

to dismantling this so-called administrative state. To do that, he deployed radical legal theories cooked up and propagated in the scheme's legal theory hothouse, where they developed schemes, kind of reverse-engineering them to give victories in cases.

In one instance, Gorsuch even wrote two opinions for the same case: one, the majority opinion that his colleagues joined; and the other, an out-there solo opinion displaying his scheme bona fides.

Gorsuch also displayed his fervor for what he called religious freedom, which usually translates to dismantling the separation between church and State, which is another scheme favorite.

Justice Amy Coney Barrett knew how to audition too. In one case, Barrett's Seventh Circuit Court of Appeals declined to hear a challenge to an Indiana law on women's right to choose. Barrett bucked the majority to stakeout an eyebrow-raising position on the right, joining a dissent aimed directly at Supreme Court abortion precedent.

On guns, Judge Barrett authored an opinion in a Second Amendment case called *Kanter v. Barr* that would have given a felon back his gun because his felony wasn't violent. Constitutional scholars' jaws hit the floor at that one.

Adam Winkler, a Second Amendment expert at UCLA Law School, told the *New Yorker* that the opinion was "Amy Coney Barrett's audition tape for the Supreme Court." And it was her audition tape because her "view of the Second Amendment [was] outside of the mainstream" and "would appeal . . . to the Federalist Society."

Of course, the biggest auditioner of all was Brett Kavanaugh. On the DC Circuit, Kavanaugh did so much auditioning it is hard to know where to begin. He issued opinions on abortion, on guns, on the administrative state, on campaign finance, and more. He was not concerned with building consensus. He wanted to make a point.

Here is Washington Post editor Ruth Marcus in her book on Kavanaugh:

His more liberal appeals court colleagues found him affable but unyielding. He would engage but rarely, if ever, change his mind, [and he] displayed a propensity for filing separate concurrences and dissents, actions that some colleagues took as judicial grandstanding and, more to the point, an effort to position himself for a Supreme Court seat.

Auditioning—in fact, Kavanaugh dissented more each year on the bench than any of his DC Circuit colleagues, whether Republican or Democratic appointees.

Kavanaugh made clear that he would be on the team if on the Court. Kavanaugh pumped up the "major questions" doctrine—one of the hot-house legal theories pushed by the far right. It says that courts should ignore an Agency's authority to solve a problem if the court thinks the problem is too big. Big regulated companies love having regulatory Agencies hobbled. So this was catnip for scheme donors.

The majority in that case panned Kavanaugh's "major questions" idea, which hadn't even been raised by the parties, but Kavanaugh wasn't out to win votes from his colleagues, and he wasn't out to do justice in that case. He was firing an auditioning flare for scheme operatives and donors to see from miles around.

Like Barrett, Kavanaugh did his own publicity. He spoke at 52—count them, 52—Federalist Society events over his career. You almost couldn't keep him out. And he wasn't the only one seeking an audience with the Federalist Society donor elite. After Trump's election, 9 of the 21 people on Trump's short list spoke at a 3-day Federalist Society panel dedicated to remembering Justice Scalia, and almost all the others were hanging out, mingling in the crowd. It was a judicial beauty pageant, with some real beauties.

Kavanaugh had a little problem. He wasn't on Trump's first list of potential Supreme Court picks, and he wasn't on the second list either. But all that eager auditioning got him onto the third list, and the rest is history.

I am not alone in noting all this auditioning. Here is how one writer for *Slate* paraphrased former U.S. District Judge Nancy Gertner about scheme auditioning:

[C]onservative judges auditioning for SCOTUS—  
Supreme Court of the United States—

go all out proving their Federalist Society bona fides: Gorsuch used his judicial opinions on the appeals court to advertise himself as an enemy of the administrative state and a diehard proponent of religious freedom; Kavanaugh flaunted his support of the unitary executive and hostility to reproductive rights to earn a spot on President Donald Trump's short list; Amy Coney Barrett brandished her Second Amendment maximalism.

As the *Slate* writers note:

The conservative legal movement rewards this kind of flagrantly ideological auditioning. Republicans demand evidence that their justices will aggressively overturn precedent and laws that conflict with their political goals.

As I said earlier, "no more Souters," "no more Stevenses."

That is the auditioning by these sitting Justices.

I will close my remarks with an example of what happens when you haven't auditioned for the scheme.

When Justice Sandra Day O'Connor announced her retirement, George W. Bush wanted to replace her with his friend and loyal White House Counsel, Harriet Miers. Miers was a dyed-in-the-wool conservative. She had served Bush and his inner circle faithfully. But she wasn't a Federalist Society insider. She didn't have a record of auditioning for the big donors behind the Federalist Society's turnstile. She couldn't soothe those rightwing donors that she was "no Souter," "no Stevens." Her sin wasn't anything in particular; she just wasn't part of the club.

As Supreme Court scholar Amanda Hollis-Brusky put it:

The message Leonard [Leo] and others had sent was: If you want to rise through the ranks, we need to know you. And that's what they were all saying about Miers—"We don't know her. She is not one of us."

Leonard Leo, by the way, is sort of the spider at the center of the web of donor interests that drive the turnstile at the Federalist Society during Republican Presidencies.

We are now embarking on the confirmation process of someone who has not auditioned to donor elites for a seat on the U.S. Supreme Court. No dark money machine guided her selection. That is refreshing.

Still, the auditioning continues on the right for the next time a Republican President holds office. Scheme donors expect standout candidates who wear their commitment to their donor welfare on their sleeves. Watch closely for more. To be continued.

I yield the floor.

The PRESIDING OFFICER. The Senator from Ohio.

#### UKRAINE

Mr. PORTMAN. Mr. President, I come to the floor again today to stand with the people of Ukraine.

What Russia is doing to Ukraine and its citizens is an atrocity. Ukraine is an American ally and an independent and democratic country of 41 million people who simply want to live in peace.

The Russian invasion is an illegal, unprovoked, and brutal assault that, over the past 19 days since the full-scale invasion began, has targeted and killed thousands of civilians. Americans have seen this atrocity in realtime with horrific videos online or on our television screens.

The videos and photos have sometimes been shocking. Remember the one of the woman who was on a stretcher, pregnant, leaving the maternity hospital that had been bombed by the Russians. We now learned that that woman and her baby have died. Today we learned that more journalists have been killed, including an American journalist, a FOX News cameraperson.

I just returned last night from a bipartisan congressional delegation trip to Poland, neighboring Ukraine. I was joined on that trip by Senator KLOBUCHAR, Senator WICKER, and Senator BLUMENTHAL. I see Senator WICKER is here on the floor. Senator BLUMENTHAL is also here. Senator KLOBUCHAR has a conflict. She wanted to be here, but she is going to be submitting her statement for the record to join us tonight.

We had a very emotional trip because we talked to a lot of the refugees coming out of Ukraine, talked about the incredible trauma they are going through. We also got some very sobering briefings when we were over there from our own team but also from the Polish Government, from people who were helping the refugees.

It is a very difficult situation. Poland is doing what they can to help their

neighbor. They have a special bond with Ukraine, and they are doing a lot. In fact, most of the nearly 2 million refugees who have fled Ukraine because of this invasion and the brutal attacks have come to Poland, where they have been met with open hearts and open homes. Literally, people in Poland are opening up their homes to these refugees. We were at the border, where some of these Polish families have come to welcome Ukrainians into their apartments, into their homes.

In addition to briefings from our U.S. Embassy team in Poland; the U.S. Embassy team from Ukraine, who is now in Poland; the U.S. military in Poland; and the Polish Government, we did go down to the border between Ukraine and Poland to meet with the border officials from Poland, U.S. and Polish international relief organizations, and, of course, with the refugees themselves who were streaming across the border.

Roughly, 100 refugees every minute are leaving Ukraine. It was heart-breaking to hear their stories. You can imagine. We spoke to them at the border crossing but also a couple miles away at what is called the reception center, a convention center that has been converted into a place where thousands of refugees can come, get a good night's sleep, maybe stay for a few days or even a few weeks, find food, find healthcare, find mental health treatment.

Most of this, by the way, has been donated. The Polish people have donated bed sheets and blankets and quilts. We worked there as volunteers with what is called the World Central Kitchen, something actually a Washington, DC, chef, Jose Andres, has set up at natural disaster areas to help feed people. He is now doing this on the border with Ukraine and in Ukraine. In fact, he has about 20 different World Central Kitchens set up. This one was at this reception center being used by refugee families who need to find some comfort and food, as they have made a long trek, in many cases, across Ukraine to get there.

There are also lots of displaced people in Ukraine itself, and those people are being helped by the same group, this World Central Kitchen. I thank them. I thank all the volunteers who give them support and help so that they can lend a hand at these reception centers and help these refugees along their way.

I also thank so many other volunteers we saw there from every organization: Catholic relief organizations, other faith-based organizations, the World Health Organization, and others.

We were at the border only about 6 hours after the Russian missiles had attacked and killed at least 35 and wounded more than 130 at a Ukrainian training center just 15 miles away. The border guards said they had felt the Earth tremble when the bombing attack occurred, again, just several hours before we got there.

This was the first Russian attack so close to the western border with Eu-

rope and so close to a NATO ally, a potentially dangerous new phase of the Russian assault.

We met refugees there from all over the country, the vast majority of whom were mothers with their children, sometimes grandmothers with their grandchildren. Men between 18 and 60 are required to stay and fight, so we heard some really tough stories about families being split apart and moms and wives and sisters wondering whether their sons and husbands and brothers who were in harm's way were still alive.

Some refugees had traveled by bus, some by foot, some on trains. Some had come over Ukraine for several days. They told of heart-wrenching stories of their homes being destroyed, of friends and family being wounded by the indiscriminate Russian bombing of civilian areas. They had backpacks or small suitcases; that is it. They had to travel and travel quickly and travel light. They left everything else behind, including, again, in some cases, family members.

Some, again, had been traveling for several days. One family we met from the eastern part of Ukraine said it had been over 2 weeks. Some who lived close to the border had only made the difficult decision to leave their homes that very morning after the bombing of the training center 15 miles away. Refugees spoke with tears in their eyes about the pain of leaving their homeland, and all the families I spoke with said they want to go back when it is safe.

Many said they appreciated what America had done, but just about every single refugee we talked to asked that the United States of America and other countries around the world do more particularly to stop the deadly bombing of civilian targets and the senseless destructions of their towns and cities.

In particular, they begged us to close the skies, as they said: Keep us from getting bombed. Stop the carnage. They were very proud of the courage of the Ukrainian soldiers—they are patriots—and, of course, of the citizen soldiers, sometimes including their own family who have stepped forward. They were proud of the bravery and leadership of President Zelenskyy.

But consistent with what we have heard from the military experts on the trip and what many of us have heard directly from President Zelenskyy, these families, these refugees—the grandmothers, the mothers—said the ability to provide better air cover with more and better ways to protect them is what they really want.

What President Zelenskyy and others have said is better anti-air systems, better ways to protect against missile attacks, anti-missile systems, drones, airplanes—that that is the single most important thing we can do to save lives and give Ukrainian military fighters, the civilian soldiers we talked about—professional soldiers—give them a chance, give them a fighting chance.

Other countries on the frontlines also need to know we are with them, especially our NATO allies, because they are nervous, as you can imagine. While in Poland, we met with hundreds of 82nd Airborne troops who have come to Poland in the past couple of weeks, along with some troops from other NATO countries. We have gone from about 5,000 U.S. troops in Poland to about 10,000 troops over the past couple weeks, and the Polish Government and the Polish people are deeply appreciative. They believe that this it is a deterrent to Russia making an even bigger mistake and coming into their country.

We received extensive briefings from the Polish Government but also from the 82nd Airborne, and we were able to join troops for dinner to hear directly from them. I was fortunate there were a lot of Ohioans there, and hearing from them made me very, very proud that they were willing to step forward and serve their country in this way.

We listened carefully to everybody. We listened to the refugees, listened to the humanitarian aid workers, listened to the U.S. diplomats, to the military experts, as well as the Polish military officials. There were differences of opinion, to be sure, on some of the specifics but actually broad agreement on the ongoing role the United States can play.

Based on what we learned, the following steps should be taken immediately. First, on the military side, we have got to redouble our efforts to provide Ukraine with the equipment and the munitions they need and, where necessary, the immediate training to provide the air defenses they need to give them better capability—defense and offense.

Whether to facilitate providing more MiG-29s from Poland or not has been hotly debated in this past week. In my view, we should have done it when it got that initial green light from part of this Biden administration because the Ukrainians asked for them, and I don't believe they are any more escalatory, certainly, than the escalation the Russians are engaged in virtually every day and what we have done and continue to do on other weapon transfers. So we should have done it immediately and quietly. But the administration seems to have dug in on this for now, and it has become too much of a public debate. I would hope that at least they would facilitate spare parts and other assistance to keep the current Ukrainian planes flying.

Perhaps more promising is to immediately help Ukraine bolster its anti-air systems. The United States can and should facilitate the transfer of Soviet-era anti-aircraft and anti-missile systems so the Ukrainians know how to operate them. And there are a number of regional partners that have this equipment.

Without going into detail, this should also include extra munitions to replenish existing anti-air batteries

that the Ukrainians have. In conjunction with transferring anti-air systems and aircraft, we need to continue to provide Stingers and enhancements to them.

All can be useful in shooting down the Russian fighters and the missiles that are raining bombs on innocent Ukraine civilians and causing so much needless death and destruction. We must find ways to quickly provide Ukraine with more armed drones, such as the Turkish TB2, which the Ukrainians know how to use and have been devastatingly effective on the battlefield already.

Especially now that Congress has passed the omnibus spending bill with a bump-up for defense and specific additional security systems for Ukraine and higher drawdown authority for the President, there can be no excuse for a gap in the flow of arms to Ukraine. We want to be sure that this is seamless. As we complete one tranche of help to Ukraine, there cannot be a gap before we do another. We must move more quickly. Ukraine needs this help. It is a matter of hours and days, not a matter of weeks or months.

In addition to the items mentioned above, this also means more anti-tank Javelin missiles but also small arms, munitions, body armor, communications equipment, anti-tank, mining, anti-ship weapons, and more so the brave Ukrainian soldiers can continue to protect their country and their citizens.

Before I talk about the second part of this, which is the humanitarian side of this effort, I would like to ask my colleagues, whom I see are here on the floor with me, if they have any comments particularly about what Ukraine needs right now in terms of military assistance to be able to be effective or other comments that they might have.

Mr. WICKER. Would the gentleman yield?

Mr. PORTMAN. The gentleman will yield.

Mr. WICKER. And perhaps we can proceed in colloquy form.

The PRESIDING OFFICER (Ms. HAS-SAN). Without objection, it is so ordered.

Mr. WICKER. Madam President, I thank my dear friend from Ohio, and I see that we have been joined by my friend from Connecticut.

We did have a bipartisan American delegation in Poland and on the Ukrainian border this weekend. I don't recommend, for tourism purposes, a weekend trip to Eastern Europe and back. It is pretty hard on the anatomy. But I think we flew the colors for the United States, for the U.S. Senate, and made a bipartisan point.

And my colleagues can speak for themselves about exactly where they come down on these issues, but it was clear from the statements we made that the United States can do more and should be doing more.

And I call on the administration tonight to listen to the learned words of

the distinguished Senator from Ohio. Yes, I support the MiGs from Poland and from other Eastern European countries. I think the debate got awfully heightened. I don't know why we needed to have an international discussion among allies about that rather than just do it. And maybe that should be a lesson to us on other decisions, which I hope we are about to make, but there are certainly other weapons that we can facilitate in delivering.

Does it make any sense to say that smaller weapons delivered from the United States are OK to fire against the Russian aggressors in Putin's war, but more effective MiG aircraft from NATO somehow would be escalatory?

Listen, our friends are in a war against the remaining dictator and tyrant on the face of the Earth; and if we are not willing—as we are not—to get involved directly in that war, yes, we ought to give our friends the weapons they need to win.

Let me say this: I hear debate in the newspaper and on the media—even today—about an off-ramp, what Putin would agree to, to simply quit fighting: If we give him some of the territory that he thinks he has already conquered, Ukraine would get to have part of their country, and everything would be OK. It makes me feel like, somehow, I have been transported to 1938 and 1939, hearing talk about what Adolf Hitler might agree to, to avoid a world war.

Madam President, it is my understanding that the distinguished majority leader has a unanimous consent request, and I am willing to defer our debate at this point to accommodate some administrative matters that need to be taken care of.

Mr. SCHUMER. Madam President, I want to thank my friend and colleague from Mississippi, as well as my friend and colleague from Ohio and from Connecticut.

We have one very important unanimous consent request that I will mention now and ask that unanimous consent request and then do the other ones as well. It will take a few minutes, and I appreciate that.

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**EXPRESSING THE SENSE OF THE SENATE CONDEMNING THE RUSSIAN FEDERATION, PRESIDENT VLADIMIR PUTIN, MEMBERS OF THE RUSSIAN SECURITY COUNCIL, THE RUSSIAN ARMED FORCES, AND RUSSIAN MILITARY COMMANDERS FOR COMMITTING ATROCITIES, INCLUDING ALLEGED WAR CRIMES, AGAINST THE PEOPLE OF UKRAINE AND OTHERS**

Mr. SCHUMER. Madam President, in a few minutes, we will pass a resolution, S. Res. 546, condemning the Russian Federation, condemning Vladimir Putin, and expressing the sense of the Senate condemning the Russian Federation, Putin, and members of Russian security council, Russian Armed

Forces, and Russian military commanders for committing atrocities, alleged war crimes against the people of Ukraine.

It has been 19 days—19 long, bloody days since the war erupted on the European continent. Today, all of us in this Chamber join together as Democrats and Republicans to say that Vladimir Putin cannot escape accountability for the atrocities committed against the Ukrainian people. The legislation passing today, championed by Senator GRAHAM, sends an unmistakable message that the United States stands with Ukraine, stands against Putin, and stands with all efforts to hold Putin accountable for the atrocities levied upon the Ukrainian people.

Putin is not winning militarily, so now, this evil man is trying to win by massacring civilians, massacring babies, parents, the elderly, pregnant women, shooting at hospitals, sending missiles to hospitals, apartment buildings, et cetera—just as he did in Syria, just as he did in Chechnya—wiping out the civilian population in hopes of winning.

But in his monomaniacal hubris, Putin has severely underestimated the Ukrainian people. Every time an innocent Ukrainian is killed, the resolve of the Ukrainian people grows stronger. And we stand with them.

We have all seen the images, heard the stories, and watched the videos of the reality of this awful war. Hundreds—maybe even thousands—of civilians have been killed, as I said, from the elderly all the way down to babies not even a month old. These atrocities deserve to be investigated for war crimes.

Entire cities with hundreds of thousands of people have been left with no water, no power, no connection to the outside world. Unable to overtly Ukraine in a quick strike, Russian forces seem to be openly targeting sites that have little military significance.

Today, I am proud to ask unanimous consent and ask all of my colleagues to support today's legislation condemning Putin's atrocities and supporting efforts to hold him accountable before the eyes of the entire world.

Madam President, I ask unanimous consent that the Senate proceed to the consideration of S. Res 546, submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The senior assistant legislative clerk read as follows:

A resolution (S. Res. 546) expressing the sense of the Senate condemning the Russian Federation, President Vladimir Putin, members of the Russian Security Council, the Russian Armed Forces, and Russian military commanders for committing atrocities, including alleged war crimes, against the people of Ukraine and others.

There being no objection, the Senate proceeded to consider the resolution.

Mr. SCHUMER. I know of no further debate on the resolution.