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## House of Representatives

The House was not in session today. Its next meeting will be held on Tuesday, July 10, 2018, at 12 p.m.

## Senate

MONDAY, JULY 9, 2018

The Senate met at 3 p.m. and was called to order by the Honorable TODD YOUNG, a Senator from the State of Indiana.

### PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Sacred God, You fill our hearts with songs. We are grateful for the hope, joy, and justice You bring to our world. Thank You that You will judge the world with righteousness and Your people with truth.

Guide our lawmakers. Lead them even through life's dark places, as they place their total trust in You. Lord, remind them that darkness is as light to You. Protect them from life's storms, for You are their help in ages past and their hope for years to come. Inspire them with Your joy, as You place Your peace in their hearts.

We pray in Your strong Name. Amen.

### PLEDGE OF ALLEGIANCE

The Presiding Officer led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

### APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. HATCH).

The legislative clerk read the following letter:

U.S. SENATE,  
PRESIDENT PRO TEMPORE,  
Washington, DC, July 9, 2018.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable TODD YOUNG, a Senator from the State of Indiana, to perform the duties of the Chair.

ORRIN G. HATCH,  
President pro tempore.

Mr. YOUNG thereupon assumed the Chair as Acting President pro tempore.

### RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

### CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Morning business is closed.

### EXECUTIVE SESSION

### EXECUTIVE CALENDAR

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will proceed to executive session and resume consideration of the Bennett nomination, which the clerk will report.

The legislative clerk read the nomination of Mark Jeremy Bennett, of Hawaii, to be United States Circuit Judge for the Ninth Circuit.

### RECOGNITION OF THE MINORITY LEADER

The ACTING PRESIDENT pro tempore. The Democratic leader is recognized.

### FILLING THE UPCOMING SUPREME COURT VACANCY

Mr. SCHUMER. Mr. President, as everyone knows, later tonight President Trump will announce his nomination for the upcoming vacancy on the Supreme Court. Whoever fills Justice Kennedy's seat will join an otherwise evenly divided Court and immediately obtain the ability to affect the laws of the United States and the rights of its citizens for generations to come.

Enormously important issues hang in the balance: the right of workers to organize, the pernicious influence of dark money in our politics, the right of Americans to marry whom they love, and the right to vote.

Two issues of similar and profound consequence are the fate of affordable healthcare and a woman's freedom to make the most sensitive medical decisions about her body. These two rights—affordable healthcare and a woman's freedom to make sensitive healthcare decisions—hang in the balance with this nominee. The views of President Trump's next Court nominee could very well determine whether the Senate approves or rejects this nomination.

President Trump has already made up his mind. President Trump has repeatedly said that he believes Roe was wrongly decided. He has promised, in his own words, to nominate only "pro-life judges" whose selection will result in the "automatic" overturning of Roe

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



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v. Wade. Those are his words: “pro-life judges” and “automatic.”

He also said that Chief Justice Roberts has been “an absolute disaster”—his words—for voting to uphold the healthcare law and said his judicial appointments “will do the right thing, unlike Bush’s appointee John Roberts, on ObamaCare.”

It is near impossible to imagine that President Trump would select a nominee who isn’t hostile to our healthcare law and to healthcare for millions and millions of Americans and who isn’t hostile to a woman’s freedom to make her own healthcare decisions.

We can be sure of this because President Trump, during the campaign, asked Leonard Leo, the founder of the Federalist Society, to assemble a list of possible Supreme Court Justices for him to pick from. Mr. Leo was not only aware of Candidate Trump’s preference for a Supreme Court that would reverse *Roe v. Wade*; he himself spent his career in pursuit of it.

That is not just my view. According to Edward Whelan, one of the most prominent legal conservative activists and bloggers, “no one has been more dedicated to the enterprise of building a Supreme Court that will overturn *Roe v. Wade* than the Federalist Society’s Leonard Leo.” No one has been more dedicated to overturning *Roe v. Wade* than the very man who chose the list of 25.

That is what we are up against here. That is why America is on tenterhooks, so worried about any choice from this list.

Let me repeat again that Mr. Leonard Leo is the man who assembled Trump’s list of potential Supreme Court nominees, and no one—no one—has been more dedicated to overturning *Roe v. Wade* than Leonard Leo.

Normally, in the Senate we have a process of advise and consent on the Supreme Court. In the old days, the President would consult with Republicans and Democrats in the Senate on a qualified judge and, then, after careful deliberations, nominate a jurist who could get bipartisan support. What we have here is the exact opposite.

The President has gone to two “far out of the mainstream” hard-right groups—the Heritage Foundation and the Federalist Society—and asked them, not the Senate, to advise and consent on a Supreme Court nomination.

Whomever the President selects tonight, if that nominee is from the preapproved list selected by Leo and the Heritage Foundation, everyone ought to understand what it means for the freedom of women to make their own healthcare decisions and for the protections for Americans with preexisting conditions: Those rights will be gravely threatened.

We are going to hear a lot this summer about precedents. The traditional question in these matters has been: Will the nominee defer to precedent? Nominees will be asked if they respect

settled law. This is known as the principle of *stare decisis*. The nominee always answers that, yes, he or she will respect and defer to precedent, and Senators nod their heads, having received this rickety, vague assurance that the nominee will not rock the judicial boat and turn the clock back decades. But for two reasons, this standard of settled law—*stare decisis*—is no longer an adequate standard by which to judge nominees. Why?

First, we have ample evidence from the past several years of judges who have sworn in their confirmation hearings to respect precedent and then have reversed their stand once on the Court. For example, in his confirmation hearings, then-Judge Gorsuch said:

Precedent is like our shared family history of judges. It deserves our respect.

Last week—just last week—now-Justice Gorsuch voted to overturn 41 years of precedent in the *Janus* decision, relying on flimsy and fabricated legal theory. It was so flimsy, in fact, that Justice Kagan wrote in dissent that the majority overruled precedent, “for not exceptional or special reason, but because it never liked the decision . . . subverting all known principles of *stare decisis*.”

Justice Roberts—another person who swore he would obey precedent—said he would call balls and strikes as he saw them, that he would interpret law rather than make it. Of course, it was Justice Roberts who was then responsible for overturning 40 years of precedent in the *Citizens United* decision, which so set back our politics and so deepened the swamp that so many Americans despise, by allowing huge amounts of dark money, unreported, to cascade into our political system.

On two of the most important rulings in the history of the Roberts’ Court, a cumulative 81 years of precedent were thrown out the window, despite the earnest promises of Justices Roberts and Gorsuch at their hearings.

When they say they will obey settled law, you can’t believe it. You can’t believe it because it just hasn’t happened in this new conservative Court that is so eager to make law, not interpret it.

There is a second reason, which is maybe even more important, why the principle of “I will follow settled law” no longer works, and that is President Trump. We already know that President Trump’s nominee will be prepared to overturn the precedents of *Roe v. Wade* and *NFIB v. Sebelius*. We know that because President Trump has said so. When the President has a litmus test for his nominees and only chooses from a preapproved list of nominees designed to satisfy that litmus test, it is certainly not enough for a judge to prove his or her moderation by invoking *stare decisis*. *Stare decisis* and respect for precedent have become an almost meaningless bar to set for a Supreme Court nominee. At this critical juncture, with so many rights and liberties at stake, U.S. Senators and the American people should expect an af-

firmative statement of support for the personal liberties of all Americans from the next Supreme Court nominee.

The American people deserve to know what kind of a Justice President Trump’s nominee would be. President Trump is the one who made a litmus test for his nominee, not us. The onus is on his nominee to show where he or she might stand.

Considering the ample evidence that President Trump will only select a nominee who will undermine protection for Americans with preexisting conditions, give greater weight to corporate interests than the interests of our citizens no matter what precedent says, and vote to overturn *Roe v. Wade*, the next nominee has an obligation—a serious and solemn obligation—to share their personal views on these legal issues no matter whom President Trump selects tonight.

#### NORTH KOREA

Mr. President, briefly, on another matter—the ongoing negotiations with North Korea over their nuclear program. Despite all the reality show pomp and circumstance, the negotiations have, thus far, been a flop. After the summit, President Trump declared, without any evidence—that is so typical—that “North Korea is no longer a nuclear threat” to the United States. The reality, of course, is far different.

Recent reports have shown that North Korea is making upgrades to a nuclear facility and expanding ballistic missile manufacturing. Just a few days ago, North Korean media called the negotiations with Secretary of State Pompeo “deeply regrettable,” accusing the Trump administration of pushing “a unilateral and gangster-like demand for denuclearization.” Talks are going great, and then our side is accused of being gangster-like?

For the President to say North Korea is no longer a nuclear threat and then have North Korea’s Foreign Ministry come back and say what they said, shows the disconnect between President Trump’s rhetoric, the reality, and the sheer incompetence of this administration. For those who say—and I hear it all the time from many of my Republican friends in my State and throughout the country—they say: Look, we don’t like the President’s style. We wish he didn’t tweet so much, but we support him because he is “getting stuff done.” Take a look at the yawning gap between what the President claims and what he has actually achieved. On North Korea and on so many other issues—taxes and healthcare are two other examples—the President makes grand promises but fails to deliver for the American people.

#### HEALTHCARE

Finally, Mr. President, one word on healthcare. Another issue the President has failed to deliver on is healthcare. After promising far better and cheaper healthcare for all Americans, President Trump has relentlessly