

**Statement Of Senator Patrick Leahy (D-Vt.),
Ranking Member, Senate Judiciary Committee,
on Filling the Supreme Court Vacancy Left by the Passing of Justice Antonin Scalia
February 23, 2016**

This past weekend, the Nation honored Justice Antonin Scalia, who was laid to rest after serving on the Supreme Court for nearly three decades. Marcelle and I were at home in Vermont when we learned that Justice Scalia had passed. We were stunned by the news. I did not often agree with Justice Scalia, but he was a brilliant jurist with a deep commitment to our country and to the Constitution. He will be remembered as one of the most influential justices in modern history.

In the immediate wake of Justice Scalia's death, Senate Republicans moved quickly to shut down the constitutionally mandated process to fill the vacancy he left on the Supreme Court. Within hours, they declared they would oppose any effort to confirm the next Supreme Court justice this year. I have heard some shocking things in my time in the Senate, but I am surprised by the political crassness of these statements. Before a nominee had even been named, some Republicans reflexively decided to prematurely reject *anyone* nominated by the President. This impulsive rush to judgment runs completely contrary to how this body has always treated nominees to the highest court in the land. Republicans should not allow the hyper-partisan rhetoric of the campaign trail to trump one of the Senate's most important constitutional duties.

The President will fulfill his constitutional duty and nominate an individual to bring the Supreme Court back to full strength, and he is right to do so. The President has already begun consulting with the Senate.

After a nomination has been made, we in the Senate must then do our jobs. The Vermonters I spoke with last week reflect Americans across the country who are tired of the partisan political games that are chipping away at the foundation of our constitutional democracy. As Oliver Goodenough, a law professor at Vermont Law School, wrote this weekend in the *Rutland Herald*, an extended Supreme Court vacancy caused by Senate inaction "would certainly create a constitutional embarrassment." I ask unanimous consent that a copy of his op-ed from February 21 be included in the record.

We must not let that dysfunction infect the Supreme Court, which is an independent, coequal branch of government that was designed to be above politics. The next nominee to the Supreme Court deserves full and fair consideration by the Senate. This includes a timely hearing, and then an up-or-down vote.

Even before President Obama took office, and ever since then, there has been an unrelenting and cynical campaign by some hyper-partisans to de-legitimize this president's authority. There were the birthers, and there have been and still are spurious slurs of all kinds. Outside of this body, the efforts to undermine President Obama's constitutional authority to fill this Supreme Court vacancy draw some of their vehemence and venom from these dark corners. The Senate is sworn to uphold the Constitution and to fulfill its constitutional duties. Let us not be intimidated and pressured to avoid our sworn duty. Let us act for the good of the American people and for the Nation.

Now, some have justified their call for obstruction by claiming that it is because the American people need a voice. But the people *have* spoken. Millions of Americans — and an overwhelming majority of Vermonters — voted in record numbers in 2008 and 2012 to elect President Obama. In doing so, they granted him constitutional authorities for *all* eight years of those two terms. Just saying that President Obama is a “lame duck” president does not make it true; the next election is not until November. The American people expect those they elected to do their jobs for their *entire* terms, both in the Senate and in the White House.

While it is rare that a vacancy on the Supreme Court arises during an election year, it is just false to say that justices do not get confirmed in presidential election years. More than a dozen Supreme Court justices have been. Most recently, Justice Kennedy was confirmed by a Democratic-led Senate during President Reagan’s final year in office. He received a hearing and a confirmation vote. The same process should apply today with a Democrat in the White House and Republicans in control of the Senate.

Several Republican Senators have acknowledged that the next Supreme Court nominee should receive a fair hearing. But the process cannot end there. I have served on the Judiciary Committee for 36 years. During my time on the Committee, we have never refused to send a Supreme Court nominee to the full Senate for a confirmation vote, even when the majority of the Committee opposed the nomination. And once reported to the full Senate, every Supreme Court nominee has received an up-or-down confirmation vote during my more than four decades in the Senate. We must uphold this bipartisan tradition for the next Supreme Court nominee because so much is at stake. Merely holding a hearing without full Committee process and a confirmation vote is insufficient for a Supreme Court nominee. It would just be a charade.

If Republicans refuse to uphold their constitutional responsibility to consider the next Supreme Court nominee, it will harm our constitutional system of government. If they succeed in deliberately holding open a seat on the Supreme Court for more than a year they will be intentionally disabling the Court's ability to fulfill its constitutional role. And Republicans will be harming the Supreme Court for more than a year.

Justice Scalia himself once wrote that a Supreme Court of just eight Justices risked the possibility that the Court “will find itself unable to resolve the significant legal issue presented by the case.” The legal issues before the Supreme Court are significant, and the importance of a single vote on the court cannot be overstated. One vote on the Supreme Court decided landmark cases concerning our campaign finance laws, clean water and air policies, marriage equality, and voting rights. Americans deserve a fully functioning Supreme Court.

Every day Americans show up for work and do their jobs. They do not have the luxury of telling their bosses that instead of doing their jobs they would rather “delay, delay, delay.” And neither should the United States Senate. The stakes are too high.

Let’s get to work and do the job the American people sent us here to do. Our oath to uphold the Constitution requires no less.

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