

with eight members for a year. That is not acceptable to the people of our country. We need to do our job.

I ask my Senate colleagues, my Republican friends, to enable the Senate to do our advice and consent role and do our job as set forth in the U.S. Constitution.

I yield the floor.

RECESS

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until 2:15 p.m.

Thereupon, the Senate, at 12:45 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. PORTMAN).

ENERGY AND WATER DEVELOPMENT AND RELATED AGENCIES APPROPRIATIONS ACT, 2016—Continued

The PRESIDING OFFICER. The Senator from Colorado.

NOMINATION OF MERRICK GARLAND

Mr. BENNET. Mr. President, I rise to discuss the vacancy on the Supreme Court and the majority's ongoing refusal to consider the nomination of Chief Judge Merrick Garland. Forty days have passed since the President of the United States nominated Judge Garland to fill Justice Scalia's seat. This is longer than it took for the Senate to confirm Justice Sandra Day O'Connor in 1981. In fact, 75 percent of all Supreme Court Justices have been confirmed within 31 days, but today—40 days after his nomination—many Senators haven't even extended Judge Garland the simple courtesy of a meeting. The majority's refusal to hold a vote is without precedent, and the majority has cited none. Instead, the majority is trying to shift the blame.

Incredibly, the chairman of the Judiciary Committee recently came to the floor to blame, of all people, not other Senators, not other politicians, but the Chief Justice of the United States of America for politicizing the Court. Ten days before Justice Scalia's death, the Chief Justice said: "The process is not functioning very well." That turns out to have been something of an understatement. The Chief Justice went on and said that the process "is being used for something other than ensuring the qualifications of the nominees." Again, he was not referring to what is going on now in the Senate. This happened before Justice Scalia passed away. There was no way that the Chief Justice could have known there was going to be a vacancy. He continued: "[Supreme Court Justices] don't work as Democrats or Republicans . . . and I think it's a very unfortunate impression the public might get from the confirmation process."

His words struck me—particularly given what has gone on since then—as a candid expression of his concern for the Court as an institution. This con-

cern apparently upset the chairman of the Judiciary Committee. He took to the floor and said:

The Chief Justice has it exactly backwards. The confirmation process doesn't make the Justices appear political.

He continued:

The confirmation process has gotten political precisely because the Court has drifted from the constitutional text, and rendered decisions based instead on policy preferences.

It is absolutely breathtaking that the Chief Justice would be criticized for "drifting from the constitutional text" when, for the past 10 weeks, the majority has drifted from article II, section 2, clause 2, which sets out our constitutional responsibility to advise and consent in very clear terms. Worse, the majority's drift isn't even about policy; it is about politics. It is about rolling the dice on an election instead of following the plain text of the Constitution.

This is absolutely unprecedented in the history of the Senate. Throughout our history, the Senate has confirmed 17 nominees in Presidential election years to serve on the Supreme Court. The last of these was Justice Kennedy in 1988. When the President made this nomination, he had more than 340 days left in his term. We are talking almost a quarter of the President's term. That is a lot more time than most of those 17 Justices had before this Senate.

In the last 100 years, every nominee to a Supreme Court vacancy who did not withdraw—and a couple did—received a timely hearing and vote. On average, the Senate has begun hearings within 40 days of the President's nomination and voted to confirm 70 days after the President's nomination. There is no excuse for not holding a hearing and a vote.

If that is what we are going to pay attention to in this Chamber and if that is what we are going to argue for—originalism, strict constructionism—the plain language of the Constitution is clear. There is a reason why no Senate has ever had the audacity to do what this Senate is doing right now—because of how clear that mission is and because there is no one else to do it. The Constitution says: The Senate shall advise and consent. It doesn't say: The House of Representatives shall have a role. It doesn't say: Let the people decide. It says that this is the Senate's job. We should do our job just as every Senate, until now, has done its job since the founding of the country, including the Senate that was there when George Washington was in office. Three of those 17 appointments were confirmed by a Senate that actually contained people who had been at the constitutional convention, and they were consistent with their understanding of what the Founders had agreed to. They had a vote on the floor of the Senate.

I am not saying how people should vote. They should vote their conscience, but we should have a vote. The

American people expect us to do our job.

I want to be clear that I believe there should be hearings. I think we should go through hearings to establish the qualifications of the nominee. I think that is really important. The point I am making about having this vote does not have to do with whom the President nominated. It has to do with our institutional responsibility. It has to do with the rule of law and the image we want to project to our country and overseas.

Finally, I have a word to say about the President's nominee. Merrick Garland is an honored and accomplished judge. Two weeks ago I had the opportunity to meet with him and learn about his judicial record and philosophy. I have known Chief Judge Garland for more than 20 years. I have actually worked for him at the Justice Department when we both worked for the Deputy Attorney General of the United States. I was fresh out of law school, but even then Judge Garland's humility, work ethic, and commitment to the rule of law inspired me and continue to inspire me.

Our meeting last week confirmed what I already know. Judge Garland is an intelligent and pragmatic judge who is extraordinarily well-qualified to serve on the Supreme Court. I have wondered whether that is the reason the majority is not holding hearings. They could simply hold the hearings and vote against Judge Garland, which is their prerogative. Why not hold hearings? Maybe they know that the American people, given the opportunity to hear directly from Judge Garland, would see that he is precisely the type of judge who should serve on the Court.

A vacancy on the Supreme Court is a rare thing. It doesn't come around very often. For those of us in this country, whether we are in the Senate or in a classroom somewhere, those vacancies, hearings, and debates on the floor present an unparalleled opportunity—a remarkable opportunity—for the American people to engage in a debate about the Court, the Constitution, and all kinds of issues that the Court will consider. That is what these hearings are about. That is what could be going on this summer during this Presidential election year, and we would have a discussion about where we want to head as a country. We are not having it. We are not having it because of this unprecedented action.

Because of what the majority has done here, by not meeting with the nominee or holding a hearing, they are denying him the opportunity to make his case to the American people. In the meantime—and this is really critical—the Court will continue to be impaired. Impaired is the word that Justice Scalia himself used when he was asked to recuse himself from a case involving Dick Cheney, then the Vice President of the United States. In that case, he was asked if there would be a presumption of recusal. Justice Scalia's answer