

Floor Statement
Nomination of Judge Amy Coney Barrett
Senator Lisa Murkowski
October 24, 2020

[Mr./Madam] President, I want to start with a personal thank you to you as the presiding officer for indulging me for additional few moments here so I may speak this afternoon on the nomination of Judge Amy Coney Barrett to be an Associate Justice of the U.S. Supreme Court, for considering these unanimous consent agreements. Statements being made but not action moving forward. I had hoped that if we were going to be at this moment in time, just over a week out from our national elections, that we would be here on the floor debating the merits of a COVID relief bill. In my home state of Alaska as in so many states around the country we are seeing unprecedented numbers now.

The news just yesterday, Friday, that the United States reported the highest single day recorded of positive cases 83,757—really staggering. In Alaska we have seen this virus spread to some of our small, outlying villages—villages that are not accessible by road, villages that have limited medical facilities. We are really quite concerned about what this means for many of the Native people in these areas.

We're not able to stay on top of the contact tracing like we were some months ago because of our increasing numbers. The pressure on hospital capacity is also a growing concern. And economically, Alaska has been hit extraordinarily hard. As most know we've got a pretty substantial tourist season, but this year we had little to no season for us. Many small businesses have closed permanently but many, many more are going into the winter wondering how they are going to make it through the winter, scrambling to find ways to piece it together. Unemployment, loss of housing—in every conversation that I have with Alaskans they're asking if

and when we are going to see another round of COVID relief. And I regret that we have no deal to offer them today. Instead, we're here on a weekend, ten days before the elections to advance a U.S. Supreme Court nominee. Now I was here on the floor yesterday, and I had an opportunity to listen to the Majority leader as he outlined the escalation of confirmation battles over the past 30 years plus, and I think it was an important lesson in our Senate history. But I'm not confused about how we wound up here, but I certainly am frustrated by it, and it's with a heavy heart. I just regret that we are in this place.

I think there was a worthy attempt during the 109th Congress, by the Gang of 14, to reduce the tensions. There was, I think a very genuine, good faith effort there to try to dial things back. Sadly, their bipartisan action was not rewarded by the voters, and perhaps that served as a warning to other members of this body rather than as an aspiration. But we've heard the history lesson, and I'm one who has long recognized that that pointing fingers doesn't ever actually solve a problem.

I personally believe that every nominee for the Supreme Court should receive an up or down vote after they have passed out of Committee. My record has been pretty clear, pretty consistent, some might even suggest boring in its consistency. But I made a very strong commitment after I returned to the Senate at the end of 2010 and said I did not believe that filibustering our judges was what we should be doing. And so I might not have liked the judges that were before us, but I did not participate in the filibuster of a judge. I had an opportunity to vote up or down, and I thought that was the reasonable way to proceed. I believe that it is fair to the individual, and it is fair to the institution. But I also recognize that the timing of this confirmation that we have before us will serve to reinforce the public perception about political influence on the Court. And I would hope that we all

recognize that public confidence in our Courts must be an imperative. We have to believe that justice is going to be equal for all of us.

Now, I know that my colleagues are not surprised to hear me discuss my concern about the politicization of the Court. I made a similar point during the impeachment trial, when some wanted to literally tear down Chief Justice Roberts and the Court because they needed the soundbite for a political ad in the primary campaign. I made the same case when I voted against the nomination of now-Justice Kavanaugh.

Also during that impeachment trial, I implored the members of this chamber to look inward, to really evaluate—are we really willing to tear down not only the other party, but the other institutions of our government as well.

So I have looked inward, considering in these difficult days what I believe is best for the institutions of our government. And I recognize that confirming this nominee is not going to heal, it's not going to salve the wounds that those institutions have endured. But neither will threats that, should the balance of power in this chamber change, that “everything is on the table” – including the end of the legislative filibuster and packing the Court.

To do that would only inflict even deeper, deeper wounds. Fundamentally and dramatically altering how the levers of power operate in this country, compromising the one branch—the one branch of government that must remain apolitical. We're the legislative branch, the executive branch, both of these branches are inherently political. It is the third branch, our courts, that we count on

to be apolitical. I think it would be a giant leap further down a path that we should not be following in the first place. So, we have to figure out how we deescalate.

So, let me very simply explain this afternoon how I plan to vote over the next two days, starting with the procedural motions, which I opposed yesterday. I will oppose again tomorrow.

In 2016, after the unfortunate death of Justice Scalia, I said that the Senate should not take up a nominee to fill that seat due to the impending presidential election. I reiterated that statement in August of this year, and then coincidentally enough, just hours before the news of Justice Ginsburg's passing that saddened the country. I did not know she had just passed when I reaffirmed my comments from earlier, but that knowledge would not have changed my mind.

I remain in the same place today. I do not believe that moving forward on a nominee just over a week removed from a pitched presidential election, when partisan tensions are running about as high as they could. I don't believe this will help our country become a better version of itself. But frankly, I have lost that procedural fight. We saw with the vote yesterday.

So what I can do now is be consistent with the precedent that I set for myself, and oppose a process that I said should not move forward. And I have done that. But at the end of the process is the substantive question of whether Judge Barrett should be categorically rejected as an Associate Justice in order to underscore my procedural objection.

I believe that the only way to put us back on the path of appropriate consideration of judicial nominees is to evaluate Judge Barrett as we would want to be judged – on the merits of her qualifications. We do that when that final question comes before us. And when it does, I will be a yes. I have no doubt about her intellect. I have no doubt about Judge Barrett’s judicial temperament. I have no doubt about her capability to do the job, and to do it well.

By now most people are very familiar with her qualifications. They’ve seen the resume, the bio, she’s been all over the news. But it is significant—her background. Graduating with honors from Rhodes College and with honors from Notre Dame Law School. She clerked on the DC Circuit Court of Appeals and the Supreme Court, and was an excellent professor for 15 years at Notre Dame Law School prior to being confirmed to the bench on the Seventh Circuit Court of Appeals. I helped confirm her to that seat on the Seventh Circuit.

I have followed on from that time when I first came to know of Judge Amy Coney Barrett. I’ve done my due diligence in my role of advice and consent. I have worked through the articles that she has written, the cases that she has written. I have engaged in a lengthy one-on-one with her. I watched both full days when she appeared before the Judiciary Committee. She presented herself admirably under a difficult situation. We all know around here that confirmation processes are not pretty.

I have expressed my concerns previously that good people will decide that the confirmation process as we have it now, sometimes an awful process—that I worry that they’re going to think that it’s just not worth it. Not worth what it puts them and their families through, and they opt out to avoid government service. On this

note, I will say that while some of the rhetoric from my colleagues has been overblown and unnecessary, this process with Judge Barrett is not nearly what it was in 2018, during the confirmation of Justice Kavanaugh.

Ultimately, I am glad, I am thankful, that Judge Barrett did not opt out. I have concluded that she is the sort of person we want on the Supreme Court. Her legal writing is excellent and will be an asset to her, as well as future generations of lawyers as they read through her opinions. Her intellectual curiosity, which is demonstrated by the depth and breadth of her academic work as a professor, will also serve the country well. Her temperament and her very patient nature were on full display over the course of the hearing.

I had a good, I think very substantive, discussion with Judge Barrett about some Alaska related matters, focusing on Alaska-specific statutes like ANILCA. I raised some of the public safety challenges that we face in my home state that serve to undermine the principal of equal justice under the law. I raised the issue of voting rights and access to the ballot. It was important for me to hear and to better understand her views on precedent and her evaluation process, specifically the weight that she affords reliance on decisions that have been in place for decades, such as *Roe v. Wade*. We discussed the doctrine of severability in regards to the Affordable Care Act case. We spoke at length about my concern that the Supreme Court is increasingly viewed as political by the public and what that then does to erode the public confidence in the impartiality of our courts. We talked about the criteria and the evaluation that a Justice would undergo for purposes of a recusal from a matter.

I do not believe Judge Barrett will take her seat on the bench with a pre-determined agenda or with the goal of putting a torch to every volume of the United States Reports. Justices should come to the Court with an open mind, willing to be convinced by the arguments presented in each case, to exchange thoughts with their colleagues, to learn new things, and rule as the law requires. And I am convinced that Judge Barrett will do just that.

So while I oppose the process that has led us to this point, I do not hold it against her, as an individual who has navigated the gauntlet with grace, skill, and humility. I will vote no on the procedural votes ahead of us, but yes to confirm Judge Barrett when the question before us is her qualification to be an Associate Justice on the Supreme Court.

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