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Senate

The Senate met at 12 noon 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.

Merciful God, enthroned above all other powers, thank You for the opportunity to be called Your children.

Lord, our heart aches because of the pain and pessimism in our world, so use our lawmakers to bring hope where there is despair. Remind our Senators that Your power is far above any conceivable command, authority, or control. Empower them to protect and defend the Constitution of this great land against all enemies foreign and domestic. Our Father, inspire our Senators through the decisions they make to build monuments of courage and moral excellence.

We pray in Your great 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.

EXECUTIVE CALENDAR

The PRESIDING OFFICER (Mrs. ERNST). The clerk will report the unfinished business.

The senior assistant legislative clerk read the nomination of Rex W. Tillerson, of Texas, to be Secretary of State.

The PRESIDING OFFICER. Under the previous order, the remaining postcloture time will be equally divided between the two leaders or their designees.

RECOGNITION OF THE MAJORITY LEADER

The majority leader is recognized.

NOMINATION OF NEIL GORSUCH

Mr. MCCONNELL. Madam President, last night President Trump announced an outstanding nominee for the Supreme Court, Judge Neil Gorsuch of Colorado. While Judge Gorsuch has a significant legacy to live up to as the nominee for the seat left vacant by the loss of Justice Scalia, I am confident his impressive background and long record of service will prepare him well for the task ahead.

Like Justice Scalia, Judge Gorsuch understands the constitutional limits of his authority. He understands that a judge's duty is to apply the law evenhandedly, without bias toward one party or another. He understands that his role as a judge is to interpret the law, not impose his own viewpoint or political leanings.

He has also been recognized from people on both sides of the aisle as a consistent, principled, and fair jurist. Judge Gorsuch has a stellar reputation and a resume to match, with degrees from Harvard and Columbia, a Ph.D. in legal philosophy from Oxford, and just about every honor, award, and scholarship you can possibly imagine.

When he graduated from law school, Judge Gorsuch did not just clerk for one Supreme Court Justice, he clerked for two. They were Justices nominated by Presidents of different political parties—Anthony Kennedy, a Reagan appointee, and Byron White, who was nominated by JFK.

Judge Gorsuch received a unanimously "well qualified" rating by the American Bar Association when he was nominated to his current position on the court of appeals. He was confirmed without any votes in opposition. That is right—not a single Democrat opposed Judge Gorsuch's confirmation, not Senator Barack Obama, not Senator Hillary Clinton, not Senators Joe Biden or Ted Kennedy. In fact, not a single one of the Democrats who still serve with us opposed him, including the ranking member of the Judiciary

Committee, Senator FEINSTEIN, and the Democratic leader himself, Senator SCHUMER. In the coming days, I hope and expect that all Senate colleagues will again give him fair consideration, just as we did for the nominees of newly elected Presidents Clinton and Obama.

This is a judge who is known for deciding cases based on how the law is actually written, not how he wishes it were written, even when it leads to results that conflict with his own political beliefs. He understands that his role as a judge is to interpret the law, not impose his own viewpoint. Here is how Judge Gorsuch himself put it: "A judge who likes every result he reaches is very likely a bad judge, reaching for results he prefers rather than those the law compels."

Some of our colleagues and some others on the left see the role of a judge very differently. In last year's Presidential debate, our former colleague, Secretary Clinton, stated her view that a Supreme Court Justice—now listen to this—ought to look more favorably on certain political constituencies than others; that it was the job of the Supreme Court to "stand on the side" of this group or another over that one. Some of our current colleagues seem to share this view. The assistant Democratic leader said that what is important to him are the political views of a Supreme Court nominee, what or perhaps whom they are going to stand for.

The problem with that approach is that it is great if you happen to be the party in the case whom the judge likes; it is not so great if you are the other guy. Justice Scalia believed this to his very core. He was an eloquent champion of the Constitution who was guided by important principles like applying the law equally to all, giving every litigant a fair shake, and rulings based on the actual meaning of the Constitution and our laws, not what you or your preferred political constituency wished they meant. These principles

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



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helped guide Justice Scalia for many years. The record of Judge Gorsuch indicates that he will continue this legacy of fair and impartial justice.

Now, of course, that does not much matter to some over here on the far left. Despite his sterling credentials and bipartisan support, some on the far left decided to oppose Judge Gorsuch before he was even nominated. We already know what they will say about him as well. It is the same thing they have been saying about every Republican nominee for more than four decades. They said Gerald Ford's nominee, John Paul Stevens, "revealed an extraordinary lack of sensitivity to the problems women face." They said Reagan's nominee, Anthony Kennedy, was a "sexist" who would "be a disaster for women." They said George H.W. Bush's nominee, David Souter, was a threat to women, minorities, dissenters, and other disadvantaged groups. So it is not terribly surprising that they would say it again this time. What is disappointing is that leading Democrats in the Senate would adopt the same rhetoric. The ink was not even dry on Judge Gorsuch's nomination when the Democratic leader proclaimed that Judge Gorsuch had—you guessed it—demonstrated a hostility toward women's rights. I hope our colleagues will stick to the facts this time around.

We know that Justice Scalia's seat on the Court does not belong to any President or any political party; it belongs to the American people. When it became vacant in the middle of a contentious Presidential election, we followed the rule set down by Vice President Joe Biden and Democratic Leader Senator SCHUMER, which said that Supreme Court vacancies arising in the midst of a Presidential election should not be considered until the campaign ends. It is the same rule, by the way, that President Obama's own legal counsel admitted she would have recommended had the shoe been on the other foot.

I have been consistent all along that the next President, Democrat or Republican, should select the next nominee for the Supreme Court. I maintained that view even when many thought that particular President would be Hillary Clinton. But now the election season is over and we have a new President who has nominated a superbly qualified candidate to fill that ninth seat. So I would invite Democrats who spent many months insisting we need nine to join us in following through on that advice by giving the new President's nominee a fair consideration and an up-or-down vote, just as we did for past Presidents of both parties.

RECOGNITION OF THE MINORITY LEADER

The PRESIDING OFFICER. The Democratic leader is recognized.

UNANIMOUS CONSENT AGREEMENT—AUTHORITY FOR COMMITTEE TO MEET

Mr. SCHUMER. Madam President, I ask unanimous consent that the Senate Select Committee on Intelligence have leave to meet after 2 p.m. today.

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

NOMINATION OF NEIL GORSUCH

Mr. SCHUMER. Madam President, I rise today on a matter of great importance to everyone in this body and everyone in America: the future of the Supreme Court. Last night, the President nominated Judge Neil Gorsuch. We in the Senate have a constitutional duty to examine his record robustly, exhaustively, and comprehensively, and then advise and consent if we see fit. We have a responsibility to reject if we do not. We Democrats will insist on a rigorous but fair process. There will be 60 votes for confirmation. Any one Member can require it. Many Democrats already have.

And it is the right thing to do.

On a subject as important as a Supreme Court nomination, bipartisan support should be a prerequisite; it should be essential. That is what 60 votes does.

This is nothing new. It was a bar met by each of President Obama's nominations. In my mind, 60 votes is the appropriate way to go, whether there is a Democratic President or a Republican President, Democratic Senate or a Republican Senate.

Because a 60-vote threshold is essential, those who say that at the end of this process, there are only two possible results—that the Senate will confirm this nominee or the Republicans will use the nuclear option to change the rules of the Senate—are dead wrong. That is a false choice.

If this nominee cannot meet the same standard that Republicans insisted upon for President Obama's Supreme Court nominees—60 votes in the Senate—then the problem lies not with the Senate but with the nominee.

The answer should not be to change the rules of the Senate but to change the nominee to someone who can earn 60 votes. Sixty votes produces a mainstream candidate, and the need for a mainstream, consensus candidate is greater now than ever before because we are in new territory in two ways: first, because the Court, under Chief Justice Roberts, has shown increasing drift to become a more and more pro-business, pro-special interest Court, siding more with corporations and employers and special interests over working and average Americans. This in an environment where starkly unequal concentrations of wealth and ever-increasing corporate power—aided and abetted by the Citizens United decision—has skewed the playing field even more decisively toward special interests and away from the American citizen. A mainstream nominee would help reverse that trend, not exacerbate it; and, second, another important reason we are in a new world here, making a 60-vote margin even more important than it was before—as important as it was before—is this: This administration, at least since its outset, seems to have less respect for the rule of law than any in recent memory and is chal-

lenging the Constitution in an unprecedented fashion. So there is a special burden on this nominee to be an independent jurist.

Let's go over each point. First, we have a special responsibility to judge whether this nominee will further tip the scales on the Court in favor of Big Business and powerful special interests instead of the average American because over two decades this Court has shifted dangerously in the direction of Big Business and powerful special interests.

According to a study by the Minnesota Law Review, the Roberts Court has been the most business-friendly Supreme Court since World War II. It is the most corporate Court in over 70 years. It was pro-corporate when it frequently favored forced arbitration as a way to settle disputes, a process that limits the ability for individuals to form a class and collectively go after large corporate interests; it was pro-corporate when it repeatedly refused to hear legitimate cases where individuals have been harmed by faulty products, discriminatory practices, or fraud; and it was pro-corporate when it came down with one of the worst decisions in the history of the Court: Citizens United. By equating money with speech, the Citizens United decision cut right at the heart of the most sacred power in our democracy: the franchise of our citizens. It has poisoned our politics by allowing dark money to cascade into the system, entirely undisclosed.

With absolutely no precedent, the Roberts Court came up with the theory that money necessarily equals speech, and under the First Amendment, you are allowed to put your ad on TV 11,000 times to drown out all others, especially average Americans. That dampens the power of their voices, dilutes the power of their votes. The Citizens United decision was the worst decision in 100 years, and it is the embodiment of this new era of the corporate special interests Court.

At a time when massive inequality plagues our economy, dark money floods our politics, and faith in institutions is low, this rightward shift in the Court is an existential threat to our democracy.

Now, more than ever, we require a Justice who will move the Court back in the direction of the people, not only because that is what the law requires but because that is what our system of government requires—summed up, of course, by President Lincoln's declaration that it is "a government of, by, and for the people."

Second, we must insist upon a strong, mainstream, consensus candidate because this Supreme Court will be tried in ways that few Courts have been tested since the earliest days of the Republic, when constitutional questions abounded, because, again, this administration seems to have little regard for the rule of law and is likely to test the Constitution in ways it hasn't been challenged for decades.