

believe them or to offer justice. These survivors deserve better. They need Congress to act. We have to do the right thing. We have to be their voice. We have to stand for them. The bipartisan Campus Accountability and Safety Act does exactly that. Please, let's all do our jobs and pass the bill.

I yield the floor.

The PRESIDING OFFICER. The Senator from Florida.

(The remarks of Mr. NELSON pertaining to the introduction of S. 2843 are printed in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. NELSON. Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

#### ATVM LOAN PROGRAM

Mr. TOOMEY. Mr. President, I rise to address an amendment that has been filed, and on which I hope we are going to have a vote. That is amendment No. 3814. It is called End Crony Capitalist Advanced Technology Vehicle Manufacturing Loan Program.

Let me describe what this is about. We are all watching this Presidential election campaign unfold, and a big theme on both sides of the aisle is about how the Obama economy is not working for so many millions of ordinary Americans—middle-income, middle-class, working-class Americans who are working as hard as ever and falling behind. It is true. It has absolutely been a fact that this economy is not anywhere near where it should be. Part of that and part of the theme is how Washington works for the well-connected—for the few who get to figure out how to get special benefits from taxpayers. But that doesn't apply if you are an ordinary man or woman who is just working hard to feed their family and take care of their family and who doesn't have the lobbyists and the connections to get special treatment. It is infuriating for people, and they are right.

One of the most egregious examples is the Advanced Technology Vehicle Manufacturing Loan Program. This is a program that forces taxpayers to lend money to especially preferred—very affluent, generally—and well-connected businesses. It was created in 2007, and it requires the Department of Energy to lend this money—up to \$25 billion of taxpayer money—to private corporations that ought to be funding their activity privately.

Why should my constituents in Pennsylvania be made to take the risk for some company that has an idea they want to float? Why in the world should it be that my constituents and your constituents, Mr. President, have to subsidize a particular business because some politicians decide they like it? This is completely outrageous, and this program is particularly egregious.

So far this program has made five loans worth \$8.4 billion. Of the five,

two of them have already defaulted. Two have already gone under. Why should our taxpayers have to make these loans to companies that then fail, and the taxpayers end up holding the bag?

Fisker Automotive is one of them. They got a \$529 million loan in 2010. It took less than 1 year for them to default. The Department of Energy—which is to say, our constituents, taxpayers—then took a \$139 million loss, just on that one transaction.

The Vehicle Production Group got a \$50 million loan in 2011. Two years later, they defaulted. Taxpayers lost almost all of it—\$42 million.

But it gets even more absurd. In 2011, the Department of Energy, under this program, tried to make a \$730 million loan to a company owned by a Russian oligarch so he could build a steel plant to compete with American steel companies and steelworkers that are already making this product. Why in the world should my constituents be forced to subsidize a Russian oligarch? This is ridiculous. And by the way, the plant had already been built. It was retroactively funding facilities that he already had the resources to build. This is just crazy. This is what drives people crazy.

The GAO has recommended three times that this program be terminated. They have estimated that if the program continues, they are going to lose another \$400 million. So here we have Washington picking a handful of preferred companies to get huge taxpayer subsidies. It has proven it is a losing program. Why are we doing this in the first place?

So we have an amendment that would end this program. Senator COATS, Senator FISCHER and myself want to end this. We don't want taxpayers to continue to subsidize these companies. We don't think crony capitalism is the way our system should work. We think our economy should work for everybody who shows up and punches a clock and works hard, not the well-connected who can get a big subsidy from Washington. So we have an amendment that would end it.

Now, there is some controversy about whether we are even going to have a vote on this, which is really disturbing. I hope we can resolve this and have this vote. I will live with the consequences of this vote, as we all have to. But if there are people who like this program and think that our taxpayers should continue being forced to give away money and subsidize preferred special interests, OK, come on down to the floor and make the case. Argue for why we should continue this crony capitalism, and why it is that politicians ought to put their thumbs on the scale of our economy and divert taxpayer dollars to preferred interests. Come on down and make the case. At least have the courage of your convictions, and let's have a vote. That is all I am asking for.

So I am hoping we will get this. I am hoping we will have a vote and, of

course, I am hoping we will end a terrible program that undermines the confidence the American people have in our government. We could take a step in the right direction of restoring some confidence that this town can figure out what to do and can take steps to help our economy be fairer, more open, and more successful for all Americans.

I thank the Chair.

The PRESIDING OFFICER. The Senator from Maryland.

#### FILLING THE SUPREME COURT VACANCY

Mr. CARDIN. Mr. President, I recently had the opportunity to convene a roundtable at the University of Baltimore School of Law entitled: "Why Nine? A Discussion on the Importance of a Fully Functioning Supreme Court." I want to particularly thank the dean of the University of Baltimore Law School, Ronald Weich, for moderating this roundtable and bringing his extensive experience to this discussion. Ron Weich is well known here. He is the former chief counsel to Senate Minority Leader REID and former Assistant Attorney General for Legislative Affairs at the U.S. Justice Department.

I want to share with my colleagues some of the comments that were made by the people who were at that roundtable discussion.

Caroline Frederickson, the president of the American Constitution Society, discussed the lengthy delays for trial and appellate court decisions. Lengthy delays in filling vacancies mean that justice delayed is justice denied. We have seen a growing number of judicial emergencies as a result of the Senate leadership's slow-walking of the consideration of judicial nominations, as I discussed recently on the floor of the Senate. One of these is my own State of Maryland's district court vacancy, in which Paula Xinis has been waiting for floor action now since she was reported out of the Judiciary Committee unanimously in September of 2015. She has waited over 7 months for action on the floor of the Senate.

Ms. Frederickson also noted the increasing number of 4-to-4 decisions being issued by the Supreme Court. She warned that a Court that is split on a tough 4-to-4 decision might be tempted to "legislate" a solution by asking the parties to reshape the legal questions before the Court and go beyond the narrow case or controversy that is properly before the Court. That is something all of us want to avoid. We don't want the Court legislating.

John Greenbaum, chief counsel and senior deputy director of the Lawyers' Committee for Civil Rights Under Law, told the group that if Republicans hold to their pledge to block the filling of the Supreme Court vacancy until a new President takes office, this vacancy would span and negatively impact two terms of the Court and could last more than a year.

The Presidential election occurs in November of 2016, but the new President is not sworn into office until late January 2017. Allowing for several months, which is the standard time for consideration of a Supreme Court nominee, it could be next spring of 2017, more than a year after Justice Scalia's death before the vacancy is filled.

Mr. Greenbaum noted that the Court issued a number of 5-to-4 decisions in the current term, many of which drew a wide range of amicus briefs from all sides on the issue, and that the Court was trying to resolve circuit splits in a number of these cases. It cannot resolve circuit splits with a 4-to-4 vote, leaving us with different laws in different parts of the country.

Michele Jawando, vice president of legal progress at the Center for American Progress, discussed focusing the American people's attention on the third branch of government—the judiciary—which often does not receive the same level of focus as the executive and legislative branches.

Professor Charles Tiefer, a professor at the University of Baltimore School of Law, previously served as deputy general counsel of the U.S. House of Representatives and served as assistant legal counsel for the U.S. Senate. He formerly clerked on the U.S. Court of Appeals for the District of Columbia Circuit, the court that Chief Judge Garland currently sits. Professor Tiefer cited two interesting precedents we should keep in mind as the Senate considers—or, frankly, fails to consider—Chief Judge Garland's nomination.

In 1988, the Senate confirmed Justice Kennedy to the Supreme Court, even though the Senate was controlled by a Democratic majority and President Reagan was in his final year of office—very similar to the circumstances we have today. In 1991, when Democrats controlled the Senate, they allowed the nomination of Clarence Thomas to reach the Senate floor even though the Judiciary Committee had not favorably recommended him. The Judiciary Committee, under Chairman BIDEN, believed the full Senate should debate a nomination for the Supreme Court of the United States and that each Senator should cast their vote either for or against the nomination. Ultimately, the Senate narrowly confirmed Justice Thomas by a 52-to-48 vote.

Indeed, turning to Judge Garland, no nominee—and, really, no President—has ever been treated this way by the Senate. Since public confirmation hearings of Supreme Court nominations began a century ago in the Judiciary Committee, the Senate has never denied a Supreme Court nominee a hearing and a vote. This would be the first. By refusing to follow this practice, the Senate Judiciary Committee and Senate leadership are abrogating their constitutional duties. This is an affront to the Constitution. It is not a political assault. This is an assault on the Constitution.

Turning to article II, the Executive power in the Constitution, the Senate Republican leadership is trying to unilaterally alter the term of the President from 4 years to 3 years and somehow argue that the President in his or her final year of office cannot do his or her job, which includes nominating Supreme Court Justices if a vacancy occurs. This flies in the face of the plain text of the Constitution. The Constitution commands that the President “shall” nominate Supreme Court Justices in the event of a vacancy. The Senate is failing to exercise its constitutional duty to advise and consent.

Turning to article III, the judicial power of the Constitution, the Senate leadership is trying to unilaterally shrink the Supreme Court from nine justices to eight by creating an artificial vacancy for an indefinite period of time. Congress, by enacting a statute, has already set the size of the Supreme Court as consisting of nine justices. There is an odd number for a reason—to enable the Court to break tie votes. The Senate Republican leadership is pursuing a strategy that will hobble the Court for two terms.

This results in an increasing number of circuit splits and a nonuniform application of Federal law across the country, with no resolution in sight, meaning that an individual's rights and responsibilities under Federal law would depend on what circuit they happen to live in or do business in.

Article VI of the Constitution provides that “the Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath of Affirmation, to support this Constitution.” And I will say that what we are doing right now is abrogating that right.

Professor Michael Higginbotham is the Dean Joseph Curtis Professor at the University of Baltimore School of Law, and he was a former law clerk to a U.S. circuit judge. Professor Higginbotham agreed it is unprecedented for the Senate not even to consider or vote on a nomination for a Supreme Court Justice. He cited the famous case of *Marbury v. Madison*, decided by the Supreme Court in 1803. The case held that a constitutional right without a remedy is no right at all, and that a right must have a remedy. But what happens when the Supreme Court cannot issue a final decision on a complex or controversial case in the law? What is the remedy that follows that right? What happens when one branch of government refuses to do its job, endangering the operation of another equal and independent branch of government? A Supreme Court that divides by a vote of 4 to 4 in major decisions leads to uncertainty and lack of specificity in the law, due to splits in the various circuit courts of appeal around the Nation.

Amy Matsui is the senior counsel and director of government relations at the

National Women's Law Center. She reminded us that women's lives are affected every day by the decisions of the Supreme Court and lower Federal courts. Lawyers have an innate respect for the rule of law and legal process. If lawyers report to work and do their job every day, why can't the Senate? She asked a good question.

Thiru Vignarajah is the Deputy Attorney General of Maryland, serving under the leadership of Maryland Attorney General Brian Frosh. He discussed the importance of the judiciary being able to function independently and efficiently. Out of the thousands of petitions for certiorari, the Supreme Court grants about 1 percent of the cases, ultimately deciding about 150 cases a year. Dozens of these cases were 5-to-4 decisions of a divided Supreme Court. These are hard cases where reasonable jurists disagree, and indeed a number of these cases have split circuit courts around the Nation, with judges issuing conflicting decisions on differing interpretations of Federal law.

This uncertainty is bad for the marketplace, bad for business, bad for lawyers, bad for judges, bad for litigants, and ultimately bad for the American people. Quite frankly, in some cases, businesses would prefer any ruling because it at least gives certainty about what the law is. Businesses do not want Federal law to become a patchwork and vary from circuit to circuit and State to State because a divided Supreme Court cannot resolve the issue.

Kyle Barry, the director of justice programs at the Alliance of Justice, discussed the importance of judicial independence. While the President has the power of the sword and controls government agencies and the Congress has the power of the purse and the ability to enact or change laws, the judiciary relies on the other branches of government and the American people to carry out its decisions.

The Framers of our Constitution gave the Justices lifetime tenure because it insulates them from the political pressures under Article III, Section 1, of the Constitution, so that they would not have to worry about losing their job through congressional impeachment if they reached an unpopular decision. Note that these are the only lifetime positions in the Federal Government. The Framers forbade Congress from cutting the salaries of the Justices while in office under Article III, Section 1, of the Constitution, to avoid retribution from Congress for unpopular decisions of the Court.

By undermining the independence of the Supreme Court and by making the Court appear to be a political entity, Republican Senate leadership is undermining the public's confidence in the Court and ultimately the very legitimacy of the Court. Our Framers intended with these very specific constitutional provisions to protect the Court and the Federal judiciary from politics.

The Senate should do its job and carry out its mission to fill vacancies of the Supreme Court, so that Americans will have confidence that the Supreme Court decides cases based on the law, Constitution, and facts of the case and so that politics does not play a role. The American public supports Congress doing its job and giving Judge Garland the hearing he deserves.

The stakes at the Supreme Court can involve matters of life and death. In death penalty cases, if the Court splits 4 to 4, a defendant would be put to death even though the Court decision did not definitively resolve the legal issue in the case.

Chief Judge Garland is a nominee for the Supreme Court and should be dealt with in this term of Congress. It is not a matter for the next President or the next Congress. There are 9 months left in this year, and to suggest that we don't have the time and the President doesn't have the authority to appoint a nominee is absolutely outrageous. It is an affront to the Constitution.

We need to go through the process and give Chief Judge Garland a chance. I have met with Chief Judge Garland and believe he is eminently qualified to be a Supreme Court Justice. But before the Senate makes a final decision, we need to do our job and vet the nominee, hold a hearing, and hold a vote that puts all Senators on the record. How can Senators in good conscience reject this Supreme Court nominee without a fair vetting and hearing or process? I think it is hard to understand how you can be excused from doing your job for 9 months by not having a confirmation hearing and vote. The President did his job, and it is now time for the Senate to do its job.

The American people want to see nine justices on the Supreme Court when it convenes its new term in October. The Senate now has the responsibility and duty to respect the independence of the Federal judiciary, the authority of the President to nominate Justices, and the powers of the Senate to advise and consent on nominations.

Let's remember our oaths to support the Constitution. Let's do our job. Let's take up the Garland nomination. I yield the floor.

I 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. CARDIN. Mr. 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.

#### ENERGY AND WATER DEVELOPMENT AND RELATED AGENCIES APPROPRIATIONS ACT, 2016

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of H.R. 2028, which the clerk will report.

The senior assistant legislative clerk read as follows:

A bill (H.R. 2028) making appropriations for energy and water development and related agencies for the fiscal year ending September 30, 2016, and for other purposes.

Pending:

Alexander/Feinstein amendment No. 3801, in the nature of a substitute.

Alexander amendment No. 3804 (to amendment No. 3801), to modify provisions relating to Nuclear Regulatory Commission fees.

Alexander (for Hoeven) amendment No. 3811 (to amendment No. 3801), to prohibit the use of funds relating to a certain definition.

The PRESIDING OFFICER. The Senator from Maryland.

AMENDMENT NO. 3811

Mr. CARDIN. Mr. President, I understand that shortly we are going to be voting on the Hoeven amendment. The Hoeven amendment would prevent the clean water rule from going into effect.

In 1972, Congress passed the Clean Water Act in response to what was happening around this country. We saw rivers literally catch on fire as a result of polluted waterways. We had Lake Erie, which was considered dead. The Chesapeake Bay was one of the world's first marine dead zones. That is nothing to be proud of. The environment and status of our water was a national disgrace, and through congressional leadership, we passed the Clean Water Act. We did that because we understood that the status of upstream water affects the status of downstream water—that we are all in this together. We understood that having clean water was a public health issue, from swimming in the water to the source of our drinking water supplies. One third of our drinking water supplies come from regulated waters.

We also understood it was important for our economy. The status of tourism very much depended upon the quality of our water. Literally, people were concerned about going close to some of our inner harbor water areas. The Baltimore Inner Harbor is a tourist attraction, as are the inner harbors of many of our cities. It is important for our economy for agriculture. Agriculture depends upon clean water. We understood that when we passed the Clean Water Act in 1972. And we also understood it was a matter of quality of life for the people in our country. From those who hike and do bird watching to those who enjoy fishing and hunting, the status of clean water very much affects the way we enjoy life.

As Senators from Maryland, Senator MIKULSKI and I both understand the importance of clean water for the Chesapeake Bay. The Chesapeake Bay is a national treasure and the largest estuary in our hemisphere. It was at great risk because of waters coming in

from other States into the Chesapeake Bay watershed, affecting the quality of water of the Chesapeake Bay.

It was for all those reasons that we passed the 1972 Clean Water Act. We understood the enforcement of the waters that were regulated under the 1972 Clean Water Act. It was based upon best science.

Science told us what we needed to do in order to have clean water—clean water for our environment, clean water for safe drinking water—and it was well understood until a Supreme Court decision. That decision in 2006, known as the Rapanos decision, was a 5-to-4 decision of the Supreme Court, which remanded the case, but it was a 4-to-4 decision on the merits of the case. Since that time, there has been uncertainty as to what bodies of water can be regulated under the Clean Water Act. So this was a situation caused by the ambiguity of the Supreme Court case. It is interesting that the decision on the merits was 4-to-4, as we are now debating whether we are going to have a full Supreme Court in order to make decisions that affect the clarity of law in this country.

The Rapanos decision sent back to the lower courts a decision on how to decide this. Since that time, there has been uncertainty as to what bodies are legally regulated under the 1972 Clean Water Act. Remember, this was 2006. The easiest way to resolve this was for Congress to pass a law clarifying the Clean Water Act, but Congress has chosen not to do that. So the Obama administration has done what it should do, using its power to promulgate a regulation that would provide clarity as to which bodies of water are regulated. Guess what. They have done that in a way that is consistent with how the law was enforced prior to the Rapanos decision—without much complaint before the Rapanos decision. It basically goes back to best science and tells us logically what needs to be regulated. That is what this rule would do: Protect our clean water.

There is a lot of misinformation that has been given about the clean water rule. Quite frankly, normal farming activities don't require any permits under the Clean Water Act. If we listen to some of the arguments against the Clean Water Act, we would have a hard time comparing that to what, in fact, is in the bill.

The Clean Water Act would reestablish the well-thought regulatory framework for protecting our clean water so that we don't return to the days of jeopardizing the Chesapeake Bay or jeopardizing our rivers or jeopardizing our clean water supplies or our environment.

Tomorrow is Earth Day. Forty-six years ago, our colleague Senator Gaylord Nelson established Earth Day. What will this Congress's legacy be? What will we be remembered for in regards to protecting this planet, protecting our country, and protecting our environment for future generations? I