both the left and the right. I do not see how that will ensure a fair and impartial judiciary. In fact, I think the opposite will be true, and Americans will no longer be confident of equal protection under the law.

When then-Majority Leader Reid changed the Senate rules in 2013, there was no one more critical of his actions than the Senator who stands before you now. I fought hard to convince my colleagues of the damage those changes would do to this body. I did so because I love the Senate. I revere this institution and the place it holds in our system of government. It is imperative that we have a functioning Senate where the rights of the minority are protected, regardless of which party is in power at the time.

While what happened in 2013 was infuriating to our side, it was also heartbreaking. It was heartbreaking because it seemed to me that the uniqueness of the Senate had been irreparably damaged and, along with it, any hope of restoring meaningful bipartisanship.

The unprecedented nature of the Democrats' filibuster of a Supreme Court nominee has left me in the difficult position of having to decide whether to support finishing what Harry Reid and the Democrats started in 2013 and eliminate the 60-vote threshold on Supreme Court nominations. I find myself torn between protecting the traditions and practices of the Senate and the importance of having a full complement of Justices on the U.S. Supreme Court.

I am left with no choice. I will vote to change the rules and allow Judge Gorsuch to be confirmed by a simple majority. I will do so with great reluctance, not because I have any doubts that Judge Gorsuch will be an excellent Justice but because of the further—and perhaps irreparable—damage that it will do to the Senate.

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

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant legislative clerk proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

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

PRAYER

Pursuant to rule IV, paragraph 2, the hour of 12 noon having arrived, the Senate having been in continuous session since yesterday, the Senate will suspend for a prayer from the Senate Chaplain.

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

God of the Heavens, who guides through the boundless skies the certain flight of water fowl, we need Your guidance in our legislative branch today.

Give our lawmakers the wisdom to do what is right. May they not put party before country or partisanship before patriotism. Lord, be for them a shield so that they will have confidence in Your wisdom, even during this challenging season. Give them a reverential awe that seeks to please You in all they think, say, and do.

Lord, surround the families and victims of the Syrian chemical attacks with Your unfailing love.

We pray in Your merciful Name. Amen.

The PRESIDING OFFICER (Mrs. ERNST). The Senator from Maryland.

Mr. CARDIN. Madam President, I take this time to explain to the people of Maryland and our Nation my views on Judge Neil Gorsuch to be an Associate Justice of the Supreme Court of the United States.

There is no more important responsibility that a Member of the Senate has than the advice and consent of an Associate Justice of the Supreme Court of the United States. Of the many important responsibilities we have, this is one of the most important responsibilities.

I have taken this on to try to understand as much as I can about Judge Gorsuch, to understand the dynamics of what his membership on the Supreme Court would mean, because I recognize it is not just an appointment for this term of Congress. This is a lifetime appointment, and it is very possible that he, if confirmed, will serve on the Supreme Court for a generation. So his impact on the workings of the Supreme Court is something that is extremely important to each Member of the Senate.

I think many of us are looking for an Associate Justice who can bring about more consensus on the Supreme Court, who can try to deal with some of the great divisions in our Nation in a way that represents the values of our Constitution, that will allow our Nation to move forward in a united way.

We also recognize that the Senate must give an independent evaluation of a Supreme Court Justice. This is not because the President of your party nominated someone to the Supreme Court, whether you support or oppose; it is the independent review process that each Senator undertakes to determine whether the nominee should get our support.

So what I look at is someone who would be a mainstream jurist, who is sensitive to the civil rights of all Americans, who would understand the importance of our Constitution, which has been a Constitution that has expanded rights and not one that we would look at ways to move in the wrong direction on extending constitutional protections—that is, move backward rather than forward.

First, let me start by stating that I am troubled by the process President Trump followed in nominating Neil Gorsuch to the Supreme Court. During his campaign, he talked about a litmus test for Supreme Court Justices, that they must be pro-life in the mold of Justice Scalia. The list that was submitted to him in which Judge Gorsuch was a part was proposed by the Heritage Foundation and the Federalist Society. That is not a good way to start a process of bringing in a consensus nominee to the Supreme Court of the United States.

To my knowledge, there was no consultation with any Democrats prior to the nomination being made. The reason why consultation with all Members of the Senate is important is that if you engage in real understanding as to what the Senate—and we represent the entire country—is looking for in a Supreme Court Justice, you have a much better chance of ending up with a nominee who is going to enjoy broader support, bipartisan support, real bipartisan support in the U.S. Senate, and then the 60-vote threshold does not become a hurdle.

There is a reason we have the rules we do in the Senate, and the 60-vote concept on a controversial nominee is so that we don't end up with an extreme candidate who would end up being on the Supreme Court of the United States, that there must be that process that would generate 60 votes.

So despite my concern about the process that was initiated by President Trump in the nomination, I have tried to look at all of the opportunities to understand Judge Gorsuch's record and his likely actions as a member of the Supreme Court. I took the time to meet with Judge Gorsuch, and I found that interview, that process, to be extremely helpful in understanding his judicial philosophy. I monitored the hearings that took place in the Senate Judiciary Committee, and I found that testimony to be helpful. I reviewed the testimony of experts who had submitted both verbal and written comments in regard to Judge Gorsuch. I have reviewed his extensive legal record. We do have an extensive legal record that I am going to comment about that went into my own process in determining whether I can support him.

I came to the conclusion that I could not support Judge Gorsuch to be an Associate Justice on the Supreme Court of the United States because he is not a mainstream candidate. I am concerned that he would put corporate interests before individual rights. The strength of our Constitution is in the individual. Individual rights should be paramount to special interests or corporate interests.

I saw in his legal opinions a hostility toward environmental interests, women's health, marginalized students with disabilities, and other vulnerable types of individuals, that had me greatly concerned.

I was particularly concerned about whether he could separate his political views from his legal views. This is an extremely important point. We want our Justices on the Supreme Court not to be influenced by the politics around us.

In the legislative branch, it is perfectly legitimate to take into consideration political views. The President of the United States is nominated by a political party; that is understood. But the Supreme Court—the Justices on the Supreme Court need to leave their political views outside of their responsibilities. I was deeply troubled, after reading the opinions of Judge Gorsuch and his writings, that he would not be able to separate his political views from his legal views.

I was concerned about whether he would truly be an independent check on the Presidency. We know that President Trump is testing the constitutional reach of his office. We have seen that in some of the Executive orders he has issued. And I have little confidence by his responses at the hearings that Judge Gorsuch would be an independent voice toward the President of the United States.

Let me cite some examples to fill in the blanks on what I am saying. Judge Gorsuch challenges the Chevron deference doctrine. In the Gutierrez case, he indicates that judges rather than agencies should be basically administering our laws. The longstanding deference to agencies to interpret our law has allowed agencies to carry out their mission. Without that authority, it is extremely challenging to see how an agency can carry out the missions of laws we have passed. Judge Gorsuch raises questions as to whether that document is still relevant.

Let me make it clear. Who benefits from the Chevron doctrine? The Chevron doctrine has allowed agencies to protect workers' rights, protect our environment, protect consumers, food safety, and the list goes on and on. Each of our States has examples to show how important the Chevron doctrine has been. In my State of Maryland, the Chesapeake Bay is critically important to Maryland's economy, critically important to the character of our State we have in Maryland and our future. The protection of the public health of the Chesapeake Bay has very much been advanced by the Chevron deference doctrine.

Judge Gorsuch wrote: ''Chevron appears to qualify as a violation of the separation of powers.'' Then he argued that its ''primary rationale is no more than a fiction.'' Looking at what he has said about a fundamental document that is there to protect our environment, protect workers, protect public health, versus what Justice Scalia once explained—and I quote from Justice Scalia: ''In the long run, Chevron will endure and be given its full scope, because it more accurately reflects the reality of government and thus more adequately serves its needs.'' In the Gutierrez case, Judge Gorsuch was showing a more activist conservative agenda than Justice Scalia.

Let me move on to Citizens United. We have talked about Citizens United probably more than any Supreme Court case on the Senate floor. We know it is a 5-to-4 Supreme Court decision. We know it opened up the floodgates for dark money, allowing corporations to have constitutional rights which we thought were only for individuals.

In the Riddle case, Judge Gorsuch announced a strict scrutiny standard to political contribution limits that quite frankly would make the Citizens United case even worse and would gut campaign finance law limits. I think each of us should be concerned about that decision.

Let me move on to the Trans-American Trucking case. Here, Judge Gorsuch was in dissent. He was in the minority. What he basically said was that a truckdriver had to sacrifice his life in order to protect his job; otherwise, he could be fired. What I mean by that, as I think many of our colleagues know, but let me say to those who might not be totally familiar, the truckdriver found himself abandoned because the brakes of his trailer were frozen in subzero temperatures. He contacted his dispatcher for help and after several hours recognized that his life was in danger because of hypothermia. He did not have adequate heat in his cab.

He had one of three choices. He could try to maneuver the cab and the trailer with frozen brakes, maybe costing himself his life or the lives of other people on the road; he could remain as he was instructed by the dispatcher and perhaps freeze to death; or he could do what I think any reasonable person would do: He disconnected the cab, took care of making sure he was safe, warmed himself up, and returned to the trailer in order to complete the mission. For that, he was fired, and Judge Gorsuch said that was acceptable. That is an extreme opinion and one that gives us great pause as to how Judge Gorsuch will act on the Supreme Court of the United States.

Let me talk about NLRB v. Community Health Services, wherein Judge Gorsuch was again in the dissent. It had to do with backpay for workers. In this opinion, he showed real hostility to workers and unions—something that had me greatly concerned.

Another case that received a great deal of publicity in this body was Hobby Lobby. I raise it here for one principal reason. What the Court was saying and Judge Gorsuch was agreeing with was that the religious protection that is provided under the Constitution—that it is more important for a company to be able to exercise that religious freedom than the employees. Once again, one of my principal concerns is whether Judge Gorsuch will protect the rights of individuals or whether he will side on behalf of business. Clearly, in the Hobby Lobby case, he decided on business, to the detriment of women's rights, the LGBT community, and others.

In the Planned Parenthood Association of Utah case, he showed a direct hostility to Planned Parenthood. Quite frankly, this case is very difficult to understand because Judge Gorsuch would have allowed the Governor to cut off funds even though the case had been settled and the parties had not asked to have the case retried.

We talk about activism and that we do not want to see activist judges. To me, that demonstrates that Judge Gorsuch, indeed, will be an activist judge in his trying to move a particular political agenda.

In Endrew F. v. Douglas County School District, which is a case that came in during the confirmation hearing process, we had a severely autistic child, and Judge Gorsuch was responsible for the absurd reading of the de minimis benefit of defending against private placement. The Supreme Court rightly rejected that logic on an 8-to-0 decision.

Justice Roberts wrote the opinion about the IDEA law in that there are protections for disabled students in our school system. Judge Gorsuch would turn back the progress that we have made on civil rights and on constitutional protection.

As I mentioned earlier, I am very concerned about whether Judge Gorsuch can keep his political views separate from what he says—how he acts as a potential Justice on the Supreme Court of the United States. I go to a 2005 National Review article in which he wrote:

> American liberals have become addicted to the courtroom, relying on judges and lawyers rather than elected leaders and the ballot box as the primary means of effecting their social agenda. . . . This overweening addiction to the courtroom as the place to debate social policy is bad for the country and bad for the judiciary.

I mention that particular case and quote Judge Gorsuch because we do not want a judge to side with either being a liberal or a conservative. We do not want a judge to say: I have a responsibility to promote an agenda as a judge. We do not want a judge to be able to take a political view and take that onto the bench. Whether it is a person whom we agree with politically or disagree with politically, we want to have an independent judiciary. This National Review article causes me grave concern as to whether Judge Gorsuch can, in fact, be that neutral person on the Court.

Judge Gorsuch appears to be an activist judge and will become an activist judge and will turn back progress to protect individual constitutional rights. That is something that gives me grave concern. It is the reason I cannot support this nominee to be an Associate Justice of the U.S. Supreme Court.

Let me turn to process for one moment, because it looks as though, sometime tomorrow, we are going to be called upon to vote on a cloture motion. I want to comment on that if I might.

As I said earlier, to me, Judge Gorsuch is not mainstream. He will put

corporate interests above individual interests. He shows a hostility toward the environment and women, health, women's health, et cetera. He has political views that, I think, he would not be able to differentiate, and he would not be an independent check and balance in our political system.

For all of those reasons, it seems appropriate to me that this is why we have a 60-vote threshold—to make sure that we do not take extreme nominees and allow them to be confirmed by a partisan vote. We want to have a broader consensus, and Judge Gorsuch did not earn that broader consensus.

There are additional considerations here, and this goes back a few years with the Republican leadership. What they did to President Obama's judicial nominations must be underscored because this is not in a vacuum. We did not get to this place in a vacuum from what has happened already but in our going back to President Obama when his district court nominees were delayed—in some cases, totally blocked—and required a record number of cloture motions to have been filed and acted upon—a record number. We had, as I understand, more clotures and more filibusters of President Obama's nominees by Republicans than we did in the entire history of the U.S. Senate.

There has been a direct effort by the Republican leadership to filibuster judicial nominees. That is wrong. It should not have been done. Yes, there are reasons for some but not for the record numbers that were done. You should be able to allow for the comity.

Quite frankly, in 2013, the Republican leader told President Obama: No more DC Circuit Court judges. Let me repeat that. In 2013—this was the first year of the President's term—the Republican leader said: No more DC Circuit Court judges. We had 3 vacancies in the DC Circuit Court; 8 of the 11 had been filled, and 3 were vacant, and it had nothing to do with the nominees. They just said that they were not going to consider any of them, and they used a filibuster to block any filling of these positions.

First, I quote from Chief Judge Henry Edwards when he talked about the DC Circuit:

> The review of a large, multi-party, difficult administrative appeal is the stable judicial work of the DC Circuit. This long distinguishes the work of the DC Circuit from the work of other circuits. It also explains why it is impossible to compare the work of the DC Circuit with other circuits by simply referring to the raw data of case filings.

Chief Justice Roberts noted that about two-thirds of the cases before the DC Circuit involve the Federal Government in some civil capacity. That figure is less than 25 percent nationwide. He also described the DC Circuit's unique character as a court with the special responsibility to review legal challenges of the conduct of the national government.

My point is clear. This is the second most important court in our land, and in the first year of President Obama's term, the Republicans announced that they would filibuster any attempt to put any judge on this circuit. Then we had the ultimate filibuster by the Republicans, and that was Merrick Garland.

In February 2016, after Justice Scalia's death, a nominee was submitted to us by President Obama who was acknowledged to be mainstream, acknowledged to be well qualified, acknowledged to be a consensus nominee, and he got the ultimate filibuster. Most of the Republicans in the Senate would not meet with him. He did not have a committee hearing or a committee vote, and he did not have a floor vote. That was the ultimate filibuster. It was wrong, particularly when we know that he would have received 60 votes.

So you cannot compare Judge Gorsuch with Judge Garland because, unlike Judge Garland, Judge Gorsuch does not share the same evaluation of being able to be a consensus, mainstream candidate who would receive a 60-vote threshold.

For all of these reasons, if the majority leader is going to pursue the cloture vote on the Gorsuch nomination, I will not vote in favor of cloture. I would hope that we would be able to return to the comity that is important in the U.S. Senate, but we recognize there are times in which you should have a 60-vote threshold. When the President of the United States goes outside of the norms and the process has already been employed by the Republicans, I urge my colleagues to rethink the course that we are on.

I yield the floor.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. SCHATZ. Madam President, when our country was founded, corporations were on the minds of no one. They are not mentioned in the Constitution or the Bill of Rights, and when the topic finally came up to the Supreme Court, Chief Justice John Marshall called corporations a ''mere creature of the law.''

People have certain unalienable rights. Corporations do not. We established corporate personhood so that companies could raise capital and enter into contracts, but nobody ever thought that this term that was used—''personhood''—actually meant that corporations were people. They are not. It is not complicated. Corporations do not eat. They do not sleep. They do not worry about their children or their elderly parents. They do not get sick. They do not retire, and they do not have complex motivations. In fact, under the law, they have only one motivation, which is to maximize profits.

Any logical person knows that corporations are not people, but in Judge Gorsuch's America, they are.

There is no doubt that he is a very smart person, but he, actually, had a hand in creating this theory that corporations have the same rights as human beings—that they are, in fact, people. We are supposed to pretend that this premise is not insane, but it is crazy, and it is hurting our democracy. For the past several decades, we have increasingly limited people's rights in favor of corporate rights.

Now Republicans want us to confirm a judge who says that corporations have religious rights. Judge Gorsuch was a part of the Hobby Lobby decision that went before the Supreme Court, in which the Tenth Circuit decided that corporate personhood extends to First Amendment religious rights, and because the corporation itself—not just the people who own it—has been granted those rights by judges like Neil Gorsuch, the rights of corporations now usurp the health and the rights of American citizens. That is the problem with Judge Gorsuch's worldview.

It is not just that he is a conservative; it is that he actually thinks that corporate entities have the very same rights as American citizens—rights, by the way, that do not come with the same responsibilities that we all have as American citizens. Yet this judge wants to confer more rights onto corporations when we are already past the tipping point as a society when corporations have more power than people.

We are in the absurd position of asking: How far are these corporate rights going to extend? They have been given First Amendment rights. They have been given Fourth Amendment rights. Do they get the right to vote next? Do they get the right to keep and bear arms? How many more constitutional rights are we going to give to corporations before we say that enough is enough? We are already well beyond the point at which corporate interests beat out the individual, whether it is at the polls or in the workplace.

There are a lot of other things about Judge Gorsuch's worldview that I object to, but, at my core, I think I might be able to get around some of those things in knowing that the Constitution requires the Senate to advise and consent, not agree with. Yet his worldview regarding corporations as people embodies everything that is going wrong with our country and with the Court. By the way, it is probably fair to say that almost every nominee whom we have seen this year embodies this worldview.

Time and again, Democrats in the Senate have raised the alarm about this administration's nominees, and we have been overruled. What is the result? You have Cabinet Secretaries destroying American diplomacy. You have Secretaries trying to ban Muslims from entering the United States. You have an EPA Administrator, Scott Pruitt, leaving a dangerous product on the market that has been proven by his own scientists to hurt children. Why? Because they prioritize corporate rights over people's rights.

The problem is this: Cabinet Secretaries come and go; Supreme Court

Justices do not. Let me put it this way: This administration's Cabinet is like a date. It is a really bad date, but at least it comes to an end. A Supreme Court Justice on the other hand is not a bad date; it is a marriage. It is a lifetime appointment that will have an impact on generations of Americans.

The fact that he is out of the mainstream is absolutely essential for us to consider. The fact that he thinks corporations are people is, in my mind, disqualifying—so disqualifying that I will vote no on cloture, and I will vote no on final confirmation if it comes to that, which brings me to the question of cloture.

When the Senate votes on cloture, the question before the Senate is, Is it the sense of the Senate that debate should be brought to a close?

For the Supreme Court nominee, we have rules, and those rules say that you need 60 Senators to end debate—not 59, not 51, not 57. There are 59 Senators who do not get to decide when to end debate; 60 do. If you cannot get 60 votes to end debate, you do not have cloture.

After 2013, there is only one position—one appointed position that retains that 60-vote threshold, and that is the U.S. Supreme Court. That is for a very straightforward reason. It is that we have decided as a body that the Supreme Court needs to have bipartisan support; that if a person cannot get 60 votes, you change the nominee, you do not change the rules.

We have decided that this position—this institution, the Court itself, the highest Court in the land—should be beyond our partisan disputes and differences. That is the foundation of the U.S. Senate. It is the way this place works. Without this rule, the reality will be grim. Without this rule, if you are a Member of the minority party, the President's nominees don't have to listen to you, meet with you, think about you. Without this rule, advice and consent is rendered meaningless for whichever party is out of power.

I have been here now 5 years, about 4½ years. Even in my short time here, the door swings both ways in Washington. Remember that today, this week, for the Republicans it might feel satisfying to use power maximally, to use the greatest authority possible under the U.S. Constitution, but without this rule, the Senate itself will be undermined by its own Members. I have never seen any legislative body endeavor to diminish its own authority, and that is what is going to happen this week.

We can argue about how we got here. Was it in 1987 when the Senate rejected Robert Bork? Was it in 2013 when Leader Reid responded to historic obstructionism by eliminating most filibusters on nominees? Was it last year when Merrick Garland was not even given a hearing? We all have our talking points. At the end of the day, both sides own some of this mess. I am a Democrat. I think it is 80/20. Republicans will think it is 80/20 on the other side. The general public may think it is 60/40 or 50/50. I am not sure that matters anymore. The question of who is at fault is not the most important question. The question is, What do we do next? Will the Senate undermine its own authority and strengthen the power of partisanship?

I would say this to my Republican colleagues: Think about what you are going to do next. Think about what this is going to mean the next time you are in the minority party, because it will not be Senators DUCKWORTH and CORTEZ MASTO who can't even get a meeting with a Supreme Court nominee, it will be you.

This is about the future of the Senate and the Supreme Court. The nuclear option will mean nominees for the Supreme Court will not have to meet with or consider minority opinions. It will mean that the Senate's habit of being slow—sometimes maddeningly so, but we know it is in the best interests of the country—will go away for this appointment. That tradition allows the center to hold, and it will be undermined.

To my Republican colleagues, I am not asking you not to do this. I am asking you to take your time. In the world's greatest deliberative body, there is no reason to rush this decision. I am asking you to wait. I am asking you to take a few weeks before you decide to change the Senate forever. Take your time. This is probably one of the most consequential decisions you are going to make in the U.S. Senate because it is about the Senate itself. This is worth talking about. This is worth deliberating over. It is worth thinking over. Go home. Talk to your constituents. If you want to do this, you can do this anytime you want. You can do this the Monday we get back from our spring work period. For goodness' sake, there is no reason not to think about it for a little bit longer.

All we need are three Members of the Republican Party to go to their leader, publicly or privately, and say: We are not with you on nuclear yet; give us some time to try to save this important aspect of the Senate. Otherwise, you will make both the Supreme Court and the world's greatest deliberative body more extreme and more divided, and I believe you will regret it.

I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. MARKEY. Madam President, I rise to speak in opposition to the nomination of Judge Neil Gorsuch to serve as an Associate Justice of the U.S. Supreme Court.

Let me begin by making clear my view that the vacancy on the Supreme Court created by the death of Justice Antonin Scalia was President Obama's to fill. In an act of unprecedented obstructionism that makes a filibuster pale in comparison, Senate Republicans broke with longstanding Senate tradition and refused to hold a vote or even a hearing on President Obama's nominee, Judge Merrick Garland.

As we now consider President Trump's nominee, Judge Neil Gorsuch, we cannot ignore or forget this hyperpartisan action. We also cannot ignore how President Trump came to nominate Judge Gorsuch. President Trump went to two of the most partisan, conservative organizations he could find—the Koch brothers-supported Heritage Foundation and the rightwing Federalist Society—and said to them: Who do you want on the Supreme Court? They compiled their dream team of 21 ultraconservative candidates. President Trump looked at the names on that list and asked himself which judge could pass the rightwing litmus tests he had articulated during the campaign. His choice was Judge Neil Gorsuch.

On the campaign trail, Candidate Donald Trump made clear that he was pro-life and would appoint pro-life judges to the Supreme Court. In one interview, he was asked about his pro-life position as follows:

> So, how important is that issue to you now? When President Trump picks Supreme Court justices, would there be a litmus test?

Trump responded:

> It is. It is.

During the second Presidential debate, Candidate Trump doubled down on this issue. He was asked specifically about Roe v. Wade, the longstanding Supreme Court precedent establishing a woman's right to choose. The question to Candidate Trump was ''Do you want the court, including the justices that you will name, to overturn Roe v. Wade?''

Trump responded that he would ''be appointing pro-life judges,'' adding, ''Well, if we put another two or perhaps three justices on . . . that will happen,'' meaning Roe v. Wade will be overturned.

We know from Donald Trump's own words that he had a litmus test for Supreme Court nominees on a woman's right to choose. That litmus test is that he will appoint only pro-life Justices who are committed to overturning Roe v. Wade.

What about a litmus test on guns? During the Presidential campaign, Candidate Trump repeatedly emphasized his pro-gun views, which are in lockstep with the National Rifle Association. He was asked about a litmus test for the Second Amendment—specifically, the precedent established in the 2008 Supreme Court case of District of Columbia v. Heller. In Heller, the Justices ruled 5 to 4 that a commonsense Washington, DC, law banning handguns and requiring other firearms to be stored unloaded or locked violated the Second Amendment.

Candidate Trump was asked: ''Will you make upholding the Heller decision a litmus test in Supreme Court nominees?''

Trump answered: ''Yes, I would.''

The followup question: ''So you won't nominate somebody to the Supreme

Court unless they agree with Scalia on the Heller decision?''

Trump responded: ''Correct.''

We know from Donald Trump's own words that he had a litmus test for Supreme Court nominees on guns—his judges must support the National Rifle Association's agenda and its unreasonable and dangerously broad view of the Second Amendment.

From that list of 21 names provided to him by the Heritage Foundation and the Federalist Society, President Trump chose Judge Neil Gorsuch, apparently convinced that he was the man who would pass these litmus tests.

The Senate Judiciary Committee's hearings on Judge Gorsuch were an opportunity for him to dispel doubts about his independence that President Trump's selection process had raised. Unfortunately, Judge Gorsuch did nothing to address these concerns. In fact, his appearance before the Judiciary Committee raised more questions than it answered because Judge Gorsuch was positively sphinx-like before the Senators questioning him.

For example, when repeatedly asked about something as elementary as his judicial philosophy, Judge Gorsuch refused to answer. He declined to say whether he agreed with the Roe v. Wade decision, the District of Columbia v. Heller decision, or other controversial decisions, such as Citizens United, which opened the floodgates to unrestricted, secret money in electoral campaigns, or even the decision in Bush v. Gore, which decided the 2000 Presidential election.

Judge Gorsuch also refused to respond whether he agreed with other Supreme Court precedents on the right to privacy, the right to counsel in criminal proceedings, voting rights, or same-sex marriage. Contrast that to Justice Sonia Sotomayor, who during her confirmation hearing explained that she fully understood the individual right to bear arms that the Supreme Court recognized in the Heller decision. Contrast that with Justice Anthony Kennedy, who during his hearing praised the Supreme Court's landmark 1963 decision in Gideon v. Wainwright, which established the right to counsel in criminal cases. Even contrast Judge Gorsuch with Chief Justice John Roberts, who at his hearing affirmed that privacy is part of the liberty interest protected by the due process clause. Instead, at his hearing, Judge Gorsuch repeatedly parroted that critical Supreme Court decisions were precedents of the Court ''that he would follow unless and until they are overturned.'' He shed no light on what he felt about those precedents or whether he would be inclined or disinclined to vote to overturn them.

Only after considerable prodding did Judge Gorsuch eventually agree that the decision in Brown v. Board of Education, which did away with the doctrine of separate but equal and desegregated schools across our Nation, was correct. Having to pry out of Judge Gorsuch that concession does not inspire confidence in him.

His performance at the hearings left us with many troubling things that we don't know about Judge Gorsuch, but equally troubling about Judge Gorsuch are the things we do know about him.

We do know that Judge Gorsuch authored the Hobby Lobby decision in which he ruled that corporations are people whose religious beliefs are more important than the reproductive rights and health of women.

We do know that Judge Gorsuch has questioned the judicial doctrine of what is known as Chevron deference. That is the rule from the Supreme Court case of Chevron v. The Natural Resources Defense Council under which judges must generally defer to expert administrative agency interpretations of laws they are charged with administering. In a speech last year, Judge Gorsuch attacked the modern administrative state that has developed under Chevron, saying that it ''poses a grave threat to our values of personal liberty.''

What Judge Gorsuch is saying is not some abstract legal theorizing; he is attacking the fundamental rules that protect the health, safety, and welfare of all Americans that are put in place by agencies like the Environmental Protection Agency, the Food and Drug Administration, and the Securities and Exchange Commission. In the decades since Chevron was decided, it has been instrumental in courts upholding these agency rules that ensure that our air and drinking water are clean; rules that ensure that drugs and medicines are safe and effective; rules that ensure that our automobiles, workplaces, food, medicine, and children's toys are not dangerous; and rules that ensure our financial markets are fair and offer investors a level playing field.

Even Justice Scalia supported Chevron deference. But Judge Gorsuch has signaled that he would overturn it and instead allow pro-corporate judges to substitute their policy views for those of the agency experts. If threatening the destruction of the regulations that protect the health, safety, and welfare of Americans sounds familiar, it should. It is straight out of the alt-right, Steve Bannon playbook. And it is a fringe position that is not worthy of representation on our Nation's highest Court.

We also know that the Supreme Court just rejected Judge Gorsuch's harsh reasoning in a disabilities rights case. A few years ago, Judge Gorsuch wrote an opinion for the Tenth Circuit Court of Appeals in a case under the Individuals with Disabilities Education Act. That opinion held that schools across the country must provide educational benefits to students with disabilities that must be ''merely more than de minimis.'' But just last week, in an IDEA case, all eight Supreme Court Justices disagreed with Judge Gorsuch. Chief Justice Roberts wrote that the IDEA—the Individuals with Disabilities Education Act—is ''markedly more demanding than the 'merely more than de minimis' test applied by the Tenth Circuit,'' and added that Judge Gorsuch's approach would effectively strip many disabled students of their right to an education.

We also know that Judge Gorsuch has consistently ruled against employees in cases involving claims of unsafe workplaces and sex discrimination, and he has repeatedly sided with insurance companies that sought to deny disability benefits to employees.

Here is something else we know. If the first 75 days of the Trump administration are a preview of coming attractions, one thing could not be more clear: The U.S. Supreme Court's rule defending the Constitution will be tested as never before: conflicts of interest, emoluments, Muslim bans, rescinding LGBTQ protections. The list of constitutional rights the Trump administration is violating gets longer every single day.

Now more than ever, we need a Supreme Court Justice who is independent and not beholden to ideology. Now more than ever, we need a Justice who will stand up for the rights of all Americans against big corporate interests. A Justice who would be to the right of Antonin Scalia on the issue of Chevron deference is not a mainstream Justice. A Justice who would be to the right of Samuel Alito and Clarence Thomas by a substantial margin—as professors from Michigan State University and the University of Wisconsin concluded after examining Judge Gorsuch's opinions on the Tenth Circuit, and the Supreme Court's decisions reviewing them—is not someone within the mainstream of American jurisprudence.

Everything we have seen so far—from Donald Trump's judicial litmus tests, to the visible hand of rightwing interest groups in the selection process, to Judge Gorsuch's reticence before the Judiciary Committee, to his pro-corporate bias in cases he has decided—leads me to the conclusion that he will be neither a Justice for all Americans, nor one on whom we can count to stand up to President Trump.

We cannot let Judge Neil Gorsuch become the crucial ninth vote on the Supreme Court. One Justice matters. The list of recent 5-to-4 decisions coming out of the Supreme Court shows that one judge's vote can forever alter history. Just remember that Bush v. Gore, Citizens United, District of Columbia v. Heller, and the Affordable Care Act, were all decided by 5-to-4 votes.

I will, therefore, oppose Judge Gorsuch's nomination to the Supreme Court and support the filibuster, and I urge my colleagues to do so, as well. If Judge Gorsuch cannot muster 60 votes, the problem is not with the process, it is with the nominee. If Judge Gorsuch cannot get to the 60 votes historically required for confirmation to the Nation's highest Court, I urge President Trump to withdraw his nomination and

consult with a wide range of Senators—legal scholars and others who past Presidents have sought out before making a Supreme Court nomination—and put before us someone in the mold of Merrick Garland, who can enjoy bipartisan support and be within the broad mainstream of American jurisprudential history.

Otherwise, the consequences of forcing Judge Gorsuch's nomination through will fall squarely on the shoulders of President Trump and his Republican allies in the Senate, if they decide to exercise the nuclear option, forever changing the history of the United States Senate.

I urge a ''no'' vote on Judge Gorsuch.

I yield back to the Chair.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. KAINE. Madam President, I also rise to discuss the Supreme Court nomination of Judge Neil Gorsuch of the Tenth Circuit. I take this very seriously.

I started my legal career as an appellate law clerk in the Eleventh Circuit Court of Appeals in the South, working for a spectacular jurist, Judge R. Lanier Anderson III. He taught me about what it was to be an appellate judge: humility, not making a case a personal cause, and careful application of the law.

I then went on to practice law in the State and Federal courts, the trial and appeal courts, including the U.S. Supreme Court as a civil rights lawyer for 17 years. When I was the Governor of Virginia, I twice had to appoint members of the Virginia Supreme Court and grappled with qualifications to serve on an appellate bench.

Maybe most especially, my wife was a judge. So with a judge in the house—she was a judge for 8 years—I spent a lot of time also thinking about the characteristics of a good judge. Judge Gorsuch has some strong characteristics, educational background, and professional experience. These are characteristics that are worthy of respect. But I have decided that there is an additional characteristic that is very important—judicial philosophy.

And as I have looked at Judge Gorsuch's judicial philosophy, I have concluded that I cannot support him. I have read scores of his opinions. I met with him in my office. I am so proud of my colleagues—Democrat and Republican—because in 2 months, Judge Gorsuch has enjoyed something that Merrick Garland didn't get in 10 months. Judge Gorsuch has had meetings with virtually all Senators. He has had a Judiciary Committee hearing, a Judiciary Committee vote. He is getting floor debate, and he will get a floor vote. Those are the five things he is entitled to, and he is getting all of them.

Judge Merrick Garland was nominated. Republicans wouldn't meet with him. They wouldn't hold a hearing. They wouldn't do a committee vote. They wouldn't do a floor debate, and he wouldn't get a floor vote. He got nothing he was entitled to as a sitting judge on the DC Circuit. Also, the Senate didn't exercise the advice and consent function that is part of our constitutional job description.

Let's talk about Judge Gorsuch's record. Many of my colleagues have been speaking for hours. I want to focus on one aspect of his record. Judge Gorsuch was promoted by President Trump as not an activist. And Judge Gorsuch has written with scorn about activist judges, saying that judges who impose their moral or social preferences on others can't square their position with the Constitution. He even scorned activists in courts, saying that liberals are addicted to the courtroom, as if somehow bringing constitutional claims in courts is wrong.

So I think it is fair to look at Judge Gorsuch by his own standard. Is he an activist or not? The best definition of a nonactivist judge was the definition given by Chief Justice Roberts during his confirmation hearing. He said: I am an umpire. I have no platform. I have no agenda. I call balls and strikes without fear of any party, without favor to any party. I am an umpire.

I looked at Judge Gorsuch's record and talked about a set of cases that determine whether that is, in fact, true. And I have concluded that Judge Gorsuch is definitely an activist. He may not be an activist on everything. I don't think you have to be an activist on everything to be an activist, but I do believe he is an activist. It shows through in no area clearer than it shows through in cases dealing with women's ability to make their own decisions about their own healthcare, especially reproductive health.

There is a famous 2013 case that has been much discussed during these discussions and in committee—Hobby Lobby v. Burwell. It was a challenge brought up in the Tenth Circuit, where Judge Gorsuch now sits. The legal question before the circuit court was pretty straightforward. Under a congressional act designed to protect religious liberty—the Religious Freedom Restoration Act—a company claimed that its religious views conflicted with the contraception mandate of the Affordable Care Act. And, if so, could they gain protection for their own position?

It was sort of a controversial case because the notion that a company could assert religious views was sort of a novel theory at the time. But, with Judge Gorsuch as part of the majority, the majority in the Tenth Circuit ruled that, yes, a company could assert a claim based on sincerely held religious beliefs under the RFR statute. And they could assert that their beliefs conflicted with the ACA's contraception mandate.

Then, in 2014, that ruling was upheld by the U.S. Supreme Court—a controversial decision, but the majority agreed with the position that, yes, a company could assert that its sincerely held religious beliefs were, in fact, in conflict with the statute, and they could get relief from the statute for doing that. Judge Gorsuch joined the ruling, which was later affirmed by the Supreme Court.

What interested me about Judge Gorsuch in the case was that he chose to write a concurring opinion. Most folks know what they are. If you are not a lawyer—when a panel writes an opinion, there is a majority opinion that is the ruling in the case. If a judge feels that it is wrong, a judge will write a dissenting opinion saying: No, you are wrong, and here is why. You are dutybound, if you think the majority is wrong, to write a dissent.

A concurring opinion is about as voluntary as it gets. A concurring opinion is: I agree with the outcome, but I have a point I want to make. I can't convince the rest of the majority to go along with me, and I want to make this point.

So Judge Gorsuch wrote a concurring opinion that was incredibly revealing. It was voluntary, and that shows you a little about a person's philosophy. It was incredibly revealing for two reasons. First, Judge Gorsuch had already joined the majority opinion to say that the employer, Hobby Lobby, could challenge the employer mandate of the ACA. He had already joined that, but he stretched beyond to rule that, in addition, the individuals owning the company should be able to sue to challenge the employer mandate, even though they weren't the employer.

The ACA mandate applied only to the employer of the female employees. The employer was Hobby Lobby. But even though the mandate didn't even apply to the Green family who owned the company, Judge Gorsuch said that they should be able to challenge the ACA anyway.

I practiced law for a long time. There is a complete separation—there is supposed to be—between individuals and an incorporated company. You can run a business and not incorporate it, and in that case, there is no separation. But as soon as you incorporate it, you get all kinds of protections, especially that you can protect your own personal assets from liability for corporate actions. The Green family had done that. But Judge Gorsuch said: Even though you voluntarily separated yourself from the company and even though the mandate doesn't apply to you, you should be able to file a lawsuit to challenge the mandate. I found that to be highly unusual—a great stretch. I asked him about it when we talked. He did not give me a satisfactory answer.

Here was the thing about the Hobby Lobby case that was more notable. It was the way Judge Gorsuch described what the case was about. The majority opinion in the Tenth Circuit and the majority opinion in the Supreme Court described the case the same way. They basically said that the owners of this company claimed that the contraception mandate was contrary to their religious views. That is what the case

was about. The clash was between the owners' religious beliefs and the statute. That is what the case was about. But Judge Gorsuch described the case completely differently. Here are his words:

All of us face the problem of complicity. All must answer . . . to what degree we are willing to be involved in the wrongdoing of others.

He didn't describe it as a clash between the owners and the statute. He described it as a case about whether you are willing to be complicit in the wrongdoing of others. That wasn't the legal issue at all. In the Gorsuch concurring opinion in Hobby Lobby, what does that phrase mean—''the wrongdoing of others''? Who are the others he is talking about? He is talking about female employees of Hobby Lobby, who wish to make their own choice from among available and lawful methods of contraception. Those are the others he is referring to.

He is also referring to that choice as ''wrongdoing.'' That is a completely editorial comment that is not drawn from what a lawyer said or what a plaintiff said. That is his own characterization of the case, and it is completely irrelevant and, I would argue, insulting. It is a completely irrelevant and insulting reference to something that was not part of the case at all, except Judge Gorsuch decided to inject it into the case.

Somebody who looks at women making their own choice of contraception as the ''wrongdoing of others''—that is very telling.

The PRESIDING OFFICER. The time for the Democrats has expired.

The majority whip.

Mr. CORNYN. Madam President, if my friend the Senator from Virginia needs a minute or two to wrap up, I know it caught him midthought. I am happy to yield to him for that purpose.

Mr. KAINE. I would appreciate it. I will take 2 minutes and finish quickly.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. KAINE. I thank my friend, the deputy majority leader, the senior Senator from Texas.

I draw support for my conclusion about that language from two other cases that Judge Gorsuch was involved in in the Tenth Circuit, one case dealing with contraception and one case dealing with an effort to defund Planned Parenthood in Utah.

In both cases, the Tenth Circuit reached a decision that was pro-women's health, pro-women's health access. The parties were fine with the decisions. They were going back to the district court and they did not apply to have the cases reheard en banc. But in both those cases, Judge Gorsuch took the highly unusual step of trying to get the appeals heard anyway, even though the parties did not want to have them reheard. In my experience as an appellate advocate, that is virtually unheard of. I have talked to litigators in the Tenth Circuit, and they have said the same thing. It is highly rare. The fact that Judge Gorsuch would do it in two cases—both of which involved women's health access—is important.

Finally, in his confirmation hearing, Judge Gorsuch was asked directly whether he agreed with the decision in Griswold v. Connecticut, the 1965 decision that said married couples could not be criminalized for using contraception.

He said it was a precedent worthy of respect like all precedents, but he would not agree—he would not say he agreed with the case. Chief Justice Roberts, during his confirmation, said he agreed with the case. Justice Thomas said: I have no quarrel with Griswold. Justice Alito said he agreed with the case. But Judge Gorsuch would not.

Griswold v. Connecticut has been used repeatedly in the last 50 years to basically create a body of constitutional precedent that says the relationships of people—romantic, inmate relationships—should be free from the intrusion of Big Government. You can't criminalize somebody because of their relationship. I think somebody who is not willing to commit to that principle is somebody who has not earned my vote.

With that, I yield the floor. Again, I thank my friend from Texas.

The PRESIDING OFFICER (Mr. YOUNG). The majority whip.

Mr. CORNYN. Mr. President, Members of the Senate have been coming to the floor talking about the important vote we will be casting tomorrow and then again on Friday which will result in the confirmation of Judge Neil Gorsuch as the next Associate Justice of the Supreme Court.

Having served on the Senate Judiciary Committee since I first came to the Senate, it has been my honor to participate in the confirmation hearings in the committee on now five Supreme Court Justices, Judge Gorsuch being the latest.

What I have been struck by when it comes to Judge Gorsuch is how much our friends across the aisle—who cast a party-line vote in the Judiciary Committee against the judge on his confirmation—how much they have been struggling to come up with even one intellectually honest argument against the nominee, in spite of his obvious and tremendous qualifications and bipartisan support.

For example, I heard our colleague from Virginia, my friend Senator KAINE, criticize a couple of decisions that the judge made. What he left out is that Judge Gorsuch participated in 2,700 panel decisions on the Tenth Circuit Court of Appeals during his 10-year tenure there. Ninety-seven percent of them were unanimous. As the Presiding Officer knows, that means that each of the judges—three judges on the typical panel or in an en banc—basically that everyone agreed, whether they were nominated by a Republican or Democrat. So this whole idea of cherry-picking the judge's judicial report to try to find some straw, to grasp at some straw with which to disagree with his confirmation is pretty striking to me.

But last night we saw the latest act of desperation to try to justify the unprecedented partisan filibuster of Judge Gorsuch. For example, it was reported that a handful of lines in a 2006 book were borrowed from other sources. Well, the timing of this says it all. This book has been published for 10 years. The only reason for this allegation is a last-minute attempt to try to make something, really anything stick to tarnish the character of someone who will soon serve on the Supreme Court.

This kind of baseless attack is not only disingenuous, it is transparent and it has absolutely no merit. Even the author of the main article allegedly plagiarized has rejected that characterization. So this is the person who wrote the article who Judge Gorsuch was claimed to have plagiarized, in essence. Well, the author of the main article rejected the characterization of plagiarization. She said that under the circumstances, it would have been awkward and difficult for Judge Gorsuch to have used different language.

Other academic experts have also rejected the claim and made clear that the preferred methodology for facts is to cite original sources, which is exactly what Judge Gorsuch did. Talk about an eleventh-hour baseless attack.

The bottom line is this: Instead of evaluating the judge based on his qualifications, the sterling reputation he has among people across the political spectrum, our friends across the aisle are determined to attempt the first successful partisan filibuster of a Supreme Court nominee. That is disappointing, but it is also destined for failure.

Yesterday, I pointed out how we actually got here. Back during President George W. Bush's first term, Senator SCHUMER and others laid the groundwork and then executed a strategy for unprecedented obstruction of judicial nominees. That was in response to the election of the last Republican President. This is in response to the election of a new Republican President. I think for him, following the election of the current one, obstruction of a perfectly qualified nominee to the Supreme Court is just the next step. It actually represents the ultimate escalation of this weaponization of the filibuster used in judicial confirmations.

As I have said before, based on the merits of the nominee, the justifications for opposing Judge Gorsuch are paper thin. Our colleagues across the aisle unanimously supported Judge Gorsuch when he was confirmed to the Tenth Circuit Court of Appeals just 10 years ago. He got everybody's vote. It was a voice vote. This was to the Tenth Circuit Court of Appeals, a lifetime tenured position. All of them agreed he

should be confirmed. Well, that includes then-Senator Obama, Senator Clinton, and Senator Biden. So I would ask you, what has changed in the last 10 years that now cause them to reach deep into their bag of tricks and to filibuster this nominee for the Supreme Court? Well, it is not his track record as a judge, that is for sure. As I mentioned, of the 2,700 cases he has participated in, 97 percent were unanimous—97 percent.

One recent analysis put him in the middle of the circuit ideologically speaking, and for a decade he has done good, fair work as a judge on the Tenth Circuit—really outstanding work, to be honest. That should tell you something about this judge and this man, but it should also tell you something about the opponents of this nominee, many of whom, like Barack Obama and Hillary Clinton, as I mentioned, supported his nomination just 10 years ago. The only thing that has changed, the only thing that explains the radical shift of Democrats in opposition to this good judge, is that now President Trump is in the White House.

I honestly believe that every excuse they have come up with to engage in this unprecedented filibuster is completely without merit. What they are really upset about is what happened on November 8. I don't believe—if they won't confirm Judge Gorsuch, they will never vote to confirm any nominee of this President, period.

What we are talking about and all we are asking for is an up-or-down vote. If they want to vote against the nomination, that is their right, but, as everybody knows, to get to that, we first have to get 60 votes to close off debate and then get to the majority up-or-down vote. But they will not even allow us to move to a vote.

I hope our Democratic friends who are obstructing will reconsider. I believe there are four Democrats who are going to join all of the Republicans in voting to confirm this nominee, so he will enjoy bipartisan support, as he should.

This judge is a faithful interpreter of the law. He believes in an independent judiciary and enjoys support across the ideological spectrum. He will be confirmed as the next Supreme Court justice, but it is up to our Democratic friends to determine just how that occurs.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant legislative clerk proceeded to call the roll.

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

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

Mr. ROUNDS. Mr. President, I rise today to offer my strong support for Judge Neil Gorsuch, President Trump's pick to replace Justice Scalia on the Supreme Court. On Monday, his nomination passed out of the Senate Judiciary Committee, and we expect to confirm him before the end of the week. I am tremendously excited to have him on the bench. Throughout his career, Judge Gorsuch has proven time and again that he is exceptionally qualified to serve on the Supreme Court. He has been praised and endorsed by members on both sides of the political spectrum, the left and the right.

As a judge on the Tenth Circuit Court of Appeals since 2006, after being unanimously confirmed by this body, Judge Gorsuch has proven he is as mainstream as they come. In fact, of the 800-plus opinions that he has written for the Tenth Circuit, less than 2 percent, or 14 opinions, have drawn dissents from his colleagues. In other words, 98 percent of his opinions have been unanimous. That is even more remarkable when you look at the makeup of the Tenth Circuit—12 of the judges were appointed by Democratic Presidents, while only 5 were appointed by Republicans. It does not get much more mainstream than that.

During his confirmation hearings last month, Judge Gorsuch again proved that he is eminently qualified to serve on the bench of our Nation's highest Court. Let me share some of his quotes from his hearing:

''The Constitution doesn't change. The world around us changes.''

''I don't believe in litmus tests for judges.''

''If I'm confirmed, I will do all my powers permit, to be a faithful servant to the Constitution and laws of this great nation.''

One last quote:

As a judge now for more than a decade, I've watched my colleagues spend long days worrying over cases. Sometimes the answers we reach aren't the ones we personally prefer. Sometimes the answers follow us home at night and keep us up. But the answers we reach are always the ones we believe the law requires. And for all its imperfections, I believe that the rule of law in this nation truly is a wonder. And that it's no wonder that it's the envy of the world.

It is clear that Judge Gorsuch is qualified to serve on the Supreme Court and that he understands the role of a judge: to interpret the law, not to make the law.

To that end, I would also like to highlight Judge Gorsuch's in-depth understanding of the separation of powers doctrine, and I am optimistic that Judge Gorsuch will carefully scrutinize cases and controversies that involve executive overreach.

The past 8 years have seen an unprecedented expansion of the administrative state. This has come at the expense of both the legislative branch, whose purpose is to make laws, and the judicial branch, whose purpose is to interpret the law and decide on a specific law's constitutionality. But more concerning than that, it has also come at the expense of American citizens.

Overreach by executive agencies has led to regulatory expansion that results in the Federal Government involving itself in nearly every facet of our lives on a daily basis. This expansion has been permitted, in part, to U.S. courts relying on the flawed Chevron doctrine to show great deference to agency interpretation of the laws passed by Congress. As a result, agencies have been able to broadly interpret laws in a way that has allowed them to expand their regulatory authority far beyond what Congress ever intended.

Fortunately, U.S. judges are beginning to question the Chevron doctrine and its impact on the separation of powers doctrine relied on by our Founding Fathers and affirmed in the U.S. Constitution. Judge Gorsuch is one of those judges. Regarding Chevron, Judge Gorsuch has written that Chevron seems to be no less than a judge-made doctrine for the abdication of the judicial duty that prevents American courts from fulfilling their constitutionally delegated duty—interpreting what the law actually intends.

Careful judicial scrutiny and interpretation of the law will allow courts to rein in agency actions that are inconsistent with the law and beyond the bounds of what Congress intended.

In his concurrence in Gutierrez-Brizuela v. Lynch, Gorsuch argues that the Administrative Procedure Act vests in the courts the responsibility to ''interpret statutory provisions and overturn agency action inconsistent with those provisions'' and questions the idea that Congress ''intended to delegate away its legislative power to executive agencies.''

Judge Gorsuch takes his duty as a judge with the utmost seriousness. He seeks to interpret the law the way Congress intended, not in the way an executive agency wants it to be.

His careful and academic approach to judicial review is well-suited for our Nation's highest Court. I am confident that Judge Gorsuch will respect and enforce the constitutionally affirmed separation of powers doctrine that in recent years has been diluted by executive agencies broadly interpreting laws, resulting in regulatory overreach. This has minimized the role of Congress in the legislative process. As a result, the voices of American citizens have also been minimized and replaced with unelected Washington bureaucrats who think they know what is best for all Americans.

Judge Gorsuch is one of the finest judges our Nation has to offer. The knowledge and careful deliberation he will bring to the Court will result in rulings that reflect justice, fairness, and an interpretation of what the law is and what Congress intended it to be, not what administrative agencies want it to be.

Despite impeccable credentials, we are in a situation today because of a precedent set in November 2013 by then-Majority Leader Harry Reid and his conference. Former Leader Reid's use of a so-called nuclear option in 2013 meant the Senate could reinterpret its rules via simple-majority vote. Former

Leader Reid accomplished this by challenging a ruling of the Chair with regard to the number of votes needed to end debate on certain nominations.

The Standing Rules of the Senate require the support of a supermajority, or 67 percent of Senators, to change the rules. To challenge the ruling of the Chair, Reid only needed a majority vote to overturn the Presiding Officer's correct interpretation of the written rule. In other words, Former Leader Reid broke the rules to change the rules and, by default, broke precedent to change the precedent moving forward as well.

Based on this new precedent set by Former Leader Reid, the Senate is likely to confirm Judge Gorsuch to the Supreme Court by a simple-majority vote. Because the Senate has always operated on precedent, we will likely follow this new precedent to approve Judge Gorsuch's nomination later this week.

When he is confirmed, Judge Gorsuch will make a tremendous addition to the Supreme Court. His lifetime of defending the Constitution and applying the law as it was written provides clear evidence that he has the aptitude for this lifetime appointment to our Nation's highest Court.

Mr. President, I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant legislative clerk proceeded to call the roll.

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

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

Mrs. FISCHER. Mr. President, I rise today in support of the nomination of Judge Neil Gorsuch to be our next U.S. Supreme Court Justice. Article II, Section 2 of the Constitution entrusts Members of the Senate with a responsibility vital to our democracy: providing advice and consent on the President's Supreme Court nominees.

The significance of this task cannot be overstated, and it is one that I take very seriously. Days after President Trump nominated Judge Gorsuch to fill the late Justice Scalia's seat on the Supreme Court, I shared the qualities that I wanted to see in a Justice. They included a strong commitment to the rule of law, first-rate credentials, and a solid judicial record. The time has come to determine whether the nominee meets those criteria.

After meeting personally with Judge Gorsuch, watching his confirmation hearing, and evaluating his background and legal record, I believe that answer is a resounding ''yes.'' Judge Gorsuch's credentials are exemplary. He has an extraordinary resume and a brilliant mind. For 10 years he has served on the U.S. Court of Appeals for the Tenth Circuit. The Senate confirmed him to this position by unanimous consent in 2006. No rollcall vote was needed because all 100 Members supported the nomination.

To date, Judge Gorsuch has decided 2,700 cases, and 99 percent of the time he sided with the majority. He has offered opinions in 800 of those cases, and 98 percent of the decisions in these cases were unanimous. This record tells us something important: He is well within the mainstream. It is why he has gained the respect of prominent attorneys on the right and on the left. Several of my Democratic colleagues have made similar observations.

Senator DONNELLY recently said that he would support Judge Gorsuch's nomination because ''he is a qualified jurist who will base his decisions on his understanding of the law.''

Similarly, Senator HEITKAMP indicated that she would vote to confirm Judge Gorsuch because ''he has a record as a balanced, meticulous, and well-respected jurist who understands the rule of law.''

My colleagues have it right. A Justice should be a follower of the Constitution, not a trailblazer or an advocate. His or her role is to interpret and uphold the laws, not to create them. Judge Gorsuch understands this. He takes it seriously.

In his confirmation hearing before the Senate Judiciary Committee, Gorsuch emphasized the importance of judicial precedent and a fair approach to the law. He said: ''I come here with no agenda but one . . . to be as good and faithful a judge as I know how to be.'' Similarly, in a private meeting in my office, the judge promised to ''follow the law, wherever it may lead.''

Judge Gorsuch recognizes the pivotal but limited role that the Constitution allows judges to play in our Republic. During long days of testimony at his confirmation hearing, he made clear that while legislators answer to the people, a judge answers only to the law. At the same time, Judge Gorsuch said that he interprets his judicial oath as a promise to ''make sure that every person, poor or rich, mighty or meek, gets equal protection of the law.''

''Equality before the law'' is Nebraska's State motto. It represents the commitment Nebraskans made 150 years ago when we entered the Union. That principle remains strong today. It should be a cornerstone of judicial philosophy for any nominee to our Nation's highest Court. It is why the words ''Equal Justice Under Law'' are engraved on the front of the Supreme Court. Judge Gorsuch is dedicated to this principle. He is committed to applying the laws neutrally, equally, and fairly to all people.

Some of my Democratic colleagues are saying that Judge Gorsuch is out of the mainstream. They argue that he will not look out for the little guy. They are prepared to take the unprecedented and extreme step of filibustering this nomination. This would be the first successful totally partisan filibuster of a Supreme Court Justice in the history of the U.S. Senate.

Let me share some of the facts about this institution. In our country's history, no Cabinet nominees have ever been denied their appointments by a Senate filibuster. In our country's history, no Federal district court judges have ever been denied their seats by a Senate filibuster.

The first time a filibuster was used to defeat a judicial nomination was for a Circuit Court judge, Miguel Estrada, who was nominated by President George W. Bush to the U.S. Court of Appeals for the DC Circuit.

In our country's history, the filibuster has been invoked only to block a Supreme Court nominee. It was in 1968, and a threatened bipartisan filibuster by Republicans and Democrats prevented Associate Justice Fortas from becoming Chief Justice of the Supreme Court. The nominee ended up withdrawing because of ethical concerns. Two sitting members of the Supreme Court were confirmed by fewer than 60 votes on an up-or-down vote, but neither one was the subject of a filibuster.

A filibuster of this nominee sets a dangerous precedent and undermines the reputation of this institution. Judge Gorsuch will make an excellent Supreme Court Justice. The American people deserve to have him on the bench. I look forward to voting in support of Judge Gorsuch's nomination to serve as our next Supreme Court Justice. And I urge my Senate colleagues to do the same.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant legislative clerk proceeded to call the roll.

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

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

Mr. LEAHY. Mr. President, I do not see anybody on the floor, but I understand that this time has been reserved for the Republican side.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant legislative clerk proceeded to call the roll.

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

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

Mr. HOEVEN. Mr. President, I am honored to come to the floor today and join my colleagues to support the nomination of Judge Neil Gorsuch to the Supreme Court of the United States.

Judge Gorsuch is an exemplary pick for my home State of North Dakota and for our Nation as a whole. He has shown deep respect for the Constitution and has a strong record of upholding the rule of law.

If confirmed, Judge Gorsuch will take the seat that was held by the late Justice Antonin Scalia. Of course, filling that vacancy will be no easy task. Justice Scalia was a brilliant legal

mind who had earned the respect of many in the legal community during his nearly 30 years on the Supreme Court. He was a true defender of the U.S. Constitution and sought to protect it so that future generations of Americans could live and thrive in a free society. His legacy on the Court will influence American jurisprudence for generations to come.

If there is anyone who is worthy of filling Justice Scalia's shoes, it is Judge Gorsuch. Like Scalia, Judge Gorsuch is an originalist when it comes to interpreting the Constitution.

I had the pleasure of meeting with Judge Gorsuch last week to discuss his nomination, and I am confident that he will make an excellent Justice.

If you look at his background, it is clear that he is an incredibly qualified nominee. After receiving degrees from Columbia, Harvard, and then Oxford, Judge Gorsuch went on to clerk for notable Supreme Court Justices Byron White and Anthony Kennedy before entering private practice.

After 10 years of private practice, Gorsuch began his career in public service as a Deputy Associate Attorney General at the U.S. Department of Justice. In 2006, he was nominated by President George W. Bush to the U.S. Court of Appeals for the Tenth Circuit, and he was confirmed unanimously by the U.S. Senate.

Let me repeat that. He was confirmed unanimously by this body. I believe that says a lot about Judge Gorsuch as a candidate. In a body that is so often divided, a candidate who can receive unanimous support is truly noteworthy.

When nominated by the President, Judge Gorsuch said: ''A judge who likes every outcome he reaches is very likely a bad judge . . . stretching for results he prefers rather than those the law demands.'' During his tenure on the Tenth Circuit, he has demonstrated fair and prudent judgment in his opinions.

In addition to his impressive professional background, Judge Gorsuch has roots as a westerner and will bring those roots and a much needed perspective to the Supreme Court. Because decisions that come from the Court affect the lives of Americans from across the country, it is important that the Court be composed of Justices from different regions of the country. It is critical that our next Supreme Court Justice have a familiarity with the challenges Western and Midwestern States face, like my home State and others—issues such as States' rights, Second Amendment rights, land use disputes, and the complex relationship between State and Tribal governments. These are the everyday realities we face across this country that the Justices must deal with.

I expect many of these important issues to come before the Supreme Court in the coming months. In fact, just yesterday, the Court decided to move forward on litigation regarding former President Obama's waters of the U.S. rule, also known as WOTUS, which has had a significantly burdensome impact on farmers and ranchers and threatens the constitutional role of the States.

Judge Gorsuch's background also makes him a prominent voice for Indian Country. As chairman of the Senate Indian Affairs Committee, I believe it is important for our next Supreme Court Justice to have a concrete record of respecting Tribal sovereignty. I was pleased to learn that he has earned the support of a number of Native-American groups, including the National Congress of American Indians and the Native American Rights Fund.

Judge Gorsuch has had a long history of handling cases that have affected Native Americans from his time on the Tenth Circuit, and he has demonstrated a consistent understanding of the unique legal principles that are involved in Federal Tribal law. The boundary between State and Tribal authorities is often ambiguous; yet Judge Gorsuch was able to bring clarity as he diligently studied the law and respected existing precedents in Tribal sovereignty.

For example, the Ute Tribe of Utah has been engaged in legal battles with the State over the State's authority to prosecute Native Americans on Tribal land. Judge Gorsuch has consistently ruled in favor of Tribal sovereignty.

In Hydro Resources v. EPA, a case in which EPA overreach was redefining the boundaries of Indian lands, Judge Gorsuch overruled the EPA's interpretation and respected the current Tribal boundaries.

For all of these reasons, I urge a ''yes'' vote on Judge Gorsuch's nomination. As the highest Court in the land, the decisions have a widespread impact on millions of Americans.

When the stakes are this high, it is necessary that we confirm someone with a sound, fair, and prudent approach to the law. I have no doubt that Judge Gorsuch is the right person for this role. I enthusiastically support his nomination, and I urge my colleagues on both sides of the aisle to do the same.

I yield the floor.

The PRESIDING OFFICER. The Senator from Washington.

Mrs. MURRAY. Mr. President, I come to the floor to express my deep concern about the Republicans' rush to fill the vacant Supreme Court seat and about President Trump's nominee for this critical position.

I believe one of the most solemn and consequential decisions we make as Senators is whether to support a nominee to the highest Court in the country. It is a responsibility I do not take lightly. And after careful consideration, I will be voting against the nomination of Judge Neil Gorsuch, and I will be opposing a cloture motion ending debate.

I come to this conclusion weighing several things. First, a Supreme Court Justice has an enormous responsibility to uphold our Constitution and defend our democracy. The Court's decision affects every citizen in every corner of this country. At times, one Justice—perhaps this nominee—may be the only thing standing between someone's rights and an executive branch that operates as though it is above the law.

That is a real concern—one I have heard over and over from people in my home State of Washington who are frightened about the direction President Trump is trying to take our country.

Since taking office about two months ago, he has demonstrated complete disregard for the law, the Constitution, and American families. He has tried to force through un-American bans on Muslim refugees and immigrants. He fired Sally Yates, an Acting Attorney General who dared to stand up to him.

It is clear this President doesn't just think he is above the law. He has, at times, shown a true disdain for it, repeatedly insulting the men and women on the bench, even telling a crowd that perhaps the Ninth Circuit Court of Appeals—a court that didn't rule in his favor—should be broken up.

Now, we need an independent judiciary that can safeguard the rights of citizens against this executive branch, but with so much chaos created by this President, coupled with the cloud of an FBI investigation into him and his associates, I have no reason to trust that he or his administration are acting in the best interests of our country or our democracy, and I cannot support moving forward with his choice for the Court.

On top of that, I am concerned about the unprecedented pace of the Judiciary Committee process, which would rush through this nominee on the fastest time line in recent history. That is pretty striking because this same committee failed to hold a single hearing on this vacancy for 12 months following Justice Scalia's passing. It refused President Obama's nominee, Judge Merrick Garland, any opportunity to be heard, which brings me to my serious concerns about this particular nominee.

I wish to start with women's access to healthcare. President Trump campaigned on promises to overturn women's constitutionally protected rights to make their own healthcare decisions, secured by the historic ruling in Roe v. Wade. This President has broken almost every promise he has made, but one he appears to be keeping, especially in selecting Judge Gorsuch, is his promise to undermine women's health and rights.

Judge Gorsuch would have taken the ruling in Hobby Lobby to allow women's bosses to decide whether or not they get birth control to an even more extreme result. His deeply conservative record suggests he can't be trusted to stand for women's constitutionally protected healthcare rights or access to care. In fact, it seems clear he will

work to weaken those rights at every opportunity.

Since day one of this Presidency, women nationwide have made it absolutely clear they do not want to go backwards, and that is something I am going to continue to fight for.

I am also going to keep fighting for our workers, and I am troubled that as a Federal judge on the Tenth Circuit, Judge Gorsuch has a clear record of siding against workers and with corporations and big businesses.

The Associated Press said his opinions were ''coldly pragmatic and they're usually in the employers' favor.''

His history of dismissing workers' safety concerns and hostility toward upholding disability rights greatly concerns me and strongly suggests that he would join conservative Justices to undermine workers' rights.

We need a Justice on the Supreme Court who will uphold workers' protections and safety and the right to organize.

I am also deeply concerned about the potential effect on children and students with disabilities.

In a number of cases, Judge Gorsuch ruled in ways that made it more difficult for them to receive the support and services they not only deserve but are entitled to under the Individuals With Disabilities Education Act—our Nation's special education law. I strongly believe in this law, and I believe we should be doing everything to ensure individuals with disabilities can obtain their full potential by accessing meaningful, quality public education—certainly not the bare minimum.

It is notable that while Judge Gorsuch was testifying—actually, while he was testifying before the Judiciary Committee 2 weeks ago—the Supreme Court unanimously rejected his prior ruling in a case involving the rights of a student with disabilities to receive a meaningful education. It is highly troubling that when it comes to policies concerning torture, Gorsuch—as a member of President George W. Bush's Justice Department—advocated that the President has broad powers to basically ignore parts of the legal ban on torture.

This deference to Executive power is concerning, to say the least, but it also makes a whole lot more sense as to why Judge Gorsuch would be Donald Trump's No. 1 choice.

His testimony before the Judiciary Committee regarding Citizens United, in which he incorrectly stated that the Court left Congress the ability to enact commonsense campaign spending limits, strengthens my decision to vote no.

So if you believe in transparency in our elections and upholding the integrity of our democracy or you believe we need a Justice who will protect the rights of all Americans and stand with them and not with President Trump and millionaires and billionaires, this choice is clear.

As I have urged my colleagues for weeks, with so much chaos in the administration and so many questions now surrounding this President's commitment to the rule of law: Slow down. Stop playing political games. Respect the families we represent. Respect the separation of power, and stop trying to jam this nominee through.

Whatever you do, do not blow up the Senate rules for Supreme Court nominees. Invoking the nuclear option is a dangerous path to go down.

I have been in the majority and I have been in the minority. Either way, I believe when it comes to a lifetime appointment to the Supreme Court, the Senate must adhere to a higher standard and the 60-vote threshold. If you can't get that many votes for a Supreme Court nominee, you don't need to change the rules, you need to change the nominee.

I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, first I wish to commend the senior Senator from Washington State for her terrific statement.

I know, as a member of the Judiciary Committee, that we reported the nomination of Judge Neil Gorsuch by the narrowest margin—a party-line vote. The majority leader then filed cloture to cut off debate on this nominee. He has shown that he will use whatever tactic is necessary to ensure this nominee is confirmed, no matter the concern of Senators or millions of other Americans.

Today is just the 75th day of the Trump administration. After only 75 days of having a Republican-controlled White House and Congress, the Republican leader has promised to vitiate the historic rights of the minority in this institution. He is prepared to abdicate the Senate's constitutional duty to serve as a check on the President and our responsibility to protect the independence of the Federal judiciary, all in the service of Donald Trump's agenda and because, as we know, Donald Trump asked him to.

Senate Republicans seek to justify their tactics by claiming that Democrats would do no different were the shoe on the other foot. They are free to make that argument, but it is wrong. There is one claim in particular that I need to address. Some Republicans have asserted that, if President Bush had made a Supreme Court nomination in 2008, the final year of his term, Democrats would have pocket filibustered that nomination the same way that Senate Republicans did to Chief Judge Merrick Garland. Well, I was the chairman of the Judiciary Committee during that time, and I can assure them that they are wrong. Democrats did not invent an election year exception to the Constitution. Look no further than when a Democratic-led Senate confirmed Justice Kennedy during a Presidential election year.

If President Bush had made a Supreme Court nomination in 2008, that nominee would have had a hearing, and all Senators would have had the opportunity to debate that nomination on the floor. As Senator HATCH and I wrote in 2001, ''The Judiciary Committee's traditional practice has been to report Supreme Court nominees to the Senate once the Committee has completed its consideration. This has been true even in cases where Supreme Court nominees were opposed by a majority of the Judiciary Committee.'' This Senator would not have disregarded precedent and constitutional obligation because of partisan politics. Whether such a nominee would have been confirmed would have depended on his or her views, but the nominee would have been given a fair process, which Senate Republicans denied Chief Judge Garland when they pocket filibustered him.

My record in 2008 shows that I treated President Bush's nominees fairly. We confirmed 28 circuit and district nominees in 2008, including 10 in 1 day, just weeks before the election, and reduced the number of judicial vacancies to just 34. Compare that to 2016, when Senate Republicans allowed just nine circuit and district nominees to be confirmed in total. That is less than 33 percent of the 2008 number. Moreover, Republicans' pocket filibusters, even for nominees supported by home State Republican Senators, allowed the number of judicial vacancies to skyrocket over 100. Of course, they had done the same thing at the end of the Clinton administration, pocket filibustering more than 60 nominees. Those are the facts. Anyone who claims that judicial nominees were never obstructed before 2001 has conveniently forgotten those facts.

When Senate Democrats changed the cloture rule for lower court nominations in 2013, we did so reluctantly and only after Senate Republicans repeatedly abused Senate rules to wage in unparalleled obstruction of President Obama's nominees over a period of years. By November 2013, the Republican leader had orchestrated an unprecedented number of filibusters, including requiring cloture motions on 34 circuit and district nominees in less than 5 years—compared to 18 nominees who faced cloture motions during the entire 8-year tenure of President Bush.

When it comes to judicial nominations, the filibuster has been a tool to protect the independence of our courts by compelling Presidents to find mainstream, consensus nominees who do not bring an agenda with their lifetime appointments to our courts. Senate Democrats filibustered a small number of President George W. Bush's nominees, but it was not because they were conservative, or had been nominated by a Republican President. It was because we had serious doubts about their ability to put partisanship and ideology aside and be fair, neutral judges. Or it was because the President had ignored the traditional role of home State Senators when selecting the nominee. We confirmed numerous

conservative nominees, including Judge Neil Gorsuch. In fact, during the 41 months that I was chairman of the Judiciary Committee while President Bush was in office, the Democratic-majority Senate confirmed more circuit and district nominees than were confirmed during the 55 months when Republicans held the majority.

When President Obama took office, Senate Republicans imposed a new standard. Just 2 days after he was sworn in, a group of extreme conservative activists instructed Senator MCCONNELL to treat President Obama's judicial nominees in an ''unprecedented'' way, and that is what he did. For the first time, even noncontroversial district court nominees were subject to filibusters—Leader Reid was at one time forced to file for cloture on 17 of them in a single day because of Republican obstruction, even though none were particularly controversial and many actually had the support of their home State Republican Senators.

Republicans filibustered judicial nominees they ultimately supported. They stalled Senate action for weeks and months on judicial nominees who they did not oppose and who they ultimately voted to confirm once their filibusters ended. Senate Republicans kept making up new excuses for filibustering nominees that had nothing to do with the nominees themselves. They abused the Thurmond Rule to filibuster Judge Robert Bacharach, even though he had been reported almost unanimously and was supported by his two very conservative Republican home State Senators. It was obstruction for obstruction's sake.

But the final straw was when Republicans blockaded the DC Circuit. The Senate had confirmed four of President Bush's nominees to that court, but only one of President Obama's five nominees. When Senate Republicans filibustered President Obama's last three DC Circuit nominees in late 2013, they barely even bothered to pretend to find fault with the nominees themselves. These were mainstream nominees with broad support. Their only alleged flaw was that they had been nominated by President Obama. Senate Republicans unilaterally decided that President Obama should not get to make additional nominations to that court, effectively trying to nullify the results of the 2012 election—a prelude to their unprecedented treatment of Chief Judge Merrick Garland.

Compare that to the situation we are in this week. We are told that we must rubberstamp Judge Gorsuch or the majority leader will change the rules. Now, some may remember reports from last year where several Senators promised to blockade any Supreme Court nominations by one of the Presidential candidates if that candidate won the election. Of course, those were Republican Senators talking about Secretary Clinton. But that proposed blockade is not what is happening here. The fact is that there is a vacancy on the Supreme Court, and that vacancy should be filled with a qualified, mainstream judge. I know that a Republican President would probably make a different selection than the one I would make, but I have always been willing to consult with Presidents of both parties to find mainstream, consensus nominees. That is my constitutional obligation as a Senator.

Now, all Presidents, including President Trump, are entitled to have their Supreme Court nominees considered on the merits. Over my 42 years in the Senate, I have evaluated every nominee on the merits, and I have never gone to reflexive partisanship. In fact, I have voted to confirm six Supreme Court nominees of Republican Presidents. I do not know if there is any Republican in this Senate who could say that about nominees of Democratic Presidents.

Although I had concerns that Judge Gorsuch would bring a partisan agenda to the Court, I went to his hearing with an open mind. I had hoped he could convince me that he was a conservative I could support, as I did Chief Justice Roberts. I voted for Chief Justice Roberts not because I thought I would always agree with him—and I do not—but because I was able to take him at his word that he did not have an ideological agenda. I cannot take Judge Gorsuch's word that same way.

It is no secret that Judge Gorsuch is very conservative—that much was evident back in 2006 when he was confirmed to the Tenth Circuit. Back then, he did not have a judicial record, but he gave answers that were reassuring. He discussed the importance of following precedent and of judicial restraint and deference to Congress. He said, ''Precedent is to be respected and honored. It is not something to be diminished or demeaned. It is something you should try to uphold wherever you can, with the objective being, follow the law as written and not replace it with my own preferences, or anyone else's.'' He explained that judges should not be ideologues who disregard precedent ''to effect [their] own personal views, [their] politics, [their] personal preferences.'' Well, I wish that same judge were before us today, but he is not.

Judge Gorsuch has a fine resume. I do not take issue with the qualifications on paper, but my concern is that he has not lived up to his own standard. I am concerned that his personal views and his politics have permeated throughout his judicial philosophy. That is, in fact, the reason why his nomination is before us today.

To know what kind of a Justice Judge Gorsuch would be, we have to understand why he was chosen. President Trump made very clear right from the beginning that he had a litmus test: Anyone he nominated to the Supreme Court would automatically overturn Roe v. Wade. Then-candidate Trump proceeded to outsource the selection process to far-right interest groups. The leader of that unprecedented vetting process admitted they were not driven by ''Who's a really smart lawyer and who has been really accomplished?'' but by a search for someone ''who understands these things like we do.''

Let us be clear. These are not groups that support independent judges who act with restraint. These groups search for nominees who will skew the courts, who will call to reject precedent, and who will further their partisan agenda. And they gave President Trump a list and said: Here, you are allowed to pick from our people. If these groups sought a mainstream, widely respected, and independent jurist, they would have been as supportive as I was of Chief Judge Merrick Garland. Instead, they funneled money to push Senate Republicans to hold Chief Judge Garland's nomination hostage and to have the Senate defy the Constitution of the United States for the first time ever in not allowing advice and consent.

The Federalist Society's purpose statement, which is on their website, calls for ''reordering priorities within the legal system to place a premium on,'' among other things, ''traditional values.'' These groups and the billionaire donors who fund them have a clear agenda—one that is antichoice, antienvironment, and procorporate. I am not one to gamble, but in my mind they would not have gambled with millions of dollars on Judge Gorsuch. They chose and invested in him for a reason. They are supremely confident he shares their far-right agenda. So is the White House.

The White House Chief of Staff has said that Judge Gorsuch ''has the vision of Donald Trump.'' He said that, with this nomination, ''We're talking about a change of potentially 40 years of law.'' It is clear that the people who vetted Judge Gorsuch do not want a nominee who will ''call balls and strikes.'' They want a nominee who will expand the strike zone to the detriment of hard-working Americans. We should all find that concerning.

At his public hearing, Judge Gorsuch did nothing to allay my concerns. In fact, he solidified them. I cannot recall a nominee refusing to answer such basic questions about the principles underlying our Constitution. These were fundamental questions that we should ask every nominee seeking a lifetime appointment to our Highest Court, but Judge Gorsuch would not answer. Some of the questions that I asked him were not intended to be difficult. Several could have been answered by any first-year law student, with ease; yet, unless we were asking about fishing or basketball, Judge Gorsuch stonewalled and avoided any substantive response. He was excruciatingly evasive. His sworn testimony and his approach to complying with the Judiciary Committee's historic role in the confirmation process was, in my view, patronizing.

Judge Gorsuch claimed that he did not want to prejudge potential cases.

That is a valid concern, but only within reason. It should not be used to evade questions on long-settled precedent or on the meaning and purpose of constitutional provisions. Judge Gorsuch would not even state whether he agreed with certain landmark Supreme Court cases such as Brown v. Board of Education. He refused to say whether he believes that the Equal Protection Clause applies to women. He refused to say whether the framers of the First Amendment believed it permitted the use of a religious litmus test. He refused to provide information regarding his selection by extreme special interest groups and a billionaire businessman. And he even refused to confirm whether he would continue to recuse himself from matters involving that billionaire—as he has done on the Tenth Circuit—even if presented with the exact same facts.

Other Supreme Court nominees have been far more forthcoming. When asked whether he agreed with important precedents, then-Judge Alito answered the questions. When I asked then-Judge Roberts whether Congress has war powers, he said, ''Of course. The Constitution specifically gives that power [to declare war] to Congress.'' I asked whether Congress has the power to stop a war, and he said, ''Congress certainly has the power of the purse,'' but added, ''as a judge, I would obviously be in a position of considering both arguments, the argument for the Legislature and the argument for the Executive. The argument on the Executive side will rely on authority as Commander in Chief, and whatever authorities derive from that.'' It was perhaps not the answer I would have liked, but he certainly engaged with the question and showed that he understood the issue in a way that did not prejudge any potential case.

I later asked then-Judge Roberts whether ''Congress can make rules that may impinge upon the President's command functions.'' He responded: ''Certainly, Senator. The point that Justice Jackson is making there is that the Constitution vests pertinent authority in these areas in both branches. The President is the Commander in Chief, and that meant something to the Founders. On the other hand, as you just quoted, Congress has the authority to issue regulations governing the Armed Forces, another express provision in the Constitution. Those two can conflict if by making regulations for the Armed Forces, Congress does something that interferes with, in the President's view, his command authority, and in some cases those disputes will be resolved in Court, as they were in the Youngstown case.'' Whether one agrees with it or not, that was a substantive answer.

I asked Judge Gorsuch a similar question in writing—whether he agreed that ''the Constitution provides Congress its own war powers and Congress may exercise these powers to restrict the President—even in a time of war'' as the Court held in Hamdan v. Rumsfeld. Here is the totality of his response: ''I agree that Hamdan v. Rumsfeld recognized limitations on the power of the President. It is a precedent of the Supreme Court entitled to all the weight due such a precedent.'' Perhaps that is better than no response at all, but not by much.

When I asked Judge Gorsuch a straightforward question about whether the Framers of the First Amendment believed it permitted the use of a religious litmus test, he refused to answer. Any first-year law student knows the answer to that one.

I asked then-Judge Roberts a similar question—whether he would reject Korematsu and hold it unconstitutional to intern U.S. residents who ''have a particular nationality or ethnic or religious group.'' He said: ''I suppose a case like that could come before the Court. I would be surprised to see it, and I would be surprised if there were any arguments that could support it.'' I do not think he prejudged any cases, but he was still able to provide a real answer to a basic question—and he earned my support.

I had hoped that, if Judge Gorsuch was not willing to be transparent for the lights and cameras, he would at least answer written questions—given time to carefully craft answers. Again, he declined. He refused to expressly acknowledge that Congress has war powers, even though we know we do. Every high school student knows that the Constitution gives Congress the power to declare war. He again misstated the holding of Citizens United in an attempt to evade my question about Congress's ability to enact campaign finance legislation. He provided no answer at all to questions regarding the Supreme Court's decision in Shelby County to gut the Voting Rights Act or about women's rights to obtain contraception. And, again, he refused to answer whether the First Amendment prohibits the President from imposing a religious test, even when the Trump administration has adamantly claimed such a litmus test is not at issue with his travel ban.

Previous nominees respected the Judiciary Committee's constitutional role by answering questions in a substantive way, not with mere platitudes. The difference is clear to Vermonters. As an editorial in the Rutland Herald put it:

> Gorsuch's affable muteness sent a message: I am above the people and their concerns. I have no responsibility to anyone but the narrow band of millionaires and ideologues who have advanced my nomination and to the President who has declared war on the American government.

Mr. President, I ask unanimous consent to have printed in the RECORD at the conclusion of my remarks the full editorial.

Judge Gorsuch claimed that his personal views do not matter so he would not share them. But that did not stop him from speaking at length about overcriminalization and arguing that there are too many Federal criminal laws and regulations. Those of us on the Judiciary Committee know this is a substantive and controversial policy issue that has been vigorously debated in recent years. I have to wonder why this was the only issue where he put forward his actual views. That is not good enough for me. As the article by Garrett Epps in the Atlantic put it, Judge Gorsuch's refusal to answer questions implied that the role of a judge is ''a job which calls, apparently, for neither values nor any firm connection to human life as it is lived.'' The American people know better.

All of this matters because court decisions, especially Supreme Court decisions, are not simply detached applications of neutral principles. If there were, all judges would reach the same results. They do not. Legal decisions are not mechanical. They are matters of interpretation and, often, matters of justice. One Supreme Court Justice said more than a century ago: ''When we take our seats on the bench we are not struck with blindness, and forbidden to know as judges what we see as men.''

Whether he will acknowledge it or not, Judge Gorsuch's record says a lot about his judgment and his sense of justice. In a policy role at the Justice Department, he embraced broad and discredited assertions of Executive power. Judge Gorsuch once complained about liberals relying on the courts to vindicate their constitutional rights, but, once on the bench, he had no problem rubberstamping the far right's social agenda when he ruled that employers could control their employees' access to contraception. As a judge, he twisted statutory language to limit the rights of workers, of women, and children with disabilities.

Judge Gorsuch also reached for broad constitutional questions that were not before him in order to advance his agenda. Just last summer, Judge Gorsuch wrote a concurrence to his own opinion in a case called Gutierrez-Brizuela v. Lynch. His unanimous panel opinion decided the case on narrow grounds. But Judge Gorsuch nevertheless wrote a separate concurrence to argue that the Chevron doctrine should be overturned. The Chevron doctrine not only forms the basis for our modern government, but it is well-settled law and has been for decades. As Emily Bazelon and Eric Posner wrote in the New York Times, ''The administrative state isn't optional in our complex society. It's indispensable.''

Judge Gorsuch's rejection of that has shown that he is not a mainstream nominee. His judicial record demonstrates a partisan agenda—a hostility toward our government's power to enact environmental, labor, consumer rights, and other regulations that keep hard-working Americans safe and ensure a level playing field—not just for the wealthy few, but for all hard-working Americans.

Between not answering questions, Judge Gorsuch spoke repeatedly about the limited role that judges play in our democracy. His actual record belies that claim. I think that is precisely why these extreme-right interests groups selected Judge Gorsuch. That is why the President's Chief of Staff promised he will bring a change of 40 years of law, and that is why I cannot support this nomination.

It is for this nominee that Senate Republicans have brought us to this precipice, but perhaps we should not be surprised. Republican leadership has sought to govern only by simple majority since day 1 of the Trump administration. They paraded before the Senate the most extreme and partisan slate of Cabinet nominees I have ever seen. Their signature legislative goal—to repeal the Affordable Care Act—collapsed under the weight of their own intraparty infighting. Then, they dusted off the Congressional Review Act and, by party-line votes, rolled back more than a dozen environmental, workplace, privacy, healthcare, and transparency protections—all over the objections of the minority.

Think about that. Republicans have not sought compromise on anything in this Congress. That is not the way to govern. To give you one example, they repealed an important internet privacy rule that protected Americans' online activity. That means that by party-line vote, hard-working Americans will now see their private internet activity sold to the highest bidder for greater corporate profits. They are allowing these companies to basically come in and spy in your house because they are making money.

But Senate Republicans didn't stop there. They rolled back protections to ensure that all students have the same educational opportunities. They eliminated rules requiring employers to maintain records of workplace injuries so employers could avoid accountability. In other words, if you have major injuries, you do not have to keep a record of that to make sure nobody knows this is a dangerous place to work. They rolled back rules holding coal companies accountable for their pollution. Most recently, Republicans undermined healthcare access for millions of Americans, rolling back protections under the title X program. In underserved communities and rural areas like Vermont, title X is critical in making sure women have access to the basic healthcare they need.

But that is what one-party rule gets you. They are great at looking out for corporate interests. They struggle at looking out for the interests of hard-working Americans. The irony of it all is that even these partisan efforts have been too partisan for some Republicans. Three times this year—the most of any Vice President since 1911—Vice President PENCE was forced to make the trip to Capitol Hill to break a tie and ensure some of these extreme measures passed.

With the Gorsuch nomination, Republicans are proving they have no interest in playing by the rules; they prefer to break them. The unprecedented obstruction of Chief Judge Merrick Garland is going to be a permanent stain on this body. But then, days after the 2016 election—after Republicans turned their back on the Constitution for a whole year, even though they had sworn an oath to uphold the Constitution, which calls for advice and consent, they refused to advise and consent and have a vote on Chief Judge Merrick Garland—Republican leaders threatened to change the rules to get their own nominee through—before we even had a name. After disregarding his constitutional obligations for nearly a year, the majority leader now tells us we must rubberstamp President Trump's nominee or he will forever damage the Senate.

It is interesting that the majority leader's argument for obstructing Chief Judge Merrick Garland was that the American people needed to weigh in on this decision, as if they had not weighed in when they reelected President Obama in 2012. But when the American people did vote last November, nearly 3 million more of them chose Secretary Clinton over Donald Trump. In fact, Ezra Klein had it right 2 months ago when he wrote that this nomination ''makes a mockery of the popular will.''

Mr. President, I ask unanimous that the article, ''The country deserves a compromise Supreme Court nominee. Neil Gorsuch isn't one,'' by Ezra Klein, also be printed in the RECORD at the conclusion of my remarks.

Because of the divergence between the popular and electoral vote, Klein argued, ''This is a time, if ever there was one, for a compromise nominee, and Gorsuch is not a compromise nominee.'' This is exactly what the 60-vote threshold is for. It helps ensure that Presidents consult with Senators of both parties and find mainstream, consensus nominees. The filibuster protects the rights of the minority and of individual Senators; it protects the constitutional role of the Senate, and it helps us protect the independence of the Supreme Court. The Court is no place for someone with a radical, partisan agenda.

Senate Republicans are defending their threat to change the rules by claiming that Judge Gorsuch is essentially a perfect nominee and that, if Democrats filibuster Judge Gorsuch, then we would filibuster anyone. That is nonsense. We have asked only for a mainstream nominee. Perhaps they are confusing our approach with their blockade of Chief Judge Garland. Unlike committee Republicans' treatment of Chief Judge Merrick Garland, I take my constitutional duty to independently evaluate a President's Supreme Court nominees seriously. As I have said, my votes on Supreme Court nominations have never been about reflexive partisanship. I have evaluated every nominee on the merits—and I have voted to confirm six Supreme Court nominees of Republican Presidents.

If the Senate does not vote to end debate on this nomination, that is a judgment on defects of this nominee. I remind the Republicans that they do have a choice here. We can work together with President Trump to find a mainstream, consensus nominee. I expect that an actual mainstream nominee would be confirmed easily, even if nominated by President Trump. Recall the process President Obama used when he selected Chief Judge Merrick Garland. He sought advice from both Republican and Democratic Members of Congress and was told this was a person who would get a solid majority vote. He said: ''We have reached out to every member of the Senate Judiciary Committee, to constitutional scholars, to advocacy groups, to bar associations, representing an array of interests and opinions from all across the spectrum.'' President Obama nominated somebody who, in normal times, would have gotten the vast majority of votes of Republicans and Democrats. If President Trump would have followed that template, we would not be in this extraordinary place.

Let me conclude with this. In the committee, I said I respect this institution as much as anyone. I have been here for more than 42 years. I have devoted myself to the good the Senate can accomplish. We 100 Senators stand in the shoes of 320 million Americans. We should be the conscience of the Nation. First and foremost, we must do what is right by 320 million Americans. And I am not going to vote solely to protect an institution when the rights of hard-working Americans are at risk. It is for these reasons that I must oppose this nomination.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Rutland Herald, Apr. 5, 2017]

NO TO GORSUCH

Senate Democrats are prepared to block the appointment of Neil Gorsuch to the Supreme Court, and the Republican majority is prepared to change the Senate rules to push the appointment through anyway.

Sens. Patrick Leahy and Bernie Sanders are willing to filibuster the Gorsuch nomination, offended by the candidate's evasiveness and alarmed by his ideological rigidity. Mounting a filibuster comes at a cost, however. Senate Majority Leader Mitch McConnell has said the Republicans would rewrite the Senate rules in order to prohibit the use of a filibuster to block Supreme Court nominees. As it stands the Republicans would need 60 votes to shut down debate; if the Republicans change the rules, Gorsuch would need only 51 votes to gain confirmation.

Elimination of the filibuster on high court nominations worries some Democrats. But what do they have to lose? If they give in to McConnell they will have retained the right to filibuster but would have lost the power to exercise it. Instead, they would have surrendered to one of the most egregious power grabs in the nation's history, allowing the Republicans to place their stamp on the judiciary in order to impose an agenda on the nation that the nation has shown no indication it supports.

The Republican campaign to seize dominance of the judiciary must be seen as an effort by narrow interest groups to force measures into the law that the American people would never allow the legislative branch to advance. In order to pursue this agenda, the Republicans have resorted to a contemptuous assault on the role of Congress as the body that must consent to judicial appointments.

The refusal of the Republicans to allow even a hearing on President Barack Obama's appointment of Merrick Garland to the Supreme Court showed that they were willing to scoff at their own constitutional obligations in service of their ideological and economic loyalties.

Gorsuch's refusal to answer even the most basic questions about his thinking was an expression of the same contempt for Congress that McConnell displayed in refusing to allow a hearing for Garland. Gorsuch's affable muteness sent a message: I am above the people and their concerns. I have no responsibility to anyone but the narrow band of millionaires and ideologues who have advanced my nomination and to the president who has declared war on the American government.

Much is at stake with the Gorsuch nomination. His own rulings suggest he adheres to a view that the high court went astray in the 1930s in decisions allowing the federal government to give rule-making power to agencies established to protect workers, consumers, investors, air, water, the purity of food and drugs. There is a cohort of extreme conservatives—President Donald Trump's adviser Steve Bannon is their godfather—who have declared that they want to destroy the ''administrative state.'' Gorsuch's rulings and his refusal to describe his thinking suggest he is one of them.

The filibuster is an antidemocratic tradition in the Senate that allows a minority to block action by refusing to end debate on a measure. It is usually defended as a means to demand from senators comity and a willingness to join with the other side to find middle-of-the road solutions. In normal times, the majority would nominate a centrist justice in order to draw support from both sides so that the minority would not see the need to mount a successful filibuster.

But these are not normal times. The Republicans have succeeded in getting their way by refusing to compromise, and they will continue to get their way until the Democrats stand up to them. McConnell may ditch the filibuster this time, but he may rue the day after the people revolt against the disaster of the Trump administration and elect a Democratic Senate.

Leahy and Sanders are taking a necessary and principled stand against the Republican effort to steal a seat on the Supreme Court. The Democrats may not win this battle, but they are on the right side.

[From Vox, Feb. 3, 2017.]

THE COUNTRY DESERVES A COMPROMISE SUPREME COURT NOMINEE. NEIL GORSUCH ISN'T ONE.

(By Ezra Klein)

The problem with Neil Gorsuch's nomination for the Supreme Court is not Neil Gorsuch. He is, by all accounts, a brilliant jurist and a kind man. But he is an extremely conservative judge at a moment when an extremely conservative judge makes a mockery of the popular will. For the good of the country and the Court, this moment demands a compromise nominee, and Gorsuch is not that.

Antonin Scalia's seat came open under a Democratic president and a Republican Senate. This should have led to a centrist nominee. And President Barack Obama tried to offer one: Merrick Garland, who had previously been suggested for the Court by Republican Sen. Orrin Hatch. Republicans did not oppose Garland. They refused to consider him, or anyone else, for the opening. They insisted that no opening on the Court could be filled in an election year—an absurd faux principle which implies that vacancies on the Court must be left unfilled fully 50 percent of the time.

Having blocked efforts to replace Scalia under Obama, Republicans were relieved when Trump won the Electoral College. But Democrats decisively won the popular vote and gained seats in the Senate. I do not want to overstate this: US elections are not decided by simply tallying up votes. But though the public will doesn't decide elections, it should still weigh on those who hold power. This is a time for a center-right nominee, just as Obama put forward a center-left nominee in Garland.

The choice is all the more important because the Supreme Court is, itself, a strange and undemocratic institution. It is insulated from popular opinion, and judges serve for life. Forcing it unnaturally out of step with the public is bad for both the Court and the country.

Senate Democrats have the power to filibuster nominees to the Supreme Court. I don't agree with those who think Democrats should filibuster anyone who isn't Garland, as Sen. Jeff Merkley is threatening. But Democrats should insist on a compromise nominee—it would be wise of them to offer a realistic list of more centrist candidates—and use the filibuster to give their position teeth.

It's true that Republicans could eliminate the filibuster with only 51 votes, but it's not clear why that's relevant. If the Supreme Court filibuster will be eliminated the moment it's used, then it's a fiction, and there's little cost to seeing it unmasked as such. If Republicans would prefer to destroy the filibuster than make any accommodation to the majority of voters who wanted a Democratic president to be making this pick, then that's their prerogative—at least the Democrats' base will know their legislators did their best. Democrats need not be in the business of protecting a filibuster they cannot use.

It's a mistake to see Supreme Court nominations as about the individual's résumé rather than the country's wishes. If the question is whether Gorsuch is qualified to be on the Court, of course he is. But that's not the question. The question is whether Gorsuch should be on the Court—whether he is the right pick for this moment, and for the decades in which he's likely to serve. He is not.

Republicans lost the popular vote in the presidential election preceding Scalia's death. They lost the popular vote in the presidential election after Scalia's death. The will of the people might not be all that matters in politics, but nor should it be meaningless. This is a time, if ever there was one, for a compromise nominee, and Gorsuch is not a compromise nominee. Republicans do not need to nominate a liberal, but Democrats should insist they nominate a justice more in the mold of Anthony Kennedy than Scalia.

The Supreme Court is undemocratic enough as it is. It does not need to be made more so.

Mr. LEAHY. I yield the floor.

The PRESIDING OFFICER (Mr. COTTON). The Senator from California.

Mrs. FEINSTEIN. Mr. President, how much time do I have?

The PRESIDING OFFICER. The Democrats have approximately 36 minutes remaining.

Mrs. FEINSTEIN. Mr. President, I rise today as the ranking member of the Judiciary Committee to speak about the nomination of Judge Neil Gorsuch to the Supreme Court of the United States.

In committee, at the outset of the hearings, I remarked that our job was not to evaluate legal doctrines and theories or to review Judge Gorsuch's record in a vacuum. Our job is to assess how this nominee's decisions will affect the American people and whether he will protect the legal and constitutional rights of all Americans.

I have had this in mind throughout the entire process. Let me begin with an aside. I represent a large State, and I do pay close attention to constituent letters, calls, and emails. A weekly report lets me know on what issues people are focused and what they think. I take this feedback very seriously.

In general, my barometer has been that when I receive over 30,000 calls, emails, or letters, that is when I know an issue is reasonably meaningful to many people in the State. To be clear, I don't base my final judgment on any issue or nominee solely on the numbers of calls and letters I receive. However, this is a representative democracy. I find this to be an important measure of what California constituents are thinking.

When it comes to this nomination so far, my office has received a total of 112,309 calls, emails, and letters from California constituents; and 92,799, or 83, percent, oppose this nominee and 19,510, or 17 percent, support this nominee.

Let me read a few of the emails. One constituent from Silverado, CA, wrote:

''In 1971, when abortion was illegal, I was forced to have a child at age 16. That was 46 years ago. With Gorsuch, we would step back into that world where women and girls have NO choice but an illegal and unsafe abortion OR become a mother. It is wrong. The choice is untenable and dangerous. Filibuster Gorsuch and do whatever it takes.''

I was a college student in the 1950s, and I remember very much what life was like before a woman had the right to privacy, to control her reproductive system according to Roe v. Wade.

Another constituent from San Diego emailed:

''As a beneficiary of the right to marry 3½ years ago, I personally understand how important Supreme Court decisions are. I also attended a segregated elementary school when I was a little boy. I do not trust that Neil Gorsuch would advocate for the best interests of women & minorities. Please do not confirm him.''

A woman from Richmond, CA, wrote:

''I believe that we, the people, will have a difficult time getting fair and equal treatment with Gorsuch being on the Supreme Court. He will help the rich corporations, and the poor and middle-class will suffer irreparably.''

I don't comment on any of these because none of these are sacrosanct, but they are opinions.

Brandon Gregg from Burlingame wrote:

''The republicans did not give Merrick Garland a hearing, instead waiting until Trump could propose a young right-leaning judge who will take our country backwards. Gorsuch will not advance the agenda of human rights within our Constitution, but will plunge us back into the past where minorities had little protection, women did not have equal rights, people of color were denied the right to vote, and protections for all people that we take for granted, did not exist. This is not the world I want for myself, my children, or my grandchildren. Filibuster Gorsuch's confirmation. Please.''

The bottom line is that Californians are letting me know loud and clear that who sits on the Supreme Court matters. Unfortunately, up to now, much of the press coverage on this nomination has been about politics and process.

In contrast, little has been said about how the Supreme Court affects the lives of Americans, their families, and their communities. So, let me say, in the past 24 years that I have been a member of the Judiciary Committee, I have seen that the Supreme Court is, in fact, the last word in so many areas: the personal rights of all Americans, including whom they can marry, and whether women have the right to privacy that allows them to control their own bodies.

The Supreme Court determines whether decisions about healthcare will be determined by families or businesses. The Supreme Court has the final say on whether States and localities will be able to pass laws that make it harder for low-income people, people of color, seniors and students to vote. The Supreme Court will decide whether corporations are able to pollute our air and water with impunity.

It is the Supreme Court that will be the final world on Executive authority, whether it is used to waterboard, detain individuals indefinitely, or overreach in other ways.

Each year, more than 350,000 civil and criminal cases are filed in Federal courts. The Supreme Court hears arguments for only about 80 cases a session and makes decisions on approximately 50 more cases without hearing arguments.

Now, this means the Supreme Court only hears a very small percentage of cases—less than 0.02 percent.

Before the current vacancy, the most significant questions were closely decided by 5-to-4 decisions, with five votes coming from Republican-appointed Justices.

These include important decisions that affect our elections, like Shelby County and Citizens United, decisions that weakened the power of average voters by expanding the role of dark money and gutting a key provision of the Voting Rights Act. We also saw a 5-to-4 decision in Heller that overturned 70 years of precedent on the Second Amendment and blocked the District of Columbia's commonsense gun regulations.

As my colleague Senator WHITEHOUSE outlined in the Judiciary Committee, in the last several years, this Supreme Court has issued an additional 11 5-to-4 decisions that promote the rights of corporations over the rights of everyday people, on topics as wide-ranging as age discrimination and harassment to limiting access to courts and juries.

So who sits on the Supreme Court matters. Just look at some of the key cases that have come down since this vacancy arose last year. For example, the Supreme Court deadlocked 4-to-4 on a case to determine whether unions are able to fight for fair pay and benefits for all workers by requiring them to contribute to a union's action on their behalf.

We know this issue will go back to the Supreme Court. If, next time the Court rules against unions like the California Teachers Association, it will be overturning a 40-year precedent known as ''agency shop,'' and it will permit an assault on worker's rights.

Also last year, the Supreme Court considered the case on North Carolina's law that reduced early voting days, eliminated same-day registration, and established new restrictive photo ID requirements to vote. The Fourth Circuit struck down North Carolina's law concluding it had ''targeted African Americans with almost surgical precision.'' Yet, when the Supreme Court considered it, they deadlocked 4 to 4. Who sits on that court matters.

After 4 days of hearings and reviewing Judge Gorsuch's record, we have learned that he, indeed, has strong views of what the law should be and how it should be interpreted. While Judge Gorsuch was not responsive to many questions, he did tell us that he is happy to be called an originalist, and that he embraced the term. He also stated that he believes judges should look to the original public meaning of the Constitution when they decide what one of its provision mean.

According to him, ''the Constitution isn't some ink blot on which litigants may project their hopes and dreams. . . . but a carefully crafted text judges are charged with applying according to its original public meaning.''

Original public meaning—that takes us back to 13 colonies, 4 million Americans, and 1789. I find this originalist judicial philosophy to be deeply troubling. It essentially means that judges and courts should evaluate all of our constitutional rights and privileges as they were understood in 1789. To freeze our understanding of the Constitution in 1789, I think, ignores the Framer's intent. But more importantly, it would ignore the vibrancy and growth of our Nation.

We are no longer a society that condones slavery. We no longer permit segregation. We do not allow child labor. We recognize that women not only deserve an education but can be leaders in business, government, and their homes.

We cannot turn the clock back 230 years.

As Justice Brennan said, asking judges to resolve legal questions by looking only to what people believed when our country was founded was ''little more than arrogance cloaked as humility'' that ''while proponents of this facile historicism justify it as the depoliticization of the judiciary, the political underpinnings of such a choice should not escape notice.'' After all, ''[t]hose who would restrict [legal claims] to the values of 1789 specifically articulated in the Constitution turn a blind eye to social progress. . . .''

This is Justice Brennan's speech in 1985 at Georgetown University. This is an important point that I think bears repeating. A judge's decision to adopt an originalist philosophy is inherently political because it discounts the expansion of constitutional protections beyond White men who owned property. Yes, that is the way it was back then.

The U.S. Constitution, I deeply believe, is a living document intended to evolve as our country evolves. We are not supposed to ignore social progress, and I don't believe the Founders of our country ever intended us to do so.

Another concern with Judge Gorsuch's record is his extreme, conservative view of the Federal Government. For example, he has indicated he believes the longstanding legal doctrine that allows agencies to write rules to effectively implement laws should be overturned. That doctrine, as the Presiding Officer well knows, is the Chevron doctrine. It was discussed in committee.

Chevron was itself a unanimous opinion authored by the liberal Justice Stevens and joined by conservatives, including Chief Justice Burger. This legal doctrine has been in place for decades and has been cited more than 15,000 times. If Chevron is overturned, as Judge Gorsuch has advocated, many important laws that Congress has passed would become ineffective.

I want to give a personal example.

In 2007, Senator Olympia Snowe and I finally passed legislation, thanks to Senator Ted Stevens and Dan Inouye, to increase the mileage efficiency of cars. This was critical to address because pollution was clouding up our cities, and it was important to improve the functioning of our automobiles.

Our legislation required the Department of Transportation to set standards so that fuel economy would increase at least 10 miles per gallon over 10 years—that is the time we could foresee—and continue to rise after that. We instructed the agency to achieve the ''maximum feasible average fuel economy'' and directed the Secretary of Transportation to consider ''technological feasibility, economic practicality, the effect of other motor vehicle standards of the government on fuel economy, and the need of the United States to conserve energy.'' That is directly from the bill.

Here is the result. It has just been announced that this program will raise fuel economy to more than 50-miles per

gallon by 2025. I think the specifics were 54 miles to the gallon.

This would have been impossible in 2007 when we were trying to pass the bill. We could not possibly understand, 10 years hence, technical details of specific automobile efficiency technologies and how they would develop in the decades to come.

Federal agencies simply must play a role. We need their technical expertise and ongoing involvement to ensure the legislation we pass is implemented effectively—as intended by Congress.

In committee, I discussed Judge Gorsuch's textualist view. This means that he believes statutes should be interpreted only by ''the plain meaning of the language.''

Combined, this judicial philosophy includes: One, limiting laws and statues to a dictionary definition that he selected. Two, reversing precedent to say that agencies can't interpret ambiguous laws. Three, reinstating a legal doctrine to further limit agency experts. Taken together, these three points would require Congress to pass bills so that they are either so specific that they would be very limited in effect or so broad they would actually be meaningless.

For example, Senator COLLINS and I have been working on legislation that would require the FDA to ensure the safety of personal care products such as we all use—shampoo, deodorant, cosmetics, shaving creams, lotions. The FDA does not do it in this country, but they do it in Europe. Our bill asks the FDA to evaluate the safety of the chemicals that are put in these products.

In committee, we had testimony about a shampoo that once used, hair fell out of the individual's head and many thousands of complaints had been registered.

Congress does not have the expertise to do the chemical evaluations, and without deference to the FDA, the bill would have to be thousands of pages long to cover every contingency for every product made by hundreds of companies, and that simply is not workable.

If Congress can no longer rely on Federal agencies, and if all laws can only be interpreted by limited dictionary definitions, then government would have no ability to regulate markets, defend against a financial crisis, protect workers, build safe roads, or safeguard our environment.

We depend on the scientists, the biologists, the economists, the engineers, and other experts to help ensure that our laws are effectively implemented. So this is really a dastardly controlling mechanism.

Under the arguments proposed by Judge Gorsuch, this would no longer occur.

Instead, only congressional action would be able to address these important issues. These rules that agencies would bring would have to be written by Congress. And even that would be severely limited. Such a radical change in law would hurt ordinary Americans, certainly their safety, and certainly our communities.

Let me say once again that who sits on the Supreme Court matters.

The issues facing our country are consequential, and they have a real-world impact on all of us. Justices on the Supreme Court must understand that the Court's decisions have real-world consequences for men, women, and children across our Nation.

Unfortunately, based on Judge Gorsuch's record at the Department of Justice, his tenure on the bench, his appearance before the Senate, and his written questions for the record, I cannot support this nomination.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from West Virginia.

MINERS PROTECTION ACT

Mr. MANCHIN. Mr. President, I rise today, as I have risen so many times, basically for all of us to understand that we have the greatest country on Earth, a superpower of the world.

If you want to know the backbone of the United States of America, look up in the stands. These are the United Mine Workers of America, who made us the country we are today. They gave us the life we have and our freedom, and for people not to understand that makes no sense to me at all.

All I am asking is for my colleagues to understand that the miners protection simply is this: Keep your promise, the promise that we made basically to all the miners who have given their lives. They have given everything they have—their blood, sweat, and tears basically for us to have energy for this country of ours. Now all they are asking is: Can't we at least keep our healthcare? Can't we at least keep our pensions? We have worked for that. We have negotiated for that. Every contract they negotiated basically was a give-and-take proposition so that they would be able to continue to have this after they retire.

For a lot of our colleagues and comrades who have passed away, the widows and families they leave behind are still dependent on this healthcare.

We have been fighting for this. On April 28, we are going to lose it again—April 28. I know the way things work around here. Someone will come down and say: Well, we have negotiated a little extension.

I want to make sure everyone is on notice: We will use every vehicle we can, absolutely every pathway that we can to make sure we will not leave here until we have our miners protected. Our miners will be protected with their healthcare and their pensions.

All 48 Democrats are united. Many of our colleagues on the Republican side have joined us or are willing to join us. All we are asking for is that vote.

I want to make it very clear: We will do anything and everything that we must. We have been very patient, but I am not going to have another notice sent out to our retired miners, to their families, to their widows saying: Well, we have given you another 90-day or 120-day extension. That is not going to happen this time. That is my commitment to them and their families. That is my commitment, basically, to the people who have depended on them.

Really, each and every one of us in this great country of ours should say thank you to them for the job that they have done.

We will fight this and we will continue to fight this onslaught, and I can't figure out why.

In October, 16,300 of our Nation's coal miners and their families were told that they would lose their healthcare on December 31. Then we extended it.

Can you imagine an elderly person receiving a notice the first of February, the end of January that says: Guess what, in 90 days, you are going to lose it again because we gave an extension until April of this year.

I can't understand it at all. I don't know how anybody could be that inhumane.

The cosponsors are working with us. We have held firm. The White House knows that we are serious about this. The President himself has given me his verbal support. I need him now to either tweet or call Senator MITCH MCCONNELL, our majority leader, and tell him it is time to act. It is time for Mr. MCCONNELL, the Senator from Kentucky, our friend from my neighboring State, to act. That is all we are saying.

President Trump, if you are listening to me, if you are watching, please tweet out: Mitch, help us. We need you.

RECOGNITION OF THE MINORITY LEADER

The PRESIDING OFFICER. The Democratic leader is recognized.

WELCOMING WEST VIRGINIA COAL MINERS

Mr. SCHUMER. Mr. President, before I begin the substance of my remarks, I want to first welcome our coal miners from West Virginia here, and I thank them for the hard work they have done through the years to make America the outstanding country that it truly is.

Also, I want to tell you, first, your Senator from West Virginia—you don't have a better fighter than in anyone but him. Second, I am totally committed to making this happen for you, and I will do everything in my power. Our entire caucus—all 48 of us—are completely behind you.

I thank my friend from West Virginia.

Mr. President, as each hour brings us closer to the cloture vote on the nomination of Judge Neil Gorsuch to the Supreme Court and a potential rules change if that vote fails, I rise this afternoon to entreat my friend, the majority leader, to step back from the brink.

As I and so many other of my colleagues have made clear, we Democrats have principled reasons to vote against this nominee on tomorrow's cloture vote. First, he has instinctively favored corporate interests over average

Americans. Second, he hasn't shown a scintilla of independence from President Trump. And third, Judge Gorsuch, based on his record and history, has a deeply held, far-right special interest judicial philosophy that is far out of the mainstream.

He was selected from a list developed by the very hard-right, special interest Heritage Foundation and Federalist Society. The Washington Post, after analyzing his decisions on the Tenth Circuit, concluded that Judge Gorsuch may be the most hard, conservative Justice on the bench, to the right of even Justice Thomas.

It may seem abstract to many Americans, but Judge Gorsuch's judicial philosophy matters a great deal. It will affect dozens of decisions and decades of jurisprudence that could have far-reaching consequences on the lives of average Americans.

As Emily Bazelton in the New York Times put it: ''[T]he 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.''

If that philosophy becomes the majority view on the Supreme Court, average Americans are in big, big trouble.

The prospect concerns almost every Democrat here in this body, enough to prevent cloture on Judge Gorsuch's nomination tomorrow.

This leaves the majority leader and my Republican friends with a choice: Break the rules of the Senate or sit down with us Democrats and the President to come up with a mainstream nominee who can earn enough bipartisan support to pass the Senate.

We Democrats believe the answer isn't to change the rules; it is to change the nominee, as Presidents of both parties have done when a nominee fails to earn confirmation. Instead, my Republican friends seem intent on breaking the rules for Judge Gorsuch and are trying to find reasons to justify it.

The truth is, each side can blame the other. We believe they are more in the wrong. They believe we are more in the wrong. The game of pointing fingers and ''they started it'' can go back and back and back to the very founding of the Republic.

If my Republican friends think that they have to change the rules because this blame game has gotten so far out of hand that Democrats will never pass a Republican-nominated Supreme Court Justice, I would remind them of Justices Alito and Roberts, two conservatives who, nonetheless, passed the Senate, having met a 60-vote bar. That was during a pretty contentious time as well.

If my Republican friends think that what we Democrats did in 2013 was so wrong and that is the reason to break the rules, I would remind them that the only reason we changed the rules was because the Republican minority in the Senate had forced cloture petitions to be filed on more nominees under President Obama's first 5 years than in all the 225 years before him combined. They forced the majority leader to file more cloture petitions for President Obama's nominees than all the cloture petitions filed from George Washington through George W. Bush.

When we Democrats changed the rules, however, we purposefully left the 60-vote bar for the Supreme Court intact because we knew, as the Republicans know, that the Supreme Court is different. Justices on the Supreme Court don't simply apply the precedents of a higher court. They set the precedents. That is why Justices should be mainstream enough to garner substantial bipartisan support.

If the majority leader breaks the rules tomorrow—that is his choice—he would be forever unwinding that important principle, erasing the last shred of bipartisanship in the Senate confirmation process.

If my Republican friends think a filibuster on Judge Gorsuch is so wrong that they have cause to break the rules, I would remind them that almost every one of them lined up behind the majority leader when he vowed mere hours after the death of Justice Scalia that President Obama would not get to fill a Supreme Court seat, despite 11 months left in his Presidency. That was much worse than a filibuster. Even my friend, the Republican Senator from Tennessee, called it ''audacious.'' But I think Representative ADAM SCHIFF of California said it best: ''When McConnell deprived President Obama of a vote on Garland, it was a nuclear option. The rest is fallout.''

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

We think a 60-vote bar is far more in keeping with tradition than what the Republicans did to Merrick Garland. The majority leader himself has stipulated—this is MITCH MCCONNELL's quote: ''In the Senate . . . it takes 60 votes on controversial matters.'' On the other hand, there is absolutely no precedent, rule, tradition, or custom that can justify what the Republicans did to Merrick Garland, none.

The two are not equivalent. Over the long history of partisan combat over judicial nominations, of course there is blame on both sides. We don't believe the blame should be equally shared between Republicans and Democrats.

The Republican Party has been far more aggressive in employing new tactics and escalating old ones to fight the nominees of a President of the opposing party. The Republican Party has been far more aggressive in their selection of judicial candidates, picking judges who have an ideology closer to the conservative extremes of American politics, while Democrats have tended to select candidates closer to the center.

Keep this in mind: The last time a Republican-controlled Senate confirmed a Supreme Court nomination of a Democratic President was 1895.

Let me repeat that amazing fact. The last time a Republican-controlled Senate confirmed the Supreme Court nomination of a Democratic President was 1895.

So we can argue endlessly about where and with whom this all started. Was it the Bork nomination, which received a vote in a Democratic Senate, by the way? Or was it the obstruction of judges under President Clinton? Was it when Democrats blocked a few judges under President Bush or when Republicans forced Democrats to file more cloture petitions in 5 years of President Obama's Presidency than during all other Presidencies combined? Was it Judge Garland or Judge Gorsuch?

Wherever we place the starting point of this long, twilight battle over the judiciary, we are now approaching its end point. We are nearing the final hour, and the stakes are considerable.

After the cloture vote on Judge Gorsuch, Democrats will have been denied Merrick Garland due to tactics we felt were unfair and Republicans will have been denied Judge Gorsuch because of tactics they think are unfair. Our two parties have traded bitter blows. In the tortured history of the Scalia vacancy, the debate has been saturated with contradiction. But in a very real sense, even though each side thinks their side is more right than the other, neither side is happy with how we got here.

Now we are standing on the brink of an irrevocable change to the way this body conducts business. As the majority leader once said: Changing the rules is a bell that is very hard to unring.

As the clock ticks steadily toward tomorrow, what are we going to do? I, for one, would like to see us step back from the brink. As the Democratic leader, I still hope that I can sit down with the Republican leader and find a way out of this pernicious cycle. I believe that as leaders of our respective caucuses, it is at least up to us to try for the sake of the Senate. The Republican leader and I disagree on a great many things, but we agree upon the importance of the Senate in American life. We can decide today to commit to solving this problem. Each side can stop pointing fingers. Each side can lay down their arms. Each side can put aside the resentments built up after years of trench warfare on nominees. We can decide today to talk about a way out of this impasse instead of changing the rules.

We both lost Supreme Court nominees. We shouldn't also lose a long-standing rule of the Senate that encourages our two parties to work together to fulfill one of the Senate's most important functions.

So the option to sit down with us Democrats and talk about a new nominee who can gain sufficient bipartisan

support remains on the table right now. I hope my friend the Republican leader thinks about where we are headed and takes a moment to let reason and prudence prevail over rancor and haste.

Just as the majority leader holds the power to exercise the nuclear option, he also has the power to avoid it. If the majority leader is willing to cooperate in a bipartisan way, if he is willing to sit down with us in good faith and try to find a way out, he will find an open door and an open mind, and maybe, maybe we can for the moment avoid an outcome that no Senator from either side wants to see.

I yield the floor.

The PRESIDING OFFICER (Mr. TOOMEY). The Senator from Ohio.

Mr. BROWN. Mr. President, I ask unanimous consent for 3 minutes—1 for Senator DONNELLY, 1 for Senator CASEY, and 1 for me. I thank Senator BOOZMAN for the time to talk for 3 minutes on the mine workers healthcare law.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

MINERS PROTECTION ACT

Mr. BROWN. Thank you, Mr. President.

I rise today on the seventh anniversary of the tragedy of the Big Branch Mine, where 29 mine workers were killed. There is no better way to ask this Senate to do the right thing on extending healthcare for mine workers permanently.

We have seen far too many times where mine workers in Ohio, West Virginia, Kentucky, and all over this country, the retired mine workers or their widows get a letter in the mail saying their healthcare is about to be canceled. We kick the can down the road for 3 or 4 months at a time. That is not acceptable.

It is up to this Senate this month to make sure that we fix this once and for all so that mine workers who did so much for their communities and their families and their country can be assured that they will have healthcare for the rest of their lives as President Truman promised.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. CASEY. Mr. President, I want to add to the remarks of Senator BROWN.

We had a process; the Presiding Officer was a part of this, as well, in the Finance Committee getting the Miners Protection Act through the Finance Committee, 18 to 8. It should have been voted on by the end of the year so these miners could have certainty with regard to healthcare and pensions, and our government could keep our promise to those miners.

Our government has not kept its promise to coal miners, and some of them are here today in Washington. It is about time our government kept our promise. They kept their promise to their company, to their country, and every promise that they have been asked to keep. It is time that we did our job here in the Senate. Get this legislation passed in the month of April.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. DONNELLY. Thank you, Mr. President.

For the third time in the last year, I stand on the Senate floor in support of thousands of retired coal miners and their families across Indiana and the United States. If Congress doesn't act, many of the miners will lose their health benefits at the end of this month.

There are a lot of important issues facing us here, but few have such high stakes. Retirees are receiving letters telling them that their health insurance will soon run out. This is a promise that was made and a promise we have to keep. We have less than 30 days.

Let's do the right thing. Let's do the right thing and enact a permanent solution. I strongly urge my colleagues to take action immediately and ensure that our retired miners receive the health benefits that were promised to them by the U.S. Government.

I yield back, Mr. President.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. BOOZMAN. Mr. President, the Senate is at a crossroads. Senate Democrats at the behest of far-left activist groups are leading the charge to break a 230-year-old precedent of confirming Supreme Court nominees by a simple majority vote. Why?

Well, when you go down the list, there is only one reason. That reason is not based on substance or reality; it is purely partisan. Judge Gorsuch is eminently qualified. That does not seem to be in dispute. His credentials are exceptional. His resume is impressive. His judicial demeanor, professional competence, and integrity all exceed what you expect in a nominee for the highest Court in the land.

Judge Gorsuch checks every box, so much so, that the American Bar Association gave Judge Gorsuch its highest rating. The ABA's assessment, mind you, has been referred to by the minority leader as the ''gold standard'' when it comes to evaluating a nominee's fitness to serve on the Court. Senate Democrats must be concerned about Judge Gorsuch's past then. Again, that is not the case. No one was able to dig up anything remotely resembling a scandal in Judge Gorsuch's past during this process. You can't manufacture a controversy where none exists. Nothing about Judge Gorsuch has come to light during this confirmation process that could conceivably merit blocking a vote on the nominee.

I have heard some Democrats try and argue that Judge Gorsuch is out of the mainstream. That hasn't stuck, either. This is a judge who has been with the majority of the Tenth Circuit Court of Appeals 99 percent of the time, and 97 percent of his decisions were unanimous. Judge Gorsuch is about as mainstream as you are going to find.

Editorial boards from newspapers across the country, including USA Today, have written in support of his nomination. Does anyone honestly believe that USA Today, which is far from a conservative newspaper, would support confirming Judge Gorsuch to the Supreme Court if he were out of the mainstream?

Now Senate Democrats are seemingly creating new standards out of thin air to justify this blatantly partisan action. According to the talking points, the nominee is now expected to tell the Senate and the American people exactly how he or she would rule on matters that may come before the Court, especially the instances where the activist base has a very keen interest. As the Judiciary chairman rightly pointed out, the standards set by Justice Ginsburg in her confirmation hearings that it would be inappropriate for a nominee to offer hints or make commitments on matters that may come before the Court have been adhered to ever since.

This leaves Senate Democrats with a filibuster that lacks a reason. The minority leader has suggested that the Senate abandon Judge Gorsuch's nomination if cloture is not agreed to and ask the President to submit a new nominee. This demand rings hollow. Here is the truth: If this nominee cannot get the Senate Democrats' blessings for a vote, then no nominee put forward by the President can.

Again, we are talking about a top rung in his profession. Judge Gorsuch is well qualified, and he was unanimously confirmed to the Tenth Circuit Court of Appeals. As I mentioned earlier, he received the highest possible rating after an exhaustive evaluation from the American Bar Association.

Senate Democrats failed to create outrage and controversy over Judge Gorsuch's nomination because there is simply none to be found, but that didn't stop them. They made this amazing 180-degree turnaround. Senate Democrats who just last year pushed for an immediate vote at the height of a contentious Presidential election now appear to be fine with leaving that seat vacant literally for years. Just last year the minority leader sounded the alarm about the judicial chaos a deadlocked Court could lead to. He appears to be no longer concerned about that. By this logic, a vacancy on the Supreme Court for a few months would be a devastating blow to democracy, but one held vacant for years would be acceptable. This makes absolutely no sense. The only explanation for it is that Senate Democrats expect to be voting on a nominee put forth by a Democratic administration, not one put forth by President Trump.

Judge Gorsuch will be confirmed to the Supreme Court this week. It is unfortunate that we may have to break longstanding precedent to do so, but Senate Democrats actually are to blame for that.

With that, Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. SCOTT. Mr. President, we heard famously that elections have consequences, and over the next few days we will have an experiment in what I call ''the physics of politics.''

For every action, there is an equal and opposite reaction. If the Democrats use for the first time a partisan filibuster of a Supreme Court nominee, we will have an equal and opposite reaction. An unprecedented action is going to evoke an unprecedented reaction.

Neil Gorsuch deserves to be confirmed, and I want to share for the next few minutes why. For more than 2 months since the nomination was first announced, we have seen that Judge Neil Gorsuch possesses the qualifications and the temperament to serve as our next Supreme Court Justice.

While all nominations carry enormous responsibility, this is arguably the most important position we are tasked with filling. We need someone who is extraordinarily qualified, someone who will respect the foundation of our country, someone who has the mental resilience to stay above the political fray. Some of my friends on the left have called Judge Gorsuch unqualified, too conservative, and someone who is simply not in the judicial mainstream.

Judge Gorsuch started his legal career by earning degrees from not one, but two Ivy League schools—Columbia University for his undergrad, Harvard Law for his juris doctor, graduating cum laude. Even as a Marshall Scholar, he earned a doctorate degree from Oxford. When one takes into account these extraordinary educational achievements, it would be simply incomprehensible that anyone would consider him unqualified.

His record on the bench is just as impressive. We have heard these numbers so many times that we sometimes just gloss or glaze over these numbers, but these numbers are powerful indicators of how successful he has been as a judge. Out of nearly 2,700 cases, Judge Gorsuch has been overruled only twice—98 percent of his opinions were unanimous, further proving that he falls exactly square in the judicial mainstream. He has received ''well qualified,'' as my Senator from Arkansas just stated a few minutes ago, from the American Bar Association, the highest rating available for a Supreme Court Justice.

Judge Gorsuch is also not new to the nomination process. Just a few years ago, in 2006, Judge Gorsuch was unanimously confirmed by the U.S. Senate to the Tenth Circuit.

Let me say that one more time because so seldom do we see the Senate acting in a unanimous fashion. This, perhaps, is a moment of reflection that Judge Gorsuch, in just 2006, received a unanimous vote for the Tenth Circuit. Every single Democrat who was serving in the Senate at that time voted in support of Neil Gorsuch, including 12 Members who are still serving in this Chamber today. His bipartisan support has not stopped there.

Senator BENNET from Colorado says that Judge Gorsuch represents the best qualities of Colorado and that we need to fulfill our responsibility to this nominee.

Senator DONNELLY, from Indiana, has said: ''I believe he is a qualified jurist who will base his decisions on his understanding of the law and is well respected among his peers.''

From West Virginia, Senator MANCHIN acknowledged that, while he may not agree with future decisions that will be made by Judge Gorsuch, he also said, without question, that he has ''not found any reason why this jurist should not be a Supreme Court Justice.''

Senator HEITKAMP, from North Dakota, said, during her meeting with our Supreme Court nominee, that Judge Gorsuch reinforced the importance of a judiciary that remains independent from the executive and the legislative branches of government.

Neal Katyal, the former Acting Solicitor General under President Obama, said of Gorsuch that he is a first-rate intellect and a fair and decent man. The judge's work reflects his dedication to the rule of law.

Last month, throughout his 3-day confirmation hearing, Judge Gorsuch provided detailed and thoughtful responses that should have answered every concern from committee members. As I watched, I was incredibly impressed with his depth of knowledge, his genuine demeanor, and his obvious respect for the rule of law. He understands that his job is not to make the law. Let me repeat that because this seems to be an unusual experience—at least it has been for me—to hear that a judge understands and appreciates that his job is not to make the law, that his job is not to alter the law but, as he expressed time and again, that he is committed to interpreting the law as it is written.

One of his most memorable comments from his hearing has left a lasting impression on me, and I hope it does on you as well.

He said:

> A judge who likes every result he reaches is very likely a bad judge, reaching for results he prefers rather than those the law compels.

In one sentence, Judge Gorsuch eloquently summarized what we should expect from our Supreme Court Justices, and it also gives insight into how he intends to serve once confirmed.

After his extensive and exhaustive hearing, we clearly see, beyond a shadow of a doubt, that this man is more than qualified for the appointment. Any argument to the contrary is based purely on political opposition.

Today, the Senate stands on the verge of breaking historical precedence. We have let political disagreements get in the way of a judicial seat—a nomination that should stand far above political rancor.

A year ago, Judge Gorsuch was serving on the U.S. Court of Appeals for the Tenth Circuit. He had no idea that he would find himself in the midst of a partisan battle. There is no question that this man has led an exemplary life and deserves a fair vote.

We are, simply, asking for a fair vote—a vote. Let us move past these political games and confirm a man who has earned this position, with a nearly flawless record, as one of the brightest judicial minds our country has to offer.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant legislative clerk proceeded to call the roll.

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

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

Mr. ENZI. Mr. President, I rise to offer my support for the nomination of Judge Neil Gorsuch to the Supreme Court of the United States of America.

Several weeks ago, shortly after President Trump announced this nomination, I came to the floor to say what an admirable choice he had made and had known him for some time.

After meeting with Judge Gorsuch to discuss his nomination and after reviewing his qualifications and after observing my colleagues on the Senate Judiciary Committee thoroughly vet him, I am all the more convinced that this man is eminently qualified to serve as America's next Associate Justice of the Supreme Court.

I was impressed that both of his Senators introduced him to the committee for the hearing. I was kind of surprised that the biggest comments that I heard about the hearing itself, were that he did not answer some of the questions directly. As with previous Justices, they do not answer questions directly when they are asked a theoretical question about some possible future case that might come before them and are without the details.

Another reason that I am convinced that he is very qualified is that the people with whom he went to school have all had good comments to say about him. The people he went to law school with have had good comments. The people who have been on the bar with him—in the legal arena—have had good comments to say about him and so have the other judges with whom he has worked through the years as he has moved up through the different processes.

I am confident that he is qualified to be our next Justice because of his extensive judicial experience, his commitment to the rule of law, and his principled character.

Neil Gorsuch's first job out of law school was a couple of blocks from here. Even back then, he was already preparing to serve his country on the

Supreme Court by learning from some of the best jurists in America. He performed clerkships first for the U.S. Court of Appeals for the DC Circuit and later for Justices Byron White and Anthony Kennedy at the U.S. Supreme Court.

After working in private practice and at the Department of Justice, in 2006 President George W. Bush nominated Judge Gorsuch to serve on the U.S. Court of Appeals for the Tenth Circuit. The Senate confirmed him by a voice vote. That is unanimous.

Let me say that again because it is relevant to the misplaced—in my opinion—partisan rancor we are hearing over this nomination. In 2006, only LINDSEY GRAHAM bothered to attend the Senate Judiciary Committee's hearing to consider Neil Gorsuch's nomination to the Tenth Circuit Court of Appeals. This body—including then-Senators Joe Biden, Hillary Clinton, and Barack Obama—was so confident about Neil Gorsuch's character and his qualifications to serve as a Federal judge that he was confirmed by the Senate without anyone even asking for a recorded vote.

With what was in essence an endorsement from three of the most influential political figures then serving in the Senate among my colleagues across the aisle, I find some of the opposition to Judge Gorsuch and the questioning of his qualifications somewhat baffling. I hope my colleagues in the Senate will put aside the political bickering and scorekeeping that have dominated Washington over the last several months and give Neil Gorsuch a fair vote, up or down, based on his qualifications and his suitability for service on the Supreme Court.

Since joining the Tenth Circuit, Judge Gorsuch has been a busy man, doing exactly the kind of work that makes him qualified for this nomination. The Tenth Circuit exercises appellate jurisdiction of Federal cases originating in eight States that cover about 20 percent of America's landmass. That jurisdiction does include my home State of Wyoming.

As a member of the Tenth Circuit, Judge Gorsuch estimates that he sat on appellate panels considering approximately 1,800 criminal cases and 1,200 civil cases. The list of citations of case decisions he has authored is a single-spaced, 21-page document. After hearing all of those cases and drafting all of those opinions, even Judge Gorsuch's detractors have criticized only a mere handful of the hundreds of opinions he has authored.

I am confident that Neil Gorsuch is qualified to be a member of the Supreme Court because of his steadfast commitment to the rule of law. The many opinions he has written are known for being clear and easy to understand. But, most importantly, his opinions reflect his respect for following the law as it is written and for applying and adhering to judicial precedent. He is a judge who applies the law to the facts of the case and reaches the conclusion that the examination yields, regardless of his own personal beliefs.

As he said, ''Personal politics or policy preferences have no useful role in judging; regular and healthy doses of self-skepticism and humility about one's own abilities and conclusions always do.''

Judge Gorsuch is an adherent to, and defender of, America's Constitution and the separation of powers that document prescribes. As he said, ''Judges must allow the elected branches of government to flourish and citizens, through their elected representatives, to make laws appropriate to the facts and circumstances of the day.''

Throughout this nomination process, during all of which Judge Gorsuch has been under a political microscope, we have seen that he is a man of admirable character with a temperament that makes him well suited to serve as a Supreme Court Justice.

We know he has a resilient character and thick skin—qualities important to any Justice—because we have seen his demeanor and response to the criticism of his career and negative characterizations about some of his previous decisions—very few of them, I should add. We have seen his reaction in the face of accusations about his judicial independence. In the face of that—biting disparagement about the work he has spent his life trying to perfect—Judge Gorsuch has been respectful, remarkably patient, and resolutely committed to upholding the ethical canons and conduct demanded of him as a jurist.

We have glimpsed Judge Gorsuch's character as he has spoken about the people he values and those he strives to emulate. His legal heroes are people like Justice White, who he said ''followed the law wherever it took him without fear or favor to anyone''; Justice Anthony Kennedy, who, Judge Gorsuch said, ''showed me that judges can disagree without being disagreeable''; and Justice Scalia, who reminds us ''that the judge's job is to follow the words that are in the law—not to replace them with words that aren't.''

Neil Gorsuch has told us that he has also looked closer to home, to his family, to shape his character: his mother, who he said ''taught me that headlines are fleeting, but courage lasts''; his father, who he said showed him that kindness ''is the great virtue''; his paternal grandfather, who Judge Gorsuch said taught him that ''lawyers exist to help people with their problems, not the other way around.''

Neil Gorsuch has demonstrated his commitment to the law, his scholarship, and his temperament befitting that of a judge. He is eminently qualified to be a member of the Supreme Court—not in my opinion—that is what the judges have said.

I am not the only one who believes this. My office has received hundreds of calls and letters from my constituents in Wyoming urging the confirmation of Judge Gorsuch. He has a lot of support from folks in the Wyoming legal community, from both parties, whom I know and trust and whose opinions I value.

Judge Gorsuch has earned a ''well qualified'' rating—the highest rating they award from the American Bar Association. To give him this rating, the ADA's Standing Committee on the Federal Judiciary conducted a peer review of Judge Gorsuch's integrity, professional competence, and judicial temperament.

As children we all learn that you might be able to fool your parents or our teachers, but you can never fool your peers. You especially cannot fool ones with whom you have worked long hours like most judges and lawyers are known to do. You can't fool your peers. They are the ones who see you at your best and at your worst. That is why it is so remarkable that dozens of Neil Gorsuch's Harvard Law School classmates—people representing many different political and philosophical persuasions and who have known him for more than a quarter of a century—signed a letter supporting his nomination to the Supreme Court.

Among our most important duties as Members of this body is to carefully vet all nominees who come before us. Never is that responsibility so stark and so substantial than when our Nation faces a vacancy on the Supreme Court.

In November, millions of people went to the polls and rejected the kind of tired, partisan bickering when they voted for a change in Washington. Those same voters went to the polls knowing that there was a vacancy on the Supreme Court and that whoever became the next President would choose that nominee.

For many weeks now, Judge Gorsuch has been before us as that nominee. He has undergone scrutiny under which most of us would wither. We have all had time to examine his record.

I thank Chairman GRASSLEY, Ranking Member FEINSTEIN, and all of our Senate colleagues who serve on the Judiciary Committee for conducting such thorough and detailed nomination hearings that provided us ample opportunity to examine Judge Gorsuch's qualifications and temperament.

I believe there is only one logical conclusion to reach after all of this examination; that is, that Judge Neil Gorsuch is supremely qualified for and capable of the solemn and mighty task of serving as the next Associate Justice of the Supreme Court.

I urge my colleagues to join me in supporting this confirmation.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant legislative clerk proceeded to call the roll.

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

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

Mr. GARDNER. Mr. President, it has been an eventful week already. We have seen a number of Members come to the Senate floor and debate the qualifications of Judge Neil Gorsuch, the President's nominee to the highest Court, the U.S. Supreme Court. Many have come to the floor talking about his high qualifications—the fact that he has the highest American Bar Association rating; the fact that he has the support of the 2008 cochair of the Democratic National Convention; the fact that Neal Katyal, a high-ranking former official in the Obama administration, supports the confirmation of Neal Gorsuch.

We have had others come to the floor, of course, and express their opposition. We have had them come and express their opposition to an individual who has proved himself to be a mainstream judge, who has proved time and again that he has the respect of his colleagues on the Tenth Circuit Court—the bench of the Tenth Circuit Court, as well as circuit courts around the country, and that he has the respect and admiration of the Justices of the U.S. Supreme Court, where Judge Gorsuch clerked for Justice White, the last Coloradan to be on the Nation's High Court, and where he clerked for sitting Justice Anthony Kennedy.

Judge Gorsuch has been known and has become known as a feeder judge—somebody who provides clerks to the Supreme Court because they understand the quality and caliber of Judge Gorsuch's work.

We know Judge Gorsuch was a part of 2,700 opinions—decisions decided 99 percent of the time with the majority of his court; we know that 97 percent of that time, these decisions were unanimous. We know about his record as it relates to being reversed or overturned.

We know that our colleagues who, for some reason, are opposing Judge Gorsuch continue to come to the floor and talk about the reasons they apparently can't support Judge Gorsuch: because he will not violate judicial ethics—the ethics judges are expected to keep; because he will not preview how he would rule under a certain fact circumstance. George Washington himself could come down from a mountaintop and would be rejected by the U.S. Senate to be a Supreme Court Justice.

It is pretty incredible to see and hear the arguments that have taken place—some lasting all night—because some of these arguments are nothing more than sour grapes. Some of these arguments are nothing more than that two wrongs must make a right, in their minds. They criticize Republicans for invoking the Biden rule or the Schumer rule, and then they decide because of that, they are going to demand the seat be held open—not confirmed—because they believe it was taken from them. In their mind, if you do two things that are wrong, it must be a right. We have taught our children that is not true.

We know, in this instance, that the American people decided who the Supreme Court Justice would be.

In 2006, Judge Neil Gorsuch was nominated to serve on the Tenth Circuit Court. A dozen sitting Members of this Chamber didn't object to his nomination then. They didn't oppose him. They didn't come and register their ''no'' vote. In fact, nobody even showed up at his confirmation. LINDSEY GRAHAM was the only one. That is how objectionable he was then. So either of a couple of things has happened: Nobody did their work then to find out what kind of judge he was going to be or they have decided that the politics have changed.

To me, the most egregious part of this debate is that the politics of the time are demanding that there be absolute obstruction for the first time in over 230 years of a Supreme Court Justice, trying to defeat a Supreme Court Justice with a partisan filibuster for the first time in two centuries, of a judge who agreed 99 percent of the time with the opinions of the court. Ninety-nine percent of the time, his opinions were made with a majority of the court; 97 percent of the time, they were made unanimously.

This is an individual who has outstanding legal credentials: Harvard, Columbia, and, most importantly, time spent at the University of Colorado.

He is a fourth-generation Coloradan. I think an old joke of the late Justice Scalia was that four of the five boroughs in New York have their own Supreme Court justice. Wouldn't it be nice if we had a Supreme Court Justice from west of the Mississippi River, another western voice on the Supreme Court, a judge who comes from a circuit court that represents 20 percent of the landmass? If you are a Westerner and you have a choice of putting a judge on the Supreme Court who is familiar with Tribal law issues, a judge who is familiar with water issues, a judge who is familiar with public land issues, that is a pretty good pick for the High Court, to represent a vast part of America that is underrepresented on the Nation's High Court.

This institution can seem pretty puzzling at times because you consistently hear the outcry for bipartisan support: Let's work together. Let's have bipartisan support. Then the President nominates a judge who has strong bipartisan credentials from the people who know him the best. Look, most people in Washington, DC, most people in this Chamber have known Neil Gorsuch for just a couple of months since the time of his nomination. Most conversations people in this Chamber have had with Judge Gorsuch have consisted of an hour or two at a judicial confirmation hearing or perhaps when he visited the office prior to the hearing. That is the extent of their relationship and their knowledge and their understanding of Judge Gorsuch.

But the people who know him best—the people out in Colorado, Republicans, Democrats—believe he is well qualified and should be confirmed, that he deserves an up-or-down vote. People like Democratic Governor Bill Ritter believe that Judge Gorsuch should have an up-or-down vote and be confirmed.

Some people find Judge Gorsuch to be so unreasonable or so unfit to serve on the High Court, they might find it hard to believe that the 2008 cochair of the Democratic National Convention is supporting Judge Gorsuch's confirmation.

Jim Lyons, an attorney and close friend of President Bill Clinton, supports the confirmation of Judge Gorsuch.

They know his record. They have reviewed the cases that the opposition has stated that they find so egregious, and they still believe he is worthy of confirmation to the Court.

The standard that has been set by those who oppose Judge Gorsuch is a standard that simply says: No Justice could be confirmed. Why? We know that because Judge Gorsuch's credentials, his academic background, his judicial history, his temperament, his qualifications, his ratings show that he is more than able to serve and deserving to serve on the Supreme Court.

There is a certainly a difference in philosophy that has been presented here, a difference of philosophies that some people believe that a judge should just be a judge who follows the law or rules and makes a decision based on where the law takes them, but there are people who believe that a judge somehow has to be maybe a focus group of opinion or policy preferences, that a judge should be somebody who puts their thumb on the scale of justice to reach an outcome that is preferred by a political party. That is not what our Founders had in mind when they wrote the Constitution. That is not what justice is about.

Judge Gorsuch believes that you take an opinion, you take a decision where the law takes you, where the law leads you as a guardian of the Constitution.

He understands the separation of powers, but apparently that is not good enough for some. They want an activist judge, but I hope that over the next several hours and the next few days that our colleagues will come realize that those who know him best believe that he is qualified, that he deserves an up-or-down vote, that a judge who votes 99 percent of the time in the majority agrees with them.

I look forward to our conversations as we confirm Judge Gorsuch at the end of this week.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. REED. Mr. President, there are few moments in the life of a nation when the people are presented with a single choice that directly affects what equality before the law will mean for the next generation. The opportunity to grant a lifetime appointment to the Supreme Court of the United States is

one of those moments. The next Supreme Court Justice will break the 4-to-4 deadlock that has constrained the Court since the passing of Justice Scalia and this body's unprecedented refusal to act on Chief Judge Merrick Garland's nomination to fill that vacancy during the final year of President Obama's second term.

Before discussing the pending nominee's merits, we must consider this nomination in its historical context. Chief Judge Garland, I believe, was one of the most qualified nominees for the Supreme Court in generations. After meeting with him and reviewing his record, I had no doubt that he easily would have earned bipartisan support and cleared the 60-vote threshold, as did each of President Obama's prior nominees to the Court. Yet my colleagues on the other side of the aisle refused even to meet with him. His treatment was disgraceful.

Rejecting the treatment Chief Judge Garland received, I met with Judge Neil Gorsuch and shared a thoughtful conversation. I found him to be intelligent and articulate but at the same time, he was not particularly forthcoming about his judicial record, which contains many distressing examples of inconsistency and ideological rigidity. Nothing in our conversation or his testimony before the Judiciary Committee convinced me that he plans to moderate his positions to dispense equal justice under the law. I am deeply concerned that granting him a lifetime appointment to be a final authority on the meaning of the Constitution would further tip the scales of justice in favor of corporations and the powerful at the expense of working people and the powerless. Therefore, I cannot support Judge Gorsuch's nomination to the Supreme Court of the United States.

This is a pivotal time for our Nation, when the people's trust in the judiciary is in decline, attributed by many to the streak of 5-to-4 decisions of the Roberts Court that have consolidated corporate power. Given how radically the Court has changed many of our institutions over just the past decade, it is difficult to overstate the importance of understanding a nominee's judicial values and the human element the nominee will bring to the Court.

I have applied the same, simple test to each Supreme Court nominee throughout my time in this body. It is not enough for a nominee to display intellectual gifts or to possess a textbook understanding of American history and jurisprudence. Judicial decision making at the Supreme Court is not an assembly line where mechanical application of the law will resolve every dispute.

Rather, the nominee must demonstrate that she or he will use judicial discretion to give meaning to the text and spirit of the Constitution.

Justice Harlan Fiske Stone laid the foundation for this model of judicial review in United States v. Carolene Products Co. He wrote that judges must enforce the specific text of the Constitution, but he went further than that, urging judges to apply stricter scrutiny to laws that impede the effective operation of government and channels of political participation. Judges should likewise demand the most compelling justifications for laws that single out powerless, discrete, and insular minorities. These principles deeply influenced future scholars and judges and laid the groundwork for modern constitutional law as we have understood it since the Warren Court.

These are the decisions that struck down race and gender segregation, proclaimed the rule of ''one person, one vote,'' enshrined the right to remain silent and to counsel in police custody, and recognized the fundamental right of a person to marry for love, regardless of race or gender.

This tradition stands in stark contrast to the new wave of hyper-partisan legal activism we have seen manifested in our courts in recent years. This judicial activism attempts to disguise judges' personal political agenda by arguing that they are merely applying pure, indisputable, mechanical logic. This philosophy goes by varied names: textualism, originalism, strict constructionism, and so forth. But in the main, it is an ideological prism to disguise traditional judicial discretion, expand the law without limits to benefit politically powerful majority groups and corporations, and constrict the law for the minorities, workers, and the politically powerless.

We know too well the devastating effects of this line of thinking as it has manifested itself in the Roberts Court. In the case of Shelby County, the Court disregarded congressional intent and ruled 5 to 4 that the preclearance formula that helped millions of African Americans secure the vote in States with a history of discrimination was no longer necessary. This freed several States to enact severely restrictive election laws that clearly benefit one party and racial group at the expense of another, and courts are still working to resolve these imbalances.

In Hobby Lobby, with an intellectual framework formed in part by Judge Gorsuch, the Court ruled 5 to 4 to give for-profit corporations religious rights to opt out of providing comprehensive health coverage for their employees. This has opened the door for corporate religious challenges to an untold number of duly enacted restraints on corporate excess, from child labor laws to basic protections against employment discrimination.

In Citizens United, as we all too well know, the Court broke with decades of precedent, the facts of the case, and common sense to create a constitutional right for corporations to spend unlimited money on our elections. Indeed, our political system is still reeling from billions of dollars in anonymous political expenditures, and we are only now beginning to recognize the national security concerns that have resulted, with hostile powers, such as Russia, seeking to influence our democracy. In order to satisfy partisan, ideological ends, the Court has left us powerless to limit the purchase of political influence or even to know who is spending all this money on our politics.

Judge Gorsuch's record strongly suggests that he would contribute to the Roberts Court's partisan, pro-corporate orientation. Indeed, the very same business groups that spent $7 million in dark money to block Chief Judge Garland's nomination to this seat also spent $10 million on ads and lobbying efforts to support Judge Gorsuch's nomination. It stands to reason that these groups believe that Judge Gorsuch shares their right-wing beliefs and will benefit their interests.

The Judiciary is supposed to be above politics. Judges write opinions to satisfy due process and establish precedents that will guide future decisions. The opinion-writing process is not intended to be an arena for judges to pursue self-serving or ideological ends. That is why I am deeply concerned with Judge Gorsuch's clear willingness on the Tenth Circuit to go beyond precedent and the facts of a case before him to advance arguments designed to bend the law to his ideology.

In Riddle v. Hickenlooper, Judge Gorsuch joined a panel decision that struck down uneven contribution limits in Colorado election laws. He then wrote separately to advocate that all campaign finance laws should be subject to greater constitutional questioning. This was both unnecessary to decide the case, and a clear signal by Judge Gorsuch that he would work to abolish what remains of laws limiting the flow of anonymous corporate money into our elections.

Judge Gorsuch has reached furthest beyond precedent when doing so would deconstruct Federal agencies that constrain corporations, and protect workers, consumers, and the environment. This confirmation process has introduced many to a relatively obscure doctrine of administrative law called Chevron deference. The Chevron case stands for the essentially uncontested proposition that, when someone sues a Federal agency and a reasonable person could read the statute at issue more than one way, the court should defer to the agency's reasonable interpretation of the law it is charged with enforcing. This case has long been a target for attacks by corporations and their advocates because it levels the playing field in cases between massively well-funded corporate lawyers who want no regulations, and agencies charged with bringing big business into compliance with the law. Judge Gorsuch has written strongly against this principle, but even Justice Scalia acknowledged the sound reasoning behind the Chevron case.

Judge Gorsuch would seemingly return us to the old days when powerful

companies could pollute the environment, scam their customers, and discriminate against their employees as long as they could pay enough lawyers and get the right judge when the Federal agency sues. In the case of Gutierrez-Brizuela v. Lynch, he took the very unusual step of writing a concurrence to his own majority opinion in order to attack Federal agencies and make the case that decades of Chevron precedent should be overturned. It is highly unusual, after you have written the majority opinion at the circuit level deciding the case, that you would then step aside and write a separate epistle advancing your ideas.

He wrote in language that is familiar to those of us in the political branches of government, but out of the ordinary for a Federal judge. He compared Federal agencies to a ''tyrannical king'' and a ''behemoth'' and a ''colossus'' and laid out his constitutional theory for challenging Chevron in the Supreme Court. None of this analysis was necessary to the case before Judge Gorsuch. Yet in writing this and similar opinions, Judge Gorsuch signaled his willingness to break from precedent and contort the law to fit his ideological vision of how the system should work to benefit the powerful and his preferred interests.

My colleagues on the Judiciary Committee spent a great deal of time and effort questioning Judge Gorsuch and trying to elicit responses about his basic judicial philosophy. Unfortunately, his answers were largely nonresponsive and failed to address many of our concerns about his record.

Judge Gorsuch's record and writings shows he believes judges should always interpret the Constitution and other laws from the perspective of those who first drafted the law, regardless of how the world looks today.

The Founders and Framers, however, did not leave us a blueprint to answer every new question of law. Nor did the delegates to the Constitutional Convention demand that all future judges be ''originalists.'' The laws and values of 1789 would shock and alienate—as they should—many Americans today, particularly women and racial and other minority groups. Worse yet, a judge attempting to resolve a case as if it were the 18th, 19th, or even 20th centuries may wittingly or unwittingly use that construct to inject into the case the judge's own view of how the government ought to work.

The Hobby Lobby case is a key example of this ideological inconsistency at work to the detriment of less powerful Americans. This case concerned, as I noted earlier, whether a for-profit corporation could refuse to comply with the Affordable Care Act's mandate that employers provide health coverage, including contraceptives, to over 23,000 employees on the ground that doing so would conflict with the corporation's purported religious rights under the Religious Freedom Restoration Act, or RFRA.

The text of RFRA provides that the ''government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability.'' The legislative history of RFRA is both recent and clear. In the case of Employment Division v. Smith, decided in 1990, the Supreme Court rejected two peyote users' claim of a religious right to consume the drug on grounds that the Constitution permits some burdens on religion if the aim of the law is secular and generally applicable. When Congress debated RFRA in 1993, the House and Senate reports showed explicitly that Congress's aim was ''only to overturn the Supreme Court's decision in Smith'' and to require courts considering RFRA cases to ''look to free exercise cases decided prior to Smith for guidance.''

No Supreme Court case prior to this time had ever granted corporations religious rights and nothing in RFRA's legislative history suggested that Congress's intent was to do so. Notwithstanding these facts, Judge Gorsuch joined his colleagues to hold that a for-profit corporation's religious beliefs may overcome its employees own consciences and rights to comprehensive health coverage. He relied on an 1871 law called the Dictionary Act, which provided that in certain circumstances, Congress's use of the term ''person'' can also mean businesses, ''unless the context indicates otherwise.'' This reference to context means that Judge Gorsuch had discretion to use history and common sense to reach the conclusion that corporations don't have religious views, but people do, and RFRA was enacted to protect real people's rights. But instead, he took this opportunity to endow corporate entities with religious rights that could help them escape the law in untold circumstances.

Let's explore for a moment Judge Gorsuch's belief that judges should always give meaning to the original intent of a law's draftsmen. In this case, what is a corporation and how does it operate? In 1787, there were roughly six non-bank corporations in America, and their powers were severely restricted in the wake of colonists' experiences with the abusive practices of the Crown and royal English corporations. Around the time that Congress passed the Dictionary Act, corporations were harshly regulated by law to achieve specific commercial ends and nothing more. There were legal limits on the capital they could raise. Many could not operate outside their state of incorporation. They were often prohibited from owning property that was not necessary for specific commercial activities. Most were even forbidden to engage in any activity that was not explicitly enumerated in their corporate charters, and a real person could sue to render a corporation's action a legal nullity if it were not expressly in furtherance of the corporation's business mission. The idea that a corporation in this context could exercise fundamental religious rights, much less that its religion should excuse it from complying with duly enacted laws that protect real people, would have been outrageous to the Framers and the Congress that passed the Dictionary Act.

Judge Gorsuch knew or should have known the ahistorical nature of his decisions. We have yet to see the full scope and consequences of his vision of a near-unlimited right of corporations to opt out of our laws, but we can imagine the harmful choices and difficult litigation on this point that may lie ahead. I, for one, have deep concerns about any judicial philosophy that bends so far in the direction of corporate interests and completely ignores tens of thousands of real people in the process.

For as much as Judge Gorsuch's record shows that he is willing to entertain new or arcane legal theories to reach a better outcome for corporations and the powerful, it is also clear that he will go to no such length to vindicate the rights of minorities, the disabled or workers.

One example highlighted during Judge Gorsuch's confirmation hearing is his record on lawsuits under the Individuals with Disabilities Education Act, or IDEA. The purpose of IDEA is to ensure that students with disabilities receive a public education that is tailored to their special individual needs. In the 2008 case popularly referred to as the Luke P. case, however, Judge Gorsuch ruled against the parents of a severely autistic child who sought reimbursement for the cost of a specialized school because their son was not making appropriate progress in the public school. In denying the parents relief, Gorsuch reinterpreted IDEA to require that public schools need only provide de minimis, or nonzero educational progress to children with disabilities. Not only did Judge Gorsuch go beyond the facts of the case to close any path to relief for the family, but in this and similar cases, he attempted to set a legal precedent for future cases that effectively eviscerated the meaning and protections of IDEA.

Fortunately, the Supreme Court intervened. In a rare unanimous decision released, ironically, on the second day of Judge Gorsuch's confirmation hearing, the Court rejected Judge Gorsuch's narrow reading of the law. In fact, the Chief Justice did not mince words when it came to Judge Gorsuch's lower bar for schools. He said Judge Gorsuch's model would hardly provide ''an education at all'' for children with disabilities, and that ''receiving instruction that aims so low would be tantamount to 'sitting idly . . . awaiting the time when they were old enough to drop out.' '' This stark, unanimous rebuke of Judge Gorsuch's view of the law in the middle of his confirmation hearing was yet another reminder that this nominee is outside of the judicial mainstream.

But Judge Gorsuch has not just restricted his reading of the law in the educational context. In TransAm Trucking, Inc. v. Administrative Review Board, a majority of the Tenth Circuit held that a truck driver was wrongfully fired when he drove away from his trailer to find help after being stranded for hours in subzero temperatures in a vehicle with no heat and a rig with failed brakes. Judge Gorsuch disagreed so sharply that he penned a dissent. Under his strict textualist view of the law, the driver was protected from firing for ''refusing'' to operate in dangerous conditions, but the word ''refusing'' could not be interpreted to include driving away to get potentially lifesaving help, rather than freezing to death. Again and again, Judge Gorsuch's record shows he is capable, but either unwilling or unable to give the same benefit of the doubt to average working people as he does to their employers, their landlords and the most powerful among us.

Mr. President, Constitutional law is not concerned with easy cases or simple answers. We have constitutional guarantees to inalienable rights because we know that majority rule sometimes gets it wrong, particularly when it comes to the rights of the minority. That is what makes the qualifications for a seat on the Supreme Court fundamentally different from any other Federal or State court in the Nation. A judge's job is to apply precedent, be faithful to the law, and exercise measures of empathy and common sense to dispense justice. A Supreme Court Justice's job is to decide when the law is wrong and must be changed in order to fulfill the promise of the Constitution. The Supreme Court cannot perform this function unless the individual Justices bring to it the values and willingness to be the last resort for the powerless when the system fails. They must be able to make unpopular decisions and side against political and cultural majorities. They must be able to reject precedent when the established way of doing things no longer safeguards the fundamental protections to which every American is entitled. They must do this for the least and most derided among us, because if they do not, there is nowhere else to turn. They have the final word on the meaning of the law.

I take Judge Gorsuch at his word that he respects the law and approaches this nomination with seriousness and a sense of responsibility. A thoughtful reading of his work as an advocate and a judge reveals that he has a consistent predisposition to favor corporations and the powerful over human beings and the powerless. To be sure, there is nothing inherently wrong when a corporation, or a landlord, or an employer or a President of the United States wins a case in a court of law. The system often works as it should even when it hands new victories to those who seldom lose at anything. But at this moment in the life of our Nation, it is vital that the next Justice of the Supreme Court be willing and able to elevate the rights of the people above the prevailing political view of the wealthiest and most powerful when the two are in conflict. I cannot conclude that Judge Gorsuch meets this standard. Therefore, I will oppose his nomination and I would urge my colleagues to do the same.

With that, I yield the floor.

The PRESIDING OFFICER (Mr. GARDNER). The Senator from New Mexico.

Mr. UDALL. Thank you, Mr. President.

We have many important responsibilities as U.S. Senators. We often have to make very difficult decisions. Deciding to vote against cloture and confirmation for Judge Gorsuch has been a tough decision.

Since coming to the Senate, I have been a strong advocate for reforming the rules, to curb abuses to ensure the body can function, and to make sure that the President's nominees are treated fairly. I believe our constitutional duty to provide advice and consent is one of the most important of all of our responsibilities as Senators, especially for nominees to our Nation's highest Court, and I believe that withholding consent should be rare—rare but not unheard of. Sometimes circumstances will be so extraordinary that filibustering a Supreme Court nominee is necessary. The gang of 14 knew this. That was the group of 14 Senators who forged a compromise in 2005. Three of them are still in the Senate. Their agreement allowed some controversial judicial nominees to be confirmed to appellate courts, but it also allowed the Senate to avoid triggering the nuclear option, and it addressed how they would weigh future nominations.

The gang of 14 agreed to the following: ''Nominees should be filibustered only under extraordinary circumstances and each signatory must use his or her own discretion and judgment in determining whether such circumstances exist.''

I think that is a good standard, to only filibuster a nominee under extraordinary circumstances. Unfortunately, in my evaluation of Judge Gorsuch's nomination to the Supreme Court, I can't think of more extraordinary circumstances.

First, this wasn't President Trump's seat to fill. Justice Scalia died on February 13, 2016. President Obama still had nearly 1 year at that point to serve in his term. So President Obama fulfilled his constitutional duty. He nominated one of the most qualified nominees in the history of the Court, Judge Merrick Garland. Shortly before Judge Garland was nominated, Senator HATCH, one of our most respected Republican colleagues on the Judiciary Committee, said Judge Garland would be a great pick. Senator HATCH went on to say that President Obama ''probably won't do that because this appointment is about the election.'' But President Obama did do it. Judge Garland is not just a fine jurist, he is an exceptional human being. Judge Garland's lifelong commitment to public service is well known. He deserved far better treatment by the Senate majority.

Judge Garland was denied a hearing. Many of my Republican colleagues wouldn't even give him the courtesy of a meeting, and he never got a vote, which was a disgrace. It is an injustice that needs to be remedied before I could ever consider voting for Judge Gorsuch.

President Trump could fix this. He could make a commitment to nominate Judge Garland to the next vacant seat on the Court. It would be the right thing to do. I have been very open that I believe the Senate has become dysfunctional, but what the majority did last year was unprecedented. Things went from bad to rock bottom.

Being senatorial used to mean something. The Republican majority has shattered that tradition for purely partisan reasons. In fact, the majority leader has publicly stated: ''One of my proudest moments was when I told Obama 'you will not fill this Supreme Court vacancy.''' That is a violation of the U.S. Constitution's requirement that the Senate provide advice and consent.

Now, in 2017, Senator MCCONNELL has guaranteed Judge Gorsuch's confirmation, even before he had his hearing. For him the outcome has been a foregone conclusion. So we see there is no advice and consent now, either, just the exercise of power to block a nominee from another party. But President Trump could help heal that deeply partisan wound inflicted by his party. There is still time for both sides to come together and work out an agreement with bipartisanship and fairness first, and put aside the bitter partisan fighting that has divided the Congress and our Nation.

There is also a pragmatic reason for President Trump to appoint Judge Garland to the next seat. President Trump needs to ask himself if he wants to be subject to the McConnell precedent. Is he willing to accept that he only gets to appoint Justices for 3 years? If a Supreme Court vacancy occurs in 2020, does President Trump understand that it is not his vacancy to fill? That is the absurd standard that Leader MCCONNELL has established. If the Republican majority is dead-set on changing the rules to jam this nominee through after all that has happened, then we need to talk about this.

Perhaps the best thing to do in order to ensure the President understands the gravity of the Republicans' obstruction of his predecessor is to go ahead and put the McConnell rule in place for President Trump. Let's establish in our rule that President Trump only gets 3 years to appoint Justices. We can do this with a simple standing order. The majority leader believed President Obama should only have 3

years to appoint Justices, certainly the same standard must apply to President Trump. If the Republican majority thought that their policy in 2016 was good for President Obama, it should be good for President Trump. What is fair is fair.

I have a standing order drafted that would do that, and I hope an agreement can be reached to rectify the injustice that was done to Judge Garland, and I hope that Republicans will decide against using the nuclear option. But if that doesn't happen, I will call on the Senate to adopt this standing order so that President Trump was bound by the same restrictions as President Obama.

If we are going to change the rules tomorrow, then let's get the Republican majority on record. Are they prepared to hold President Trump to the same unjust standard as President Obama? We can find out.

Mr. President, I ask unanimous consent to have printed in the RECORD the text of my standing order at the end of my remarks.

Unfortunately, Judge Garland's unacceptable treatment isn't the only concern that guides my decision to vote against Judge Gorsuch. Like many things in the Trump administration, there is no shortage of extraordinary circumstances. Perhaps the most serious is the cloud of suspicion over his Presidency.

U.S. intelligence agencies have concluded that the Russian government interfered in the U.S. Presidential election and that it interfered to help Candidate Trump. There are unexplained ties between the President, his campaign staff, his associates, and Russian officials. People close to the President had meetings and telephone calls with Russian officials during the campaign and transition, and, most critically, the FBI and the Department of Justice are investigating whether the President and his associates coordinated or conspired with the Russian Government to interfere with the Presidential election. It is an investigation that began last July and is likely to continue for months.

If the President or his close advisers worked with Russia to help him win the U.S. election, do we really want to let him appoint a Justice to the Supreme Court, someone who could be on the Court for 30 years or more? There is no reason to rush this nomination.

Remember, Republicans had no problem letting Judge Garland's appointment languish for 293 days, and President Obama wasn't under investigation. Judge Gorsuch was nominated just 64 days ago. If Republicans had treated Judge Garland's nomination with the same expediency, he would have been confirmed last May when President Obama still had 8 months in office. The unacceptable treatment of Judge Garland and the investigation into Russia's influence in the election are reasons enough to vote against Judge Gorsuch.

But there is one more critical issue: the nominee himself. I have met with Judge Gorsuch and followed the hearing in the Senate Judiciary Committee. I carefully studied his record, and based on all of this information, I can't support his confirmation. The Supreme Court changes people's lives. Its decisions stand for generations. It is essential that Justices understand not only how these issues impact our democracy but how they affect people's lives, and that they consider them free of ideology.

Our meeting and the Senate hearings were Judge Gorsuch's opportunity to convince me that he will be an independent mind on the Court. He failed to answer questions that were critical for me—his position on the rights of working mothers, whether women can choose their own health care decisions, LGBTQ rights, and dark money in our elections, just to name a few. But what I found most troubling is that he failed to convince me that he would be an independent voice on the Court.

In just the last couple of months, the President has taken constitutionally questionable actions affecting Muslim immigrants, freedom of speech, and religion. The FBI is investigating his campaign, and he faces scrutiny about whether his company is benefitting from his office. All of these issues could well come in front of and before the Supreme Court. It is more important now than ever before that we have a neutral, clearminded Justice sitting on the bench. After carefully considering all these issues, I cannot support Judge Gorsuch's confirmation. It is not an easy decision, but I believe it is the right one for our country.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

RESOLUTION

Title: Prohibiting consideration of a nomination to the Supreme Court of the United States during the final year of the term of office of the President.

Resolved,

SECTION 1. PROHIBITION ON CONSIDERING NOMINATIONS TO THE SUPREME COURT OF THE UNITED STATES DURING THE FINAL YEAR OF THE TERM OF OFFICE OF THE PRESIDENT.

During the period beginning on January 20, 2020 and ending at noon on January 20, 2021, it shall not be in order in the Senate to consider the nomination of an individual to the position of Chief Justice of the United States or a position as a justice of the Supreme Court of the United States.

Mr. UDALL. With that I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. PETERS. Mr. President, the U.S. Supreme Court is a pillar of our Nation's democracy, and I take very seriously the Senate's responsibility to advise and consent on nominees to serve in this revered institution. Our constitutional democracy is a system of checks and balances with three coequal branches of government. Each branch is intended to serve as a check on the other two.

If congressional Republicans are unwilling or unable to check President Trump, this leaves our courts as the last line of defense against an administration that is committed to expanding the already vast power that is provided to the Executive.

We have seen this play out over the past 2 months as President Trump has twice rolled out unconstitutional travel bans only to have Federal courts stop their implementation. The President's reaction was telling. He lashed out at the ''so-called 'judge' '' and urged his Twitter followers to blame not only the judge who stayed a travel ban but the entire Federal court system should an attack occur.

Judge Gorsuch wants us all to know that he found these attacks on the judiciary ''disheartening.'' He told me as much when we met. He made a point to use the same language when in meetings with a number of my colleagues. Personally, I would say that these attacks on the judicial branch are more than disheartening—they are appalling, and I would say they are dangerous.

Judge Gorsuch is, by all accounts—and in my opinion—a good man, but as I have reviewed Judge Gorsuch's record and previous rulings, I have to say that I find them disheartening.

I find it disheartening that he has regularly sided against everyday Americans' rights, including women's reproductive rights, workers' rights, and civil rights. I find it disheartening that, instead of allowing women access to basic healthcare, Judge Gorsuch authored a concurring decision that argued that corporations have religious beliefs.

Yes, we all know that corporate law creates a legal fiction of personhood, but let's be real. Corporations are not people. They are not humans, and I have never sat next to a corporation at church. Corporations do not have religious beliefs. To say otherwise defies common sense.

Judge Gorsuch's ruling and the subsequent Supreme Court decision in Burwell v. Hobby Lobby Stores, Inc., is a dangerous step backward for women's health. This ruling puts corporations before people and could leave women in Michigan and across the country without access to essential healthcare services. This decision is a step backward for women. It is, instead, a step forward for the growing power that corporations have in this country. Courts not only serve as a check against a powerful executive branch, but they are supposed to put individuals on a level playing field against large, powerful corporations.

I am disheartened that Judge Gorsuch was the only Tenth Circuit judge to rule against a Detroit truck-driver who was unfairly fired for not staying in his disabled trailer after waiting for hours in dangerously cold weather. In a 2-to-1 decision in TransAm Trucking v. DOL, Judge Gorsuch ruled that TransAm Trucking

was in the right when it fired Alphonse Maddin for walking away from his disabled semi instead of risking death by hypothermia.

I am also disheartened by Judge Gorsuch's ruling on accommodations for disabled students. In Thompson R2–J School District v. Luke P., Judge Gorsuch ruled that schools only need to provide meager accommodations to satisfy the Individuals with Disabilities Education Act.

During Judge Gorsuch's confirmation hearing, the Supreme Court handed down a decision that ruled unanimously against his position. Even the most conservative judges on the Court overruled him.

Chief Justice John Roberts powerfully wrote:

> When all is said and done, a student offered an educational program providing ''merely more than de minimis'' progress from year to year can hardly be said to have been offered an education at all.

Whether it is ruling against children who want an equal opportunity to get a quality education or women who want access to healthcare or a truckdriver who simply wants to make it home safely at the end of his shift, I am disheartened that Judge Gorsuch often fails to take into account the human face behind each case.

The U.S. Supreme Court is often the last line of defense for everyday Americans, and Judge Gorsuch's previous rulings indicate he believes that corporations have greater rights than individuals. As millions have been spent by the corporate elite in support of his nomination to the Supreme Court, the judge has failed to acknowledge how deeply the Citizens United decision has corrupted our government by opening the floodgates for special interest money to pour into our elections.

My colleagues on the other side of the aisle will tell you that Judge Gorsuch is a mainstream judge. I would argue that most Michiganders do not consider the Koch brothers or the Heritage Foundation to be mainstream. Mainstream Michiganders would tell you that our winters can be bitter cold and that you cannot sit in a stalled vehicle for hours without risking life and limb. They would tell you that corporations are not people and, therefore, do not have religious beliefs. They would tell you that all children deserve a chance at a quality education.

A lot of my colleagues will be discussing Senate procedures and rules and precedent in the coming days, and I will simply say this: Michiganders and all Americans deserve a true mainstream, consensus Supreme Court Justice who can earn broad bipartisan support and not merely squeak by.

Now, more than ever, we need the Supreme Court to be our Nation's North Star, not a weathervane that responds to rapidly shifting political winds.

Serving on the Supreme Court requires more than education, more than experience, and more than a pleasant demeanor. A Supreme Court Justice must have sound judicial philosophy and the ability to interpret the law as intended by the Constitution and by the Congress.

I am extremely concerned that Judge Gorsuch's judicial approach is out of step with mainstream Michigan values, and I urge my colleagues to join me in opposing his nomination.

Mr. NELSON. Mr. President, will the Senator yield?

Mr. PETERS. I yield the floor.

The PRESIDING OFFICER. The Senator from Florida.

Mr. NELSON. Mr. President, I thank the Senator for yielding.

Mr. President, deciding whether to confirm a President's nominee for the highest Court in the land is a responsibility I take very seriously. Over the past few weeks, I have met with Judge Gorsuch, listened to the Judiciary Committee's hearings, and reviewed his record with an open mind. I have real concerns with his thinking on protecting the right to vote and allowing unlimited money in political campaigns. In addition, I am concerned that the judge will not protect the rights of the everyday average citizen when they come up against large corporate interests. Judge Gorsuch has consistently sided with corporations over employees, as in the case of a freezing truck driver who, contrary to common sense, Judge Gorsuch would have allowed to be fired for abandoning his disabled rig during extreme weather conditions.

I will vote no on the motion to invoke cloture and, if that succeeds, I will vote no on his confirmation.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. VAN HOLLEN. Mr. President, I rise today to speak about one of the most important responsibilities we have here in the U.S. Senate: considering the President's nominee to the Supreme Court.

It is a vote with consequences that will far outlast this Presidential administration. It is a vote with implications that will outlast all of our time here in the Senate. It will certainly be one of the most consequential decisions each one of us makes.

That is because any one of the nine individuals named to the Supreme Court with a lifetime appointment can change the course of our Nation. In just the past few years, we have seen that. We have witnessed a series of 5-to-4 decisions that changed the trajectory of our society—decisions that gutted section 4 of the Voting Rights Act and resulted in numerous States enacting discriminatory laws designed to limit access to the ballot box, especially for African-American and minority voters.

The 5-to-4 Citizens United decision overturned the law of the land and Supreme Court precedent in order to empower corporations to spend unlimited sums of money in support of candidates for public office, corroding the fabric of our democracy. There were decisions that limit a woman's access to safe and affordable birth control and reaffirm the legal fiction that for-profit corporations should have the same rights as real people. There was a decision that upheld the Affordable Care Act, and a decision that—with a single vote—gave every American the right to marry the person they love.

The decision of a single Supreme Court Justice can indeed change the trajectory of our judiciary and of our society for generations.

Now my Republican colleagues rightly note that this weighty decision begins with the President. They have routinely said it is the President's right to choose his judicial nominees, and that is true. I have one question for them: Where were they last year when President Obama nominated Merrick Garland to the Supreme Court of the United States? They were AWOL.

Shortly after Justice Scalia passed away and before President Obama even named his nominee, the Senate Republican leader announced that he would leave the seat open—and he did—for an unprecedented 293 days. For 293 days, one of the most qualified and mainstream nominees in our history languished without even a hearing. Many Senators refused even to meet with him. For 293 days, Democrats in this Chamber and people from all over the country called upon this Senate to do its job and consider the nomination of Judge Merrick Garland. The response? Nothing—a total abdication of this Senate's constitutional responsibility of advice and consent.

But, unfortunately, this Chamber's failure to live up to its responsibility to consider the Garland nomination is just one piece of a larger assault on the independence of our judiciary.

President Trump has made it clear that he sees our Nation's judges not as a separate and coequal branch, but an unwelcome challenge to his power. He has called the courts broken and political. When he faced trial for scamming thousands of students at Trump University, he charged that the Federal judge overseeing that case could not be impartial. Why? Because, he said, he was Hispanic—a charge that was, in the words of the Speaker of the House PAUL RYAN, the ''textbook definition'' of racism.

When the Trump administration first tried to impose its Muslim ban, only to be blocked by a Federal court, did President Trump display respect for the rule of law? No. He fired his acting Attorney General, Sally Yates and accused her of having ''betrayed'' the Department of Justice. He went on to say that if any future harm occurs, it is the fault of the courts, and called them obstructionists for not bending to his will. They are not supposed to bend to the will of the Executive.

President Trump's disdain for the courts makes it all the more important that the open seat on the Supreme Court be filled by somebody who is

seen as an impartial administrator of justice—someone who does not have a set political ideology.

Unfortunately, Neil Gorsuch does not meet that important test.

His record and his testimony shows that he applies a very cramped reading of the law and consistently—time and again—sides with powerful corporate interests against the rights of workers, consumers, and individuals. When he had an opportunity during the hearings to explain that bias, he chose instead to evade the questions and answer with platitudes, not substance. While he is undoubtedly a skilled lawyer, his record reveals that he is outside of the judicial mainstream. His decisions have closed the doors of justice to working people, to people with disabilities, and to individuals seeking to protect their rights.

In one opinion, Judge Gorsuch was the only judge who thought that TransAm Trucking company was right when they fired a driver whose only offense was finding safety when the heat in his truck broke down in subzero temperatures, and he began to show signs of hypothermia. The driver said he could not feel his lower body, his fingers were becoming numb, and he experienced slurred speech while waiting for hours for help from his company. Judge Gorsuch was the only judge who thought that Federal regulations protected the trucking company and not the truckdriver trying to avoid freezing to death. It makes me doubt that Judge Gorsuch considers the real-world consequences of this ruling.

Judge Gorsuch also sided against working people and defended powerful corporations. In his opinion in Hobby Lobby, he came down on the side of corporate power against the rights of workers. He argued that not only do corporations have rights to religious liberty, but those rights can supersede—can trump—the rights of ordinary working Americans. He was the architect of an opinion that severely limited a woman's access to basic reproductive healthcare.

In yet another ruling, Judge Gorsuch prevented an autistic child from getting a proper public school education. His opinion on the Individuals with Disabilities Education Act severely limited the options for parents of children with disabilities and the quality of public school education they could receive. His reasoning in that case was overturned by the Supreme Court literally as he was testifying in the Senate Judiciary Committee.

Not merely was his decision overturned, it was overturned unanimously—eight to nothing. According to the justices that Judge Gorsuch hopes to serve with, his standard would have cut children with disabilities out of high-quality education.

As the Supreme Court said in that case: ''For children with disabilities, receiving instruction that aims so low would be tantamount to sitting idly, awaiting the time when they were old enough to drop out.''

That is what the Court said. Fortunately for children with disabilities and their families, and for the sake of justice, they did not adopt the Gorsuch reasoning.

Finally, Judge Gorsuch has spent his career arguing against the so-called Chevron standard. In essence, this means that when it comes to Federal rules designed to protect the public health and safety, he believes that the opinions of judges like himself should outweigh the opinions of experts in these subjects in our civil service. This view was rejected by none other than Judge Scalia. It is much more in line with the thinking of Steve Bannon, a man whose stated goal is to deconstruct the Federal rules that protect the health and safety of the American people. Again, Judge Gorsuch is not in the mainstream.

And let's make no mistake, he was never intended to be a mainstream nominee. Candidate Trump established several litmus tests. He said he wanted a nominee who was opposed to a woman's right to reproductive choice and someone who would have the support of the NRA. Donald Trump then subcontracted out the nomination process to rightwing conservative groups like the Heritage Foundation and the Federalist Society. He asked them to compile a list of nominees who they liked. Neil Gorsuch was on that list.

So it should be no surprise that an analysis that appeared in the New York Times concluded that Neil Gorsuch would be the second most conservative member of the current Supreme Court, and an analysis in the Washington Post concluded he would be the most rightwing member of the Court.

And once President Trump selected Neil Gorsuch, the rightwing money machine went into action. Since that moment, money has flooded our airwaves, with more than $10 million spent in support of this nomination. Never before has our country witnessed a multimillion dollar campaign for the Supreme Court.

When pressed, Judge Gorsuch said he had no idea who or why anybody would spend that much money to make sure he sits on the highest Court. I think we know why from looking at his record. They want someone who consistently rules in favor of large corporate special interests against the rest of us.

There is a better way. Typically, the White House will consult with Members of both parties, Republicans and Democrats, before settling on a nominee. This time that courtesy was not extended to Democrats. If it had been, we could be talking today about a bipartisan nominee—someone who would uphold equal justice under the law for every American. The rules do not need to change; the nominee needs to be changed.

Our Nation's independent judiciary is under attack. Our President demonizes judges whenever he feels challenged, and now special interest groups have begun funding millions of dollars into a campaign, reducing our solemn constitutional duty to a set of slick campaign ads. That is why we need a new nominee—one who has the support of 60 members of this Chamber.

I will oppose this nomination and insist that this nominee be held to the 60-vote standard to show he can get a consensus of this body.

I yield the floor.

The PRESIDING OFFICER. The Senator from New York.

Mrs. GILLIBRAND. Mr. President, one of the most important constitutional duties we as Senators have is to decide whether a Supreme Court nominee is the right person for the job.

When we make a decision, we should always consider what is best for the people of this country. Three branches of government were created to serve the people, so no matter what we do—whether it is here in the Senate, whether it is in the White House, or whether it is across the street in the Supreme Court—the American people should always come first. And our rights—our individual rights should never be subordinate to the rights of corporations.

The Supreme Court is supposed to be the ultimate protector of our individual rights—the ultimate arbiter of justice for our citizens.

Unfortunately, Judge Gorsuch, over the course of his career, has made it clear that he thinks the rights of corporations are more important than the rights of individuals.

For someone who describes himself as a strict constructionist—as a so-called textualist—his judicial ruling on corporate rights in the Hobby Lobby case is one of the biggest distortions of our sacred principle of individual rights that I have ever seen.

And now President Trump has nominated Judge Gorsuch to the Supreme Court, where he could end up ruling on many more cases related to individual rights.

In my State, just like in many of yours, there are thousands and thousands of families who will be directly affected by the decisions the Supreme Court makes in the next few years: voting rights, workers' rights, reproductive rights.

The PRESIDING OFFICER. The time of the Senator has expired.

Mrs. GILLIBRAND. I ask unanimous consent for 1 additional minute.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mrs. GILLIBRAND. In my State, just like many others, there are thousands of families who will be directly affected by the decision the Supreme Court makes in the next few years—even our First Amendment speech rights, which President Trump has threatened by saying he wants ''to open up our libel laws'' against the press.

If any of these cases make it to the Supreme Court, they will all be decided in part by the next Supreme Court Justice, and Judge Gorsuch's record does

not give me confidence that he will be a Justice whose rulings would bolster those individual rights.

On the issue of changing the rules to the filibuster, I strongly oppose changing these Senate rules for President Trump, to give him special help with Judge Gorsuch.

So I urge my colleagues to think about the potentially far-reaching and damaging consequences to our democracy if they vote to eliminate the filibuster for Supreme Court nominees. Fundamentally, changing the rules for President Trump is a historic mistake.

We must stand up for individuals' rights over corporations, and I urge my colleagues to vote against this nominee.

The PRESIDING OFFICER (Mr. LEE). The Senator from Alaska.

Mr. SULLIVAN. Mr. President, I, too, wish to spend some time talking about the confirmation and upcoming vote on Judge Neil Gorsuch. As many of my colleagues have noted, this is certainly one of the most important responsibilities we have in this body—to confirm the next Supreme Court Justice.

As the Presiding Officer noted in remarks made a few days ago about Judge Gorsuch, he is an exceptionally well-qualified candidate for the U.S. Supreme Court. I will go briefly into his bio.

First of all, he has a sterling academic reputation and credentials. He graduated from Columbia, Harvard, and Oxford. He clerked for two Supreme Court Justices. He worked at the Justice Department. Very importantly—and we are not hearing a lot about it from our colleagues on the other side—he was unanimously confirmed for a U.S. court of appeals job for the Tenth Circuit in 2006. Senators such as Hillary Clinton, Barack Obama, and Joe Biden all voted for him, as well as many of my colleagues in this body on the other side of the aisle who are still serving.

He is a westerner. We know that right now the U.S. Supreme Court, with the possible exception of Justice Kennedy, has no westerners. Geographical diversity on the Court is very important. This morning, my colleague Senator MURKOWSKI talked about how the current Supreme Court is occupied by Justices who have spent almost their entire lives in the Boston, New York, DC corridor. That is not America. That doesn't represent the whole country. Judges in Western States focus on issues like Native-American law, lands issues, oil and gas issues. It is very important, certainly for my State of Alaska, to have a judge with that kind of background.

But it is more than facts on a page that make Judge Gorsuch such a strong candidate for the High Court. During Senate Judiciary Committee hearings last week, his temperament was also tested and his judicial philosophy was articulated. It was clear during those hearings that Judge Gorsuch will bring a commitment to following the rule of law and that he believes no one, including the President of the United States, should be above the law. He reveres the separation of powers and the fundamental principle that it is the Congress of the United States, not the judiciary, that makes our laws.

He performed exceptionally well. He answered question after question with consistency and displayed a legal philosophy well within the mainstream of judicial thought within the United States.

As the Presiding Officer knows, it is not just Members of this body who are talking about Judge Gorsuch and how well qualified he is; commentators across the country have focused on how qualified Judge Gorsuch is to be our next Supreme Court Justice. Let me highlight just a few of their quotes.

This is from an editorial from the Chicago Tribune:

> Here is a judge who knows the law and knows the role of the judiciary: He isn't on the bench to make law, he's there to interpret it faithfully.
>
> Neil Gorsuch should be confirmed.

The Detroit News:

> After two days of often hostile hearings, Supreme Court nominee Neil Gorsuch is proving himself an even-tempered, deeply knowledgeable nominee who should be confirmed by the United States Senate.

The Denver Post said:

> [Judge Gorsuch] possesses the fairness, independence and open-mindedness necessary to make him a marvelous addition to the Supreme Court.

USA TODAY's editorial board declared: Gorsuch merits confirmation. This Supreme Court nominee is qualified within the broad judicial mainstream of America.

In fact, we looked to see if there was any major paper across the country or commentator who is opposed to Judge Gorsuch's nomination. It was hard to find any. It was hard to find any in any part of the country. Two former chief justices of the Tenth Circuit Court of Appeals—both appointed by different Presidents of different parties—stated that Judge Gorsuch ''represents the best of the judicial tradition in our country.''

Even one board member of the liberal American Constitutional Society who said he supports Democratic candidates and progressive causes declared: ''There is no principled reason to vote no on Judge Gorsuch's confirmation.''

He received the highest rating from the American Bar Association. And it is not just the ABA, there is a long list of different groups across the country, many representing minority groups in America, who have supported Judge Gorsuch—the National Congress of American Indians, the Native American Rights Fund, the Hispanic Leadership Fund, the Central Council of Tlingit and Haida Tribes in Alaska. The list goes on and on and on.

Given the broad-based support—from the left, from the right, from the center—why would my colleagues on the other side of the aisle threaten the traditions of this institution and not even allow an up-or-down vote on Judge Gorsuch? Well, I have been listening. I have been listening to the speeches to see what they are saying. It seems that some of my colleagues are focused on this vague notion of vagueness—literally, vagueness. If we listen to their comments, they talk about Judge Gorsuch's supposed ambiguity, his vagueness, his evasiveness, that he won't answer questions on how he would rule on specific cases, so they are going to oppose him because of this. Well, these are curious and, to be frank, unconvincing reasons to oppose Judge Gorsuch.

First, as we know, a nominee is typically not expected to say how he or she would rule on future cases. Judicial nominees, whether appointed by Democratic or Republican Presidents, have said this repeatedly. I will provide a quote from a prior nomination hearing by one of our current Supreme Court Justices. She stated:

> Because I am and hope to continue to be a judge, it would be wrong for me to say or to preview in this legislative chamber how I would cast my vote on questions the Supreme Court may be called upon to decide. Were I to rehearse here what I would say and how I would reason on such questions, I would be acting injudiciously.

That was what Justice Ruth Bader Ginsburg told the Senate Judiciary Committee in 1993. She continued during her confirmation hearing:

> A judge sworn to decide impartially can offer no forecasts, no hints, for that would show not only disregard for the specifics of the particular case, it would display disdain for the entire judicial process.

Many have called this the Ginsberg standard, one that Justices have followed in front of the Judiciary Committee during their confirmation hearings and one that Judge Gorsuch also followed. Indeed, during his hearing, Judge Gorsuch stated that if the President or others had asked such a specific question on how he would rule on a particular case, ''I would have walked out'' of the room.

So my colleagues on the other side of the aisle can't have it both ways. They say they want an independent voice on the Court, but they are also opposing Judge Gorsuch because he won't tell them how he would rule on certain cases. This is a new standard and an impossible standard to meet.

The second reason the vagueness standard of many of my colleagues on the other side of the aisle in their opposition to Judge Gorsuch is unconvincing is that it ignores the fact that this is a judge with a record. They say: He is vague. We are not sure what his views are.

Judge Gorsuch has decided roughly 2,700 cases, over 800 of which he authored. There is nothing vague about that. In 97 percent of the time in those cases, he reached a unanimous decision with the other panelists on the Tenth Circuit. These are not vague decisions. His judicial philosophy and temperament are on full display in literally

tens of thousands of pages of decisions in his own words. There is nothing vague about them.

My colleagues can challenge him on his mountain of legal opinions, but please, with all due respect, let's drop the facade of opposing him because of vagueness, and that they don't know what the issues are is not an argument that has much merit.

So despite widespread acclaim from groups across the country, representing a broad spectrum of liberals and conservatives, and despite a tenured, concrete record as a judge on the U.S. court of appeals, my colleagues on the other side of the aisle appear to want to engage in a partisan filibuster of Judge Gorsuch's nomination.

What exactly does this mean? The language, I admit, can be confusing—cloture, filibuster, 60-vote threshold. In plain English, what is really going on? It means that the minority leader right now wants to prevent the Senate from having an up-or-down vote on the merits of this Supreme Court nominee. In other words, no vote ever on the qualifications of Judge Gorsuch. We will just filibuster.

I have been watching a number of my colleagues come to the floor and talk about what they are planning on doing. The minority leader has essentially been saying: We all do this. We are all guilty. Nothing new here. This is just a little bit of payback. This is how this place operates.

In many ways, these arguments are almost cavalier in what they are about to do. But we shouldn't buy that. I have been in the Senate only 2 years—a mere blink of an eye compared to others—and I missed a lot of the other nominations and debates in 2013, the Gang of 14 many years ago. But I like to read a lot of history, and here are some facts that are important to understand as we debate the Gorsuch confirmation:

First, there has never been a partisan filibuster of a new President's nominee for the Supreme Court—never.

Second, it has been the custom, always, of the U.S. Senate to give a new President's nominee an up-or-down vote. For example, Republicans gave this courtesy to President Clinton when he nominated Ruth Bader Ginsburg in 1993 and Stephen Breyer in 1994 and President Obama with his first-term nominees, Sonia Sotomayor in 2009 and Elana Kagan in 2010. They all got up-or-down votes.

Third, there has never been a 60-vote requirement for any Justice on the Supreme Court during the confirmation process in the U.S. Senate—never.

Let me go through the votes of the current Supreme Court Justices: Justice Kennedy, 97 to 0; Justice Thomas, 52 to 48; Justice Ginsburg, 96 to 3; Justice Breyer, 87 to 9; Chief Justice Roberts, 78 to 22; Justice Alito, 58 to 42; Justice Sotomayor, 68 to 31; Justice Kagan, 63 to 37.

Incidentally, Justice Scalia, whom Judge Gorsuch would be replacing, passed the vote in the U.S. Senate 98 to 0. Note that two of the current members of the Supreme Court were confirmed by fewer than 60 votes.

Bottom line: There has never been a 60-vote requirement in the U.S. Senate or a partisan filibuster of a Supreme Court nominee during a President's first term—never.

Here is another fact equally as relevant to Judge Gorsuch's confirmation: More than any other President, more than any other Presidential election in recent memory, the one last year was clearly about the U.S. Supreme Court. Republicans in the Senate and Candidate and now President Trump told the American people: There is an open seat on the U.S. Supreme Court. This is an important issue. Let the people decide.

And they did. Polls show that millions of Americans ended up voting for President Trump and against Hillary Clinton based, at least in part, on which candidate they believed should nominate our next Supreme Court Justice and whether they wanted the Court to act as a superlegislature, interpreting a living Constitution, or whether they wanted a Justice in the mold of Justice Scalia, with a more modest view of how the Court should view its station in our constitutional order.

The American people, including my constituents, spoke loudly in November on this issue of the U.S. Supreme Court by voting against Hillary Clinton and for Donald Trump. And to his credit, President Trump kept his word on this important issue by putting forward an extremely well-qualified candidate who will be a worthy successor to Justice Scalia.

Despite all this—an extremely well-qualified nominee and a national election that focused on who should fill the vacancy of the Supreme Court—it appears that the minority leader of the Senate is going to ignore the will of the American people and set a precedent dating back to our Nation's founding by leading a filibuster against Judge Neil Gorsuch. We shouldn't allow this to happen, and we won't.

I hope my colleagues who are contemplating this will change their minds because in going forward with this filibuster, who are they really punishing? They are punishing the American people, as well as undermining the traditions of this body—a body with rules crafted carefully over the last two centuries.

As I mentioned, we need to work together in this body. In my 2 years in the Senate, I have tried hard to work with my colleagues on bipartisan issues. I have also tried hard to show all my colleagues the respect they deserve as duly elected Senators of this important body. Whatever the outcome of this vote on Judge Gorsuch, I certainly want to make clear that we need to continue respectfully working across the aisle for the sake of our Nation, and we need to rebuild trust in the Senate. But at the same time, I believe strongly that Judge Gorsuch deserves to get an up-or-down vote. I certainly encourage my colleagues to bring that vote forward and to confirm this exceptionally well-qualified candidate to be our next Supreme Court Justice. And the American people deserve as much, as well.

I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I rise today to speak out against the abuse of the Executive authority. Before I do, I want to compliment the distinguished Senator from Alaska for his cogent remarks here today on the floor. He is one of the great new additions to this body, and he ought to be listened to. I personally respect him and appreciate the words he said here today.

ANTIQUITIES ACT

Mr. President, I rise today to speak out against the abuse of Executive authority under the Antiquities Act.

Over the last two decades, past Presidents have exploited the law in the extreme, using it as a pretext to enact some of the most egregious land grabs in our Nation's history. My home State of Utah has been hit especially hard by this Federal overreach. Time and again, Presidents have abused their power under the Antiquities Act to proclaim massive monument designations—to lock away millions of acres of public land.

My State has fallen victim to not one but two catastrophic monument designations. These designations were made unilaterally, without any input whatever from our congressional delegation or even the local Utahans whose lives would be directly affected by such decisions. Rather than advancing the important cause of conservation, these national monuments have come to symbolize Washington at its worst.

How did we get here? How did a century-old law, which is intended to give Presidents only limited authority to designate special landmarks, become a blunt instrument for Executive overreach? In answering this question, some background is necessary.

In 1906, Congress passed the Antiquities Act, which granted the President limited authority to establish national monuments to protect areas containing ''historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest.'' The Antiquities Act was a well-intentioned response to a serious problem: the looting and destruction of cultural and archaeological sites.

When applied as intended, the law has been indispensable in preserving our Nation's rich cultural heritage. But the law has not always been applied as intended; rather, it has been abused, exploited, and distorted beyond all recognition. It has been hijacked by past Presidents not to preserve archaeological features but to satisfy special interests and to advance a radical political agenda—all at the expense of States' rights.

By signing their authority under the Antiquities Act, past Presidents have seized millions of acres of public land, violating both the spirit and arguably the letter of the law. We need only look at the history of the Antiquities Act and its enactment to see how far we have come and how far we have strayed off course.

As with any law, congressional intent is key. On this point, I would like to refer to the House CONGRESSIONAL RECORD dated June 5, 1906. When asked how much land would be taken off the market in the Western States by passage of the Antiquities Act, Congressman John Lacey, the bill's lead sponsor, gave a simple response: ''Not very much.''

The bill provides that it shall be the ''smallest area necessary for the care and maintenance of the objects to be preserved.'' ''The smallest area necessary.'' These words are damning in light of recent monument designations which, far from regulating the smallest area necessary, have sought to restrict the largest area possible. I wonder what Congressman Lacey would say today if he could see how his bill has been manipulated for extreme partisan ends. I wonder what he would say if he could see how his legislation has been exploited by past Presidents to lock up entire sections of State land—all without congressional approval. And I wonder what he would say about the two most recent monuments designated in Utah: Bears Ears and the Grand Staircase-Escalante monuments. Together, these two monuments encompass 3.25 million acres—an area roughly the size of the State of Connecticut. To say that Congressman Lacey and his colleagues would be disappointed is an understatement.

In passing the Antiquities Act more than 100 years ago, Congress did not intend to cede undo authority to the executive branch, and they certainly did not intend for future Presidents to proclaim the massive land grabs of the recent past. They intended to give Presidents only limited authority to designate special landmarks, such as the unique national arch or the site of old cliff dwellings. Yet today, when it comes to the Antiquities Act, there is a shocking disparity between what Congress intended and what has actually happened.

As a case in point, look no further than my home State of Utah, where President Obama's last-minute, lame-duck monument designation at Bears Ears is wreaking havoc on the local population. In the parting shot of his Presidency, President Obama defied the entire Utah congressional delegation and the will of his own constituents when he declared the Bears Ears a national monument. With the stroke of a pen, he locked away an astonishing 1.35 million acres—a geographic area larger than the total acreage of all five of Utah's national parks combined.

If that is not enough, consider that Utah's second most recent national monument, the Grand Staircase-Escalante, spans 1.9 million acres. That is an area double the size of all of Utah's national parks combined. When President Clinton proclaimed the Grand Staircase-Escalante a national monument more than 20 years ago, I remember standing on this very floor and speaking out then, just as I am speaking out now. My words back then are just as applicable today. I said:

> While the 1906 Antiquities Act may indeed give the President the literal authority to take this action, it is quite clear to me that in using this authority, he is violating the spirit of U.S. environmental laws. Real damage has been done here. The failure even to consult prior to making this decision should be considered devastating to representative democracy.

To this day, the Grand Staircase proclamation remains among the most flagrant abuses of Presidential power I have ever seen. Without so much as a ''by your leave'' from Utahans, this unilateral action cut off access to millions of acres of land, suffocating economic development and uprooting the lives of thousands of Utahans who relied on the region's resources for their very survival. And just like Bears Ears, this designation came with no input from Utah's Governor, the Utah congressional delegation, or even local communities.

The Grand Staircase monument designation exemplified Executive overreach of the worst kind. Even Democrats were stunned by this shocking power grab, and many of them conceded to me privately when I was then shouting publicly that the President was never meant to set aside millions of acres through the Antiquities Act.

Even the San Francisco Chronicle—by no means a conservative newspaper—panned President Clinton's Grand Staircase proclamation. In 1996, the editorial board stated:

> The question is whether a decision of such magnitude should be carried out by Executive order. We think not. This may well be a worthy idea, but it deserves a fair hearing. It deserves to go through public deliberations, as slow and messy as democracy may be, to fully air the concerns.

That was more than 20 years ago. In the intervening period, nothing has changed. Bears Ears was Grand Staircase all over again. When President Obama declared the Bears Ears a national monument in the twilight hours of his Presidency, he ignored the years of work Utah's congressional delegation had spent fighting to pass legislation to protect the region via a fair and open process. He ignored the State legislature and the Governor. He ignored the stakeholders and even local Utahans who were all working together to find a workable solution. He ignored the best interest of Utah and cast aside the will of the people, all in favor of the top-down unilateral approach meant to satisfy the demands of far-left interest groups. This is Executive hubris at its worst. It was never supposed to be this way.

Congress, not the President, is solely responsible under the Constitution for the management of property and land within the Federal domain. Only through passage of the Antiquities Act can Congress grant authority to the President to make limited monument designations. Congress entrusted the executive branch with narrow authority, but the executive branch has violated that trust time and time again.

For years, I have fought to check the abuse of Executive power under the Antiquities Act. As far as back as 1997, in the aftermath of the Grand Staircase proclamation, I introduced legislation requiring an act of Congress before the President could establish any national monument of more than 5,000 acres. As early as last year, in anticipation of the eminent Bears Ears debacle, I wrote a bill prohibiting any further extension or establishment of national monuments in Utah without express authorization from Congress.

Most recently, I have been working closely with the Trump administration from day one to right the wrongs of previous administrations. Within days of his nomination, I indicated to Secretary Ryan Zinke that undoing the harm caused by the Bears Ears and Grand Staircase monument designations was among my top priorities.

In a private meeting in my office, I even told Secretary Zinke that my support for his nomination would depend largely on his commitment to this cause. After gaining assurances from Secretary Zinke that he would work with us in this effort, I was eager to support his confirmation. I probably would have supported it anyway because he is a fine man. But I am really pleased that he agreed with me on the injustices that have occurred in Utah.

Just 2 weeks later, I found myself in the Oval Office where I engaged President Trump for over an hour on a wide-ranging discussion that focused specifically on the public lands issue. I have to say that I was amazed at the President's willingness to help. He listened intently as I relayed the fears and frustrations of thousands in our State who have been personally hurt by the Bears Ears and Grand Staircase monument designations.

I explained the urgency of addressing these devastating measures. I asked for his help in doing so. I was encouraged that, unlike his predecessor, President Trump actually took the time to listen and understand the heavy toll of such overreaching actions. Our President even assured me that he stands ready to work with us to fix this disaster. More than any of his predecessors, President Trump understands what is at stake here.

I was really buoyed up by the conversation with him in the Oval Office. Indeed, in all my years of public service, I have never seen a President so committed to reigning in the Federal Government and so eager to fix the damage done by these overbearing monument designations. We are fortunate now to have the White House at our side in the fight for local control.

There are many areas in this country that merit protection. I welcome the opportunity to work with my colleagues to further that cause. But the process to determine how best to protect these areas is equally important. That is why, for decades now, I have vehemently opposed unilateral actions to restrict the use of entire landscapes without even the charade of a public process.

Using the Antiquities Act to protect our public lands, we must set a new precedent of collaboration and trust between the States and the Federal Government. I look forward to working with President Trump to establish this new precedent.

Mr President. I will turn to another matter of pressing importance, the confirmation of Judge Neil Gorsuch to be a Justice on the U.S. Supreme Court. I have been in a lot of these battles over the years. I have to say, this one bothers me as much as any battle we have had.

In early January of this year, the Democratic leader issued a warning to then-President-Elect Donald Trump regarding the President-elect's anticipated selection of a Supreme Court nominee. Even before President Trump took the oath of office, the Democratic leader was already threatening the soon-to-be-President to either pick a ''mainstream and independent'' nominee or the Democrats would oppose the President-elect's choice ''with everything we have.''

Well, President Trump did exactly what the Democratic leader asked when he nominated Judge Neil Gorsuch to the Supreme Court. Not only is Judge Gorsuch a mainstream and independent judge, he is easily one of the finest and most qualified nominees to the High Court that I have seen in all my 40 years in the Senate. His selection was also the result of the most transparent Supreme Court nomination process in American history.

President Trump and Hillary Clinton both made the Supreme Court a centerpiece of their campaigns and spoke at length about the type of judge they would appoint to replace Justice Scalia. Candidate Trump even made the novel pledge to nominate someone from a list of judges his campaign released to the public. This gave the American people the opportunity to vet the list and to discuss more generally the proper role of judges in our system of governance.

When the American people elected Donald Trump to be our next President, they ratified his list of candidates. When President Trump subsequently selected Neil Gorsuch from that list to be his nominee, he kept his promise to the American people. That is who I expected him to select at that time.

Judge Gorsuch's judicial record on the Tenth Circuit paints a clear picture of the judge's judicial temperament and philosophy. Of the more than 2,700 cases Judge Gorsuch has participated in on the Tenth Circuit, 97 percent of them were decided unanimously. Judge Gorsuch voted with the majority on that court 99 percent of the time, even though the majority were Democrats.

In the 1 percent of the cases in which Judge Gorsuch dissented, he did so with almost the same frequency, whether the majority opinion was written by a judge nominated by a Republican or a Democrat President. Additionally, Judge Gorsuch has gained bipartisan support, including from President Obama's former Solicitor General, Neal Katyal, a man whom I respect, said that Judge Gorsuch is committed to the rule of law and the judiciary's independence.

Judge Gorsuch was described by six former Solicitors General appointed under four different Presidents as, ''highly respected'' and ''admired by his colleagues appointed by Presidents of both parties and law clerks of all political stripes.''

The American Bar Association gave Judge Gorsuch its highest rating of ''well qualified'' to be an Associate Justice on the Supreme Court. I think we can all agree that this is a far cry from the profile of an extreme or activist judge. It is a far cry from that. That needs to be pointed out. I want to know how anyone can, while keeping a straight face, honestly make the case that Judge Gorsuch is anything but mainstream.

In reality, quite the opposite is true. Judge Gorsuch is exactly the kind of judge we need on the Supreme Court. He is an impartial, thoughtful man with tremendous judicial experience, a person that you can't help but respect. He has been educated at some of the best schools in the world and has excelled at every stage of his career.

He has served with character, courage, and integrity for more than a decade on the Federal bench. It would be hard to even imagine a better, more suitable choice for the Supreme Court than Judge Gorsuch. After seeing the judge sit through several grueling days of confirmation hearings and nearly 20 hours of questioning before the Senate Judiciary Committee, my confidence in Judge Gorsuch has only been solidified.

Despite the Democrat's best efforts before and during the hearings to distort his record, he demonstrated time and again that his judicial philosophy is to impartially interpret and apply the law and the Constitution wherever it might take him.

Now we are about to witness something unprecedented in the history of our Nation. The partisan minority is going to block a vote on a Supreme Court nominee. In all of the Senate's 228-year history, that has never happened before. Three Supreme Court nominees have faced filibusters in our Nation's history. The first, Abe Fortas, faced a bipartisan filibuster by Senators of both parties concerned about Fortas's questionable ethics background.

The second and third, William Rehnquist and Samuel Alito, endured partisan filibusters by Democrats who disagreed with these nominee's judicial philosophies. The filibuster against Fortas succeeded, in part, because Fortas lacked a clear majority support, and, in part, because he was ethically compromised. The filibusters against Rehnquist and Alito, by contrast, failed. Rehnquist and Alito both enjoyed clear majority support and both were confirmed. But that was a different Senate at the time. There was a lot more open mindedness about the qualifications of these judges and their right to sit on the bench.

I regret to say that we are likely to add a fourth filibustered Supreme Court nominee, Neil Gorsuch. Like Justices Rehnquist and Alito, Judge Gorsuch enjoys clear majority support. Like Justices Rehnquist and Alito, Judge Gorsuch faces opposition from Senate Democrats who don't like his judicial philosophy. Why, I will never understand. In particular, they object that Judge Gorsuch takes the law as he finds it, rather than trying to bend the law toward liberal social ends.

Unlike Justice Rehnquist and Alito, however, Judge Gorsuch is apparently not going to clear the 60-vote threshold for cloture. This is because Senate Democrats, with only a few exceptions, have concluded that no nominee who does not subscribe to their views of hot-button social issues should be allowed to serve on the Supreme Court. Never, never, in the history of this body has the Senate allowed a partisan minority to defeat a Supreme Court nomination for which there is clear majority support.

The only successful filibuster of a Supreme Court nominee in our Nation's history was bipartisan, and it involved an ethically compromised nominee, Abe Fortas, who resigned from the bench shortly after his nomination failed rather than face impeachment for serious conflict-of-interest violations. Those circumstances are not even remotely comparable to the situation we face today.

The filibuster of Judge Gorsuch, should it go forward, will be entirely partisan. It will have nothing to do with Judge Gorsuch's ethics or character, which are above reproach, and it will occur in the face of clear majority support for the nominee.

Senate Democrats' decision to block Judge Gorsuch should come as no surprise to anyone who has been following the confirmation wars for more than the last 5 seconds. My Democratic colleagues will no doubt shout to the hilltops—some of them. There are some that are standing up here too. But they will shout to the hilltops that Republicans are ruining the Senate if we decide to put a stop to their unprecedented obstruction of this nominee.

They will no doubt cry that the 60-vote threshold for cloture on Supreme Court nominees is sacrosanct and that by putting an end to Democrats' unprecedented obstruction, Republicans are somehow undermining this institution's ideals.

When the American people hear these claims, when they hear Senate Democrats argue that Republicans should respond to their unprecedented obstruction by allowing a nomination with clear majority support to fail, they should recognize these arguments for what they are: hypocrisy. The fact is, we are only in this situation, forced to choose between rewarding Democrat obstructionism and changing the Senate's rules, because of Democrats and the campaign they have waged against qualified judicial nominees for the past 30 years.

Every single escalation of the confirmation wars can be laid at the feet of Democrats. This is a simple truth, and nothing my colleagues on the other side of the aisle can say can change it. I speak from experience. I have been here for through all of it. I was here in 1987 when Democrats started the confirmation wars with their disgraceful treatment of Robert Bork, one of the greatest lawyers in the country and a person who was supremely qualified to be on the Supreme Court.

I remember vividly the day the late Senator from Massachusetts came to this floor and smeared Judge Bork as a man would somehow turn back the clock to darker days in our Nation's past. I have to say, Senate Democrats twisted Judge Bork's words, misrepresented his record, and in sum, did their best to turn a good and decent man into some sort of a monster.

In their scorched-earth campaign against Robert Bork, Senate Democrats sowed seeds of destruction that are coming now to full fruition.

Next came Clarence Thomas. My Democratic colleagues learned from their Bork experience that fabrications and misinterpretations can bring down even the most qualified nominee, so they set to work on Judge Thomas. Not satisfied merely with denigrating Judge Thomas's professional qualifications, they set out to destroy him personally as well.

I have been in the Senate for 41 years, and never in all my time have I seen a lower moment than the way the Senate Democrats treated Clarence Thomas. No baseless allegation, no lurid lie was too low for my Democratic colleagues' attention. To his great credit, Judge Thomas endured this slander with dignity and respect and was confirmed by a slim 52-to-48 margin.

Thankfully, after the Thomas ordeal, we stepped back from the brink. When Bill Clinton became President and had two Supreme Court vacancies early in his term, Senate Republicans did not play tit for tat. Instead, we gave Justices Ginsburg and Breyer fair hearings and confirmed them overwhelmingly. And how did Senate Democrats pay us back for our fair treatment of President Clinton's nominees? They filibustered President George W. Bush's nominees.

I have used the word ''unprecedented'' to describe Democrats' expected filibuster of Judge Gorsuch. Well, what the Democrats did to President Bush's judicial nominees was also unprecedented. For the first time in history, Senate Democrats successfully filibustered 10 court of appeals nominees. These were nominees with majority support in this body. These were nominees who would have been confirmed had they gotten an up-or-down vote. I cannot overstate how dramatic a change this was to Senate norms and procedures. For the first time in history, Senate Democrats created an effectual 60-vote threshold for judicial nominees. Remember that Clarence Thomas was confirmed with only 52 votes. Had Senate Democrats filibustered his nomination, it would have been defeated. But they didn't because partisan filibusters of nominees with majority support were simply not in the accepted playbook. What Senate Democrats did during George W. Bush's Presidency changed the Senate forever.

Next up was Samuel Alito. Like Chief Justice Rehnquist, Justice Alito faced a partisan filibuster by Senate Democrats. Like Chief Justice Rehnquist, he overcame that filibuster. But what is notable about Justice Alito is he received fewer than 60 votes for confirmation. He overcame the filibuster because 19 Senate Democrats voted to end debate on his nomination even though only 4 ultimately voted for confirmation. Fifteen Senate Democrats chose not to filibuster Justice Alito even though they opposed his nomination because they recognized that filibustering a Supreme Court nominee with clear majority support had no precedent in this body's norms or history.

What happened when Barack Obama became President and Republicans had an opportunity for payback? Did they filibuster Sonya Sotomayor and Elena Kagan? Of course not. Indeed, many Republicans voted against Justice Sotomayor and Justice Kagan, but no Republican tried to prevent their nominations from coming to a vote. Once again, Senate Democrats escalated confirmation wars, and Senate Republicans chose not to reciprocate.

How did Democrats pay us back for our restraint on Justices Sotomayor and Kagan? They nuked the filibuster for lower court nominees. The irony of this move is really something. It was the Democrats who, 10 years earlier, for the first time in Senate history, began the practice of filibustering courts of appeal judges in an effort to stop President Bush's nominees. When Senate Republicans then had the gall not to roll over for President Obama once the shoe was on the other foot, Democrats simply changed the rules back to what they were in practice 10 years prior. Democrats, that is, raised the effectual confirmation threshold to 60 votes by instigating filibusters to block Republican nominees and then lowered it back down to 50 votes to push through Democratic nominees. They did so after only seven failed cloture votes. The Republicans, by contrast, endured 20 failed cloture votes during President Bush's term and never changed the rules.

That brings us to today. Having Borked Judge Bork, smeared Justice Thomas, instigated the filibuster for lower court nominees when it was in their interest, filibustered Justice Alito, and then eliminated the filibuster for lower court nominees when it was in their interest, Senate Democrats now expect Republicans to drop our hands and allow them to block Judge Gorsuch—an unquestionably qualified nominee with broad support from across the legal community and the country as a whole.

Enough, Mr. President. Enough.

We have let our Democratic colleagues get away with their games for too long. They were for the filibuster before they were against it before they were for it. They were the ones who created an effectual 60-vote threshold for judicial nominees. They were the ones who then undid that threshold to assist their short-term political interests when they were in power. They are the ones who now, for the first time in history, are seeking to block a Supreme Court nominee with clear majority support.

To put the matter bluntly, my Republican colleagues and I are fed up with these Democratic Party antics. We will no longer be bound by their games and petty partisanship. We will no longer allow them to dictate the terms of debate in ways that always advantage their side and always disadvantage ours.

I regret deeply the point we have arrived at. I am an institutionalist. I love the Senate and what it represents. I love my Democratic colleagues, and they know it. I have been very fair to them through the years, and I continue to be. I value debate, and I honor bipartisanship. But 30 years ago, my Democratic colleagues sent us down this path, and they have done nothing in the years since to turn us from this course. To the contrary, they have only hastened our descent.

If Democrats will filibuster a person like Judge Gorsuch, they will filibuster anyone—anyone—who holds to the traditional judicial values Republicans embrace. Neil Gorsuch is as good as they come. If he is not good enough for Democrats, no one will be.

Democrats demand that Republicans choose a nominee they would choose if they held the White House, when that has never been the standard for Supreme Court nominees and defies all logic and common sense. They demand the power to veto President Trump's choice even though the Supreme Court was, in all likelihood, the issue that won him the election. And I believe that. And they demand that Republicans keep the rules sacrosanct when they have changed the rules and changed the rules and changed the rules.

I am not happy that we are where we are, but I can say without reservation

that we are here because of what Democrats have done over the past 30 years to poison the confirmation process.

I am about to change the rules if necessary to put Neil Gorsuch on the Supreme Court. I won't be happy about that, but I will do it because Judge Gorsuch deserves confirmation and because I refuse to reward Democrats for 30 years of bad faith in blocking, stalling, and smearing Republican nominees.

Enough, Mr. President. Enough.

I hope my colleagues will come to their senses and realize that we ought to be working to support people of the quality of Judge Neil Gorsuch. There will come a time when they are going to have nominees before this body—I kind of hope that doesn't happen, but I think it is bound to happen—and when they do, I hope my fellow Republicans won't treat their nominees the way they are treating ours. It is abominable, it is abysmal, it is wrong, and I think it is time for everybody in this country to know that.

Mr. President, I used to try cases in Federal court, in Pittsburgh and in Utah. I had tremendous respect for Federal court judges. Mainly the judges in Pittsburgh were all Democrat. The judges in Utah more often were Democrats, some Republicans. But I have got to say that they were good judges, and I was very proud to be able to present my cases in front of them.

All I can say is that in all my years of working on the Judiciary Committee, trying cases before I came here, having an AB rating, the highest rating that Martindale-Hubble grants to attorneys for ability in both Pittsburgh and Utah, I have to say that I am very disturbed by the arguments made against Judge Gorsuch, and I have to say that I don't think you can find a better more qualified person to be on the Supreme Court.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. TILLIS). The clerk will call the roll.

The senior assistant legislative clerk proceeded to call the roll.

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

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

Mr. BLUMENTHAL. Mr. President, we will vote today and tomorrow on the Supreme Court nominee, Neil Gorsuch, in the midst of a looming constitutional crisis. Only in the past few weeks, the Director of the FBI has confirmed that his agency is investigating ties between President Trump's associates and Russian meddling in our recent election.

The urgent need for an impartial investigation and the possibility of the Supreme Court's having to rule on a subpoena directed to the President of the United States is very real. The repeat of United States v. Nixon is far from idle speculation. The independence of our judicial branch has never been more important. It has never been more threatened.

When the story of this constitutional crisis is written, I believe that the heroes will be an independent judiciary and a free press. An independent judiciary is the bulwark against overreaching and autocratic tyranny, and the free press has uncovered much of the facts that have prompted the FBI investigation and, I hope, eventually—sooner rather than later—an independent prosecutor because only a special prosecutor can bring criminal charges that will hold accountable wrongdoers who have broken our criminal laws.

In this constitutional crisis, respect for an independent judiciary is more important than ever before, but it is threatened by forces that are powerful and undeniable. It was threatened first by the denial to Merrick Garland of a hearing and a vote, relying on an invented principle found nowhere in the Constitution that the President of the United States—then Barack Obama—somehow lost his power to appoint Justices during the fourth year of his term. That act of political expediency demeaned this institution, the U.S. Senate, and it also disrespected our judiciary. It dragged the Supreme Court into the partisan mire that has caused such drastic dysfunction in this branch of government.

President Trump demonstrated his own disrespect for the judiciary through his constant, repeated, relentless attacks, calling one member of the bench a ''so-called judge'' simply because he ruled against him and struck down on constitutional grounds President Trump's illegal travel ban—really a Muslim ban. His demeaning and disparaging comments have attempted to shake the foundation of respect for judicial rulings that have held him accountable and potentially every President accountable to the American people, along with the Senate and the House of Representatives. He has attempted to convince his audience that judges who rule against him are not only wrong but illegitimate—in one case, because of a judge's ethnic heritage.

I would have thought that there would have been bipartisan shock and outrage at such suggestions, but the silence across the aisle has been deafening. Such a campaign by the Executive against the judicial branch would be extraordinarily disturbing regardless of the circumstances but particularly so now in the midst of this constitutional challenge.

President Trump's disrespect for the judiciary was emphasized, as well, by how he selected his nominee for the Court and how he established a litmus test for that nominee. He proudly proclaimed that litmus test, declaring on multiple occasions that his nominee would automatically overturn Roe v. Wade and strike down gun violence prevention measures. He outsourced that selection process to extreme rightwing groups, like the Heritage Foundation, choosing from their list, from their preapproved selectees. Against this backdrop, President Trump nominated Neil Gorsuch to the Supreme Court.

I want to make clear that despite my outrage about what happened to Merrick Garland, which was far worse than a filibuster—one of my colleagues has termed it the ''filibuster of all filibusters''—and despite my deep concern over a nomination from a President who so disrespects the judicial branch, I was prepared to give Judge Gorsuch a fair hearing. I believe my colleagues on the Judiciary Committee and I provided that hearing, and we will provide a vote.

I strongly believe that during this process, Judge Gorsuch had a special obligation to be forthcoming. I want to be clear that that is not opining on cases or controversies that may come before him or issues that may be before his Court if he is confirmed. Unlike prior nominees, he absolutely refused to say whether he agreed with core principles and precedents, well-established and long-accepted decisions of the Supreme Court that embody and enshrine principles that the American people have accepted and that they expect the Supreme Court to implement.

There is no tradition of a Supreme Court nominee's refusing to answer every question posed to him as Neil Gorsuch did, even questions about iconic cases. Justice Kennedy and Chief Justice Roberts answered unambiguously that they believed that Brown v. Board of Education was rightly decided. Justice Roberts also said of the decision in Griswold v. Connecticut: ''I agree with the Griswold Court's conclusion.'' On the related case of Eisenstadt v. Baird, Justice Alito said: ''I do agree with the result in Eisenstadt.'' Such statements do not prejudice any litigants or prejudge any cases; instead, they provided Senators and, more importantly, the American people with the confidence that these Justices adhere to long-settled legal principles that have formed the basis of critically important cases that came afterward. How far these principles may extend is a live issue, but their underlying legitimacy is not and should not be.

Unfortunately, at his hearing, Judge Gorsuch would tell us only that Griswold and Eisenstadt were precedents—or decisions—of the Court, and he doubled down on his evasiveness in response to written questions that were submitted just last week. There was no reason for him to diverge from the kinds of answers that were provided by Justice Roberts and Justice Alito unless he, unlike them, disagreed with the reasoning that was used in these cases.

These cases go to the core of the right to privacy and equal treatment under the rule of law. The constitutional right to privacy underlies not

just the rights of couples to use contraception, which was the issue in Griswold and Eisenstadt, but the right of women to control their own bodies, as established in Roe v. Wade, and couples of different races to marry, as established in Loving v. Virginia, or the right of same-sex couples to equal treatment, as established in Lawrence v. Texas and Obergefell v. Hodges. Justice Brandeis, in one of the original privacy decisions, called this right to privacy ''the right to be left alone,'' and it is a core constitutional principle that Chief Justice Roberts endorsed as well.

If Judge Gorsuch does not believe in this fundamental right or equal protection under the rule of law, the American people deserve to know it. Unfortunately, his continued evasion of my questions and those of others tells a different story. I am left with the inescapable conclusion that Judge Gorsuch passed the Trump litmus test—an automatically anti-choice, pro-gun conservative and an acolyte of hard-right special interests who screened and selected his name. Yet I am equally and maybe more concerned by Judge Gorsuch's approach to cases dealing with worker safety and consumer rights, issues relating to clean air and water and the fundamental role of the public sector in protecting individuals and putting their rights above corporate interests.

The important concerns my colleagues and I have raised have been caricatured by some Senate Republicans to a belief that judges should always rule for sympathetic plaintiffs, and that is simply not so. The TransAm Trucking case, which has been discussed at length on the floor and in committee, is of concern not because of the individual but because of the reasoning he used. He relied on a handpicked dictionary definition to rule against a worker who left his truck as he was under threat of grave physical peril and perhaps death, and he distorted the meaning of the statute, leaving aside basic common sense and feeling. He called Congress's declared statutory purpose—protecting health and safety—too ''ephemeral and generic'' to provide an interpretive guide. That is how he characterized our purpose here in protecting the safety of workers. This approach shows that Judge Gorsuch looks for guidance not in the words that Congress has chosen but in his own dictionary. And it may not even be Webster's; it may be the dictionary that is in his head or is in the heads of the rightwing groups who screened and proposed his name.

Then there is Judge Gorsuch's open hostility to the Chevron doctrine, which is a term that was likely meaningless and incomprehensible to most Americans before these proceedings and may be again after we are done. Yet it is a profoundly important principle of law that essentially stands against judicial activism—the very defect that many of our Republican colleagues believe is too characteristic of the courts today.

The structure of our government depends on the flexibility of these agencies that protect the purity of our drinking water, the safety of workers on construction sites, the integrity of our financial markets, and much, much more, so that it may do its job and enforce rules and laws that provide not only protection for ordinary people, everyday Americans, but also a level playing field for the good guys who want to do the right thing, and they are the majority of businesses in this country.

The proposed abandoning of the Chevron doctrine that Judge Gorsuch supports would eviscerate the enforcement of these basic rules that protect workers and consumers—people who drink water in their homes and breathe the air and go to work every day and expect to come home safely, as well as people who invest their money in a way that is protected against fraud.

As Emily Bazelon and Eric Posner wrote this Sunday in the New York Times:

> Judge Gorsuch is skeptical that Congress can use broadly written laws to delegate authority to agencies in the first place. That can only mean 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.

I ask unanimous consent that the article be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the New York Times, Apr. 1, 2017]

THE GOVERNMENT GORSUCH WANTS TO UNDO

(By Emily Bazelon and Eric Posner)

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 adviser 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's 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 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 rule-making to the president, the N.I.R.A. violated the Constitution's separation of powers.

The court's ruling in Schechter 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.'' Schechter Poultry's stand against executive-branch rule-making 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 collective 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 to ending 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.

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 for 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 E.P.A. 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 E.P.A. 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 E.P.A. (and any agency) could determine the

meaning of an ambiguous term in the law. The rule came to be known as 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 viewed 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-loans crisis of 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 Schechter Poultry all over again.

And Judge Gorsuch has forcefully 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) Schechter Poultry. Never mind that the Supreme Court hasn't since relied on its 1935 attempt to scuttle the New Deal. Nonetheless, Judge Gorsuch wrote that in light of Schechter 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 vote to overturn Chevron without saying so directly, noting that the administrative state existed long before Chevron was decided in 1984. The implication is that little would change if courts stopped deferring to the E.P.A.'s or the Department of Labor's reading of a statute. Judges would interpret the law. Who could object to that?

But here's the thing: Judge Gorsuch is skeptical that Congress can use broadly written laws to delegate authority 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.

Mr. BLUMENTHAL. His philosophy represents the height of activism, because it would allow courts to substitute their policy judgments for agency expertise. Abandoning the Chevron doctrine and the principles it represents invokes a desire to destroy a broad array of rules that protect critical rights. One such rule was issued by the Occupational Safety and Health Administration in the aftermath of a Connecticut tragedy at L'Ambiance Plaza decades ago when a collapse killed 28 workers in Bridgeport, CT. The rule prohibiting the use of the lift slab construction technique that led to L'Ambiance's collapse has now saved the lives of others. But would it have survived a review by Judge Gorsuch? My fear is that he would have struck it down and substituted the activist instinct of a judge instead—protecting the corporations that might use it.

Today we still know very little about Judge Gorsuch's core beliefs because he evaded so many questions. But here is what we do know. We know that the man who hired him has said he passes his rightwing litmus test. We know that conservative organizations have spent millions of dollars on the prospect that he will move American law dramatically to the right. And we know that he will not answer questions that his Republican-appointed predecessors answered about core tenets of American jurisprudence. In short, he has left us with substantial doubt.

Let me conclude on this note—that doubt. Important and critical doubt that should preclude us from confirming him today leaves women wondering how long they will have autonomy over their healthcare decisions, same-sex couples questioning whether they might be denied the right to marry the person they love, workers and consumers doubting their rights, and Americans fearing the Court will abandon protections of privacy, equality, and the rule of law.

That is why I cannot support this nomination and why I urge my colleagues to support a filibuster to block it.

I yield the floor.

The PRESIDING OFFICER. The majority leader.

UNANIMOUS CONSENT AGREEMENT—EXECUTIVE CALENDAR

Mr. MCCONNELL. Mr. President, I ask unanimous consent that following leader remarks on Monday, April 24, the Senate proceed to executive session for consideration of Calendar No. 31, the nomination of Sonny Perdue to be Secretary of Agriculture. I further ask that the time until 5:30 p.m. be equally divided in the usual form and that at 5:30 p.m., the Senate vote on confirmation with no intervening action or debate, and that if confirmed, the President be immediately notified of the Senate's action.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. WHITEHOUSE. Mr. President, I ask unanimous consent to speak for up to 20 minutes as in morning business.

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

CLIMATE CHANGE

Mr. WHITEHOUSE. Mr. President, this is my 163rd ''Time to Wake Up'' speech. I persist in the hope that one day these little water drops will ultimately cut through the stone of fossil fuel intransigence.

Last week our new President, Donald Trump, announced an Executive order aiming to wipe out many of his predecessors' climate change measures. So I would like to take some time this evening to examine his Executive order—which is, in many respects, a sham—and show how very far away it is from the actual wishes of the American people.

So to set the scene, exactly as the big polluters wanted, the Trump Executive order purports to roll back climate protections. It seeks to change rules for how industry controls methane leaks from natural gas extraction and to lift a ban on new coal leases on our Federal lands. It signals an effort to unwind the Clean Power Plan, which has helped put us on track to sharply reduce carbon emissions over the next decade. Typical for this insider-friendly administration, it is a polluter's wish list, but terrible for the American people—sad, as the President would say.

President Trump promises that this will revitalize the coal industry, but it won't. Appalachian coal is being crushed in the market by Wyoming coal, and cheap natural gas is crushing both Appalachian coal and Wyoming coal, and ever-cheaper renewables are catching up on them all. So like so much of what this Oval Office does, this was political theatrics, not real policy.

The Clean Power Plan is going nowhere because America is not, despite Trump's best efforts, a banana republic. The administrative agencies that Trump directed to stop taking action on climate change are actually obliged to follow the law, and they will be held to the law. Under the Administrative Procedures Act, these agencies have to follow real facts, not conjure up ''alternative facts'' from the fever swamp of the Breitbart imagination. Their record and their decisions will be reviewed by courts—not ''so-called'' courts, real courts. Administrative agencies cannot make decisions that are, to use the standard of administrative law, arbitrary and capricious. This is an Oval Office that lives by being arbitrary and capricious, but administrative agencies cannot be, or their work will be thrown out in court.

The question of carbon dioxide as a pollutant has been settled by the U.S. Supreme Court. Even Administrator Pruitt seems to recognize the folly of trying to undo the EPA carbon dioxide endangerment finding. So we have, as a matter of law, a dangerous pollutant, and under the law, it must be regulated. So this performance of the Trump Show is a waste of time because ultimately lawyers and courts will give the law—the law—the final say.

Courts are actually pretty good places for addressing climate change. It is very hard for the lies that are at the heart of climate denial to withstand judicial scrutiny. Smelly conflicts of interest can be exposed, and administrators with those smelly conflicts can be removed or recused. Judges aren't supposed to be influenced by campaign contributions or political threats. The law, and real facts, not alternative facts, prevail.

In litigation like the cases in New York and Oregon, the fossil fuel industry will face discovery, testimony, and cross-examination. Lawyers and courts will ultimately force things back on track. In the meantime, this Trump show makes losers of the American people. The Clean Power Plan is a reasonable approach to confronting our carbon problem. It gives States flexibility, and it would save American families $85 a year on energy costs once fully implemented. Good luck making a better plan.

I represent Rhode Island, a downwind State prone to air pollution from out-of-State smokestacks. We are also a coastal State, where rising seas driven by climate change threaten our coastal towns. I am sure the Presiding Officer can sympathize with the risk to coastal communities as the sea levels rise.

Just this past week, our Providence Journal had a story that said there are seven water treatment plants that are in danger of inundation in a 100-year storm, which, of course, is becoming more and more likely each year. So for Rhode Island, reducing carbon pollution and other greenhouse gases is part of preserving the map of the State we love and protecting the health of our people.

We need EPA, because our State environmental agency can't regulate out-of-State pollution. That brings me to the man standing next to the President as he signed this order, EPA Administrator Scott Pruitt. He is a man who built his career raising money from the industry, and for years lent his badge of office to the industry-enabled legal assault on the Clean Power Plan. As you might imagine, he beamed as President Trump passed him the pen used to sign the Executive order.

Years ago, in Central and South America, fruit company puppets ruled banana republics. They wore ostentatious uniforms and enjoyed the trappings of power, but it was the fruit company backers who really called the shots. That is why banana republics are called banana republics. The fossil fuel industry is well on its way to try to turn America into a banana republic, but it won't work. It is a stain upon the Senate that Pruitt actually got through the Senate without ever having to disclose who funded his political dark money operation. That is a first. That is a first. The Republican majority would not have those questions answered because they were so eager to shove this fossil fuel operative into the Administrator's seat at EPA. Inconvenient questions like that wouldn't get answered in banana republics, either.

While fossil fuel interests have been calling the shots in Washington, the American people have been of an entirely different mind. Let me show several polls that have come out over the past few weeks documenting public concern about climate change.

The Gallup poll shown here found that 71 percent of the American people believe climate change is happening—71 percent. Seventy-one percent trust scientists that, in fact, climate change is happening; 68 percent believe that global warming is caused by human activities; 62 percent believe we are already feeling the effects of climate change in our lives; and 45 percent worry a great deal—worry a great deal—about global warming.

A recent poll indicates that climate change is the top worry for 66 percent of Democrats.

Yale's program on Climate Change Communication recently launched an extensive interactive map. It was featured recently in the New York Times. It shows that Americans all over the country overwhelmingly believe that climate change is real and support a variety of actions to address it. So let's start with what Americans believe. Seventy percent believe that global warming is happening, and 53 percent believe it is caused mostly by human activities. Most scientists think that global warming is happening—that is a near majority—and 71 percent trust scientists about global warming. That, by the way, compares to 9 percent of the Republican Senate caucus when we called a vote on the issue last Congress. So if we are looking for who is out of step here, it is the Republican Senate caucus that is very out of step with the public.

And when you go on to solutions, 82 percent of Americans want research into renewable energy sources; 75 percent want to regulate CO_2 as a pollutant; and 69 percent want to set strict CO_2 limits on existing coal-fired powerplants.

Actually, the Clean Power Plan was a good deal softer than strict CO_2 limits, and even then, 69 percent of Americans support it, and 66 percent of Americans support requiring utilities to produce 20 percent of their electricity from renewable sources.

So my colleagues from Republican States might think this data is representative of people living in their districts, that this is being biased by concern from blue States. Well, here is a State-by-State look. So these are all the States. The colors reflect the percentage of Americans who think that climate change is happening. The break point from blue to tan is the 50-percent break point. So in every single State in the Union, no matter how red, a majority of Americans understand that climate change is happening. How that 50 percent ends up being 9 percent on the Senate floor is a story that I have told in other speeches. But we will see that at 45 percent, it is just pale blue. There is not a bit of pale blue anywhere. The entire country is above 50 percent.

So the next item this allows us to look at is Americans who support funding for research into renewables. Now, the lowest color here is the kind of deep orange and that comes in at 75 percent. That is the lowest point of any State in wanting support funding for research into renewables—75 percent—and it goes all the way up into the 90s.

For renewable research in coal country, we see 82 percent support in Wyoming; 81 percent support in West Virginia; 79 percent support in Kentucky; and the same in the oil patch—79 percent of Texans support renewables. Despite this support, President Trump recently proposed massive cuts, showing once again that the Trump show is not the America show even in fossil fuel States.

The support for carbon dioxide limits on existing coal-fired plants is also widespread. In all 50 States—in all 435 red, blue, and purple congressional districts—there is majority support, every single place. So what did President Trump and the fossil fuel operative at EPA do in the face of this? Signed this silly Executive order purporting to undo the Clean Power Plan.

Yale's map allows us to do some interesting stuff. It is interactive, so we can zoom in. Let's take a quick zoom in Oklahoma, Administrator Pruitt's home State.

As we can see, in every congressional district, a majority of Oklahomans believe climate change is happening, trust climate scientists about climate change, support regulating carbon dioxide as a pollutant, and support setting strict carbon dioxide limits on existing coal-fired powerplants—even in Oklahoma.

So who is Scott Pruitt representing? Because he is certainly not representing any State in the country, any congressional district in the country, certainly not representing Oklahoma or any congressional district in Oklahoma.

Interestingly, not too long ago, President Trump and his children were on the same page as those majorities of Oklahomans and Americans. I have shown this before: In 2009, Donald, Ivanka, Donald Junior, and Eric Trump supported meaningful and effective measures—in an ad in the New York Times to fight climate change—calling

climate change ''scientifically irrefutable'' and warning that its consequences would be ''catastrophic and irreversible.'' So 7 years ago, the entire Trump family recognized that climate change was based on scientifically irrefutable evidence and had catastrophic irreversible consequences.

Despite the popularity of getting something done on climate change in every single congressional district in the country, we do nothing. What is up with that, if not politics—fossil fuel industry politics? The most voracious special interest in American politics, the fossil fuel industry, has captured the Trump show, installed its flunkies at the EPA, and hopes to unwind environmental and public health safeguards that the public supports.

So I have to keep asking the fossil fuel guys: How do you think this ends? Are you delusional enough to believe that you can defeat real science and ignore both the laws of nature and the will of the American people?

It is bonkers. It is political power run amuck.

We have a chance to push back a little bit. Scientists will be marching in Washington, DC, and around the country on April 22 to reject the phony-baloney alternative facts of President Trump. Please join them wherever you can. The following weekend, people from around the country are coming to DC—April 29—for the People's Climate March. I was in the People's Climate March in September 2014 with more than 400,000 other concerned Americans, and it was a heartening and energizing experience. So mark your calendars for April 22 and for April 29, and come to DC or to the satellite marches being held around the country.

As these maps have shown, you are not alone in seeking climate action. Every single congressional district in the country wants climate action. It is only the death grip of the fossil fuel industry on this building that prevents that from happening.

So help make these the last days of denial by this dirty industry and its rightwing climate denial fanatics. As days and months slip by, we lose precious time to address both the harm to Mother Earth of climate change and the harm to America of being made ridiculous around the world by our obeisance to the fossil fuel industry. We are supposed to be the city on the hill, not fossil fuel's banana republic.

It is time for America to begin leading again on climate. It is time to wake up.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. BENNET. Mr. President, our founders knew that ''while history does not repeat, it does rhyme.'' That is why they mined the politics of ancient Greece and Rome for lessons about the promise and the perils of self-government. In their wisdom, they placed those lessons at the heart of the American political experiment. Two hundred thirty years later, that experiment has exceeded their wildest hopes, in no small part because generation after generation of Americans—including elected officials, including Members of this body—understood that our government is far more than the sum of our laws or the letter of our Constitution. Our system is also held together by rules, written and unwritten, that help elected officials resolve their differences without unleashing a downward spiral of recrimination that could endanger the Republic itself.

They understood, for example, that while civility, compromise, and cooperation are not required by law, laws cannot pass without them. They recognized that while the majority may have the power to rule on its own, it should not trample over the minority. They understood that, at some point, partisanship should give way to patriotism.

Throughout history, including moments far more difficult than our own, these principles were the quiet guardrails of our politics, keeping dysfunction at bay. But in recent years, we have begun tearing these guardrails down, and in doing so, we risk the revenge of history by ignoring it.

There is a tendency around here to think that our problems are unique and that the consequences of our actions are fleeting.

Some 2,400 years ago, the ancient history of Korsia was consumed by civil war. According to Thucydides, both sides spared ''no means,'' he wrote, ''in their struggles for ascendancy. . . . In their acts of vengeance they went to even greater lengths, not stopping at what justice or the good of the state demanded, but making the party caprice of the moment their own standard.''

As the civil war intensified, both sides struggled to end it because ''there was neither promise to be depended upon nor oath that could command respect; but all parties dwelling rather in their calculation upon the hopelessness of a permanent state of things, were more intent upon self-defence than capable of confidence.''

The Founders read Thucydides. They knew that once factions cross the line, once they violate tradition in an escalating retaliation, it becomes very hard to turn back.

James Madison in particular understood the peril of faction. He wrote how people with ''a zeal for different opinions concerning religion, concerning government, and many other points'' have ''divided mankind into parties, inflamed them with mutual animosity, and rendered them much more disposed to vex and oppress each other than to cooperate for their common good.''

They also feared that, once in power, majority factions would abuse that power to run roughshod over the minority. In a country with such diverse beliefs and traditions, doing so could threaten the very stability of the Republic.

For these reasons, the Founders embedded checks in the design of our government. That is why in the Senate we represent entire states, not gerrymandered districts. Colorado, for example, has roughly equal numbers of Democrats, Republicans, and Independents. That is why the Senate gives smaller States disproportionate representation, with Colorado receiving the same votes as California.

That is why traditions of the Senate hand the minority tools to encourage consensus between political parties. The filibuster is one of those tools, and it has been used for good and for ill throughout our history. By requiring the consent of 60 Senators to proceed on key votes, the filibuster ensures that the legislation we pass and the nominations we approve reflect at least a modest level of consensus. The filibuster is meant as a tool of last resort, but in recent years it has become yet another weapon in our endless partisan warfare. It was not always that way.

From George Washington to George W. Bush, the filibuster was used just 68 times against Presidential nominees. But during just the first 5 years of the Obama administration, Republicans used the filibuster 79 times against his nominees. That was my first term in the Senate, and at that time, I saw the filibuster the way many Americans still do—as an undemocratic tool for delay and gridlock. So in 2013, after unprecedented Republican obstruction of highly qualified nominees, I voted with the Democratic majority to end the 60-vote threshold for most Presidential nominations, invoking what is known as the nuclear option.

Although Republicans were wrong to abuse the rules, Democrats were wrong to change them. Even as we changed the rules, however, we made a point to retain the filibuster for Supreme Court nominations, recognizing their profound influence on our country's laws.

Last year, dysfunction in the Senate reached a new low when Senator MCCONNELL denied Judge Merrick Garland, President Obama's nominee for the vacancy left by the late Justice Scalia, the courtesy of even a hearing, to say nothing of a vote. That was an offense to the traditions of this body and our Constitution.

I recognize that it is impossible to separate politics from the courts, but at the same time, we must not allow the judiciary—and especially the Supreme Court—to become a pure extension of our partisan elections and politics. Alexander Hamilton wrote that ''liberty can have nothing to fear from the judiciary alone, but would have everything to fear from its union with either of the other departments.'' Continuing, he wrote that because of ''the natural feebleness of the judiciary, it is in continual jeopardy of being overpowered, awed, or influenced by its coordinate branches.''

Our actions over the last few years—and I would say over the last few days—jeopardize not only the Senate,

but also the judiciary. Today, some of my colleagues plan to filibuster President Trump's Supreme Court nominee, Judge Neil Gorsuch. The Republican leadership has responded by threatening to invoke the nuclear option, which would eliminate for all time the 60-vote threshold for Supreme Court nominees and allow them to confirm Judge Gorsuch with the narrowest partisan majority. This is precisely the outcome our Founders feared, when lifetime appointments to our highest Court, which touches every aspect of American life, become just another partisan exercise. We must not go down this road.

This President may have several more opportunities to nominate a Supreme Court Justice during his term. If that happens, Republicans would face enormous pressure to nominate an extreme candidate, knowing that they could confirm them without a single Democratic vote—indeed, that they would be expected to confirm them without a single Democratic vote. And to those who believe that President Trump could not nominate someone more outside the mainstream than Judge Gorsuch, I would say to just look at some of President Trump's Cabinet nominees, some of whom are among the least qualified and most radical ever confirmed by this body. By the way, under the change to the rules that we made, it is the first Cabinet to be confirmed requiring just 51 and not 60 votes.

Not to put too fine a point on it, but if you don't like the ring of Judge Gorsuch, how do you feel about Justice Pruitt, who doesn't believe in climate change, or Justice Sessions, who has a record of opposing civil rights and equality? If we continue down this path, both of those could be confirmed with a slim majority vote.

With respect to Judge Gorsuch, I am proud he is from Colorado. But I am concerned by his judicial approach, which too often seems to rely on the narrowest interpretation of the law with little appreciation for its context. In particular, I believe he has far too much confidence in the original meaning of the words in legislation or, for that matter, even the Constitution. Having worked on legislation for nearly a decade now, I know these words, so often written in the dead of night in meager attempts to let everybody go home, cannot be explained without reference to the legislative context or human history or lawmakers' intent. Sometimes a comma really does end up in the wrong place.

Although I have reservations about his approach to the law, I do not have reservations about his qualifications for the Court. He is a committed and honorable public servant, and that is why so many members of the Colorado bar and bench support his nomination. Qualified nominees deserve an up-or-down vote. That is the tradition of this body. How members vote is a matter of conscience for each of us.

For all of these reasons, and in the hope of preserving the minority's voice in our government, which so many generations before us have done, I will oppose efforts to filibuster this nomination. If we go down this road, we will undermine the minority's ability to check this administration and all those who follow.

Today we have a President who does not appreciate the separation of powers and who has made unprecedented attacks on the free press and the judiciary. The country needs an empowered Senate minority right now, more than ever. More than that, the country needs a Senate that can forge a consensus about our future, rather than carrying on the bitter and tired divisions of the past. I know it can be hard. I have been here long enough to know it can be hard for both sides to see beyond the partisan tactics of the moment. Lawmakers will never lack for an excuse to break with custom or change the rules to their benefit. They may even argue, as some recently have, that the damage is not that bad—that everything can continue on as normal.

We should know better than that. Our Founders certainly did. They would recognize our path today in the currents of history. The Roman Republic endured for nearly 500 years, but it was brought low by events that should seem eerily familiar to people in this Chamber.

In 60 BCE, the Roman Senate was consumed by a controversial land reform initiative. One side was led by a Senator named Cato; the other, Julius Caesar. To stop land reform and other initiatives, Cato employed delay tactics similar to the filibuster, freezing the Roman Senate for months. While the action was within the rules, it broke with Senate custom. Caesar vowed to press forward. Cato's allies responded by declaring a religious holiday for the rest of the legislative calendar, stopping the reform effort in its tracks.

In a further break with precedent, Caesar bypassed the Senate and took the bill to the people's assembly for approval. Furious, Cato's allies boycotted the government and postponed the next election by 3 months. While Caesar eventually triumphed, the incident intensified a cascade of recrimination that the Roman Senate struggled to escape. Legislative strikes, delayed elections, and believe it or not, shutdowns grew in frequency. Manufactured crises became routine.

As the dysfunction grew, the Senate became increasingly irrelevant, as power flowed to Caesar and military leaders. Even as Senators recognized the danger, they failed to correct course. Too much damage had been done. Centuries-long custom had been broken. Trust among Senators had eroded. Confidence in the body collapsed.

As dysfunction in the Senate rose, so did popular calls for a strongman to clean up the mess. Within a decade, Caesar crossed the Rubicon with an army, and the Republic soon gave way to tyranny. It would take 1,300 years for another large Republic to emerge—this time in the United States of America.

Unlike us, our Founders knew this history as well as their own. But they could not guarantee that we would heed its lessons. That is why they built institutions to check the worst impulses of faction, to help us navigate profoundly consequential decisions—like confirmations for the Supreme Court—without tearing each other apart. But the Founders also placed their faith in the willingness of elected officials to resist the lure of narrow interests or passions of the moment and rise up to defend their institutions and our traditions, especially in hard times. We must not betray their faith.

With each escalating crisis, we damage not just the Senate, but the Republic. The Rubicon may be far, but with each rule and custom broken, we draw nearer. Choices on both sides have brought us to this low point, but I have faith that we can choose—and we should choose—a different path. We can choose to step back from the brink to find common ground, to fulfill our obligation in the time we are serving here to sustain the American experiment for the next century and beyond.

I yield the floor.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. BROWN. Mr. President, I always appreciate the remarks—the well-thought-through remarks of my colleague, and the history lesson putting it into context is always so important and something we should do more of in this body.

I thank Senator BENNET for his words.

The Supreme Court, as we know, has tremendous influence over the lives of our country, the lives of Ohioans, my State, and the lives of so many. Nominees must defend the rights of all Americans to make their own healthcare decisions, to collectively bargain for safe workplaces and fair pay, and to be protected from discrimination and Wall Street greed.

Unfortunately, Judge Gorsuch is simply not that nominee. His record is clear. He has ruled that corporations are people. I am not a lawyer, but I understand that it is a relatively recent concept in American jurisprudence to equate corporations with people. When you do that, you simply give corporations more rights than individuals have. When you come from that position, it means that judges repeatedly rule to choose corporations over workers; they choose polluters over communities; they choose Wall Street over consumer protections; they choose special interest money over our citizens. We have seen too much of that in this country.

We have seen a decline of the middle class, in part because the Federal judiciary is choosing corporations over

workers. If chosen, polluters over communities; if chosen, Wall Street over consumer protections; if chosen, special interest money over citizens—that is the Court we have seen in far too many 5-to-4 decisions, as Senator WHITEHOUSE has pointed out so effectively on this floor.

The misguided idea that corporations are people is far outside the mainstream of what most Ohioans believe. It may work for graduates of Harvard and Yale Law School. Interestingly, if Judge Gorsuch is approved, all nine of the Supreme Court Justices will have attended Harvard or Yale Law School. I don't know what is wrong with Ohio State or the University of Toledo or Akron University or University of Cincinnati or Case Western or Michigan or Chicago or anywhere else. That is whom Presidents have chosen; those are the people we seem to confirm.

But this view that corporations are people simply doesn't wash with the American people. It is how we got rules that allow Wall Street banks and hedge funds to wreak havoc on ordinary working people and ordinary working families, with no consequences.

Judge Gorsuch himself has argued against the rights of working Americans to band together to hold Wall Street and corporations accountable. He ruled against children with autism. He ruled against students with disabilities. We have a President in the White House who makes fun of disabled people. Now, we are going to put a Justice on the Court who rules against students with disabilities. We have a Secretary of Education who barely knew what IDEA was—the provision of the law that guarantees disabled students an education.

Why we are moving in this direction, I think, amazes most people in this country, whether you have a disabled person in your family or not. His views of protecting students with disabilities are so outside the mainstream that last month, the Supreme Court unanimously rejected his reasoning.

A boy with autism, Luke, wasn't making progress in school, and it was recommended that he be placed in a residential program. An impartial hearing officer and two different judges agreed. But Judge Gorsuch disagreed. He said that, as long as a student with a learning disability is making ''merely . . . more than de minimus'' progress in his or her education, the school district didn't have to do anything else. Think of that. That student, he counts a little bit, but he really doesn't count that much. He doesn't count as a full human being with full rights and full citizenship in this country.

If your disabled child is getting more than nothing, I guess that is good enough, according to Judge Gorsuch. Luckily, this Supreme Court, as conservative as it usually is, overturned Judge Gorsuch's precedent that denied a real education to students like Luke. Again, they overturned him unanimously. Chief Justice Roberts noted that a student offered an educational program providing merely more than de minimus progress from year to year—this is Justice Roberts, a very conservative Chief Justice—can hardly be said to have been offered an education at all.

In other words, what Judge Gorsuch thinks and thought about this case was that doing only a little bit for this student was meeting the obligation of this civilized society that we are proud of. Fortunately, the eight members of the Supreme Court—four Republican conservative nominees, four more moderate to liberal nominees from the Democrats—unanimously came together and disagreed with Judge Gorsuch.

But think about what can happen the next time. If an Ohio family has a child with a learning disability and struggles with that school system, they won't find sympathy from Justice Gorsuch. In fact, forget sympathy. They can't count on him to protect their child under the law.

Take a look at the case of Alphonse Maddin, the truckdriver from Michigan. He was hauling meat through Illinois when he stopped to refuel. His brakes froze. He was stranded. He called for help, for a company repair unit. He waited for hours for help. He nearly froze to death. He couldn't feel his legs. It was 14-degrees below zero in the truck. He needed to get to shelter or risk losing his limbs or worse.

But his company fired him. They claimed he abandoned his cargo. Mr. Maddin later returned to get the cargo and completed his job. But it just did not matter to the company. To the company, the cargo was more important than Mr. Maddin's life. To Judge Gorsuch, that company's interests were more important than Mr. Maddin, more important than his health, more important than his life.

Imagine that. That is what we mean when we say he puts corporations ahead of workers. At the beginning, you remember I said there is this relatively new idea in American jurisprudence that corporations are individuals and people are corporations. When you say that, it means that you side with corporations over workers. You side with polluters over communities. You side with Wall Street over consumer protections. You side with big, dark money from billionaires in Citizens United over citizens.

Take a look at the case of a mother who had leukemia and had to take time off for treatment. After the treatment was over, her doctors advised her not to return to work quite yet. There was a flu epidemic. Her immune system was compromised from chemotherapy. But her employer told her she needed to show up within a week or they would fire her despite 15 years of dedicated service. Guess who Judge Gorsuch sided with? It was not the worker suffering from cancer, who had dedicated a decade and a half of her life to her employer and who wanted to return to work, but she simply was advised against it by her doctor.

This woman's daughter, Katherine, said that when Judge Gorsuch issued his ruling, ''he didn't even think about the impact that this had on our family.'' She said his ruling ''set the precedent that a company's needs come before workers like her mother.''

At a time when Americans work longer and harder than ever before, when we devalue work in this country, when workers' wages—for huge percentages of workers in this country—are stagnant, when people work longer and harder with less and less to show for it, the last thing we need to do is elevate someone who sees workers as nothing more than a cost to be minimized.

That is what is at stake here. We are talking about putting someone on the Court who wants to give corporations special rights, but he has a record of ignoring the rights of ordinary citizens, choosing corporations over people, saying that corporations are, in fact, people. That means that he is almost always, in his cases, choosing corporations over workers, choosing polluters over communities.

Judge Gorsuch's record makes clear that he would turn back the clock on a woman's right to make her own healthcare decisions, or LBGT rights, or clean air and clean water, or safe food and medicine.

That is what is at stake here. If the Senate does not reject his nomination, the decisions Judge Gorsuch hands down will haunt our Nation for generations. My opposition to this nominee has nothing to do with what has occurred in the Senate over the past 8 years, as despicable as it has been. It has everything to do with what could happen over the next 100.

This is about our children and our grandchildren. Seven of the eight current justices have met the 60-vote benchmark. In other words, seven of the eight justices on the Court right now were fairminded enough and centrist enough and agreeable enough that far more than 60 Senators—people in both parties—came together to confirm those nominees.

With so much at stake, it is up to Judge Gorsuch to earn the votes of 60 Members of this body. I do not believe someone who fundamentally wants to give and has given corporations more rights than individual citizens has earned that broad support. The solution is not to change the rules; it is to change the nominee.

That is what we mean by advice and consent. The American people need a Supreme Court Justice who looks out for the interests of all Americans, not just the 1 percent, not just the most powerful, not just the most privileged. That is why I oppose Judge Gorsuch's confirmation to the U.S. Supreme Court.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. PORTMAN. Mr. President, I spoke on the Neil Gorsuch nomination

last week, and I intend to speak on it again tomorrow. Let me just say that I support Neil Gorsuch as the nominee to the Supreme Court. He is a good man. He is a mainstream jurist, incredibly qualified. I am happy to strongly support him for the Court.

OPIOID EPIDEMIC

Tonight, Mr. President, I want to talk about another issue, one that I hope can continue to bring us together here in this body and also bring our country together. I rise today to talk about what a lot of experts say is the worst drug crisis in the history of our great country—the worst. It is the opioid epidemic. This is the addiction to heroin, prescription drugs, synthetic heroins like fentanyl. The newest threat, this synthetic fentanyl, is coming into our communities from other countries, particularly China.

There are laboratories in China where evil scientists are putting together these concoctions and sending them through the U.S. mail system into our communities.

China is doing it on a scale that is devastating to our communities. As a result, I have urged President Trump to prioritize this issue in his meeting with President Xi in Florida later this week. China has banned one synthetic form of heroin, carfentanil, recently, but there is a lot more to do. I am urging President Trump to make it clear to President Xi that we will do everything we need to do to keep this poison out of our communities.

This epidemic is affecting every single one of the States represented here in this body. I know the Presiding Officer knows that because I know he has been involved in his own State. It is affecting your home town, whoever you are and wherever you are in the United States. Unfortunately, it is affecting people you probably know.

Every day we are now losing 144 Americans to drug overdoses, most of which are from overdoses of opioids. That is one American life lost every 12 minutes. That will be about the length of this speech. Look at your watch. In the next hour, five Americans will die of a drug overdose.

I have been working on this issue for a long time. I first got involved over 20 years ago when I was in the House of Representatives and a constituent came to me because her son had died of a combination of smoking dope and huffing gasoline. She came to me and said: What are you doing about it?

I was ready. I talked to her about the fact that we had $15 billion devoted to interdicting drugs and incarcerating people and so on.

She said: What are you doing to help me and my community? I have gone to my church. They are in denial. I have gone to the school, and they say it is not a problem here. I have gone to my neighbors, and they won't come together and talk about it.

So we got involved in this issue, and I set up our own community coalition back in my home town of Cincinnati and chaired that for 9 years. I am still very involved with that group, but I also got involved with legislation to try to do things to actually reduce the demand for drugs, because that is so important.

Here we are again. The crisis we had then was mostly crack cocaine, marijuana. Then it was methamphetamines, bath salts. But I have never seen anything like this. This is the worst. If you don't think it is the worst drug crisis we have ever faced, then think about this. Look at this chart of drug overdose deaths in America.

Drug overdoses are now the leading cause of accidental death—the leading cause—in my home State of Ohio, and probably in your State and in our country. This is from 2015, the most recent year for which we have complete data. Nearly two-thirds of the deaths were because of the prescription painkiller heroin-fentanyl issue, or synthetic forms of heroin.

Drug overdoses are not now just the leading cause of death. Overdoses kill more Americans than guns do. This next chart will show that, according to the Centers for Disease Control and Prevention, more Americans died from drug overdoses in 2015 than died from HIV/AIDS at the height of that epidemic. The peak of the AIDS epidemic was 1995. This is 2015 with regard to drug overdoses.

According to an article in the New York Times, more than four times as many people are dying every day from this epidemic than were dying at the peak of the crack epidemic. In the last 3 years, more Americans have died of drug overdoses than died in the Vietnam war.

Unfortunately, we have reasons to believe that this crisis is getting worse, not better. According to recent figures, fatal overdoses due to prescription painkillers, heroin, or synthetic heroin in 2016 alone went up 26 percent in Connecticut, 35 percent in Delaware, and 39 percent in Maine. During the first three quarters of 2016, deaths from overdoses in Maryland increased 62 percent. In Ohio they increased 20 percent the last 2 years in a row.

So we have seen this huge spike here in deaths from overdoses, starting in about 2010 and going up. This is with regard to heroin. This is with regard to non-methadone synthetic opioids—in other words, fentanyl, carfentanil, U4, and other synthetic heroins.

This is a crisis. It is one that, unfortunately, is affecting every single community—whether you are in an urban, suburban, or rural community, whether you are young or old, regardless of your walk in life.

The issue, of course, is much bigger than just the tragedy of overdose deaths. It is also about people whose lives have gotten off track because of these drugs and because of the addiction. There are 200,000 people in Ohio alone who are living with an addiction to these drugs. By the way, if you are addicted, you are much more likely to be committing crimes, fraud, and theft to pay for that habit.

In my State of Ohio—and I will bet in your State—the No. 1 cause of crime is opioids. A lot of these people have lost a job or can't get a job. I talked to some business folks over the weekend in Ohio who talked about regulations and taxes. They said: You know, this drug issue is affecting every single one of us. We can't get people to pass a drug test. We have employees who are now addicted to prescription drugs or heroin and their absenteeism and inability to come to work is affecting our economy.

So this is something that is affecting all of us. Of course, many have broken relationships with their families and their loved ones. I cannot tell you the number of people who have told me, and I have probably met with 1,000 addicts or recovering addicts over the last few years. I can't tell you how many people have told me: Drugs became everything, and I pushed my family out, and pushed my friends out, and pushed my job away, and it left me in a situation where I was broken.

But living without hope is something that we can deal with, because there are ways for us to get people into treatment and to get people into recovery to help them. We are in a crisis. Some have asked me: Well, how did we get here? That is usually a good start to this: How do we get out of it? How did we get here is complicated. But according to the Centers for Disease Control and Preventions, those who are addicted to prescription painkillers are 40 times more likely to be addicted to heroin.

Let me look at this a different way. Four out of five heroin addicts started with prescription drugs. So this issue of prescription drugs, overprescribing, is a huge part of how this happened in the first place. Increasingly, what we have seen in all of our States is addiction starting with these drugs and then switching to cheaper and more accessible heroin, and then switching again to sometimes more powerful forms of heroin like carfentanil, maybe 30 to 50 times more powerful than heroin. That is what is taking so many lives at such an alarming pace. The epidemic started with overprescribing. The United States uses more prescription pain killers than any other country in the world. It is not even close. Look at these numbers here. This is the daily opioid dose for over a million people. Look at the United States as compared to every other country in the world.

This is using 2014 data, and the numbers may have gotten better because of the work being done to cut back on painkillers. But according to the American Society of Interventional Pain Physicians, we consume nearly 70 percent in this country—5 percent of the world's population and nearly 70 percent of the world's painkillers.

In 2012, that number was 75 percent. It is still not even close on a per-person basis. For every American, there are 50

pain pills in this country, and second place is Canada with 30 pain pills.

According to the National Institute on Drug Abuse, painkiller prescription sales nearly quadrupled from just 1999 to 2014. That number finally peaked in 2012, by the way, and since then has come down slightly. In 2012, there were more prescriptions for painkillers in Ohio than there were people in Ohio. There were more prescriptions for painkillers—not pills, prescriptions—than there were people in Ohio. By the way, that was also true in 11 other States.

Fortunately in Ohio, we have made some progress under the leadership of Governor Kasich, Lieutenant Governor Taylor, Attorney General DeWine, and the State legislature. They have taken some important steps to cut back on painkiller prescriptions. We have cut them back by about one-fifth, about 20 percent since they peaked in 2012, but that number is still way too high. According to the Ohio Board of Pharmacy, 631 million pain pills were prescribed to Ohioans last year. We are also still dealing with the consequences of a lot of the addictions that got started in 2011, 2010, or before.

The number of prescriptions has risen, just as the addiction to opioids has risen. Drug cartels have followed this prescription drug epidemic, bringing in heroin. Those drug cartels flooded my State and probably a lot flooded a lot of your States with this cheaper, more accessible heroin, now synthetic heroin.

According to the National Institute on Drug Abuse, Mexican heroin production alone increased sixfold in just 4 years—from eight metric tons in 2005 to 50 metric tons in 2009. That number is now 70 metric tons, and it just keeps rising.

According to the Office of National Drug Control Policy, here in this country, Mexican opium poppy planting increased by 64 percent just from 2014 to 2015. So it is getting worse, not better.

According to the Congressional Research Service, virtually all of the heroin produced in Mexico is consumed here in the United States of America.

According to the Centers for Disease Control and Prevention, heroin use among young people has doubled in the last decade, among young people 18 to 25 years old.

This affects all of us. It knows no ZIP Code. It certainly knows no walk of life.

Since 2010, heroin overdose deaths have doubled among Hispanic Americans, African Americans, Native Americans, and Whites.

A lot of the people who are addicted to prescription drugs have switched to heroin instead. Now we are seeing that heroin addicts are switching also, even if they don't know they are doing it. They are switching to fentanyl and carfentanil. Again, it could be up to 50 times more powerful than heroin. Sometimes they don't know it because the traffickers are sprinkling the fentanyl in other drugs—heroin, of course, but also, we know now, cocaine. They are mixing it with marijuana, mixing it with other drugs, and not letting people know.

We had a 14-year-old girl recently die in Dayton, OH. She was with her friends, snorting what she was told was heroin. She had done it before. But this was fentanyl, and it killed her instantly.

More than 1,000 Ohioans were killed by fentanyl in 2015—more than double the previous year and more than 10 times the number in 2013. In Cleveland, for example, there have been more overdoses from fentanyl in the past 10 months than there had been in the past 10 years. In Columbus, there have already been half as many fentanyl overdoses in the first 3 months of this year as there were all of last year. This is why I say fentanyl is the new risk, the new danger.

As one father who lost his son to an overdose told me: Every time you engage in taking drugs, you are playing Russian roulette because you don't know what is in it.

In my hometown of Cincinnati, fentanyl deaths now surpass heroin deaths. Drug overdose deaths in Cincinnati increased by 40 percent from 2014 to 2015. Over that same timeframe, in just 1 year, heroin overdoses increased 12 percent, while fentanyl overdose deaths increased 153 percent. These numbers are very disturbing. They are discouraging, too, because it seems like we just can't turn the tide. It is easy to feel as though we just can't do anything, that we are paralyzed, but there is actually a lot we can do to help, and we can and should.

Here in the Senate, we have already taken some very important steps in the last year. About 9 months ago, we passed legislation called the Comprehensive Addiction and Recovery Act, CARA. Last year, we passed the 21st Century Cures Act. Those two together provide much more funding for this issue. The Cures Act alone is $500 million more this year going back to the States to provide funding primarily for treatment for this increase in overdose deaths. There will be $500 million authorized again next year. We have to be sure that gets into the appropriations bill.

We also have seen, I think much more importantly in a way, through the Comprehensive Addiction and Recovery Act—separate legislation—that we are beginning to fund directly programs that work. We spent 3 years looking around the country and had five conferences here in Washington, DC. We brought experts in from all over the country who told us what the best practices were. What is the best prevention technique that is working? How do we get kids not to make these decisions? What is the best thing that is happening in terms of treatment, and then longer term recovery, what works and what doesn't work. Is medication-assisted treatment better? Is it better? Does it rely more on longer term recovery? Have they had more success there?

All of this has led us to put together this legislation, the Comprehensive Addiction and Recovery Act, that actually funds programs like drug courts that are working around the country. They take people, diverting them from prison, and say: As long as you stay clean, you can stay out of jail, because you are a user, you are not a pusher. But you have to stay clean.

Then they provide them alternatives, including using drugs that reduce the cravings. If you reduce the craving for opioids, that is proving to be very, very successful in some cases. Dimitrol is the drug they use mostly in Ohio to do that. There are some great examples of people who have gone through the drug court process who have now been clean for a few years. They are back to work. They are back with their families. They are back as contributing members of society. So there is hope. We have seen how it can work.

CARA is the first legislation Congress ever passed to promote long-term recovery. Why? Because we have looked around the country and had experts here. We figured out that the treatment programs are important, and before that, the detox program is important. But what is leading to more success is longer term recovery programs.

As an example, think about being in detox for a week and then maybe a couple weeks in a treatment program and then going into a sober housing arrangement where you have regular meetings, where you are getting support from fellow recovering addicts. That seems to work longer. You are there. It seems to work better for most Americans.

Unfortunately, we do not have all of CARA's legislation fully implemented yet. Only three of its eight programs have been implemented. It has been a while. It has been about 9 months. It is time to push all of those programs.

I pushed the Obama administration on this. I am now pushing the Trump administration. Last week, I was delighted that the Trump administration announced the creation of a commission on the opioid epidemic, led by New Jersey Governor Chris Christie, who has a real passion for this issue. I commend the President and Governor Christie for their commitment to making progress on the issue. Their leadership and their partnership with Congress will make a difference.

Today I talked to General Kelly, the new Secretary of Homeland Security. He is going to be on the commission. He said they are going to report about the problem within 90 days. We know a lot about the problem. We also have to be sure we are seeing some action.

What I would suggest today is that the administration work hard to implement the remaining five CARA grant programs that are not yet up and running. For example, it has been 8 months, almost 9 months, since CARA

was signed into law. Yet we still don't have the grant for naloxone up and running. Our States and local communities need this Narcan on the street to save people's lives, because this is a miracle drug that reverses the effects of an overdose, but we also need to get more training for some of our first responders so they can administer it more effectively, which is particularly more important right now with this new drug, the fentanyl, the synthetic drug coming in, because synthetic heroin requires sometimes not one, not two but four or five uses of Narcan—maybe more—to save someone's life. So our first responders are asking for this help.

We still don't have the grant for medication-assisted treatment up and running. We still don't have the grant for pregnant and postpartum women's treatment providers up and running. This will help to ensure we have fewer babies who are born with this addiction. Let's get going on these.

For all of us here in Congress, let's be sure that we fully fund CARA. It is $182 million a year, every year, in addition to what we were spending on opioids. We need to be sure that funding is there, that these programs are working, and that our communities begin to get more of the help they need. These evidence-based programs that work are what we ought to be supporting, and that is exactly what the legislation does.

I thank Vice President PENCE, who was in Ohio on Saturday. It was a meeting about the economic issues we faced as a country. He talked about tax reform and regulations and skills training, but he also talked about this issue. I think it is important that we are all talking about this issue back home and raising awareness hopefully to save lives, to keep people from going down this path but also to ensure that our fellow citizens know the importance of Congress and State legislatures and local communities getting engaged with it all. Everyone must get involved.

I was in Youngstown, OH, on Friday, and I held a roundtable at the Neil Kennedy Recovery Center. This is one of the first programs of its kind in the country. It started in the late 1940s. It focused more at that time on alcoholism. Executive Director Carolyn Givens was there with her staff. They are incredibly compassionate people. She told me a lot of stories.

I was able to meet with some of the recovering addicts at the center. One told me his name was Michael. He told me that center saved his life. It saved his life. This is a guy who worked for years at utility companies. He is a skilled worker. He got involved with prescription drugs because of an accident or an injury, and then he ended up moving to heroin, which was cheaper and more accessible. Then he found his life spinning out of control. Now he is there, and he is getting back on track.

Everybody, by the way, at the roundtable who was there—the staff and community leaders who were involved—they all said: Get this legislation implemented. We need it.

On Friday afternoon, I went to Cleveland and toured the St. Vincent Charity Medical Center with addiction specialist Dr. Ted Parren. What an amazing guy he is. This is in a hospital setting where they have a detox unit and a treatment center, which is very unusual. I think it is the only one of its kind in Cleveland, and it is one of a few in the country where, within a hospital setting, these people are getting everything they need. It is a very comprehensive approach. They deal with mental health issues, of course, but also other physical issues people have, and it is helpful to have it all together there at that center. I thank the sisters for what they are doing because they are supporting this, and sometimes it is quite expensive to have a treatment program. At St. Vincent's, they are doing an awesome job.

Everyone there told me the same thing that I hear across Ohio—that their services have, unfortunately, never been in greater demand. They have a waiting list. They say the situation is getting worse, not better. I think that is true in your State, too, because according to the Substance Abuse and Mental Health Administration, SAMHSA, 9 out of 10 of the 22 million Americans who are suffering from addiction are not getting the treatment they need—9 out of 10. CARA and the Cures Act will help change that.

People need to change that in their own hearts. They need to step forward and seek the treatment they need. We need to take away the stigma of addiction because it is an illness. We need to treat it as an illness because that would help people come forward, admit they have a problem, and get the treatment they need. Their families and their communities are desperate for that to happen. CARA and Cures will help change all that.

I applaud my colleagues here, Republican and Democrat alike, for moving forward on this legislation over the last year, but there is a lot more work to do. We should continue to address the underlying issue of overprescribing. It started this epidemic in the first place. We talked about the number of prescriptions that are still out there.

Last week, I joined with my colleague Senator AMY KLOBUCHAR to introduce bipartisan legislation called the Prescription Drug Monitoring Act to keep better track of prescription painkillers, keep them out of the wrong hands, and identify an addiction as early as possible so that it can be treated.

This goes to the pharmacist. You will have to report when someone gets a pain pill prescription. They have to put it on the Prescription Drug Monitoring Program.

It goes to doctors. They have to be sure that when they are prescribing medication, that that is part of the drug monitoring program. They have to access the drug monitoring program before they give a prescription to be sure the person isn't filling the prescription with them that they have already filled somewhere else. Unfortunately, there is a lot of that abuse still out there. Sometimes it is across State lines, which is why Federal legislation is required. Our legislation requires that States work better together to ensure that the Prescription Drug Monitoring Programs are talking to each other.

By the way, if people don't do this under our legislation—the pharmacists, the doctors, and the States—then they have their Federal funding pulled back that we talked about earlier on the CARA legislation.

If you see a sign of addiction starting, our legislation requires that you let the patient's doctor know that so we can begin to identify the people who have an addiction and get them the treatment they need.

I think this is going to be a good bill because it will lead to a smarter and more effective use of taxpayer dollars, and more importantly, of course, it is going to prevent a lot of new addictions from starting in the first place. That, of course, would save lives.

Congress can also do something else that is really important, and that is to give law enforcement better tools to be able to keep some of this poison out of our communities. So the prevention and the treatment and the recovery and Narcan for our first responders—they are all very important, but let's also keep some of this out. Let's do a better job of stopping the heroin at the southern border. Let's do a better job of stopping the fentanyl, which is this new synthetic heroin we are talking about that is causing so many overdoses and deaths. Let's do a better job of keeping that out.

This should be a no-brainer, in my view, because it is coming in through the U.S. mail system. We know this. All the studies show this. Most of these synthetic drugs are being made in labs in China, and they are shipped by mail to traffickers in the United States, sometimes to Mexico as well. Typically that is done through the Postal Service. Why? Because the private carriers like UPS or FedEx or DHL and others require, when you ship something, that you have advance information provided to the Customs and Border Protection and to others as to where the package is from, what is in it, where it is going. The post office doesn't require that. Is it any wonder that traffickers are using the Postal Service rather than one of these private carriers?

Law enforcement came to us and told us that they could use this data—it is electronic data provided up front—because that would enable them to determine the suspect packages. Of the millions of packages that come into our country, they have to know how to find that needle in the haystack. That is why they want the ability to find these

packages, to scan these packages, and to be able to stop some of this poison that is coming into our communities.

The legislation we have with regard to this issue is called the STOP Act. I recently introduced it again this year with Senator KLOBUCHAR, Senator RUBIO, Senator HASSAN, and many others here in the Chamber. It is a bipartisan bill, called the Synthetic Trafficking and Overdose Prevention Act, or the STOP Act. It closes this loophole we talked about within the Postal Service and requires the post office to obtain advanced electronic data on packages before they cross our borders, just like the private carriers have to do.

It is not a new idea, by the way. In 2002, Congress placed this requirement on private carriers. That is when it started. It also required that the post office review this and look into this. So, in 2002, this Congress was smart enough to say: This seems to make sense. Let's require the post office to look into it. We have seen the results. The results are that traffickers stay away from the private carriers because they know they can use the Postal Service and get away with it.

Traffickers are lacing the heroin on the streets of America with these synthetic drugs to make them stronger and more addictive. They are getting more people addicted. Fentanyl is also so powerful that it only takes a couple of milligrams—the equivalent of a pinch of salt—to kill you. They say that three flakes can kill you. The fact that heroin is now being laced with fentanyl, of course, makes it much more likely for you not only to have an overdose, because of the strength of this synthetic heroin, but also that you will die from that overdose. Again, it is much harder to use Narcan and to begin to save lives by using that and to reverse the effects of the overdose.

So the STOP Act, to me, again, is something that we definitely ought to do in this Chamber. It would restrict the supply of these dangerous drugs, raise the prices of these drugs, and would make them harder to get. That is going to save lives.

Support for the STOP Act is growing. Our bill has now been endorsed by the Fraternal Order of Police and by the Major County Sheriffs of America. They are convinced that this tool will work. Last Friday, I was in Columbus, OH. I met with Franklin County deputy sheriff Rick Minerd, also the deputy chief of the Columbus Police, Mike Woods. We had the Cincinnati and Columbus directors of the Customs and Border Patrol—the chiefs—there to talk about it, and we had the Drug Enforcement Agency's special agents in charge there with us. We also had people who were on the investigative side of the Customs and Border Patrol. The deputy attorney general of Ohio was there, Steve Schumaker, and others. All of these law enforcement people said: Give us this legislation. It is a tool that we need.

We had a hearing today on the Homeland Security and Governmental Affairs Committee, and General Kelly was there. He is the new Secretary of Homeland Security. He agreed with me that the STOP Act would ''help [Customs] officers target illegal shipments . . . reduce the ability for the post office to be used for the illicit shopping of all kinds of contraband . . . [and] be helpful to be able to identify packages'' of synthetic drugs. He is right. We need the administration's help and push for this legislation as well. Let's get this done.

President Trump, by the way, endorsed this idea last year when he said during the campaign:

> We will close the shipping loopholes to China that others are exploiting to send dangerous drugs across our borders and into the hands of our own Postal Service. These traffickers use loopholes in the Postal Service to mail fentanyl and other drugs to users and dealers in the United States. [The] Trump administration will crack down on this abuse and give law enforcement the tools they need to accomplish this mission.

Let's get it done.

Again, I have asked President Trump to raise this issue with President Xi Jinping because China can do a lot more to try to shut down these laboratories in China, to try to stop some of the materials that are coming into the laboratories that make up this fentanyl. By the way, it is in China's interest to do so.

I have received information recently that there is leakage. What does that mean? That means that some of this fentanyl is going out to the countryside, to the suburbs of China, and to the cities of China, and it is affecting their population.

This legislation already has a companion bill in the House. So this is not an issue in which the Senate can act and then we cannot get it through the process because we cannot get it through the House and the Senate. PAT TIBERI and RICHARD NEAL have introduced companion legislation—TIBERI, a Republican from Ohio, and NEAL, a Democrat from Massachusetts. It is bipartisan. It is the kind of legislation that should draw bipartisan support, and we should get it done.

Is it a silver bullet? No, we do not have a silver bullet. There is not one silver bullet. There is a comprehensive approach here, and these two bills that I have talked about are new steps that we should take.

I urge my colleagues to continue to support the CARA legislation. Let's provide full funding. Let's support the Cures legislation in the upcoming appropriations process. Let's continue to engage the good folks back home who are trying, at the tip of the spear, to do all that they can in terms of providing better treatment opportunities and longer term recoveries and who are going into our schools and talking about prevention so as to do all we can to keep people from going into that funnel of addiction.

Let's pass this legislation. Join us in keeping better track of painkiller prescriptions so that potentially addictive drugs do not end up in the wrong hands and so that addictions get treated early. That legislation is important.

Join me and join the 10 other Senators in pushing back against poisonous synthetic heroin, which is coming into our communities, by supporting the STOP Act as a cosponsor so that we can get this bill to the floor and get it to the President for his signature.

I believe these two pieces of legislation, if allowed on the floor, will pass overwhelmingly. I believe the President would sign them. Most importantly, I believe they would begin to save lives in the communities we all represent.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant legislative clerk proceeded to call the roll.

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

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

NATIONAL PARK WEEK

Mr. DAINES. Mr. President, as a fifth-generation Montanan who grew up just a short drive from our Nation's first national park, Yellowstone National Park, and as chair of the Senate Energy and Natural Resources Subcommittee on National Parks, the resolution before us is critically important to reassure the public that the U.S. Senate recognizes the remarkable value our national parks bring to our national heritage.

I especially want to thank my good friend from Hawaii, Senator HIRONO, who serves as ranking member of our subcommittee, for her partnership on bringing this resolution to the floor here this evening. She has been invaluable in working together to bring us to this moment.

In fact, 33 of our colleagues joined us in submitting this resolution—nearly half Republican and half Democrat—including Alaska, Washington, Tennessee, New Mexico, Oklahoma, West Virginia, Missouri, Minnesota, Florida, Michigan, Colorado, Virginia, Louisiana, Ohio, California, Wyoming, Rhode Island, Maine, Arkansas, Wisconsin, and New Hampshire. There are small States and large States, States that boast vast landscapes and big game like Alaska and Montana, diverse ecosystems like the oceans of Hawaii or the Florida Everglades. Other States boast historic and cultural treasures, like our hallowed battlefields in Virginia.

At a time when our country and Congress seem to be torn, it is only fitting that tonight our national parks are going to bring us together for a moment, to bridge this political divide, to bring remarkable opportunities for cultural education, outdoor recreation for