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Senate

The Senate met at 10 a.m. and was called to order by the Honorable CINDY HYDE-SMITH, a Senator from the State of Mississippi.

PRAYER

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

Let us pray.

Holy Father, thank You for the showers of blessings You bestow upon us each day. Help us to open our hands to Your generosity, expressing our gratitude in loving obedience.

Lord, inspire our lawmakers to live for You, striving to please You in their every endeavor. May they not forget that they belong to You, the Great Shepherd of their destinies. Go before them, that they may follow in Your steps. Go behind them to steer them when they stray. And go beside them so that they will experience the strength and joy that come from Your abiding presence.

We pray in Your marvelous 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 senior assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, July 10, 2018.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby

appoint the Honorable CINDY HYDE-SMITH, a Senator from the State of Mississippi, to perform the duties of the Chair.

ORRIN G. HATCH,
President pro tempore.

Mrs. HYDE-SMITH thereupon assumed the Chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

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

NOMINATION OF BRETT KAVANAUGH

Mr. MCCONNELL. Madam President, President Trump has made a superb selection to serve as Associate Justice of the Supreme Court of the United States: Judge Brett Kavanaugh of the DC Circuit. Judge Kavanaugh possesses an impressive resume, an outstanding legal mind, and an exemplary judicial temperament. He has served 12 years on the Nation's most consequential circuit court. During that tenure, he has proven to be one of the most thorough and thoughtful jurists in our country. Importantly, that record demonstrates an understanding of a judge's proper role in our constitutional Republic.

Judge Kavanaugh understands that in the United States of America judges are not—not—unelected superlegislators whom we select for their personal views or policy preferences. A judge's duty is to interpret the plain meaning of our laws and our Constitution according to how they are written.

Judges need to be unbiased. They need to treat all parties fairly. They need to approach every case with open ears and an open mind. Judges' decisions must turn on the facts of each case and be based on the texts that it is their job to interpret.

By all accounts, Judge Kavanaugh is precisely that kind of judge. His re-

sume, to put it simply, is topnotch: a bachelor's degree from Yale, with honors; a law degree, also from Yale, where he was a member of the law review; a lecturing position at Harvard Law School, to which he was appointed, by the way, by then-Dean and now-Justice Elena Kagan.

After graduating, he quickly built a reputation as a star law clerk, including on the Supreme Court, for Justice Kennedy; as an energetic and talented public servant; and as one of the preeminent legal minds of his generation.

In 2006, the Senate confirmed him to the DC Circuit. He has compiled an extensive record on the Federal bench. He has published more than 300 opinions and has earned considerable praise for his clear writing and reasoning.

Judge Kavanaugh has built a long and distinguished record. It paints a clear picture of how he would conduct himself as a member of the Nation's highest Court. It reflects a firm understanding that judges must interpret laws as they are written. We do not choose them to make policy, to pick favorites, or to craft novel legislation from the bench.

Some of our colleagues—and others on the left—seem to see the role of judges very differently. President Obama summed up this alternate view well when he was running for President. He explained that he sought to appoint judges who harbored particular empathy for certain parties in certain cases. That is great if you happen to be the party in the case whom the judge likes. It is not so great if you are the other guy. It doesn't align with our Nation's historical understanding of the rule of law or the role that Federal courts play in our democracy.

I respectfully submit that, then and now, some of our Democratic colleagues seem to be a little confused. They seem to be confusing the nature of a political office with the nature of a judicial office. This would explain why some of our colleagues sound

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



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eager to try and turn judicial confirmations into something like political elections—to grill Judge Kavanaugh on policy outcomes, like voters rightly grill all of us when we run for our seats in the Senate.

Some Democratic Senators have telegraphed that they will heed the demands of the far-left special interest groups and try to force Judge Kavanaugh to commit under oath to decisions he might make on particular issues in hypothetical cases. Forget that the cases don't even exist yet. Forget the total absence of any facts, legal arguments, or research. Forget how inappropriate and undesirable it would be for a judge to predetermine a ruling before either side's lawyers uttered a single word.

That is simply not how this process has ever worked or ever could work. I am not the one saying this. Here is what a prior Supreme Court nominee said on this very subject: "A judge sworn to decide impartially can offer no forecasts, no hints, for that would show not only disregard for the specifics of the particular case, it would display disdain for the entire judicial process."

Those are the words of another then-DC Circuit Court judge and current Supreme Court Justice Ruth Bader Ginsburg during her Senate confirmation to the Supreme Court in 1993.

I think we all should remember that standard. We will do well to remember that we are evaluating a judge, not debating a candidate for political office.

Even more regrettably, a number of our Democratic colleagues could not even wait until the President's announcement last night before launching attacks on his nominee. This was, in some cases, quite literally a fill-in-the-blank opposition. They wrote statements of opposition only to fill in the name later.

Sadly, this is not a new approach for the far-left special interest groups. Just last year, Justice Gorsuch met with partisan opposition before the ink was even dry on his nomination. I am sorry to say that Judge Kavanaugh seems to have already broken that record, because Senate Democrats were on record opposing him before he had even been named—just fill in the name, whomever it is we are against—before the ink was even dry on Justice Kennedy's resignation.

This is a telltale sign that some of our colleagues are throwing thoughtful independent judgment out the window and are outsourcing their thinking on this matter to far-left special interest groups.

There has been a lot of talk about outsourcing here. If anybody is outsourcing, it is the Democrats outsourcing what they say to these outside groups that are demanding opposition to anyone at all costs, no matter who it is.

As I discussed on the floor yesterday, we know exactly what this partisan playbook looks like. It has been hauled

out for most everyone who a Republican President has nominated to the Supreme Court for the last 40 years. It is like clockwork.

I fully anticipate that we will hear all kinds of fantastic stories about the pain and suffering that this perfectly qualified, widely respected judge will somehow unleash on America if we confirm him to the Court. That kind of cheap, political fearmongering insults the intelligence of the American people because Americans understand the difference between a political office and a judicial office. They understand the difference between the policymakers who throw pitches and the judges who call balls and strikes.

I look forward to the Senate's fair consideration of this most impressive nomination. I look forward to meeting with Judge Kavanaugh later this morning, to hearing his testimony in committee, and to voting on his confirmation right here on the Senate floor.

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 following nomination, which the clerk will report.

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

Mr. MCCONNELL. I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The senior assistant legislative clerk proceeded to call the roll.

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

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

RECOGNITION OF THE MINORITY LEADER

The Democratic leader is recognized.

NOMINATION OF BRETT KAVANAUGH

Mr. SCHUMER. Madam President, last night President Trump selected Brett Kavanaugh as his nominee for the upcoming vacancy on the Supreme Court. In selecting Judge Kavanaugh, President Trump did exactly what he said he would do on the campaign trail—nominate someone who will overturn women's reproductive rights

and strike down healthcare protections for millions of Americans, including those with preexisting conditions. He has put at risk civil rights, labor rights, environmental rights, and LGBTQ rights. How do we know? Because President Trump repeatedly promised to nominate Justices who will overturn *Roe v. Wade* and who will undermine our healthcare laws.

This didn't come out of the clear blue; President Trump promised it. He said he would only pick "pro-life judges" who would "automatically" reverse *Roe v. Wade*. President Trump actually went so far as to say that women should be "punished" for their healthcare choices. President Trump also said that his judicial appointments would "do the right thing," unlike Justice Roberts on healthcare. That is President Trump's litmus test, and it couldn't be clearer.

During the campaign, President Trump commissioned a list of 25 people who would meet the litmus test, who were vetted and approved by two organizations that represent the hard right—the Federalist Society, led by a man named Leonard Leo whose goal in life has been to overturn *Roe v. Wade*, and the Heritage Foundation, whose goal is to strike down healthcare law because they don't want the government to help people out when they have preexisting conditions or other healthcare needs.

Edward Whelan, a prominent conservative activist, said this about Leonard Leo, the man who put together the list that Trump promised to choose from: "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."

If anyone believes that Judge Kavanaugh or anyone else on the list would uphold *Roe v. Wade*, then I have a bridge to sell them.

Leonard Leo's goal in life is to repeal *Roe*. He came up with the list. Do you think he put any slackers, in his opinion, on that list? No.

Judge Kavanaugh got the nomination not because he will be an impartial judge on behalf of all Americans but because he passed President Trump's litmus test—repeal women's freedom for their reproductive rights and repeal America's healthcare, including protection for preexisting conditions. If Judge Kavanaugh were to be confirmed, women's reproductive rights would be in the hands of five men on the Supreme Court. That is not what the women or the men of America want.

Judge Kavanaugh in his own writings made clear he would rule against reproductive rights and freedoms and that he welcomes challenges to the constitutionality of the Affordable Care Act, of our healthcare act. Judge Kavanaugh has argued that the Supreme Court should question the constitutionality of the Affordable Care Act. He openly criticized the Supreme