China cheating has long been overdue. These tariffs are a tool to bring China to the table and to get long-term structural changes to support American jobs.

My colleagues know I strongly oppose the Corker-Toomey legislation, which would undo China's tariffs, let China off the hook, and gut the section 232 status. That is why I stood on the floor 2 weeks ago to block that.

What we are considering today is different. With this motion to instruct, the Senate will reaffirm that it has a role in section 232 determinations. Of course, we should. That is why I have talked regularly with Secretary Ross and Ambassador Lighthizer throughout this process.

I will vote for the motion to instruct not because I think it makes sense to consider trade policy on an appropriations bill that has nothing to do with tariffs but because, of course, Congress should have a role in 232 determinations. It should have a role in all trade policies. I have been saying that for years. I am glad my colleagues finally agree.

The PRESIDING OFFICER. The Senator's time is expired.

Mr. BROWN. I ask unanimous consent for 10 seconds.

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

Mr. BROWN. Let me be clear. Today's vote is not a vote for undermining the trade agenda. It is not a vote to rescind steel tariffs. I will do everything in my power to defeat any efforts to do that.

I yield.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. TOOMEY. Madam President, if there is any time remaining, let me just stress that this vote is a vote to move in the direction of restoring to Congress our constitutional authority and, ultimately, if we do that right, to revisiting the misuse of the section 232 provisions of our trade law, which is applying inappropriate tariffs on steel and aluminum from our allies and close friends.

I urge my colleagues to vote yes.

The PRESIDING OFFICER. The question is on agreeing to the motion to instruct.

Mr. LEE. Madam President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The senior assistant legislative clerk called the roll.

Mr. CORNYN. The following Senator is necessarily absent: the Senator from Arizona (Mr. MCCAIN).

The PRESIDING OFFICER (Mr. TILLIS). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 88, nays 11, as follows:

[Rollcall Vote No. 151 Leg.]

YEAS—88

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

NAYS—11

Barrasso	Graham	Perdue
Capito	Heller	Risch
Crapo	Hyde-Smith	Scott
Enzi	Inhofe	

NOT VOTING—1

McCain

The motion was agreed to.

The Presiding Officer appointed Mr. SHELBY, Mr. ALEXANDER, Mr. BOOZMAN, Mr. DAINES, Mr. LANKFORD, Mr. LEAHY, Mrs. FEINSTEIN, Mr. SCHATZ, and Mr. MURPHY conferees on the part of the Senate.

EXECUTIVE SESSION

EXECUTIVE CALENDAR—Continued

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

The Senator from West Virginia.

NOMINATION OF BRETT KAVANAUGH

Mrs. CAPITO. Mr. President, I want to take a few moments to talk about what I believe is an excellent choice that President Trump made on Monday, and that is in selecting Judge Brett Kavanaugh to fill the vacancy on the Supreme Court.

Judge Kavanaugh's credentials are those of a person very well suited for the U.S. Supreme Court. He excelled as an undergraduate and as a law student at Yale and clerked for Justice Anthony Kennedy, who is retiring—the man he would replace—and was also a clerk for two Federal appeals court judges. He served in a very critical position in President George W. Bush's administration.

Beyond his resume is a record of respect and effectiveness. Judge Kavanaugh is highly regarded by his colleagues in the Federal judiciary. I think that says a lot about his potential and his character in terms of potential to become a Supreme Court Justice. He has also impressed others over his long and very prestigious career.

We saw his wonderful family on Monday night. We can tell they are very proud of their dad and their mom, and I was very honored to have the opportunity to meet all of them, along with Judge Kavanaugh's parents.

He has been very effective. As a matter of fact, this Supreme Court has adopted his reasoning in their opinions on 11 separate occasions, and the 300 opinions he has written are frequently cited by Federal judges all across the country.

But perhaps Judge Kavanaugh's most qualifying characteristic is something I heard him say at the White House on Monday evening. When the President announced his nomination, Judge Kavanaugh committed to be open-minded in the cases that come before him as a Supreme Court Justice. Open-minded—I think that is critical, and his record backs up that commitment.

He has a long and clear record of fairly applying the text of our Constitution and our laws. There will be a lot to consider on Judge Kavanaugh because he has such a long and very clear record of writing, and the President mentioned his very precise writing skills.

When I consider nominees for the Supreme Court, I don't look for a person who promises particular policy outcomes or someone who is out to actually create laws; what I look for is a person who reflects experience, fairness, and respect for the Constitution as it is written. That is because the Constitution assigns legislative authority to us, to elected representatives in the Congress. Accountability to the American people is diminished when unelected judges pursue their own policy goals.

A newspaper in the Northern Panhandle of our State, the Wheeling Intelligencer, editorialized today:

> Kavanaugh has said that if confirmed to the Supreme Court, his allegiance will be to the Constitution as it is written, not to his personal preferences. That is precisely what the Nation needs.

Another editorial appearing in West Virginia today—this one from the Daily Mail—said:

> A conservative Supreme Court justice interprets the U.S. Constitution for all, not just those on the right or the left.

I believe Judge Kavanaugh truly understands a Justice's and a judge's proper role, and I think no one puts that better than the judge himself. I would like to read a portion of a speech he gave last fall:

> One overarching goal for me is to make judging a more neutral, impartial process in all cases, not just statutory interpretation. The American rule of law, as I see it, depends on neutral, impartial judges who say what the law is, not what the law should be. Judges are umpires, or at least should always strive to be umpires. In a perfect world, at least as I envision it, the outcomes of [cases] would not often vary based solely on the backgrounds, political affiliations, or policy views of judges. This is the rule of law

as the law of rules; the judge as umpire; the judge who is not free to roam in the constitutional or statutory forest as he or she sees fit.

In my view, too, this goal is not merely a preference of mine but a constitutional mandate in a separation-of-powers system.

I believe that Judge Kavanaugh and I share the belief that faithfulness to the text of the law as written, not the pursuit of a particular policy outcome, should be the goal of a judge.

In the same speech last year, Judge Kavanaugh discussed his meeting with then-West Virginia Senator Robert C. Byrd during his confirmation process to the DC Circuit. Most West Virginians and Americans know the reverence that Senator Byrd had for the text of the Constitution. During his speech, Judge Kavanaugh spoke of reading the text of Article I with Senator Byrd. Senator Byrd was among the Democrats who voted to confirm Judge Kavanaugh to the DC Circuit. I think Judge Kavanaugh's record on the DC Circuit and his experience merit a bipartisan confirmation process—the same type of bipartisanship that Senator Byrd showed when he voted for Judge Kavanaugh.

For all of the noise and debate outside of this Chamber, the confirmation process for a well-qualified Supreme Court nominee does not have to focus on trying to guess how a Justice Kavanaugh might rule in a particular case. As a matter of fact, I think that will be a futile exercise and quite damaging to the process at the same time. If we are looking for a fair umpire, which we are looking for, there is no reason a nominee with a strong record of applying the text of the Constitution and the law should not be confirmed with overwhelming support.

President Trump made clear in his campaign that he would appoint judges with respect for the Constitution. I believe he kept his commitment when he nominated Brett Kavanaugh to become a Supreme Court Justice.

The process is just beginning where Judge Kavanaugh's record will be scrutinized to the nth degree. We are going to have hearings, and I hope all of us—and I am certainly putting myself in this category—will have the opportunity—and I think we will—to sit down one-on-one, to talk with Judge Kavanaugh, to make our own judgments about his qualifications and his abilities in terms of becoming a Supreme Court Justice.

I look forward to advancing the process, and I look forward to meeting with Judge Kavanaugh.

I yield the floor.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. BARRASSO. Mr. President, I first wish to associate myself with the remarks from the outstanding Senator from West Virginia. We had a chance to be together on Monday night when the President announced the nomination of Judge Brett Kavanaugh to serve on the U.S. Supreme Court, and I agree with my colleague from West Virginia that it is a fantastic choice.

I said before that there are three things I want to see in any nominee for the Court: the appropriate judicial philosophy, a strong intellect, and a solid character. Everything I have seen so far confirms that Judge Kavanaugh satisfies all three of these requirements.

I would like to talk today about a few things I think we can expect to see over the next couple of months. First, I think it is safe to say that throughout this process, Judge Kavanaugh will not announce how he is going to rule on cases that might come before him on the Supreme Court. The Presiding Officer and I know—as we walked back from the visit at the White House and were heading home after having a chance to visit with the President of the United States before he actually told the country Judge Kavanaugh would be the nominee—that it is a very appropriate thing for the judge to do, to not announce how he is going to rule on cases that might come before him at the Supreme Court. In fact, the ethics rules say it is exactly what a nominee should do. They should avoid making these sorts of comments. The rules say that judges and nominees should not answer questions about how they would rule on a case they might consider, so I expect that Judge Kavanaugh will follow the rules and not get into specifics on which side he may favor.

It is what Ruth Bader Ginsburg, a current member of the Court, did during her confirmation process in 1993. She said that ''a judge sworn to decide impartially can offer no forecasts, no hints''—no hints, no forecasts, no previews. She said that this would ''display disdain for the entire judicial process,'' and she was confirmed. That is the Ginsburg standard. Every nominee since then has followed that standard.

Well, the second thing I expect to happen is that Democrats are going to complain that Judge Kavanaugh follows the Ginsburg standard, and we have heard it already. They are going to complain that he will not promise to take their side in cases that might come before the Court. They are going to complain—and have already—that some of the cases he has decided in the past didn't work out the way they wanted them to work out—not what the law said, not what was right, but what they wanted. That is what Democrats in the Judiciary Committee did when Neil Gorsuch was nominated to the Supreme Court last year.

We have seen this movie before. We know the playbook. They have criticized him for some of the rulings they didn't like. Even though the rulings followed the law, they didn't like the rulings, so they criticized the judge for following the law. They suggested he should have ignored the law, sided with the little guy, the sympathetic side in a case, regardless of what the law said. But Judge Gorsuch knew the same thing Judge Kavanaugh knows: Judges are absolutely not supposed to consider who they think is sympathetic in a case, where the empathy lies. It is where the law lies. They are supposed to be making decisions and rules based on the law.

Federal judges actually swear an oath, and the oath is to ''administer justice without respect to persons, and to do equal right to the poor and to the rich.'' That is what Judge Kavanaugh has done during his 12 years as a member of the DC Circuit Court.

The minority leader, Senator SCHUMER, has already said that is not good enough for him—not good enough for Senator SCHUMER. He wrote an op-ed in the New York Times on July 2, and he wrote this op-ed before the President had even made a decision as to who he might nominate. At the time, the President was considering a number of names. It didn't matter to Senator SCHUMER; he made it clear that he is going to fight any mainstream nominee unless he can confirm that the nominee will rule in a certain way. Judges don't do that. Judges shouldn't do it. Well, that is the litmus test now for liberal Democrats in the U.S. Senate. They are going to try to make people believe that they know how Judge Kavanaugh is going to rule in the Supreme Court.

When President Obama was picking people to serve as judges and Justices, he said that he was looking for people who would decide cases based on—this was his word—''empathy.'' Well, President Trump has consistently selected judges—and we have approved and confirmed quite a few now as we have been here since President Trump has taken office—and Justices who decide cases based upon the law and the Constitution of the land. Judge Kavanaugh is exactly that kind of judge. He understands that writing the laws is not his job. It hasn't been his job in the circuit court, and it would not be his job on the Supreme Court. He gave a speech last year in which he said that Congress and the President, not the courts, possess the authority and the responsibility to legislate. Let me repeat that. Congress and the President, not the courts, possess the authority and responsibility to legislate.

The third thing I expect to happen in this whole process is we will vote on Judge Kavanaugh's nomination before the next Supreme Court session starts in October. That is what the American people want us to do. NBC News did a recent poll, and they found that 62 percent of Americans want us to vote on this nomination before the November election, and only 33 percent said that we should wait. But Democrats want to delay. They want to delay the process. The American people are saying to get on with it.

It is early July now. We are going to work through the month of August. It gives us plenty of time to consider this nomination. When you look at the people serving on the Supreme Court today, we typically spend about 66 days to confirm each of them. That is going

to put it around the middle of September. There is no reason we need to take any longer than that.

Judge Kavanaugh has been through this process before and has been confirmed by the Senate before. He was confirmed to the circuit court by a vote of 57 to 36 in this body. Four Democrats supported his confirmation.

Judge Kavanaugh has served on the circuit court for over 12 years, has written a number of rulings—I think over 300. His background as a judge gives us powerful evidence of the kind of Justice he will be. He is going to take the law and the Constitution at face value. He is not going to treat them like blank pages on which he can rewrite the laws the way he wishes they were. In a speech last year, he made it very clear. He said: ''The judge's job is to interpret the law, not to make the law or make policy.'' This view—and every example I have seen from Judge Kavanaugh's record—is squarely in the mainstream of American legal thinking today. He is smart, he is fair, and I believe he is very well qualified.

Regrettably, none of this matters to some of the Democrats. They are going to use the same scare tactics they use every time a Republican President nominates someone to the Supreme Court. They did it 40 years ago when President Gerald Ford nominated John Paul Stevens to the Court. Liberals accused him of ''antagonism to women's rights.'' When President Reagan nominated Justice Kennedy 31 years ago, the Justice who has just retired from the Court, Democrats said his nomination ''should be unsettling to those concerned with the health and legal status of women in America.'' They have been using the same old lines for more than 40 years. It is never true; it is never reality. But apparently for the Democrats, it never gets old.

I hope the Democrats in the Senate will give Judge Kavanaugh a chance. I hope they will take the time to consider his qualifications and actually sit down and talk with him before they rush to condemn him, although quite a few rushed to condemn him even before the President had decided and he was named to the Court.

I also look forward to sitting down with the nominee and exploring some of his views more fully, but everything I have seen so far suggests to me that it is going to be a very good conversation and that Judge Kavanaugh would make an excellent Justice of the Supreme Court.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. SANDERS. Mr. President, today I rise to oppose the nomination of Brett Kavanaugh to the Supreme Court. This is an issue I will return to in the coming weeks and months at greater length, but I did want to say a few words about why I am in opposition to Mr. Kavanaugh.

I think many Americans have a pretty good sense of what the function of Congress is and what the President of the United States does, but, in fact, I think many Americans do not fully appreciate the role that the Supreme Court plays in our lives. In the past decade alone, the Supreme Court has issued some incredibly controversial and, to my mind, disastrous decisions that have had a profound impact on the lives of the American people.

Let me review for a moment why this nomination is so very important by looking at what the Supreme Court, often by a 5-to-4 vote—a one-vote majority—has done in recent years. If you go out onto the streets of any community in the United States of America—whether it is a conservative area or a progressive area—what most people will tell you is that we have a corrupt campaign finance system—a system that today, as we speak, allows billionaires to spend hundreds of millions of dollars to buy elections. Most Americans, whether they are Democrats or Republicans or Independents, do not think that is what American democracy is supposed to be about. What most people think is that the majority should rule. Sometimes you win, and sometimes you lose, but everybody gets a vote—not a situation in which billionaires can spend unlimited sums of money to support candidates who represent their interests. That is, in fact, what goes on right now.

Many Americans may think that was a decision made by Congress, made by the President. That is not so. That disastrous decision that is undermining American democracy came about by a 5-to-4 vote of the U.S. Supreme Court in the Citizens United case.

That is what a Supreme Court decision can do. It can undermine American democracy and create a situation where the very wealthiest people in this country can buy politicians and influence legislation.

Several years ago, the Supreme Court upheld the constitutionality of the Affordable Care Act, but the Court also ruled that the Medicaid expansion as part of the Affordable Care Act had to be optional for States.

I am on the Health, Education, Labor, and Pensions Committee, which helped to write that bill. I can tell you that there was almost no discussion—I don't recall any discussion—about whether or not that legislation would apply and all elements of the legislation would apply to every State in the country.

The Supreme Court ruled that this was not the case. They said that the decision of expanding Medicaid was up to the States. Today, we have 17 States in our country that still have not expanded Medicaid. What that means in English—in real terms—is that today there are millions and millions of people, in 17 States in this country, who are ill, people who can't afford healthcare, people who are literally dying because they don't go to the doctor when they should, and that is all because of a decision of the U.S. Supreme Court.

It is not only the issue of campaign finance or the issue of Medicaid and healthcare where the Supreme Court has acted in a disastrous way. I think everybody knows that our country has a very, very shameful history in terms of civil rights. It has been a very long and hard struggle for us to finally say that in America, regardless of the color of your skin, regardless of your economic position, you have the right to vote. It is not a radical idea, but it is a struggle for which very brave people fought for many decades.

In 1965 the Congress finally passed the Voting Rights Act, which had the impact of eliminating racial discrimination in voting. That Act, passed by Congress, has been reauthorized multiple times since. In other words, what Congress said is that everybody in this country has the right to vote, regardless of the color of your skin.

In 2013 the Supreme Court—again, by a 5-to-4 vote—ruled that parts of the Voting Rights Act of 1965 were outdated, and they struck down a major part of that law that guaranteed that all Americans had the right to vote. Literally days after that decision was rendered by the Supreme Court, officials in State after State responded by enacting voting restrictions targeted at African Americans, poor people, young people, and other groups of citizens who don't traditionally vote Republican.

Literally days after that Supreme Court decision, State officials said: Wow, we now have the opportunity to make it harder for our political opponents to vote.

They moved very, very quickly with restrictive voting rights laws. That situation was created by, once again, a 5-to-4 vote by a conservative Supreme Court.

Just this year, we saw the Supreme Court rule against unions in a really outrageous decision in the Janus case, designed to weaken the ability of workers and public employees to negotiate fair contracts. Just this year, we saw the Supreme Court uphold President Trump's Muslim ban and other important pieces of legislation.

This is already a Supreme Court that, given the option, will rule, as they have time and again, often by a 5-to-4 vote, in favor of corporations and the wealthy and against working people; that will continue to undermine civil rights, voting rights, and access to healthcare; that are edging closer and closer to ruling that a person's religious beliefs should exempt them from following civil rights laws.

Having said that, let me say very briefly why I oppose the nomination of

Judge Kavanaugh. As it happens, I do not usually believe anything that President Trump says because I think, sadly, that he is a pathological liar, but I do think this is a moment where we should believe one thing that he said during the campaign. I think, in this instance, he was actually telling the truth. During the campaign, he was asked if he wanted to see the Court overturn Roe v. Wade, the landmark decision that protects a woman's right in this country to control her own body. He responded to that question:

Well, if we put another two or perhaps three justices on, that's really what's going to be—that will happen. And that'll happen automatically, in my opinion, because I am putting pro-life justices on the court.

That is Donald Trump during the campaign.

On a separate occasion, as many recall, Trump suggested that women who have abortions should be punished. I have very little doubt that while he may evade the question of whether or not he wants to overturn Roe v. Wade—I have zero doubt—he would not have been appointed by Donald Trump unless that is exactly what he will do.

As I think we all know, President Trump put forth a list of 25 potential justices, all of whom were handpicked by the Heritage Foundation and the Federalist Society. These two extreme rightwing groups claim they have ''no idea'' how any of the people on that list would rule on Roe v. Wade, but overruling Roe has been a Republican dream for 40 years. Please do not insult our intelligence by suggesting it is possible that any of these candidates could secretly support a woman's right to control her own body. That will not be the case.

That brings us to Judge Kavanaugh. You may remember that last year the Federal Government was sued by an undocumented teenage girl they were keeping in detention in Texas. She discovered that she was pregnant while in detention and tried to obtain an abortion. Judge Kavanaugh wanted to force her to delay the proceeding, presumably until it was no longer legal under Texas law for her to obtain an abortion in that State. When he was overruled by the full DC Circuit, he complained in a dissent that his colleagues were creating a right to ''abortion on demand.'' Does that sound like someone who is going to strike down State laws that create undue barriers to abortion access, or does it sound like somebody who had no problem with forcing a teenage girl to carry a pregnancy to term?

There is also another case percolating out of Texas that could have even graver consequences for tens of millions of Americans. The State of Texas and 17 other Republican States have sued the Federal Government, claiming that the Affordable Care Act is unconstitutional, and the Department of Justice under Donald Trump agrees with them. While I do not know how Judge Kavanaugh would rule on this case—nobody could, of course, know that—I will note that in another case about the ACA, he suggested that the President could simply refuse to enforce laws that he deems unconstitutional, regardless of what the Courts say.

What we are dealing with here is, literally, a life-and-death decision regarding preexisting conditions, regarding the issue of whether today you have cancer, heart disease, diabetes, or some other life-threatening illness. Before the Affordable Care Act, an insurance company could say to you: Oh, you have a history of cancer, we are not going to insure you because we can't make money out of you because that cancer might recur. It might be: You are too sick and we are going to lose money on your case and we are not going to insure you or, if we do insure you, your rates are going to be five times higher than somebody else's of your age.

One of the major achievements of the Affordable Care Act, which was supported by 90 percent of the American people, is that we must not end the protections the American people have today against insurance companies that would bring back preexisting conditions—that would discriminate against people who were ill. It is very likely that case will come before the U.S. Supreme Court. Yet 90 percent of the American people say we should not discriminate against people who have cancer or heart disease and that insurance companies should not be allowed to deny them coverage or raise their rates to levels that people cannot afford.

The Trump administration has supported the argument of the Republican Governors and will not defend the ACA in court, which will come to the Supreme Court. Unless I am very mistaken, Judge Kavanaugh will vote with the rightwing majority and allow discrimination against people who have serious illnesses to, once again, be the law of the land.

Time and again, Judge Kavanaugh has sided with the interests of corporations and the wealthy instead of the interests of ordinary Americans. He has sided with electric power utilities and chemical companies over protecting clean air and fighting climate change.

He has argued, if you can believe it, that the Consumer Financial Protection Bureau, which has saved consumers billions and billions of dollars from the greed and illegal behavior of Wall Street and financial institutions, is unconstitutional because its structure does not give enough power to the President. He has also argued against net neutrality.

He dissented in an OSHA case and argued that SeaWorld should not be fined for the death of one of its whale trainers because the trainer should have accepted the risk of death as a routine part of the job.

While nobody can predict the future, we can take a hard look at Judge Kavanaugh's record and extrapolate from his decisions what kind of Supreme Court Justice he will be. I think the evidence is overwhelming that he will be part of the 5-to-4 majority, which has cast decision after decision against the needs of working people, against the needs of the poor, and against the rights of the American people to vote freely, without restrictions.

This is an issue to which I will return. I just want the American people to understand, when they hear this debate taking place here and think, well, it is the same ol' same ol'—with people yelling at each other—that this is an enormously important decision which will impact the lives of tens and tens of millions of people. I hope very much that the American people become engaged on this issue, learn about Judge Kavanaugh's record, and join with those of us who are in opposition to his nomination.

I yield the floor.

Mr. GRASSLEY. Mr. President, I am pleased the Senate is considering Brian Benczkowski to serve as the Assistant Attorney General for the Criminal Division. This is a critical position at the Department of Justice and its extended vacancy has hindered the agency's effectiveness. Mr. Benczkowski has the experience and qualifications to lead the Criminal Division. I am proud to support his nomination on the floor today.

Mr. Benczkowski was nominated 400 days ago. The Judiciary Committee held his confirmation hearing nearly a year ago. A fully staffed and well-functioning Criminal Division is vitally important to the Department of Justice's mission.

Over a dozen former U.S. Attorneys, from both the Bush and Obama administrations, support his nomination. They wrote that the head of the criminal division is ''the nerve center of federal prosecution, and the absence of a confirmed occupant can diminish the effectiveness of our law enforcement program throughout the country.''

The former prosecutors went on to state: ''Those of us who know Brian recognize that he is the right person to provide that leadership and to be a strong and effective partner with the United States Attorneys' Offices.''

Mr. Benczkowski already has an impressive legal career. He previously served as the Republican staff director on the Senate Judiciary Committee from 2009–2010.

He also served as a counsel on the House Judiciary Committee. Before that time, he worked on the Senate Budget Committee and served as a counsel to Senator Domenici for 4 years.

Mr. Benczkowski excelled as a leader during his time on the Judiciary Committee. During his time as staff director, he was instrumental in passing the Fair Sentencing Act. This law reduced the disparity in federal criminal sentencing between crack and powder cocaine. His leadership was instrumental

in several pieces of bipartisan legislation, including the Crime Victims Fund Preservation Act of 2009, the Secure and Responsible Drug Disposal Act of 2009, the Judicial Survivors Protection Act of 2009, and the Combat Meth Enhancement Act of 2009.

Mr. Benczkowski also served in several different roles at the Department of Justice. In 2008, he became the chief of staff to the Attorney General and the Deputy Attorney General. He also served as the chief of staff to the ATF. In total, he held five senior leadership positions in different divisions in the Department of Justice, working with components and law enforcement agencies across the Department.

During Mr. Benczkowski's decade in the private sector, he gained extensive litigation management experience that will serve him well as he oversees the Criminal Division.

Some of my colleagues on the other side of the aisle have said they will not support his nomination because he allegedly lacks experience. They say this because Mr. Benczkowski was never a prosecutor.

But the head of the Criminal Division is not a prosecutor. The position oversees criminal matters and formulates and implements criminal enforcement policy. It requires a deep knowledge of Federal criminal law, experience in government investigations, and strong management skills. Mr. Benczkowski, with his years of experience in relevant fields, is clearly qualified for this position.

But don't just take my word for it. Five former heads of the Criminal Division appointed under the Bush and Obama administrations said this about Mr. Benczkowski's nomination: ''Mr. Benczkowski has the necessary leadership, management and substantive experience to lead the Division.'' They noted that, ''by virtue of our service in the position to which Mr. Benczkowski has been nominated, we are familiar with the qualifications and experience necessary for success in the job.''

They went on to say ''throughout his career, on the criminal defense side in private practice and in the Department, he has worked on complex criminal investigations on a range of issues; significant criminal legislation matters; important criminal policy matters; and domestic and international law enforcement matters.''

These former heads of the Criminal Division know better than anyone the background and qualifications required to do the job, and they think that Mr. Benczkowski is a good fit for this role.

Some of my colleagues have raised a different concern, related to Mr. Benczkowski's legal representation of Alfa Bank while he was working at the law firm of Kirkland and Ellis. The Senate learned of this matter when reviewing his FBI background investigation.

Normally the committee doesn't publicly discuss any matters contained in the background investigation but because this matter raised some concerns for some senators, Mr. Benczkowski voluntarily waived his privacy rights, so we could freely and publicly question him on this matter.

At his hearing, the committee members extensively questioned him about his representation of Alfa Bank. He answered all our questions. He was not evasive. His testimony was public. It was very credible and uncontroverted.

Mr. Benczkowski also then responded in writing to several rounds of written questions submitted to him.

After this hearing, I helped Senator DURBIN arrange an intelligence briefing with the Office of the Director of National Intelligence related to Alfa Bank.

I also helped arrange for the Deputy Attorney General to call Senator DURBIN to explain the Department's longstanding tradition that it does not confirm nor deny investigations, particularly when it comes to a nominee's client.

When clients are under investigation, they need lawyers to represent them. Are we now going to have a political litmus test for nominees based upon the clients they stepped forward to represent in private practice?

There is no credible allegation that Mr. Benczkowski did anything wrong or unethical related to his limited representation of Alfa Bank or otherwise. He has promised to recuse himself from handling any matters involving Alfa Bank, and he has promised to consult with ethics officials regarding any other times he may need to recuse.

I believe Mr. Benczkowski will be an outstanding head of the Criminal Division. I urge my colleagues to join me in supporting his nomination.

Mr. SANDERS. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. COONS. Mr. President, I come to the floor to raise concerns both about the next vote we will take—a vote that will or will not confirm President Trump's nominee Brian Benczkowski to be the Assistant Attorney General of the Criminal Division of the U.S. Department of Justice—and to express my concern about our President's actions at the NATO summit and his upcoming meeting with Vladimir Putin, the President of the Russian Federation.

Let me start with Mr. Benczkowski. I come to the floor to speak in opposition to our proceeding to his confirmation. Mr. Benczkowski has been nominated to serve as an Assistant Attorney General and will be in charge of the Criminal Division at the U.S. Department of Justice.

How big of a division is that—10, 50, 100? It actually has 900 employees and 600 career Federal prosecutors. The U.S. Department of Justice takes up, handles, investigates, and prosecutes cases of an unbelievable range, complexity, and sophistication in every district court in the entire United States. One would have to assume that to take on such a significant—such an important—role as overseeing, supervising, and managing 900 professionals and 600 career prosecutors that Mr. Benczkowski must be very qualified to serve.

As someone who is himself an admitted member of the Delaware bar and serves on the Judiciary Committee, I hesitate to suggest that I have the qualifications because I have never tried a criminal case in court, so I am not sure how I would directly supervise a whole team of career Federal prosecutors. Mr. Benczkowski has never prosecuted a case. He has never supervised a criminal prosecution. In fact, he has not ever appeared in Federal court, by his own admission, except for on one or two limited occasions in order to address routine scheduling or other matters.

Mr. Benczkowski is before us, in his having been nominated to supervise the single largest, most complex, most sophisticated law firm in America for criminal matters on behalf of the people of the United States, without his having the relevant experience. In my view, that alone is disqualifying. That alone should lead us to pause in terms of whether we should confirm this man to lead the Criminal Division as the Assistant AG.

Virtually all of the last several Senate-confirmed Assistant Attorneys General for the Criminal Division have had extensive prior experience as prosecutors, as former U.S. attorneys, as career or elected folks who have either been within the Department of Justice or have been attorneys general. This is for good reason, for the Federal Government holds enormous power and discretion when it comes to criminal prosecutions. The Assistant Attorney General is responsible for overseeing offices that investigate and prosecute money laundering, fraud, organized crime, public corruption, and a host of other serious offenses. It is that AAG who ultimately signs off on some of the edgiest or most difficult or most questionable prosecutorial decisions. Every American should expect that the person who is nominated for this important job is qualified to meet the weighty demands of this job.

Secondly, every American is entitled to the assurance that the Department of Justice will be independent and that criminal prosecutions will rise and fall with the facts and the law and nothing else. Sadly, Mr. Benczkowski fails to pass this test too.

He led the Department of Justice's transition team for the Trump administration. He previously served with our now-Attorney General and former Senator Jeff Sessions. Yet, after leaving the transition team for the Trump

administration, he went on to private practice in a law firm where he represented Alfa-Bank, which is one of the largest Russian banks. It is a Russian bank which, through its owner, a Russian oligarch, has close ties to Vladimir Putin.

At times, it is hard for me to believe how many people immediately around the President, his Cabinet, his campaign team, or around him personally have had concerning, inexplicable, difficult-to-understand ties to Russian entities, but here we are again. To be frank, I am concerned that Mr. Benczkowski's position—if confirmed by this Senate in just 5 minutes in a vote we are about to take—could enable him to directly interfere with Special Counsel Mueller's ongoing investigation into Russian interference.

I have raised concerns about this, about ensuring that Attorney General Sessions fully complies with his recusal from matters related to the last election. Adding Mr. Benczkowski to the mix in his absolutely central role as the Assistant Attorney General who will oversee the Criminal Division raises these concerns even further. Adding another senior person to the Justice Department's leadership team who raises these concerns about real independence gives me real pause.

I joined all of the Senate Judiciary Committee Democrats in a letter that asked the administration to move Mr. Benczkowski to some other position and to send us a qualified, capable nominee who does not have concerning Russian connections. Unfortunately, the administration hasn't done that. My friends on the other side of the aisle seem poised to confirm this gentleman today.

NATO

Mr. President, this concerns me more than ever because of what has just been said by our President in Europe to our vital NATO allies. There is a number I have been holding in my heart this week—1,044. That is the number of NATO troops who have died in combat in Afghanistan while having served shoulder to shoulder with the United States.

President Trump is correct to raise the issue of contributions to our mutual defense. President Trump has had a real impact. He has gotten our NATO allies to up the ante by more than $14 billion in the last year and a half. I wish he had gone to Brussels and simply said: Thank you, folks, for increasing your contributions. Now let's focus on interoperability and deployability and on linking arm-to-arm and facing our real adversary—Russia.

The NATO alliance exists for mutual defense. How can you successfully defend when you can't successfully identify your real adversary?

I have just returned from a bipartisan trip to visit Sweden, Denmark, Latvia, and Finland—two NATO allies and two very close security partners. All four of these countries have fought alongside us in Afghanistan and have suffered combat deaths. For two of those countries, they have been the first combat deaths since the Second World War.

When our President makes misleading, mistaken comments that NATO doesn't pay its fair share or is using us as a piggybank or, as he said in a campaign-style rally in Montana, that NATO is killing us, it really weighs upon the hearts of our vital allies that have sent their young men and women to serve alongside ours and, in 1,044 cases, to die.

We need to respect our vital allies and recognize that for seven decades, our NATO allies and our security partners—whether the 4 I just visited with the Republican chairman of the Foreign Relations Committee or the others among the 29 in NATO—are stepping up their investments, but they have already paid a price that few other countries have paid of sending their sons and daughters, alongside ours, into combat.

Rather than question their commitment to our mutual security, I wish our President would celebrate that they have increased their investments, thank them for their strong partnerships and alliances, and begin facing our country toward its true adversary—Russia.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. HOEVEN. Mr. President, I ask unanimous consent that all time be yielded back.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

All postcloture time is expired.

The question is, Will the Senate advise and consent to the Benczkowski nomination?

Mr. GARDNER. Mr. President, I ask for the yeas and nays.

The ACTING PRESIDENT pro tempore. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The bill clerk called the roll.

Mr. CORNYN. The following Senator is necessarily absent: the Senator from Arizona (Mr. MCCAIN).

The ACTING PRESIDENT pro tempore. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 51, nays 48, as follows:

[Rollcall Vote No. 152 Ex.]

YEAS—51

Alexander	Boozman	Cassidy
Barrasso	Burr	Collins
Blunt	Capito	Corker
Cornyn	Hoeven	Portman
Cotton	Hyde-Smith	Risch
Crapo	Inhofe	Roberts
Cruz	Isakson	Rounds
Daines	Johnson	Rubio
Enzi	Kennedy	Sasse
Ernst	Lankford	Scott
Fischer	Lee	Shelby
Flake	Manchin	Sullivan
Gardner	McConnell	Thune
Graham	Moran	Tillis
Grassley	Murkowski	Toomey
Hatch	Paul	Wicker
Heller	Perdue	Young

NAYS—48

Baldwin	Harris	Nelson
Bennet	Hassan	Peters
Blumenthal	Heinrich	Reed
Booker	Heitkamp	Sanders
Brown	Hirono	Schatz
Cantwell	Jones	Schumer
Cardin	Kaine	Shaheen
Carper	King	Smith
Casey	Klobuchar	Stabenow
Coons	Leahy	Tester
Cortez Masto	Markey	Udall
Donnelly	McCaskill	Van Hollen
Duckworth	Menendez	Warner
Durbin	Merkley	Warren
Feinstein	Murphy	Whitehouse
Gillibrand	Murray	Wyden

NOT VOTING—1

McCain

The nomination was confirmed.

The ACTING PRESIDENT pro tempore. Under the previous order, the motion to reconsider is considered made and laid upon the table and the President will be immediately notified of the Senate's action.

CLOTURE MOTION

The ACTING PRESIDENT pro tempore. Pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will state.

The senior assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the nomination of Paul C. Ney, Jr., of Tennessee, to be General Counsel of the Department of Defense.

Mitch McConnell, Mike Crapo, Tom Cotton, Johnny Isakson, John Kennedy, John Thune, John Boozman, Tim Scott, Richard Burr, Thom Tillis, Roy Blunt, Cory Gardner, Roger F. Wicker, Mike Rounds, John Cornyn, John Barrasso, Jerry Moran.

The ACTING PRESIDENT pro tempore. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on the nomination of Paul C. Ney, Jr., of Tennessee, to be General Counsel of the Department of Defense, shall be brought to a close?

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The senior assistant legislative clerk called the roll.

Mr. CORNYN. The following Senator is necessarily absent: the Senator from Arizona (Mr. MCCAIN).

The ACTING PRESIDENT pro tempore. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 74, nays 25, as follows: