

our Nation and, in particular, to protect our elections, so I hope our colleague from New York gets out of the way.

But the Democratic leader didn't stop there. A few minutes later, he decided to cheapen a solemn and unifying moment and turned a draft unanimous resolution honoring Justice Ginsburg into one more depressing stunt for the TV cameras.

Over the weekend, I wrote a resolution honoring the late Justice's amazing life. Normally, such measures are adopted with unanimous, bipartisan support. That is exactly what we did after Justice Scalia passed. Every Senator recognized that our collective eulogy was no place to debate political questions—oh, but not this time. This time, the Democratic leader copy-pasted the tribute I had written, put his name on top, and added two divisive references to our debate over what to do next. He didn't devote any time or attention to the language praising Justice Ginsburg's life and career. He did not suggest a single change to any of that. His sole focus was on turning a solemn routine and unanimous moment for Justice Ginsburg into a platform for himself.

Justice Ginsburg could not be more deserving of the honor of a formal Senate tribute. I hope our colleague from New York will let us pass one sometime soon.

#### SUPREME COURT NOMINATIONS

Mr. McCONNELL. Madam President, on another matter, I have already talked a lot about history this week, but before we shift focus to President Trump's nominee, we need to review Senate history one more time.

As we await the hurricane of misrepresentations and bad-faith attacks that seem almost guaranteed to pour out, we need to understand, in very clear terms, why our colleague from New York is a uniquely non-credible messenger when it comes to the Senate's role in judicial confirmations.

It was Senate Democrats who began our modern challenges with their treatment of Robert Bork in 1987, but the acrimony really got going in the early 2000s when a group of Senate Democrats took the almost-never-used tactic of filibustering nominations and turned it into a constant routine for the first time ever.

So who was the main driving force behind these tactics? Let's consult some New York newspapers from the year 2003:

Schumer decided [to] put ideology on the front burner in the confirmation process. . . . "I am the leader (of the filibuster movement), and you know, I'm proud of it," said the senator from Brooklyn.

Mr. Schumer urged Democratic colleagues . . . to use a tactic that some were initially reluctant to pursue, and that has since roiled the Senate.

Throughout President Bush 43's two terms, our colleague built an entire

personal brand out of filibustering judicial nominees. Talented, hard-working people's careers were destroyed, like the brilliant lawyer Miguel Estrada, a close friend of now-Justice Elena Kagan, who says he is "extraordinary" and "thoughtful" and would have made "an excellent addition to any Federal court." People like that, literally, were destroyed by Democratic tactics.

This version of the now-Democratic leader said filibustering judges was an essential part—an essential part—of the Senate. He said that if Republicans ever used the nuclear option to "change the rules in midstream" because "they can't get their way on every judge . . . it'll be a doomsday for democracy."

But of course, in the very next Presidential administration, the Democratic leader leapt at the chance to press that doomsday button himself. Democrats could not abide by President Obama's being constrained by the same rules they had imposed on President Bush. They had no patience to taste their own medicine. So the Democratic leader suddenly decided that "the old rules need to be modified." He voted to use the nuclear option to lower the bar.

So there actually has been one consistent principle all this time. For the Democratic leader, two things qualify as a crisis when it comes to the courts. The sky is falling when a Democratic President does not get to confirm every last judge he or she wants, and the sky is falling when a Republican President gets to confirm any judge.

Six months ago, our colleague walked across the street to the Supreme Court steps, stood in front of a crowd, and yelled:

I want to tell you, Gorsuch! I want to tell you, Kavanaugh! . . . You will pay the price! You won't know what hit you if you go forward with these awful decisions!

That is the Democratic leader in front of the Supreme Court of the United States.

Just last night he said this:

I tell the American people, everything you need and want, just about everything, will be taken away inexorably, month after month, year after year, decision by decision, by this new court.

That is the argument. That is, apparently, the argument. "Everything you need and want will be taken away." Is this a discussion among Senators or an overdramatic line from a bad movie?

The American people do not need any more revisionist history lectures, any more threats, or any more performance outrage from the side that launched this unfortunate fight and escalated it time after time after time.

There is one right path before us. It does right by the judiciary, the Senate, the yet-unnamed nominee, and the American people. It is a fair hearing, a fair process, and a fair vote. That is what the American people ensured in 2018 after the Democratic leader explicitly asked for a referendum on this approach to the judiciary. He got that referendum in 2018. The people decided. They shrunk his minority even further.

Americans took care to ensure Senate Democrats could not stand in the way of a fair process. So that is exactly what the Senate will provide.

#### GOVERNMENT FUNDING

Mr. McCONNELL. Madam President, now on another matter, yesterday the House passed a government funding resolution on a bipartisan basis. It will now make its way through the Senate.

A few days ago, when House Democrats released their first draft, Republicans immediately spoke out about a huge omission. It intentionally neglected the needs of farm country and rural America. They tried to use our Nation's farmers and ranchers as a bargaining chip.

Fortunately, thanks to the leadership of our colleague Senator ERNST, along with Senators HOEVEN, BOOZMAN, and many other Republican colleagues, we made it clear right away that we would not let Democrats leave farmers behind.

The Commodity Credit Corporation is an essential source of funding for our farmers. For years it has been routinely refilled with bipartisan support, but this year Speaker PELOSI tried to take Middle America hostage for unrelated political brinksmanship.

I am grateful to Senator ERNST and everyone who fought hard to fix the Democrats' bill. Republicans kept the Speaker of the House from adding insult to injury in such a challenging year for rural America.

I know all Members will carefully review the continuing resolution sent over by the House. I am optimistic that, with bipartisan cooperation, we will be able to make law well before the government funding deadline at the end of this month.

#### MEASURES PLACED ON THE CALENDAR—S. 4653 AND H.R. 8337

Mr. McCONNELL. Madam President, I understand there are two bills at the desk due a second reading en bloc.

The PRESIDING OFFICER. The clerk will read the bills by title for the second time.

The senior assistant legislative clerk read as follows:

A bill (S. 4653) to protect the healthcare of hundreds of millions of people of the United States and prevent efforts of the Department of Justice to advocate courts to strike down the Patient Protection and Affordable Care Act.

A bill (H.R. 8337) making continuing appropriations for fiscal year 2021, and for other purposes.

Mr. McCONNELL. In order to place the bills on the calendar under the provisions of rule XIV, I would object to further proceedings, en bloc.

The PRESIDING OFFICER. Objection having been heard, the bills will be placed on the calendar.

#### RESERVATION OF LEADER TIME

The PRESIDING OFFICER. Under the previous order, the leadership time is reserved.

# RECOGNITION OF THE MINORITY LEADER

The PRESIDING OFFICER. The Democratic leader is recognized.

## SUPREME COURT NOMINATION

Mr. SCHUMER. Madam President, first, let me thank all of my colleagues who were here until late last night and made such persuasive arguments as to why the new Supreme Court Justice matters so much to the American people, to their healthcare, the working people's rights, to women's rights, to preserving the right to choose, to making sure we have a good green planet, to LGBTQ rights. They did an eloquent job.

I hope America was listening because this nomination matters; it matters to the average daily lives of average Americans. And last night, by holding the floor until the late hours, Democrats made really strong arguments.

I thank my colleagues for doing that.

Madam President, for the third day in a row, Leader McConnell has come to the floor and completely ignored the "principle" he established in 2016, when, mere hours after Justice Scalia passed away, Leader McConnell said that "the American people should have a voice in the selection of their next Supreme Court Justice"—his words: "The American people should have a voice in the selection of their next Supreme Court Justice," referring to the upcoming election.

That election was more than 8 months away. We are now only 42 days away. But the so-called McConnell rule—the supposed principle that the American people deserve a voice in the selection of a Supreme Court Justice—hasn't come up. The Republican leader can't mention it. No wonder he never mentions it. And he sticks to just diversionary, irrelevant remarks in his speeches on the floor instead of addressing the main issue—why he said one thing in 2016 and a different thing now.

Instead, the Senate is forced to suffer these tortured explanations and misleading precedents. At a press conference yesterday, here is how the Republican leader described the Senate role in confirming the Supreme Court Justices. He actually said: "[W]e have an obligation under the Constitution [to consider a Supreme Court Justice] . . . should we choose to take advantage of it."

Did you catch that? Did you catch that? It is an obligation, but only if the Republican leader chooses to take advantage of it. I see. So, when there is a Democratic President, it is one of those obligations you don't have to take advantage of, but when there is a Republican President, it is a solemn constitutional duty.

Are we really supposed to swallow the argument that, when the Senate and the President are of the opposite party, one rule applies, but when they

are of the same party, a different rule applies? I didn't hear that right after Scalia died when Leader McConnell explained why he was holding it up.

So this idea that when it is one party, one rule applies and another party, a different rule applies, we have a term for that. It is called a double standard.

If the leader really wants to discuss precedent—real precedent, not fiction—we can dispatch with that conversation in about 30 seconds.

Madam President, I have a parliamentary inquiry for the Chair: Is there a Senate precedent for confirming a Supreme Court nominee between July and election day in a Presidential year?

The PRESIDING OFFICER. Materials from the offices of the Secretary of the Senate do not show such a precedent.

Mr. SCHUMER. Thank you, Madam President.

July is long gone. August is over. We are now at the end of September. As you just heard—not from the Democratic leader but from the records in the Senate, as spoken by the Chair, there is no, no, no precedent for confirming a Supreme Court Justice between July and election day. The Republican leader can come up with arguments that twist things, that jump through hoops, but it doesn't gainsay no, no, no precedent for any Supreme Court nominee being confirmed between July and election day. As you know, July is gone. August is over. We are now at the end of September. It is 6 weeks before an election in which some people have already begun to vote.

Simply, my Republican friends have no ground on which to stand—none.

There is no logic to excuse flipping their position 4 years apart, under the same circumstances. There is no justification for the Senators who said on the record that they would "say the same thing if a Republican president were in office"—"say the same thing if a Republican president were in office" they said then, but it doesn't apply now that we have a Republican President in office. There is no defense for the Senator who said: "Precedent set. Precedent set. I'm sure come 2020, you'll remind me of that." There is no place to hide for the Senator who said: "You can say that I said, let the next president decide. Hold this tape. I want you to use my words against me."

Why are Senate Republicans going to such extreme lengths to ram through a Justice weeks before an election, making a complete mockery of their previous "principle"? Why are they committing a power grab so egregious that it risks shredding the last vestiges of trust that remain between our two parties? For what? Because this is the only way for Republicans to achieve their radical, rightwing agenda—an agenda so far away from where average Americans think, even average Republicans, that they wouldn't dare bring such things on the floor of the Senate.

Unable to thrust comically unpopular positions on the American people through Congress, they have to try through the courts—a cynical strategy that dates back to the 1950s.

Republicans are sick and tired, for instance, of this annoying law, the Affordable Care Act, and that it keeps providing healthcare to millions of Americans. They tried to repeal it in the House just about a million times, and they tried here, too, in the Senate but failed by one vote. So now they have taken it to the courts.

President Trump and Republican attorneys general are suing right now to eliminate the entire law, including protections for up to 130 million Americans with preexisting conditions. In fact, President Trump is meeting with those Republican attorneys general at the White House today, this afternoon. Less than a week after Justice Ginsburg's passing, the President is meeting with the leaders of the Republican lawsuit against our healthcare law. Ostensibly, it is about how social media companies are biased against conservatives, but who wants to bet that the healthcare lawsuit doesn't come up? I would like for someone to ask them that.

If he cared about healthcare and the American people, President Trump himself would ask the AGs to withdraw their lawsuit. I am calling on him to do it right now. I doubt he will, given his record, given his lack of concern for the American people's healthcare, but he should. But, unfortunately, let's remember, President Trump already told the American people his goal. He said: "My judicial appointments will do the right thing, unlike Bush's appointee John Roberts, on *ObamaCare*."

He is about to make a Supreme Court pick while there is an ongoing lawsuit that seeks to eliminate the Affordable Care Act. Hear that, America? The healthcare law you want, the healthcare law you need, the healthcare law that protects you against overreaching insurance companies that will not give you insurance when you have a preexisting condition—President Trump has said he will appoint a nominee who will undo it, and we know he said it because of what he said about Justice Roberts when Justice Roberts opposed his view on healthcare.

Guess when the case is being heard in the Supreme Court, America. November 10, a week after the election. Is that why Senate Republicans are in such a rush to get a new rightwing Justice confirmed before the election—so that the Supreme Court can do what they failed to do here in the Senate—repeal this healthcare law, which protects so many Americans?

Leader McConnell slammed on the brakes while tens of thousands of Americans died from COVID, and now he is slamming his foot on the gas to approve a Supreme Court Justice who could rip away Americans' healthcare in the middle of a pandemic. Shame. Shame.