

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.

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#### RESERVATION OF LEADER TIME

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

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#### CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Morning business is closed.

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#### EXECUTIVE SESSION

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#### 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

Court when they upheld the law. He is no neutral arbiter. He has already made up his mind. He wouldn't have been approved by the Heritage Foundation if they weren't certain that he would repeal the ACA. He wouldn't have been approved by the Federalist Society if Leonard Leo wasn't certain that he would repeal *Roe v. Wade*.

Judge Kavanaugh has argued that the Trump administration could keep a young girl in Federal custody to prevent her from obtaining constitutionally protected healthcare. He has argued that employers should be able to deny their employees access to affordable contraceptive coverage. If Judge Kavanaugh feels that way about contraceptive rights, imagine what he feels about a woman's right to choose.

I will make one other point about Judge Kavanaugh. He is a deeply, deeply conservative justice, way out of the mainstream. He has written troubling decisions rejecting something 90 percent of Americans want—commonsense gun laws. He has undone environmental protections. He has challenged them. Our Clean Air and Clean Water Acts would be at risk. He would make it far more difficult for regulations to exist to enforce those laws.

Here is what is most amazing: He has gone so far as to say that a President doesn't need to follow the law if he "deems" it unconstitutional.

Folks, here we have a President, President Trump, who cares less about the rule of law, less about the restraints that every other President has felt were put in place by the Constitution and the norms that have blessed this great country for 200 years, and we are going to put on the Bench someone who says: If this President, President Trump, deems some law is unconstitutional, he doesn't have to follow it. How many Americans think the President would be judicious and limited in doing that? That is not the President I have seen over the last year and a half—oh, no.

An analysis by Professor Epstein of Washington University of St. Louis found that Judge Kavanaugh would be the second most conservative Justice on the Court, to the right of Judge Gorsuch, second only to Justice Thomas. This is the most conservative Court we have had in 80, 90 years—since the 1930s, at the very minimum. To those who say that President Trump has made a moderate selection from the judicial mainstream in the form of Judge Kavanaugh, think again and look at his record. He is a deeply conservative justice.

His judicial philosophy appears to spring from his history. Judge Kavanaugh was embedded in the partisan fights of the past few decades involving the notorious Starr report, the Florida recount, President Bush's secrecy and privilege claims once in office, and ideological judicial nomination fights throughout the Bush era.

The hard right has had a goal. They can't achieve their hard-right philo-

sophy through the two elected branches of government, try as they might—the Congress and President—but if they get control of the one nonelected branch, the judiciary, they can turn the clock back in America for decades, maybe centuries. That has been their goal. When Judge Kavanaugh worked in the White House, he helped them achieve that goal. Judge Kavanaugh's background as a partisan political operative seems exactly like the kind of man President Trump would want on the Supreme Court if legal issues from the Mueller probe arise—deferential to a fault to Executive authority.

Judge Kavanaugh's long track record of partisan politics comes with a long paper trail. The Senate must now be able to access and have the time to adequately review all documents, emails, and other paperwork associated with Judge Kavanaugh before the process moves forward. Judge Kavanaugh's papers may be critical to helping the American people understand the kind of jurist that Judge Kavanaugh would be on the Supreme Court, and if that makes us take a little more time, so be it.

As the President himself has said, this is one of the most consequential nominations we have had in a generation. To get the full record before any of us vote is absolutely necessary, important, essential, and fair. Judge Kavanaugh's papers may give the Senate the best and only chance of understanding Judge Kavanaugh's personal views.

No doubt, Judge Kavanaugh will be schooled, as were his most recent predecessors, to reveal as little as possible about his philosophy and personal views in his confirmation hearing. No doubt he will employ practiced evasions that have become a farcical tradition of the nomination process: I will respect precedent. I will follow settled law and strive to uphold *stare decisis*. Gee, Senator, I can't comment lest I bias myself on a future case.

We have seen what happened when Justice Roberts, Justice Gorsuch, and Justice Alito said that. Once they got on the Bench, they overturned precedent with alacrity to achieve their political goals. Probably the worst was *Citizens United*, where Chief Justice Roberts undid close to a century of tradition and allowed wealthy people to send millions of dollars undisclosed into our politics, making the swamp so much worse. Most recently, Justice Gorsuch, Justice Roberts, and the rest dramatically overturned precedent in the *Janus* case on a whim, as the dissent noted. They just pulled a theory out of a hat—a First Amendment ruling that the First Amendment prohibited unions from organizing. My, oh my, how can anyone believe that Judge Kavanaugh will stick to precedent when Justice Roberts, Justice Gorsuch, and Justice Alito ignore precedent and make their own political rulings regularly?

We need to review the record—Judge Kavanaugh's written history, where

the best clues of his jurisprudence may lie. It is no less than the standard my Republican colleagues demanded of then-Judge Kagan during her confirmation process. They asked for her entire record; 170,000 documents were sent here.

We need those documents now more than ever because this new Justice will be so pivotal in determining the future of our Nation for so long. The nomination could alter the balance of the Court in favor of powerful special interests against working families for a generation. The pro-hard-right business Heritage Foundation wants only nominees who will side with the big boys against the average person, and in Judge Kavanaugh, they have someone who would do just that.

We cannot let it happen. If the Senate blocks this nomination, it will lead to a more independent, moderate selection that both parties could support.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Utah.

Mr. HATCH. Madam President, I enjoyed listening to the minority leader and disagree with almost everything he said. I do believe he is one of the great Senators here, and I care for him. He has a job to do, I suppose.

It seems strange that every time a Supreme Court nominee comes from the Republicans, there is every reason in the world not to confirm that nominee in the eyes of the current Democrats. Even without the first day of hearings, we are getting that type of situation. It is hard to believe. It is really hard to believe.

I rise today in strong support of the nomination of Brett Kavanaugh to be an Associate Justice of the Supreme Court. I have known Brett for quite a while. He is a terrific human being. He is honest, decent, and a good family man. He is everything you would want on the Bench. He is fair. He is considerate. He is knowledgeable. He is intelligent. He understands the law, and when he doesn't understand the law, he will search it until he does.

President Trump has made an outstanding choice. He has kept his commitment to the American people. He has selected a nominee with deep experience in the law and an understanding of the proper role of a judge under our Constitution.

I first met Brett Kavanaugh 14 years ago when he came before the Judiciary Committee for his first confirmation hearing to the DC Circuit. I was the chair of the Judiciary Committee at that time. I was impressed at that time by Brett's sterling credentials, his broad knowledge of the law, and his demeanor. At only 39 years of age, he knew more about the law than most lawyers who have practiced a lifetime. I think anybody who is fair would acknowledge that.

Brett was confirmed to the DC Circuit in 2006 following years of obstruction by Senate Democrats. I was pleased and proud to support Brett's

nomination to the DC Circuit. I have followed his work on that court the last dozen years with great interest. He spent a dozen years on that court, the second greatest court in our country, without criticism, by the way—or at least, I should say, without fair criticism. He has been a true intellectual leader, authoring landmark opinions on the separation of powers, administrative law, and national security.

It is no overstatement to say that Judge Kavanaugh is among the most distinguished and most influential judges in the entire country. The Supreme Court has adopted his positions and his opinions no less than 11 times. He has authored multiple dissents that ultimately prevailed in the Supreme Court. That ought to be complimented, not condemned.

He has taught courses at Harvard, Yale, and Georgetown. I would have preferred if he had taught some courses at Brigham Young University and the University of Utah, but that was too far west, I guess. But you can't knock Harvard, Yale, and Georgetown.

It bears mention that liberal and conservative Justices alike have hired his former clerks, which shows the respect he has across the ideological spectrum.

Truly, there is no one more qualified and more prepared to serve on the Supreme Court than Brett Kavanaugh. The funny thing is most people know that, including my friends on the other side. That is one reason they are afraid to have him on the Court. I speak from experience on this. I am the former chairman of the Judiciary Committee. I have participated in the confirmation of more Federal judges than any Senator in our Nation's history—more than half of all Federal judges ever confirmed. I have participated in the last 14 Supreme Court confirmation battles, including the confirmations of all current members of the Court.

I know a good nominee when I see one. Brett Kavanaugh is not just a good nominee; Brett Kavanaugh is an exceptional nominee, and any fair person has to admit it.

It has been a little over a year since we last considered a nominee to the Supreme Court. That nominee was Neil Gorsuch.

I have to say, President Trump hit a home run with Justice Gorsuch. I came to this floor nearly a dozen times in support of Justice Gorsuch's nomination because I knew Neil Gorsuch, and I knew what kind of a Justice he would be. I knew he would interpret the Constitution according to its original meaning, not according to the pet theories of liberal law professors or progressive activists. I knew he would give effect to the plain text of statutes rather than roaming around to find bits and pieces of legislative history to support his preferred view. I knew he would hold the administrative state to task and help check the unrestrained growth of the unelected, unaccountable fourth branch of government.

Justice Gorsuch has done all of that and more. He has shown himself to be an independent thinker who faithfully applies the text of the Constitution and the text of statutes. He has shown that he is perfectly comfortable disagreeing with the administration when the administration advances what he believes is a wrongheaded argument. Most of all, he has shown that he understands deeply that under our Constitution, political power lies with the people and their elected representatives, not nine Justices in Washington, DC.

In all the ways Neil Gorsuch has been a home run, Brett Kavanaugh will be one too. In his dozen years on the DC Circuit, Judge Kavanaugh has been an independent, fair-minded jurist who is deeply committed to the Constitution and the rule of law. He has made his mark especially in cases involving the separation of powers and agency decision making. He is serious about ensuring that the branches of government stay within their proper spheres and that agency officials have sufficient political accountability. He has also shown a commitment to our First and Second Amendment freedoms. In all this, he has been a true intellectual leader. And like Justice Gorsuch, Judge Kavanaugh has demonstrated that he understands that in our system of government, judges interpret the law. They don't make the laws; they interpret them. Policymaking is for the other branches of government.

In a rational world, Judge Kavanaugh's nomination would be confirmed by the Senate overwhelmingly. I don't think there is any question about that. His qualifications are unquestionable. His integrity is beyond reproach. He is respected throughout the country as one of our Nation's leading jurists.

Sadly, however, sometimes we don't live in a rational world, at least not when it comes to the Supreme Court. We saw this last year. My Democratic colleagues attacked Justice Gorsuch as unfit and unqualified. They said he had not sided often enough with the right sort of causes and that he would not do enough to protect the "little guy" when deciding cases. Democrats' objection, at root, was that they did not think Neil Gorsuch would rule the way they wanted. They did not think he would reach liberal enough outcomes. Of course they couldn't say that directly, as that would have given the whole game away and shown that their opposition was really just about politics, which is exactly what it was. So they latched on to a couple of cases, blew them entirely out of proportion, and misrepresented what then-Judge Gorsuch had actually said.

They asked him questions about cases likely to come before the Supreme Court that neither he nor any other nominee could answer without violating the canons of judicial ethics. He could not answer without violating the canons of judicial ethics. Yet they asked these questions anyway. I guess

they expected an answer, but no self-respecting nominee would have given an answer.

They claimed he would be some sort of rubberstamp for the administration, when there was nothing in his record at all to suggest he had ever been a rubberstamp for anything.

My Democratic colleagues could not with a straight face oppose Neil Gorsuch or Neil Gorsuch's nomination on the merits, so they kicked up a cloud of half-truths and misrepresentations and used those to justify their opposition. Fortunately, the majority of my colleagues saw these desperate tactics for what they were—complete baloney, and that is putting it mildly.

Now we are about to replay the same game. In the coming weeks, my Democratic colleagues are going to throw everything they have at Judge Kavanaugh. We are going to see Judge Kavanaugh's opponents twist his words, misrepresent his opinions, and do everything they can to make him into some sort of a monster, a judicial monster. They will call him a rubberstamp for the rich and powerful and warn that his confirmation will mean the end of liberty and civil rights. That is trash talk, but that is what we are used to around here when they are afraid of the nominations that come from the Republican side. There is no reason to be afraid; these are people who are going to abide by the law, live in accordance with the law, and decide cases the way the law demands and dictates.

This is the same playbook we have seen before. It is the same playbook we saw last year with Neil Gorsuch. It is the same playbook we would have seen no matter whom the President nominated because the opposition will not be about Judge Kavanaugh's credentials or his qualifications; it will be about politics, straight and simple. My Democratic colleagues want a Justice who will reach the outcomes they want, who will use the Constitution to make policy, but Judge Kavanaugh is not that kind of a judge. He interprets the Constitution as written. He interprets our laws as written. He follows the separation of powers and leaves policymaking to the political branches.

Brett Kavanaugh is one of the most respected judges in our country for good reason—because he is a real judge. He has been an intellectual leader on one of our Nation's most important courts for over a decade. He has heard thousands of cases and issued hundreds of opinions. He is a great thinker, a powerful writer, and, I might add as somebody who knows him well, a kind and humble man. I cannot think of a better person to fill Justice Kennedy's seat on the Supreme Court than his former clerk because Justice Kennedy is a kind and humble man, and he is excited about having this nominee take his place.

After all the kicking and screaming last year, after all the obfuscations and misrepresentations, we confirmed Neil

Gorsuch to the Supreme Court. We did so because he was unquestionably qualified and because he had demonstrated a firm understanding of the judge's proper role under the Constitution.

Like Neil Gorsuch, Brett Kavanaugh is unquestionably qualified. Like Neil Gorsuch, Brett Kavanaugh has shown a commitment to the Constitution and to the principle that judges are to interpret the law, not make it up. Like Neil Gorsuch, Brett Kavanaugh will be confirmed. I have confidence in my colleagues that he will be confirmed. He is a good man. I know him personally. I have known him for a long time. He is a good man. He is a brilliant man and a man whose nomination I am honored to support.

I intend to do everything in my power to see Judge Kavanaugh confirmed to the Supreme Court. I could not be more pleased that one of my final acts here in the U.S. Senate will be to help shepherd through one last nominee to our Nation's highest Court. I could not be more pleased that this nominee is Judge Brett Kavanaugh.

I know Judge Kavanaugh. I know what a great Justice he will make. I know that he will be fair. I know that he will live in accordance with the law. I also know that he has courage and conviction and that he will do what Justices have to do; that is, interpret the Constitution and our statutes in this country in ways that will please the vast majority of all Americans. That is about all we can ask for. I know he will do that because I know the man. I know his family. I know his parents. All I can say is that I am very pleased that our President has decided to nominate him as a Justice on the United States Supreme Court.

I would caution my colleagues to pay attention to his record because you can't keep voting against people just because politically they are not on your team. I think you can if they are not qualified, but he is qualified. I think you can if they are not willing to abide by the law as written, but he is and has proven that.

I could go on and on. All I can say is that he is a good nominee. I hope all of my colleagues will support him. I hope my friends on the Democratic side will do the right thing. The right thing will help propel the confirmation process along. Who knows who the next President is going to be. It could be a Democrat, and I would hope that Brett Kavanaugh would be an example to Republicans, if they are in the minority, to do what is right—make your case, but don't slander people or libel them, and certainly don't stop decent, honorable candidates from holding these positions on the Federal bench.

I wish Judge Kavanaugh well because I think he will make a great Justice on the Court. I think he will be the type of Justice who will make everybody proud, even those with whom he disagrees. He is a decent man. He is an honorable man. He is a family man. He

is brilliant. He is exactly like the person our Founding Fathers would like to have on the Supreme Court Bench. I believe that if we give him a chance, he will do a very good job. He is not going to always please me. He is not going to always please the Republicans. He will do what is right. I hope my colleagues on the other side will understand that and will not make this another cause celebre.

Be that as it may, we are going to push as hard as we can, and hopefully he will become our next Justice on the United States Supreme Court.

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

The PRESIDING OFFICER (Mr. YOUNG). Without objection, it is so ordered.

Mr. CORNYN. Mr. President, last night the President of the United States announced that Brett Kavanaugh is his choice to fill the vacancy on the U.S. Supreme Court left by the impending retirement of Justice Anthony Kennedy. I was glad to have the occasion to join the President and others at the White House last night, and I could not be more pleased with the President's choice.

Now that the President has performed his duty under the Constitution, it now falls to us to do our duty. The appointments clause to the U.S. Constitution says that subject to the advice and consent of the Senate, the President shall appoint members of the Supreme Court, among other officials. The President has done his job, and now it falls to the U.S. Senate to do our job under the Constitution of the United States.

We have all learned a little bit more about the nominee in just the few hours since his nomination. Of course, we know he is a judge on the U.S. Circuit Court of Appeals for the DC Circuit—what some have called the second highest court in the land. By that, they mean that because it sits in the District of Columbia, many important cases involving the U.S. Government go up through that court as opposed to courts in Texas or Indiana or other places around the country. For more than 10 years, he has served in that capacity.

We know he has had a distinguished academic and legal career. He graduated from an elite law school—Yale—and clerked for Justice Kennedy himself, the man he will succeed when confirmed. Most importantly and as evidence of Judge Kavanaugh's good judgment, he made the wise decision to marry a Texan. His wife grew up in Abilene and graduated from the University of Texas.

Now that the nomination has been made, the Senate will follow what we

refer to here as regular order. That means the Judiciary Committee, led by Chairman GRASSLEY, will thoroughly vet the nominee, and then the committee will debate and vote on the nomination, and then the nomination will come to the floor of the Senate, where we will debate and vote on the nomination.

We have already heard some say that there is not enough time to carry out this process before the midterm elections, which should raise all of our antennae. Both Justice Gorsuch and Justice Sotomayor were confirmed 66 days after they were nominated, so the truth is that we have plenty of time to do our job under the Constitution. We do want to be thorough, and we will, but we also owe it to the Court and to the American people to move expeditiously to fill this post so as not to leave it vacant. Justice Kennedy said that he intends to leave at the end of the month.

As the senior Democratic Senator from Kentucky said recently, "The Senate should do nothing to artificially delay consideration of the next Justice." I agree with him, and that is consistent with the standard here in the Senate.

Some have said: Well, we have a midterm election coming up, and maybe we ought to defer filling the vacancy. But I would note that in 2010, leading up to a midterm election, just like this year, Senate Democrats confirmed President Obama's nominee to the Court, Elena Kagan. So there is plenty of precedent for moving expeditiously, thoroughly, not recklessly but in a focused fashion to confirm this nomination once it has been vetted and voted on.

It is no secret that Judge Kavanaugh will help decide cases that will be important in the life of our Nation. That is the role of the Supreme Court, and it is already clear from his previous experience that he has had plenty of preparation—academically and work experience and life experience—that has prepared him to do exactly that.

Judge Kavanaugh has demonstrated the intellectual capacity that we would expect of a Supreme Court Justice, and over the years, he has demonstrated a rigorous understanding of the law. He has demonstrated his sharp mind and analytical skills in a variety of jobs—working in the White House as a lawyer and as Staff Secretary to the President.

By the way, for those who don't know what a Staff Secretary does in the White House, that is the person who has the final eyes on a document before the President is presented something for his signature. It is a very, very important job. Brett Kavanaugh was Staff Secretary to the President of the United States during the term of office of President George W. Bush.

He has also taught at law schools, such as Harvard, where he was actually hired by now-Justice Elena Kagan, whom he would serve alongside, as well

as Georgetown and Yale. We know that during the years he has been on the appellate bench, he has handed down hundreds of decisions. Let's not forget that in order to attain that important position, the Senate already confirmed him once in 2006 by a vote of 57 to 36.

We all know that this is President Trump's second nomination to the Supreme Court, after that of Justice Neil Gorsuch just last year. In his first term on the Court, Justice Gorsuch has already demonstrated the power of his pen, the clarity of his thought, and the force of his legal reasoning, and I am sure that Justice Scalia would be proud of his successor's impartiality, his rigor, and his self-discipline. Based on his distinguished record, I think Judge Kavanaugh will display many of the attributes Justice Gorsuch has displayed on the Supreme Court.

In the coming weeks, we will hear a lot about Judge Kavanaugh's interesting life story, his long career as a dedicated public servant, his service to his community, and, yes, his strong Catholic faith, but at the end of the day, the decisions of the Supreme Court should not be affected by personal agendas, political or otherwise. That is because the interpretation of the law is a discipline unto itself, and it should always be separated from the personalities, the preferences, or the ideological or political agenda of the judge. That is what judges do. If they can't do it, then they shouldn't serve as judges.

Justices, by their work, must be insulated from the day-to-day politics that are all too common here in the Congress. The Court, of course, should not be a partisan or political institution. It was created by the Founders to be something apart from the political branches of government, the executive and legislative branches. That is because the political branches of the government run for election and are held accountable by the voters—not so with judges who serve for a life term.

I know President Obama once argued in favor of what he called an empathy standard in judicial decision-making, but that is not my standard, and I know it is not Judge Kavanaugh's standard either. It is another way to call for results-oriented judging, which is the opposite of what a good judge should do.

As a former judge and justice of the Texas Supreme Court, I believe those who serve in the judicial branch must put their personal beliefs aside and apply the law as written and faithfully interpret those laws passed by Congress, signed into law by the President, as well as interpreting the text of the Constitution. If they want to be policymakers, they ought to run for Congress. They ought to be subject to the vote of the electorate. They ought to run for school board. They ought to run for city council. If you want to be a judge, you have to take an oath to do something different from serving in those sorts of political offices.

It is crucial that as this process begins to unfold, we remember that. It is important that the President's nominee not be subjected to personal attacks from the angry and unhinged element we have seen already reflected on our TV screens and that at times seems to forget that judges in our political system are not charged with making the law or making policy but rather interpreting the law and the Constitution and the laws written by the Congress and signed by the President.

Based on what we have seen so far, the confirmation process will no doubt be contentious. We have seen activists already encourage Members of the Senate to abandon civility and decorum, and I hope we resist. We have seen some of our colleagues already engage in various publicity activities and talk about battle lines being drawn, as if this is some sort of war to be fought. They indicated their unwavering opposition to the President's nominee before we even knew who the nominee might be. One of our colleagues came to the floor of the Senate before the nomination was announced and said he would oppose whomever President Trump were to nominate. Well, that should tell us a lot—that it is not about the individual, it is about the office, and it is about kowtowing to a political base that demands opposition at all costs and at all turns to anything this President might do, no matter how qualified the nominee might be.

In the days ahead, I think we can predict from experience that these attacks will continue. Some of our colleagues will demand that Judge Kavanaugh reveal how he will rule in a particular case in exchange for their vote. How corrupt would that be, to insist that the judge tell you ahead of time how he would rule in a particular case in exchange for a vote for confirmation? That would clearly be wrong. It would be wrong for any judge, without hearing the case—the arguments of the lawyers, the facts of the case—to prejudice an outcome. That, again, is not what judges do. They don't run for office based on a political platform as do the political branches of government. Those of us who run for office for the Senate or the House are happy to talk about what we believe in and what we would do if elected to office, but that is not what judges are supposed to do.

What is more, there is clear precedent for resisting those sorts of guarantees ahead of time. Justice Ruth Bader Ginsburg said during her own confirmation process that sort of assurance is completely inappropriate. Justice Ginsburg gave what I think is the correct response to such requests, saying she would offer no hints, no forecasts, no previews of her rulings.

Trying to predict how ethical Justices will decide particular cases is a futile endeavor because, for good judges, it depends on learning the facts as well as entertaining the legal arguments by the lawyers involved, not

coming into it with a preconceived notion of how you would rule in any case under any facts involving a particular topic. Sure, hypotheticals can be dreamed up, but no judge knows the right decision until he or she studies the case before them.

I can tell my colleagues, we relish the opportunity to support and defend the President's nominee against any and all baseless attacks. We will not back down. We will not surrender the field to those who make unjustified criticisms of the nominee or attribute to him some characteristic or some experience which is entirely false. We will defend the record of Judge Kavanaugh, who I believe is a thoughtful and willing public servant, against deliberate attacks to denigrate him. We will not allow others to distort the nature of his previous judicial decisions or use him as a sacrificial lamb in some sort of vengeance campaign against this President. We pledged that same level of support for Justice Gorsuch, and we showed we were able to do just that—defend the President's nominee against unjustified attacks—and will do so again, joined by Judge Kavanaugh's many other supporters, including those who do not share his political or judicial philosophy.

I noted today a liberal law professor, Akhil Amar, who wrote an opinion piece saying that, yes, even liberals should support this nominee, and he gives his reasons why. You can read it for yourself in the *New York Times*, but the stakes are simply too important to let unfair and inaccurate accusations be made about the nominee without correcting them. The American people deserve better. This nominee deserves better.

The American people demand judges like Brett Kavanaugh, who are fair and independent arbiters of the law. The basic problem is, in recent years, some have viewed the court as a way to circumvent and evade the political process and achieve their preferred policy outcomes when judges pronounce some radical change in the law or public policy from the bench without the chance for voters to vote on that individual or on those policies. Many have come to see this as an end-run around the normal political process. Those who can't win at the ballot box, well, let's win on the court, but that is not the right philosophy. That is not the one preferred by most Americans, nor shared by the Founding Fathers of this country or evidenced in the Constitution.

During the first 18 months of this administration, President Trump has nominated, and we have confirmed, 42 members of the Federal judiciary, including Justice Gorsuch. Next on our list is Judge Kavanaugh. So we look forward to doing our duty under the Constitution to vet the nominee, to ask the tough questions, to have the debate and then the vote in the Judiciary Committee, and then bring that nominee to the floor of the Senate and have that debate and that vote here.

Vote we will this fall on this nominee, and I trust we will keep the same sort of timeframe we have seen applied impartially in cases like Justice Sotomayor, Justice Kagan, and Justice Gorsuch. There is no reason to drag this out other than for partisan, political purposes.

So let's do our job. Let's be dignified about it. Let's not engage in unnecessary name-calling or falsely attribute to the nominee beliefs he does not have or make wild, unhinged predictions about what may happen to the Supreme Court were he to be confirmed.

I look forward to confirming this new equally outstanding nominee this fall.

I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. MURPHY. Mr. President, I come to the floor to talk for just a few, quick moments about what the stakes are as we begin this debate over a new swing vote on the U.S. Supreme Court.

This is a fairly simple chart listing off a number of preexisting conditions that tens of millions of Americans have. What it says is, the Supreme Court could take away your healthcare if you have a history of cancer, diabetes, heart disease, strokes, cerebral palsy, mental illness, ALS, lupus, epilepsy, Parkinson's—the list goes on.

The reason for this is, the new priority for those who oppose the Affordable Care Act and the protections that are built in it for Americans who are sick or have ever been sick—their new strategy is to use the court system as a means to try to invalidate the protections in the law for people with preexisting conditions—protections, by the way, Republicans said they supported during the debate over the Affordable Care Act.

The case currently before the district court level, *Texas v. United States*, has drawn interest because of an exceptional decision by the Trump administration. The Trump administration has decided to weigh in on behalf of the petitioners, abandoning the traditional role of the executive to defend a statute. Traditionally, an executive will defend a statute regardless of whether they politically support it because who else will defend a statute if not the Department of Justice and the U.S. Government?

In this case, the Trump administration is going to court to argue the U.S. Congress cannot, under the Constitution, provide protection to people with preexisting condition against discrimination and rate increases from insurance companies. Now, this should freak out the tens of millions of Americans who have preexisting conditions because without the protection in the law today, healthcare will be unaffordable and unavailable to the over 100 million Americans who have any history of disease.

Given the importance the Trump administration has placed on this case by weighing in, in this exceptional, unprecedented way on behalf of those who

are trying to pull apart protections for people with preexisting conditions, we have to expect, we have to prepare for the fact that this case may move from the district court to the appellate court and eventually to the Supreme Court. If it does, this seat we are about to debate will likely, potentially, be the deciding vote as to whether Americans in this country who have preexisting conditions will continue to be able to get healthcare. So I just wanted to come to the floor, as we start, to set the table for this conversation to make very clear what the stakes are.

The Trump administration has taken the exceptional position of arguing against people with preexisting conditions, saying Congress cannot, by law, protect people with preexisting conditions. President Trump, as a candidate, made it very clear that his priority was to put Justices on the Court who would correct for the fatal flaw of John Roberts. He identified that fatal flaw as John Roberts' defense of the Affordable Care Act. He made a promise he wouldn't make that mistake again; that he would not put somebody on the Court who would vote to uphold parts of the Affordable Care Act.

You have to take the President at his word. Most of the things he said he would do as President of the United States, when he was a candidate, he has done. A lot of folks here didn't take him seriously—didn't think he would really try to unwind NATO, didn't think he would really try to ban Muslims from the United States, didn't think he would pursue this crazy idea of a wall. He did all those things.

So let's take him at his word when he says he is not going to appoint a Supreme Court Justice who will uphold the Affordable Care Act, and the case that is moving up to the Supreme Court today is a case that would take away protections for people with preexisting conditions.

Second, he essentially outsourced the decision over who would be his nominee to these two political groups: the Federalist Society and the Heritage Foundation. We know where the Heritage Foundation is on the Affordable Care Act. They have basically made it their mission, over the course of the last 7 years, to try to destroy the Affordable Care Act. They have essentially written the legislation that has been put before this Congress, on a variety of occasions, to try to replace the Affordable Care Act with something that provides no protections for people with these illnesses, but the Federalist Society is in this game, too, of trying to attack the Affordable Care Act.

In one of the main judicial attacks on the Affordable Care Act, *NFIB v. Sebelius*, one of the lead counsels of record was a Federalist Society member, and 24 other Federalist Society members signed and filed amicus briefs in support of this judicial attack against the Affordable Care Act and the protections for preexisting conditions.

The Heritage Foundation and Federalist Society have been in the business of trying to take away protections for people with preexisting conditions from the beginning of this fight. So when you outsource the selection of the Supreme Court Justice to those groups, you know whom you are going to get. You are going to get a Justice who is going to vote to unwind these protections. You don't have to do that kind of supersleuthing because the President effectively already told you he was going to appoint someone who would remedy the fatal sin of John Roberts, which was to uphold at least a central tenet of the Affordable Care Act.

I understand what Senator CORNYN is saying; that we should just accept that the nominee, when he comes before the Judiciary Committee, isn't going to answer any questions and that we shouldn't assume anything we don't know, but we have some pretty good evidence thus far. In addition, we have Judge Kavanaugh's writings, Judge Kavanaugh's attacks in his judicial opinions on the Affordable Care Act.

Seven-Sky is a really interesting case that came before the DC Circuit Court. It essentially, in the end, upheld the constitutionality of the individual mandate. Judge Kavanaugh dissented. I will admit, it was an interesting dissent, and people should read it, but in that dissent, he goes out of his way to suggest that Congress has gone far afield from its constitutional limitations in adopting the Affordable Care Act.

He wrote in his dissent that the individual mandate is "unprecedented on the federal level in American history" and predicted that upholding the mandate would "usher in a significant expansion of congressional authority with no obvious principled limit." Those are extraordinary words.

It is interesting because if you read the dissent, it, in fact, hints that ultimately the individual mandate can be upheld as a tax. So I acknowledge the subtleties in that dissent, but that is an extraordinary phrase, that upholding the individual mandate would "usher in a significant expansion of congressional authority with no obvious principled limit." The obvious limit is the Constitution, and the idea that judges would decide what the principled limit is, other than the Constitution, I think is something that should be part of our debate. The fact that Judge Kavanaugh went out of his way to talk about his fears as to how broad the Affordable Care Act may be, in addition to his inclusion on the Federalist Society and Heritage Foundation list and in addition to Trump's very clear signaling that he is only going to appoint a judge who is willing to overturn the Affordable Care Act, tells you that if you have any of these conditions, you are in the crossfire right now.

One hundred thirty million people in America have preexisting conditions.

Let's take a few of these just to give a sense of the scope of the threat. There are more than 15.5 million cancer survivors in the United States today; 23 million Americans have been diagnosed with diabetes; there are about 100 million adults who have high blood pressure, about 100 million more who have high cholesterol; 26 million Americans diagnosed with asthma; 44 million Americans have mental illness; 400,000 diagnosed with multiple sclerosis; and 28 million diagnosed with heart disease.

Without the protections in the Affordable Care Act, if you have these diagnoses, you likely will not be offered healthcare. That is what happened prior to the protections for people with preexisting conditions; you just weren't even offered a plan if you had some of these conditions. But if you were offered coverage, you were offered them at rates that were unaffordable.

Here is some data based on CMS's calculations around operated risk adjustment methodology. They say that for folks who have diabetes without complication, the increase in rates without protections for people with preexisting conditions could be about \$5,600 a year. If you have a drug dependence, if you have an addiction, the increase could be \$20,000 a year. If you have had a heart attack or a history of serious heart disease, your increase could be \$60,000 a year. If you have metastatic cancer, you could be paying a 3,500-percent premium; that is, \$140,000 in additional surcharge a year. Obviously nobody can afford that. That is why, if you have a history of metastatic cancer, you are not getting offered insurance unless you have that protection. Those are the stakes.

I want to make people understand that we are going to have a big debate over what Judge Kavanaugh will mean for the future of reproductive choice in this country, women's access to contraception. Those are really, really important debates. But I want everyone to understand that this case is coming; *Texas v. United States* is moving through the court system. It is moving through the court system, in part, because the Trump administration is trying to get the judicial branch to invalidate protections for people with preexisting conditions. Despite the fact that the President told us he liked that part of the law, he has now instructed his judicial department, instructed the Office of the Attorney General to try to strip away protections for people who have high cholesterol, mental illness, cerebral palsy, multiple sclerosis, and it may mean this seat on the Supreme Court is going to decide that case. I think we can be pretty sure of how Judge Kavanaugh is going to rule. His hostility to the Affordable Care Act in his writings, his inclusion on lists by groups that have worked for years to undo these protections, and the clear signal from the President that he was only going to pick individuals for the Court who would unwind

the Affordable Care Act tell you how big the stakes are.

The Supreme Court could take away your healthcare if you have any of these diseases, and the likelihood that they will take away your healthcare if you have any of these preexisting conditions is radically increased if Brett Kavanaugh is confirmed. I announced last night that I will oppose his nomination, and I will be on the floor talking at length about many of the reasons this body should reject his nomination. At the outset, I wanted to make clear that this debate over the future of preexisting condition protections for people in this country—130 million people who have preexisting conditions—needs to be at the center of this conversation regarding Brett Kavanaugh's nomination.

I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, I thank the Senator from Connecticut. Certainly I am happy he is bringing to the attention of the Senate this critical issue of the future of the Supreme Court and the impact it will have on families across America. Certainly, when it comes to something as basic as our health insurance, we understand this.

There are forces at work in Washington in the Trump administration that are trying to put an end to the Affordable Care Act, and in Congress, many Members of Congress—the House and the Senate—have voted 60 times to repeal the Affordable Care Act. We barely saw it survive just a few months ago when Senator JOHN McCAIN, in the middle of the night, came and stood in that well and voted no, along with two other Republican Senators. They saved the Affordable Care Act.

Most Americans had their own questions about the Affordable Care Act and how important it was, but they couldn't understand how the Republicans would come to us and say "Get rid of it" and have no replacement.

We realize, as the Senator from Connecticut just explained, that under the old rules with insurance companies, under the old rules, many of us were victims. If you had someone with a preexisting condition in your family—perhaps you had diabetes, perhaps your child was a cancer survivor, had asthma, or so many different things—health insurance was very expensive, if you could get it. We changed the law. We said: You can't discriminate against an American because someone in their family has had a preexisting condition. Everybody is in the same pool in America. We are going to join together.

Well, now the Trump administration has said they are going to fight that in court. They are going to try to declare it unconstitutional to protect people with preexisting conditions, so they filed a brief in a lawsuit—a lawsuit that is wending its way to the Supreme Court. When the Senator from Con-

necticut, Mr. MURPHY, came before us and talked about the new nominee to fill the vacancy on the Supreme Court, it is important that he focused on the impact it could have on ordinary people.

Most Americans, put to the test, couldn't name the Justices on the U.S. Supreme Court. Well, they know it is a big Court, an important Court, the highest Court in the land, but they don't know who is there until we get into this kind of debate. As we do, people tend to learn a lot more about the Justices and what their core beliefs are.

When it comes to Judge Brett Kavanaugh, who now sits on the DC Circuit Court of Appeals, he has a lengthy record—12 years of opinions as a judge, not to mention all the years before that when he was active politically in Washington, DC. Senator MURPHY of Connecticut is correct to note that his approach to the law and his approach to the Constitution do not give us great hope in preserving the protections on health insurance that are part of the Affordable Care Act. One decision by that Supreme Court could undo years of legislative work and literally remove protections from families. We are talking about that today. We should be talking about that today. But it isn't what we are voting on today, and that is why I have come to the floor.

#### NOMINATION OF BRIAN BENCKOWSKI

Mr. President, back on page 8 of the Executive Calendar of the United States Senate, there is a long list of nominations that are pending before the Senate, and one of these, Calendar No. 639 on the Message No. 1402, is the name Brian Allen Benczkowski, of Virginia, to be an Assistant Attorney General. You would have to search the Executive Calendar to find it, but it is going to be voted on this afternoon in the Senate.

Is it another routine nomination? Not at all. This position in the Department of Justice is the Assistant Attorney General for the Criminal Division, who is the leader and is responsible for over 600 Federal prosecutors who are prosecuting cases across the criminal spectrum from treason against the United States to the opioid crisis and everything in between—600 men and women, career prosecutors, prosecuting the laws, the cases on behalf of the U.S. Government. President Trump has suggested that he wants this man, Brian Allen Benczkowski, of Virginia, to be in charge of those 600 prosecutors.

Is this a big assignment? In the Department of Justice, it is one of the biggest assignments. This person will be directing the cases that are filed on behalf of the United States of America, critical cases for protecting our national security, critical cases relative to crimes that are being committed, critical cases when it comes to our rights as citizens. He will be leading 600 Federal prosecutors.