of these events. If Congress in 2000 had moved at the speed we are moving now, some of this would have been avoided, and with every year that we delay—not acting—these are the real world consequences; it only gets worse, not better.

That is why I remain committed, and among my highest priorities for the State of Florida is to get this done in a timely fashion, with the Federal support and the Federal commitment necessary to match what the State has already done with great urgency. I hope we can continue to make progress on all of this. Otherwise, we are going to have more loss, and the lives of millions of people will continue to be impacted in catastrophic ways.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon.

NOMINATION OF BRETT KAVANAUGH

Mr. MERKLEY. Mr. President, the most important words of our Constitution are its first three, ''We the People.'' It is the mission statement of our Constitution, the mission statement of our country, a nation ''of the people, by the people, for the people,'' as President Lincoln so eloquently stated, not a nation by, for, and of the powerful and the privileged.

Critical to that vision of ''we the people'' is a strong and independent judiciary, particularly a strong and independent Supreme Court, since all the decisions from the lower courts can be appealed right on up to the very top.

Today, there is a vacancy on the Supreme Court with Anthony Kennedy's announced retirement. On Monday night, President Trump announced his nominee to fill that seat—Judge Brett Kavanaugh.

A single vote can make all the difference in the world on the Supreme Court in protecting the freedoms we hold dear. A single vote can tip the scales toward the vision of our Constitution, the ''we the people'' vision of our Constitution, or it can tip the scales away from that vision toward government by and for the powerful.

We can see the impact of the single vote when we look at Justice Kennedy's own legacy, his own record of 5-to-4 decisions. Time and again during his three decades on the Court, he made the deciding vote in a critical decision—a single vote making a big difference.

In 1992, he wrote the majority opinion in Planned Parenthood v. Casey, not only reaffirming Roe v. Wade but protecting a woman's fundamental right to make decisions about her own healthcare. As Justice Kennedy wrote, ''These matters, involving the most intimate and personal choices a person may make in a lifetime . . . are central to the liberty protected by the Fourteenth Amendment,'' the amendment prohibiting States from depriving a person of liberty without due process.

In 2005, he wrote the ruling in Roper v. Simmons, which barred the execution of juveniles, declaring it cruel and unusual punishment banned by the Eighth Amendment, highlighting the ''evolving standards of decency that mark the progress of a maturing society.'' Justice Kennedy said that even when a child commits the most heinous of crimes, ''the State cannot extinguish his life and his potential to attain a mature understanding of his own humanity.''

In Boumediene v. Bush, he appealed to the better angels of our nature and channeled the sentiment behind Benjamin Franklin's adage that ''Those who would give up essential Liberty, to purchase a little temporary Safety, deserve neither Liberty nor Safety'' when he wrote the majority opinion that detainees at Guantanamo Bay had the constitutional right of habeas corpus to challenge their detention.

Certainly, in looking at Justice Kennedy's legacy and the importance of a single vote, it is worth noting cases that involve the rights of opportunity for our LGBTQ brothers and sisters. Because of that 5-to-4 vote, our Nation declared finally that love is love and that everyone has the right to marry whomever they love, regardless of gender or sexual orientation.

In United States v. Windsor, he helped strike down the Defense of Marriage Act, declaring it unconstitutional under the Fifth Amendment's due process clause after the surviving spouse of a legally recognized same-sex marriage was denied the Federal estate exemption given to all surviving spouses.

Then, in Obergefell v. Hodges, he wrote: ''No union is more profound than marriage, for it embodies the highest ideals of love, fidelity, devotion, sacrifice, and family.'' Justice Kennedy went on to say that same-sex couples who sought legal recognition of their unions in the case asked only ''for equal dignity in the eyes of the law,'' and that ''the Constitution grants them that right.''

Think about these powers, these freedoms, these rights: due process under the 14th Amendment; protection from cruel and unusual punishment under the 8th Amendment; the right to petition for a writ of habeas corpus granted in article I, section 9 of the Constitution; due process under the 5th Amendment, all upheld by a single vote.

If there is any doubt about how much difference that vote can make, look at some of the recent decisions handed down by the court.

The Janus case was a 5-to-4 decision undermining the rights of workers to organize. The ability of workers to organize is a fundamental right, a key power to be able to participate in the wealth that you work to create, yet it was undermined just the week before last by a 5-to-4 court decision.

Trump v. Hawaii was a 5-to-4 decision upholding a travel ban against Muslims, effectively shutting the door of our country to a group of people simply because of their religion. What a 5-to-4 assault that was on the freedom of religion.

Abbot v. Perez was another 5-to-4 decision green-lighting racial gerrymandering in Texas, violating the Voting Rights Act.

One case after another has come down in recent weeks against ''we the people,'' decided by a single vote. How many cases are we going to see in the coming years where a single vote transforms the landscape of our country as we know it, where a single vote takes away a fundamental right in the vision of a ''we the people'' nation? That is why this nomination is so unlike any other recent confirmation; the impacts on the court and on our Nation will reverberate for decades to come.

So many core issues are under consideration: the influence of money in politics; the power of big corporations to prey on consumers and workers; marriage equality; the right of every American to have their voice heard at the ballot box. How can you believe in the foundation and vision of a democratic republic if you don't believe in voter empowerment? Yet we have members of the Supreme Court who don't. The right of every American to receive a quality education, affordable healthcare and a woman's right to choose—it is clear that the very soul of our ''we the people'' Nation is hanging in the balance.

But here is a certain circumstance that we may never have seen before; that is, we have a President who is under investigation for the possibility of colluding with an enemy, with an adversarial foreign power. In case after case, time after time, he has sought to make it difficult to conduct an investigation into the Presidency and the campaign that preceded it. He said in a tweet: ''As has been stated by numerous legal scholars, I have the absolute right to PARDON myself, but why would I do that when I have done nothing wrong?''

I ask this: Why would he tweet that topic if he is not worried about needing a pardon? He is a President who talks openly about the possibility of pardoning himself—something there is no precedent for, which no President has considered? This is the situation we are in.

With a President at this moment nominating a Supreme Court Justice who well may have the power to determine whether it is possible under our Constitution for a President to pardon himself, who may well determine under our Constitution whether a President can fire a special counsel at will, the march to an authoritarian nation is one that should concern us at this moment because that is the issue of the expansive power of the Presidency. Is it so broad, so large that the checks and balances written into the Constitution become irrelevant? This is exactly what President George Washington warned the Nation about in his Farewell Address, when he said, ''The spirit

of encroachment tends to consolidate the powers of all the departments in one, and thus to create whatever the form of government, a real despotism.'' He said this ''is the customary weapon by which free governments are destroyed.''

Here we have this issue of the President having chosen as a nominee, off a long list of possibilities, an individual who has gone to great lengths to talk about the President being above the law. Therefore, we have every right to worry.

About this expansive view of Executive power, in a 2009 Minnesota Law Review article, he said:

> We should not burden a sitting President with civil suits, criminal investigations, or criminal prosecutions.

He said:

> [A] possible concern is that the country needs a check against a bad-behaving or lawbreaking President. But the Constitution already provides that check. If the President does something dastardly, the impeachment process is available.

So here he is saying directly that his reading of the Constitution is that the check on the President is through impeachment.

''The President,'' he says, ''should have absolute discretion . . . whether and when to appoint an independent counsel.''

In another point, he argued that it should be the President who has the power to dismiss an independent counsel and to do so without cause. In a 1998 panel discussion called ''The Future of the Independent Counsel Statute,'' he said: ''If the President were the sole subject of a criminal investigation, I would say no one should be investigating that.''

When the moderator asked how many on the panel believed a sitting President cannot be indicted, it is Mr. Kavanaugh who raised his hand.

In his dissent in Seven-Sky vs. Holder, Kavanaugh wrote a footnote stating: ''Under the Constitution, the president may decline to enforce a statute that regulates private individuals when the president deems the statute unconstitutional, even if a court has held or would hold that statute constitutional.''

Wow, not only does this nominee believe that the only power to address a misbehaving President is impeachment—the power granted to the Congress—but also that the President has the power to ignore laws just by virtue of feeling that they are unconstitutional, even if a court says they are constitutional. That is not the system of checks and balances set up in our Constitution.

That is a big concern, and it leads us to the conclusion that when a President is under investigation for the possibility of a serious crime of collaborating with the enemy, that President should not have this Chamber considering holding hearings and proceeding to take a debate and a vote on that nominee. Let that cloud be cleared first.

There is more to be concerned about. There is a lot to be concerned about in healthcare. In Garza v. Hargan, he dissented from a decision protecting a woman's constitutional right to control her own reproductive health decisions. Then, there is Priests for Life v. U.S. Department of Health and Human Services, where he wrote a dissenting opinion in which he stated that the Affordable Care Act's contraceptive coverage requirement violated religious nonprofits' religious freedom. The nonprofits said that even submitting the one-page form from the Obama administration to allow religious nonprofits to opt out might make them complicit.

As for net neutrality, in U.S. Telecom Association v. Federal Communications Commission, he wrote an opinion in favor of striking down the FCC's net neutrality rule. He argued that the net neutrality rule violated the First Amendment by ''restricting the editorial discretion of internet service providers.''

The editorial discretion of internet service providers? This issue of net neutrality is whether or not an internet service provider can charge a series of fees based on the content of the information. If you want to protect freedom of speech, then you protect net neutrality. This net neutrality issue was about whether an internet service provider can charge fees based on the type of platform you are using or the computer program you are using. It was about whether you can create a fast lane on the internet for those wealthy enough to afford it while the rest of us in America are stuck in the slow lane behind a truck going 30 miles per hour. That is what net neutrality is about.

Did he even understand the basic fundamentals of the issue? He said it is about the editorial decision of the internet service providers—talk about a decision warped and twisted and crafted to support the powerful or the fundamental opportunity for us as a nation to make rules that regulate fair opportunity on the internet.

Our Nation is at a pivotal moment. We have a Court that in a 5-to-4 decision, a 5-to-4 decision, and a 5-to-4 decision has proceeded to weigh in on behalf of the powerful, against the people, against the workers of America, against the consumers of America, against the women of America and healthcare rights in America. Now we have the possibility of a nominee being considered who wants to make the Presidency of the United States above the law, not subject to investigation, not subject to the possibility of indictment, not subject to the courts saying that a law is constitutional or unconstitutional.

Perhaps it is appropriate for a King in a kingdom but not for a democratic republic, not for a ''we the people'' constitution. That is why we absolutely should not proceed to consider this nominee until the President is cleared of the investigation for conspiring, for collaborating with an enemy of the United States of America. It is absolutely why if that cloud is cleared, we should still be dramatically concerned about the viewpoints of this nominee, who doesn't respect the healthcare opportunities and rights of Americans, who doesn't respect the government's ability to create a fair playing field, equal lanes for individuals on the internet, and who certainly doesn't understand that no one is above the law under the vision of the Constitution, not even the President of the United States.

Thank you.

ADJOURNMENT UNTIL 10 A.M. TOMORROW

The PRESIDING OFFICER. Under the previous order, the Senate stands adjourned until 10 a.m. tomorrow.

Thereupon, the Senate, at 6:38 p.m., adjourned until Thursday, July 12, 2018, at 10 a.m.

CONFIRMATION

Executive nomination confirmed by the Senate July 11, 2018:

DEPARTMENT OF JUSTICE

BRIAN ALLEN BENCZKOWSKI, OF VIRGINIA, TO BE AN ASSISTANT ATTORNEY GENERAL.