

respect for the decision making in courts themselves.

When I was Governor of Virginia, I did not have the power to put judges on the bench, except in rare instances. In the Virginia State system, I wouldn't even nominate judges. The legislature would choose the judges, and the Governor had no role, except—except—when the legislature would deadlock. If the house and senate couldn't agree on filling a position, then the Governor got to put in a judge or a justice until the legislature came back next year, and then they would have to vote on whether to ratify what the Governor had done.

Three times, when I was Governor, my two Republican houses deadlocked on an appellate judge: one on the court of appeals and two on the Virginia Supreme Court. So I had this opportunity. As somebody who practiced civil rights law for 17 years, as somebody who was married to a juvenile court judge, I had the opportunity to consider and then nominate people to be appellate judges.

I decided pretty quickly, as I analyzed who should be appellate judges—and I followed this rule in all three of my opportunities—that I would appoint a great trial judge. In each of the three instances, I appointed a great trial judge because I knew that that great trial judge would be able to sit on an appellate court and render rulings that weren't sort of philosopher, king-or-queen rulings that might sound good in a law review article or in a panel discussion, but they could render rulings that would be instantaneously understood in courtrooms all across the Commonwealth and be able to be implemented by the other trial judges, who were doing their best every day to conduct fair trials.

So that is why I think the second factor that Judge Brown Jackson was a district court judge handling trials, multiple trials and motions every day, will put her in such good company as she joins Justice Sotomayor as the only other member with that experience.

I will conclude and just say a Justice Ketanji Brown Jackson will add depth and perspective to a Court that needs it. As we near the 150th anniversary of Myra Bradwell's quixotic case, the confirmation of Justice Ketanji Brown Jackson will make the statue of justice and the engraved phrase "Equal Justice Under Law" more accurate reflections of our Nation's highest Court.

With that, Mr. President, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from South Dakota.

Mr. THUNE. Mr. President, I ask unanimous consent that the following Senators be permitted to speak prior to the scheduled vote: myself for up to 15 minutes, Senator CRUZ for up to 25 minutes, and Senator STABENOW for up to 10 minutes.

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

#### TITLE 42 AND THE BORDER

Mr. THUNE. Mr. President, we are moving from disaster to catastrophe at our southern border. Last week, the Biden administration announced that title 42 COVID-19 restrictions, which had provided for the immediate deportation of those who crossed the border illegally, will end in May.

Now, it is ironic that just as the administration presses for more COVID funding, it is apparently declaring COVID is over at the border. Now, I just want everybody to think about the inherent contradiction in what is being said here. By ending title 42, the administration says, for all intents and purposes, the pandemic is over; it is over at the border. But, today, it was announced that the student loan program—repayments on student loans—would be extended until the month of August. Why? Presumably because of the pandemic.

There is still a policy in place, Mr. President, if you can believe this—yesterday, I had the chance to question, at the Senate Finance Committee, Secretary Becerra of the Health and Human Services Department about a policy that is in place right now that has not yet been repealed that requires children under 5 in Head Start facilities to wear masks—masks not just when they are in the classroom but when they are outside on the playground—children under 5, to wear masks.

Now, who says that is a bad idea? Well, for one, the World Health Organization. The World Health Organization isn't exactly a conservative-leaning institution. The World Health Organization says that it is not necessary for children under 5 to wear a mask because there is no discernible health or safety benefit derived from that.

So that policy is still in place. Kids under the age of 5 at Head Start facilities still have to wear masks, not just inside but when they are outside.

Now student loans, again, have been deferred. You don't have to repay your student loans at least until August. It has been extended again.

These policies reflect a belief on behalf of the administration that we are evidently still in a pandemic that requires these policies to stay in place.

So the student loan deferral request has been made or is going to happen. They are just going to do it. So they are doing that by fiat. And this rule that requires children under 5 to wear masks suggests we are still very concerned about the pandemic and about the spread of COVID-19. Yet, Mr. President, title 42 is going to be lifted at the border, which is a pandemic measure. It was put in place as a result of the pandemic and has enabled our officials at the border, Customs and Border Protection, to be able to at least somewhat manage the flow of illegals coming across the border. Think about that. Think about the inherent contradiction, the messages that you are sending—in addition, I would add, to

the \$10 billion, which was originally \$15 billion, that is being requested by the administration to deal with COVID.

So you are asking for more funding. You are requiring kids to wear masks. You are extending the deferral on student loan repayments. Yet you are lifting title 42 restrictions.

Let me tell you what that means. Once title 42 restrictions are officially lifted, the flood of illegal immigration across our southern border is expected to become a tsunami. The Department of Homeland Security expects as many as 18,000 per day to attempt to cross our southern border after the policy is lifted—18,000 per day. That adds up to more than half a million migrants per month.

To put those numbers in perspective, in fiscal year 2021, Border Patrol encountered more than 1.7 million individuals attempting to cross our southern border. That was the highest number ever recorded in a single year. Now we are talking about a rate of migration that would lead to our hitting that 1-year record in just over 3 months.

Title 42 restrictions were never intended to be a permanent border solution, and lifting them would not be a problem if the President had some meaningful plan in place for dealing with the border crisis that has been going on since he took office, but he doesn't—again, evidenced by the fact that the President has no interest in visiting the border, nor has his border czar, the Vice President of the United States. Neither has been to the border.

Lifting title 42 without a plan to curb illegal immigration is nothing more than an invitation for our current crisis to get exponentially worse, which is exactly, exactly what the Department of Homeland Security expects is going to happen.

Now, you don't have to take my word for it on these problems with the administration's decision. Here is what one Democratic Senator had to say about the administration's title 42 decision:

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That is from a Democratic Senator.

Another Democratic Senator noted:

I think this is not the right time and we have not seen a detailed plan from the administration. We need assurances that we have security at the border and that we protect communities on this side of the border.

Another Democratic Senator.

This is another Democratic Senator, a third one:

Today's announcement by the CDC and the Biden Administration is a frightening decision. Title 42 has been an essential tool in combatting the spread of COVID-19 and controlling the influx of migrants at our southern border. We are already facing an unprecedented increase in migrants this year, and that will only get worse if the Administration ends the Title 42 policy. We are nowhere near prepared to deal with that influx.

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Again, a third Democratic Senator on the subject of ending title 42.

Mr. President, under the Biden administration, we have had 12 straight months of border encounters in excess of over 150,000. In February, U.S. Customs and Border Protection encountered 164,973 individuals attempting to cross our southern border illegally—the highest February number in more than 20 years. And, of course, those numbers only reflect individuals the Border Patrol has succeeded in apprehending. There is no question that many other illegal immigrants have crossed the border in the past year without being apprehended and have disappeared into the United States. The President is largely responsible for this situation thanks to the series of actions he has taken to weaken border security and immigration enforcement since his administration began.

Mr. President, illegal immigration is a very serious problem for several reasons. First of all, it is dangerous for any country not to know who is entering the country, who is crossing its borders. Illegal border crossings are not confined to individuals wanting to build a better life for themselves. Weak borders are an invitation to human traffickers, drug smugglers, gangs, and even terrorists.

We currently have a very serious fentanyl problem in this country. In fact, fentanyl overdose is the leading cause of death for U.S. adults between the ages of 18 and 45. And where is this fentanyl coming from? It is being trafficked across our southern border. In fact, Mexico has replaced China as the dominant source of fentanyl in the United States. There is no question that the worse the situation at the border gets, the easier it is for drug smugglers to evade detection and capture.

Our Border Patrol officers do heroic work, but they are stretched incredibly thin and have been for the past year. It is simply common sense to acknowledge that the greater the flood of illegal immigration they have to contend with, the easier it is going to be for bad actors to get across the border.

So there are real security concerns that illegal immigration represents. There are also serious humanitarian concerns. The journey to our southern border for those attempting to cross illegally is frequently fraught with danger, and there is nothing compassionate about encouraging individuals to undertake that journey, to run the risk of exploitation and disease and exposure.

Finally, encouraging or tacitly endorsing illegal immigration shows a real disregard for the rule of law. I am a strong supporter of legal immigration. I am one generation removed from immigrants in this country, and I hope this country will always serve as a refuge for individuals seeking a new life for peace and for freedom. But immigration laws are not exceptions to

the principle that the law must be respected.

We can and should make changes to immigration laws as needed to address problems or to expand opportunities, but immigration must proceed according to the law. To suggest otherwise is to cultivate contempt for the rule of law, not to mention how unfair it is to those who have done what is required to come here legally.

As President, President Biden has a particular responsibility to care for the country's security. When it comes to the border, at least, he is failing in that responsibility, and he is betraying the duty he owes to the American people, who should be able to count on their President to care about security concerns, including border security.

We are less than 2 months away from the end of title 42 restrictions and the border surge that we expect to follow. I hope that the President will use that time to get serious about developing a plan to secure our southern border because he owes the American people nothing less.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Texas.

#### NOMINATION OF KETANJI BROWN JACKSON

Mr. CRUZ. Mr. President, I rise today ahead of the Senate's vote on Judge Ketanji Brown Jackson to be a Justice on the U.S. Supreme Court. There are few responsibilities the Senate has that are more important than confirming judges and, in particular, confirming Justices on the Supreme Court of the United States.

The Supreme Court is charged with the responsibility of defending and upholding the Constitution and the Bill of Rights. It is charged with the responsibility of upholding the rule of law and protecting your rights and my rights.

Judge Jackson is someone that I have known personally for 30 years. She and I went to law school together. We were both on the law review together. Judge Jackson is someone who, on a personal level—she is smart; she is talented; she is charming. I have always liked Judge Jackson. But the responsibility given to the Senate is not to make an assessment on a personal level, but rather to assess a nominee's record and the kind of job they would do for the position to which they have been appointed.

Now, many Democrats in this Chamber and their cheerleaders in the corporate media insist that we cannot examine Judge Jackson's record. They insist, in fact, that any scrutiny of her record, any difficult questions directed her way, and, certainly, any opposition to her nomination must, must, must be rooted in racism or sexism. Sadly, this is a common talking point for Democrats. Whenever anyone disagrees with them on substance, you must be a racist. If you are not a socialist, you are a racist. That is their standard go-to.

And in this instance, all should acknowledge and should celebrate the

historic milestone that would be having the first African-American woman serve as a Justice on the Supreme Court. Given our Nation's troubled history on race, that is a major important milestone. I would note, though, that the Democrats celebrating that fact—patting themselves on the back—there is more than a little irony in their celebrating that fact because the reason that we have not, to date, had an African-American woman on the Supreme Court—a major reason—is that the Democrats who are so proud of themselves filibustered a qualified African-American woman nominated to the U.S. Court of Appeals for the DC Circuit. Her name was Janice Rogers Brown. She was a justice on the California Supreme Court, and 20 years ago, President George W. Bush, a Republican, nominated her to the DC Circuit. And Senate Democrats realized that a qualified African-American woman on the DC Circuit was a real threat to go to the U.S. Supreme Court.

Janice Rogers Brown is a conservative and a constitutionalist, and for Democrats, that was unacceptable. So Democrats filibustered Janice Rogers Brown. CHUCK SCHUMER filibustered Janice Rogers Brown. Joe Biden filibustered Janice Rogers Brown. DICK DURBIN filibustered Janice Rogers Brown. PAT LEAHY filibustered Janice Rogers Brown. DIANNE FEINSTEIN filibustered Janice Rogers Brown.

So now, all the Democrats who are celebrating putting the first African-American woman on the Supreme Court have themselves to thank for that because it could have happened 20 years ago.

But in Senate Democrats' way of viewing things, if a Black woman or a Black man or a Hispanic woman or a Hispanic man dared to disagree with leftist orthodoxy, they do not count. Indeed, it was not just Janice Rogers Brown. Democrats also filibustered Miguel Estrada to the DC Circuit. Miguel Estrada, an advocate with superb credentials, was criticized, as the staff for Senator Ted Kennedy wrote at the time in internal memos that they could filibuster "because he is Hispanic."

Mr. President, this was before your time and my time in this body.

Here is what Ted Kennedy's staff told them:

Identify [Miguel Estrada] as especially dangerous . . . because he is Latino.

That is racism—which the Democrats put in writing. If you are Black, if you are Hispanic, we will target you, we will filibuster you, we will block you, and that is what they did. For that matter, that is what Democrats have done for three decades now to Justice Clarence Thomas, one of the greatest Justices to ever serve on the U.S. Supreme Court. And yet, in Democrats' minds, he is not a Black man because he dares disagree with their leftist ideology. It is wrong; it is racist; it is cynical; and it is offensive.