

there, hours and hours with border security. I was on shallow draft boats. I was on horseback. I have been on ATVs. I spent a lot of time down at the border, and the one thing I will tell you is that the President is absolutely right. There is a crisis on the border—and not only on the southern border, but I will state that ranchers on the northern border also believe they have challenges that this President is right to address.

I also happen to agree with a good portion of how the President is going to do it after Congress failed to do its job. Keep in mind that over the last year, we have had on this floor Democrats and Republicans voting for as much as \$25 billion for border security—Democrats and Republicans—and now we are fighting over a fraction of that.

The President needs to act. He got an appropriation of about \$1.5 billion through the negotiated settlement a couple of weeks ago, and now he is taking the only action he can until Congress acts, and that is to figure out other sources of funding that he believes he can use within current statutory limits. The way he has done that is he has first taken the \$1.3 billion that Congress did appropriate. He has another \$2.5 billion and another \$600 million that I believe he is right to reprogram, send to the southern border, and probably make some investment in the northern border.

Here is where I have a respectful difference of opinion with the President and the administration: It is the emergency order, that under the emergency powers act, he is using his authority to appropriate the remaining funds.

First off, those funds will come what we call the MILCON budget. That is military construction. Right now, we are trying to find out what that means—which projects we think are critical to help the readiness of our soldiers, sailors, airmen and marines; which investments that we were going to make, that we have already determined we should make in military construction, are going to be put on hold while we reprogram those dollars to go to the southern border.

The real problem I have is that this is only a fraction of what we all know we need to secure the border.

I want to go back to the humanitarian crisis, though. My wife and I had an interesting discussion the other night. She wasn't too happy when I took this position originally. I am still not sure if she is happy.

But to understand why I respectfully disagree with the President, you have to understand, again, as I started this discussion, that there is a crisis. There are people dying. There are millions of doses of poison coming across the border every single year that are killing tens of thousands of people. That is a crisis. There are thousands of people crossing the border and dying. They have what they call coyotes, human traffickers who will get them across

the border, get people who will pay thousands of dollars to cross the border, and then they will say: Civilization is just an hour away.

It is an hour plane ride away. Most people don't understand the sheer size and scale of Texas, particularly those crossing the border in the dead of night, working with basically organized crime. You have to pay a toll to get through the so-called plazas that run the northern border of Mexico.

My problem right now has to do with an Executive order, the emergency declaration that the President intends to send to Congress.

My wife and I were having a discussion. She said: You just said you agree with the President that there is a crisis on the border; you agree with the President that we need to send resources down to the southern border and work on the northern border; you agree that Congress has failed to act; and you agree that if you were President, you would do exactly what he is doing.

I said yes.

She said: Why don't you support it?

I said: Because I am not the President. I am a Member of the U.S. Senate. I am a Member of a coequal branch who actually believes that this action falls within our purview. Now we are going to find out because I am sure we are going to be challenged in the courts. But I also worry not so much about this one—frankly, even the way this money is going to be programmed, I agree with. What I worry about are future Presidents and what they may do if we set this precedent going into the future.

We actually have a Democratic candidate running for President—this is one hypothetical. There have been some far-flung ones that I am not sure I completely agree with, but let me give this one. It relates to border security. We have someone who is a Member of this body who has publicly said that their priority, if they were elected to be President, would be to tear down borders, tear down walls, build bridges, and open the borders. Well, if you argue that there is a humanitarian crisis—and I have said there is already is one—what would prevent that President from issuing an Executive order that would divert military construction funding to tear down the walls that are going to be built now? If we give this President—a President I support and a President whose policies and priorities I agree with—that authority, that could be aiding and abetting a future President and empowering them beyond what I believe their authorities are, vested in the Constitution in article II.

So I have come here today in part to maybe take another stab at explaining to my wife why I have taken this position but also to explain to the American people and folks in North Carolina and across this country. I agree with the President. I know we have a crisis we have to take care of. We have a na-

tional security crisis, a homeland security crisis, and a humanitarian crisis. It is not the end; it is a portion of the means.

I applaud the President for taking the action up here and getting things going. I hope that over time, we can find a way to fully fund the border strategy on a bipartisan basis and also address other immigration issues that I believe are pressing for this Nation.

Madam President, thank you for allowing me to come to the floor and explain my position.

If anybody in North Carolina has any questions, I know they know how to get ahold of me because my phones are blowing up right now. But I do want to explain it to them in a way that makes sense. I am a steward of the U.S. Senate. I am a steward of the article I branch. That matters to me.

Thank you, Madam President.

The PRESIDING OFFICER. The Senator from Minnesota.

NOMINATION OF ERIC D. MILLER

Ms. KLOBUCHAR. Madam President, I rise today to join many of my colleagues who have come to the floor and to express my opposition to the nomination of Eric Miller to be U.S. circuit judge for the Ninth Circuit. I have already expressed that opposition in my vote in the Judiciary Committee, but I would like to explain this in more detail.

There are several troubling aspects of Mr. Miller's background, particularly his consistent opposition to Tribal interests and women's reproductive rights.

My State of Minnesota has a large and diverse Tribal population. I have always believed that our State history has been drawn from the culture and traditions of our Native Americans.

As a member of the Judiciary Committee, I know that Tribal sovereignty is a fundamental tenet of our laws. The Ninth Circuit is home to more federally recognized Tribes than any other circuit—more than 425. So many of the cases that come before the court involve Tribal issues. I am concerned that Mr. Miller has a history of representing interests that have sought to undermine Tribal sovereignty. For example, in a brief he filed before the Supreme Court, he urged the Court to adopt a standard that would have undermined the legitimacy of many federally recognized Tribal governments.

The National Congress of American Indians and the Native American Rights Fund have come out against his confirmation. I know the Senator from New Mexico, Mr. UDALL, is here and understands the major concerns, since he is the ranking member of the Indian Affairs Committee, and how important that concern is. It is only the third time in the history of these two organizations—the National Congress of American Indians and the Native American Rights Fund—that they have opposed a judicial nominee.

In their letter to the Senate Judiciary Committee, they wrote that Eric

Miller “chose to build a law practice on mounting repeated challenges to tribal sovereignty, lands, religious freedom, and the core attribute of Federal recognition of Tribal existence.”

I believe we need judges, particularly on the Ninth Circuit, who respect the history and contribution of Tribal nations, not one who seeks to undermine their sovereign status.

Mr. Miller’s record on women’s reproductive rights is no less troubling. During his time at the Justice Department, he used ideological language in cases in which he advocated for restrictions on a woman’s personal healthcare decisions. I am concerned about what this says about how Mr. Miller will approach these types of cases.

Finally, it pains me to say that this is a historic moment for this body—for the Senate—because of how we came to be here today. It is not historic in a good sense of the word. It is historic in a bad sense of the word. We are voting on this nomination today because of an unprecedented disregard for the Senate’s traditions when it comes to judicial nominations. According to the Congressional Research Service, no judge has ever been confirmed without having both blue slips returned by both home State Senators until now. We have had instances where one blue slip was returned, and the judge went on to be confirmed, but what we have here is not one blue slip from either of the home State Senators from the State of Washington was returned.

Senator CANTWELL, who also, by the way, has been a major leader when it comes to Tribal matters, did not return a blue slip for Mr. Miller. Senator MURRAY, a major leader when it comes to women’s rights, did not return a blue slip for Mr. Miller.

In the rush to confirm judges like Mr. Miller, the Judiciary Committee has chipped away at the traditions and rules that allow us to properly advise and consent on nominations, which is our responsibility specifically enumerated in the Constitution.

This goes beyond disregarding the voices of home State Senators on judicial nominations. This nominee’s hearing was held during a monthlong recess with no Democratic members of the Judiciary Committee. Since this was an established work period at home, only two Republican Members were in attendance. Mr. Miller’s questioning lasted for less than 5 minutes for a lifetime appointment. Why would you have this hearing at a time when we were scheduled to be working in our home States? That is what happened because it was rammed through the Senate without the support of either of the home State Senators.

At a time when the American people see this body shirking its responsibilities to act as a check and balance on the executive branch, and when they see us divided on the basic question of whether Congress has the power of the purse, I am concerned about what message we are sending to the country and

the world about the health of this Senate.

This is a lifetime appointment. It should at least have had a normal hearing. We should have at least respected the views of the home State Senators as we have so many times in the past. There are no winners in a race to the bottom when it comes to process in the Senate—a democratic process, a process of advice and consent, a process of checks and balances set up by our Founders so no one branch of government would have all the power.

What do we see happening now? We see judges being put forward without blue slips. What that simply means is, the home State Senators are OK with that nominee. We have had blue slips over the years in many administrations for judges who perhaps were not the first choice of the home State Senators, but they were someone they felt could be a judge out of their State who would have the right experience as well as be fair and impartial in the administrative law.

What else do we have going on? We have a President who, after an agreement was reached in the Senate, which is run by his own political party, on how to do border security—and it was a widespread vote in both the Senate and the House—he then decided to declare an emergency to do something which I consider unconstitutional and has no respect for the balance of powers. He decided he would declare an emergency, when, in fact, those kinds of emergencies are things like Hurricane Sandy and the weather we saw, and the damage down in Florida, or the wildfires we saw in Colorado and in California. Those are emergencies. In addition to that, it raises eminent domain issues at the border.

It also makes us question where the money is coming from. That is why you see these lawsuits. The money is coming from the military budget, military construction for our troops, and the like.

While this may seem like a very different issue, it is not a different issue. It is the same issue. The Senate should be sticking up for the individual States we represent and the power of those States and the power of that balance that is so important to running this government and to the very Constitution that guides us.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. UDALL. Madam President, I rise to oppose the nomination of Eric Miller to be circuit judge for the U.S. Court of Appeals for the Ninth Circuit.

Senate traditions command respect, and if we are going to change them, we should do so in a bipartisan way. Changing rules midstream and changing traditions well into the Congress causes bitterness, acrimony, and it hurts our ability to work with each other. Such Senate traditions as the blue slip, where the nominee’s home State Senators are given an oppor-

tunity to object—this courtesy has been in place for more than 100 years as part of the Senate’s advice and consent responsibility.

If confirmed, Mr. Miller would be the first circuit court nominee in history to be confirmed without having a blue slip returned from either of his home State Senators. The lack of respect shown for this Senate tradition by the Republican leadership of the Judiciary Committee is as saddening as it is alarming.

Another Senate tradition again flouted by the majority was holding Mr. Miller’s confirmation hearing during a Senate recess. The recess hearing—lasting only 30 minutes, with only two Republican Members in attendance—was objected to by Democratic Members who sought to question Mr. Miller on a number of legal issues, including Indian law. Instead, the questioning lasted less than 5 minutes.

Bringing Mr. Miller’s nomination to the floor without an adequate hearing is an abuse of the confirmation process by the Republican leadership of the Judiciary Committee.

Putting aside these abuses of the process, as significant as they are, Mr. Miller’s repeated willingness to side against Native American Tribes in court and the likelihood that such willingness will follow him to the bench where he would have an outsized influence on the development of Indian law for decades, concerns me deeply.

As vice chair of the Senate Committee on Indian Affairs, I pay special attention to a nominee’s record on Tribal issues, especially if a nominee will preside in a jurisdiction that has 427 Tribal nations, as is the case with Mr. Miller. I am concerned that Mr. Miller’s record has not shown and does not have the proper respect for Tribal sovereignty.

As an attorney in private practice, Mr. Miller consistently advocated against Tribal interests and Tribal sovereignty. In fact, Mr. Miller has donated over 675 hours of pro bono work against Tribal sovereignty, against Native American religious practices, Federal recognition, and numerous other respected Tribal doctrines.

For example, in the case of *Upper Skagit v. Lundgren*, Mr. Miller argued that Tribal governments are not entitled to sovereign immunity because it interferes with the “State’s sovereign interest in adjudicating disputes over title to land within their territory and frustrate[s] the ordinary adjudication of competing [ownership] claims.” His arguments in this case demonstrate he does not understand the inherent sovereignty of Tribal nations.

Mr. Miller has shown a lack of respect for Native American religious practitioners when he argued for a narrow application of the Religious Freedom Restoration Act when these practitioners argued that the construction of a solar farm would substantially burden their ability to conduct their religious practices.

Mr. MILLER has argued for an extremely narrow reading of the Indian Reorganization Act when considering the Federal recognition status of Tribes. He asserts that only Tribes that possessed federally managed lands when the act was passed in 1934 should be federally recognized. This narrow view does not acknowledge the well-established principles of Indian law and can lead to the termination of Tribal nations that do not meet his narrow and arbitrary standard.

Mr. MILLER's record on Tribal issues is one-sided and extreme. His history of advocating against Tribal interests does not give me confidence that he would be a fair and impartial jurist on the Ninth Circuit Court of Appeals when Tribes come before him.

I will vote no on Eric MILLER's confirmation. I urge my colleagues to do so as well.

I yield the floor.

The PRESIDING OFFICER. The Senator from Montana.

Mr. TESTER. Madam President, before I start with my comments, I want to associate my thoughts and views on Mr. MILLER with Ranking Member UDALL's points on Native American sovereignty and Mr. MILLER's current job and what he has done in that.

REMEMBERING JASON BAKER

Madam President, I come here today in a sad time. As I speak, about right now in Montana, a funeral is beginning for Jason Baker.

Jason was originally from Fort Benton, MT, which is a town right down the road from where I live in Big Sandy. Jason was a firefighter. Jason passed away on February 20, early in the morning. He was far, far too young—the age of 45. He had been a firefighter for 16 years with Great Falls Fire Rescue. He was incredibly talented and incredibly professional, and he was somebody who loved being a firefighter. His life of public service, whether it was helping out kids or helping out adults or helping out communities, was a part of who he was as a person.

Jason was also married to my wife's cousin Jill. They have two children, Peyton and Porter, whose hearts have to be aching. This day is a day, I am sure, that they had to have planned for the last 3 or so years after his diagnosis of stage IV lung cancer. I guess it was 2 years ago.

I have a number of memories of Jason from my days in the State legislature, when he showed up as a relatively young firefighter, to my days as a U.S. Senator, when he showed up to my offices here in Washington, DC, to advocate for firefighters' issues. More important than all of that, Jason was a friend. He happened to also be a relative. He was somebody who, when his wife's grandfather passed away and they had the funeral up in Havre, was at the height of who he was as a human being. He wasn't sick and hadn't been diagnosed with anything. He was just vibrant and full of life.

With cancer's being the disease that it is, it was a struggle for him, as it is for anybody who gets it. He was somebody who fought that disease bravely and proudly, but in the end, it took him. It took him last Wednesday, early in the morning. We were driving to Great Falls, and my wife sent a little message to Jill that read our hearts were with them because we knew that Jason wasn't good. She sent back a text with hearts, and that was it. He had already passed.

In the end, though, as I think back on Jason's life, there are some lyrics to a song that say "Only the good die young." It could not be any more true than with Jason Baker. If the world were full of Jason Bakers, this would be a better world, but life happens, and you have to get through it.

I am sure that Jill and Peyton and Porter will think back and remember their dad proudly as he served proudly as a firefighter, as a public servant—as somebody who ran to danger while other people were running away from it.

As they proceed with the ceremony today in Montana—and it is happening as I speak—just know, Jill, Peyton, Porter, and all of the firefighters who are there, that we are very proud of your dad and his service and what he fought for.

Two years ago, there was a bill in the Montana Legislature on presumptive illness for firefighters. I do not believe Jason would have contracted cancer if not for his job, if not for the kinds of fumes he breathed when he protected neighborhoods and families. I think it is only right that when people sacrifice for their communities, we sacrifice for them. Two years ago, the legislature did not pass that presumptive illness bill. I think it made a mistake.

When I gave my speech to the House of Representatives in the Montana Legislature, one of the points I made in that speech was that they needed to pass the presumptive healthcare bill for firefighters. Jason was alive when I gave that speech, and now he has passed. I think, in memory of Jason Baker, at the very least, the Montana Legislature could pass that bill. I understand it has passed one of the houses but that it hasn't passed both of them. If it passes both houses, I know Governor Bullock will sign that bill.

So, with that, we bid adieu to a great American, a great community man—somebody who literally gave it all for his country and his State and his town.

We will miss you, Jason Baker.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

NOMINATION OF ERIC D. MILLER

Mr. BLUMENTHAL. Madam President, we are in the midst of a stealth

campaign. Normally, we think about "stealth" as associated with bombers or submarines, weapons platforms designed to go, in effect, under the radar, to avoid detection, to escape public notice or the notice of our adversaries.

This stealth campaign is really hiding in plain sight. It is a campaign to remake our Federal judiciary in the image of the far-right extreme of the Republican Party, the far-right extreme ideologically and politically, a campaign, in effect, to outsource selections of judges to groups that reflect those extreme points of view—the Heritage Society and other such groups.

Shortly, we will consider the nomination of the latest individual nominated by the President, outsourced to those groups: Eric MILLER, of Washington, to the Ninth Circuit Court of Appeals. The effort here is to drastically reshape our judiciary but, in the process, also dismantle the norms and practices critical to the health of our democracy. The judiciary is essential to the health of our democracy.

In the future, when we look back on this era—a dark and dangerous time for our democracy—the heroes will be our free press and our independent judiciary because they have been selected in the past by both Republican and Democratic Presidents based on qualities of integrity, intelligence, and independence.

That norm, common to both Republican and Democratic administrations in the past, has been broken by this one. One of the norms that has been broken in the U.S. Senate relates to the use of blue slips. Most of the public has no idea what blue slips are. They are the traditional mechanism used over decades to afford home State Senators the opportunity to express their approval or disapproval for fitness, a basic quality of a President's judicial nominee to a court that has jurisdiction over their State.

What is the reason? Well, Senators just happen to spend a lot of time talking with folks at home. We talk to farmers, businesspeople, lawyers. A lot of those lawyers know fellow lawyers. Of course, we receive the ABA qualified or unqualified ratings, but they are single words based on fact gathering that may or may not be as reliable as our colleagues—the lawyers who appear in front of judges, who go to court every day, who have settlement conferences, who rely on the word of their colleagues, which is either good or bad, who know their integrity and intelligence, who know whether they have the temperament to sit in judgment of cases that will have enduring and irreparable ramifications for the litigants who appear in front of them.

Respecting the blue-slip tradition ensures that when there is a Federal judicial vacancy—for Connecticut, for example—that the President nominate a qualified candidate from Connecticut with the advice and consent of Connecticut Senators. The same is true for the Presiding Officer's home State of