

bring strategic litigation before the Court. Some appear as what they call amici curiae, friends of the Court. Some swap back and forth in the same series of cases; they exchange positions as the litigant group and a friend of the Court. But what they share is that they are funded by the same groups, and they don't disclose that to the Court in their filings. So it raises the proposition that this isn't just dark-money eels swirling around the Court, but these are, in fact, tentacles of a common operation.

It is particularly surprising that the Senator from Montana would not have concern about this because the State of Montana has been so strongly concerned about dark-money influence for so long. Indeed, it was a State of Montana case that went to the Supreme Court under, I guess, Attorney General Bullock at the time, where Senator McCain and I wrote a bipartisan brief warning of the dangers of all of this money.

So that is the first thing—dark-money influencers swirling around the Court in a way that is unprecedented, in my view, in judicial history.

The second is a pattern of decisions that has emerged out of that Court. Under Chief Justice Roberts, there have been 80 decisions that had these characteristics: One, they were decided 5 to 4—a bare majority. Courts usually strive to build stronger majorities because that strengthens the institution. Eighty cases, bare 5-to-4 majorities—by the way, bare partisan 5-to-4 majorities—and in every case, an identifiable Republican donor interest at stake that won—a pattern of 80 to 0.

Last, you have the behavior taking place politically around these nominations and how peculiar that behavior is.

Here is Senator DAINES talking about the effort to appoint Judge Garland to the Supreme Court. He said, "I don't think it's right." The Senator put it in terms of right and wrong. And he said, "I don't think it's right to bring a nominee forward in an election year." He said, "The American people have already begun voting . . . and their voice should be reflected in what we do going forward."

The very next occasion, the very next election in which the same set of circumstances presented itself, he and virtually everyone on the Republican side completely reversed their position about what is right in this matter. When you see reversals of position like that, that is a signal to me that there is something more going on.

So whether it is all the dark money, whether it is the peculiar pattern of decisions, or whether it is the unexplainable behavior of Members, it sends a pretty strong signal that something is, in fact, rotten in and around that Court.

I believe that every one of us should agree that we are entitled as Americans to a court that is not a pantomime court that goes through the rou-

time, the ritual of adjudication, while making sure that a small group of special interests actually wins the case at the end of the day. Nobody should be interested in a court that operates that way.

We don't know how bad the situation is because it is dark money, because it is still hidden, and until we figure it out, under the rule that it is premature to rule out remedies until you have a complete diagnosis, I will object.

The PRESIDING OFFICER. Objection is heard.

The Senator from Montana.

Mr. DAINES. I appreciate the Senator from Rhode Island bringing up dark money spent in our elections.

We all agree that dark-money spending has gotten out of control; however, the Senator from Rhode Island gives me an opportunity to point out the blatant hypocrisy from those in the Democratic Party on this very issue.

I know I speak for probably every Montanan, if not most, when I say that we are tired of being bombarded with never-ending television, digital, radio, mail pieces, and most of it is from dark-money organizations. And where do you think much of this dark money is coming from? It is from groups aligned with the minority leader and the Democrats. In fact, according to a September 2020 report by OpenSecrets, which tracks political spending, two dark-money groups aligned with the Democratic Senate leadership have spent more than \$44 million on political TV ads—more than any other outside group on television ads during the 2020 election cycle.

Let me say that again. These are two dark money groups aligned with Democratic Senate leadership that have spent more than any other outside group on television ads during the 2020 election cycle. Yet neither group has reported any spending to the FEC at all—zero.

You may ask yourself why the minority leader and his dark money allies are dumping so much money into races across our country, including Montana. The reason for that is the minority leader wants to be the majority leader and take control of the U.S. Senate. He wants to change the rules, destroy 151 years of precedent, and pack the Supreme Court with activist, liberal judges who will strip away our rights and our freedom.

Packing the Court is a direct attack on our Montana way of life. That is why, more than ever, my Court packing resolution is so important. It just says: Let's keep it at nine.

It is not that complicated. We cannot let this Court packing occur.

So while the Democrats continue to decry dark money—until it benefits their campaigns, of course—we must all take a stand in ensuring that our Montana way of life is protected.

For those reasons, I object.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. WHITEHOUSE. I just want to make sure that the record of the Sen-

ate is clear here. Democrats don't just decry dark money spending; Democrats have, over and over again, sought to end it. I know this because I was the floor leader on the DISCLOSE Act when we brought it right here in the Senate, and we came within one vote of getting rid of dark money. Every Democrat voted for that measure. Every Democrat voted to get rid of this scourge of dark money. Every Republican voted to protect it.

So, yes, do Democrats use dark money? We are playing by your rules. We are playing by Republican rules. We could have brought up the DISCLOSE Act again because it was the first order of business the House passed in H.R. 1, but the Senate majority leader didn't want that bill to get a vote.

So it is a little bit rich to hear a litany of woes about dark money from the party that is responsible for dark money happening. We could have gotten rid of it if we had passed my DISCLOSE Act. We could have gotten rid of it if we had passed H.R. 1. We did none of the above.

So if I may, I would like to ask that a resolution be passed.

UNANIMOUS CONSENT REQUEST—S. RES. 59

Mr. President, as in legislative session, I ask unanimous consent that the Senate proceed to the consideration of S. Res. 59, submitted earlier today; further, 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.

If I may, just briefly, before the Presiding Officer calls for objections, just describe the resolution, which expresses the sense of the Senate that dark money undermines the integrity of the judicial system and damages the perception that all people receive equal justice under law; that dark money organizations funded by anonymous donors are now playing an outsized role in the selection of judges and Justices of the Supreme Court of the United States and have spent millions of anonymous dollars on advertising campaigns supporting those selections; that the people of the United States have no idea who is funding these campaigns and what business those funders might have before the Court; that the Federalist Society and the Judicial Crisis Network and other groups have been a part of this and they are heavily dark money funded in this role; that then-Candidate Trump said of his judicial selections that they would "be hand-picked by the Federalist Society"; that his White House counsel boasted that the Federalist Society had been "in-sourced"; that the Washington Post reported that Leonard Leo, then of the Federalist Society, helped raise \$250 million from mostly anonymous donors into this effort—and I will leave the rest of the details to interested readers who want to pursue it.

But I would say to Senator DAINES' umbrage about dark money in Montana campaigns, if there is anything worse

than dark money in political campaigns, it is dark money around courts, and that is the problem we face right now, and that is what requires looking into.

The PRESIDING OFFICER. Is there objection?

The Senator from Montana.

Mr. DAINES. Mr. President, reserving the right to object, I have already made my remarks about the hypocrisy on this issue of dark money.

I think it is also worth pointing out that it was a very different situation in 2016, when Merrick Garland was nominated by President Obama. In every White House controlled by one party and the U.S. Senate by another, the President of the Senate, going back to 1888—in an election year when both the Senate and the Presidency are controlled by the same party, you move forward; when not, you don't.

That is exactly what we did. We had an election in 2016. President Trump won, and here we are in 2020 with Republicans controlling the Senate, and the White House began to move forward.

So with that, I object.

The PRESIDING OFFICER. Objection is heard.

The Senator from Rhode Island.

Mr. WHITEHOUSE. Mr. President, I would just add, that was not what Senator DAINES or anybody else on the Republican side said at the time. I was here at the time, and what was said at the time, particularly by Senator DAINES is "I don't think it's right to bring a nominee forward in an election year"—not when the party's control is split in one way or another. "I don't think it's right to bring a nominee forward in an election year" because the American people should have their voice "reflected."

That has not changed. This new emphasis on the party difference is fundamentally the rule of "because we can." If that is going to be the rule, if that is the rule that Republicans are prepared to adopt here—that what matters around here isn't precedent, isn't principle, isn't what is right, but is just because we can—then please don't feign surprise in the months and years ahead if we on the Democratic side follow that same rule that you are saying is the way to proceed today.

In the same way that it is at least ironic for Republicans to stand here complaining about dark money when it was the Republican Party that protected dark money here on the Senate floor, it will be equally ironic if the party should turn around later on and Democrats seek to use the measure of "because we can," and you raise objections. You are basically here on the Senate floor forfeiting your right to make those objections in the way you are behaving on this nomination.

With that, I will yield the floor to Senator SCOTT.

The PRESIDING OFFICER (Mr. DAINES). The Senator from Florida.

Mr. SCOTT of Florida. Mr. President, I yield back.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. WHITEHOUSE. Mr. President, given the time, I will reserve the other unanimous consents I have. I understand that we are going to close, and we are close to that time. So I appreciate Senator SCOTT's coming to the floor to respond to those, but I yield back.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. WHITEHOUSE. Mr. President, I will shortly ask to have a quorum call by noting the absence of a quorum, but before I do that, I wanted to point out just one issue of vocabulary, if you will, which is that the definition of "court packing" has actually two operative definitions on the Senate floor: One is to expand the number of judges; the other is to take advantage of existing vacancies and try to use them to change the balance of the courts and to put in judges who are predisposed to certain rulings.

That is, in fact, the meaning that Senator MCCONNELL gave to that term when he said that President Obama was seeking "to pack the D.C. Circuit with appointees" when he was filling vacancies; that Senator CORNYN used when he said President Obama wanted to "pack the D.C. Circuit"; what Senator GRASSLEY used when he announced President Obama's "efforts to pack" the D.C. Circuit; and when Senator LEE of Utah accused President Obama of trying to "pack the D.C. Circuit with unneeded judges simply in order to advance a partisan agenda."

So when we describe all that has taken place across the last three nominations—all the procedural abnormalities, all the peculiarities of funding, all the odd political behavior on the other side, the 180-degree, tire-squealing reversals, all of that, we are actually following the vocabulary that you all used about the D.C. Circuit, just to be clear on that point.

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. 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.

MORNING BUSINESS

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. DAINES:

S. Res. 758. A resolution expressing the sense of the Senate that the number of justices of the Supreme Court of the United States should remain at 9; to the Committee on the Judiciary.

By Mr. WHITEHOUSE:

S. Res. 759. A resolution expressing the sense of the Senate that dark money under-

mines the integrity of the judicial system and damages the perception that all people receive equal justice under law; to the Committee on the Judiciary.

ADDITIONAL COSPONSORS

S. 3103

At the request of Mr. DURBIN, the name of the Senator from South Dakota (Mr. ROUNDS) was added as a cosponsor of S. 3103, a bill to amend title XVIII of the Social Security Act to restore State authority to waive for certain facilities the 35-mile rule for designating critical access hospitals under the Medicare program.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 758—EXPRESSING THE SENSE OF THE SENATE THAT THE NUMBER OF JUSTICES OF THE SUPREME COURT OF THE UNITED STATES SHOULD REMAIN AT 9

Mr. DAINES submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 758

Whereas the Act entitled An Act to amend the judicial system of the United States, approved April 10, 1869 (commonly known as the "Judiciary Act of 1869") (16 Stat. 44; chapter 22), states that "the Supreme Court of the United States shall hereafter consist of the Chief Justice of the United States and eight associate justices";

Where the Supreme Court of the United States has consisted of a Chief Justice and 8 associate Justices for 151 years;

Whereas previous attempts to increase the number of justices on the Supreme Court of the United States have been rejected and widely condemned by individuals of both political parties;

Whereas, in 1937, when former President Franklin Delano Roosevelt proposed the Judicial Procedures Reform Bill of 1937, a bill that sought to expand the number of justices on the Supreme Court of the United States from 9 justices to 15 Justices, he was harshly criticized by both parties and his own Vice President, John Nance Garner;

Whereas, the 1937 Senate Judiciary Committee report, in response to the Court-packing plan by President Roosevelt, decried the plan as "a needless, futile, and utterly dangerous abandonment of constitutional principle", that "[i]ts ultimate operation would be to make this government one of men rather than one of law" and that it was "a measure, which should be so emphatically rejected that its parallel will never again be presented to the free representatives of the free people of America";

Whereas, during the Trump Administration, Democrats have refused to recognize the legitimacy of nominations made by President Trump to the Supreme Court of the United States and have advocated for packing the Court with additional justices appointed by a future Democrat president;

Whereas, in 1983 during a Senate Judiciary Committee hearing, then-Senator Joe Biden noted that Court packing was a "bonehead idea" and "a terrible, terrible mistake" that "put in question for an entire decade the independence of the most significant body—including the Congress, in my view—the most significant body in this country, the