

that—exactly the opposite. She wrote that if a judge's personal views were to impede that judge's ability to impartially apply the law, then the judge should recuse herself from the case.

As the coauthor of that article and current president of Catholic University recently put it, "The case against Prof. Barrett is so flimsy, that you have to wonder whether there isn't some other, unspoken, cause for their objection."

It does make you wonder.

To those using this matter as cover to oppose Professor Barrett because of her personally held religious beliefs, let me remind you, there are no religious tests—none—for public office in this country. That is not how we do things here. Our government and our Nation are made better through the service of qualified people of faith. That will surely be true of Professor Amy Barrett.

I look forward to voting to confirm this accomplished law professor and devoted mother of seven later today, and I would urge our colleagues to join me.

Once we do, the Senate will advance another of President Trump's well-qualified circuit court nominees, Michigan Supreme Court Justice Joan Larsen, to serve on the U.S. Court of Appeals for the Sixth Circuit.

Justice Larsen is the second of three accomplished women whom the Senate will consider this week for appointment to our circuit courts. I assume that all three of these impressive women will receive strong support from our Democratic colleagues who never seem to miss an opportunity to talk about the war on women.

Here is what nominees such as Larsen and Barrett and the others we will consider this week represent for our Federal judiciary: equal justice under the law for all and a fair shake for every litigant. What a refreshing departure from President Obama and his so-called empathy standard for selecting judicial nominees—really just another of the left's ideological purity tests and one that was anything but empathetic for individuals on the other side of the case. If you are the litigant for whom the judge does not have empathy, you are in a tough position before such a judge.

Finally, I would like to express my gratitude, once again, to Chairman CHUCK GRASSLEY for his continued work to bring these outstanding nominees to the Senate floor.

RESERVATION OF LEADER TIME

The PRESIDING OFFICER. Under the previous order, the leadership time is reserved.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to executive session and resume consideration of the Barrett nomination, which the clerk will report.

The senior assistant legislative clerk read the nomination of Amy Coney Barrett, of Indiana, to be United States Circuit Judge for the Seventh Circuit.

The PRESIDING OFFICER. The assistant Democratic leader.

Mr. DURBIN. Mr. President, Senator MCCONNELL has come to the floor to complain about what he calls obstruction of President Trump's judicial nominees. The majority leader must feel that many of us suffer from amnesia.

It was just last year Senate Republicans, under the leadership of the same Senator MCCONNELL, set a new standard of obstruction. The most prominent victim of Republican obstruction, Chief Judge Merrick Garland, was President Obama's nominee for the Supreme Court. Never, never in the history of the U.S. Senate has the Senate denied a Supreme Court nominee a hearing and a vote. Senator MCCONNELL led the Republicans last year in doing that.

Then, Senator MCCONNELL refused to even meet with Judge Garland, refused to give him the courtesy of a meeting, even though the judge's qualifications were unquestioned and even though he had been confirmed to the DC Circuit with broad bipartisan support.

The way Senate Republicans treated Merrick Garland was disgraceful, but Judge Garland was far from the only victim of Republican systematic obstruction during the Obama Presidency. In 2016, there were 30 non-controversial judicial nominees—17 women and 13 men—who were denied a floor vote by Senate Republicans. All but two of these nominees were reported out of the Judiciary Committee with a unanimous vote of Democrats and Republicans. Some of these nominees—like Edward Stanton of Tennessee and Julien Neals of New Jersey—sat on the Senate calendar for more than a year, waiting for a vote which the Republican majority leader and his Members refused to give them.

During the last 2 years of President Obama's administration, the Republican-controlled Senate confirmed only 22 judges in 2 years. That is the lowest number of confirmations in a Congress since 1952. By comparison, in the last 2 years of George W. Bush's Presidency, the Democratic-controlled Senate confirmed 68 judicial nominees—22 under Republicans and Obama and 68 under Democrats for President Bush.

That is not all. Republicans also obstructed 18 Obama nominees by denying them blue slips. That is the permission slip from a Senator from the State of the judicial nominee. That included five nominees who had been State su-

preme court justices who were not approved by Republican Senators to move to the Federal bench: Lisabeth Tabor Hughes from Kentucky, Myra Selby from Indiana, Don Beatty from South Carolina, Louis Butler from Wisconsin, Patricia Timmons-Goodson from North Carolina.

Senate Republicans turned obstruction of judicial nominees into an art form under President Obama. Yet Senator MCCONNELL, day after day, has said: "I think President Obama has been treated very fairly by any objective standard."

He comes to the floor now regularly to complain about "obstruction" of Trump nominees. Senator MCCONNELL and the Senate Republicans set the standard for obstruction. If Leader MCCONNELL thinks President Obama was treated fairly with these facts, it is hard to understand why he is complaining about the treatment of President Trump's judicial nominees.

So far this year, the Senate has confirmed four of President Trump's circuit court nominees and four of his district court nominees. At the same point in his first year, President Obama had one circuit court nominee and three district court nominees confirmed. Twice the number have been confirmed under President Trump as were confirmed under President Obama in each of their first years. President Trump's nominees are moving twice as fast as President Obama's.

Senator MCCONNELL controls the floor schedule. If he wants to schedule more votes on judges, I suppose he has the power to do so. He is exercising that power by doing something that has never happened in the history of the Senate. Four circuit court judge nominees will be considered this week in the Senate.

Since the Republicans in the Senate are dedicating this week to judicial nominations, it gives us a good opportunity to look at the nominees President Trump has put forward for lifetime appointments to the second highest courts in the Federal system.

Time and again, we have seen President Trump nominate people who are far outside of the judicial mainstream. For example, there is John Bush, now a judge on the Sixth Circuit, who blogged about the false claim that President Obama wasn't born in the United States, compared abortion to slavery, and said in his hearing that he thinks impartiality is an aspiration for a judge, not an expectation.

There is Damien Schiff, nominee for the Court of Federal Claims under President Trump, who called Supreme Court Justice Anthony Kennedy "a judicial prostitute."

There is Jeff Mateer, a Trump nominee for the district court in Texas, who described transgender children as part of "Satan's plan" and who lamented that States were banning so-called "conversion therapy," the pseudoscience of attempting to "convert" LGBT Americans into heterosexuals.

There is Thomas Farr, Trump nominee for the district court in North Carolina, whom the Congressional Black Caucus describes as “the pre-eminent attorney for North Carolina Republicans seeking to curtail the voting rights of people of color.”

There is Greg Katsas, nominee for the DC Circuit, who refused to say at his hearing whether the torture technique known as waterboarding is illegal.

There is Brett Talley, a nominee by President Trump to be Federal trial judge in Alabama, who has never tried a single case and he wrote in a blog: “I pledge my support to the National Rifle Association, financially, politically, and intellectually.”

There is Alabama district court and Trump nominee Liles Burke, who hung a portrait of Confederate President Jefferson Davis in his office and defended it at his hearing, saying it had “historical significance.”

There is Oklahoma district court nominee Charles Goodwin, who received a very rare rating of “not qualified” to be a Federal judge from the American Bar Association.

The list of Trump nominees goes on. Routinely, we see judicial nominees under President Trump who have a history of taking ideologically driven positions that are out of the mainstream. Nearly all of these nominees are members of the rightwing Federalist Society, which President Trump uses as his gatekeeper for the Federal bench.

Do you remember Neil Gorsuch, the Supreme Court Justice? Do you know how he was notified that he had been chosen to be a candidate for the Supreme Court? You would expect a call from the White House, right—maybe even a call from the President? No. The White House decided to delegate to the Federalist Society to notify him. They called Mr. Leo, their director, and said: Why don’t you call Mr. Gorsuch and give him the good news? Well, it is no surprise to those of us who know that the Federalist Society, this conservative group, is now the gatekeeper of all the Federal judges under President Trump.

Many of these nominees have given no reassurance that they will be independent as judges. And the question obviously is, What impact will the President—who has unfortunately denigrated and pressured Federal judges in the past—have on them?

Let’s consider the nominees before the Senate this week.

Professor Amy Coney Barrett, who has been nominated to sit on the Seventh Circuit Court of Appeals, is a distinguished professor at Notre Dame Law School. She has strong academic credentials. She clerked for Justice Scalia on the Supreme Court. But she has no judicial experience. And she told the Judiciary Committee that she could only recall three litigation matters that she worked on in her entire career—three. She has never served as a counsel of record in an appellate case or ever argued an appeal.

Given her lack of judicial record and her minimal record as a practicing lawyer, the Judiciary Committee looked at Professor Barrett’s academic writings to try to understand who she is and what she believes. Basically, that is all we had to go on.

Much of Professor Barrett’s writings deal with when she believes it is acceptable for judges to deviate from precedent. For example, in a 2003 law journal article, she called for “federal courts to restore flexibility to stare decisis doctrine.” In a 2013 article, she said that it is “more legitimate for [a justice] to enforce her best understanding of the Constitution rather than a precedent she thinks clearly in conflict with it.” These are extraordinary—some would say even extreme—views of the obligation of a Federal judge to follow established precedent from someone who is seeking a lifetime appointment to the second highest court in the land.

I would like to address Barrett’s Law Review article. She co-wrote an article in 1998 with John Garvey in the *Marquette Law Review* entitled “Catholic Judges in Capital Cases.” This article was about what she perceived then as the recusal obligations of “orthodox Catholic” judges. The article said some provocative things. Here are some examples:

“A judge will often entertain an ideological bias that makes him lean one way or another. In fact, we might safely say that every judge has such an inclination.”

“Litigants and the general public are entitled to impartial justice, and that may be something that a judge who is heedful of ecclesiastical pronouncements cannot dispense.”

She wrote, when discussing the “behavior of orthodox Catholics in capital cases,” that “the judge’s cooperation with evil passes acceptable limits when he conducts a sentencing hearing.”

This is an article written by the nominee. This is an issue raised by the nominee. It was such a profound statement about the relationship between conviction, conscience, and religious belief, that it was the subject of many questions from many Senators on the Judiciary Committee.

For the last 2 days, Senator McConnell has come to the floor and talked about the left asking questions about Amy Coney Barrett’s religious beliefs. Obviously Senator McConnell has not read the transcript from the Senate Judiciary Committee.

Some have suggested it was inappropriate for the Judiciary Committee to even question the nominee about the impact of religious belief on the discharge of her duties. Some of my colleagues have questioned the propriety of such questions in light of the Constitution’s clear, unequivocal prohibition on religious tests. But I would remind the Senate that it was the nominee herself, in this 47-page Law Review article, who raised this issue on whether the teachings of the Catholic Church

should have any impact on the discharge of judicial duties of a Catholic judge.

So was it any surprise that at least five different Senators—three Republicans and two Democrats—asked her about the article that she coauthored? It is no surprise that the gravity of this publication and the issue it raised led committee members on both sides of the aisle to ask questions about the nominee’s religious beliefs, the contents of her writings, and how it would impact the discharge of her duties if she was approved by the Senate.

Who asked the first question about the religious beliefs of Amy Coney Barrett? It was the Republican chairman of the Committee, CHARLES GRASSLEY. He noted that Professor Barrett had been outspoken about her Catholic faith and asked her when it was proper for a judge to put religious views above applying the law. Chairman GRASSLEY also asked, in his second question, how she would decide when she needs to recuse herself on grounds of conscience.

Senator McConnell comes to the floor and suggests that any reference to that article somehow raises questions of religious bias. Let me say for the record that I do not believe Chairman GRASSLEY is guilty of religious bias, nor have I ever seen any evidence of it. It was hard to imagine how he could avoid the obvious. She had written a lengthy article—coauthored an article on a subject, and he felt duty-bound, as chairman of the Judiciary Committee, to ask her questions about her beliefs on the subject. I don’t believe that Chairman GRASSLEY would ever apply a religious test to any nominee, but he and many of us felt it important to ask Professor Barrett to state her position clearly on the convergence of her faith, her conscience, and her duties as a Federal judge.

Similarly, Republican Senator ORRIN HATCH felt it necessary to ask Professor Barrett to make clear a judge’s duty when the laws or Constitution conflicts with the judge’s personal religious beliefs. Again, I do not believe Senator ORRIN HATCH, Republican of Utah, would apply a religious test to any nominee, but the nominee’s writings and the questions those writings raised led him to ask the nominee that question.

Later in the hearing, Senator TED CRUZ, Republican of Texas, raised the same issue. I will quote what he said to Professor Barrett:

I’ve read some of what you’ve written on Catholic judges and in capital cases, and in particular, as I understand it, you argued that Catholic judges are morally precluded from enforcing the death penalty. I was going to ask you to just please explain your views on that because that obviously is of relevance to the job for which you have been nominated.

That was from Republican Senator TED CRUZ. I do not suggest that he was guilty of any religious bias in asking the question about an article written by the nominee.

I take our Constitution seriously when it says there should be no religious test for public office, but many Senators on the Judiciary Committee—three Republicans and two Democrats, including myself—felt the writings of the nominee warranted an inquiry about her views on the impact of her religion on a judge's role. That is far from a religious test in violation of the Constitution.

At her hearing, I asked Professor Barrett several questions about her 1998 *Law Review* article. I asked her whether she still agreed with her article. She said in general that she did. I said that even though I am a Catholic, even though I have gone through 19 years of Catholic education, I have never run into the term “orthodox Catholic,” which she used in that article. I asked her if she could define it. What was she saying? Whom did she describe? She said it was an imperfect term but explained the context for her use of it. I asked her whether she considered herself in that category, using her term which she put forward as carrying certain obligations on judicial recusal. She acknowledged again that the term is a proxy and that it wasn't a term in current use.

Some have argued that I was imposing a religious test—somehow, the three Republican Senators asking the same question have not been challenged—or that I was insinuating that Catholics can't serve on the bench. That is absurd. I myself am Catholic. I deeply respect and value the freedom of religion in our country and the Constitution. And I will let my record speak for itself about the number of Catholic nominees whom I have appointed to the bench or tried to appoint to the bench with the concurrence of the Senate during the course of my career. I voted for many judicial nominees who are of the Catholic religion, including Judge Ralph Erickson, who is outspoken about his Catholic faith and whom I voted to confirm several weeks ago. I am also sure I voted against nominees who were Catholic as well because I didn't think they had the experience, judgment, or temperament to serve in the Federal judiciary.

At nomination hearings, I ask questions to try to understand how the nominee would approach the job of a judge. I asked Professor Barrett questions about issues she raised in her academic writings that could directly impact the discharge of her judicial duties.

I would note that Professor Barrett put forward her views as part of the academic legal debate. Contrast that with Paul Abrams, President Obama's nominee for the Central District of California, who was aggressively questioned by committee Republicans last year about statements he made while speaking at his synagogue. Republicans ultimately blocked Paul Abrams' nomination. No one on this side of the aisle—not this Senator or any Senator—questioned whether they were

applying a religious test in rejecting his nomination.

When judicial nominees have put forward their views on issues like the intersection of law and faith as part of the academic legal debate, I think it is fair for members of the Judiciary Committee to ask them about it. That is no religious test by my measure.

I voted against Professor Barrett's nomination in committee because I don't believe she has sufficient experience to be a circuit court judge and because of her writings about precedent. No one doubts that she is smart, but she has barely spent any time in the courtroom. The only basis we have to judge her on is on her academic writings.

Let's be honest. If a Democratic President had put forward a nominee with as little practical legal experience as Professor Barrett and with a similar history of advocating for not following precedent, I think we know exactly how the Senators on the other side of the aisle would have voted. As it stands, I cannot support Professor Barrett's nomination.

NOMINATION OF JOAN LARSEN

I oppose the nomination of Michigan Supreme Court Justice Joan Larsen to the Sixth Circuit. She is one of the 21 Supreme Court candidates that the Federalist Society and the Heritage Foundation handpicked for President Trump. Clearly, those rightwing organizations are confident that they will like her rulings if she is confirmed.

When she appeared before our committee, I asked some simple questions, and I was troubled by the responses.

In 2006, Justice Larsen wrote an op-ed defending President Bush's use of a signing statement on the McCain torture amendment. The McCain amendment prohibited torture and cruel, inhuman, or degrading treatment. I asked Justice Larsen about that op-ed and asked her if she believes waterboarding is torture and illegal. She would not answer the question. The law is clear on this matter, and I have voted against nominees in the past who would not acknowledge this.

I also asked Justice Larsen about the \$140,000 in ads that a dark money front group called the Judicial Crisis Network had run in support of her nomination. This is the same rightwing, dark money organization that spent millions of dollars in undisclosed donations running ads to oppose Merrick Garland's nomination to the Supreme Court and to support the nomination of Neil Gorsuch.

I am troubled that special interest groups are making undisclosed donations to these nomination front groups. These special interests likely have a stake in the cases that will come before these judges. The donations should be transparent so that judges can make informed decisions about recusal.

I asked Justice Larsen if she could call on this front group to stop running ads in support of her nomination unless donations to the groups are made pub-

lic. She responded that this was a political debate on which she could not opine. I think that is an absurd position, given that the debate here is over her own nomination and getting information for her own recusal decisions.

I also asked Justice Larsen if she agreed, as a factual matter, with President Trump's patently absurd claim that 3 to 5 million people voted illegally in the 2016 election. I think that is an easy question. Justice Larsen ducked it, saying that this was a political debate. I am troubled by these answers. I believe Justice Larsen has not shown the necessary independence from the President or rightwing groups like the Judicial Crisis Network, and she does not earn my vote.

NOMINATION OF ALLISON EID

I oppose the nomination of Colorado Supreme Court Justice Allison Eid to the Tenth Circuit. She is another on the short list of 21 Supreme Court nominees that the Federalist Society and the Heritage Foundation assembled for President Trump. She has now been nominated to the seat of the Tenth Circuit once held by Supreme Court Justice Neil Gorsuch.

I am troubled by the dissents Justice Eid wrote in a number of cases. I asked her about one of those cases during her hearing. A 2015 case, *Westin Operator, LLC v. Groh*, involved a hotel that evicted a group of college-age, intoxicated friends into freezing weather one night. The young adults ended up getting into a car and driving away. The car crashed, and a person was killed. The family of Caitlin Groh, who suffered traumatic brain damage in the accident, sued the hotel for negligently evicting the guests into a foreseeably dangerous environment.

Justice Eid's dissent argued that the court should have dismissed the Groh's family claim on a motion for summary judgment. She said that she saw no material dispute of fact in the case because she claimed the hotel video showed there were taxis in the area that the evicted guests could have taken. But the majority of the court saw the same evidence, the same video, and came to the opposite conclusion.

The majority wrote:

Video footage from hotel security cameras shows two taxis in the vicinity during the general timeframe of the eviction. No taxi is visible on screen during the time in which the group exited the hotel and walked to the parking lot en masse, but there is a police car parked at the entrance. It is unclear from the record whether the taxis visible at other times in the video were occupied or available for service, whether any member of the group saw the taxis, and whether the security guards evicting the group were aware if a taxi was immediately available. . . . One of the people evicted testified at his own deposition that he tried to look for a cab outside the hotel but didn't see one.

In other words, looking at the same evidence, the majority of the court could not reach the same conclusion. It is difficult to understand how Justice Eid saw this evidence as undisputed and why she wanted this case dismissed