AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mrs. CAPITO. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate on September 27, 2016, at 9:30 a.m.

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

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mrs. CAPITO. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet during the session of the Senate on September 27, 2016, at 10 a.m., in room SR–253 of the Russell Senate Office Building to conduct a hearing entitled ''Oversight of the Federal Trade Commission.''

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

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

Mrs. CAPITO. Mr. President, I ask unanimous consent that the Committee on Homeland Security and Governmental Affairs be authorized to meet during the session of the Senate on September 27, 2016, at 10 a.m., to conduct a hearing entitled ''Fifteen Years After 9/11: Threats to the Homeland.''

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

COMMITTEE ON FOREGN RELATIONS

Mrs. CAPITO. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on September 27, 2016, at 2:30 p.m.

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

SELECT COMMITTEE ON INTELLIGENCE

Mrs. CAPITO. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on September 27, 2016, at 10 a.m., in room SH–216 of the Hart Senate Office Building.

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

APPOINTMENT

The PRESIDING OFFICER. The Chair, on behalf of the President pro tempore, pursuant to Public Law 110–315, announces the reappointment of the following individual to be a member of the National Advisory Committee on Institutional Quality and Integrity: Dr. Paul LeBlanc of New Hampshire.

ORDERS FOR WEDNESDAY, SEPTEMBER 28, 2016

Mr. BOOZMAN. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 9:30 a.m., Wednesday, September 28; that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, and the time for the two leaders be reserved for their use later in the day; further, that following leader remarks, the Senate resume consideration of H.R. 5325 until 10 a.m.; finally, that at 10 a.m., the Senate resume consideration of the veto message to accompany S. 2040, as under the previous order.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

ORDER FOR ADJOURNMENT

Mr. BOOZMAN. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that it stand adjourned under the previous order, following the remarks of the Senator from Colorado, Mr. BENNET.

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

The Senator from Colorado.

NOMINATION OF MERRICK GARLAND

Mr. BENNET. Mr. President, I am privileged to be here with the Presiding Officer this evening. I thank my colleague from Arkansas for allowing me to speak at this time.

I rise to discuss the vacancy on the Supreme Court. Nearly 200 days have passed since the President nominated Judge Merrick Garland to fill the Supreme Court vacancy. Yet the majority still refuses to hold a hearing on his record or a vote on his nomination. As a result, Judge Garland is now the longest pending nominee in the Nation's history.

Next week, the Supreme Court will reconvene for a new term with one seat still vacant. I remember reading Justice Scalia's opinion in a case where he described an eight-member Court as a diminished Court. That was the language he used. We now have a Supreme Court that, not just in one term but in two terms, has been diminished by the inability of this Senate to confirm a nominee.

There is no doubt that anybody with any sense can see this has been an unconventional period in American politics, to say the least, but in many cases, the majority's refusal to even consider Judge Garland's nomination is the most egregious example of Washington dysfunction I have seen.

Within an hour of Justice Scalia's death, the majority leader unilaterally decided the Senate would not consider the President's nominee, even though 342 days remained in the President's term. By taking this unprecedented action, the majority leader hoped that the next President would nominate someone with the same originalist judicial philosophy as Justice Scalia. Indeed, that is what some of my colleagues have said. Waiting would allow the next President to ''nominate a justice who will continue Justice Scalia's unwavering belief in the founding principles we hold dear.'' Another said that we should wait so as to ''preserve the conservative legacy of the late Antonin Scalia.'' By taking this position, they have made clear that they want the next President—perhaps Donald Trump—to replace an originalist such as Antonin Scalia with another originalist. But by taking this approach, the majority leader has radically departed from the plain language of the Constitution and more than 200 years of historic precedent in this Chamber.

As an originalist—and he certainly was—Justice Scalia would interpret the Constitution by examining the meaning of the words when it was enacted.

Article II, section 2 of the Constitution states: ''[The President] shall nominate, and by and with the Advice and Consent of the Senate shall appoint . . . Judges of the Supreme Court.'' When a vacancy arises, the President has an affirmative duty to nominate a replacement, and the Senate, in return, has an affirmative duty to advise and consent. That is what the plain language of the Constitution requires, and that is what the original meaning would have been.

But beyond the text of the Constitution, we should also consider the traditions of our predecessors in this Chamber. Members of the majority seem eager to make this point. One of our colleagues said that ''we should follow a tradition embraced by both parties and allow his successor to select the next Supreme Court Justice.'' Another said: ''There is significant precedent for holding a Supreme Court vacancy open through the end of a president's term in an election year.'' The truth is exactly the opposite. In fact, the majority's position today is absolutely unprecedented in the history of the United States or the history of the U.S. Senate.

Recently, Professors Robert Kar and Jason Mazzone combed through the history of Supreme Court nominations and Senate confirmations for a piece I believe appeared in the NYU law journal. Since the founding of the country, there have been 103 instances similar to the moment we face today, where an elected President nominated a person to fill a vacancy before the election of the successor—where an elected President nominated an individual to fill a vacancy before the election of his successor.

The professors found that in all 103 instances, the sitting President was able to both nominate and appoint a replacement Justice by and with the advice and consent of the Senate. The professors further wrote: ''This is true even of all eight such cases where the nomination process began during an election year.''

That is the history. That is the precedent. So when we hear people