

threat Russia poses to our democracy, to our allies, to our national security, and to the endurance of our Republic. If that threat is not something that deserves determined, bipartisan effort, I don't know what is.

There are many threats to our future I could lay out today, but let me simply emphasize that in the absence of trust, this body cannot play its intended constitutional role, and without trust, we will not rebuild what is necessary to sustain this body.

Everyone likes to point the finger at the other side as the source of this distrust. The reality is, there is abundant blame to go around.

Folks like to remember the good old days when Justice Scalia was confirmed by this body 98 to 0, when Justice Ginsburg was confirmed 96 to 3, but if we look at our five most recent nominees to the Supreme Court who got votes, you can see a clear trend: Nine Senators, all Republican, voted against Justice Breyer. Then 22 Senators voted against Justice Roberts. Then 42 Senators, mostly Democrats, voted against Justice Alito. For President Obama's nominees, Justices Sotomayor and Kagan, more than 30 Republican Senators opposed each one. Only nine Republican Senators voted for Sotomayor, and only five Republicans voted for Justice Kagan. We have been on this trajectory—both parties—for some time.

Then, of course, we have Chief Judge Merrick Garland, the first Supreme Court nominee in American history to be denied a hearing and a vote, and we have Judge Gorsuch, the first to be the object of a partisan filibuster on this floor.

We did not get here overnight. We have become increasingly polarized. How can we work together to repair this lack of trust so we can face the very real challenges that face our Nation?

My own attempts of recent days—although I was blessed to be joined by Senators of good will and good faith and great skill in both parties—were ultimately not successful. I wish I had engaged sooner and more forcefully. I wish I had been clearer with my colleagues how determined I was to seek a result, but this doesn't mean I am disappointed that I tried, and it also doesn't mean I am going to stop. I am not going to stop trying to fix the damage that has been done, trying to find a better pathway forward.

I ask my colleagues: If you know what you have done today, then what will we do tomorrow? How could we avoid the further deepening, corrosive partisanship in this body? What past mistakes can each of us own up to? What steps can we take to mend these old wounds? What more can we do to move forward together?

We sometimes talk about the dysfunction of this body as if it is external to us, as if we bear no accountability for it, but at the end of the day, here we are: 100 men and women sent to rep-

resent 50 States of this Republic and 325 million people. In many ways, we have all let them down today.

I can tell you what I am going to do tomorrow. I commit to working with anyone who wants to join me to try to strengthen and save the rules and traditions of this body and its effectiveness as an absolutely essential part of the constitutional order for which so many have fought and died. It is what all of our predecessors would have wanted.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Georgia.

THANKING SENATORS AND STAFF

Mr. ISAKSON. Mr. President, I will be brief. I also want to make sure I don't take advantage of the personal privilege I have as a United States Senator, but I am going to anyway.

I want Senator COONS from Delaware to pause for just a second.

I want to thank every Member of the Senate, Republican and Democrat, and the staff of the Senate for the many kindnesses they have extended to me in the last 4 months during my injury and my recovery. I am on the way back home, in large measure, because of the support of the Members of the United States Senate. I am very grateful for that and the staff who have allowed that to take place. I say thank you very much.

Notwithstanding what your politics are or what your partisanship is or anything else, this is a great institution and a great body because it is made up of great people.

To that end, my friend Senator COONS from Delaware made an excellent speech, which I am going to adopt as my speech, since I don't have the strength to stand as long as I would like to, to talk about an issue so important. We do need to open all our minds and our hearts in the days ahead to make sure we know what direction we are going as Members of the Senate, regardless of our party and notwithstanding our partisanship.

Neil Gorsuch, from everything I have seen—and I probably have seen more than anybody because I have been watching it on TV while I have been recovering. You guys have had to do it in debate. I have seen the real thing.

His record, his testimony, the way he presented himself, the way Senator GRASSLEY and Senator FEINSTEIN allowed that hearing to go forth, I know we have a good man as a nominee to be a Supreme Court Justice of the United States, but the issues and the divide on the cloture, on a simple majority, and the rule change of 2013, and what has happened in the past, now has us in a position where we slowly but surely are moving to be a body that is another House of Representatives, not the United States Senate.

The majority rule is a great philosophy. The majority winning is always a great philosophy, but I used to have a teacher who taught me. She said: If four equals the majority, three equals

zero, but you always need to listen to the other three because sometimes they may be right. I think that is a good lesson for us today, and that was a grammar school teacher.

If there are seven voting members, four does equal the majority, but three doesn't equal zero because the rest still count.

As we move forward in the days ahead and judge other issues, whether they be partisan issues in terms of regular debate and general legislation, whether it be issues over the confirmation of judges or Secretaries or whatever it may be, let's be thoughtful, so that, not as a criticism of the House, but as a compliment to our Founding Fathers, we don't become a second House and later a unicameral body, majority rule and mob rule, and eventually waive rules, where passions overrule common sense and all of a sudden you find yourself digging your way out of a hole that you have created, rather than building the dreams you have always wanted to do.

I commend the leadership of both parties for exercising their political and partisan desires. I commend each Member for being here to take part in this debate today and being a part of it. That is what America is all about.

Somewhere down the line, there is going to be something that is going to happen that is going to cause a resurrection of the debate that we have had today and another road to cross on which way we go in the future. The more we move away from a Senate that is a deliberative body, that is a dignified body, to a body that makes sure it knows where it is going before it moves forward, we won't be better off. If we move toward a body that is a rubberstamp of the House or a unicameral government of legislation, we will never be the United States of America our Founding Fathers intended us to be. That is what I believe, and that is what I think the end of this will be.

To all our Members, I compliment them on everything they have had to say and have done.

Judge Gorsuch, I am so proud to have someone like that who will hopefully serve on the bench of the U.S. Supreme Court with distinction.

To all of us, our job is not finished. I look forward to being here and being a part of it.

I yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. WHITEHOUSE. Mr. President, I thank the Senator for yielding to me. I wish to say how nice it is to see the Senator from Georgia back here with us. It means a lot to all of us to have Senator ISAKSON back on the Senate floor.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Mr. President, I don't wish to turn this into a bouquet-tossing process, but I think it is very clear that Senators on both sides of the aisle are very, very pleased to see our friend

from Georgia back today. We are wishing him health and Godspeed. We look forward to his full and complete recovery. We are so glad to have him here.

I am also pleased that Senator COONS is on the floor, because I think it would be fair to say that Members on both sides of the aisle who have watched how Senator COONS has conducted himself throughout this extraordinarily contentious debate would say that Senator COONS makes all of us very, very proud.

It is no secret that he has tried repeatedly to bring both sides together, and he and I have talked often about this. I think there are going to be opportunities for finding common ground on important legislation, breaking out of this gridlock that we all understand is not what the Senate is all about and forging toward more mainstream topics. When we get there, to a great extent, it will be because of the thoughtful comments of my friend from Delaware.

Mr. President, the Senate is going to act on one of its most sacred and important constitutional duties, the advice and consent on the nomination of the next Associate Justice of the Supreme Court.

The long tails of these Supreme Court debates stretch through generations and shape our government deep into the future. The choice the Senate makes in this extraordinary debate will have a profound impact, from the broadest governing statutes down to the most specific particulars of the law that affect our daily lives.

There are several issues that are particularly relevant to this nominee that have gotten short shrift. I am talking about secret law, and warrantless wiretapping, death with dignity. I intend to discuss these issues shortly.

I would like to begin, however, by stating that whether one supports or opposes Judge Gorsuch, our job would have been easier had the judge been more forthcoming in his testimony before the Judiciary Committee. He chose, however, not to do so. So what the Senate has to go by instead is the judge's lengthy record of adhering to a rigid and far-right philosophy that is packaged in the branding of so-called originalism.

The originalist says that our rights as a people are contained within and linked to our founding documents. But that viewpoint is plainly incorrect. In practice, originalism becomes a cover for protecting the fortunate over the poor, corporations over individuals, and the powerful over virtually every other American. It is a political agenda that masquerades as philosophy, an agenda whose sole intent is reserving power for those in power and limiting the recognition of the rights reserved to the people.

Far from endorsing such a creed, our Constitution is actually a document of constraints, constraints that bind the government, not the people. The full scope of our fundamental rights as a

people, as Justice M. Harlan once wrote, "cannot be found in or limited by the precise terms of the specific guarantees elsewhere provided in the Constitution." The exact concept is written into the Bill of Rights itself. The Ninth Amendment says: "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

James Madison, the founder so significant that Americans are said to live in a "Madisonian Democracy," was outspoken about the dangers of future readers or interpreters thinking that the fundamental rights contemplated by the Framers were limited to the Constitution or Bill of Rights.

So our founding document and its Framers made clear that rights were not enumerated by the Constitution; they were retained by the people. Individual liberties, from personal privacy to a woman's right to vote, the choice of contraception and abortion, interracial marriage, same-sex marriage, equal protection of the law—these liberties and, let me emphasize, many, many, many more have always existed. In fact, the Constitution and the Bill of Rights were silent on much of what Americans consider fundamental to a free people. That silence left the door open for the courts, as we shed the prejudices of a darker age, to recognize the true meaning of the words "all men are created equal" and "inalienable rights."

The process has been painfully slow. The Constitution, like any document composed by politicians, is fraught with original sin. For example, the three-fifths compromise was a shameful device of political accommodation. Through long stretches of our history, political agendas have left many individual rights unrecognized or unprotected by the courts. They ruled in favor of the powerful and against the disadvantaged and the disenfranchised, often with the justification that their rulings adhered to the text of the Constitution.

Nowhere did the Constitution expressly deny women the right to vote, but the Supreme Court ruled against Virginia Minor in 1875. The Federal Government was not expressly granted a right to intern residents of Japanese descent, but the Supreme Court allowed it in *Korematsu*. There was no constitutional basis on which to deny people of different ethnicities the right to marry. On those issues and more, our judges were wrong. Supreme Court Justices were wrong. In the service of the economic, political, and religious powers that be, the Court has defended slaveholders, denied the franchise, permitted racial, sexual, and other discrimination, and routinely—routinely—elevated the power of the State over individual liberties. Any defense of those rulings as adhering to the text of the Constitution is just plain wrong.

Let's look more closely at women's voting rights. In *Minor v. Happersett*,

the Supreme Court found that women did not have the right to vote because that right was not expressly stated anywhere in the Constitution. In a unanimous decision, the Court took the absurd position that a document predicated on voting, organized by voting, and dependent on voting for any amendment, still did not protect the right to vote for all citizens. Such is the intellectual bankruptcy of a long legal tradition sustained by its defense of the status quo.

The 19th Amendment was a response to the abridgement of a fundamental right by political parties and their dependent courts, but it did not create a new right. It was a long overdue fix made necessary by an originalist court.

If there is a national evolution that extends protection of rights and liberties to disenfranchised and oppressed people, it is because with time, our wonderful country tends to correct its wrongs. It did so with a Civil War and the amendments that followed. It did so with women's suffrage and the Brown decision. It did so more recently with the *Obergefell v. Hodges* decision. Historically, our country has gradually recognized fundamental rights and liberties.

"Recognition"—I use that word intentionally. It is recognition because there are no new rights, *per se*. They are inalienable, and those rights are not limited to those spelled out in the Constitution. A jurist governed by that principle would respect individual rights, but that simply isn't the viewpoint taken by many so-called originalists on the far right today.

The rightwing originalism looks, in my view, a lot more like the judicial philosophy that trampled on the rights of Americans in days past—a philosophy that throughout our history has left many Americans marginalized, disenfranchised, and oppressed by the State.

Unfortunately, after listening very carefully to Judge Gorsuch present his views and after reviewing his writings, including some I will mention that specifically talk about my home State, I have no faith that Judge Gorsuch would be any different from this philosophy that I mentioned that has left so many Americans marginalized in our country.

Judge Gorsuch not only has a long record of conservative activism in the courtroom, but he has demonstrated an out-and-out hostility toward the right of individuals to make decisions about their own lives and their own families without interference from the State. In one troubling instance, he went so far as to author a book attacking death with dignity. This of course has been a matter that historically has been left to the States, and the people of my State twice approved death-with-dignity ballot measures and our death-with-dignity laws have been in place for nearly 20 years. The Supreme Court upheld it more than a decade ago in a case known as *Gonzalez v. Oregon*. But

Judge Gorsuch's record and his own words put the will of millions of Oregonians in question.

Nothing in the Constitution gives the Federal Government the power to deny suffering Oregonians the right to make basic choices about the end of their lives. There is nothing in the Constitution that gives the Federal Government a power to deny people in my State the right to make those emotional, difficult, wrenching decisions about end of life. It is a private matter between individuals and doctors, and when politicians attempt to force regulations through the back door by going after doctors and their ability to prescribe, in my view that is an obvious over-the-line Federal infringement. But my guess is there are probably going to be some folks on the far right that are going to try that route again.

Nothing Judge Gorsuch said in his confirmation hearing gave me any indication that he respects the death-with-dignity issue as settled law or that he would rule against Federal abuse of power to intrude on a private choice. The bottom line is that Judge Gorsuch is locked into an extreme rightwing viewpoint on this issue.

And there is more. As I have listened to this debate and, particularly, the number of comments that some of those who have espoused the views that concern me so much come back to, part of this is that they are always talking about States' rights. States' rights—that will be the altar that we really build our views and philosophies around. I will state, however, that when we listen to some of what they are having to say about States' rights, what they are really saying is that they are for the State if they think the State is right. That is not, in my view, what fundamental rights—particularly, ones that have been afforded to States—ought to be all about.

As I indicated, I think his views with respect to death with dignity really do involve a Federal abuse of power in its intruding on private choices, but there are other issues that concern me as well.

He has made it clear, in many instances, that he favors corporations at the expense of the working people. He has sided with insurance companies to deny disability benefits to people with disabilities, with large companies to deny employees basic job protections, and has even written that class action lawsuits are just tools for plaintiffs to get “free rides to fast riches.”

No example better illustrates this tendency—and my colleagues have talked about it—than the case of the truckdriver in *TransAm Trucking v. Department of Labor*. In this case that leaves one practically speechless, Judge Gorsuch sided against a truckdriver who was fired for leaving his freezing cold truck when his life was in danger.

I have another significant concern about Judge Gorsuch that came up in the context of his confirmation hear-

ings. It is something that, I think, a lot of Americans and even those in government are trying to get their arms around. I have been on the Intelligence Committee since the days before 9/11, and one of the things we have come to feel strongly about is the danger of what I call “secret law.” I want to make sure people know exactly what I am talking about when I describe “secret law.”

In the intelligence world and in the national security sphere, operations and methods—the tactics used by our courageous men and women who are protecting us and who go into harm's way to protect our people—always have to be secret. They are classified. They have to be because, if they were to get out, we could have Americans die—the people who do all of that wonderful work and, possibly, millions more. Sources and methods have to be secret, but the law and our public policies ought to always be transparent.

The American people need to know about them because that is how we make informed decisions in our wonderful system of government. Voters are given enough information to make the choices. Sources and methods and operations have to be secret, but the law and political philosophies have to be public.

Judge Gorsuch, as a senior attorney in the Department of Justice, was a practitioner of secret law. As I indicated, the public is not going to know about secret operations; we protect them. But trust in government and in our legal system cannot survive when Americans understand that the law says one thing and then the government or a secret court says that it means another. Secret law prevents the people from knowing whether their fundamental rights are being infringed by an unaccountable, unconstrained government that is aided by compliant courts.

Secret law also keeps the Congress in the dark. Congress's job is to represent the people and oversee the government. Congress, barring rebellion, is the only recourse of a free people against an executive-judicial alliance of secrecy that infringes their liberties. It is my view that secret law makes a mockery of the oath that Members of Congress, Justices, and each Senator here has taken to serve, protect, and defend our Constitution. Secret law is fundamentally corrosive to the rule of law in America.

As we learned during his confirmation hearings, Judge Gorsuch was a supporter of secret law. In 2005, the CIA was conducting a secret torture program. In May of that year, the Department of Justice's Office of Legal Counsel determined, secretly, that torture techniques, such as waterboarding, were legal. Somehow, it deemed them consistent with statutory prohibitions on torture and the Constitution. This was extraordinary, willful, faulty legal analysis. It was entirely inconsistent with how the Congress and the public would read the law or the Constitution.

Then our distinguished colleague from Arizona, Senator MCCAIN, who knows a little bit about these issues in his having been subjected to them in the defense of our country, passed the Detainee Treatment Act. Senator MCCAIN understood, in having fought for our country—given fully of himself—that our government had to find a way out of this problem. The McCain law prohibits the cruel and inhumane or degrading treatment that has been at issue here.

By any measure, both the law—the language of the law, the clear intent of the Congress—and the context in which it was passed would leave every American to understand that a decision had been made by their elected officials to limit the power of government. Yet Judge Gorsuch, then an employee of the Bush administration's, had a solution.

In December of 2005, he wrote to the author of the Justice Department's opinion, Mr. Bradbury, about a Presidential signing statement that would magically transform the McCain law into an endorsement of torture. What Judge Gorsuch wrote was that the McCain amendment that prohibited cruel, inhumane, and degrading treatment was best read as, essentially, codifying existing interrogation policies. In other words, according to Judge Gorsuch, JOHN MCCAIN's law—the one that passed 90 to 9 in the U.S. Senate—endorsed torture when it did just the opposite.

The issue came up in his nomination hearing. Judge Gorsuch's explanation was that he was making the recommendation as a lawyer who was helping his client, which was the administration. I have to say, if there is one thing we have learned, this “just following orders” defense has gone on for far too long in this city. It is a small and feeble excuse and is unbecoming of a judge who has been nominated to the highest Court in the land. A judge who justifies government violations in the law and the Constitution just so his boss can say “I was following the advice of counsel” is making a choice to do wrong.

The McCain amendment—what we passed here in the Congress—did not green-light torture. It did not codify torture, period. Anybody who has ever heard JOHN MCCAIN talk about this issue and describe his personal, horrifying experiences with torture knows that it, certainly, could not have been his intent when writing the bill.

Any lawyer, especially one secretly advising the government, first has an obligation to the law and the Constitution. Judge Gorsuch's failure to recognize that principle and his choice to do wrong, in my view, disqualifies him from having a seat on the U.S. Supreme Court.

Torture is not the only illegal program on which Judge Gorsuch has left his fingerprints. After news broke of the illegal, warrantless wiretapping program, Judge Gorsuch helped prepare

testimony for the Attorney General, which asserted that these authorities are vested in the President and are inherent in the office.

It added: "They cannot be diminished or legislated away by other co-equal branches of the government."

If that were the case, then no action taken in this area by the elected representatives of the people would have any weight. The Foreign Intelligence Surveillance Act, which has existed since the 1970s, would just be some kind of advisory statement. Section 702 of the Foreign Intelligence Surveillance Act, which we are going to debate this year, would be little more than wasted paper. Then the USA FREEDOM Act, which ended the bulk collection of law-abiding Americans' phone records, might as well have never been signed into law.

Voting for those bills and voting to confirm Judge Gorsuch call into question any Member's commitment to those laws that we passed.

In response to a question during his nomination hearing, Judge Gorsuch said that he did not believe the Attorney General's testimony and that, again, he was only acting as a scribe, as a speechwriter. As such, he absolved himself of responsibility for his actions. Again, I think that it is just wrong to use this as an excuse. Like the endorsement of torture, assertions of Presidential authority to override congressional limits on warrantless surveillance rip at the fabric of the rule of law. Judge Gorsuch, a man who chose to get up and go to work every day for individuals who were violating the law, had the power to say no, but he would not make that choice.

Colleagues, the Senate is voting to confirm an individual to a lifetime position on the Supreme Court. What Judge Gorsuch has stood for and against over the course of his legal career is all we have to go on in this debate, and we will have to reflect on it. A history of support, in my view, for secret, illegal, and unconstitutional programs is an unacceptable record for someone who is seeking a place on the Supreme Court.

I have reminded this Senate of how, time and again, the Supreme Court has rubber-stamped the excesses of our executive and legislature over the years rather than defended individual liberty. That is the record—the Supreme Court rubbing-stamping the excesses of the executive and legislature rather than protecting the individual liberties of the American people.

It is my view that it is our job as Senators to ensure that the Supreme Court does not repeat the errors of yesterday—enshrining disenfranchisement and discrimination and denying equal protection of the law based on prejudice and political agendas. I believe that the only way to prevent this abuse is to appoint judges who recognize that the judiciary is a bulwark against any attempt to infringe on our unalienable rights.

The bottom line for me, colleagues, is whether Judge Gorsuch recognizes that rights are reserved for the people.

There is no respect for individual rights and liberty to be found in a viewpoint that allows for secret law to justify torture, that favors the powerful over the powerless, or that tramples on the rights of Americans to determine the courses of their own lives. Unfortunately, we have learned over the last few weeks that this is Judge Gorsuch's record.

I oppose his nomination. I urge my colleagues to do the same.

I yield the floor.

The PRESIDING OFFICER (Mr. PERDUE). The Senator from Montana.

Mr. DAINES. Mr. President, one of the most consequential votes that I will ever cast is a vote to confirm a U.S. Supreme Court nominee. It is a lifetime appointment to our Nation's highest Court. In fact, tomorrow, when I cast that vote for Judge Gorsuch, it will be the first chance I have had as a Senator to confirm a Supreme Court nominee.

As it stands today, the U.S. Senate is on the precipice of confirming Neil Gorsuch to be our next U.S. Supreme Court Associate Justice. Just a few short hours ago, my colleagues on the other side caved to the pressures of the far left and unleashed an unprecedented, partisan filibuster for the first time in 238 years of this institution.

I was honored to be at the White House's East Wing on January 31, with President Trump, when he made the announcement that Judge Neil Gorsuch would be the nominee to replace Antonin Scalia.

Judge Gorsuch's academic accomplishments are nothing short of being absolutely stellar. His decision to serve as a Justice on the highest Court in the land is a true testament to his character, his intelligence, his understanding of the law, and his commitment to the Constitution.

Judge Gorsuch was appointed by President George W. Bush to the Tenth Circuit in 2006 and was unanimously confirmed by the U.S. Senate. In fact, some of those Democrats who did not oppose Judge Gorsuch then included his Harvard Law classmate Barack Obama, Vice President Joe Biden, and Minority Leader CHUCK SCHUMER.

Of utmost importance in a Justice is the desire and the ability to apply the law as it is intended, not to legislate from the bench. So I can say that I was very thrilled to here Judge Gorsuch say this: "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."

On February 9, I met Judge Gorsuch in my office. Let me tell my colleagues, he is impressive. We discussed the Constitution. We discussed the Second Amendment. I represent the State of Montana. I can tell my colleagues that as we look at our Constitution and our Bill of Rights, the Second Amendment is very important to the people of

Montana. He will defend the Second Amendment. We also talked about the separation of powers, the role of government and federalism, and the Fourth Amendment.

Through 4 full days of hearings, Judge Gorsuch eloquently answered Judiciary Committee members' questions, and certainly, before the entire viewing audience of the American people, he showcased his brilliant legal mind.

Prior to his hearing, he met with 80 Senators. He provided the Judiciary Committee with 70 pages of written answers regarding his personal record and over 75,000 pages of documents, including speeches, case briefs, opinions, and written works going as far back as his college days. The White House archives produced over 180 pages of email and paper records related to Judge Gorsuch's time at the Department of Justice.

During the committee hearing, Judge Gorsuch sat for three rounds of questioning totaling nearly 20 hours. In fact, when Judge Gorsuch appeared before the Judiciary Committee of the U.S. Senate, it was the longest hearing of any nominee in this century. He answered nearly 1,200 questions during that hearing. By the way, that is nearly twice as many questions as Justices Sotomayor, Kagan, or Ginsburg.

Today's vote was nothing more than a campaign fundraising effort for Senate Democrats. In fact, the Democratic Members who have pledged to support him already have threats from liberals of voting them out of office. It is a sad day that this body has become so partisan that, for the first time in this body's history, we had a partisan filibuster to a more than qualified nominee.

Judge John Kane, a judge appointed by Democrat Jimmy Carter, said in an op-ed for an online legal website:

As the saying goes, we could do worse. I'm not sure we could expect better, or that better presently exists.

There is just no arguing that Judge Gorsuch a mainstream nominee.

Take the remarks of Obama's Solicitor General, Neal Katyal:

Judge Gorsuch is one of the most thoughtful and brilliant judges to have served our nation over the last century. As a judge, he has always put aside his personal views to serve the rule of law. To boot, as those of us who have worked with him can attest, he is a wonderfully decent and humane person. I strongly support his nomination to the Supreme Court.

I remind my colleagues that those are the words of President Obama's Solicitor General.

A nominee of this caliber who has undergone, as I just mentioned, rigorous vetting deserves the respect of the Members of this Chamber. Yet Senate Democrats walked down the road that their former leader did in 2013 by changing the precedent of this body and allowing the U.S. Senate to become even more partisan.

The American people want Judge Gorsuch. The polls show that. In fact,

they demanded nine Justices on the Court. Today, we are one step closer to confirming him.

Judge Gorsuch is the right replacement to honor the legacy of Justice Antonin Scalia. He has widespread support across the State of Montana, including our agriculture groups, the NRA, and leaders from across our State. Four Indian Tribes in Montana have endorsed Judge Gorsuch.

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

As the American people watched Judge Gorsuch before the Judiciary Committee, they saw an exceptionally qualified nominee for the highest Court in the land. They saw someone who is bright—Columbia undergraduate, Harvard Law School, Oxford Ph.D. I would submit that Judge Gorsuch's intellectual capacities are only exceeded by the size of his heart. This is a kind man. This is a brilliant man. This is an independent jurist.

I very much look forward to casting my vote tomorrow to confirm Judge Gorsuch.

THE PRESIDING OFFICER. The Senator from South Dakota.

Mr. THUNE. Mr. President, today we are one step closer to a vote to confirm Judge Gorsuch to the Supreme Court. I look forward to the vote tomorrow. We will be confirming a Justice to the Supreme Court who is supremely qualified, who is a mainstream judge, who respects the rule of law and the Constitution, and who will rule impartially from the bench—someone who will call balls and strikes. That is what I believe the American people look for when they look for a Supreme Court Justice.

While it was always clear that some Democrats would oppose any Supreme Court candidate the President nominated, I had hoped that partisanship would be at least somewhat limited. I had hoped the Democrats would want to preserve the Senate's nearly 230-year tradition in confirming Supreme Court Justices by a simple-majority vote. And I had hoped that more than a handful of Democrats would join us to confirm one of the most, as I said, supremely qualified judges in my memory. That is not what happened. Despite Judge Gorsuch's qualifications, despite the support for his nomination from both liberals and conservatives, the vast majority of Senate Democrats were determined to block this confirmation.

Of course, it wasn't really ever about Judge Gorsuch. It is not that Democrats were determined to block his confirmation; it is that they were determined to block any confirmation.

Democrats tried to offer reasons to oppose Judge Gorsuch, but they struggled to come up with anything plausible. The Senate minority leader actu-

ally came to the floor and tried to argue that he was worried that Judge Gorsuch would not be "a mainstream justice."

Over the course of 2,700 cases on the Tenth Circuit, Judge Gorsuch has been in the majority 99 percent of the time—99 percent. In 97 percent of those 2,700 cases, the opinions were unanimous. So I would love to hear an explanation for how exactly a judge who has been in the majority 99 percent of the time is out of the judicial mainstream. Was the minority leader attempting to argue that all of the judges on the Tenth Circuit, including those appointed by Democratic Presidents, are out of the mainstream?

The fact is that Democratic opposition to Judge Gorsuch had nothing to do with his qualifications. I doubt that any of my colleagues on the other side of the aisle really think that Judge Gorsuch is out of the mainstream or that he lacks the qualifications of a Supreme Court Justice, but they opposed him anyway.

If they opposed a judge with a distinguished resume and a reputation as a brilliant jurist; if they opposed a judge who is known for his fairness and impartiality; if they opposed a judge whose nomination has been repeatedly supported by liberals, as well as conservatives; if they opposed a judge who unanimously received the highest possible rating from the American Bar Association—a rating, I might add, that the minority leader once called the "gold standard" for judicial nominees; if they opposed a judge a number of them supported 10 years ago, then it is abundantly clear that their opposition wasn't about this judge but about any judge this President nominates. Thus, Republicans were left with no real alternative but to act to preserve the Senate's tradition of giving Supreme Court nominees an up-or-down vote. This wasn't my preference. I preferred to leave room for a minority to block a judge who is truly not fit for office. But it was the only alternative we were left with if we wanted to confirm anyone to the Supreme Court.

Historically, confirming judges was not a partisan process. During the George W. Bush administration, however, Democrats decided they were going to change that. They were mad back then too—mad that a Republican President was in charge. Apparently, modern-day Democrats are not reconciled to the fact that in our system of government, it is not always the Democrats who win.

Anyway, the Democrats were mad, and they decided that the historically bipartisan process of confirming judicial nominees was going to change. Their 2003 filibuster of Miguel Estrada, who had been nominated to a seat on the Court of Appeals for the DC Circuit, was the first time a judicial nominee who enjoyed clear majority support was not confirmed because of a filibuster.

Democrats ultimately successfully filibustered no fewer than 10 Bush

nominees to appellate courts. That was a massive reversal in Senate history. Suddenly the normally smooth process of confirming a President's judicial nominee had been turned into an exercise in partisanship.

Ten years later, Democrats struck again when they employed the nuclear option to ensure that they could pack the DC Circuit—despite the fact that at the time, when the current minority leader announced that Democrats would "fill up the D.C. Circuit one way or the other," Republicans had blocked just two of President Obama's circuit nominees and had confirmed 99 percent of his judges. So 215 were confirmed out of 217 under President Obama up to that point.

And now here we are today. Democrats are again mad that they lost an election, that they can't control the nomination process, and they once again turned to "no-holds-barred" partisanship. They made it clear that no Republican nominee would ever make it to the Supreme Court; thus, we had to act to ensure that Supreme Court nominees can receive an up-or-down vote going forward.

In the Senate's nearly 230 years, the filibuster has been used to block a Supreme Court nominee exactly once—one time. Supreme Court Justice Abe Fortas's nomination to be Chief Justice of the Supreme Court was blocked by a bipartisan coalition, in part over ethical concerns. That is how strong the Senate's bipartisan tradition of an up-or-down vote on Supreme Court nominees has been—230 years, one time, and it was bipartisan. I am deeply sorry that the Democrats were determined to end that tradition.

Judge Gorsuch should never have faced the threat of a filibuster. There was no reason—no reason other than the most flagrant partisan politics—to block this supremely qualified nominee from the Supreme Court.

As I said, I look forward to tomorrow and to this final vote where we will have an opportunity to confirm to the Supreme Court this well-qualified, mainstream nominee who fundamentally respects the rule of law and the Constitution of the United States and will act impartially as a Justice for the American people.

Mr. President, I yield the floor.

I suggest the absence of a quorum.

THE PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. SHELBY. 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. SHELBY. Mr. President, I wish to address the Senate for a few minutes about the nomination of Judge Neil Gorsuch, which is the topic of the day and has been the topic for weeks. It probably has been said, but I am going to go through some of it again.

Judge Gorsuch is a native of Denver, CO, where he currently resides with his

wife Louise and their two daughters. He is currently 49 years old.

I want to talk about some of his credentials. Judge Gorsuch received his bachelor of arts degree from Columbia University in 1988, his juris doctor from Harvard Law School in 1991, and a doctorate in legal philosophy from Oxford University in the UK in 2004.

At Columbia, he was a member of Phi Beta Kappa, a Truman scholar at Harvard Law School, and a Marshall scholar at Oxford.

Following law school, Judge Gorsuch served as a law clerk to Federal appellate judge David Sentelle and then to Justice Byron White of the U.S. Supreme Court and Associate Justice Anthony M. Kennedy of the Supreme Court.

In 1995, Judge Gorsuch entered private practice as an associate of Kellogg, Huber, Hansen, Todd, Evans & Figel, and he was elected partner in that law firm in 1998. His practice focused on general litigation in both trial and appellate matters.

Judge Gorsuch left private practice in 2005 to serve as the Principal Deputy to the Associate Attorney General at the Justice Department in Washington.

President George W. Bush nominated Judge Gorsuch to the Tenth Circuit Court of Appeals, located in Denver, on May 10, 2006. He was confirmed in the Senate by a voice vote on July 20, 2006.

We talk about qualifications for judges. I want to share some of his. Judge Gorsuch has served over a decade on the U.S. Court of Appeals for the Tenth Circuit. He has an outstanding judicial record that speaks for itself. He has participated in over 2,700 appeals on the Tenth Circuit, and 97 percent of them have been unanimously decided. In those cases, he was in the majority 99 percent of the time.

Of the approximately 800 opinions he authored on the Tenth Circuit, 98 percent of his opinions were unanimous, even on a circuit where 7 out of the 12 active judges were appointed by Democratic Presidents. His opinions on the Tenth Circuit have the lowest rate of dissenting judges at 1.5 percent. That is unheard of. Out of the eight cases he has decided that were reviewed by the U.S. Supreme Court, seven were affirmed and one was vacated.

Judge Gorsuch's nomination to the Tenth Circuit Court of Appeals in 2006 was met without opposition, and he was confirmed by voice vote.

Notably, Senators serving during this time include a lot of my former colleagues: then-Senator Barack Obama, Senator Joe Biden, Senator Hillary Clinton, Senator John Kerry, Senator Harry Reid, and 12 other current sitting Democratic Senators in this body, including the minority leader, CHUCK SCHUMER.

In March, the American Bar Association, ABA, unanimously gave Judge Gorsuch a "well qualified" rating, their highest possible mark. Minority Leader SCHUMER and Senator LEAHY have both previously referred to the

ABA as the "gold standard by which judicial candidates are judged."

In the area of jurisprudence, Judge Gorsuch has a mainstream judicial philosophy, which he clearly articulated during the Senate Judiciary's confirmation hearing.

I believe his record is unequivocal in that he believes judicial decisions should be based on the law and the Constitution and not personal policy preferences. He has a deep commitment to the Constitution and its protections established by our Founding Fathers, including the separation of powers, federalism, and the Bill of Rights. Judge Gorsuch's decisions demonstrate that he consistently applies the law as it is written, fairly and equally to all individuals.

Additional information about Judge Gorsuch: The American people deserve to have their voices heard in selecting Justice Scalia's replacement. This is what we are doing.

Some of my colleagues intend to oppose Judge Gorsuch based solely on the fact that they disagree with the outcome of the Presidential election.

During President Trump's campaign last year, he clearly defined the type of Justice he wished to nominate to the current vacancy. He even published, as you will recall, a list of 21 judges who possessed what he believed are the necessary qualifications to serve on the U.S. Supreme Court.

Following Judge Gorsuch's nomination, he sat for over 20 hours of questioning in front of the Senate Judiciary Committee in the Senate—the longest hearing of any 21st-century nominee. Additionally, he was given 299 questions for the record by my colleagues on the other side of the aisle. This also is the most in recent Supreme Court confirmation history.

Simply put, I believe this is the most open and transparent process in choosing a Supreme Court nominee ever conducted by an administration. By filibustering this nomination, some of my colleagues are breaking a nearly 230-year tradition of approving Supreme Court nominees by a simple-majority vote.

I believe the American people spoke clearly when they elected President Trump. I believe this is the American people's seat, and I believe Judge Gorsuch is an exceptional choice for the Supreme Court. He deserves an up-or-down vote, and that is why I believe we are getting ready in the next few hours to confirm him.

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. 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, as we finished the vote just hours ago,

I could not help but notice a number of my colleagues on the other side of the aisle high-fiving each other. That image stays with me as I stand here now. It saddens me. There is no cause for celebration in what happened in the Senate just hours ago. No one should sleep well tonight. No one should underestimate the magnitude of what happened here. Damage was done to our democracy, in fact, to the institutions that are the pillars of our democracy—the United States Supreme Court and the Senate itself.

Today is, indeed, one of my saddest days in the Senate. Sadder than anything is the damage that has been caused to the Supreme Court by eroding and undermining trust and respect for an institution that has power only because of its credibility with the American people. It has no armies or police force; all it really has is the confidence and respect of the American people.

Today, raw political power has been exercised to break the rules and norms of this body so that a nominee could be confirmed. The only way that he could be confirmed was, in fact, to wreck the rules, a nuclear option that will have enduring fallout and rippling repercussions, perhaps for years come.

For myself, I would state unequivocally that I hope we will work together on issues where we have common ground, where we can reach common solutions on infrastructure, on tax reform, on immigration issues.

No one should make light of the potential fallout, as there is in any nuclear explosion, from this action today.

The Senate has broken with decades of bipartisan practice when it comes to the U.S. Supreme Court. The practice and the tradition was that Presidents of either party would consult with Members of both parties in this body before making a nomination so as to ensure a mainstream nominee, and that nominee would be in the mainstream even before his or her selection so that there was some modicum of comity and so that respect for this body, as well as the courts, would be preserved.

My concern is that the contagion of partisanship will infect the court system as a whole. All of the nominations to lower courts, as well as the appellate courts, will be affected.

My hope is that we can avoid that truly cataclysmic outcome, a nuclear explosion, in some ways even more deafening and damaging than the one used today would be because our courts are the bulwark of our democracy. An attack on our courts is an attack on the only check we have against tyranny and autocratic erosion of those rights. That is why the nonpartisanship of our courts is so important.

The Supreme Court, of all our courts, should be above politics. In fact, that is why the 60-vote rule for the Supreme Court was so important. The Supreme Court is different: nine Justices appointed for life to the highest Court in

the land. In some ways, it is an anachronism in our democracy—unaccountable, unelected, sitting for life with the power to strike down actions of elected representatives and an elected Executive by issuing words on paper without the direct means to enforce them, depending only on respect and credibility from the American people. To approve nominees by a razor-thin majority is a disservice to the Court and to our democracy.

Supreme Court Justices do more than just follow the law; they have to resolve conflicts in the law and differences among the lower courts where they disagreed and, in fact, ambiguities in the statute, where there is lack of clarity, where this body is unable to reach consensus and, in effect, decides to agree, to the extent it can, and leave some question to administrative agencies, which rightly are entitled to respect, as they implement the law.

Confidence and trust are essential, and we have undermined it today. Our Republican colleagues have gravely damaged it by the actions taken today.

I have urged my colleagues to reject Neil Gorsuch because I believe he is out of the mainstream, because he failed to answer questions about whether he agreed with established core precedents essential to rights of privacy and equality under the law, because he has a judicial philosophy that would involve substituting judgments of courts for administrative agencies and banning the Chevron doctrine, and because he favored in many of his actions, opinions, writings the interests of corporations over individual rights.

We have debated the merits of this nominee. I believe that his repeated evasion of the questions that were put to him leaves us with the inescapable conclusion that he passed the Trump test; that he is not a neutral caller of balls and strikes; that he is, in fact, an acolyte of the of the rightwing groups that screened and suggested his name; and that he would carry out not only the Trump litmus test to overrule *Roe v. Wade*, strike down gun violence provisions, but also other unknown decisions that would implement that far-right conservative agenda. We can debate whether that view is right or wrong.

Today is one of my saddest days in the Senate. It goes more to the institutions that have been demeaned and degraded: the U.S. Senate and the Supreme Court. My hope is that maybe it will be a turning point. Maybe we can reconstruct the sense of bipartisanship and comity that existed for so many years. Many of my colleagues on the other side have expressed to me their misgivings about what was done today.

The obstruction of Merrick Garland's nomination was, as one of my colleagues put it, "the filibuster of all filibusters." It was another step in a continuing progression, culminating in today's outcome that very much betrays the spirit and values of a bipartisan selection of Supreme Court nominees be-

cause the highest Court in the land is different.

I had the extraordinary honor to clerk for a Justice on the U.S. Supreme Court, Harry Blackmun, who was appointed by a Republican, President Richard Nixon. He grew as a Justice and surprised a lot of people. He, no doubt, surprised the President who appointed him. And that is what happens to really extraordinary men and women who serve on our courts as well as in the U.S. Senate; they grow in the job.

Choosing a U.S. Supreme Court Justice is one of the most solemn and important duties that a President has, and confirming her or him is one of the most important tasks we have in this body.

Even at the most difficult and contentious times, as I served then as a law clerk and as I have litigated since then for several decades, I have never doubted that judges were working in good faith to uphold the rule of law. Whether they ruled my way or not, I believed that we were working to try to be above partisan politics and uphold the rule of law and do the right thing to follow the law.

The Supreme Court does more than follow; it leads. Today's vote is a significant challenge to that principle and perhaps the most difficult that we have seen in recent history. It threatens to exact profound damage on the confidence and trust the American people have in the Supreme Court and perhaps in the courts overall, and that is a danger for all of us.

In my view, when the history of this time is written, there will be two heroes: the free press that has uncovered abuses and wrongdoing despite opposition from many powerful forces, and our independent judiciary that has upheld their right to do it and, also, the rights of countless Americans in many areas of law.

Today's action threatens those two institutions in our society. It undermines our rules. It would not have happened without a choice made by the Republican leadership that they were willing to break the rules to achieve this result.

I am determined to try to move forward in a positive way, in legislation as well as in protecting and enhancing our courts, giving them the resources they need to do their job—and law enforcement, the resources needed to uphold the rule of law.

We cannot hold the Supreme Court hostage to any ideology, and that is a lesson from today and from the past year that we should all heed.

Mr. President, I will continue to talk about this topic because I believe it is so profoundly important to our Nation, but for now, I yield the floor.

THE PRESIDING OFFICER (Mr. CASSIDY). The Senator from South Carolina.

Mr. GRAHAM. Mr. President, when they write the history of our times, I am sure that when it comes to Senate

history, this is going to be a chapter, a monumental event in the history of the Senate not for the better but for the worse. After we are all long dead and gone, somebody may be looking back and trying to figure out what happened or what motivated people.

I am going to tell you what has motivated me since I have been in the Senate: an understanding that the job of a Senator, when it comes to advice and consent, is not to replace my judgment for that of the President, not to nullify the election, but to be a check and balance to make sure that the President of either party nominated someone who is qualified for the job and is capable from a character point of view of being a judge for all of us, having the intellect, background, judgment, experience to carry out the duties of a Supreme Court Justice.

When President Obama won the White House, I suspected that he would pick judges who I would not have chosen, based on our different philosophies of liberal-conservative jurisprudence.

This is what Greg Craig, the former White House Counsel in the Obama administration, said about Elena Kagan, who is now on the Court: "Kagan is . . . a progressive in the mold of Obama himself."

This is what Vice President Biden's Chief of Staff Ronald Klain said about Elena Kagan: "Elena Kagan is clearly a legal progressive . . . [and] comes from the progressive side of the spectrum."

I think that was an accurate description of her and Sonia Sotomayor, who both are progressive Justices who come from the progressive side of the judicial spectrum. Both are highly qualified, capable women who had stellar legal records. Even though they had outcomes I did not agree with, they were certainly in the mainstream. Both had been judges. I think he chose people I would not have chosen, but they were really highly qualified.

I was the only member of the Judiciary Committee on the Republican side to vote for either Justice Kagan or Justice Sotomayor because I used a standard that I thought was constitutionally sound. I am not telling any other Senator what they should do. I am just trying to explain what I did. In the *Federalist Papers*, No. 76, written April 1, 1788, Mr. Hamilton said:

To what purpose then require the co-operation of the Senate? It would be an excellent check upon a spirit of favoritism in the President. It would portend greatly to prevent the appointment of unfit characters from state prejudice, from family connection, from personal attachment, and from a view to popularity.

So, from Hamilton's point of view, it was a check and balance against a crony or unqualified person, someone who was popular but not qualified for the job, somebody who was supported because they were close to the President and not qualified for the job, someone who was appointed because they were a favorite son of a particular State. That would not be fair to everybody else. When you look at the history of the advice and consent clause,

it is pretty clear that the Founding Fathers did not have in their minds that one party would nullify the election when the President of another party was chosen by the people when it came to Supreme Court confirmations because they chose somebody they did not agree with philosophically.

I voted for Elena Kagan and Sonia Sotomayor, knowing they come from the progressive judicial pool. Neil Gorsuch is one of the finest conservatives that any Republican President could have chosen, and he is every bit as qualified as they were. His record is incredible—10½ years on the bench, 2,700 cases, and 1 reversal. He received the highest rating of the American Bar Association, “well qualified,” just like Sonia Sotomayor and Elena Kagan.

To merit the committee’s rating of “well qualified,” a Supreme Court nominee must be a preeminent member of the legal profession, have outstanding legal ability and exceptional breadth of experience, meet the very high standards of integrity, professional competence, and judicial temperament. The rating of “well qualified” is reserved for those found to merit the committee’s strongest affirmative endorsement. By unanimous vote on March 9, the standing committee awarded Judge Gorsuch this highest rating of “well qualified,” just like they did for Sonia Sotomayor and Elena Kagan. He has 2,700 court decisions, 1 reversal, and praise from all areas of the law—left, right and middle. The ABA report of 900 cases describes a very thoughtful man, an incredible judge, and a good person. So I don’t think anybody could come to the floor and say—even though they may disagree with the outcome—that Judge Gorsuch is not qualified, using any reasonable standard, to be chosen by President Trump. He is every bit as qualified as the two Obama appointments. So, clearly, qualifications no longer matter like they used to.

Antonin Scalia—whom Judge Gorsuch, hopefully, will soon replace as Justice Gorsuch—was confirmed by the Senate 98 to 0. Ruth Bader Ginsburg was confirmed 96 to 3. I would argue that you could not find two more polar opposite people when it comes to philosophy than Justice Ginsburg and Justice Scalia. They became very dear friends, but nobody in their right mind would say there is not a difference in their judicial philosophy.

Strom Thurmond, my predecessor, a very conservative man himself, voted for Ms. Ginsburg. Clearly a conservative would not have chosen her because she was general counsel of the ACLU. I can tell you that Ted Kennedy and other people on the progressive side of the aisle would not have voted for Antonin Scalia based on philosophy. Something has happened in America from 1986 to 1993. The Constitution hasn’t changed. Something has changed. I think the politics of the moment have taken the Founding Fathers’ concept and turned it upside

down. From the time that Scalia was put on the Court and Ginsburg was put on the Court, everything has changed.

I was here when the first effort to filibuster judicial nominations was made in earnest. In the first term of Bush 43, there was a wholesale filibuster on the circuit court nominees of President Bush. I was part of the Gang of 14 that broke the filibuster. We lost a couple nominees but we did move forward. We said there would be no further filibuster of judges unless there were extraordinary circumstance. That allowed Alito and Roberts to go forward. Both of them got a good vote. On Alito we had to get cloture, but we got 78 votes.

Clarence Thomas was probably the most controversial pick in my lifetime. If you can remember that hearing, it was front page news every day and on TV every night. Not one Democratic Senator chose to filibuster him. He got an up-or-down vote and he passed 52 to 48. They could have chosen to require cloture, but they didn’t.

So this is the first time in the history of the Senate that you have a successful partisan filibuster of a Supreme Court nominee. Abe Fortas was filibustered to be Chief Justice of the Supreme Court by almost an equal number of Democrats and Republicans because of ethical problems, and he eventually resigned.

So we are making history today—the first successful filibuster in the history of the Senate to deny an up-or-down vote on a nominee to the Supreme Court. It breaks my heart that we are here. I don’t know what to do other than to change the rules to have some sense of fairness. I can’t believe that Judge Gorsuch is not qualified by any reasonable standard. I voted for Sotomayor and Kagan. Nobody even asked for a cloture vote. They went straight to the floor. One got 62 votes or 63 votes, and the other got 68 votes. I don’t know why we can’t do for Judge Gorsuch what was done for Sotomayor and Kagan.

We keep hearing about Judge Garland. Judge Garland is a fine man and would have been a very good Supreme Court Justice. Justice Scalia died in February of 2016 after three primaries were already held. The nominating process was well on its way for picking the next President. So this was an election year. I remember what Joe Biden said in 1992, the last year of Bush 41’s term, when there was the suggestion that somebody might retire in the election year, and he said, basically: If someone steps down, I would highly recommend that the President not name someone, not send a name up. If he, Bush, did send someone up, I would ask to seriously consider not having a hearing on that nominee. It would be our pragmatic conclusion that once the political season is underway, and it is, action on a Supreme Court nomination must be put off until after the election campaign is over. That is what Vice President Biden said when he was

chairman of the Senate Judiciary Committee in 1992.

That made sense. President Trump put a list of names out that he would choose from if he became President, which was historic. Part of the contest in 2016 was about the Supreme Court. I have no problem at all saying that, once the campaign season is afoot, we will let the next President pick. That is no slam on Judge Garland. I have zero doubt that if the shoe had been on a different foot, there would not have been a different outcome. I can’t imagine Harry Reid being in charge of the Senate in 2008 and allowing President Bush, in the last year, to nominate somebody in the Court and that they would approve that decision once the campaign season had started in 2008. I say that knowing that it was Senator Reid who chose to change the rules in 2013, which broke the agreement of the Gang of 14 in part.

Here is what Harry Reid said in 2005:

The duties in the U.S. Senate are set forth in the Constitution of the United States. Nowhere in the document does it say the Senate has a duty to give the Presidential nominee a vote.

All I can say is that in the 100-year history of the Senate, from today going backward, there has been one person put on the Court when the President was of one party and the Senate was held by the other party and a vacancy occurred in the last year of a Presidential term.

We have done nothing that would justify Judge Gorsuch to be treated the way he has been treated, and he has been treated pretty badly. Here is what NANCY PELOSI said: “If you breathe air, drink water, take medicine, or in any other way interact with the courts, this is a very bad decision.”

All I can say is that Judge Gorsuch does not deserve that. That is a political statement out of sync with the reality of who this man is and the life he led, and it is that kind of attitude that has gotten us to where we are today.

I can also say that there is blame on my side too. Nobody has clean hands completely on this. When Justice Sotomayor was nominated, she made a speech to the effect that a White man would have a hard time understanding what life is like for minorities. That was taken to believe that she somehow could not be fair to White men. That was a speech she gave that was provocative, but I never believed it was an indication that she somehow was prejudiced against White men. The reason I concluded that was because anybody who had known her, including White men, said she was a wonderful lady.

I remember Elena Kagan. The attack on our side was that she joined with the administration of Harvard to kick the ROTC unit off campus. Somehow that made her unpatriotic. My view was that it was the position of a very liberal school called Harvard, and no one could ever convince me that Elena Kagan was unpatriotic. She seemed to be a very nice, highly qualified lady,

and that decision by Harvard could not be taken to the extreme of saying that she is not fit to serve on the Court. So I was able to look beyond the charges leveled at these two ladies on our side to understand who they really were. When you look at people who know these judges the best, they can tell you the most accurate information. In the case of Kagan and Sotomayor, there were a lot of people, left and right, who said they were well-qualified, fine ladies. When you look at what was said about Judge Gorsuch in the ABA report, it is just an incredible life, well lived.

So here we are. We are about to change the rules. Up until 1948, it was a simple majority requirement for the Supreme Court. As a matter of fact, as for most Supreme Court nominations in the history of the country, a large percentage were done based on a voice vote. It is only in modern times that we got in this political contest over the Court. It probably started with Judge Bork.

There is some blame to go around on both sides, but I can say that while I have been here, I have tried to be fair the best that I know how to be. I voted for everybody I thought was qualified. I said, as for Judge Garland, let the next President decide. At the time I said that in March 2016, I had no doubt in my mind that Donald Trump would lose and that Hillary Clinton would probably pick somebody more liberal than Garland. But it made sense to me in that stage of the process to let the next President pick.

The fact that we are filibustering this man says a lot about the political moment. If this were a controversial character, I might understand it better. When you look back and try to figure out what we did and how we got here, I can say that we took one of the best people that President Trump could have nominated—somebody I would have chosen if I had gotten to be President. I think PAUL RYAN, MIKE PENCE, or any of us would have chosen Neil Gorsuch, and he was denied an up-or-down vote. That says all we need to know about the political moment.

We will change the rules. It will have an effect on the judiciary, and it won't be a good one, because in the future, judges will be selected by a single party, if you have a majority with no requirement to reach across the aisle, which means the judges will be more ideological.

When you have to go over there to get a few votes or when they have to come over here to get a few votes, you have to water down some of your choices and the most extreme ideological picks or a party or President are probably not going to be able to make it through. Now they will. I think what you will see over time is that the most ideological people in the Senate are going to have a lot to say about who is chosen by the President. It will change the nature of the judiciary.

To the Senate itself, every Senate seat now becomes a referendum on the

Supreme Court. So when we have a contest for a Senate seat, it is not just about the Senate. It is about the seat affecting the outcome of the Court, because all you need is a simple majority. Whether or not it leads to changing the legislative filibuster, which would be the end of the Senate, I don't know, but I don't think it helps. There will be a majority around here one day, a President of the same party, with control of the House, and they will get frustrated because the other side will not let them do everything they want to do, and they will be tempted to go down this road of doing away with the 60-vote requirement to pass a bill—not appoint a judge—and that will be the end of the Senate. We have made that more likely by doing this. It was more likely in 2013. I hope I am wrong, but I think we have set in motion the eventual demise of the Senate. The one thing I can say—I am optimistic, though—is that while I will vote to change the rules for this judicial nomination, I will not ever vote to change the rules for legislation.

The reason I am voting to change the rules is that I do not know what I would go home and tell people as to how Sotomayor and Kagan got on the Court and Gorsuch could not, why President Obama was able to pick two people who were highly qualified and why Trump was not able to pick one person who was highly qualified. You just can't have it where one side gets the judges and the other side does not. To rectify that wrong, I guess we had to change the rules.

It is not a good day. I was hoping it would never come, but it has. To the extent that I have been part of the problem, I apologize to the future. I think, at least in my own mind, I have tried to do the right thing as I saw it. I took a lot of heat for voting for their judges at a time when there was a lot of heat on our side. I am glad I did.

It is not that I am not partisan—certainly, I can be. I just think history is going down a very dark path, and the Senate is going down a very dark path. There will never be another 98 votes for a Scalia or another 96 votes for a Ginsburg. That is a shame because even though they may be different, they have one thing in common: They are good people who are highly qualified to sit on the Court. I can understand why a liberal President would choose one and a conservative President would choose another. Yet what we are doing today is basically saying that in the Senate, we do not really care about election results anymore.

I yield the floor.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. KENNEDY. Mr. President, Senator GRAHAM, my fellow Senators, our constituents in the Gallery, a lot of what has gone on today may seem very complicated. We have heard a lot of terms being thrown around: cloture, the nuclear option. Yet, really, the question that we were faced with today

in the Senate was very simple, and it continues to be pretty simple and straightforward, in my judgment: Should we have an up-or-down vote on the nomination of Judge Neil Gorsuch to be an Associate Justice of the U.S. Supreme Court?

Earlier today, the Senate voted to do that. I think it is very important for the American judicial system and for the American system of democracy that the U.S. Senate be allowed to vote on Judge Gorsuch's nomination to the U.S. Supreme Court. It was not enough to only vote on a motion to end debate; we also needed to be allowed to vote on the actual nomination with "yes" or "no."

Unfortunately, our friends on the Democratic side of the aisle decided to filibuster in order to make it impossible for us to vote on this crucial nominee without modifying the rules of the U.S. Senate. That is what we did earlier today. I do not know that anybody did it happily, but certainly a majority of the Senate believed that the American people deserved an up-or-down vote, yea or nay. Stand up and be counted in front of God and country. Do you want Judge Neil Gorsuch to be on the Supreme Court, or do you not? That vote is going to take place tomorrow afternoon.

The Constitution reads that the President of the United States of America "shall nominate and by and with the advice and consent of the Senate shall appoint . . . judges of the Supreme Court." I do not need to tell you that this is an extremely important part of our separation of powers. It is vital to our protecting the integrity of the Supreme Court, the work that all of us do—not just members of the Judiciary Committee but every Member of the Senate—in vetting our nominees and making sure they are qualified and independent, as is Neil Gorsuch. He is enormously important for the protection of liberty itself.

Let's not ever forget what we are protecting. We are protecting justice, and we are protecting liberty. We are not supposed to be protecting a certain point of view. We are not supposed to be protecting a certain policy preference. We are not supposed to be protecting a certain political party.

I hope tomorrow, when we finally get the opportunity to vote up or down on Neil Gorsuch for his membership on the greatest tribunal in the history of civilization, in my judgment, the U.S. Supreme Court, that we will consider his nomination in light of how it will affect our country, not our party. When we look at his nomination from that perspective and leave the politics of the last few years in the rearview mirror, I think we can analyze his nomination with a lot more clarity.

Alexander Hamilton, whom I think most Americans admire, said in *Federalist* No. 78 that the Court has "neither force nor will but merely judgment." I think that is what we are all looking for—or should be—in a nominee to any court but especially to the

U.S. Supreme Court. We are not looking for somebody with a certain policy preference. We are not looking for people with ideas of how the law can be improved because the role of a judge is not to make law, it is to interpret the law as made by the legislative body as best that judge can understand it. That is why we need someone like Neil Gorsuch, in my estimation, who has good judgment.

I sit on the Judiciary Committee. I have spent 20 to 40 hours with Neil Gorsuch or with people who know him well, in hearing their testimony. I have read his opinions. As far as I am concerned, he is as good as it gets. I cannot imagine that President Trump could have picked better.

He is a thoroughbred. He is a legal rock star. If you read his opinions, you will see that he is painstaking in his application of the law to the facts before him. He writes beautifully. His communication skills are absolutely amazing. His analysis and analytical rigor are clear and concise. His decisions are wise and disciplined, and he is faithful to the law. He is an intellectual, not an ideologue. He is a judge, not a politician. He is whip-smart, has clear writing, is a strict constitutionalist, likes snow skiing, fly fishing, and is a fourth-generation Coloradan. I think he will serve every person in our country well as a member of the Supreme Court. That is why I am supporting him.

Let me say one final thing. I do not think there is any vote that will be more important than the vote we will take tomorrow on a President's nomination to the U.S. Supreme Court, so I want to choose my words carefully. Not a single, solitary vote is more important than that vote we will take tomorrow. That is not to say that there are not other important issues before this body. That is why I think it was so important today that we decided to vote up or down on Judge Gorsuch so that we can move on to those other important issues—jobs, jobs, jobs; designing a healthcare delivery system that looks like somebody designed it on purpose, which our Acting President has worked so hard on; infrastructure; elementary and secondary education; a skilled workforce. I could go on.

There is an enormous amount of pain in America today. There are too many Americans who are not participating in the great wealth of America—not economically, not socially, not culturally, and not spiritually. We have been elected in the Congress to do something about that.

I talk to people in my State every day, and I know the Presiding Officer does too. The people of Louisiana are fun-loving, God-fearing, and plain-talking, and this is what they tell me: Kennedy, this country was founded by geniuses, but sometimes I think it is being run by idiots.

They say: Kennedy, we look around our country today, and here is what we see. We see too many undeserving peo-

ple at the top—I want to emphasize “undeserving” because I don’t want to paint with too broad a brush—who are getting bailouts, and we see too many undeserving people at the bottom who are getting handouts. We are in the middle, and we get stuck with the bill. We cannot pay it anymore, Kennedy, because our health insurance has gone up, our kids’ tuitions have gone up, and our taxes have gone up. I will tell you what has not gone up—our income.

These are real people with real problems, and they sent all of us here because they are real mad and they expect us to do something about it.

The sad truth is that our children’s generation is at risk of becoming the first in America, unless this body does something, to be worse off than their parents’ generation because in our country today, for too many Americans, it is harder than ever to get ahead. That is why so many Americans feel stuck. They feel like the hope and change they were promised has become decline and uncertainty, and they are looking to us to do something about it.

So let’s vote. Let’s vote tomorrow. I understand reasonable people disagree. I understand unreasonable people can disagree too. But I am going to vote for Neil Gorsuch to be an Associate Justice of the U.S. Supreme Court. Then I am going to ask this body to move on to other important issues that are keeping moms and dads awake at night when they lie down and try to go to sleep.

Thank you, Mr. President.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. INHOFE. Mr. President, when we lost the Honorable Justice Antonin Scalia, we were all saddened, as he was such a legend on the Court, and I am very proud that President Trump nominated a successor who is worthy of fulfilling his shoes.

Judge Gorsuch has garnered respect and approval from people across the legal community, and he has unrivaled bipartisan support. It is unfortunate that the Democrats have tried to block his nomination. It is not going to work, but they have tried.

Recently, I had the honor of meeting Judge Gorsuch. It is kind of interesting because I was not on his list to visit. In fact, I had even said: Don’t waste your time on me, as I know your credentials and I am going to support you anyway, and I am not on the appropriate committees that would pass judgment. Yet he did call, and we met. I will tell you that you have to meet and talk to the guy in person to know what kind of an individual he really is.

Of course, being from Oklahoma, I am sensitive to the fact that he is the son of the West. In fact, none of our Justices up there, with the exception of California, are from what we would call the Western United States—the area where people need to be properly represented.

As a judge on the Tenth Circuit Court of Appeals, he has heard from

Utah, Wyoming, Colorado, Kansas, New Mexico, and my State of Oklahoma. He knows the issues of the Western States and what we are facing, and he has expertise to deal with them. He has handled with a lot of care and fairness the issues that have come before him. Of course, we know this because Oklahoma is in the Tenth Circuit.

His reputation is such that, regardless of party affiliation, countless groups, organizations, and individuals have come out in support of Judge Gorsuch, including Neal Katyal. Neal Katyal was the Acting Solicitor General in President Obama’s Cabinet, so he was a Cabinet member of President Obama’s. He testified before the Senate Judiciary Committee and wrote an op-ed piece in the New York Times. Keep in mind, when you listen to this—this is a quote from an op-ed piece in the New York Times, and one of the individuals from the administration of President Obama said this: “His years on the bench reveal a commitment to judicial independence—a record that should give the American people confidence that he will not compromise principle to favor the President who appointed him.”

That comes from an Obama appointee.

Not only is he well liked, but he also has an impressive resume, serving as law clerk to two different Supreme Court Justices. He attended Columbia, Harvard, Oxford, and it doesn’t get any better than that. It is clear he has the qualifications, and as recently as the last administration, that was really all you needed to be confirmed to be on the U.S. Supreme Court.

What the Democrats have done to block his nomination has never been done before. This is significant. People don’t realize—people who are maybe critical of some of the procedures that were taking place, they forget the fact that there has never been, in the history of America, a successful partisan filibuster of a Supreme Court nomination—there has never been. This will be the first time this happened.

I support the majority leader in changing the rules in the face of this unprecedented action by a minority party. There is really no reason for their filibuster of this highly qualified individual, other than partisanship and catering to their liberal base. Changing the rules for Supreme Court nominations had to be done, and if the situation were reversed, the Democrats would have done the same thing in a heartbeat, as we saw in 2013 when they did the same thing.

Judge Gorsuch deserves to be on the Supreme Court. He does not deserve to be blocked because people are upset that we observed the Biden rule; that is, not providing for any action on a nominee for a Supreme Court vacancy once the election season is underway—and they lost the election.

Now, that is Joe Biden, not JIM INHOFE.

In addition to his impeccable job and experience and educational background, he is perhaps best known for his defense of religious liberty, including a role in the dispute during the Obama administration that required employers to provide abortion-inducing drugs to their employees as part of their health insurance. One of these employers was Hobby Lobby.

Everyone knows who Hobby Lobby is, but not everyone knew them back when I knew them. I knew them back in the 1970s, when the Green family, who started Hobby Lobby, were actually operating out of their garage, making picture frames, and look at them today. I have known them for a long time. They started out their whole business with a \$600 loan. Now they have over 700 stores across the United States and are the largest privately owned arts and crafts store in the world.

Judge Gorsuch and the Supreme Court agreed with Hobby Lobby and upheld their religious liberty rights. I am going to read to my colleagues his concurring opinion. It is very profound. Judge Gorsuch wrote, after they made the determination that Hobby Lobby did not have to give these drugs to their employees:

It is not for secular courts to rewrite the religious complaint of a faithful adherent, or to decide whether a religious teaching about complicity imposes “too much” moral disapproval on those only “indirectly” assisting wrongful conduct. Whether an act of complicity is or isn’t “too attenuated” from the underlying wrong is sometimes itself a matter of faith we must respect the faith.

Now, that is what he wrote in Hobby Lobby.

In a very similar situation around the same timeframe, there was a case that is known now to be the Little Sisters of the Poor. He joined in an opinion defending the rights of nuns not to be forced to pay for abortion-inducing drugs in their healthcare plans. This is another profound statement he made. He said: “When a law demands that a person do something the person considers sinful, and the penalty for refusal is a large financial penalty, then the law imposes a substantial burden on that person’s free exercise of religion.”

It is not just petitioners of the Christian faith whom Judge Gorsuch has sided with. He upheld the religious beliefs of a Native American prisoner and of a Muslim prisoner who found their ability to practice their faith restricted in one manner or another.

He comes to his decision not because he is seeking some predetermined outcome; he comes to his decisions because that is where the facts of the law and the Constitution lead him.

For example, in the Lynch case—another Oklahoma case—Gorsuch referred to Chevron deference as “a judge-made doctrine for the abdication of the judicial duty.”

Chevron deference is the judicial rule that requires judges to defer to an agency’s interpretation—we are talk-

ing about a bureaucracy—an agency’s interpretation of the law if the law is considered ambiguous or unclear and if the agency’s interpretation is reasonable. This defense to the agency gives them a lot of authority, a lot of power. Moreover, it can provide a lot of uncertainty to the regulated community.

As Judge Gorsuch wrote, Chevron deference allows agencies to “reverse its current view 180 degrees any time based merely on the shift of political winds and still prevail [in court].”

I know a little bit about this. I spent a lot of years being the chairman of a committee called the Environment and Public Works Committee. During the Obama years, we had a bureaucracy that was trying to change the law instead of following the law. It was exactly what Judge Gorsuch was talking about in this case when he talked about the Chevron deference, giving deference to a bureaucracy. You can imagine being in business, especially a heavily regulated one, that has to worry that every 4 to 8 years the rules might change then and how do you plan to make your plans.

I think Gorsuch’s opinion on Chevron deference is an important debate to have. Do we, as a coequal branch of government, continue to give up our powers to the administrative state or do we take our power back and write laws as they should be implemented? Furthermore, does the judicial branch, as a coequal branch of government, continue to give up their power of interpretation to the administrative state?

These are important, fundamental questions that should be addressed, and I am glad the Gorsuch nomination has brought these cases to light.

Although Judge Gorsuch was nominated by a Republican President, this doesn’t mean my colleagues on the other side of the aisle should have any concern about Judge Gorsuch’s decisionmaking ability. This is important to point out because being a judge is not about making decisions that are in the best interests of any political party but really about making decisions based on facts and the law and the Constitution without bias.

During his confirmation, Judge Gorsuch stated his judicial philosophy, saying:

I decide cases . . . I listen to the arguments made. I read the briefs that are put to me. I listen to my colleagues carefully and I listen to the lawyers in the well . . . keeping an open mind through the entire process as best I humanly can and I leave all the other stuff at home. And I make a decision based on the facts and the law.

Who can argue with that? He has proven over a period of time that he will do that.

Through the whole debate, it has become evident that the Democrats were asking him to rule in favor of causes and not to follow the law, which is what a judge does and should do.

Regarding the roles and balance of our government, Gorsuch is what a

judge should be. He believes Congress should write the laws, the executive branch is to carry them out, and the judicial branch is to interpret the laws. The confirmation of Judge Gorsuch will shape our Nation for generations to come, and all of us will be able to benefit from his wise decisions.

I am looking forward to confirming Judge Neil Gorsuch. It is going to happen tomorrow, and then all of this will be over. I am proud to give him my vote. Justice will be well served as such.

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

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

VENEZUELA

Mr. NELSON. Mr. President, I have already cast my “no” vote with regard to the judge and will so again whenever we get to final passage, but I want to take this opportunity to talk about the chaos that is going on in Venezuela.

As if there weren’t already enough chaos, last week Venezuela’s supreme court stripped its legislative branch of its powers—just stripped them of powers. Only because the court had gotten such significant criticism did it reverse its decision. Apparently even the very shaky President of Venezuela, Maduro, weighed in to get them to reverse their decision. Now, isn’t that something? This is supposed to be a democracy. Yet it is being run as a dictatorship, where even the judicial branch goes and does something crazy and the President of the country gets up and tells them: You had better reverse yourself; there is too much criticism.

This is the nonsense that is going on in Venezuela. Of course, what went on last week further undermines Venezuela’s so-called democracy, and it is only the latest in President Maduro’s creeping dictatorship. That is what it is.

He has repeatedly and violently suppressed protesters and jailed his political opponents in violation of any understanding of human rights. He has used that same Supreme Court to block members of the National Assembly from taking office, and he has used that Supreme Court as a rubberstamp to overturn the laws that the National Assembly does that he doesn’t like. Isn’t it a sad state that Venezuela has reached?

The President has also thwarted opposition efforts to recall him, President Maduro, in a national referendum. In so doing, he was able to appoint a Vice President with ties to Hezbollah, and now a Vice President it appears that he has sanctioned for drug trafficking.

Meanwhile, the poor Venezuelan people suffer the consequences of the political, humanitarian, and economic