

EXECUTIVE CALENDAR—Continued  
The PRESIDING OFFICER. The Senator from Florida.

REQUEST FOR COMMITTEE TO MEET

Mr. RUBIO. Mr. President, I ask unanimous consent that the Intelligence Committee be authorized to meet today with the Director of National Counterintelligence, and he is also leading the election security efforts on behalf of the Office of the Director of National Intelligence—that that meeting occur during today's session of the Senate.

The PRESIDING OFFICER (Mr. ROMNEY). Is there objection?

The Democratic leader.

Mr. SCHUMER. Reserving the right to object. Because the Senate Republicans have no respect for the institution, we will not have business as usual here in the Senate, I object.

The PRESIDING OFFICER. The objection is heard.

The Senator from Florida.

Mr. RUBIO. Mr. President, if I may, just for a moment, just for the information of the Members, then, who are on the committee, we will not be having the hearing today on the issue of election security with the person leading that effort. It is a priority of mine here.

We are scheduled to have the Director of National Intelligence tomorrow to discuss that and many more topics of great importance that I know a lot of people here have been saying we need to be having briefings over. I hope that if, in fact, the Democratic leader intends to object to that, that we should know that today as well, I hope, so that the Members will know that and make arrangements accordingly.

I yield the floor.

VOTE ON LUCAS NOMINATION

The PRESIDING OFFICER. Under the previous order, all postcloture time has expired on the Lucas nomination.

The question is, Shall the Senate advise and consent to the Lucas nomination?

Mr. ALEXANDER. Mr. 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. THUNE. The following Senators are necessarily absent: the Senator from West Virginia (Mrs. CAPITO), the Senator from Wisconsin (Mr. JOHNSON), the Senator from Alaska (Mr. SULLIVAN), and the Senator from North Carolina (Mr. TILLIS).

Further, if present and voting, the Senator from Wisconsin (Mr. JOHNSON) would have voted yea.

Mr. DURBIN. I announce that the Senator from California (Ms. HARRIS), the Senator from Vermont (Mr. SANDERS), and the Senator from Michigan (Ms. STABENOW), are necessarily absent.

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

The result was announced—yeas 49, nays 44, as follows:

[Rollcall Vote No. 187 Ex.]

YEAS—49

Alexander	Fischer	Perdue
Barrasso	Gardner	Portman
Blackburn	Graham	Risch
Blunt	Grassley	Roberts
Boozman	Hawley	Romney
Braun	Hoeven	Rounds
Burr	Hyde-Smith	Rubio
Cassidy	Inhofe	Sasse
Collins	Kennedy	Scott (FL)
Cornyn	Lankford	Scott (SC)
Cotton	Lee	Shelby
Cramer	Loeffler	Thune
Crapo	McConnell	Toomey
Cruz	McSally	Wicker
Daines	Moran	Young
Enzi	Murkowski	
Ernst	Paul	

NAYS—44

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

NOT VOTING—7

Capito	Sanders	Tillis
Harris	Stabenow	
Johnson	Sullivan	

The nomination was confirmed.

CLOTURE MOTION

The PRESIDING OFFICER. 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 Keith E. Sonderling, of Florida, to be a Member of the Equal Employment Opportunity Commission for a term expiring July 1, 2024.

Mitch McConnell, Cindy Hyde-Smith, John Thune, John Hoeven, John Boozman, David Perdue, Steve Daines, Pat Roberts, Thom Tillis, Lamar Alexander, John Cornyn, Lindsey Graham, Roger F. Wicker, Mike Braun, John Barrasso, Richard C. Shelby, Tim Scott.

The PRESIDING OFFICER. 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 Keith E. Sonderling, of Florida, to be a Member of the Equal Employment Opportunity Commission for a term expiring July 1, 2024, shall be brought to a close?

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. THUNE. The following Senators are necessarily absent: the Senator from West Virginia (Mrs. CAPITO), the Senator from Wisconsin (Mr. JOHNSON), the Senator from Alaska (Mr. SULLIVAN), and the Senator from North Carolina (Mr. TILLIS).

Mr. DURBIN. I announce that the Senator from California (Ms. HARRIS), the Senator from Vermont (Mr. SANDERS), and the Senator from Michigan (Ms. STABENOW), are necessarily absent.

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

The yeas and nays resulted—yeas 52, nays 41, as follows:

[Rollcall Vote No. 188 Ex.]

YEAS—52

Alexander	Gardner	Perdue
Barrasso	Graham	Portman
Blackburn	Grassley	Risch
Blunt	Hawley	Roberts
Boozman	Hoeven	Romney
Braun	Hyde-Smith	Rounds
Burr	Inhofe	Rubio
Cassidy	Jones	Sasse
Collins	Kennedy	Scott (FL)
Cornyn	Lankford	Scott (SC)
Cotton	Lee	Shelby
Cramer	Loeffler	Sinema
Crapo	Manchin	Thune
Cruz	McConnell	Toomey
Daines	McSally	Wicker
Enzi	Moran	Young
Ernst	Murkowski	
Fischer	Paul	

NAYS—41

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

NOT VOTING—7

Capito	Sanders	Tillis
Harris	Stabenow	
Johnson	Sullivan	

The PRESIDING OFFICER. On this vote, the yeas are 52, the nays are 41.

The motion is agreed to.

EXECUTIVE CALENDAR

The PRESIDING OFFICER. The clerk will report the nomination.

The legislative clerk read the nomination of Keith E. Sonderling, of Florida, to be a Member of the Equal Employment Opportunity Commission for a term expiring July 1, 2024.

The PRESIDING OFFICER. The Democratic leader.

UNANIMOUS CONSENT REQUEST

Mr. SCHUMER. Madam President, over the course of her extraordinary life, Justice Ginsburg did as much to advance the cause of justice as she could manage. She was a trailblazer of women from all ages, from all walks of life, who watched her tear down the barriers that separated men from women, first from outside the corridors of power, then within them.

As I said this morning, it is only fitting that she will be the first woman to ever lie in state at the Nation's Capitol. After all, she made a life's work

out of going where women had not gone before.

I rise now to offer a resolution that will honor her long and illustrious career. Republicans came to us with this resolution, but it ignored Justice Ginsburg's dying wish, what she called her most fervent wish, that she not be replaced until the new President is installed. We simply have added to the exact same text of the resolution the Republicans gave us.

All the kind words and lamentations about Justice Ginsburg from the Republican majority will be totally empty if those Republicans ignore her dying wish and instead move to replace her with someone who will tear down everything she built; someone who could turn the clock back on a woman's right to choose; someone who could turn back the clock on marriage equality; someone who would make it impossible to join a union; someone who could take healthcare away from tens of millions of Americans, send drug prices soaring, and rip away protections for up to 130 million Americans with preexisting conditions. That is what we are talking about when we talk about this vacancy.

For hundreds of millions of Americans, everything is on the line. Perhaps that is why Justice Ginsburg expressed her "fervent" wish that she not be replaced until the next President is installed. She knew how important the Supreme Court was in American life, and she knew there would be great temptation to take advantage of the timing of her death for political purposes. She knew the risks of her vacancy turning into a power game driven by rank partisanship, so she expressed a simple idea: Let the next President decide, whoever it might be. It could be President Trump, it could be Vice President Biden, but let the next President decide.

Don't rush a nominee through mere days before an election in what is sure to be the most controversial and partisan Supreme Court nomination in our Nation's entire history.

Maybe Justice Ginsburg hoped that her dying wish could save the Senate majority from itself. It doesn't appear that way, but here on the floor this afternoon, we ask our colleagues to acknowledge her entire life and legacy, including her dying wish.

As in legislative session, I ask unanimous consent that the Senate proceed to the immediate consideration of the Schumer resolution related to the death of Ruth Bader Ginsburg, Associate Justice of the Supreme Court of the United States, which is at the desk. I further ask that the resolution be agreed to, the preamble be agreed to, and that the motions to reconsider be considered made and laid upon the table with no intervening action or debate.

The PRESIDING OFFICER. Is there objection?

The Senator from Texas.

Mr. CRUZ. Reserving the right to object, this endeavor started with a reso-

lution that the majority put forward that was intended to be a bipartisan resolution commemorating the life and service of Justice Ruth Bader Ginsburg. That follows the bipartisan tradition this body has followed in commemorating Justices when they have passed.

Unfortunately, the Democratic leader has put forth an amendment to turn that bipartisan resolution into a partisan resolution. Specifically, the Democratic leader wants to add a statement that Justice Ginsburg's position should not be filled until a new President is installed, purportedly based on a comment made to family members shortly before she passed.

That, of course, is not the standard. Under the Constitution, members of the Judiciary do not appoint their own successors. No article III judge has the authority to appoint his or her own successor. Rather, judicial nominations are made by the President of the United States, and confirmations are made by this body, the U.S. Senate.

I would note that Justice Ginsburg was someone whom I knew personally. I argued nine times before Justice Ginsburg at the Supreme Court. She led an extraordinary life. She was one of the finest Supreme Court litigators to have ever practiced. She served 27 years on the Court, leaving a profound legacy. Justice Ginsburg understood full well that the position being put forth by the Democratic leader is not the law and is not the Constitution. Indeed, I will quote what Justice Ginsburg said just 4 years ago.

Reported in the Washington Post on September 7, 2016, Justice Ginsburg is reported to have said:

The president is elected for four years not three years, so the power he has in year three continues into year four. Maybe members of the Senate will wake up and appreciate that that's how it should be.

Now, of course, when Justice Ginsburg said that, that was when President Obama had made the nomination of Merrick Garland to the Supreme Court, and the Senate had declined to consider that nomination. Without even a hint of irony, every Democrat who is now screaming from the ramparts that we cannot consider a vacancy on the Court during this election year was screaming equally as loudly from the ramparts that we must consider a nomination during a Presidential election year just 4 years ago.

Joe Biden vociferously called for the Senate to consider that nomination. Barack Obama called for the Senate to consider that nomination. Hillary Clinton called for the Senate to consider that nomination. The Democratic leader said the Senate was not doing its job if we didn't consider that nomination. To my knowledge, every Democratic Member of this body, likewise, decried the decision not to take up that nomination and insisted the Senate was not doing its job.

Well, today, obviously, the situation has changed, whereby all of those

Democratic Members who demanded the Senate take up a nomination to the Supreme Court are now demanding the Senate not take up a nomination to the Supreme Court.

To be sure, the Republican majority that declined to consider that nomination is now going to take up President Trump's nomination to this vacancy, but I would note the circumstances are markedly different, and history and more than two centuries of precedent are on the side of what this Senate will do.

The question of whether a President should nominate a Supreme Court Justice to fill a vacancy that occurred during a Presidential election year has occurred 29 times in our Nation's history. This is not new—29 times. Of those 29 times, Presidents of both parties, Democrats and Republicans, have nominated Justices 29 times. Every single time there has been a vacancy during a Presidential year, a President has nominated a Justice to that vacancy. Of the 44 individuals who served as President of the United States, 22 have done so. Fully one half of the Presidents who have ever served this country have made Supreme Court nominations during Presidential election years.

So what is the difference?

Well, there is a sharp difference in our Nation's history depending upon whether the Senate is controlled by the same party as the President or a different party from the President. So, of the 29 times in history, in 19 of those times, the Senate and the Presidency were controlled by the same party. When that happened, the Senate took up and confirmed those nominees 17 of the 19 times.

Do you want to ask what history shows this body does when the President and the Senate are of the same party and a nomination is made during a Presidential election year? This body takes up that nomination and, assuming a qualified nominee, confirms that nominee.

On the other hand, what happens when the President and the Senate are of different parties? Well, that has happened 10 times in our Nation's history. In all 10 times, the President has made a nomination, but in those circumstances, the Senate has confirmed those nominees only twice, and 2016 was one of those examples.

Now, the Democratic leader gave a passionate speech, which I know he believes, about what kind of Justice he would like to see on the Court. Democratic Members of this body have long championed judicial activists who would embrace a view of the Constitution that, I believe, would do serious damage to the constitutional liberties of the American people.

The interesting thing about the Democratic leader's speech is that the argument was presented to the voters, and the voters disagreed. In 2016, Hillary Clinton promised to nominate Justices just like the kind the Democratic

leader said he wanted to see, and President Trump promised to nominate Justices “in the mold of Justice Scalia and Justice Thomas.” The American people had that issue squarely before them, and the voters chose that we wanted constitutional judges nominated to the Supreme Court. It was not only regarding the Presidential election but the Senate majority. The American people voted for a Republican majority in the Senate in 2014. The American people voted for a Republican majority again in 2016, and, in 2018, the American people grew our majority.

In all three of those elections, the question that the Democratic leader has put forward was directly before the voters. What kind of Justices do you want? The voters clearly decided and had given a mandate.

The President has said he is going to nominate a Justice this week. That is the right thing to do. This body, I believe, will take up, will consider, that nomination on the merits, and I believe we will confirm that nominee before election day. That is consistent with over 200 years of Senate precedent from both parties.

There is, however, something that the Democratic leaders and Democratic Members of this body are threatening that is not consistent with history or precedent or a respect for the Constitution, and that is, namely, a threat to pack the Supreme Court. We have heard multiple Democrats say that, if the Senate confirms this nominee and the Democrats take the majority next year, they will try to add two or four—or who knows how many—Justices to the Supreme Court. Well, you know, there was another Democratic President who tried to do that—FDR. Even though he had a supermajority, the Democratic Congress rejected his efforts as an effort to politicize the Supreme Court.

Since the Democratic leader believes we should follow the wishes of Justice Ginsburg, I think it is worth reflecting on what Justice Ginsburg said about this. She was asked about this in an interview with NPR, and her statement was as follows:

Nine seems to be a good number. It's been that way for a long time. I think it was a bad idea when President Franklin Roosevelt tried to pack the court.

Well, unfortunately, it seems the Democratic leader and Democratic Senators are repeating the partisan mistakes of their predecessors in threatening the Court and threatening to pack the Court, which would be truly a radical and bad idea, as Justice Ginsburg explained.

Accordingly, what I am going to do is propose modifying the Democratic leader's resolution to delete his call that we leave this vacancy open, that we leave the Court with just eight Justices, which opens up the possibility of a 4-to-4 tie, not able to resolve a contested election, and leaving this country for weeks and months in chaos if we have a contested election in Novem-

ber. Instead, let's replace in the resolution the quote from Justice Ginsburg that packing the Court is a bad idea and have the Senate agree that packing the Court is a bad idea.

I am confident that, when I ask the Democratic leader, he is going to reject this because we are, sadly, seeing one side of the aisle embrace more and more dangerous and radical proposals, including trying to use brute political force to politicize the Court. That is neither consistent with the Constitution nor is it consistent with two centuries of this body's precedent.

Accordingly, I ask that the Senator modify his request and, instead, take up my resolution at the desk. I further ask that the resolution be agreed to, the preamble be agreed to, and the motions to reconsider be considered made and laid upon the table with no intervening action or debate.

The PRESIDING OFFICER. Does the Senator so modify his request?

Mr. SCHUMER. Madam President, reserving the right to object, I believe Justice Ginsburg would have easily seen through the legal sophistry of the argument of the junior Senator from Texas. To turn Justice Ginsburg's dying words against her is so, so beneath the dignity of this body.

I do not modify.

The PRESIDING OFFICER. Is there objection to the original request?

Mr. CRUZ. I object.

The PRESIDING OFFICER. Objection is heard.

The Senator from Iowa.

#### BIDEN TAX PLAN

Mr. GRASSLEY. Madam President, last week, former Vice President Biden released his Presidential tax plan. I wish he would release the list of people he is going to put on the Supreme Court, like he said he was going to do in June. He hasn't done that, and, I think, yesterday, he said he wasn't going to do it, but we do have his high-tax plan.

He has vowed to raise taxes immediately on U.S. businesses even though our country is recovering from the worst economic crisis since the Great Depression. Usually, when you are in that economic condition, you don't raise taxes, and the very last thing struggling Americans need, and particularly the businesses that create the jobs, is a massive tax increase at this time. Of course, Mr. Biden's tax plan shouldn't come as a surprise to anyone. His party seems to think the answer to every problem in America is to raise taxes and spend more money.

When he was Vice President, the U.S. corporate tax rate was the highest in the industrialized world. It isn't now because of President Trump's tax proposals and the tax reform legislation we passed December 2017. Prior to tax reform, U.S. companies were not competitive with their foreign counterparts. And there were constant headlines about companies that were moving their headquarters overseas, largely because of our outdated tax system.

In fact, a number of Mr. Biden's proposals make me think that he is reliving his time as Vice President. His plan to increase the corporate tax rate from 21 to 28 would very quickly take us back to those days. Once again, this country would be saddled with the highest business tax rates in the industrialized world, taking into account Federal and State taxes in this country. U.S. companies, both large and small, would see higher taxes than their foreign competitors in France, Germany, the UK, and other major trading partners. In some cases, those taxes would be as much as 15 percentage points higher.

Mr. Biden says our tax system encourages offshoring, profit shifting, and inversions. Back when he was Vice President, those things actually happened: offshoring, profit shifting, and inversions.

When Mr. Biden was Vice President, the U.S. tax law allowed companies to defer their foreign earnings until they were brought back to the United States. Why would you bring them back when we had the highest tax rate in the industrialized world?

That system allowed many companies to delay paying taxes on their foreign earnings, and in some cases, that could be indefinitely.

As part of tax reform, we specifically sought to end the parking of profits overseas. We wanted that money to come home so that money would be invested in this country and would create jobs.

That is why we enacted the tax on global intangible low-tax income—or GILTI, as it is referred to—which imposes a minimum tax on foreign earnings in low-tax countries.

And when Biden was Vice President, there were plenty of opportunities for what we call base erosion. That is why we created the base erosion anti-abuse tax—or the BEAT, as it is called—which targets deductible payments made to foreign affiliates. We also imposed limits on the deductibility of interest.

Together, these policies addressed loopholes so companies can't erode the U.S. tax base and avoid taxes.

While tax reform cracked down on notable abuses, it also had the positive effect of making the United States a far more attractive place to invest—not only for profits of U.S. companies coming home but for foreign investment in America as well.

We created the foreign-derived intangible income rules to incentivize companies to keep intellectual property in this country, not abroad.

We also allowed immediate expensing of investments to encourage companies to put their facilities and jobs here on U.S. soil. And President Trump has gone way beyond the new tax law to provide incentives to get industry back to this country.

Now, Mr. Biden may be harkening back to 2014, but let's all remember that companies then were announcing