

on summary judgment—until you read the part of Justice Eid's dissent where she talks about "the burden that the majority is placing on Colorado businesses." That appears to explain her ruling, not the facts in the case.

In written questions I asked Justice Eid if she had also considered the burden the court's decision would place on these young adults and their families. She did not respond.

This is one of her troubling dissents, but there were others. In the 2014 case of *City of Brighton v. Rodriguez*, her dissent would have denied workers' compensation for a city employee who fell down the stairs to her office and needed brain surgery. In the 2017 case of *People v. Boyd*, her dissent criticized the State's decision not to prosecute a person on appeal based on a marijuana possession statute that is no longer operative. The cases go on and give ample reason why I do not believe this troubling record justifies Justice Eid replacing Justice Gorsuch on this important court.

NOMINATION OF STEPHANOS BIBAS

The last nominee I will address is, I believe, one of the most unusual I have ever seen before the Senate Judiciary Committee—Stephanos Bibas, who has been nominated for a lifetime appointment to the Third Circuit Court. In 2009, Professor Bibas wrote a lengthy draft paper entitled "Corporal Punishment, Not Imprisonment." In it, he said that for a wide range of crimes "the default punishment should be non-disfiguring corporal punishment, such as electric shocks." He went on to call for "putting offenders in the stocks or pillory where they would sit or stand for hours bent in uncomfortable positions." Professor Bibas then went on to say that "bystanders and victims could jeer and pelt them with rotten eggs and tomatoes (but not rocks)."

For more severe crimes, Professor Bibas called for "multiple calibrated electroshocks or taser shots" with medical personnel on hand to ensure "that the offender's health could bear it."

He also wrote "instinctively, many readers feel that corporal punishment must be unconstitutionally and immorally cruel, but neither objection withstands scrutiny." He then wrote that corporal punishment "in moderation, without torture or permanent damage, is not cruel."

Professor Bibas said at his hearing that he didn't ultimately publish the 60-page, footnoted paper because he realized that his writings were wrong and offensive. He now says that he rejects his paper. But his 2009 paper was not just scribbles on a notepad. This was a polished, heavily footnoted, 60-page draft law review article.

Professor Bibas admitted that he presented this draft paper at conferences—on June 8, 2009, at a conference at the University of Pennsylvania Law School; on July 20, 2009, at George Washington University Law School; on

September 12, 2009, at that Vanderbilt Criminal Justice Roundtable.

According to the website of the Federalist Society, Professor Bibas also gave presentations on this same article to three student chapters of the Federalist Society—on September 3, 2009, at George Mason; on October 21, 2009, at the University of Florida; on October 22, 2009, at Florida State. Incredibly, this presentation by Professor Bibas was advertised with the title "Corporal Punishment, Not Imprisonment: The Shocking Case for Hurting Criminals." This is an insensitive title for a presentation that called for administering electric shocks to human beings.

In his draft article, Professor Bibas thanked nine other people for their thoughts and comments on this paper. This was not something the professor wrote as a child or even as a student. When he wrote this paper in 2009, Professor Bibas was a professor at the University of Pennsylvania Law School, and he had already worked as an assistant U.S. attorney. He wrote this paper after Congress had considered the McCain torture amendment.

At the hearing I asked Professor Bibas: Do you remember the debate we went through as Americans about the acceptable method of interrogation for suspected terrorists overseas? Do you remember the debate we had on the floor when Senator McCain, the victim of torture himself as a prisoner of war in the Vietnam war, came forward and authored an amendment, which got a vote of 90 to 9, condemning torture, cruel, inhuman, and degrading treatment of prisoners suspected of being terrorists? I asked him if he remembered that debate, which occurred 3 years before he wrote this outrageous article.

He said at the hearing: Well, I want to make it clear that I don't support waterboarding.

I said: So you support electric shock on American prisoners, but you do not support waterboarding?

He said on the record, under oath: "I [knew] it was a crazy idea."

This is a man seeking a lifetime appointment to the second highest court in the land. This paper deeply troubles me. Not only did Professor Bibas go a long way down a dangerous path with his proposals, but this law school professor got the law wrong. The Supreme Court had made clear in 2002 in the case of *Hope v. Pelzer* that the corporal punishment practiced in the State of Alabama of restraining prisoners by tying them to a hitching post in uncomfortable positions constituted cruel and unusual punishment in violation of the Eighth Amendment.

Professor Bibas wrote his paper, workshopped it, took it to six different universities, and then ran away from it only after he heard how offensive his proposals were.

That is not my only concern about his nomination. We spent a lot of time at the hearing talking about his ag-

gressive prosecution of Linda Williams. What was she charged with? The alleged theft of \$7 from a cash register. The magistrate judge acquitted this defendant even before the closing argument from defense counsel. The case was weak, yet it was aggressively pursued by then-attorney Bibas. Professor Bibas apologized at his hearing for this prosecution, but we have seen over and over again that many people try to walk away from who they are and what they have done when it comes to a confirmation hearing.

I believe these cases that I mentioned, particularly this outrageous article, show a real insight into the judgment and temperament of this judicial nominee.

I have been a member of the Senate Judiciary Committee for a number of years, and I have seen many nominees. I will tell you without fear of contradiction that I have never seen a nominee who has written an article that is so unsettling and so worrying. I wonder about the temperament of this nominee. Given the power that we are about to give him to judge the fate of others for decades to come, can we really trust his temperament? Can we really trust his judgment?

Sadly, if the shoe were on the other foot, if this were a nominee who had been proffered by a Democratic President before that same committee, I know exactly what his fate would have been. He would never have been taken seriously or considered for such a high position.

Mr. President, the article by Amy Coney Barrett, "Catholic Judges in Capital Cases," published in the *Marquette Law Review* can be found online at <http://scholarship.law.marquette.edu/cgi/viewcontent.cgi?article=1443&context=mulr>, and the article by Stephanos Bibas entitled "Corporal Punishment, Not Imprisonment," can be found online at <https://www.judiciary.senate.gov/download/stephanos-bibas-corporal-punishment>, so that those who read my statement will understand exactly what it was based on.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant legislative clerk proceeded to call the roll.

Mr. SCHUMER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

RECOGNITION OF THE MINORITY LEADER

The Democratic leader is recognized.

RUSSIA INVESTIGATION

Mr. SCHUMER. Mr. President, yesterday morning we learned that two members of the Trump campaign—Mr. Manafort, his one-time campaign chairman, and Mr. Gates, a close associate of Manafort's—were indicted on a dozen charges as part of Special Counsel Mueller's investigation, including

money laundering, conspiracy to commit fraud, and conspiracy against the United States.

The fact that the activity in question took place partially before the Trump campaign offered Mr. Manafort the role of chairman in no way diminishes the gravity of the situation. If anything, it suggests that the Trump campaign was negligent in hiring as its chairman a man who was an unregistered foreign agent working for a pro-Russian proxy party in Ukraine. That man is now alleged to have been laundering large sums of money and concealing his identity as a foreign agent from the FBI and the Department of Justice, including during his time during the Trump campaign. Imagine having such poor vetting and poor judgment to hire such a person as your campaign manager.

We also learned that a Trump campaign adviser met with a Kremlin contact to discuss “dirt” they possessed on Secretary Clinton and had several email exchanges with other Trump officials about his outreach to the Russians. This disclosure should put an end to the idea that there was no communication or possible connection between the Trump campaign and Russia.

It is not fake news, Mr. President. It is not fake news. There was a connection between the Trump campaign and Russia. Who was involved, how much, and what happened are yet to be determined, but there was a connection, even though the President has denied that connection for months.

The President can assert whatever he wants on Twitter, but the facts are the facts. There were official members of the Trump campaign who were receptive to working with a hostile foreign power to obtain damaging information about their political opponent. These revelations should concern every Member of this body—Democrat, Republican, Independent, liberal, moderate, and conservative.

I understand the strength of the centrifugal forces in our politics that warp everything into a partisan battle between two sides. There are two sides to every argument, but no one is above the law, no matter what side of the argument one is on. The rule of law and American democracy are indisputable as our bedrock. We cannot abandon it for political expediency.

Special Counsel Mueller, who served both Republican and Democratic administrations—a lifetime public servant and a man of unimpeachable integrity—was appointed by President Trump’s Deputy Attorney General. Mr. Mueller was a career prosecutor and is as straight of a shooter as they come. He must be allowed to finish the work he started without any interference. If he had nothing to fear, as he claims, President Trump would encourage Special Counsel Mueller to follow every lead and pledge his full cooperation. Instead, President Trump is again trying to divert our attention by making spurious allegations and trying to knock down anyone or anything in his way,

playing right into the partisan, two-sides instinct of Washington. But this goes beyond partisanship. It goes right to the rule of law.

The President has a tendency to call anyone who disagrees with him and anyone who has facts that he doesn’t like a liar, dishonest, and this, that, or the other thing. This has demeaned and degraded our Presidency and even our country. There are places where it must stop, and it should stop at the rule of law. I say that to President Trump, who may never listen, but I say that to my Republican colleagues here in this Chamber.

The Founders of the Republic put at the center of our civic life no religion, dogma, or sovereign, but rather the rule of law. It is what separated the American experiment from the hereditary monarchies of the era and outdated ideas like the divine rights of Kings.

The rule of law holds in check our people, including our President. Donald Trump is President, not King. He cannot decree things to go away or say that facts are not facts. He is as subject as anyone else to the rule of law. That is what makes our democracy so grand. No one—no one—is below the rule of law’s protection, and no one is above its reproach, including the President of the United States. It safeguards our democracy from the usurpations of demagogues and would-be dictators. It is why this noble experiment—the American experiment—continues, and Donald Trump is shaking the foundation of that when he tries to get out from Special Counsel Mueller’s due process.

What Special Counsel Mueller represents is the rule of law at work in 21st century American democracy. Intentionally and spuriously impugning his integrity or smearing his efforts as partisan is not only inaccurate, it is not only false, it is not only fake, but it is damaging to a core ideal in our country, the independent and impartial rule of law that no man—even the President of the United States, even Donald Trump, think what he may—is above the rule of law.

Special Counsel Mueller’s investigation must be allowed to proceed unimpeded, and my friends on the other side of the aisle must help dispel the notion that his investigation is in any way partisan. To their great credit, many of my colleagues have done just that in the last 24 hours, and I salute them.

The American people must have faith that when the very foundations of our democracy are shaken by a hostile foreign power, our independent judicial system built on the rule of law will not be degraded by partisan politics. We must loudly reject forces and actors that will try to make it so—on both ends of Pennsylvania Avenue. Our leaders—our Republican leaders in the House and Senate—have an obligation to tell Donald Trump to lay off Mueller’s investigation. Let it proceed

where it goes. That is what our democracy is all about, and that is what leadership is all about.

REPUBLICAN TAX PLAN

Mr. President, according to their timeline, House Republicans are set to release the details of their tax plan tomorrow. We will see if they can do it and, if so, just how detailed it will be. What everyone in America should focus on is the question of who exactly the Republican plan will benefit. Will it be the poor, the working class, or the middle class, or will it be big corporations and the richest 1 percent?

We live in a time of immense inequality, so much so that it strains the bonds of affection that bind us together in this country. The wealthy have amassed astonishing wealth—and God bless them. We don’t begrudge them for their success, but working Americans and middle-class Americans have slipped further and further behind. The President is surely aware of this. He rode into the White House by channeling the legitimate anger and anxiety of working-class Americans who have seen their wages diminished and their jobs shipped overseas.

Will President Trump and his Republican Party, once in power, turn around and rewrite the Tax Code to benefit the wealthy few at the expense of the middle class? Will he do a 180-degree turn from what he campaigned on and what he talks about and pass a plan for the hard right—those wealthy thousand people who give so much money to the Republican Party and think tanks? Will he bow to them against everything he campaigned on and what he says? It sure seems so.

On Wednesday, Republicans will likely propose to eliminate or substantially reduce the State and local tax deductibility, a bedrock middle-class deduction claimed by over one-third of all taxpayers—not just the wealthy—most of whom are in the middle class or the upper middle class. The proposal caused such angst in the House that it almost brought down the budget resolution. So Republicans have crafted a compromise that would allow taxpayers to claim State and local deductions on property taxes but not sales and income tax. That compromise would still cost taxpayers \$900 billion.

Taxpayers in high sales tax States, like Tennessee, Florida, and Nevada, would get whacked, as would taxpayers in high income tax States, like New York, New Jersey, California, Minnesota, and Colorado. Go figure that high property tax States, like Texas, Chairman BRADY’s State, would be better off under the proposal.

Picking winners and losers like this doesn’t solve the problem. The new State and local compromise is still a nearly \$1 trillion tax hike on the middle class to pay for tax giveaways to big corporations and the very wealthy.

I say to my Republican colleagues in the House, particularly to those from suburban and fairly affluent districts, middle-class and upper middle class