

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

## NAYS—42

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

## NOT VOTING—2

Coons	Durbin
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The motion was agreed to.

# DISAPPROVING A RULE SUBMITTED BY THE DEPARTMENT OF THE INTERIOR

The PRESIDING OFFICER. The clerk will report the joint resolution.

The legislative clerk read as follows:

A joint resolution (H.J. Res. 38) disapproving the rule submitted by the Department of the Interior known as the Stream Protection Rule.

The PRESIDING OFFICER. Pursuant to 5 USC 802(d)(2), there will be up to 10 hours of debate, equally divided between the proponents and the opponents of the resolution.

The Senator from Utah.

## NOMINATION OF NEIL GORSUCH

Mr. LEE. Mr. President, I rise to speak about the nomination of Judge Neil M. Gorsuch to be an Associate Justice on the U.S. Supreme Court.

Confirmation of anyone appointed to the Federal judiciary is a big deal. Confirmation of someone appointed to serve on the Supreme Court of the United States is an exceptionally weighty matter. I therefore approach this with the seriousness it deserves. I approach this as one who has argued in front of Judge Gorsuch. I found as a lawyer that he is an exceptional judge, an unusual judge—a judge who comes to argument with an unusual degree of preparation, having read all the briefs and apparently all of the cases and all of the statutes cited in the briefs.

There are some judges who at oral argument are constantly asking questions, but they are not necessarily questions that need to be asked. Perhaps some judges want to hear the sound of their own voices. That is, of course, something that would never happen here, in the U.S. Senate, but it happens sometimes with other people. There are other judges who might be

quiet throughout an argument. Then there is a unique category of judge, a judge who doesn't necessarily speak constantly but a judge who listens attentively and then pounces at the moment when he or she sees the pivotal moment in the case arising.

The late Justice Oliver Wendell Holmes, Jr., used to say there was a point of contact in every case. When asked, he pointed out that the point of contact in any case is the place where the boy got his finger caught in the machinery. I learned that quote when I was in law school. I have never entirely understood what it means, but it reminds me of the fact that in every case, there is a pivotal fact and a pivotal aspect of the law which, when properly understood, can help lead the court to a proper disposition of the legal question at hand.

Judge Gorsuch is one of those rare judges who is able to seize upon the point of contact in any case. He does so with seeming effortlessness. Yet I know he does it in a way that requires a lot of effort because these things don't just come naturally. They come only as a result of faithful study of the law, of faithful attention to detail in every case, reading every brief in every case.

Judge Gorsuch does this in part because he was well trained. When we look at his background, we can see that excellence has always been something we have been able to see from him. He graduated with honors from Harvard Law School and received a doctorate in jurisprudence from Oxford. He clerked for three brilliant and very well-respected jurists: Judge David Sentelle on the U.S. Court of Appeals for the DC Circuit and Justice Byron White, as well as Justice Anthony Kennedy of the U.S. Supreme Court. We could not ask for a better legal education or a stronger record of accomplishment from a young lawyer.

After his clerkship, Judge Gorsuch entered into private practice, where he was a trial attorney for 10 years. In 2005, he joined the U.S. Department of Justice as Principal Deputy Attorney General, and he became a judge on the Tenth Circuit in 2006, where he has served for the last decade.

Judge Gorsuch has what I would consider—and I think what most would acknowledge—is the correct approach to the law. He is a judge's judge, both literally and figuratively—literally, because he sits on the U.S. Court of Appeals for the Tenth Circuit. He literally judges the rulings of other judges. It is his job to decide whether other judges have done the right thing. And he is a judge's judge figuratively in the sense that he has the characteristics that all judges aspire to—or at least should. He decides cases based on what the law says and not on the basis of what a particular judge might wish the law said.

I particularly enjoyed last night listening to Judge Gorsuch speak at the White House, his reference to what he considers an important, telltale sign of

a good judge or a bad judge. He said: "A judge who likes every outcome he reaches is very likely a bad judge, stretching for results he prefers rather than those the law demands." So a bad judge is one who necessarily likes all the results he reaches, and it naturally follows that a good judge will, from time to time, necessarily disagree with some of the judge's own rulings. In other words, the outcome of the case doesn't necessarily match up with the outcome the good judge would prefer—or the judge, an all-powerful ruler who had the power not only to interpret the law but also make it, establishing rules, embodying policies that would govern in all cases.

This is the essence of the conservative legal movement—the judicial conservative movement, we might say—in which Justice Scalia was so influential, which is why it is so fitting that Judge Gorsuch has been named to replace Justice Scalia.

Judges do not have a roving commission specifically to address all of the evils that plague society. They don't have a roving commission to decide big policy questions of the sort we debate in this Chamber every day. The judge's role, rather, is to apply the facts to the case at hand, and, in the case of the Supreme Court, to provide guidance to lower courts so they can resolve difficult and consequential questions of law. Judge Gorsuch understands the difference between being a judge and being a legislator, and that is very much reflected in his work on the bench.

When I had the privilege of practicing law and appearing in front of Judge Gorsuch, I was able to be the beneficiary of his skill as a judge and of his commitment to the rule of law. Over the last few days, I have had the privilege of reading many of his opinions. I spent hours upon hours poring through his opinions. Knowing that he might well be named to the Supreme Court, knowing he was one of the potential nominees made me want to learn more about him than I already knew. I have to say, every single opinion I read, without exception, was impeccable to an unusual degree. They are methodical. They are careful. They are studious. They reflect a degree of academic and professional craftsmanship rarely seen. He treats the parties appearing before him with dignity and respect. He takes their arguments seriously, and he respectfully explains their arguments as he addresses them.

I know from my time in the practice of law that no one likes to lose a case, but I doubt any litigant has read a Judge Gorsuch opinion and felt like he failed to understand their position or that he failed to take their views seriously with the credibility and dignity they deserve. This is a crucial yet, sadly, often underrated factor when reviewing the work of any judge.

Most of all, his opinions are just brilliant. They are digestible to lawyers

and nonlawyers alike. This is crucial because the judiciary belongs to everyone in this country, not just to attorneys. Judge Gorsuch's opinions are memorably written without being snarky, and he scatters his opinions with literary and philosophical references to highlight the legal points he is making while also just making the opinion much more interesting. As someone who has read more than my fair share of judicial opinions, I can tell you that Judge Gorsuch's opinions are among the very best I have ever read. I don't just mean a few of them, I mean every single one of them that I have read, which is a lot of them. They are very, very good. In fact, they are Supreme Court caliber.

Judge Gorsuch has written hundreds of opinions, but there are two recently decided cases I wish to highlight.

He is a critic of an obscure but very significant legal rule known as the Chevron doctrine. When the Supreme Court decided the Chevron case back in 1984, the Justices may not have thought they were deciding a big case. They might not have realized the extent to which the decision in *Chevron v. NRDC*—the extent to which that case would have such a profound impact on the Federal judiciary and on the state of the law in the United States of America, but Chevron is in fact one of the most important Supreme Court cases that most of us have never heard of. It says that the courts must defer to an agency interpretation of a statute if the statute is ambiguous.

The problem with Chevron, as Judge Gorsuch has pointed out, is that it tends to divest the courts of their obligation to "say what the law is," as Chief Justice John Marshall wrote in *Marbury v. Madison*. It has led to a system in which executive agencies not only make and enforce the law but also interpret the law, arrogating to themselves, in effect, some aspects of the powers allocated to all three branches of the Federal Government. This is a violation of the doctrine of separation of powers, one of the most important protections in the Constitution, one of the two fundamental structural protections in the Constitution, as important as any other provision in our founding document.

Worse, doctrines that have developed in response to Chevron allow agencies to stake out a legal position, lose in court, and stake out a new legal position that reaches the same outcome. As Judge Gorsuch points out, that creates fair notice and equal protection problems.

Now, there are two additional points to make about Chevron. First, in the coming days, we will undoubtedly hear some of my colleagues complain that getting rid of Chevron will somehow make the air less clean, our food less safe, our financial system more unstable, and cause a whole lot of other problems, but as Judge Gorsuch has written, "We managed to live with the

administrative state before Chevron. We could do it again. Put simply, it seems to me that in a world without Chevron, very little would change—except perhaps the most important things."

Second, it is important to note here that the Chevron doctrine is not a particularly ideological one.

Indeed, in the 1980s, Chevron primarily assisted the Reagan administration's deregulation efforts, and junking the doctrine today would constrain the Trump administration's use of regulations. So eliminating the doctrine would affect equally Republican and Democratic policy goals. In any event, I am sure, based on his background and on his record, Judge Gorsuch's critique of the doctrine is not about politics; it is about first principles. At the end of the day, Chevron is neither Republican nor Democratic; it is neither liberal nor conservative. It is simply wrong.

In another notable case, Judge Gorsuch was the lone dissenter in a case in which an 11-year-old student was arrested for generating fake burps in class. As heinous a crime as some might perceive this to be, it is not ordinarily the kind of thing that results in calling the police. Judge Gorsuch would have concluded that clearly established law prevented the arrest and that the child's parents should prevail in a lawsuit against the school officials who decided to call the police in response to this childish act in class. This is not uncommon for Judge Gorsuch, who has voted not to provide qualified immunity in several cases and has voted in many cases for the underdog, for someone who might otherwise not have had a chance in court but for the willingness of one very brave and astute and diligent judge to study the law and the facts of that case aggressively so as to make sure that justice was accorded to the parties.

There are other important areas of the law where Judge Gorsuch has made an important contribution during his time on the U.S. Court of Appeals for the Tenth Circuit. I will be talking about some of those at length in the days and weeks to come. He has been a staunch advocate for the First Amendment. He has read criminal statutes to constrain the government's power, where appropriate, and has voted in several cases to withhold qualified immunity. All of these are important, and I look forward to discussing them with my colleagues.

Before I close, I want to talk a bit about the confirmation process. In 2006, Judge Gorsuch's nomination to the Tenth Circuit was so uncontroversial that it lasted 26 minutes—just 26 minutes, less time than a "Brady Bunch" episode. He was confirmed on a voice vote. Among other notable Members of the Senate the day that Judge Gorsuch was confirmed were Minority Leader SCHUMER, ranking member of the Judiciary Committee FEINSTEIN, Senator DURBIN, and Senator LEAHY.

Already, prominent liberal lawyers are praising his nomination. Neal

Katyal, who served as Acting Solicitor General under President Obama, has a New York Times op-ed in which he urges liberals to support Judge Gorsuch. Katyal writes:

I, for one, wish it were a Democrat choosing the next justice. But since that is not to be, one basic criterion should be paramount: Is the nominee someone who will stand up for the rule of law and say no to a president or Congress that strays beyond the Constitution and laws? I have no doubt that if confirmed, Judge Gorsuch would help restore confidence in the rule of law. 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.

Judge Gorsuch is exactly the type of judge who should be confirmed, who should be allowed to serve on the Supreme Court of the United States. This vacancy was a central issue in the 2016 election. The people have now spoken, and I plan to honor the results of this election by working as hard as I can to see Judge Neil Gorsuch confirmed to the Supreme Court of the United States.

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

Ms. CANTWELL. Mr. President, I come to the floor tonight to start debate on what is called the Congressional Review Act of the stream protection rule. For people who are probably saying "I don't understand any of that; could you explain it to me?" what we are going to do tonight is to start this debate, which is really about clean water, and it is about making sure that polluters clean up their messes, particularly when it comes to streams and the beauty we have in our country that is used by many people. And it is about making sure that rules for polluters paying are enforced in law and, clearly, agencies which have developed those rules in conjunction with laws that are already on the books continue to have those laws in effect.

We are in a new administration, and already the debate is starting where people would like this end result to be clean water, 0; Donald Trump, the new President, 1. That is because this administration is starting a war on clean water, and tonight that debate is coming to the Senate floor. It is coming to the Senate floor because the last administration worked for more than 5 years on producing something to make sure that we had safe drinking water and safe stream water for fishing and to make sure that industries that are known for polluting ensure that their level of pollution is cleaned up.

After more than 5 years in the implementation of that rule, after thousands and thousands of hours of discussion and debate, as it has become a rule, now there is one thing that can stop it. There is one thing that can stop it; that is, if Congress uses its authority under the Congressional Review Act to repeal it within the 60 days of legislative action that it has become effective.

What is happening is that the Trump administration and our colleagues on the other side of the aisle are trying to say that we want to repeal more than 5 years of hard work of clearly outlining a stream protection rule to protect streams in the United States of America from pollution caused by certain types of mining activity.

Let me show you a picture of what I am talking about. This stream could be anywhere in America. It could be anywhere in the United States of America. It is probably a good picture. Why? Because it shows the great outdoors. Probably for me, it is somewhere I would like to hike. It shows a stream, but it shows the degradation of that stream with the pollution in the stream.

Whether you are Trout Unlimited, which supported this rule, or you are the Wilderness Society, or all the hunting and fishing groups that supported this rule, or you are just one of the many citizens in a State where mining exists and you are happy that it exists there but you also want them to be clean up their messes—these are the people who do not want to see this level of degradation in the streams.

Why don't they want to see it? Because first and foremost they obviously don't want to see it, but if you are a fisherman and you are out fishing, you certainly don't want to see the impacts that selenium is causing on fish.

There are a couple of incidents here where the impacts of selenium on fish are shown in this diagram. Deformation both here in the tail and here in the mouth of fish are impacts from selenium in streams. We do not want to see selenium having that kind of impact on our fish.

What do we want to do? We want to make sure that we are measuring selenium in the streams and that we are cleaning it up. That is what we want to do. The notion that somehow people have described a rule for stream protection that is about having safe drinking water and having safe fishing water is about a "war on coal" is just wrong-headed. This is about making sure that we don't overturn something that took over 5 years to get in place. And I should say, it is the first time in 33 years that we have updated this rule.

For 33 years, the Department of the Interior has said that the hydraulic impact of mining on a stream should be mitigated. What has changed in the last 33 years is that we now have better technology and we have more information about selenium. We know that it impacts fish, and we want mining companies to measure their impacts on headwaters and make sure they are doing something to minimize this selenium impact.

I know people think that maybe in this process for 5 years—somehow that created a decrease in the amount of coal in the United States of America, even though the rule was just getting started. Let's look at the real issue. The real issue is that natural gas be-

coming cheaper in the United States of America has pushed down the demand for purchasing coal, a more expensive product that had nothing to do with this rule.

I have been in business and, yes, you plan for the future. And if you think your business is going to have to increase its insurance or change its business practices, yes, you consider all of that, but this chart clearly shows that our electricity grid has gone from having 50 percent of it supplied by coal now down—as this line is crossing here—to about 30 percent of our electricity grid from coal.

This rule was not in place. Saying that you want to have safe drinking water has nothing to do with what has happened in the marketplace as natural gas has become a more viable option than coal. This chart shows it.

We have another chart that also shows this 23-percent decline in coal. Why? Again, because of natural gas consumption going up. For those on the other side who would like to say this is somehow about a war on coal, I will tell you, we should not denigrate anybody for the job that they have done to support their families. In fact, I believe we should make sure they have a pension, make sure they have health care.

It is a tragedy that we bailed out Wall Street from the U.S. Treasury, and as pension programs all across America imploded, nobody wanted to bail out the pension program for miners so they could retire with the kinds of health benefits that other people do. If we want to help individuals who are suffering in coal country, I suggest that we take care of their pensions.

In the meantime, what we should do is make sure we are preparing for the health and safety of people who depend on these streams for multiple uses; that is to say, there are those in an outdoor economy who count just as much on those streams and count on them not being polluted because of certain mining activities.

This chart can be shown in just about every State of the United States. The outdoor economy in our States—the people who like to go fishing, the people who like to go hunting, the people who like to navigate our rivers and want to do so when they are not polluted—is 6.1 million direct jobs in the United States. That basically dwarfs the coal industry.

This isn't about saying one job is better than the other, but the notion that somehow we are hurting our economy because we want to have clean streams and we want people to be able to safely catch fish without selenium in them is basically ignoring the facts. By not regulating the coal industry to make sure they are cleaning up their mess, you are hurting the 6.1 million jobs that depend on having clean streams.

I know people here probably understand that Montana is full of streams. That movie, "A River Runs Through It," is iconic in the Northwest as an ex-

ample of why people love the outdoors because they want to fish. They want the experience of going and being outdoors and having the wonder of that.

I personally have been in the streams of West Virginia and have had a fabulous time. I want other people to understand that these streams are worth protecting all over the United States of America. But the movie is not called "A River Runs Through It and a Mine Sits on Top of It." We don't have people moving to Montana and buying ranches, making investments, hiring people, and diversifying because they want to see the mines in Montana. They want to see the beauty of the outdoors. They want it to be pure and pristine, and they want people to clean up their pollution. If we are talking about an economy and you want to talk about jobs, do not ruin the \$80 billion in tax revenue that comes from an outdoor industry because you want to allow an industry to continue to pollute.

I am going to continue for the next year to make this point to my colleagues in the West who are going to try to overturn every rule they don't like because they think somehow that they want to claim it impacts jobs. We are going to have this discussion, and we are going to show that the outdoor economy is just as important and is actually producing more jobs and producing more revenue. The only point of conflict, I think, is when one impacts the other to the degree of creating pollution and then taking a beautiful stream away from us—because no one wants to fish in a stream with that level of pollution.

Why are we here? We are here because certain types of mining—particularly, mountaintop removal mining—make it way more challenging to protect those streams. As I mentioned, for the last several years, people have been discussing what to do to make sure that these companies are making sure the environmental impacts are minimized. The production of these mines has actually fallen a great degree in the last several years.

We have been working, as I said, during this time period to make sure that we implement the right kind of regulations so that people will clean up this mess. As I mentioned, it has been basically since the early eighties until this level of attention was given to a new rule. Why do we want to change a rule that was from 1983? Because it says that you must minimize the disturbances to the prevailing hydraulic balance at the mine site and offer areas and quality of water and ground water systems, both during and after the mining operations.

President Trump did not invent that. That has been in law all along. The notion that somehow that has changed is not correct. It has been in the opening days of the Trump administration that people are trying to say that stewardship doesn't matter, that somehow, yes, we want to have immaculate water

and immaculate air—as President Trump said—but it is OK if regulations cause a problem for business. What business? The outdoor industry or the coal industry? Because right now, you are talking about making a change to what is protection of those streams and repealing a law that is about safe drinking water. We don't want to eliminate that.

We want to make sure that we use the best technology available to minimize the disturbances, address the impacts on fish and wildlife, and any other related environmental issues. We know a lot more about mining and fishing. As I showed you one picture, I will show you another impact of selenium. Basically, it is showing the deformation. What we now know much more about is how selenium does impact these areas.

What is at stake if you kill the stream protection rule? Our sportsmen—groups like the National Wildlife Federation and Trout Unlimited—say this:

The resolution is an ill-conceived tool for jettisoning a very useful rule that protects mountain head water streams and communities throughout the coal country in Appalachia. We urge you to oppose striking this rule, and to instead work with the Department of Interior to protect these streams, and make necessary improvements to improve the CRA, instead of using it as a cleaver.

They go on to say:

150,000 passionate trout anglers work to conserve, protect and restore our Nation's trout and salmon fisheries and their watersheds. And our members give back to the resources they love by investing dollars and hundreds of thousands of volunteer hours to conserve streams.

So you can see that they feel passionately about this. They feel passionately because this is part of our outdoor economy and what people have passion about.

In my State, people would say: Well, you have these other jobs. No, actually, in our State, there are 250 abandoned mines in Washington. Yes, if we don't clean them up, and if we don't make sure there is reclamation, there is still pollution.

We have had a mine history in our State, but we want responsible mining and we want responsible cleanup. With today's rule that is in place and that you are trying to repeal—to repeal safe drinking water, basically—that would take those tools away and allow pollution to continue. What is the cost of that? It is very small. You would think that the way some people go on about this, that somehow this is astronomical amounts of money. Basically, it is about 0.1 percent of the industry's annual revenue. When you are in business, you think about your costs. You think about your cost of doing business. Yes, the cost of doing business has to include making sure that you clean up pollution. To me, this is an industry that makes way more than this in its annual revenue.

Am I empathetic to my colleagues who represent States that are changing

in their energy mix and resources? Do you think we need to have a plan for that? Yes. Do I think we need to have a plan for how we are going to diversify? Yes, I do. But this is not an economic debate about how we are going to save jobs. In reality, as I showed in the chart before, the natural gas prices are driving coal to a much lower level of our electricity grid than ever before in our history, and that is not going to change.

Let's make sure we clean up our streams. Let's make sure we use the best technology available to make sure we are detecting that pollution and require people to have a minimal amount of responsibility in the cost of what it takes to make sure that selenium is not in drinking water or impacting our fish.

I yield the floor.

The PRESIDING OFFICER. The Senator from North Carolina.

#### SPIRIT OF BIPARTISANSHIP

Mr. TILLIS. Mr. President, I want to thank my colleague from Utah and his eloquent comments about the Supreme Court nominee. I would like to associate myself with everything he said. He has the kind of experience and insight that I hope so many Members on both sides of the aisle will listen to.

I am here to talk about the spirit of bipartisanship and getting things done. I submitted an editorial to my local newspaper down in Charlotte a couple of weeks ago. The whole premise of my opinion was that in November the voters did not vote for a Republican mandate; they voted for a results mandate. They are tired of the gridlock they see up here in Washington. They are tired of people promising things they know they can't deliver. They are wanting for a leader in President Trump and in the congressional leadership people who want to produce results. They want people who want to work across the aisle and come up with bipartisan solutions to a lot of the problems that confront this Nation.

You would have thought that I changed my registration and became a member of the minority party with the criticism that I got from people on my side of the aisle. I was called a RINO. For those of you who don't know what that is, that is a Republican in name only.

When I was the speaker of the house in North Carolina, the last thing I was ever called was a RINO. We worked on a conservative agenda that made sense. We gained the support of a number of Democrats along the way. North Carolina is a lot better place because of the courage of those folks who were willing to work across the aisle to help our great State, to go from one of the laggards in terms of economic performance to one of the leading States in the Nation for economic performance over the course of about 4 years.

I don't really care about the criticism from the talking heads—from the far left or the far right—because I consider them one of the great threats

that we have to actually turning this Congress around and getting things done. I am going to do everything I can to reach across the aisle and produce solutions to some of the most vexing problems we have.

There are solutions within our reach. If you think about immigration reform, there is a 40-year-old failure on the part of the Republicans and Democrats to address the immigration problem. Everybody wants their position on one end of the spectrum or the other versus what the American people want or a solution to the problem—a solution that makes sure the American worker is respected and taken care of, that our borders are secure, and that we end this 40-year-old failure on the part of Washington to solve the problem.

They want solutions on criminal justice reform. We have many people in prison who, after they get out, are more likely to go back into prison because we really haven't thought about commonsense ways to help them enter back into society and have productive lives, beyond just going back into a criminal enterprise. We can solve that problem, but we can only solve it if we have Republicans and Democrats come together—and silence the voices who want their perfect version based on their ideology—on a solution that makes sense to the average American.

The agenda that we want to complete can only be completed if we have people who have the courage to come to this floor and do what I consider to be political courage. It is not courageous for me as a Republican to stand up to a Democrat and oppose their view. That is my job. I am a conservative. I am a proud conservative. Courage, in terms of someone who would walk onto this floor, is someone who can look at a person—a fellow Republican and conservative—and say: We are not going to go where you want to go because we are here to get something done—not just to make speeches, not to talk about an unachievable goal, but to make progress on things that are sound, conservative policies. But maybe we have to make some compromises. Maybe we have to go a little bit further than we want because we want to get something done. We want to pass things that are good. If we wait to only pass things that are perfect, then we will be guilty of doing exactly what many other people have done in this body—to promise a lot and deliver very little.

I took a lot of hits for my op-ed and my public comments about bipartisanship, about compromise, about respect, about reaching across the aisle. I am willing to take those hits because I would rather go down as someone who is willing to go get something done than someone who is willing to only settle for the perfect, knowing that perfect never happens here. The Founding Fathers didn't expect perfect. The Founding Fathers introduced defects, if you read the Federalist Papers, that

prevented any one ambition from prevailing. To have ambition set against ambition is foundational to our democratic institution here. We are not going after perfect. We are going to go after good.

I was really excited. I got some great comments from my friends across the aisle. I thought this is an area where we can work together. There are a lot of areas where we can't work together because our world views are so different. Let's not focus on those. Let's focus on things on which we can work together. I thought we had a minority leader who was actually committed to that. At least that is what I thought. But I have to say I am beginning to wonder if we haven't gotten a different sort of view of the leadership. Comments today do not reflect the comments of not so long ago. In 2012, the minority leader said:

Everything doesn't have to be a fight. Legislation is an art of working together, building consensus, compromise.

I could have written that. I absolutely agree with that principle. That is why I got criticized by folks on my side of the aisle—or the talking heads, anyway, the conservative talking heads—because I wasn't willing to take a purist position.

Now, you fast forward. And the minority leader made this comment when he was not the minority leader. But today this is what we are hearing just within the last month: "The only way we're going to work with him"—that would be President Trump—"is if he moves completely in our direction and abandons his Republican colleagues."

Does that sound like bipartisanship? Does that sound like somebody who wants to reach across the aisle and work on immigration reform, criminal justice reform, sentencing reform—things where I believe there is a majority of people in this body, as many as 60 or more votes—who would be willing to move legislation? I don't think so.

We have to make sure that people like this are accountable to the American people, the so-called real people. I will get to that in a little bit. That is not bipartisanship. That is not leadership. That is divisiveness. That is gridlock. That is the stuff that inspired me to run in 2014. That is the thing I am against, whether it is a Democrat saying it or a Republican saying it.

I think we can also expect more of what really stems—or what you can infer from the latest position of the minority leader, more gridlock. We will go to the next chart. The sort of a double standard here, duplicity, really drives me crazy. Situational ethics I will call it or situational principles. On the one hand, you stand firm on something. You fast forward because you didn't like the outcome of the election, and suddenly you no longer take that same position.

People can rationalize it any way they want to, but I think the real people, the real voters, the folks out there, see this for what it is. It is taking a so-

called principled position when that particular position benefits your agenda, not necessarily something that is bipartisan, something that actually serves a political agenda.

The Supreme Court, I think that is what we are going to see here. I have presided. I have been a freshman for 2 years. We get to preside a lot. I get to hear a lot of these floor speeches. I heard endless speeches talking about how we needed to do our job, how we actually—here is another quote from the now minority leader:

The Supreme Court handles the people's business. As President Reagan put it, every day that goes by without a ninth justice is another day the American people's business is not getting done.

Now what we are hearing is that same group of people say they are going to use every lever they can to stop us from seating a ninth Supreme Court Justice. What has changed, except for the fact that you are not happy with the outcome of the election? So I think we need to recognize that the American people are sick of Democrats and Republicans promising things, but if they don't get their way in the election outcome, if they are not able to set the agenda, then they are no longer interested in bipartisanship.

I have a lot of confidence in this body. I have a lot of confidence in a number of people on the other side of the aisle. I think there is a pent-up demand among Members here who want to see results—not perfect, but good. I am going to do everything I can to work with those. I will do an equal amount of time focused on those who I don't think are acting in the best interests of their own constituents. They are not listening to the real people in America, the real people who did not endorse a Republican mandate in November.

They said: It is time to stop. It is time to get things done. It is time to treat people with respect on both sides of the aisle. It is time to accept good, and it is time to stop pretending that this body can produce perfect. Now, I have to say I am glad to see my colleagues on the other side of the aisle are starting to look at the so-called real people.

Last week, the Republicans were in Philadelphia. We were at a retreat. At the same time, there was a group of my colleagues on the other side of the aisle who were meeting up in West Virginia. There was a Politico article that I thought was particularly interesting. This was a part of the published agenda that was reported by Politico, an agenda that says they are getting people together. They want to talk about speaking to those who feel invisible in rural America, listening to those who feel unheard, and a discussion with Trump voters.

There was another entry in the agenda, I believe, that says talking to real people. I am here to talk to the real people tonight. You have Members in the Senate who want to get things

done. We know you are hurting. We know the government has failed you, Democrats and Republicans. We have failed to actually take the tough votes. We have failed to deliver. It is time for us to deliver.

I believe we have a President who expects us to reach across the aisle and solve problems. I am going to be a part of solving that problem. We have a great opportunity here with the Supreme Court nomination. It is time to get past the election results, get over it, and get to work. It is time to recognize that the real people, the people who sent a mandate here—but the mandate was not Republican, it wasn't far right, it wasn't far left—all they said was produce results.

I am going to produce results. I am going to expect my Members to produce results. I am going to go into my conference, when it looks like we are going down the path of taking an intransigent position that does not produce a result, and I am going to call them out. I am also going to hold my colleagues on the other side of the aisle to the same standard.

I am going to hope to find folks who want to solve the immigration problem in a respectful, methodical way. I want to work with people on the other side of the aisle who want to solve the criminal justice problem, the sentencing reform, the judicial reform bills that are moving through that have, I believe, far more than 60 votes to support it.

We have to work on these. We will save the other ones where we simply can't find common ground, and those will be the arguments that we can have that can influence future elections, but for the next 2 years, let's get work done. Let's actually be able to go back to our State and proudly proclaim that we had the courage to stand up to people on our side of the aisle when getting to perfect was at the expense of doing something good.

If we do that, we will have one of the most productive legislative sessions. The 115th Congress could go down in history as one of the most productive Congresses in the last 100 years. I want to be a part of that story. I want to go back to North Carolina and be proud of what I did, proud of the compromises, proud of the bipartisan relationships that we did to solve these problems.

I am going to go to other States who may be up for reelection in 2018 and either thank the Members on the other side of the aisle who worked with us for those solutions or campaign against them because they failed to actually look at their constituents and do the right thing.

There are a lot of opportunities here. I, for one, am going to spend every waking hour to make sure I do my part, and I can be proud of the work I did to produce results, to answer that mandate by the electorate that came in November to produce results.

I have every confidence that there are enough Members here to join us.

With that, we will do great things. We will fulfill the promises we made. There is nothing more rewarding than being able to look your constituents in the eye and say: We did it. We listened to you. We compromised. We treated people with respect. We delivered.

I call on all my Members to think again about what they can do to be a part of providing the solutions. I look forward to working with them in this Congress.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. SCHATZ. Mr. President, I rise to speak on the stream protection rule. One of the first things we learn as kids is that if you make a mess, you are responsible to clean it up. It is good manners, but it is also a matter of ethics. It is about doing the right thing. This is the spirit, this is the idea behind the stream protection rule. It simply tells coal companies doing mountaintop mining that they need to clean up their mess if they make a mess. It seems pretty common sense to me.

Opponents of this rule argue that this is somehow an unfair burden on coal companies because coal is doing poorly in the emergency markets. Opponents seem to want to say that asking companies to be responsible to clean up whatever mess may have been made makes it harder for them to compete.

The truth is, coal is having a very difficult time in energy markets, but it is not because they are being required to clean up after themselves. It is because other energy resources are becoming cheaper. Solar is cheaper now than ever. The natural gas revolution is now in competition with coal. It is very difficult to get a new coal-fired powerplant on line. It may be even more difficult to recapitalize an old one. So coal is struggling, but the reason is not the stream protection rule.

There is another aspect of this, which is, since when is there no cost to doing business? Since when are any companies allowed to come in, pollute, and then walk away without doing anything about it? If you hired a contractor to work on your house and they left a pile of materials in your kitchen, you wouldn't say: Well, that is just the cost of doing business. You would say: Clean up the mess. That is part of the job.

There is no question that coal mining is a tough business, but it also can sometimes be a messy business. That is a simple fact. If we ignore the pollution that is caused, if we ignore the cost the public bears when toxic substances are dumped without proper treatment or when coal-fired powerplants spew carbon pollution into the atmosphere, for that matter, we are ignoring the cost of doing business.

To be fair, we have to make sure every industry, including the coal industry, plays by the same rules as everyone else. Up until December of last year, some coal companies just were not playing by the same rules. Moun-

taintop mining had leaked dirty water and waste into the streams. Researchers estimate that this has destroyed 2,000 miles of stream in the United States of America.

That destruction has a domino effect. It threatens the health of people who depend on those streams for their drinking water, it poisons fish, birds, plants, and it reduces the quality of life for people across the country. That is why the stream protection rule was established. It is there so parents don't have to worry when their kids go play by the stream or go fishing behind their house. It is there so ranchers don't have to worry about a nearby mine that could harm their land, and fishermen don't have to worry if the salmon catch is poisoned or if there are fewer fish because salmon are dying from pollution.

This rule is so communities don't have to worry that their daily lives will be changed because a company is not being responsible and cleaning up after itself. This may surprise some people, but the rule will actually create jobs. People like to talk about how burdensome regulations are, especially in the environmental space, but the truth is, it will not lead to fewer jobs.

The Department of Interior predicted it will actually create hundreds of jobs a year, not take them away. Most of all, it is going to have a real positive impact on the world we live in. Over the next two decades, researchers estimated that the stream protection rule would protect or restore 6,000 miles of streams. That is more than the distance between eastern Maine and my home State of Hawaii.

So if you care about protecting local water supply, if you care about having a place for your kids to go hiking and fishing, if you care about holding everyone to the same standard, then don't let this bureaucratic mumbo jumbo get in the way. This rule was created to fix a specific problem, and repealing it could effectively exempt mountaintop coal mining from modern regulation indefinitely.

This is a very important point that has to be made about Congressional Review Act votes. We are going to have a slew of them over the next probably 2 or 3 months. Here is the thing about a CRA vote because it gets rather technical. It is not just overturning a regulation. The way the law works, is that not only is the regulation overturned but an administration can never touch this issue again. We can't do anything that is "substantially similar."

So if you want to do something about the stream protection rule, make a law; override the rule that was just made and craft legislation. You have a working majority in both Chambers, work with the bipartisan group. You have four or five Democrats who voted for the CRA. Let's legislate.

What is going to happen when the CRA vote succeeds is we are never going to be able to touch the question of pollution from mountaintop removal

again—literally. That is how CRA works. So every time we have a CRA vote, it is not just whether you like the particular rule and want to overturn it, it is whether you never want to touch this subject matter again. That is a rather serious threshold that we have to come through.

We are going to do a lot of CRAs. I know everybody on the Republican side is raring to go to sort of undo all the rules that were done under the Obama administration. Fair enough. We understand. You have the Presidency. You have both Chambers. It is certainly your prerogative to take up all of these CRAs, but be careful because you are not going to be able to touch these issues again. You are forfeiting your prerogative to touch these issues again.

So for the sake of public health and in order to leave a better world for our kids, we need to keep this rule in place. I yield the floor.

The PRESIDING OFFICER. The Senator from West Virginia.

Mrs. CAPITO. Mr. President, I am here to speak in support of the Congressional Review Act on the stream protection rule.

I want to say to those who participated in the last election—where part of the discussion was the Federal Government knows all and needs to be in your life and in your business life every day, and it knows the best one-size-fits-all way—that help is on the way today. A lot of the talk of the election is now going into action in the form of the Congressional Review Act.

In particular, the stream protection rule was a last-minute power grab that was aimed at giving more power to the Federal Government.

Now, at the onset, I would like to say this: I don't have any charts. I don't have any pictures, but then I thought, you know what. Yes, I do. I have a lot of pictures on my device here, which I will not open up because it is against the rules and you will not be able to see anyway. But in these pictures, you will see a picture of me fishing in a beautiful stream in West Virginia, where trout is unlimited. You will see me riding an ATV on a Hatfield-McCoy Trail, which is the old mining trails and the old lumber trails in southern mine country in West Virginia, where thousands of people come every year. You will see me visiting a school or a business park that is built on the top of what is a reclaimed mountaintop removal.

If you have ever been to West Virginia, they don't call us the Mountain State for nothing. It is mountain after mountain after mountain, difficult terrain, and in some ways it is very difficult to have any kind of economic development.

So when the laws are enforced—the laws that we have now, in terms of water protection and reclamation—after the mining is finished, we have been able to have some economic development projects that have been to the benefit of many communities there.



So I have no charts. I live there. This is my home. I can drive 4 miles and be at a coal mine very easily, probably less than that.

I heard the argument about outdoor recreation, that people want to have outdoor recreation. I just described three outdoor recreation activities in my State, and the ranking member was talking about how she fished in West Virginia and enjoyed it and had good luck, I hope. Anyway, we have beautiful trout streams, but the outdoor recreator doesn't want to see a coal mine. I would bet the outdoor recreator doesn't want to see a nuclear plant, probably doesn't want to see a wind-mill farm, probably doesn't want to see a natural gas plant because when you are getting away to recreate, I don't know that anybody would want that, but I can tell you what they do want.

They want the steel that is in their truck to get them there. They want the electricity that they have to have when they go home at night to cook their food or clean their clothes or all the different things that electricity does.

There are tradeoffs to everything. Certainly coal has provided the base-load of the industrial revolution for this country, and we still, I think, have a great role to play.

There are estimates with this rule. The other thing is, it was said that there were no rules in place until we had this rule. That is absolutely false—absolutely false. This rule was rushed in. It was worked on for 5 years, yes. It had 10 State regulators. Let me go back.

The regulation, under the Clean Water Act, is done by the States through the EPA, in conjunction with State and Federal, with the EPA overseeing what the States are doing to make sure they are meeting the minimum standards.

So there are protections in place, and we welcome those protections. Where we live, where everybody lives, we want that. Can we do better? Absolutely, we can do better. We should always strive to do better.

This rule has been in the making for 5 years. Ten States came to this table, 10 States which were most heavily impacted, to try to help the Department of Interior develop this rule.

Our DEP Secretary Randy Huffman says that this proposed version of a stream protection rule—and this is not a Republican-Democrat thing. This is a Democratic Governor's DEP commissioner saying that it was “an unnecessary, uncalled for political gesture.” He went on to say that “the combined administrative record developed throughout the history of mining regulation under SMCRA is totally devoid of any indication of a need for this radical rewrite of the regulations governing the way coal is mined in America.”

Other States have made comments as well. We had the Ohio Chief of Mineral Resources Management Lanny Erdos

testify before our EPW Committee. “OSM has not provided for meaningful participation with the cooperating or commenting agency States.”

Basically, these State regulators who were charged with the primacy of putting forward the water standards in their States and overseeing mining in their States were basically invited into the party and then put in another room and not listened to. Then, eight of them walked away. That has to tell you, this wasn't an even playing field and was probably a very insincere effort to include everybody's opinions.

In Wyoming, Todd Parfitt said: “The failure to engage cooperating agencies throughout this process is reflected in the poor quality of the proposed rule.”

We have heard a lot about the empathetic voices of the job losses: 60,000 miners since 2011, many of them in my State. Many of these men and women who were making \$80, \$90,000 a year no longer have a job. They are living in communities that are decimated.

Our State is \$500 million in the hole. We are trying to transition. We are trying to do the right thing, but rules like this that we are about to overturn through the CRA process are such an overreach of authority.

The EPA has already gotten slapped down by the Supreme Court for the match rule. They put a stay on the Clean Power Plan. There are definite questions as to the authorities that the past administration has put forward.

United Mine Workers of America President Cecil Roberts says: “We are especially concerned with the long-term negative impact this rule is very likely to have on future longwall coal mining in the United States and associated employment impacts on our miners.”

We have heard about mountaintop removal. There is a strong belief that this will impact our underground mining as well. That is pretty much—I wish I knew the exact percentage, but I would say well over 70 or 75 percent of the mining and maybe more than that.

I hosted Senate committee field hearings centered on energy jobs in Beckley, Logan, and Morgantown. Bo Copley, a coal miner who lost his job, talked about the impact regulatory policies were having on him, his young family, his community, and his former colleagues.

We heard about the fact that the health and pension of our miners is in deep trouble. I have been very much on board. Senator MANCHIN and I have been working hard—along with Senator PORTMAN, Senator BROWN—with those more affected regions to make sure the health care and pensions of our miners are funded and that those miners know that the benefits that were promised will be there for them and their families. The promises made will be promises kept, but this downturn in the coal industry heavily affects the ability for the pension funds to be solvent and for the health benefits to be carried on. So there is a direct correlation between

the overregulation we have seen and the effects in the health and pension funds.

The ranking member on the Energy Committee—and we just had a good conversation. I will paraphrase what she said: Sometimes I think we are sort of talking by one another. And I think maybe she is right in certain respects, and she mentioned the effect of natural gas on the coal industry. Yes, that has had an effect on the coal industry, but this rule that was proposed, rushed in at the last minute by the Department of Interior, would have an even more devastating effect than the combination of regulations to this point, the combination of the natural gas and market conditions.

So you ask: Oh, how rushed in was it if it was being worked on for 5 years?

Well, they didn't publish the rule until December 20, 2016, after the election—the election in which overregulation was one of the key factors that was discussed during the election and the effect on economies and businesses and the ability for American workers to continue to work hard and keep their jobs, but Americans rejected the continuation of these policies.

So they published the rule on December 20, 2016, and then it was made effective January 19, 2017.

What is January 19, 2017? It was the day before President Obama left office. There is no irony there at all, I don't think.

I am here to say that Senator MCCONNELL and I have put this forward. It is one of the first ones that has come forward in terms of the Congressional Review Act. Help is on the way, and the President will sign this. He has said in his Statement of Administration Policy: “The administration is committed to reviving America's coal communities, which have been hurting for too long.”

Again, I can tell you about it. I could probably show you pictures of it. I live there. These are my friends. These are folks I see every day. I see them in the grocery store. And we have seen the effects in our region to the point of six of our counties are in deep, deep depressions.

So I want to congratulate the House of Representatives for passing this earlier today. I want to thank West Virginia Representatives DAVID MCKINLEY, EVAN JENKINS, and ALEX MOONEY for voting yes and getting a strong vote. I would like to thank Leader MCCONNELL for his leadership on this and the 27 other cosponsors of this bill.

Lastly, I would like to say, we heard the Senator from Hawaii talk about how this is really going to create jobs. Well, I found an article from the Wall Street Journal on December 20, 2016, and I am going to quote from it.

Interior's projections about the economic impact are laughable. OSM reckons the rule would cost a mere 124 coal mining jobs a year—

Whereas, other estimates are almost as much as one-third of the jobs—

but instead of visiting operating mines, the wizards at OSM built their estimates on computer models. They even reported a net gain in jobs—

And I think this is what the Senator from Hawaii was talking about—as miners are replaced by workers implementing the rule.

Less mining but more workers—genius.

This reminds me a little bit of when we were talking about all of the regulatory burdens of Dodd-Frank, which I am sure we will be getting into in another CRA. I was on the Financial Services Committee over in the House for a long time, and we learned, when Dodd-Frank went into effect, within a year and a half, the largest growing profession was bank auditors. So the government has created jobs for bank auditors to put forward their rules. It sounds a lot like that is what OSM has done with this rule.

I would just like to close with this. We are going to move forward with this because it is important to our region. It is important to a lot of working people. It will not and does not in any form or fashion allow fowling of the water, fowling of our streams. There are protections that are carried forth through our State regulators who came to the table for this rule, who felt they were not being listened to and, over the course of 5 years, all drifted out. I don't think they were invited back. I am confident this will have an effect of saying: America, you voted to unleash the American economy, to let our regulators regulate, to let our clean water statutes move forward in conjunction with State and Federal regulators, to let Americans know that the Federal Government is not going to be reaching into every aspect of your life and it is going to result in losing your job, creating hopelessness, 72 teachers being laid off in my county last month because we have lost people, real estate values going down, and the loss of a valuable resource that leads to the strength and to the viability and to the security because energy security is security for our country, for our whole country.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. CARPER. Mr. President, I rise in opposition to this effort under the Congressional Review Act to block implementation of the stream protection rule.

CRA offers Congress an important tool, as we know, to consider potentially egregious rules that are promulgated usually at the end of Presidential terms. The stream protection rule, which we are considering this evening, is not one of those.

I live in a State—Delaware—whose citizens can be adversely affected by the upstream actions of others and border States whose citizens could be compromised by the things we do.

I take it as a matter of faith that we should treat other people the way we want to be treated. We call that the

Golden Rule, and I know that not everyone shares my passion for the Golden Rule, even though it appears not just in my faith, those who happen to be Catholic or Protestant, Jewish, Muslim, Hindu, Buddhist—it appears in all faiths, the idea that we ought to treat other people the way we want to be treated.

I also believe the Federal Government should act to protect citizens from the harm of the actions that other citizens would do to them. This stream protection rule is, I believe, one of those actions.

I am a native West Virginian. I was born in Beckley, WV, a coal mining town in South Central West Virginia. I understand well the role coal mining has played in supporting families in my native State and communities there for longer than any of us can personally remember.

I also know that mining operations have had a devastating impact on the lives of those who have endured compromised drinking water and destroyed natural habitat, with a loss of the fish and wildlife that define the fabric of my native State and all other States.

This rule has been a long time coming, as we have heard this evening. Indeed, we are living with rules governing mining conduct that go back, I believe, as far as 30 years. It is time for an upgrade, and I think the rule before us is a sound, responsible, and carefully developed answer to that need.

In what is becoming an art form in this country, there are myths—some call them alternative facts—that are swirling around this rule. As ranking member and the senior Democrat on the Environment and Public Works Committee, I want to address a couple of them.

Some would attack this rule's provisions as redundant and inconsistent with State obligations under the Clean Water Act. I am also a former Governor and am keenly aware of the problems of inefficient governance and avoided at all costs conflicts between State agencies. It wasn't always easy, but we didn't need Federal actions to compound those frictions. I am happy to say that the drafters of this rule heard those concerns, and this rule promotes collaboration and coordination between mining and environmental agencies and clarifies their roles, preserving their authorities under the surface mining and clean water laws.

Both the EPA and the Army Corps of Engineers concurred with the final rules, and in doing so, EPA said: "We have concluded that nothing in the Stream Protection Rule is inconsistent with the provisions of the Clean Water Act and that the final rule does not inhibit the EPA's Clean Water Act authority to require that surface mining activities comply with all applicable provisions of the Clean Water Act, particularly those provisions related to water quality."

The EPA goes on to say: "The final Stream Protection Rule incorporates

measures to limit duplication and avoid inconsistency in the implementation of Surface Mining and Reclamation Act and Clean Water Act programs, while supporting complementary, comprehensive, and effective environmental reviews of proposed surface coal mining operations."

Some would say that the stream protection rule allows the U.S. Fish and Wildlife Service to veto Surface Mining Control and Reclamation Act permits. That is not true. It is true that section 7 of the Endangered Species Act does require the Office of Surface Mining Reclamation and Enforcement of the Department of the Interior to consult with the U.S. Fish and Wildlife Service if any action "may affect" listed terrestrial and freshwater species.

The stream protection rule allows permit applicants and regulatory authorities to achieve ESA compliance in a variety of ways but does not provide the Fish and Wildlife Service any veto authority over permits. Indeed, this past year, the Office of Surface Mining Reclamation and Enforcement and the Fish and Wildlife Service completed consultation under the Endangered Species Act, resulting in what is known as the 2016 Biological Opinion. This new Biological Opinion smooths the way for more efficient Endangered Species Act compliance, while providing important protections to industry and State regulators regarding possible impacts of mining operations on protected species.

I think it is important to note that if we kill this rule, that protection for industry and State regulators will go away. Let me repeat that. I think it is important to note that if we kill this rule, that protection for industry and State regulators will go away, and those players will have to resort to a more cumbersome case-by-case review under the Endangered Species Act for all activities that might affect protected species. That would be a shame for a struggling industry.

For those and a host of other reasons my colleagues will offer today, I urge a "no" vote on this resolution.

I thank the Presiding Officer, and I yield back my time.

The PRESIDING OFFICER (Mr. GARDNER). The Senator from Georgia.

NOMINATION OF NEIL GORSUCH

Mr. PERDUE. Mr. President, during the Presidential campaign last year, President Donald J. Trump promised the American people he would nominate an unwavering supporter of the U.S. Constitution to the Supreme Court. He has now kept that promise.

I personally applaud the President for nominating Judge Neil Gorsuch to serve on the U.S. Supreme Court. He is an outstanding choice. Throughout his career, Judge Gorsuch has been a stalwart, standing strong in support of the U.S. Constitution. He has repeatedly shown his commitment to our country's founding principles of economic opportunity, fiscal responsibility, limited government, and individual liberty. These principles have served to



make our Nation exceptional throughout our history. Each branch of government has the shared charge of preserving and protecting those rights for all Americans. Judge Gorsuch has had a remarkable career in both the public and private sectors and has demonstrated a keen understanding and appreciation of the law.

He has an outstanding academic record. He is an outsider to the political nonsense here in this town. He has an impeccable judicial record, and he is actually called a “judge’s judge” in the Scalia mold. He is a mainstream judge.

Actually, when he was confirmed in his current position, he was confirmed by 11 Democrats who are still in this body today, including Senators LEE, FEINSTEIN, SCHUMER, and DURBIN. Clearly, Judge Gorsuch will honor the formidable and impressive legacy of defending the Constitution left by Justice Scalia.

Throughout last year, I and other Members in the Senate held our ground in saying that no nominee to the Supreme Court should be confirmed until after the Presidential election. We believed the American people deserved a voice in the process. We also knew that the hyper-partisanship and politics of a Presidential election cycle should never have any place in the nomination and confirmation of a Supreme Court Justice, which we all know is a lifetime appointment. The integrity of the advice and consent process, clearly spelled out in Article II, Section 2 of the Constitution, was at stake. In protecting the integrity of the sacred constitutional process, we did our job.

Our position was exactly the same, ironically, as held by former Vice President Biden, former Minority Leader Harry Reid, and others in earlier times and earlier debates.

Now that President Trump has announced his nomination, it is time to continue doing our job. I hope the minority leader and Members of the minority party will walk away from the hypocrisy they are already demonstrating this year.

Last June, the current minority leader tweeted: “In order for justice to remain a pillar of this nation, we must have a functioning judicial branch. The [Supreme Court of the United States] must have nine [sitting Justices].” Later that same month, the minority leader said before the U.S. Senate: “Every day that goes by without a ninth Justice is another day the American people’s business is not getting done.” So why would the current minority leader and some of the Democrats in this body now say they will filibuster any nominee to the Supreme Court before even knowing who would be nominated?

The minority leader railed on the Senate floor. Yet last month he went on CNN and said: “We absolutely would keep the seat open . . . we will fight it tooth and nail, as long as we have to.”

Again, this was before a nominee was even announced.

The political theater of 2016 has no place in the confirmation process this year. Now is the time to govern, not to engage in the far-off political theater of 2018 and 2020. As we move forward in this process, I hope the minority leader and my colleagues across the aisle will remember that. I hope they will put the integrity of the Constitution before the scope of their political ambition and their bitterness about last year’s election outcome.

I would remind my colleagues across the aisle that Republicans put aside political theater to confirm two Justices to the Supreme Court under both President Obama and President Clinton. Now President Trump has nominated Neil Gorsuch, who is a principled judge who will put the Constitution of the United States and the rights of all Americans at the forefront of any decision he takes. Judge Gorsuch’s record of service and his commitment to the Constitution is quite clear. I am looking forward to voting to confirm his nomination and to ensure that we have a fully functioning High Court.

I strongly urge my colleagues across the aisle to put aside their partisan self-interest and do what is right for our country. Our children and our children’s children deserve nothing less.

TRAVEL BAN

Mr. President, I also would like to speak momentarily to the President’s recent Executive order to strengthen our refugee screening process that he thinks will protect America, and I agree with him.

The minority leader’s tear-jerking performance over the past weekend belongs at the Screen Actors Guild awards, not in a serious discussion of what it takes to keep America safe. Folks back home are fed up with Members of this body stirring up global hysteria to score political points.

Let’s be clear. This temporary action is not a so-called Muslim ban, and no Muslim ban has been put into place. As a matter of fact, the five countries most heavily populated with Muslims around the world were not included in this temporary pause on movement. In fact, almost 90 percent of the world’s Muslim population is not even remotely affected by this temporary pause.

The seven countries that were included in President Trump’s Executive order—Iraq, Iran, Syria, Libya, Somalia, Sudan, and Yemen—were included for specific reasons. Each of these nations was previously identified by President Obama as posing national security threats to the United States.

This is not a target at any religion; it is simply a temporary pause in the movement of individuals from nations of concern in order to assess whether our current screening system is in the best possible shape to protect Americans. I am apoplectic that Members of the minority party and the former President of the United States would actually say or imply otherwise. Their comments encouraging civil unrest and

disobedience are both deplorable and unacceptable.

The failed foreign policy of President Obama in Syria and the broader Middle East has made the world more dangerous than at any time in my lifetime and has helped to create the current refugee crisis around the world. We are at war with ISIS, and we know they have identified and targeted our refugee system as a point of weakness. They have already exploited the refugee systems of nations in Europe, carrying out terrorist attacks and killing innocent people.

It would be malfeasance for our President not to take action and immediately review our current screening process to ensure we are helping those in need and keeping terrorists out. This temporary pause will allow us to assess our current screening process and strengthen it as needed. Moving forward, the implementation of this temporary pause must be efficient and effective.

During this screening review period, we should avoid overreacting to the responsible steps that have been taken to prioritize the protection of all Americans. It is totally irresponsible and ridiculous for the minority leader, Members of this body, the former President, President Obama, and others to suggest that it is anything other than a rational, responsible step to keep America safe and deal with the ISIS threat once and for all.

I yield my time.

The PRESIDING OFFICER. The Senator from Washington.

Ms. CANTWELL. Mr. President, I know my colleague from Oregon is around somewhere and wanted to speak on this rule, and when he shows up on the floor, we will certainly give him the time to do so. I want to make a couple of points while we are waiting for him.

First, in this discussion here with my colleagues, there is some discussion and I guess the start of what will be a continuing theme that somehow, if you get rid of regulations, we are going to restore competitiveness to the U.S. economy. Nothing could be further from the truth.

If you ask businesses what we need to do to be competitive as a country, they will say: Make sure we have a great education system. Make sure we invest in R&D. Let’s develop new technology.

If we look at where businesses are locating, they want to locate in beautiful, pristine places because they know that is where their employees will want to locate. So, first of all, that somehow the government is going to restore the economy by deregulating and letting polluters pollute is just not correct. It is not what America wants. What people want is to have safe drinking water, and they want an outdoor economy that is supported by having a great environment.

So I want to say a couple of other things. Obviously, this rule that we are talking about and that has been developed over a long period of time is an

improvement over the 1983 rule because it gives us a better idea on the pollution that is happening. Now, if people don't want to know that information, I guess that is OK. The court, counter to what my colleague from West Virginia said, did not say that it was suspending the rule. It said that it was still in effect, that the pollution had to be cleaned up. It said: Come back and look at the economic impact. But somehow, some are saying that the Supreme Court decision on the MATS rule gave EPA and others a get-out-of-jail-free card; you don't have to look at pollutants. They have to look at pollutants.

So what is this issue about? It is about clean water.

Mr. President, I wish to enter into the RECORD a couple of articles that I have seen from constituents. My colleague from West Virginia mentioned a few people. These are the real people in America who want this.

One of them is a gentleman named Ben Kurtz, who happens to be from Grand Junction, CO. This is what he says:

It's often said that drag is a fly fisherman's greatest enemy. The truth, however, is that a wet fly or heavy drag is irrelevant if you don't have clean water to fish. Our lakes, rivers, streams and the fish that inhabit them are all extremely sensitive to pollution. And right now, many of these streams all across our country are being threatened by dirty groundwater stemming from coal mines.

Despite this, it's been nearly a decade since the Department of Interior has updated its Stream Protection Rule—an inadequate, Reagan-era regulation governing impacts to waterways from coal mining which was weakened even further under the Bush administration.

For the last six years, DOI has been engaged in the process of updating and gathering input on the rule, with the ultimate goal of revising it to make it more effective, in line with the challenges our waters face today as well as the law Congress passed in the 1970s to create it. While it has been a long time coming, that process now appears to be coming to a close.

Once finalized, the revised rule would establish common-sense new protections that would safeguard the health of our waterways, and by extension, the communities that are impacted by them. For example, the rule would strengthen baseline requirements for water quality testing to ensure that coal mining operations are not polluting streams in a manner similar to that of the old hardrock mines throughout the West.

In addition, the revised standards would require coal mines to develop a plan for how to protect fish and wildlife while also putting in place measures that will reduce impacts on habitats and improve reclamation of mines that have shuttered.

I mentioned earlier as a side note to this letter that we have 250 such mines in our State.

These proposed changes are just common sense: The rule is low-cost (independent analysts have calculated that the safeguards would cost between 1 and 60 cents per ton of coal that's mined) and while the revisions are expected to result in cleaner waters and improved public health, its impact on jobs will be slim to none.

Still, the issuing of a strong final Stream Protection Rule is not a foregone conclusion,

as the coal industry is intent on maintaining the status quo. Were that to transpire it would mean streams that are at greater risk of being polluted with coal mine waste and runoff.

Taking all of this into account, it's clear that whether you're a fly fisherman or not, the revised rule is something we should all support. Cleaner waters not only mean better fishing but cleaner and healthier communities too.

Speaking on behalf of my fellow fly fishermen, I applaud the Department of the Interior for its ongoing efforts to enact sensible safeguards that protect the federal lands we all support and enjoy. It's time for DOI to push the Stream Protection Rule update across the finish line so we fishermen—

Obviously, this letter was written before that—

can go back to worrying about the little things—like what color fly to cast—rather than fretting over groundwater pollution that threatens our vibrant ecosystems and jeopardizes our health.

Well, I think Mr. Kurtz said it the best.

Mr. President, I ask unanimous consent that this article be printed in the RECORD.

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

PROTECTION FOR OUR RIVERS AND STREAMS IS LONG OVERDUE  
(By Ben Kurtz)

It's often said that drag is a fly fisherman's greatest enemy. The truth, however, is that a wet fly or heavy drag is irrelevant if you don't have clean water to fish. Our lakes, rivers, streams and the fish that inhabit them are all extremely sensitive to pollution. And right now, many of these streams all across the country are being threatened by dirty groundwater stemming from coal mines.

Despite this, it's been nearly a decade since the Department of Interior has updated its Stream Protection Rule—an inadequate, Reagan-era regulation governing impacts to waterways from coal mining which was weakened even further under the Bush administration.

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These proposed changes are just common sense: The rule is low-cost (independent analysts have calculated that the safeguards would cost between 1 and 60 cents per ton of coal that's mined) and while the revisions are expected to result in cleaner waters and improved public health, its impact on jobs will be slim to none.

Still, the issuing of a strong final Stream Protection Rule is not a foregone conclusion, as the coal industry is intent on maintaining the status quo. Were that to transpire it would mean streams that are at greater risk of being polluted with coal mine waste and runoff.

Taking all of this into account, it's clear that whether you're a fly fisherman or not, the revised rule is something we should all support. Cleaner waters not only mean better fishing but cleaner and healthier communities too.

Speaking on behalf of my fellow fly fishermen, I applaud the Department of Interior for its ongoing efforts to enact sensible safeguards that protect the federal lands we all support and enjoy. It's time for DOI to push the Stream Protection Rule update across the finish line so we fishermen can go back to worrying about the little things—like what color fly to cast—rather than fretting over groundwater pollution that threatens our vibrant ecosystems and jeopardizes our health.

Ms. CANTWELL. Mr. President, I can read others, but these are the people who are concerned about this rule. These are the individuals who want to know whether we are going to do our job and to say that polluters must pay. I believe that if we have the technology and the rules to do that, why would miners object? Why would the mining industry object to having the correct information?

I will read another letter from a Montana rancher this time.

As a long-time rancher of north of Billings, water supply has been a 70-year-old struggle for my ranch. The coal industry has posted a threat to my water supply since the 1970s, and more recently increased mining, spurred by fast-growing markets and the export to Asia, which has sparked water damage across the West. The limited water we are talking about in the West makes it doubly valuable and in need of protection. As the saying goes: "Whiskey is for drinking and water is for fighting." So it is absolutely essential that we protect the water we have, and sometimes that means a stronger rule from the Federal Government.

Most cattle ranchers in the Bull Mountains where I live rely on a combination of wells and natural springs to water our livestock. And like other nearby operations, my ranch is currently being literally undermined by coal mines using massive and destructive long wall machines that make it difficult for efficient mining because of surface disruptions, impairing coal aquifers, subsiding recharge areas, and they pull surface streams underground. I can think of no industry that degrades water in such a reckless and cavalier way as the coal industry. From acid mine drainage and thousands of mines' buried headwaters across Appalachia, to eating streams on the prairie that are destroying wells and springs in Montana's Bull Mountain.

While Montana surface mining laws require reclamation of the area over long mines, reclamation is a slow and uncertain process, and water in the existing mines in Montana has not been reclaimed, according to the bond-released statistics. These proposals for mining are to be included along these rivers and even moving along tributaries, to get it out of the way of coal mining. In Wyoming, Angelo Creek is slowly being eaten by a coal mine. With all of it as a backdrop, I am happy to see the proposal by the Department of the Interior to update this regulation put in place over 30 years ago.

So the proposed Stream Protection Rule would safeguard communities from destructive coal mining practices and keep pace with our current science and modern mining practices. These new rules would minimize impacts to surface and groundwater such as springs on my property by requiring companies to avoid mining practices that permanently pollute and diminish streams, requiring coal companies to test and monitor the conditions of streams that their mining might impact before and during and after operations.

The proposed rule would also require companies to restore streams and other waters that they were using and that were capable of supporting, like in the ranching area, prior to the mining activities. The Department of the Interior could also improve parts of the stream protection rule by providing technical assistance.

It is very well to have good standards and test these out in rules, but if they are poorly implemented on the ground and over time, the results will be like no rule. So the Interior Department's work to update and modernize these decade-old rules and regulations is absolutely essential if we are going to keep a bad situation from getting worse. Clean water in the West is too precious to let coal companies pollute it or diminish it.

This happens to be from a woman named Ellen Pfister who has a cattle ranch in the Bull Mountains area of Shepherd, MT.

So these are just two examples of people who really want to see us do something. Why? Because clean water is so important to them. It is so important to the outdoor economy, and it is important to this particular rancher who wants to make sure that clean water is an aspect of their farming.

There are a couple of other points I wanted to make about the rule and this notion that somehow overregulation has destroyed the pension program. It is so amazing that here in the Senate, somebody thinks that overregulation could blow that big of a hole into the pension program. The pension program had a more than 23-percent drop in the implosion of the economy in 2008 and 2009. So that kind of hole was there before this process. It is sad that now miners who are going to reach a retirement age won't have a pension to retire on. I think it is appalling that we bailed out Wall Street and we don't want to help with a pension program that basically took a major hit during the downturn. What are we saying to people? We don't care about those pensions, but we will turn over the keys to the Treasury to someone else?

So the notion that, somehow, standing up for clean water is equated with the pension program is just not true. We support those workers. We will do anything to help them from all aspects of that picture, including giving them a pension and making sure they have health care and retirement. We have had that discussion, and many of my colleagues had that discussion here late into the night just at the end of last year. I am sure that we are waiting for a response from Leader McCONNELL as to when he is going to put that kind of legislation on the Senate floor. But, unfortunately, what we have in-

stead is a rule trying to hold back making sure that we have safe drinking water, safe fishing water, and an outdoor economy that can count on these things.

I thank my colleague from Hawaii for being here earlier and talking about this issue, as well as my colleague who is the ranking member from the EPW committee, Senator CARPER from Delaware, making an eloquent statement and talking about the West Virginia economy, as he is a native of West Virginia, and now my colleague from Oregon, who is also addressing this issue. I appreciate their coming to the floor tonight and being part of this discussion.

This is so important to all of us and really to all of our country. I think making sure that people understand how important clean water is to various aspects is so important. So I thank my colleague from Oregon.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. MERKLEY. Mr. President, I appreciate the comments just delivered by my colleague from Washington State. Our two States are roughly the same size. They have similar amounts of coastline. We have citizens who share a lot of perspective on the country and that may be apparent in the comments I am about to make.

Mr. President, from our earliest days, long before the Founding Fathers gathered in Philadelphia to declare that 13 disparate colonies were united and "absolved from all allegiance to the British Crown" and long before they sought to "form a more perfect Union," our streams, our rivers, and our lakes have been the economic lifeblood of our Nation. They have supported commerce and trade, fishing and agriculture. They have facilitated the ability to travel the vastness of this continent. They have sustained our growing communities and served as critical resources for public health.

It is no wonder, then, that generations of Americans have worked incredibly hard to protect these natural resources to keep them clean and safe. That is why here, in the Senate and in the House, in 1972, we passed the Clean Water Act that formed the foundation for our Nation's water regulations. It is why, 2 years later, the House and Senate developed and passed the Safe Drinking Water Act, to make sure that public drinking water supplies are safe throughout the Nation.

I recall the impact of these acts in my home State of Oregon. The Klamath River was considered extraordinarily polluted. You could boat down it and see pipes dumping into it at regular intervals. Then, over time, as the State worked hard to identify those pipes, remove those pipes, and make sure that all pollution went through water treatment, the river got better. It got healthier.

Now, it is not without its problems. Its problems still exist. There is still nonpoint pollution that affects life in

the stream. But it is a far more beautiful and far healthier river than it was before we passed the Clean Water Act.

We have proceeded to be fairly fierce about our enforcement. We have prosecuted polluters who have bypassed the law and dumped the results of their processes directly into our streams and our waterways. We have worked to protect wetlands, and we have worked to protect estuaries, understanding more and more about the role these various bodies of water play in our economy and play in our natural system and making sure they can continue to play that role so that we have a sustainable environment, one that is not at war with our economy.

We have made the two work very well together, and we have accomplished all this through the debate and dialogue that we have had in the Senate and in the House and that the experts have brought to bear in our committee hearing rooms. We have accomplished it through the testimony of concerned citizens across the Nation who have identified one particular problem or another problem and have brought those challenges to us here in this body, and we have worked to address them. If you have ever visited a nation that didn't have this kind of process and seen the intense, incredible pollution of its waterways, then you know what a difference it makes to have this public process. I invite you to visit China and see what happens when there is no public process for taking into account and rectifying the challenges when industrial waste is simply dumped into our waterways.

We take a lot of pride in protecting our streams, our rivers, and our lakes. That process has continued over these past years at the Department of the Interior, where the Office of Surface Mining Reclamation and Enforcement was working on the stream protection rule.

I am going to show a picture to give some scale to the type of mining that the Department of the Interior, Office of Surface Mining Reclamation and Enforcement was trying to address. We see here the little tiny tractor. This is actually a massive tractor dwarfed by the scale of this massive mine. Indeed, in many cases, the entire top of the mountain is blown off to get at the coal seams underneath. In the process, a tremendous amount of rock debris is created and a tremendous amount of fracturing that can lead to water that moves through the water table eventually finds its way into streams.

The goal has been to find a way that this type of mining can be done in respectful balance with the streams that are further down the mountainside. That is the challenge, and it wasn't easy to address. That is why this rule has been under development for 7 years, from 2009 right up through December of 2016—virtually the entire length of the Obama administration. During this period of consideration, there have been multiple reiterations of what the rule could look like and

what actually works in the real world, with stakeholder after stakeholder after stakeholder saying: This is what you have to do to make it work. The goal was that this type of mining would be done, but not in a fashion which would destroy the streams. That is why it took so much hard work to do this.

There were hundreds of hours of meetings, responses to over 114,000 comments on the rule. But here we are in the evening, with little attention being paid by the vast bulk of Senators spending just a couple hours and planning to undo this work.

Under the Senate rules under the Congressional Review Act, we have just 10 hours of debate. Some of that can be yielded back by one side or the other, so maybe it will only be a few hours of debate. In those few hours, we hold in our hands the fate of the streams downstream from this mining. This is the premise: Will they conduct this mining in a fashion and followup with restoration to protect the streams that will otherwise be devastatingly impacted?

I am going to say yes. Let's take to heart the 100,000-plus hours of work or the 114,000 comments and the multitude of meetings over 6 years, the work of professionals who talked to every stakeholder. Let's take to heart their work and not undo it in just an hour or two here on the floor.

The Senate works in a way now that, even with something that has such a profound impact, Senators aren't here listening to each other; thus, we are not sharing our thoughts back and forth the way the old Senate used to debate. It is almost in silence that we are undoing or potentially undoing all of this work. Shouldn't we be celebrating that so many folks came together to craft a strategy that would not cause this type of mining to destroy the down-mountain streams?

Let me show an example of what a down-mountain stream looks like. This is a stream that probably ran blue not too long ago. It now runs orange. It is full of toxic metals and who knows what. I rather doubt that any Member of the Senate would volunteer to go and take a cup of water from this stream and drink it. We can just look at it and know it is deadly.

So we are trying to keep in place a rule carefully crafted so this stream—which not so long ago ran blue or ran turquoise or deep green because it was a natural stream without this devastating pollution—will stay in that natural state. That is the goal. That is the point of this rule.

I want to be very clear that the stream protection rule is designed to enable mining and stream sustainability to go hand-in-hand. Coal mining is changing in America. It has adopted a number of practices that have made it safer. Machinery has also gotten bigger in ways that mean far fewer people are employed in it. It is also changing because the economies of the energy

market are changing. We see that natural gas prices have dropped so low that many utilities are shutting down their coal plants and they are opening up natural gas plants or they are investing in wind or solar renewables. But we need to recognize that for 150 years coal mining families have worked incredibly hard, at great personal risk to their health, to put meals on their tables and to provide power to our Nation. So let's have this conversation about protecting our streams with a full respect for the mining economy and the families that have put their lives at stake and worked to put food on the table.

There is no reason we can't do what we have done in so many other parts of our economy to make the industrial process or the manufacturing process or the mining process be one that works in harmony with our environment, instead of at odds with the environment. That is the goal of the stream protection rule. It updates our 30-year-old coal mining regulations to better reflect the industry as it is today, in 2017.

The fact is, we know a great deal more about the impacts of various coal mining processes on both the people and communities and environment—much more now than we did when most of the regulations were put together decades ago. We know that when we use explosives to blast the summit of a mountain as is done in mountaintop removal, everything gets blasted up into the air and pushed down into the valleys where it ends up in rivers and streams. What is the result of that? If that newly blasted rock doesn't block the flow of the river and streams entirely, it is still in constant contact with them, leaching out pollutants into the water, and those pollutants include things like heavy metals and other toxics that pose enormous threats to the region's fish and to the plants and to the animals and, yes, even to the people who live downstream. There are pollutants like selenium, a metalloid that is toxic to fish even at a very low level, causing deformities, causing reproductive failures, causing death.

One way to tell the health of a stream is that it has life in it, but I doubt anyone would come out and say: Last year, I fished here when this was a blue-green stream, but this year I am not because with one glance at this stream, you know all the fish are dead.

There are other pollutants like cadmium, a pollutant that is not safe at any level and has been tied to cancer in humans. So as cadmium goes down into water, flows into the streams and cities and small towns further down, it adds to the health risks of the folks living in the areas.

Waste dumps called valley fills are left in place even when the mining is completed and the company moves on. We know that the rubble from mountaintop mining is impacting our streams and waterways because we

have measured it. According to the Environmental Protection Agency's statistics, valley fills from mountaintop removal are responsible for burying 2,000 miles of vital Appalachian headwater streams. Now, 2,000 miles is a lot of streams. Picture 2,000 miles of a blue-green stream reduced not just to a toxic red stream but to no stream at all because it has been completely covered and eliminated. That is a lot of fishing holes that are gone forever.

In addition to that, we know the fish populations downstream have been reduced by two-thirds from the places where mountaintop removal is occurring.

We know that communities nearby are contending with contaminated drinking water and that babies are being born with higher rates of birth defects. I think about the birth of my two children. Like every parent, we pray and hope that the child is going to be born free of birth defects.

So this rule is about something very close to our hearts. For some, it is the beauty of natural streams. For some, it is the opportunity to fish and see wonderful natural places. But for others, it comes straight to the question of whether their children are going to be born with birth defects. At the other end of life, we see downstream elevated levels of lung cancer, elevated levels of heart disease, elevated levels of kidney disease, elevated levels of hypertension.

So I ask: Is it right that here, in the dark of night, with just a few hours of discussion and virtually no one here in the Senate Chamber, we are going to undo 7 years of work designed to reduce birth defects, reduce lung cancer, reduce heart disease, reduce kidney disease, reduce hypertension, reduce contaminated drinking water?

In just a few short hours, we will be making a decision that will result in an impact on thousands of people, as well as thousands of miles of streams. The stream protection rule is pretty straightforward in its design. I will give a few details about what it is intended to do.

One is that it improves construction standards for waste piles. What is a waste pile? Well, it is pretty much what it sounds like. It is a pile built from accumulated rock waste that is removed when you do mountaintop mining. Why do we need to improve their construction? Because these piles grow to enormous size. They can involve millions and millions of tons of rock and debris. Over time, erosion in the soil around them can create dangerous, unstable slopes that can eventually produce landslides. So how you design it matters. These coal piles can have high levels of coal dust or hydrocarbons. And then there is the acid rock drainage. As water comes down in rain and it percolates down through these, it ends up seeping out into the groundwater or into the stream and poisoning the groundwater or poisoning the stream.

That is why it matters how you have a construction standard for a waste pile. Isn't it smart to have such a standard in place and one that has been developed over hundreds of meetings over 6 years so that mining is much more compatible with clean streams and healthy people?

Another thing this rule does is it enhances restoration by strengthening bonding requirements. It is not unknown, unfortunately, that coal miners would just abandon the mine once their operations were finished, leaving all sorts of undone business that adds to the enormous contamination that even a small amount of mining can do.

In 1977, Congress passed a law saying that miners needed to restore the land after their mining operation was completed and that they needed to provide a bond up front to pay for the cleanup cost just in case the company decided it didn't want to follow through on the cleanup after it completed extracting the coal. Strengthening that and making sure the bonding process actually works right, that the bond is actually there to do the cleanup, makes a lot of sense.

Years ago, I was immersed in first developing housing with Habitat for Humanity and then building affordable multiplexes for a nonprofit, Human Solutions. Companies that were being paid to do their work had a construction bond. The bond made sure that if the company somehow disappeared in the middle of the night, the work was going to get done. That bond was very important to the nonprofit, that what they were investing in—the payments they made were actually going to result in what was contracted to be delivered. That is the same thing here. A company that comes in and says: We got permission to mine—it is saying to the public, with a good bonding system, yes, you can be confident that the cleanup work will be done. That needed to be strengthened because often it is not done. That is another piece of this puzzle.

Then there is another piece that is related to coal slurry and reducing the odds of coal slurry causing a lot of damage. Coal slurry is liquid waste generated when mined coal is washed off. You have a lot of water that is thickened with debris from washing the coal, and it can be held in a basin, but if the walls of that basin fail and that coal slurry gets into the streams, it does massive damage.

That transpired in Martin County, KY, 16 years ago. An estimated 306 million gallons of slurry spilled into two tributaries of the Tug Fork River. How much is 306 million gallons? It is a lot of swimming pools, almost more than you can imagine. Another way to look at it is it is 30 times larger than the *Exxon Valdez* oilspill, one of the worst environmental disasters ever.

There it is. It was a big, massive pond that spilled into the forests and into the rivers in that situation in Martin County. Overnight, one of the

tributaries, the Coldwater Fork, a 10-foot-wide stream, became 100 yards of slurry. In some places, the spill was over 5 feet deep. It spread out and covered people's yards on the banks. Hundreds of miles of the Big Sandy River were polluted as a result as the stuff washed down the stream. The Ohio River was polluted. The water supply for 27,000 people was contaminated.

It is not that it has just happened once; it has happened other times. It happened in Buffalo Creek Hollow, WV, in 1972. In that case, it was 132 million gallons of slurry. That is about a third of the size of the other spills, so I guess you could say that instead of being 30 times *Exxon Valdez*, it was only 10 times *Exxon Valdez*. But it did a lot of damage. It created a wave going downstream that was 30 feet high. Can you imagine how much material is required to create a wave of—a flash flood of coal slurry 30 feet high? This didn't happen away from human civilization; this wave of coal slurry killed 125 people. This wave of toxic coal slurry hit and injured over 1,000 more people—1,121 more people. It left 4,000 people homeless, wiped out their homes and their towns.

That is the type of damage that can occur, so why not have a rule that has looked at how these ponds are created and said, here is a standard so that the pond is not overloaded or overtopped or the wall does not collapse and cause a tidal wave that will kill more than 100 people or injure more than 1,000 or leave 4,000 people homeless. Having a standard is the logical thing to do. It helps the companies because then they know exactly what they need to do to make that pond safe.

Those are some examples of what is in this rule.

I think it is important to understand another factor. This rule requires careful mapping before the mining is done so that the restoration process can be held accountable to restore the contours that existed previously, or as close as you can get. Without an understanding of what the land looked like beforehand, it is hard to say what it should look like when it is restored.

Those are commonsense measures. That is it. Common sense. Common standards for safety, for protection of the streams and the wildlife and the people. Isn't that what we should be all about? Shouldn't we not be undoing that, as we will be in a couple of hours, in a deserted Senate Chamber in the middle of the night? That is wrong.

If you want to change these standards—and I say this to my colleagues, and I know many do care a great deal about the environment—then have the courage to do it in daylight. Have the courage to do it in a committee. Have the courage to invite the public in to testify. But here we are tonight, hiding from the population across America, undoing this important work for the safety of our people. That is wrong.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. SCOTT). The Senator from Rhode Island.

Mr. WHITEHOUSE. Mr. President, it is my understanding that the Senator will take us through the closing script, and as a part of that, I will be recognized in the order to make my remarks.

With that understanding, I yield the floor.

What if I suggest that I begin my remarks, that you give me the high sign whenever the closing script is prepared—it is. Never mind.

I yield the floor.

The PRESIDING OFFICER. This is the high sign.

Mr. WHITEHOUSE. The high sign has been received.

The PRESIDING OFFICER. The Senator from Colorado.

#### MORNING BUSINESS

Mr. GARDNER. Mr. President, I ask unanimous consent that the Senate be in a period of morning business, with Senators permitted to speak therein for up to 10 minutes each.

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

#### VOTE EXPLANATION

Mr. DURBIN. Mr. President, I was necessarily absent for the votes on the motion to proceed to legislative session and the motion to proceed to a joint resolution disapproving the rule submitted by the Department of the Interior known as the Stream Protection Rule, H.J. Res. 38.

On vote No. 41, had I been present, I would have voted "nay" on the motion to proceed to legislative session.

On vote No. 42, had I been present, I would have voted "nay" on the motion to proceed to H.J. Res. 38.

#### COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

##### RULES OF PROCEDURE

Mr. ROBERTS. Mr. President, the Committee on Agriculture, Nutrition, and Forestry has adopted rules governing its procedures for the 115th Congress. Pursuant to rule XXVI, paragraph 2, of the Standing Rules of the Senate, on behalf of myself and Senator STABENOW, I ask unanimous consent that a copy of the committee rules be printed in the RECORD.

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

#### RULES OF THE COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

##### 115th Congress

##### RULE I—MEETINGS

1.1 Regular Meetings.—Regular meetings shall be held on the first and third Wednesday of each month when Congress is in session.