

## NAYS—44

Baldwin	Gillibrand	Peters
Bennet	Harris	Reed
Blumenthal	Hassan	Sanders
Booker	Heinrich	Schatz
Brown	Hirono	Schumer
Cantwell	Kaine	Shaheen
Cardin	Klobuchar	Stabenow
Carper	Leahy	Tester
Casey	Manchin	Udall
Cortez Masto	Markey	Van Hollen
Donnelly	McCaskill	Warner
Duckworth	Merkley	Warren
Durbin	Murphy	Whitehouse
Feinstein	Murray	Wyden
Franken	Nelson	

## NOT VOTING—3

Coons	Sessions	Tillis
-------	----------	--------

The motion was agreed to.

## LEGISLATIVE SESSION

The PRESIDING OFFICER. The majority leader.

## THE JOURNAL

Mr. MCCONNELL. Mr. President, I move that the reading of the Journal be waived.

The PRESIDING OFFICER. The question is, Shall the Journal stand approved to date?

Mr. MCCONNELL. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The clerk will call the roll.

The bill clerk called the roll.

Mr. CORNYN. The following Senator is necessarily absent: the Senator from Alabama (Mr. SESSIONS).

Mr. DURBIN. I announce that the Senator from Delaware (Mr. COONS) is necessarily absent.

The PRESIDING OFFICER (Mr. JOHNSON). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 54, nays 44, as follows:

[Rollcall Vote No. 39 Leg.]

## YEAS—54

Alexander	Fischer	Moran
Barrasso	Flake	Murkowski
Blunt	Gardner	Paul
Boozman	Graham	Perdue
Burr	Grassley	Portman
Capito	Hatch	Risch
Cassidy	Heitkamp	Roberts
Cochran	Heller	Rounds
Collins	Hoeven	Rubio
Corker	Inhofe	Sasse
Cornyn	Isakson	Scott
Cotton	Johnson	Shelby
Crapo	Kennedy	Sullivan
Cruz	King	Thune
Daines	Lankford	Tillis
Durbin	Lee	Toomey
Enzi	McCain	Wicker
Ernst	McConnell	Young

## NAYS—44

Baldwin	Franken	Merkley
Bennet	Gillibrand	Murphy
Blumenthal	Harris	Murray
Booker	Hassan	Nelson
Brown	Heinrich	Peters
Cantwell	Hirono	Reed
Cardin	Kaine	Sanders
Carper	Klobuchar	Schatz
Casey	Leahy	Schumer
Cortez Masto	Manchin	Shaheen
Donnelly	Markey	Stabenow
Duckworth	McCaskill	Tester
Feinstein	Menendez	

Udall	Warner	Whitehouse
Van Hollen	Warren	Wyden

## NOT VOTING—2

Coons Sessions

The PRESIDING OFFICER. The Journal stands approved to date.

The majority leader.

## MOTION TO PROCEED TO EXECUTIVE SESSION

Mr. MCCONNELL. Mr. President, I move that the Senate proceed to executive session to consider Calendar No. 11, Elisabeth DeVos to be Secretary of Education.

The PRESIDING OFFICER. The question is on agreeing to the motion.

Mr. MCCONNELL. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The senior assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Delaware (Mr. COONS) is necessarily absent.

The PRESIDING OFFICER (Mr. GARDNER). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 52, nays 47, as follows:

[Rollcall Vote No. 40 Leg.]

## YEAS—52

Alexander	Flake	Perdue
Barrasso	Gardner	Portman
Blunt	Graham	Risch
Boozman	Grassley	Roberts
Burr	Hatch	Rounds
Capito	Heller	Rubio
Cassidy	Hoeven	Sasse
Cochran	Inhofe	Scott
Collins	Isakson	Sessions
Corker	Johnson	Shelby
Cornyn	Kennedy	Sullivan
Cotton	Lankford	Thune
Crapo	Lee	Tillis
Cruz	McCain	Toomey
Daines	McConnell	Wicker
Enzi	Moran	Young
Ernst	Murkowski	
Fischer	Paul	

## NAYS—47

Baldwin	Harris	Nelson
Bennet	Hassan	Peters
Blumenthal	Heinrich	Reed
Booker	Heitkamp	Sanders
Brown	Hirono	Schatz
Cantwell	Kaine	Schumer
Cardin	King	Shaheen
Carper	Klobuchar	Stabenow
Casey	Leahy	Tester
Cortez Masto	Manchin	Udall
Donnelly	Markey	Van Hollen
Duckworth	McCaskill	Warner
Durbin	Menendez	Warren
Feinstein	Merkley	Whitehouse
Franken	Murphy	Wyden
Gillibrand	Murray	

## NOT VOTING—1

Coons

The motion was agreed to.

## EXECUTIVE SESSION

## EXECUTIVE CALENDAR

The PRESIDING OFFICER. The clerk will report the nomination.

The senior assistant legislative clerk read the nomination of Elisabeth Prince DeVos, of Michigan, to be Secretary of Education.

The PRESIDING OFFICER. The majority leader.

## CLOTURE MOTION

Mr. MCCONNELL. Mr. President, I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The senior assistant legislative clerk read as follows:

## CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the nomination of Elisabeth Prince DeVos, of Michigan, to be Secretary of Education.

Mitch McConnell, David Perdue, Johnny Isakson, Tom Cotton, Mike Crapo, James E. Risch, Pat Roberts, Roy Blunt, John Boozman, Lamar Alexander, John Barrasso, Orrin G. Hatch, Jeff Flake, John Cornyn, Shelley Moore Capito, John Thune, Richard Burr.

The PRESIDING OFFICER. The Senator from Missouri.

## NOMINATION OF NEIL GORSUCH

Mr. BLUNT. Mr. President, I am proud to have a chance to speak in support of your fellow Coloradan, Neil Gorsuch, President Trump's nominee to be an Associate Justice of the Supreme Court.

Clearly, we all understand this is an important decision and an important institution. The Supreme Court is the only Court specified in the Constitution and often the final arbiter of how the Constitution and the law is to be applied. In the history of the Court, in the history of the country, only 112 individuals have had the honor to serve on the Supreme Court. As we debate the qualifications and qualities of the person who has been nominated, and I hope to see confirmed as the 113th person to serve as an Associate Justice or a Justice on the Court, it is really vital we understand that we have a nominee who has a deep understanding and appreciation of the role of the Court and the role the Court plays in our democracy.

Judge Gorsuch embodies these principles through a lifetime of service, and he has really prepared himself in many unique ways for this moment. He graduated from Columbia University, where he was elected to Phi Beta Kappa and earned his law degree from Harvard Law School. After law school, Judge Gorsuch served as a Supreme Court clerk to two different Justices, Justice Byron White and Justice Anthony Kennedy. It has been pointed out that if Judge Gorsuch is confirmed to serve on the Court, he will be the first person ever to serve with someone for whom he clerked, and hopefully he and Justice Kennedy will have an opportunity to serve together.

After clerking on the Court, he went on to a successful career in private law

practice, spending 10 years litigating a broad range of complex trials and appeals.

In 2004, just in case his Harvard law degree wasn't enough, as a Marshall scholar, he received a doctorate in philosophy from Oxford University.

At every point in his preparation, it has been understood he was at the top of that preparatory activity. He has served his country in the Justice Department, working as the Principal Deputy Associate Attorney General. In 2006, 10 years ago, President George W. Bush nominated him to serve on the Tenth Circuit Court of Appeals. At the time of his nomination, the American Bar Association gave him a unanimous "well qualified" rating, the highest rating. The Senate then confirmed his nomination unanimously by a voice vote.

Today I believe the Senate has 11 Democrats serving with us who were part of that unanimous process. In his decade on the Tenth U.S. Circuit Court of Appeals bench, Judge Gorsuch has demonstrated a steadfast commitment to upholding the rule of law and interpreting the Constitution as its authors intended.

I am confident he will continue to adhere to the Constitution, apply the rule of law, and not legislate from the bench. I think he understands, as Justice Scalia did, that the job of a Justice of the Supreme Court is not to decide what the law should be or what the Constitution, in their opinion, should say but decide what the law is and what the Constitution does say.

His keen intellect and devotion to law are very well understood and appreciated throughout the legal profession. He has the integrity, the professional qualifications, and the judicial temperament to serve on the Nation's highest Court.

Mr. President, I ask unanimous consent to have printed in the RECORD an editorial from earlier this week.

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

[From the Denver Post, Jan. 26, 2017]

TRUMP WOULD DO WELL TO CONSIDER NEIL GORSUCH FOR SUPREME COURT  
(By the Editorial Board)

Then-U.S. Sen. Ken Salazar, right, introduces Neil Gorsuch at his nomination hearing to the U.S. Court of Appeals for the 10th Circuit on June 21, 2006. Gorsuch is being considered as a possibly replacement for the late U.S. Supreme Court justice Antonin Scalia.

President Donald Trump is on the verge of making his most enduring appointment to date and we are encouraged by one of the names on his list to replace former Supreme Court Justice Antonin Scalia.

Neil Gorsuch is a federal judge in Denver with Western roots and a reputation for being a brilliant legal mind and talented writer. Those who have followed Gorsuch's career say that from his bench in the U.S. 10th Circuit Court of Appeals he has applied the law fairly and consistently, even issuing provocative challenges to the Supreme Court to consider his rulings.

Liberals who dreamed of a less-conservative Merrick Garland on the court will un-

doubtedly gasp at a suggestion that Gorsuch would be a good addition to a court that has been shorthanded for more than a year.

Gorsuch is most widely known for ruling in the Hobby Lobby contraception case before it reached the Supreme Court in 2014. His controversial decision was upheld in a 5-4 vote. Gorsuch wrote in the case that those with "sincerely held religious beliefs" should not be forced to participate in something "their religion teaches them to be gravely wrong."

We disagreed with that ruling, saying the Supreme Court wrongly applied constitutional protections of religious freedom to a corporation that remained owned by a small group of like-minded individuals.

We argued that even closely held corporations—primarily functioning as money-making entities and not religious institutions—shouldn't be able to opt out of the Affordable Care Act mandate that insurance cover contraception by citing First Amendment protections intended for individuals and churches.

But in considering Gorsuch's body of work and reputation—and yes, we like his ties to Colorado as well—we hope Trump gives him the nod.

We are not afraid of a judge who strictly interprets the Constitution based solely on the language and intent of our nation's founders, as long as he is willing to be consistent even when those rulings conflict with his own beliefs.

As Denver Attorney Jason Dunn, who considers himself a longtime fan of Gorsuch, explains, his views stem "from a belief in a separation of powers and in a judicial modesty that it is not in the role of the courts to make law. Justice Scalia would put it: If you like every one of your rulings, you're probably doing it wrong."

A justice who does his best to interpret the Constitution or statute and apply the law of the land without prejudice could go far to restore faith in the highest court of the land. That faith has wavered under the manufactured and false rhetoric from critics that the high court has become a corrupt body stacked with liberals. And while Democrats will surely be tempted to criticize the nomination of anyone Trump appoints, they'd be wise to take the high road and look at qualifications and legal consistency rather than political leanings.

Gorsuch, at 49, will have years to whittle away at that damaging lack of trust. A July 2016 Gallup Poll found that 52 percent of Americans disapproved of the way the Supreme Court handled its job. The finding is striking, considering the same poll in 2000 found only 29 percent of Americans disapproved.

We could do far worse than a thoughtful graduate from Columbia, Harvard and Oxford universities, who clerked for two Supreme Court justices and calls Denver home.

Mr. BLUNT. I wish to share a little of that editorial where the Denver Post says:

We are not afraid of a judge who strictly interprets the Constitution based solely on the language and intent of our nation's founders, as long as he is willing to be consistent even when those rulings conflict with his own beliefs.

As Denver Attorney Jason Dunn, who considers himself a longtime fan of Gorsuch, explains, his views stem "from a belief in a separation of powers and in a judicial modesty that it is not in the role of the courts to make law. Justice Scalia would put it: If you like every one of your rulings, you're probably doing it wrong."

That is similar to what you and I heard Judge Gorsuch say last night;

that a good judge doesn't rule based on what a judge likes to have happen but what the law and the Constitution insists does happen.

Going back and continuing just one more paragraph from that Denver Post editorial:

A Justice who does his best to interpret the Constitution or statute and apply the law of the land without prejudice could go far to restore the faith in the highest court of the land. That faith has wavered under the manufactured and false rhetoric from critics that the high court has become a corrupt body stacked with liberals. And while Democrats will surely be tempted to criticize the nomination of anyone Trump appoints, they'd be wise to take the high road and look at qualifications and legal consistency rather than political leanings.

That is in the middle of that editorial that is now in the RECORD.

The Supreme Court is one of the most important legacies this President is likely to leave. I think he made a very well-considered and right choice in selecting Judge Gorsuch to begin shaping the long-term view of the Court. I look forward to hearing more from the judge as this confirmation process moves forward and to seeing him confirmed as an Associate Justice of the Supreme Court.

I yield the floor.

THE PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, we began public hearings on the Supreme Court nominees in 1916. Since we began those, the Senate has never denied a hearing or a vote to a pending Supreme Court nominee—never, since 1916 until last year.

Last year Senate Republicans waged an unprecedented blockade against the nomination of Chief Judge Merrick Garland, a fine judge with impeccable credentials and with strong support from both Republicans and Democrats, a man who should be on the Supreme Court today. This is the first time since 1916 that had ever been done. Instead, bowing to the extreme right of their party, Republicans who knew him and who even had said publicly before how much they respected him and how he should be on the Supreme Court refused even to meet with him, let alone accord him the respect of a confirmation hearing—even though the Constitution says that we shall advise and consent and even though each one of us has raised our hand in a solemn oath saying we will uphold the Constitution.

So this is exactly what happened. The Republicans held hostage a vacancy on the Supreme Court for a year so that their candidate for President could choose a nominee. The blockade of the Merrick Garland nomination was shameful, but I think it is also corrosive for our system of government. Candidate Donald Trump, who verbally attacked a sitting Federal judge in what Speaker RYAN called "a textbook example of a racist comment," encouraged Senate Republicans to "delay, delay, delay." Candidate Trump then went further. He said he would

outsource the vetting of potential nominees to far-right organizations, many of them lobbying organizations, that want to stack the judiciary with ideological conservatives who are outside the mainstream. He promised a nominee who would overturn 40 years of jurisprudence established in *Roe v. Wade*. With the selection of Judge Gorsuch, it appears as though he is trying to make good on that promise.

When we confirmed Judge Gorsuch for the Tenth Circuit Court of Appeals—and I was a Member of the Senate at the time—I knew he was conservative, but I did not do anything to block him because I hoped he would not impose his personal beliefs from the bench. In fact, at his confirmation hearing in 2006, Judge Gorsuch stated that “precedent is to be respected and honored.” He said it is “unacceptable” for a judge to try to impose “his own personal views, his politics, [or] his personal preferences.” Yet, just last year, he tried to do that. He called for important precedent to be overturned because it did not align with his personal philosophy.

From my initial review of his record, that I have just begun, I question whether Judge Gorsuch meets the high standard set by Merrick Garland, whose decisions everybody would agree were squarely within the mainstream. And with the ideological litmus test that President Trump has applied in making this selection, the American people are justified to wonder whether Judge Gorsuch can truly be an independent Justice. So I intend to ask him about these and other important issues in the coming months.

Republicans rolled the dice last year. They subjected the Supreme Court and the American people to a purely political gamble. They ignored the Constitution and did something that had never been done before in this country.

I know President Trump likes to boast that he won the election in a massive landslide. Well, of course he didn't. Secretary Clinton received more than 2.8 million more votes from the American people than President Trump. But more importantly, due to Senate Republicans' political gambit, the U.S. Supreme Court clearly lost in this election. This is really no way to treat a coequal branch of government, and it is certainly not the way to protect the independence of our Federal judiciary—something that is the bedrock of our Constitution.

The President's electoral college victory—which was far narrower than either of President Obama's victories—is hardly a mandate for any Supreme Court nominee who would turn back the clock on the rights of women, LGBT Americans, or minorities; or a nominee who would use theories last seen in the 1930s to undermine all we have accomplished in the last 80 years. If he follows these right-wing lobbying groups who helped vet him for the President, if he follows what they want, then critical programs, like So-

cial Security and Medicare and Medicaid, key statutes, including the Civil Rights Act, the Voting Rights Act, and the Clean Air Act, could well be at risk.

So after nearly a year of obstruction—unconstitutional, unprecedented obstruction—I really don't want to hear Republicans say we now must rush to confirm Judge Gorsuch. I know the President thinks they should, but I also wonder how seriously even he takes this. His announcement yesterday was like he was announcing the winner of a game show: I brought in these two people, and now here is the winner. We are talking about the U.S. Supreme Court; treat it with the respect it deserves.

For all of the Republican talk of Democrats setting the standard with the confirmations of Justice Sotomayor and Kagan, they ignored the standard they set in the shameful treatment of Chief Judge Garland. In fact, I remember when—and I was chairman at the time—when we set the schedule for the hearings and the vote on Justice Sonia Sotomayor, and I remember the Republican leader rushing to the floor and saying: Oh, this is terrible. You are rushing it. You are moving it so fast.

I pointed out that we were setting the schedule to the day—to the day—the same as we set for Chief Justice John Roberts. So I asked the obvious question: Are you telling me the schedule was OK for him but not OK for her? We followed the schedule.

We need time to look at all of these nominees.

I would note, as one who has tried cases in Federal courts, as a lawyer, and as one who has chaired the Judiciary Committee, I would say the courts are a vital check on any administration, especially one that, like this one, has found itself on the losing side of an argument in Federal court in only its first week—they lost on something that a first-year law student could have told them they were going to lose. But with great political fanfare, the President issued an order. Fortunately, the order was seen for what it was: No Muslims need show up in our country.

Judge Gorsuch, to be confirmed, has to show that he is willing to uphold the Constitution even against President Trump, even against the lobbying groups the President had vetting him.

His record includes a decade on the Federal bench. The Judiciary Committee must now carefully review his decisions. We have to conduct a thorough and unsparing examination of his nomination. That is what I will do, just as I have done for every nominee—everybody currently on the Supreme Court and many before them. Whether nominated by a Republican or a Democrat, I did a thorough and unsparing examination of their nomination. The Senate deserves nothing less. More importantly, the American people deserve nothing less.

I yield the floor.

The PRESIDING OFFICER. The Senator from Virginia.

TRAVEL BAN

Mr. KAIN. Mr. President, I rise to speak on a special day. Today is my wife's birthday. Today is National Freedom Day, when we recognize President Lincoln's signing the 13th Amendment banning slavery. This is the reason we celebrate Black History Month in February.

Today, February 1, begins American Heart Month, acknowledging the great heart of the American people, as well as the need for health care.

But today, February 1, is also the first day of World Interfaith Harmony Week. In 2010, King Abdallah II of Jordan spoke before the U.N. General Assembly, and he asked the U.N. to declare a week every year to promote understanding and tolerance between the world's religions. In his speech before the U.N., this is what King Abdallah said:

It is also essential to resist forces of division that spread misunderstanding and mistrust, especially among peoples of different religions. The fact is, humanity everywhere is bound together, not only by mutual interests, but by shared commandments to love God and neighbor, to love the good and neighbor. What we are proposing is a special week, during which the world's people, in their own places of worship, could express the teachings of their own faith about tolerance, respect for others and peace.

The resolution was adopted unanimously at the U.N. General Assembly, and all nations, religions, and peoples were asked to observe it.

By happy coincidence, as the Presiding Officer knows, King Abdallah is in Washington right now. He visited with Senators here at the Capitol yesterday and today. Earlier today I met with him, and I told him I would speak in his honor in the hopes that his words might inspire us at a challenging time.

The word of last Friday's Executive orders regarding immigration and refugees—orders which implemented the President's campaign rhetoric to implement a Muslim ban—shocked the country this weekend. I traveled to Roanoke and Blacksburg, VA—communities in the southwestern portion of my Commonwealth. I was there to meet with local health care providers and students pursuing health care careers. I had planned the trip to go talk about the Affordable Care Act, but at my first event, two families came to me with a concern. Working together with Roanoke Catholic charities, they had helped settle a Syrian refugee family in Blacksburg 1 year ago. The Syrian family was a mom and dad and four kids. These sponsors told me how well the family was doing and how welcoming this community was in bringing this family to Virginia and taking them in.

The employer of the Syrian father runs a construction company, and he hired him to do construction work. He told me, kind of chuckling about it: Senator, not all my workers agree with me on politics, but no one better say a