

year and do something about it. I will continue to come down to the floor and share these stories, share some of these charts, share some of the data, in the hope that it will inspire this body to break out of its ice of indifference—as somebody coined the phrase before me—and do something.

I understand we are not likely to get a vote on background checks between now and the end of the year, but there is a big bipartisan mental health bill we can debate on the floor before we wrap up for the year. This Senator would submit to you that is not the answer for the epidemic of gun violence, but it would help. If you create more inpatient beds and more outpatient capacity, a lot of the very disturbed individuals who take these demons that exist inside them and turn them into an act of massive violence—that mental health reform bill could help them. It would just be the beginning of the work we have to do, but it would be a very important beginning.

At some point the U.S. Senate, the greatest deliberative body in the world, an organization that claims to represent the will of the people, will have to start paying attention to the voices of these victims and the overwhelming majority of the American public who want us to honor them.

I yield back.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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 Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

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

#### CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

#### RELATING TO THE DEATH OF ANTONIN SCALIA

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to the consideration of S. Res. 374, which the clerk will report.

The legislative clerk read as follows:

A resolution (S. Res. 374) relating to the death of Antonin Scalia, Associate Justice of the Supreme Court of the United States.

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

Mr. MORAN. Madam President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. THUNE. The following Senators are necessarily absent: the Senator from Texas (Mr. CORNYN), the Senator

from Texas (Mr. CRUZ), the Senator from Florida (Mr. RUBIO), and the Senator from Mississippi (Mr. WICKER).

Further, if present and voting, the Senator from Texas (Mr. CORNYN) would have voted “yea” and the Senator from Florida (Mr. RUBIO) would have voted “yea.”

Mr. DURBIN. I announce that the Senator from New Jersey (Mr. BOOKER), the Senator from Missouri (Mrs. MCCASKILL), and the Senator from Vermont (Mr. SANDERS) are necessarily absent.

The PRESIDING OFFICER (Mr. HOEVEN). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 93, nays 0, as follows:

[Rollcall Vote No. 26 Leg.]

YEAS—93

Alexander	Flake	Murphy
Ayotte	Franken	Murray
Baldwin	Gardner	Nelson
Barrasso	Gillibrand	Paul
Bennet	Graham	Perdue
Blumenthal	Grassley	Peters
Blunt	Hatch	Portman
Boozman	Heinrich	Reed
Boxer	Heitkamp	Reid
Brown	Heller	Risch
Burr	Hirono	Roberts
Cantwell	Hoeven	Rounds
Capito	Inhofe	Sasse
Cardin	Isakson	Schatz
Carper	Johnson	Schumer
Casey	Kaine	Scott
Cassidy	King	Sessions
Coats	Kirk	Shaheen
Cochran	Klobuchar	Shelby
Collins	Lankford	Stabenow
Coons	Leahy	Sullivan
Corker	Lee	Tester
Cotton	Manchin	Thune
Crapo	Markey	Tillis
Daines	McCain	Toomey
Donnelly	McConnell	Udall
Durbin	Menendez	Vitter
Enzi	Merkley	Warner
Ernst	Mikulski	Warren
Feinstein	Moran	Whitehouse
Fischer	Murkowski	Wyden

NOT VOTING—7

Booker	McCaskill	Wicker
Cornyn	Rubio	
Cruz	Sanders	

The resolution (S. Res. 374) was agreed to.

The PRESIDING OFFICER. Under the previous order, the preamble is agreed to.

(The resolution, with its preamble, is printed in the RECORD of February 24, 2016, under “Submitted Resolutions.”)

The PRESIDING OFFICER. Under the previous order, the motions to reconsider are considered made and laid upon the table.

The Senator from Oklahoma.

#### MORNING BUSINESS

Mr. LANKFORD. Mr. President, I ask unanimous consent that the Senate be in a period of morning business, with Senators permitted to speak therein for up to 10 minutes each.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from Maryland.

#### FILLING THE SUPREME COURT VACANCY

Ms. MIKULSKI. Mr. President, I rise to speak in morning business on an issue before the American people, and that is the Supreme Court vacancy.

I rise today to express my very deep, deep disappointment in my Republican colleagues for vowing to block President Obama’s nomination—vowing to block President Obama’s nominee for filling the vacancy on the Supreme Court.

Each and every Senator serving in this Chamber was elected by the American people, and we took an oath to uphold the Constitution. In this matter, the Constitution is very clear. Article II, section 2 says the President “shall nominate, and by and with the Advice and Consent of the Senate, shall appoint . . . Judges of the supreme Court.”

It doesn’t say the President only has an hour and a half left. It doesn’t give a time limit to the President. If you are a President and you have a 4-year term, you have the authority and duty to exercise your obligations under the Constitution for a full 4 years, and the Senate has a duty to provide advice and consent. There are no waivers for election years. I urge my colleagues: Do your job. Follow the Constitution and live up to the Constitution. The Constitution doesn’t say: In an election year, delay, delay, delay. The word “delay” doesn’t even appear in the Constitution, in the hope that one day you will get your way.

Republicans have said that the Senate must wait until the people have spoken by electing a new President in November. The American people have spoken. They elected President Obama in 2008, and they reelected him in 2012. Barack Obama is our President from now until noon on January 20, 2017. If the Founders wanted a 3-year term for the President, they would have written that in the Constitution, but they mandated 4 complete years.

Now the other party wants to deny the President the legitimacy and authority of his office. Even George Washington had his nominee considered during a Presidential election year and had three of his candidates confirmed. What was good enough for the first Congress under George Washington should be good enough for this Congress now under President Obama.

President Obama and I will both be closing our offices in January of 2017, but that doesn’t mean we are done working for the American people today. There is a lot of work to be done. President Obama has the constitutional duty to submit a nomination in order to fill the vacancy left with Justice Scalia’s passing. This duty is not suspended in an election year. The Constitution is clear about the President’s authority. The President must fulfill his duty, and we must do our job. The issue is not about Executive orders or checking Executive powers or interpreting law books; it is about following the Constitution.

I say to the Republicans on the other side of the aisle: Please do your job. Your constituents elected you to this position to follow the Constitution. If you don't like the nominee the President has selected, vote no, but at least follow the process. After the President selects his nominee, we then go through a courtesy process where the nominee calls upon each Senator. Then there is a hearing—and maybe there are several days of hearings—and then there is a vote.

I am calling on the Senate to follow the process that was mandated by the Constitution and mandated by our traditions. After the President nominates someone, let's meet with the nominee. Let's hold the hearings and follow the process, and then let's bring it to a vote. Over the last 40 years, the average time it has taken for the Senate to act has been only 67 days from nomination to confirmation, so to say we don't have enough time just doesn't work. We have 10 months, or 330 days, left in this President's administration to do this job.

Some of my colleagues say there is precedent for this obstructionism. Chairman GRASSLEY, the chair of the Judiciary Committee, cited four times in our history where a President did not nominate someone to fill a vacancy during an election year. Well, those numbers are right, but guess what. The vacancy occurred after the Senate had adjourned for the year. None of those Presidents could have nominated a candidate because the Senate wasn't in session.

For the past 100 years, every Supreme Court nominee has been acted upon. Even if they got a disapproval vote in the committee, they still got a vote in the Senate.

In 1987, Robert Bork was voted down in the committee, but he still got a vote on the floor where he was voted down.

In 1991, Clarence Thomas, one of the most contentious and controversial Supreme Court nominations that I ever participated in, was voted on by the committee without a recommendation. He got a vote on the floor and was approved 52 to 48.

Each of these candidates had their day to be evaluated. Each Senator had the ability to apply their advice and consent or, in some cases, nonconsent. I didn't always vote yes on the nominee, but I certainly supported the process that we have here. We have never denied a sitting President his duty to provide a nominee. This is of utmost importance to our Nation. It really is.

The Supreme Court is unique. It is the highest Court of the land with real and lasting impacts on American lives. To obstruct a Supreme Court nominee for political reasons would be absolutely unprecedented. Until this vacancy is filled, the Supreme Court is left with eight members with the potential for tie votes. If there is a tie vote in a decision, the ruling of the lower court remains as if the Supreme

Court never heard the case. In some cases, that leaves disagreement among courts, leaving our laws at odds with each other.

If this vacancy lasts until the next President, the Supreme Court could be left without eight members for two terms on the Court. Some of the cases with the most impact on our history have been decided in 5-to-4 votes. That brings up some cases that are of particular concern to me.

What if there were a tied decision in a case and we were left stuck in a gridlock? The Senate knows that I am very involved with equal pay for equal work. There was the famous Lilly Ledbetter case—Lilly Ledbetter v. Goodyear Tire and Rubber Company. It was decided by a 5-to-4 vote. She faced injustice not only at her job, but also in the courts. At the urging of Justice Ginsburg, the Senate provided a legislative remedy to correct that injustice. If we had a tie, we might not have ever been able to resolve that issue both through the Court and through the Senate. This is what democracy is supposed to be.

There was another amazing case, which was Bush v. Gore. Everyone remembers the election in 2000 when we had the hanging chads in Florida and we really weren't sure who won the election—Al Gore or George Bush. This is America, so banks stayed open, there were no tanks in the street, school children were able to go about learning what America was all about and get ready for the new century. We were moving ahead because the process moved through the courts.

The Bush v. Gore case was decided with a 5-to-4 vote. Can you imagine if we had a tied Court now? We would have a constitutional crisis, and we would have a crisis over who was the legitimate President of the United States. We can't have that happen again.

When the voters make their decisions in November on who they want to have as the next President, I hope it is clear and decisive and we don't end up before the Supreme Court, but surely we need to have a Court that is not going to end in a tie and that we have done our job to make sure that there are nine—N-I-N-E—on the Supreme Court.

First of all, follow the Constitution. It is in the best interest of our country. Do your job so we can say to the world: We are a Nation of laws. We encourage people all over the world that are emerging from authoritarian regimes or chaotic political situations to write a Constitution and live by it. Well, we wrote a Constitution, so let's live by it. We need to follow what we say we were elected to do and that we swore an oath to do.

President Obama must do his job. I urge the Republicans to do their job. Let's follow and live up to the Constitution. When the President makes his nomination, let's open our doors so we can meet with that nominee. Let's hold a hearing or multiple hearings, if necessary, and then let's hold a vote on

the Senate floor. Let's be accountable by the deeds of our vote and not simply avoid our responsibility.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant legislative clerk proceeded to call the roll.

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

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

#### ORDER OF BUSINESS

Mr. McCONNELL. Mr. President, for the information of all Senators, Senator MURKOWSKI and Senator CANTWELL and many others continue to work diligently on a way to wrap up the Energy bill and to deal with the Flint issue. In the meantime, I will be shortly filing cloture on a motion to proceed to the opioid bill, and I am hopeful we can reach an agreement to finish this bill with just a handful of amendments next week.

#### COMPREHENSIVE ADDICTION AND RECOVERY ACT OF 2015—MOTION TO PROCEED

Mr. McCONNELL. Mr. President, I move to proceed to Calendar No. 369, S. 524.

The PRESIDING OFFICER. The clerk will report the motion.

The senior assistant legislative clerk read as follows:

Motion to proceed to Calendar No. 369, S. 524, a bill to authorize the Attorney General to award grants to address the national epidemics of prescription opioid abuse and heroin use.

#### CLOTURE MOTION

Mr. McCONNELL. 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 senior assistant 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 motion to proceed to Calendar No. 369, S. 524, a bill to authorize the Attorney General to award grants to address the national epidemics of prescription opioid abuse and heroin use.

Mitch McConnell, Daniel Coats, Dan Sullivan, Orrin G. Hatch, Shelley Moore Capito, John Cornyn, Lindsey Graham, Roy Blunt, Ron Johnson, Chuck Grassley, Rob Portman, Susan M. Collins, Jeff Flake, Cory Gardner, Lamar Alexander, John Barrasso, John McCain.

Mr. McCONNELL. Mr. President, I ask unanimous consent that the mandatory quorum call under rule XXII be waived.

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

Mr. McCONNELL. I suggest the absence of a quorum.