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## Senate

The Senate met at 9:30 a.m. and was called to order by the President pro tempore (Mr. HATCH).

### PRAYER

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

Let us pray.

Eternal God, we bless Your Holy Name. Lead us safely to the refuge of Your choosing, for You desire to give us a future and a hope.

Today, give our Senators the power to do Your will, as they realize more fully that they are Your servants. May they seek Your best for our Nation, repeatedly soliciting Your guidance and following Your leading. Lord, inspire them to not merely give a handout but a hand up, so that people can maximize their possibilities for the glory of Your Name. Give our lawmakers the perseverance and faith to remain true to duty, striving always to please You.

We pray in Your sacred Name. Amen.

### PLEDGE OF ALLEGIANCE

The President pro tempore led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

### RESERVATION OF LEADER TIME

The PRESIDING OFFICER (Mr. PAUL). Under the previous order, the leadership time is reserved.

### CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

### EXECUTIVE SESSION

### EXECUTIVE CALENDAR

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to executive session to resume consideration of the Bush nomination, which the clerk will report.

The bill clerk read the nomination of John Kenneth Bush, of Kentucky, to be United States Circuit Judge for the Sixth Circuit.

The PRESIDING OFFICER. Under the previous order, the time until 10:30 a.m. will be equally divided between the two leaders or their designees.

If no one yields time, the time will be charged equally.

### RECOGNITION OF THE MAJORITY LEADER

The majority leader is recognized.

### HEALTHCARE

Mr. McCONNELL. Mr. President, ObamaCare was imposed on our country 7 long years ago. It has been hurting the people we represent ever since. Families were supposed to spend less on healthcare costs. They actually paid more. Families were supposed to have more healthcare choices. They ended up with fewer, sometimes none at all.

Worse still, for many years, we had an administration that often waived away the concerns of middle-class families who were hurting. Today, we thankfully have an administration that has chosen instead to listen and agrees with us that Americans deserve a lot better.

I appreciate the efforts of the administration at every step of the process to move beyond the failures of ObamaCare. The President, the Vice President, Secretary Price, Administrator Verma, so many others—we thank them for all the work they have done so far. We look forward to continuing these collaborative efforts when we travel to the White House later today because we have a very important task before us.

As I announced last evening, after consulting with both the White House

and our Members, we have decided to hold a vote to open debate on ObamaCare repeal early next week. The ObamaCare repeal legislation will ensure a stable 2-year transition period, which will allow us to wipe the slate clean and start over with real patient-centered healthcare reform. This is the same legislation that a majority of the Senate voted to send to the President in 2015. Now we thankfully have a President in office who will sign it, so we should send it to him.

Mr. President, today the Senate will vote to move forward on the nomination of John Bush, of Kentucky, to serve as a judge on the Sixth Circuit Court of Appeals.

As I said when I introduced Mr. Bush to the Judiciary Committee, I am pleased to join the bipartisan chorus of voices supporting his nomination. More than 100 lawyers and law professors from around the country have written in support of his nomination. Nearly one-third of those supporters are Democrats. They laud Mr. Bush's "excellence, professionalism, and leadership in the legal profession." They also note his "capacity to approach issues with an open mind and to respectfully consider the viewpoints of others."

In addition, some of his supporters from across the ideological spectrum and from around the country who have known Mr. Bush for decades have written separately to underscore their support for his nomination. They are confident he understands the role of a judge, which is to fairly consider the arguments of both sides in a case and then to decide that case based on the law and nothing else. Indeed, it is precisely because of his firm belief in the rule of law that they strongly support his nomination, despite the fact that he and they may hold different political and policy views.

As an illustration, I think we can all agree it is not common for current or former leaders of Planned Parenthood

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



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to praise judicial nominees of Republican Presidents, just as it is not common for me to quote leaders of that organization.

More than one has praised the President's nomination of John Bush because of his fairness, thoughtfulness, and respect for the views of others, regardless of his personal opinions. For instance, Christie Moore is on the board of directors of Planned Parenthood of Indiana and Kentucky. She has practiced law with Mr. Bush for nearly two decades. She is "confident" that "he will follow the rule of law regardless of his personal or political opinions. In my experience, John naturally approaches issues with an open mind and has always been respectful of differing viewpoints. In fact, I am a living example of John's ability to seek out and respect differing viewpoints and opinions. John and I come from opposite ends of the political spectrum—I am a life-long registered Democrat and proudly approach life and politics as a Democrat. Yet John and I have practiced closely together and enjoy a strong and respectful relationship."

She concludes: "I can personally attest John is a consummate professional, and I believe he will be a tremendous asset to the federal court of appeals."

Her law firm colleague, Janet Jakubowicz, similarly explains why Mr. Bush will do an outstanding job on the Sixth Circuit. She states that he "has shown himself to have both the legal ability and temperament to be an outstanding judge."

She writes it is precisely because she is a "long time registered Democrat" that she can say "with extreme confidence" that John Bush "approaches issues with an open mind and has always been respectful of differing viewpoints" and that he will make decisions on the bench "in the same manner, and follow the rule of law regardless of his personal or political opinions."

Sheryl Snyder, also from my hometown, notes that he and Mr. Bush "come from different political parties and have different perspectives on many political issues." Mr. Snyder says that he is "a Member of the American Civil Liberties Union, and not the Federalist Society." Nevertheless, he has "every confidence that as a Court of Appeals Judge, John will scrupulously follow the law and apply precedent." He notes that Mr. Bush is "well known . . . as an experienced, capable, ethical litigator" and that "his knowledge of the law is unquestioned."

Praise for Mr. Bush is not confined to those from the Commonwealth of Kentucky, however. Ted Boutrous, Jr. practices law in Los Angeles. Among other matters, Mr. Boutrous represented the plaintiffs in their challenge to California's Proposition 8. He has known John Bush for a quarter century. He writes that "while we come from different political parties . . . I am certain John will make an ab-

solutely superb Circuit Judge. He is an extraordinary lawyer and an exceptionally fair, decent, and honest person. I have every confidence that as a judge, John will scrupulously follow the law and Constitution and precedent."

Mr. Bush has received numerous professional awards. For instance, the Best Lawyers in America named him the "Louisville Litigation-Antitrust Lawyer of the Year in 2017," this year. Last year, the same organization recognized him as the "Louisville Appellate Practice Lawyer of the Year." He has been included on the Kentucky Super Lawyers list every year for the last decade.

Beginning in 2012, the Sixth Circuit appointed him to serve on its advisory committee on rules, in recognition of his in-depth knowledge of the court's practice and procedure.

In sum, as evidenced by the impressive testimonials of those who actually know him, John Bush is a man of integrity and considerable ability. He will do an outstanding job on the Sixth Circuit.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, I rise in open opposition to the nomination of John Bush, nominated to serve a lifetime appointment on the Sixth Circuit Court of Appeals.

The Federal courts of appeal have a significant impact on the lives of many Americans. Because the Supreme Court only reviews a limited number of cases each year, decisions by the circuit courts represent the final word on thousands of legal matters that involve a host of important issues.

The Senate has to take very seriously its obligation to consider candidates for these important courts. We have to make sure they have the qualifications, the temperament, and the judgment to serve for the rest of their lives. Based on Mr. Bush's record and his testimony before the Judiciary Committee, I believe he falls short of this standard.

Over the course of his legal career, Mr. Bush has made dozens of provocative comments, casting serious doubt on his temperament, his judgment, his impartiality, and his ability to serve as a fair and impartial judge.

Consider the following things that this nominee has said or done:

In 2008, Mr. Bush compared abortion to slavery, writing in an anonymous blog, I might add, that "the two greatest tragedies in our country—slavery and abortion—relied on similar reasoning and activist justices at the U.S. Supreme Court, first in the Dred Scott decision and later in Roe."

Senator FEINSTEIN and I decided to ask Mr. Bush to explain this statement at his hearing. He did not disavow the comparison he made in this anonymous blog. Here is what he said instead. He claimed that he had referred to *Roe v. Wade* as a tragedy "in the sense that it divided our country."

I asked Mr. Bush to explain his logic, asking whether he would characterize

*Brown v. Board of Education* as a case that divided our country. He answered: "I wasn't alive at the time of Brown, but I don't think it did."

That is an incredible statement made by a man who seeks to serve on a Federal circuit court for the rest of his life. His logic and his historical analogy have fallen apart. There is no dispute that *Brown v. Board of Education*, which ended up in the official desegregation of public schools across America, was a landmark Supreme Court decision that deemed racial segregation unconstitutional and, as a result, led to controversy and division across the United States.

I can't believe a man from Kentucky, a border State—a neighboring state of my State of Illinois—could not measure the impact of *Brown v. Board of Education* and whether it divided our country. That, to me, is incredible. The reason, of course, he didn't is because he didn't want to concede, quite obviously, that he was just opposed to a woman's right to choose, and this was a rationalization for this position.

There were many other instances in which Mr. Bush expressed provocative and troubling views. He wrote that public financing of election campaigns is "constitutionally dubious" and "runs afoul of constitutional guarantees by forcing taxpayers to subsidize candidates' political speech and contravention of those taxpayers' First Amendment rights."

This is a view which is hard to understand because it contradicts decades of Supreme Court precedent. Mr. Bush, seeking this opportunity to serve for the rest of his life on a Federal court, has now questioned a Supreme Court precedent which has been on the books for years.

He gave a speech where, sadly, he made an anti-gay slur about the town of Louisville, KY. He wrote blog posts supporting the nomination of a voter suppression advocate Hans von Spakovsky to the Federal Election Commission. In response to a written question I sent to him, he refused to disavow President Trump's claim that 3 to 5 million people voted illegally in 2016. He said it was "the subject of political debate." That assertion by the President has been rejected and discredited by every objective person who has been challenged but not by Mr. Bush, who seeks this lifetime appointment to the court.

Mr. Bush wrote blog posts that repeatedly placed the terms global warming and climate change in quotes, insinuating they did not exist.

He described then-House Speaker PELOSI as "Mama Pelosi" and wrote that someone should "gag the House speaker."

He posted articles from right wing websites, speculating that former President Barack Obama was born in Kenya.

He wrote in a blog post during the 2016 Republican National Convention, "Time to roll with Trump."

The list of comments goes on and on. On a range of policies and legal issues, Mr. Bush has already made crystal clear where he stands.

At his hearing, Mr. Bush asked the Judiciary Committee to trust that he could completely set aside everything I have read into the RECORD this morning; that he can walk away from his personal views if he is confirmed to serve on the circuit court. Unfortunately, he has given us little reason to trust that assurance. He has no judicial experience demonstrating that he could be impartial. He spent his entire career in private practice.

At his hearing before the Judiciary Committee, Mr. Bush was asked by Senator TILLIS, a Republican Senator: "Do you think that impartiality is an aspiration or an absolute expectation?"

Mr. Bush responded: "It is an aspiration. I will do my best to be impartial."

In other words, Mr. Bush claims that he will try to be impartial but that the Senate shouldn't expect that he will be completely successful.

Here is what Senator TILLIS, my Republican colleague, then said in reply: "I actually have a concern with someone who thinks impartiality is an aspiration. I think it is an expectation."

I agree with Senator TILLIS.

I believe Mr. Bush's failure to commit to impartiality disqualifies him from this lifetime position.

Mr. Bush's views are far outside the judicial mainstream. He provided no evidence that he could set aside his views if confirmed.

I understand that Mr. Bush does check many of the boxes we have seen for recent nominees from this administration. Most important and absolutely essential to his nomination is the fact that he is a longtime member of the Federalist Society.

The Federalist Society describes itself as "a group of conservatives and libertarians dedicated to reforming the current legal order." The Federalist Society is funded by big money, right-wing interests like the Koch brothers, the Chamber of Commerce, and the Ed Uihlein Family Foundation. This is the group President Trump personally thanked for selecting his list of Supreme Court nominee finalists. So far this year, every Trump judicial nominee who has had a hearing before our Senate Judiciary Committee has been a Federalist Society member. Coincidence? I don't think so.

I urge my Republican colleagues not to let the Federalist Society serve as the selection committee—the secret handshake—to become a Federal judge for life in the United States of America. We want a Federal bench that welcomes independent and impartial thinkers. Mr. Bush's Federalist Society membership shouldn't be his ticket to the Federal bench.

In conclusion, this vote, when it comes to his nomination, is really not a close call. It is clear that Mr. Bush has friends in high places, but he has

demonstrated a temperament and a judgment which we should not put in a lifetime position on the Federal court of appeals. I urge my colleagues to oppose his nomination.

Mr. President, I yield the floor.

I suggest the absence of a quorum.

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

The bill clerk proceeded to call the roll.

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

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

#### RECOGNITION OF THE MINORITY LEADER

The PRESIDING OFFICER. The minority leader is recognized.

#### HEALTHCARE

Mr. SCHUMER. Mr. President, according to the majority leader, there will not be a vote on the motion to proceed to the healthcare bill until next week. In the time between now and then, my Republican friends have a choice to make about how they want to move forward on what looks like will be a failed vote.

Do they want to take the path of President Trump, who yesterday said that he wanted our healthcare system to fail, or do they want to work with Democrats on legislation to improve the law? It is that simple.

We Democrats know the Affordable Care Act isn't perfect, and we propose specific legislation that could pass right now to stabilize marketplaces and lower premiums for Americans across the country. These proposals are specific, nonideological, and could pass quickly and make life better for millions of Americans. A decent number of Republican Governors and even Senators have said that these are the kinds of proposals we need.

Here they are:

First, we have proposed a bill by Senator SHAHEEN that would guarantee the premium reduction payments that insurers say is the No. 1 thing we could do right now to stabilize the individual marketplace.

Second, we have proposed a bill by Senators CARPER and KAINE that would create a reinsurance program for the individual health insurance market, again, aimed at stabilizing the marketplaces.

Third, we have proposed a bill by Senator McCASKILL that would enable any American living in a bare county—that is, a bare county that lacks health insurers—to purchase the same insurance we get here in Congress.

All three of these would stabilize the markets and help to prevent premiums from going up further and coverage from decreasing. They address the actual issues in our healthcare system. I have mentioned they are not ideological and exactly the kind of legislation we could work on together. If our intent is to make things better, this is something we can come together on—all three of these proposals. They address the actual issues that we have

and should be something we can do together immediately.

The Republican approach—decimating Medicaid to give a tax break to the wealthy—doesn't solve any of the problems Republicans claim to be so worried about: high premiums, high deductibles, bare counties. In fact, by most objective reports, it makes them worse. The CBO said that under each version of the Republican plan, premiums would go up on many Americans, deductibles and copays would go up, there would be even more bare counties than there are today, and tens of millions would lose insurance.

Repealing the healthcare law without any replacement is even worse. It would cause our healthcare system to implode, creating chaos. Millions more would lose insurance, and for millions more than that coverage would be diminished, all of which is even worse than under the Republican bill.

I hope my colleagues will join with us in working on these three nonideological, practical problem solvers that will reduce premiums and make healthcare better for many, many Americans. Again, many Republicans have spoken favorably of these ideas, and I hope we will go forward.

The worry I have is that our Republican colleagues follow the policies of President Trump. President Trump's promise to let our healthcare system collapse is just mind-boggling. It is hard to believe he could say something like that.

President Trump's promise to let our healthcare system collapse is so, so wrong on three counts: It is a failure morally, it is a failure politically, and it is a remarkable failure of Presidential leadership.

First, the President's position is a moral failure. It is morally wrong to intentionally undermine the healthcare system in this country, using Americans as political pawns in a cynical game. It is morally wrong to play a political game with healthcare in this country. There is no religious teaching or moral precept that could advocate such a cynical ploy.

The President didn't say that he wanted the system to change in a way to make it better. He said: I have lost, and I am going to make things worse for everyone to show you that I should have won. As I said, that is a moral failure that none of our religious leaders of any of the great religions would ever, ever accept, nor will the American people.

Second, saying "I am not going to own it" will not work politically. The President is the President. He is in charge. Americans look to him for leadership. They know that Republicans control both branches of Congress and the White House. They know they are in charge.

Earlier this year, the Kaiser Family Foundation found that two-thirds of Americans would blame President Trump and congressional Republicans for the future problems in our