

The motion was agreed to.

# EXECUTIVE SESSION

## EXECUTIVE CALENDAR

Mr. McCONNELL. I move to proceed to executive session to consider Calendar No. 866.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

The PRESIDING OFFICER. The clerk will report the nomination.

The senior assistant legislative clerk read the nomination of James N. Stewart, of North Carolina, to be an Assistant Secretary of Defense.

### CLOTURE MOTION

SENATOR. Mr. President, I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

### CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the nomination of James N. Stewart, of North Carolina, to be an Assistant Secretary of Defense.

Mitch McConnell, James Lankford, John Hoeven, James M. Inhofe, Johnny Isakson, David Perdue, John Cornyn, Steve Daines, John Barrasso, Mike Rounds, Thom Tillis, Lamar Alexander, James E. Risch, Jeff Flake, Richard Burr, Roy Blunt, Deb Fischer.

Mr. McCONNELL. Mr. President, I ask unanimous consent that the mandatory quorum calls for the cloture motions be waived.

The PRESIDING OFFICER. Without objection, it is so ordered.

## ORDERS FOR TUESDAY, OCTOBER 9, 2018

Mr. McCONNELL. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 3 p.m., Tuesday, October 9; further, that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and morning business be closed; finally, following leader remarks, the Senate resume consideration of the House message to accompany S. 3021, and notwithstanding rule XXII, the Senate vote on the motion to invoke cloture on the motion to occur at 5:30 p.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

## ORDER FOR ADJOURNMENT

Mr. McCONNELL. Mr. President, if there is no further business to come before the Senate, I ask that it stand adjourned under the previous order, following the remarks of Senator COONS.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Delaware.

### NOMINATION OF BRETT KAVANAUGH

Mr. COONS. Thank you, Mr. President.

I come to the floor to express my opposition to the nomination of Judge Kavanaugh to serve as Associate Justice of the U.S. Supreme Court.

I come with a profound regret. I come today with profound regret that this body has transformed from one that historically confirms Supreme Court Justices with broad and bipartisan support to one in which rules, norms, and courtesies fall away to serve the objectives of the majority and one in which Justices are confirmed by the absolute narrowest of margins.

I know I am not the only one to feel this way. We can simply wish for the bygone era of consensus to return, we can give speeches about bipartisanship with no hope of making progress, but to wish for it without doing the work of reaching across the aisle is empty talk without action, and as one who tries to inject some spirit of bipartisanship in what has been the most bitter and most divisive and most partisan fight I have seen in my 8 years here, I wanted to reflect for a moment before we close today on my views on the nomination of Judge Kavanaugh, the process that got us here and where we go next.

First, in this process, in this nomination, I saw barrier after barrier placed in front of consensus and bipartisanism and the proper functioning of the Senate Judiciary Committee on which I serve. These barriers prevented us from fully and effectively performing the advice and consent function to which we are called by the Constitution. We have to do better. There needs to be a reckoning with all that went wrong here.

I am sure that colleagues from the other side of the aisle may well have different views on exactly which steps or developments led to the sharply divided vote today and the heated and sharply divided hearing and proceedings of last week, and I welcome their input.

But I thought today I should, for me, recount the course of this nomination. It was fraught from the beginning because the Senate Judiciary Committee majority used an unprecedented and partisan process to rush this nomination while blocking access to millions of pages of documents of Judge Kavanaugh's service in the White House, potentially relevant to our deliberations.

For the first time since Watergate, the nonpartisan National Archives was cut out of the process for reviewing and producing the nominee's records, and Judge Kavanaugh's former deputy, who made his career representing Republican and partisan causes, was in charge of designating which documents this committee and the American people got to see.

Nonetheless, the committee pressed forward, despite objections from the minority to Judge Kavanaugh's hearing. During that hearing, I was, frankly, disappointed. Judge Kavanaugh was not fully forthcoming when discussing his interpretation of the Constitution and responding to timely and important questions about his record.

I asked Judge Kavanaugh why he repeatedly criticized *Morrison v. Olson*, a 30-year-old precedent about a now-extinct statute but a 30-year-old Supreme Court precedent holding that Congress can create an independent counsel with authority to investigate the President and whom the President cannot just fire on a whim.

I asked whether he still believes what he said in 1998, that a President can fire at will a prosecutor criminally investigating him. On these and other critical questions of Presidential power, Judge Kavanaugh would not respond. He would not tell me whether he believes all executive branch officials must be removable at will by the President, according to his view of Executive power.

I asked whether critical rights like rights of access to contraception, to abortion, the right to marry the person you love would be protected under the test to evaluate substantive due process that he has championed. Judge Kavanaugh has repeatedly cited a test for substantive due process that would limit the protection of liberty and interest to rights "deeply rooted in our Nation's history and tradition," but he would not confront the consequences of applying this test going forward.

Judge Kavanaugh would also not condemn President Trump's attacks on the Federal Judiciary and the President's suggestions that the Justice Department should consider politics when making prosecutorial decisions. I asked Judge Kavanaugh about a comment he made on a panel at Georgetown when he said: "If the President were the sole subject of a criminal investigation, I would say, no one should be investigating that." In fact, Judge Kavanaugh testified he didn't say that, but I reviewed the record.

I followed up with a series of questions for the record to get additional information I think the American people should know and to give Judge Kavanaugh a chance outside of our brief exchanges in the confirmation process to explain his suggestions that perhaps I had misquoted him. Unfortunately, I instead received pages of non-answers.

When I asked Judge Kavanaugh specific questions about his criticism of *Morrison v. Olson*, he simply referred to his prior testimony and said he had "nothing further to add here." He would not explain how his proffered test for substantive due process is consistent with the Court's landmark marriage equality decision by Justice Kennedy in *Obergefell*.

After the hearing was over, I learned of Dr. Ford's allegations that Judge

Kavanaugh had assaulted her in high school. Dr. Ford courageously presented her account to the committee and the country. She gave compelling testimony about a terrifying sexual assault she experienced at age 15. She recounted Mark Judge and Brett Kavanaugh, stumbling drunk, pushing into her bedroom, locking the door, laughing, and turning up the music to muffle her screams.

Dr. Ford testified with 100 percent certainty that the person who assaulted her was the judge whose nomination we were considering, whom she had known through acquaintances and socialized with on many occasions.

Dr. Ford had borne the pain of this attack alone for decades, but over time, she told several people she trusted. She told her now-husband in 2002, she told therapists in 2012 and 2013, and friends in 2013, 2016, 2017, and 2018. She proffered their names in the subsequent FBI investigation, but they were never questioned.

Importantly, Dr. Ford wasn't the only person to come forward during this period. Her testimony gave courage to countless others to confront their own trauma and share their own pain so that all of us can understand.

As I just shared in a bipartisan conversation with colleagues at the end of this divisive vote, we have all had the experience of friends and colleagues, classmates and neighbors coming forward with stories long concealed—whether out of shame or fear; whether out of a certainty they would not be believed; whether out of pressures real, recent, or long gone—and we all have work to do together.

Inspired by these survivors, I will never forget the experiences they have shared, and I will not stop in efforts to make certain this body, this Senate, acts in ways that respect them and their suffering and their experiences.

When Dr. Ford came forward to speak to all of us and the American people, I will remind you she had nothing to gain and a lot to lose. She came forward to testify about her assault, and I am going to use her own words to explain why, as she said to us: "I am here today not because I want to be. I am terrified. I am here because I believe it is my civic duty to tell you what happened to me while Brett Kavanaugh and I were in high school."

Civic duty to tell the truth.

What always struck me was how Dr. Ford came forward to voice concerns before Judge Kavanaugh was nominated by the President. She reached out to her Congresswoman and anonymously to the Washington Post when his name was on a short list, but he had not yet been chosen.

Later, last Thursday, after Dr. Ford's testimony, Judge Kavanaugh came forward to offer an aggressive, full-throated, angry denunciation of her accusations. Even recognizing the understandable passion of one who believes himself to be defending his honor against unjust assault, I found his pre-

pared opening statement and combative exchanges with my colleagues deeply troubling. As a sitting circuit court judge, he refused to answer fair and relevant questions, instead throwing them back in the faces of two of my colleagues.

He was not candid with the committee about his own history of drinking and aggressive behavior. To quote an editorial recently published by three college classmates:

Telling the truth, no matter how difficult, is a moral obligation for our nation's leaders. No one should be able to lie their way onto the Supreme Court. Honesty is the glue that holds together a society of laws. Lies are the solvent that dissolves those bonds.

They stated: "Brett lied under oath while seeking to become a Supreme Court Justice."

Most concerning of all to me, Judge Kavanaugh broke his own stated rule of staying three ZIP Codes away from politics. In his sharply worded and partisan exchange with Senators, he accused Democrats of "replacing advice and consent with search and destroy," of "Borking" him, of engaging in some sort of revenge plot on behalf of the Clintons, and of a calculated political hit. He looked us in the eye and told us: "What goes around comes around."

Retired Justice John Paul Stevens explained he changed his mind about Judge Kavanaugh's fitness to serve because his hearing performance "demonstrated a potential bias."

I share the concern of my colleague Senator MURKOWSKI's that after last Thursday, the "appearance of impropriety has become unavoidable."

Following the intense and emotional testimony of last Thursday, I am grateful that we took a week pause so that the FBI could conduct an investigation into credible allegations of sexual assault, and I remain thankful to my colleague Senator FLAKE for supporting my call for an FBI investigation. It showed courage on his part.

Unfortunately, regrettably, the investigation that ensued had a scope so narrow, so cursory, so incomplete that it did not remove the cloud hanging over Judge Kavanaugh's nomination. Dozens of witnesses who could have corroborated Dr. Ford's and Ms. Ramirez's accounts were never contacted and never questioned, despite their contacts and names being handed to FBI agents and despite the efforts of many offices in the Senate to forward their information.

I fear that with the confirmation of Judge Kavanaugh to the Supreme Court today, we will look back on this moment not only as a moment of raucous turmoil for the Senate but as a moment where the norms and traditions of blind justice, a justice blind to partisanship, will have slipped away.

The Court is critical to the rule of law in our country, and I am deeply concerned that its legitimacy will be harmed with the addition of an explicitly partisan Justice.

The Supreme Court plays a pivotal role in defining the scope of the Presi-

dent's power in determining whether the President is above the law.

The Supreme Court impacts essential rights enshrined in our Constitution—the rights to privacy, intimacy, marriage, contraception, abortion, the freedom to worship as we choose, the ability to participate in our democracy as full and equal citizens, and the promise of equal protection of the laws. There are so many more I could list. These issues are not academic, and they are under assault. There are cases proceeding to the Supreme Court now that are relevant to so many of these concerns.

There are cases challenging the constitutionality of the ongoing special counsel investigation now. A lawsuit that is aimed at striking down the Affordable Care Act is proceeding in Texas now, and the Trump administration is refusing to defend protections for people with preexisting conditions. A challenge to restrictive regulations for abortion clinics—regulations aimed at putting clinics out of business—is headed to the Supreme Court now. Right now, there are also lawsuits across the country in which LGBT Americans are challenging discrimination they have faced in employment, in schools, and in government service.

Our Supreme Court should be a bulwark against violations of law, deprivations of freedom, and abuses of power. Yet we may now enter a perilous time when the Court will, in fact, be shifting far right and will end up issuing decision after decision on clearly partisan lines—significantly more conservative than the majority of Americans at a time when a President elected by a minority of Americans will have appointed the Justice with a deciding vote, after his confirmation, by the narrowest of margins. The Justice who has been confirmed today is one who, in his conduct, will lead some to fairly doubt his impartiality. He will likely play a central role for decades in charting a course for interpreting our laws and rights and freedoms.

I hope and pray that I am wrong, that my interpretation of his writings, of his speeches, and of his opinions is flawed, that the apology and retraction he offered is genuine, in an opinion that was published yesterday, about his partisan screed in his confirmation hearing, and that his behavior as a Justice will put to rest all of the concerns I have raised and that he will be a model of moderation and balance. Yet I have profound doubts and grave concerns about Judge Kavanaugh's ability to serve on the Supreme Court in an evenhanded and nonpartisan way.

As I conclude, let me make a personal plea to those who are listening and those who may watch: that we in the Senate, in going forward, must address the flaws and weaknesses of the process that got us to today and that we must do better. Simply retreating to our partisan cloakrooms when we are faced with our Nation's challenges will not solve them.

If we do not work to repair this institution, there will be nothing left worth saving. If this Senate does not work, our Congress does not work. If our Congress does not work, our Nation does not work. If our Nation does not work, we teach the world that democracy is not the model to follow. If we, simply, reflect the bitter partisanship that is growing and festering across our Nation—fueled by some here in Washington—we will fail.

We in the Senate must, instead, follow the Founders' vision for us and, in fact, lead the country to common ground, to consensus, and to a better future. We should, therefore, work together to get back to a place where it is possible for Supreme Court Justices to be confirmed with broad and bipartisan majorities, where it is possible to legislate together on the issues compelling to our time, and where it is possible to hear each other and to hear the concerns of all of our people.

I hope my colleagues will hear my remarks today as an invitation to work together to face this challenge. We owe nothing less to the Supreme Court, to our country, and to our people.

I yield the floor.

## LEGISLATIVE SESSION

### MORNING BUSINESS

Mr. COONS. Mr. President, I ask unanimous consent that the Senate proceed to legislative session for a period of morning business, with Senators permitted to speak therein for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

### VOTE EXPLANATION

Mr. DAINES. Mr. President I would like to discuss my strong support for the nomination of Judge Brett Kavanaugh to be Associate Justice of the Supreme Court of the United States. In July I had the opportunity to meet with Judge Kavanaugh in my office, and it was clear to me that President Trump had nominated an outstanding jurist who was well-qualified and ready to be our next Supreme Court Justice.

From the very beginning, just minutes after his nomination, some of my Democratic colleagues had already decided to oppose Judge Kavanaugh at all costs. They refused to meet with him, spread a misinformation campaign about his record, and claimed he was outside of the mainstream. The indisputable fact is that Judge Kavanaugh is the mainstream. His reasoning has been adopted by the Supreme Court more than a dozen times, and he is well respected by people across the spectrum, from fellow judges to those who have argued before him.

Judge Kavanaugh sat through more than 30 hours of testimony before the Senate Judiciary Committee and sub-

sequently responded to 1,287 questions for the record, more than every previous Supreme Court nominee combined. It was not until the 11th hour, when Judge Kavanaugh was on the verge of being confirmed, that unsubstantiated and uncorroborated claims from 36 years ago were leaked to the media in a last ditch effort to derail his nomination. The F.B.I. conducted yet another background investigation, its seventh, and yet again, nothing was discovered that would disqualify Judge Kavanaugh from sitting on the Supreme Court.

Montanans overwhelmingly want a Supreme Court Justice with impeccable academic credentials, someone who does not legislate from the bench, but upholds the rule of law and who follows the Constitution. Judge Kavanaugh is without a doubt that person.

Yesterday, I was happy to cast my vote in favor of bringing debate to an end on this nomination. While I was unavailable this afternoon for the vote due to a longstanding family commitment, I spoke with Judge Kavanaugh and assured him that, if my vote was needed for final passage, that I would return as soon as possible. I would like to thank my good friend and colleague, Senator MURKOWSKI, for pairing votes so that my absence would not change the outcome.

However, I would be remiss not to mention that we would not be in this position had my friends across the aisle not turned this entire process into a political circus. They have done this for no other purpose than to obstruct and delay this nomination through the election in hopes that they take back control of this body and block all of President Trump's nominees. I fully support Judge Kavanaugh's confirmation look forward to his many years of service on the Supreme Court.

### INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. BARRASSO:

S. 3559. A bill to amend the Internal Revenue Code of 1986 to terminate the credit for new qualified plug-in electric drive motor vehicles and to provide for a Federal Highway user fee on alternative fuel vehicles; to the Committee on Finance.

### AMENDMENTS SUBMITTED AND PROPOSED

SA 4048. Mr. MCCONNELL proposed an amendment to the bill S. 3021, to provide for improvements to the rivers and harbors of the United States, to provide for the conservation and development of water and related resources, to provide for water pollution control activities, and for other purposes.

SA 4049. Mr. MCCONNELL proposed an amendment to amendment SA 4048 proposed by Mr. MCCONNELL to the bill S. 3021, supra.

SA 4050. Mr. MCCONNELL proposed an amendment to the bill S. 3021, supra.

SA 4051. Mr. MCCONNELL proposed an amendment to amendment SA 4050 proposed by Mr. MCCONNELL to the bill S. 3021, supra.

SA 4052. Mr. MCCONNELL proposed an amendment to amendment SA 4051 proposed by Mr. MCCONNELL to the amendment SA 4050 proposed by Mr. MCCONNELL to the bill S. 3021, supra.

### TEXT OF AMENDMENTS

**SA 4048.** Mr. MCCONNELL proposed an amendment to the bill S. 3021, to provide for improvements to the rivers and harbors of the United States, to provide for the conservation and development of water and related resources, to provide for water pollution control activities, and for other purposes; as follows:

At the end add the following.

"This Act shall take effect 1 day after the date of enactment."

**SA 4049.** Mr. MCCONNELL proposed an amendment to amendment SA 4048 proposed by Mr. MCCONNELL to the bill S. 3021, to provide for improvements to the rivers and harbors of the United States, to provide for the conservation and development of water and related resources, to provide for water pollution control activities, and for other purposes; as follows:

Strike "1 day" and insert "2 days"

**SA 4050.** Mr. MCCONNELL proposed an amendment to the bill S. 3021, to provide for improvements to the rivers and harbors of the United States, to provide for the conservation and development of water and related resources, to provide for water pollution control activities, and for other purposes; as follows:

At the end add the following.

"This Act shall take effect 3 days after the day of enactment."

**SA 4051.** Mr. MCCONNELL proposed an amendment to amendment SA 4050 proposed by Mr. MCCONNELL to the bill S. 3021, to provide for improvements to the rivers and harbors of the United States, to provide for the conservation and development of water and related resources, to provide for water pollution control activities, and for other purposes; as follows:

Strike "3 days" and insert "4 days"

**SA 4052.** Mr. MCCONNELL proposed an amendment to amendment SA 4051 proposed by Mr. MCCONNELL to the amendment SA 4050 proposed by Mr. MCCONNELL to the bill S. 3021, to provide for improvements to the rivers and harbors of the United States, to provide for the conservation and development of water and related resources, to provide for water pollution control activities, and for other purposes; as follows:

Strike "4" and insert "5"

### PRIVILEGES OF THE FLOOR

Mr. DURBIN. Mr. President, I ask unanimous consent that Manpreet Teji,