place. Separate educational facilities are inherently unequal.''

As I have said before, this historic decision was the most important Supreme Court decision of the 20th century—and perhaps of all time. Shortly after the decision, the New York Times published an editorial that stated: ''The Supreme Court's historic decision in the school desegregation cases brings the United States back into the mainstream of its own best traditions. Segregation is a hangover of slavery, and its ugliest manifestation has been in the schools.''

While the Brown decision was a historic victory for equality, this anniversary is bittersweet. We have made great progress in the last 62 years, but there is much work that remains to be done to create ''the more perfect union'' that our Constitution promises. Significant racial disparities persist in our schools, as well as our economy and our criminal justice system.

Just last week, following a five-decade legal battle, a Federal district court judge ordered a school district in Mississippi to desegregate. In her opinion, Judge Debra Brown wrote that: ''[the school district's] delay in desegregation has deprived generations of students of the constitutionally-guaranteed right of an integrated education. Although no court order can right these wrongs, it is the duty of the District to ensure that not one more student suffers under this burden.''

It is shocking to consider that, six decades after the Brown decision, there is still resistance to the Court's mandate to desegregate our schools.

We also continue to see efforts to make it more difficult for African Americans and other minorities to exercise the most fundamental constitutional right, the right to vote. Three years after the Brown v. Board of Education decision, the Rev. Dr. Martin Luther King, Jr., spoke at the Lincoln Memorial during a prayer pilgrimage to Washington.

In a speech entitled ''Give Us the Ballot,'' Dr. King described the, ''noble and sublime decision'' in Brown, as well as the massive resistance to enforcing the decision. Dr. King noted that: ''many states have risen up in open defiance. The legislative halls of the South ring loud with such words as 'interposition' and 'nullification.' But even more, all types of conniving methods are still being used to prevent [African-Americans] from becoming registered voters. The denial of this sacred right is a tragic betrayal of the highest mandates of our democratic tradition.''

Dr. King knew that there was a vital connection between desegregation and the right to vote. Without Federal voting protections, African Americans would not have a voice in government to ensure that the Supreme Court's decision in Brown was fully implemented. He went on to say, ''our most urgent request to the President of the United States and every member of Congress is to give us the right to vote. . . . Give us the ballot.''

Eight years later, the Voting Rights Act was signed into law. For years, this landmark legislation was recognized as a great achievement. It was repeatedly reauthorized by large, bipartisan majorities in Congress. However, 3 years ago, in Shelby County v. Holder, the Supreme Court gutted the Voting Rights Act. In a divided 5–4 vote, the Court struck down the provision that required certain jurisdictions with a history of discrimination to preclear changes to their voting laws with the Department of Justice.

Since the decision, States like Texas, North Carolina, Alabama, and Mississippi have put in place restrictive state voting laws, which all too often have a disproportionate impact on lower-income and minority voters.

Sixty-two years after the Supreme Court's decision in Brown v. Board of Education, it is clear there is much more work to do. We should remember Dr. King's words in 1957. We should restore the law he implored Congress to enact. It is time to bring the bipartisan Voting Rights Advancement Act to the floor and ensure that the Federal Government is once again able to fully protect the fundamental right to vote.

The Supreme Court of the United States stands just across the street from here. On the front of the Court four words are engraved: ''Equal Justice Under Law.'' Those words are a promise and a challenge to all of us. On this day, the anniversary of one of the Court's greatest triumphs, let us rededicate ourselves to ensuring that those four words—''Equal Justice Under Law''—ring true for this generation and future generations of Americans.

JUDICIAL NOMINATIONS

Mr. LEAHY. Mr. President, today is the 62nd anniversary of the Supreme Court's landmark decision in Brown v. Board of Education, which reaffirmed our Nation's commitment to justice and equality by ending racial segregation in our public schools. The unanimous Court overruled one of its worst precedents in Plessy v. Ferguson and held that ''in the field of public education, the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal.''

For generations, the Brown v. Board decision has been viewed as a turning point in the effort to eradicate the shameful legacy of Jim Crow and racial segregation. On this anniversary, we are reminded of the significance of a strong and independent Supreme Court, as set forth in our Constitution. Americans respect the Court as our guardian of the Constitution and the rule of law. Each generation of Americans since the Nation's founding has worked to bend the arc of the moral universe further toward justice, seeking to fulfill the Constitution's stated purpose of forming ''a more perfect Union.'' In Brown v. Board, the Court's unanimous decision reflected that we are a nation of laws and that equal justice under law has meaning.

Unfortunately, while we commemorate this momentous Supreme Court decision today, we find the Supreme Court today weakened by Senate Republicans' current obstruction. It is an undisputable fact that the Republicans' refusal to consider Chief Judge Merrick Garland's nomination means that the Supreme Court will be without a full nine justices for more than one of its terms. The Republican argument articulated in February that they should delay all consideration because it is an election year has no precedent and is unprincipled. It shows contempt for the Court as an institution and as an independent and coequal branch of government.

The result of Republicans' sustained obstruction is that the Court is taking on fewer cases, and even in the cases it does hear, it has repeatedly been unable to definitively resolve the issue before it. A May 1 article by Robert Barnes in the Washington Post notes that the number of cases that the Justices have accepted has fallen, and the experts in that article attribute this to the Court being down one member. As one expert noted in the article, ''there seem to be a number of 'defensive denials,' meaning neither side of the ideologically split court wants to take some cases because of uncertainty about how it will turn out, or whether the court will be able to reach a decision.''

Another harmful effect of this Republican obstruction is that the Court has been contorting itself to avoid 4–4 splits by leaving the key questions of cases undecided. Just yesterday, in two different cases, the Court was unable to make a final decision on the merits. In both cases, the appellate courts are split on the law, and the Supreme Court was unable to live up to its name. One of the cases, Zubik v. Burwell, involved religiously affiliated employers' objections to their employees' health insurance coverage for contraception. The Court had already taken the unusual step of ordering supplemental briefing in the case, seemingly to avoid a 4–4 split. Even with the extra briefing, the Court was still unable to make a decision. Instead, it sent the issue back to the lower courts expressing ''no view on the merits of the cases.'' In the second case, Spokeo v. Robbins, the question at issue was Congress's ability to statutorily create rights that confer standing for plaintiffs to sue when those rights are violated. The case involves important privacy questions about Americans' power to take action when incorrect information is posted about them online. The Court, however, failed to reach the key question at issue. The effect is that the current split among the Circuit Courts of Appeals remains unresolved. As yesterday's New York Times editorial

notes, ''Every day that passes without a ninth justice undermines the Supreme Court's ability to function, and leaves millions of Americans waiting for justice or clarity as major legal questions are unresolved.''

In addition to these contortions, the Court has deadlocked in at least three instances on significant legal issues before it. These 4–4 splits have real, practical consequences. As a recent Economist article noted, ''By letting lower-court decisions stand but not requiring other courts to abide by the ruling, the stage is set for odd state-by-state or district-by-district distinctions when it comes to the meaning of laws or the constitution.'' I ask unanimous consent that all three articles be printed in the RECORD at the conclusion of my remarks.

Republicans' refusal to do their jobs and consider Chief Judge Garland's nomination diminishes the role of the Supreme Court. In nominating Chief Judge Garland to the Supreme Court, President Obama has picked an eminently qualified judge who has more Federal judicial experience than any other Supreme Court nominee in history. This is an individual who has received praise across the political spectrum. But instead of delving into his lengthy public service record for themselves, Republicans have decided to outsource their jobs to outside interest groups who have spent millions of dollars to smear Chief Judge Garland. And worse, they continue to refuse to allow Chief Judge Garland a chance to respond at a public hearing.

As long as they stick to this unprincipled position, Republicans will continue to undermine the Court's ability to serve its role under our Constitution as the final arbiter of our Nation's laws. Republicans should reverse course and treat the Court as the independent and coequal branch of government that it is.

So today, let us not only celebrate the Court's historic decision in Brown, but also resolve to return this venerated institution to full strength. It begins with giving Chief Judge Garland a fair public hearing and a vote.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Washington Post, May 1, 2016]

SCALIA'S DEATH AFFECTING NEXT TERM, TOO? PACE OF ACCEPTED CASES AT SUPREME COURT SLOWS

(By Robert Barnes)

The ways in which Justice Antonin Scalia's sudden death are altering the current Supreme Court term have been widely chronicled.

But it appears the absence of Scalia will be felt on the court's work next term, as well.

The number of cases the justices have accepted has fallen, meaning that a docket that in recent years has been smaller than what is traditional is shrinking still.

The court has accepted only six cases since Scalia died Feb. 13. The number is low compared with the average, Scotusblog.com editor Amy Howe said at an event last week reviewing the Supreme Court's work.

And none of the cases that the court has accepted for the term that begins in October approach the level of controversy that have marked the dramatic rulings of recent years.

A panel of court experts assembled by the Constitutional Accountability Center last week offered a number of reasons for the reduced workload.

But they boiled down to a reluctance of the ideologically divided eight-member court to take on an issue in which it might not be able to provide a clear answer.

First, a reminder of the enormous leeway the justices have in setting their agenda.

An outraged citizen's vow to fight an injustice ''all the way to the Supreme Court'' comes to pass only if the Supreme Court consents.

With a few exceptions of cases the court is mandated to consider, justices are unencumbered as they cull through the thousands of petitions seeking review. In recent years, only about 70 or so cases receive writs of certiorari—''cert grants''—signaling that the justices will review the decision of the lower court.

It takes the approval of four justices to schedule a case for full briefing and oral argument. The court makes those decisions all year—it could announce on Monday that it has accepted more cases—but generally those granted after January are placed on the court's docket for the term that begins the following October.

So there is plenty of time for the court to pick up the pace. But based on what's in the pipeline, Howe suggested that there could be plenty of lulls in the court's schedule.

If Senate Republicans hold true to their pledge not to hold hearings or a vote on President Obama's nomination of U.S. Circuit Judge Merrick Garland to fill Scalia's seat before the election, the court will enter the next term one justice down. And if a lame-duck Senate after the election does not consider him, it would be sometime in the spring, at the earliest, before the court is back to full strength.

John P. Elwood, a Washington lawyer and Supreme Court specialist, said ''having an extra member matters.''

He watches the Supreme Court's docket as closely as anyone, writing a column for Scotusblog about the cases the court considers at its private conferences and which seem likely to be granted.

He said there seem to be a number of ''defensive denials,'' meaning neither side of the ideologically split court wants to take some cases because of uncertainty about how it will turn out, or whether the court will be able to reach a decision.

''The court already is a defensive enough institution,'' Elwood said. He said that Justices Clarence Thomas and Stephen G. Breyer have noted that the court is cautious about granting cert in the best of times.

They ''have said essentially, 'You can't screw up by not taking a case, you can only screw up by taking a case,''' Elwood said. ''And now there's one more reason not to take a case: that the court may blow up and not be able to decide the thing.''

Sherrilyn Ifill, president and director-counsel of the NAACP Legal Defense and Educational Fund, said the apparent slowdown is another consequence of waiting to fill Scalia's seat.

It is a rebuttal to ''all of these sanguine statements that we can have eight justices and it just doesn't matter, we'll just kick the can down the road,'' she said.

Ifill often disagrees with the decisions of the conservative court but said that everyone agrees ''this is a branch of government that actually gets the job done.'' She added: ''I think the court is trying to be prudent and not be a participant in its own demise by not taking these cases it can't decide.''

Brianne J. Gorod, the Constitutional Accountability Center's chief counsel, said justices ''know that if the issue is an important one it will probably come back in a year or two, when hopefully there will be a ninth justice.''

Andrew J. Pincus, another Washington lawyer who practices before the court, agreed with this analysis but said it is the wrong approach for the court to take.

''This sounds a little self-interested,'' Pincus began, but he said the court has a ''wrongheaded view'' about the frequency with which issues appear before it, and a ''complete misperception of the real world impact of lower-court decisions that are out there for a long time that people in the real world have to comply with.''

But if it is easy to detect a slowdown in the court's grants, it is more difficult to identify which cases the court might have taken if at full strength.

The court makes those decisions in secret. No vote total is announced and rarely is an explanation given.

So there can only be speculation about which cases are skipped because the court is divided, or which the justices agreed the lower court got it right and there is no work for them to do.

[From the New York Times, May 16, 2016]

THE CRIPPLED SUPREME COURT

Every day that passes without a ninth justice undermines the Supreme Court's ability to function, and leaves millions of Americans waiting for justice or clarity as major legal questions are unresolved.

On Monday, the eight-member court avoided issuing a ruling on one of this term's biggest cases, Zubik v. Burwell, which challenges the Affordable Care Act's requirement that employers' health care plans cover the cost of birth control for their employees. In an unsigned opinion, the court sent the lawsuits back to the lower federal courts, with instructions to try to craft a compromise that would be acceptable to everyone.

This is the second time since Justice Antonin Scalia's death in February that the court has failed to reach a decision in a high-profile case; in March, the court split 4 to 4 in a labor case involving the longstanding right of public-sector unions, which represent millions of American workers, to charge collective bargaining fees to nonmembers.

The Zubik litigation, which involves seven separate cases, was brought by religiously affiliated nonprofit employers like hospitals, colleges and social service organizations that do not want any role in giving their employees access to contraception.

The Obama administration, mindful of concerns over religious freedom, has already provided a way out for these employers: They must notify their insurer or the government, in writing, of their objection, at which point the government takes over and provides coverage for the contraceptives at no cost to the employers.

This sensible arrangement was not enough for several plaintiffs who said it still violated their religious freedom under a federal law, because the act of notification itself made them complicit in the provision of birth control.

Eight federal courts of appeals have already rejected this claim, finding that such a minor requirement did not place a substantial burden on the objectors' religious freedom. In her opinion for the Court of Appeals for the District of Columbia Circuit, Judge Cornelia Pillard wrote that under both federal law and the Constitution, ''freedom of religious exercise is protected but not absolute.'' This was the right answer, and should

have easily guided the justices in resolving this case.

But in a highly unusual order issued days after oral arguments, the justices asked both sides to consider a potential compromise—having a religiously affiliated employer tell an insurer of its objection to birth control coverage, and then having the insurer separately notify employees that it will provide cost-free contraceptives, without any involvement by the employer.

In Monday's opinion, the court said both sides' responses indicated that a compromise was possible. Without weighing in on the merits of the litigation, the court sent the lawsuits back to the federal appeals courts and told them to give the parties ''an opportunity to arrive at an approach going forward that accommodates petitioners' religious exercise while at the same time ensuring that women covered by petitioners' health plans receive full and equal health coverage, including contraceptive coverage.'' '

This move solves nothing. Even if these plaintiffs can find their way to an agreement with the government that satisfies their religious objections, there are other employers with different religious beliefs who will not be satisfied, and more lawsuits are sure to follow.

The court could have avoided this by affirming the appellate decisions that correctly ruled in the government's favor. Unfortunately, the justices appear to be evenly split on this issue, as they may be on other significant cases pending before them.

The court's job is not to propose complicated compromises for individual litigants; it is to provide the final word in interpreting the Constitution and the nation's laws. Despite what Senate Republicans may say about the lack of harm in the delay in filling the vacancy, the court cannot do its job without a full bench.

[From the Economist, May 9, 2016]

WHY THE SUPREME COURT IS SLOWING DOWN

With five votes, the late Justice William Brennan liked to tell his clerks, ''you can do anything around here''. Justice Brennan's rule still applies after the death in February of Antonin Scalia. But with only eight justices remaining, the magic number of five is now harder to come by. Twice since Mr. Scalia's death the Supreme Court has performed the judicial equivalent of throwing up its hands. In a small case concerning banking rules and in a hugely consequential case challenging the future of public-sector unions, the justices issued one-sentence per curiam (''by the court'') rulings: ''The judgment is affirmed by an equally divided court.'' A tie in the high court means that the ruling in the court below stands. But a tie-induced affirmance does not bind other lower courts, and the judgment has no value as a precedent. A tie, in short, leaves everything as it was and as it would have been had the justices never agreed to hear the case in the first place.

That's a lot of wasted ink, paper, time and breath. And now it seems the justices may be keen to reduce future futile efforts as they contemplate a year or more with a missing colleague. As Robert Barnes wrote in the Washington Post last week, the Supreme Court's pace of ''grants''—cases it agrees to take up—has slowed. Only 12 cases are now on the docket for the October 2016 term that begins in the fall, and grants are lagging below the average of recent years. The slow pace is especially notable because it marks a slowdown from an already highly attenuated docket. Seventy years ago, the justices decided 200 or more cases a year; that number declined to about 150 in the 1980s and then plummeted into the 80s and, in recent years, the 70s. The justices will grant more cases in dribs and drabs following their private conferences in May and June and after the so-called ''long-conference'' in September (followed by more conferences throughout the autumn and winter), but early indications are that the term starting in October may be one of the most relaxed in recent memory.

The Obama administration continues to push Senate Republicans to change their minds and hold confirmation hearings for Merrick Garland, chief judge of the District of Columbia circuit court. While a number of GOP senators have agreed to meet Mr. Garland for lunch or tea, none have endorsed him or said he should have a hearing. The fight to fill Mr. Scalia's seat before the next president takes office includes a new hashtag (#WeNeedNine) and a counter showing the number of ''days of obstruction'' in the Senate since Mr. Obama tapped Mr. Garland for the job. (That number is 51 and counting.) But the Republican leadership isn't budging. Charles Grassley, chair of the judiciary committee, admits that leaving the appointment to the next president is a ''gamble'' given that Donald Trump is now all-but certain to be the Republican nominee, but he is sticking to his guns.

What's wrong with eight justices? The primary worry is that tie votes will sow legal confusion and uncertainty. When justices are split down the middle, they cannot resolve rival views on crucial national issues—from affirmative action and public unions to gay rights, birth control and abortion. By letting lower-court decisions stand but not requiring other courts to abide by the ruling, the stage is set for odd state-by-state or district-by-district distinctions when it comes to the meaning of laws or the constitution. This seems to be the worry that prompted the justices to search for a compromise after hearing arguments in March in the latest fight over Obamacare and contraception. One federal district court has said that the contraceptive mandate violates a 1993 law banning the government from unduly interfering with other people's religious scruples. A half dozen other appellate courts have come to the opposite opinion. So if the justices divide 4–4 in Zubik v Burwell, women across most of America will have access to birth control through their employer's health coverage, while women in seven midwestern states will not. The justices' unprecedented effort to square the circle by playing mediator does not look promising.

Some legal scholars argue that an eight-justice bench isn't so bad after all and might actually be preferable. Eric Segall, a professor of law at Georgia State University, thinks the 4–4 ideological divide is pushing justices to moderate their claims in an effort to win votes from their colleagues on the other side. ''[T]o accomplish their goals'', Mr. Segall writes, ''the Justices would simply have to get along better''. This is a prescription, he says, to ''more public confidence in the final outcomes'' of Supreme Court decisions. We may have seen just such a compromise at work in a recent voting-rights decision, Evenwel v Abbott. After the oral argument in December, most pundits (including your correspondent) were expecting a 5–4 decision upending the common understanding of ''one person, one vote'' (counting everybody) in favour of counting only eligible voters, a scheme favouring whiter, wealthier, GOP-leaning districts. But the justices came out 8–0 in the other direction. The four liberals seem to have attracted the conservatives' votes (though Justices Samuel Alito and Clarence Thomas disagreed with the reasoning) by lowering the temperature a bit: the constitution permits states to use total population as the basis for drawing districts, Justice Ruth Bader Ginsburg wrote for her colleagues, but the question of whether it requires them to do so is off the table until a case forces it back on.

But beyond the Evenwel surprise and the seemingly ill-fated attempt to resolve the dicey dilemma in Zubik, it's very hard to see how a denuded court is an appealing concept in the medium or long-term. A patchwork quilt of legal realities may have been fitting for America under the Articles of Confederation, before the country had a political system that made it something approximating a union, but America's constitutional design is not consonant with deep confusion about what the law means on controversial questions of public life. While the bind they're in may lead to occasional compromises, the justices will only bend so far. Whether the divide manifests as 4–4 splits or a tendency to hear fewer cases in which those splits seem likely, a curbed Supreme Court is not a court that can possibly live up to its name.

VOTE EXPLANATION

Mr. WYDEN. Mr. President, I regret that due to travel delays on my return from Oregon, I missed the vote yesterday on the confirmation of the nominee, Paula Xinis, to fill a judicial emergency vacancy in the U.S. District Court for the District of Maryland.

Ms. Xinis was nominated more than a year ago. The ABA Standing Committee on the Federal Judiciary unanimously rated Xinis ''Well Qualified'' to serve on the district court, its highest rating. She has the support of her home State Senators, Senators MIKULSKI and CARDIN. She was voted out of the Judiciary Committee by voice vote on September 17, 2015. In addition, 20 judicial nominees for lower court vacancies that were all voted out of committee by unanimous voice vote are currently on the Executive Calendar. It is important that the Senate work to prioritize filling these vacancies.

For those reasons, had I not experienced travel delays and been present as originally intended, I would have voted in support of her nomination.

NATIONAL HURRICANE PREPAREDNESS WEEK

Mr. VITTER. Mr. President, I wish to recognize the week of May 15 through 21, 2016, as National Hurricane Preparedness Week.

As each Louisianian knows, the beginning of June marks the beginning of hurricane season, and we are acutely aware of how dangerous and damaging these storms can be. As we recognize National Hurricane Preparedness Week, I want to emphasize the importance of making adequate preparations to keep our families and communities safe. While it is impossible to predict when a disaster will strike, being informed, prepared, and having a plan can make all the difference in the world.

The National Hurricane Center recommends that folks take specific steps to prepare, such as creating a plan for your family, buying proper supplies