

THE DISPATCH

The Morning Dispatch: Biden's SCOTUS Commission

April 12, 2021

Plus: Workers at an Alabama Amazon plant opt not to unionize.

Happy Monday! We bet you won't be able to guess which former president called which current Senate Minority Leader a "dumb son of a b*****" over the weekend.

Quick Hits: Today's Top Stories

- There will be a dip in availability of the Johnson & Johnson COVID-19 vaccine this week—and possibly longer—due to a manufacturing problem at a Baltimore facility, the White House said Friday. Johnson & Johnson still expects to deliver 100 million doses of the vaccine by the end of May, officials said, a goal they set when the vaccine was approved.
- The White House announced Friday that Roberta Jacobson—President Joe Biden's "border czar" on the National Security Council—will step down at the end of the month. Jacobson says she only intended to serve about 100 days, but the news comes amid a growing surge of migrants to the southern border.
- One day after Iranian President Hassan Rouhani officially inaugurated advanced centrifuges at the underground Natanz nuclear facility Saturday, a blackout struck its electrical grid in what the head of Iran's nuclear program called an act of "nuclear terrorism." While no countries have publicly taken or cast blame, several American and Israeli intelligence officials told the *New York Times* Israel was responsible.
- The incident, if the work of Jerusalem, could complicate already fraught nuclear talks between the U.S. and Iran underway in Vienna. A senior State Department official clarified Friday that the U.S. will not lift all Trump-era economic sanctions on Iran, despite Tehran's demands.
- The House Ethics Committee announced Friday it has opened an investigation into whether Rep. Matt Gaetz "engaged in sexual misconduct and/or illicit drug use, shared inappropriate images or videos on the House floor, misused state identification records, converted campaign funds to personal use, and/or accepted a bribe, improper gratuity, or impermissible gift." Gaetz dismissed the accusations as a "smear campaign."
- Maryland became the first state in the country to repeal its police Bill of Rights on Saturday when the Democratic-controlled legislature passed a series of police reform bills overriding Republican Gov. Larry Hogan's vetoes. The package, Hogan argued, "will result in great damage to police recruitment and retention, posing significant risks to public safety throughout our state."

- Workers at Amazon’s Bessemer, Alabama warehouse voted 1,798 to 738 against unionization efforts organized by the Retail, Wholesale, and Department Store Union (RWDSU).
- The United States confirmed 46,015 new cases of COVID-19 yesterday per the Johns Hopkins University COVID-19 Dashboard, with 3.2 percent of the 1,433,211 tests reported coming back positive. An additional 281 deaths were attributed to the virus on Sunday, bringing the pandemic’s American death toll to 562,061. According to the Centers for Disease Control, 33,919 Americans are currently hospitalized with COVID-19. Meanwhile, 3,579,422 COVID-19 vaccine doses were administered yesterday, with 119,242,902 Americans having now received at least one dose.

Biden Unveils Supreme Court Commission

In the months leading up to the 2020 Democratic primary, Joe Biden was one of a handful of candidates who opposed packing the Supreme Court. Back in July 2019, he said he was against the idea because “we’ll live to rue that day.” In a debate that October, he argued Republicans and Democrats would cycle through adding justices until the country begins “to lose any credibility the court has at all.”

But as calls from the Democratic base intensified—and Justice Ruth Bader Ginsburg was replaced with Justice Amy Coney Barrett—Biden went quiet on the issue, deflecting any time a reporter asked him if his position had changed. Eventually, that approach became untenable, and Biden came up with an answer.

“The last thing we need to do is turn the Supreme Court into just a political football, whoever has the most votes gets whatever they want,” he told CBS News’ Norah O’Donnell a few weeks before the election. “If elected, what I will do is I’ll put together a national bipartisan commission of constitutional scholars: Democrats, Republicans, liberal, conservative. And I will ask them to—over 180 days—come back to me with recommendations as to how to reform the court system. Because it’s getting out of whack the way in which this is being handled.”

On Friday, President Biden signed an executive order doing exactly that. The 36-person, bipartisan commission will be tasked with compiling a report that examines the “role and operation of the Supreme Court in our constitutional system” and “the principal arguments in the contemporary public debate for and against Supreme Court reform.” Once the commission holds its first meeting, it will have 180 days to submit its analysis.

Although many Democratic activists are calling for court packing in expressly partisan terms—Brian Fallon’s Demand Justice group deems it necessary to “undo the damage Republicans did by stealing multiple Supreme Court seats”—Biden himself has expressed skepticism. And some see the formation of this commission as an effort to punt on the issue.

“Historically, presidential blue ribbon commissions have been a way to kick an issue down the road so the president doesn’t have to deal with it immediately,” Ilya Shapiro, director of the Robert A. Levy Center for Constitutional Studies at the Cato Institute, told *The Dispatch*. “And hopefully when the commission report comes out, there’s less controversy.”

But the move was met with outrage from Republicans in Washington, who decried the commission as an attempted power grab. “This faux-academic study of a nonexistent problem fits squarely within liberals’ years-long campaign to politicize the Court, intimidate its members, and subvert its independence,” said Senate Minority Leader Mitch McConnell. “This is not some new, serious, or sober pivot away from Democrats’ political attacks on the Court. It’s just an attempt to clothe those ongoing attacks in fake legitimacy. It’s disappointing that anyone, liberal or conservative, would lend credence to this attack by participating in the commission.”

There are conservatives on the commission—including former Bush administration Assistant Attorney General (and *Dispatch* contributor) Jack Goldsmith, Adam White of the American Enterprise Institute, and Princeton University Professor Keith Whittington (a frequent guest on **The Remnant**). But it will be co-chaired by the Biden campaign’s legal adviser Bob Bauer and Obama administration deputy assistant attorney general Cristina Rodriguez. “By my count, the ratio of progressives to non-progressives is three to one,” Shapiro said, adding that it skews heavily academic. “There are two former judges and there are three leading legal progressive activists. ... All the rest are professors.”

The commission will examine a variety of reform proposals—“the length of service and turnover of justices on the Court; the membership and size of the Court; and the Court’s case selection, rules, and practices”—but the court-packing debate carries particular weight, for obvious reasons.

The Constitution does not specify any fixed number of Supreme Court justices; the size of the bench fluctuated between five and 10 throughout early American history. But it’s held steady at nine since 1870, with the only serious threat coming in 1937 when President Franklin D. Roosevelt became frustrated with the Court declaring some of his New Deal programs unconstitutional. Roosevelt’s plan to pack the Court never got far, but voters punished Democrats for it anyway: Republicans picked up 81 seats in the House in 1938, and eight in the Senate.

Justice Stephen Breyer—the oldest member of the Court, appointed by President Bill Clinton in 1994—warned against putting additional justices on the bench in a lecture at Harvard Law School last week. “It is wrong to think of the Court as another political institution, and it is doubly wrong to think of its members as junior league politicians,” Breyer said. “Structural alteration motivated by the perception of political influence can only feed that perception, further eroding that trust.”

Justice Ruth Bader Ginsburg opposed the move as well. “I think that was a bad idea when President Franklin Delano Roosevelt tried to pack the Court,” Ginsburg told NPR in 2019. “If anything would make the Court appear partisan it’d be that: One side saying, ‘When we’re in power we’re going to enlarge the number of judges so we’ll have more people who will vote the way we want them to.’”

The commission could come back with additional reform proposals beyond simply expanding the number of justices on the bench, Shapiro explained, including amending Senate rules to require a confirmation vote within a certain number of days of nomination, or reintroducing the filibuster for Supreme Court justice confirmations. Scholars have also put forth ideas like rotating lower court judges through the Supreme Court or implementing term limits for justices.

But Shapiro is doubtful the commission will propose reforms that we haven't seen before, or that both parties can get behind. "I'm very curious to see what they come up with," he said, "but I'm skeptical that they will come up with anything that is both bipartisan and feasible—and also then actually improves the court."

Amazon Workers Vote Against Unionization

A few weeks ago, we wrote to you about a unionization push at an Amazon fulfillment center in Bessemer, Alabama that had quickly become central to the organized labor movement and national political debates. Amazon is the second-largest private employer in the United States, and growing; if the Retail, Wholesale, and Department Store Union (RWDSU) was successful in getting the Bessemer workers on board, it could have had a domino effect nationwide.

But voting came to a close last week, and the Alabama employees overwhelmingly rejected attempts to unionize, 1,798 to 738 (several thousand eligible workers did not vote). "I work hard for my money, and I don't want any of it going to a union that maybe can get us more pay, or maybe can get us longer breaks," Melissa Charlton Myers, a 41-year-old Amazon employee that voted against unionization, told the *Wall Street Journal*. "It's not worth the risk."

In a statement Friday, Amazon attempted to reframe the "company v. workers" debate many politicians and journalists claimed the vote represented. "Amazon didn't win—our employees made the choice to vote against joining a union," it read. "Our employees are the heart and soul of Amazon, and we've always worked hard to listen to them, take their feedback, make continuous improvements, and invest heavily to offer great pay and benefits in a safe and inclusive workplace." Amazon provides employees a \$15-per-hour minimum wage nationwide (Alabama's is \$7.25/hour), as well as health care coverage, a 401(k) retirement plan, parental leave, and child care. Workers have, however, complained about a lack of break times and the physically grueling nature of the work. Documents obtained by *The Verge* in 2019 showed that Amazon frequently fired employees for not meeting "productivity quotas."

But the unionization vote suggests that Amazon employees are, on the whole, happy with their conditions. Walter Olson—a senior fellow at the Cato Institute who wrote a book on employment law—noted that Amazon's Bessemer workers have highlighted their pay and benefits in interviews. "They have a sense of what wages—and especially benefits—are like in jobs of that sort in the neighboring community," he told *The Dispatch*. "They believe that they're being paid well above the market standards for that sort of job in their community." Olson noted that workers often feel that "once that line is drawn and you are represented by the union, you will not be recruited into management."

Despite Bessemer workers having dealt the union a more than 2-to-1 defeat, RWDSU President Stuart Appelbaum is not yet waving the white flag. "We won't let Amazon's lies, deception and illegal activities go unchallenged, which is why we are formally filing charges against all of the egregious and blatantly illegal actions taken by Amazon during the union vote," he said Friday, making clear he'd bring his case to the National Labor Relations Board (NLRB). "Amazon knew full well that unless they did everything they possibly could, even illegal activity, their workers would have continued supporting the union." The RWDSU has alleged Amazon pressed the U.S. Postal Service for a mailbox on company property that would give workers the false impression their mail ballots would be tallied by their employer, and that the company offered a financial

incentive for unhappy workers to quit, diluting the pro-union pool. (Amazon says this incentive is offered to warehouse employees across the country every year.)

Workers at the facility had no doubt which way their employer wanted them to vote: Amazon set up a “Do It Without Dues” website decrying a union as unnecessary, held mandatory meetings for employees in which anti-union sentiment was shared, and distributed “Vote No” pamphlets and pins for workers to wear.

Mike Elk, a reporter for the *Payday Report*, asked several workers who voted against unionization for their rationale. “I’ve been a member of unions in the past and was actually a member of this same union,” said 59-year-old Ken Worth. “I don’t really feel like they represented us well. I think that unions could do a whole lot more.”

Ashley Beringer, 32, didn’t want to mess with the status quo. “I don’t want someone coming in and changing everything, especially if certain things are good in the situation,” she said. “And if [the union] comes in, I don’t know how it’s gonna be.”

Although public sector union membership has held relatively steady, membership in private sector unions has been declining for decades: Data compiled by researchers at Georgia State University show just 6.4 percent of private sector workers were part of a union in 2018, compared to 24.2 percent in 1973. That trend—alongside the Democratic Party’s relative strength with union workers—may have played a role in President Biden’s decision to intervene in the Amazon push last month, when he released a video calling workers’ votes to organize unions “vitally important.”

Asked by a reporter Friday about the results in Alabama, White House Press Secretary Jen Psaki said Biden will wait for the NLRB to certify the election before he weighs in again.

Worth Your Time

- In a thoughtful piece for *The New Atlantis*, Taylor Dotson argues that an obsession with the idea of facts and certainty is actually *harming* our politics. “The belief that misinformation is today’s main threat to democracy blinds us to the pernicious effects of a broader preoccupation with certitude,” he writes. “This obsession has been tearing at American politics throughout the Covid pandemic, and continues to imperil debates over vaccination, masking, and lockdowns. But the problem will remain with us long after the virus has been beaten. ... Our leaders have a powerful incentive to stay the course of fact-ist politics: It excuses them from having to lead. Handing challenging decisions off to experts, or blaming a corrupt scientific cabal for all our problems, allows our leaders to duck ownership over hard decisions.”
- If you read this newsletter—or anything from *The Dispatch*—you’ve probably heard that, for the first time since Gallup has been polling, less than 50 percent of Americans currently consider themselves members of a church. In his latest column, Ross Douthat argues these numbers will continue to fall as long as the intelligentsia and professional class continue to forgo faith. “Most of these people ... would be unlikely models of holiness in any dispensation, given their ambitions and their worldliness,” he writes. “But Jesus endorsed the wisdom of serpents as well as the innocence of doves, and religious communities no less than secular ones rely on talent and ambition. So the deep secularization of the meritocracy means that people who would once have become priests

and ministers and rabbis become psychologists or social workers or professors, people who might once have run missions go to work for NGOs instead, and guilt-ridden moguls who might once have funded religious charities salve their consciences by starting secular foundations.”

Presented Without Comment

Toeing the Company Line

- In his Sunday French Press, David reflects on a book from Calvin University history professor Kristin Kobes Du Mez entitled *Jesus and John Wayne: How White Evangelicals Corrupted a Faith and Fractured a Nation*. Evangelical culture’s “unhealthy attachment to a particularly aggressive vision of masculinity” has a history of encouraging or enabling abuse within the church, David writes, summarizing Du Mez’s argument. But he also thinks she paints with too broad a brush. “I served with heroic Christian men in Iraq,” David writes. “They stood side-by-side with brothers of all faiths and turned the tide against a truly evil enemy. One need not obsess over male strength to understand that virtuous male courage is a cultural necessity.”
- Author Julia Galef joined The Dispatch Podcast on Friday to discuss her new book—*The Scout Mindset*—with Sarah and Steve. “The scout’s role, unlike the soldier, is not to go out and attack or defend,” she explains. “It’s to go out, and see what’s really out there as clearly as possible and to put together as accurate a map of the territory or a situation as you can.”
- In his Friday G-File, Jonah argues President Biden has succumbed to the Democratic Party’s long history of New Dealism, envisioning himself as a modern-day FDR. “Joe Biden’s trillion-here, trillion-there approach is as ad hoc as FDR’s in many ways,” Jonah writes. “You look at some of the outlays in his proposals—a hundred billion for this, a hundred billion for that—and it becomes clear that the important thing is just to spend a hundred billion, or \$2.4 trillion; what the money actually goes to is an afterthought.”
- In our culture section this weekend: Audrey on ballet studios and dancers struggling to make it through the pandemic, and Alec’s review of Ken Burns and Lynn Novick’s new Ernest Hemingway documentary.