



83 Prospect Ave., Princeton, NJ 08540

October 8, 2020

Hon. Lindsey Graham, Chairman  
Committee on the Judiciary  
United States Senate  
290 Russell Senate Office Building  
Washington, DC 20510

Hon. Dianne Feinstein, Ranking Member  
Committee on the Judiciary  
United States Senate  
331 Hart Senate Office Building  
Washington, DC 20510

Dear Chairman Graham and Ranking Member Feinstein:

An inquiry has been placed before me concerning a statement, most recently made by Sen. Kamala Harris (D-Calif.) in the course of her debate with Vice President Pence, to the effect that Abraham Lincoln withheld his nomination of a Supreme Court justice until after his re-election in November 1864, so that the voice of the people in re-electing him might be heard first.

As a historian of the American Civil War era, and particularly as a biographer of Abraham Lincoln and a scholar of Lincoln's political life, I wish to say that this is an error on Sen. Harris's part. Lincoln made no comment of this nature about reserving such a nomination, nor was the nomination he did make – that of Salmon Portland Chase – affected by his re-election to the presidency on November 8, 1864.

Lincoln understood his re-election to be in question only until mid-October, 1864. After the vote pattern established in state elections in Pennsylvania, Ohio and Indiana in October, Lincoln (according to Alexander McClure) "knew that his election was in no sense doubtful." When, on October 12, 1864, Chief Justice Roger Taney died, Lincoln at once began contemplating a replacement. Possible nominees included William Evarts, Montgomery Blair, his outgoing Attorney-General, Edward Bates, and the Secretary of War, Edwin Stanton, and these candidates were discussed by Lincoln in cabinet meetings. Lincoln, however, seems to have settled on Salmon Portland Chase as a successor for Taney as early as June (even before Taney's death). Lincoln did not send Chase's name to the Senate for confirmation until December 6, 1864, for one very simple reason: the second regular session of the 38<sup>th</sup> Congress did not meet until December 5, 1864. There was, in other words, no one to whom he could have sent the nomination until December 5<sup>th</sup>. Lincoln cited this same reason on October 13<sup>th</sup> for not appointing a replacement for U.S. District Judge Albert S. White, explaining that he would "defer the appointment of [a] Judge until the meeting of Congress."

In the mid-19<sup>th</sup> century, Congress met on what we would regard as a surprisingly eccentric schedule. The 38<sup>th</sup> Congress was elected in the fall of 1862, but in accordance with custom in a slow-paced age, its first regular session did not convene until more than a year later, on December 7, 1863. That first session adjourned on July 4, 1864, while Chief Justice Taney was still alive; hence, Lincoln had no opportunity to nominate a successor then. There is no record of Lincoln offering any other reason for sending his nomination of Chase until Congress re-assembled on December 5<sup>th</sup>.

Perhaps it will give some context for understanding Lincoln's judicial appointment decisions if we remember that Lincoln, before the Chase appointment, appointed *four* new justices to the Supreme Court – Noah Swayne, Samuel Freeman Miller, David Davis and Stephen J. Field. All of these were highly political appointments. David Davis was, in fact, Lincoln's old judge from the Illinois 8<sup>th</sup> Judicial Circuit, his campaign manager in 1860, and the executor of Lincoln's estate. All of his Supreme Court nominees were anti-slavery, and he specifically stated that his nomination of Chase was to ensure that emancipation would not be jeopardized by the federal courts (this was an ongoing anxiety of Lincoln's, and a major reason why he also pressed for an abolition amendment). He also appointed 27 district judges, among whom were personal lawyer friends (Archibald Williams, Mark Delahay), the man who secured his nomination in 1860 (David Cartter) and a member of his cabinet (Caleb Blood Smith). Lincoln's nomination of Chase was entirely in line with that direction of thought, rather than with a concern about the outcome of elections.

These comments represent only my observations as a historian, and do not represent the opinion of any organization.

Yours very sincerely,

A handwritten signature in black ink that reads "Allen C. Guelzo". The signature is written in a cursive, flowing style with a large, decorative initial 'A'.

Allen C. Guelzo, Ph.D.

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Author, *Abraham Lincoln: Redeemer President* (2000), *Lincoln's Emancipation Proclamation: The End of Slavery in America* (2004), *Lincoln and Douglas: The Debates That Defined America* (2008), *Abraham Lincoln as a Man of Ideas* (2009), *Lincoln: A Very Short Introduction* (2009), *Fateful Lightning: A New History of the Civil War and Reconstruction* (2012), *Redeeming the Great Emancipator* (2015), *Reconstruction: A Concise History* (2018)