

be good to have that vacancy left by the retirement of Judge Kennedy filled with this nominee. So the idea that we can somehow put this off until after the midterm elections I think makes no sense, or if it makes sense, it makes sense only from the standpoint of stalling the confirmation process.

I agree with the senior Senator from Connecticut, who said recently that the Senate should do nothing to artificially delay consideration of the next Justice. I agree with him. Since Justice Gorsuch and Justice Sotomayor were confirmed just 66 days from the time they were nominated, a similar amount of time should not be unreasonable for Judge Kavanaugh. I am not suggesting it be exactly 66 days; it might be a few days earlier or a few days later. But just to sort of orient everybody as to the timeframe we are talking about, if it were 66 days, like Justice Gorsuch and Justice Sotomayor, that would mean we would vote to confirm Justice Kavanaugh on September 13, if my math is correct.

Well, we know that these judicial nominations—particularly for the Supreme Court of the United States—are hotly contested, and that is because on the left, they see the Court as an end run around the democratic process. In other words, what you can't win in an election and what you can't win in a debate and vote of Congress, well, if you can get the Court to do it—unelected, lifetime-appointed judges—then you have basically won in advancing your policy position at the Federal level. I would say that the opposite philosophy is one that was embraced by Alexander Hamilton and James Madison, who viewed the courts as what they called the least dangerous branch because they viewed the courts as not being political and judges as being impartial arbiters of the law and letting the chips fall where they may. But on the left, if they can't achieve their desired policy outcomes through the normal legislative process, well, doing it by lawsuit and by court decision becomes the means to their end. That is why they are so upset, I think, about this President's nominee. He is what I would call a traditional judge in the James Madison, Alexander Hamilton mold—someone who believes that judges have a very important job in our government, but it is a limited job and role.

In other words, the main responsibility for making public policy should fall on the shoulders of Members of Congress and the President because we stand for election. If people don't like what we are doing, they can knock on our door and say: Senator, we don't like what you are doing. We want you to change your vote or your point of view.

That is entirely appropriate. If we don't, they reserve the time-honored right to throw the rascals out. You can't do that for a Federal judge. That is why their role under the Constitution is circumscribed as interpreting

the law and applying the facts to settled law.

I understand why our friends across the aisle are disappointed. They were hoping that President Hillary Clinton would be filling this vacancy, and they were hoping that Majority Leader CHUCK SCHUMER would be the one guiding that nomination through the Senate. Instead, they were disappointed—I understand it; it is a normal human reaction—that President Trump won, so he is the one making the nomination, and a Republican Senate, led by Majority Leader MCCONNELL, is the one guiding this nomination through.

I can understand their disappointment. It is no reason to drag your feet or obstruct an orderly and thoughtful deliberative process when it comes to filling this vacancy. We are going to have a chance to talk about this topic a lot in the coming weeks.

KEEP FAMILIES TOGETHER AND ENFORCE THE  
LAW ACT

Mr. President, on a separate note, I want to address the situation unfolding on the U.S.-Mexico border. As of 7 o'clock this morning, we heard that the Trump administration has now complied with a court order and completed the reunification of those children under the age of 5 who immigrated here with their parents unlawfully. Those children have been reunited with their parents, which I think we all should be grateful for.

Secretary Azar of Health and Human Services; Kirstjen Nielsen, Secretary of Homeland Security; Attorney General Sessions; and all those officials at the Departments of Health and Human Services, Homeland Security, and Justice have been working tirelessly to complete these initial reunifications. Their goal has always been the well-being of these children and returning them to a safe environment.

As we can see from this morning's report, the administration clearly needs time to vet all the people. In fact, in some instances, they actually have to take DNA tests to confirm the claim that the adult who brought the child across is, in fact, their biological parent. We know that the cartels, the human traffickers, are very sophisticated, and if they can simply pair up an unaccompanied child with an adult and send them across the border while claiming to be a family unit, they can basically navigate the gaps in our legal enforcement system against illegal immigration.

Over the next few weeks, we know Federal officials will be working to reunite all other separated families, as they should. This is one thing we all—Republicans and Democrats alike—agree on; these families should be kept together. This is consistent with President Trump's Executive order, as well as a bill that I have introduced, along with other colleagues, called the Keep Families Together and Enforce the Law Act.

As that bill suggests, there are two parts to it. One is treating families

with compassion by allowing them to remain together and, also, enforcing the immigration laws on our books. They don't have to be mutually exclusive, and our bill will ensure that they aren't. It will allow parents to stay with their children in a safe facility while awaiting their court proceedings.

In other words, a number of these children and these adults are claiming asylum in the United States. That can be finally decided only by an immigration judge. What we would like to do is move them to the head of the line and get them a hearing in front of an immigration judge on a timely basis. Our bill would also set mandatory standards of care for family residential centers and keep children safe by requiring that they be removed from the care of an individual who endangers their safety.

In conclusion, I will say that this is not a new problem. We know that several of the countries in Central America are basically in a meltdown mode. In other words, gangs and violent organizations threaten the safety and welfare of families in these Central American countries.

What we saw in 2014 is what President Obama called a humanitarian crisis—when tens of thousands of these children, unaccompanied by a parent, were turned over to these criminal organizations and transported from Central America all the way through Mexico into the United States, where they were then processed and placed with a sponsor in the United States, consistent with the law currently in effect. This is not a new scenario.

The cartels, the criminal organizations, have found a new way to circumvent American law unless we change it, unless we fix it. What they are hoping for, ultimately, is a restoration of the catch-and-release policies of the past.

What happens when people are not detained and when they are not presented before an immigration judge on a timely basis is that they are given a notice to appear in the future and told to come back for their hearing in months and maybe years later. It should surprise no one that the vast majority of those people don't show up for their hearing.

What has happened is, the criminal organizations who profit from this business model and the people who illegally immigrate to the United States have basically gamed the system. Unless we are willing to stand up and fix it, then shame on us.

This is really about two issues. One is compassionate treatment of the children, treating the adults with dignity and providing them a safe place. But it is also about making sure that our laws are enforced.

Some of our colleagues across the aisle have said: Well, let's just abolish law enforcement at the border. Let's abolish Immigration and Customs Enforcement, abolish ICE, as it is called. That would be a disaster of the first

order. How would we be maintaining fidelity with our oath to support the Constitution and laws of the United States if we would not see to it that our law enforcement agencies, like ICE, which perform important and necessary duties along the border and throughout the country, were not there with our support to do the job we have asked them to do?

I know there has been a lot of discussion about this legislation, but at some point, patience ceases to be a virtue, and I expect that at some point there may well be an opportunity for one or more Senators to come to the floor and offer this legislation by unanimous consent. We will see who wants to be a constructive player in this process and who wants to object and obstruct our ability to fix this crisis at the border.

The PRESIDING OFFICER (Mrs. FISCHER). The Senator from Iowa.

FBI

Mr. GRASSLEY. Madam President, as we all know, the Federal Bureau of Investigation is a component of the Department of Justice. It is frequently described as the premier law enforcement agency in the country. The FBI's investigative authority has only grown—and grown tremendously—since its creation almost 100 years ago.

The Bureau now covers everything from kidnapping to counterintelligence, public corruption to bank robbery, and maybe a lot of things in between. Its power is very substantial, and its jurisdiction is far-reaching. It is a very important agency. Because of that, the FBI is subject to a lot of scrutiny.

Lately, we have had a lot of folks around here who seem to be mistaking the word “scrutiny” of the Bureau with the word “attacks” on the Bureau. Oversight of the FBI is not new, and it is a constitutional responsibility of the Congress at least to do oversight of every agency, and the FBI can't be an exception.

Far from being out of bounds, it is essential for the people's elected representatives in the Congress to put the FBI under a microscope. That is doubly true when the FBI gets involved in election controversies. The more power and the more secrecy the FBI claims in order to carry out its responsibilities, the more closely it ought to be watched.

Under our government, where the public's business ought to be public, that statement I just made ought to be common sense to everybody.

In its criminal work, the FBI is held accountable primarily by the court system. When the FBI secretly gathers information for intelligence purposes, the risk of impropriety skyrockets. If the information is never going to be presented in the courts, as in a criminal matter, who is going to be watching to make sure that the power to gather and use it is not being abused?

That is why we need vigorous congressional oversight and strong inspector general scrutiny. Lots of people say

that the FBI should be independent. I disagree. The FBI needs to be objective and nonpartisan. It should be insulated from undue political pressure.

If you want to call that independence, then I will use that word. It cannot be independent of accountability to the people's elected leaders. Civilian control of the military has always been a key safeguard to liberty for the same reason.

Freedom is at risk if the FBI can become a domestic intelligence service with free rein to weaponize information in secret. We have seen the risks of that in the text messages of Peter Strzok and Lisa Page. Their contempt for both the people of this country and, particularly, their elected leaders should disturb everyone.

Abuses of power at the FBI are why we have a term limit for the Director of the FBI. That term limit is not there to protect the FBI's independence; it is there to protect the people from the abuses that J. Edgar Hoover committed because he became too independent. He was accountable to no one. J. Edgar Hoover was feared by Presidents, Senators, and Congressmen. While the Director originally was selected by the Attorney General, in 1968, Congress made the position subject to Presidential appointment and Senate confirmation. In 1976, the Congress established a nonrenewable 10-year term limit for the Director. The Senate Judiciary Committee published a committee report on that bill that limited the 10-year term in 1974. It took a couple of years for the bill to pass the House.

In quoting from that report:

The purpose of the bill is to achieve two complementary objectives. The first is to insulate the Director of the Federal Bureau of Investigation from undue pressure being exerted upon him from superiors in the Executive Branch. The second is to protect against an FBI Director becoming too independent and unresponsive.

At the time, Congress was grappling with the fallout of Watergate and the decades of corruption and civil liberties abuses by that first Director of the FBI, J. Edgar Hoover—hence, the legislation. Congress knew the FBI had to be able to operate free of partisan interference but still be accountable to the duly elected leadership of the country, including all Members of Congress in their constitutional roles of oversight.

Certainly, the FBI Director can't be a politician's stooge, but history tells us that the bigger risk is in the other direction. Hoover abused his power to intimidate politicians and other political leaders. In a democracy, all of our leaders are ultimately accountable to the people. Access to information about what agencies like the FBI are doing is essential to holding them accountable. Transparency brings accountability. Abuses multiply in secret. That is why congressional oversight—Congress's responsibility under the Constitution—is key. The recent

report by the Department of Justice's inspector general is a very good example. It describes behavior having taken place in secret at the FBI that simply cannot be defended when having been brought to light.

First, the inspector general's report identified unacceptable messages that were sent on FBI mobile devices and computer systems by 5 of the 15 FBI employees on the Clinton email investigation. Those messages reeked with political bias. The report found that through such messages, these employees “brought discredit to themselves, sowed doubt about the FBI's handling of the Midyear investigation, and impacted the reputation of the FBI.” One message explicitly suggested a willingness to take official investigative steps for partisan reasons where there should be no partisanship. That message vowed to stop the election of Donald Trump.

Can you imagine an FBI employee in an official capacity, on official devices, taking that approach and then claiming not to be biased?

Because of that message, the IG was unable to conclude that the FBI's inaction on the Clinton email matter, for nearly a month prior to the election, was free from partisan bias.

The IG referred to the Bureau all five employees who had expressed partisan bias in order for the FBI to consider potential disciplinary action. Those messages showed a bureau plagued by arrogance, disrespect for policy and norms, and disgust of democratic accountability.

The report found that Director Comey's actions usurped the Department's authority. It called his decision of publicly announcing that Secretary Clinton would not be prosecuted as “extraordinary” and “insubordinate.” Director Comey acted as if he were accountable to no one except himself.

His subordinates also appeared content to ignore Bureau and Department policy and guidance—some, apparently, for their own personal interests.

The inspector general also recently concluded that the FBI's former Deputy, Andrew McCabe, authorized the disclosure of information to a reporter. That information confirmed the existence of an ongoing investigation. The IG report faulted McCabe for violating longstanding Department and Bureau policy. There is a public interest exception to that policy, but the inspector general found that McCabe authorized the disclosure of the information to make himself, McCabe, look good. Now McCabe claims Comey knew about it, but the FBI will not release information that supposedly supports that claim.

The FBI did little to nothing to address what now appears to be a culture of unauthorized contact with the media. Yet, somehow, every day, you read in the newspapers of the FBI's stiff-arming congressional oversight at every turn. Going to the newspapers is OK. When Congress wants the same information, no.