Prepared Statement by Senator Chuck Grassley of Iowa
Chairman, Senate Judiciary Committee
Executive Business Meeting
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We have several bills on the agenda for the first time today, as well as four nominees. Three of those nominees are ripe for a vote. I'd hoped to move those three out of Committee last week, but when we tried to meet off the floor as we often do, the other side objected.

As I said yesterday, I want to open this meeting up for a discussion on the Supreme Court vacancy before we turn to the agenda. So, assuming we get to the legislation and nominees today, we'll hold over the legislation and one nominee, and then we'll vote on the other three nominees.

There's been a lot discussion about the Supreme Court vacancy over the last couple weeks. The record is pretty clear about how the Senate approaches vacancies that arise in a presidential election-year, and why we're going to approach it the same way.

I've spoken at length on the Floor about these issues. But somehow I doubt my colleagues have been spending their free time reading my floor speeches. So I thought I'd spend a few minutes reviewing where we are, and dispelling just a few of the myths that I've heard repeated a number of times.

The most appropriate place to begin is with Chairman Biden's famous speech from 1992. As we all know, in that 20,000 word speech, Chairman Biden went into great detail about Supreme Court vacancies arising during a heated presidential campaign. By now we're all pretty familiar with the Biden Rules, so I'm not going to repeat all of them. But, based on what I've been hearing, there appears to be some confusion about the matter. So I'd like to clear a few things up.

First of all, there's been some suggestion that somehow Chairman Biden didn't really mean what he said. It's been suggested, that when he explained why the Senate shouldn't consider a Supreme Court nominee during a heated presidential election campaign, somehow the actual words he used had a secret, and completely different meaning.

As an aside, I'd note that this sounds a lot like how liberal judges tend to read the Constitution.

Thankfully for all of us, Chairman Biden spoke at length, as he so often did when he was in the Senate, and was clear.

For the benefit of my colleagues who haven't heard it, here is part of what then-Chairman Biden said:

> "Should a justice resign this summer and the President move to name a successor, actions that will occur just days before the Democratic Convention and weeks before the Republican Convention meets, a process that is already in doubt in the minds of many

> will become distrusted by all. Senate consideration of a nominee under these circumstances is not fair to the President, to the nominee, or to the Senate itself."

Now, if that wasn't clear enough, Chairman Biden continued:

> "Mr. President, where the Nation should be treated to a consideration of constitutional philosophy, all it will get in such circumstances is partisan bickering and political posturing from both parties and from both ends of Pennsylvania Avenue. As a result, it is my view that if a Supreme Court Justice resigns tomorrow, or within the next several weeks, or resigns at the end of the summer, President Bush should consider following the practice of a majority of his predecessors and not name a nominee until after the November election is completed."

And then from there, of course, Chairman Biden went on to say that if the President did not follow the practice of the majority of his predecessors and submitted a nominee anyway, then the Senate shouldn't consider the nominee.

Now, let me offer a couple of observations.

As I said, over the last few days, some have tried their best to re-cast what Chairman Biden actually said, in an attempt to give it a totally different meaning. Even the Vice President suggested that what he said in 1992, isn't what he really meant. Instead, the argument goes, his 1992 speech was all about greater cooperation between the President and the Senate.

Well, Chairman Biden did talk about the more cooperation. There's only one problem. He said that cooperation should occur, "in the next administration."

It was only *after* discussing why the President shouldn't send a nominee if a vacancy arose, and only *after* explaining why the Senate shouldn't consider any such nominee, regardless of "how good a person" is nominated, that Chairman Biden turned to how the process should be changed, in his view, "in the next administration."

Again, here's what he actually said:

> "Let me start with the nominating process, and how that process might be changed in the next administration, whether it is a Democrat or a Republican."

And just so there wouldn't be any confusion, he repeated it two sentences later:

> "With this in mind, let me start with the nomination process and how that process might be changed in the next administration, and how I would urge to change it as Chairman of the Judiciary Committee were I to be Chairman in the next administration."

So, Chairman Biden was clear. All the spin in the world won't change that fact.

Now, we've talked a lot about the Biden Rules, but we haven't talked as much about why he felt so strongly that conducting hearings in these circumstance would be bad for the nominee, the process, and the Court.

It was because, under these circumstances the process would not be about constitutional interpretation and the proper role of the Court.

It would be a hyper-political slug fest.

As Chairman Biden said:

> "Where the Nation should be treated to a consideration of constitutional philosophy, all it will get in such circumstances is partisan bickering and political posturing from both parties and from both ends of Pennsylvania Avenue."

Chairman Biden was making the point that all of us know to be true, but only some of us are willing to admit: considering a Supreme Court nomination in the middle of a presidential campaign would be all politics, and no Constitution.

And if there is any doubt that this was Chairman Biden's view, just look at how he described the problem in an interview about a week before his famous speech in 1992:

> "Can you imagine dropping a nominee . . . into that fight, into that cauldron in the middle of a presidential year?"

The result of that "supercharged" environment, he concluded, would be this:

> "Whomever the nominee was, good, bad or indifferent … would become a victim."

I raise this, in part, because we're already witnessing how raw politics is infecting the process. Regardless of what some are willing to admit publicly, everybody knows any nominee submitted in the middle of this presidential campaign isn't getting confirmed. Everybody. The White House knows it. Senate Democrats know it. Republicans know it. Even the press knows it.

So, why the charade? Why all this 'outrage' about a hearing? Why the 'demands' for a hearing that everyone knows would never result in a confirmation? It's because the other side is committed to using this process to score as many political points as possible. That's it. Plain and simple.

That's why, for instance, the Minority Leader has taken to the floor on a daily basis to attack me in personal terms. We've seen that kind of thing from him before. It's all about using this process to score political points. It's that simple.

We're even seeing reports that the White House's selection process is guided by the raw political calculation of what they think will exert the most political pressure on me. The misguided logic appears to be that if they nominate someone who I, and other Republicans, supported for a lower

court, then somehow we'll suddenly conclude that it's a good idea to drop that nominee into what Chairman Biden called the "cauldron" of a hearing during a heated presidential campaign.

People conveniently forget that Judge Bork was confirmed unanimously to the D.C. Circuit. But that was before the other side viciously attacked and smeared him when he was nominated to the Supreme Court.

It's even been suggested that if the White House selects a Judge from Iowa, then I'd try to convince my colleagues that it's a good idea to hold hearings. We've been up front and clear, but in case there is any confusion over whether this obvious political ploy would work, let me be crystal clear: it won't.

We're not going to drop any nominee into that election-year 'cauldron', and I'm certainly not going to let it happen to an Iowan.

Now, let me touch on a couple other points before I turn to the Ranking Member.

Some of the arguments we've heard are so absurd, they barely merit rebuttal. But my friends seem to be under the impression that if they repeat something often enough, it magically becomes true. So, I'll take a couple minutes here to answer them.

I've heard it said that the Bork/Kennedy episode somehow lends support to the notion that the Senate should consider a nomination during middle of a presidential campaign. The argument is that because Justice Kennedy was nominated in 1987, and confirmed in early 1988, this somehow disproves Chairman Biden's argument. Of course, the only reason that seat was still vacant in early 1988, is because Judge Bork was treated to an unprecedented and shameful smear campaign in 1987. Those of us who were here remember it well.

And that brings me to another, related point. It's been suggested that the Democrats who were here in 1987 and 1991, and Chairman Biden in particular, should be applauded for how they handled the Bork and Thomas nominations. I'll set aside for the moment the obvious fact that neither of those nominations occurred during a heated presidential election campaign. The argument appears to be Judge Bork and Justice Thomas were treated to a fair process because, even though they didn't have the support of a majority in this Committee, they were reported to the Floor.

I'm not going to re-litigate those nominations. But I will say this. I was here for Judge Bork. I was here for Justice Thomas. I saw what happened to both of them. I saw what happened to their records, to their reputations, and to their families. If anyone wants to argue that either one of those individuals was treated to a fair process, they're free to make that argument. But to this Senator, it would be laughable, if it weren't so sad.

It's also been said that the Biden Rules somehow don't apply because there wasn't a vacancy when Chairman Biden took to the Floor in 1992. But consider that for a minute. Chairman Biden spoke on the Floor the day before the end of the Court's term. And of course, that's the day when Justices often announce their retirement. It's true, there was no vacancy. But the

Chairman of the Senate Judiciary Committee went to the Floor of the Senate, and put the public, all nine Justices and the President of the United States on notice. If any Justice was considering retirement, they should know that the Senate was NOT going to consider any replacement, consistent with past practice.

Now, based on what we've heard over the last few days, you'd think that those who are expressing 'outrage' today, would have rushed to the Floor to express their disagreement with Chairman Biden in 1992. But for some odd reason, they didn't. Not a single Democrat went to the Floor that day, or in the days and weeks that followed, to stand up and say, 'No, Mr. Chairman you have the history wrong.'

Not one.

Not one Democrat went to the Floor, stood up and said, 'No, Mr. Chairman, that may be the Senate's history, and there may be very good reasons for it, but I think we should press ahead with an election-year nomination anyway.'

Not one.

Not a single Democrat went to the Floor, stood up and said, 'No, Mr. Chairman, I disagree.'

And we haven't located any newspaper editorials taking him to task either. So much for fairness. So, we should keep that in mind when we hear all of this 'outrage' today.

Let me make one final point. And if this particular argument wasn't so transparently absurd, it would be worthy of more debate. It's this idea that because Republican Senators met to discuss the issue, that somehow we weren't being up front and open. We could get into all of the "secret" meetings the other side held before they walked into the Chamber on November 21, 2013, and invoked the Nuclear Option. But I don't think that would be constructive.

Everyone in this room knows we meet to discuss important matters. And the reason I know everyone in this room knows it, is because I've met with each one of you on one issue or another. And, you didn't invite the press or the public.

When I first became Chairman, I met with every single Republican, individually and privately. And I offered to meet with every single Democrat, individually and privately. And in fact I did meet with most of you. I met with each of you so I could learn what your priorities were. I wanted to know what each of you wanted to see accomplished. Republican and Democrat.

That's how you learn where we can agree, where we likely cannot, and where we might be able to work together towards an agreement. That's how you get things done. That's how you lead. The bottom line is this. We didn't play games. We didn't hide the ball. We made clear up front, to the President, Senate Democrats, and the public exactly what we were going to do, and why we were going to do it.

And we did it with our eyes wide open. We knew the Minority Leader and others were going to make this as political as possible. That's unfortunate, but ultimately it doesn't matter, because it's the right thing to do.

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