

part of the Senate's history, too, and that, too, shouldn't be ignored.

But there is an even more fundamental point, and that is that even in modern times, there isn't exactly an unbroken and lengthy practice of treating the blue slip procedure as if it were a veto. The practice is even sparser when you consider that the blue slip takes on a different function depending on whether the President's party is in control of a majority of the seats in the Senate. When the President's party does not control the Senate, the blue slip is an efficient way to negotiate with the opposition party, which, after all, can vote down the President's nominees.

When you look at the relevant circumstances, here is what you find: The blue slip has been treated as a veto for a grand total of 28 years when the President's party controlled the Senate. Fourteen of those years occurred under Senator Eastland, who was waging a personal vendetta against civil rights, including with respect to judicial nominees processed by the Judiciary Committee.

So if the Senate blue slip procedure is not a veto, what function should it play? As I have said, the blue slip is the chairman's prerogative. But if I were advising the chairman, here is what I would say: The blue slip should not be a veto of a nomination so long as the executive branch has sufficiently consulted with the home State Senators in advance of making this nomination. That rule is consistent with the appointments clause of the Constitution, which establishes joint shared responsibility for appointments to Federal office.

It is important to note that, contrary to what some of my colleagues have suggested, the appointments clause does not grant individual Senators the right to pick nominees, whether processed by the Judiciary Committee or otherwise.

That rule is also consistent with the best reading of Senate custom. It is roughly consistent with the practice that unfolded between 1917, when the blue slip was first adopted, and 1955, when Senator Eastland brought about some changes. It has at least as much support in modern practice.

What counts, then, as sufficient consultation? It is hard to come up with a precise rule, with a single mathematical definition, but in my view, the White House has an obligation to let the home State Senators know whom the White House might be considering for a vacancy. The home State Senators have the right to review the candidate's record and share any concerns they have about the candidate. Qualifications count. Character counts. Home State ties and ties to the community count. I don't think home State Senators have the right to demand someone who shares their particular approach to the law necessarily, but they do have the right to insist that the candidate believe in the

law as something independent from politics, particularly where the candidate is being nominated to a lifetime position in an article III court.

There is a final point to make. As we move forward, my colleagues across the aisle will charge us with hypocrisy just as predictably as our prediction that the Sun will come up in the east tomorrow. There are two things to say about this.

First, my approach to the blue slip has remained consistent since I took office. I have followed the approach that I have just described.

Second, until 2013, the blue slip was a lot less important because the minority party could filibuster. That is no longer an option because the Democrats changed the rules in 2013. When you change the rules—the actual written protections upon which we rely—when those are changed, then you are left reliant on customs. Customs can always be changed. In this case, the custom we are dealing with isn't even a particularly strong one. It is not even a particularly long-lasting one.

More broadly, in the Senate we are trying to figure out how to process the President's nominees. We have improved the pace of confirming nominees recently, but we are still significantly behind in modern historical terms from where we should be and from where other Senates have been during the first year of other Presidential administrations. We need to find a solution to improve the pace, including by remaining in session longer so that we can complete this important work.

It is essential that we understand the difference between, on the one hand, the Constitution and, on the other hand, the rules; and, on the one hand, the rules and, on the other hand, the custom. There is a significant difference here. In this case, the custom isn't even all that long, not nearly as long as some have suggested, and it certainly hasn't been consistent. We can do better, and do better we must.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

TAX REFORM

Mr. DAINES. Mr. President, as we cut taxes, there is one goal that is the most important: We need more good-paying jobs, and we need bigger paychecks for hard-working Montanans.

It was just announced that the Senate's draft tax bill will repeal a tax that fundamentally targets those of low to middle income in my State and across the Nation. In fact, in Montana alone, 75 percent of the people who pay this tax make less than \$50,000 a year. In fact, in Montana, 32.5 percent make

less than \$25,000 a year. This is not just anecdotal. In 2015, if you looked across the Nation, 79 percent of those who paid this tax made less than \$50,000 a year. In fact, a little over 37 percent made less than \$25,000 a year.

The IRS pickpocketed over \$3 billion from approximately 6.5 million Americans in 2015 alone, a majority of whom made less than \$50,000 per year. This is a tax that is targeted at those who are in poverty.

What is this tax, you might ask? Where in the world did it come from? I will tell you where it came from. It came from ObamaCare. It is the ObamaCare poverty tax.

Otherwise known as the individual mandate, which forces people to purchase health insurance or pay a fine, the poverty tax systematically taxes those who make less than \$50,000 a year. If it were not enough that ObamaCare plans were already too expensive for some of these folks, the IRS adds insult to injury by fining them, taxing them, for not being able to afford it. Some say that ObamaCare steals from the rich to give to the poor, but, honestly, ObamaCare's individual mandate is really Robin Hood in reverse. ObamaCare's poverty tax is like Robin Hood stealing from the poor to pay King John.

It is unthinkable that we would leave such a provision in the law when we have the opportunity to repeal it. By repealing it, we would save \$338 billion over 10 years. That is over \$300 billion that we could put toward additional tax relief for small businesses and families.

Alternatively, if we do nothing, the CBO projects that we will increase taxes by \$43 billion because of this poverty tax and that those taxes will be paid primarily by America's low- and middle-income families—\$43 billion in taxes on those who can afford it the least.

ObamaCare's poverty tax must go, and there is no better time to get rid of it than right now. I urge my colleagues on both sides of the aisle to join me in fighting on behalf of the low and middle classes of our Nation.

Benjamin Franklin is credited with this phrase: Just two things in life are certain—death and taxes.

That may be so, but we do not need to make them both quite so painful. That is why I am glad to see that a repeal of the ObamaCare poverty tax has been included in the current Senate draft tax legislation. I urge my colleagues in the House of Representatives to do the same.

Thank you.

The PRESIDING OFFICER. The majority leader.

ORDER OF PROCEDURE

Mr. McCONNELL. Mr. President, I ask unanimous consent that notwithstanding rule XXII, at 11:50 a.m. on Wednesday, November 15, the Senate proceed to the consideration of the following nomination: Executive Calendar No. 463; further, that there be up to 10

minutes of debate on the nomination, equally divided in the usual form, and that following the use or yielding back of time, the Senate vote on the nomination with no intervening action or debate; that if confirmed, the motion to reconsider be considered made and laid upon the table and the President be immediately notified of the Senate's action.

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

Mr. McCONNELL. I further ask unanimous consent that following the disposition of the Esper nomination, all postcloture time on Executive Calendar No. 383 be considered expired.

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

Mr. McCONNELL. For the information of all Senators, there will be three rollcall votes at 12 noon tomorrow.

LEGISLATIVE SESSION

MORNING BUSINESS

Mr. McCONNELL. Mr. President, I ask unanimous consent that the Senate proceed to legislative session for 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.

TRIBUTE TO ELIZABETH "LIZ" TISDAHL

Mr. DURBIN. Mr. President, today I want to take a few moments to acknowledge former mayor of Evanston, IL—and my friend—Liz Tisdahl.

Liz began her service to Evanston in 1989 on the Evanston Township School Board. After 2 years as president of the board, Liz was appointed to the Evanston City Council in 2003 by Mayor Lorraine Morton. Mayor Morton had met Liz years earlier when she was picking up her youngest granddaughter from softball practice. She didn't recognize the new coach and asked about her. It was Liz Tisdahl. Liz didn't have a child on the team, but she wanted to lend a helping hand in the community.

When Lorraine Morton became mayor, she always remembered how Liz stepped up just to help other people, so when it came time for Mayor Morton to decide whom she wanted to replace her, the first and only name that came to mind was Liz Tisdahl. When Liz was first approached to run, her answer was "absolutely not," but after giving it more thought, Liz answered the call to run to help out Evanston's residents who were leaving the community due to the increasingly high cost of living. Liz Tisdahl wasn't running for mayor to help herself, but like her time coaching that softball team years earlier, she was doing it for other people.

Early in Liz's tenure as mayor, she quickly learned what it meant to be the "face of Evanston" and the good

she could accomplish. At the time, too many Evanston residents struggled to afford housing, so Liz wrote a Federal grant application and flew to Washington, DC, to lobby for money to expand affordable housing in her community—and it worked. Evanston received an \$18 million grant. I remember calling her with the good news. Liz later said that was "the day that I realized that there really was something to this 'being a mayor' thing."

Liz Tisdahl also has successfully lobbied to secure a designation for a Federal qualified health center in Evanston, resulting in the establishment of the Erie Evanston/Skokie Health Center. Since 2012, the Erie Evanston/Skokie Health Center has treated nearly 12,000 patients and provided immediate care for the residents of Evanston.

In 2009, when Liz Tisdahl first ran for mayor of Evanston, she campaigned under a simple platform: "Diversity, Sustainability, and Economic Development." First, Liz set out to increase employment. She expanded the Mayor's Summer Youth Employment Program, which had 167 jobs in 2009. Since 2012, the program has grown by 100 jobs each year, employing 750 young people in 2016. Liz also created partnerships with Northwestern University, NorthShore University HealthSystem, and other businesses to establish job training and apprenticeship programs for the community's most vulnerable people. In 2009, the unemployment rate of Evanston was 8 percent. When Mayor Tisdahl left office earlier this year, unemployment was down to 4.1 percent.

Liz Tisdahl also worked to make Evanston greener and—as promised—brought changes to the city's sustainability efforts. According to a 2015 emissions report, Evanston reduced its greenhouse gas emissions by more than 18 percent between 2005 and 2015. In 2014, Evanston became one of America's first two cities to receive a four-star rating from the Sustainability Tools for Assessing and Rating Communities Initiative. For her environmental work and focus on sustainability issues, Liz received the Climate Protection Award from the U.S. Conference of Mayors.

Earlier this year, after two terms in office, Liz Tisdahl decided not to run for a third. When asked why, her answer was simple. Although she loved being mayor, she had accomplished her goals. Liz Tisdahl went out on top.

Despite her many achievements, Liz's proudest accomplishment is her family. Now that she is retired, I know she is enjoying more time with her children and grandchildren, but this isn't the last we have heard from Liz Tisdahl. She will continue to be a fearless advocate for the people of Evanston. Since retiring, Liz has joined the board at Curt's Cafe, an Evanston coffee shop that trains at-risk youth, prepares them to become job-ready, and helps them to transition into full-time employment. One thing is clear, Liz

Tisdahl is not done helping the community she loves.

I want to congratulate Liz Tisdahl on her distinguished career and thank her for her outstanding service to the people of Evanston. Now as she enters the next chapter in her life, I wish her and her family all the best.

(At the request of Mr. SCHUMER, the following statement was ordered to be printed in the RECORD.)

VOTE EXPLANATION

• Mr. MENENDEZ. Mr. President, I was unavailable for rollcall vote No. 272, on the nomination of Steven Gill Bradbury, of Virginia, to be general counsel of the Department of Transportation. Had I been present, I would have voted nay.

Mr. President, I was unavailable for rollcall vote No. 273, on the motion to invoke cloture on David G. Zatezalo to be Assistant Secretary of Labor for Mine Safety and Health. Had I been present, I would have voted nay. •

(At the request of Mr. SCHUMER, the following statement was ordered to be printed in the RECORD.)

VOTE EXPLANATION

• Mr. BOOKER. Mr. President, I was necessarily absent for the votes on confirmation of Executive Calendar No. 254 and the motion to invoke cloture on Executive Calendar No. 383.

On vote No. 272, had I been present, I would have voted nay on the confirmation of Executive Calendar No. 254.

On vote No. 273, had I been present, I would have voted nay on the motion to invoke cloture on Executive Calendar No. 383. •

ARMS SALES NOTIFICATION

Mr. CORKER. Mr. President, section 36(b) of the Arms Export Control Act requires that Congress receive prior notification of certain proposed arms sales as defined by that statute. Upon such notification, the Congress has 30 calendar days during which the sale may be reviewed. The provision stipulates that, in the Senate, the notification of proposed sales shall be sent to the chairman of the Senate Foreign Relations Committee.

In keeping with the committee's intention to see that relevant information is available to the full Senate, I ask unanimous consent to have printed in the RECORD the notifications which have been received. If the cover letter references a classified annex, then such annex is available to all Senators in the office of the Foreign Relations Committee, room SD-423.

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