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Counting Down on the GOP Senate's Days of Shame

A Guest Column from Evan Barrett

July 29, 2016

Tick, tick, tick. Today we are counting down on the Republican Senate's days of shame. The GOP-led U.S. Senate is on a Summer break. Count the days. For fifty-four days, from July 14 to September 6, both House and Senate are on the longest summer break since those breaks were first established in the 1960s. What are they doing? Can't be just the Presidential Conventions – both of those were over by July 28th.

These fifty-four days of Summer break are dates of shame because of the important things the Congress could be doing but is not getting done. The list is long, so let me comment on the most egregious thing the U.S. Senate is not doing – a direct Constitutionally-required function. They are not holding hearings on and acting upon the nomination by President Obama of Merrick Garland for the vacant seat on the U.S. Supreme Court.

Tick, tick, tick to another number of shame: 126. July 26th was the 126th day since the nomination of Merrick Garland was formally submitted to the Senate. On July 26th that nomination became the longest unresolved Supreme Court nomination in the 227 years we have functioned under the U.S. Constitution – the longest time in US history! Since 1789 the Constitution has read: *"[the President] shall ... nominate, and by and with the Advice and Consent of the Senate, shall appoint Judges of the Supreme Court."*

The respective duties of the President and the Senate are clear. The President nominates and appoints and the Senate provides advice and consent. The Senate, by refusing to even consider the nomination is violating its duty to provide advice and consent. But even beyond that, many Republicans in the Senate, including Montana's junior Senator Steve Daines, have refused to even meet with the nominee. The Senate can say "no" if it wants, but the refusal to act – the refusal to meet -- is a refusal of the GOP members of the Senate to fulfill their Constitutional duty.

Maybe these days that's considered "just politics." But it's really more than that. Each member of the U.S. Senate has taken an oath of office. You will recognize the oath, where they each: *"do solemnly swear that I will support and defend the Constitution of the United States ... that I will bear true faith and allegiance to the same...and that I will well and faithfully discharge the duties of the office on which I am about to enter: So help me God."* In a way, these are sacred duties, which include giving advice and consent (or non-consent) to the President's nominees to the Supreme Court.

Tick, tick, tick. The Senate has now exceeded the record 125 days it took in 1916 to consent to the nomination of Louis Brandeis by President Woodrow Wilson. Although President Wilson was a Democrat and the Senate was also Democratic, Brandeis, later considered one of the most outstanding justices in U.S. history, was at that time seen as a threat to the establishment. Justice William O. Douglas, who served for the longest

time in Supreme Court history, later said: "Brandeis was a militant crusader for social justice whoever his opponent might be. He was dangerous not only because of his brilliance, his arithmetic, his courage. He was dangerous because he was incorruptible. . . [and] the fears of the Establishment were greater because Brandeis was the first Jew to be named to the Court."

Tick, tick, tick. How does Merrick Garland's record 126 days (and counting) compare with the confirmation time for all the current Court members, plus the late Justice Scalia? Those folks sitting on the Supreme Court today averaged 77 days to confirmation. Merrick Garland's pending confirmation raced past that average on June 7th.

So, the "tick, tick, tick" on Merrick Garland has now become "shame, shame, shame." One of those who ought to be ashamed by his refusal to fulfill his constitutional duty and live up to his oath of office is Montana's Republican Senator Steve Daines. You know, the one who always says he reveres the Constitution. Well, obviously, talk is cheap, while living up to your words is harder. Senator Daines is apparently long on the rhetoric but short on the performance. As long as he is gallivanting around during the longest summer break in Senate history, if you happen upon him, you might ask him about this dereliction of his duty under the Constitution and not living up to his oath of office. The glib and evasive answer you will get – the song and dance and the political two-step -- will not change the facts. Tick, tick, tick. Shame, shame, shame.

Evan Barrett of Butte, recently retired from 47 years at the top level of Montana economic development, government, politics and education. He currently writes columns and commentaries, produces Montana history films and occasionally teaches.

(772 words in the body)