

Like so many here, I was here in 2001 when President George W. Bush proposed his tax cuts, which I opposed, and assured us that our economy would grow, that jobs would multiply, that we would be fine. Let me remind my colleagues that he said this after we had made the tough decisions in the Clinton Administration that led to a projected surplus in the billions of dollars. The mantra from many people at the time was, let's give the money back to the American people.

We don't have a surplus today. We have a significant deficit. It will grow with this bill because this bill says that we are going to increase it by \$1.5 trillion at a minimum, and it will not be just \$1.5 trillion.

I suggest that, unless we abandon our commitments to the men and women of our Armed Forces, unless we decide to disengage from the deterrent that we must have to defend the Nation from a nuclear Armageddon, unless we decide to leave Afghanistan—after the President announced that no longer are we basing our decisions on time but on conditions—there will continue to be trillions and trillions of dollars of unavoidable costs that should be included in this debate.

This is not the time to take trillions of dollars and give a disproportionate share to the wealthiest Americans. This is the time for us to work together, to provide the resources for our military, to provide investments for our people, and to deal with the issue of inequality between the wealthiest 1 percent and everybody else. None of that is accomplished by this bill. In fact, this bill will complicate, compound, and make even more difficult the problems we face in defending the Nation and giving people a chance at having better futures.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Iowa.

BLUE SLIPS AND THE NOMINATIONS OF DAVID STRAS AND KYLE DUNCAN

Mr. GRASSLEY. Mr. President, earlier this week, I spoke about the history of the blue-slip courtesy. I hope my colleagues will read that history as well. I explained in that speech earlier this week that in my nearly four decades in the Senate, I have regularly returned my blue slip even when I would have preferred that the President had nominated someone else.

Today, I am announcing that the Judiciary Committee will hold a hearing for two circuit court nominees, each of whom has one home State Senator who has not returned a blue slip containing a positive endorsement.

The hearing for Justice David Stras, nominee to the Eighth Circuit, and Kyle Duncan, nominee to the Fifth Circuit, will take place on November 29. Both of these nominees appear to be very well qualified, and they deserve the Judiciary Committee's further consideration. I would therefore like to offer an explanation as to why I am choosing to proceed on these nomina-

tions and allow the hearing despite the lack of two positive blue slips.

As I explained earlier this week, the blue-slip courtesy is just that—a courtesy. For 100 years, the Judiciary Committee chairmen have asked for the views of home State Senators on judicial nominees via the blue-slip process. The blue slip is meant to solicit insights into nominees and ensure that the White House is adequately consulting with home State Senators as the advice part of the advice and consent would apply.

Let me be very clear. I will maintain the blue-slip courtesy, but some of my Democratic colleagues and leftwing outside groups mistakenly assert that the blue slip affords a home State Senator veto power over a nominee. That is not true. Only 2 out of the 18 previous chairmen of this committee in the last 100 years allowed a single Senator to wield veto power over a nominee.

Senator Joe Biden, when he was the Judiciary Committee chairman, articulated what I consider to be a sensible policy with regard to the blue slip. He said that a negative blue slip will be a "significant factor" for the committee to weigh, but "it will not preclude consideration of a nominee" unless the administration were to fail to consult with the Senator. I intend to follow this practice for negative and unreturned blue slips. This practice is consistent with the vast majority of the blue slip's history.

I will add that I am less likely to proceed on a district court nominee who does not have two positive blue slips from home State Senators, but circuit courts, as we know, cover multiple States. There is less reason to defer to the views of a single State's Senator for such nominees when that nominee is going to serve several States in a circuit.

It is important to remember that the judicial confirmation process has changed over the last several years. Previously, when home State Senators did not return a positive blue slip, their colleagues often defeated that very same nomination on the floor but not in committee.

When President Bush nominated Carolyn Kuhl to the Ninth Circuit, her home State Senators did not return positive blue slips. Chairman HATCH, nevertheless, held a hearing and a vote for that nominee. Her home State Senators, however, convinced their colleagues to filibuster the nominee on the Senate floor. Carolyn Kuhl was never confirmed.

A few years ago, as we know—I think it was in 2013—Democrats abolished the filibuster for nominees to the lower courts. They argued that a minority of Senators should not be allowed to block nominees who had majority support.

Our colleague, the Senator from Oregon, said: "‘Advice and consent’ was never envisioned as a check that involved a minority of the Senate being

able to block a Presidential [nomination]." Well, now that Senator is withholding his blue slip for a nominee to the Ninth Circuit. If he did not believe that 41 Senators should be able to block a nominee, he surely wouldn't believe that a single Senator would have that right.

I think the Democrats now seriously regret that they abolished the filibuster, as I warned them about at that particular time when they were trying to add a lot of people who were not needed on the DC Circuit Court of Appeals, as an example—packing the court, in other words. They cannot veto it because there is not a filibuster, so they want to use the blue slip for that purpose. It is very clear from the history of the blue slip that that is not what the blue slip was meant for.

On the other hand, some have argued that the blue-slip courtesy has no place in modern judicial confirmations. The LA Times recently suggested getting rid of the blue slip, as did the New York Times several years ago. Even our committee's ranking member, Senator FEINSTEIN, once advocated for abolishing the blue slip.

I disagree that we should abolish the blue slip. The blue slip serves the important purpose of encouraging consultation between the White House and the Senate. Otherwise, the constitutional provision of advice and consent is just consent. But there is opportunity to advise ahead of time. That is what the blue slips help to do. The blue slip serves the important purpose of encouraging consultation between the White House and the Senate. The White House has an obligation to engage in good-faith consultation with home State Senators for the purpose of advice.

I will not allow the White House to just steamroll home State Senators, but, as I have said all along, I will not allow the blue-slip process to be abused. Ever since last November, when the press had asked me about the blue slip, I have said that we are going to honor the blue-slip process but that there are always exceptions. I am not going to allow Senators to prevent a committee hearing for political or ideological reasons. Those are the least reasons not to have a hearing. Using the blue slip for these purposes is not consistent with historical practice.

This brings me to one of the two nominations we are having on November 29, that of Justice David Stras of Minnesota.

Justice Stras appears to be exceptionally well qualified. He graduated first in his class from the University of Kansas Law School. He clerked for both the Ninth Circuit and the Fourth Circuit and then for U.S. Supreme Court Justice Clarence Thomas. After several years in private practice in Minnesota, Justice Stras joined the faculty of the University of Minnesota Law School. He remained there until his appointment to the Minnesota Supreme Court in 2010. In 2012, he was

elected to a full 6-year term on the court by 56 percent of Minnesota voters. Think about one's not returning a blue slip when somebody gets 56 percent of the vote to be returned to the court.

Justice Stras was raised by a single mother in Kansas. He is the grandson of Holocaust survivors. He carries the lessons passed down by his grandparents with him each day.

I want to refer to a writing he just submitted to a leading newspaper. Writing recently about their survival in Auschwitz and then immigrating to the United States, he recalled that his grandfather had "the uncommon gift of being able to see the light of human generosity in the midst of near-total darkness."

He wrote that his grandparents embraced "a message of optimism, intended to ensure that their children and grandchildren were able to lead a life free from the atrocities that they had witnessed."

Justice Stras has an impeccable reputation in the Minnesota legal community.

His former colleagues at the University of Minnesota Law School describe him as a person who "engaged in debate respectfully, listening to opposing ideas while backing up his own views with facts and arguments" and who "wanted our students to be exposed to a wide range of beliefs."

Another group of colleagues of Justice Stras from his days in private practice describe this justice as the type of attorney who "never talked down to people" and "there was never any hint that he felt himself superior to anyone." Instead, Justice Stras "listened to others' views, and worked to find an approach to legal problems that was both effective and acceptable to everyone on the team." They also note in that letter his dedication to mentoring young lawyers.

Despite these accomplishments and accolades, one Senator has withheld his blue slip. Evidently, my colleague from Minnesota believes that Justice Stras has not even earned a hearing before the Senate Judiciary Committee. But the reasons given for withholding the blue slip are not consistent with the blue slip's purposes and history.

Justice Stras was nominated to the Eighth Circuit on May 8, more than 6 months ago. After many months, my colleague formally announced that he would not return a blue slip. He cited Justice Stras's "deeply conservative judicial philosophy," as well as his admiration for Justice Thomas and Justice Scalia. To me, this amounts to an ideological litmus test: Admirers of Justice Thomas and Justice Scalia need not ever apply for being on a circuit court.

The Minnesota StarTribune's editorial board summed it up. They said the Senator from Minnesota "rejected Stras for one reason: the justice's conservative views."

The editorial board of the largest newspaper in Minnesota echoed the retired justice, Paul Anderson:

While Stras is more conservative than I would like, that is not the point. The question is whether Stras is qualified to serve on the Eighth Circuit. And he is.

My colleague later claimed that he was not adequately consulted by the White House, which would be a legitimate reason for withholding a blue slip, as I hope I have implied several times during my remarks today and before. So I looked into this by reviewing the records of consultation—and thank God the White House keeps pretty good records. It is clear the White House earnestly and repeatedly attempted to work with both home State Senators. The White House reached out to my colleague from Minnesota several times between January and May of this year to discuss the Eighth Circuit vacancy that Minnesota supplies a member for.

It wasn't until May 2 that my colleague suggested alternatives to Justice Stras. That was more than 3 months after initial contact by the White House. Nevertheless, the White House did what they should under the Constitution by listening to Senators. They considered my colleague's two suggested nominees. I am satisfied that the White House adequately tried to consult with both home State Senators as the Constitution requires under advice and consent. Therefore, I am not going to deny Justice Stras a hearing.

I would like to say a brief word about Justice Stras's supposedly rigid conservative views. The Judiciary Committee has received numerous letters attesting to Justice Stras's intellectual honesty and, probably more importantly, open-mindedness. It is clear that he has great respect for the rule of law, and his tenure on the Minnesota Supreme Court demonstrates that, like any good judge, he is able to put aside his personal views and apply the law faithfully.

One letter, written by a bipartisan group of attorneys from Justice Stras's former firm, noted that they "never doubted for a minute that he reached his decisions based on his well-considered view of the law, and not personal, political, or ideological considerations."

They went on to note:

The lawyers whose names appear at the bottom of this letter span the political spectrum, from Democrat to Republican, liberal to conservative. We differ in our political views, but we are united in our support of Justice Stras's nomination to the Eighth Circuit Court of Appeals.

There are all kinds of people writing that letter—Democrats and Republicans, liberals and conservatives. Why is a Senator concerned about the justice's ideological views when people who know him well seem to think that is not a consideration because he is going to make a good judge?

A group of former colleagues at the University of Minnesota agree. They

wrote a letter to the committee stating:

We are Minnesota law professors with diverse political views ranging from very conservative to very progressive. Some of us have appeared before Justice Stras as advocates, and all of us are familiar with his academic and judicial track records.

Now as I continue the quote, I want to say to everybody, get this:

He is no extremist, and he has approached his academic and judicial work without bias or favoritism.

This support is echoed by his colleagues in my State of Iowa. The committee has received several letters of support from the faculty at the University of Iowa College of Law where Justice Stras teaches as an adjunct professor. Among his supporters are the dean of the law school, Gail Agrawal, and Professor Sheldon Kurtz, a self-described "life-long liberal."

Justice Stras is a widely respected jurist, and he should have a hearing. Ideological differences should not prevent the committee from moving forward.

I would also like to address my decision to hold a hearing for Kyle Duncan, a nominee for the Fifth Circuit. He also has not had two positive blue slips returned. He is a widely respected appellate lawyer who has litigated over 30 cases in Federal and State appellate courts, including the U.S. Supreme Court.

My friend and colleague, Senator KENNEDY of Louisiana, has declined to return a positive blue slip. However, Senator KENNEDY expressed that while he is undecided on Mr. Duncan's nomination, he does not oppose a hearing for Mr. Duncan. This seems to me to be a very sensible approach. It is the correct distinction that a Senator should make when deciding whether to return a blue slip. The blue slip is not meant to signify the Senator's ultimate support or opposition to the nominee. It only expresses a Senator's view about whether the nominee should have a hearing.

Senator FEINSTEIN made this precise distinction in 2003 for Carolyn Kuhl's nomination. I referred to that nomination earlier in my remarks. Senator FEINSTEIN returned a blue slip which noted that she "reserved judgment" on Carolyn Kuhl. She also supported holding a hearing for Judge Kuhl. Ultimately, after Judge Kuhl's hearing, Senator FEINSTEIN decided to oppose confirmation.

Evidently, the hearing served a useful purpose, and Senator FEINSTEIN was able to distinguish between allowing a hearing and supporting a nominee. Senator KENNEDY has shown that he understands this distinction as well.

I look forward to hearing from Justice Stras and Mr. Duncan at the Senate Judiciary Committee hearing on November 29.

I think that all 100 Senators ought to look at the advice and consent clause. We have an opportunity to give advice to a President. We have an opportunity then, if that nominee comes up here, to vote for that nominee.

Do we want to preserve the “advice” part of advice and consent? If we do, I would suggest that we look at the blue slip as a useful tool for accomplishing a very important part of the process. If it is abused—at least while I am chairman, you don’t have to worry about it going away. But if it is abused, someday it will go away, and then all we are going to have, when it is all said and done, is consent.

I yield the floor.

The ACTING PRESIDENT *pro tempore*. The majority leader.

Mr. McCONNELL. Mr. President, I listened carefully to the excellent remarks of the chairman of the Judiciary Committee, outlining the history of the blue slip. I am going to say to the chairman that he has outlined a sensible use of the blue slip, which involves consultation but does not lead to a one-Senator veto of a nominee.

I thank the chairman for the history lesson. It is a history lesson that the Senate needed to hear.

I also thank the chairman for the spectacular job that he has done all year long with this new administration in processing and bringing forward highly qualified nominees. For generations to come, Americans who follow the third branch will be indebted to the chairman for the way he has handled these nominations, processed them, moved them out on to the floor, and given the Senate the opportunity to express its will.

I wish every Member of the Senate had been able to hear the chairman’s remarks, but I am certainly going to call these remarks to the attention of our Members every opportunity I get, and I thank the Senator from Iowa.

Mr. GRASSLEY. I thank the leader.

The ACTING PRESIDENT *pro tempore*. The Senator from Nebraska.

NATIONAL DEFENSE AUTHORIZATION BILL

Mrs. FISCHER. Mr. President, I rise today to speak about the National Defense Authorization Act. The process of negotiating the annual defense bill is one that has a long and important history on Capitol Hill.

This afternoon, the Senate voted to pass a conference report, continuing a tradition of 55 consecutive years in which the National Defense Authorization Act has been a must-pass bill for the Congress. People have a habit these days of assuming that Congress cannot pass major legislation, but this bill is a testament to the fact that when it comes to supporting our men and women in uniform, we work together to provide them with the support they need. I am happy to say that this year, we are carrying on this proud tradition.

This year’s National Defense Authorization Act was passed by overwhelming bipartisan majorities in both the Senate and the House. As a member of the Senate Armed Services Committee, I have been proud to do my part to help craft this bill and to be a part of the process.

We live in a rapidly changing world, and, unfortunately, one that presents a

growing number of threats and challenges that our military must face. Across the globe, we have witnessed the rise of dangerous new threats that make the mission of our warfighters even more challenging. In Europe, Vladimir Putin has shown a complete disregard for international law and order and threatens key allies and democracies that underpin the democratic backbone of Europe. In the Pacific, we face a nuclear-armed dictator in North Korea who murders his own people while threatening mass death and destruction to the United States and to our allies. In the Middle East, we have witnessed the rapid and fearsome emergence of radical extremist groups like ISIS, whose barbarism shocks the world. Their horrific acts of bloodshed show just how dangerous this warped ideology is, and the efforts of the men and women in uniform have played a critical role in the fight to stem this dark tide.

Unfortunately, this same ideology of radical extremism is finding new followers in Europe, Africa, and Asia. These threats demand that we be ready. The fact is that the United States has faced challenges before, and if one thing holds true throughout history, it is that our Armed Forces will be called upon to defeat the enemies of freedom and safeguard this Nation. For them to succeed, the Congress must provide the men and women in uniform the support they need to execute their missions. That is why I am so proud to stand before you today and speak about the National Defense Authorization Act.

This legislation sends a clear message: Now is the time that we begin to rebuild our military. Contained in this bill is the necessary funding to start filling the gaps and ensuring our force remains the best in the world. This includes increases to the size of the Army, Navy, Air Force, Reserves, and our National Guard. It also means that new, battle-ready systems are going to get the funding they need to be put in the field as quickly as possible. On land, the NDAA authorizes funding for 85 Abrams tank upgrades and 93 Bradley fighting vehicles. At sea, it revitalizes our fleet, authorizing 13 new ships for our Navy. In the air, it provides 90 new F-35 aircraft and 53 UH-60M Black Hawk helicopters.

Across all of these domains, the fiscal year 2018 NDAA authorizes funding for critical modernization priorities to help ensure that on every battlefield the men and women of America’s Armed Forces have the resources they need to complete the missions they are given.

I serve as chair of the Armed Services Committee’s Subcommittee on Strategic Forces, and my top priority has been the modernization of our nuclear forces and the Department of Energy’s nuclear weapons complex.

This bill strongly supports nuclear modernization and makes a number of other key investments within the sub-

committee’s jurisdiction. First, the conference report builds on important provisions included in the versions that passed both the House and the Senate this year, and it includes the administration’s request for additional missile defense funding, submitted earlier this month. In total, the bill authorizes an additional \$4.4 billion above the level requested by the President when the budget was initially submitted to improve our missile defense systems. This includes a significant expansion of our Ground-based Midcourse Defense system and authorizes resources to begin construction of another 20 interceptor silos at Fort Greely, AK. To further enhance the system’s effectiveness, the bill makes valuable investments in the network of radars and other sensors that support the system’s operations. The bill also contains reasonable reforms to our military space enterprise that are designed to achieve a more streamlined and agile system that is more responsive to the needs of our warfighters.

Furthermore, the bill improves the oversight and management of our nuclear command and control architecture. Often overlooked, these programs form the connective tissue between our national leadership and our nuclear forces. Their reliability and resilience are vital to the effectiveness of our nuclear deterrent.

As the specter of great power conflict returns and the threat from a nuclear-armed North Korea continues to grow, our missile defense and nuclear capabilities will play an increasingly important role in protecting our homeland. I look forward to continuing to work with my colleagues to further modernize and strengthen these vital capabilities to ensure that we stay ahead of the threats that our Nation faces.

Beyond the strategic forces portfolio, this bill recognizes that we must also rebuild our readiness and military infrastructure here at home, which is why we have included funding increases in the bill to support 90 percent of the requirements for facilities sustainment, as well as a significant increase for facilities restoration and modernization. This means newly authorized funding to restore and modernize facilities and infrastructure ranging from barracks and hospitals to runways and hangers.

But let’s not forget the most important part of our effort in crafting this bill, and that is providing for the one asset we can never replace: our soldiers, sailors, airmen, and marines. The people who wear the uniform are more valuable than any weapons system. The dedication, sacrifice, and honor they exemplify every day is why we stand here today and enjoy the freedoms this country has to offer. For that reason, included in this bill is the largest pay raise for our troops in 8 years.

We have also permanently preserved special survivor indemnity allowance