Planned Parenthood. That is judicial activism. That is rewriting the law. That is not a judge; that is a legislator. A person who wants to rewrite the law in the frozen trucker case, a person who wants to rewrite the law in the autistic child case, a person who wants to rewrite the law in the Planned Parenthood case should run for office and legislate, not use the courts as your personal strategy for judicial activism; that is, to rewrite the law, the opposite of what the law says.

In the majority's opinion, Judge Mary Briscoe wrote separately to highlight the troubling nature of Gorsuch's dissent. She noted first how ''unusual'' and ''extraordinary''—those are words that she put in—it would be for the Tenth Circuit, on its own motion, to order an en banc review when neither

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

party to a litigation sought such a review. And then she went on, and what did she say about Judge Gorsuch's proposal? She said he ''mischaracterized this litigation and the panel decision at several turns.''

Politics should be in this room, not taking your politics and trying to change the law through judicial activism on the court by turning the law upside down and saying it means X when it clearly states Y.

An unidentified judge—we are not sure who—requested that judges be polled. Again, that would be an unusual situation, apparently, in this context. Another judge in the majority pointed out that none of the parties asked for a hearing within the time permitted, and there was no justification for polling the court on that question at all.

These types of cases give you a sense of how Neil Gorsuch has used his judicial position to rewrite laws. The law says protect the trucker. If the trucker is seeking to pursue safety, he says don't protect the trucker. The law says provide the disabled child with an appropriate education; Neil Gorsuch says no appropriate education is required.

The court says that Planned Parenthood's rights were violated because they were singled out. That is not equality before the law, a very important principle in American jurisprudence. Neither side contested the outcome. It was kind of like, yes, OK, the court got it right. Judge Gorsuch wanted to contest it so he could strip Planned Parenthood of funding on a basis that the Court found to be unconstitutional. That is yet another reason that this hearing, this review of the judge be set aside.

You have these three fundamental reasons. First, for the first time in our history, the seat has been stolen from one Presidency and delivered to another in a strategy to pack the Court, causing tremendous damage to the institution, as well as tremendous damage to this institution, because it involved not exercising our advice and consent responsibility.

By the way, one may wonder, why didn't the majority, rather than stealing the seat, putting it in a time capsule and fast-forwarding it into the next administration in hopes of packing the Court—why didn't they just bring Judge Garland up and vote him down? The Senate has acted to not confirm in roughly a quarter of the nominations that have come forward to us for the Supreme Court. In those election year cases that I put up earlier, the Senate acted in all 15 of the cases that preceded the death of Antonin Scalia, but they didn't confirm in every case; they turned several of them down. They tabled a couple of them. They defeated a motion to proceed in another. But the Senate always acted.

Why didn't the majority honor the responsibility under the law for the Senate to do advice and consent, when there was plenty of time to do so, when the entire tradition of the Senate had been to always do so, when the written responsibility under the Constitution was to do so? So why not just bring up the judge and defeat him?

The answer is in the quotation that I read earlier from my colleague from Utah, who anticipated that if only the President would nominate somebody like Merrick Garland, it would be a great thing, and we would see a quick confirmation. Merrick Garland was that acceptable. He was that down the middle. He was without the kinds of issues that raised concerns. That was Merrick Garland.

So the majority said: We can't have a debate on him because the Senate will approve him, because he is that qualified. He will get that bipartisan support.

That is the principle of the filibuster; that is, that you don't close debate unless 60 Members say you close debate. So if 41 say we are not ready for whatever reason, you keep debating. That sends a strong message for Presidents to do what President Obama did. He consulted with the Democrats; he consulted with the Republicans and chose somebody who would be acceptable to both sides. That is the way it is supposed to work. And when a President ignores that and says: I am going to support somebody from the extremes, I am going to nominate somebody from the extremes, that is an invitation for the Senate to say no. The reputation, the legitimacy of the Court matters, so we are not going to approve this judge.

That is probably what is going to happen this week. The majority here in the Senate may say they want to close debate, but will they have a supermajority, a bipartisan majority? No. A few Senators perhaps, but they will not have those 60 votes.

Obama's judges met the 60-vote standard—both of them that they put forward before the third vacancy—and nobody filed a motion to close debate. There wasn't a vote on a motion to close debate. And why was that? Because everyone knew that they would have 60 votes to close debate. So, still, even out of the context of having had a cloture vote, you have the 60-vote standard there guiding the President and guiding the selection of the nominees.

We should not go back in time to a world in which the copper barons ruled Montana, not back to a time where the railroads and the oil companies called all the shots. We need to recognize that we have come a long way in terms of fulfilling the constitutional vision that our Founders set out—this vision of equality under the law, this vision of the pursuit of justice. But with the recent decisions of the 5-to-4 Court, we have gone backward. We have gone backward by allowing gerrymandering, by allowing voter suppression, by striking down the Voting Rights Act, and, most importantly, we have gone backward by allowing this vast infusion of dark money from the very few to drive election results.

I have been sharing the many reasons this debate should be suspended: One, because the seat was stolen; two, because there is an enormous cloud over the legitimacy of the President, and there are investigations under way, and we need to get to the bottom of it before a life-tenured position is filled by this President; and, three, a judge who repeatedly has engaged in rewriting the law to find for the powerful over the people, even when the law was very clear—even to the point that the entire Supreme Court overturned him on his effort to say doing merely more than nothing is acceptable under a law that says you must provide an appropriate education.

But here is one more thing. Breaking news: A POLITICO report has just come out which says that Judge Gorsuch committed plagiarism in a book and in an academic article. Well, that is news I had not heard, so I will read the article, and we can all learn about it at the same time.

This is a report from POLITICO entitled, ''Gorsuch's writings borrow from other authors.'' It came out at 11:19, which would put it an hour ago. Since I am here and since we are talking about Gorsuch, it is probably appropriate to share this breaking news with you.

Supreme Court nominee Neil Gorsuch copied the structure and language used by several authors and failed to cite source material in his book and an academic article, according to documents provided to POLITICO.

The documents show that several passages from the tenth chapter of his 2006 book, ''The Future of Assisted Suicide and Euthanasia,'' read nearly verbatim to a 1984 article in the Indiana Law Journal. In several other instances in that book and an academic article published in 2000, Gorsuch borrowed from the ideas, quotes, and structures of scholarly and legal works without citing them.

The findings come as Republicans are on the brink of changing Senate rules to confirm Gorsuch over the vehement objections of Democrats. The documents could raise questions about the rigor of Gorsuch's scholarship, which Republicans have portrayed during the confirmation process as unimpeachable.

The White House on Tuesday pushed back against any suggestion of impropriety.

Here is what the White House said:

''This false attack has been strongly refuted by highly-regarded academic experts, including those who reviewed, professionally examined, and edited Judge Gorsuch's scholarly writings, and even the author of the main piece cited in the false attack,'' said White House spokesman Steven Cheung. ''There is only one explanation for this baseless, last-second smear of Judge Gorsuch: Those desperate to justify the unprecedented filibuster of a well-qualified and mainstream nominee to the Supreme Court.''

That was the comment from the White House. I must do a little bit of editorializing here. Having a lengthy debate on a judge is not unprecedented at all. What is unprecedented is, for the first time in U.S. history, the majority leader filed a petition to close debate on the first day of debate. That motion under our rules means, in 2 days, we will have a vote to close debate. That

is what is unprecedented and never before done in U.S. history. Quite frankly, when the White House says ''mainstream nominee,'' the analysis by the Washington Post didn't find him to be a mainstream nominee. You can call him that, but read his opinions; read his judicial activism; find how he rewrote the law so that it means the case comes out the opposite of the way the law is written. See how that happened in the frozen trucker case. See how that happened in the autistic child case. See how that happened in his pursuit of the assault on Planned Parenthood, when everyone agreed there was a fair outcome and no one was appealing the outcome, except Judge Gorsuch.

If we are going to talk about a filibuster and we want to think about it in the longer sense, we aren't even allowed to continue talking to keep this from being considered because the majority leader filed a petition to close debate, so we have to have a vote on it. But last year, for 290-plus days, the Republicans completely filibustered Merrick Garland. If we are talking about the core heart of the meaning of filibuster—piracy, freebooting piracy to take over the system—that is what they did last year. They wouldn't allow even a committee hearing or a vote also for the first time in U.S. history. That is piracy. That is a violation of our responsibility. So the White House certainly got some of this completely wrong.

The article goes on—after having cited the White House opinion that this was an unfair attack—saying:

However, six experts on academic integrity contacted independently by POLITICO differed in their assessment of what Gorsuch did, ranging from calling it a clear impropriety to mere sloppiness.

''Each of the individual incidents constitutes a violation of academic ethics. I've never seen a college plagiarism code that this would not be in violation of,'' said Rebecca Moore, a Syracuse University professor who has written extensively on the issue.

Elizabeth Berenguer, an associate professor of law at Campbell Law School, said that under legal or academic standards Gorsuch's similarities to the Indiana Law Journal would be investigated ''as a potential violation of our plagiarism policy. It's similar enough to the original work.''

She continued:

''I would apply an academic writing standard,'' said Berenguer, who teaches plagiarism and legal writing. ''Even if it were a legal opinion, it would be plagiarism under either.''

The White House provided statements from more than a half-dozen scholars who have worked with Gorsuch or helped oversee the dissertation he wrote at Oxford University that was later turned into his book. They included John Finnis, professor emeritus at Oxford; John Keown of Georgetown University, one of the outside supervisors for Gorsuch's dissertation; and Robert George of Princeton University, the general editor for Gorsuch's book publisher.

The experts offered by the White House asserted that the criteria for citing work in dissertations on legal philosophy is different than for other types of academia or journalism: While Gorsuch may have borrowed language or facts from others without attribution, they said, he did not misappropriate ideas or arguments.

''Judge Gorsuch did not attempt to steal other people's intellectual property or pass off ideas or arguments taken from other writers as his own,'' said George. ''In no case did he seek credit for insights or analysis that had been purloined. In short, not only is there no fire, there isn't even smoke.''

The article continues:

The examples at issue make up a small fraction of published works by Gorsuch, which includes hundreds of legal opinions, academic articles, news articles and his book. POLITICO did not conduct a full examination of the federal judge's writings.

Yet a review of the documents provided to POLITICO shows Gorsuch parroting other writers' prose and sourcing without citing them. Instead, Gorsuch often acknowledges the primary sources cited by those writers.

In the most striking example, Gorsuch, in his book, appears to duplicate sentences from an Indiana Law Journal article written by Abigail Lawlis Kuzma without attributing her. Instead, he uses the same sources that Kuzma used: A 1982 Indiana court ruling that was later sealed, a well-known pediatrics textbook, ''Rudolph's Pediatrics,'' and a 1983 article in the Bloomington Sunday Herald.

At one point, Gorsuch's prose mimics Kuzma's almost word for word in describing a child born with Down syndrome.

Kuzma stated that—

Some medical terms here that I won't get right—

''Esophageal atresia with tracheoesophageal fistula indicates that the esophageal passage from the mouth to the stomach ends in a pouch, with an abnormal connection between the trachea and the esophagus.''

Did everybody follow that?

Gorsuch wrote that ''Esophageal atresia with tracheoesophageal fistula means that the esophageal passage from the mouth to the stomach ends in a pouch, with an abnormal connection between the trachea and esophagus.''

That is pretty close to word for word.

Gorsuch also used similar language as Kuzma in describing ''Baby Doe's'' first days.

''Shortly after Baby Doe was born, a hearing was held at Bloomington Hospital to determine whether the parents had the right to refuse the surgery on behalf of their child. An attorney was present at the hearing to represent the parents, though no one was present to represent Baby Doe's potentially adverse interests. Six physicians attended, three of whom had obstetric privileges and three of whom had pediatric privileges at Bloomington Hospital,'' Gorsuch wrote.

Kuzma, the predecessor from which it is being argued that he has taken this virtually word for word, wrote:

''Approximately twenty-six hours after Infant Doe was born, a hearing was held at Bloomington Hospital to determine whether the parents had the right to choose a course of treatment for their child that consisted of allowing the child to die. An attorney was present at the hearing to represent the child's parents. No attorney was present to represent Infant Doe's interests. Six physicians attended the hearing, three of whom had obstetric privileges and three of whom had pediatric privileges at Bloomington Hospital.''

I believe that last sentence was virtually word for word copied from what Kuzma wrote.

Kuzma, a one-time aide to former Sen. Dick Lugar (R–Ind.), did not respond to an inquiry from POLITICO, but released a statement through Gorsuch's team. Kuzma said she does ''not see an issue here, even though the language is similar.''

''These passages are factual, not analytical in nature,'' Kuzma, now a deputy attorney general in Indiana, said. ''It would have been awkward and difficult for Judge Gorsuch to have used different language.''

But a 1983 Notre Dame Law Review article addressing the same case did, in fact, use different, plainer language to describe the issue than Kuzma or Gorsuch did. Author John M. Maciejczyk wrote that the ''infant needed surgery to correct a blocked esophagus.''

In several other examples provided to POLITICO, Gorsuch follows the fact patterns and sourcing without acknowledging them.

This article goes on for another several pages. I guess we have the time to share it in its entirety. But let's not lose the fundamental point at the start of the article; that is, the title, ''Gorsuch's writings borrow from other authors,'' and an introductory comment here:

Supreme Court nominee Neil Gorsuch copied the structure and language used by several authors and failed to cite source material in his book and an academic article, according to documents provided to POLITICO.

To continue and to share the full text here, the article continues, providing more details. Tomorrow many people will be going through these because this is information that just came out an hour ago. It makes you wonder, is the reason that we had a first-ever motion to close debate on the first day of debate—the first time in U.S. history this happened—because there is information that people are aware of, and they want to get this nomination vote concluded before this information becomes public? Is that why we are violating all the constitutional norms here? Well, I hadn't thought of that possibility until this article was put in my hands a few moments ago.

The article continues:

In several other examples provided to POLITICO, Gorsuch follows the fact patterns in sourcing of other writers without acknowledging them.

In describing euthanasia activist Derek Humphrey, Gorsuch's book tracks closely with the 2003 book titled ''A Merciful End: The Euthanasia Movement in Modern America,'' by Ian Dowbiggin.

''In 1989 Humphrey left his second wife, Ann Wickett, soon after she had undergone surgery for breast cancer. During the divorce, Wickett alleged that when Humphrey purported to help her mother commit suicide, the resulting death was not fully consensual,'' Gorsuch wrote.

Dowbiggin wrote—

In a parallel phrasing that preceded Gorsuch's writing—

''In 1989 he left his second wife, Ann Wickett, shortly after she had undergone surgery for breast cancer. Their subsequent divorce was made messier by Wickett's allegations that her mother had not died willingly when Humphry had participated in the suicide of her own parent,'' Dowbiggin wrote.

Gorsuch did not include an attribution to Dowbiggin in the passage at issue, though he did cite the author at numerous other points in the book. Dowbiggin listed his sources as ''Deadly Compassion: The Death of Ann

Humphry and The Truth About Euthanasia,'' by Rita Marker, and ''Last Rites: The Struggle Over the Right to Die,'' by Sue Woodman. The same titles were cited as sources by Gorsuch.

In the same chapter, Gorsuch appears to rely heavily on a 2002 article by Paul Lombardo of the University of Virginia about sterilization techniques used in that state in the early 20th century. Lombardo writes that a woman named Carrie Buck was sterilized after having a child and her mother was institutionalized.

''Even worse for her, officials at her mother's asylum claimed that mother and daughter shared heredity traits in feeblemindedness and sexual promiscuity,'' Gorsuch wrote.

Wrote Lombardo, ''Officials at Virginia Colony said that Carrie and her mother shared heredity traits of 'feeblemindedness' and sexual promiscuity.''

There is a bit of an echo there.

Gorsuch did not cite Lombardo despite mimicking his sentences and presenting them in virtually the same order, according to an electronic search of Gorsuch's book.

Howard, the Syracuse University professor, said Gorsuch engaged in a passage known as ''patchwriting''—essentially patching together words, fact sequences and quotes from another source, but occasionally changing up the phrases and tenses.

It is a way to copy someone else's work while making it look like it is your own.

In addition to ''heavy patchwriting,'' Howard said, Gorsuch ''hides his sources, which gives the appearance of a very deliberate method. I would certainly call it plagiarism.''

In a 2000 article in the Harvard Journal of Law & Public Policy titled ''The Right to Assisted Suicide and Euthanasia,'' Gorsuch's writing aligns closely with a 1985 Duquesne Law Review article about euthanasia in colonial America. Gorsuch describes laws in colonial Virginia, Massachusetts, Rhode Island, South Carolina, North Carolina and Pennsylvania in the same order and with similar quotations as the Duquesne article. But Gorsuch never cites the article in that passage, instead only repeating the same sources that it relied on.

Oxford's academic guidance for plagiarism states that ''paraphrasing the work of others by altering a few words and changing their order, or by closely following the structure of their argument, is plagiarism if you do not give due acknowledgement to the author whose work you are using.''

Christopher Sprigman, a New York University law professor involved in building an online standard for citation in legal scholarship, said he did not believe examples of Gorsuch's questionable writing reflected ''mendacious'' acts on the judge's part. Gorsuch's manner in attributing sources is ''a choice that you might agree or disagree with,'' Sprigman said. ''It's a little bit risky, but I wouldn't say it rises to the level of a bad act. I think some people would say it's sloppy.''

That is the conclusion of the article—again, information that just came out about 1 hour 20 minutes ago. So I recommend that folks take a look at the article. I am sure many people will be analyzing it tomorrow.

Part of the point of the lengthy debates we often had over the Supreme Court is to have a chance for all the facts to come out. And the fact that tonight—well, that is, Tuesday night; it is now Wednesday morning—Tuesday was the first time ever in our entire 200-plus years as a Senate that a cloture motion on a Supreme Court nominee has been filed on the first day of debate. Maybe that motion should be withdrawn given that there is more information now to analyze as of a few minutes ago than we had before.

The challenge this institution faces is, how do we restore it to a functioning legislative body, and how do we repair the deep divide in America? This question goes far beyond just the issue of the nomination of Neil Gorsuch; this issue goes to fundamental changes in how this Senate operates, fundamental changes in how our society receives its information. While I shared some of that previously, I think it is probably now, many hours later, worth going back through a little bit on this set of challenges the Senate faces.

When I was first here as an intern in 1976—41 years ago—the Senate was here all week long, Monday through Friday. It had a normal workweek. The Senate families were here, which meant that people had a more normal family life. During the breaks, they returned to their home States to share what they had worked on, what they were going to work on, what the Senate was working on, and generally hold townhalls and meetings and catch up on everything and then come back here after the break. That structure of families living here meant that there were connections not just between Senators but connections between them and their spouses. There were connections between their children. There were relationships formed over many evenings in which people socialized, and they had activities on weekends.

There were a lot of connections that we don't have now, four decades later, because we fly in and vote on Monday night, and then we vote on Thursday afternoon and fly out. So we don't have the reenforcement of our families being here to provide the kind of fabric in which the legislative discussion occurs, and we don't have the time to get to know each other. That is a challenge.

Plus, we have to spend a lot more time fundraising than folks in the Chamber did four decades ago. When you realize that a single individual, under the deeply mistaken decisions of the Supreme Court, can now put as much money into a campaign attack against you through a third party campaign—that they can write a check for more than the total amount you have raised for your entire campaign, it means that you are going to have to work very hard year after year to prepare for the next battle because the opposition doesn't have to prepare for the next battle. They simply have these massive amounts of funds that they can deploy at a moment's notice: Let's put $5 million in that race. Let's put $10 million in that race.

The result is, for example, in the case of the Koch brothers, that when the Koch brothers used front groups to attack various candidates across America, the candidates wrestled with whether to respond by attacking the Koch brothers, and generally, they decided not to because of the old adage ''Don't pick a fight with someone who buys ink by the barrel.'' But the modern version of that is ''Don't pick a fight with someone who has the most deeply funded super pac that exists in the United States.''

So the Koch brothers carried their fight in 2014 into the Senate race in Arkansas. They carried their battle into the Senate race in Louisiana. They carried their battle into the race in North Carolina and in Colorado and certainly in Iowa and in Alaska and my home State of Oregon. They were funding front groups to attack me with a third-party campaign. This is what people fear. The Koch brothers can write a $5 million check—they and their associates—and counter all the funds you raised.

In addition to the fact that we are here only 3 days, a portion of those 3 days from Monday night to Thursday night is given over to fundraising. So instead of being able to go to dinner with colleagues, you go to a fundraising dinner. Maybe you slip across the street to do an hour of phone calls. If you are not raising for your own campaign, you are raising for your party's Senate group—the Republican Senate campaign committee or the Democratic Senate campaign committee—or maybe you are raising money directly for your colleagues themselves, helping to make calls for an event that is upcoming.

So you have an incredible shrinking of the Senate week, combined with a huge expansion of the time dedicated to fundraising in order to prepare for the attack that may well come from deeply funded super pacs. That is not a good combination in terms of Senators getting to know each other and getting to respect each other, developing projects together.

I know that it not only damages the time people should be working together, but it also delegitimizes what this group of 100 Senators does. The minority feels almost compelled to fight the battle after having been attacked so viciously by the other side in third-party campaigns. To some degree, this probably goes both directions. So we come here brutalized by the groups who are supporting the other side of the aisle. You are not particularly in a mood to help them out.

This is why I keep coming back to this: It is easy to simply become a pure partisan in this world in which deep-funded interests make up all kinds of attacks and put them on television in an effort to elect someone who will do their bidding, but if we do that, if we don't keep coming back together with the philosophy of problem-solving, then problems will never be solved. We will never have a better healthcare system. We will never have a better public education system. We won't have a better transportation system. We won't

have better deployment of infrastructure in rural America if all we do is nurture the wounds of elections. But it also means that we need to change the dynamic that creates those wounds. That is why the Supreme Court seat matters, because the 5-to-4 Court has been doing a lot of wound infliction on our system, making it easier to gerrymander, making it easier for voter suppression, making it easier for dark-money campaigns to corrupt the election process. So we have to attack it on all fronts.

That experience of coming here 41 years ago as an intern and seeing this place operate in a very different way gives me the hope that some way, we could find our way back from the brink. I don't think we have been anywhere as deep in the pit of partisanship—to mix metaphors—as at this moment, with this stolen seat; at this moment, with a cloud over our President and, therefore, a cloud over his nomination; at this moment, with a nomination that disrespected the role of a supermajority, the role being to help encourage Presidents to make nominations from the mainstream, not from the ideological extreme. Here we are, deep, deep into the pit.

If we don't solve the dark-money problem which is very related to the Supreme Court, then we aren't going to come together to solve the other problems because we won't have people who have been elected through a ''we the people'' vision of America, where each citizen has an equal voice, Jefferson's mother principle.

So that is the challenge that we face both on the Supreme Court side of this nomination but also in terms of problem solving.

I think that article that just came out is one that should add to this conversation—this article that says there is now yet another issue, an issue that didn't come out in the Judiciary Committee deliberations.

POLITICO has prepared a side-by-side comparison, which I have on this multicolored chart so citizens can look that up and contribute to that. But it is yet another reason we should probably go a different direction.

Now I am going to turn to Gorsuch's views of expansive Executive power.

Given the need for strong judicial oversight of this administration, under the circumstances, this nominee is particularly ill-suited. He has consistently taken the position that Executive power has very few limits.

As a member of the Bush administration, Judge Gorsuch, according to the New York Times, ''was at the center of both litigation and negotiations with Congress'' regarding ''detainee abuses, military commissions, warrantless surveillance and its broad claims of executive power.''

As a lawyer at the Department of Justice, Judge Gorsuch defended President Bush's enhanced interrogation methods.

In 2005 Congress passed the Detainee Treatment Act, which was meant to ensure greater human rights for detainees held at Guantanamo Bay. Judge Gorsuch, working as a Department of Justice lawyer at the time, managed to weaken a provision in the Detainee Treatment Act permitting a civilian appeals court to review decisions by military tribunals.

The original draft let judges scrutinize whether the tribunal had applied the correct standards, but the revised language only let them look to see whether the tribunal had applied standards set by the Pentagon. That is quite a change.

After the legislation was passed, Gorsuch sent an email to a colleague in the White House in which he said he needed cheering up. In the email, he discussed successful efforts to weaken the legislation stating: ''The administration's victory is not well known, but its significance shouldn't be understated.''

After the Supreme Court issued a landmark ruling in June 2006 to find that officials involved in the use of interrogations could be vulnerable to prosecution for war crimes, Judge Gorsuch helped draft a legislative proposal to address the issue, though he left before the eventual bill, the Military Tribunal Commissions Act, was enacted.

It is clear that he played a significant role in the case of Hamdan v. Rumsfeld, which former Solicitor General Walter Dellinger called ''the most important decision on Presidential power ever.'' The case was regarding the legal process being accorded to detainees at Guantanamo Bay. His central role was made clear by a request from the Department of Justice Office of Public Affairs that he, along with the Solicitor General and his principal deputy, participate in a background media call on the day the decision was to be announced.

The Department of Justice records show that Gorsuch had been very involved in helping support the inclusion of language in the Detainee Treatment Act and the National Defense Authorization Act and bolstered the position that only the DC Circuit should be able to review complaints about the Bush military commissions.

Gorsuch repeatedly asked several DOJ colleagues in November where we stand on the legislative language and if there is anything we can do to help.

In February, a Republican Senate Judiciary Committee staffer sent Gorsuch a drafted amicus brief on behalf of Senators Kyl and GRAHAM for the administration's jurisdiction stripping arguments, a CONGRESSIONAL RECORD excerpt supporting the claim. Fortunately, the Supreme Court rejected the jurisdiction stripping Hamdan, but it was clear that Gorsuch was trying his best to enact sweeping Bush claims to unilateral authority and severe limits on judicial review.

Let me go back to the central premise here. As a member of the Bush administration, Judge Gorsuch, according to the New York Times, was at the center of both litigation and negotiations with Congress regarding detainee abuses, military commissions, warrantless surveillance, and broad claims of Executive power.

I think all of us should be more than a little disturbed by getting to the bottom line here, which is that Congress sought to ensure greater human rights for detainees held at Guantanamo Bay and Judge Gorsuch was working as a DOJ lawyer to weaken a provision in that regard and these other pieces that I have referred to.

I will turn now to an analysis of ''The Dissents of Judge Neil Gorsuch: Far to the Right and Out of the Mainstream.''

This analysis by People For the American Way goes through a number of cases, setting out the picture, if you will, of just how far out of the mainstream Neil Gorsuch is. I will just read this by Elliot Mincberg, written last month:

> Many, if not most, decisions by the Supreme Court and the court of appeals are unanimous. Reviewing the cases where an appellate judge has chosen to disagree with and dissent from his or her colleagues, therefore, can be particularly revealing. And that is precisely the case with Judge Neil Gorsuch. Judge Gorsuch's dissents from his colleagues on the Tenth Circuit Court of Appeals are consistently right-wing, generally seeking to favor big business and other authority and harm the interests of workers and those who have suffered abuse by government officials. And this is on a court which, until recently, consisted primarily of Republican appointees like Gorsuch. For example:
>
> In Compass Environmental, Inc. v. Occupational Safety & Health Review Commission, Gorsuch dissented from a decision to affirm a Department of Labor fine against a company that failed to properly train a worker, resulting in his death by electrocution. Gorsuch claimed that there was no evidence to show that industry standards would have required more training. But as the court majority and the agency found, there was ''clear evidence'' to support the ruling.

Let me say that again. Gorsuch said there was no evidence. The court majority basically found there was ''clear evidence'' to support the ruling.

> In particular, the company's own job hazard analysis found ''fatal danger'' from the high-voltage power lines involved, and recommended training for employees.

That was the company's own job hazard announcement. The company itself knew: If you are operating a piece of equipment next to a high-powered voltage line and that metal equipment touches that line, you create the possibility of an electrocution.

That training was given to some employees, but the employee who was killed did not get that training because they didn't give it to him. So the court majority said: Yes, you should have provided the training that you knew was necessary for the operation of this equipment in that setting with a high-voltage power line, but you didn't give it. Therefore, you are in the wrong. But Judge Gorsuch saw it differently.

> As a result of that negligence, the danger truly did become fatal, and the fine against

the company was clearly justified. But Gorsuch disagreed with his own colleagues—including one who, like Gorsuch, was appointed by President Bush—and argued that the corporation should pay nothing.

My father was a mechanic. He worked when he was first out of high school for construction companies on highways in Arizona, and he did a whole host of roles but mostly repairing the equipment of the shop.

In a few years, he became a journeyman, a mechanic. In the course of that work on these big machines, you come to be aware that there are a lot of hazards that need to be addressed. You know some of those hazards for the operators, some of the hazards for working on the machines themselves.

Companies know this as well. They know that if they are hiring a new employee to work in a hazardous setting, they need to train the employee so the employee doesn't get hurt.

The company didn't provide the training. The employee died. The company is fined. And Gorsuch says: No, no, no problem here.

Really? Why did the rest of the court majority find otherwise? Why did the Department of Labor find otherwise? Why did he disagree with his colleagues in order to protect a powerful corporation that had failed to provide the training that resulted in the death of a person?

That is what the requirements for training are all about—to protect individuals from situations where they are at high risk. You eliminate those risks.

(Mr. TILLIS assumed the Chair.)

The article goes on to address the issue of the frozen trucker who I discussed earlier.

In TransAm Trucking, Inc. v. Administrative Review Board, Gorsuch dissented from a decision. Here again, the majority is finding one thing, and, as you hear about this, you will realize that what the majority found was very logical, and what Judge Gorsuch found was standing everything on its head:

Gorsuch dissented from a decision to approve a Labor Department determination that a large trucking company had wrongfully fired a truck driver who had refused to drive under hazardous conditions. The trailer's brakes had frozen in subzero temperatures, and the driver waited over two hours for repair help. He reported that he was ''having trouble breathing because of the cold'' and that he ''couldn't feel his feet.'' When help still did not arrive, he unhitched the large trailer because of concerns about driving the entire load under those conditions and began to drive away in the cab. The company insisted by radio that he keep waiting in the frigid conditions or drive with the full load, even though the trailer's brakes had frozen. Although he returned when help arrived in around fifteen minutes, he was fired; the company claimed that the firing was proper because instead of remaining in the freezing conditions and not driving (which was his right), he drove off without the trailer instead of the dangerous way the company demanded. Gorsuch agreed with the company, claiming that finding for the driver was improperly using the law ''as a sort of springboard to combat all perceived evils in the neighborhood'' and that the objective to promote health and safety was just ''ephemeral and generic.'' The court majority agreed with the agency, calling Gorsuch's reasoning ''curious.''

If anyone missed the elements of this case when I spoke about it previously, as I have several times in the course of the night because I find it such an outrageous situation, you have a driver who is in an impossible situation. The brakes had frozen on a truck in subzero temperatures. Therefore, the braking ability on the trailer is compromised. So it is dangerous to drive it. Then the auxiliary heater in the cab had failed. So he is in subzero conditions in the cab, and as this relates he had conveyed that he had gone numb. He was having trouble breathing because of the cold. He couldn't feel his feet. So he did the logical thing to protect his own safety. He drove somewhere seeking to get some heat but didn't drive the trailer because to do so would have been to endanger everyone else. The Court said this all fits with the law. Gorsuch disagreed.

In Planned Parenthood Ass'n of Utah v. Herbert, a three-judge panel had issued a preliminary injunction against Utah's governor for unilaterally cutting off Planned Parenthood (PP) funding.

This is a case that I referred to earlier where you have three basic things. A Governor chooses to cut off funding, eliminating equality under the law because of some doctor videos that were released—videos that were completely discredited later on—but in this kind of political campaign he chose to discriminate against Planned Parenthood. The fact is that those videos weren't about Utah. They were about a program that wasn't even utilized by Planned Parenthood of Utah. So at every level, there was no basis for this discrimination. So the majority of the full Tenth Circuit declined to rehear the case after the preliminary injunction.

Gorsuch, however, wrote a dissent for himself and several others, and argued for deferring to the governor. An important issue in the case was the governor's intent in cutting off funding, which the panel found was retaliation for promoting access to abortion. On that issue in particular, Gorsuch argued for deference to the governor in the name of ''comity.''

In the name of comity? OK. Let's get this right. It is OK to violate the equality under the law in order to make nice with the powerful government. That is what Gorsuch argued? Well, the majority certainly disagreed, noting that nobody party to the suit had asked for a rehearing. This is where you seek a rehearing by a broader group of the panel of judges. If the defendant doesn't dispute it, why would you possibly do a rehearing except to score political points on the rightwing of the universe? That is what Gorsuch did. It shows his lack of regard for reproductive rights. It also shows that he wanted comity, that he wanted to make nice with the Governor rather than defend the rights of the organization that had been discriminated against. I think this kind of deference to executive authority is certainly something that in the context of our current situation is a dangerous tendency.

These are just a few of the dissents written by Gorsuch where his disagreements with his own colleagues, including other Republican appointees, show that he is far to the right and out of the mainstream. Altogether, Judge Gorsuch has written 35 dissents, which are in the following areas: workers' rights, abuse of government official authority, corporations and consumers, criminal law, and other constitutional issues.

So let's take a look at each of these areas. So again, these are cases where Gorsuch is disagreeing with the majority on a case.

Judge Gorsuch has written five dissents in cases concerning workers' rights.

I am reading this analysis. This analysis that has been prepared by Elliot Mincberg last month, titled ''The Dissents of Judge Gorsuch: Far to the Right and Out of the Mainstream.'' So Elliot writes:

Judge Gorsuch has written five dissents in cases concerning workers' rights. In all but one, the majority found in favor of the worker, but Gorsuch argued for a result that would have hurt the worker and helped a corporation or other employer. These include the Compass Environmental and TransAm Trucking cases discussed above.

Those we already talked about.

The two others are similarly troubling.

These are not my words. I am reading Elliot Mincberg's words.

In Strickland v. United Parcel Service, Inc., the court majority ruled that a lower court had improperly dismissed a complaint that UPS had committed sex discrimination against a fired female employee and had also violated the Family Medical Leave Act (FMLA), and sent the case to the district court so that the plaintiff could try to prove her claims at trial. Although Gorsuch agreed with the FMLA ruling, he dissented on the discrimination claim and argued that the dismissal of that claim should be affirmed. The majority was critical of Gorsuch's argument, noting that he ''fail[ed] to acknowledge'' substantial evidence that the worker was treated differently because of her gender. That evidence, the majority explained, included testimony from ''multiple co-workers'' that she was treated differently than male employees, including being required to meet 100 percent of sales goals and being subjected to ''increased oversight'' such as frequent ''negative'' meetings that ''interfered with her ability to do her job.''

Certainly, I think, in this day and age, we expect companies not to engage in discrimination on the basis of gender. Here the court found ''substantial evidence,'' including ''testimony from multiple co-workers that she was treated differently''—and not in a positive way—''than her male employees''—subjected to different sales goals, subjected to different oversight, subjected to different special meetings that interfered with her job. But Judge Gorsuch disagreed with the majority and thought that this argument of discrimination should be rejected.

The article continues:

Finally, in NLRB v. Community Health Services, Inc., Judge Gorsuch dissented from a ruling last year that upheld a National

Labor Relations Board (NLRB) decision that granted over $100,000 in back pay to hospital workers whose hours were illegally reduced, without deducting amounts that some earned elsewhere during the period that the employees' hours were improperly reduced. The Board concluded that such deductions were improper because the outside employment was important to help address additional hardship, encourage production and employment, and prevent dilatory conduct by employers in accord with law. But Gorsuch did more than dissent.

Again, I am reading now the words of Elliot Mincberg.

He excoriated the NLRB, a favorite target of many right-wing Republicans, suggesting that the NLRB's decision could have stemmed from its alleged ''frustration that it cannot pursue more tantalizing goals like punishing employers for unlawful actions.'' Interestingly, one of the judges in the majority from which Gorsuch dissented was Chief Judge Tim Tymkovich, also a Bush appointee who was on Trump's list of 21 possible Supreme Court nominees, but who obviously was not selected.

You know the NLRB, or the National Labor Relations Board, exists to protect workers by making sure employers abide by the law, and I find that Gorsuch's language here that imputes that the Board was operating not on the facts of the case but out of the frustration that it ''can't pursue more tantalizing goals like punishing employers,'' really quite bizarre.

I know that in the pursuit of protecting workers it is often frustrating to companies that they get subjected to fines for their conduct by the NLRB or are ordered to pay back pay, but isn't this now the moment in which you have a President who said he was going to fight for workers? Wouldn't he want to nominate a judge who actually wanted to have the National Labor Relations Board be able to successfully fight for fairness for workers, not someone who treated that as kind of a frivolous thing: Oh, those workers, what do they need? They are just constantly bothering our powerful corporations with things like asking for fair treatment. How inappropriate is that? I mean, that is kind of the tone of the Gorsuch approach here, and I think it is incredibly important that we have an agency that says: If you proceed to bring people in and you don't pay them for the hours they work, you must pay them. If you are supposed to pay overtime and you didn't, you have to make it up. Somebody has to hold people accountable to the law for protection and for fairness to workers.

It is not as if workers in America have been doing very well. Over the last four decades, workers have been getting the short end of the stick. The wealth in America has soared and soared and soared, and the workers, unfortunately, have received very little of that wealth. The inequality in the Nation has expanded dramatically. One way of framing this is that virtually all the new income in America has gone to the richest 10 percent of Americans. So here we have an agency that is just saying basic fairness: If you are supposed to pay overtime, pay overtime. If you bring people into the job, pay them for the time they work. If you are supposed to provide a break time, provide a break time—basic fairness for workers. But instead of having this basic fairness for workers, there is this campaign to take away the power of the agency that provides that.

This came up in the context of the challenge we faced in 2013 when the minority said: We are not going to allow anybody to be confirmed to the National Labor Relations Board. They wanted it to be dysfunctional so they couldn't protect workers. Now we have a President who was running to help workers but he is nominating a Justice who treats that like a frivolous goal—protecting workers.

Let me return to the argument here and to the topic of the ''Abuse of Government Official Authority.''

Judge Gorsuch has written four dissents in civil cases concerning claims of abuse of government official authority—three involving law enforcement officials and one involving a state's governor. In three out of four [of these cases], his judicial colleagues found that such abuse had occurred or at least the plaintiffs should have a chance to prove it. In all three of those cases, Gorsuch dissented and would have deferred to the government official.

We discussed already the most important of those dissents, which was Planned Parenthood v. Utah.

Let's go forward to consider Cortez v. McCauley.

The full Tenth Circuit considered whether a couple whose home was unexpectedly invaded by the police after midnight could bring claims of abuse to a jury. In the case, a 2-year-old girl for whom plaintiff Tina Cortez had baby-sat, said that Tina's partner had molested her, which other later investigation found to be untrue.

Based on that report alone and with no warrant, four police officers burst into the Cortez's home after midnight. Among their other actions, the police woke up the couple and shined a flashlight into Ms. Cortez's face, grabbed her by the arm, put her in the backseat of a locked police car, interrogated her, left her there for about an hour, and searched the home without a warrant even though the 2-year-old had not accused her of any misconduct.

The couple was released and was allowed back into their house after 2 a.m. after it became clear from investigation elsewhere that the claims against Mr. Cortez were false and there was no basis to proceed any further.

The majority and Judge Gorsuch were in substantial agreement on Mr. Cortez's claims of improper police conduct, but Judge Gorsuch wrote a dissent for himself and several other judges from the decision of the majority, written by another Republican appointee and joined by several others, that Ms. Cortez should be able to present her claim to a jury and that qualified immunity should not apply.

The majority criticized Judge Gorsuch because his dissent ''comes very close to saying'' that the police conduct was justified simply because the 2-year-old's claim was repeated by a nurse and her mother and was then ''acted upon by police officers,'' reflecting an extraordinary and improper degree of deference to police officials.

Gorsuch also attempted to minimize the harm to Ms. Cortez, describing it as simply a ''transient feeling'' of intimidation. But as the majority explained, Gorsuch ''disregard[ed] the emotional or psychological injury'' that a jury could well find ''resulting from intimidation, fear for personal safety,'' and ''loss of liberty and privacy'' as a result of being ''removed from the residence in the middle of the night'' and being ''locked'' in a police car and interrogated ''for over an hour.''

To get a better grip on that case, this is setting up a situation in which, on very minor information, police proceed without a warrant to burst into a home after midnight, grab a woman, throw her in the backseat of a locked police car, interrogate her, leave her there for an hour, search the home without a warrant, and so forth. Gorsuch described this as just a ''transient feeling'' of intimidation, according to this article.

I think that if most of us were ripped out of our homes in the middle of the night and were thrown into a police car and interrogated, we would find it to be something more than just a minor transient feeling of intimidation.

The point was the goal of whether she should be able to present her claim to a jury. It was not even a finding on the legitimacy of her case; it was just that she should have her day in court, that she should be able to make her claim that how she was treated was inappropriate. Gorsuch minimized the impact on her and wanted to strip her of that ability to present her case in court.

Shouldn't citizens who have gone through what they believe to be extraordinary experiences—and I believe being pulled out of your house in the middle of the night and thrown into a police car and interrogated is pretty substantial—have the ability to make their case? Maybe the judge and jury agree with you and maybe they do not. This is just a case of, do you get a chance to ask for justice? In this case, Gorsuch said no, and the majority said yes, you should have a chance.

There are issues here. There are issues of personal safety, issues of loss of liberty, issues of loss of privacy.

In another case that Judge Gorsuch decided—and I return to reading the article—Judge Gorsuch also dissented in Webb v. Thompson, in which ''the majority affirmed a lower court decision saying that county police officials were not entitled to qualified immunity from a complaint by a man arrested at a simple traffic stop and treated improperly by county police. This included being held in jail for 5 days when, according to county police, he should have been released in no more than 48 hours.''

This was, again, a man who was arrested at a simple traffic stop and was held in jail for 5 days when the policy was that he should have been released in 2 days.

The lower court had found that there was a disputed issue of fact as to whether three officers had helped cause the delay, which all

agreed was improper, and therefore ruled that the victim was entitled to present his case to a jury. But Judge Gorsuch dissented from the majority's decision to uphold that ruling, claiming that the officers did not have a personal legal duty to ensure a prompt hearing. The majority easily explained the flaw in Gorsuch's argument. Whether or not they had an affirmative duty to act, the majority explained, the officers were clearly liable if they, in fact, ''caused the delay.''

Here you have an individual who was held after a minor traffic stop—held for 5 days in jail. I do not know about any other Member of the Senate, but if a Member of the Senate were picked up on a traffic stop and held for 5 days—and while we do not have the full context of the case here, under the rules, he should have been held no more than 2—it would be pretty upsetting, and his family would be pretty upset.

Thus, there is the question of whether you get a chance to present your case. Do you, as a citizen, get a chance to present your case? The majority said: Yes, there is a reasonable basis here. You get a chance to present your case.

Gorsuch said: No, we are going to strip the individual of a chance to present his case.

It is quite a different approach, a continuous finding on behalf of the powerful, but not always. So I return to reading the article.

In one case, A.M. v. Holmes, Gorsuch dissented in favor of an individual. The primary claim in that case was against two middle school officials who had asked an Albuquerque police officer to remove a 13-year-old boy who had disrupted a physical education class and rendered a teacher ''unable to continue to teach the class.'' The student was suspended and also arrested under a State law prohibiting interference with the educational process.

When the mother sued, the lower court granted qualified immunity, a 10th Circuit panel majority affirmed, but Gorsuch dissented, suggesting that the severity of the officials' reaction was not justified. The majority also was troubled by the circumstances, but explained that it is ''not our place to question or undermine'' the state's decision to ''criminalize interference with the educational process.''

In this case, Judge Gorsuch did dispute a case and did so on behalf of an individual, giving more substantial support to the mother, who was suing.

I am reading from this article written by Elliot Mincberg. It is titled ''The Dissents of Judge Neil Gorsuch: Far to the Right and out of the Mainstream.''

The article turns to the issue of corporations and consumers.

Eight of Judge Gorsuch's dissents involved corporations, consumers, or both, including one environmental case. One dissent involved a case of two corporations pitted against each other. In all but one of the seven others, Gorsuch disagreed with his colleagues and wrote a dissent that favored corporations, harmed consumers or other citizens, or both. In the seventh, the corporation Gorsuch ruled against was an adult bookstore. This is the case of Ragab v. Howard.

Ragab v. Howard concerned the increasingly important issue of forcing individuals to go to arbitration, rather than the courts, to resolve disputes with corporations. In this case, an investment banking firm and a capital financing company tried to compel arbitration of Sami Ragab's lawsuit for misrepresentation and violation of consumer credit repair laws in connection with agreements to help him obtain financing for a new business.

Both the district court and the court of appeals majority, including a Republican appointee, ruled against the corporations. Judge Gorsuch dissented, however, arguing that even though the six different agreements among the parties contained conflicting language concerning the specifics of handling arbitration, the fact that all six called for arbitration of some sort was enough, and that the court should do a ''workaround'' so that arbitration would take place.

The majority strongly disagreed. The different provisions, the majority explained, created such ''irreconcilable'' conflicts that it was clear that there was no ''meeting of the minds,'' a basic principle of contract law. The majority pointedly noted that it would be improper for ''courts'' to effectively write in an arbitration requirement when the agreements did not ''demonstrate the parties'' intent.

Let's talk for a moment about this issue of binding arbitration. This is a situation in which consumers are involved in a transaction, and there is some fine print that says: If we get into a dispute, you must go to an arbitrator, and the outcome of that—whatever the arbitrator decides—will be the only outcome you can get.

That sounds pretty good at first. An arbitration sounds like a judicial process. Nothing about it sounds completely unbalanced. But, in fact, it is not a judicial process; it is unbalanced. The corporation hires the arbitrator.

Now, if you and I are in dispute and you are essentially hiring the referee for that dispute, wouldn't you kind of figure the system was a bit rigged, especially if there are a whole series of disputes and the referee—that is, the arbitrator—wants the business of the corporation and is only going to get that business if they find on behalf of the corporation? So you are not going to get a fair hearing. You get an unfair hearing.

The system is rigged because the individual being hired by the other party will get business only if they keep finding in that party's favor, so you enter the room knowing that you are going to be found against, except in a rare circumstance. It is a completely rigged system. It doesn't compensate at all. It doesn't replace any fair adjudication, and it allows companies to get away with predatory practices because there is no avenue through which to pursue fairness. In this case, the majority said there is no clear arbitration, but Judge Gorsuch wanted to write a requirement. He wanted to legislate.

We have seen these other cases where he wanted to legislate. He wanted to change the way the law is written to protect truckers who operate vehicles so as not to endanger others because he didn't like that. He wanted to rewrite the law in Utah so that you could ban funds for Planned Parenthood, even though it was unconstitutional to discriminate against them, and so on and so forth.

The more I read his opinions, the more I think Neil Gorsuch should run for office. He wants to change the law in case after case after case. Run for office. Theoretically, that is what legislators do, not what judges do. Judges call balls and strikes, not twist the law to mean the opposite of what it was written to be. And in this case, he is saying the court should do a ''workaround'' so that arbitration should take place, and the majority said that is not possible. These are irreconcilable conflicts between the different provisions of the different arbitration requirements. There is no meeting of the minds. It is the principle of contract law, and it would be improper for the courts to write an arbitration requirement. But that is what Judge Gorsuch wanted to do. He wanted to write an arbitration rule. He wanted to legislate. Well, run for office; don't put yourself forward to fill a stolen seat on the Supreme Court.

I know that members of the Senate Judiciary Committee followed these cases during the hearings of the Judiciary Committee and looked at them carefully. The more they saw, the more they saw not a judge but someone who wanted to legislate, who wanted to rewrite the law to help the powerful over the ordinary individual, in case after case after case.

Let's turn to another case. I will return to the article. This article by Elliot Mincberg, titled ''The Dissents of Judge Neil Gorsuch: Far to the Right and Out of the Mainstream.''

The article continues:

In Gorsuch's sole dissent on environmental issues, New Mexico Off-Highway Vehicle Alliance v. US Forest Service, he dissented from a ruling by two other Republican appointees and argued that the Sierra Club and other environmental groups should not be allowed to intervene in a lawsuit contesting Forest Service rules that expanded the number of trails and roads that were only for hikers and bikers.

So the lay of the land here: You have a really—by two Republican appointees, and you have Gorsuch arguing the opposite side, saying that the environmental group should not be allowed to intervene in a lawsuit contesting Forest Service rules.

So then the article continues:

The Alliance, a nonprofit supported by Kawasaki and other motorized vehicle companies, wanted to return to old rules allowing motorized vehicles on more trails. Even though neither the Forest Service nor the Alliance objected, the district court ruled against the environmentalists' participation in the case, and Gorsuch agreed in dissent. As the majority explained, however, other 10th Circuit decisions made clear that the environmentalists had strong reasons to be involved in the case and ''should not have to rely'' on the government to protect their interests, particularly since the government did not object to the proposed intervention. The majority specifically criticized Gorsuch for appearing to rely on the opinion of just

three judges in a previous case involving all 13 10th Circuit judges to try to reach a narrow and unfavorable result in the case.

So I know that often Neil Gorsuch liked to say: I just apply the precedents. So what does he do? He takes the opinion of three judges in a case involving 13 Tenth Circuit judges. Well, you can see a clever strategy as presented in this article, an effort to reach a narrow and unfavorable result.

The article continues:

In WWC Holding Co. v. Sopkin, Gorsuch argued that a wireless service carrier should be able to avoid the Colorado Public Utility Commission's efforts to enact state-specific consumer protection standards for wireless phone service because the company was complying with relevant federal rules. The majority in the case, including the Republican appointee, disagreed and ruled that Colorado had the authority to enact and enforce state-specific rules, including requiring free calls at libraries, in school districts, and in other community gathering places, under the ''express statutory authority'' of federal as well as state law.

So let's review that. Gorsuch wanted the company to avoid the public utility commission's requirements, and the majority said: Wait, there is express statutory authority for the State utility commission to be able to require State-specific things such as free calls at libraries, in school districts, and in other community gathering places.

This is another case where Gorsuch wanted to be the legislator. Well, go and get elected and write a law rather than writing law as a judge when you are supposed to be calling the balls and strikes.

The article continues:

Judge Gorsuch dissented in three other cases in which the majority had found in favor of individual consumers.

So the majority says the individual is right, and Judge Gorsuch said: Let me be clear. I want this case to come out on behalf of the corporation.

The article continues:

Pace v. Swerdlow, where the majority reversed the dismissal of a negligence case against an expert witness and ruled that parents should have the opportunity to prove that the expert's actions prevented them from receiving compensation related to their daughter's death.

So the argument of the parents was that there was an expert witness, and the expert witness's actions prevented them from receiving compensation relating to their daughter's death, and the case should be dismissed. So the majority reversed the dismissal, but Judge Gorsuch dissented.

The article continues:

In Salmon v. Astrue, where the majority ruled that a hearing examiner had improperly disregarded evidence reporting a claim of physical and mental disability benefits from the Social Security Administration, but Gorsuch argued in dissent that the examiner's denial met the legal test of being supported by ''substantial evidence,'' which he equated with simply being within the ''bounds of reason.''

The majority said the examiner—just to review that—had improperly disregarded evidence. Well, certainly, if I were having a family member in that situation, I would not want a hearing examiner to improperly disregard evidence related to a claim for mental and physical disability benefits. But Gorsuch argued on the other side, against the person on the minority side.

In Blausey v. Trustee, where the majority allowed a bankrupt couple to appeal an unfavorable bankruptcy court decision, the majority said the couple should be able to appeal an unfavorable bankruptcy court decision rejecting the petition, although it ultimately decided against the couple, but Gorsuch would not have accepted the appeal in the first place.

He would not have allowed that bankrupt couple to appeal an unfavorable bankruptcy court decision. The majority said: We may not find in her favor, but she deserves her day in court. Judge Gorsuch said: No day in court for her. We are not letting her even argue her case.

The article goes on to address another section involving criminal law:

Most of Judge Gorsuch's dissents have been in criminal cases, often raising constitutional issues concerning whether people have been deprived of effective assistance of counsel under the Sixth Amendment or of rights against unreasonable search and seizure under the Fourth Amendment. A number of these were habeas corpus cases, in which the federal courts undertake limited but important review concerning criminal cases tried in state courts. Gorsuch has dissented in favor of criminal defendants on five occasions. But in almost twice as many, nine, he has dissented against rulings by colleagues, many of them Republican, that vindicated important constitutional rights.

Most troubling have been Gorsuch's four dissents in cases where his colleagues found that Sixth Amendment rights were violated because individuals, usually low-income people, did not receive effective assistance of counsel. Perhaps the clearest example is provided by his two dissents in Williams v. Jones.

In the three-judge panel decision in Williams, two of Gorsuch's Republican colleagues, including the very conservative Michael McConnell, ruled that more effective relief was required for an individual who, both the majority and an Oklahoma estate appellate court agreed, was deprived of effective assistance of counsel. In this case, the state had offered Williams a plea agreement under which he would serve 10 years in jail, which Williams wanted to accept but was stopped by his counsel. The lawyer claimed that Williams would be committing perjury if he accepted the agreement and said that he would withdraw from representing Williams unless the case went to trial; short of money, Williams agreed. The trial resulted in a guilty verdict and a sentence of life without the possibility of parole. The Oklahoma court of appeals agreed that the lawyer's conduct was improper and had harmed his client, but the only relief they granted was to reduce the sentence to life with the possibility of parole. The 10th Circuit accepted a habeas petition limited to the question of adequacy of the relief provided by the Oklahoma court.

The panel majority explained that in light of the egregious conduct by counsel and the obvious consequences, the case should be sent back to the state court to provide a remedy ''tailored to the injury.''

What is the injury? Egregious conduct by counsel resulting in a massive penalty.

The panel majority explained that in light of the egregious conduct by counsel and the obvious consequences, the case should be sent back to the state to provide a remedy ''tailored to the injury,'' i.e. the loss of a ten-year sentence as opposed to a life sentence. Gorsuch not only disagreed, but would also have gone even further. He claimed that there was no Sixth Amendment violation at all, because Williams received a fair trial in which his lawyer represented him well after the plea agreement failed.

The majority was extremely critical of Gorsuch's claim. ''No federal circuit court,'' they explained, had accepted Gorsuch's view that any pre-trial Sixth Amendment violation is somehow cured if the later trial is fair. Gorsuch's claim that the Sixth Amendment is essentially limited to what happens at trial, the majority stated, has been ''rejected by the Supreme Court'' and is ''incompatible with a right to effective assistance of counsel in connection with the entire plea process.''

Let me comment here that when a person is in court and has very limited funds—unlike a very affluent person who can have a whole team of lawyers—you really depend on your lawyer representing you in an effective manner, not, as relayed here, in an egregious manner that basically undermined your path.

But Gorsuch did not stop there. He dissented from a decision by the entire 10th Circuit not to rehear the case, which included several additional Republican-appointed judges, this time also claiming that the effect of the court's ruling was to overturn the later jury verdict that had found Williams guilty.

One of the Republican-appointed judges on the original panel made short shrift of Gorsuch's arguments in a concurring opinion. It was not a federal court that had originally pointed out the Sixth Amendment violation requiring relief; it was the Oklahoma appellate court that found Williams' lawyer's conduct ''highly improper'' and ''deficient,'' and that Williams had ''indeed suffered prejudice by his trial counsel's action.'' Gorsuch's view, the concurrence explained, was ''impossible to square'' with Supreme Court and court of appeals' rulings on effective assistance of counsel. The Supreme Court denied review of the case.

So the Supreme Court sided with the majority, essentially saying Gorsuch got it wrong. This concept of effective assistance of counsel is fundamental to the notion of a fair trial system. An ordinary person can't represent themselves; they have to have effective assistance of counsel if there is to be any possibility of a fair decision.

The article continues, saying:

Other dissents by Gorsuch on findings of Sixth Amendment violations include:

Wilson v. Workman, in which the majority of the full Tenth Circuit agreed, in a decision by Judge McConnell and joined by other Republican appointees, that a death row prisoner suffered a Sixth Amendment violation because his lawyer failed to present important evidence of Wilson's poor mental health and other problems that could have mitigated against the death penalty. Gorsuch dissented and claimed that the court should defer to the state appellate court that had rejected the claims. But as the majority pointedly explained, deference was inappropriate because the state court had not considered available ''material, non-record evidence'' and thus had not truly ''adjudicated that claim on the merits.''

So here is another case of the lack of effective assistance of counsel, and all that counsel's representations were defective—''failed to present important evidence of Wilson's poor mental health and other issues that could have mitigated against the death penalty.'' Gorsuch said it doesn't matter. A majority said of course it matters. ''The state court had not considered available 'material, non-record evidence' and thus had not truly 'adjudicated that claim on the merits.' ''

Let's turn to the case of Hooks v. Workman. Again, I am reading from this article:

Hooks v. Workman, in which another Republican-appointed judge wrote a panel opinion finding that a death row prisoner's lawyer had failed to present important mitigation evidence, including concerning Hooks' brain damage, mental retardation, and a history of abuse against him. Gorsuch argued this time that even if that evidence had been presented, the jury would have sentenced Hooks to death. As the majority explained, however, the lawyer's work was demonstrably ''deficient'' and ''prejudicial,'' and there was clearly a ''reasonable probability'' that at least one juror would have refused to impose the death penalty if the Sixth Amendment violation had not occurred.

So here the majority—this is not Democratic or Republicans; it is an Republican-appointed judge—found that a death row lawyer failed to present important mitigation evidence regarding brain damage and mental retardation and a history of abuse—all mitigating circumstances. The failure to present that meant the jury sentenced him to death where they might not have otherwise. The majority made it very clear that ''the lawyer's work was demonstrably 'deficient' and 'prejudicial,'' but Gorsuch dissented.

The concept of effective assistance of counsel as presented in these cases seems to be one that Neil Gorsuch really doesn't grasp or, if he understands the concept intellectually, doesn't want to, if you will, honor the requirements of the Sixth Amendment.

Turning to motions to suppress.

Judge Gorsuch's record is mixed concerning dissents relating to motions to suppress evidence because of alleged constitutional violations by police. In U.S. v. Carloss, Gorsuch argued in dissent that it was improper for police officers to knock on a homeowner's doors as part of an investigation into illegal possession of a machine gun, without a warrant or exigent circumstances, when the homeowner had conspicuously posted ''No Trespassing'' signs on his door and around the property. Gorsuch listed this opinion as one of his ten most significant opinions in his response to the Senate Judiciary Committee questionnaire.

In three other cases not involving trespassing at home, however, Gorsuch dissented from decisions that suppressed evidence because of improper conduct by law enforcement. In US v. Benard, he dissented from a decision to suppress statements made by Benard after he had been arrested without receiving Miranda warnings. Gorsuch argued that the error was harmless, but the majority explained that they ''cannot conclude'' that was correct ''beyond a reasonable doubt,'' as the law requires.

In US v. Nicholson, Gorsuch dissented from a ruling that police officers had improperly stopped and then searched a car for an alleged traffic violation, when there was no violation at all because the driver's left turn was not illegal. Gorsuch claimed it was a reasonable mistake, but the majority explained that according to existing Circuit precedent, ''failure to understand the law by the very person charged with enforcing it is not objectively reasonable.''

To translate that, the police officer shouldn't stop somebody for making a legal left turn when the left turn is legal.

And in US v. Dutton, Gorsuch dissented from a decision by two other Republican appointees that a search warrant for a storage unit contained a ''fatal flaw'' because the application lacked ''any evidence'' that the unit belonged to Dutton. Gorsuch called it a good faith error, but the majority clearly disagreed.

So in these cases where he is dissenting, essentially the majority is saying: You have to hold our public safety officers to a standard required by law. And Gorsuch is saying: Well, it was good faith. It wasn't an error. They didn't mean to do it. He is choosing to basically say that the individuals will not be able to assert the error made on the public safety side. It gives them a great big leash area, a big, sizeable zone, and compresses the zone in which the individual is acting. That is the pattern we see in this.

Other criminal issues.

In addition to Carloss, two of Gorsuch's other dissents favorable to criminal defendants concerned prosecutions for federal firearms violations. In US v. Ford, he argued in dissent that prosecutors should have disclosed evidence suggesting that the defendant was entrapped into purchasing a machine gun, although the majority considered that evidence not material to the defense. In US v. Games-Perez, Gorsuch dissented from a decision not to rehear a case concerning a federal law prohibiting possession of a gun by a felon.

Two other Gorsuch criminal law dissents that favor defendants concerned unique issues. In US v. Nichols, he argued in dissent that the full 10th Circuit should rehear a case in which a sex offender was convicted of violating requirements of the Sex Offender Registration and Notification Act that he notify authorities when he travels to another area. Nichols had been convicted prior to the date of the Act, and Gorsuch argued that Congress had improperly delegated to the attorney general wide authority to determine to what extent the law applied to such offenders.

So apparently in that case the majority was pointing out that Nichols had been convicted prior to the date of the act, and Gorsuch was arguing that Congress had improperly delegated to the Attorney General wide authority to determine to what extent the law applied.

Gorsuch also dissented in US v. Spaulding and disagreed with a majority ruling that a lower court did not have jurisdiction to set aside a criminal judgment that contains a term of imprisonment.

In several other cases, however, Gorsuch dissented on the merits from decisions by his colleagues that disfavored prosecutors.

In US v. Rosales-Garcia, he dissented from a ruling that the trial court judge had improperly enhanced the sentence of an individual convicted of re-entering the country illegally because of a prior conviction that resulted in a severe sentence. The majority stated that ''we cannot agree'' with Gorsuch's claim that the US Sentencing Guidelines could be equally plausibly read to support the government's position. As the majority explained, the sentence on the prior conviction had been later enhanced because of the individual's re-entry, not because of the original misconduct, and thus should not qualify under the guidelines as a reason to further increase the sentence imposed.

Gorsuch also dissented in US v. Raymond, in which one of his Republican colleagues wrote an opinion affirming a lower court decision to dismiss an indictment that violated a previous plea agreement that prosecutors not bring additional charges against Raymond arising out of conduct known to the US Attorney before a specified date. Gorsuch argued that the district judge had committed an error, but the majority explained that ''we cannot disturb the district court's factual finding'' that the US Attorney did have such knowledge, based on specific testimony.

I am reading from a lengthy article prepared or at least issued under the organization People for the American Way and titled ''The Dissents of Judge Neil Gorsuch: Far to the Right and Out of the Mainstream'' by Elliot Mincberg.

The article then turns to other constitutional issues. So I will continue reading it. This article continues:

In addition to the criminal law and other cases discussed above, Judge Gorsuch has written dissents from his colleagues' opinions in three other cases related to constitutional law issues: two relating to the Establishment Clause and one relating to the Constitution's Guarantee Clause. In all three, Gorsuch's dissent was significantly to the right of even other Republican judges on the court or raised other troubling concerns.

In Green v. Haskell County Board of Comm., a three-judge panel of all Republican appointees had concluded that an Oklahoma county's decision to approve the construction of and maintain a Ten Commandments monument on its courthouse lawn violated the Establishment Clause. Judge Gorsuch wrote an opinion for himself and several other judges that dissented from a decision by the full court of appeals, including several other Republican appointees, not to rehear the case. He argued that the panel's decision was inconsistent with the Supreme Court's ruling in Van Orden v. Perry that upheld the Ten Commandments monument in Texas, and suggested that the court should not even use the establishment ''endorsement'' test to decide the case. As the panel decision explained, however, the endorsement test remained the law in the Tenth Circuit (and elsewhere), the monument clearly had the ''primary effect of endorsing religion,'' and the Van Orden decision did not apply because the case involving a monument that has stood on public property for 40 years without challenge, while the monument in Green was recently erected and challenged. The Supreme Court denied review of the case.

Another panel of three Republican-appointed judges simply ruled against the Utah Highway Patrol Association's construction and maintenance of a series of 12-foot crosses on public lands near roads to memorialize deceased officers, explaining the crosses had the ''impermissible effect'' of appearing to endorse the Christian religion. Judge Gorsuch wrote an opinion for himself and other judges that dissented from the decision of the full court of appeals, including Republican appointed judges, not to not rehear the

case. Gorsuch again asserted that the ''endorsement'' test should not be applied, and relied on a three-judge plurality in another Supreme Court case, Salazar v. Buono, that allowed a cross to remain on public property. As the panel explained, however, the endorsement test clearly remained the law of the Circuit, and the Buono case did not apply because it concerned a cross that had been on government property since the 1930s. The Supreme Court again denied review of the case—

Which means they upheld the majority and did not uphold the position that Gorsuch was taking—

Justice Thomas alone wrote a vigorous dissent, making some of the same arguments as did Judge Gorsuch.

Finally, Judge Gorsuch and several others dissented from the decision of the full 10th Circuit not to rehear a panel decision in Kerr v. Hickenlooper. The panel had upheld a district court decision to allow a claim by a number of State legislators and others that the Colorado taxpayer bill of rights, under which all tax increases must be approved in advance by voters before legislative action, violated the Constitution's Guarantee Clause. Under that clause, all States are guaranteed a republican form of government where a State legislature presumably makes such decisions. The panel did not reach the merits of the claim, but agreed that there was standing to go forward and the case should not be dismissed as raising only a ''political question.''

Gorsuch argued that the issue was an unreviewable political question because there were no ''judicially manageable standards'' to decide it. The panel disagreed, pointing out that no such standards existed in advance of the Supreme Court's decisions on the Second Amendment. In addition, Gorsuch ignored the fact, as one scholar has pointed out, that the Supreme Court itself has ruled on the merits of the Guarantee Clause claims as recently as 1992. Even more importantly, Gorsuch's dissent suggested a particularly troubling view on the subject of possible constitutional challenges to partisan redistricting.

Continuing the analysis here as presented in this particular article:

In particular, in trying to support the argument to his dissent, Gorsuch asserted that the Supreme Court had ''put to bed'' in Vieth v. Jubilerer the question of whether the partisan gerrymandering could be challenged constitutionally because of the lack of manageable standards of review. As the Campaign Legal Center has pointed out, however, that statement is flatly wrong. Although some justices argued that the issue cannot be reviewed, in his controlling opinion in Vieth, Justice Kennedy recognized the corrosive effects of partisan redistricting, and held the door open for appropriate and judicially manageable standards in the future. In fact, a recent decision from Wisconsin that articulated such standards in striking down partisan gerrymandering could well be reviewed soon by the Supreme Court. Gorsuch's suggestion that he already agrees with the justices in Vieth who claimed the issue should not be are he viewed at all is extremely disturbing.

The article then has a short conclusion that reads as follows:

This review of Judge Gorsuch's dissents yields very troubling conclusions. Consistently, he has argued in favor of corporations and government authority and against workers, consumers, environmentalists, and poor people, even when a majority of his colleagues, including other Republican appointees, disagree. In those rare instances when he does not so argue, he has frequently sided with gun and property owners. His views are clearly to the right of the Supreme Court majority—even when Justice Scalia was on the Court—on issues like the Sixth Amendment, partisan gerrymandering, the non-delegation doctrine, and the Establishment Clause. Measured against his own colleagues on the Tenth Circuit including Republican appointees, he is far to the right and out of the mainstream, and should not be elevated to the Supreme Court.

So that is the article titled ''The Dissents of Judge Neil Gorsuch: Far to the Right and Out of the Mainstream.''

Let's turn to an analysis of the ways that Neil Gorsuch threatens women's rights. This is titled ''Extreme Far Right Judge'' from the Center for American Progress. ''5 Ways the Nomination of Neil Gorsuch Threatens Women's Rights.'' It is from March 23, 2017.

The principle of equality is a cornerstone of American democracy. From our nation's earliest history to the present day, there has been a robust discussion about how to realize the promise of equality and the everyday experiences of people across the country. But equality in the United States has come with an invisible asterisk: Its principles have not been uniformly enjoyed across different segments of society. Given this reality, people who face discrimination have always depended on the courts to protect their access to equal justice.

The article continues:

For women, the ongoing quest for equality has been a deliberate—yet uneven—journey. The U.S. Supreme Court has been pivotal in determining the pace and scope of this progress. It is therefore critical that the next Supreme Court justice has an unflinching commitment to an equality that respects all women's dignity and autonomy, enables them to participate fully in society, and empowers them to make decisions about their lives that make sense for them. President Donald Trump's nominee to the Supreme Court, however, has a judicial record that suggests that he would attack—not advance—women's equality if he is elevated to the Supreme Court. A close look at Judge Neil Gorsuch's record reveals that his appointment would likely threaten women's rights in the following five ways.

The first area of the article addresses his putting employers' preferences ahead of women's rights. And then it continues:

Gorsuch favors protecting the religious preferences of employers at their employees' expense. If confirmed, he would further erode women's ability to make sound personal health decisions. In Hobby Lobby v. Sebelius, Gorsuch and his colleagues on the 10th U.S. Circuit Court of Appeals ruled that a closely held, for-profit corporation could refuse on religious grounds to comply with the Affordable Care Act, or ACA, requirement that health insurance cover contraception. Judge Gorsuch wrote a separate concurrence to the court's ruling, explaining the ACA mandate forced the corporations to violate their religious beliefs. A divided U.S. Supreme Court upheld the 10th Circuit's decision.

While conservative judges frame the case as a dispute about religious freedom, Hobby Lobby was also a case about women's equality and the rights of employees. The ability to control fertility is one of the most personal decisions a person can make; for women, it goes to the heart of whether they have an equal right to participate in the workforce and start a family. Yet, Gorsuch deems these interests secondary to a corporation's religious preferences.

The second area the article addresses is refusing to support protections from pregnancy discrimination.

Because many women will take time off from work at some point in their careers for the birth of a child, the Pregnancy Discrimination Act was enacted in 1978 to make clear that discrimination based on pregnancy or child birth constitutes sex discrimination. Yet, too many women continue to confront discriminatory, outdated attitudes about their ability and commitment to work simply because they are or might become pregnant.

Two of Gorsuch's former students at the University of Colorado Law School allege that, during a discussion about maternity leave in Gorsuch's legal ethics class, he stated that employers should ask female applicants whether they intend to start a family. He reportedly argued that women often manipulate maternity leave policies to take time off at the company's expense before leaving the company.

When asked about this at his Senate confirmation hearing, Gorsuch first denied making the comments, claiming he had merely asked students a question from a teacher's text to illustrate the prevalence of sex discrimination. But when asked about his specific views on pregnancy discrimination laws, Gorsuch raised more questions than answers. He declined to say whether questioning a female and not male applicants about their intent to start a family would violate the law. Gorsuch's unwillingness to clearly affirm protections against pregnancy discrimination is cause for concern. Women's ability to participate fully and equally in the workforce depends on fair treatment without regard to family responsibilities.

I am reading from the article, ''5 Ways the Nomination of Neil Gorsuch Threatens Women's Rights,'' March 23, 2017. The article now addresses the issue of undoing Roe v. Wade.

Throughout the Presidential campaign, Trump promised to nominate a Supreme Court justice who would ''automatically overturn Roe v. Wade. Judge Gorsuch admitted he spoke with President Donald Trump about abortion in his pre-nomination interview but claimed their conversation was limited to the issue's political impact.

Gorsuch has declined to discuss his views on Rowe at his hearing, beyond acknowledging that it is ''precedent.'' But his writings make his position clear. Gorsuch has argued against the legal principles on which Roe is founded, both indirectly in his opinions and more directly in his book criticizing assisted suicide. He is critical of the right to privacy and the substantive due process rationale used by the Supreme Court in support of this right. Without this right to privacy, there is no Constitutional right to make decisions about sex, reproduction, or even marriage without State interference. Moreover, preserving and protecting a women's constitutionally protected legal right to access abortion is critical to their individual dignity and autonomy.

That is another section in the article, ''5 Ways the Nomination of Neil Gorsuch Threatens Women's Rights.'' The next section is ''Eliminating women's access to health care.'' This will be the fourth of the five sections.

Conservatives have relentlessly attacked women's access to quality, affordable health

care, threatening their agency, health, and well-being. Among the most vitriolic and inflammatory efforts: the push to defund Planned Parenthood. Anti-abortion activists have targeted Planned Parenthood because it provides abortion services, even though those services are provided with nonfederal funds and make up only a small percentage of the services the organization provides. An estimated 2.5 million people visit one of the 650 Planned Parenthood facilities across the country each year. Eliminating funding for those health centers would devastate entire communities and dramatically reduce women's access to health care.

During Gorsuch's time on the 10th Circuit, the court upheld an injunction to stop Utah Gov. Gary Herbert . . . from defunding Planned Parenthood in response to misinformation to doctored videos that falsely accused the organization of selling fetal tissue. Gorsuch, however, took the unusual step of pushing for a rehearing by the full court, even though the Governor did not ask for a rehearing. When his colleagues declined to rehear the case, Gorsuch dissented and attempted to legitimize the governor's unsupported claims.

The fifth section in this article titled ''5 Ways the Nomination of Neil Gorsuch Threatens Women's Rights'' is the section on ''Denying women access to justice.''

No one can vindicate their rights if they cannot even make it to court. Yet, in several cases, Gorsuch has shown a conspicuous penchant for barring women from litigating discrimination claims.

In Strickland v. UPS, Carole Strickland alleged that she was discriminated against when she was held to higher performance standards than her male coworkers, even as she exceeded them in sales. The majority ruled that her case could move forward, but Gorsuch filed a dissent arguing that her evidence of discrimination, which included testimony from multiple co-workers, was insufficient.

In another case, Weeks v. Kansas, former counsel Rebecca Weeks alleged she was fired in retaliation for advocating for colleagues who experienced workplace discrimination. Upon review, Gorsuch openly ignored relevant U.S. Supreme Court precedent because Weeks failed to cite it and denied her the right to proceed with her claim. If Gorsuch is confirmed, women may face new barriers to challenging discrimination in court.

Judge Gorsuch could become a reliable vote against the critical rights essential to women's equality and women's progress—such as the ability to access reproductive health care, including abortion, and challenge different forms of sex discrimination in the workplace. Women deserve a Supreme Court justice who will not turn back the clock on their rights. The Senate should stand up for women and reject President Trump's Supreme Court nominee.

The author, Jocelyn Frye, is a senior fellow at American Progress, and co-author Michele Jawando is vice president for legal progress at American Progress.

Let's turn now to an article on money and politics. This article by Arn Pearson appeared in the Huffington Post. It is titled ''Gorsuch Would Move the Supreme Court in the Wrong Direction on Money in Politics.''

The article starts out:

Who the Senate confirms to fill the current vacancy at the U.S. Supreme Court will determine the nature of our elections for decades to come.

The Court is closely divided on the issue of whether to further open the floodgates for unlimited and undisclosed political spending or allow limits designed to prevent corruption and keep powerful special interests from drowning out the voices of voters. The next justice will tip the scales one way or the other.

While the court may be split on what to do about the influence of big money in politics, the American people are not.

Nine out of ten voters (93 percent) want ''a Supreme Court justice who is open to limiting the influence of big money in politics,'' according to recent polling. That includes 91 percent of Trump supporters, most of whom apparently believed his populist rhetoric decrying the influence of big donors.

Unfortunately, that's not Neil Gorsuch.

Gorsuch hasn't handled many campaign finance reform cases, but everything in his background and record strongly indicates that he would favor fewer restrictions on political spending by corporations and the wealthy, not more.

The son of two lawyers, Gorsuch has spent his life moving in elite legal and corporate circles, and has been a strong ideological conservative since his early days. He attended Columbia University and Oxford, and earned his law degree at Harvard. From 1995 to 2005, Gorsuch worked at a boutique D.C. corporate law firm representing corporate clients—including the U.S. Chamber of Commerce—in anti-trust, class action, and securities lawsuits, before briefly joining the Department of Justice under George W. Bush and being nominated to the U.S. Court of Appeals for the Tenth Circuit.

The Chamber of Commerce spends more money to influence the federal government than any other organization, and was one of the top political spenders in 2016, making it among the biggest beneficiaries of the Supreme Court's 2010 ruling in Citizens United that allowed corporations to spend unlimited amounts on independent expenditures and electioneering.

Gorsuch hasn't exactly left the corporate world behind since becoming a judge, and has become a millionaire in his own right.

A recent story by the New York Times documents Gorsuch's close relationship with secretive billionaire Phillip Anschutz, who has amassed $12.6 billion in wealth through a sprawling business empire. Gorsuch represented Anschutz while in corporate law practice, and Anschutz played a key role in getting Gorsuch nominated to the federal appeals court.

I am reading from an article entitled, ''Gorsuch Would Move the Supreme Court in the Wrong Direction on Money in Politics.''

Gorsuch has been a frequently featured guest at the mogul's annual dove-hunting retreat for the rich and powerful on his Eagle Nest Ranch. At the 2010 retreat, Gorsuch spoke about the importance of judicial nominations, ''especially when we live in a system where judges have the last word'' on the Constitution and are ''empowered to strike down legislation.'' Gorsuch implored his elite audience ''to be vigilant to all threats to our prosperity.''

Not surprisingly, Gorsuch's rulings as a federal appeals court judge have consistently favored large corporations over consumers and workers, and indicate a willingness to overturn key Court precedents that have supported efforts to reign in corporate power since the New Deal.

The big question is whether Gorsuch would use his seat on the Supreme Court to further weaken anti-corruption measures when it comes to political spending.

People for the American Way joined 120 other democracy reform and advocacy organizations and 110 House members this week—

This would have been March 17—

in calling on the Senate Judiciary Committee and Senate leadership to closely scrutinize Gorsuch's views on the influence of big money in politics.

''Will Judge Gorsuch's legal philosophy lead him to strike down even more protections against the use of corporate or personal wealth to influence elections, such as candidate and party contribution limits, or will he permit sensible limits on political money in order to ensure the voices and will of all Americans are fully represented within the political process?'' the groups asked.

In Citizens United v. FEC, the 5–4 majority decreed that independent expenditures by corporations ''do not give rise to corruption or the appearance of corruption'' and that ''[t]he appearance of influence or access, furthermore, will not cause the electorate to lose faith in our democracy.'' In reaching that conclusion, the Court assumed that those expenditures would not be coordinated with candidates, and that they would be disclosed.

Almost everyone in America thinks big money in politics is a problem (94 percent) and that it ''empowers wealthy special interests over everyday Americans'' (93 percent), according to a recent poll.

Taken to its logical and legal conclusion, the reasoning in Citizens United—that corporations have the same right as people, that money is speech, and that laws can't distinguish between speakers—puts the little that remains of our nation's post-Watergate scandal reforms at grave risk. So far, the Court has rebuffed challenges to the federal ban on direct corporate contributions to candidates and to most contribution limits, but Gorsuch's confirmation could change that.

In one of his only campaign finance cases, Riddle v. Hickenlooper, Gorsuch wrote a concurring opinion that suggests he would apply the highest level of scrutiny to contribution limits that distinguish between types of contributors. To date, the Supreme Court has applied a lower level of scrutiny to contribution limits, including that reasonable limits only impose a marginal restriction on First Amendment rights.

Gorsuch's opinion signals that he might be willing to strike down a ban on corporate campaign contributions on Equal Protection grounds.

Relatedly, Gorsuch joined the majority in the controversial Hobby Lobby Stores v. Sebelius case, which relied heavily on Citizens United to extend religious liberty protections to corporations. Indeed, Gorsuch would like to have taken things even further to hold that any individual owners of the corporation could challenge laws that allegedly impinge on their beliefs.

When viewed together, those two cases support the troubling conclusion that a Justice Gorsuch would be more likely to expand on Citizens United's anti-reform rationale than to walk it back.

Outside spending has more than doubled since Citizens United and our elections are awash in cash—most of it from the super rich, and much of it secret.

According to a new study by Demos, the Supreme Court's string of decisions deregulating campaign spending over the past decade was responsible for $1.3 billion in spending on the presidential race and 77 percent of the money flowing into competitive races in 2016.

Campaign spending isn't charity. Most big donors have a stake in government decisions and want something in return. The result? Increasingly, concentrated economic power is translating into concentrated political power, and the rest of us are left on the sidelines.

By all appearances, Gorsuch's confirmation to the Supreme Court would move the country further in that troubling direction by granting corporations new rights and crippling government's ability to protect Americans from the exercise of increased corporate power. Yet three out of four voters want Congress to reject any Supreme Court nominee ''who will help the wealthy and privileged wield too much power over our elections.''

It's not hard to connect the dots. Confirming Gorsuch would take the country down a path very few of us want, with damaging results for the health of our democracy.

So that is the completion of the article entitled ''Gorsuch Would Move the Supreme Court in the Wrong Direction on Money in Politics'' by Arn Pearson from March 17, 2017, in the Huffington Post.

This issue of money in politics is a huge one for the future of our country. If we do not succeed in reversing the decisions that have unleashed a flow of largely secret money concentrated in the hands of the megawealthy into campaigns, then there is no way that you end up with a House or Senate that reflects the will of the people.

The President seemed to campaign saying that he cared about workers, about ordinary people, but he has nominated an individual who gives every indication of fully supporting the ability of money to be concentrated in campaigns by the most wealthiest individuals in our country and in fact corrupting the outcome.

I mentioned earlier that you can see this corrupting power by looking at the disappearance of the interests of my colleagues across the aisle in the environment. It used to be that Republicans were often expressing a lot of interest in the sustainable management of the environment.

It was President Nixon who created the Environmental Protection Agency and the Clean Air Act and Clean Water Act, and many colleagues expressed a lot of interest in taking on one of the most diabolical sources of pollution, carbon dioxide. But that interest has completely disappeared since the fossil fuel industry put ''bazillions'' of dollars into the Republican Senate campaigns—completely disappeared. Isn't that exactly the type of corruption that the Supreme Court said they didn't expect to see?

Let me tell you that we have seen this pollutant, carbon dioxide, surge in the atmosphere. Going back 20 to 30 years ago, there was an increase per year in the parts per million in the atmosphere of about one per year. So you might go from 350 to 351 parts per million in 1 year, and 351 to 352 the next. Now what we see is that the rate of pollution has increased, and we are seeing close to an increase of 2 parts per million. This is not at one location. This is dispersed carbon dioxide pollution across the world. This pollutant is directly the product of burning fossil fuels, coal, and gas and oil.

So we have been extracting and burning these fuels for 150 years, and they have greatly magnified the amount of work that can be done by a human. When we used to evaluate how much work you can do, we talked about horsepower—1 horsepower, 2 horsepower.

I was working in a village once where I was asked to help a man whose nephew plowed a field in a remote hilltop, and we had a 2 horsepower plow. We actually had a horse and mule pulling that plow. The man told me that that combination was very good because the horse responded to commands better and got the mule to behave, and the mule was better at pulling the plow. So that was the combination. That was 2 horsepower. But when you burn fossil fuels, you create a tremendous amount of energy. We don't talk about our cars with 1 or 2 horsepower; we talk about 100 horsepower or 200 horsepower.

Burning fossil fuels has enabled us to transform the face of this planet in a few generations. Sometimes that has been an extremely positive development—better housing, better transportation systems. But there is an enormous dark side to the burning of fossil fuels, and that dark side is the product, the pollutant, carbon dioxide. As it is accumulating in the atmosphere, it is providing the blanket that is causing the Earth to warm, and that warming is a very destructive force on our farming, on our fishing, and on our forests. We used to talk about computer models and what might happen in the future. Now we simply pick up a newspaper and every day there is a news story of some impact of global warming.

In my home State of Oregon, we have a fire season that is two months longer than it was 40 years ago, with more acreage of forests burning and more heat doing more damage. We have the spread of insects like pine beetles, which would have been killed by colder winters but are not killed by the warmer winters. We have a snowpack in the Cascades that, while it can go up and down year to year, in general has been declining, meaning less water for streams. So we have warmer, smaller trout streams, and we have less water for irrigation, and we have over on the coast a challenge with our oysters that reflects another consequence of the growing pollution of carbon dioxide. That carbon dioxide is absorbed into the ocean. A significant amount of it is absorbed into the ocean and converted into carbonic acid. This acid then, having changed the chemistry of water, makes it much more difficult for sea life to form shells.

At about the time that I was running for office—running for the U.S. Senate in 2007, 2008—there was a problem encountered by the Whiskey Creek Oyster Hatchery in that its baby oysters were not thriving, often dying, and they wondered why.

They turned to researchers at Oregon State University. They thought maybe that this was a virus, but it was not. They thought maybe this was a bacteria, and it was not a bacteria. Finally, they found something that had been staring them in the face, which was that the water was too acidic. The water they were pulling through a big pipe out of the ocean was too acidic because of the carbonic acid. The result was that the baby oysters had difficulty in forming their shells. It is not just the baby oysters, as coral reefs are being profoundly impacted across the world.

There is a researcher from Oregon State University, Professor Dickson, who has made studying coral reefs his life's work. He did a briefing here in DC. It was probably 7 or so years ago—6 or 7 years ago. He showed some slides of the coral reefs that he had been studying—what they used to look like and what they looked like today. He said: These reefs are my babies, and my babies are dying. They are dying because the temperature of the water is warmer and more acidic.

You may wonder how this affects the corals. First, as with the oyster shells, they have more difficulty in forming their bodies. Coral is an animal, and it lives in a symbiotic relationship with algae. When the changes occur in the water, the algae can multiply at a rate that is not supportable by the coral, and the coral ejects them. This is referred to as bleaching. If circumstances do not change quickly, the coral will die because it has ejected its symbiotic partner on which it depends in order to live. There are reports that, over the past few years, 80 percent of the Great Barrier Reef, off of Australia, has died.

So here we have this massive problem that is facing the planet—carbon pollution. It is having a huge impact on our farming for irrigation water. Certainly, in our fishing, it is affecting things like coral reefs and oysters and in our forests, with there being more intense forest fires. Yet we here are doing so little to face this and address this.

Why are we doing so little?

We are doing so little because the coal and oil billionaires have proceeded to invest so much money in third-party Senate campaigns to elect one side of the aisle and defeat the other side. They become the controlling power behind what happens here on the floor of the Senate.

Those interests, most prominently represented by the Koch brothers, do not want us to take on this issue of global warming and carbon pollution because to take it on means to transform our energy economy from extracting and burning fossil fuels, which they own vast amounts of, to clean and renewable energy, which does not create carbon dioxide—solar energy and wind energy. This group of companies—the Koch brothers and friends—is doing everything it can to make sure that this body sustains the subsidies we give to it and not help the success of the clean and renewable energy that might replace the fossil fuels.

Look at it this way: Imagine that you have a set of doctors and they have

an enormous disease affecting a city, but the donors behind the doctors have a big stake and do not want them—the doctors—to address the illness. That is corruption, and that is what we have right here, right now.

We have a Senate that is corrupted by Citizens United and dark money that flows through the campaigns and causes Senators who were concerned about the environment to decide that, if they want to stay in office, they had better not talk about it and they had sure better not do anything about it. In addition, this fossil fuel cartel wants to make sure it has a corps that continues this corruption. That is why they put so much pressure on Senators not to consider Merrick Garland when he was nominated last year, in 2016.

For the first time in the history of our country, when there was a vacancy during a campaign year—an election year—the Senate failed to do its responsibility under the advice and consent clause of the Constitution. There were 15 times when we had previously had a vacancy during an election year, and 15 times the Senate had responded, but not last year, not on turn No. 16. Why was that? It is because the oil and coal cartel did not want Senators to consider a Justice who might, actually, end this corrupt system of the funding of campaigns.

You can see that their influence comes on multiple levels in terms of direct pressure on policies for those who sit in the Senate but also in terms of determining who sits in the Senate to begin with. In this article, Gorsuch would move the Supreme Court in the wrong direction on money and politics. This is not just one issue among dozens of others. This is a key issue as to whether or not we have a ''we the people'' government, which we are in the process of losing. We are fighting this nomination because we are fighting to keep this vision—our constitutional vision.

Our Founders were well aware that the powerful want to have a government that serves the powerful. They saw it throughout Europe. They said: We are going to do it differently in the United States of America. We are not going to have a government by and for the powerful. We are going to have a government by and for the people.

This is where Jefferson was concerned about whether we could sustain such a government—one that would make decisions that reflected the will of the people. He noted that we must, in order to have that happen, have individuals—each citizen—have an equal voice. But Citizens United and the philosophy for the powerful of Neil Gorsuch is the opposite of Jefferson's mother principle. It is the opposite of ''we the people.'' That is why, when we come to a vote on closing debate on this nominee, at least 41 of us are going to stand up and say: absolutely not. We are going to stand for the integrity of the United States. We are going to stand for the integrity of our Constitution. We are going to stand for the integrity of the Senate, and we, certainly, are going to stand for the integrity of the Supreme Court. That vote should be 100 to zero to oppose closing debate, but at least 41 of us care about this Constitution, and we will be doing all we can to try to save our Nation.

I am going to share an article by Paul Gordon: ''Real People, Real Lives: The Harm Caused By Judge Gorsuch.'' This article was written in February of 2017.

When Donald Trump was running for president, he outsourced his future selection of potential Supreme Court nominees to two right wing organizations, the Federalist Society and the Heritage Foundation. They provided him a list of 21 people who were acceptable to them, Trump (the candidate) promised to select a nominee from the list they gave him, and they and their right wing colleagues agreed to support him. Neil Gorsuch was nominated as the product of this political arrangement.

So it is no surprise that Judge Gorsuch has a history of regularly finding ways to put corporations and the powerful first. In that way, he is much like his idol and role model Antonin Scalia and the other far right conservatives on the Supreme Court. And while this unbalanced approach to cases might make for interesting reading, the courtroom is not an academic paper. Each case involves real people with real problems. While a judicial decision might be just another day at work for some judges, it is often one of the most important and impactful days in the lives of the people involved. Below are some of the cases Judge Gorsuch has been involved with and the people who have been affected by them—people who have been victimized outside the courtroom and, to the extent Gorsuch's view prevails, are victimized again.

(Mr. JOHNSON assumed the Chair.)

The article continues by turning to the case of Pinkerton v. Colorado Department of Transportation, 2009.

How many men serving as Federal judges on circuit courts have experienced increasingly blatant sexual harassment from a supervisor over a period of weeks and months? Probably not many. Perhaps that played a role when Judge Neil Gorsuch joined Paul Kelly's opinion upholding the dismissal of a fired woman's case alleging outrageous sexual harassment and retaliation.

Betty Pinkerton experienced two months of escalating sexual harassment from David Martinez, her supervisor, at her job with the Colorado Department of Transportation. The harassment began in December 2002 when Martinez asked her, ''What does a divorced 52 year [old] lady do when she gets sexual urges?'' As she unfortunately had to do several times over the next two months, Pinkerton told him he was being inappropriate in asking such personal questions.

The harassment continued through January and February. Every time she made it clear that his comments were not welcome, but the harassment continued.

So on February 19, 2003, she reported the harassment to the office of the civil rights administrator and formally filed a written complaint on February 24. About three weeks later, Martinez was removed as Pinkerton's supervisor, and on March 21 he was formally found to have engaged in sexually inappropriate conduct with her.

But six days later, Pinkerton was fired.

She sued the Department of Transportation, claiming it was liable for the hostile work environment Martinez had imposed on her. But in Pinkerton v. Colorado Department of Transportation, Judges Gorsuch and Kelly uphold the ruling of a magistrate judge that she had waited too long (two months) to report the harassment and the claim could not go to trial.

But as the dissenting Judge, David Ebel, pointed out, there could have been justifiable reasons for the delay. Perhaps she felt the harassment wasn't sufficient enough to file a complaint until it elevated to a certain point, or maybe she thought she could get her supervisor to stop without the involvement of the civil rights office and without possibly damaging her relationships with others in the office.

In addition, although this was not mentioned in the dissent, perhaps the judges in the majority had insufficient personal familiarity with repeated sexual harassment to know the many reasons a woman might not promptly file a complaint. But instead of letting a jury decide the question of fact as to whether she waited ''too long,'' Gorsuch and Kelly took it upon themselves to be the jurors and decided this factual issue on their own.

Pinkerton also claimed that the Department of Transportation had fired her as retaliation for reporting the sexual harassment, while her employer cited poor performance as the cause, each side having supporting evidence. Here too, Judge Gorsuch took the issue away from a jury. He joined Judge Kelly's majority opinion in a detailed analysis of all the evidence (like a jury would have done at trial), decided that no reasonable jury would find the Department of Transportation fired her for any reason but poor performance, and therefore dismissed her retaliation claim.

That's the jury's job, not theirs. As Judge Ebel noted in his dissent, each side presented evidence supporting their position, and the case should have gone to trial so the jury could do what it is supposed to do: Determine the motive for the firing. Judge Ebel listed several factors that a jury might consider to determine that the employer's rationale of job performance was simply a pretext for her firing. For instance:

The State Department of Transportation director testified that the most serious error leading to Pinkerton's firing was an allegedly mishandled call from an employee's daughter that had happened about four years earlier.

The director tried to get Pinkerton another job with the state Department of Transportation only months before she was fired.

As Judge Ebel noted, ''It is a jury's function to determine whether an employer acted with a retaliatory motive.'' But Judge Gorsuch chose to join his colleague as the jury so that Pinkerton would not have the issue decided by a jury of her peers.

I am reading from an article called ''Real People, Real Lives: The Harm Caused By Judge Gorsuch,'' by Paul Gordon, March 2017.

The article now turns to the case of Caplinger v. Medtronic in 2015. The headline of this section is ''Medical Device Maker Pushes Misuse of Product: Protecting a Corporation From Its Victims.''

It starts out saying:

Illness can be frightening. We turn our health and our lives over to medical personnel and there are many devices of healing. While the physician is highly trained in

medicine, the device manufacturers are highly trained in selling their products to the physicians. Patricia Caplinger learned this the hard way.

Suffering from a degenerative disc condition, Patricia Caplinger and her doctor discussed her options. Medtronic had developed the ''Infuse Bone Graft device,'' which stimulated bone growth. The FDA had only approved its use for surgeries entering the body from the front, but a Medtronic representative recommended an ''off-label'' usage: Enter from behind to use the Infuse device. Not knowing that Medtronic had evidence that such posterior approaches could actually cause serious complications, both Caplinger and her doctor chose to follow Medtronic's advice. The company's representative was even present for the operation.

The consequences of the company's recommendation were terrible for Caplinger, because posterior use of the device resulted in too much bone growth. Two or three months after the procedure, her symptoms returned and worsened. She developed foot drop as a result, which in turn led to a knee ligament tear requiring surgery. The rapid overgrowth of new bone in her spine led to additional surgery, but the overgrowth continued nonetheless, requiring yet another surgery.

Because of the harm she suffered, Caplinger filed a complaint against Medtronic in court. In her lawsuit, Caplinger presented evidence of the lengths to which Medtronic went to facilitate off-label use of its Infuse product. These included bribing doctors, paying kickbacks for promoting such uses, and funding misleading scientific studies that provided a false impression of the safety of these off-label uses.

Nevertheless, writing for a split panel in Caplinger v. Medtronic, Gorsuch agreed with the lower court that every charge of Caplinger's state-law lawsuit was preempted by federal law. The dissenting judge agreed in part, but concluded that Caplinger's negligence and failure-to-warn claims were not necessarily preempted. He wrote: ''My disagreement with the majority opinion does not turn on the substance of federal preemption law. Instead, our disagreement turns on our respective characterization of Caplinger's pleadings and understanding of the proper burden at this stage of the litigation.''

All three judges seemed to agree that Caplinger's briefs were not written very clearly to address all the facets of the preemption issue. One judge was willing to interpret them to give her another chance to make her case, but Gorsuch chose to characterize Caplinger's pleadings in such a way as to ensure her case would be dismissed.

The executives at Medtronic were very likely very relieved.

This article, ''Real People, Real Lives: The Harm Caused by Judge Gorsuch'' now turns to address ''Gorsuch and Children with Autism: Removing the Chance to Learn Lifetime Skills.''

When Congress passed the Individuals With Disabilities Education Act, it was a major step forward in making sure children with disabilities had a free and appropriate public education. But Luke P., a child with autism living in Colorado, was denied this right by Judge Gorsuch, negatively affecting not just him but other kids throughout the Tenth Circuit.

Luke was two years old when he was diagnosed with autism, and when he entered school, he had an education plan specific to his needs, as required by IDEA. Between kindergarten and third grade, he made significant progress in skills relating to communication, self-care (including use of the toilet), independence, motor skills, social interactions, and academic functioning.

But there was an enormous problem for Luke. He was generally unable to transfer his skills into environments other than school. So when he was home or otherwise out of school, he continued to have significant problems.

Fortunately, his parents learned about a residential private school specializing in educating children with autism. If he could gain admittance, Luke would live at the school for 44 weeks of the year, and he would be supervised 24 hours a day. It was a great opportunity to not only advance in the skills learned in school, but to generalize them so they weren't place-dependent. His parents enrolled him there with updated education goals and a new plan to achieve them. They then applied to the school district to reimburse them (since IDEA promises a free education). But the district refused. They were willing to accept Luke's updated plan, but they insisted those goals could be met at the public school he'd been attending.

His parents refused to send him back to a school that had achieved some success but had also failed Luke in many important ways and continued to seek reimbursement. A hearing officer, an administrative law judge, and a federal district court judge all agreed that Luke's inability to generalize his skills demonstrated that the school district had failed to provide him with the free appropriate public education required by law. Only the residential program could do that, meaning the district needed to reimburse Luke's family.

Then Judge Gorsuch stepped in, taking away Luke's opportunities and risking his entire future.

Writing for a Tenth Circuit panel in Thompson R2–J School District v. Luke P., Gorsuch ruled in favor of the school district. They had met their obligation to Luke because all they had to do was provide an educational benefit that was more than de minimis. That is quite a low bar, one that could easily prevent Luke and other children from acquiring the critical lifetime skills they will need throughout their school years and for the rest of their lives.

Fortunately, there is hope: This term, the Supreme Court is considering a different case challenging the ''de minimis'' standard. A decision in Endrew F. v. Douglas County School District is expected by the end of June. Luke's family and families across the nation will be looking to the Supreme Court to protect their children.

What this article doesn't note is that the Supreme Court just handed down a decision 8 to 0 overturning the position Judge Gorsuch had in this case. They ruled that the IDEA Act was intended to ''provide an educational benefit that was more than de minimis.'' Merely more than nothing, I believe, was Gorsuch's standard. Merely more than nothing—if you have done that, you have met the test. The Supreme Court said: No, the whole point of the act was to provide an appropriate education. It wasn't one or two Justices rejecting Gorsuch's writing, his interpretation of the law—basically, his decision to ignore the law, which is what he did in his decision. They ruled 8 to 0. They basically kicked that decision clear out of the field of common sense or a rational interpretation of what the IDEA Act says. So that was a powerful addition to that story.

Let me return to the article. This section is called ''No Leave Extension for Leukemia Patient: Gorsuch's Cramped View of What Makes an Accommodation Reasonable.'' This is the case of Hwang v. Kansas State University, in 2013.

Grace Hwang, a longtime assistant professor at Kansas State University, received frightening news in June of 2009: Her doctors diagnosed her as having leukemia. Without aggressive chemotherapy and a bone marrow transplant, she would die. She had to spend six months in medical facilities, during which time she was on a paid leave of absence. But she made sure her work got done: She prepared the instructors who were stepping in for her, including by sharing her teaching materials, lesson plans, and syllabi. Even while she was hospitalized, she consulted with the substitutes through phone calls and e-mails.

In January, after her six-month ordeal, Professor Hwang was looking forward to returning to work. But there was a severe outbreak of swine flu on campus, and her physicians warned her that, due to her compromised immune system, she should stay away from campus. So she informed university officials that she would need some additional leave—hopefully, a short time, but potentially as long as the entire semester, depending on the flu situation and her immune system.

But the university refused to grant her additional leave. Their reason? Because they have a policy that caps a leave of absence at six months, which she had used up. Professor Hwang sued them for violating the Rehabilitation Act, which requires employers to provide a reasonable accommodation for someone's disability. She was unsuccessful before the district court.

The Rehabilitation Act calls for accommodation requests to be evaluated on a case-by-case basis. Every situation is unique, depending on any number of factors. That is why Congress chose not to set a point at which a leave of absence was no longer a reasonable accommodation.

But when Professor Hwang appealed to the Tenth Circuit, Judge Gorsuch ruled against her in an opinion very much focused on the length of time from its very opening (Hwang v. Kansas Sate University (2013)). He set Professor Hwang up to lose in the very first paragraph. He could have opened the opinion in a neutral manner by asking whether extending her leave would create an undue burden for the university. Instead, he chose to frame the legal issue from the university's perspective, casting the employer as the victim:

Must an employer allow employees more than six months' sick leave or face liability under the Rehabilitation Act? Unsurprisingly, the answer is almost always no.

Judge Gorsuch concluded that the professor simply could not perform the duties of her job without being present on campus, and an accommodation past six months was not reasonable under the Rehabilitation Act.

The Rehabilitation Act seeks to prevent employers from callously denying reasonable accommodations that permit otherwise disqualified disabled persons to work—not to turn employers into safety net providers for those who cannot work.

Since Professor Hwang performed work while hospitalized to ensure her classes were taught effectively in her absence, it is hard to imagine that she could not do any work from home. She was simply seeking a hopefully-short extension of her leave so she could do her work in person without risking her life. It is also difficult to see how her efforts to retain a job she'd excelled at for

more than a decade was just an effort to turn her employer into [as Judge Gorsuch termed it] ''a safety net provider.''

When Professor Hwang was first diagnosed, she probably had no idea that her treatment would cost her her job.

These are stories from the article, ''Real People, Real Lives: The Harm Caused By Judge Gorsuch.''

The next section is titled ''Excessive Force: Immunity For Police Officer Who Kills Young Man Over Marijuana Plants.''

Wilson v. City of Lafayette (2013).

Wendy and Jack Wilson learned about Gorsuch's approach to the law the hard way when they sought to hold police officer John Harris accountable for needlessly killing their son Ryan. Their son had been standing near an area known for growing marijuana, and he admitted the plants were his. Then he ran. Officer Harris chased him until Ryan reached a fence, where he stopped. Officer Harris saw Ryan start to reach into his pocket and warned him not to, in case it held a weapon. As Ryan turned to run again, Officer Harris shot him in the back of the head or neck with a Taser, killing him.

But in Wilson v. City of Lafayette (2013), Judge Gorsuch concluded that Harris hadn't used unconstitutionally excessive force, so the parents' case shouldn't even go to trial. Another judge observed in her dissent that Gorsuch's opinion

. . . fails to give sufficient weight to the fact that the Taser used by Officer Harris on August 4, 2006, had a targeting function, that Officer Harris fired at Ryan Wilson from only ten to fifteen feet away, and the training manual specifically warned officers against aiming it at the head or throat unless necessary.

Given all this, the Wilsons certainly had a legal argument of excessive force they should have been able to present at a trial. But Gorsuch shut that possibility down. After losing their son, they lost the opportunity to hold anyone accountable for his completely unnecessary killing.

So much for ''And Justice For All.''

The next story in this article, ''Real People, Real Lives'' is ''Worker Dies Due to Inadequate Training, but Gorsuch Tries to Rule for the Company,'' the case of Compass Environmental, otherwise known as the case of the electrocuted miner.

Chris Carder also died needlessly, but in this case it was from a workplace accident in which he was electrocuted. Carder worked as a trench hand at a mine site, which involved using rubber and metal hose with a metal nozzle to dispense grease. Since there was a live power line crossing over the construction site, the safety training everyone received warned trench hands and others to keep at least twenty feet from the powerline. However, Carder started on the job a week after everyone else and, in a decision that had tragic consequences, this safety measure was not included in Carder's individual training. An accident ensued when the nozzle was too close to the power line, and Carder was fatally electrocuted.

Looking into the accident, the Department of Labor's Occupational Safety and Health Review Commission (OSHRC) concluded that Carder could have avoided electrocution had he been adequately trained by his employer (Compass Environmental) about the highly dangerous situation he faced—training that the other on-site employees had received. OSHRC [Occupational Safety and Health Review Commission] issued a serious citation against Compass for inadequate training, and it imposed a financial penalty against the company. This was upheld by a Tenth Circuit panel, but with Judge Gorsuch in dissent.

While the majority in Compass Environmental v. OSHRC (2011) criticized Gorsuch's case analysis, perhaps most striking was Gorsuch's decision to open his dissent with an ideological criticism of federal agencies in general:

Administrative agencies enjoy remarkable powers in our legal order. Their interpretations of ambiguous statutes control even when most everyone thinks Congress really meant something else. Their regulations bind as long as they can make the modest boast that they haven't behaved arbitrarily or capriciously. Their factual findings rule the day unless someone can show they have not just erred but clearly erred.

Gorsuch wrote that this was such a case, where the agency had erred in finding Compass had violated the law. But the superfluous ideological introduction cast a shadow on his entire approach to the case and whether he analyzed it as a disinterested judge or as an anti-government conservative seeking to use his position on the federal bench to make a political point. Either way, if it had been up to Gorsuch, the company responsible for Carder's death would not have been held accountable.

Well, it wasn't up to Gorsuch, because the majority of the panel said: Yes, of course if you put a worker in a highly dangerous situation, you have the responsibility to train them about that situation. Somehow, Gorsuch managed to find the opposite conclusion: If you put a worker in a highly dangerous place and don't train them, that is OK, even if they die as a result.

I am reading stories from the article, ''Real People, Real Lives: The Harm Caused By Judge Gorsuch.'' The next section is, ''Die or Be Fired: The Case of the Frozen Trucker.'' I have relayed the facts of this several times since I began speaking a few hours ago, so I will try to do an abbreviated version of this.

TransAm Trucking v. Administrative Review Board (2016).

While Chris Carder died on the job, Alphonse Maddin was fired for not dying on the job. He was a truck driver hauling cargo in subzero weather, and the brakes on his trailer froze. He stopped, called the company to report the problem, then waited for a repair person. Unfortunately, the heater in the cab of the truck was broken, wasn't working, so after a couple of hours, his body became numb, his speech was slurred, and he couldn't feel his feet at all. He called the company two more times and reported his increasingly perilous state; he was even having trouble breathing.

Maddin unhitched the trailer from the truck. With the repair person still not there, he called the company to let them know he was leaving to get help, but he was told not to leave the trailer behind. He was given two choices: Drag the trailer despite its frozen brakes (either impossible or wildly dangerous), or keep waiting for the repair person in the cold and put his own life at risk.

Rather than die in the cold, Maddin drove off in the truck for help, leaving the trailer behind and returning with assistance in about 15 minutes. A week later, the company fired him for abandoning his cargo. The Labor Department found that the company had violated whistleblower protection regulations, since Maddin had reported a problem, not obeyed an order relating to that problem that could have killed him, and was fired for it.

Not surprisingly, . . . a panel of Tenth Circuit judges upheld the Labor Department's actions. But Judge Gorsuch dissented. The Surface Transportation Assistance Act protects a worker from refusing to operate an unsafe vehicle.

I am now interjecting—which is what he did because he refused to drive with that trailer attached with the frozen brakes, which could have endangered many people on the road.

Now I will return to the article.

. . . a panel of Tenth Circuit judges upheld the Labor Department's actions. But Judge Gorsuch dissented. The Surface Transportation Assistance Act protects a worker from refusing to operate an unsafe vehicle, but Gorsuch reasoned that the driver wasn't ''refusing to operate'' anything at all; instead, he was choosing to operate the vehicle in a way that he'd been instructed not to. And that, wrote Gorsuch, isn't covered by the law.

And that is how a person who wants to be a legislator turns the law on its head, to reverse the outcome clearly laid out in the law to begin with.

Back to the article.

So according to Gorsuch, a law passed to protect workers from being forced to drive unsafe vehicles doesn't cover workers who drive away to avoid the particularly unsafe situation of death. The law empowers companies to make workers choose between their jobs and their lives, according to Gorsuch. Fortunately, Maddin survived his ordeal and Gorsuch's analysis did not carry the day.

The next section of this article, ''Real People, Real Lives: The Harm Caused By Judge Gorsuch''—the title is ''Defer to the Governor, Facts Notwithstanding: Gorsuch Turns a Blind Eye to an Unlawful Effort to Defund Planned Parenthood.''

This is also a case that I have read a fair amount about in the course of the last few hours, so I will just summarize it.

The Governor of Utah said: Well, there is this video out, and it is about a program in which Planned Parenthood sells tissue for research. I don't like what they are doing, so I am going to refuse to provide State funds to Planned Parenthood.

Planned Parenthood basically pointed this out: Well, first, the video didn't have anything to do with Utah. Second of all, Planned Parenthood in Utah is not involved in this tissue research program, so it had nothing to do with us in that regard. And refusing to provide State funds to us is unequal treatment under the law and unconstitutional.

The case was tried, and the judges found for Planned Parenthood for all the reasons I just mentioned. Neither the Governor of Utah nor Planned Parenthood saw any reason to appeal this. Planned Parenthood had won, and the Governor recognized that there were seriously strong arguments that had been made. But Gorsuch did something very unusual: He asked the Tenth Circuit to reconsider the decision of the three-court panel en banc, which means with all the judges of the Tenth

Circuit. He essentially retried the entire case with a larger group. Gorsuch accused the majority of not showing ''the sort of comity this court normally seeks to show the States and their elected representatives.''

Let's treat the Governor nicely. The job of the court is not to treat the Governor nicely; the job is to determine whether someone's rights have been violated or whether someone has suffered damage that needs to be compensated.

One of the fellow judges in the majority criticized Gorsuch's mischaracterization of the record, and he noted that Gorsuch ''mischaracterizes this litigation and the panel opinion at several turns.''

The article continues:

It would be hard to estimate how many women would have become ill or died if Judge Gorsuch had been in the majority.

The next section of this article, ''Real People, Real Lives: The Harm Caused By Judge Gorsuch'' is titled ''No Understanding of Another's Perspective: The Department Of Motor Vehicles and the Rehabilitation Act.'' This is the case of Barber v. Colorado.

Julianna Barber and her mother, Marcia Barber, learned just how out of touch Judge Gorsuch could be . . . and the pain that he would impose on people with disabilities and their families. Fifteen year-old Julianna wanted to practice her driving. Colorado law restricted her to driving with a parent or guardian with a driver's license. Since her mother Marcia was blind and therefore didn't have a license, she asked the DMV for a reasonable accommodation: Let Julianna drive with her grandfather. After consulting with the State attorney general, the DMV refused, but suggested that Marcia could give Julianna's grandfather some form of guardianship. She refused to even discuss signing away her parental rights, and the family sued under the Rehabilitation Act.

The Barbers lost in the Tenth Circuit with a panel consisting of judges nominated by Ronald Reagan, George H.W. Bush, and George W. Bush in Barber v. Colorado. The majority acknowledged that the State had discriminated against Marcia Barber but ruled against her because she refused to negotiate with the DMV over reasonable accommodation.

But Judge Gorsuch wrote a concurrence going even further: Citing Colorado Revised Statute Section 15–14–102(4). Gorsuch pointed out that the guardian for purposes of driving does not have to be someone with full guardianship authority. He also cited Colorado Revised Statute 15–14–105's provision that a parent can delegate ''any power,'' however small, ''regarding care, custody or property'' of a child to someone else. Therefore, all Marcia Barber had to do was find a sheet of paper and write that Julianna's grandfather had the right to supervise her driving. She wouldn't need to file the paper in court or go through any other formal process. According to Gorsuch, this option is available to anyone, does not discriminate against anyone based on disability.

The DMV wasn't even required to make a reasonable accommodation for the family. At no point in the opinion is there any suggestion that Marcia Barber understood that the DMV was talking about anything but surrendering some of her parental rights, so it was not surprising that she wouldn't consider discussing it further. No reasonable judge can expect a regular person to be sufficiently familiar with the details of Colorado statutes to know everything about guardianship that he cites. How would she know this?

Gorsuch's inability to comprehend the worldview of another person is perfectly captured in the footnote to his concurrence.

The article says it is worth quoting in full. Here is that footnote:

Plaintiffs argue that, in a February 23, 2005 letter, the State misrepresented its Colorado law by asking Ms. Barber to sign a document giving full, not limited, guardianship authority to another person. The letter, however, simply stated that, for the ''youngest of drivers just learning to drive,'' State law required ''that they be under the direct and immediate supervision of someone with full parental authority.'' By definition, a limited guardian has full parental authority, albeit for prescribed purposes, sometimes even very modest purposes (such as the supervision of a minor while driving). The State thus did not misrepresent to plaintiffs the availability or nature of its limited guardianship statutes.

Perhaps 95 to 99 percent of the Nation's population, like Marcia Barber, would not know that someone with full parental authority could include someone whose only authority is permission to supervise her daughter's driving. A good judge recognizes that different people can reasonably interpret the same thing differently based on their different education, upbringings, and life experiences.

I think if somebody told me that they wanted me to grant full parental authority to someone else, I certainly would say: Hold on. That is not happening.

What Neil Gorsuch points out is that full parental authority can apply to a very small set of activities, but the phrase ''full parental authority'' implies a broad range. How would an ordinary citizen possibly know the point Neil Gorsuch is making? And therefore I think virtually everybody would respond the way she did. Full parental authority—I am going to pass that away? No, of course not. Why don't they call it limited or special cause parental authority? Then maybe an ordinary person might have some idea. But that was not the case.

The next section in ''Real People, Real Lives: The Harm Caused By Judge Gorsuch'' is titled ''Sex Discrimination: Never Mind the Evidence.''

Many of the appeals before the 10th Circuit involve plaintiffs whose cases were dismissed before trial or jury verdict because (the trial judge ruled) they had not presented enough evidence to possibly support their legal claim. That is what happened to Carole Strickland, a UPS driver who was promoted to key account executive. She presented evidence that she had been the subject of sex discrimination at the new job and quit under pressure.

Her coworkers testified that supervisors treated her differently than her male colleagues. Even though Strickland met between 93 and 104 percent of her sales quotas and was outperforming at least some of her coworkers on every measure, only she was required to attend individual meetings with the supervisors. Only she had to make written sales commitments, even though no one was at 100 percent of every sales quota. One of the men in her office had lower performances than Strickland in almost every sales measure, but he was not required to attend meetings to discuss performance, was not denied assistance, and was not counseled for failing to reach 100 percent in every sales measure.

At the same time, UPS pointed out that there was one other woman in Strickland's office, and she did not report being treated differently. In addition, there had been one man among the staff whose treatment approached that given to Strickland. The district court ruled that she didn't have a case and dismissed it.

The Tenth Circuit panel of judges who heard her appeal in Strickland v. UPS (2009) disagreed. While her employer's evidence might have undercut Strickland's case, she had nevertheless presented enough evidence for a jury to consider her arguments, consider UPS's arguments, and conclude that she had indeed been subject to unlawful sex discrimination.

That is what the 10th Circuit said.

Judge Gorsuch dissented, deciding for himself that Strickland's supervisors were not motivated by sex discrimination. Therefore, Gorsuch concluded, since no reasonable jury could agree with Strickland about the cause of her treatment, her case should be dismissed before she could make her case to a jury.

Everyone deserves their day in court. Except for some people.

In case after case that I have been talking about in the course of the last few hours, we see that the judge said: No, we are going to stop that person from ever getting their day in court. Generally, the article attacked the conduct of a powerful corporation.

The next section of ''Real People, Real Lives'' is regarding ''The Most Vulnerable: Children With Disabilities.'' This case is ''A.F. v. Espanola Public Schools (2015).''

The Individuals with Disabilities Education Act, IDEA, ensures that students with disabilities are provided ''free appropriate public education.'' Under the law, such children have individualized education programs designed to provide educational benefits. Congress included a requirement that if a parent believes their child's needs are not being addressed, . . . they must first exhaust the administrative remedies IDEA makes available before they can go to court. Congress has also passed other laws relevant to children with disabilities, some of which have remedies that IDEA lacks. They also require all IDEA administrative remedies to be exhausted first before going to court.

A.F., a child with dyslexia, had her case heard on appeal by Judge Gorsuch who read IDEA to limit parents' options to most effectively address their children's educational needs. A.F.'s mother Christine felt the school hadn't adequately assessed her daughter and created an IEP [an Individual Education Plan] for her as IDEA requires. She filed a complaint and reached an agreement in which the school recognized that A.F. had a disability. Believing she had met the requirement to exhaust IDEA's administrative remedies, she then went to court to obtain remedies available under statutes like the Rehabilitation Act and the Americans with Disabilities Act.

But in A.F. v. Espanola Public Schools . . . Judge Gorsuch shut her down. Writing for a

divided panel, he ruled that she hadn't exhausted her administrative remedies because she had reached a settlement with the school district on her IDEA case. To pursue relief available only through statutes other than IDEA, he concluded, a parent must refuse to resolve the IDEA claim.

Judge Mary Beck Briscoe pointed out the bind Judge Gorsuch was imposing on parents with children with disabilities, against Congressional intent.

Judge Briscoe wrote:

[Judge Gorsuch's] interpretation is inconsistent with the very purpose of IDEA. It forces a claimant to choose between mediating a resolution to her IDEA claim . . . and thereby obtaining some or all of the relief sought under IDEA . . . ,or forgoing any relief at all and waiting (while the child ages and potentially continues to receive something other than the requisite ''free appropriate public education'') in hopes of later filing suit and obtaining relief under both IDEA and other statutes.

So his position just places the parent in an impossible situation and obviously a good share of the panel disagreed. Of course there are parallels there on that IDEA case to the autism case that we looked at earlier. Certainly, in both cases, the judge was not sympathetic to the role of the family seeking an appropriate education for their child. In the autism case, the Supreme Court just recently overturned Judge Gorsuch and the principle he asserted, which is basically all that was required of the school district was ''merely more than de minimus,'' merely more than nothing. That is inconsistent with the whole purpose of the IDEA, which is to provide a free appropriate public education. So here again, we see much the same attitude being displayed, an attitude of rewriting the law to be something that it clearly is not.

''The Sixth Amendment: Undermining the Right to Counsel. Williams v. Jones.'' I am reading another section from ''Real People, Real Lives: The Harm Caused By Judge Gorsuch.''

Perhaps no government power is more awesome—and more dangerously susceptible to abuse—than the right to imprison someone, completely taking away their freedom. Because our liberties require robust protection, the Bill of Rights establishes certain requirements that the government must meet before it is allowed to exercise its authority to lock any of us away. Since the criminal law can be used mistakenly or even inappropriately against anyone, these procedural requirements are guarantors of our freedom.

The Founders recognized that unjustified imprisonment would be less likely if each criminal defendant had someone advocating for them who knew the law inside and out. Hence, the Sixth Amendment guarantees that the criminally accused ''shall enjoy the right . . . to have the Assistance of Counsel for his defence.'' As a constitutional provision that is part of the Bill of Rights, this indicates that, as a nation, we believe that no one should be stripped of their freedom just because they are not experts in the law.

But Judge Gorsuch appeared to disagree, as he showed in 2009 case of Williams v. Jones. In this case, Michael Williams was being prosecuted for first-degree murder. The prosecution offered him a deal which he would plead guilty to a lesser crime (second-degree murder) and he would serve ten years in prison. Williams wanted to accept. However, his attorney said that if Williams accepted the deal, he (Williams) would be committing perjury and the lawyer would withdraw from the case.

Faced with this terrible legal advice and threat from his attorney, Williams reluctantly rejected the plea deal and went to trial. He was found guilty of first-degree murder and sentenced to life in prison without parole.

At the Tenth Circuit, the panel majority addressed the appropriate remedy for the unconstitutional ineffective assistance of counsel. While the remedy was not an easy issue to address, the majority had no difficulty whatsoever in identifying the constitutional violation. Indeed, a state court in Oklahoma had already found that there was a Sixth Amendment violation in this case.

Judge Gorsuch dissented both from the panel decision and from the whole court's decision not to reconsider the case en banc. He found no constitutional violation in the first place, because he claimed that the right to effective assistance of counsel only covers the trial, not any pretrial plea bargaining. Since the trial itself appeared to be fair, Gorsuch concluded, Williams didn't have a case. He wrote that ''due process requires a fair trial, not a good bargain.''

A little commentary here: What Judge Gorsuch was doing was saying that the Sixth Amendment right to legal assistance is only in the case of the trial, not in the legal work done before the trial starts. That is what is being referred to by the panel majority as an ''extremely cramped view of the right to counsel.''

So the article continues:

The panel majority harshly criticized this extremely cramped view of the right to counsel, noting that it had been rejected by the Supreme Court and was ''incompatible with [the Supreme Court's precedents involving] a right to effective assistance of counsel in connection with the entire plea process.'' When the circuit without comment declined to reconsider the case en banc, one judge wrote . . . a concurring opinion solely to correct the errors in Gorsuch's dissent. They cited the Supreme Court's prior holdings and statements that would have made no sense if the Sixth Amendment's right to counsel didn't apply at the pretrial plea-bargaining stage.

The Sixth Amendment protects both the guilty and the innocent. Judge Gorsuch's narrow interpretation is particularly frightening in the age of Trump.

That concludes that section. But it certainly is disturbing that Neil Gorsuch made a decision that completely disregarded the Supreme Court precedents and made no sense because when you have a lawyer, that lawyer is assisting you through the legal process. Part of that is the negotiation that occurs before you are actually in court. It is all part of the process of your case being considered. To try to put up a wall and say the Sixth Amendment does not apply to any of the legal work done, including negotiations over a potential plea, makes no sense.

So you have Judge Gorsuch writing his own law, ignoring the Supreme Court precedents, and being reprimanded, in essence, by the panel majority.

Returning to the article, ''Real People, Real Lives,'' the conclusion of the article reads as follows:

These are far from being the only people who have been or could have been greatly harmed by the way Judge Gorsuch approaches cases. When Gorsuch's view carry the day right now, the damage he does is limited to States covered by the Tenth Circuit; he has also been limited by the Supreme Court precedent he may disagree with. Were he to be elevated to the High Court, however, he would be in a position to overrule precedents that have gotten in his way over the past 10 years, and the damage he would impose would be nationwide and unreviewable.

Judge Gorsuch may be affable and have many friends, but that is not at all relevant to whether he should be confirmed to the Supreme Court. Few if any of the parties Gorsuch has unfairly ruled against would feel better knowing that he is reputed to be a great guy outside the courtroom.

So, that is the article ''Real People, Real Lives: The Harm Caused By Judge Gorsuch.''

The next article is from the New York Times by Emily Bazelon and Eric Posner from April 1, 2017. No, this was not an April Fools' article. This is a serious article: ''The Government Gorsuch Wants to Undo.'' It starts out as follows:

At recent Senate hearings to fill the Supreme Court's open seat, Judge Neil Gorsuch came across as a thoroughly bland and nonthreatening nominee. The idea was to give as little ammunition as possible to opponents when his nomination comes up this week for a vote, one that Senate Democrats may try to upend with a filibuster.

But the reality is that Judge Gorsuch embraces a judicial philosophy that would do nothing less than undermine the structure of modern government—including the rules that keep our water clean, regulate the financial markets and protect workers and consumers. In strongly opposing the administrative state, Judge Gorsuch is in the company of incendiary figures like the White House advisor Steve Bannon, who has called for its ''deconstruction.'' The Republican-dominated House, too, has passed a bill designed to severely curtail the power of federal agencies.

Businesses have always complained that government regulations increase their costs, and no doubt some regulations are ill-conceived. But a small group of conservative intellectuals have gone much further to argue that the rules that safeguard our welfare and the orderly functioning of the market have been fashioned in a way that is not constitutionally legitimate. This once-fringe cause of the right asserts, as Judge Gorsuch put it in a speech last year, that the administrative state ''poses a grave threat to our values of personal liberty.''

The 80 years of law that are at stake began with the New Deal. President Franklin D. Roosevelt believed that the Great Depression was caused in part by the ruinous competition among companies. In 1933, Congress passed the National Industrial Recovery Act, which allowed the president to approve ''fair competition'' standards for different trades and industries. The next year, Roosevelt approved a code for the poultry industry, which, among other things, set a minimum wage and maximum hours for workers, and hygiene requirements for slaughterhouses. Such basic workplace protections and constraints on the free market are now taken for granted.

But in 1935, after a New York City slaughterhouse operator was convicted of violating the poultry code, the Supreme Court called into question the whole approach of the New

Deal, by holding that the N.I.R.A. was an ''unconstitutional delegation by Congress of a legislative power.'' Only Congress can create rules like the poultry code, the justices said. Because Congress did not define ''fair competition,'' leaving the rulemaking to the president, the N.I.R.A. violated the Constitution's separation of powers.

The court's ruling in the Shechter Poultry Corp. v. the United States, along with another case decided the same year, are the only instances in which the Supreme Court has ever struck down a federal statute based on this rationale, known as the ''nondelegation doctrine.'' Shechter Poultry's stand against executive-branch rulemaking proved to be a legal dead end, and for good reason. As the court has recognized over and over, before and since 1935, Congress is a cumbersome body that moves slowly in the best of times, while the economy is an incredibly dynamic system. For the sake of business as well as labor, the updating of regulations can't wait for Congress to give highly specific and detailed directions.

The New Deal filled the gap by giving policy-making authority to agencies, including the Securities and Exchange Commission, which protects investors, and the National Labor Relations Board, which oversees bargaining between unions and employers. Later came other agencies, including the Environmental Protection Agency, the Occupational Safety and Health Administration (which regulates workplace safety) and the Department of Homeland Security. Still other agencies regulate the broadcast spectrum, keep the national parks open, help farmers and assist Americans who are overseas. Administrative agencies coordinated the response to Sept. 11, kept the Ebola outbreak in check and were instrumental in the last financial crisis. They regulate the safety of food, drugs, airplanes, and nuclear power plants. The administrative state isn't optional in our complex society. It's indispensable.

I am reading from the article ''The Government Gorsuch Wants to Undo'' by Emily Bazelon and Eric Posner. It continues:

But if the regulatory power of this arm of government is necessary, it also poses a risk that federal agencies, with their large bureaucracies and potential ties to lobbyists, could abuse their power. Congress sought to address that concern in 1946, by passing the Administrative Procedure Act, which ensured a role in the judiciary in overseeing rule-making by agencies.

The system worked well enough for decades, but questions arose when Ronald Reagan came to power promising to deregulate. His EPA sought to weaken a rule, issued by the Carter administration, which called for regulating ''stationary sources'' of air pollution—a broad wording that is open to interpretation. When President Reagan's EPA narrowed the definition of what counted as a ''stationary source'' to allow plants to emit more pollutants, an environmental group challenged the agency. The Supreme Court held in 1984 in Chevron v. Natural Resources Defense Council that the EPA and any agency could determine the meaning of an ambiguous term in the law. The rule came to be known as the Chevron deference: When Congress uses ambiguous language in a statute, courts must defer to an agency's reasonable interpretation of what the words mean.

Chevron was not used as a left-leaning decision. The Supreme Court decided in favor of the Reagan administration, after all, voting 6 to 0 (three justices did not take part), and spanning the ideological spectrum. After the conservative icon Justice Antonin Scalia reached the Supreme Court, he declared himself a Chevron fan. ''In the long run Chevron will endure,'' Justice Scalia wrote in a 1989 article, ''because it more accurately reflects the reality of government, and thus more adequately serves its needs.''

That was then. But the Reagan administration's effort to cut back on regulation ran out of steam. It turned out that the public often likes regulation—because it keeps the air and water clean, the workplace safe, and the financial system in working order. Deregulation of the financial system led to the savings and loan crisis in the 1980s and the financial crisis a decade ago, costing taxpayers billions.

Businesses, however, have continued to complain that the federal government regulates too much. In the past 20 years, conservative legal scholars have bolstered the red-tape critique with a constitutional one. They argued that only Congress—not agencies—can create rules. This is Shechter Poultry all over again.

And Judge Gorsuch has fortunately joined in. Last year, in a concurring opinion in an immigration case called Gutierrez-Brizuela v. Lynch, he attacked Chevron deference, writing that the rule ''certainly seems to have added prodigious new powers to an already titanic administrative State.'' Remarkably, Judge Gorsuch argued that Chevron—one of the most frequently cited cases in the legal canon—is illegitimate in part because it is out of step with (you guessed it) Shechter Poultry. Never mind that the Supreme Court has not since relied on its 1935 attempt to scuttle the New Deal. Nonetheless, Judge Gorsuch wrote that in light of Shechter Poultry, ''you might ask how is it that Chevron—a rule that invests agencies with pretty unfettered power to regulate a lot more than chicken—can evade the chopping block.''

At his confirmation hearings, Judge Gorsuch hinted that he might overturn Chevron without saying so directly, noting that the administrative state existed long before 1984. The implication is that little would change referring to the E.P.A.'s or Department of Labor's reading of a statute. Judges would interpret the law. Who would object to that?

But here's the thing: Judge Gorsuch is skeptical that Congress can use broadly written laws to delegate authorities to agencies in the first place. That can mean only that at least portions of such statutes—the source of so many regulations that safeguard Americans' welfare—must be sent back to Congress, to redo or not.

On the current Supreme Court, only Justice Clarence Thomas seeks to strip power from the administrative state by undercutting Chevron and even reviving the obsolete and discredited nondelegation doctrine, as he explains in opinions approvingly cited by Judge Gorsuch. But President Trump may well appoint additional justices, and the other conservatives on the court have expressed some uneasiness with Chevron, though as yet they are not on board for overturning it. What would happen if agencies could not make rules for the financial industry and for consumer, environmental and workplace protection? Decades of experience in the United States and around the world teach that the administrative state is a necessary part of the modern market economy. With Judge Gorsuch on the Supreme Court, we will be one step closer to testing that premise.

That is the conclusion of the New York Times article ''The Government Gorsuch Wants to Undo'' by Emily Bazelon and Eric Posner, dated April 1.

The next article I will share with you is an editorial from November 7, and I believe the other is from December 24 of 2016. This is by the editorial board of the New York Times, and it reads as follows:

People don't usually remember it this way, but on December 13, 2000, Vice President Al Gore gave one of the most important speeches in American history. Mr. Gore had contested initial results of the Florida vote count and prevailed in Florida State courts, but the Supreme Court had voted 5-to-4 the day before to end the recount and effectively hand the presidency to George W. Bush.

''Now the U.S. Supreme Court has spoken,'' Mr. Gore said. ''Let there be no doubt, while I strongly disagree with the court's decision, I accept it.'' The frenzied battle over a few hundred votes had spawned intense anger across the country—but it had been resolved ''as it must be resolved, through the honored institutions of our democracy.''

Mr. Gore's concession that night still stands as the most powerful reaffirmation in modern times of the Supreme Court's unique and fragile role in the American system of government. Millions of people were furious in the justices' decision in Bush v. Gore—many believed it was the result not of legal reasoning but of rank partisanship—and yet virtually everyone followed Mr. Gore's selfless lead, accepted the court as the final arbiter of the dispute, and moved on. There were no riots in the streets, no attempted coups, no ''Second Amendment solutions.'' There was, instead, a peaceful transfer of power: the hallmark of a civil society operating under the rule of law.

Sixteen years later, the Supreme Court sits crippled, unable to resolve the most pressing legal questions before the country. Two events—the sudden death of Justice Antonin Scalia in February and the unprecedented refusal of Senate Republicans to even consider President Obama's pick to fill the vacant seat—have converged to throw the court's future as a functioning institution into doubt.

This scenario would have seemed unimaginable a year ago. But Tuesday's vote—for president and for control of the Senate—will determine whether the court remains shorthanded for months or, as Republicans are now threatening if they hold the Senate, for years.

Last month, Senator Richard Burr, of North Carolina, told supporters that if Hillary Clinton wins, ''I am going to do everything I can to make sure four years from now, we still got an opening on the Supreme Court.'' Senator Ted Cruz of Texas suggested he was happy with the current situation, and said, ''There is certainly long historical precedent for a Supreme Court with fewer justices.'' Even Senator John McCain, who once joined with Democrats in an effort to depoliticize the judicial nomination process, recently told a radio show, ''I promise you that we will be united against any Supreme Court nominee that Hillary Clinton, if she were President, would put up.''

Step back for a moment and consider the radical absurdity of this position. Senate Republicans first justified their refusal to hold hearings or a vote on Mr. Obama's nominee before the presidential election because ''the people's voice'' needed to be heard. That was always a transparent lie. Now, apparently believing their candidate, Donald Trump, will lose, they are acting as though the Supreme Court is the property of the Republican Party.

This mind-set isn't just a matter of a few senators going rogue. Leading conservative groups are embracing the argument, happy to destroy a principle of American politics—

to privilege partisanship over the Constitution itself. Ilya Shapiro, a senior fellow at the influential Cato Institute, wrote two weeks ago that ''it would be completely decent, honorable, and in keeping with the Senate's constitutional duty to vote against essentially every judicial nominee'' a President Clinton would name. Last Thursday, the Vice President of Heritage Action for America, a top conservative think tank, said Senators McCain, Burr and Cruz were taking ''exactly the right position,'' and that an effective, long-term blockade of the court will require ''an immense amount of willpower'' from Senate Republicans.

A small number of Republican senators have expressed discomfort with this idea, but when was the last time public interest won out in today's Republican Party?

The indefinite blockade not only hobbles the justices' ability to resolve current cases, it takes open aim at the court's legitimacy as the sole unelected branch of government. Because the court ''has no influence over either the sword or the purse,'' as Alexander Hamilton wrote in the Federalist Papers, its legitimacy and authority depend entirely on the shared public acceptance of its verdicts.

Today's Republicans are essentially saying the court is nothing but another political body, and that justices should be treated as ideological sock puppets of the president who nominated them. Yes, the justices come with political beliefs and backgrounds, but that makes it all the more important to demand that they work harder than the rest of us to struggle and preserve their independence. This is why, for instance, Justice Ruth Bader Ginsburg was wrong to comment on Mr. Trump's candidacy—words for which she later apologized.

Until this year, no one disputed that the president should have wide latitude in picking justices. In 1993, Senate Republicans voted overwhelmingly in favor of Justice Ginsburg, President Bill Clinton's first nominee. And even though they voted in large numbers against Mr. Obama's first two nominees, Sonia Sotomayor and Elena Kagan, they did not try to block those nominations from going forward. Senate Democrats voted unanimously to confirm Ronald Reagan's choice of Justice Scalia in 1986 and allowed full votes on Robert Bork and Clarence Thomas, both of whom they strongly opposed.

In 2016, Republicans have blown this delicate balance to pieces, all to keep a conservative majority. Of course, the court has had a majority of Republican-appointed justices for nearly half a century, through the normal processes of advice and consent. But now, Republicans want to maintain that majority, even if that means tossing out all political norms. This majority, they hope, would promote a world view where fewer people have rights, where women do not have reproductive choices, where lawmakers can make it harder for minorities to vote, where religious people are free to disregard laws protecting people they don't like. Such a court could use a severe interpretation of the Constitution to ensure that American politics can be flooded with unlimited money, that reasonable gun restrictions are struck down, that corporate interests prevail over those of consumers, and that basic environmental regulations are turned back.

Make no mistake: That is the court Americans would get under a President Trump. Still, Senate Democrats would have an obligation to consider and vote on his nominees, just as Republicans would have that obligation to Mrs. Clinton's choices. No doubt, there would be Democratic voices demanding that their Senators mimic the Republicans' shameful example. But the Constitution asks more of us than that. In the next Congress, regardless of who wins on Tuesday, the very survival of the court as an independent body will be at stake.

I certainly agree that the very survival of the Court as an independent body is at stake right now. That is why I am here on the floor at 4:20 in the morning. It is because so much is at stake in terms of the legitimacy of the Court.

This is probably a good moment to return to the central premise of where we are. Where we are is that for the first time in U.S. history, a seat has been stolen from one President and delivered to another in a Court-packing scheme. If that were to succeed, it would set a precedent that would haunt the Court for decades to come, and it will haunt this body, the Senate, because if a theft succeeds, then it changes the analysis of every future Supreme Court vacancy.

If there is a vacancy and it is an opportunity for the Democrats to steal a seat back and deliver it to a future President who might be a Democrat, will they do so, and would they be right in doing so—to rebalance the Court after a seat has been stolen? We should never have to ask these questions—questions such as, if you can steal a seat and get away with it, when a seat becomes vacant a year before a President leaves office, can you do it 2 years before the President leaves office? Can you do it for 3 years? Can you keep a seat vacant for 4 years, as suggested by the article I just read and the comments of some of my colleagues in that they would be determined to reject any nominee put forward by Hillary Clinton? These questions are being asked because of this crime against our Constitution—the crime of stealing a Supreme Court seat in an effort to pack the Court.

The second big issue we are facing is the investigations underway of the Trump campaign and its possible coordination with the Russians to change the outcome of the election.

We know a lot about what the Russians did. We know they created false news stories. We know they had a team estimated to be 1,000 individuals in a building, doing social media to amplify the impression that Americans were writing negative comments about Hillary Clinton. We know they had a system of bots—a botnet, if you will—to use computers to respond and add commentary on comments people were making on social media so that it looks like there are far more people—far more disgruntled individuals—who were criticizing the Democratic nominee. We know that their strategy involved trying to influence the outcome in terms of groups like Facebook, identifying something as ''trending'' and then putting it up as ''trending news'' so that the false news, now being driven by the thousand social media folks in some building and the botnet, is amplified to the degree that it is now scrolling on your Facebook, looking like very legitimate news. We know the Russians broke into computers to obtain information and worked to release it in a fashion that was designed to damage the Presidential nominee from the Democratic Party.

That is a pretty comprehensive strategy of fake news and fake social media comments and botnet-generated comments and breaking into computers to secure information and release it in a fashion to damage the Democratic nominee, Hillary Clinton. We will learn more about all of those things, but that is a pretty good list of serious attacks on the United States of America, attacks on the integrity of our electoral system.

What we do not know—and why there are investigations underway—is how much the Trump campaign communicated with and conspired with that Russian operation. Each day, drip by drip, we hear more about some contact. This morning, it was the media and the Seychelles that we did not know about previously. Every day, it seems like there is one little additional piece, and we do not know where it will all lead to, if anywhere. Maybe it leads nowhere, but we must pursue it because if anyone conspired with the Russians to undermine the integrity of our elections and change the outcome of the elections, that is traitorous conduct, and it must be prosecuted to the full extent of the law.

Right now, we do not know a lot about how much communication and how much potential collaboration or conspiracy there was, so we have investigations to get to the bottom of it. The FBI has an investigation into it, as well as the House Intelligence Committee and the Senate Intelligence Committee, and we should not be considering this nomination while those investigations are underway.

Of course, a third significant reason that we should not be pursuing this is that the President failed to recognize the role of the supermajority requirement—the 60-vote requirement—that anyone who serves on the Supreme Court should be able to get bipartisan support from 60 Members. Therefore, nominating somebody from the far right, the extreme right, and all of the opinions we have talked about over the last many hours are related to crushing the rights of individuals and helping the most powerful. Certainly an individual who is at that far point in the spectrum is not from the mainstream of judicial thinking. It is another reason this should be set aside.

Then we have that information that came out at about 11 p.m., earlier this evening, Tuesday time. Now we are 5½ hours later, but the information was about the number of cases in which Neil Gorsuch had lifted passages from others virtually word for word without giving them credit. That is known as plagiarism. Hopefully, that issue will get a fair amount of attention and be examined closely.

The next article I am going to read is in the Sunday Review, December 24,

2016, entitled ''The Stolen Supreme Court Seat.''

Soon after his inauguration next month, President-elect Donald Trump will nominate someone to the Supreme Court, which has been hamstrung by a vacancy since the death of Justice Antonin Scalia in February. There will be public debates about the nominee's credentials, past record, judicial philosophy and temperament. There will be Senate hearings and a vote.

No matter how it plays out, Americans must remember one thing above all: The person who gets confirmed will sit in a stolen seat.

It was stolen from Barack Obama, a twice-elected President who fulfilled his constitutional duty more than nine months ago by nominating Merrick Garland, a highly qualified and widely respected federal appellate judge.

It was stolen by top Senate Republicans, who broke with longstanding tradition and refused to consider any nominee Mr. Obama might send them because they wanted to preserve the court's conservative majority. The main perpetrators of the theft were Mitch McConnell, the majority leader, and Charles Grassley, chairman of the Judiciary Committee. But virtually all Republican Senators were accomplices; only two supported holding hearings.

The Republican Party line—that it was an election year, so the American people should have a ''voice'' in the selection of the next justice—was a patent lie. The people spoke when they re-elected Mr. Obama in 2012, entrusting him to choose new members for the court. And the Senate has had no problem considering and usually confirming election-year nominees in the past.

Of course, Supreme Court appointments have always been political, and the court's ideological center has shifted back and forth over time. But the Senate has given nominees full consideration and a vote even when the party in power has opposed a president's choice. That is, until this year, when Republicans claimed that though the Constitution calls for the Senate's ''advice and consent,'' Senators aren't obligated to do anything. This is a bad-faith reading of that clause, even if there is no clear way to force a vote. It certainly obliterates a well-established political norm that makes a functioning judicial branch possible. As Paul Krugman wrote in his column on Monday, institutions are not magically self-sustaining, and they ''don't protect against tyranny when powerful people start defying political norms.''

This particular norm is of paramount importance because the court's institutional legitimacy depends on its perceived separation from the elected branches—a fragile concept in the best of times. By tying the latest appointment directly to the outcome of the election, Mr. McConnell and allies took a torch to that idea—an outrageous gambit that, to nearly everyone's shock, has paid off. But while Republicans may be celebrating now, the damage they have inflicted on the confirmation process, and on the court as an institution, may be irreversible.

The slope is both slippery and steep. If Republicans can justify an election-year blockade, what's to stop Democrats in the future from doing the same? For that matter, why should the party controlling the Senate ever allow a President of the opposing party to choose a justice? Indeed, in the weeks before the election, Senate Republicans were threatening, with the encouragement of leading conservative thinkers, never to confirm anyone to fill the vacancy if Hillary Clinton won.

Can anything be done to repair the harm? One step—as obvious as it is unlikely—would be for Mr. Trump to renominate Mr. Garland. Conservatives will scoff, but they know he is as qualified for the job as anyone in the country. When Mr. Garland was floated as a possible choice for the Supreme Court in 2010, Orrin Hatch, the senior Republican Senator from Utah, called him a ''consensus nominee'' and said there was ''no question'' that he would be confirmed with bipartisan support. That's partly why Mr. Obama nominated him this time, and also why Mr. McConnell denied him a hearing—he knew he couldn't prevent a Senate vote once Americans saw an eminently qualified and reasonable jurist testify on live TV.

At the very least, Mr. Trump could follow President Obama's example and pick a centrist—someone who commands wide respect and operates within the bounds of mainstream legal thought. That would be an appropriate gesture from a man who lost the popular vote by more than 2.8 million votes and will enter office with the lowest approval ratings in recent history.

The shameful, infuriating actions of the Senate Republicans won't be ignored in the history books. In a desperate effort to keep a conservative majority in the court, they rejected their own professed values of preserving American institutions. There's little hope they will come to their senses now, but they and Mr. Trump have the power and the obligation to fix the mess they have created.

That is the article ''The Stolen Supreme Court Seat,'' an editorial from the Sunday Review of the New York Times.

I do hope that there is a path in which this damage can be avoided because it is enormously significant to confirm a Justice when the seat has been stolen. It is enormously damaging to confirm a Justice when the President's team is under investigation for possible collusion with the Russians. It is enormously a big deal to confirm someone way out of the mainstream of judicial thought in America.

So should this progress, should we find that there are 41 individuals who will stand up for our institutions and block this nomination under the filibuster tradition, the 60-vote tradition—60 votes required to proceed—we will have the question of whether we are going to change the rule or change the nominee. And always in the past, when the Senate rejected in any fashion, including closing debate on a motion to proceed, a nominee by tabling them—rejected a nominee by voting them down—the answer was to change the nominee, to protect the integrity of the Court.

I think the advice in the December 24 editorial, ''Stolen Supreme Court Seat,'' which calls on the President to nominate a centrist, is terrific advice because it may give a chance for healing to take place. But there will be no healing if the seat is filled by Neil Gorsuch—a seat that belonged to President Obama under the Constitution of the United States of America, a seat that was stolen for the first time in U.S. history. That dynamic will haunt us for a very, very long time.

This editorial is from January 31 from Time Magazine, entitled, ''Sorry, Neil Gorsuch, the Supreme Court Vacancy was Already Filled,'' and written by Geoffrey Stone:

If Antonin Scalia died today, and Donald Trump thereafter nominated Judge Neil Gorsuch as his successor, I might support Judge Gorsuch's confirmation. Although Judge Gorsuch has not yet established himself as a jurist of any distinction, he is generally regarded as a capable judge with good character. Moreover, although he is a very conservative jurist, he will be replacing a justice with a similar ideological disposition. In such circumstances, just as I supported the confirmation of Judge John Roberts to succeed Chief Justice William Rehnquist, so too would I be inclined to support the nomination of Neil Gorsuch to succeed Antonin Scalia, even though I strongly disagree with Gorsuch's very conservative ideology.

But Antonin Scalia did not die today. He died almost a year ago, and President Barack Obama nominated Judge Merrick Garland to succeed him. Chief Judge Garland is a jurist of impeccable credentials and personal character who is widely celebrated for his moderate approach to the law. President Obama nominated Garland not only because of his distinguished reputation as a jurist, but also because as a relatively moderate judge, he should have been more than acceptable even to the most conservative Senate Republicans. In typical Obama fashion, Garland's nomination was an effort to compromise in order to win the support of Senate Republicans.

Chief Judge Garland should have been confirmed easily. Indeed, every Supreme Court nominee in living memory with anything approaching Chief Judge Garland's impeccable credentials and record of moderation has been easily confirmed by the Senate, without regard to whether the Senate was controlled by the President's party or by the opposing party. This was true, for example, of such Republican nominees to the Court as Warren Burger, Harry Blackmun, Lewis Powell, William Rehnquist, John Paul Stevens, Sandra Day O'Connor, Anthony Kennedy, and David Souter. Even the extremely conservative Antonin Scalia was confirmed by a vote of 98–0.

But not Merrick Garland. In a completely unprecedented abuse of power, Senate Republicans, under the ''leadership'' of Senate Majority Leader Mitch McConnell, refused to confirm, or even to consider, Judge Garland's nomination. This unconscionable maneuver was nothing less than a dishonorable and dishonest effort to steal this seat on the Supreme Court for the right wing.

Senator McConnell had the audacity to maintain that the ''people'' should decide who should fill this particular vacancy. By employing his duplicitous strategy, he managed to shift this appointment from a President who had won the popular vote by a margin of five million votes in 2012 to one who lost the popular vote by a margin of three million votes in 2016. This crass and unprincipled manipulation of our democracy should not be allowed to succeed.

Anyone who cares about the proper and legitimate functioning of our American democracy must oppose Judge Gorsuch's nomination, not because he is necessarily unqualified, but because of the undermining of our American democracy by Senate Republicans. Anyone who cares about the rule of law must oppose this nomination. If we fail to take this stand, the Senate Republicans will have succeeded in placing a justice onto our highest Court who has no business being there. They will have undermined the credibility of the Supreme Court as an institution, an institution that is critical to the functioning of our Constitution.

Judge Gorsuch's nomination should be withdrawn, and the President should nominate in his place a genuinely moderate justice who is acceptable to Democrats and Republicans alike. Only then can we move on

with a sense of institutional integrity. Short of that, every decision of the Court decided by a margin of five-to-four with Neil Gorsuch in the majority will justifiably be castigated as fundamentally illegitimate.

That was in Time Magazine, by Geoffrey Stone, and op-ed opinion editorial entitled, ''Sorry, Neil Gorsuch, the Supreme Court Vacancy Was Already Filled.''

This commentary is from Rolling Stone, entitled, ''Grand Theft Judiciary: How Republicans Stole the Supreme Court.'' It is subtitled: ''Pray that Ruth Bader Ginsburg and her fellow liberal justices stay healthy and don't retire,'' by David Cohen, written in November of 2016.

The Republicans just pulled off one of the greatest heists in American political history—they stole a Supreme Court justice.

Since 1789, there have been 112 justices on the Supreme Court. Having the opportunity to appoint a new justice is one of the prize opportunities for a president. With the right young justice, a president can influence American law and society for decades to come. For instance, Anthony Kennedy, the current ''swing justice'' on the Court, was appointed by President Reagan. Since he sits in the ideological middle of this current court, Kennedy's views on the law often determine how American justice work. And for that, we owe thanks to a president who was last elected 32 years ago and has been dead since 2004. That's the power of a Supreme Court appointment.

These opportunities are often completely unpredictable. Justices are appointed for life, so they leave their position only when they retire or die. Sure, a president can make an educated guess about particular justices' life expectancies or end-of-career plans, but knowing exactly when a justice is going to leave the Court is out of the president's control.

When Justice Scalia died suddenly in February, President Obama was gifted the opportunity to fill his third seat on the Court. He had previously replaced David Souter with Sonia Sotomayor and John Paul Stevens with Elena Kagan. Neither of those appointments shifted the Court's ideological balance, as in each case Obama replaced, broadly speaking, a judicial liberal with another liberal. Replacing Scalia, on the other hand, was going to be a monumental shift in the Court. Scalia was one of the most conservative justices in the history of the Supreme Court. An Obama replacement would give the Court its fifth liberal and shift it to the left in historically significant ways. President Obama and Democrats were salivating at the opportunity.

The Republicans, though, were having none of it. Through unflinching and unified obstructionism combined with Tuesday's election of Donald Trump, they succeeded in stealing a seat right out from under President Obama's nose. It was a staggering case of grand theft judiciary.

This all started almost immediately with Scalia's death, with the Republicans claiming a new theory that a president should not be able to appoint a justice during an election year; rather, the people should be allowed to speak and decide on the direction of the Court, they said. Never mind that justices have been confirmed regularly throughout history in election years, and that presidents have constitutional authority to appoint judges to the federal judiciary in all four years of their terms, not just their first three, and that the Court would have to (and continues to) function with only eight justices. The Republicans understood the stakes of shifting the Court's ideology, so they put up a united obstructionist front and never wavered in saying they would not confirm an Obama appointee this year.

President Obama, as he often does, thought he could break through the Republican wall by trying to appease them. Instead of nominating a young liberal firebrand or a judicial first, he nominated a well-respected but moderate, not-young white male: Merrick Garland. Obama thought Garland, who had been praised throughout his career by politicians on both sides of the aisle, would be unobjectionable and would break the logjam.

The president couldn't have been more wrong. Without any interest group to cheerlead his cause, Garland was quickly forgotten and faded into the distant background of American politics. As a result, there was no movement whatsoever, and Garland's nomination has lingered with no action longer than for any nominee in history.

During the campaign, Democrats occasionally brought up this issue, trying to paint Republican senators as obstructionist and against good government. But the issue never stuck in Senate races, and Hillary Clinton never really led the charge over the Supreme Court either. As a result, according to an ABC exit poll, of the 21 percent of Americans who said the Supreme Court was the most important factor in their vote, 57 percent of them voted for Trump and only 40 percent voted for Clinton.

Now that Trump is president-elect, he's going to have the opportunity to fill Justice Scalia's seat; even though it means the Supreme Court will remain short-handed for months longer, there's no chance in hell Republicans will do anything to move Garland's nomination between now and inauguration day. They want their stolen prize, and they'll wait for it.

Trump has given a list of 21 possible justices he would nominate, all of whom have varying pedigrees as conservatives. If he follows through and nominates someone from that list, the Democrats could respond with a similar blockade. Though the Republicans still control the Senate, and thus would be able to move the nominee through the judiciary committee to a floor vote, Democrats could try to filibuster. A filibuster requires 60 votes to break, so the 52 Republicans in the Senate would not be able to stop it.

There are two problems with this plan, though. First, Democrats have been less unified in the past when it comes to opposition than the Republicans have been, and the Democrats would need to make sure no more than seven Senators broke ranks. With several Dems up for reelection in 2018 in very conservative states, that's something that may be more difficult than it should be.

Second, the Republicans may opt to get rid of the filibuster altogether. This option, commonly referred to as the ''nuclear option,'' would eliminate the filibuster as a tool for Supreme Court nominees. Because of Republican opposition during the Obama years, the Democrats eliminated the filibuster for lower court justices when they controlled the Senate. However, they kept it for Supreme Court nominations because they understood just how controversial and serious such a move would be.

The author continues:

I have no expectation that the Republicans would do the same. They have been laser focused on wrestling this nomination away from President Obama and are not going to let the Democrats ruin their fun. The Senate rules allow the filibuster to be eliminated with a majority vote, and the Republicans will probably do so very soon after Trump nominates his justice and the Democrats announce their filibuster.

What will this mean for the Supreme Court? Filling this seat will put a younger conservative in Justice Scalia's seat. It will dash liberals' hope of a new progressive Supreme Court and likely continue its recent history as one of, if not the most, conservative Courts in American history.

However, the Court will still have Justice Kennedy as the swing justice.

Obviously, this was written before the nomination of Neil Gorsuch. It notes that if Republicans go nuclear, there is almost nothing the Democrats can do to stop it. That is certainly true. We don't have a mechanism that can prevent this body from reinterpreting the application of its rules.

It happens in a very simple fashion. A Member asks for a ruling of the Chair on whether the super majority provision to close debate applies to closing debate on Senate nominees. The Chair consults with the Parliamentarian and probably says: Yes, it does clearly apply. Then the majority leader challenges the ruling of the Chair. If 51 folks vote to overturn the ruling of the Chair, that is it. The precedent is then set. The supermajority does not apply to Supreme Court nominees, to closing debate on Supreme Court nominees. It is that simple. It is not a change in the rules. The Senate rules require a supermajority to change the rules. It has just not always been helpful. It has meant that the Senate has not adjusted to the changing culture of the Senate to keep it functional. A lot of the time, State legislatures are far more functional than the U.S. Senate because when they have problems develop as the culture changes or people develop new tactics for obstruction, they adjust the way they operate in order to make sure they can keep making decisions.

It is not unusual in my home State in Oregon for us—that is, the body in the house or the senate in Oregon—to consider 8 or 10 bills in a day. With a bill raised, everybody who wants to speak to it for 5 minutes or less gets to speak to it. Then there is a vote, it is decided, and we go on to another. There is more conversation sharing of viewpoints on the floor of the Oregon House in the course of a single day than there is a sharing of views and debate on the floor of the Senate in an entire year. We have, basically, completely lost anything resembling a conversation about any issue before the Nation here on the floor of the Senate. That is a tragic situation. It could be changed if we changed the way that we operate.

(Mrs. ERNST assumed the Chair.)

The L.A. Times editorial board wrote an essay titled: ''It's not Neil Gorsuch's fault, but we can't support his ascension to a stolen Supreme Court seat.''

As we can see from this series of articles, no one will ever forget that, for the first time in U.S. history, the majority is stealing a seat from one President and delivering it to another in an audacious effort to pack the Court. No one should ever forget that, and we should come to our senses and end this

before the theft is completed by confirming the nominee to this seat.

This article in the L.A. Times, by the editorial board, says:

A decade ago, The Times urged the Senate to confirm John Roberts to the U.S. Supreme Court even though he was a conservative judge nominated by a conservative president and was likely to pull the court to the right for decades to come. We backed him, despite our disagreements with his judicial philosophy, because we believe that presidents—Democrats and Republicans alike—are entitled to significant deference when they nominate justices to the high court, so long as the nominees are well qualified and scandal-free, respect precedent and fall within the broad mainstream of judicial thinking.

Under normal circumstances, that same reasoning would lead us to support the nomination of Judge Neil Gorsuch. Like Roberts, he is conservative but competent, with more than a decade of experience on the appellate bench and a ''well-qualified'' rating from the American Bar Assn.

But these are not normal times.

Not after the outrageous obstruction of Judge Merrick Garland's nomination for 10 full months by Senate Republicans. That debacle began in March 2016, when President Obama nominated Garland, a moderate and well-respected appeals court judge, to fill the seat on the court that had become vacant with the death of Justice Antonin Scalia. Instead of doing what the Constitution requires and offering their advice and, if merited, their consent, Senate Republicans refused even to engage in the process. They denied Garland a confirmation hearing and in many cases wouldn't even meet with him—on the hastily fabricated pretext that a president in his final year of office shouldn't be allowed to name a new justice because . . . well, it was never really clear what the supposed principle was behind this self-serving position.

They stonewalled the nomination until Obama was safely out of office and a Republican had won the election. And now, with Gorsuch subbed in for Garland, their cynical and dishonorable strategy is about to deliver its rewards.

Some people think it's hyperbolic to suggest that a seat was ''stolen.'' But how else to describe it? Republicans took the opportunity to fill the vacancy away from Barack Obama without justification and delivered it up instead to Donald Trump. Gorsuch could now tilt the balance on the increasingly polarized Supreme Court for the next 30 or more years, influencing rulings on free speech, gay and transgender rights, campaign finance, abortion and gun laws, among other subjects. He may not be outside the mainstream of judicial thinking, but he is a textualist, an originalist and a likely ally of the court's conservative justices.

The Republicans' underhanded ploy to subvert the Garland nomination has put the Democrats in an untenable position. They can now do what would ordinarily be the right thing do—by going high after the Republicans went low. They could grumble a little bit but then decline to filibuster, or they could even vote in favor of Gorsuch—effectively capitulating in the quixotic hope that an act of good faith would encourage the Republicans to behave more honorably in the future.

Alternately, they can go down kicking and screaming. We say ''go down'' because no matter how hard they kick or how loud they scream, they seem unlikely to win this battle. The reality is that without filibustering, they don't have the votes to defeat Gorsuch. And if they do mount a filibuster, Senate Republicans can vote to do away with the filibuster for Supreme Court nominees entirely. Under either scenario, Gorsuch gets his job.

To be clear, Democrats and Republicans share the blame for the long roll down the slippery slope of polarization and dysfunction of the judicial selection process. (Some Democrats have even suggested in the past that presidents shouldn't fill Supreme Court seats in election years.) As that selection process has become increasingly politicized, the court itself has become more ideologically driven as well. Although there are differences between Roberts and Justice Samuel Alito, for example, on some important 1st Amendment issues, it's also true that in recent years, justices appointed by Democratic presidents have tended to vote for ''liberal'' outcomes and justices appointed by Republicans for ''conservative'' outcomes. That polarization is a bad trend.

The judicial system works best when justices are neither rigidly ideological nor biased along partisan lines. To get there, we need a less highly politicalized selection process, along with a measure of cooperation, compromise and civility in Congress.

For the moment, though, it is imperative to remind the world of what the GOP did. By all means, let's hear a cri de coeur from Democrats, even if it is in vain. The Republican misuse of power took partisan obstructionism to an extraordinary new level and must not be ignored now as if it never happened. President Obama's nominee was robbed of his right to a hearing, and the Senate Democrats are under no obligation to be complicit in the theft.

I do believe it is our responsibility to cry out from our hearts that this is wrong. Stealing a Supreme Court seat is wrong. Having this deliberation while the President is under a cloud for his team's potential collaboration with Russians is wrong. And while this article described Gorsuch as a bit more mainstream, as people have become familiar with his opinions—opinions that were widely criticized by other Republican jurists, and, in one case, overturned by the Supreme Court on an 8-to-0 vote—they have come to the recognition that he is way far out on the fringe, not in judicial mainstream.

So how do we fix this? We fix it by each Senator asking what they would do if the tables were turned and the Democrats had stolen a seat. The Republicans would cry out: It was wrong. They would ask Democrats to join them in rejecting that theft. I invite my colleagues to go through that exercise. How would you respond if a seat had been stolen from a Republican President and delivered to a Democratic President? How would you respond if that Democratic President was being investigated for potential collaboration with the Russians to sway the outcome of our elections? How would you respond if the nominee was not from the mainstream, but from the far edge? I am quite confident about how each person would respond because that situation would be outrageous.

We must be able to step into each other's shoes and say: If we are going to preserve this institution, we have to be willing to recognize when it has gone off course, and it has gone dramatically off course this last year.

This article is by Dawn Johnsen and is titled: ''Trump's Nominee Shouldn't Get a Hearing Until Merrick Garland is Seated.''

There really is—as several of these articles have mentioned—a path to righting this wrong, and that is to go back in time, to recognize that Merrick Garland was not considered by the Senate, and that we need to tell the President that we are not entertaining any person other than Merrick Garland to be in the seat. We will debate whether he should be in the seat. We will vote on whether he should be in the seat, and thereby rectify this theft—this stolen seat theft that will otherwise haunt this body and haunt the Supreme Court for the rest of our lives and maybe well through our children's lives. But we haven't committed the crime yet. This theft has not been completed. So we should all be pondering how to prevent that from happening.

The article starts out:

As President Donald Trump's nominee for the vacant Supreme Court seat receives public scrutiny in the coming days, it's incumbent for us to remember one thing: This seat was not Trump's to fill.

In fact, the U.S. Senate should refuse to confirm anyone President Trump nominates to the Supreme Court—until Trump renominates and the Senate confirms Judge Merrick Garland.

It then refers to a Senate filibuster as the only correct approach.

To recap: The Senate failed to fulfill its constitutional responsibility with this unprecedented refusal even to consider President Obama's nomination of Garland. Obama made the nomination with about a year left in his presidency, but from day one the Republican Senate leadership insisted it would permanently block it.

No one ever questioned Garland's qualifications—an impossibility for this brilliant, dedicated public servant. The obstruction constituted an insulting challenge to Obama's legitimacy, accompanied by calls for the people to decide via the election of the next President. The Republicans effectively have attempted to steal this Supreme Court seat. If this effort succeeds—as has appeared likely ever since Trump's surprise election—it will create a fundamental imbalance in the third branch of our federal government, the independence and integrity of which is vital to our constitutional system. An essential role of the federal judiciary is to check unlawful actions of the political branches—Congress and the president. When political actors conspire to distort the makeup of the court, as they did in denying President Obama his basic constitutional role, we the people must demand that the balance be restored.

The confirmation of Garland to the court would provide perfect justice. This may not be quite so far-fetched as it might seem initially. President Trump is likely to have the opportunity to make more than one Supreme Court appointment. As Trump is not nominating Garland this time, the Senate should keep the current vacancy open until a second seat becomes vacant. It should then confirm Garland, followed by the consideration of the Trump choice. The only appropriate alternative—given the constitutional stakes—would maintain an eight-person or fewer court for four years.

I don't suggest this lightly: I experienced firsthand—

Again, I am reading this article. So the ''I'' is the author. The author is Dawn Johnsen.

I don't suggest this lightly: I experienced firsthand the personal toll of the Senate refusing to vote on my nomination to head the Department of Justice's Office of Legal Counsel in 2009 and 2010. One Republican senator sought to reassure me it wasn't personal; it was politics, how the game was played: ''You do it to us; we do it to you.'' My husband, two sons, and I spent more than a year in confirmation limbo, in a rented house far from home, awaiting the Senate vote repeatedly predicted for the next week, next month—but that never came.

Of course, the politicization of a presidential appointment is wrong. Each of the president's nominations ordinarily should be assessed on its individual merits. Notwithstanding Trump's awful first 10 days in office, the Senate should continue to offer the president's executive branch nominees this same fair standard of treatment. In particular, Trump's nominee to head the Office of Legal Counsel—the office to which President Obama nominated me and the same office I headed for part of the Clinton administration—should be confirmed expeditiously, as long as the nominee is personally qualified. This president is in desperate need of good legal advice.

But this Supreme Court vacancy is different. It exists only as the result of the wrongful denial of the legitimacy of Obama's presidency. It is the breakdown of the very function of our democracy and a slap in the face to constitutional norms. It is an attempted theft that, if permitted, would bring longstanding consequences. Its end was to prevent the court from having a majority of justices appointed by Democratic presidents for the first time since 1969. That's almost half a century with a court majority appointed by Republican presidents, a striking imbalance that does not reflect the presidential vote: Since 1961, Democratic and Republican presidents have served equal numbers of years.

The flimsy and transparently specious argument Republicans offered was: ''Let the people decide.'' Of course, the people decided when they elected President Obama to a second four-year term. And 3 million more Americans decided they preferred Obama have a Democratic successor rather than Trump make this appointment. Those who value an independent judiciary, and a Senate committed to democracy, can fix this constitutional problem by insisting on Merrick Garland's appointment to the seat he already should be occupying. The pick after that can belong to President Trump.

I think that accurately sums it up. There is an idea embedded in there of saying: How about this? How about this, fellow Senators—that we suspend the consideration of Neil Gorsuch at this point in time until there is another Supreme Court seat that opens up, and at that time, Merrick Garland gets at least considered for the first seat, the seat that he was rightly nominated for. President Trump has his person rightly considered for the second seat. That would be a way to heal the mess that has been created through the theft of the Supreme Court seat: We have stolen it, but we will not act on it, and so eventually we will enable the same nominee to be considered for that seat. That is an interesting idea, a face-saving idea, an idea that gives President Trump the opportunity to make the nomination that corresponds to a seat that comes open during his administration, and President Obama's nominee to be considered for the seat that came open under President Obama's control of the Presidency—his time in office.

The LA Times January 31 editorial said—the title kind of sums it up: ''When the GOP stole Merrick Garland's Supreme Court seat, they set the stage for a miserable battle.'' That is pretty much the situation we are in. The previous article I read laid out an idea of a way around it at this point, in which we leave the Scalia seat empty until there is a second seat, and then Merrick Garland gets considered for the first seat, and if the President wants his nominee to be considered for the second seat, he would have to make that nomination, and then the President gets his nominee considered for the seat that came up under his administration, so suddenly there is no longer a stolen seat, and we are on the path to a future in which the Supreme Court's integrity is not completely decimated.

This article starts out as follows:

The outrageous obstruction of Merrick Garland's nomination to the Supreme Court—the 10-month-long stonewall by Senate Republicans that not only stymied the high court's ability to do its job but effectively stole the nomination of a new justice from President Obama—is now delivering its rewards to the cynical politicians who carried it out.

Having denied Garland even a committee hearing from the time of his nomination in March until Obama was safely out of office, the GOP-controlled Senate is now smugly offering that opening to President Trump to fill. The new president, who has repeatedly promised to select a new justice in the mold of the late conservative Justice Antonin Scalia, has said he will announce his nominee Tuesday evening.

This was written just before the President announced Neil Gorsuch as his nominee. The article continues:

It's hard to express how head-shakingly unfair this is. Trump will now have an opportunity to affect the balance of the increasingly polarized court for the next 30 or 40 years—influencing rulings on abortion, the rights of gay and transgender people, free speech, corporate and union spending on elections, labor issues, the separation of church and state, the ubiquity of guns, criminal justice reform and endless other hot button subjects.

But Trump never should have been handed this opportunity. The seat was Obama's to fill subject to Senate ''advice and consent,'' and he fulfilled his constitutional responsibility in good faith, only to be kneecapped by a body that would neither advise nor consent but merely gummed up the machinery in a transparent effort to preserve the court's conservative majority. The GOP's feeble justification for its behavior—that an appointment made by a duly elected president was somehow illegitimate because he had only 10 months remaining in office—was believed by no one.

The Senate's misbehavior affected more than just the court. It also constituted a new low in the tit-for-tat cycle of dysfunction in Congress, in which each side obstructs its opponents wherever possible even if that produces a stalemate that brings the operation of government to a halt. Working cooperatively across the aisle to solve the nation's problems has gone out of fashion.

The Democrats have been put in a terrible bind. Do they take the Republican bait, declare the seat stolen and launch a filibuster? Or do they roll over, brand themselves patsies and allow Trump to appoint a Scalia clone? What message do the Democrats send if they allow themselves to accept this theft supinely without exacting any punishment? How should they fight if the nominee is truly outside the mainstream? And what if he or she is a conservative who is well-respected and competent—what strategy makes sense then? It's an awful predicament and it's hard to see how it ends well.

Frankly, the Democrats are not in a terribly strong position. They don't have a majority in the Senate, and though they can filibuster for a while, most Senate Republicans would sooner do away with the filibuster for Supreme Court justices than allow the seat to sit empty indefinitely. That's the so-called nuclear option.

At the end the day—

Says this article—

Senate Majority Leader Mitch McConnell will probably win this round, thus ensuring the long roll down the slippery slope of polarization and dysfunction continues at an ever-accelerating speed. He should be, but presumably is not, ashamed of that contribution to history. His obstructionism exacerbated the weakening of governmental institutions and continued the erosion of bipartisan cooperation and civility. Yet if democracy is to work and the nation is to prosper, the political system must allow for compromise and rationality even among determined opponents.

For now, another Justice Scalia or someone even more extreme will probably be enstooled, potentially endangering the rights of women and non-whites, threatening backward movement on same-sex marriage and abortion, offering more protection for powerful businesses and less for the environment. Even in these difficult days, this disgraceful move by Senate Republicans to manipulate a U.S. Supreme Court seat for partisan purposes stands out as sad and egregious.

Well, that was the LA Times article from January 31: ''When the GOP stole Merrick Garland's Supreme Court seat, they set the stage for a miserable battle.''

In the course of conversing about the dilemma we face, I have noted that there are three big problems. The first is that the seat has been stolen from one President and delivered to another in an effort to pack the court.

The second is that the nominee from President Trump is way outside the judicial mainstream. I have gone through many of the cases.

The third is that there is a big cloud hanging over this administration. The Trump administration's connections to Russia during the campaign and throughout the transition are numerous, and we keep learning about pieces of the puzzle every day.

Contact between the campaign and Russians or dialogue in itself is not necessarily wrong. But it is wrong if that dialogue was about how to coordinate, to basically tilt the playing field in favor of Donald Trump and against Hillary Clinton.

The Russian activity was designed to change the outcome of the election. So, that in itself is a problem we have to pay a lot of attention to. We have to understand every piece of how the Russians operated. We have to convert

that knowledge into a strategy that prevents it from happening again.

We certainly have to work with our allies to make sure that we help all of the democratic Republics of the world resist such meddling by the Russians. So far, we have a pattern of a lot of contacts. That pattern of Trump associates misleading the public about meetings and relationships with Russian officials does raise red flags. If meetings were innocent, why not be forthcoming? That is why we have to have a strong set of investigations to get to the bottom of this.

We have to understand and recognize that what Russia did in their strategy was equivalent to an act of war on the United States. They were attacking our core institution, the bedrock of our democratic Republic, our election system. That is unacceptable.

If anybody conspired with the Russians, that is treasonous conduct, and we have to get to the bottom of it. We certainly should get to the bottom of it before this Supreme Court seat conversation continues. The subsequent handling of the investigation by the House Intelligence Committee and the actions taken by the chair of that committee, Representative NUNES, underscore how serious the situation is. We definitely have to get to the bottom of what happened.

That fact only emphasizes how seriously the Senate needs to consider slowing down, setting aside, pressing the pause button on the debate regarding the nomination of Judge Neil Gorsuch. Until the FBI and Congress complete the investigation of these contacts, the ongoing coverup confirming President Trump's lifetime appointment to the Court is premature.

On top of possible collusion, it is also worth remembering why it is so troubling that President Trump has gushed about Putin's leadership while turning some of our longest and most strategic relationships on their heads. Putin operates a repressive regime, one that cracks down on freedom of expression and whose opposition leaders frequently perish in mysterious and suspicious ways. Someone carrying an item up to their apartment magically falls and dies or is shot down near the Kremlin or a whole host of different ways.

The actions of Putin are not the actions of a friend of America. The actions of Putin are not actions that reflect the values shared by the American people. They are not values honored in our tradition. They are not values embedded in our Constitution.

The Putin strongman model is very contrary to our system of government. There are no checks and balances. Those who rise up in the streets are likely to be cut down in the streets. Those who cry out for justice are likely to be silenced. Those who march to improve things may well find themselves behind bars. That is Putin. That is Russia.

We should not have a significant improvement in our relationship with Russia unless there is a vast improvement in the fundamental values of a free and fair society within Russia.

There is an enormous amount of evidence that the Trump campaign was familiar with and in conversation with Russia. If we pursue the investigations aggressively, we will find whether there was collusion.

Paul Manafort, a Republican strategist and longtime Washington operator, joined Trump's campaign team last spring. He was elevated to be campaign manager after Corey Lewandowski was fired in June. But with just 3 months to go until the Presidential election, Manafort resigned amid questions over his campaign role and his extensive history of lobbying overseas, particularly in Ukraine, where he represented a pro-Russian interest.

Manafort also worked as an adviser on the Ukrainian Presidential campaign of Viktor Yanukovych and his Party of Regions during the same time span—from December 2004 until February 2010, the Ukrainian Presidential election—even as the U.S. Government opposed Yanukovych because of his ties to Russian leader Vladimir Putin.

Manafort was hired to advise Yanukovych months after massive street demonstrations, known as the Orange Revolution, overturned Yanukovych's victory in the 2004 Presidential race. According to a 2008 U.S. Justice Department annual report, Manafort's company received about $64,000 from Yanukovych's Party of Regions over a 6-month period for consulting services. That was in 2008.

In 2010, under Manafort's tutelage, the opposition put the Orange Revolution on trial, campaigning against its leader's management of a weak economy.

Returns from the Presidential election gave Yanukovych a narrow win over Prime Minister Yulia Tymoshenko, the leader of the 2004 demonstrations. Yanukovych owed his comeback in the Presidential campaign to a drastic makeover of his political persona, and this makeover is credited to Paul Manafort.

From 2007 to 2008, Manafort was involved in investment projects with Russian oligarch Oleg Deripaska and Ukrainian oligarch Dmitry Firtash. The Associated Press reported that Manafort negotiated a $10 million annual contract with Deripaska to promote Russian interests in politics, business, and media coverage in Europe and the United States. We are talking about 2005.

In 1980, Manafort, along with Roger Stone, were founding partners of the Washington, DC-based lobbying firm Black, Manafort, Stone and Kelly.

Roger Stone—what do we know about him? He is a former Trump adviser, a self-described master of political dark arts, and has been labeled as the dirty trickster of delegate fights. He has worked with the campaigns of Richard Nixon and George H.W. Bush and Ronald Reagan.

Stone repeatedly claimed throughout the final months of the 2016 campaign that he had back-channel communications with WikiLeaks founder Julian Assange, and he knew of the forthcoming document dumps, which disseminated materials that were hacked by Russia from Democratic computers.

He admitted in March 2017 that during August of 2016, he had been in contact with Guccifer 2.0, who was believed to be tied to Russian intelligence and was claimed to be behind the hack of the DNC.

August 10, Stone tells a local Republican Party group in Florida: I have actually communicated with Julian Assange.

August 12, Stone says on a podcast that he believes Assange has emails deleted by Clinton aides Huma Abedin and Cheryl Mills. He adds that he knows he has them, and they should be expected to drop in the next 3 months. ''In fact, I know [Assange] has them,'' Stone said, ''and I believe he will expose the American people to this information within the next 90 days.''

August 14, Stone engages in direct messages with the DNC hacker, Guccifer 2.0, according to direct messages reported by the Washington Times and the Smoking Gun. Stone tells the hacker he was delighted that Twitter had reinstated his account.

A day later, Stone says that he has communicated with Assange, and forthcoming material will be related to the Clinton Foundation.

A day after that, Stone tells radio host Alex Jones that he has back-channel communication with Assange, who has political dynamite on the Clintons.

August 18, Stone says in an interview on C–SPAN that he has been in touch with Julian Assange through an intermediary, someone who is a mutual friend. WikiLeaks would later tweet in response: ''We are happy to hear true information from everyone. But so far, we have not heard from Mr. Stone.''

On August 21, Stone tweets that it will soon be Podesta's time in the barrel. Stone later says his tweet was about Podesta's business dealings. On the same day, Stone denies that Guccifer 2.0 is connected to the Russians.

August 26, in an interview with Breitbart radio, Stone says: I'm almost confident Mr. Assange has virtually every one of the emails that the Clinton henchwomen, Huma Abedin and Cheryl Mills, thought that they had deleted, and I expect that he's going to drop them at strategic times in the runup to this race.

On the 29th, Stone says on local Florida radio of Assange and the Clinton Foundation: ''Perhaps he has the smoking gun that will make this handcuff time.''

September 16, Stone says on Boston Herald radio that he expects Assange and WikiLeaks to ''drop a payload of new documents on a weekly basis fairly soon. And that of course will answer the question of exactly what was

erased on that email server.'' Assange has been in touch with them through an email intermediary.

October 1, Stone tweets: Hillary Clinton is done.

You go back to the comments he was making, where he seemed to know what was going to happen before it happened, and we saw it happen. It clearly suggests, from this public record, the appearance there—it is hard to imagine with these conversations that there wasn't some form of collaboration about what was going on. That is why we need to get to the bottom of it. Was there collaboration? Those kinds of comments are deeply, deeply disturbing.

We have Carter Page, who worked for 7 years as an investment banker at Merrill Lynch. His biography said—took him to London, New York, and Moscow for 3 years in the mid-2000s before Trump last year listed him as a foreign policy adviser in response to a question from the Washington Post.

Page has regularly espoused views at odds with much of the foreign policy community in Washington in particular, questioning the U.S. approach toward Russia and calling for warmer relations between the two countries. He has expressed views in support of Vladimir Putin and harshly criticized U.S. policy. He is frequently quoted on Russian television as a famous American economist.

In September of 2016, U.S. intelligence officials investigated alleged contacts between Page and Russian officials subject to U.S. sanctions. Page rejected the accusations and said he would take a leave of absence from the Trump campaign.

In January of 2017, Page's name appeared repeatedly in the leaked Donald Trump-Russia dossier containing contract intelligence from the former British intelligence operative Christopher Steele in the employ of a private American firm.

In January of 2017, Page is under investigation by the FBI, CIA, NSA, and ODNI. Page contends that he has done nothing wrong.

In February 2017, Page said that he had not met with Russian officials in 2016, but 2 days later, he appeared to contradict himself and stated he did not deny news reports that he met with Russian Ambassador Sergey Kislyak during the Republican National Convention in Cleveland, OH.

This month, Page was called on by the Senate Intelligence Committee investigating the links between the Trump campaign and Russian dealings.

Michael Flynn attended a gala in Moscow in honor of Russia Today, now known as RT, a Russian Government-owned English language media outlet on which he made semiregular media appearances as an analyst after he retired from U.S. Government service.

Flynn was paid $45,000 by Russia Today for the 2015 talk and provided an all-expense-paid 2-day trip paid by Russia. National Security Adviser Michael T. Flynn was forced to resign once it was revealed that on December 29, 2016, the day Obama announced sanctions against Russia, Flynn discussed the sanctions with the Russian Ambassador to the United States. Flynn had earlier acknowledged speaking to the Ambassador but not discussing the sanctions.

The New York Times, on March 2, reported that Kislyak had met with Michael Flynn and Jared Kushner in December 2016 to establish a line of communication with the Trump administration.

This is just a series of contacts. What we need to know is: Did these contacts involve communications for coordinating campaign tactics? Did Russia release information on Hillary at a time suggested by the Trump campaign? Was there any form of coordination? That is why we need this robust investigation now.

We have the investigation in the House Intelligence Committee. That investigation has sputtered and has all the appearance of going nowhere, and it has been compromised by the comments of the House chair.

There is another investigation on the Senate side, with Senator BURR as the chair and Senator WARNER as the ranking member, and they are working pretty well together. We hope that continues. I know that they believe that we have a responsibility to get to the bottom of this issue, and I know there are many Members on both sides of the aisle who put a high priority on getting to the bottom of this issue.

I applaud the work the Senate committee is doing, but we all know that the Intelligence Committee is a hard place to get information out of. For example, when the torture report was completed, it was extraordinarily difficult to get that into the public's hands. This should not be the only strategy.

Certainly, we have another strategy with the FBI, and we had the briefing on the Hill. The FBI Director, a week ago Monday, came to speak to the House, and he shared a fair amount in terms of confirming that the investigations are underway, and it is important that the FBI use its talents and assets and connections to find out what really went on in order to get to the bottom of this.

I would like to also see us have a special prosecutor who pursues this, who puts together a team and specifically drills in to get to the bottom of this. I would like to see a bipartisan commission—a Watergate-style commission—so that some of this could be done in the public realm and not hidden behind the veil of classifications. Of course, I would like to see a robust investigation by the press—by the fourth estate. If all of those things happen or if some do not happen but the others are done well, we will get to the bottom of this—and the sooner the better.

I am going to continue by sharing some comments that the Senate Democratic leader made in a floor speech on February 16. These are excerpts of Senator SCHUMER's floor speech:

> The recent reports about General Flynn detailing constant high-level contact between members of the Trump administration and the Russian Government raise serious doubts about this administration's competence in the realm of foreign policy and national security and even graver doubts about the sanctity of our democratic process.
>
> We do not know all the facts, and in the coming days and weeks, more information may well surface about these disturbing revelations, but we already know that something is rotten in the state of Denmark.
>
> All of us can agree that right now what are required are the facts. We have to evaluate the scope of Russia's interference in our election and assess if agents of their government have penetrated to the highest levels of our government. Throughout the process, we have to avoid jumping to conclusions or engaging in wild speculation. We must seek the truth, the whole truth, and nothing but the truth. Once we have the facts at our disposal, Democrats and Republicans alike can debate what to do next.
>
> Senate Democrats are faithfully committed to keeping this issue above partisan politics. The gravity of this issue demands nothing less . . . I am very hopeful the other side wants to get at all the facts, just as our side wants to get at all the facts.
>
> This is an issue on which patriotism must prevail over politics because before we are Democrats or Republicans, we are Americans, with respect for the rule of law.

Those are excerpts of Senator SCHUMER's floor speech on February 16, and I certainly, passionately, agree with him.

This investigation of what went on in the election is one in which patriotism must prevail over politics because, above all, we are Americans with respect for the rule of law.

I will add that, as leaders in America, here in this Senate Chamber, we have a huge responsibility to get to the bottom of this, to urge forward the investigation by the Senate Intelligence Committee to make sure the results, as appropriately compiled and vetted to protect confidential sources, are shared with the American public so that the American public can know what transpired and so that we, then, act on that information. If that information shows that there have been treacherous acts of collaboration with the Russians to undermine the integrity of our elections, we must pursue it to the full extent of the law.

This next excerpt is from Senator SCHUMER's speech, on March 6, which called for a special prosecutor:

> So my Republican colleagues should understand that what they know in their hearts is the right thing to do. Do a strong, impartial investigation and get to the bottom of this. That is where the American people want them to go. The American people disagree with President Trump and want a thorough and impartial investigation—even 43 percent of the Republicans. They are right.
>
> A special prosecutor is the best way to ensure that an investigation proceeds impartially for several reasons.

In a conversation with POLITICO, our Democratic leader said on March 21:

You can bet if the shoe were on the other foot and a Democratic President was under investigation by the FBI the Republicans would be howling at the Moon about filling a Supreme Court seat in such circumstances.

It is unseemly to be moving forward so fast on confirming a Supreme Court Justice with a lifetime appointment while this big, gray cloud of an FBI investigation hangs over the Presidency.

The Washington Post notes it is unseemly to confirm Gorsuch amidst an FBI probe of the Trump campaign.

I would like to point out that it is the height of irony that Republicans held the Supreme Court seat open for nearly a calendar year while President Obama was in office but are now rushing to fill the seat for a President whose campaign is under investigation by the FBI. It is unseemly and wrong to be moving so fast on a lifetime appointment in such circumstances.

On March 21, a report on the Hill by Jordain Carney said:

Senate Minority Leader Charles Schumer is urging Republicans to delay a vote on Neil Gorsuch, President Trump's Supreme Court nominee, because of an ongoing investigation into potential ties between Trump officials and Russia.

''It is unseemly to be moving forward so fast on confirming a Supreme Court Justice with a lifetime appointment while this big, gray cloud of an FBI investigation hangs over the Presidency,'' the Senate's top Democrat said, echoing language used the day before by Republican House Intelligence Committee Chairman Devin Nunes.

Schumer's request, which is unlikely to gain traction with Republicans, comes as Gorsuch is into his second day before the Judiciary Committee . . . but the New York Democrat argued that it was ''the height of irony'' that the Republicans blocked then-President Obama from filling the Supreme Court seat left vacant by Antonin Scalia's death . . . but are now rushing to confirm Gorsuch.

Just before I started speaking yesterday evening, the majority leader came to the floor, gave a short speech, and said he was filing a petition to close debate. That is the first time in U.S. history that a petition to close debate has been filed on the first day of a Senate debate. Generally, the Senate will, if people have more to say, go for many days—go for weeks—without somebody's filing a petition to close and shut off debate.

Why are we rushing into the completion of this nomination in this extraordinarily inappropriate, condensed, accelerated fashion when there is so much to consider?

This is not a nomination in normal times. This is a nomination for a seat that has been stolen from one President and delivered to another. It is the first time it has happened in U.S. history. This is a nomination during a moment in which the President making the nomination has a team that is under investigation for potentially conspiring with the Russians to change the outcome of the Presidential election. That is the big cloud that must be dispelled and resolved and should be resolved before this conversation on the floor continues.

This is a nominee who comes from the far right of the spectrum, with case after case after case—the frozen trucker case, the autistic child case. There is case after case in which he finds a way to turn the law to do the opposite of what the law was written to do.

As I have read through those cases over the course of the nearly, roughly more than 11 hours, you will see the pattern of decision after decision being made for the powerful and the privileged, of his writing a dissent from the majority that says this decision by a labor board was very reasonable and in compliance with the law because it exactly fits the law. Yet Neil Gorsuch wrote a dissent because he wanted to find a way to find for the powerful organization.

Here we have these three big factors. This is a time when there should never be a petition to close debate because people have a lot to say, and there are 100 Members of this body. When they expend their energies and they are through with their conversations, then ask the question: Are people ready to close debate? At that moment: Are there 60 votes for this nominee?

This effort to ram this through not only does not fit the tradition of the Senate or fit the circumstances, but it raises a question: Is there an effort to put this through before information comes to the surface that might change the outcome?

At 11 o'clock last night, we got this posting—or, I guess, it was posted at 11 p.m. and we got it at about midnight here on the floor—of the article by POLITICO. It laid out a side-by-side comparison of language that Gorsuch had used that was, essentially, lifted from other people's writings without attribution. Several experts have said that this meets the standards of plagiarism because the language was lifted without attribution, and that is what plagiarism is. Others said maybe not. Maybe it does not quite meet that standard.

Is this one of the reasons that we are trying to shove this nomination through in such an extraordinary way when it is under such a cloud to begin with? Is there more information like this that needs to come out?

This is a guarantee that Senators would vote against closing debate if there is the possibility that this is trying to be done fast—to have a vote—before significant information is put into the public realm.

(Mr. GARDNER assumed the Chair.)

The New York Times had an article on March 29, 2017: ''Senate Intelligence Committee Leaders Vow Thorough Russian Investigation'':

Senators leading the investigation into Russia interference in the November election pledged on Wednesday to conduct an aggressive inquiry, including an examination of any ties to President Trump, as they sought to distance themselves from the flagging efforts in the House.

In a conspicuous show of bipartisanship during a fractious time at the Capitol, the top Republican and Democrat on the Senate Intelligence Committee vowed to forge ahead by interviewing key players connected to Mr. Trump and pressing intelligence agencies to provide all relevant information.

But their display of collegiality seemed intended primarily as a contrast to the explosive and often bewildering statements in recent days from the Republican chairman of the House Intelligence Committee, Representative Devin Nunes of California, whose perceived closeness with the Trump White House has raised doubts about his ability to conduct an impartial investigation.

The chairman of the Senate Intelligence Committee, Richard M. Burr, a Republican from North Carolina and a supporter of Mr. Trump during the campaign, suggested on Wednesday that he would not retreat from a process that could damage the reputation of a Republican President. ''This investigation's scope will go wherever the intelligence leads,'' Mr. Burr said during a rare joint news conference.

Asked later whether he had encountered any direct links between Mr. Trump and Russia's interference, Mr. Burr was stern. ''We know that our challenge,'' he said, ''is to answer that question for the American people.''

The Senate investigation amounts to a credibility test for Republicans under the Trump administration—a chance to prove their willingness to ask uncomfortable questions of a Republican President, even if the answers might weaken his or the party's standing.

Democrats are skeptical. But they are also mindful that the Senate most likely remains their best hope on Capitol Hill for gathering information, making them disinclined to abandon the Senate Intelligence Committee's investigation. The F.B.I. is also investigating.

On Wednesday, Mr. Burr and his Democratic counterpart on the committee, Senator Mark Warner of Virginia, offered some evidence of what they had reviewed so far, saying they had begun to schedule the first of at least 20 interviews.

Mr. Warner drew attention to reports of perhaps 1,000 internet trolls in Russia generating fake news stories and targeting them in swing States like Wisconsin, Michigan, and Pennsylvania. ''Russia's goal, Vladimir Putin's goal,'' said Mark Warner, ''is a weaker United States.''

Mr. Burr noted that the Russians were now ''actively involved'' in the French elections. On Thursday, the committee will hold a public hearing on Russian influence on campaigns broadly.

The two also left little doubt that they viewed the House's unruly process as an afterthought, one that should not reflect on their own efforts.

''Let me set the ground rules real quick,'' Mr. BURR said, ''before taking questions. We will answer anything about the Senate Intelligence Committee's investigations. We will not take questions on the House Intelligence Committee.''

Mr. Burr could not suppress a smirk. Mr. Warner laughed outright.

But the drama in the House has already complicated the Senate's task, according to Senate committee members, leading the public to question congressional inquiries across the board.

''I worry that the chaos on the House side has affected the public's view on whether Congress can credibly investigate this matter,'' said Senator Susan Collins, a Republican from Maine and a committee member. ''I believe the answer to that is still yes, and the Senate is the place.''

Lamenting the ''debacle'' in the House, Senator Kamala Harris, Democrat of California and another committee member, said she believed ''the public is now shifting to us.''

The Congressional investigations are not related, but their focuses overlap, leaving the Senate panel to defend itself in the face of Mr. Nunes's assorted claims. While a vast majority of Republicans in the House have stood by Mr. Nunes amid calls for him to recuse himself, his furtive maneuvering—including bypassing the committee to brief the White House about relevant intelligence—has placed House committee members in a difficult spot.

And at least one Republican lawmaker, Representative Charlie Dent of Pennsylvania, suggested on Wednesday that the Senate should take the lead on Congress's investigation into ties between the President's orbit and Russia.

The Senate majority leader has long resisted calls for a special prosecutor or select committee, saying the Senate can do the job through regular protocol.

On the House side, a string of perplexing decisions by Mr. Nunes has threatened to unravel the panel's investigation altogether. Last week, he abruptly announced that he had obtained information indicating that people associated with the Trump transition may have ''incidentally'' been caught up in legal surveillance of foreign operatives. He also bypassed the committee's top Democrat, Representative Adam B. Schiff of California, to brief Mr. Trump.

The President seized on the information, misleadingly, as evidence for his thoroughly debunked claim that President Barack Obama had wiretapped Trump Tower—an allegation dismissed not only by senior law enforcement officials like the F.B.I. Director James Comey, but also by the heads of the House and Senate investigations, including Mr. Nunes.

Another obstacle to bipartisanship came on Monday, with the revelation that Mr. Nunes had viewed what he characterized as ''dozens'' of reports containing classified information on the grounds of the White House.

Democrats fumed, their suspicions fueled by speculation that the source of Mr. Nunes's information was a Trump administration official and that Mr. Nunes may have even coordinated with the White House. While Mr. Nunes defended him by saying he needed to be at the White House to view the sensitive documents in question, one can peruse sensitive information at the Capitol and at other spots around Washington.

The story of the House investigation melting down continues, and it really emphasizes how important the Senate investigation is. I have been very impressed by Senator BURR and Senator WARNER working together to pursue that investigation. I feel that more needs to be done. Yes, the FBI needs to investigate, and the Senate Intelligence Committee, and the press, but we should also have a special prosecutor. We should also have a bipartisan commission. But if each part of this puzzle pursues their work aggressively and in good faith, we may get to the bottom of what went on. It is so important to hold people accountable, and if traitorous crimes have been committed, they need to be pursued to the full extent of the law.

The article goes on:

Democrats have also chafed at Mr. Nunes's shuffling of the hearing schedule. Earlier this month, with Mr. Schiff by his side, he announced plans for three former officials to testify, a group that would include Sally Q. Yates, who briefly served as acting Attorney General and alerted the administration that Michael Flynn, Mr. Trump's former National Security Adviser, appeared to have lied about his contact with Russian officials.

Last week, Mr. Nunes scrapped that public hearing, arguing that the committee first needed more time to question intelligence leaders. But on Tuesday he said this hearing had been postponed as well—as the Washington Post reported that White House officials had tried to stymie Ms. Yates's testimony. Democrats have accused Mr. Nunes of trying to stall not only the investigation but also the committee as a whole.

Mr. Warner said on Wednesday he would ''like to see Ms. Yates at some point'' before his committee.

At the same time, the Senate investigation has not been blemish-free.

Well, this can be summed up by saying that each of them are saying that they are partners and they are working on this together. And I urge them to continue that work aggressively.

''I'll do something I've never done: I'll admit I voted for him,'' Mr. Burr said of Mr. Trump. ''But I've got a job in the United States Senate.''

And we have a job to address. We are here at this critical moment, wrestling with what to do with this stolen Supreme Court seat, knowing that if we confirm a nominee to this seat and confirm and complete the theft, it will damage the Court through the rest of our lifetimes. It will set a precedent that will cause more turmoil, more politicization. It will call into question every 5-to-4 decision of the Court. That is our responsibility, to figure our way out of this.

One of the articles I read earlier suggested a path out of this. It said to keep this seat empty. Set this aside until there is a second seat, and then the nominee, Merrick Garland, who should have been considered for the first seat, would be considered, and the second nominee would be whoever President Trump wants to put forward, and maybe that is the same nominee we have now. Maybe it is Neil Gorsuch; maybe it is somebody else. But the point is you eliminate the stolen seat syndrome.

Maybe there are other pathways out of this, but proceeding to the completion of this week, in confirming Neil Gorsuch, that is where this week ends. It is truly deeply damaging to the Supreme Court for the balance of our lives. Let us not be partners to such a destruction of a key branch of our government.

The damage won't just be to the Supreme Court. It is also to this body. Because once this body conspired in the theft, the wounds here are deep and will continue to cause tremendous acrimony as we go forward, and it will lead to future acts in the Senate—perhaps balancing out the first theft with a second theft—and so on and so forth, in which nobody wins.

So let us come to our senses and not have this week end in the manner in which it has been predicted that it will.

NPR wrote, or it has a piece done by Philip Ewing: ''4 Unanswered Questions About the FBI's Russia Investigation,'' March 20.

FBI Director James Comey lit the fuse Monday on a political time bomb and no one—including him—knows how long it will take to burn or what kind of damage it may cause when it goes off.

Comey confirmed to Members of Congress that his investigators are looking into possible collusion between the campaign that elected President Trump and the Russian government. In fact, he said, the FBI has been doing so since last July.

The signs had been there, from press reports to the announcement by Attorney General Jeff Sessions that Sessions would recuse himself from any such probe. Now, Comey's disclosure to the House Intelligence Committee removes all doubt that the FBI believes there is sufficient evidence to look into the connection between Trump's one-time political aides and the Kremlin.

The case that Russia interfered in the presidential campaign has been made. The U.S. intelligence community laid out an unclassified version in December, and then President Barack Obama responded by expelling a group of Russian spies and sanctioning some of its key officials.

But details about the role Trump's team might have played in the making of that mischief still are murky, and Monday's hearing did not include much explosive new information. In fact, the panel's chairman, California Representative Devin Nunes, who served on Trump's transition team, and his fellow Republicans, spent as much of their time as they could drawing the focus away from the Russian collusion narrative.

The real outrage, Republicans argue, is the leaking of classified information to the Washington Post and other newspapers, especially the identity of former lieutenant general Mike Flynn as having been swept up in U.S. Government surveillance of Russian ambassador Sergei Kislyak.

I am sure I will be corrected on that later, with the correct pronunciation.

Flynn resigned after a brief stint as Trump's National Security Adviser and has since retroactively registered as a foreign agent for his work representing Turkish interests. Democrats revealed on Friday that Flynn had also taken more than $50,000 in payments from Russian government entities.

Democrats, led by ranking member Adam Schiff, also of California, used their time on Monday to put Trump and the Russians together as closely as possible, including in an extended opening statement by Schiff that laid out his theory of the case.

Much of Schiff's statement, however, relied on information that is already publicly available, which has been called into question. Monday's session did not include major new details about the alleged ways that the Trump camp may have worked with the Russian intelligence services.

But it did raise new questions about the imbroglio—some of which lawmakers may answer at a second session now scheduled for March 28, and some of which might not be cleared up until the FBI announces the results of its investigation.

The first question:

1. How much evidence is still to be discovered? And how reliable is what's now public?

Schiff crafted a narrative about the Russians' first exploration of the presidential candidates to a critical period from July to August of 2016. If Moscow began by trying simply to learn more about the potential next U.S. president, it shifted to trying to hurt the likely Democratic nominee, Hillary

Clinton, and then helping her opponent—or so the argument goes.

Schiff relied on information that has appeared in press reports and some that appears in a controversial dossier passed from a former British intelligence officer to Comey by Sen. John McCain, R-Ariz. NPR and other news organizations have refrained from reporting such details because of the unknown providence of the dossier—but does Schiff's use of it in the public hearing indicate that at least some of the information has been verified?

The Democrats' case also rests on conversations between Trump advisers and people connected to the Russian military intelligence service, the GRU, or other top Russians. But how much more detail exists about what was said in those meetings? How much effort are congressional or FBI investigators making to interview Trump's campaign advisers?

So the first question in the NPR report is, How much evidence is still to be discovered and how reliable is what is now public?

The second question in this report:

2. Might Trump aides have colluded with Russia without knowing it?

One new thread that emerged from Monday's hearing came as part of an exchange between Comey and Illinois Democrat Mike Quigley, who asked whether it's possible for Americans to help a foreign power and not know about it.

Yes, Comey answered cautiously—an American might give information to someone he legitimately believes is a Chinese researcher and isn't aware is actually a Chinese intelligence officer. Or an America might fall in love with someone and not realize he or she is in a relationship with a foreign agent: ''Romance could be a feature,'' he said.

That could explain denials by people at the center of the Trump-Russia imbroglio, including former Trump campaign manager Paul Manafort, who resigned after reports about his connections to pro-Kremlin government factions in Ukraine. The New York Times referred to Manafort in a story in February about U.S. intelligence officers documenting many alleged connections between the Trump camp and Russians.

Manafort called the report ''absurd'' and told the newspaper: ''It's not like these people wear badges that say, 'I'm a Russian intelligence officer.' ''

Manafort's comment caused head-scratching at the time it appeared, but Comey and Quigley's exchange on Monday created the prospect for a story about Russia not necessarily using Trump campaign aides as agents, but dupes.

The third question in this NPR article:

3. What did Trump know—and when did he know it?

If Comey's investigation results in no charges or no new information about ties between Trump's camp and Russia, the White House would get rid of an albatross that has been around its neck for months. But if the FBI charges former Trump campaign officials or reveals links between the Trump camp that haven't already been aired publicly, that could escalate quickly and land the president or his top campaign aides in hot water.

Trump never retreats and never apologizes and so far has mounted a brash defense. He flits between sometimes acknowledging the Russian mischief during the presidential race and sometimes dismissing it as a fiction created by Democrats to excuse their loss. That strategy has continued to be workable, and Republican aides on Capitol Hill have shown continued willingness to carry water for the White House in responding to press reports or handling inquiries like those on Monday.

But charges against Trump aides, or new revelations about collusion between the campaign and Russian agents, would change all that—and fast. Democrats may never forgive Comey for revealing just before Election Day that the FBI had resumed inquiries into Hillary Clinton's private email server, which Clinton and Democrats say threw a close election to Trump. Now the president, the White House and their Republican allies on Capitol Hill are under a similar Sword of Damocles.

The fourth question:

How will Russia respond to the investigations and their outcome?

Comey, National Security Agency Director Michael Rogers and other top U.S. intelligence officials have taken care not to say whether they believe Russia succeeded in influencing the outcome of the 2016 election—only that they're confident Moscow conducted an influence campaign.

Will Russian President Vladimir Putin turn out to have invested wisely or to have been the dog that caught the car? If Putin wanted the U.S. to relax the Obama-era sanctions imposed after Russia's invasion of Ukraine, that ship may have sailed—the scrutiny of Trump's connections to Moscow may have now made even the appearance of any deal impossible.

And American military deployments in Eastern Europe, including of armored units along NATO's frontier with Russia and ships with aircraft in the Black Sea, have continued.

None of this means, however, that Putin is finished meddling in American politics, Comey warned. He told members of Congress on Monday that the Russians, for their own purposes, likely are satisfied with their work—having sowed confusion and undercut faith in the U.S. democratic process—and may try it again.

''We have to assume they're coming back,'' he said.

We have to assume they are also working to undermine the elections in other democratic countries, and we need to be working with our allies and fellow democracies to fully understand and thwart this Russian strategy of undermining the foundation for our democratic Republic's elections.

The NPR article raised very good questions—questions to which we don't have answers. But just the breadth of the questions shows how significant this situation is.

I understand the Sun is coming up behind the Supreme Court. I was struck just how beautiful the weather was yesterday, while the weather inside this building was so dark and gloomy. Mother Nature gave us a beautiful, beautiful day. The partisan politics gave us a very, very ugly setting here in the Senate Chamber as we started debating over a nominee nominated to fill a seat which did not open up under President Trump's watch and which he has no right to propose a nominee. This is a seat stolen from the Obama administration, delivered to President Trump.

Wouldn't it have been something if President Trump said: I talked a lot about bringing this country together, and that starts by honoring our institutions. So I am going to heal this rift. I am going to end this theft by nominating Merrick Garland. Sixteen times—the President could have said—16 times in the history of our country, there has been an open seat during an election year on the Supreme Court. And we already know the past; that is, 15 times the Senate considered the nominee and either confirmed or rejected them but always considered them—except with Merrick Garland.

We are going to heal that damage, the President could have said, and so first we will put forward Merrick Garland. Then when a seat opens legitimately on my watch, I will put forward a nominee I would choose according to the principles I laid out in my campaign. But I am not going to damage the Supreme Court for generations to come by participating in this strategy of packing the Court.

If the President had given that speech, that would have been an impressive moment—a moment of bringing this country together, of saying that he is the President not of the Republican Party but of the United States of America, which has these beautiful key branches of government, coequal branches—the executive branch, the legislative branch, the judicial branch—bringing all three of those together in that conversation and saying: What the legislative branch did sets the stage to damage the Supreme Court, and as President, I won't participate in it. I will solve it. I will bring people together. I am the great negotiator. I know how to make a deal. Right now, the only deal is a bad deal that damages all three branches, a deal that was crafted within a few minutes following the death of Antonin Scalia, on the same day the majority leader came to the floor and said: We are going to do something never done before in American history. We are going to steal a seat.

Of course, those are not the words he used. His words were: We are not going to have any Senate action on this nominee, the nominee the President will put forward for this seat.

If only at that moment the Senate had been the cooling saucer. That is the idea that Washington reputedly put forward, considered to be apocryphal, but it is a nice image that sums up the difference between the House and the Senate—the Senate elected for 6 years, seats rotating every 2 years. And when there are wild ideas crafted in the passion of the moment, the Senate comes along and says: We will bring a little more experience and thoughtfulness. We will bring a little more deliberation, and we will craft something that will strengthen America, strengthen our institutions, not destroy them.

But we didn't have that reaction on that day when Antonin Scalia died. Instead, we had not the cooling saucer, but we had the immediate rush to a principle that will do so much damage. And I say ''principle'' only in the context of an asserted argument; that is,

an argument that, well, it is an election year, so we really shouldn't consider someone. It should go to the next President. There was no principle behind it and no history behind it. As I pointed out, 15 seats were open during the election year in the history of our country, and the Senate acted on every one until the 16th, when Antonin Scalia died, and within just a couple hours, the majority leader announced that we will do what we never did, and that is, fail to honor the advice and consent responsibility of the U.S. Senate.

Mr. DURBIN. Mr. President, will the Senator from Oregon yield for a question without yielding the floor?

Mr. MERKLEY. I will do so.

Mr. DURBIN. As I recall, there was a moment in 1988, in the last year of President Reagan's Presidency, when there was a vacancy on the Supreme Court. This Republican President was in his last year—his so-called lame-duck year, as many Republicans have now characterized it. At that time, the Senate was in the control of the Democratic Party. Of course, the Senate Judiciary Committee, I believe, was chaired by Joe Biden at that time in 1988.

President Reagan sent the name ''Anthony Kennedy'' to the Senate to fill a vacancy on the U.S. Supreme Court and the Democratic Senate held a hearing and a vote and sent Anthony Kennedy to serve on the U.S. Supreme Court, where he continues to serve. So those who argue on the other side that everybody is doing it, that ''you would do the same thing, if you could'' and that sort of thing, I believe that is belied by the history—the recent history—when the Democrats were in the majority in this Chamber.

So the Senator from Oregon is saying that this is not the only time in history this has occurred, and Senator MCCONNELL ignored this and decided not to even have a hearing or vote on Merrick Garland—something that has never been done in the history of the Senate, which brings us to this moment. Is that the point the Senator is making?

Mr. MERKLEY. My colleague from Illinois is absolutely right. In the middle of the night somewhere, a few hours ago, I pointed out that this evidence of different style of action didn't just depend on the history books because you can look a few hundred yards here from the Senate out at the Supreme Court, where Justice Kennedy sits and had gone through the process, just as the Senator had described.

Mr. DURBIN. I would ask the Senator from Oregon, as well, through the Chair, in this situation where Senator MCCONNELL, as the Republican Senate leader, has exercised his so-called nuclear option to stop Merrick Garland, President Obama's choice, from filling the vacancy on the Supreme Court, does the Senator from Oregon believe, as I do, that this is part of a concerted effort by the Republicans to take control of the Federal judiciary, the fact that we left the end of the last year with 30 Federal judicial nominees on the Senate calendar, nominees who had received a bipartisan vote in the Senate Judiciary Committee? They were left unresolved, unvoted on, when the Senate went out of session. Does the Senator from Oregon see as I do, a pattern of conduct on the Republican part when it comes to filling the courts?

Mr. MERKLEY. As my colleague has pointed out through his question, the challenge we have with the appropriate treatment of our advice and consent responsibility isn't simply a problem with the Supreme Court nominee, but with strategies to prevent the consideration of judges from our former President—both at the district court and at the circuit court levels—leading to the circumstances you describe.

Mr. DURBIN. Is the Senator from Oregon aware of the fact that President Trump, during his campaign, released the list of 21 names of potential nominees for the Supreme Court, and then thanked the Federalist Society and the Heritage Foundation for preparing that list? The Federalist Society—a Republican advocacy group here in Washington, DC—now brags that every member of the Supreme Court appointed by a Republican President has either been a member of or cleared by the Federalist Society before they took the bench.

Mr. MERKLEY. I am aware of that, and it disturbs me that the responsibility of the President to find the right person to place on the Court was farmed out, essentially, to these two groups the Senator mentioned.

While often people will say: Did the President ask the nominee a particular question about how they might rule on XYZ, I am sure that it is quite likely that these groups did ask all sorts of questions in developing their list of 21 potential Justices.

Mr. DURBIN. I wonder if the Senator from Oregon will yield for another question through the Chair.

I ask, when it comes to the Federalist Society—of course, like so many of these dark money organizations, they refuse to fully disclose their donors. They say it is to protect their identity from harassment. It is also protecting the American people from the truth.

Three that we do know have been actively involved would be the Koch brothers—a well-known group supporting Republican candidates—the Richard Mellon Scaife family foundation, as well as the Mercer family, now merging with millions and millions of dollars supporting these Republican causes.

I ask the Senator: Is it a leap of faith for me to think that they would not be working so hard to put someone on the Court, unless they felt that person was going to rule along the lines that they believed?

Mr. MERKLEY. I think that would not be a leap of judgment or analysis. Clearly, the groups like the Koch brothers believe that their interests are deeply connected to the decisions made in this body. And they have invested vast resources into the campaigns, so it is not just that they said: Well, let's go down and talk to people in the Senate about our particular interests as coal and oil billionaires. No, they decided to change the makeup of who sits in this body. In 2014, the investment involved going into Louisiana and Arkansas and North Carolina and Iowa and Colorado and Alaska and several other States, including my State, the State of Oregon. And they won most of those States that they invested in.

Then they sent a message in January 2015 by saying: In the next election, we are prepared to spend the better part of a billion dollars. That was heard very loudly in this Chamber, and the first bill up was a Koch brothers' bill. You see their influence in all kinds of ways, indeed.

I believe the reason we are here today in this conversation is in large part because those who invested in creating the majority that we now have in this Chamber wanted to make sure that there was a Supreme Court that would sustain the Citizens United ruling that allows this dark money of which the Senator speaks.

Mr. DURBIN. I ask the Senator from Oregon through the Chair again: During the course of the Senate Judiciary Committee hearing, Senator SHELDON WHITEHOUSE raised this question about dark money with Neil Gorsuch, the nominee for the Supreme Court, and asked if he was aware of the fact that millions were currently being spent on ad campaigns and mail campaigns across the United States to promote his nomination—and whether Neil Gorsuch felt that the source of this money should be disclosed. As far as we could bring the judge on this subject, he said: Well, someone should ask about where the money is coming from. That, I guess, is a pretty bold statement because many Republicans don't believe that it is fair to even ask where the money is coming from.

There was a time when even the Senate majority leader used to say: I am not going to complain about the amount of money. I just want to make sure it is all disclosed. Well, he is completely vacating that position. He doesn't want disclosure. He doesn't want the American people to know where the money is coming from.

I don't know if the Senator from Oregon noticed the television advertising here in Washington, where there is a lot on an issue like this before us. But the television screens—at least for those morning talk shows—were inundated with advertising in favor of Neil Gorsuch from groups like the 45 Committee, Judicial Justice Committee. They make up these names right and left.

I ask the Senator: When it comes to decisions like Citizens United, does

that give us clear evidence of why the Republicans are fighting so hard to make sure they put the right person on the Supreme Court?

Mr. MERKLEY. I say to my colleague from Illinois that the entire situation we are in revolves around the issue of dark money and having a person on the Court who will sustain that flow. That Citizens United decision was a 5-to-4 decision. Four Justices laid out the case that these unlimited funds—and often secret funds—are corrupting our American political system. And if one wants an example of that corruption, simply look at the vast change—within a short period of years—of the position of our colleagues on the right side of the aisle in regard to the environment.

We had many colleagues who were very concerned about carbon pollution coming from the extraction and burning of fossil fuels. They wanted to make sure that we had a sustainable planet to pass on to our children—our children's children. It was following a Republican tradition of being involved in things like the Environmental Protection Agency creation with President Nixon and the Clean Water Act and Clear Air Act.

In a short period of time, like a shallow pool beneath a hot sun, it just evaporated. That concern for the environment just disappeared and dissipated. The result is that today, we have virtually no support to take on this major environmental threat in a bipartisan fashion, and that corresponds to this flow of dark money from the oil and coal billionaires into the campaigns for the Senate in the United States of America.

So it is a deeply disturbing situation in which absolutely a lot of the explanation as to why we have a stolen Supreme Court seat and why we have this nominee and why he is being rushed through in a way that no Supreme Court seat had been rushed through ever before.

Yesterday—Tuesday—just shortly before I started speaking last night, the majority leader came to the floor and said that he was filing a petition to close debate. That is the first time in U.S. history that has been done on the first day of the debate. That is the type of, I guess, completely focused effort to complete the theft that began last year.

Mr. DURBIN. I ask the Senator from Oregon if he will further yield.

Neil Gorsuch, the judge from the Tenth Circuit who has been nominated for the Supreme Court, has had some noteworthy opinions. One was the Hobby Lobby case. It is an interesting parallel between Hobby Lobby and Citizens United. In Citizens United, the Supreme Court said: We believe that money is speech. And we believe that the protections of the First Amendment extend to corporations who should be treated like persons when it comes to their right of free speech.

In the Hobby Lobby case, Neil Gorsuch, who is headed for the Supreme Court, reached a parallel decision, giving good credibility to the argument that the Republicans know why they are pushing for this man to go to the Court because this was a case where the Hobby Lobby company, which has stores across the United States owned by the Green family—the Green family had their own special personal religious beliefs when it came to family planning and birth control. So they refused to provide for their 13,000 employees across the United States any health insurance plan that provided for methods of birth control, which they found personally offensive. They said that this was a corporate position they were taking—a company position.

So it was Neil Gorsuch, with others on the Tenth Circuit Court, who decided to expand the definition of personhood—again to include closely held corporations like Hobby Lobby. The net result was that the owners—the Green family—were able to say: We are going to stand up for our religious beliefs when it comes to family planning. And to say to 13,000 employees that those employees' personal beliefs—the religious beliefs of each employee—really made no difference from the viewpoint of Judge Gorsuch. Once the owners of the company had decided what was good, principled religious conduct, they could impose that on their employees.

So there is a parallel here where Citizens United said a corporation is a person. Judge Gorsuch and Hobby Lobby said that a closely held corporation is a person. And in the Citizens United case, he said this person—corporation person—has the right of free speech. In the case of Hobby Lobby, Judge Gorsuch said this corporation has the right of freedom of religion to exert their sincerely held religious beliefs.

So I say to the Senator from Oregon: It is clear to me that they tested Judge Gorsuch in the Tenth Circuit, and he came out ahead when it came to the basic principle that corporations should somehow be treated as persons when it comes to rights under the Constitution. That to me is hard to imagine.

I just can't fathom how they could stretch the meaning of person to include corporations when it doesn't say so expressly in any of the statutes that were referenced here. I haven't seen a lot of corporations pleading guilty and being sent to prison. It doesn't happen much.

So my question to the Senator from Oregon is, when it comes to the clearance of Neil Gorsuch for the Supreme Court seat—this open seat on the Supreme Court—whether they found the Hobby Lobby decision something that said to them: This man would believe in Citizens United had he been on the Court at the same time.

Mr. MERKLEY. I say to my colleague from Illinois that we will probably never know the full vetting that took place and the conversations that took place, but your observation that Hobby Lobby involves a parallel with Citizens United is absolutely right. In Citizens United, the Court said: The corporation gets these political rights; that is, the ability to spend money in campaigns, unlimited funds. And in Hobby Lobby, the corporation gets religious rights, if you will—the right to overrule, not just express them through the benefits they provide to their employees, but to trump the religious choices of their employees. It is kind of a super religious power, if you will, choosing the corporation over the people. In both cases, there is this element of choosing the corporation, promoting it, exalting it, over the rights of individuals.

Jefferson made a comment in a letter where he talked about the philosophy of the mother principle. The mother principle said that the only way our government will proceed to fulfill the will of the people is if each citizen has an equal voice—not vote, but voice. ''Vote'' was a big piece of that, but he chose the word ''voice,'' as did President Lincoln on another occasion. The point he was making is that you have to have a place where everyone can weigh in, more or less, in equal fashion.

The opposite of that is Citizens United, where an individual who is a multibillionaire can weigh in massively by buying up the air waves, the radio waves, the television waves, the web advertising, the social media, scrolling and so forth—all of these tools that didn't exist at the time they were formed. So there is this ability for the wealthiest to do a citizen sound equivalent of a stadium sound system that drowns out the voice of the people, just as you have this situation in Hobby Lobby where the religious preference of the corporate entity can trump the religious preferences of the employees.

Mr. DURBIN. If the Senator from Oregon will yield further, when I started trying to find out the source of the money for these television ads that support Neil Gorsuch for the Supreme Court, I went to something—the 45 Committee, I mentioned to you. I had never heard of it before. I looked it up. There was a committee that sounds just like this. It is hard to keep track of them. The largest donor by far in terms of money was Sheldon Adelson, a man out of Las Vegas who has become rather celebrated, if not notorious, for putting millions of dollars into those political efforts on behalf of candidates from the right—some say from the extreme right.

I would also ask the Senator from Oregon if, during the course of his review of Judge Gorsuch's record, he came across the TransAm Trucking case, which was really explored at length in the Senate Judiciary Committee. Many of us felt this was such a clear definition of the values of Neil Gorsuch, who tends to rule on the side of big business and corporate elites over and over again.

The case involved a truck driver who was driving near Chicago on Interstate 88 in January a few years ago during a bitterly cold period of time. He had trouble with his trailer. He pulled it off to the side of the road and realized the brakes on the trailer were frozen. So he got on his cell phone and he called his dispatcher, and his dispatcher said: Whatever you do, stay with that truck and trailer. The repairman is on the way.

So he waited a while. No one showed up. He fell asleep. By the time he woke up to a phone call from a member of his family, his legs were numb and he was having trouble breathing. It turned out there was no heater in the cab of the truck. So there he was, facing hypothermia and freezing in his truck. Again, the dispatcher told him: Stay there. Don't leave the truck.

He decided that the idea of dragging this trailer down the interstate was dangerous and the idea of staying in this truck could threaten his own life, so he made what I consider to be a reasonable decision: He unhitched the trailer, took the truck to the gas station, filled it with gas, warmed up, and came back to the trailer. For that conduct, he was fired by TransAm Trucking. Because he was fired, he was blackballed from ever driving another truck.

This man, whom I happened to meet in my office a few weeks ago, Alphonse Maddin, then did not know which way to turn. He couldn't make a living. He was a hard-working fellow out of Detroit.

Somebody said: You can go to the Department of Labor, and you can file a complaint for unfair dismissal.

I see the Senator has a photograph of Mr. Maddin there.

He told me he went to the Department of Labor. They handed him the form. With a ballpoint pen, he filled it in as to what happened to him, protesting this dismissal and firing. He said he was shocked a few months later to get a letter in the mail that said: You win. You are right. They shouldn't have fired you.

Well, he thought that was a pretty good thing and that he would get some backpay out of it. But then the appeals started, and it went in the Federal court system. By the time it got to the Tenth Circuit, where Judge Neil Gorsuch sat, seven different court judges and administrative judges had considered the case of Alphonse Maddin as to whether it was fair to fire him under these circumstances. Only one judge out of the seven said it was the right thing to do—Neil Gorsuch, the man who aspires to be on the Supreme Court.

One of my colleagues—and I think it was Senator FRANKEN—said to Judge Gorsuch: What would you have done if you were sitting in that truck? What would you have done if you faced freezing to death or dragging a disabled trailer out on a busy interstate, endangering the lives of others?

Judge Gorsuch replied: I never really thought about it.

He never really thought about it. To me, that really gets to the heart of what we are talking about here. He thought about it enough to rule against that truck driver who faced that terrible choice in his life, but he did not think for a moment what a reasonable, ordinary man would do under the circumstances. He reduced the situation to the absurd and decided to rule for the trucking company, for the corporation.

When you consider that this Roberts Supreme Court has ruled on the corporate side, the U.S. Chamber of Commerce side, 69 percent of the time, it is pretty clear why they have this fond feeling for Neil Gorsuch as the next Supreme Court Justice.

Does the Senator from Oregon see the linkage here between what the Republicans are looking for in a Supreme Court nominee and what they would find in this TransAm Trucking decision?

Mr. MERKLEY. My colleague from Illinois brings up the frozen trucker case, as it has often been referred to, and how it demonstrates an effort to really twist the law away from its original purpose in order to find for the powerful over the individual.

In this particular case, when he wrote his viewpoint, Neil Gorsuch revealed a whole lot because here was a law specifically crafted to protect truckers from being fired if they operated for personal safety or the safety of the public.

Clearly, for him to have driven that trailer down the road, a fully loaded trailer without brakes because the brakes were frozen, would have been incredibly dangerous to all kinds of people. To stay in that cab freezing to death was dangerous to him. You can interpret the concept of operating a truck, and the law said refusing to operate a truck. Well, does refusing to operate a truck mean that you refuse to operate it in exactly the manner that you were told to? Does it mean driving the cab without the trailer or the cab with the trailer?

Gorsuch zeroed in on the fact that, well, he did not refuse to operate because he drove the cab. He was operating. Well, no, he was not operating in any common person's understanding. He left the trailer there. He wasn't driving it down the road. But he searched for that slight little way that he could say: Well, that does not quite fit, and therefore I can find for the corporation.

It just fits case after case after case in which the nominee who is before us now stretched the law, twisted the law, tortured the law, in order to try to find a victory for the powerful over a person.

Mr. DURBIN. I thank the Senator from Oregon for yielding for questions.

Mr. MERKLEY. I thank my colleague from Illinois for coming down to help focus on some of those cases. I appreciate the great knowledge he brings to Senate issues and the deliberations in the Judiciary Committee. I am not a member of the Judiciary Committee, so, as I listened to my colleagues commenting on the questions that were being raised and how they were being answered, I saw in the course of those hearings a trajectory in which many colleagues found, as they looked into the heart of these decisions, that there was an absence of heart reflected in the decisions.

The ability to understand the full context of which something happened is so important. When I was a freshman in college, I had a course, a freshman seminar, and that seminar was taught by an esteemed professor of the law school. She would have us read the circumstances of a case, and then say: How would you have ruled on this case? We would write up our little memos, our short little memos, not really based on law because we didn't know the law but on common sense or whatever life experience would have brought to bear.

Then the next week, we would read the Justice's opinions, their decisions on what they had found to be the case—did they sustain the argument for the defense or otherwise, and what arguments did they bring to bear?

I was always struck that William O. Douglas seemed to have the best grip on being able to place himself into the mindset and the situation of folks who were bringing grievances forward to be addressed. I think a lot of that came from his life experience and the life experience in which he had basically lived in the wilderness part of the time. He had hung out with hobos, and he had ridden the rods underneath the railroad cars to get from one place to another. He had experiences that were not just inside the bubble—the billionaire bubble, the elite bubble, the gated community.

The opposite of that is the situation when I was in New York back in 2008 and I was speaking to someone about campaigning for the Senate. The individual said: I don't understand why you are so concerned about healthcare. Everybody has healthcare—everybody. Well, in his world, in his bubble, everybody had healthcare and everybody was wealthy, but that is not the entirety of the world.

So it is so important to have people on the Court who can get inside the experience that others have and that diverse experience. You don't see that reflected in decisions that have been written by Neil Gorsuch.

I thank my colleague from Illinois.

The Guardian wrote an article titled ''The Guardian view of Trump's Russia links: a lot to go at.'' I will share this particular article, but before I do so, let us remember that we are here at this moment with three substantial issues.

One issue is the fact that for the first time in U.S. history, a Supreme Court seat has been stolen from one President and delivered to another—the first

and only time. Sixteen times we have had a vacancy in a Presidential year, and 15 times the Senate has acted to consider the nominee, in some cases rejecting them, in some cases—in most cases confirming them, but always acting until last year.

The second big issue is this Russia investigation, the investigation of the links between the Trump campaign and the Russians, this big cloud hanging over the legitimacy of the Presidency. It needs to be resolved. That certainly affects whether it is legitimate to be considering at this moment the President's nominee before that cloud is dissipated or resolved because this individual, whoever is confirmed for this seat, will quite likely serve for many decades. When it is a younger nominee, as it is with Neil Gorsuch, that could be five decades. It could be an extensive length of time with decisions that stretch far into the future.

Rather than rush through this in a few days, we should be setting this aside until these issues are resolved to make sure that we have established the legitimacy of the President's role in office and gotten rid of this cloud hanging over him.

The third, of course, is the nominee himself. I so much appreciate my colleague from Illinois proceeding to, through his questions, raise a number of the points about Neil Gorsuch's record. There is the case of the frozen trucker. We did not talk about the case of the autistic child, but that is very similar, where the law—and it is similar in this sense—the law was quite clearly written to promote a particular resolution of a challenge, and that is that every child, despite their disability, would have the opportunity to have an appropriate education. Neil Gorsuch managed to reduce that down to mere improvement over de minimus; that is, basically a tiny little bit of improvement over doing nothing. That was the Neil Gorsuch standard.

That standard went to the Supreme Court. The Supreme Court just recently issued its decision, and it was not a confirmation that it is OK to have just a mere improvement over doing nothing, it was a wholesale rejection, because the law is very clear, and Neil Gorsuch tormented it and twisted it and tortured it to produce a position that you can do nothing and meet the standard of the law that says you have to do quite a bit.

So it was 8 to 0. It was not six out of eight or seven out of eight, but eight out of eight. Every Justice, no matter where they were in the ideological spectrum, said: That is an absurd finding and overthrew the Neil Gorsuch decision.

(Mr. BARRASSO assumed the Chair.)

So we have these three substantial, major issues to consider, and that is why this conversation should be set aside until we resolve the Russia investigation.

I will read ''The Guardian view of Trump's Russia links.'' It says:

> Why days before the presidential election did the FBI announce it was reopening an investigation into Hillary Clinton—when it was silent about its probe into Mr. Trump's Russia ties?
>
> When the president's own staff turn up in Washington to publicly rebut his accusations that he had been wiretapped by his predecessor, it's not good news for the White House. Yet the longer the director of the Federal Bureau of Investigation, James Comey, and MIKE ROGERS of the National Security Agency appeared in front of a committee of Congress, the worse it got. Since last July, Mr. Comey said, the president's campaign has been investigated for colluding with Russia to influence the 2016 election. Donald Trump's election machine is coating his White House with sewage.
>
> Yet Donald Trump, with the insouciance of a Bourbon monarch, shows no sign of taking any notice of the facts. Nor, it seems, will he retract false claims, nor will he be held accountable for his dissembling. Mr. Trump is prepared to carry on in disgrace. He spent the minutes after his own intelligence officers called him out for peddling falsehoods by trying to create a bizarre counter narrative with the @POTUS twitter account that stretched his credibility so far it snapped.

Well, this article continues to go into how just an amazingly absurd situation this is at this moment.

I was really struck that what seemed to have transpired just a few days ago was that the White House, some key advisers in the White House, some very top advisers, called up the chair of the House Intelligence Committee and said: Hey, come over here to the White House. We want to brief you on some information that shows that maybe there was some intelligence picked up on Trump in the course of other intelligence activities.

So the chair goes over to the White House, gets briefed, comes back to the House, holds a press conference, and says that he has this information from a whistleblower, and he has to go back over to the White House to brief the President.

The whole thing was phony. The information came from the White House. The whole thing was set up to look as though there was some magnificent new information that somehow confirmed some theme or line the President was advocating. I mean, this was Keystone Cops. That is the place we have come to in this administration. So those are certainly the concerns that I have.

I think it is important to continue focusing on the Gorsuch nomination. Let us recognize the setting in which this is happening.

Certainly we have a nominee who seems to want a 19th century judicial philosophy for the 21st century. The preamble to our Constitution states: ''We the People of the United States, in Order to form a more perfect Union, establish Justice.'' That is a vision that reminds us that we are a nation of laws, where individuals like the frozen trucker can go to the authorities and get a fair, square deal, a deal that reflects the fact he was unfairly fired, but he didn't get that from Neil Gorsuch. The type of system where an autistic child who, under the law, is supposed to be receiving an appropriate education receives that education, but he didn't get that fair square justice from Neil Gorsuch.

We are a nation of laws, but we are also a nation of justice, and it sets us apart from so many other countries—that concept that average citizens, ordinary people have a way to pursue justice.

During his confirmation hearing last month, Judge Gorsuch put on a great show, kind of a friendly, everyday-man show, but when it came to making decisions, the ordinary person lost out on these decisions time after time after time.

We have a far right, extremist judge outside of the mainstream who, in case after case, has twisted the laws to deny average Americans the justice they deserve. He is so far out of the mainstream that he would be the most conservative Justice on the Supreme Court—further to the right than Justice Antonin Scalia or Justice Clarence Thomas, according to an independent analysis by the Washington Post. The Post came to this conclusion by examining the Tenth Circuit's opinions that have been delivered since Gorsuch joined the Court in 2006. The Post concludes:

> The magnitude of the gap between Gorsuch and Thomas is roughly the same as the gap between Justice Sotomayor and Justice Kennedy during the same time period. In fact, our results suggest that Gorsuch and Justice Scalia would be as far apart as Justices Breyer and Chief Justice Roberts.

We can see this extremism by examining some of Judge Gorsuch's significant cases.

Earlier, my colleague from Illinois came in and spoke about the frozen trucker case. Alphonse Maddin was a truckdriver who was transporting cargo through Illinois when the brakes on his trailer froze because of subzero temperatures, and he did the responsible thing. He got off the road. He pulled over. He refused to drive under hazardous conditions, and he called for help.

After reporting the problem to the company, he waited 3 hours in freezing temperatures for a repair truck to arrive. He couldn't even wait in the cab of his truck to keep warm because the auxiliary power unit was not working. After those 3 hours, his torso went numb, and he began having difficulty breathing. He couldn't feel his feet. So he unhitched the truck—that is the trailer, the loaded trailer, and left it there. He drove the cab, seeking to find a place he could get warm, and then he returned to the truck when the repairman was arriving.

The law is specifically written to say that you can't fire a truckdriver for refusing to operate a truck in a fashion that will cause dangers to others. And that is what he did; he refused to keep driving with those frozen brakes in order to avoid causing danger to others.

Neil Gorsuch looked for a way to twist that, to say: Well, he didn't refuse to operate the truck. He drove the cab, and that is kind of like operating the truck.

Well, I would tell Neil: It is not. Operating a cab unhitched from a trailer is not the same as operating a truck with the trailer. The purpose of the driver is to deliver the goods.

So, quite frankly, he did exactly what he should have done for his personal safety and the safety of others. He was fired for it, which is what the law is written to stop. Everyone else got this, but not Neil Gorsuch.

Neil Gorsuch looked for a strategy that he could possibly find to favor a company over an individual, and that is really of great concern.

In his dissent—Neil Gorsuch was not in the majority. He wasn't making the decision. He wasn't writing the majority opinion. He had a dissent.

He strained the reading of the statute. He went out of his way to minimize the words ''health and safety'' in the law. He stated that finding for the driver was improperly using the law ''as a sort of springboard to combat all perceived evils lurking in the neighborhood'' and that the objective to promote health and safety was ''ephemeral and generic.''

Well, clearly the finding that a trucker who was fired because he refused to operate the truck—the cab and the trailer—in unsafe conditions because the brakes were frozen, when the law says you can't fire a trucker for refusing to operate a truck in unsafe conditions—that is about not providing a very specific danger to the community.

How do you get from that to say that finding for the driver was a framework ''to combat all perceived evils lurking in the neighborhood''? As if somehow deciding the case on the pure merits and the pure law, finding a case on behalf of an individual was somehow opening a Pandora's box of bad decisions that would affect other situations where maybe corporations that made a mistake would have to pay a fine. That would be unacceptable.

I don't know what he meant by ''a sort of springboard to combat all perceived evils,'' but I know it is totally disconnected from the pure facts of the frozen trucker case and the law that guided it, and that is why the court found in the trucker's favor.

In short, in reaching his conclusion, Judge Gorsuch took an extremely narrow view of the statute, remarking that it only forbids them from firing employees who refuse to operate a vehicle out of safety. That is exactly, of course, why he did it.

I think that all along that case, you saw common sense, a clear view of the facts, and a clear view of the law on everyone's behalf, except for one individual, and that individual was Neil Gorsuch, who is before us.

Let's turn to the case of the autistic child. Luke P, a young child with autism, began receiving special education services at his public school in kindergarten in 2000. He had an education plan specific to his needs, as required by the Individuals with Disabilities Education Act, the IDEA.

The problem was that he wasn't making progress in generalizing skills, applying skills he learned at school to other environments. Despite his appropriate social interactions at school, he often had severe behavioral problems at home and public places, including violence. The public school's inability to meaningfully improve Luke's ability to generalize basic life skills put enormous stress on the family and exposed the limitations of what the school was able to provide.

His parents found a program designed for children with this form of autism, a place that specialized in that, a place that knew how to approach it. They worked at getting him admitted, and they succeeded. It was a great opportunity for Luke to not only learn important life skills but to be able to apply them outside the classroom. Luke got in, and he began to flourish, getting the attention and specialized instruction that his condition merited.

So Luke's parents, knowing that the IDEA requires that children with disabilities are entitled to a free education, applied to the school district for reimbursement of the new school's tuition, but the school district said they wouldn't fund that because they could meet the goals of Luke's updated education plan. But the problem was, they couldn't. That experience had already occurred, and the district had fallen short.

At the due process hearing, the State level hearing, Luke's parents prevailed. They laid out their case. The hearing compared the situation to the law and the requirements in the law, and Luke's parents won.

It went up to the Federal district court. Again, looking at the case, looking at the law, the parents prevailed. At each level, a hearing officer judge determined that Luke wasn't getting the help he needed at the public school. They concluded that, by failing to help him generalize his skills, they failed to provide him with the free appropriate education he was entitled to under the law.

Each looked at the facts and said: Only the specialized residential school could provide the education he needed, and the school district must reimburse the family.

Well, the school district appealed all the way up to the Tenth Circuit—Judge Gorsuch's Tenth Circuit. And what happened on the Tenth Circuit? Well, writing the opinion for the majority, Judge Gorsuch stated that ''the educational benefit mandated by IDEA must merely be more than de minimis.'' A way to translate that, ''merely more than de minimis'' means a tiny bit more than nothing. That is the standard. That is the Gorsuch standard. In effect, Judge Gorsuch argued that you meet the law designed to insist that disabled children get an appropriate education with a little bit more than nothing.

Well, this was then appealed up to the Supreme Court, and what happened here just days ago? On March 22, Judge Gorsuch's ruling was overturned by the eight members of the Supreme Court. It wasn't a 5-to-3 or 6-to-2 or 7-to-1 decision; it was 8 to 0.

They felt that the standard Gorsuch put forward was totally incompatible with the way the law was written. That is a very telling situation to have eight Justices, through a large spectrum, see that the world is quite different from the world of Neil Gorsuch, where the law gets twisted to find for the powerful over the individual.

Judge Gorsuch's ruling was overturned through a unanimous vote in the case of Endrew F. v. Douglas County School District during the final days of Judge Gorsuch's confirmation hearings, March 22. In that case, another autistic child, who also has attention deficit disorder, had been removed from public school since the fifth grade. Like Luke, he went on to make great progress in a private school. His parents said the education plan that the public school created was not helping, and they sued the school district to compel them to pay for the private tuition. It was basically a mirror example of Luke's case.

In speaking for the Court, Chief Justice John Roberts said that Judge Gorsuch's de minimis standard was too low and that the Federal law demands more, that it requires an educational program that is reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances.

Chief Justice John Roberts went on to say in his majority opinion that it cannot be right that the IDEA generally contemplates grade level advancement for children with disabilities who are fully integrated into the regular classroom but is satisfied with merely more than de minimis progress.

No. The IDEA contemplates grade level advancement, and it cannot be squared with the standard that Neil Gorsuch put forward in his saying ''merely more than de minimis.''

Speaking in front of the Court, the Solicitor General specifically noted that Judge Gorsuch's interpretation of the IDEA's requirement is not consistent with IDEA's text or structure with this Court's analysis or with Congress's stated purposes. Basically, that is the outline of the autistic child's case.

Let's turn to the Utah en banc request, the Planned Parenthood Association of Utah v. Herbert.

In August of 2015, Gary Herbert, Utah's Republican Governor, ordered the State to strip $272,000 in Federal funding from the Planned Parenthood Association of Utah in response to a series of hidden camera videos that were released by the Center for Medical Progress. They were attacking Planned

Parenthood's program for providing fetal research tissue to research institutions. These videos were found to have been doctored and the footage was inaccurate. The entire premise was debunked.

Despite the fact that the videos had no merit, Governor Herbert stood by his order to cut Planned Parenthood's funding. Utah's Planned Parenthood Association decided to fight back by filing for and temporarily receiving a restraining order against the State.

In spite of his continued claim—that is, the Governor's claim—that stripping funding was not to punish the organization for its stance on abortion but was in response to the videos, Governor Herbert eventually admitted, while responding to Planned Parenthood's motion for a preliminary injunction, that the events in the videos involved other Planned Parenthood affiliates in other States, not Planned Parenthood in Utah. There was not even an accusation that Planned Parenthood in Utah had strayed beyond the law.

The organization in Utah does not participate in that research program that was attacked in that video. There was no connection—not geographically to Utah and not through the substance issue of a tissue research program. None of the Federal funds that go through the State's health department to Planned Parenthood fund abortions, which is an important point.

Let me reemphasize that the accusations made by the videos about Planned Parenthood and its affiliates were false.

What the Governor's response has made clear is that he was, in fact, punishing Planned Parenthood of Utah for its constitutionally protected advocacy and its services that include abortion. That is a very, very small part of what it does.

A three-judge panel on the Tenth Circuit Court of Appeals granted a preliminary injunction to Planned Parenthood, concluding that Utah's Planned Parenthood was operating lawfully and that the Governor's personal opposition to abortion could likely be demonstrated as a motivation for blocking Federal funds. Therefore, the Governor was targeting a health organization, in violation of its constitutional rights.

We have these basic concepts, like equality under the law. You cannot just choose and pick, basically, whom you like and dislike.

Here is what happened. In spite of that Tenth Circuit's finding of those three judges, who all found on the side of Planned Parenthood, Judge Gorsuch dissented from the court's denial and requested that it be considered en banc—that is, by the entire Tenth Circuit set of judges. This is very unusual because the Governor who lost the case was not asking for it to be reconsidered, and Planned Parenthood was not asking for it to be reconsidered. It was a done deal. The arguments that the Governor had brought basically fell apart upon examination—each and every argument. Planned Parenthood of Utah was not in the videos. The videos themselves were edited to create a false story. They did not even participate in the same research program and so forth—I mean, every piece of it. Yet Judge Gorsuch said: No, we should have the entire group of judges reconsider this—a judge pushing this forward when the defendant did not even push it forward. He was willing to ignore court practice and custom, to mischaracterize facts in law to ensure that Utah's Republican Governor could eliminate funding for Planned Parenthood.

He made a reference to kind of the deference to elected opinion. That, in itself, is very strange. Isn't your job to find out whether the circumstances fit the law and, if someone has been shortchanged, to rule for him and not to defer to someone because he has the title of ''Governor'' before his name?

In the majority's opinion, Judge Mary Briscoe wrote separately to highlight the troubling nature of Judge Gorsuch's dissent. She noted first how unusual and extraordinary it would be for the Tenth Circuit to have one of its own make a motion for an en banc review when neither party to the litigation sought such a review. Second, Judge Briscoe emphasized that Judge Gorsuch repeatedly mischaracterized this litigation and the panel at several turns.

Another judge in the majority pointed out that none of the parties asked for a rehearing within the time permitted and that there was no justification for polling the court on that question at all. Apparently, an unidentified judge had requested that the judges be polled.

So we have here—as we have in the case of the autistic child, as we have in the case of the frozen trucker—another case of twisting the law to try to come out with an outcome that is not merited by the facts of the case or the plain language of the law. That really is a significant concern.

Judge Gorsuch has been a lifelong ideological warrior. The quote from Henry Kissinger that he used in both his high school and Columbia yearbooks might have been intended as joke, but it warrants some consideration in light of his record:

> The illegal we do immediately. The unconstitutional takes a little longer.

In light of these cases, where in case after case he stretched the law, tortured the law, twisted the law to find for the powerful—the Constitution has a vision of equality before the law. Our Constitution has this vision of justice for all so that when a judge does not pursue equality before the law, does not pursue justice for all, then that really is kind of a venture into the unconstitutional. That is exactly what happened in the case of the autistic child, where the Court said: Your decision was unconstitutional. Your decision to say that a little bit more than nothing meets the standard of the IDEA is wrong. That is unconstitutional. That is wrong for the law.

Indeed, it almost makes the hair on your neck stand to realize that he was writing that the unconstitutional takes a little longer.

His world view really began to take shape at Columbia when he cofounded the Federalist, which was the school newspaper, and a magazine called the Morningside Review. In writing for the publications, Judge Gorsuch defended social inequality, saying it allows men of different abilities and talents to distinguish themselves, as they wish, without devaluing their innate human worth as members of society and arguing that a responsible system requires a governing class that is comprised of men of exceptional political ability and spirit of concern who craft laws and run the government.

When I read this, it made me think of Plato's ''Republic.'' In Plato's ''Republic,'' he lays out a vision of the guardians, kind of this superior group of men who find just the right solutions. It sure sounds like that—a responsible system that requires a governing class that is comprised of men of exceptional political ability, spirit, and concern, who craft the laws and run the government—in other words, a government by the elite. Through his decisions, we see that it is not just by the elite and by the powerful, it is for the elite and for the powerful. That is a long way from equality under the law, and that is a long ways from justice for all. And he characterized efforts to fight racism as ''more demand for the overthrow of American society than the forum for the peaceable and rational discussion of these people and events.''

We have a substantial amount of racism still embedded in our Nation, and we see it come out in unexpected ways. The first I was really aware of the racism that we have in our society was when I was a 19-year-old and I was an intern for Senator Hatfield here. I was assigned to open all of the letters each morning because I was the last of the three summer interns to arrive, and that job went to the last person. I started opening these letters, and the job was to sort them, to get them into different piles according to topic for the different corresponding legislative correspondents who would then write replies. But as I read the letters, I would read one letter and there would be an attack on Seventh Day Adventists. In another there would be an attack on African Americans. In another, there was an attack on immigrants, and so on and so forth. There were attacks on Mormons. There were attacks on every possible group.

It made me think about how Oregon was at one time a territory that excluded African Americans, and at a later date it came to have the largest Ku Klux Klan in the Nation—Oregon. You wouldn't imagine that. I saw no signs of this racism growing up in the suburbs of Portland or down in

Roseburg, but these letters that people were writing were full of racism.

We can't simply pretend that it doesn't exist. Over the course of this last year, we have seen this time and again. We have seen groups that kind of are still deeply wedded to racism and discrimination, and they have kind of come out and made themselves more publicly available. They have kind of shared their thoughts more readily, and they have engaged in more racist acts against others.

So we have more people who have been attacked in parking lots because of their race, or we have more situations where graffiti has been scrolled on the side of buildings. We have mosques that have been burned. We have synagogues that have been defiled. We have individuals who look to be Middle Eastern being attacked because they are looking like they are Middle Eastern.

So, clearly, as to racism, we are not discussing this challenge in America, pondering how we come to a full respect for each and every individual in our country. That cannot be characterized as a demand for the overthrow of American society, unless your concept of American society is one that is a White supremacist viewpoint, and then respect for everyone else perhaps is an overthrow of society.

Now, I am not saying that Neil Gorsuch was coming from that particular viewpoint, but he certainly shows in his quote that he has great difficulty considering a conversation about racism to be a legitimate and important conversation for making America a better place, embracing the strengths of all of our citizens who come from diverse backgrounds. It can't be that this is ''more demand for the overthrow of American society than a forum for rational discussion of these people and events.'' It is a discussion that we need to have.

Judge Gorsuch is absolutely coming into the Court with a view of expansive rights for corporations.

For a long time in our Nation's history, our biggest businesses and corporations certainly ruled the roost, and we had the barons who came from Big Oil and Big Railroad and Big Copper, and their wealth and their station in life ensured that they really had a lot of power over the people around them. Over time, we gave and developed standards so that people couldn't be exploited to the extent that they were exploited under these barons. We had developed labor and safety standards, and we had developed minimum wages and 40-hour workweeks and overtime—really quite an amazing transformation of the workplace. We made great strides in the course of the 20th century. We recognized that American workers are entitled to be treated with respect in a safe working environment.

But there are other cases other than the frozen trucker case where Judge Gorsuch has put the interest of the company or the corporation above the safety of the American worker. One of those is the case of the electrocuted construction worker, the mining construction worker.

Encompass Environmental. The Occupational Safety and Health Review Commission fined employer Encompass Environmental because the company failed to properly train Chris Carter, a worker who was electrocuted. He did not recover. He died.

Chris joined the construction project a week after it had begun. Because he was not trained in that specific work, he brought a piece of equipment in contact with an overhead line. This was specifically something the company had trained others to avoid, but he wasn't trained in it, and the result is he died.

The Tenth Circuit on which Neil Gorsuch serves upheld the fine against the company for the failure to train, saying that it was ''undisputed that Encompass did not give this employee any instruction on the fatal danger posed by the high voltage lines located in the vicinity of the work area.''

The company's own job hazard announcements found a fatal danger from the high-voltage power lines involved and recommended training for employees that would instruct them to keep at least 20 feet away from those power lines. A lot of the employees got that training, but Chris Carter didn't, and he died.

While all of the Tenth Circuit upheld the fine against the company, Judge Gorsuch dissented. He said that, as to the Occupational Safety and Health Review Commission, which fined the employer, that fine was yet another example of an administrative agency wielding remarkable powers and penalizing a company where no evidence existed. If it had been up to Neil Gorsuch, Encompass Environmental would not have had to pay this fine. It would never have been accountable for the negligence that ended in this tragic, unnecessary death.

It is striking to me that despite the fact that the company itself knew about this hazard, and the company itself trained other employees to avoid the hazard but failed to provide the training in this case, Neil Gorsuch really somehow believes that there was no error made by the company; that, somehow, it is unfair if you are penalizing the company.

The ultimate example of Gorsuch's efforts to expand the rights of corporations came in the Hobby Lobby case, which held that corporations are persons exercising religion under the purposes of the Religious Freedom Restoration Act. Therefore, according to the ruling, closely held, for-profit secular corporations could deny their female employees the legal right to contraceptive coverage as part of their employer-sponsored health insurance plans.

The Tenth Circuit upheld this position, but that wasn't enough. In a separate opinion he couched this expansion of corporate rights in a blanket of religious freedom writing:

> All of us face the problem of complicity. All of us must answer for ourselves whether and to what degree we are willing to be involved in the wrongdoing of others. For some, religion provides an essential source of guidance both about what constitutes wrongful conduct and the degree to which those who assist others to commit wrongful conduct themselves bear moral culpability.

What that case really amounted to was saying that religious preferences of the employer—a corporation—trumped the religious choices of the employees—the individuals. That is the scary thing about Hobby Lobby—giving corporations expansive control while you diminish the realm of private rights.

The Hobby Lobby decision has already been invoked—not only supporting curtailing employees' access to reproductive healthcare but also to justify noncompliance with child labor laws, anti-kidnapping laws, and anti-discrimination laws.

As a lawyer, Neil Gorsuch wrote a brief in Dura Pharmaceuticals v. Broudo, urging the Court to ignore the statutory legislative history of the Securities and Exchange Act and advocating that the Court limit the availability of those who confronted the corporation to band together to seek redress.

In a 2005 article, Gorsuch launched into an attack on plaintiffs' lawyers for such cases. The lawyers were just looking for a free ride to vast riches, he concluded. They involved frivolous claims, taking an enormous toll on the economy and on virtually every corporation in America at one time or another, costing businesses billions of dollars in settlements.

So Neil Gorsuch has taken positions making it more difficult for class action lawsuits to proceed.

Well, what is a class action lawsuit and why is it so important in our system to have class action lawsuits? Imagine that you are in a situation where, for example, maybe a telecommunications company gets involved in slamming charges onto your bill that you never asked for, and maybe that costs you $10 a month for some service put on your long-distance bill or on your cable bill or on your worldwide net band bill, and you proceed to notice this, but they put this on without you authorizing it. Yet it is $10. You can't possibly afford to go to court to take on this predatory conduct of charging you for something you never ordered, but when you realize there are often tens of thousands of other people who have also been the victims of this illegal predatory action, then a class action lawsuit gives you the ability to band with those other folks to take on that predatory conduct by the corporation, and that helps to dissuade a corporation from being involved in predatory conduct to begin with.

This can be involved in all sorts of things. It could be misrepresenting a product that is being sold, a physical

product, or not warning about its having a danger that any rational person should have warned you about, or misrepresenting stocks in some type of a scheme where thousands of people are sold something, but what they buy is not what they were promised, and so forth.

So class action is a powerful tool for justice, but you see in case after case after case, complete disdain by Neil Gorsuch for class action lawsuits. He sees them as a burden on the corporate enterprise of America.

Well, I believe that it is important to stop illegal predatory conduct, and in cases where you can't possibly afford to go as an individual, class action is an important strategy.

In one case, Shook v. The Board of County Commissioners, he prevented a group of inmates with mental illnesses who were not receiving proper care from joining together to request that the jail meet its constitutional obligation to provide medical care. Shook may not have involved a corporation, but the same legal reasoning Judge Gorsuch applied in that case can be used to limit class action lawsuits brought against companies and against corporations. There were a number of other cases in that category, and there are cases that essentially highlight issues of discrimination and sexual harassment and Judge Gorsuch's views on that.

In Pinkerton v. Colorado Department of Transportation, Judge Gorsuch joined an opinion discounting Pinkerton's evidence of discrimination and concluding that her performance, not discrimination, resulted in her termination.

Betty Pinkerton was an administrative assistant. She alleged that her supervisor had made inappropriate, sexually explicit remarks to her over a period of several months and that she was fired when she reported the harassment. Pinkerton specifically alleged that her supervisor asked her whether she had sexual urges and asked about the size of things that a boss should not ask about, and he actually commented on a whole series of things which I don't think I will read into the RECORD but which were totally inappropriate in a workplace setting.

After her supervisor asked to go to her house for lunch, Pinkerton called the internal civil rights administrator and complained and then made a formal written complaint 7 days later. An investigation that followed led to the supervisor's removal, but shortly after the supervisor was fired, Pinkerton was also fired. She sued, claiming that the department of transportation was liable for the hostile work environment imposed by the supervisor and that she had been fired because she had raised this issue and this conduct.

There was a divided panel that affirmed a summary judgment in favor of the Colorado Department of Transportation, which held that Pinkerton had waited too long—2 months—to report the harassment, and Judge Gorsuch found with the majority.

Judge Paul Kelly's majority opinion concluded it was Pinkerton's performance, not discrimination, that resulted in her termination, but the dissenting opinion said that it should be a jury who decides at what point Pinkerton's failure to report the harassment becomes unreasonable, that the termination just days after the investigation was completed raised a genuine issue of fact about her claim of retaliatory discharge, especially considering that the State department of transportation testified that the most serious error leading to Pinkerton's firing was an allegedly mishandled call from an employee's daughter that happened 4 years earlier, and the director tried to get Pinkerton another job with the State department of transportation only months before she was fired. But Judge Gorsuch joined the majority and did not give Betty Pinkerton the chance to confront her employers in a court of law in front of a jury. In other words, she wanted her day in court to make the case.

The minority in that case said: Yes, she should get her opportunity to make her case. There is enough evidence, and it should be presented. She can make her case and the department can make their case—not to preempt the opportunity for her to have her day in court. But that is where Judge Gorsuch ended up.

Then there is Strickland v. United Parcel Service, UPS. In this case, Judge Gorsuch concurred in part, while also dissenting in part from an opinion holding that Strickland provided ample evidence that she was regularly outperforming her male colleagues, and yet she was treated less favorably than they were.

Carole Strickland was a female driver for UPS who alleged sex discrimination and quit under pressure. Two judges on the Tenth Circuit panel overturned a lower court decision granting UPS judgment as a matter of law. In doing so, they emphasized that Strickland provided ample evidence that she was regularly outperforming her male colleagues, and yet she was treated less favorably, including direct testimony of several of her coworkers that she was treated poorly or worse than others.

Strickland's coworkers testified that supervisors treated her differently from her male colleagues. She met 93 percent to 104 percent of her sales quotas, was outperforming some of her coworkers on every measure, and yet she was singled out to attend individual meetings—the only one who had to make written sales commitments even though no one was at the 100-percent quota level.

One of the men in her office had lower performance than Strickland in almost every sales measure but was not required to attend these meetings to discuss work performance and was not counseled on failing to reach 100 percent.

Judge Gorsuch, unlike his two colleagues, dissented from the decision. He would have decided the case could not have gone to a jury, arguing that a reasonable juror could have found that Strickland was a victim of sex discrimination. He himself decided the essence of the case rather than giving her an opportunity to have her day in court, in spite of the substantial evidence she brought forward. He would have denied an employee the opportunity to hold a corporation accountable for their mistreatment.

We see the theme in these cases, one after the other. When fellow judges found that a person had a reasonable right to make their case, he dissented and worked to block a chance for an individual to have their case heard.

There is a list of cases we have been going through, but I want to go back and recap why we are here in the Senate hearing this nomination and deciding whether to confirm this individual, Neil Gorsuch. This story is one that really begins with the death of Antonin Scalia.

Antonin Scalia died in February of last year. Within hours, the majority leader had decided to pursue a strategy of asking the Senate—really, demanding the Senate—ensuring that the Senate not fulfill its constitutional advice and consent responsibility. If only at that moment my colleague the majority leader had thought: This is a big deal. Asking the Senate to not exercise its advice and consent responsibility—that is a big deal. Maybe I should wait a day and think about this.

But no, there was a rush to the floor to lay this out, and that became the path this body has been on ever since.

A month later, in March, the President did his job under the Constitution: He nominated Merrick Garland, and it was forwarded over here to the Senate. The normal thing would be for the Senate to start hearings, but the Republican majority leadership said: No. No hearings in the Judiciary Committee.

Why not? It is our responsibility to provide advise and consent on nominations, and there is no nomination more important than the nomination to the Supreme Court of the United States of America. It isn't someone who just serves for a couple of years in the administration or maybe for a full 4 years of the administration; it is somebody who serves for life. And it is not someone like a district judge or a circuit judge who can write an opinion but then have it overturned at a higher level; the Supreme Court is the higher level. It is the highest level. The buck stops with the Supreme Court.

Given the lifetime appointment and enormous power to set precedent for what the meaning of our Constitution is makes the Supreme Court nomination fantastically important. So it is shocking that we failed to do our job as a Senate—to hold hearings, to hold a vote, and to send the issue to the floor and hold a debate on Merrick Garland.

Some Members said: This is in keeping with tradition for an election year.

Well, no, it is not in keeping with tradition. We have had 16 nominations during an election year. A few of them came after the election. Yet there was still a nomination, and the Senate still acted. On others, the vacancy occurred before the election, and the President chose not to fill or not to produce a nominee until after an election, and still the Senate said there is time to act. In nine other cases, the vacancy came before the election, the nomination came before the election, and in eight of those nine, the Senate acted. In 15 cases out of 15 cases before Antonin Scalia died, the Senate acted—confirming most, rejecting a few, but they acted. They exercised advice and consent. Then last year the Senate failed for the first time—the first time in U.S. history—to act.

We can think of this as a kind of lengthy, lengthy filibuster of a Supreme Court nominee. Some of my colleagues have said: It doesn't seem right that a minority—41 Senators—can stop us from getting to a final vote. But it is right. It is a tradition that a 60-vote standard to approve a nominee to the Supreme Court is essential to make sure that a nominee has bipartisan support, that they are from the judicial mainstream, that they have judicial temperament, and that they fit this very important role, this task which they are going to be assigned to do and which they might do for many, many decades to come. That is why we have a 60-vote standard.

What happened last year was a complete refusal to act and 290-plus days of failure to act—plenty of time to act to fulfill our responsibility. It would be different and we would be having a different discussion today if the Senate had considered the nominee and rejected the nominee.

So why didn't the majority leader simply say: We don't like this nominee, so we are going to probably have a debate and we are probably going to vote the nominee down. The reason why is everyone loved Merrick Garland. He was right down the middle. He had great quotes of support from both sides of the aisle. He didn't have a history like the history I am describing with Neil Gorsuch, which raised eyebrows time and time again, or where he was kind of legislating from the bench. He didn't do that the way Neil Gorsuch has done.

So that is the big issue, that we have a strategy of stealing a Supreme Court seat in order to pack the Court. It has never been done before, and we are in the middle of it now. And if this week goes as the majority leader said he was going to make sure that it went, then the theft is going to be completed by Friday.

So I have been here through the night talking about this, to say how important this is that we not do this—that to proceed to fill this stolen seat will damage the Court for decades to come and will damage the Senate for decades to come. If you can steal one seat and get away with it, the temptation next time is to steal another seat—either to double down on the strategy or rebalance the first crime against the Constitution. And each and every time, it will deepen the divisions, and it will diminish the legitimacy of the Court. In the 5-to-4 decisions that we see in the future from the Supreme Court, we are looking to say every single time that it is Justice Merrick Garland's stolen seat—President Obama's stolen seat. Every time that person is in the positive side—the winning side of a 5-to-4 decision—the Court would decide it differently if the seat weren't stolen, if the Court weren't packed. That decision doesn't really have legitimacy because it was the result of court-packing. That is not the way we want to be viewing the Supreme Court.

We want to have a Court of wise, thoughtful individuals with great depth and knowledge of the law, combined with a terrific diversity of life experience. They can put themselves into the position and identify with the challenges faced in an authentic manner. That is important. That strengthens the Court. But it weakens the Court to have a Court packed as a crass, political tactic and to do it through a stolen seat.

So that is why it matters—that it hurts the integrity of this body and it hurts the integrity of the Court. It involves the participation of the President because the President provided a nomination, and that hurts the integrity of the executive branch. In other words, it is a lose-lose-lose proposition. There is still time to take this train off the tracks and not result in this very unfortunate potential outcome.

The second reason we are at this point is that this nomination is just being rushed through as quickly as possible—brought to the floor immediately after the committee vote. Then, for the first time in U.S. history, not only was it brought to the floor the day after the committee vote, but it was brought to the floor and then immediately a petition was filed to close debate. For the first time in U.S. history, on the first day of debate on a Supreme Court nominee, that a petition was filed to close debate. That petition, under our rules, forces a vote on whether to close debate on Thursday, long before the Senate has had a full chance for everyone to make all of their points and thoughts.

Mr. President, a point of Parliamentary inquiry——

The PRESIDING OFFICER. The Senator will please state his inquiry.

Mr. MERKLEY. What is the agreed-upon schedule to resume the normal activities of the floor?

The PRESIDING OFFICER. The Senate has a previous order to stand adjourned when the Senator is finished speaking until 9:30 a.m.

Mr. MERKLEY. I appreciate that clarification. I am going to make this comment now, in case I might forget later. I want to give special thanks to the team of individuals who make this body work in order to provide for the opportunity for extended debate, sometimes here under extraordinary circumstances. Because I have been here through the night speaking, one of those extraordinary circumstances was this night that has just passed. The stenographers, the Parliamentarians, the pages, our doorkeepers, our caucus staff, the bill clerks, and others who staff the desks in the offices in the Democratic and Republican cloakrooms—I am excited to see the set of smiles on the pages' faces. I don't know if the same pages were here all night or not. Well, they will hopefully really get a lot out of this opportunity to serve here. But thank you to all the staff members who have labored during the wee hours of the night and into this morning.

I was summing up the issues that we labor under and noting a significant one is the stolen Supreme Court seat and the damage that completing that theft will do to our institutions. I have been going through a number of cases that are related to the far-right, anti-we-the-people vision of Neil Gorsuch, from the frozen trucker case, to the autistic child case, to the worker suffering sexual discrimination or gender discrimination at work—all of these cases that have come forward.

We have the third issue, of course, being that cloud that is hanging over the Presidency because of the investigations underway at this moment into the role the Trump campaign may have played in communicating with or collaborating with the Russians in their extensive strategy to interfere with our Presidential election. So there are a lot of concerns.

This should be the last case where we are cutting short the debate by filing a petition to close debate on the opening day, but there it is—another first, another degradation of the institution.

Dahlia Lithwick wrote in November:

> We are already hearing from Republicans and Democrats in leadership positions that it is incumbent upon Americans to normalize and legitimize the new Trump presidency. We are told to give him a chance, to reach across the aisle, and that we must all work hard, in President Obama's formulation, to make sure that Trump succeeds. But before you decide to take Obama's advice, I would implore you to stand firm and even angry on this one point at least: The current Supreme Court vacancy is not Trump's to fill. This was President Obama's vacancy and President Obama's nomination. Please don't tacitly give up on it because it was stolen by unprecedented obstruction and contempt. Instead, do to them what they have done to us. Sometimes, when they go low, we need to go lower, to protect the thing of great value.

I don't love the way that is phrased, that is for sure. Because in my mind, the point here is to guard our institutions and make them work better. That is the high road. That is not going lower; that is going higher. We must strengthen and defend these institutions that are being torn asunder by this strategy of stealing a Senate seat.

That is an article from the Slate.

The Miami Herald says: ''Supreme Court Nominations Will Never Be the Same.''

The story of the Supreme Court in 2016 can be summarized in a statistic: It's been 311 days since Justice Antonin Scalia died on February 13, and his seat remains unfilled. That is not the longest Supreme Court vacancy in the modern era, but it's about to enter second place—and it will become the longest if Donald Trump's nominee isn't confirmed about the end of March.

This striking fact will be front and center when the history of the court in 2016 is written, but what really matters isn't the length of the vacancy. It's the election in the middle of it. The Republican Senate changed the rules of confirmation drastically by refusing even to consider Judge Merrick Garland's nomination. And against the odds, it paid off for them.

It is interesting because we talk about the nuclear option of changing the rules, but in a very de facto matter, the nuclear option went off the day the majority leader came to the floor and said that we are going to conduct ourselves in a totally different way than the Senate's ever conducted itself. Unlike every other time in U.S. history, when there was a vacancy during election year and the Senate acted, we are not going to act. We are going to essentially engage in stonewalling the President's nominee—no hearing, no discussion. That was a nuclear option. So, certainly, I think that is a point well made by this article.

The history of the confirmation process is central to the history of the court. There have been some important landmarks in the last century. Louis Brandeis was the first justice to have a confirmation hearing. Felix Frankfurter was the first justice who had to testify at his confirmation.

More recently, the confirmation process for Robert Bork in 1987 had epochal consequences. For the first time, judicial philosophy was a focus.

That was 1987.

No one disputed Bork's intelligence or qualifications. Instead liberals, including law professors like my colleague Laurence Tribe, criticized Bork's conservatism, as opposition to fundamental rights.

Well, there is a whole host of commentary from all across America. Let's turn to the Pittsburgh Post-Gazette. ''The Senate's shame: Merrick Garland deserved a hearing for Supreme Court.''

Judge Merrick Garland is returning to his work on the Court of Appeals for the D.C. Circuit, his nomination for the Supreme Court killed without a vote by a Republican Senate majority more concerned with partisan politics than with doing its job.

The behavior of those who disposed of his nomination stands in sharp contrast to his own record and reputation as a nonideological judge.

Judge Garland is a moderate jurist with a reputation for careful reasoning. Mere days before President Barack Obama announced Merrick Garland's nomination, Senator Orrin Hatch, a Republican from Utah, told a conservative news site that if the President wanted to pick a moderate, he ''could easily name Merrick Garland, who is a fine man.''

But Senate Majority Leader Mitch McConnell had already announced, in February, that his caucus would block any Obama nominee. ''This vacancy,'' he said, ''should not be filled by this lame-duck President.'' So the Senate refused even to hold hearings.

Let's be clear. We have had 16 vacancies in the course of an election year during our 200-plus years of history, and never before did a majority refuse to exercise their advice and consent responsibility under the Constitution, arguing that it is a lameduck President. That is not embedded in the Constitution. It is not embedded in the Senate rules. It is not embedded in history. It is not embedded in any logic. When you elect a President, you elect him for 4 years.

Obama was elected, not by a small margin, not by an electoral victory combined with a citizen majority loss. No, he won the citizen vote massively, as well as winning the electoral college. He won it twice. You can't look for a better endorsement for the role of a President and an affirmation in the face of the determined effort to ensure he did not get a second term.

So that lameduck argument is lame. The argument that the President was a lameduck so, therefore, his Supreme Court nominee should not get a hearing is disingenuous and irresponsible. Mr. Obama had a year left in his term, and Presidents have their full constitutional authority until noon on inauguration day. They must perform all of their duties until then.

Granted, a President must nominate justices the Senate can reasonably be asked to confirm. You can't ask a Senate dominated by the other party to confirm someone whose judicial philosophy could appeal only to someone who shares the President's politics. He must, when facing such a Senate, choose someone in the middle. Mr. Obama did that. He did his job. He picked the very judge Senator HATCH said would be a moderate choice.

The Senate did not do its job. Its refusal to confirm Judge Garland was not based on any flaw in the nominee's character, any deficit in his abilities, or even any disagreement with his jurisprudence. It was pure partisan politics. Senate Republicans wanted to let a Republican President fill the vacancy, and they are going to get their way. But this refusal of the Senate to do its duty cost a good man a fair hearing, and, more importantly, it cost the Nation a potentially fine justice, one more faithful to the law than one of the political parties or particular judicial ideology.

As a result of this abdication of responsibility, it will be harder to get Justices like that in the future. Indeed, the Senate has established a terrible precedent that makes it less likely that any President will be get a Senate controlled by the other party to confirm his or her Supreme Court nominees, however wise and well-qualified.

This was a study of Washington politics at its worst—political and constitutional malpractice—and it will have a lasting consequence.

Well, there is still time to change course and not have this legacy, as characterized by the Pittsburgh Post-Gazette, of ''political and constitutional malpractice with lasting consequences''. So one question we have not talked about too much in this debate through the night is how voters view this GOP maneuvering to push through Trump's ultraconservative Supreme Court nominee. This is a national survey of likely voters by Greenberg Quinlan Rosner Research. It notes the following:

In the wake of President Donald Trump's nomination of Neil Gorsuch to the U.S. Supreme Court, a new national poll shows that voters believe that the nomination has real consequences for the direction of the country. Voters strongly oppose efforts by the Republicans to change the rules in order to push through Trump's ultraconservative nominee.

Americans see this as a fight that matters to them. When presented with potential consequences and rulings that could result from Gorsuch's confirmation, including overturning Roe v. Wade and leaving the flow of special interest money in politics unchecked, large majorities of voters say they are more likely to oppose the nominee.

Key findings from the poll conducted January 27 through 31 on behalf of NARAL Pro Choice America Foundation, Every Voice, and End Citizens United, include:

Voters overwhelmingly believe that Trump's nomination will have a real impact on the country's future. Fully 72 percent of voters think the nomination will have a big difference in the direction of the country. Voters across the political spectrum agree on the importance of this nomination, with 76 percent of Democrats saying it will make a big difference, along with 75 percent of Republicans and 64 percent of Independents.

So, in short, basically roughly three out of four Americans recognize that it is a very big deal because out of this discussion could come a confirmed nominee, a ninth vote on the Supreme Court, and that 5-to-4 votes of the Supreme Court steer the country in very different directions, depending on how that 5-to-4 voting occurs.

If you are adding to the Supreme Court spectrum of conservatives who have this view of Merrick Garland and antipathy toward the ability of citizens to pursue justice through class action lawsuits, and an effort to always kind of torture the law in order to find for corporations over the individuals, and a love of arbitration agreements, and even inventing them as we heard last night—inventing an arbitration agreement where none exists—in order to prevent an issue from going forward in the courts—all of that is a real handicap for Americans in the future. So Americans understand this is a big deal.

Americans strongly object to any GOP attempts to use political tactics to strong-arm Trump's nominee through the confirmation process. After hearing balanced messaging, seven in 10 (69 percent) oppose Republicans changing the rules to prevent a filibuster and allow the Senate to confirm a nominee with just a simple majority instead of the required 60 votes, with 54 percent strongly opposing this proposal. In fact, even 4-out-of-10 Trump voters (39 percent) oppose Republicans trying to change the filibuster rules.

Highlighting potential actions and rulings that could result from confirming Trump's Supreme Court nominee makes voters much more likely to oppose him. Large majorities of voters say they are more likely to oppose Trump's nominee when they hear a diverse set of issues that could be impacted by a nominee like Gorsuch. Actions that create strong opposition include:

Upholding the Citizens United decision to allow corporations, unions, and wealthy donors to spend more money on elections.

Overturning the Roe v. Wade decision that made abortion legal.

Eliminating or weakening environmental regulations that protect air, water, and land from pollution.

Refusing to uphold or eliminating rights and protections for LGBT individuals.

Failing to protect voting rights and making it more difficult for Americans, particularly the poor and people of color, to vote.

Weakening the ability of labor unions to organize workers to negotiate for better wages and working conditions.

Voters strongly support legal abortion and oppose a Trump nominee they believe could put that right at risk. Seven out of 10 voters (69 percent) support a woman's right to choose, and they recognize that Trump's Supreme Court nominee jeopardizes the Roe v. Wade decision that made abortion legal. More than half of voters (52 percent) think it is very or somewhat likely that Roe v. Wade will be overturned if Trump's nominee is confirmed. This possibility raises strong opposition for voters, with 61 percent who say they are more likely to oppose a nominee who wants to overturn Roe v. Wade.

Voters have strong negative reactions to a Supreme Court nominee who will continue to allow corporations and special interests to use money to gain influence and drown out the voice of individuals in politics. Opposition to a nominee who wants no spending limits for corporations and wealthy individuals in elections is broad and deep. Overall, 78 percent are more likely to oppose a nominee (56 percent much more likely to oppose), including 92 percent of Democrats, 84 percent of Independents, and 59 percent of Republicans. Three quarters of voters express a desire for their Senators to oppose a Supreme Court nominee who was ruled in favor of allowing campaign contributors to spend more money in politics.

Voters recognize this Supreme Court nomination is crucial to the direction of the country and they strongly oppose any efforts by Republicans to skirt the rules to push through Trump's ultraconservative nominee.

So the date of that Greenberg Quinlan Rosner Research poll was February 1. I think it really highlights that voters understand that what we are doing now—this process of considering the potential confirmation of a nominee—has huge consequences for this country and has a huge impact on a whole variety of issues—environmental issues, labor issues, discrimination issues, consumer issues, commerce issues, a whole host of a range of things that the Supreme Court regularly considers. So there is a lot of concern at this point.

Here is another issue, and that is the potential impact on LGBT rights. This is an article by Rebecca Buckwalter-Poza entitled: ''Judge Gorsuch Threatens the Dignity of LGBT People.''

Judges with Supreme Court aspirations tend to guard their views, avoiding stances and statements that could impede a nomination or a confirmation. Judge Neil Gorsuch has done just that, leading observers to look to his influences rather than his issuances. Among them is Justice Anthony Kennedy, for whom he clerked. While Judge Gorsuch and Justice Kennedy may share a bond, they part ways on several issues. One lesser known but critically important point of potential disagreement surrounds a somewhat nebulous legal principle critical to lesbian, gay, bisexual, and transgender, or LGBT, rights: the dignity of free persons.

For decades, the Supreme Court has repeatedly affirmed that individuals' due process right to liberty also protects their dignity—and shields them from indignity. The concept of dignity encompasses an individual's innate value as people and their right to live free of interference; their right to make important personal decisions; and their entitlement to social recognition or protection from discrimination. This notion of human dignity is at the heart of the Court's three landmark LGBT rights cases: Lawrence v. Texas, United States v. Windsor, and Obergefell v. Hodges.

Judge Gorsuch's writing—both on the bench and in his book against ''assisted suicide,'' based on his Oxford dissertation—suggests he is, at a minimum, skeptical of the principle from which the right to dignity derives: substantive due process. To be clear, substantive due process, which protects individuals from having their fundamental rights violated without justification, has been part of Supreme Court jurisprudence for more than 100 years.

In one case, Judge Gorsuch made a point of incorporating criticisms of substantive due process. He noted that ''some'' believe if such a concept existed, it would reside elsewhere in the Constitution. ''Others,'' he offered, question whether substantive due process ''should find a home anywhere in the Constitution.'' This critical aside, while mild, is unusual. Judge Gorsuch hews to precedent on substantive due process only grudgingly, after conceding that ''the Supreme Court clearly tells us'' that substantive due process does have a home in the Constitution.

In his book, Judge Gorsuch went so far as to criticize the Supreme Court for adhering to substantive due process precedent in ''case after case.'' He also proposed an alternative relevance for dignity, based in equal protection, that could restrict rather than protect individual rights. The recognition of innate human dignity is the foundation for equality, Judge Gorsuch claimed, and equality makes ''assisted suicide''—termed ''death with dignity'' in those states that permit it—unacceptable because all people created equal enjoy an inalienable right to life. This view is troubling, not only in signaling an intent to misappropriate the concept of dignity to restrict individual choice, but also because of the implications for reproductive access, rights, and justice.

This article continues:

Senators must press Judge Gorsuch to commit to upholding Supreme Court precedent based on the recognition of dignity—or admit he would not respect this long-established, critical principle.

This goes on in a somewhat scholarly fashion.

(Mr. BOOZMAN assumed the Chair.)

I want to return to the core premise and review the fact that never before have we had a stolen seat in the United States of America.

It is so important to drive this point home, that there is absolutely no foundation for what happened last year in American history. You have those 16 seats where a vacancy occurred in an election year. I am going to go through them so that it becomes absolutely clear what we are talking about here.

There were three seats where the vacancy occurred after the general election. So the general election was in early November. One seat opens in December in an election year, one in November, another in December—three seats that opened up after the election and for which the nomination was put forward.

There wasn't a lot of time. In these cases, the President was still transitioning in March, rather than in January, so there was a little more time than you might anticipate. We shortened that with a later constitutional amendment.

Here, the President put forward a nominee within 3 days. Grant put forward a nomination within about a week and just a single day for Hayes to put forward a nomination.

So here you are after the election. The passions of the campaign are starting to settle down. You know who the next President is going to be. There is not a lot of time, but there is enough time for the Senate to act, and it did in all three cases.

In all three of these cases where the seat became empty after the election, even then, the Senate found there was time enough to act. In all three of these cases, that action was a confirmation of the nominee—three out of three. So that is one set.

John Jay was nominated by President Adams. Ward Hunt was nominated by President Grant. Williams Woods was nominated by President Hayes, but in one of those interesting little twists, in this case, the nominee actually declined it after he had been confirmed. I don't know that we have seen that very often in the history of Supreme Court Justices.

Then there is that set of cases in an election year where the vacancy occurred before the election but the President, for a variety of reasons, didn't nominate until after the election. So you are kind of back in the same situation—a short amount of time. We have four cases that are in that category.

We had the first case in 1828—a vacancy before the election, a nomination afterward. The Senate acts. The Senate didn't always confirm the nomination, but they always acted. In this case, they rejected the nomination by tabling it.

Then we had President Buchanan, who nominated Jeremiah Black. In May, the seat became vacant, and the nomination didn't occur until February. The President would have transferred in March. The Senate again acted. The Senators of this body acted, and they rejected it. They rejected it by rejecting the motion to proceed.

Salmon Chase, under Lincoln—the vacancy occurred just a month before the election in October. The President put forward the nomination a month after the election in December, and the Senate confirmed him.

With Eisenhower and William Brennan, there was a vacancy a month before the election and a nomination that basically came 2 months after the election—getting very close to the transition date, yet he was confirmed.

So those are seven of the nominations, of which five were confirmed and two were rejected—tabled and the motion to proceed was rejected. Then we have the remaining nine. These nine are closer—well, one of them is the seat that became open when Antonin Scalia died, but the historic additional eight seats—those seats are a little closer to the situation we have with Antonin Scalia dying and the President nominating Merrick Garland, because the vacancy came before the election in these eight cases, and the nomination came before the election.

In fact, here we have the first case, under President Jefferson. He nominated William Johnson. But the vacancy occurred in January. The nomination occurred in March. It was pretty close to the situation we faced last year, yet the Senate acted, and they confirmed the nominee.

President Tyler nominated Edward King. The vacancy occurred in April, the nomination in June, and the Senate acted. They rejected the nomination by tabling it.

Edward Bradford was nominated by President Fillmore in July of 1852. The following month, the nomination was put forward before the election, and again the Senate acted, but they tabled it.

So they didn't confirm in every case, but they acted in every single case.

Melville Fuller was nominated by President Cleveland. There was a vacancy in March. The nomination was in May. He was confirmed.

Under President Harrison, there was George Shiras. The vacancy occurred in January. Quite a few months passed. It was almost 6 months before the nomination was put forward in July by the President. The nomination was confirmed.

Justice Brandeis was put forward by President Wilson. In this case, two vacancies occurred in an election year, both before the election—one in January, one in June. The candidate was put forward quite quickly—within the month of January and a month later in the case of John Clarke—and both were confirmed.

There was Benjamin Cardozo under President Hoover in 1932. The vacancy was in January. The nomination was in February. He was confirmed.

So those are 8 additional, and we have now a total of 14.

Then we have Merrick Garland. Obama put forward Merrick Garland. The vacancy was in February. The nomination was in March. No action. It is the only time there was no action in U.S. history.

That is why we have all of these editorials from across the country noting that this is a stolen seat, that it has never happened before, and that it sets a terrible precedent. That is the problem we are looking at.

Why is it a terrible precedent? Because once the Senate starts stealing a seat from one President and handing it to another in an effort to pack the Court, there is no end to the mischief that follows.

If you can steal a seat in which there was plenty of time to consider in the final year of a Presidency, you can do it for 2 years. We saw this in terms of many comments that were made by Republican legislators before the November election. When they thought the Democratic nominee was going to win, they were saying: We are going to make sure that for 4 years, it stays an eight-member Court, that no matter that the people will have spoken through an election, no matter that a nominee has been put forward who is credible, we are simply not going to consider it for 4 years.

This is a court-packing scheme through the theft of this Supreme Court seat. You can just think about if the Court is packed, then when the parties are reversed—and it always does go back and forth sooner or later—then does the other party say: We have to balance back out the Court, restore its integrity by stealing a seat back, stealing it 2 years into a Presidency.

It is terrible not only in terms of its impact on the Senate here because it now makes this incredibly partisan pitched battle out of what was supposed to be an advice and consent responsibility to deter a President from nominating people of unfit character—I use the phrase ''of unfit character.'' That is a phrase Hamilton used. In the Federalist Papers, he lays out what this advice and consent responsibility was supposed to be all about. They needed to have a strategy for how they put key appointments into the executive branch to basically staff the Cabinet agencies.

They thought at first: Maybe the check will be that we will have the appointments made by the Senate.

So the executive branch will be headed by the President, but the appointments will be made by, as they referred to it, the assembly.

Then they said: Well, there is a big problem with that because one Senator will get their best friend in one post in exchange for some other Senator's best friend in some other post. The public won't know why it happened. There will be no accountability. So that is not a great idea.

So they said: A better idea is to have accountability and have the President make the appointments. But there is a problem. What if the President goes off-track and starts appointing people of unfit character? Well, we need a way to put a check on that.

So they came up with this idea of the Senate's advice and consent, meaning that the Senate could block a nominee if the person was of unfit character. They anticipated this power to be used rarely because of the very nature and the very existence of the power of the Senate to block someone of unfit character would deter a President from appointing someone of unfit character.

What did they mean by unfit character? Well, it could mean a host of things—that a President might be appointing somebody who had some conflict of interest or who was unacceptable, or maybe the President was appointing someone who had absolutely no knowledge of the issues or maybe appointing somebody who had an alcohol problem and wasn't capable of responsibly executing the task, the responsibilities of the office. There were a host of possibilities, but they thought it would be rarely used; that it wouldn't be applied as a tool to conduct warfare on the executive branch; that it wouldn't be used as a tool to be conducted as warfare on the judiciary; and it wouldn't be used as a tool to pack the Court and delegitimize the Court. Yet we have been seeing all of that from the past in recent years. So that really is something that we should be deeply concerned about.

(Mr. FLAKE assumed the Chair.)

We saw, back in 2013, the growing use of the supermajority as a weapon of mass legislative destruction or government destruction in trying to prevent the President from having a team with which he could act. The National Labor Relations Board was blocked from having its positions filled, and the Labor Secretary was unable to get a floor vote, and the list just went on and on and on—tons of district court judges and circuit court judges, to the point that we had to find a way to curb that destructive strategy, and that meant that we had to go to a simple majority. But we left in place the supermajority for the Supreme Court because it has powers no other institution has. It is the decider.

One can have a district court make a decision that gets bumped to a circuit court, and a circuit court makes a decision, and it goes to the Supreme Court. They are ultimately the decider and they hold the positions for as long as they want. So they can hold it for decades. It is not an appointment to the executive branch that might be there for 2 to 4 years. That is why it is so incredibly important that we get this right and why people who are observing what is going on are so concerned about the damage that is being done.

This article is from the New York Times: ''Neil Gorsuch, the Nominee for a Stolen Seat.''

It's been almost a year since Senate Republicans took an empty Supreme Court seat hostage, discarding the constitutional duty that both parties have honored throughout American history and hobbling an entire branch of government for partisan gain.

President Trump had a great opportunity to repair some of that damage by nominating a moderate candidate for the vacancy, which was created when Justice Antonin Scalia died in February. Instead, he chose Neil Gorsuch, a very conservative judge from the federal Court of Appeals for the 10th Circuit whose jurisprudence and

writing style are often compared to those of Justice Scalia.

If Judge Gorsuch is confirmed, the court will once again have a majority of justices appointed by Republican presidents, as it has for nearly half a century. For starters, that spells big trouble for public-sector unions, environmental regulations and women's access to contraception. If Trump gets the chance to name another justice, the consequences could be much more dire. In normal times, Judge Gorsuch—a widely respected and, at 49, relatively young judge with a reliably conservative voting record—would be an obvious choice for a Republican President.

These are not normal times.

The seat Judge Gorsuch hopes to sit in should have been filled, months ago, by Merrick Garland, the chief judge of the Court of Appeals for the District of Columbia Circuit, whom President Barack Obama nominated to the high court last month. Judge Garland, a former federal prosecutor and 20-year veteran of the nation's most important federal appeals court, is both more moderate and more qualified than Judge Gorsuch.

That meant nothing to Senate Republicans, who abused their power as the majority party and, within hours of Justice Scalia's death, shut down the confirmation process for the remainder of Mr. Obama's presidency. There would be no negotiations to release this hostage; the sole object was to hold on to the court's conservative majority. The outrageousness of the ploy was matched only by the unlikelihood that it would succeed—until, to virtually everyone's shock, it did.

The destructive lesson Senate Republicans taught is that obstruction pays off. Yet they seem to have short memories. After Senate Democrats refused to attend votes on two of Mr. Trump's cabinet picks on Tuesday, Senator PAT TOOMEY of Pennsylvania said, ''We did not inflict this kind of obstructionism on President Obama.'' Even absent such dishonesty, any Democratic impulse to mimic the Republican blockade by filibustering Judge Gorsuch would be understandable. But Senate Democrats should be wary of stooping to the Republicans' level, especially because any such effort is likely to prove futile, since Republicans have the votes to simply eliminate the use of the filibuster. . . .

You know, I think about the fact that it has been bandied about with such lack of gravity that the Senate majority may change the 60-vote requirement for the Supreme Court. It is an immediate tactical victory to do so, but it may turn out to be a tactical mistake in the bit longer term. President Trump may have a single opportunity to put in place a Supreme Court Justice, and the next President, who might be a Democrat, might have many chances to nominate a Supreme Court Justice. So lowering the standard from the 60 votes designed to have a judge down the middle could lead to very different consequences depending on when various judges retire, who they are, and where they are in the spectrum—something that none of us can predict. So it is certainly a strategy that has simply just been asserted as this: Well, we will just do it.

Not only does it have high tactical risk, but it just is another blow of the ax, felling the trees in the forest of the integrity of the Court and the integrity of the Senate. It sets the stage for all these battles that are going to come over future nominees. The pure partisanship, short-term gains, grudges to be remedied rather than the advice and consent vision that was in our Constitution—the vision that Hamilton laid out which might have to be used rarely because it would deter Presidents from making nominations of people of unfit character.

I am disturbed about where we are headed. There are many policy issues that seem important at the time as they come to this floor, and they are important. They are issues related to the ability of workers to get fair wages for the value they bring to the development of the products they make. There are certainly key issues about our transportation infrastructure and key challenges on healthcare. But a single Supreme Court seat can change policy on a huge spectrum of issues with the Supreme Court as the final arbiter.

If we have a pivot point in which dark money—unlimited amounts of funds—are injected into the national campaigns forever more, well, we are never going to heal and get back to the point of the Senate being a great deliberative body, because that dark money will own this body and control this body, much as it does now after the entry of the Koch brothers into the national campaign contests.

That is the impact of a single Supreme Court decision. It has huge impact on who serves here and what decisions they make. It has huge impact on whether we are a ''we the people'' government or a government by and for the most powerful.

It might be interesting at this point to go back in time to sections of a speech by Senator Robert Byrd. Senator Byrd was still in the Senate when I came here in 2008. He was one of four Senators that were in the Senate when I was an intern in 1976.

He says in his speech, delivered December 15, 1998, in the Old Senate Chamber:

Clio being my favorite muse, let me begin this evening with a look backward over the well-traveled road of history. History always turns our faces backward, and this is as it should be, so that we might be better informed and prepared to exercise wisdom in dealing with future events.

''To be ignorant of what happened before you were born,'' said Cicero, ''is to remain always a child.''

So, for a little while, as we meet together in this hallowed place, let us turn our faces backward.

Look about you. We meet tonight in the Senate Chamber. Not the Chamber in which we transact our business daily now, but the Old Senate Chamber where our predecessors wrote the laws before the Civil War. Here, in this room, Daniel Webster—he moved about the Chamber from time to time—Daniel Webster orated, Henry Clay forged compromises, John C. Calhoun stood on principle. Here, Henry Foote of Mississippi pulled a pistol on Thomas Hart Benton of Missouri. Senator Benton ripped open his coat, and said, ''Let the assassin fire!'' And, ''Stand out of the way.'' Here the eccentric Virginia Senator John Randolph brought his hunting dogs into the Chamber, and the dashing Texas Senator Sam Houston sat over here to my right; he sat at his desk whittling wooden hearts for ladies in the gallery. Seated at his desk in the back row, Massachusetts Senator Charles Sumner was beaten violently over the head with a cane wielded by Representative Preston Brooks of South Carolina, who objected to Sumner's strongly abolitionist speeches and the vituperation that Sumner had heaped upon Brooks' uncle, Senator Butler of South Carolina.

The Senate first met here in 1810, but, because our British cousins chose to set fire to the Capitol during the War of 1812, Congress was forced to move into the Patent Office Building in downtown Washington, and later into a building known as the Brick Capitol, located on the present site of the Supreme Court Building. Hence, it was December 1819 before Senators were able to return to this restored and elegant Chamber. They met here for 40 years, and it was during that exhilarating period that the Senate experienced its ''Golden Age.''

Here, in this room, the Senate tried to deal with the emotional and destructive issue of slavery by passing the Missouri Compromise of 1820. That act drew a line across the United States and asserted that the peculiar institution of slavery should remain to the south of the line and not spread to the north. The Missouri Compromise also set the precedent that for every slave state admitted to the Union, a free state should be admitted as well, and vice versa. What this meant in practical political terms was that the North and the South would be exactly equal in voting strength in this Chamber, and that any settlement of the explosive issue of slavery would have to originate here in the Senate. As a result, the Nation's most talented and ambitious legislators began to leave the House of Representatives to take seats here in the Senate Chamber. Here, they fought to hold the Union together through the omnibus compromise of 1850, only to overturn these efforts by passing the fateful Kansas-Nebraska Act of 1854.

The Senators moved out of this room in 1859, on the eve of the Civil War. When they marched in procession from this Chamber to the current Chamber, they marked the last time that leaders of the North and South would march together. The next year, the South seceded, and Senators who had walked shoulder to shoulder here parted to become military officers and political leaders of the Union and of the Confederacy.

This old Chamber that they left behind is not just a smaller version of the current Chamber. Here, the center aisle divides the two parties, but there are an equal number of desks on either side—you will count 32 on one side and 32 on the other, not because the two parties were evenly divided, but because there was not room to move desks back and forth, depending on the size of the majority, as we do today. That meant that some members of the majority party had to sit with members of the minority. It did not matter to them. The two desks in the front row in the center aisle were not reserved for the majority and minority leaders as they are now, because there were no party leaders at that time. No Senator spoke for his party; every Senator spoke for himself. There were recognized leaders among the Senators, but only unofficially. Everyone knew, for example, that Henry Clay led the Whigs, but he would never claim that honor. Clay generally sat in the last row at the far end of the Chamber so he could talk to Senators as they came in to vote.

The Senate left this Chamber because it outgrew the space. When they first met here in 1810, there were 32 Senators. So many states were added over the next four decades

that when they left in 1859, there were 64 Senators. Yet, while the Senate increased in size, it was essentially the same institution that the Founders had created in the Constitution. Today, another century and four decades later, and having grown to 100 Senators, it is still essentially the same institution. The actors have changed; the issues have changed; but the Senate, which emerged from the Great Compromise of July 16, 1787, remains the great forum of the states. This is so, largely, because as a Nation, we were fortunate to have wise, cautious people draft and implement our Constitution. They were pragmatists rather than idealists. James Madison particularly had a shrewd view of human nature. He did not believe in man's perfectibility. He assumed that those who achieved power would always try to amass more power, and that political factions would always compete out of self-interest. In ''The Federalist Papers,'' Madison reasoned that ''in framing a government which is to be administered by men over men, the great difficulty lies in this: You must first enable the government to control the government; and, in the next place, oblige it to control itself.'' Madison and other Framers of the Constitution divided power so that no one person, no single branch of government could gain complete power. As Madison explained it: ''Ambition must be made to counteract ambition.''

However, ambition has not always counteracted ambition, as we saw in the enactment by Congress of the line-item veto in 1996. Just as the Roman Senate ceded its power over the purse to the Roman dictators, Sulla and Caesar, and to the later emperors, thus surrendering its power to check tyranny, so did the American Congress, the Senate included. By passing the Line-Item Veto Act the Congress surrendered its control over the purse—control which had been vested by the Founding Fathers here in this legislative branch.

This brings me to the first point I would like to leave you with this evening. It is this: The legislative branch must be eternally vigilant over the powers and authorities vested in it by the Constitution—eternally vigilant. This is vitally important to the security of our constitutional system of checks and balances and separation of power. George Washington in his Farewell Address of September 17, 1796, emphasized the importance of such vigilance: It is important likewise that the habits of thinking in a free country should inspire caution in those intrusted with its administration to confine themselves within their respective constitutional spheres, avoiding in the exercise of the powers of one department, to encroach upon one another. The spirit of encroachment tends to consolidate the powers of all the departments in one, and thus to create, whatever the form of government, a real despotism. . . . The necessity of reciprocal checks in the exercise of political power, by dividing and distributing it into different depositories, and constituting each the guardian of the public weal against invasions of the others, has been evinced by experiments ancient and modern. . . . To preserve them must be as necessary as to institute them.

Each Member of this body must be ever mindful of the fundamental duty to uphold the institutional prerogatives of the Senate if we are to preserve the vital balance which Washington so eloquently endorsed.

Senator Byrd continues:

During my 46 years in Congress, and particularly in more recent years, I have seen an inclination—I think I have—on the part of many legislators of both parties to regard a chief executive in a role more elevated than the Framers of the Constitution intended. We as legislators have a responsibility to work with the chief executive, but it is intended to be a two-way street. The Framers did not envision the office of President as having the attributes of royalty. We must recognize the heavy burden that any President bears, and wherever and whenever we can, we must cooperate with the chief executive in the interest of all of the people. But let us keep in mind Madison's admonition: ''Ambition must be made to counteract ambition.''

As Majority Leader in the Senate during the Carter years, I worked hard to help President Carter enact his programs, but I publicly stated that I was not ''the President's man''; I was a Senate man. For example, in July 1977, I opposed President Carter's plan to sell the AWACS (Airborne Warning and Control System) to Iran. Iran was then a military ally of the United States, but I was troubled over the potential security risks involved with the possibility of compromising highly sophisticated technology in this volatile region. I was concerned that the sale ran contrary to our national interests in maintaining a stable military balance and limited arms proliferation in the Middle East. Both Houses of Congress had to vote disapproval resolutions to stop the sale. I enlisted the support of then Republican Minority Leader Howard Baker. Senator Baker was someone who could rise above political party when he believed that the national interests required it, just as he did in the Panama Canal debates. The Carter administration chose to withdraw the sale of AWACS temporarily. Shortly afterwards, the Iranian revolution occurred and the Shah was replaced. Had that sale gone through as planned, those sophisticated aircraft would have fallen into the hands of an unfriendly government. As so often has happened in our history, individual courage and character again chartered our course.

I want to return to Senator Byrd's point about Republican Minority Leader Howard Baker. It says: ''Senator Baker was someone who could rise above political party when he believed the national interests required it, just as he did during the Panama Canal debates.'' The debate over those treaties was intense because they were a valuable asset controlled by the United States. Many thought of them as a possession of the United States, and we were turning them over to Panama after a long period of negotiations. But to be able to rise above partisanship to pursue a national interest—that is what we need now as we face the potential of this devastating change in Senate conduct over the selection of a Supreme Court nominee.

I hope we can find a way to rise above partisanship or political party and pursue the national interests because I have seen so little of the desire to strengthen our institutions. I am not optimistic, but I do think it is worth noting that it is possible. We could take this train off the tracks—because of the shadow hanging over the Presidency, because of the far-right views of Neil Gorsuch, because it is a stolen seat and we haven't remedied that situation with a plan.

Senator Robert Byrd continued:

This brings me to my second point. On the great issues, the Senate has always been blessed with Senators who were able to rise above party, and consider first and foremost the national interest. There are very worthy examples in Senate history.

When I came to the Senate in 1959, artists were at work painting five porthole portraits in the Senate reception room. The Senate had appointed a special Committee chaired by Senator John F. Kennedy to select the five most significant Senators in Senate history. This was no easy task, because there were many potential candidates.

In setting the criteria, the Committee looked to Senators who had stood firm for principle, who had not blown with the winds, and who made personal sacrifices for the national good. They were not saints, nor were they perfect men.

Daniel Webster's personal financial dealings left an eternal blot upon his record; yet, he deserved to have his portrait in the Senate reception room, not simply as a great orator, but as a man who sacrificed his own political standing by endorsing the compromise of 1850, which was deeply unpopular in his home State of Massachusetts, but which he realized was the best chance to hold the Union together.

In my almost 46 years in Congress, I have seen other courageous Senators.

I have already referred to the courage demonstrated by former Senator Howard Baker during the Panama Canal debates. Without Senator Baker's support, the Panama Canal Treaties would never have been approved by the Senate. We needed two-thirds; we were swimming uphill. The odds were against us. The killing of American servicemen in Panama would have gone on, but Senator Howard Baker threw his shoulder behind the wheel and helped to construct what he and I referred to as leadership amendments, amendments which protected U.S. interests in that region, and we both worked shoulder to shoulder against great odds, as indicated by the polls.

We did so because we believed, after careful study, that the treaties were in the best interests of the United States. There were people in my own State of West Virginia who still don't believe that. But I was convinced of it.

Howard Baker knew what my old majority leader, Mike Mansfield, and all students of the Senate's institutional role know.

Political polarization—too much emphasis on which side of the aisle one sits, is not now, and has never been, a good thing for the Senate. I am talking about politics when it becomes gamesmanship or when it becomes mean-spirited or when it becomes overly manipulative, simply to gain advantage.

I am not talking about honestly held views or differing political positions. Those things enrich our system. Americans have always loved a good debate. And that is what I believe and wish for now: More substantive and stimulating debate and less pure politics and imagery.

But I well understand history and its ebb and flow, and I well know that we live in an age of imagery. It is simply my wish that, sometime soon, the rising tide of imagery and partisanship will begin to ebb rather than to flow quite so freely.

Washington, in his farewell address, warned us against the ''baneful effects of the spirit of party'' when he said:

''. . . in governments purely elective, it is a spirit not to be encouraged. From their natural tendency, it is certain there will always be enough of that spirit for every salutary purpose. And there being constant danger of excess, the effort ought to be, by force of public opinion, to mitigate and assuage it. A fire not to be quenched, it demands a uniform vigilance to prevent its bursting into a flame, lest instead of warming, it should consume.''

So, I believe that the American people are more than tired of partisan warfare. I believe

they wish for less of it from the Congress, especially in the Senate, where more statesmanship and a longer view are still expected.

Declining participation in elections, and repeated public surveys which indicate weariness, distrust, and alienation within our system ought to serve as a harbinger to be ignored at our peril.

It must be a matter of concern to all of us that all too few Americans look to officeholders for inspiration in these troubled and turbulent times.

How can we attract the talent needed to serve in public office in future years if elected officials continue to be held in such low esteem?

Continuing to read Senator Byrd's speech in the Old Senate Chamber:

I would very much like to see a rekindling of basic faith in our leaders, and a renewal in politics and of public service. But the existence of inspiring leadership by public officials is fundamental to a shoring up of that faith.

In fact, I think the American people are in desperate need of some old-fashioned heroes. Now, it seems, today's heroes, if we want to loosely use the term, are merely celebrities—rock stars who spout deplorable messages, or sports figures who mass fortunes advertising baggy clothes at exorbitant prices.

I'm not talking about Sammy Sosa. I'm not talking about Mark McGuire. They were my heroes, too, as was Babe Ruth in 1927. Not much to look up to here, I say. Not much to build dreams on.

Look hard at the content of our popular culture. There is really nothing much to inspire and look up to. And regrettably there also is not much to counter the empty commercialism which is so prevalent today. It has become the norm.

Senator Byrd continued:

So where are we in all of this? What is our role? What part can we as Senators—authority figures, statesmen representing the people—play while we simultaneously endeavor to carry out our 200-year-old mandate, bequeathed to us by some of the most brilliant men of their age, or of any age before or since?

Well, we can show up for our roll call votes, carry out our committee assignments, issue the obligatory press releases, dutifully follow up on constituent requests, and answer our mail.

All of these are necessary and to a greater or lesser degree important.

But a reemphasis by the Senate on our strict institutional role is certainly something which I would like to see. It is a sobering and heavy responsibility all by itself, and its very weightiness tends to cool the overheated passions of political demagoguery. After all, that role is, in a constitutional sense, the reason we are here. The Framers expected a zealous defense of our powers to keep the tyrants at bay. But there is still another role—an intangible something—that we who are privileged to sit in this body, and indeed leaders in the private sector, as well as those who write and reflect upon the news, are called upon to play. I call it the duty beyond our duties.

The duty I am talking about is the duty to endeavor to inspire others and to demonstrate, through personal example, that public service of all types ought to be an honorable calling. Contrary to what many believe, it is absolutely the wrong place for the slick and the insincere.

Serving the public in a leadership role demands honesty, hard work, sacrifice, and dedication from those who dare to ask the people for such an awesome trust. Those who ask to shoulder that mantle also shoulder a much larger personal obligation than many of us may regularly contemplate.

Mr. Leader, we all have a clear responsibility to serve as role models to inspire our people, and particularly our young people, to be and to do their best.

On that score, we politicians, as a group, generally miss the mark.

Perhaps it's because power, whether it be the power of political office, or the power to run giant corporations, or the power to report and analyze events, is a very heady thing. It can lead to arrogance, self aggrandizement, disregard for playing by the rules, and contempt for the people who send us here. It can lead us to forget that we are servants, not masters.

Senator Byrd continued:

In the real world, exemplary personal conduct can sometimes achieve much more than any political agenda. Comity, courtesy, charitable treatment of even our political opposites, combined with a concerted effort to not just occupy our offices, but to bring honor to them, will do more to inspire our people and restore their faith in us, their leaders, than millions of dollars of 30-second spots or glitzy puff-pieces concocted by spinmeisters.

These are troubling times for our nation and our people on both the national and international fronts.

For our country to weather the rough seas ahead, we must use our most tempered judgment and seek out our best and most noble instincts.

Our example here can be a healing element—a balm to salve the trauma of distrust and disillusionment too long endured by good people. Let each of us follow his or her own conscience when it comes to issues, but as we do so, may we be ever mindful that our people watching us, and the people who sent us here can take us back home again.

Let us be aware of the sublimely uplifting which the example of simple dignity, decency, decorum, and dedication to duty can play in the life of a nation.

Senator Byrd had yet more words to share.

Let us also remember that even after two hundred years, the Senate is still the anchor of the Republic, the morning and evening star in the American constitutional constellation.

It has had its giants and its little men, its Websters and its Bilbos, its Calhouns and its McCarthys. It has been the stage of high drama, of comedy and tragedy, and its players have been the great and the near great, those who think they are great, and those who probably never will be great.

It has weathered the storms of adversity, withstood the barbs of cynics and the attacks of critics, and provided stability and strength to the nation during periods of civil strife and uncertainty, panics and depressions.

In war and in peace, it has been the sure refuge and protector of the rights of the state and of a political minority because great and courageous Senators have always been there to stay the course and keep the faith.

And it can do so again as long as we are ever blessed in this august body with those who hear the clear tones of the bell of duty, the Senate will continue to stand—the great forum of the constitutional American liberty!

That is a lot of good advice. As we sit here in these troubled times and ponder how we are going to rise above the passions and politics of the moment to restore the functionality of the Senate, that is the challenge we have. I believe Byrd—with his experience, with his articulate language—is calling to us from the past to say that we can do it. We can do better. We can rise above the situation in which we have put ourselves, the situation in which one team, for the first time in U.S. history, has stolen a Supreme Court seat to pack the Court.

To now be in this position of considering a Senate nomination at the exact moment that the person making the nomination and his team are under investigation for potentially traitorous conduct against the United States—but we don't have the answers yet.

(Mr. PAUL assumed the Chair.)

Here we are with a nominated judge who is way outside the mainstream, and we therefore have a challenge. It is exactly what the filibuster was designed for—to keep judges who are outside the judicial mainstream from being nominated. So that is a lot for us to wrestle with in the next few days.

The New Yorker did an analysis of where Neil Gorsuch lies. The subtitle says: ''Every sign suggests that he would be at least as conservative a judicial activist as Samuel Alito.'' This is a different source, but that is the same basic point, showing an analysis that places Neil Gorsuch to the right side of the right peak in terms of ideology.

Ruth Bader Ginsburg, the diminutive liberal colossus of the Supreme Court, has built a distinguished record as a Justice, but her legacy as a nominee is more dubious. In her confirmation hearing before the Senate Judiciary Committee, in 1993, she refused to answer most questions about how, if confirmed, she would rule. In an oft-quoted phrase, she vowed to give ''no hints, no forecasts, no previews.'' Nominees have invoked this stonewall ever since.

Last week, Neil Gorsuch, Donald Trump's choice to fill the seat of the late Antonin Scalia, proved an especially ardent follower of what has come to be known as the Ginsburg rule. Asked repeatedly by members of the committee about his views of such cases as Roe v. Wade and Citizens United, Gorsuch not only refused to answer, but went on to say that his feelings, if he had any, were of no consequence: ''It's not a matter of agreeing or disagreeing. It's a matter of it being the law, and my job is to apply and enforce the law.'' Gorsuch portrayed himself as a kind of judicial automaton, obligated to pay mindless obeisance to the Court's prior rulings.

This interpretation of the role of Supreme Court Justices is, to put it charitably, incorrect—they can and do overturn their earlier holdings. And Trump didn't nominate Gorsuch simply because he knows how to follow precedent. He nominated Gorsuch because his career resembles a lab experiment synthesizing every trend in modern conservative thought.

A ruggedly handsome Coloradan—this President cares a great deal about appearances—Gorsuch has an appealing manner and an impressive resume. He did well in good schools, held prestigious clerkships, worked at a fine law firm, took a senior post in the Department of Justice, and for the past decade has served in the Tenth Circuit Court of Appeals. From his boyhood days as a Republican Senate page to his decades of volunteer work for GOP candidates, Gorsuch has been

a strong party loyalist. (Like many Republican pols, he refers to the ''Democrat,'' rather than the Democratic, Party.)

His background also includes a dose of pro-corporate, deregulatory libertarianism, as reflected in his close relationship with the billionaire Philip Anschutz, a client turned mentor. A sampling of authoritarianism can be seen in Gorsuch's service in George W. Bush's Justice Department, where he helped craft a proposal for the treatment of detainees at Guantanamo. (The Supreme Court later ruled it unconstitutional.) There's social conservatism, too, evident in his one book, a critique of death-with-dignity laws and physician-assisted suicide. ''All human beings are intrinsically valuable,'' he wrote, ''and the intentional taking of human life by private persons is always wrong.'' It's easy to read the book as a coded attack on abortion rights.

To the extent that Gorsuch said anything of substance at his hearing, he put himself across as a mainstream figure. He said he participated in some 2,700 cases on the appeals court, and had voted with the majority in 99 percent of the them. This proves only that most cases are routine. (Even the Supreme Court issues unanimous rulings more than half the time.) The hard cases are the ones that matter, and it's reasonable to project how Gorsuch would vote in them. He would oppose abortion rights. (Trump promised to appoint a ''pro-life'' Justice.)

His predilection for employers over employees is such that it yielded a circuit-court opinion of almost Gothic cruelty. When subzero temperatures caused a truck driver's trailer brakes to freeze, he pulled over to the side of the road. After waiting three hours for help to arrive, he began to lose feeling in his extremities, so he unhitched the cab from the trailer and drove to safety. His employer fired him for abandoning company property. The majority in the case called the dismissal wrong, but Gorsuch said the driver was in the wrong.

As a Justice, Gorsuch would embrace a deregulation of campaign finance symbolized by the Citizens United decision. (He argued in an opinion that judges should evaluate limits on political contributions using the same tough standards that they apply to racial discrimination.)

His most famous Tenth Circuit decision had him taking a side in the culture wars. In Hobby Lobby Stores v. Sebelius, he ruled that a multibillion-dollar corporation could withhold federally guaranteed rights to birth control from thousands of female employees because of religious beliefs of the corporation's owners. (His position was upheld, 5–4, by the Supreme Court.)

In an embarrassing coincidence, on the second day of Gorsuch's testimony, the Court unanimously rejected one of his holdings in the Tenth Circuit, ruling that it denied adequate educational opportunities to students with disabilities.

Every sign suggests that Gorsuch would be at least as conservative a judicial activist as Samuel Alito.

It's also clear what Neil Gorsuch is not: Merrick Garland. Gorsuch's nomination is inextricable from its shameful political context. When Scalia died, more than 11 months remained in Barack Obama's Presidency, but Senate Republicans refused to give his nominee even a hearing. This departure from norms is all the more outrageous because a tactic was used to block a moderate; the Republicans denied Obama his constitutional right in order to trade a Justice who might have been less liberal than Stephen Breyer for one who might be as radical as Clarence Thomas.

Such a turnabout seems especially disturbing given that the FBI and other agencies are now investigating the very legitimacy of the Trump Presidency. Indeed, Chuck Schumer, the Democratic leader in the Senate, has called for a delay in the Gorsuch vote until there is some clarity about the Trump camp's ties to Russia. Last week, he also promised to lead a filibuster against Gorsuch's confirmation, but Republicans, in response, vowed to change the Senate rules to allow them to confirm the nominee by a simple majority.

The Supreme Court is, as political scientists like to say, a counter-majoritarian institution: The President and members of the Congress must answer to voters; the Justices, who serve for life, answer only to the commands of the Constitution. But, in doing so, it's their duty to speak for those who lack political power. The Trump era has already meant trouble for these people—the poor, the sick, the dissenters, immigrants—and Gorsuch, for all his intellectual distinction, has shown scant regard for their concerns. There's little reason to believe that he would as a Justice either.

The L.A. Times wrote the story titled ''Another judicial dirty trick from Senate Republicans.''

One of 2016's most spectacular examples of government dysfunction was the U.S. Senate's outrageous refusal to consider President Obama's nomination of Judge Merrick Garland to replace the late Antonin Scalia on the Supreme Court. That dereliction of duty by the Republican majority not only denied the sitting President his constitutional prerogative to fill vacancies in the court (so that the appointment would go instead to a hoped-for Republican successor.) It also prevented the court from resolving a handful of cases because of a 4–4 split and probably discouraged the justices from accepting other cases because of the possibility of a similar deadlock.

Less well known is the fact that the Senate also failed to hold 4 votes on 24 Obama nominees for lifetime federal judgeships who had been cleared by the Senate Judiciary Committee. They are among 59 aspiring judicial appointees whose nominations will expire when the 144th Congress fades into history this month.

Of the 24 nominees left stranded, three had been selected to federal appeals courts, two for U.S. Court of International Trade, and 19 for federal district courts. Some of the nominees have been waiting for Senate action for months, including U.S. district judge Lucy Haeran Koh, who was nominated to the San Francisco Bay's U.S. 9th Circuit Court of Appeals by Obama in February and recommended by the committee in September.

Sen. Patrick Leahy of Vermont, the ranking Democrat on the Judiciary Committee, accused Senate Republicans of setting a record for inaction on judicial nominations. Whereas the Democratic-controlled Senate confirmed 68 of George W. Bush's judicial nominees in the last two years of his presidency, only 22 nominees had been confirmed in the comparable period, Democrats note.

Republicans countered by citing other statistics, such as the fact that Obama has had more judicial nominees confirmed overall than Bush did in his two terms—329 to Bush's 326.

It is also true that the Democratic-controlled Senate ended its business in 2008 without having confirmed 26 Bush judicial nominees. Both parties have a history of refusing to act on highly qualified judicial nominees proposed by a president of the other party. Yet LEAHY's indictment is on point.

As with Senate Majority Leader MITCH MCCONNELL's stonewalling the Garland nomination, the failure to act on the lower court nominations is extreme and inexcusable.

As we noted above, it represents a partisan attempt to prevent Obama from exercising his right, as the Constitution puts it, to appoint judges by and with the advice and consent of the Senate. Sabotaging the exercise of that authority is offensive, not only because it undermines the Constitution but because it perpetuates a partisan grudge match over the Federal courts.

It would be utterly understandable if Senate Democrats now retaliated by making it difficult for President-Elect Donald Trump to win confirmation for his judicial nominees, especially those slotted for seats that Obama had every right to fill. Democrats will be especially reluctant to support a Trump nominee to the Supreme Court who likely would move the court to the right after the Republicans cheated Obama out of his opportunity to shape the Court in a more liberal direction by appointing Garland.

We recognize that the selection of Federal judges is an inherently political process, one of which both Presidents and Members of the Senate consider not only a nominee's technical qualifications and legal philosophy but also his or her ideology and party label. Even so, both parties need to eventually find a way back to a state of affairs in which a president, regardless of party, will receive prompt Senate consideration of his judicial nominees and an affirmative vote if they are well-qualified and not extreme in their philosophy (as we fear some Trump nominees might be). That should be the process, regardless of which party controls the Senate.

That is important because denying qualified judicial nominees a vote harms the federal judiciary—by denying it needed personnel and by telling lawyers who might aspire to the bench that their nominations could languish for months and ultimately perish not because of any failing on their part but because of partisan gamesmanship. And it isn't lawyers and judges who suffer. As White House Counsel W. Neil Eggleston told the Washington Post: ''There is a real impact on real people. There are people and companies who are not having their cases heard because there are no judges around.''

Trump can make a significant gesture toward restoring a measure of normality to the confirmation process. He should resubmit the names of the nominees who received bipartisan support in the Judiciary Committee but were left stranded because of the delaying tactics of his fellow Republicans.

This article is by Paul Gordon, titled ''Gorsuch and the Senate GOP's Alternative Universe.'' As I am reading these articles, let's not forget the basics. The basics are that 16 seats have become open on the Court in the history of the United States of America. Each and every time, up until last year, the Senate acted on the nominee put forward by the President. This is 9 of the 16. These are the nine that most resemble the situation we had with Merrick Garland, where the vacancy occurred before the election and the nomination occurred before the election.

For example, with Merrick Garland, the vacancy was in February and the nomination was in March. It is not so different from the first name on the

list, William Johnson, under Jefferson, when the vacancy was in January and the nomination was in March.

In each and every one of these cases—the cases that occurred where the vacancy was after the election and the nomination, obviously, was after the election as well—there were vacancies before the election but then the President waited to nominate until after the election, and those cases that are more like Merrick Garland, where both the vacancy and nomination occurred beforehand. In virtually every case—well, actually, in every case, in all 15 cases preceding the death of Antonin Scalia, the Senate acted.

Of those 15, they confirmed 11 and they defeated 4. That brought us to last year. As you can see on this chart, there is no action for the first time in U.S. history. It wasn't just an alternative way of doing things. It was a strategy to pack the Court, to try to send the nomination into the future in the hopes that there would be a conservative President who would nominate a conservative member of the Court.

I think most folks who are participating in this Court-packing scheme didn't really think it would work because it wouldn't have worked if Democrats won the Presidency or gained control of the Senate. They were considered at least to have a 50–50 shot at each. It was a surprise to everyone that suddenly we were where we are, but there was no decision even at that late date after the election that we could have had time to vet and vote on the nominee.

There is a whole set of these nominations that occurred after the election. It would have been totally possible after the November election to go ahead and still at that point consider Merrick Garland.

We wouldn't be in this deep, difficult hole right now had we done so, but we didn't. It was a deliberate strategy to pack the Court, which is now on the verge of succeeding if we go through with the vote this week and if the rules are changed.

If the rules aren't changed, then we will do what has been done over the decades. If your candidate doesn't have the votes, they get withdrawn. You change the candidate. You don't change the rules. The rule of 60 votes to close debate is designed to ensure that there is some bipartisan support for the nominees being put forward.

That is an important issue in terms of integrity of the Court. We have to resolve this stolen seat. One way we can do that is to say: Hey, we are going to put this on hold. We are going to put it on hold until the investigation is done with the President, and we are going to put it on hold until we have a second open seat. At that point, the President could propose Merrick Garland for one of the seats—the first seat where he should have been duly considered to begin with—and a judge for the second seat that is more to his liking, off of his list, if you will.

That would get us out of this quagmire. That would protect the credibility of the Senate, and it would protect the legitimacy of the Court.

This article, ''Gorsuch and the Senate GOP's Alternate Universe'' is by Paul Gordon.

In their efforts to get the ultra-conservative Neil Gorsuch onto the Supreme Court, Senate Republicans have moved beyond creating ''alternative facts.'' They've created an entire alternative universe.

If Gorsuch has earned so little bipartisan support that he cannot get the support of 60 Senators (as all six successful nominees of the past three presidents were able to do), Mitch McConnell is threatening to change the Senate rules to allow Supreme Court nominees to be confirmed by party-line majority votes. He and his colleagues portray Judge Gorsuch as mainstream, the absence of consultation as bipartisanship, and themselves as victims of unprecedented and unprincipled partisan obstruction from the Democrats. Republicans don't want to trigger the ''nuclear option,'' they claim through crocodile tears, but will have no choice but to do so if those mean Democrats insist on a 60-vote threshold.

Listening to them, you'd think they were the injured party. You'd never know that:

Republicans refused to even hold a hearing for Merrick Garland, President Obama's nominee for this very vacancy. To justify this unprecedented move, they claimed that it had been decades since any president was permitted to immediately fill a vacancy that arose in a presidential election year. They were careful not to mention the reason for that: It's rare for justices to die in office, and Justice Scalia was the only justice since 1950 to pass away during an election year. The refusal to even consider Judge Garland for the Supreme Court was unprecedented, a pure power play that drew wide condemnation.

Republicans insisted on a 60-vote threshold for three of President Obama's D.C. Circuit nominees, regardless of who they were, and even announced their demand before any nominations were made. They made it clear that they would block President Obama from filling any of the three vacancies on the 11-member court. (It was this extreme, unprecedented, unprincipled, and anti-democratic putsch that forced the Democrats to drop the 60-vote requirement for lower court nominees.)

Republicans defended the 60-vote margin during the Obama years as a safety mechanism to encourage presidents to consult with Senators of the opposing party and select judicial nominees with bipartisan support.

Conservatives claim that Democrats should support Gorsuch because his nomination was a culmination of the most transparent Supreme Court selection process in history, since Trump listed his potential nominations before the election.

In fact, this may have been the least transparent selection process in history, designed to lead to an extremist nominee rather than one who could garner bipartisan support.

Trump outsourced his Supreme Court selection to two of the most influential and well-funded right-wing ideological organizations in the country: The Federalist Society and the Heritage Foundation. Their selection process is the one that matters, and it was anything but transparent. What conversations did they have with Gorsuch that led them to include him on their list? When Sen. Blumenthal asked Gorsuch if he'd had any conversations about Rowe v. Wade or abortion in general with the Heritage Foundation, Gorsuch only said that no such conversations had occurred after the election (long after he'd been included on the list).

We have seen transparent and bipartisan selection processes before, and they looked nothing like what we have seen with the current nomination. For instance, President Clinton consulted closely with Orrin Hatch, then the ranking Republican on the Judiciary Committee, before making his two Supreme Court nominations. And that consultation was genuine: Based on Sen. Hatch's advice, Clinton passed over his original first choice, acting transparently and in a manner to encourage bipartisanship.

Republicans can posture as a principled, wounded party, forced to trigger the nuclear option, but that simply isn't reality. Since the death of Justice Scalia—indeed, since the moment President Obama took office—they have time and again escalated their partisan approach to the selection of judges. They held Obama circuit court nominees to a 60-vote threshold, then refused to allow votes at all on three D.C. Circuit vacancies regardless of who they were, and then refused to even hold a hearing for a Supreme Court nominee.

Senate Republicans did not enter this presidency with clean hands.

And while much of the GOP obstruction since 2009 had nothing to do with the nominees themselves, Democrats' opposition to Gorsuch is based on his record. Democrats have not said that they will oppose anyone who Trump nominates. In fact, as Senate Minority Leader Chuck Schumer has said numerous times, if Gorsuch cannot earn 60 votes, the solution is not to change the rules, but to change the nominee.

It's clear that Senate Republicans have created an alternative universe worthy of a Star Trek episode.

The Brennan Center for Justice published an article by Ciara Torres-Spelliscy titled ''Neil Gorsuch Understands Campaign Finance—And That's The Problem.''

It's Supreme Court prediction season with Tenth Circuit Judge Neil Gorsuch's nomination to fill the late Antonin Scalia's seat by President Trump (Or by whomever he outsourced the job. I'm looking at you, Federalist Society and Heritage Foundation.) Now everyone (including me) is poring over his past decisions to see what they could mean for the laws most in flux before the Supreme Court.

I've hunted for clues about what Gorsuch believes about money in politics. He presides at the Tenth Circuit, which covers Wyoming, Colorado, Utah, New Mexico, Kansas and Oklahoma. From a campaign finance perspective, most of the cases come from Colorado, which has tried to improve its campaign finance laws both through statute and by amending its state constitution.

Various aspects of the Colorado campaign finance laws have landed in the Tenth Circuit, which is not known for being a particularly hospitable venue for reformers. One 2014 case called Riddle v. Hickenlooper has a concurrence written by Gorsuch. So what can we learn from this opinion about his style of judging, his views of campaign finance reform, and what he might do if he is elevated to the Supreme Court?

Riddle v. Hickenlooper involved three candidates vying for a seat in the Colorado House of Representatives. There were two major party candidates and one write-in candidate. Individual contributions to the Republican and Democratic candidates were capped at $400, while the limit for the write-in candidate was $200. The reasoning for the law was that major party candidates (typically) have to go through a primary while minor and write-in candidates do not. The write-in candidates sued, claiming that the lower cap was a violation of contributors'

rights under the Fourteenth Amendment's equal protection clause. The district court dismissed the claim, saying that contribution restrictions were constitutional. But a three-judge Tenth Circuit panel (consisting of two Republicans and one Democrat) unanimously reversed the lower court, finding that the disparities in contribution limits were, indeed, a violation of the equal protection provision.

Gorsuch took the time to write a separate concurring opinion. What's encouraging about Gorsuch's opinion is that he accurately discusses complex campaign law, and this takes time and skill. Trust me, I've read plenty of lower court opinions in campaign finance cases where the lower court judges . . . can't follow the ins and outs of the exceptions to the exceptions in campaign finance law.

These details do not stump Gorsuch. He writes thoughtfully and incisively about how the Supreme Court has been unclear about exactly which level of scrutiny applies to equal protection objections to differential campaign contributions. In the end, he concludes that whether the standard is strict scrutiny or intermediate scrutiny, the Colorado law cannot justify allowing major party candidates to raise twice as much as minor party candidates.

Gorsuch also deserves credit for crafting his opinion narrowly and taking the time to note the limits of the case's holding. As he wrote, ''[h]aving said this much, it is worth pausing to emphasize what isn't said in these pages. Nothing in what I've suggested or what the court holds intimates that Colorado must adopt a per-election-cycle rather than a per-election approach to the regulation of campaign contributions.'' This limiting language appears to display sensitivity to the fact that Colorado has great latitude to choose its own means of election administration and campaign finance. This shows judicial incrementalism and a laudable degree of modesty.

But there are a few words from Gorsuch's opinion which should give campaign finance reformers pause. For one, he wrote, ''[n]o one before us disputes that the act of contributing to political campaigns implicates a 'basic constitutional freedom,' one lying 'at the foundation of a free society' and enjoying a significant relationship to the right to speak and associate, both expressly protected First Amendment activities.''

In other words, Gorsuch is maintaining the link between political money and free speech. He added, ''[t]he plaintiffs before us don't complain that Colorado's contribution limits violate their First Amendment rights because, say, the limits are too low for everyone.''

This last quote is ambiguous. It is not clear whether there is an inadvertently missing word ''they'' before ''say'' which would mean he was attributing this statement to the plaintiffs in the case. But the way it is written sounds like Gorsuch himself is saying that contributions are too low for everyone. The limits at issue were $400 for major party candidates and $200 for minor party and write-in candidates. If this is his true belief, it would demonstrate hostility to one of the basic pillars of campaign finance reform since Watergate: modest contribution limits.

So the good news is Gorsuch can navigate his way through a tangle of precedent—a basic qualification for a jurist. The bad news is he may harbor antipathy to regulating money in politics. If Gorsuch is elevated to the Supreme Court, he can help conservatives move the goal post to script scrutiny so that Colorado's and other States' attempts to temper the role of money in politics will be far more difficult to justify in court.

So let me return to where I started yesterday evening. We are facing three very significant problems. The first problem is that for the first time in history, we are considering a nominee for a stolen Supreme Court seat. That alone should be reason for everyone who cares about this institution to turn down this nominee and to convey to the President that the only legitimate nominee for this open seat is Merrick Garland, because as a Senate we have a stake in the legitimacy of our work and that of the Court. To confirm anyone but Merrick Garland to this seat confirms the Senate as the thief who took the seat for the first time in U.S. history and transported it to another President in an effort to pack the Court.

Furthermore, if there is a person confirmed to this seat other than Merrick Garland, it will cast a shadow over every 5-to-4 decision that individual participates in, in the years to come. It destroys the public credibility of the position. It makes the Supreme Court simply into a political body to which clever campaign tactics have delivered a majority for one ideological vision over another. Let's not enter into that position of destroying the credibility of the Senate process and the integrity of the Court in one fell swoop.

Second of all, we should not be considering a nominee from a President who is under investigation for conspiring with Russia to change the outcome of an election. We don't know where those investigations will lead, but what we do know is that this places a big cloud over the legitimacy of him holding the office. Let's clear up that cloud. Let's answer the questions that were raised when, a week ago Monday, FBI Director Comey came to Capitol Hill to talk to the House and say: Yes, those investigations are underway.

We know what the diabolical practices of the Russians were. We know they created fake news. We know they had a team of roughly 1,000 people sending out contrived social media messages to comment on the events of the day, to make it look like American citizens were commenting and to make one candidate look very good and the other candidate look very bad.

Finally, this is an extreme nominee from the far right who does not believe in the fundamental vision of ''we the people'' and makes decision after decision through tortured, twisted, contrived arguments to find for the powerful over the people. That is unacceptable.

The PRESIDING OFFICER (Mr. COTTON). Under the previous order, the time until 11 a.m. will be controlled by the majority.

RECOGNITION OF THE MAJORITY LEADER

The majority leader is recognized.

Mr. MCCONNELL. Mr. President, Neil Gorsuch is eminently qualified to serve on the Supreme Court. He was confirmed by the Senate to his Federal judgeship with no Democratic opposition at all—none. He participated there in more than 2,700 cases, writing in the majority 99 percent of the time and enjoying unanimous support 97 percent of the time.

He received the highest possible rating from a group the Democratic leader called the ''gold standard'' for evaluating judicial nominations—the American Bar Association. He has earned high praise from across the political spectrum, with Democrats and Republicans alike attesting to his qualifications, his fairness, and his impartiality. He also enjoys the support of a bipartisan majority of the Senate. Yet the Democratic leadership is now determined to block his confirmation with the first successful partisan filibuster of a Supreme Court nominee in American history. They proved that in yesterday's procedural vote.

Judge Neil Gorsuch is one of the most impressive nominees we have ever seen. If a widely appraised nominee like this can't get past a Democratic filibuster, then no nominee of a Republican President can. Democrats would filibuster Ruth Bader Ginsburg if President Trump nominated her. We all know why. The Democrats are bowing to hard-left special interests who can't get over the results of the election and thus are demanding complete Democratic opposition to everything—everything this President touches. As the Washington Post just reported, the Democratic leader ''seemed ready to endorse every argument activists made.''

It seems some Democrats made up their minds long ago to oppose whomever this President nominated. The Democratic leader himself indicated as much before Judge Gorsuch was even selected. He even mused on a liberal talk show about holding the seat open indefinitely. So it doesn't really matter whom this President nominates; a Democratic minority is determined to successfully launch an unprecedented partisan filibuster regardless. Perhaps that is why Democrats still have yet to put forward a cogent rationale to oppose him—not that that would be easy, you understand.

As a longtime Democratic board member of the left-leaning American Constitution Society put it, ''The Senate should confirm [Judge Gorsuch] because there is no principled reason to vote no.''

Well, if there is no principled reason to vote no on this nomination, then there is certainly no principled reason to prevent the Senate from taking a vote on it at all. But that is just what a partisan Democratic minority of the Senate is threatening to do—for the first time in the nearly 230-year history of the Senate.

Let me remind colleagues of something I said yesterday. When President Clinton nominated Justice Ginsburg, I voted to confirm her. When President Clinton nominated Justice Breyer, I voted to confirm him. When President Obama nominated Justice Sotomayor and Justice Kagan, I led my party in