

EXECUTIVE SESSION

EXECUTIVE CALENDAR

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will proceed to executive session to resume consideration of the following nomination, which the clerk will report.

The senior assistant legislative clerk read the nomination of Christopher T. Hanson, of Michigan, to be a Member of the Nuclear Regulatory Commission for the term of five years expiring June 30, 2029. (Reappointment)

The ACTING PRESIDENT pro tempore. The majority whip.

BORDER SECURITY

Mr. DURBIN. Mr. President, when I hear the Republican leader come to the floor and talk about the fact that President Biden has waited until this point in his first term to issue an Executive order on border security, I can't help but think how long the Senate has waited to do anything on immigration.

The Senator from Kentucky knows as well as I do that for more than 30 years, this Senate has failed to pass any meaningful immigration legislation.

Part of the problem on our border today harkens back to decades of neglect by the Senate and the House of Representatives to meet their constitutional responsibility to upgrade our laws.

How many times have you heard it said that our immigration legal system is broken? They are right. I happen to know that. I have paid personal attention to this issue for a long time.

For the Senator from Kentucky to berate President Biden because he waited until this moment in his first term to take action is to ignore the obvious.

We passed comprehensive immigration reform in the U.S. Senate, and it was passed by more than 60 votes. It was sent to the Republican House of Representatives. They refused to act on it.

To bring it closer to home, we were told last October not to pass any defense supplemental bill unless it included a provision related to border security. So we waited for a bipartisan group of three Senators—one Republican, one Independent, and one Democrat. Senator LANKFORD led the effort on behalf of Republicans. We waited until they produced a work product which, in fact, President Biden embraced. Though it was controversial, I felt it was a reasonable step forward.

What happened at that moment? We had a chance to do something—finally, to do something—in the Senate on immigration. We had a bipartisan bill, a bill which was crafted by able Members of the Senate and addressed the major problems facing us on the border.

What happened? Do you remember? I will tell you exactly what happened. Donald Trump, former President of the United States, announced he opposed

the bill, instructed any Republican who happened to agree with his point of view to oppose it as well, and then said: And if you want to assign any blame, blame me. Well, I am blaming him. A chance to pass legislation was stopped by Donald Trump and the Republicans in the Senate even though they initiated the process themselves.

That is the reality of the status that President Biden faces on the border.

We are facing the largest refugee crisis in modern history all over the world, and we are seeing it on our southern border and in the United States as well. The question is, Will we do anything?

President Biden has decided to step forward with an Executive order which would limit the access of individuals between ports of entry on the border in an effort to slow down the pace of those presenting themselves. That, to me, is a step in the right direction.

I wish he would do more. I wish he would also do something to help those immigrants in the United States who have shown that they can be worthy citizens of this country, have contributed mightily toward the betterment of this country, and have been here long enough to prove that that is true. I think they deserve opportunities and legal recognition. I think that should be included.

But for now to argue from the Senate floor, where little or nothing has taken place on immigration reform in more than 30 years, that President Biden isn't moving quickly enough is a really difficult argument to understand, let alone explain to anyone.

Let me say another word. To call those people who present themselves for asylum in the United States and who are waiting for their case to be resolved in court illegal aliens is a misnomer. They are here by a legal recognition status as asylees seeking protection. A final status has not been determined, and that will determine what their final classification will be. But at this point, they are legally in the United States awaiting a hearing. To call them illegal is not proper.

JUDICIAL NOMINATIONS

Mr. President, let me say a word about the situation in Illinois on judges. I was a little surprised the Senate Republican leader raised this issue.

As chairman of the Senate Judiciary Committee, I spent a large part of my time in the last 3½ years bringing judges to the Federal bench. We now have over 200 judges who have been approved in a very closely divided U.S. Senate, and I have paid close particular attention to my own State of Illinois.

Nancy Maldonado is the nominee for the Ninth Circuit. She is currently serving as a Federal district court judge in Chicago. No one—absolutely no one—on that court has argued that she is lazy or is not carrying her share of the load when it comes to the cases pending before her. She was caught in a situation where she was sent more cases than usual and has not had an opportunity, as other judges have in the

The Biden list requires judges to explain why they are so far behind. Judge Maldonado blames her record on “complexity of the case,” “voluminous transcripts/briefs to be read,” and “heavy civil and criminal caseload.” Does the President think his nominees will face less complex cases on the court of appeals, lighter caseloads, less voluminous transcripts or briefs?

Why on Earth would our colleagues consider giving new and greater responsibilities to a judge who is clearly struggling with the ones she has already gotten or, for that matter, why would they consider promoting someone whose instinct is to pass the buck?

I wish I were making this up: When our colleagues asked Judge Maldonado about her case backlog in written questions, she blamed her clerks. That is probably cold comfort to prisoners seeking relief for inhumane treatment or litigants paying months of legal fees awaiting her decisions. Apparently, it is not the woman with a judicial commission who is responsible for justice delayed; it is the 25-year-old brandnew lawyers on her staff. But passing the buck is what Judge Maldonado does.

The junior Senator for Louisiana asked her how she defined “assault weapon” in a brief supporting Illinois’ assault weapons ban, and the judge said she didn’t know because she didn’t write the brief. She was only—get this—the counsel of record.

Do our colleagues really expect a promotion to the court of appeals to turn things around? Do they really think one of the Nation’s least productive jurists actually deserves such a promotion?

It doesn’t have to be like this. Without even leaving Chicago, Washington Democrats will find a different trial judge, Judge Mary Rowland.

Judge Rowland has impeccable liberal credentials. She satisfies the left’s desired diversity metrics. The only difference? She is actually good at her job.

Her Biden list is three cases. And her reason? These opinions are being drafted but need to have hearings. Complex cases and voluminous briefing don’t faze Judge Rowland.

This matters. The Seventh Circuit is a busy court. They hear oral arguments for every case that has a lawyer and publish all of these opinions as precedent. It is also the last stop for almost all litigants in Wisconsin, Illinois, and Indiana.

Confirming Judge Maldonado to that court would be taking a judge who has proven herself incapable of swimming in the shallow end of the pool and throwing her into Lake Michigan.

The people and litigants of the Seventh Circuit deserve better. And if my colleagues want to see basic competence in their judges, they ought to reject this nominee.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Morning business is closed.

past, to relegate those cases to other judges for consideration.

It is noteworthy that those who are critical of Judge Maldonado should know that in all the decisions she has rendered on the bench in the several years that she has been there, not one single case has been rejected by the reviewing appellate court.

She is a worthy person to serve on the circuit court, not to take anything away from the judge whom Senator MCCONNELL praised, Mary Rowland. She is a dear friend of mine. It took me 10 years to get her on the Federal bench, and it was worth the wait because she is that good. But to argue that she is any better than Nancy Maldonado, I don't think that even Mary Rowland would try to make that case. So I hope Senator MCCONNELL would reconsider the issues which he raised.

RIGHT TO CONTRACEPTION ACT

Mr. President, I would like to speak on a separate topic at this point.

Fifty-nine years ago this week, the Supreme Court ruled in *Griswold v. Connecticut* that all married Americans have a constitutional right to use contraception. This decision has served as the foundation for other landmark Supreme Court decisions, including the expansion of the right to access contraception to other Americans in 1972.

For those of us who remember the time when *Griswold* was decided, we remember what it meant for millions of Americans. With that decision, finally, was the freedom to make their own reproductive family healthcare decisions, something which we take for granted in this country today.

When *Griswold* was decided in 1965, our Nation still had a long way to go in living up to the promise of equal justice under the law.

As one example, in 1965, women were often required to ask their husbands for permission to apply for credit cards—hard to believe, right? In many banks, widowers and divorced women had to bring a man to the bank with them to cosign for a credit card. We have certainly made a lot of progress, and 59 years later, we still have a long way to go.

But the *Griswold v. Connecticut* decision was a breakthrough. It was a glimpse of the Nation that we can be.

Sadly, 2 years ago this month, six rightwing judicial activists sent us back in time. I am referring to the Supreme Court's decision in *Dobbs*—the crowning achievement of a Republican-led, decades-long campaign to overrule *Roe v. Wade* and abolish fundamental reproductive rights in America.

The *Dobbs* ruling is one of the most irresponsible and dangerous decisions ever handed down by the Supreme Court. It ripped away a constitutional right from individuals and their families and handed it over to politicians.

With the *Dobbs* decision, the ultra-conservative majority on the Court not only overruled a nearly 50-year-old precedent that had been reaffirmed

over and over again but also twisted the facts to reach the outcome they wanted.

What do I mean by that? In his majority opinion, Justice Alito claimed that abortion cannot be constitutionally protected because it is not “deeply rooted in the Nation’s history and tradition.”

Judge Alito is wrong again because, whatever we may think about the issue, it has deep roots in our history. As the dissenting Justices in *Dobbs* wrote: “embarrassingly for the majority—early law in fact does provide some support for abortion rights.”

Justice Alito’s argument for overruling *Roe* has no credibility. It wasn’t originalism; it was an ideologically motivated outcome based on his historical cherry-picking.

Incredibly, Justice Clarence Thomas wanted to go even further. He believes the constitutional right to privacy is a fiction. In a concurring opinion in *Dobbs*, Justice Thomas declared that the Court should “eliminate” the legal doctrine behind the constitutional right to privacy and “reconsider all of this Court’s substantive due process precedents, including *Griswold*, *Lawrence*, and *Obergefell*.”

That means one of the Justices who eliminated the right to abortion also thinks that the Court should reconsider the constitutional right to contraception as well as the constitutional rights to marriage equality and consensual relationships between LGBTQ people.

Over the past 2 years, Republican lawmakers have picked up where the Supreme Court left off. In State after State after State, they have ripped away reproductive rights from millions of Americans, with devastating consequences.

Overruling *Roe v. Wade* has unleashed a healthcare crisis in America, and 24 of the 50 States have either barred or severely restricted access to abortion or are attempting to do so. Many of these bans by the States provide no exceptions for rape and incest, and many are grossly insufficient in protecting the health and lives of mothers. Some of these bans are even written in a way that appear to limit access to contraception.

You may hear some of our colleagues across the aisle argue that Democrats are exaggerating when we say the right to contraception is at risk. They claim there is nothing to see here.

Well, tell that to the millions of Americans impacted by the successful effort to overrule *Roe v. Wade*, which has inserted politicians and judges into the most personal decision imaginable. Tell that to the Americans who are worried that some of those politicians and judges now have their sights set on contraception, particularly after Justice Thomas urged his colleagues to reconsider the Court’s holding in *Griswold*.

That is why my colleagues Senators MARKEY, HIRONO, and DUCKWORTH re-

introduced the Right to Contraception Act, which I am cosponsoring. The bill would protect the rights of patients to access and use contraception and of healthcare providers to provide contraception and information about contraception. It would codify the right to contraception the Supreme Court first recognized in the *Griswold* decision. It would also allow patients, providers, and the Justice Department to go to court to enforce these rights.

This week, the Senate has an opportunity to make history and counteract some of the repressive policies that Republican State legislatures have put in place post-*Dobbs*. Tomorrow, the Senate will vote on cloture on the motion to proceed to the Right to Contraception Act. My Senate colleagues will have to decide how they want to be remembered during this historic vote. Do they want to be remembered for blocking the effort to protect the right to access contraception or for standing on the right side of history and protecting reproductive rights?

I urge my colleagues to join me during this anniversary week of the *Griswold* decision and help pass the Right to Contraception Act and ensure that Americans will always be able to access free and safe contraception.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Republican whip.

BORDER SECURITY

Mr. THUNE. Mr. President, a couple of weeks ago at a White House press briefing, the President’s Press Secretary was asked why the President isn’t doing anything on the border, given the fact that he has the authority to act unilaterally. And the White House Press Secretary responded:

But why should he have to do it unilaterally?

Why should he have to do it unilaterally? It was, perhaps, a typical response from a White House that would like to portray itself as the victim of the border crisis rather than the cause, a White House that would prefer Congress take action on the border rather than run the risk of taking action itself and annoying some Democratic voters. But it was an outrageous statement, nonetheless.

Why should he have to do it unilaterally? Well, for starters, because President Biden is the President and thus bears a special responsibility for our national security and because, as President, he has the authority to take a number of measures to help secure our Nation’s border. For a President not to do anything in the face of the kind of crisis we are dealing with is unconscionable. But most of all, President Biden should be taking action because he is responsible for this border crisis.

Why should he have to take action unilaterally? Because he created this border crisis unilaterally. On the day he took office, the President began dismantling the border security policies of his predecessor, and illegal immigration began surging in response. It has