

[Rollcall Vote No. 149 Leg.]

YEAS—97

Alexander	Gardner	Nelson
Baldwin	Gillibrand	Perdue
Barrasso	Graham	Peters
Bennet	Grassley	Portman
Blumenthal	Harris	Reed
Blunt	Hassan	Risch
Booker	Hatch	Roberts
Boozman	Heinrich	Rounds
Brown	Heitkamp	Rubio
Burr	Heller	Sanders
Cantwell	Hirono	Sasse
Capito	Hoeven	Schatz
Cardin	Hyde-Smith	Schumer
Carper	Inhofe	Scott
Casey	Isakson	Shaheen
Cassidy	Johnson	Shelby
Collins	Jones	Smith
Coons	Kaine	Stabenow
Corker	Kennedy	Sullivan
Cornyn	King	Tester
Cortez Masto	Klobuchar	Thune
Cotton	Lankford	Tillis
Crapo	Leahy	Toomey
Cruz	Manchin	Udall
Daines	Markey	Van Hollen
Donnelly	McCaskill	Warner
Duckworth	McConnell	Warren
Durbin	Menendez	Whitehouse
Enzi	Merkley	Wicker
Ernst	Moran	Wyden
Feinstein	Murkowski	Young
Fischer	Murphy	
Flake	Murray	

NAYS—2

Lee Paul

NOT VOTING—1

McCain

The motion was agreed to.

The Presiding Officer appointed Mr. MCCAIN, Mr. INHOFE, Mr. WICKER, Mrs. FISCHER, Mr. COTTON, Mr. ROUNDS, Mrs. ERNST, Mr. TILLIS, Mr. SULLIVAN, Mr. PERDUE, Mr. CRUZ, Mr. GRAHAM, Mr. SASSE, Mr. SCOTT, Mr. CRAPO, Mr. REED, Mr. NELSON, Mrs. MCCASKILL, Mrs. SHAHEEN, Mrs. GILLIBRAND, Mr. BLUMENTHAL, Mr. DONNELLY, Ms. HIRONO, Mr. KAINE, Mr. KING, Mr. HEINRICH, Ms. WARREN, Mr. PETERS, and Mr. BROWN conferees on the part of the Senate.

EXECUTIVE SESSION

EXECUTIVE CALENDAR—Continued

The PRESIDING OFFICER. Under the previous order, the Senate will now resume executive session.

The Senator from Rhode Island.

Mr. WHITEHOUSE. Mr. President, I ask unanimous consent to speak for up to 15 minutes as in morning business.

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

Mr. WHITEHOUSE. Mr. President, this past year and half of the Trump administration has been a constant, daily barrage of scandal, corruption, and chaotic incompetence. In this environment, the Senate now considers the President's controversial nomination of Brian Benczkowski to lead the Criminal Division of the U.S. Department of Justice. It has been over a year since Benczkowski was first nominated, and there have been repeated calls for his nomination to be withdrawn.

Why this man, for this job, at this time? There is a very good chance that

something fishy is happening here. The warning signals of something fishy should be evident to Democratic and Republican Senators alike.

The obvious question is whether President Trump and his political or legal team are using this appointment to sneak a fast one by the American people and put themselves in a position to interfere, from the inside, with the Department of Justice investigation into the dealings between Russia and the Trump campaign—the so-called Mueller investigation, though it has expanded beyond Bob Mueller into several other parts of the Department of Justice.

How would this fast one work exactly? We will be voting tomorrow to install a Trump ally and nominee—a longtime political operative with ties to a Russian bank and to the recused Attorney General Jeff Sessions—into one of the most powerful posts at the Department of Justice, a position that just so happens to have significant supervisory control over Special Counsel Mueller's investigation and the criminal investigation of the Southern District of New York into Trump's personal lawyer, Michael Cohen. What could possibly go wrong?

Remember, we are dealing with a President who remains the subject of an ongoing criminal investigation by the Department of Justice. We are dealing with a President who repeatedly violates longstanding rules and norms in his continuing effort to interfere with that investigation. We are dealing with a President who has told the press he believes he has "absolute control" over the Department of Justice and who repeatedly criticizes Attorney General Sessions' recusal from the Russian interference investigation as insufficiently "loyal."

We are dealing with a President who appears to have actively interfered in the Department's investigations into Michael Flynn, who insisted on "loyalty" from his FBI Director, and who admitted that firing that FBI Director was to ease pressure over what he called "the Russia thing."

We know all of this in the Senate, often from this President's own mouth and his own tweets. With that backdrop from the Oval Office for this nomination, extra caution is warranted to be sure we are not being led into trouble.

Worse still, it is not just the President who is up to no good with respect to the ongoing criminal investigation. Republicans in the House—I suspect hand in hand with the White House and legal team—are pressing their smear campaign against Deputy Attorney General Rosenstein, seeming to want to kneecap the independence of the Mueller investigation and get access to its confidential investigative files.

As a former U.S. attorney, I recoil from the notion that a legislative body wants to peek over the shoulders of prosecutors in an ongoing investigation, particularly when those legisla-

tors are so closely allied with the subject of that investigation.

Against that added backdrop of House interference, the Senate is being asked to install a Trump loyalist into a key position of authority and control over the Russia-Trump collusion investigation. Even more caution is warranted for this nomination, given the behavior of the House.

Why this man, for this job, at this time? Why Benczkowski? Let's review. He is nominated to be the Chief of the Criminal Division, a critically important office within the Department of Justice. He will oversee nearly 700 career prosecutors who are some of the most talented and experienced lawyers in the country. Criminal Division lawyers prosecute nationally significant cases, from high-profile public corruption to child exploitation, to complicated money laundering and international organized crime cases.

One thing that is obvious—that is obvious—is that Mr. Benczkowski brings astoundingly weak qualifications to that task. Given the stakes and the complexity of the Criminal Division's work, you would expect someone leading the Division who had years of experience as a prosecutor, who had tried cases to a verdict—someone who knew the ins and outs of the Division's work and knew his way around Federal courtrooms.

To say that Benczkowski lacks this experience is putting it mildly. He may be the weakest candidate ever put forward in the history of the Department to oversee the Criminal Division. He is probably not hireable into the career positions he will oversee. The man has less courtroom time than the average citizen who has sat on a jury. He has never tried a case of any sort, criminal or civil, State or Federal. He has never argued a motion—something most litigators have done in their first years out of law school. He has never worked as a prosecutor. His stints at the Department of Justice were never as a practicing lawyer but always on the political side. In his whole career, he told the Senate, he could only come up with one or two times he ever entered a courtroom on what he called "routine scheduling or other matters."

So it is not Benczkowski's experience or qualifications that are the reasons for his appointment. If qualifications and experience are not the reasons for his appointment, why put this prosecutorial neophyte into one of the most powerful, important prosecutorial positions at the Department of Justice? What, one might ask, is the motive? What do we know?

Although serious questions remain unanswered by the Department of Justice and by Mr. Benczkowski, we know from our correspondence with the Department that the Russia-Trump collusion investigation is being run under Department of Justice procedures that require approvals by the Criminal Division for a wide array of investigative and prosecutorial steps. As the U.S. attorney for Rhode Island, I used to have

to work with the Department of Justice and go through those approvals and those steps. The Mueller investigation and the Cohen investigation in the Southern District of New York are both subject to those same rules. That gives Mr. Benczkowski, if he is confirmed, not just a window into the Russia-Trump collusion investigation but the ability to actually interfere.

What else we know about Mr. Benczkowski is that he was a longtime political operative here in the Senate, on the Senate Judiciary Committee, where he worked as staff director for none other than Senator Jeff Sessions. Well, Attorney General Jeff Sessions has recused himself from the Russia-Trump collusion investigation. It is therefore an obvious question, if this person brings no experience as a prosecutor but plenty of experience as a close political operative for Jeff Sessions, whether that close political relationship is the reason.

That, in turn, presents the obvious question: Since Benczkowski is not there for his experience or for his qualifications, is he being installed as some kind of back channel, either as a trusted intermediary to get information to Attorney General Sessions around his recusal from this investigation perhaps or perhaps, in a worst-case scenario, to be a pipeline to Trump and his lawyers of confidential investigative information—the kind of information that House Republicans are trying to get their hands on? Maybe it is simply to jam the bureaucratic gears whenever Robert Mueller seeks approvals from the Criminal Division.

These are not easy questions, but there is an easy answer to these questions, and that easy answer is, don't worry, Mr. Benczkowski will be fully recused from that investigation. But the Department and Mr. Benczkowski won't say that. There have been no meaningful answers to these questions. Why won't they just say he will be recused? That should be easy.

It gets weirder. Benczkowski has his own Russia-Trump angle. After the election, with his old boss Sessions tapped to become Attorney General, Benczkowski volunteered for the Trump transition team, leading the so-called landing team at DOJ. It was on his way out the door from that role, heading back to his law firm, that Benczkowski told Sessions he was interested in securing a political appointment in the Department of Justice.

Scroll forward 2 months to March of 2017, when Benczkowski got a call from one of his law partners. The firm was representing the Russian Alfa Bank against allegations that Alfa Bank was serving as a back channel to the Trump organization. Alfa Bank is one of Russia's largest banks, and its owners reportedly have longstanding ties to Vladimir Putin. The partner wanted to know whether Benczkowski—fresh off the Trump Department of Justice tran-

sition team—could help the Russian bank. Benczkowski joined the firm's Alfa Bank legal team.

The next month, in April of 2017, Benczkowski was contacted by the Attorney General's office to ask whether he would like this job to head up the Department's Criminal Division. Press reports as early as May 4 indicated that Benczkowski was likely to be tapped for this Criminal Division job. Surely a person of sound judgment at this point would have stopped representing a Russian bank that might be under DOJ investigation for secret ties to the President. Surely. But no. Rather than withdraw from his representation, Benczkowski expanded his portfolio with Alfa Bank to review the now famous and widely verified Steele dossier.

The Steele dossier has been a feature not only in the Russia-Trump collusion investigation, it has also been a feature of Republican political efforts to discredit and besmirch the collusion investigation.

Benczkowski's new portfolio was to advise whether Alfa Bank, the Russian bank, should file a defamation suit against publisher BuzzFeed for disclosing the Steele dossier, which Alfa Bank subsequently did in New York State court.

There is more. Benczkowski's nomination to this position triggered confirmation obligations to disclose information to the Senate Judiciary Committee about his background, publications, and clients. This client was a Putin-tied Russian bank, and Benczkowski's work related to the red-hot Steele dossier. So obviously he disclosed this client relationship—actually, not. Benczkowski's Senate Judiciary questionnaire included no mention whatsoever of the Russian bank. Only when Democratic Senators reviewed Benczkowski's confidential FBI background report did questions arise about his relationship with Alfa Bank and his review of the Steele dossier for this Russian client. Benczkowski explained the troubling omission, telling us that he had been forbidden by his firm's confidentiality agreement from disclosing his work for Alfa Bank.

Some people would have thought his obligations of disclosure to the Senate mattered more than obligations of non-disclosure to such a client. These disclosure issues are customarily waived by clients in these circumstances or the nominee can withdraw. You don't just fail to list such a client, but that is what he did.

Mr. Benczkowski was voted out of the Judiciary Committee on a party-line vote a year ago. Now, with the Russia-Trump investigation heating up, with significant new potential cooperating witnesses, and with millions of pages of new documents available to the Department of Justice from Michael Cohen, now Republicans bring this nomination forward. Particularly this week, when the country has turned its focus to the Supreme Court an-

nouncement—an announcement obviously likely to dominate the news cycle—this bizarre nomination gets called up for a vote. It is almost as if they don't want people watching while this happens.

This is a nomination that should fail on qualifications alone. In the long history of the Department of Justice, there has never been so unqualified a nominee, in my view. In the name of the 700 career prosecutors in the Criminal Division who deserve an experienced and capable leader at their helm, in the name of the crime victims our criminal laws and their enforcement are intended to protect, I urge my colleagues to vote no just on qualifications. But this goes beyond an unqualified nominee; this is a nominee exhibiting a flashing array of warnings that there may be mischief afoot here. No Senator should take this vote unaware of these obvious warnings. Why somebody so unqualified? Why somebody so politically connected to the Attorney General? Why right now, right in the middle of constant interference by President Trump and his legal team and constant interference by House Republicans with this investigation? Now we put someone in who won't say he will recuse himself, who will have a window into this investigation, who will have the power to interfere with this investigation? That seems like a lot to let pass.

In the name of the integrity and independence of the Department of Justice, Senators should vote no because of the contamination risk Mr. Benczkowski poses even if he were qualified for the post. This combination of lack of qualification—a flagrant, flat-out unqualified nominee—and the risk of contamination in an environment in which there are abundant political efforts to interfere with this investigation—that is a combination no Senator ought to accept—not for this man, not for this job, not at this time.

If mischief is afoot and if these dark prospects should come to pass, Senators, we will have been warned. We will have been warned.

I yield the floor and 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. McCONNELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

ORDER OF PROCEDURE

Mr. McCONNELL. Mr. President, I ask unanimous consent that notwithstanding the provisions of rule XXII, all postcloture time on Executive Calendar No. 639 be considered expired at 2 p.m. tomorrow and the Senate immediately vote on the nomination; that if confirmed, the motion to reconsider be considered made and laid upon the table and the President be immediately