



## Ted Cruz Debunks Democrats' False Claim About Lincoln's Supreme Court Nomination Decision

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Sen. Ted Cruz debunked the false claim of Democrats that it was President Abraham Lincoln (R) who set a precedent for not proceeding with filling a vacancy on the Supreme Court close to an election.

Democrat vice presidential nominee Sen. Kamala Harris (CA) made the false claim during her debate last week with Vice President Mike Pence (R).

Similarly, on Tuesday during Judge Amy Coney Barrett's confirmation hearing, Sen. Amy Klobuchar (D-MN) again protested her nomination, stating Lincoln "made the wise decision to wait until after the election."

Cruz explained Thursday during the hearings about the important details Harris left out of her claim about Lincoln:

We are told that Honest Abe, the founder of the Republican Party, showed the example for why we should not be proceeding on this. I think it's worth noting that that example misses a lot of the story. So, Abraham Lincoln, in 1864, 27 days before the election, Chief Justice Roger Taney passed away. Roger Taney, by the way, had been the author of the infamous Dred Scott decision, an abominable decision of the Supreme Court. So, suddenly there was a vacancy 27 days before the election. Sen. Klobuchar and Sen. Harris before her both pointed out the fact that Abraham Lincoln did not make a nomination in those 27 days. What both of them omitted was the Senate wasn't here. The Senate had left. They had gone home. This was not the age of jet travel, this was not the age of commuting every weekend, jumping on a United flight. They were gone, and the Senate would not return until December, so there was no Senate physically present to confirm that nominee. When the Senate did return in December, Abraham Lincoln nominated in December, a justice to fill that seat. Salmon Chase, which the Senate confirmed the next day. Twenty-four hours later, they confirmed him.

I would note also that Abraham Lincoln was in the midst of a presidential reelection and as Doris Kearns Goodwin writes so beautifully in *Team of Rivals*, he was very good at assembling the political coalition he needed to win, and so he had multiple factions of the Republican Party that were splintered – some things haven't changed from 1864. And Lincoln had multiple players that wanted that Chief Justice seat all working really hard to reelect him and dangling the nomination out in front of each of them. So, Salmon Chase had been his treasury secretary. Salmon Chase had been a pain in the rear to Lincoln. And as a result of this vacancy, Salmon Chase went out and campaigned like crazy for Lincoln to get him reelected because he wanted the nomination.

Cruz went on to point out the *Washington Post* also found fault with Harris's claim about Lincoln:

But, to suggest that that is somehow a precedent and that requires us not to fill this vacancy now is well, I actually can't put it better than the *Washington Post*, who fact checked Sen. Harris on this claim, and the *Washington Post* – not exactly a right wing bastion – the *Washington Post* conclusion was that Sen. Harris's argument, quote, "wasn't exactly true."

As Breitbart News noted, Dan McLaughlin of *National Review* also observed that President Abraham Lincoln did not say what Harris claimed he said. Lincoln simply delayed sending a Supreme Court nominee to the Senate because it was out of session. McLaughlin wrote:

Lincoln, of course, said no such thing. He sent no nominee to the Senate in October 1864 because the Senate was out of session until December. He sent a nominee the day after the session began, and Salmon P. Chase was confirmed the same day. And Lincoln wanted to dangle the nomination before Chase and several other potential candidates because he wanted them to campaign for him. Lincoln's priority was winning the election, which was necessary to win the war — and he filled the vacancy at the first possible instant.

Ilya Shapiro, Cato Institute's constitutional scholar, also noted recently, "[V]acancies have arisen 29 times in presidential election years, during the administrations of 22 of the 44 presidents preceding the current one, and those presidents made nominations all 29 times."