

was totally her decision; and it was lifesaving.

But if Judge Barrett were Justice Barrett, if the right to abortion were a thing of the past, Madeline's pregnancy would have been a death sentence. As she put it, "This isn't a right vs. left issue for a lot of us, it's life or death—and knowing [that] is at stake . . . is terrifying."

Madeline isn't the only person who is terrified. If Republicans win their lawsuit, over 130 million people with pre-existing conditions like Madeline could be charged more for their health insurance, have benefits excluded, or be denied coverage entirely.

Over 20 million people like Mays and Rhianon could lose coverage for Medicaid expansion, the exchanges, or their parents' plans. Insurance companies could exclude essential health benefits countless other patients rely on, like prescription drugs or maternity care or therapy or wheelchairs or much more.

Half the country could be charged more for health insurance just because they are a woman. Seniors could face thousands more in healthcare costs with the return of the age tax and the Medicare doughnut hole. Lives of people with disabilities could be upended if they lose access to home- and community-based services that help them live independent lives or if insurance providers can discriminate on the basis of disability by denying coverage or charging more.

And people with expensive healthcare needs—cancer diagnosis, a medically complicated pregnancy, a fight with COVID-19—could be left with an enormous bill since insurance companies won't have to cap patients' out-of-pocket costs but will be able to place annual and lifetime limits on their benefits.

And we cannot forget the communities of color who already face worse outcomes due to systemic racism in our healthcare system who would be hit hardest by so much of the damage of the Republicans' healthcare lawsuit.

Healthcare isn't all that is at stake for families—far from it. Fundamental rights and protections and opportunities for workers are on the line. The fate of immigrants and refugees and asylum seekers—families and Dreamers who came to our Nation in search of a better life and brighter future are on the line. And hard-fought victories for the LGBTQIA+ community are on the line.

Matthew, in my home State of Washington, and his husband were able to marry, to adopt, and fortunate to be able to form a loving family. But that might not be possible for LGBTQIA+ couples like them in the future if the highest Court in the land turns back the clock and refuses to see them as equal under the law.

The bottom line is that this Supreme Court fight is not about politics. It is about the lives of hundreds of millions of people. If Republicans don't believe my constituents, I invite them to ask

their own. I encourage them to listen because I guarantee people across the country know what Republicans have been saying, know exactly what Republicans are voting for, and they are speaking up about it.

I am here sharing their stories on the Senate floor, and Democrats brought their stories to the committee room so that Republicans have no choice but to hear them.

When we vote, Republicans will have no excuse to pretend they do not know exactly what is at stake. Instead, every one of them will have a simple choice. Will you listen to the families who are speaking up, the people who are saying to you, in no uncertain terms, that if you put this judge on the Court, if you win this partisan lawsuit, it could kill me or will you ignore them?

If Republicans truly want to reassure their constituents and want to show they are listening, the choice is simple: Vote no on this nomination. For those who choose to put this President and the profoundly lost Republican Party above anything else, to those Republicans who are capping these brutal last 4 years off with such a staggering show of fealty and partisanship and callousness, know the consequences of this vote will be felt long after this President is gone from office, regardless of the outcome of this election. People of this country will not forget and neither will your Democratic colleagues.

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.

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

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

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

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

Pursuant to rule IV, paragraph 2, the hour of 12 noon having arrived, and the Senate having been in continuous session since yesterday, the Senate will suspend for a prayer from the Senate Chaplain.

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Holy God, as our lawmakers strive on this decisive day in history to accomplish Your purposes, show them how to discern Your will. May they renew their minds through the nourishment of Your Holy Word. Lord, prepare them to be sober-minded and filled with Your Spirit, accomplishing the tasks that receive Your approval. Keep them from conforming to worldly impulses as they strive to ensure that their behavior will rightly represent You. May they conduct themselves with holiness, god-

liness, and civility, waiting for the day when You will return to establish Your Kingdom on Earth. Lord, prepare us all to stand before You in peace without spot or blemish.

We pray in Your powerful Name. Amen.

The PRESIDING OFFICER. The Senator from Utah.

NOMINATION OF AMY CONEY BARRETT

Mr. LEE. Mr. President, it is an honor and a privilege to speak on behalf of the confirmation of Judge Amy Coney Barrett to the Supreme Court of the United States today.

One of Judge Barrett's familiar themes, one that she has invoked in speeches when speaking about the Constitution and about the role of the Federal judiciary, involves a line from *Odysseus*. It involves a reference to the "Odyssey."

She says:

The Constitution is like when *Odysseus* ties himself to the mast to resist the song of the Sirens. And he tells his crew, 'Don't untie me no matter how much I plead.' That's what we've done as the American people with the Constitution. We've said . . . it's the people sober appealing to the people drunk, [that when you are tempted to get untied], that when you are tempted to get carried away by your passions and trample upon the First Amendment rights or minority rights, this document will hold you back.

Judge Barrett points out a very critical matter here, an absolutely essential matter, which is, first of all, that the whole point of having a Constitution involves restraining and restricting government. As it relates to the judiciary, it involves acknowledging the necessarily limited, finite, and confined role of the judiciary.

Sometimes when people refer to the three branches of the Federal Government, they will get it backward. Sometimes people will refer to the judicial branch as if it were the most powerful. This gets it exactly backward. It was designed to be—and, in fact, is—the least dangerous branch of the three branches. That is not to say it is not the most dangerous of all. Government, generally, is something that while necessary is also dangerous just like water or fire or wind or oxygen or any of the things that we depend upon for our day-to-day existence.

Government, including the power of the judiciary itself, has to be managed carefully, and it has to be channeled. If it is not, we become dangerous. So that is why we have a Constitution. It is to restrain government because government is force. Government is nothing more or nothing less than the collective, coercive use of force. We use it to protect life, liberty, and property. We use it to make sure that people don't harm each other and to make sure that we are protected from our adversaries within and without our borders, our boundaries. Yet, if we lose sight of what government does and what it doesn't do, what it can and cannot do, what it may or may not do, or what any branch of the government may do, we find ourselves in troubled, troubled waters.

The reason I say that the judicial branch is the least dangerous of the three is that it doesn't possess the power to say what should be, only what is. The power of the legislative branch, where we serve, is the most dangerous of the three because we have the power to prohibit conduct. We have the power to prescribe policy. We make the law.

The second most dangerous power is probably that which is held in the executive branch. It has been made more dangerous over the last 80 years as Democrats and Republicans alike have ceded more power to the executive branch, voluntarily relinquishing the role, which is uniquely, distinctively, and by constitutional mandate ours, over mostly to unelected, unaccountable bureaucrats who are, in some cases, the President of the United States or those who serve under his employ.

The judicial branch possesses neither the power of the purse nor the power of the sword. We have the power of the purse. We spend the money. We prescribe the policy. The executive branch has the power to implement and force and execute the laws, hence the power of the sword. The judicial branch possesses only the power to decide what the law says. In that respect, it is operating as if through a rearview mirror. It is not saying what will come or what should be but what already is, what the law means as it already exists.

In order to do that, the judicial branch has to come to a conclusion that our laws consist of words; that those words have meaning; and that, in order to tie themselves to the constitutional mast in order to make sure that they themselves are able to resist the siren call of power and to keep each of the three branches of government in check insofar as it is their prerogative to do so, they have to check back continually and check themselves constantly with the words of the U.S. Constitution and the words of the law itself.

Yes, it matters. Yes, these things are easily ignored. These powers are easily abused. In fact, they often have been abused. There are a number of reasons for this. They have to do mostly with human nature itself. Human beings, while redeemable, are flawed. They crave power. They tend to act toward those things that make them more powerful if they are already in positions of government authority. That is why it is easy to understand why, from time to time, the courts stray.

Now, I want to be very clear at the outset. The Federal court system, notwithstanding its flaws, is the best of its kind in the world. There is no judicial system anywhere in the world that I am aware of that is as respected or as consistently dedicated to the rule of law, to interpreting the law consistently and faithfully as is our Federal court system.

The Supreme Court of the United States, while it has made some very bad decisions along the way, for the

most part, gets things right. In fact, it is something that may come as a surprise to many Americans that of all of the decisions that the Supreme Court decides in a typical year, in modern times, it is most common that the Supreme Court decides those questions either unanimously or with near unanimity. Most cases at the Supreme Court are decided with a vote of 9 to 0 or 8 to 1 or 7 to 2—the overwhelming majority, in fact.

Keep in mind, these are cases that with very few exceptions have proven difficult for the lower courts. They have caused some of the greatest legal minds in our country to address the same finite legal questions and to come up with different results. Yet those on the Supreme Court of the United States, for the most part, decide these cases with unanimity or nearly unanimity. Why?

Well, most of the time, they tie themselves to the mast. They remember what is their charge. They remember that they are there not to decide matters of policy but to decide questions of law. They can't just reach out and say, I don't like this type of law. Let's go after this type of law and attack it or undermine it or let's pursue this line of law that should be in place and isn't.

They don't have that authority. They have to have a case or a controversy, meaning one or more parties that can properly invoke the jurisdiction of the Court, and they have to have an actual, live, ripe dispute between people who are actively affected by the law. Then and only then may the Court act.

From time to time, however, the Court has been tempted to give in to the siren call—to make law. It isn't always with the same political objectives in mind, and those objectives can change over time. To cite one of many examples that we could point to today, I am going to refer to a decision made by the Supreme Court of the United States in 1905 in a case called *Lochner v. New York*.

In that case, the State of New York had enacted some laws governing minimum wage and maximum hour issues for bakery employees in the State of New York. The Supreme Court of the United States decided that those laws were bad and that they didn't like them, and on that basis, it said in essence: These laws are bad, and they are so bad that they must be unconstitutional. They are so bad, and they lack any legitimate purpose that we can see. We are, therefore, going to deem this part of the due process protections, the due process protections that are covered by the 14th Amendment to the Constitution and allow us to impose our judicial authority on State law and invalidate that State law.

Their reasoning essentially amounted to that: We don't see any good reason for this law. We, therefore, deem it incompatible, inconsistent, irreconcilable with due process, and we hereby strike it down as unconstitutional.

This, in my view, was wrong. It was a problem. It was a political dispute that was becoming increasingly common as the Progressive Era was gaining momentum.

Conservatives in the country were losing many of these battles in many lawmaking bodies, including, apparently, the New York State legislature. They didn't like it. So these particular jurists on this particular day chose to exercise their authority as jurists to strike down that law even though it was really a political argument they were making, even though it wasn't within their jurisdiction.

So they stretched the meaning of the law. They stretched out the concept of due process so that they could declare this to be a constitutional violation.

They took debatable matters beyond debate—not only beyond debate, but they took them outside the proper realm of State law jurisdiction and outside the context of legislation and debate surrounding such legislation within political branches of governments generally, whether State or Federal. They said: This is now Federal. We are going to make it Federal, such that you can't legislate in this area because we don't like it, and because we don't like it, we are going to say that it is part of the Constitution; it is part of your due process protection, notwithstanding the fact that due process, as the name implies, is about process. It is about making sure that you have your day in court, making sure that you have access to tools connected to fundamental fairness on procedural questions, not an outcome.

So in *Lochner v. New York*, the Supreme Court Justices untied themselves, as it were, from the mast of the Constitution. They did so in a way that was harmful and unsustainable. They did so notwithstanding the fact that there was no logical end point to this. It was very difficult to conceive of any question of public policy that could not and, ultimately, would not come before the Supreme Court of the United States if you used their standard of analysis: This law doesn't really do anything good. It is not something that has a legitimate purpose, so we are going to strike it down.

Fortunately, the Supreme Court of the United States—it took many years to do it—eventually saw the error of its ways and eventually overturned *Lochner v. New York*. In many instances we ought to look back at that moment and say that we don't really want the Supreme Court taking debatable matters beyond debate. That is how political accountability works in this country. If you have something that you don't like as a matter of policy, you ought to try to change it before the legislative body in which it is properly considered. Now, if it is unconstitutional, yes, it should be unconstitutional. I am not one who focuses obsessively on judicial activism for fear that by focusing obsessively on judicial activism, we will perpetuate the

idea that really what we want is judicial passivity. We don't want either. It is just as bad to invalidate as unconstitutional a law that is, in fact, not unconstitutional as it is to leave intact an unconstitutional law that is constitutionally defective. Both are equally repugnant to the Constitution. Both represent an effort by jurists to untether themselves from the mast of the Constitution and from the finite judicial role.

Justice Scalia was someone who was nominated to the Supreme Court of the United States in 1986. He was confirmed overwhelmingly, by a vote of 98 to 0, if I recall.

Justice Scalia was someone who, while a law professor, and later, while serving as a judge on the U.S. Court of Appeals for the DC Circuit, had acknowledged the need for judges to keep themselves tethered to the mast, had acknowledged the need for them to focus on deciding cases based on the law rather than on the basis of favorable policy outcomes.

This was at once a somewhat revolutionary idea at the time, and yet it wasn't overwhelmingly controversial at the time, given the fact that he was confirmed by a vote of 98 to 0 to the Supreme Court of the United States.

But over the next three decades or so, while he served on the Supreme Court of the United States, Justice Scalia revived—he restored—this concept, this constitutional understanding of the proper role of government and of the proper role of each branch of the Federal Government, including and especially the judicial branch of the Federal Government.

During his service on the Supreme Court of the United States, he was able to mentor a number of law clerks, including Judge Amy Coney Barrett.

Judge Barrett has explained that she believes in the same line of reason. She believes that judges and Justices need to tether themselves to the mast of the Constitution. They need to confine their role to that that involves judging, and they need to not covet and, ultimately, try to overtake the role of the elected lawmaker or the role of the executive. One has the power of policy and the purse; the other, the power of the sword.

But as Alexander Hamilton explained in Federalist 78, there is a profound difference between these powers. The legislative branch, he explained, has the power of will. It exercises will when it decides what should and should not be within the law.

The power of the judiciary, by contrast, involves only the power of judgment, to decide what the law says. That is the kind of jurist we need today.

Now, make no mistake—this is not a conflict that involves a desire to put on the Supreme Court of the United States people who will wage political warfare within the judicial branch from the conservative side. It is not that. It is not anything close to that. In fact, it is the opposite of that.

We don't want Judge Barrett on the Supreme Court to be our advocate. We want Judge Barrett on the Supreme Court to decide law, to decide cases based on what the law says, to keep herself tethered to that mast because it is through that mast that our rights are protected, that we are able to elect people who will exercise sound judgment in deciding what the law should be. And, yes, we want them to strike down laws when they are unconstitutional. But, no, we don't want them striking them down simply because of a policy disagreement.

In fact, all of our political, our economic, and our civil rights end up being tied to this very feature within our government. They are all protected by the willingness of our jurists to keep themselves tethered to the constitutional mast, just as Odysseus insisted on being tied to his. Notwithstanding how hard he might plead upon hearing the call of the sirens, he knew that it was important for him to stay on task, to stay focused on his job.

Judge Amy Coney Barrett is an exceptionally well qualified and talented legal mind and jurist. She is bright. She is articulate. She is, as we have seen, unflappable, and she is willing to set her mind on that course—to uphold and protect and defend that document that I believe was written by wise men raised up by Almighty God for that very purpose.

That document, insofar as we have followed it, has fostered the greatest development of the greatest civilization the world has ever known. I hope that it ever will be that way because it is a strong and sure foundation upon which we have built, but we need people who believe in that foundation and are willing to tie themselves to it.

Thank you.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SHELBY. Mr. President, during my time in the U.S. Senate, I have had, right here, the privilege of being part of the confirmation process for each Justice currently sitting on the Supreme Court—yes, each one. As such, over the years I have had the opportunity to meet with many of the Nation's most talented jurists. At this time, I consider Judge Amy Coney Barrett to be the most qualified Supreme Court nominee I have encountered in my 34 years in the U.S. Senate.

Let me explain.

Education—that is important. Judge Barrett, born and raised in the New Orleans area, is the eldest of seven children, as has been spoken of here. And if you take a look at her scholastic credentials, you know she was an exceptional student. Judge Barrett graduated magna cum laude from Rhodes College in Memphis, TN, and was inducted into Phi Beta Kappa. She also graduated summa cum laude from Notre Dame Law School, where she was the executive editor of the Notre Dame Law Review and finished first in her class.

Look at some of her professional experience. This is important.

Judge Barrett is no stranger to the courtroom. She has decades of exemplary professional legal experience that I believe deem her well qualified to sit as a Supreme Court Justice.

Following law school, Judge Barrett clerked for Justice Laurence Silberman of the U.S. Court of Appeals for the District of Columbia Circuit. He is a great jurist in his own right, Judge Silberman.

One year later, she had clerked at the U.S. Supreme Court for Justice Scalia, one of the renowned judges, gaining fundamental legal experience that would help shape her future legal career.

From there, she practiced law and taught as a visiting professor at George Washington University Law School here in Washington.

Judge Barrett went on to serve as a law professor for 15 years at her alma mater, Notre Dame University Law School. In that period of time, she was awarded Notre Dame Law School's Distinguished Professor of the Year Award three separate times.

Most recently, in 2017, Judge Barrett was confirmed right here in the Senate as a judge for the U.S. Court of Appeals for the Seventh Circuit. And during this time on the Seventh Circuit Court of Appeals, she authored 79—79—majority opinions as a circuit court judge.

Let's review for a minute the judicial philosophy and temperament of Judge Barrett. I think that is highly important. While her education and professional experience are certainly noteworthy, it is her judicial philosophy and temperament that really set her nomination apart, I believe, from a lot of others.

I am a firm believer that any nominee to the Supreme Court must and should demonstrate that he or she consistently and honorably applies the law as it is written, impartially and equally to all individuals.

Judge Barrett has, time and again, shown through her opinions and her statements that she will base her decisions on the law and the Constitution, not on personal policy preferences, as it should be.

She has also demonstrated a deep commitment to the Constitution and its protections established by our Founding Fathers.

When considering potential nominees to the Supreme Court, I find one's judicial temperament to be vitally important.

The American Bar Association Standing Committee on the Federal Judiciary, which consists of 19 lawyers who conduct nonpartisan peer reviews of Federal judicial nominees, relies on confident assessments of judges, lawyers, law professors and deans, community leaders, and others with knowledge of the nominee.

I want to share what some of them have said about her. For Judge Barrett, the committee invited 944 people to

provide input into whether she is qualified for the Supreme Court. I would like to share here in the Senate this afternoon just a few of the comments that the American Bar Association committee provided.

They said about her, “whip smart, highly productive, punctual and well-prepared.”

“A brilliant writer and thinker.”

“An intellectual giant with people skills and engaging warmth.”

“The myth is real. She is a staggering academic mind.”

Judge Barrett “has demonstrated stellar judicial temperament in all settings: She is often described as a ‘good listener’ who makes time for people, whether they are law students, law clerks, colleagues or friends.”

Of other note here, I have comments from Randall Noel, the chair of the American Bar Association Standing Committee, and he said Judge Barrett “is incredibly honest and forthright.” Judge Barrett is an “exemplar of living an integrated life in which her intellect, integrity and compassion weave the different threads of her life together seamlessly.” Think about all this. He also says: “All of the experienced, dedicated, and knowledgeable sitting judges, legal scholars, and lawyers who have worked with or against Judge Barrett had high praise for her intellect and [her] ability to communicate clearly and effectively.”

It is no surprise that the American Bar Association found Barrett’s professional competence to have exceeded their high standards for Supreme Court nominees.

As a country, we should seek, I believe, to have judges who are thoughtful, fair-minded, and respectful. Judge Barrett exemplifies all of these traits.

In conclusion, I believe that the role of the Constitution of advice and consent that we talk about here to the Supreme Court nominees to be one of my most important responsibilities here in the Senate. Judge Amy Coney Barrett is as qualified for the U.S. Supreme Court as any nominee I have encountered in 34 years here, and I have the utmost confidence that she will serve the Court and this country with honesty and integrity. I look forward later today to voting to confirm her nomination and encourage my colleagues to do the same.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant legislative clerk proceeded to call the roll.

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

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

BREAST CANCER AWARENESS MONTH

Mr. CASSIDY. Mr. President, I had the privilege to speak on the nomination of Amy Coney Barrett a couple of days ago, for her qualifications and the uniqueness she will bring to the Court,

which will serve our country well. Today, I would like to speak on a different topic.

October is Breast Cancer Awareness Month, and I rise to pay respect to those who have lost their lives, to those who currently have disease, and to those who work so hard to save these patients.

A little personal—my wife, Dr. Laura Cassidy, is a retired breast cancer surgeon, so it is an issue which has always been very near to our house.

This year, it is estimated there will be almost 280,000 new cases of invasive breast cancer among women and about 2,600 among men—often not realized that men are affected as well. About 49,000 women are estimated to contract ductal carcinoma in situ, or so-called DCIS. About 43,000 Americans every year will die from breast cancer.

Breast cancer, of course, is hardest on the patient, but the diagnosis has a ripple effect through the family. I mentioned that my wife Laura is a retired breast cancer surgeon, and she would tell me that when she would deliver the diagnosis to a patient, she would look at the woman and say: “You have breast cancer.” The patient would be stoic, and her husband would cry. It points to the fact that while cancer is a terrible diagnosis for anyone, when that “anyone” happens to be the center of a family, it radiates out from her diagnosis to touch everybody in her immediate family, in the generation above, and perhaps the generation below.

We have been inspired to make gains against cancer in general but against breast cancer in particular for the centrality that women play in our society and, of course, the deadliness of breast cancer.

So it takes courage to address the disease if you have a diagnosis, and resiliency and determination just seem to develop in those who are so diagnosed.

The support of family and friends means a lot more to the patient than the family will ever know, so I encourage those who know somebody with breast cancer in particular that I am speaking of but any form of cancer to reach out. Simply being there could make a tremendous difference in the fight to survive.

Let me say, there is always hope. In addition to early detection, there are steps that people can take to reduce their risk of contracting breast cancer. Age is the primary risk—no, the primary risk factor, my wife used to say when speaking to a crowd, the primary risk factor for breast cancer is being a woman, to emphasize that all women have a risk for breast cancer. So don’t just say that because I am not this or that, I am not at risk. Recognize that all women have a risk.

Age would be the next risk factor, being that the older you are the more likely that you can develop it. Women who have children after age 35 may be at higher risk. The more children a

woman gives birth to may lower risk. But, again, the primary risk of breast cancer is being a woman. So every woman should take the disease seriously and take steps to reduce her risk for developing breast cancer, increasing the chances that it is detected if she does develop it, and increasing the chance for a successful treatment if it does develop.

There are steps you can take to reduce the risk. Regular exercise can reduce the risk by as much as 20 percent. Breast feeding lowers the risk of breast cancer. Eating fruits and vegetables, especially carotenoids, which are in carrots, as you might guess from “carotenoids,” avoiding obesity, moderation in drinking alcohol—all can reduce risk, and all should be practiced.

Although a cancer diagnosis can be shocking, again, you can do things to detect it at an earlier stage and improve the chance of a successful outcome. The American Cancer Society advises women 40 to 44 to consult with their doctor for regular clinical exams and on guidance as to when it is best to have a mammogram. Women who are 45 to 54 should have an annual mammogram, and those older than 54 and in good health should have a mammogram every 2 years. But, again, check with your doctor. All of these need to be customized for the patient.

Patients should also do self-exams for warning signs. This could be a change in the look or feel of the breast or possible discharge from the nipple. The presence of a lump, swelling, discoloration, and changes in size and shape are common signs. If these are present, she should consult with her healthcare provider.

If someone doesn’t know how to do a breast self-exam, look on the internet. There are all kinds of resources that can help somebody know if they are just not sure how to do it.

Lastly, the treatments for breast cancer continue to improve. The surgical radiation therapy and medical therapies are improving every year. A diagnosis of breast cancer is not a death sentence; it is the beginning of a treatment regimen which can cure.

Now, by the way, let me diverge just a second from October being Breast Cancer Awareness Month to the contemporary thing we are speaking of.

My Democratic colleagues on the floor have been imagining how a Justice Amy Coney Barrett would rule on various topics—frankly, saying things that are designed to cause fear, and they are doing it for political gain. But I think everybody on this side of the aisle—all Republicans have a commitment to make sure that all Americans have healthcare and that they have coverage for preexisting conditions.

I am a doctor who worked in the public hospital system for many years, but some stories particularly stand out. This is a patient of my wife’s, and she was probably about 45 and had three children. Her husband had died or they divorced—I forget which. They lived in

a very nice neighborhood in my hometown of Baton Rouge. She drove a nice car. But when her husband left, however he left, she had decisions to make, and she made the decision to go without health insurance so she could afford other things for her family.

At some point along the way, she felt a lump in her breast, but without health insurance, she didn't know what to do. My wife was a breast cancer surgeon in private practice, but eventually someone connected this patient with my wife. When she came to see my wife, she had waited so long for evaluation that the cancer was growing out of her skin. It is called fungating, like a mushroom grows out, except it wasn't a mushroom; it was cancer eating through the skin. She had everything otherwise—great house, good car, wonderful kids in parochial school.

It is that sort of example that touches us all, that lets us all realize that there is a personal reason why we all care about everyone having access to healthcare, why we all care about folks having coverage for preexisting conditions.

I give congratulations to my colleague sitting in the chair, the Senator from North Carolina, who brought a bill up that would address preexisting conditions. But on several occasions, my Democratic colleagues have objected to your bill being passed that would protect those with preexisting conditions.

So I will end this paragraph where I began it. As I digress a little bit from Breast Cancer Awareness Month in October, I will point out that my Democratic fellow Senators raising the issue of preexisting conditions in the setting of Amy Coney Barrett seem to be doing it more for political gain because the bill that my colleague from North Carolina offered would have addressed the issue, but they opposed it uniformly, as if they want an issue to campaign on but not a solution to the problem.

So let me conclude. As October comes to a close, let us reflect on breast cancer victims not only in the final days of Breast Cancer Awareness Month but throughout the year. Know the risk factors, know the warning signs, and screen regularly to catch early. Doing so saves lives. It is important for the person who may have breast cancer. It is important for us all.

I yield the floor.

The PRESIDING OFFICER. The Senator from Colorado.

COLORADO WILDFIRES

Mr. GARDNER. Mr. President, yesterday I came to the floor and spoke about the forest fires in Colorado, and luckily we have had a great deal of snow on some of the most problematic conflagrations, and it has slowed the fires down tremendously and has given us a chance to fight back and make some containment progress. So the news on the fire front is generally a good-news story today, with more challenges to come down the road.

NOMINATION OF AMY CONEY BARRETT

Mr. President, this morning I come to the floor to talk about the nomination of Judge Amy Coney Barrett to be placed on the U.S. Supreme Court. That will be the third Supreme Court Justice I have had the honor and privilege of voting on this Congress and the previous Congress, including Neil Gorsuch, Colorado's own Neil Gorsuch.

We have heard a lot of discussion about the Federalist Papers and our Founding Fathers and the intent and the role of the Senate. The language of the Constitution points out that the President shall nominate and, with the advice and consent of the Senate, place Justices throughout our judiciary.

We have heard in Federalist 69 by Alexander Hamilton, the President is to nominate and, with the advice and consent of the Senate, to appoint Ambassadors and other public ministers, Justices of the Supreme Court.

In Federalist 69, Hamilton goes on to compare the power of appointment that the President has or the Chief Executive has to that of the King of Great Britain, even comparing the power of appointment to the Governor of New York—Alexander Hamilton in Federalist 69 did—and he stated that both the King and the Governor of New York at that time had a greater power of appointment than the President due to the requirement of advice and consent and the ability of the Governor of New York to actually cast a vote on the matter himself. To quote Alexander Hamilton, "In the national government, if the Senate should be divided, no appointment could be made." He pointed out that the President has a concurrent authority in appointing offices and the President is not the sole author of these appointments.

It is clear in Alexander Hamilton's writings that this power was intended to be diluted; that it was to be balanced amongst the Chambers; that the judicial branch was viewed as the weakest of the three branches of government, not because it wasn't equal in power but because it didn't have some of the mechanisms that the other two branches do to protect it.

While the President makes that appointment, it is this Chamber—the sole duty of this Chamber, in the Constitution, to agree or disagree with that nomination.

We saw that disagreement occur in 2016 when this Chamber did not give its consent to a nomination. Later, Neil Gorsuch—Colorado's Neil Gorsuch—was confirmed to the Supreme Court. And just a matter of a little more than a month ago, we lost a trailblazing leader in Justice Ruth Bader Ginsburg, leaving open another seat on the Supreme Court that we are now asked to fill.

Federalist 78, also written by Alexander Hamilton, has been referenced many times on the floor this past year, and particularly during this debate. He wrote about the Constitution being fundamental law, that it is the will of

the people and that the courts are the only true guardians—the only true guardians—of the Constitution; that the Constitution is the highest man-made law, that any legislative act to the contrary must be held void by the court, since "the interpretation of the laws is the proper and peculiar province of the courts"—that it was the guardian of the Constitution.

When Madison was talking about this in the First Congress, he introduced, of course, the amendments that became what we call the Bill of Rights today. He said that the courts would "consider themselves in a peculiar manner the guardians of those rights; they would be an impenetrable bulwark against every assumption of power in the legislative or executive; they will be naturally led to resist every encroachment upon rights expressly stipulated for in the Constitution by the declaration of rights."

That idea of this "guardian of the Constitution" that the courts play is a hallmark of our democracy today. And whether or not a Justice has the support of a Member of this Chamber, I don't believe that anyone would deny that role that our courts must play, and that is that role as guardian of the Constitution.

It is clear in the confirmation hearing for Judge Barrett that some people believe the guardian of the Constitution takes on a different hue, that there is more to that role than simply looking at the law and making a decision based on the law. As some called it—I believe it was Justice Scalia and perhaps paraphrased by Justice Gorsuch—a judge's role is to call balls and strikes. I would add to that it is not their role to call the pitch.

But what we saw during the Judiciary Committee hearings, of course, was a viewpoint of some that a judge should be more than calling balls and strikes. A judge should be, in effect, a super legislator; that a judge should accomplish things that this Chamber, this Congress, has failed to do; that if there is a shortcoming in a policy, a judge or Justice would look the other way and fill in that policy or write that policy or proactively create that policy.

That is, again, going back to what we have known throughout this country as the guardians of the Constitution. The guardians of the Constitution don't make up policy. They don't fill voids of new policies that the legislators didn't do or couldn't do because they couldn't get it through their Chamber. So they decided they would count on a judge to do it somewhere else. That is not the role of the courts. It is certainly not the role of a guardian of the Constitution.

A guardian of the Constitution is somebody who looks at the law and makes decisions on the law and upholds and protects that will of the people, the fundamental law of the people. And, of course, an activist judge—an activist Justice—would be reaching

into the law to fit their own personal opinion or beliefs to craft something that they believe is perhaps more in line with what they thought somebody wanted and more in line with their own opinions, instead of looking at that letter of the law.

I think it is important that we keep in mind that that is not the role of the courts. If this Chamber can't pass a policy or a law, if it can't have its own victory in carrying the day in an argument, it is not up to a judge or a Justice to fill in the blank. They have to rule and carry out the law.

So that is a real key distinction that we saw during the Judiciary Committee debates—that role of policymaker that some wish Judge Barrett to be versus that role of protector, that guardian of the Constitution, calling balls and strikes.

I look at any nominee for the courts, whether it is for district court or appellate court or the Supreme Court, through this lens: Are they going to protect that Constitution? Are they going to uphold the Constitution? Are they going to fight and defend and be the guardian of the Constitution? Are they going to protect and do the same with the law, outside of the Constitution—the laws, the statutes that this body enacts and passes and are signed into law by the President? Will that judge or Justice uphold and defend that law—not make that law, not change that law but uphold the law? And, of course, there is that guardian of the Constitution role that they will play.

There is no doubt that Judge Barrett's qualifications are immense. Her qualifications as a member of our great American community and somebody with a beautiful family is mind-boggling. Jaime and I have a challenge with our three kids, making sure they get to school on time and making sure they are getting their homework done. I can't imagine seven children, while also carrying the schedule that their family does. But it is a testament to the incredible power and the leadership of their family and their dedication to being upstanding citizens of this Nation and giving back to this Nation with this new pursuit.

We know about that key intellect that has been shared with this country over the last several years in the Seventh Circuit Court of Appeals. We know of her time as a law professor, and we have had the opportunity to look over a decade-plus worth of work.

We know that she is a person of faith in our community and has come under incredible attacks because of that faith. We know in this Chamber that our Constitution actually forbids the kinds of attacks that we have seen on her faith. Our Constitution makes it clear that there is no religious test. Our Constitution actually makes it very clear that you cannot vote or deny public service appointment to someone because of their religious beliefs.

We have seen it done. We have seen it tried, especially over the last Congress.

We saw it done at the Budget Committee with the nomination of Russ Vought to be the deputy director of the Office of Management and Budget, when a colleague of ours basically said that because of his deeply held Christian beliefs that he was not qualified to be a public servant in this country.

I hope the American people are hearing what is happening in some of these debates, that Amy Coney Barrett is attacked because of her faith. But it is not just limited or isolated to her. There are others who are more and more accustomed, or who feel more and more empowered, emboldened to use a person's faith to deny them their vote to a position in our government. That is an unconstitutional test that some in this Chamber are starting to rely on, and I hope the American people will use this opportunity to see through it, to reject it, and to get back to the values of our Constitution and the intent of that language.

I had a conversation with Judge Barrett. I had a chance to visit with her, and I talked about those three qualifications to uphold the Constitution. Will you fight to protect the Constitution? Will you protect the law? And will you avoid being that activist legislator? Will you avoid legislating from the bench? And I received her commitment. That is exactly the kind of judge that she will be, somebody to be that guardian of the Constitution, the protector of law, and to call balls and strikes.

I talked to her about the importance that I know that the vote that I cast for her is something that matters not just next year or the next year but 10 or 20 years from now, as she is on that Court and that that same view will remain, and she assured me that it will because of the same reason that I want it to. That is the future of our kids and their kids, and she knows it means everything to her children as well—to protect our Nation's laws and Constitution and to avoid that attempt, that desire, that pull at the heart to legislate. Even if you want to come out with an opinion that is different than your own interpretation of the law, you have to follow the law, and that is what she has assured me she has done. She has assured me that there are moments in rulings that she has issued that she would have preferred a different outcome personally, but that is not what the law required, and that is why she ruled the way that she did.

In talking to my colleagues on the Judiciary Committee, they talked about her understanding of the law, and in watching the hearings, you could sense the deep commitment and devotion to the law. There was a time several decades ago, when President Ronald Reagan went to introduce Justice Sandra Day O'Connor to a group of Federal judges at the White House, and Ronald Reagan in his speech talked about what it means to be a judge. He talked about the exacting standards of integrity and fairness and intellect

that are required for a Federal judgeship—that it provides reassurance to all of us that our ideals of liberty and justice are alive and well.

He went on to talk about the most important quality that we could have in a judge, and that was wisdom. That wisdom is the quality that we look for most, and I think you could sense a great deal of wisdom in Amy Coney Barrett.

He went on to say that we demand of our judges a wisdom that knows no time, has no prejudice, and wants no other reward. We entrust judges with our ideals and freedom, and our futures depend on the way that judge defines them. It requires the lonely courage of a patriot. And he went on to say: A judge is a guardian of freedom for generations yet unborn.

So, I hope that my colleagues will support the nomination of Amy Coney Barrett. If you could take the politics out of the place, she would probably have a unanimous vote. Unfortunately, the politicization of this nomination is going to prevent that. But I just urge my colleagues to look past the politics, to look past the partisanship, and to vote for a truly qualified justice who is committed to the law and to the Constitution, who is committed against activism on the bench, and who will make sure that our country, for generations to come, has a protector of that guardian of the Constitution with the wisdom to get the job done.

I urge my colleagues to support Justice Amy Coney Barrett, and I am honored, in just a few hours, to know that I will be able to cast a vote in support of soon-to-be Justice Amy Coney Barrett.

I yield the floor.

The PRESIDING OFFICER (Mr. GARDNER). The Senator from North Carolina.

Mr. TILLIS. Mr. President, I thank my staff, Elliott—who is on the floor—Brad, Cirilo, Seth, and Brad for all the work that they have done as we have gone through the nomination process.

I was reviewing my prepared remarks this morning, and then I reflected back on a very important moment during the Judiciary Committee hearing where Senator CORNYN asked—he said: You can see, among all of us, we have three-ring binders; we have staff behind us; we have taken weeks to prepare; and you are about to go through some 20 hours of questions, would you mind sharing with us your notes? She looked at a blank notepad that was given to her by the chairman. It had nothing on it.

She came to that committee fully prepared to answer any question from the 22 members of the Judiciary Committee purely from what is up there, and she did an extraordinary job.

The reason she did an extraordinary job is because she has had an extraordinary career, beginning as a student, then going to Rhodes College, where she was magna cum laude, then going to Notre Dame School of Law, where she graduated first in her class.

She went on to be a professor at Notre Dame, and she was, multiple times, voted the Distinguished Professor by a broad spectrum of liberal and conservative students.

She has also proven as a judge, with some 600 cases going through the Seventh Circuit, that she has an encyclopedic knowledge of that law. There were so many times when members on the other side of the aisle would try to trip her up or ask her a question. She had no notes to refer to. She got the specifics of the case right.

What she demonstrated throughout the entire hearing process, which I attended, was that she interprets—she does her job by doing two things: looking at the plain letter of the Constitution, understanding the limits that the laws can have within the bounds of the Constitution, and rule accordingly.

Now, our colleagues on the other side of the aisle of the Judiciary Committee were constantly—it was clear to me, after weeks of attacking Amy Coney Barrett, not directly but through surrogates, that they were trying to demonize this person before she ever came before the committee, like they did with Justice Kavanaugh. But each and every time they asked her a question, she brought them back to the boundaries of the Constitution and the question of law before, in her case, the circuit court, and there was just no way to trip her up.

So then what happened? Then they started talking about how you are going to go to the Supreme Court, and you are going to overturn the Affordable Care Act. They asked her questions that they knew she couldn't answer. Justice Ginsburg, pursuant to the Ginsburg rule—they had no intention—no responsible judge would go before the Judiciary Committee and tell you how they are going to rule on a future case. It is actually a violation of their code of conduct.

So she told them in so many instances—and what was interesting with some of the members on the other side of the aisle was, on the one hand, they would say: You cannot overturn this precedent or that precedent, and in the same breath, they would say: But we want to make sure you overturn this precedent or that precedent. And every time, Amy Coney Barrett was calm and composed and demonstrated to everybody in that committee that she is going to be objective; she is going to be fair; and she is going to stay within the lines of the Constitution and the matter of law that is before her.

Now, I think that it is very important to have a judge like that on the Supreme Court. Our religious freedoms are at stake. Our Second Amendment rights are at stake. We do have people who want activist judges. I don't want an activist judge, period—not for a conservative cause or a liberal cause. I want a judge whom I know that if I someday go before the Supreme Court—or any American—that I have a judge there who is going to be fair, who

is going to be thoughtful, who is going to be impartial, and who will always have a concern for both sides of the argument, but at the end of the day, know that they have a responsibility to judge objectively.

I have had a couple of opportunities to meet with Amy Coney Barrett. In the last meeting that I had with her in the Capitol, just a few steps away from where we are right now, I brought two pocket Constitutions with me. I said: I have two granddaughters—one will be 3 next week; the other one is a little over 2 months old. I said: Would you mind signing these Constitutions for Sawyer and Willow, my granddaughters? She said: Certainly. She opened it up, she signed her name and just said: "Dream big."

When they get a little bit older—they are not old enough yet—I am going to get them to understand the significance of that quick note from an incredible jurist, somebody who dreamed big and realized her American dream—a mother of seven school-aged children, two adopted from Haiti, one with special needs.

She is going to be the first Supreme Court Justice female on the Supreme Court with school-age children. She has seven of them. She is able to manage the stresses and the challenges of being a working mom while she served with distinction on the Seventh Circuit and while her husband worked as well. She has realized her American dream. I believe that she is going to make sure that everybody else has the freedoms to do the same thing.

I think Judge Amy Coney Barrett is going to go down in history as one of the great Justices on the U.S. Supreme Court.

It is a shame, as the Presiding Officer just said in his comments a moment ago, that this is even a divided decision. In a less political time than we find ourselves today, I suspect that she would have the unanimous support of this body, much the same way that Justice Ginsburg did when she came before the Senate.

But, today, I am looking forward to voting for Judge Amy Coney Barrett. I am looking forward to watching her build on what is already a very strong legacy. I am looking forward to making sure that we continue to have a Court that is independent, impartial, focuses on protecting all of our constitutional rights and freedoms. And I know, without a doubt, Amy Coney Barrett is going to be one of those stewards in the U.S. Supreme Court.

I rise today to express my strong support for the confirmation of our next Supreme Court Justice, Judge Amy Coney Barrett. Over the last few weeks, I have heard from thousands of North Carolinians asking me to vote to confirm Judge Barrett to the Supreme Court.

Judge Barrett is an incredibly qualified nominee.

She is a top-notch legal scholar and jurist. She is widely respected within

the legal community, and after three days of intense questioning by the Senate Judiciary Committee, I can see why she is so widely respected and why all of her former law school colleagues at Notre Dame Law School support her nomination.

I was especially impressed with her composure and impressive knowledge of the law as she answered unfounded allegations about her judicial record from Democratic members of the committee, and shameful smears radical liberals. The way she handled this process I am more convinced than ever that she clearly has the judicial temperament required to serve as a Justice on the U.S. Supreme Court.

Her answers made clear that she will be unbiased and fair to every party that comes before her. She made clear that she will interpret the law as written, without regard for her personal views or feeling, and will not be a legislator from the bench. Legislating is our job, not hers.

She is truly a textualist in the mold of Justice Scalia.

Her commitment to applying the law as written, and not legislating from the Bench, should be the standard for every nominee. I am confident that with Judge Barrett on the Court, Americans can rest easy knowing their religious liberty and second amendment rights are secure.

Soon, I will cast my vote to confirm Judge Barrett, as Justice Barrett. But first, I must also address the dangerous rhetoric from my Democratic colleagues.

First, they claim this nomination is somehow illegitimate. That is false. If the media wasn't so biased this claim would be dismissed outright. As Justice Ginsburg said, a President is elected for 4 years, not 3. President Trump fulfilled the duty he owes to the millions of Americans who elected him in 2016.

Similarly, voters elected a Republican majority to the U.S. Senate.

Voters expanded that majority in 2018, and now we are fulfilling the duty we owe to those voters by voting on Judge Barrett's nomination.

My Democratic colleagues are also threatening to pack the Court if they take control of the Senate and White House. Just as Democrats misrepresented Judge Barrett's record, they are misrepresenting what it means to pack the Court.

Packing the Court means adding more seats to the Supreme Court and then immediately nominating and filling these new seats with radical liberal activists. They would add seats until there is an activist liberal majority on the court. And the reason is simple: they want the Court to legislate from the Bench and impose their socialist agenda on the country through fiat, instead of working through the Democratic process.

This would wholly undermine and delegitimize the Court. Justice Ginsburg agreed. She said that "nine is a

good number” and that packing the Court is a bad idea.

Democrats need to be honest with the American people. The American people deserve to know where they stand on Court packing, and they deserve to know what liberal activist judges Joe Biden would nominate if he were President.

Personally, I am thankful Judge Barrett was willing to answer the call to serve our country. Just like Justice Ginsburg was an inspiration to so many, Justice Barrett will be a role model for young women, like my two granddaughters, who may one day aspire to go to law school or serve their country.

I look forward to voting soon to confirm her, and I would ask all my colleagues to join me and do the same.

Thank you. I yield back.

THE PRESIDING OFFICER. The Senator from Maryland.

Mr. CARDIN. Mr. President, I rise in opposition to the pending confirmation vote of Amy Coney Barrett to be an Associate Justice of the Supreme Court to fill the vacancy created by the death of Justice Ruth Bader Ginsburg, whom we lost in September of this year. Justice Ginsburg was a champion of women's rights and civil rights, and she is going to be sorely missed on that Court.

Article II, section 2 of the Constitution provides that the “President shall nominate, and by and with the Advice and Consent of the Senate, shall appoint . . . Judges of the Supreme Court.” One of a Senator's most solemn responsibility is to evaluate the nominee's qualifications as well as the process the Senate uses to provide their advice and consent for a lifetime appointment to our highest Court. I believe, on both substance and process, this nomination should be rejected.

First, on process. Let's talk about fairness. Let's talk about the integrity of the Senate. Let's talk about living up to your own words. Let's talk about using the same rules for Republicans that you use for Democrats.

Let me remind my colleagues what happened in 2016 in the Senate during President Obama's final year of a term in office in a Presidential election year. Justice Scalia died in February of 2016. Within just a few hours after the death of Justice Scalia, Leader McConnell unilaterally announced that the Senate would not consider a replacement for Justice Scalia until after the November 2016 Presidential election, which established a yearlong vacant Supreme Court seat.

The Republican leader's action, backed by his caucus, set a very clear precedent: Under no circumstances do Senate Republicans consider a Supreme Court nominee in a Presidential election year.

It did not matter that in March 2016, President Obama appointed Merrick Garland, a respected DC Circuit judge, with bipartisan support. They would not meet with Judge Garland, hold a

hearing, or allow a vote on him for 293 days.

In 2016, the Presidential election was nearly 9 months away. Four years ago, our Republican colleagues said: 9 months was not time enough. Leave it up to the voters. We will do this whether it is a Democrat or Republican in the White House.

The Republican leader, MITCH MCCONNELL, said:

Mr. President, the next Justice could fundamentally alter the direction of the Supreme Court and have a profound impact on our country, so of course—of course the American people should have a say in the Court's direction. . . . The American people may well elect a President who decides to nominate Judge Garland for Senate consideration. The next President may also nominate somebody very different. Either way, our view is this: Give the people a voice in filling this vacancy. . . . The American people are perfectly capable of having their say on this issue, so [let's give] them a voice. Let's let the American people decide. . . . The American people should have a voice in selection of the next Supreme Court Justice. Therefore, this vacancy should not be filled until we have a new President.

That was the Republican leader.

Several Judiciary Committee members made similar statements after the death of Justice Scalia. Senators GRASSLEY, GRAHAM, CORNYN, LEE, and CRUZ signed a letter to Leader McConnell, which read, in part as follows:

[W]e are in the midst of a great national debate over the course our country will take in the coming years. The Presidential election is well underway. Americans have already begun to cast their votes. As we mourn the tragic loss of Justice . . . Scalia and celebrate his life's work, the American people are presented with an exceedingly rare opportunity to decide, in a very real and concrete way, the direction the Court will take over the next generation.

The letter from my Republican colleagues concluded:

We believe The People should have the opportunity. . . . Because our decision is based on constitutional principle and born of a necessity to protect the will of the American people, this Committee will not hold hearings on any Supreme Court nominee until after our next President is sworn in on January 20, 2017.

Current Judiciary Committee Chairman GRAHAM explicitly addressed this point in 2016. In March 2016, Senator GRAHAM, then a member of the Judiciary Committee, said:

I want you to use my words against me. If there is a Republican President in 2016 and a vacancy occurs in the last year of the first term, you can say, LINDSEY GRAHAM said let the next president, whoever it might be, make that nomination. You can use my words against me, and you'd be absolutely right.

We are setting precedent here today—Republicans are—that in the last year of a Presidential term, you are not going to fill a vacancy on the Supreme Court based on what we are doing here today. That is going to be the new rule.

I have repeatedly stated that the election cycle is well underway, and the precedent of the Senate is not to

confirm a nominee at this stage of the process. By the way, Senator GRAHAM reaffirmed that in 2018.

In the case of Justice Ginsburg's death and vacancy in 2020, we are about 40 days away from a general election—not 9 months. Mail-in voting in record numbers has already begun in several States. And, of course, early voting has started in many States also. We are proceeding to a final vote on this nominee for a lifetime appointment just days before election day. Americans, millions of Americans, have already cast their ballots.

Once again, within hours of Justice Ginsburg's death, Leader McConnell unilaterally decreed that the Senate would fill the vacancy before the election. Leader McConnell said that “President Trump's nominee will receive a vote on the floor of the Senate.”

So I implore my Republican colleagues to stop this blatant hypocrisy now. Let's follow the McConnell rule and let the American people pick the next President and Senate so they can weigh in on this decision, just as Senator McConnell argued in 2016, when President Obama nominated Merrick Garland for Justice Scalia's seat.

Let the Senate honor Justice Ginsburg's legacy by continuing to fight for the rights she fought for her entire career, both as a litigator, a circuit judge, and, finally, as a Supreme Court Justice. Let us honor Justice Ginsburg's dying wish: “My most fervent wish is that I will not be replaced until a new President is installed.”

President Trump's agenda is quite clear when it comes to a tragedy for the Supreme Court. President Trump has repeatedly said he would appoint Justices in the mold of Justice Scalia. As President Trump said on the campaign trail, when asked what kind of Justice he would nominate, “We're going to have a very strong test. We want . . . strong conservative people that are extremely smart. Scalia is a terrific judge. Clarence Thomas, you look at him, he's been a stalwart, he's been terrific, and we have others.”

President Trump also talked about the type of Justices he did not like when on the campaign trail. He said:

I'm disappointed in Roberts because he gave us Obamacare. He had two chances to end Obamacare, he should have ended it by every single measurement and he didn't do it, so that was a disappointing one. Everybody thought he was good, he was a Bush appointee, he was somebody that should have, frankly, ended Obamacare, and he didn't.

When President Trump announced Judge Amy Coney Barrett's nomination to the Supreme Court, Barrett herself highlighted the ideological parallels between her and her mentor, Justice Scalia. She said about Justice Scalia: “His judicial philosophy is mine, too.”

Judge Barrett was a Supreme Court clerk for Justice Scalia. Justice Scalia was one of the most staunchly conservative members of the Supreme Court.

Justice Scalia voted to strike down key parts of the Affordable Care Act. He frequently called for overturning *Roe v. Wade*. He opposed marriage equality. He voted to gut the protections for voting rights in the *Shelby* case. He voted to gut our campaign finance laws in the *Citizens United* case.

He made it harder for workers discriminated against by their employers to seek justice in court and further stacked the deck in favor of wealthy business owners and corporations over working-class individuals.

By nominating Judge Barrett, President Trump is attempting to bring Justice Scalia's judicial philosophy back to the mainstream in our Nation's highest Court. Placing Judge Barrett on the Supreme Court puts at risk so many of the rights and protections Americans have fought for and gained.

So let's look at how the law could change if Judge Barrett is confirmed. That is the second reason to oppose this nomination—her judicial philosophy—in addition to the flawed process.

You cannot always predict how a Supreme Court Justice will act after her confirmation, but Judge Barrett has given us clear views on her philosophy. So many American rights are on the line, but let me start by talking about the Affordable Care Act.

Judge Barrett has made her views quite clear about the Affordable Care Act. In a 2017 law review article, she concluded that the ACA is unconstitutional. She wrote: "Chief Justice Roberts pushed the Affordable Care Act beyond its plausible meaning to save the statute."

Judge Barrett argued that Chief Justice Roberts' approach to *NFIB v. Sebelius*, which was joined by Justice Ginsburg, "express[ed] a commitment to judicial restraint by creatively interpreting ostensibly clear statutory language" and that "its approach is at odds with the statutory textualism to which most originalists subscribe."

In another Supreme Court case, *King v. Burwell*, the Supreme Court, in the 6-3 decision joined by Justice Ginsburg, affirmed health insurance tax credits for millions of families. Nearly 9 million Americans depend on these tax credits for coverage.

Barrett criticized the decision, stating:

I think the dissent has the better of the legal arguments.

Elsewhere, she wrote:

Justice Scalia, criticizing the majority's construction of the Affordable Care Act in *NFIB v. Sebelius* and *King v. Burwell*, protested that the statute known as *ObamaCare* should be renamed "SCOTUScare" in honor of the Court's willingness to "rewrite" the statute in order to keep it afloat. . . . By this measure, it is illegitimate for the Court to distort either the Constitution or a statute to achieve what it deems a preferable result.

It is clear to me—and it should be clear to all of us—that Judge Barrett has a clear bias against the Affordable Care Act. President Trump has repeat-

edly stated that he would appoint judges who would overturn the ACA and has consistently done so in terms of his appellate and trial court nominations. Judge Barrett appears to meet President Trump's litmus test.

I mention these cases to underscore the importance of the Supreme Court Justice in the lives of all Americans. So much is at stake in the filling of Justice Ginsburg's vacancy. Your healthcare is literally on the line.

The Affordable Care Act that President Trump has tried to repeal and that Republicans tried to repeal in this body but have failed, they are now going to take it to the Supreme Court. A hearing is scheduled this November 10 in the case of *California v. Texas*, just 1 week after the general election.

This is a real risk for tens of millions of Americans who depend on the law for their healthcare coverage and other benefits. Twenty million Americans could lose their healthcare, and people with preexisting conditions could lose those protections. That is 133 million Americans, during the coronavirus pandemic. That is what is at stake.

We are talking about pregnancy, cancer, diabetes, high blood pressure, behavioral health disorders, high cholesterol, asthma, chronic lung disease, heart disease, and numerous others that have been held to be preexisting conditions before the protection in the Affordable Care Act. And you can now add COVID to those preexisting conditions for 8 million Americans and counting. That protection is in the Affordable Care Act. This is on the line before the Supreme Court this November.

If the Affordable Care Act is struck down, insurers could bring back annual lifetime limits on coverage. Adults covered by Medicare expansion would lose vital health services. Young people would be kicked off of their parents' insurance. And insurers could sell skimpy plans that don't even cover essential health benefits like prescription drugs, emergency room visits, mental health, substance use, and maternity care.

The Affordable Care Act increased access to care for millions who were previously uninsured or underinsured. Through Medicaid expansion, 13 million low-income Americans now have dependable, comprehensive health coverage. In Maryland alone, over 1.3 million low-income individuals depend on Medicaid, including 512,000 low-income children, 107,000 seniors, and 152,000 individuals with disabilities. That is just in Maryland.

We must protect the Medicaid expansion population and other uninsured and underinsured populations from the Trump administration's effort to eliminate their access to affordable care. It is at risk.

I have similar concerns about women's healthcare issues. Judge Barrett has already gone on record in opposition to reproductive rights and freedoms. So it is clear to me that she

would try to roll back the clock on those rights as a Supreme Court Justice.

In a 2013 speech she entitled "Roe at 40," Judge Barrett explained that "Republicans are heavily invested in getting judges who will overturn *Roe*." She wrote that the "framework of *Roe* has essentially permitted abortion on demand, and *Roe* recognizes no state interest in the life of a fetus." In a 2003 article, Judge Barrett suggested that *Roe v. Wade* was "an erroneous decision."

Recall that President Trump has already said he would only nominate justices who would "automatically" overturn *Roe v. Wade*. Judge Barrett appears to have met this litmus test as well.

Indeed, Judge Barrett may hold an even more extreme record when it comes to reproductive rights than I have already stated. She refused to say at her confirmation hearing whether *Griswold v. Connecticut* was rightly decided, in which the Court held that the Constitution guarantees a right to marital privacy and that a law criminalizing the use of contraception violated that right.

Now, note that Justices Roberts, Alito, Kagan, and Kavanaugh all discussed the *Griswold* case at their confirmation hearing. Yet Judge Barrett said that *Griswold*'s correctness "is something I cannot opine on."

Judge Barrett's views on immigration also raise concerns. Our most vulnerable individuals are at risk as well with the naming of a new Justice to the Supreme Court. Let me talk about one specific group.

On June 18 of this year, in a 5-4 decision written by Chief Justice Roberts and joined by Justice Ginsburg, the Supreme Court held that the Department of Homeland Security violated law when it rescinded the Deferred Action for Childhood Arrival, or DACA, Program.

There are approximately 643,000 DACA recipients—these are our Dreamers—in the United States, and approximately 29,000 are healthcare workers and essential workers who are serving us during the COVID-19 pandemic, who have saved lives and eased suffering.

But for the 5-4 decision, those individuals' lives could have been totally disrupted, and they could have been ordered to leave our country. These are individuals who know no other home but the United States of America. They are our neighbors and friends. The next Justice could very well determine the fate of the Dreamers.

Unfortunately, Judge Barrett already has demonstrated a judicial track record which is hostile to immigration. In *Cook County v. Wolf*, Judge Barrett authored the dissenting opinion from a ruling that struck down the Trump administration's cruel "public charge" rule. The rule basically penalized immigrants for exercising their legal rights to use benefits that Congress has made available.

And in the case of *Yafai v. Pompeo*, Judge Barrett wrote the majority opinion and held that U.S. consular officials have virtually unchecked authority to deny visa applications to those seeking entrance to the United States. It was pointed out in the minority opinion that the majority has created a constant “dangerous abdication of judicial responsibility” that would lead immigration officials to deny visas on the basis of “impermissible bias.”

So let me turn to the rights of the LGBTQ community. In the *Obergefell v. Hodges* case joined by Justice Ginsburg, the Supreme Court held that the Constitution guarantees same-sex couples the right to marry, in a 5–4 decision. Unfortunately, Judge Barrett has demonstrated hostility to marriage equality and to LGBTQ rights more generally. In speeches, Judge Barrett seemed to be critical of the Supreme Court’s decisions in *Obergefell*, indicating that she was worried about the “who decides” question when it comes to the courts or legislatures deciding who can marry and start a new family.

But fundamental rights under the Constitution should not be up for debate. Every American should have the same rights, benefits, and obligations of marriage regardless of their gender or who they love. Notably, Judge Barrett referred to sexual orientation as “sexual preference” in her testimony, implying that sexual orientation is a choice instead of an immutable characteristic.

As Justice Kennedy concluded in *Obergefell*:

No union is more profound than marriage, for it embodies the highest ideals of love, fidelity, devotion, sacrifice, and family. In forming a marital union, two people become something greater than once they were. As some of the petitioners in these cases demonstrate, marriage embodies a love that may endure even past death. It would misunderstand these men and women to say they disrespect the idea of marriage. Their plea is that they do respect it, respect it so deeply that they seek to find its fulfillment for themselves. Their hope is not to be condemned to live in loneliness, excluded from one of civilization’s oldest institutions. They ask for equal dignity in the eyes of the law. The Constitution grants them that right.

I would hope that we agree with Justice Ginsburg, but I am afraid that is a view that is not shared by Judge Barrett. Judge Barrett was critical, as well, of the extension of civil rights laws to protect transgender people, saying at an event that “it does seem to strain the text of the statute to say that Title IX demands it.” However, the Supreme Court held otherwise in *Bostock v. Clayton County*, where Justice Gorsuch, joined by Justice Ginsburg, held for the Court in a 6–3 decision that the prohibition of employment discrimination on the basis of “sex” should be read to include gender identity and sexual orientation.

Judge Barrett has issued several disturbing findings that indicate a cramped and narrowed view of civil rights laws designated to protect

American workers from discrimination based on race or age.

In *EEOC v. AutoZone*, Judge Barrett voted against rehearing a panel decision that ruled against an African-American employee whose company involuntarily transferred him to another store based on race. The EEOC had charged that AutoZone had an unlawful practice of segregating employees by race when it assigned African-American employees to stores in African-American neighborhoods and Latino employees to Latino neighborhoods.

The dissent argued that the court upheld a “separate but equal” arrangement that is contrary to the Supreme Court’s decision in *Brown v. Board of Education* when the court interpreted the equal protection clause of the 14th Amendment to find that separate facilities can’t really be equal.

The dissent wrote:

This case presents a straightforward question under Title VII of the Civil Rights Act of 1964: Does a business’s policy of segregating employees and intentionally assigning members of different races to different stores “tend to deprive any individual of employment opportunities” on the basis of race? The panel answered this question “not necessarily.” I cannot agree with that conclusion.

Once again, Judge Barrett was on the side of denying protection against racial discrimination.

In *Kleber v. Care Fusion Corporation*, Judge Barrett sided with the majority that the Age Discrimination in Employment Act only protects current employees from discrimination due to disparate impact and not outside job applicants—a very narrow view.

Then there are Judge Barrett’s views on gun safety, which I find deeply concerning. Judge Barrett’s record strongly suggests that she would strike down commonsense gun safety laws, even as Congress and the States continue to try to combat gun violence, which kills nearly 40,000 Americans every year.

According to the Center for American Progress, from 2008 to 2017, over 6,200 people were killed with guns in Maryland, and from 2014 through 2018, there were 42 mass shootings in Maryland, killing a total of 45 people and injuring 156. That is just in one State.

That is just in one State. The next Supreme Court Justice could hold the decisive vote should Congress or the States adopt commonsense gun safety laws to curb gun violence, such as requiring universal background checks, banning assault weapons, or banning high-capacity magazine clips.

In *Kanter v. Barr*, the Seventh Circuit held that a law barring felons from possessing a firearm did not violate the Second Amendment. The Supreme Court previously held in the District of Columbia *v. Heller* that the Second Amendment conveyed an individual right to bear arms, separate from the right of the militia to do so.

But even Justice Scalia—Judge Barrett’s mentor and President Trump’s role model for an ideal Justice—wrote in his majority opinion for

the Court in *Heller* that “nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons.” Yet Judge Barrett dissented in *Kanter* and concluded that the bar on gun possession should apply only to violent felons. She argued that the majority was treating the Second Amendment like a second-class right. She went on to note that the government could deny nonviolent felons the right to vote but not the right to bear arms because “history does show that felons can be disqualified from exercising certain rights—like the rights to vote and serve on juries—because these rights belonged only to virtuous citizens.” So ultimately Judge Barrett bizarrely seems to treat voting rights as a second-class right compared to gun ownership. That is pretty extreme.

I have always expected that in America, we could move forward in protecting individual rights under our Constitution; that in each Congress, in each session, the Supreme Court would advance those rights for individual protection under the Constitution of the United States. The filling of this Supreme Court vacancy could very well reverse a trend of protecting rights and deny many in our community their rights.

The Leadership Conference on Civil and Human Rights has sent a letter to the Senate, signed by a diverse group of 150 organizations, in opposition to the confirmation of Judge Barrett. The letter urges the Senate to “oppose the confirmation of Judge Barrett and allow the president duly chosen in the 2020 general election to fill the existing Supreme Court vacancy.”

Groups opposing the nomination include the Alliance for Justice, Human Rights Campaign, NAACP, NARAL Pro-Choice Maryland, National Council of Jewish Women, National Employment Law Project, National Organization for Women, People for the American Way, SEIU, United We Dream, and the Violence Policy Center. The list goes on and on.

On October 15, 2020, the Leadership Conference reiterated its opposition to the Barrett nomination with a letter from over 400 State and local officials asking the Senate not to confirm a new Justice until after Inauguration Day. The Leadership Conference ends their letter by saying: “It is shameful that, instead, the U.S. Senate is rushing through a nominee who is likely to eviscerate the Affordable Care Act and deprive millions of people of access to health care, destroy reproductive freedom by gutting *Roe v. Wade*, and suppress our right to vote, making it harder for Americans to have their voices heard in our democracy.”

I am gravely concerned that the rushed and sham process the Senate is using here will undermine the public’s faith in the independence and legitimacy of the Supreme Court as a fair and impartial body.

A group of former Federal judges recently wrote to the Senate:

Our citizenry is sharply polarized—a foreboding sign for the health of any democracy. The judicial confirmation process has increasingly become dangerously politicized. Injecting a Supreme Court confirmation fight into this noxious mix will ultimately change and diminish the public's faith in this vital institution.

Public opinion polling does indeed show that a supermajority of Americans want the winner of the upcoming election to fill the current Supreme Court vacancy.

I again reference the Leadership Conference letter opposing Judge Barrett, which states “Judge Barrett’s extreme record on the U.S. Court of Appeals for the Seventh Circuit, along with her ideologically driven writings and speeches, demonstrate that she is incapable of rendering equal justice under the law.”

After reviewing Judge Barrett’s full record, statements, and committee testimony, I am not convinced that Judge Barrett would administer impartial justice and guarantee equal protection of the law and equal justice of the law; so therefore I must vote against her nomination. She is certainly not a mainstream jurist.

Let’s follow the McConnell rule and let the American people pick the next President and Senate so that they can weigh in on the decision, just as Senator MCCONNELL argued in 2016 with President Obama’s nominee of Merrick Garland for Justice Scalia’s seat. Let the Senate honor Justice Ginsburg’s legacy by continuing to fight for the rights she fought for her entire career, both as litigator, circuit judge, and finally as a Supreme Court Justice. Let’s honor Justice Ginsburg’s dying words: “My most fervent wish is that I will not be replaced until a new president is installed.”

With that, I yield the floor.

THE PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Mr. President, everything that has happened since the untimely passing of the legendary Justice Ginsburg is a clear reminder that much of what goes on in Washington, DC, is simply not on the level.

Right now, our country is hurting—mass death, mass unemployment, mass hunger, and suffering among children. The two sides in Congress ought to be addressing those challenges together.

Now more than ever, while so many are so fearful about tomorrow, the rules the Senate goes by and the agreements the Senate makes need to stand for something. That is how I felt when I negotiated for the \$600-per-week unemployment insurance boost in March.

The Treasury Secretary for the Republicans agreed to it, but then, at the last minute, Republican Senators pretended otherwise and tried to vote it out of the bill. Think about that. There was an agreement between both sides, and the one thing that Senate Republicans wanted to do was to break the agreement and keep workers from getting that extra money to pay the rent and the food bill at a time when they

had been laid off through no fault of their own.

Another example is unfolding right before our eyes. Until a few weeks ago, Leader MCCONNELL and Chairman GRAHAM would have told you it was essentially the 11th commandment, carved in stone: No election-year Supreme Court appointments. Again, Republicans went back on their word.

If the cure to COVID-19 was partisanship and rule-breaking, then Senate Republicans might be onto something with their low stunt on the high Court, but it is not.

The American people have a much more sensitive radar for unfairness than Senate Republicans. When I was home during the 2-week period here recently, I went to counties that Donald Trump won decisively and counties that Hillary Clinton won in 2016. Folks I talked to in both communities, in both areas, said the person who wins the 2020 election should be the one who chooses the Court nominee. In this case, the American people know what is at stake for them because they see the consequences of rule-breaking.

If Judge Barrett is confirmed and does what Donald Trump has repeatedly said he requires of a nominee—help him throw out the Affordable Care Act—here is what will happen: Tens of millions of Americans will suddenly lose their healthcare during a pandemic. COVID-19 will become a pre-existing condition used by insurance companies to once again discriminate against consumers. It will take America back to the days when healthcare was for the healthy and wealthy.

Even the nominee herself shows this process on judicial nominees is so dysfunctional and so broken, it doesn’t come close to being on the level. Amy Coney Barrett may have established herself as the Babe Ruth of saying pretty much nothing.

Now, everybody understands that nominees typically clam up during these hearings. I don’t expect Judge Barrett to disavow Trump healthcare policy. I wouldn’t expect to agree with all of a Trump nominee’s positions. But unfortunately for our country, this hearing was a new low.

For example, one of my colleagues asked whether Judge Barrett was aware that the President had committed to nominating judges who would throw out the Affordable Care Act—a statement that was part of news accounts all across the country again and again and again and again.

Back in 2015, Donald Trump said: “If I win the presidency, my judicial appointments will do the right thing, unlike Bush’s appointee John Roberts on *ObamaCare*.”

The day after Judge Barrett’s nomination, Donald Trump tweeted: “*ObamaCare* will be replaced with a much better and far cheaper alternative, if it is terminated in the Supreme Court.”

But Judge Barrett answered, when my colleague asked about whether she

had heard about anything resembling Donald Trump’s views on this, she said: “I don’t recall hearing about or seeing such statements . . . that wasn’t something that I heard or saw directly by reading it myself.” She also said she couldn’t recall whether Senators brought it up during their conversations with her.

I say to the Senate today, does anybody think that was an authentic answer? Everybody who occasionally looks at the news knows that Donald Trump wants to tear down the Affordable Care Act. He famously promised the far right that his judges would take all the far-right positions. He routinely attacks Republican-appointed Justices for opinions he dislikes.

The “never heard it, never saw it” argument advanced by Judge Barrett, that she doesn’t follow the news, apparently, at all; didn’t talk with anybody about the healthcare debate that has been front and center in American politics for a long, long time, is hard to mesh. I understate this with reality. You don’t reach the heights of the academic and legal profession by ignoring the news of the day for years and years and years on end.

If you watch Judge Barrett’s hearing, it is clear what this “never heard it, never saw it” argument is all about. It is about denying that there is any real threat to the Affordable Care Act to protections for preexisting conditions, to cheaper medicines for seniors.

Judge Barrett certainly put on a hall of fame performance in ducking and dodging and weaving her way out of even the simple routine questions about existing law, stuff that is guaranteed to come up in every nomination hearing.

For example—this one just stunned me when I heard it. She wouldn’t say whether *Griswold v. Connecticut* was decided correctly. That was the landmark 1960s case that affirmed the right of married women to have access to contraception. It is one of the key Supreme Court decisions that gets directly to the right of privacy and to the rights of women to make decisions about their own bodies and their own lives. The decision in *Roe v. Wade* follows directly from the decision in *Griswold*.

Even Justices Thomas, Roberts, Alito, and Kavanaugh—not exactly the leftwing of the American judicial systems—said *Griswold* was decided correctly. Judge Barrett refused. That matters because there is a far-right campaign working to undo both of those decisions, which would be devastating to a woman’s fundamental freedoms in our country.

She dodged serious questions on the legality of in vitro fertilization, which has helped millions of parents achieve their one dream: having a family.

She refused to say whether she believes the landmark decision on marriage equality was decided correctly. The one case she was asked about enshrined marriage equality.

She dodged a question on whether U.S. Presidents should even commit to a peaceful transfer of power. She went on to say on the issue of voter intimidation that she wouldn't answer whether it was illegal. That is not an open question. It is a case of black-letter law.

She was given what I thought was a slam-dunk opportunity to confirm that a President cannot unilaterally change the date of the election. That one is not open to interpretation. The law is clear that he cannot. Judge Barrett wouldn't say so.

It is not like this nominee has been shy about sharing her views. For example, she bashed the opinion by Chief Justice Roberts that upheld the Affordable Care Act. She said it "pushed the Affordable Care Act beyond its plausible meaning to save the statute." That decision is the reason that 130 million Americans with preexisting conditions are protected today, why insurance companies can't impose caps on people who need costly healthcare, why seniors no longer get stuck in the prescription drug doughnut hole bankrupting their savings.

Judge Barrett put her name on a letter that talked about overturning *Roe v. Wade* because of what it called its "barbaric legacy." She also lectured on the subject. She failed to disclose the letter and some of her lectures in her disclosure to the Judiciary Committee.

Again, I understand that nominees are always careful in these hearings, but nomination hearings are providing less and less substance. That has been the case for a long time. Over the last few weeks, Judge Barrett set a new low. Years ago, Chief Justice Roberts talked about the job of the Supreme Court Justice and said it was about "calling balls and strikes." My question is, How can you be trusted to call "balls and strikes" if you spend your nomination hearing playing "hide the ball?"

This rush job doesn't qualify as advice and consent. In my view, you look at Donald Trump and Republicans rushing this confirmation, you look at all the ducking and dodging of basic questions, and it is not hard to see the politics behind it. At a moment when there are millions of Americans across the country wondering how they are going to pay their rent, how they are going to afford medicine, whether they are going to be able to safely hug their elderly parents again, Senate Republicans are laser-focused on locking in political power over the courts. That is what this is all about.

Senate Republicans somehow think this is a Houdini act, suddenly making the threat of the Affordable Care Act disappear. It is not working. My view is the American people understand that the rush to fill the Ginsburg seat is about a lot more than healthcare.

Republican nominees for the Court always come before the Senate and talk about how it is the text of the laws as written, respecting precedent,

respecting the original meaning of the Constitution. What happens when they join the Bench? They throw out longstanding precedents, restrict individual rights, push forward with an agenda that favors special interests and the powerful.

For example, Judge Barrett gutted a consumer protection law from the bench by essentially ignoring the text of the law itself, making it easier for debt collectors to prey on the vulnerable.

Judge Barrett threw out precedent to deny \$332 in damages to a woman who was injured in a medical procedure. The woman was actually unable to afford a lawyer, and she mistakenly used the wrong word to describe the money she was owed. Judge Barrett used that mistake against her.

She ignored another existing precedent, taking away a jury award from a teenager who was repeatedly raped by a prison guard.

She sided with a company that segregated employees by race.

In another case, she came up with a twisted interpretation of the Age Discrimination in Employment Act to allow discrimination against older job applicants. None of that had anything to do with "calling balls and strikes" or respecting the laws as written. Those rulings favor the powerful and corporations over people who don't have clout and don't have vast sums of money to protect themselves.

The President and Senate Republicans have packed the courts from the top on down with far-right judges who excuse these kinds of ideological rulings. They blocked Democratic judicial nominees for years. They had a plan to remove seats from the DC court rather than considering the sitting Democratic President's nominees.

Now, this President has pushed through an immense number of nominees, given how many seats Republicans left open through obstruction. Some of these judges have been deemed not competent for the job by non-partisan legal groups. It has done incredible damage to the legitimacy and the independence of the judiciary. Virtually all of them tell the same story about originalism and sticking to the text in the tradition of Justice Scalia.

Justice Scalia is considered to be the ultimate example of what is considered originalism. Judge Barrett recently said "his judicial philosophy is mine, too." Judge Scalia, in fact, packed his opinions with ideology. He wrote that the decision granting same-sex couples the right to marry was a "threat to American democracy," that "robs the People of . . . the freedom to govern themselves." He wanted to throw out the Affordable Care Act. He helped gut the Voting Rights Act in a ruling that led to massive voter disenfranchisement.

What is behind all this talk about originalism and sticking to the text of the laws as written is a political agenda, plain and simple, taking away peo-

ple's healthcare, disenfranchising voters and entrenching minority rule, giving corporations more power over their employees, legalizing discrimination against the LGBTQ community and against Black, Hispanic, Asian, and other groups of Americans. It is about cementing government control over women's bodies. Republicans could never enact these deeply unpopular policies through legislation, so they want the Supreme Court to enact their agenda for them.

I want to close by way of saying that all of this is contrary to what Justice Ginsburg spent her career fighting for. It is exactly what the big rush to fill the Ginsburg seat is all about and how this process torpedoes any opportunity for the Senate to come together on other big issues.

My Democratic colleagues and I have been pleading with the majority, essentially going and saying, Look, let's work together on a major COVID package—virtually pleading that we work in a bipartisan way to help people on what I have heard again and again at home is their No. 1 concern. MITCH MCCONNELL said, however, that it was too complicated to get done.

Last week, I brought forward a bill on enhanced unemployment insurance, a lifeline for jobless workers. It was blocked. Two days ago, Democrats brought forth a series of bills, including proposals addressing domestic violence, election security, and childcare—all blocked. This nomination to Senate Republicans comes first, and absolutely everything else is on hold, has to wait. We see, really, no genuine interest to do the hard work of putting it together.

This nomination and this process are not on the level. Republicans are, again, breaking their word to hand the Supreme Court to the far right. I know that because I have heard from so many Oregonians about it, Oregonians who are worried about losing their healthcare, their vote, and so many of their fundamental freedoms. They are worried about what this means for the future of the country.

This debate is about the Ginsburg seat. Justice Ginsburg was not just an iconic fighter for the rights of the powerless and the vulnerable. She always said what she meant, and she meant what she said. We did not get that from Judge Barrett.

I oppose this nomination.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mrs. SHAHEEN. Mr. President, I come to the floor today in opposition to the nomination of Judge Amy Coney Barrett to the Supreme Court. I am truly disappointed that my Republican colleagues have chosen to ram through this partisan nominee in the middle of a pandemic when an election is underway and tens of millions of Americans have already cast their ballots.

The Senate should be focused on a bipartisan COVID-19 relief package to help Granite Staters and Americans

across this country who are struggling to pay the bills and put food on the table during this pandemic. Instead, Leader MCCONNELL's only priority has been to push through a nominee who will fundamentally alter the balance of the Court and affect the lives of generations of Americans, all just days before ballots will be counted to decide the next President of the United States and the makeup of this very body. The stakes in this nomination could not be higher.

I want to read an excerpt from an email I received from a constituent. This is from Dave in Portsmouth, NH. Dave writes:

What is at stake with the Supreme Court nomination . . . among the topics that have stricken the deepest sadness, pain, and fear in eyes, minds and hearts are the goals of this administration to dismantle . . . the Affordable Care Act . . . A woman's right (and only her right) to make decisions about her body and her life . . . and the rights of the LGBTQ community.

Mr. President, I ask unanimous consent for the full text of this email to be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

HELLO SENATOR SHAHEEN,

These past months I have looked into the eyes of many of my friends and family and have seen extreme sadness, pain and fear. To enumerate the many causes would be redundant . . . but with express concern is what is at stake with this Supreme Court nomination. Among the topics that have stricken the deepest sadness, pain and fear in eyes, minds and hearts are the goals of this administration to dismantle . . . The Affordable Care Act . . . A woman's right (and only her right) to make decisions about her body and her life . . . and the rights of the LGBTQ community.

Before you cast your vote for this nominee, try to distinguish between her legal pedigree and her crystal clear biases for which she has often been on record. Her evasiveness during questioning before the Judiciary Committee played perfectly into her chosen role of political pawn of the Trump administration. This Supreme Court . . . my Supreme Court . . . your Supreme Court . . . The Supreme Court of the United States of America must remain untainted from the rampant political posturing of this 2020 election cycle.

What will be your legacy? In recent days some of the GOP members of the Senate have . . . through short public statements . . . been trying to distance themselves from Donald Trump. With this vote . . . you have the power to actually do it. To turn away from hypocrisy and years of blatant lack of integrity. You owe it to America, to yourself, to your family, to my family . . . to take a moment to look at the sadness, pain and fear in the eyes of America today.

And yes . . . I am speaking to you all . . . including some who have tried to push through this quagmire with an eye toward how the world and history will judge us all . . . including you Sen. Romney . . . and yes . . . you Sen. Sasse . . . and Senators . . . Collins, Murkowski, Gardner, McSally, Fishler and so on. I am pleading with you . . . imploring you to do the right and just thing and vote NO on this confirmation.

You know what is right. You will know it when . . . as I have . . . you look in the eyes of good and decent Americans . . . who are desperate for real leadership . . . and you see

the sadness, pain and fear that has been sowed by this administration and which continues to be sown with this confirmation process. It has been a rushed, politically motivated and politically charged Supreme Court nomination being transacted while the American people are voting RIGHT NOW to steer the course of this country . . . this Senate chamber . . . and this country's highest court.

Step up and do what is right.

Thank you,

DAVID J CUMMINS,
Portsmouth, NH.

Mrs. SHAHEEN. The President and his allies here on Capitol Hill are trying to tear down the healthcare law that has helped provide millions of Americans with coverage in the middle of the greatest public health crisis in a century. They pressed forward with this reckless attempt, even though they don't have a plan for what to do when as many as 23 million Americans—and in New Hampshire, more than 100,000 Granite Staters—would lose their healthcare coverage.

I want to repeat that.

This administration and congressional Republicans have no plan for what to do if millions of Americans lose their healthcare coverage if the Affordable Care Act is overturned.

For the last 6 years, we have seen congressional Republicans try to repeal the ACA numerous times, and they have failed every time because the American people have raised their voices and made it clear that they want to keep the Affordable Care Act and strengthen it, not repeal it. Now we are seeing the administration and congressional Republicans try to do in the courts what they were not able to get done in Congress—to overturn the Affordable Care Act.

We have also seen with Judge Barrett that she has made her feelings very clear about the ACA. She disagreed with decisions to uphold the ACA the last two times it went before the Supreme Court, and she wouldn't answer questions about the healthcare law during her confirmation hearing.

Striking down the ACA would deal a crushing blow to our most vulnerable populations during this pandemic. If the Court strikes down the Affordable Care Act in its entirety, Granite Staters and Americans across the country will lose access to Medicaid expansion. Medicaid expansion is a critical source of coverage for millions of Americans and, in New Hampshire, for thousands of Granite Staters who have lost their jobs during this pandemic. In fact, since the start of this pandemic, what we have seen is that enrollment in Medicaid expansion in New Hampshire has increased by more than 11,000 enrollees as we have seen job losses mount.

For these individuals and all of the more than 60,000 Granite Staters who are covered through Medicaid expansion, the loss of the ACA in the Supreme Court—the Supreme Court's overturning the ACA—would eliminate a critical lifeline for coverage during

this public health crisis. In New Hampshire, if we lose Medicaid expansion, we will also lose our most important tool for combating the opioid epidemic.

Without the ACA, we will go back to a time when insurance companies had sweeping power to undercut coverage. They will be allowed to charge women higher premiums than men for the same coverage. The health insurers will be able to remove essential health benefits like prescription drugs or maternity care. They will also be allowed to jack up premiums or deny coverage altogether for individuals with pre-existing conditions.

More than 8 million Americans, including nearly 10,000 Granite Staters, could be denied coverage because they have previously contracted COVID-19, which could now count as a preexisting condition, and without the ACA, seniors could, once again, find themselves stuck in Medicare's doughnut hole for prescription drug coverage at a time when we are seeing drug prices soar.

In her confirmation hearing, Judge Barrett even refused to say whether the Medicare Program was constitutional. With Judge Barrett on the Supreme Court, the health coverage that the ACA, Medicare, and other Federal programs provide will be under a constant threat.

Sadly, women's reproductive rights are also on the line with Judge Barrett's nomination. When he ran for President in 2016, Donald Trump said that he would appoint judges who would overturn *Roe v. Wade*. Well, we are seeing that very clearly with Judge Barrett's record. It shows that President Trump is trying to do just that—overturn *Roe v. Wade*.

Amy Coney Barrett's dissenting opinions, while serving on the Seventh Circuit, show that she is comfortable with laws that make it difficult or nearly impossible for a woman to exercise her right to make her own reproductive health decisions. Judge Barrett has even publicly supported an organization that is opposed to in vitro fertilization, which is a procedure that has helped millions of American couples start families.

Almost 50 years of precedent of upholding a woman's right to control her own body are in jeopardy because the Republicans are playing politics with the Supreme Court and packing the Court with extreme Justices.

There are nearly 20 abortion-related cases that are currently one step away from reaching the Supreme Court. A partisan Court would likely disregard longstanding precedent in these cases and put a woman's health and well-being at risk. Let's be very clear: Repealing *Roe v. Wade* is not going to reduce the number of abortions. If history is any indication, what it will do is increase the number of abortions in the country.

Unfortunately, the Affordable Care Act and women's reproductive rights are just two of the many areas of American life that a partisan Supreme Court could dramatically alter.

Equality for LGBTQ Americans is another major concern. Millions of gay and lesbian Americans have been married since the Supreme Court legalized same-sex marriage, but in a recent dissent penned by Justices Thomas and Alito, these Justices challenged the constitutionality of that decision and called for it to be revisited. When asked in her confirmation hearing about the precedent of the Supreme Court decision to legalize same-sex marriage, Judge Barrett was evasive. So you can understand the anxiety and fear that same-sex families are experiencing as they watch the Republican-led Senate rush this nomination.

The stakes are also incredibly high for voting rights, for worker protections, for commonsense gun laws, and for so many other issues that are in jeopardy with the appointment of Judge Barrett.

Now, I know the die has been cast. We saw that yesterday with the 51-to-48 cloture vote, but I believe this effort to politicize the Supreme Court is a decision that those who care about our democratic institutions will come to regret for many decades to come. If today's vote is the same as yesterday's—51 to 48—this will be the closest vote for a Supreme Court Justice in our Nation's entire history. We should not be doing this today. We should be focusing on what the American public is most concerned about—help with the coronavirus.

I yield the floor.

The PRESIDING OFFICER (Mr. HAWLEY). The Senator from Nevada.

Ms. ROSEN. Mr. President, I rise because the healthcare of millions of Nevadans and tens of millions of Americans is in danger. Their healthcare is in danger because, in just a few weeks, the Supreme Court will consider a case that could overturn the Affordable Care Act completely. This means that the next Supreme Court Justice will decide whether individuals with pre-existing conditions could, once again, be denied healthcare coverage.

The fact is, this administration has tried for years to overturn the Affordable Care Act. First, it attempted to repeal the ACA through legislation. It failed repeatedly because Congress and the American people do not support its schemes to take away our healthcare. Then it changed its strategy and is trying to use the Court to dismantle our Nation's healthcare system.

Now, with an election just 1 week away, the Senate Republicans are scrambling to confirm a new Supreme Court Justice in order to tip the balance of the Court in favor of their lawsuit that aims to destroy the Affordable Care Act. Rather than waiting for the outcome of the election, which is already underway, and follow the precedent that they themselves established in 2016, the McConnell rule, my Republican colleagues are rushing to put Judge Amy Coney Barrett on the Bench.

Not only does Judge Barrett support the President's position on dismantling

our Nation's healthcare law, but, if confirmed, she could very well be the deciding vote to undo the Affordable Care Act and take healthcare away from millions of Americans. Judge Barrett's hostility toward the Affordable Care Act is on the record, and we have seen a long and extensive paper trail outlining her opposition to the ACA. Her past comments, well, they paint a bleak picture of what the Affordable Care Act's future would look like with a Justice Barrett on the Bench.

To put it simply, this administration's attempt to use the Court to take away Americans' health insurance and raise the cost of care, especially at this moment—during a global pandemic—is not only cruel and reckless, it is deadly.

I have met many Nevada families, and I have heard stories from men, women, and children whose lives would be just devastated without the Affordable Care Act: cancer survivors, people with diabetes, asthma, cystic fibrosis, and countless other preexisting conditions that affect families. These are real Nevadans whose healthcare would be jeopardized if the ACA were no longer the law of the land.

I always tell my constituents that I carry their stories with me to Washington. They inform the actions that I take and the decisions that I make. I want to take some time to share some of the stories that I have heard—stories from Nevadans whose lives have been saved and who enjoy the quality of life because of the Affordable Care Act; stories from Nevadans who are outraged about what is happening and have reached out to my office to make their voices heard; and countless stories of how allowing the ACA to be dismantled would impact their lives.

First, I want to share a letter from Jen, who lives in Henderson, NV. Jen's husband is one of the 1.2 million Nevadans who is estimated to be living with a preexisting condition. Like many people, Jen is worried about the health of her husband and the future of her family if the Affordable Care Act is eliminated.

Here is what Jen wrote:

Dear Senator Rosen, I am watching the confirmation hearing for Amy Coney Barrett, and listening to the conversation around the ACA. I'm scared to death that it will be overturned, and what that means for me and my husband. In February 2019, at only 38, he had a devastating stroke, and had to stay in the hospital for four months. If he hadn't had insurance, we would never have been able to afford his care. I'm scared of losing that protection from pre-existing conditions. He will need specialists for the rest of his life, as well as physical, occupational, and speech therapy. We cannot afford his care otherwise. I am so scared. Please help.

Unfortunately, Jen's situation and concerns are far too common. Many Nevadans and Americans across our country are worried about a future where they could lose their lifesaving coverage.

Here is another letter from a Nevadan who lives in Spring Creek who is

worried about his own continued healthcare without the protections the ACA provides:

I have had asthma my whole life and it's severe. I finally have good insurance and need it desperately. This will affect millions of us. I have lived through not having insurance and it almost killed me. The insurance companies at that time were asking for premiums higher than what I made.

Nevadans across the State are absolutely terrified about the possibility of losing care because of this nomination.

I received a letter from a brave Nevadan who lives in Minden, which is a small town in the western part of our State. She wanted to share with me her health struggles and her fears for the future. She said this:

I have been fighting a rare, aggressive form of breast cancer for the past 4 years and still have numerous surgeries to undergo as part of my ongoing battle against this devastating disease. I worry about how the loss of the preexisting conditions protection would adversely affect my treatment plan, my everyday financial security, and my ability to get health insurance in the future should I lose what I currently have.

The Affordable Care Act has opened the door to healthcare for Nevadans all over my State, in communities big and small. These are real people with real struggles and real families who desperately want the best possible care for their loved ones. That is all. They want the best care for their loved ones. Don't we all want that?

What is at stake here is life or death for far too many Nevadans and too many Americans across this country. Assuring the health of our loved ones should be an essential, basic, human right.

It is thanks to the Affordable Care Act that more than 200,000 Nevadans get coverage through the ACA's expanded Medicaid Program. It is thanks to the Affordable Care Act that over 77,000 Nevadans have coverage through the Nevada Health Link insurance exchange, and it is thanks to the Affordable Care Act that over 19,000 Nevadans under the age of 26 get to remain covered through their parents' health insurance plans.

All of these people—that is 1 in 10 Nevadans—could lose their health insurance if the Supreme Court overturns the ACA.

All of them could face overwhelming costs and denials of the care they both need and deserve.

Not to mention, it is thanks to the ACA that there are an untold number of people who can still get coverage because insurance companies can no longer put lifetime caps on their healthcare coverage. Before the ACA, an insurance company could limit how much they would pay for your medical bills over your lifetime.

One constituent from Las Vegas voiced her concerns that without ACA protections, we would see a return of lifetime caps on coverage.

She said this:

I am concerned about the potential elimination of the Affordable Care Act. In addition to the potential elimination of pre-existing conditions, no one seems to address

the issue of lifetime limits, which were eliminated under the ACA.

For those with long-term illnesses, they stand to risk loss of medical insurance while battling catastrophic illnesses.

My husband has been battling colon cancer for several years. If the lifetime limit were to be reinstated, we would no longer be covered for any of his chemo or other cancer-related treatments.

I am sure that the insurance companies would jump at the chance to stop coverage for those with extraordinarily high medical expenses.

The American people? Well, they want us to protect their care. The American people want us to protect them. They do not want to see the Affordable Care Act eliminated.

The fact is, our healthcare coverage is better now than it was before the ACA was enacted. Insurance plans now have to cover those 10 essential health benefits, and we have fought hard against junk plans that claim to provide coverage but aren't there when you need them the most.

In addition to that, many middle-income Nevadans can access affordable care because of the much needed tax credits that the ACA provides.

I have spoken with and heard from countless Nevadans, and I can say with certainty that no issue matters more to people of my State than their health and safety and the health of their loved ones.

The Affordable Care Act has not only given families the peace of mind that comes with quality health coverage, but it has literally saved lives.

Without the critical protections the ACA provides, we risk going back to the days when big insurance companies could deny insurance coverage based on preexisting conditions. Repealing the Affordable Care Act would have dire consequences for hard-working Nevada families and families across our country.

Healthcare shouldn't be a partisan issue. We have an obligation to protect the health of our constituents. We need access to healthcare more now than ever, and taking critical protections away from Nevadans would be a disaster for our State, and it would be a disaster for our country.

I heard from another constituent, Carol, who lives in Pahrump, who highlighted the risk of this nomination during the current challenges our Nation faces due to the pandemic.

Carol wrote to me, saying this:

Our country is in a public health crisis right now, one that gets worse by the day.

In this moment, we need our legislators to protect our families, to provide relief and support, to do the job we elected them to do.

We do not need to rush through the nomination of a Supreme Court Justice who is on the record as hostile to the law that provides our healthcare protections.

Well, Carol is right to point out that we are in the middle of a catastrophic pandemic that has left more than 225,000 Americans dead. Not only that, but this pandemic could put millions of Americans at risk of being denied coverage because of a new preexisting con-

dition—COVID-19. Just imagine being someone who suffered through even a mild case of COVID-19, only to have their coverage taken away because of this new preexisting condition.

Just this week, we are seeing the highest positivity rates across the country we have seen thus far. Instead of developing a clear, national strategy for combating the coronavirus or crafting comprehensive legislation to assist Americans in need of a lifeline during this difficult time, this administration and Senator MCCONNELL seem to be preoccupied with rushing through a Supreme Court nominee who is outwardly hostile to the Affordable Care Act.

Since coming to Congress, I have made it my mission not only to preserve the Affordable Care Act but to expand care for all Americans. I have worked to increase access, lower costs, and improve quality of care. In fact, one of my first actions as a Senator was to join my colleague Senator JOE MANCHIN in introducing legislation to demand that the Senate intervene to defend the Affordable Care Act in court.

Instead of joining me and my colleagues and working to protect Americans' health, this administration is too busy playing politics with people's lives and is singularly focused on taking away your care, my care, our care.

Our healthcare is at stake. Our lives are at stake.

Before the Senate confirms a lifetime appointment to our Nation's highest court, the American people's vote should be counted and their voices should be heard. This is how the American people feel.

A constituent who lives in Reno wrote to me saying that "President Trump has promised to appoint justices who will overturn *Roe v. Wade* and undermine access to healthcare—certainly not what I want. And not what the majority of your constituents want."

He continues:

The election is already underway and we should be given the power to decide which President nominates someone for this seat. The Senate should be focused on addressing the COVID-19 crisis, not fast-tracking a Supreme Court nominee.

We are only 9 days away from an election, but let's be clear. The election has already started, and millions of Americans all across our country have already cast their ballot. They have mailed in their ballots, and early voting is happening in many places as we speak, including my home State of Nevada.

We should allow the American people to have their say at the ballot box before the Senate considers a lifetime appointment to the Supreme Court—one that will determine the future of access to quality, affordable healthcare in the United States for everyone.

I am sure that other Senators—well, they are hearing the same stories from their constituents like the ones I have

shared today, and I truly hope that my colleagues really listen to them; that they really hear the pain, the anguish, and the anxiety that so many Americans are feeling right here in this moment. Their lives, their healthcare—they are going to be directly impacted by our decisions.

I will not support the nomination of a Supreme Court Justice who does not support the Affordable Care Act. I will vote against Judge Barrett's nomination.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. LANKFORD. Mr. President, for the past several years, I have heard some pretty remarkable stories from the other side of the aisle and from the national media.

We heard from an Atlantic article that the President called servicemembers killed in action "losers." It was spread all over the place until it was refuted flatly by 14 different officials who were on the trip.

We heard claims that the Trump administration has deployed Federal troops to Portland, and they were taking over the streets of Portland, until leadership of ICE and of DHS came to Congress and reported what actually happened, starting with, there were no Federal troops that went. There was Federal law enforcement there, but it is because it is a Federal building that was under attack. And they weren't just aimlessly roaming the streets arresting people, although they did arrest the people who threw Molotov cocktails at the building.

I have heard that the post office cannot handle the increased volume of mail, and the Trump administration is intentionally trying to slow down the post office so mail can't come in, saying with frantic, breathless voices: It could be 100 million ballots coming in the mail. Can the post office handle it? Until you find out that 2 weeks before Christmas last year, the post office handled 2.5 billion pieces of first class mail just that 1 week—certainly they can handle 100 million ballots coming in over a month.

I heard last summer that the President had taken away toothbrushes from children at the border—until a group of us were actually at the border the very next week and went into that exact facility saying there are no toothbrushes there available for the children and saw a storeroom full of toiletries—yes, including toothbrushes.

I read the story and followed up with the ICE leadership about Muslims in our ICE detention facilities being forced to eat pork—tormenting them by feeding them pork, against their faith—until we actually followed up on the facts of it and found that story was completely false.

It seems every day—sometimes multiple times a day—there is a new accusation that comes out to attack the Trump administration and to challenge them on every angle of every direction you can possibly do it.

And then for the Presiding Officer—you know this full well because I sat in that same chair for 2 hours last night during our 30 hours of continuous debate, following Senate rules to conclude a confirmation of a Supreme Court Justice, and I was quite amazed at some of the things I heard while I sat in the chair.

I heard things like, well, Amy Coney Barrett should have never even come out of the Judiciary because Democrats boycotted coming, actually, to the hearing. If they don't come to the hearing, the nominee cannot come out; the Republicans have broken the rules.

In fact, some of my colleagues went dangerously close to say: Because they broke that rule, we are going to break the next rule and pack the Court. Except they leave out one little thing: That has happened multiple times before. They did follow the rules. There wasn't a breaking of the rule in the committee. In fact, one of the Members speaking last night even said so far as, they broke the rules, except the Parliamentarian ruled them in order. And so the Parliamentarian was wrong as well.

At least seven times since 2006—most recently in 2014 when Democratic Chairman LEAHY sent a circuit court judge and two district judges to the floor, out of committee, when only one member of the minority was present—not fulfilling “the rule.”

Republicans did not break the rule as they came out of committee with Amy Coney Barrett.

I heard over and over again that there has never been a time like this that anyone has brought a Supreme Court nominee during an election year like this—except when you actually go back and look at the history, which I have recounted on this floor before, and multiple of my colleagues have recounted the actual history. But then last night I heard once again: Even Abraham Lincoln, the month before the election, could have put in a nominee for the Supreme Court, and he chose not to, to wait for the election. All I could do was sit with my mask-covered face in the presiding chair and smile and think about the Washington Post article that came out just a few weeks ago when Senator HARRIS gave the same lesson about Abraham Lincoln and the Supreme Court. The Washington Post, the day after, wrote an article titled “KAMALA HARRIS’s ‘little history lesson’ about Lincoln’s Supreme Court vacancy wasn’t exactly true.”

No, Abraham Lincoln didn't hold back and say: I will wait until after the election. That is not how that occurred. The Senate was not even in session during that time period. And Abraham Lincoln, in the middle of the Civil War, was waiting it out, trying to keep his fractured Republican coalition together and not fracture it by naming someone. In fact, he shrewdly ended up naming one of his opponents in the Republican Party as the nominee who would come after he was reelected.

It is interesting to me how things seem to get twisted around in some of this debate. I heard last night during the debate time that Amy Coney Barrett refused to answer the questions—the most basic questions about what she believes about things. The shocking thing is, Amy Coney Barrett did the exact same thing that Ruth Bader Ginsburg did during her nomination and that every nominee has said. They said: I am a judge. I can't tell you how I am going to rule on it because it has to be based on the facts of the case. It not something I can just make up on the spot.

In fact, this is what was quoted from Justice Ginsburg when she was Judge Ginsburg at the time and going through the nomination process. This is from Judge Ginsburg:

I come to this proceeding to be judged as a judge, not as an advocate. Because I am and hope to continue to be a judge, it would be wrong for me to say or to preview in this legislative chamber how I would cast my vote on questions the Supreme Court may be called upon to decide. Were I to rehearse here what I would say and how I would reason on such questions, I would act injudiciously.

Judges in our system are bound to decide concrete cases, not abstract issues. Each case comes to the court based on particular facts and its decision should turn on those facts and the governing law, stated and explained in light of the particular arguments the parties or their representatives present. A judge sworn to decide impartially can offer no forecasts, no hints, for that would show not only disregard for the specifics of the particular case, it would display disdain for the entire judicial process.

For some reason Justice Ginsburg was celebrated by the left for not saying how she would rule, but Amy Coney Barrett has been shown disdain for saying she is not telling exactly how she will rule on every single issue.

The most painful thing I heard last night when I was in the Chair and that I have heard over and over again in the dialogue has been a sad, personal destruction and deception, pushing Amy Coney Barrett over and over again as a closet racist and segregationist. I am disappointed that even this candidate is being challenged as a racist, quiet segregationist. It is the firebomb thrown into the middle of a dialogue.

Over and over again, she was challenged by saying what would she do with *Brown v. Board of Education*, as if quietly she is a segregationist.

Over and over again, her concept on originalism was pushed, and here is how it was framed on the debate on this floor: She is an originalist. That means she is backward-looking. That means she is supportive of those White men who supported slavery and would not allow women to be able to vote because, in their perspective, that is what an originalist is. They want to go back to slavery and segregation and removing the rights of women to vote—even saying last night that originalists go back to the time of child labor.

It is a smear. It is a personal attack, and it is an act of desperation. It is an

attempt to terrify the American people that this mother of seven is to be feared because she will take away your healthcare; she will take away your rights; she will remove every option that protects the rights of individuals in a free society; and, as was stated last night, she is afraid of “we the people.”

We have a responsibility in this body to set the tone for the debate. We disagree on things strongly, and so do the American people. But this should not be a place of smears and personal attacks and disdain for each other and for labeling people—something that if we were to sit down face-to-face and I were to ask the Members on the other side of this Chamber “Do you really think that Judge Barrett is a segregationist?” I have every confidence that Members on the other side would say “No, but it plays well to the base.”

What have we become?

Future Justice Barrett, now Judge Barrett, was labeled over and over again as a person who doesn't have her own mind, who is running big-dollar donors from the Federalist Society and is just a puppet of the right, someone who actually was labeled to be groomed by the right for this position, as if that judge has not studied, worked, and prepared her entire life to serve.

She has her own mind. She is well prepared. She is eminently qualified, and she is not a secret racist segregationist coming to take away healthcare from Americans. She is a judge who has heard 600 cases, graduated first in her law school class, taught law for 15 years at Notre Dame University, is well prepared, and, yes, does have this originalist view of the Constitution, meaning you can't just look at it and make it say what you want to. People on this floor can try to put words in her mouth which she has not said, as I heard over and over again, like her desire is to suppress voters. You cannot change how well prepared she is for this task and this moment.

I am grateful that America continues to produce great leaders and great individuals who work hard in their personal lives, who study and prepare themselves to be ready to do whatever God calls them to do, and who are intently focused on serving their fellow Americans in the best way they possibly can.

We ask of Justices one thing—at least I do: Follow the law. It seems my colleagues on the other side of the aisle are terrified that someone may just come follow the law and that policy arguments may have to be debated back in Congress again. Well, I hope that is true because there are policy arguments we need to resolve as a country, but let's resolve them in this Chamber, not in the one across the street. The one across the street, let's keep it non-political, focus on just helping Americans follow the law.

I look forward to voting for Amy Coney Barrett later on tonight, and I

look forward to the day when false accusations are seen for what they really are. Let's do the right thing, and let's do it the right way.

With that, I yield the floor.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I rise today out of grave concern with the direction of the Senate as an institution and with the choices being made on behalf of the American people.

By almost every account, our economy remains severely wounded by the effects of the COVID-19 pandemic. Cases are still rising. In fact, a record was set just in the last couple of days. Small businesses are, unfortunately, closing at an accelerating rate. Foreclosures and evictions are on the rise. Jobless benefits for many have run out. And our State and local governments are running dangerously low on resources to assist teachers, first responders, firefighters, and so many others.

But rather than focusing on the immediate needs of the American people and acting to remove the uncertainty being felt by families across this country and in the Commonwealth of Virginia, the Senate is preparing to pursue a partisan exercise to fundamentally alter the composition of our Supreme Court.

This comes as we are just a week away from November 3, when Americans will go to the polls to cast their ballots in a Presidential election. In my State, the Commonwealth of Virginia, literally almost 2 million Virginians have already voted.

President Trump and the majority leader are jamming through, at this moment, a divisive nominee to fill Justice Ginsburg's seat on the Supreme Court—Judge Amy Coney Barrett.

The Senate has never confirmed a Supreme Court nominee this close to election day. The election is in a week. Nearly 60 million people have already voted. And while they eviscerate Senate precedent and rush toward a Supreme Court nomination, they delay passing the kind of critical legislation in terms of additional COVID relief that would help millions of Americans make it through the economic crisis.

Think about that. Every day we wait to pass a comprehensive COVID stimulus bill, more people than necessary will get sick, some will die, businesses will be lost. Families will lose their homes, and millions of unemployed workers will continue to wonder how they are going to make ends meet.

So why has the President rushed Judge Barrett's nomination through the Senate? The President is jamming through this nomination because there is so much on the line with this Supreme Court vacancy.

On November 10, just 1 week after the election, the Supreme Court will hear a case that could invalidate the Affordable Care Act and rip healthcare coverage away from more than 20 million Americans—20 million Americans—in the middle of a pandemic.

The President and my Republican colleagues here in Congress have already tried—and tried again and tried again—and failed to repeal the Affordable Care Act through Congress. Now they have turned to our Nation's Supreme Court in a purely political effort that could devastate our Nation's healthcare system.

They have offered no replacement plan that would adequately protect individuals with preexisting conditions, and millions of Americans will then be set to lose their healthcare coverage should the ACA be overturned.

I have come to this floor many times and acknowledged that the ACA is not perfect. There are places where it could be improved. But in the years since its passage, I have heard from countless Virginians who have benefited from the law—individuals who have gained access to healthcare coverage for the first time, cancer patients who can no longer be kicked off their plans and denied coverage, 8 million Americans who now have COVID and who now have a preexisting condition. I have talked to small business owners and entrepreneurs who are now able to get coverage on the individual exchange and consequently start that business that otherwise they couldn't take the risk of starting and so many of Virginia's seniors who have seen their drug costs go down thanks to important reforms in the ACA.

That, in and of itself, being considered by the Supreme Court a week after election, would be more than enough reason to wait and delay and let the American people first have their say. But that is not all that is at stake in future cases before the Supreme Court.

This Court—the Court that would disproportionately be moved out of the mainstream—will be looking at everything from reproductive rights to voting rights, to rights for LGBTQ people. All of these hang in the balance. Given those stakes, the American people have a right to have their voices heard before the confirmation of a new Justice.

In 2016, Majority Leader MITCH MCCONNELL set a standard when he refused to consider President Obama's Supreme Court nominee 10 months prior to the election. I strongly objected to the majority leader's actions in 2016, but he is the majority leader. He had the votes. And now that is the precedent by which we should govern this Supreme Court nomination, because the truth is, we can't have one set of rules for Democratic Presidents and a different set of rules for Republican Presidents.

Our system of checks and balances has held strong and lasting for more than 200 years, and it was simply not meant to bear the brunt of such cynicism and hypocrisy.

The Senate should get to the real needs of the American people—a deal that I know Secretary Mnuchin and Speaker PELOSI are quite close to. Let's split the difference and get it

done. We should not be considering a Supreme Court nomination before Inauguration Day. Yet the majority leader is continuing forward with votes on Judge Barrett's nomination.

Judge Barrett's record is clear, and so is my vote. I am voting no. There is too much at stake.

Thank you.

With that, 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. MARKEY. 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. MARKEY. Mr. President, I rise to speak in opposition to the nomination of Amy Coney Barrett to serve as an Associate Justice on the U.S. Supreme Court.

This is no ordinary nomination, and it comes at no ordinary time in the life of our Nation. We are in the midst of a global pandemic that has already claimed more than 225,000 American lives. We are a mere 8 days away from a Presidential election.

Donald Trump announced his nomination of Judge Barrett even before we could fully mourn the death of the great Justice Ruth Bader Ginsburg, and Senate Republicans then rushed this nomination to the Supreme Court. In doing so, they violated the rule that their leader, MITCH MCCONNELL, imposed in 2016, which kept Merrick Garland off the Supreme Court after President Obama nominated him in February of that year to fill the vacancy that arose with the death of Justice Antonin Scalia.

That rule was clear. That rule was concise. That rule was definitive: The Senate would not consider a nomination to fill a vacancy on the Supreme Court during a Presidential election year.

Many of my Republican colleagues echoed Leader MCCONNELL's pledge. In fact, my colleague, Senator LINDSEY GRAHAM, who chairs the Judiciary Committee, admonished us to use his own words against him if he went back on his promise: "If there is a Republican President in 2016 and a vacancy occurs in the last year of that term, you can say that LINDSEY GRAHAM said, let's let the next president, whoever it might be, make that nomination."

But the majority has ignored the McConnell rule and broken their promises to follow it as they engage in the outright theft of yet another seat on the U.S. Supreme Court.

You can't spell "shameful" without "sham," and that is what Senate Republicans have turned this Supreme Court nomination process into—a sham.

What else is unprecedented about the circumstances surrounding the Barrett nomination? Well, in Donald Trump, who made the Barrett nomination, we

have a President who has repeatedly refused to commit to a peaceful transition of power, should he lose the upcoming election.

In Donald Trump, we have a President who has openly stated that he needs Judge Barrett on the Supreme Court to cast a crucial vote if cases arising out of a disputed election reach the Court, like *Bush v. Gore* did after the 2000 Presidential election.

In Donald Trump, we have a President who has vowed to appoint to the Supreme Court a Justice who would vote to overturn *Roe v. Wade* and take away a woman's reproductive rights and freedom. Even before he was elected in 2016, he pledged: "I will appoint judges that will be pro-life, yes."

In Donald Trump, we have a President who has expressly promised that he would only nominate a Justice who would vote to get rid of the Affordable Care Act—ObamaCare—and coverage for preexisting conditions, and President Trump made that another bright-line litmus test for this nomination.

In Donald Trump, we have a President who has told us that he needs Judge Barrett on the Bench to rule in the Affordable Care Act case the Supreme Court is scheduled to hear on November 10, 1 week after the election—a case that will decide the fate of that law and the availability of health insurance for millions of Americans suffering during a pandemic and well afterward.

If Amy Coney Barrett is confirmed to the Supreme Court and votes the way Republicans expect, nearly 3 million people in Massachusetts with preexisting conditions could face higher costs, fewer benefits, and could have trouble finding insurance coverage.

Massachusetts was the model for the Affordable Care Act, but if Donald Trump and his Supreme Court nominee have their way, more than 335,000 Bay Staters enrolled through the Medicaid expansion could lose their coverage.

As we experience the highest number of 1-day coronavirus deaths since the spring, we have a Republican-led Senate that has been unwilling and unable to work with their party's own President to craft desperately needed legislation that would provide relief to the hundreds of millions of Americans who are suffering during this pandemic—Americans who are out of work through no fault of their own; Americans whose small businesses, the engine of our economy, are struggling or going under; Americans who can't get the medicines, the testing, the protective equipment, or the medical care they need; Americans who right now are lacking access to online learning and the promise of an education.

For weeks and weeks, Senate Republicans would not lift a finger to help our workers and our families during this crisis. They would rather our States and our cities go bankrupt; that our students go without Wi-Fi—Black, Brown, and poor children in our country go without the internet at home

and without the funding to provide it to those kids. Right now, at the height of the pandemic, there are going to be millions of children who do not have access to the tools they need to be in the third grade, to be in the fifth grade. And even today our nurses go without the masks they need. Yet, when it comes to filling a vacancy on the Supreme Court and confirming a far-right Justice, these same Republicans made the Senate move with speed that would make Usain Bolt jealous.

Jamming through this nomination in this fashion is unprecedented. It renders this process and this nomination illegitimate, period. If Judge Barrett is confirmed, it will only serve to further erode the stature and the legitimacy of the Supreme Court in the eyes of the American people.

Now, everything to which I have just pointed—the pandemic, the election, the corruption—is just the place settings. It is the table onto which Donald Trump has served up the nomination of Amy Coney Barrett.

Judge Barrett is a proud originalist and textualist in the mold of her mentor, the late Justice Antonin Scalia, one of the staunchest and most arch-conservatives ever to serve on the U.S. Supreme Court. As Judge Barrett put it at her own confirmation hearing, "Justice Scalia's judicial philosophy is mine, too."

As Judge Barrett describes so-called originalism, it means she is supposed to interpret the Constitution's text and understand it to have the meaning it had when the Constitution was ratified, but interpreting the Constitution in that manner has been used over and over to deny rights to women, to communities of color, and to LGBTQ individuals—members of our society who had no rights when the Constitution was ratified.

Originalism is racist. Originalism is sexist. Originalism is homophobic. For originalists like Judge Barrett, "LGBT" stands for "let's go back in time"—a time when you couldn't marry whom you love; a time when you couldn't serve in the military if you were trans; a time when rights were not extended to gay, lesbian, bisexual, transgender, queer, questioning, or intersex individuals.

"Originalism" is just a fancy word for "discrimination." It has become a hazy smokescreen for judicial activism by so-called conservatives to achieve from the bench what they cannot accomplish through the ballot box and an elected Congress. As a result, they roll back individual rights through judicial decisions.

The activist originalist Justices on the Supreme Court and lawyers in its legal community are poised to repeal the Affordable Care Act, deny reproductive freedom, and repeal same-sex marriage. They will welcome a Justice Barrett and a 6-to-3 conservative majority with open arms.

We know a lot about Judge Barrett's judicial philosophy of originalism.

What about her application of it and her views? Well, in early 2017, 4 months before Donald Trump nominated her to serve on the U.S. Court of Appeals for the Seventh Circuit, she wrote a law review article in which she criticized Chief Justice John Roberts' majority opinion in *NFIB v. Sebelius*, which upheld the Affordable Care Act. She made clear she didn't think much of Justice Roberts' opinion, arguing that he "pushed the Affordable Care Act beyond its plausible meaning to save the statute."

We know from another law review article that Judge Barrett, like many originalists, does not give precedent the respect that it deserves. In 2013, she wrote that because a Justice's duty is to the Constitution, there is "more legitimacy in enforcing her best understanding of the Constitution rather than a precedent she thinks clearly is in conflict with it." In other words, she believes that her own interpretation of the Constitution is more important and more legitimate than precedent such as *Roe v. Wade*.

We know from her dissenting opinion in *Kanter v. Barr* that she believes a felony conviction shouldn't necessarily result in losing the right to own a gun, but she is OK with felony convictions taking away the right to vote. She would make it easier for a felon to own a gun than to vote. That is the kind of result that Judge Barrett's originalism gets us into.

So, on many of these issues, Amy Coney Barrett has shown us that she couldn't be further in spirit from Ruth Bader Ginsburg, the late, great Justice whose seat on the Nation's highest Court she will fill. While Justice Ginsburg always had us looking forward, Amy Coney Barrett and her originalism will always have us looking backwards—and backwards is precisely the direction in which this Nation should not be going.

What we know from Amy Coney Barrett's own words is very troubling. Yet then, at her confirmation hearing, we learned that there are many basic, fundamental legal issues on which she would not say a word and she would keep her views hidden.

At her confirmation hearing, Judge Barrett declined to answer questions about such important propositions as whether it is unlawful to engage in voter intimidation—spoiler alert: it is; questions about whether the President can delay a Presidential election—news flash: he can't; questions about whether Presidents should commit to a peaceful transition of power—listen up: they should; questions about whether *Obergefell v. Hodges*, the landmark Supreme Court decision recognizing the right to gay marriage and making marriage equality the law of the land was correctly decided—no doubt about it, it was; questions about whether the non-discrimination provisions of the Affordable Care Act protect LGBTQ people from discriminatory treatment in healthcare—of course they do; questions about whether *Roe v. Wade* was

correctly decided and is a superprecedent—it was and it is; questions about whether Medicare is constitutional—of course it is; questions about whether climate change is real and whether human beings cause it—it is and we do.

On these and so many important issues and questions, Judge Barrett refused to give the obvious and indisputably correct answers, but based on her judicial philosophy, her writings, and her record, I have little doubt where she really stands, and that is in the same corner with rightwing, reactionary jurists who are far outside the mainstream of American jurisprudence.

Finally, there is another question that Judge Barrett would not answer: whether, if confirmed, she will recuse herself from the Affordable Care Act case and any election cases that reach the Supreme Court.

There is a Federal statute that governs the recusal decision. It requires recusal in situations where a judge's impartiality might reasonably be questioned. President Trump himself put Judge Barrett's impartiality at issue when he confessed that he needed Judge Barrett on the Supreme Court to decide any election disputes. He did it when he said he would only appoint a Justice who would help to overturn the healthcare law.

After reviewing Judge Barrett's record and listening to her testimony before the Judiciary Committee, it is becoming clear that we have a binary choice: We can have the Affordable Care Act, or we can have Amy Coney Barrett on the Supreme Court. We can have the ACA, or we can have ACB, but we can't have both.

Judge Barrett needs to do the right thing and recuse herself.

I will conclude by noting the irony that Ruth Bader Ginsburg and MITCH MCCONNELL were both on the same page as to this nomination. In 2016, Senator MCCONNELL gave us his promise that the Senate would not fill a vacancy on the Supreme Court in a Presidential election year. After she passed, we learned that it was Justice Ginsburg's dying wish that she not be replaced until a new President is installed. So let's hold MITCH MCCONNELL and LINDSEY GRAHAM to their words and honor Justice Ginsburg's fervent wish: no confirmation before inauguration.

But if Republicans succeed here today in their effort to confirm yet another conservative Supreme Court Justice just days before the Presidential election, as soon as the Democrats take back control of the Senate in January, we must abolish the filibuster and expand the Supreme Court. We cannot allow such corrupt partisanship to take precedence over justice and liberty in our country.

I will vote against the confirmation of Judge Amy Coney Barrett to the U.S. Supreme Court and urge my colleagues—all of my colleagues—to do the same.

I yield back.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. PETERS. Mr. President, I would like to start by giving a quick history lesson, and I will begin with just two numbers. These two numbers speak to how extraordinary it is that we are here today debating and voting on a nominee for the U.S. Supreme Court.

The first number is four. Four. That is how many Supreme Court vacancies have arisen after July 1 and before election day in a Presidential election year. Only four times in the history of this country has a Supreme Court vacancy arisen within 4 months of a Presidential election.

The next number I think is very important to remember, and that number is zero. Zero. That is how many times these vacancies were filled. In fact, similar to this vacancy, President Lincoln had a Senate majority when a vacancy arose just weeks before election day in 1864. What did he do? He chose to wait. President Lincoln thought nominating a Justice so close to an election would delegitimize our institutions and harm the Republic that he was fighting so hard to preserve.

That is the precedent that President Trump and Senate Republicans have disregarded as they quickly plotted to fill the seat just hours, if not minutes, after Justice Ginsburg's passing.

In addition to breaking with this historical precedent, Republicans are also jamming through their nomination in the middle of a pandemic that is gripping our country.

Instead of prioritizing Michigan first responders, small businesses, workers, teachers, families, and healthcare professionals who are still suffering through the effects of the coronavirus pandemic, Senate Republicans and the President are instead laser-focused on jamming through a Supreme Court nominee for a lifetime appointment.

This is more than just political gamesmanship. This nominee will significantly impact the lives of Michiganders and folks all across our country.

We know that the Supreme Court is set to shortly consider a case that has far-reaching ramifications for people's healthcare. The Trump administration is arguing in Court that the Affordable Care Act should be overturned in a case that will come before the Supreme Court in November, just 7 days after election day.

If the Trump administration gets its way in this lawsuit, we could go back to the days when insurance companies once again call the shots on people's healthcare. Over 4 million Michiganders with preexisting healthcare conditions could be denied coverage. Seniors could be charged more for prescription drugs. Lifetime and annual limits on coverage could make costs unaffordable and, as a result, force families into bankruptcy. Before the passage of the Affordable Care Act, medical debt was the No. 1

reason for personal bankruptcy. People faced financial devastation simply because they got sick. Women could again be charged more for being a woman because a potential pregnancy is a preexisting condition.

We have come way too far to be turning the clock backward. For the Trump administration to be pushing this lawsuit is reckless and dangerous, especially during the worst public health and economic crisis in generations.

But that is not all that is at stake. A woman's right to make her own healthcare decisions and reproductive freedom is at stake. Workers' rights against corporate special interests are at stake. Environmental justice is at stake. Access to the ballot box is at stake. Attempts to end the corrosive effect of money in campaigns and elections is at stake. And LGBTQ rights are at stake. Those are just some of the many issues that a Supreme Court Justice with a lifetime appointment will be ruling on for decades to come.

Judge Amy Coney Barrett's nomination has extremely far-reaching consequences.

We are just a few days from election day. Already over 2 million Michiganders have voted, and many more are voting as I speak here today. With all that is at stake, Michiganders deserve a say in who nominates and confirms the next Justice to our Nation's highest Court. And the fact that Michiganders are being denied this opportunity is simply unacceptable.

Therefore, I cannot support this nomination process. It should wait until a new President and Senate take office following an election to take place in only a few days. For this reason and many others, I will not be voting for Judge Barrett's confirmation. I will cast a "no" vote.

Here we are. Instead of bringing folks together to find common ground on coronavirus relief, our country is being forced to go through a divisive Supreme Court nomination process. It simply did not have to be this way.

I continue to stand ready to roll up my sleeves and put together a comprehensive, bipartisan, and meaningful COVID relief package. Ask any Michigander what they are worried about today, and you are going to get the same answers from them. They are worried about being able to put food on the table or a roof over their head. They are worried about getting or keeping a job to support their families. They are worried about catching a virus that has killed over 7,000 of their fellow Michiganders and over 220,000 people all across our Nation. They are worried that, if they survive a COVID infection, it will compromise their health for the rest of their lives. They will have a preexisting condition.

So I ask: Why isn't this pandemic the Senate's top priority right now? When we passed the CARES Act, we came together. We put politics aside and passed a real comprehensive package that helped keep millions of people

stay afloat. We need to summon that spirit again. Michiganders are counting on us. Americans across this country are counting on us.

I implore my colleagues to drop what we are doing, and let's come together and pass a meaningful, bipartisan COVID relief package, and let's get that done now.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. HEINRICH. Mr. President, I rise today as more than 220,000 Americans are dead from the coronavirus. There are more than 4 million fewer jobs than when Donald Trump took office. We are still squarely in the middle of this pandemic and an economic crisis, the likes of which we have not seen since the Great Depression.

In recent weeks, cases of the coronavirus have risen dramatically. In my home State of New Mexico—and, frankly, across the entire country—everyone is rightly worried about whether our schools, our childcare centers, and our small businesses can acquire the resources and the equipment they need to reopen safely.

We still don't have enough resources or even a national plan for testing and contact tracing, much less for treatments and the eventual nationwide distribution of an FDA-approved vaccine that would allow us to finally get a handle on this virus.

If we don't pass real economic relief in the coming weeks, many families in New Mexico will face desperate choices—between paying their bills, keeping a roof over their heads, and putting food on the table. Yet here we are, using valuable time on a Supreme Court confirmation process that should never have been taken up before the election.

Senate Republicans say they aren't going to negotiate another coronavirus relief package. They say it is more important to ram a Supreme Court nominee through a broken and nakedly political process than it is to help the people that we were all elected to serve.

Clearly, nothing—not even the lives or livelihoods of the American people—will get in the way of their power-grab design to reward their biggest donors and the most extreme interests.

Let me say this clearly: I disagree. There is still so much that we need to do to stop the spread of the coronavirus and to support families, workers, and businesses that are struggling and to rebuild our communities. Let's move to that urgent action.

But with Senate Republicans refusing to do that, let's discuss in real terms what they are doing instead.

Considering and confirming Supreme Court nominees is one of a Senator's most solemn duties under the Constitution. We are supposed to take it seriously and deliberately, but Senate Republicans have thrown out the rule book. It started when, with nearly a full year remaining in President

Obama's final term, Senate Republicans refused to even hold hearings on Merrick Garland, the nominee to replace the late justice Antonin Scalia.

Then, they dismantled the rules that had ensured that both parties would have a seat at the table on Supreme Court nominations. Then, they bull-rushed the vetting process for Justice Kavanaugh's lifetime appointment to the Court, despite multiple, credible allegations of sexual misconduct.

After all of that, I suppose it should have come as no real surprise that Majority Leader MCCONNELL waited less than an hour after the announcement of Justice Ruth Bader Ginsburg's death to say that he was going to push the envelope even further.

So here we are. Leader MCCONNELL and Republicans are now forcing the Senate to rush through another partisan Supreme Court confirmation battle in mere weeks—and now mere days before election day.

They are shamelessly discarding their own precedents, breaking their own rules, abandoning their own words, and they are trampling on the legacy of Justice Ruth Bader Ginsburg. Before her death, Justice Ginsburg told her granddaughter that her “most fervent wish” was that her seat wouldn't be filled until after the next President is inaugurated.

Justice Ginsburg served on our Nation's highest Court for nearly three decades and worked for decades before that to move our country's laws toward greater equality. She understood that the American people must trust that the Supreme Court Justices are acting above the partisan politics of the moment.

The next Presidential election is now less than two weeks away. Millions of Americans have already voted for their next President and their next Senators. I believe that these Americans deserve a voice in this process.

In the words of Majority Leader MCCONNELL himself, as was reported in the Washington Post on February 18, 2016, “Given that we are in the midst of a presidential election process . . . the American people should seize the opportunity to weigh in on whom they trust to nominate the next person for a lifetime appointment to the Supreme Court.”

The Senate should follow that precedent and should allow voters to decide who should fill this Supreme Court seat. What has changed for Majority Leader MCCONNELL? Well, over the last decade, the Court has made razor-thin 5-to-4 rulings on women's rights, LGBTQ rights, workers' rights, immigration, voting rights, civil rights, climate change, and so much else. My Republican colleagues will say that these decisions were made by activist judges and that all they want are judges who will call balls and strikes. But what they really want are judges who will make those calls consistently biased toward wealth and power, rather than toward people.

For all the talk of activist judges, it is my Republican colleagues who are right now attempting to add one whopper of an activist to the Supreme Court.

Next month, the Supreme Court will take up President Trump's case to eliminate the Affordable Care Act in its entirety. That is right. In the middle of this pandemic that has now killed more than 220,000 Americans and infected millions more, the Supreme Court is taking up a case that could eliminate healthcare coverage for millions of Americans.

Judge Barrett refused to answer questions about the Affordable Care Act during her confirmation hearing last week. But her views on the healthcare law are clear and they are exposed in the public record. Judge Barrett has repeatedly and publicly criticized the Affordable Care Act. She has said that the Supreme Court should have already invalidated it. If Senate Republicans have their way, she will have the opportunity to do just that.

What would it mean if the Supreme Court overturns the Affordable Care Act? It means bringing back discrimination, higher costs, and even outright denial of coverage for more than 800,000 New Mexicans living with preexisting conditions like heart disease, diabetes, cancer, and now COVID-19.

I am particularly worried about what this would mean for the people in Indian Country, who have been disproportionately impacted by this pandemic. In New Mexico, Tribal nations have experienced heartbreaking losses, and healthcare resources in Tribal communities have been incredibly strained.

I have lost friends and mentors in Indian Country, and I know others who are still struggling to recover from this virus. I can't even imagine how much worse this situation could become if the health coverage provided by the Affordable Care Act were ripped away.

When we passed the Affordable Care Act, I fought hard to include a permanent reauthorization of the entire Indian Health Care Improvement Act, which supports the care provided to Native Americans through the Indian Health Service.

An estimated 290,000 American Indians and Alaskan Natives also gained health coverage through the Affordable Care Act's Medicaid expansion. All of that is at risk if the Supreme Court overturns the Affordable Care Act.

If Judge Barrett is confirmed, she will also attack other important Supreme Court precedents, from *Roe v. Wade* to the recent marriage equality decisions. She dodged questions on these issues during her hearing.

But her academic and judicial record made clear Judge Barrett's extreme beliefs and philosophy. In her hearing last week, Judge Barrett also refused to take a firm view on climate change. We have major wildfires burning right now in Northern New Mexico—in October—Colorado and California are seeing

much of the same. We don't have time to debate the undisputed facts and realities of climate change, especially with a judge who would strip us of the tools needed to address it.

Tellingly, Judge Barrett also refused to agree to recuse herself from any decisions related to the upcoming Presidential election. Given that President Trump considers Judge Barrett "his" Justice, this creates a dangerous conflict of interest. It is also a very real threat to the foundation of the Supreme Court as an equal and independent branch of government.

Meanwhile, instead of attempting to tear down our democracy, the House of Representatives has passed multiple coronavirus relief bills over the last 6 months that would help workers and families. And they are already willing and able to negotiate with the President, to negotiate with Leader McConnell to come to some sort of bipartisan agreement. Majority Leader McConnell and Senate Republicans have walked away from the negotiating table, leaving us with nothing but false promises and sham bills to provide themselves a little political cover before an election.

We all know the real story here. Behind closed doors, Majority Leader McConnell is actively discouraging negotiations on a bipartisan relief bill. Let me say this to Majority Leader McConnell and all of my Republican colleagues: If voters reelect your Republican majority and President Trump, there will be plenty of time to move forward with a real and legitimate Supreme Court confirmation process.

Right now, we should be focusing all of our energy on delivering the aid that Americans so desperately need, protecting the health and the economic well-being of Americans. That is what our country expects of us. That is our duty. Let's get to it.

I yield the floor.

The PRESIDING OFFICER (Ms. ERNST). The Senator from Missouri.

Mr. HAWLEY. Madam President, some months ago, in July of this year, I came to this floor shortly after the conclusion of the Supreme Court's most recent term to lament the ongoing judicial activism—the judicial imperialism—that we have seen from this Court over this past term and from the Supreme Court for years on end.

I quote the late Justice Scalia who said: "The imperial judiciary lives."

I said on the floor of this Senate—and it was a shame to say but was undeniable—that the imperial judiciary continued to live in this country—a judiciary intent and a Supreme Court intent on legislating from the Bench, on making up laws that went along with no regard for what the people actually wrote in their statutes or in their laws.

I particularly lamented the position of religious conservatives, of people of faith, who had seen in this past term from the U.S. Supreme Court decision after decision that tossed aside the

concerns of religious conservatives and faithful Americans and who had watched the Supreme Court legislate and depart from the text of written laws with barely any concern for the effects on religious liberties. In fact, it tossed aside concerns about religious liberty, religious freedom, and in one or two lines of opinions, the effect on religious institutions. This is what we have been seeing from the U.S. Supreme Court.

Religious conservatives have come to a place of asking: What is it that we are fighting for? What is it that we have been working for and voting for all of these years? Is anybody actually listening to us? Do our votes really matter?

Those are the questions that religious conservatives were asking in July of this year, and that is why the nomination of Amy Coney Barrett to the Supreme Court of the United States comes as such historic and welcomed news to people of faith in this country, to religious conservatives, and to all who believe in the rule of law in America.

The nomination of Amy Coney Barrett is truly historic. This is the most openly pro-life judicial nominee to the Supreme Court in my lifetime. This is an individual who has been open in her criticism of that illegitimate decision *Roe v. Wade*.

She is a nominee who has been open about her faith and her faith commitments and the way she and her husband live their lives—immersed in their Catholic faith—and raise their children in their Catholic faith and want others to have the freedom to be able to do the same. Her nomination and, I anticipate, her confirmation tonight, in just a few hours on this floor, will show that there is nothing wrong with any of that.

In fact, people of faith should be welcomed on the Supreme Court of the United States, and people of Judge Barrett's convictions should be welcomed on the Supreme Court of the United States. In just a few hours, with the vote of this body, we will confirm that this is, indeed, the case.

I have to say that Judge Barrett's own positions and her convictions give me great confidence that she understands the difference between judging and legislating—that she will not be a judicial imperialist as I have talked about on this floor in months past.

Now, I said earlier this year that I would not vote for a Supreme Court nominee who did not understand the difference between judging, on the one hand, and legislating on the other and that I would not vote for a judicial imperialist. I specifically singled out *Roe v. Wade* and said that I would not vote for a Supreme Court nominee who did not understand that *Roe* was an act of judicial imperialism and that, indeed, I wanted to see record evidence that the nominee understood that *Roe* was an act of judicial imperialism and understood the difference between legis-

lating from the Bench and actually adhering to the Constitution and the laws.

I am proud to support the nomination and confirmation of Judge Amy Barrett because her record makes abundantly clear that she understands the role of a judge and that she understands the role that the Constitution assigns to the judiciary. It is not the role of legislating. It is not the role of imposing policy preferences or personal views. It is the role of following the law. Her record indicates that she understands that and is committed to following that role and committed to reviving that approach, that constitutional approach to judgment—that she will fight for it and revive it on the Supreme Court of the United States.

So I am delighted to support her nomination. I am delighted to have someone of her convictions. I am delighted to have someone who has taken the stances that she has taken as a legal practitioner, as an academic, and as a judge. Yes, that includes her position on life, and yes, that includes her position on *Roe*.

We will set a precedent tonight that people of faith and people of the convictions that Judge Barrett has and shares are welcomed in this country in every office. They are welcomed on the highest Court in the land, and we need not ask people of convictions to give up those convictions in order to serve on the Supreme Court of the United States. We need not say: Oh, you have to scrub your personal views. Oh, you have to pretend that you don't have religious faith or you have to pretend that it doesn't matter to you. You have to renounce your past record. We do not have to do any of that.

What we have to ask them to do is to understand the difference between judging and lawmaking. What we have to ask them to do is to understand their role that the Constitution assigns them. We have to ask them to be committed to following the law. I am convinced, based on her record, that Judge Barrett will do exactly that.

For those reasons, I am delighted to support her confirmation, and I look forward to this historic vote in just a few hours' time.

I yield the floor.

The PRESIDING OFFICER. The Senator from Missouri.

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

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

Mr. BOOKER. Thank you, Madam President, my colleague from Iowa. I am grateful.

Madam President, I rise today to speak on the nomination of Amy Coney Barrett. I rise in the midst of a pandemic, in the midst of an election process in which over 50 million Americans

have already voted, to speak with a simple call that we should wait. We should not be doing this as a body.

Now, that is not a radical statement. It is a statement that has been said by pretty much every Member of the Democratic side, but it is also a statement that was made by many people in the Republican Party before we got to this juncture.

It was said around the time that Merrick Garland was up for nomination by President Barack Obama 269 days before an election, and people said that we were in an election season; that we should wait.

But this is not a typical election season. This is an election that is going on where the people are coming out to speak on an array of issues. There is a profound urgency in the air—not a partisan urgency. America has seen record turnout because they know what is at stake in this election.

There are issues that are driving people to the polls, and in this context, our President is doing what has never been done before. The only time this had a chance to be done before was when Abraham Lincoln had a vacancy on the Supreme Court in the midst of an election—this close to an election. Abraham Lincoln—one of our greatest Presidents of all time—made a powerful choice. He had the power to move, and he had the power to nominate, but he showed a restraint on power. He showed, in a sense, what we would call an act of grace. He knew that in the midst of an election, when people were coming out to speak, that it was better to wait.

This grace is also what was called for by Ruth Bader Ginsburg on her deathbed. She didn't know who would win this election, but she thought it was best to call to the better angels of our nature; that sometimes the greatest demonstration of power is when we do not use it; that this precious democracy, this great experiment that has endured for this period of time, has sustained itself on acts of decency and grace and most importantly on trust—trusting people, trusting Americans, and trusting voters.

We haven't always gotten it right, but this fundamental ideal that when people are exercising their voice, the people in this body should listen. Over 50 million Americans. We are days—in fact, hours—away from the actual election day, but the process has started already. People are speaking, but we are refusing to listen.

I fear that what is driving many people to the polls are some of the very issues that this Supreme Court Justice will be in a position to hear. We know that Donald Trump spent the last 4 years trying to overturn the Affordable Care Act. He made a promise to only appoint Justices who would overturn it. He promised that he would nominate a judge who would “do the right thing unlike Bush’s appointee John Roberts on *ObamaCare*.” This is clear.

We know that the majority leader, MITCH MCCONNELL, controlling this

floor, has spent years trying to overturn the Affordable Care Act. In fact, between the House and the Senate, there have been over 70 votes to overturn the Affordable Care Act.

We know there is a case that will come before the Supreme Court on November 10 that could very well determine whether over 600,000 people in my State and 20 million people across the country can keep their health coverage.

So this is not a secret. The American people know what is going on. They see what is happening here. Many of them, I believe, are going to the polls to speak about the issue of healthcare, and instead of waiting and trusting to hear and listen to the will of the people, we are here right now.

Folk are scared. We are, in a sense, walking through the valley of the shadow of death—the fourth largest mass casualty event in the history of our country, and the death rate is rising every single day. That is why so many Americans have been speaking out and calling out, because they know what this nomination could very well mean for their lives and for the lives of their family members. They know what a world without the ACA would be like.

For a President to nominate someone—a President hostile to the ACA—a Supreme Court Justice who has spoken to this, they know what this might mean. We know that for 3.8 million New Jerseyans and 130 million Americans who have preexisting conditions—people with diabetes; cancer survivors; people with diseases like my dad had, Parkinson's—it could mean being charged more or being denied coverage completely. This is a terrifying reality.

Folk who are going to the polls, waiting hours in a line, know what it could mean—that once again more people are going to be bankrupted by outrageous medical bills.

They know what it could mean for lifetime caps on care for children with complex medical conditions.

They know what it could mean for a family with a child who survived a medical procedure and another medical procedure and another medical procedure, surgery after surgery, being told: If you want your child to live, pay for it yourself.

So many Americans know what it would mean for seniors not being able to afford lifesaving prescriptions, making the dangerous decision to cut pills in half or ration their insulin.

So many Americans know that losing the ACA could mean real tragedy.

In New Jersey, over 600,000 people are losing their healthcare in the middle of a pandemic that in my State has already killed 16,000 of our first responders, our neighbors, and in many cases our friends and our family members. These are numbers, these are data, and these are statistics, but each one is a human life. Each one has dignity, and each one has family.

I know, for example, Michelle Lewris from Palisades Park, NJ. When

Michelle lost her husband John suddenly last year, she also lost the health coverage she had through his job. But she was able to get coverage through the Affordable Care Act's marketplace and qualify for a subsidy that made it more affordable for her. Today, she is insured, and she can manage her diabetes and her heart disease and her autoimmune disease because of her coverage. She said that if she lost her affordable healthcare, she would have to sell her home and would be in financial crisis.

Losing the ACA for Merritt Bowman, who is a 49-year-old dad with twin boys and a football coach from New Jersey—he said that before the ACA was passed, he didn't even go to the doctor because he was afraid he couldn't afford it, putting his own health in danger. After the ACA, he was able to get affordable coverage. When he felt sick a few years back, he made a doctor's appointment and was diagnosed with diabetes. Today, thank God, his condition has improved, but, he said: Now I have a preexisting condition. My insurance covers my medication and my equipment to monitor my diabetes. If that is taken away from me, what is going to happen? I can't afford those things on my own.

I know this reality. We must know this reality. We must listen to Americans right now who are saying openly: I am going to the polls because of my fears on healthcare.

Yet we are going through—instead of waiting to listen to our fellow Americans, showing that grace that they should decide, we are rushing forward.

What about protections that are granted people like those under *Roe v. Wade*? What about that? Those are decisions that we should let voters decide. We should listen to the American people. What about protections for workers? What about protections for organizers? What about voting rights? All of these issues in the midst of an election deserve to be decided by the people.

The American people know what is at stake right now because we know that Donald Trump nominated Judge Barrett with a very specific agenda in mind. He told us very clearly. We know that Donald Trump wants the Affordable Care Act to be overturned, and he would appoint judges he believes would do that. We know that Donald Trump wants *Roe v. Wade* overturned. He has explicitly told us that. We know that Donald Trump wants us to question the validity of an election because he has questioned the validity of an election that is ongoing right now.

I never imagined I would have a day in my life as an American citizen—I have watched other countries, but I never thought in my own we would have a leader who would question the validity of an election, going as far as to say: If I lose, this election was rigged, and it was illegitimate.

That does real damage to not just this moment in time; it does damage to

our very institutions and our processes that are essential for this democracy. It is dangerous language.

The behavior of this President is so dangerous that his own Cabinet members—former Cabinet members—have called it out.

I know the strength of our Nation, but our institutions must be protected, and they must be preserved. The processes that ensure this democracy continues to go on so that our truth goes marching on—all have to be protected.

When you have a President who calls into question our very election processes and literally says “If I lose, it is illegitimate” and then says “I won’t even commit to a peaceful transfer of power,” that should raise alarms. That is why people within his own party, people who served in his own Cabinet, people respected in this entire body, like General Mattis, former Secretary of Defense, have said that Donald Trump is a threat to our democracy.

It is in that context, in the middle of a national crisis, that we are in the midst of an election, and we can’t even get a Supreme Court nominee to commit themselves to the idea of the peaceful transfer of power, who the President himself has said he is rushing to the highest Court in the land because he believes that this election may be decided by that judge. That judge won’t even commit to being recused under these circumstances. Is that strengthening our democracy? Is that girding trust in our country’s processes, or is it weakening them? Because it clearly is doing damage to what is necessary for the endurance of our country and our ideas.

These aren’t just my words; these are the words of people on both sides of America’s political divide. Yet we are not showing restraint in this moment. We are not showing that grace. We are rushing for short-term gain for one political party and long-term damage to our Nation.

I don’t understand why this is not something that raises worry and concern—a President who so easily trashes some of our most valued and sacrosanct ideas.

I remember the hurt I felt when peaceful protesters in Lafayette Park were turned upon. I remember a note I was forwarded from a college classmate—if I have it correct—about her son being hit with a rubber bullet. I remember journalists whom I had gotten to know in these very hallways telling me about the horror of seeing the panic and the screams and the running as the gas and the rubber bullets hit. I saw how a President seemed to utilize the military to menace what is one of our most important constitutional protections—the right to protest peacefully.

I have seen 4 years now of too many people who have remained silent in the face of erosions to our constitutional norms as the President has so willingly trashed that which people on both sides of our political divide have worked so hard to build up. I stood right there

down near the Presiding Officer and raised my hand, like so many of us have—like all of us have—to protect and defend the Constitution of the United States.

To not see us right now, in the midst of a potential constitutional convulsion; in the midst of a potential constitutional crisis where a President himself is not committing to the peaceful transfer of power; where there are people organizing to do harm to elected leaders, kidnap them; when you could go online right now and look at groups calling out to people with Special Forces training to go to polls and perhaps cause mayhem—I don’t understand why we don’t share a bipartisan, deep concern for what is happening right now in our country and how this moment in American history fits into the concern that moving forward right now causes danger and causes harm.

I would be remiss to not mention that in the midst of it all, we are also in the midst of a racial awakening in our country. We saw what are perhaps the largest demonstrations in our Nation around issues of racial justice—all 50 States, towns and communities from all backgrounds, people marching and protesting around race issues. It has led millions of Americans to learn more about our own history, discovering things like the Tulsa massacre, discovering things like the Colfax massacre, going to the incredible museum in Alabama for lynching, where thousands of Americans were lynched in our country, discovering our history and how it ties directly to the President.

In the midst of all of this, we know that issues of race and the law will continuously come up before the Court until we have justice rolling down like water and righteousness like a mighty stream.

In the midst of all of this, even in my conversations with this nominee, I was surprised that they could not speak to one article, one Law Review article, one column, or one book they have read about issues of race in the law, when we are still in a nation that has such bias in its outcome, where just by the color of their skin they are directly correlated with longer sentences, more likely to get the mandatory minimum, more likely to get the death penalty, where we see no difference between Blacks and Whites in America for using marijuana or selling marijuana, but Blacks are almost four times more likely to be arrested for possession of marijuana, getting criminal convictions for doing things that two of the last three Presidents admitted to doing.

And in the midst of all of this that has activated so many Americans and many even in the polls today, I couldn’t get even a dialogue going about issues of race.

When I specifically asked about a case, Judge Barrett’s case in *Smith v. Illinois Department of Transportation*—this case involved a Black traffic patrol driver who had been fired by

the Illinois Department of Transportation. This employee claimed that he had been the subject of a hostile work environment and that his supervisor had called him the N-word. Judge Barrett ruled against him saying that despite documenting being called the N-word by his supervisor, the employee had failed to make the case that he had been fired in retaliation for complaints about race discrimination.

When I asked Judge Barrett why she ruled that a supervisor using a vial and derogatory term, one that carries with it a history of racial subjugation and violence like the “N-word,” did not constitute a hostile work environment—I mentioned that Judge Kavanaugh, in a similar case, ruled that it did—I was surprised after her answers to go back and read the case. She had muddled the facts in the case. In fact, she blatantly mischaracterized a key fact in the case.

Judge Barrett said: “He didn’t tie the use of the N-word into the evidence that he introduced for his hostile work environment claim.” When, in fact, the employee’s reply brief states: “Appellant’s position is that the combination of the N-word and the acts identified immediately above did create a hostile work environment.”

She mischaracterized her own ruling claiming, “So the panel very carefully wrote the opinion to make clear that it was possible for one use of the N-word to be enough to establish a hostile work environment claim if overplayed that way,” when, in fact, her opinion stated something different:

The N-word is an egregious epitaph. That said, Smith can’t win simply by providing that the N-word was uttered.

Again, even Justice Kavanaugh stated that being called the N-word by a supervisor suffices in itself to establish a racially hostile work environment.

Again, in this context, at a moment that our country is moving in numbers we have not seen before, we have a Justice that mischaracterizes a case, doesn’t speak directly to the facts, as plain as they were, and can’t engage in a substantive conversation about any scholarship whatsoever around race in America.

I would like to read an excerpt of the letter from Derrick Johnson, President and CEO of the NAACP. He writes: “It is disturbing enough that Judge Barrett declined to rule that use of this vial epitaph constituted a racially hostile work environment, but her misrepresentation to the Judiciary Committee about the basis for her ruling raises serious questions about her truthfulness and candor under oath that extended far beyond this particular case.”

I ask unanimous consent that a letter from the Black Lives Matter Global Network Foundation signed by 18,000 Americans in opposition to the nomination of Amy Coney Barrett to serve as Associate Justice on the Supreme Court of the United States be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

BLACK LIVES MATTER,
October 21, 2020.

Hon. LINDSEY GRAHAM,
Chairman, Senate Judiciary Committee,
Washington, DC.

Hon. DIANNE FEINSTEIN,
Ranking Member, Senate Judiciary Committee,
Washington, DC.

Re Opposition to the Nomination of Amy Coney Barrett to the Supreme Court of the United States.

DEAR CHAIRMAN GRAHAM AND RANKING MEMBER FEINSTEIN: On behalf of Black Lives Matter Global Network Foundation, Inc. the umbrella organization for our global movement, I strongly urge you to oppose the nomination of Amy Coney Barrett to serve as Associate Justice on the Supreme Court of the United States.

The New York Times recently recognized Black Lives Matter as the largest, most diverse civil and human rights movement in the history of both our country and the world. We cannot stand back nor stand by as partisan political games threaten irreparable harm to the last branch of government where Black Americans can turn for protection and justice.

As imperfect as our American judicial system has been, it has traditionally had at least the veneer of an avenue for recourse for marginalized groups. This political hijacking of the nominating process to the highest court in the land goes against the purpose and intent of the Constitution you are sworn to uphold.

The U.S. Supreme Court has always been crucial to the progress of African Americans. Our rights to fully participate in democracy and in every facet of social and economic life, on an equal basis, lie in the balance. From *Brown v. Board of Education* to *Shelby County v. Holder*, we have seen the power of the Supreme Court to both advance and undermine civil rights and equal justice under law. Each year, the Court decides critical cases involving voting rights, equal educational opportunity, fair employment, fair housing, women's rights, access to healthcare, immigration, consumer rights, environmental justice, and criminal justice. These decisions directly impact our lives, our families, and our communities for generations.

Placing someone like Barrett who has a record of flagrant disregard for established precedent, especially on issues related to race, on the Court is dangerous for marginalized people. *Smith v. Illinois Department of Transportation*, is only one example of her dangerous jurisprudence. In the aforementioned case, Barrett ruled that being called the n-word by a supervisor does not constitute a hostile work environment. So extreme is this ruling, that it places Barrett to the right of Justice Kavanaugh, who in 2013 wrote that a single use of this epithet "suffices by itself to establish a racially hostile work environment." The means by which Judge Barrett reached this extraordinary conclusion, by relying on grounds that neither the trial court nor either party had raised, reveals the jurisprudential gymnastics to which she was willing to undergo in order to reach this disturbing conclusion.

The nomination of Amy Coney Barrett in the middle of a presidential election poses a grave threat to the integrity and legitimacy of the bastion of the Judicial Branch of government. Justice Ginsburg passed away on September 17. Thirteen days after, voting began. At least 31.4 million people have already voted for President and for their Senators in this election, both through early

voting and voting by mail. Their voices must be heard and honored.

Black Lives Matter wants a Supreme Court that works for all of us. We will fight for that Court. Corporate interests like insurance companies, drug companies, and the gun industry have worked for years to pack the courts to ensure that they work for them, not for the rest of us. To have courts that protect equal justice for everyone, we need a nominee who will fight against these corporations and protect the rights of everyday working people. We need a Justice who won't pick and choose whose rights to defend, but one who will work to protect equal justice for all. Amy Coney Barrett is not that nominee. She will not be that Justice.

Our rights and the future of our democracy is at stake. Because Amy Coney Barrett puts the wealthy and powerful first, the Court will continue making decisions that deny Americans' voting rights, put corporations ahead of people, refuse to recognize and remediate discrimination, and limit access to health care.

Black Lives Matter must also note that Amy Coney Barrett currently occupies a judicial seat meant for a Black woman. She ascended over Black women with greater qualifications and more professional experience. In 2017, Donald Trump appointed Barrett to an Indiana seat in the U.S. Court of Appeals for the Seventh Circuit, which covers Indiana, Illinois, and Wisconsin. This is the same seat to which President Obama nominated Myra Selby, a Black woman, in 2016. But Republican Senators blocked Myra Selby's confirmation and saved the seat for Donald Trump. After Trump was elected, the Seventh Circuit lost its only judge of color to retirement. In total, Trump had four vacancies to fill on this circuit. Instead of nominating a person of color to restore diversity to the court, Trump appointed four white judges, including Amy Barrett, making the Seventh Circuit the only all white federal appellate court in the country.

The judicial oath for the Supreme Court states "I solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me". Judge Barrett has failed to show she is capable of holding true to those principles. We take her at her opined word and believe she is who she has shown us to be.

For these reasons, Black Lives Matter strongly opposes the nomination of Judge Barrett to the Supreme Court. Thank you for your consideration of our position.

Respectfully,

PATRISSE CULLERS,
Co-Founder and Executive Director, Black Lives Matter Global Network Foundation, Inc.

Mr. BOOKER. So I appeal, again, one last time to the conscience of the Senate. This is not a time to proceed. This is a time for grace. It is not a time to proceed. It is a time to firm up the foundations of our Republic. It is not a time to proceed. It is a time to listen to the American people. It is a time to listen to the voters lined up now. It is a time to listen and wait.

I know there are a lot of Americans who are concerned right now, not with the one nominee but with how this process has gone. It is a process that is eroding people's trust and their faith in the institution. They don't see fairness

in this. They look at the own words of Republican Senators and don't understand how hypocrisy like that can stand—one standard for one President, another standard for another.

But I want to tell everyone who is hurting right now, everyone who is worried about our Republic, everyone who is concerned in this moment about their healthcare and their voting rights and their Nation that this is not a time to give up. There will be difficult days ahead, but it is not a time to give up.

We know that healthcare is at risk, but it is not a time to give up. We know that women controlling their own bodies, sacrosanct as that idea is and as under threat as it now is—it is not a time to give up. LGBTQ rights are under threat, but it is not a time to give up. We cannot give up in the cause of our country. It is not a right cause or a left cause. It is a right and wrong cause.

We can be a nation that builds for posterity a functioning republic that can elevate the best of human ideals like grace. We cannot give up in this moment. We cannot meet darkness with darkness. We cannot surrender to cynicism about our systems. We have to keep pressing forward.

I still believe that our Nation's history, as speckled as it is with wretchedness and pain, is still a story that is a testimony to the overcoming of injustice and the better securing of it. I still believe that we do live in a nation where the truth does prevail in the end. I still believe that even when wrongs are done, they can be righted. I still believe that though this may become, today, a moment of shame, we can reclaim in this Nation the ideals of our Founders—those testimonies to grace, the commitment to each other of their sacred honor—that we still can take a body politic, wounded and injured, and in our country find healing, find redemption, and find grace.

I yield the floor.

The PRESIDING OFFICER (Mr. BOOZMAN). The minority leader.

COMPOUND MOTION

Mr. SCHUMER. Mr. President, as we speak, over 60 million Americans have voted. The Republican majority is ignoring—even laughing—at their wishes.

Despite what the American people want and whom they will vote for, this Republican majority is ramming this nomination through only because they can. Might makes right, in their view. That is so wrong. That is so against the American principle of democracy and rule of law.

So I will move to adjourn so that we consider this nomination after the election that is now ongoing—not before it, not 8 days before it.

Therefore, Mr. President, I move to adjourn and to then convene for pro forma sessions only, with no business being conducted, at 12 noon on the following dates and that, following each pro forma session, the Senate adjourn

until the next pro forma session: Tuesday, October 27; Friday, October 30; Tuesday, November 3; Friday, November 6; further, that if there is an agreement on legislation in relation to the COVID pandemic, the Senate may convene under the authority of S. Res. 296 of the 108th Congress; finally, that when the Senate adjourns on Friday, November 6, it next convene at 4:30 p.m., Monday, November 9, and that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and morning business be closed.

The PRESIDING OFFICER. That motion would require unanimous consent and is not in order.

Mr. SCHUMER. I appeal the ruling of the Chair and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays are ordered.

The question is, Shall the decision of the Chair stand as the judgment of the Senate?

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from California (Ms. HARRIS) is necessarily absent.

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

The result was announced—yeas 53, nays 46, as follows:

[Rollcall Vote No. 223 Ex.]

YEAS—53

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

NAYS—46

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

NOT VOTING—1

Harris

The PRESIDING OFFICER. The Senate sustains the decision of the Chair.

The PRESIDING OFFICER. The Senator from Delaware.

NOMINATION OF AMY CONEY BARRETT

Mr. COONS. Mr. President, I ask the question, as I have for several weeks now: Why are we here? What I hear from my constituents in Delaware, as I heard earlier today at an event at Westside Health: Why is this Senate in session now in the midst of a nationwide pandemic, focusing on rushing through a nominee for the U.S. Supreme Court rather than doing everything we can to work across the aisle to craft a solution to the problems, the crises facing our Nation—tens of millions of Americans unemployed, hundreds of thousands of businesses permanently closed? There are schools all over the country that are either not yet open or are just barely open, and thousands upon thousands of Americans have died alone, in pain, uncomfortable by family and uncertain of how they came to be in this place, uncared-for by their country. There have been 8½ million infected and 220,000 or more who are dead.

We are in the middle of a tragic pandemic and a recession made worse by our President's bungled mishandling of that pandemic, and instead of coming together and providing the relief that all of our States and all of our people are calling for, we are doing this. We are doing this. Instead, my Republican colleagues are walking over a dangerous precipice. They are doing something that was, according to Chairman GRAHAM of the Senate Judiciary Committee, unthinkable just 2 years ago.

In the last 10 days before a Presidential election—in the last month before a Presidential election—they are ramming through for a lifetime appointment to the Supreme Court President Trump's nominee. This is a rushed and partisan process in the midst of an ongoing Presidential election. Why? Why are we here, and why are they doing this?

I have heard a lot of talk from my colleagues on the Judiciary Committee and here on the floor about Justices and how they are not policymakers; about how they are distinct from politics; about abstract methodological terms and ideas like originalism and textualism; about judges and Justices as neutral arbiters whose decisions couldn't possibly be predictable.

But you don't work this hard to confirm a Supreme Court Justice in the middle of a pandemic while the majority of American States is voting—tens of millions have voted—and while election day is just 8 days away and a third of us are up for reelection because you care most about abstract ideas or neutral principles. You don't go against your own promise—your own promise—after you have claimed, as a matter of high principles, that Justices shouldn't be confirmed during Presidential elections and after you blocked a highly qualified nominee for exactly that reason—because you care most about neutral arbiters and judicial methodology.

No. This race to fill this seat is about power. It is about political power. It is

about knowing the American people have turned against the President, especially because of his failed, flawed, and ultimately disastrous response to this pandemic. We are not turning the corner as he declared just this week. We have a record-high number of cases in dozens of States, an outbreak uncontrolled, unmanaged, and leadership that is uncaring.

My colleagues know the election is upon us. Many are up for reelection. So, when Justice Ginsburg tragically passed away just a few weeks ago, President Trump and my colleagues saw one last opportunity—one last chance—to decide the balance of the Supreme Court not just for a year or a term but for decades and to come and entrench a hard-right majority, whose views are far outside the American mainstream.

As my Democratic colleagues and I have been laying out in the Judiciary Committee and in speeches here on this floor, that hard-right turn will have lasting, serious, significant, even devastating consequences for the American people.

After digging into and studying Judge Barrett's record as a law professor and as a judge—her writings, her speeches, her opinions—I am convinced that she will come to the Supreme Court with both a deeply conservative, originalist philosophy in the style of Justice Scalia and a judicial activism even further to the right that will put at risk longstanding rights the American people hold dear in nearly every aspect of our modern lives. Simply put, Judge Barrett as Justice Barrett, I am convinced, will open a new chapter of conservative judicial activism unlike anything we have seen.

Why would I think this?

First, Judge Barrett was handpicked by President Trump after he made clear he wanted a new Justice to overturn the Affordable Care Act, with there being potentially catastrophic consequences for a majority of Americans protected by the ACA.

Everyone watching at home has heard my colleagues say for the last decade that their top priority was to repeal the Affordable Care Act. All of the Republican Senators on the committee talked publicly, repeatedly, about their desires to get rid of the law, and they voted that way. So did our President. Yet, despite their best efforts, he and my Republican colleagues failed to get the vote here on the floor of the U.S. Senate. So now they are taking their last and best shot at overturning the ACA, and they are trying to do it through the Supreme Court.

This is where Judge Barrett comes in. As she admitted during my questioning, Judge Barrett has written in no uncertain terms that she thinks Chief Justice Roberts got it wrong in his ruling 8 years ago that upheld the ACA against a constitutional challenge. She wrote this article just 3 years ago, in 2017. Soon thereafter, she

found herself on President Trump's short list for the Supreme Court.

Meanwhile, the Justice Department, under President Trump's leadership, has joined the challenge to the ACA, which is now back in front of the Supreme Court. That will be heard by the Court just 1 week from the election and 2 weeks from tomorrow. President Trump and his administration are arguing in no uncertain terms that the Court must get rid of the entire ACA.

My Republican colleagues have said this is fearmongering in that this is a different case and a different issue, but to anyone who thinks the characterization of this challenge is farfetched, just read the brief. Read the brief that has been filed by the Solicitor General of the United States or the brief that has been signed and cosigned by 18 Republican State attorneys general.

President Trump himself lashed out at Chief Justice Roberts over and over again for upholding the Affordable Care Act and its protections for a majority of Americans, and he pledged as Candidate Trump that his nominees would do the right thing and overturn the law. So here, in the last minute of the last act of the Trump show, he may at long last have his chance.

Yet it isn't just the Affordable Care Act that is on President Trump's Supreme Court agenda. He made clear he wants a nominee to do three things: overturn the ACA, overturn *Roe v. Wade*, and perhaps most chillingly for the future of our democracy, hand him the election if there is a dispute in the courts that makes its way to the Supreme Court.

On that second point about overturning *Roe*, Judge Barrett steadfastly refused to say whether she thought *Roe* had been correctly decided, because it is the subject of legislation and litigation that is currently being contested. She refused to say, as well, whether the foundational case of *Griswold v. Connecticut* was right, which was decided 55 years ago and protects the right to privacy and the right to use contraceptives by a married family in the privacy of their own home.

In the recent past, even indisputably conservative nominees—nominees chosen by Republican Presidents, such as Chief Justice Roberts and Justices Alito and Kavanaugh—have said that of course *Griswold* was rightly decided and is settled precedent. So I found Judge Barrett's hesitation—even refusal—to say so to be chilling.

More broadly—and this is important—Judge Barrett's approach to precedent itself suggests she will lead the way in reversing longstanding cases upon which our rights rely. Precedent has been called the foundation stone of law. Precedent protects the rights and freedoms that many Americans rely on today—the right to be safe in your home from government intrusion, the right to marry whomever you love, the right to control your own body.

Yet I have come away convinced that Judge Barrett, if confirmed to the

Court, would be even more willing than Justice Scalia to overturn those precedents with which she disagrees. This is rooted in things that she has written and said as a law professor and as a judge. She has made clear that judges and Justices should feel free to overturn cases they believe have been wrongly decided regardless of how many people have ordered their lives around those decisions and have come to rely on them. She even said that those with her conservative, originalist philosophy have abandoned a commitment to judicial restraint.

As I made clear in my questioning, the cases that could be in jeopardy with a Justice Barrett on the Supreme Court cover a vast range of issues, issues which together affect hundreds of millions of Americans' lives from healthcare to education, to consumer protection, to marriage equality, to criminal justice. Over the past several decades, the Supreme Court has decided more than 120 cases by a 5-to-4 margin, with Justice Ginsburg in the majority and Justice Scalia in the dissent.

Just as a matter of analysis to help folks see the scope and the reach and the consequences of the decision being made here tonight, we look at what would happen if Justice Ginsburg in the majority were replaced by somebody with Justice Scalia's philosophy or with one further right.

These cases include not only the key ruling on the Affordable Care Act—*NFIB v. Sebelius*—but also on *Obergefell v. Hodges*, which, based on that privacy jurisprudence that started all the way back in *Griswold*, upheld the idea that marriage equality was the rule of the land; on *Grutter v. Bollinger*, which upheld race conscious admission policies at universities; on *Tennessee v. Lane*, which held that State governments must comply with the Americans with Disabilities Act; on *Arizona State Legislature v. Arizona Independent Redistricting Commission*, which upheld the constitutionality of nonpartisan redistricting; on *Massachusetts v. EPA*, which allows the EPA to regulate greenhouse gases; and on *Roper v. Simmons*, which prohibits executing people for crimes they committed while they were children.

Think about the scope and reach of the cases that touch labor rights to Native American rights and consumer rights to environmental protection. Yes, our comments on the floor and in committee focused on the Affordable Care Act, and they focused on reproductive rights and privacy, but the scope and reach of the consequences are breathtaking. Even to this day, I fear that we as a nation have not fully reckoned with the impact that a 6-to-3 conservative Court will have on so many aspects of our lives.

As to President Trump's third demand that a Justice chosen by him will help to decide the election, I was deeply dismayed to hear Judge Barrett refuse to commit to recusing herself

from any case involving an election dispute. President Trump is the reason I ask that question.

President Trump himself is actively undermining the integrity of our election. He is spreading baseless rumors about voter fraud, encouraging voter suppression, and engaging in a disinformation campaign so egregious it is hard to believe it could be coming from an American, let alone an American President.

His statements have been so indefensible that, when my colleagues asked Judge Barrett whether the President should commit to conducting a peaceful transition of power if he loses the election—a question that is an obvious no-brainer and a matter of basic civics—Judge Barrett said she couldn't respond because President Trump's statements have turned this fundamental tenet of our democracy into a partisan, political question.

Before now, to my knowledge, no President has ever demanded that his nominee to a Supreme Court seat be rushed through so that this Justice, that ninth Justice, could look at the ballots, as he has said, and hand him an election. Never in our history has the U.S. Senate confirmed a Supreme Court Justice in circumstances like these—just 8 days before the final election day in an ongoing Presidential election.

At the very, very least, given President Trump's unprecedented overreaching, inappropriate comments about the election and her nomination, I asked Judge Barrett if she would recuse herself in the event of an election dispute. To be clear, nothing is stopping her from making that commitment, and she would not do so.

Recent events have made it clear that this issue is anything but hypothetical. Just last week, the U.S. Supreme Court was divided 4 to 4 on a question arising from Pennsylvania, and it came to the brink of adopting a novel—even radical—theory advanced by the Republicans in Pennsylvania that would empower the Supreme Court to override a State supreme court's interpretation of its own State laws and constitution in a way that would disenfranchise thousands of voters.

A new Justice Barrett joining that Court could well provide the fifth vote in support of this outrageous theory, which her mentor, Justice Scalia, accepted in *Bush v. Gore*. And to no one's surprise, the Pennsylvania Republican Party is again preparing to file in the Supreme Court a renewed claim.

In light of this conflict of interest, in light of the appearance of bias, her involvement in this case could have lasting, negative, devastating consequences for the independence of the Court and for our democracy. So I urge my Republican colleagues to consider, before voting to confirm tonight, the very real impacts their actions will have, not only on millions of our constituents but on our democracy and this institution itself.

As for me, I will be voting no on the confirmation of Judge Barrett to the U.S. Supreme Court.

I yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. Mr. President, that was quite a speech from our friend from Delaware. If I had to categorize it, I would say this is really the Chicken Little argument: The sky is falling. Amy Coney Barrett—this is the end of civilization. This is the end of the world as we know it.

The irony to me and, frankly, the hypocrisy of the argument is that if the shoe were on the other foot, Senator SCHUMER, who has said everything is on the table “if we win the majority”—Court packing, making DC, making Puerto Rico States—they would somehow show this superhuman self-restraint and not fill this seat.

This is entirely consistent with the practice, given the fact that President Trump's first term doesn't run out until January 20 of next year. All of the Senators elected are serving through the end of this year, at least. So it is somewhat entertaining but beside the point to suggest that this good judge, this really extraordinarily decent human being is part of some vast conspiracy to subvert the Constitution and overrule all these precedents that the Senator from Delaware considers sacrosanct.

Well, I am happy with the fact that tonight the Senate is set to confirm an exceptionally well-qualified nominee to the Supreme Court. Judge Amy Coney Barrett is as impressive as they come. America saw it. Initially they didn't know her, but when they came to know her through her testimony on the Judiciary Committee, she became very popular. In my State, 59 percent of the people in a recent poll said they wanted us to confirm Judge Barrett now before the election—59 percent.

It is no wonder why. She graduated first in her class from Notre Dame Law School. She clerked for the District of Columbia Court of Appeals and on the Supreme Court and practiced law before transitioning to academia, where she has written and taught constitutional law, Federal courts, and statutory interpretation for nearly two decades. And, of course, for the last 3 years, she has served with distinction on the Seventh Circuit Court of Appeals.

Her time in both the classroom and the courtroom have given her understanding of the law that few can rival. Over her confirmation hearing, she skillfully answered questions about legal doctrine, constitutional issues, and a myriad of precedents without so much as having a page of notes in front of her.

As impressive as Judge Barrett's deep knowledge of the law is, it is only part of what I believe makes her an ideal candidate for the Supreme Court. Now, more than ever, the judiciary, along with our other elected officials,

tends to function not by what the law says but through a lens of personal and political bias. It is polarizing. We know that people are highly agitated, including my friend from Delaware, and trying to stoke the turnout of their partisans in the runup to the election. It should go without saying—but I will say it anyway—that judges don't do that. They can't do that and still be judges.

In order for the High Court to serve the proper role under our Constitution, it has to be made up of men and women of great integrity, restraint, and self-discipline, who will discharge their duties on the Bench free from bias, which means you don't announce the decision in a case before you have even heard it. You don't offer predictions or promises of how you will decide these contentious matters, which I know frustrates our friend from Delaware and others, but Judge Barrett has not only committed to doing this, not clouding her decisions by personal or political motivation or favor for any party; she has a record to back it up.

During her time on the Seventh Circuit, she has joined with her colleagues in 95 percent of the 600 cases she has decided—95 percent consensus on a three-judge panel. That is no record of an outlaw or a radical or somebody who is going to disregard their judicial oath. She has consistently shown in each of these decisions a fidelity to the law and an impartiality, which are essential qualities for a Supreme Court Justice.

But despite the judge's unassailable qualifications, our Democratic colleagues have repeatedly tried and failed to make this nominee out to be a radical, suggesting that she would violate her oath—the same oath to uphold and defend the Constitution that we take as Senators. But there is nothing in her background or her character which would suggest she would do something so brazen and so wrong.

Some folks on the left have attacked her because of her Catholic faith. They have also tried to convince the American people she is on some sort of crusade to take healthcare away from American families—How ridiculous is that?—or that she would slowly chip away at our freedoms and our liberties.

The reason we have seen such hysterical attacks that are completely out of touch with reality is that this is all they have. They have nothing else.

There is no legitimate reason to oppose the nomination of Judge Barrett. Her stellar credentials and deliberate body of work prove that she understands the role of a judge—as important as it is but as limited as it is under our constitutional system—and I think that is part of what terrifies our colleagues on the other side of the aisle.

You see, they have become accustomed to a Supreme Court that is more political than judicial, that feels free to make policy judgments to bail out the Congress or those who have either

lost the vote or lost an election. That is why our Democratic colleagues have repeatedly pressed her to commit to an outcome in cases before the Court. She won't do it, and she shouldn't do it, and she didn't do it.

They asked her everything from healthcare to abortion to climate change. They want to know right now—before she is even on the Court, before she has even heard the case—how she would rule.

Well, Judge Barrett rightly declined. She invoked what is known as the Ginsburg rule from the 1993 confirmation hearing—presided over by Joe Biden when he was chairman of the Judiciary Committee—of Ruth Bader Ginsburg. Ruth Bader Ginsburg had been a lawyer with the American Civil Liberties Union and had been known for her pioneering work on behalf of women's rights, but she held some personally pretty radical views. So the Senators, out of curiosity if nothing else, wanted to ask her about those, and she declined, as she should have, because she said: It is inappropriate to make predictions or provide hints of how I might decide cases in the future.

This is the most basic principle of our judicial system. Judges are not legislators. They shouldn't advocate for policy outcomes or promote a specific agenda. They certainly shouldn't commit to an outcome on a hypothetical case during the confirmation process.

How would you feel if the judge you came before had previously said: Well, if I hear a case like that, I am going to decide against this litigant, this party for the lawsuit. That would be outrageous, and she shouldn't and didn't do that. Neither did Justice Ginsburg.

Chief Justice Roberts reminded us last year: “We do not have Obama judges or Trump judges, Bush judges or Clinton judges.” And I agree that is the ideal.

Men and women in black robes can't stick their thumbs on the scales of justice and supply wins to any cause, any individual, or any party. It is antithetical to our constitutional system.

So I hope this process will help begin a way to guide our courts back to their proper function in our Constitution and to remind all of us of what has rightly been called the crown jewels of our Constitution, and that is an independent judiciary—judges whose pay can't be cut during their tenure in office, and they serve for life if they want to. That is the ultimate in political independence. Those are the crown jewels because judges apply the law that Congress writes, interpret the precedents of other courts, and interpret the Constitution. To give an unelected individual the power to make policy and to have an agenda to accomplish their personal or political goals would be the opposite of what our Constitution comprehends.

There is no question that Judge Barrett has a brilliant legal mind, a deep respect for the Constitution, and an unwavering commitment to the rule of

law. Her resume and her record are spotless.

How do I know that? Well, if it wasn't, you would have heard about it. It is spotless. Her character is beyond reproach, and virtually everyone who has worked with or learned from Judge Barrett has offered their full-throated endorsement of her nomination. All the evidence—all the evidence—points to one simple fact: Amy Coney Barrett is exceptionally qualified to serve on the Supreme Court. I have faith in Judge Barrett's ability to fairly interpret the law and apply it to cases before her—nothing more and nothing less.

I believe Amy Coney Barrett will be an outstanding Supreme Court Justice, and I am proud to support her nomination.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, we are faced with three basic questions, and the first question couldn't be more basic: Why are we here?

If you told the American people that the U.S. Senate was in session 5 days in a row and meeting through the weekend and asked them what they think the order of business was before the Senate, they would say: Silly question. It is obvious. It has to be the pandemic facing America. It has to be the fact that 225,150 Americans have died from the coronavirus, 8.7 million infected, and most certainly because the United States has recorded more than 85,000 COVID-19 cases just this last Friday, the highest number of cases recorded within a 24-hour period since the beginning of the pandemic and Saturday was the same.

So they would guess that the Senate was in session to do something about this deadly epidemic that is affecting the United States of America in a more serious way than any country in the world. They would wonder what we are doing to try to provide more testing, more protection for people. They certainly would question the statement by the Chief of Staff of the President of the United States, Mark Meadows, who said just yesterday that the Trump administration "is not going to control the pandemic." It would trouble them, I am sure.

They would expect this Congress representing them—up for reelection, many of us—to be responsive to their needs to protect their families or they might ask us: Are you doing anything to help the people, the 23 million unemployed in America? Certainly, you must be working on that, too, because these families were cut off from their Federal unemployment supplemental on July 31. So for the months of August and September and now into October, the amount of money coming in to keep their homes together, their families together has been dramatically diminished.

If they assumed that, they are wrong, because for the last 5 days here in the U.S. Senate we have not been consumed with those life-and-death issues

of this pandemic at all. Instead we are consumed with a political mission.

How did we reach this point where we are taking up this Supreme Court nomination in the midst of a Presidential election for the first time in the history of the United States, in the midst of an election we are taking this up? Well, because of the determination of the Republican majority leader of the Senate, Senator MCCONNELL of Kentucky.

Four years ago, you will remember the Antonin Scalia vacancy. President Obama decided that he was still President of the United States in the 8th year of his Presidency, but Senator MCCONNELL said: No, you are not. You do not have the Presidential authority to fill a Supreme Court vacancy because it is the last year of your Presidency. You are a lameduck. There is an election coming. Let the American people decide who will fill this vacancy. That was the McConnell rule 4 years ago, and the Republican Senators marched in lockstep behind him with his logic.

Fast forward 4 years, the vacancy with the death of Ruth Bader Ginsburg and Senator MCCONNELL has changed his story completely and his troops are still marching obediently behind him. Now, under President Trump, he can fill a vacancy even in the midst of a Presidential election, and that is why we are here today. This determination by Senator MCCONNELL that this political errand that he is running for President Trump is more important than the COVID-19 pandemic, more important than the runaway infection rates in 20 States across the United States, more important than trying to deal with the unemployment and the dysfunctions of this economy under this President.

Yes, we asked basic questions to be answered by the Judiciary Committee—questions that were posed to Amy Coney Barrett, once a law school professor at Notre Dame Law School, now on the Seventh Circuit Court of Appeals.

People say: Is she qualified? Well, if you are asking whether she is studied in the law and has a head full of law, there is no question about it. It has been many years since I faced a law school professor, and I will give it to you that she certainly knows a lot about the law. There is no doubt about it. But the questions that I asked of her really went beyond that basic question. I really wanted to know what was not just in her head when it came to the law but I want to know what she has in her heart when it comes to the law.

One of the Senators who spoke to us a few minutes ago chided us because we kept bringing color photographs to the floor and to the committee hearings of people whose lives depended on the Affordable Care Act. He characterized it as "theater" and likened these images, these photographs, to cutouts at sporting events.

Well, let me tell you the ones that I presented from Illinois represent real-life stories of real-life families who depend on the Affordable Care Act. Why do we raise the Affordable Care Act in the midst of this hearing for filling this Supreme Court vacancy? For one simple reason—that is what the President did. It was the President who told us far in advance: I am going to fill Supreme Court vacancies to eliminate the Affordable Care Act. So is this a leap of faith on our part to take the President at his word? Would the President even consider lying to the American people?

If you take him at his word, then Amy Coney Barrett is part of an agenda—a political agenda to eliminate the Affordable Care Act. And in the past the President has said *Roe v. Wade* while you are at it and also to move forward when it comes to protecting him if there is an election contest after the November 3 election. He said as much. As I mentioned earlier, he doesn't have an unuttered thought. He tweets it 25 times a day, whatever crosses his fertile mind, and that is his agenda when it comes to filling the Supreme Court vacancy. When we asked Judge Barrett, she denies any promises have been made. But there is some evidence, obviously, along the way that convinced the President and the people in the White House that she would fulfill his mission if she came to the Supreme Court.

When you look at the issues involved, it is not just her compassion when it comes to the Affordable Care Act and 23 million Americans covered by insurance under that law, 600,000 of them in Illinois. It is not just a question of her courage to stand up to this President if there is an election-year contest that comes before the Supreme Court. It is really whether she is committed to preserving the pillars of modern law—the rights of women. Ruth Bader Ginsburg's death created this vacancy. There is hardly a person in our modern history who spent more of her life dedicated to the rights of women. Is Amy Coney Barrett going to follow in that tradition? I think it is a legitimate question.

When it came to racism, are we going to deal with racism in an honest way? And I will get to that in a moment when I speak to her originalism motivation.

Marriage equality, privacy, voting—all these issues are on the table. And I do have to disagree with my colleague from Texas who preceded me. I just don't believe the law is robotic, nor do I believe that there is a simple formula to use that can guarantee an outcome of a case. As I said to Judge Barrett in our private conversation before the hearing, there wouldn't be 5-to-4 cases if we could count on people to always look at the facts and the law and come to the same conclusion. People reach different conclusions.

That takes me to the third point here. We asked Amy Coney Barrett during the course of this hearing so

many questions about basic, basic law that went right to the heart of this Constitution. These weren't trick questions. They weren't the subject of pending litigation or litigation. Questions like, Can this President or any President unilaterally decide to change the date of a Presidential election? That is pretty basic. I think it is covered by three different sections in this Constitution. She refused to answer because of the possibility that there would be litigation before the Court on that subject.

Well, what about intimidation against voters, trying to cast their votes in an election? Couldn't answer that one either—same reason.

This was asked by Senator KENNEDY, a Republican from Louisiana: What about climate change? Well, it turns out Judge Barrett told us she really hadn't developed any thoughts on climate change. Really? Forty-eight years old, lawyer, law school professor, mother of seven—no thoughts on climate change?

When it was all over, you had to ask yourself, what was the purpose of that hearing if those were the kinds of answers we faced? Certainly, we wouldn't ask her about pending litigation.

But the one thing that she was very proud of and stated over and over again is that she was an originalist when it came to her thinking on the law and the Constitution. As I said, originalism is not some foreign language you pick up on Babel. It is a mindset. It is a mission statement. It is the belief that the original text in our Constitution reveals all the answers. I doubt that very much. That is kind of MAGA jurisprudence—"take us back to the good old days" jurisprudence because, you see, what really launched originalism occurred in the 1950s in a case called *Brown v. Board of Education*. The Southern States were not ready for integration, and many of the Northern States weren't either, for that matter. The critics of that Supreme Court decision said it was judicial activism to integrate the public schools of America. They were critical of a Court that they thought went too far under Earl Warren. They called for his impeachment and more and started saying: You should have stuck with the original Constitution. Well, the original Constitution didn't give African Americans the right to vote; in fact, considered them under the law to be three-fifths of an American citizen. So those so-called originalists criticized that activist Court, and it didn't end with *Brown v. Board of Education*.

The same criticism was launched when it came to *Griswold v. Connecticut*, a case that really argued that we have a right of privacy in our married lives that can't be overcome by the State; *Loving v. Virginia*, that interracial marriage was permissible; and then, of course, the case of *Roe v. Wade*, the ultimate case when it came to privacy and liberty.

So those who come before us and tell us that what is really at stake here is

restraint on the Court, self-discipline on the Court—we have heard all those words—and making sure that Justices don't pursue policy, think about all of those things in terms of what happened in *Brown v. Board of Education* and when they overruled *Plessy v. Ferguson* decades before, and said: Moving forward, we believe this Constitution guarantees to every child the right to an education, regardless of their race.

Dr. Chemerinsky is with the University of California School of Law in Berkeley. He wrote a recent article in the *New York Times* on this originalism theory. And he noted the fact that it was Antonin Scalia who gave it great popularity, and a lot of people followed Scalia because he was cerebral, jocular, and fun to be with. He spoke to a luncheon of Democratic Senators that I was able to attend. But when it came down to it, his views on the law were pretty strict and pretty rigid pursuing this idea that, for example, under this view, the First Amendment means the same thing as when it was adopted in 1791; the Fourteenth Amendment means the same thing as it was ratified in 1868. It turns out that the circumstances in all those cases have changed so dramatically in America.

Judge Amy Coney Barrett argued she is an originalist. She would be joining that other originalist on the Court, Clarence Thomas, with her legal thinking, and that gives me pause and concern when it comes to what she is bringing to the Court—a head full of law, for sure, but an approach to it that I think is a pose. It is a way to argue against change and evolution in America that is inevitable and, in fact, necessary.

The professor says under the original public meaning of the Constitution, it would be unconstitutional to elect a woman as President or Vice President until the Constitution is amended because article II refers to the pronoun "he." When you get stuck with the language in the original Constitution in the extreme, you find yourself reaching conclusions that are not in the best interest or consistent with American mores or values today.

So this is more than just another nomination to fill a vacancy on the Supreme Court. It comes at a moment in time when we should be focusing on the deadly pandemic facing America. We should have spent 5 straight days coming up with a COVID relief bill for the millions of Americans desperate for help today and desperate for peace of mind when it comes to this public health tragedy which we are facing.

It is a nomination which comes before us when the rules of Senate and the rules of the Senate Judiciary Committee are being twisted and turned to create a political opportunity for Senator MCCONNELL and his side of the aisle. Sadly, it is a moment in time when a nominee for the Supreme Court wants to bring to us a legal way of thinking which I believe is inconsistent

with progress in this country when it comes to human rights and civil rights.

Under originalist theory, we may never have had *Brown v. Board of Education* and the other cases I mentioned. What a loss for this great Nation. That is not what we need on the Court. We need people on the Court who are realists and who will look at the law and the Constitution in real terms and not ideological terms.

The notion that this Justice is being hurried before us in the hopes that she will eliminate the Affordable Care Act in the midst of a pandemic certainly is worth noting. It is one of the reasons—one of many of reasons—that I will be voting no on Amy Coney Barrett with her nomination to the Supreme Court. I yield the floor.

The PRESIDING OFFICER (Mr. SULLIVAN). The Senator from South Carolina.

Mr. GRAHAM. Mr. President, as chairman of the Judiciary Committee, it is my honor to speak on the floor about this nomination, which I think is historic in many facets and all positive from my point of view.

We have before the committee the nomination of Judge Barrett, who currently sits on the Seventh Judicial Circuit. She is one of the most impressive people I have ever met. Two days of hearings; answering every question thrown to her with grace and judicial demeanor. I think it should be the gold standard for every other nominee.

I want to thank my staff, beginning with Lee Holmes, the director. Lee has done such a great job on the Judiciary Committee and has done a lot of things—some contentious and some not. I want to thank Lee for shepherding this nomination and the fine work he has done.

Mike Fragos—Mike, I got your first name right anyway. He is just outstanding. He has done a terrific job.

The permanent nominations unit for the Judiciary Committee includes Lauren Mehler, Raija Churchill, Tim Rodriguez, Watson Horner, and Akhil R-A-J-A-S-E-K-A-R—I don't want to butcher your name. They all worked incredibly hard for 135 article III judges, not just this one.

In addition, Lucas Croslow joined my staff to lead the team of special counsels assisting with the Barrett nomination. That included Sidd Dadhich, D-A-D-H-I-C-H, Joe Falvey, Abby Hollenstein, Eric Palmer, and Robert Smith. They went through the entire record presented by Judge Barrett to make sure we would be prepared for the confirmation process.

The law clerks were Matt Simpson, Emily Hall, Megan Cairn, and Peter Singhal. I would like to thank the Judiciary Committee's press secretary, Taylor Reidy. They did a great job, along with George Hartmann, as well as our deputy staff director, Joe Keeley.

The bottom line is, all of them worked really hard. They made history. They should be proud and tell

their grandkids about all this. Well done.

To my Democratic colleagues, I know you didn't like what we did, but I do appreciate the way you conducted yourselves in the hearing. It wasn't a circus. I think you challenged the judge appropriately during your time. We had 4 days of hearings. We heard from a variety of people about Judge Barrett.

In terms of the process, it was well within what we have done in the past. In every Judiciary Committee markup regarding a Supreme Court Justice, we have done the same thing. The first day is opening statements, then 2 days of questions, and the final day is input from outside groups. That is what we were able to do here. So she went through the process like every other nominee since I have been here.

But let me just say this to my Democratic colleagues. It is not about the process. You will find ways to make sure that most of you can't vote for anybody we nominate. It really does break my heart.

With Roberts, 78 to 22, that was sort of the norm. I think Alito got 96 and Ginsburg got 97. Maybe I got the numbers right. I can't remember who got what, but one got 96 and one got 97. It used to not be this way. It used to be different.

We looked at the qualifications and said: OK, you are good to go. You are a person of integrity. You are smart. You are well rounded. You are knowledgeable in the law. You may have a different philosophy than I have, but we understand elections matter. And everybody accepted the election outcome. Those days are over, absolutely completely over and destroyed. There is nobody any Republican President can ever nominate, I think, who is not going to face a hard time. That is too bad. That is the way it is.

Alito, 58 to 42—Judge Alito was well known on our side of the aisle. He was the kind of person you would be looking at to promote to the Supreme Court. President Bush nominated him. Well within the mainstream. Roberts and Alito were well known in the conservative world, being very bright court of appeals judges whom any Republican President would be looking at to put on the Court if they ever had an opportunity. There is no difference between Alito and Roberts, but Alito went through hell. But he made it, and he got 58 votes.

So then along comes President Obama. He gets two picks—Sotomayor, 68 votes to 31. I think she deserved more, but 68 is pretty darn good. I was glad to vote for her. I saw that she was qualified. Then we had Elena Kagan, 63 votes. You can see the trend here. Both of them were Obama nominees, 68 and 63, and I thought Elena Kagan was highly qualified. She had a different judicial philosophy. She was a dean of the law school at Harvard but worked for the Solicitor General's Office. Both of them had been with the liberal side

of the Court most every case but not all. I am not surprised the way they decided cases. I think they are tremendously well-qualified women and should be sitting on the Court. That is exactly who you would expect a Democratic President to pick—Sotomayor and Kagan.

So now we come back. Trump wins. Nobody thought he would win, including me. I voted for somebody in 2016 I wouldn't know if he walked through the door—Evan McMullin. I think I met him once. I had my challenge for President Trump during the 2016 primary. He beat me like a drum. I accepted my defeat. I have been trying to help him ever since, and I think he has done a really good job of sending to the Senate highly qualified judges. He has gotten input from a lot of different people—the Federalist Society, you name it—a lot of different people.

Gorsuch and Kavanaugh had one thing in common: They were in my top three recommendations. Any Republican President looking to nominate somebody to the Supreme Court would be looking at Gorsuch and Kavanaugh. These are not exotic picks. They are in the mold of Sotomayor and Kagan in terms of qualifications.

So what happened? Gorsuch was the first attempt at a partisan filibuster. We had three votes to get 60, and we couldn't, so we changed the rules for the Supreme Court like they changed the rules in 2013 for the district court and court of appeals. If we had not, Gorsuch wouldn't be on the Court. And to say he is not qualified is a joke. It is an insult to him and says more about you than it does Judge Gorsuch. If you can't see he is qualified, you are blinded by your hatred of Trump. So he made it, but we had to change the rules. We hated to do it but had to do it because in any other time, Gorsuch would have gotten the same type votes as Roberts because he is just highly qualified.

Then comes along Kavanaugh. Nothing about process there. There was no process argument. Right at the very end, the last day of the hearing when we thought it was all over, you give us a letter that you had for weeks, an allegation against the judge. It would have been nice to share it with him so he could tell his side of the story, but you chose not to do that. You had it precooked with the press outlets, and everything blew up.

So all of us on the committee had to decide what to do. I sat down with Senator Flake and Senator COLLINS, and we felt like the allegations had to be heard. They are made. I know a lot of people on our side thought it was unfair, dirty pool, but we had the opportunity to have the hearing, and the rest is history. It was high drama.

All I can say is that something happened to the person who accused Judge Kavanaugh, but I don't believe Judge Kavanaugh had anything to do with it. This was a party in high school. Ms. Ford couldn't remember where it was

and who was there. The people who were said to have been there said they don't remember anything like it happened.

Judge Kavanaugh hasn't lived a life like what was being described. He was accused by four or five people. Three of them actually made it up. I hope some of them go to jail for lying to the committee and the country. They were trying to make him a rapist and drugging women in high school, and what was his annual all about? It was the most sickening episode in my time in the Senate. They were hell-bent on destroying this guy's life based on a bunch of manufactured lies and evidence that wouldn't get you out of the batter's box in any court of law in the land.

And here we are, 50 to 48. What I saw there was a turning point for me. We cannot continue to do this. You are going to drive good people away. And I am hoping that the Barrett hearings, which were far more civil and far more traditional, will be a turning point because I don't know who the next President will be, but there will be an opening. I am sure, on the Court. I am hoping that the next hearing is more like Barrett's and less like Kavanaugh's, no matter who wins.

Now, Barrett. I understand the concern about the process. This is the latest we have ever confirmed somebody. You heard all the arguments about when the President is of one party and the Senate of a different party; you have had one confirmation in 100-some years; that most of the time, when the President is of the same party as the Senate, they go through. I understand.

The bottom line is, we gave her the same type hearing that Alito, Sotomayor, Kagan, Gorsuch, and Kavanaugh had. My Democratic colleagues showed up at the hearing, they participated, they pushed her hard, but I don't think they went across the line. They decided not to show up for markup. I hate that, but that is the way it is.

I would like to spend a few minutes talking about the person who is going onto the Court in about an hour.

If you are looking for somebody a Republican would be picking, regardless of the process, it would be Judge Barrett. She would be on anybody's list.

I listened to Senator DURBIN, who is a good friend, and we will work on whatever comes our way after the election. I find that he is somebody you can work on hard things like immigration with. But his description of Judge Barrett simply doesn't pass scrutiny.

He is trying to make a character of this person that doesn't exist. There is nothing exotic about Judge Barrett. She is very mainstream in our world. All I can say is that after 2 days of hearings, the American people, by 51 percent—it is pretty hard to figure that in this country, you get 51 percent agreement on anything—felt like she should be going onto the Court.

Here is what Dean O'Hara said, the dean of Notre Dame Law School, who

hired Amy Barrett to be a professor at Notre Dame:

I have only communicated with this august committee on two occasions. The first was ten years ago when I wrote a strong letter in support of now-Justice Elena Kagan, whose term as dean of Harvard Law School overlapped with my own. The second is today introducing and endorsing Amy Coney Barrett in equally strong terms. Some might find these recommendations to be in juxtaposition, but I find them entirely consistent.

To anybody wondering about Judge Barrett, I would highly recommend that you look at the ABA's recommendations and the process they used to find her "well qualified." Not one person uttered a negative word about her character, according to the ABA. Someone said to the ABA: The myth is real. She is a staggering academic mind. She is incredibly honest and forthright. She is exactly who you think she is. Nothing about her is fake. She is good, she is decent, she is selfless, and she is sincere. She is an exemplar of living an integrated life.

The Standing Committee would have been hard-pressed to come up with any conclusion other than that Judge Barrett has demonstrated professional competence that is exceptional. Then they had a committee to look at her writings—all of her writings. They accepted input from 944 people she has interacted with in her professional life. Not one negative comment.

So forget about what politicians say about Judge Barrett. Forget about what people who don't recognize President Trump as being a legitimate President say about Judge Barrett. Forget about what I say if you want to. Look at what people who worked with her said, who are in the law business, who know her individually and have worked with her as a judge, as a professor, and they conclude without any doubt that she is one of the most gifted people to ever be nominated to the Supreme Court.

There is nothing exotic about Judge Barrett. She is going onto the Court in about an hour. That is exactly where she needs to be. She is the type of person who has lived a life worthy of being nominated. She is the type of person who is worthy of receiving a large vote in the Senate, but she won't get it.

She is not going to get one Democratic vote. Write her out of the process if you want to. That is fine. But what about the others? All I can say is that we are going to have an election here in about a week, and whatever happens, I am going to acknowledge the winner when it is all said and done.

It may go to the Supreme Court. I don't know. But there will be a day that we know who won, and I am going to accept those results, and I am going to do with the next President what I have tried to do with this one and every other one—try to find a way forward on things that are hard to keep the country moving forward.

To the majority leader and the minority leader, it is a tough place

around here now. This, too, shall pass. But this is about Judge Barrett. This is about her time, her moment. She has done everything you would expect of her. She has exceeded every challenge put in her way. She has impressed everybody she has worked with. She has impressed the country. She is going onto the Court because that is where she deserves to be.

As to us in the Senate, maybe down the road we can get back to the way we used to be. I don't know. But I do know this. There is nothing exotic about Judge Barrett. She is as mainstream as it gets from our side of the aisle.

When it comes to people outside of politics looking at her, it was universal: "highly qualified," "highly competent," "ready to serve this country as Associate Justice of the Supreme Court."

My last thought: It is hard to be a conservative person of color. That is a very difficult road to hoe in modern American politics. My good friend TIM SCOTT is a great voice for conservatism. And TIM—a lot of things were said about TIM that were said about nobody else on our side of the aisle. He is tough. He can handle it. The same for conservative women.

Judge Barrett did not abandon her faith. She embraces it. But she said: I embrace my faith. But as a judge, it will not be the rule of Amy. It will be the rule of law. It will be the facts. It will be the law and the outcome dictated by the law, not by anything I personally believe.

I will say this. For the young, conservative women out there who are pro-life and embrace your faith, there is a seat at the table for you. This is historic. This nomination is different. This is a breakthrough for conservative young women.

I was honored to be the chair of the committee that reported out Judge Barrett to the floor of the Senate, and I am going to be honored to cast my vote to put her on the Supreme Court, exactly where she deserves to be.

I yield the floor.

THE PRESIDING OFFICER. The minority leader.

MR. SCHUMER. Mr. President, today, Monday, October 26, 2020, will go down as one of the darkest days in the 231-year history of the U.S. Senate.

Let the record show that tonight the Republican Senate majority decided to thwart the will of the people and confirm a lifetime appointment to the Supreme Court in the middle of a Presidential election, after more than 60 million Americans have voted.

Let the record show that tonight the Republican majority will break 231 years of precedent and become the first majority to confirm a Supreme Court Justice this close to election day.

Let the record show that tonight the Republican majority will make a mockery of its own stated principle that the American people deserve a voice in the selection of Supreme Court Justices, completing the partisan theft

of two seats on the Supreme Court using completely contradictory rationales.

And let the record show that the American people—their lives and rights and freedoms—will suffer the consequences of this nomination for a generation.

This entire debate can be summed up in three lies propagated by the Republican majority and one great terrible truth. The first lie is that the Republican majority is being consistent in following its own standard—what rubbish. After refusing a Democratic nominee to the Supreme Court because an election was 8 months away, they will confirm a Republican nominee before an election that is 8 days away.

What is Leader MCCONNELL's excuse? He claims that the principle of not confirming Justices in Presidential years only applies when there is divided government. But this is what Leader MCCONNELL said after Justice Scalia died: "The American people should have a voice in the selection of their next Supreme Court Justice."

That is all he said. He didn't say that the American people should have a voice but only when there is divided government. No, the last bit is *ex post facto*.

If this were really about divided government all along, Republican Senators would not have promised on the record to follow their own standard if the situation was reversed. "I want you to use my words against me," said the chairman of the Judiciary Committee. "If there is a Republican President in 2016 and a vacancy occurs in the last year of the first term, you can say LINDSEY GRAHAM said, let the next president, whoever it might be, make that nomination."

So the claim by the leader that this is consistent with their own principle—please. Rather than accept the consequences of its own words and deeds, the Republican majority is lighting its credibility on fire.

This hypocritical, 180-degree turn, is spectacularly obvious to the American people.

The second lie is that the Republican majority is justified because of Democratic actions on judicial nominations in the past. The Republican leader claims that his majority's actions are justified by all the bad things Democrats did years ago. He claims that every escalation of significance in judicial debates was made by Democrats. But in his tortured, convoluted history lesson, Leader MCCONNELL left out a whole bunch of chapters. He omitted that Republicans bottled up more than 60 judicial nominees by President Clinton, refusing them even a hearing.

He made no reference to the decision by Republican Senators to hold open 14 appellate court seats in the 1990s so that a Republican President could fill them. Instead, a tactic Republicans would revisit under President Obama, when Republicans used partisan filibusters to block his nominees to the DC

Circuit, at the time, Republican Senators, including my colleague from Kentucky, amazingly accused President Obama of trying to pack the court by the mere act of nominating judges to vacancies of the Second Circuit. What a hypocritical double standard, which appears to be endemic in Leader McConnell's recounting of history.

And on top of it all, the leader has asked the Senate to play a blame game that dates all the way back to 1987, pointing to a 3-minute speech by Senator Kennedy about Robert Bork as the original sin in the judicial wars. Seriously, that is what he said. Because one Democrat give one 3-minute speech that Republicans didn't like, Leader McConnell can steamroll the minority to confirm a Justice in the middle of an election.

Imagine trying to explain to someone: Sorry, I have to burn down your house because of something one of your friends said about one of my friends 33 years ago. That is how absurd and obnoxious this game has gotten. That is how unjustifiable the majority's actions are, how flimsy their excuses have become.

The leader's final argument boils down to: But you started it—a declaration you would sooner hear in the schoolyard than on the floor of the U.S. Senate.

The third and perhaps the greatest lie is that the Republican majority is confirming Judge Barrett solely on the basis of her qualifications, not based on her views on the issues. My colleagues insist that Judge Barrett should be confirmed on her credentials alone. That is all they talk about. They don't talk about her views on the issues, only qualifications. Well, this canard is about as apparent as a glass door. Everyone can see right through it.

What is the real reason Republicans are so desperate to rush Judge Barrett onto the Supreme Court? Of course, it is not because of her qualifications. If my Republican friends truly believed that the only thing that mattered about a judicial candidate is their qualifications, then Merrick Garland would be sitting on the Supreme Court right now.

If the Republican leader truly believed that judicial appointments were about qualifications, and qualifications alone, Judge Garland would be Justice Garland right now.

Judge Garland was among the most qualified candidates ever—ever—to be nominated to the Supreme Court. No Republican Senator has disputed that. But they didn't want Judge Garland on the Bench. They do want Judge Barrett. They subjected Judge Garland to an unprecedented partisan blockade, but they are erecting a monument to hypocrisy to rush Judge Barrett on the bench.

Why? It is not because she is more qualified than Judge Garland was. What is the difference between Barrett and Garland? The difference is not qualifications but views. We know

that. We all know that. Healthcare, a woman's rights, a woman's right to choose, gun safety—you name it. It is not because the far right wants Judge Barrett's views on the Court, but it is because the far right wants Judge Barrett's views on the Court but not Judge Garland's.

The truth is, this nomination is part of a decades-long effort to tilt the judiciary to the far right, to accomplish through the courts what the radical right and their allies—Senate Republicans—could never accomplish through Congress.

Senate Republicans failed to repeal the Affordable Care Act, so President Trump and Republican attorneys general are suing to eliminate the law in court.

Republicans would never dare to attempt to repeal *Roe v. Wade* in Congress. So they pass onerous laws in State legislatures that they control to drive that right to the point of near extinction and then provoke the Supreme Court to review *Roe v. Wade*.

The far right has never held the majority on the court to limit *Roe v. Wade* or *Griswold*, but if Judge Barrett becomes Justice Barrett, it very well might.

And if you are looking for some hard numbers to prove that the political right considers ideology and not just qualifications, consider this. Under Justice Roberts, there have been 80 cases—80—decided by a 5-to-4 majority, in which the five Justices nominated by Republican Presidents came down one side and the four Justices nominated by Democratic Presidents came down on the other. Eighty cases—exactly the same majority—calling balls and strikes. And in an amazing coincidence, all the Republican-nominated Justices think it is a strike and all the Democratic ones think it is a ball, or vice versa. It would be the most remarkable coincidence in the history of mathematics if nine Justices, simply calling balls and strikes, exhibited the same split in the exact same configuration 80 times.

We all know what the game is here. So stop pretending. Stop pretending there aren't entire organizations dedicated to advancing far-right judges. Stop pretending that the political right doesn't spend millions of dollars to prop up the far-right Federalist Society and support certain judicial candidates because they only want "qualified" judges. No, they want to systematically and permanently tilt the courts to the far right.

So does Judge Barrett have views on legal issues? You bet she does. That brings me to the one great and terrible truth about this nomination. The American people will suffer the consequences of Judge Barrett's far-right, out-of-the-mainstream views for generations.

Judge Barrett came before the Judiciary Committee and refused to answer nearly any question of substance. That is the new game at the hearings. She

would not answer questions about healthcare. She would not say whether voter intimidation is illegal. She would not say if she thought Medicare and Social Security were unconstitutional. She could not even offer platitudes in responses to questions about the peaceful transfer of power, and refused to say if climate change was real.

It is not because Judge Barrett isn't allowed to answer these questions. It is because she knows how unfavorable her views on the issues might sound to the American people.

But the thing is, we do know how Judge Barrett thinks. She views certain rights, like the right to privacy, through a pinhole. She was closely affiliated with organizations who advocated the outright repeal of *Roe v. Wade*.

But she views other rights, like the right to keep and bear arms, as almost infinitely expansive. She once authored a dissent arguing the Federal Government does not have the authority to ban all felons—felons—from owning guns.

Only a few hours ago, the Republican Senator from Missouri proudly declared from the Senate floor that Judge Barrett is the most openly pro-life judicial nominee to the Supreme Court in his lifetime: "This is an individual," he said of Judge Barrett, "who has been open in her criticism of that illegitimate decision, *Roe v. Wade*." He was being more honest than most of the talk around here, which says it is only about qualifications.

Judge Barrett has proudly fashioned herself in the mold of her mentor, Justice Scalia, who, before his death, appeared set to declare union fees to be unconstitutional, driving a stake into the heart of the American labor movement. While American workers break their backs to make ends meet and earn ever less of ever growing corporate profits, what might Justice Scalia's former clerk portend for the future of labor rights?

What about voting rights? Judge Barrett has suggested that certain rights are civic rights, including voting rights, and can be restrained by the government, but other rights, like the right to keep and bear arms, are individual rights that cannot be subject to even the most commonsense restrictions.

And, of course, what about healthcare? Judge Barrett has argued that Justice Roberts got it wrong when he upheld the Affordable Care Act. She said that, if Justice Roberts read the statute properly, the Supreme Court would have had to invalidate—her words—the law.

That is the same thing, by the way, that Donald Trump said about Justice Roberts and the ACA. That is the great and terrible truth about this nomination.

Judge Barrett holds far-right views, well outside the American mainstream, and those views matter to the vast majority of Americans. They matter to

women facing the hardest decision of their lives. They matter to LGBTQ Americans like my daughter, who only 5 years ago won the legal right to marry who she loves and could lose it just as fast. They matter to little girls like 7-year-old Penny Fyman from West Hempstead, Long Island, born with a neurological disorder, bound to a wheelchair, attached to a feeding tube, who is alive today—alive today—because of the Affordable Care Act.

We are talking about the rights and freedoms of the American people: their right to affordable healthcare, to make private medical decisions with their doctors, to join a union, to vote without impediment, to marry whom they love and not be fired because of who they are.

Judge Amy Coney Barrett will decide whether all of those rights will be sustained or be curtailed for generations. And, based on her views on the issues—not on her qualifications but her views on the issues—Judge Barrett puts every single one of those fundamental rights—American rights—at risk.

So I want to be clear with the American people. The Senate majority, this Republican Senate majority, is breaking faith with you, doing the exact opposite of what it promised 4 years ago, because they wish to cement a majority on the Supreme Court that threatens your fundamental rights.

And I want to be very clear with my Republican colleagues. You may win this vote, and Amy Coney Barrett may become the next Associate Justice of the Supreme Court, but you will never, never get your credibility back. And the next time the American people give Democrats a majority in this Chamber, you will have forfeited the right to tell us how to run that majority.

You may win this vote, but in the process you will speed the precipitous decline of faith in our institution, our politics, the Senate, and the Supreme Court. You will give an already divided and angry Nation a fresh outrage, an open wound in this Chamber that will take a very long time to heal. You walk a perilous road.

I know you think that this will eventually blow over, but you are wrong. The American people will never forget this blatant act of bad faith. They will never forget your complete disregard for their voices, for the people standing in line right now and voting their choice, not your choice. They will never forget the lack of consistency, honor, decency, fairness, and principle.

They will never forget the rights that are limited, constrained, or taken away by a far-right majority on the Supreme Court, and history will record that, by brute political force, in contradiction to its stated principles, this Republican majority confirmed a lifetime appointment on the eve of an election, a Justice who will alter the lives and freedoms of the American people, while they stood in line to vote.

Leader McCONNELL has lectured the Senate before on the consequences of a

majority's action. "You'll regret this," he told Democrats once, "and you may regret it a lot sooner than you think." Listen to those words: "You'll regret this, and you may regret it a lot sooner than you think."

I would change just one word. My colleagues may regret this for a lot longer than they think.

Here, at this late hour, at the end of this sordid chapter in the history of the Senate, the history of the Supreme Court, my deepest and greatest sadness is for the American people. Generations yet unborn will suffer the consequences of this nomination. As the globe gets warmer, as workers continue to fall behind, as unlimited dark money floods our politics, as reactionary State legislatures curtail a woman's right to choose, gerrymander districts, and limit the rights of minorities to vote, my deepest, greatest, and most abiding sadness tonight is for the American people and what this nomination will mean for their lives, their freedoms, their fundamental rights.

Monday, October 26, 2020—it will go down as one of the darkest days in the 231-year history of the U.S. Senate.

I yield the floor.

The PRESIDING OFFICER. The majority leader.

Mr. McCONNELL. Mr. President, I think my remarks may encroach somewhat on the time previously set for beginning the vote. I ask consent that I be allowed to finish.

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

Mr. McCONNELL. Mr. President, this evening the Senate will render one of the most consequential judgments it can ever deliver. We will approve a lifetime appointment to our Nation's highest Court.

Since the ink dried on the Constitution, only 114 men and women have been entrusted to uphold the separation of powers, protect people's rights, and dispense impartial justice on the Supreme Court. In a few minutes, Judge Amy Coney Barrett of Indiana will join their ranks.

This body has spent weeks studying the nominee's record. We have examined 15 years of scholarly writings, about 100 opinions from the Seventh Circuit, and testimonials from legal experts running the gamut from close colleagues to total strangers.

There have been one-on-one meetings for every Senator who wanted one and a week of intensive hearings. All of it—all of it—has pointed to one conclusion: This is one of the most brilliant, admired, and well-qualified nominees in our lifetime.

Intellectually, Judge Barrett is an absolute all-star. She graduated No. 1 in her class at Notre Dame Law School. She clerked on the second highest Federal court and the Supreme Court. Then she returned to her alma mater and became an award-winning academic.

Judge Barrett's mastery of the Constitution gives her a firm grasp on the

judicial role. She has pledged to "apply the law as written, not as she wishes it were." Her testimony, her writings, and her reputation confirm a total and complete commitment to impartiality, and the nominee's personal integrity and strength of character are literally beyond reproach.

She earned the highest rating from the left-leaning American Bar Association. They marveled at the "breadth, diversity, and strength of the positive feedback [they] received from judges and lawyers of all political persuasions."

If confirmed, this daughter of Louisiana and Indiana will become the only current Justice with a law degree from any school not named Harvard or Yale—any school not named Harvard or Yale. She will be the first mother of school-aged children to ever sit on the Court.

By every account, the Supreme Court is getting not just a talented lawyer but a fantastic person. We have heard moving testimony from former students whom Judge Barrett went out of her way to help and to mentor. Her past clerks describe an exemplary boss. Her fellow scholars describe a winsome, respectful colleague who is tailor-made for the collaborative atmosphere of the Court.

By any objective standard, colleagues, Judge Barrett deserves to be confirmed to the Supreme Court. The American people agree. In just a few minutes, she will be on the Supreme Court.

Two weeks ago, a CNN journalist made this observation that I found particularly interesting. This is what he said: "Let's be honest . . . in another [political] age . . . Judge Amy Coney Barrett would be getting 70 votes or more in the United States Senate . . . because of her qualifications"—in a different era.

Now, we know that is not going to happen. These are not the days when Justice Scalia was confirmed 98 to 0 and Justice Ginsburg was confirmed 96 to 3. By the way, I voted for both Ginsburg and Breyer. It seems like a long time ago now.

We spent a lot of energy in recent weeks debating this matter. I think we can all acknowledge that both sides in the Senate have sort of parallel oral histories about the last 30 or so years. Each side feels the other side struck first and struck worst and has done more to electrify the atmosphere around here about confirmations.

Now, predictably enough, I think our account is based on what actually happened, what actually occurred—factually accurate. I was there. I know what happened.

I had laid it out earlier, and I will talk about some of it again so the people may understand how we got to where we are. It was the Senate Democrats—our colleagues over here, who amazingly enough don't seem to be on the floor at the moment—who spent the early 2000s boasting about their

brand-new strategy of filibustering qualified nominees from a Republican President. They were proud of it. They found a new way to halt the process, stop those crazy rightwing judges that Bush 43 was going to send up.

They pioneered it because they knew what the precedent was at that point. At that point, as we discussed before, it just wasn't done. You could do it—you could—but you didn't. The best evidence that you shouldn't do it was the Clarence Thomas nomination, confirmed 52 to 48. All of us know that any one of us in this body has a lot of power to object. If any one of the 100 Senators at that time, including people who were vehemently opposed to Justice Thomas—like Joe Biden and Ted Kennedy—could have made us get to 60 votes and Thomas Clarence would not have been on the Supreme Court. That is how strong the tradition was, until the Democratic leader led the effort in the early 2000s to establish the new standard.

Well, after establishing the new standard, they got kind of weary of it. In 2013, the so-called nuclear option was implemented because Republicans were holding President Obama's nominees to the same standard that they, themselves, had created. When the shoe got on the other foot, they didn't like it too much. It was too tight.

Senate Democrats, both in 1992 and 2007, helpfully volunteered how they would have dealt with a nominee like we did in 2016. The then-chairman of the Judiciary Committee, Joe Biden, helpfully volunteered in 1992 when Bush 41 was running for reelection that, had a vacancy occurred, they wouldn't fill it. There wasn't a vacancy, but he helpfully volunteered how they would deal with it if they had one. "If there is a vacancy, we won't fill it."

Well, to one-up him, Leader Harry Reid and his friend—now the Democratic leader—CHUCK SCHUMER said: 18 months—18 months—before the end of the Bush 43 period, if a vacancy on the Supreme Court occurred, they wouldn't fill it. That is a fact. What we are talking about here are the facts about how we got to where we are.

I understand my Democratic friends seem to be terribly persuaded by their version of all of this. All I can tell you is, I was there, I know what happened, and my version is totally accurate. The truth is, on all of this, we owe the country a broader discussion. Competing claims about Senate customs cannot fully explain where we are. Procedural finger-pointing does not explain the torrent of outrage and threats which this nomination and many previous ones had provoked from the political left.

There are deeper reasons why these loud voices insist it is a national crisis. You just heard it: It is a national crisis when a Republican President makes a nominee for the Supreme Court. Catastrophe looms right around the corner. The country will be fundamentally

changed forever when a Republican President makes a Supreme Court nomination.

They have hauled out the very same tactics for 50 years. Some of the opposition is more intense, but the doom-day predictions about the outcome of nominating these extremists like John Paul Stephens, David Souter—I mean, the country was hanging in the balance. Really?

Well, somehow, everyone knows in advance that nominations like Bork, Thomas, Alito, Gorsuch, Kavanaugh, and Barrett are certain to whip up national frenzies, while nominations like Ginsburg, Breyer, Sotomayor, and Kagan are just calm events by comparison.

This glaring asymmetry predates our recent disputes. It comes, my colleagues, from a fundamental disagreement on the role of a judge in our Republic. We just have a fundamental difference of opinion. We just heard the Democratic leader name all of these things that are threatened by this nominee. It sounds very similar to the tunes we have heard before. We, like many Americans, want judges to fulfill the limited role the Constitution assigns to them: stick to text, resolve cases impartially, and leave policy-making to the people and their representatives, which is what we do here.

We just spent 4 years confirming brilliant, qualified constitutionalists to the Supreme Court and lower courts who understand their roles—53 circuit judges, over 200 judges in total—and we are about to confirm the third Supreme Court Justice—what they all have in common: brilliant, smart, and know what a judge is supposed to be.

The left thinks the Framers of our country got this all wrong. They botched the job—the people who wrote the Constitution, they didn't understand what a judge ought to be.

Several Senate Democrats have reaffirmed in recent days during this discussion that they actually find it quaint or naive to think the judge would simply follow the law. Quaint or naive?

Scalia used to say: If you want to make policy, why don't you run for office? That is not what we do here.

Gorsuch said: We don't wear red robes or blue robes, we wear black robes.

What they want is activist judges. They have made it quite clear. The Democratic leader just a few minutes ago made it quite clear: What they are looking for here is a small panel of lawyers with elite educations to reason backward from outcomes and enlighten all of the rest of us with their moral and political judgment, whether the Constitution speaks to the issue or not.

They know what is best for us, no matter what the Constitution or the law may say. For the last several decades in many cases, that is what they have done—one activist decision after another, giving the subjective preferences of one side the force of law.

Across a wide variety of social, moral, and policy matters like a healthy society would lead to democratic debate, the personal opinion of judges have superseded the will of the people.

They call that a success, and they want more of it. President Obama actually was refreshingly honest about this. He said he wanted to appoint judges who had empathy. Well, think about that for a minute, colleagues. What if you are the litigant before the judge for whom the judge does not have empathy? You are in tough shape. You are in tough shape. So you give him credit for being pretty honest about this.

That is what they are looking for—the smartest, leftish people they can put to make all the decisions for the rest of us, rather than leaving it to the messy democratic process to sort these things out, the way the Framers intended.

It is clearly why we have taken on such an outsized, combative atmosphere with regard to these confirmations. That is why they have become so contentious, because they want to control not only the legislative body but the judicial decisions as well.

Let me just say this. There is nothing innate about legal training that equips people to be moral philosophers. There is just nothing inherent in legal training that equips people to be moral philosophers.

Incidentally, as I just said, that is why these confirmations have taken on such an outsized, unhealthy significance. The remarks we just heard from across the aisle show exactly why the Framers wanted to stop the courts from becoming clumsy, indirect battlefields for subjective debates that belong in this Chamber and over in the House and in State legislatures around the country.

The left does not rage and panic at every constitutional judge because they will simply enact our party's policy preferences. Any number of recent rulings make that very clear. The problem that every judicial seat occupied by a constitutionalist is one fewer opportunity for the left to go on offense.

At the end of the day, this is a valid debate. The difference of opinion on the judicial role is something the Senate and our system are built to handle. But there is something else, colleagues, our system cannot bear. As you heard tonight, we now have one political faction essentially claiming they now see legitimate defeat as an oxymoron. They now see legitimate defeat as an oxymoron.

Our colleagues cannot point to a single Senate rule that has been broken—not one. They made one false claim about committee procedure, which the Parliamentarian dismissed. The process comports entirely with the Constitution. We don't have any doubt, do we, that if the shoe was on the other foot, they would be confirming this nominee? Have no doubt, if the shoe was on the other foot in 2016, they

would have done the same thing. Why? Because they had the elections that made those decisions possible.

The reason we were able to make the decision we did in 2016 is because we had become the majority in 2014. The reason we were able to do what we did in 2016, 2018, and 2020 is because we had the majority. No rules were broken whatsoever.

All of these outlandish claims are utterly absurd. The louder they scream, the more inaccurate they are. You can always tell—just check the decibel level on the other side. The higher it goes up, the less accurate they are.

Our Democratic colleagues keep repeating the word “illegitimate” as if repetition would make it true. If you just say it often enough, does it make it true? I don’t think so. We are a constitutional Republic. Legitimacy does not flow from their feelings. Legitimacy is not the result of how they feel about it. You can’t win them all. Elections have consequences.

What this administration and this Republican Senate has done is exercise the power that was given to us by the American people in a manner that is entirely within the rules of the Senate and the Constitution of the United States.

Irony, indeed. Think about how many times our Democratic friends have said—berating President Trump for allegedly refusing to accept legitimate outcomes he does not like. How many times have we heard that: President Trump won’t accept outcomes he does not like. They are flunking that very test right before our eyes.

That is their problem. They don’t like the outcome.

Well, the reason this outcome came about is because we had a series of successful elections. One of our two major political parties increasingly claims that any—any political system that deals them a setback is somehow illegitimate. And this started actually long before this vacancy, as we all know.

One year ago, Senate Democrats sent the Court—the Court, directly, an amicus brief that read like a note from a gangster film. They wrote: “The Supreme Court is not well” in their amicus brief. “The Supreme Court is not well. . . . Perhaps the Court can heal itself [heal itself] before the public demands it be ‘restructured.’”

In March of this year, the Democratic leader stood outside the Court. He went over in front of the Court and threatened multiple Justices by name. Here is what he said: “You won’t know what hit you if you go forward with these awful decisions.”

“You will pay the price!”

That is the Democratic leader of the Senate in front of the Supreme Court mentioning Justices by name and, in effect, saying: If you rule the wrong way, bad things are going to happen.

For multiple years now, Democrats in this body and on the Presidential campaign stump have sought to revive

the discredited concept of Court packing. Every high school student in America learns about Franklin Roosevelt’s unprincipled assault on judicial independence, so now they are thinking about repeating it. Former Vice President Biden, who spent decades condemning the idea here in the Senate, obediently says he will look into it.

Most importantly, the late Ruth Bader Ginsburg said last year, when asked about this, she said nine is the right number. That is the vacancy we are filling right now. I don’t think any of them quoted her on this issue, have they? Ruth Bader Ginsburg said nine is the right number.

These latest threats follow decades of subtler attempts to take independent judges and essentially put them on political probation: You don’t rule the way I want, something dire might happen.

How many consecutive nominees have Democrats and the media insisted would “tip the balance” of the Court? How often do we hear that—“tip the balance” of the Court? Has anyone tallied up how many “hard right turns” the courts have supposedly taken in our lifetimes? All this ominous talk is a transparent attempt to apply improper pressure to impartial judges.

Rule how we want or we are coming after the Court. Rule how we want or we are coming after the Court. Vote how we want or we will destroy the Senate by adding new States. These have been the Democratic demands. This is not about separation of powers. It is a hostage situation—a hostage situation.

Elections come and go. Political power is never permanent. But the consequences could be cataclysmic if our colleagues across the aisle let partisan passion boil over and scorch—scorch the ground rules of our government.

The Framers built the Senate to be the Nation’s firewall. Over and over, this institution—our institution—has stood up to stop recklessness that could have damaged our country forever.

So tonight, colleagues, we are called on to do that again. Tonight, we can place a woman of unparalleled ability and temperament on the Supreme Court. We can take another historic step toward a Judiciary that fulfills its role with excellence but does not grasp after power that our constitutional system intentionally assigns somewhere else.

And we can state loud and clear that the U.S. Senate does not bow to intemperate threats.

Voting to confirm this nominee should make every single Senator proud.

So I urge my colleagues to do just that.

Mr. SCHUMER. Mr. President, I note the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The senior assistant legislative clerk called the roll.

The PRESIDENT pro tempore. A quorum is present.

All postcloture time has expired.

The question is, Will the Senate advise and consent to the nomination of Amy Coney Barrett, of Indiana, to be Associate Justice of the Supreme Court of the United States?

Mr. McCONNELL. I ask for the yeas and nays.

The PRESIDENT pro tempore. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll.

The result was announced—yeas 52, nays 48, as follows:

[Rollcall Vote No. 224 Ex.]

YEAS—52

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

NAYS—48

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

The PRESIDENT pro tempore. The nomination of Amy Coney Barrett, of Indiana, to be an Associate Justice of the Supreme Court of the United States is confirmed.

(Applause.)

The PRESIDING OFFICER (Ms. MURKOWSKI). The majority leader.

LEGISLATIVE SESSION

Mr. McCONNELL. Madam President, I move to proceed to legislative session.

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

The motion was agreed to.

EXECUTIVE CALENDAR

Mr. McCONNELL. Madam President, I move to proceed to executive session to consider Calendar No. 865.

The PRESIDING OFFICER. The question is on agreeing to the motion. The motion was agreed to.

The PRESIDING OFFICER. The clerk will report the nomination.

The senior assistant legislative clerk read the nomination of James Ray