

Senate Judiciary Committee hearing on the nomination of Brett Kavanaugh to be an associate justice of the Supreme Court

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Body

Subject: Kavanaugh Nomination

Participants: Sen. Charles E. **Grassley**, R-Iowa, Chairman; Sen. Orrin G. Hatch, R-Utah; Sen. Lindsey Graham, R-S.C.; Sen. John Cornyn, R-Texas; Sen. Mike Lee, R-Utah; Sen. Ted Cruz, R-Texas; Sen. Jeff Flake, R-Ariz.; Sen. Thom Tillis, R-N.C.; Sen. Ben Sasse, R-Neb.; Sen. Michael D. Crapo, R-Idaho; Sen. John Kennedy, R-La.; Sen. Dianne Feinstein, D-Calif., Ranking Member; Sen. Patrick J. Leahy, D-Vt.; Sen. Richard J. Durbin, D-Ill.; Sen. Sheldon Whitehouse, D-R.I.; Sen. Amy Klobuchar, D-Minn.; Sen. Chris Coons, D-Del.; Sen. Richard Blumenthal, D-Conn.; Sen. Mazie Hirono, D-Hawaii; Sen. Cory Booker, D-N.J.; Sen. Kamala Harris, D-Calif.

Witnesses: Sen. Rob Portman, R-Ohio; former Secretary of State Condoleezza Rice; Lisa S. Blatt, partner at Arnold & Porter; Brett Kavanaugh, nominated to be an associate justice of the Supreme Court

Location: 216 Hart Senate Office Building

Time: 09:30:00

Date: 2018-09-04

GRASSLEY: Good morning. I welcome everyone to this confirmation hearing on the nomination of...

HARRIS: **Mr.** Chairman...

GRASSLEY: ... Judge Brett Kavanaugh...

HARRIS: **Mr.** Chairman...

GRASSLEY: ... to serve as associate justice...

HARRIS: **Mr.** Chairman, I'd like to be recognized for...

GRASSLEY: ... of the Supreme Court of the United States.

HARRIS: ... a question before we proceed.

(UNKNOWN): Regular order, **Mr.** Chairman.

HARRIS: **Mr.** Chairman, I'd like to be recognized to ask a question before we proceed.

The committee received just last night, less than 15 hours ago...

(UNKNOWN): **Mr.** Chairman, regular order.

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HARRIS: ... 42,000 pages of documents that we have not had an opportunity to review or read or analyze.

GRASSLEY: You are out -- you're out of order. I'll proceed.

HARRIS: We cannot possibly move forward, **Mr.** Chairman, with this hearing.

(CROSSTALK)

GRASSLEY: I extend a very warm welcome to Judge Kavanaugh...

HARRIS: We have not been given an opportunity to have a meaningful hearing ...

GRASSLEY: ... to his wife, Ashley...

HARRIS: ... on this nominee.

GRASSLEY: ... their two daughters...

(CROSSTALK)

(UNKNOWN): **Mr.** Chairman, I agree with my colleague, Senator Harris.

GRASSLEY: ... their extended family and friends...

(UNKNOWN): **Mr.** Chairman, we received...

GRASSLEY: Judge Kavanaugh's many law clerks, and everyone else joining us...

(UNKNOWN): 42,000 documents that we haven't been able...

GRASSLEY: ... today.

(UNKNOWN): ... to review last night, and we believe this hearing should be postponed.

GRASSLEY: I know that is an exciting day for all of you here...

BLUMENTHAL: **Mr.** Chairman...

GRASSLEY: ... and you're rightly proud of the judge.

BLUMENTHAL: **Mr.** Chairman, if -- if we cannot be recognized, I move to adjourn.

GRASSLEY: The American people...

BLUMENTHAL: **Mr.** Chairman, I move to adjourn.

GRASSLEY: ... (inaudible) directly from Judge Kavanaugh, and later this afternoon...

(APPLAUSE)

BLUMENTHAL: I move -- **Mr.** Chairman, I move to adjourn.

GRASSLEY: And...

BLUMENTHAL: And, **Mr.** Chairman, we have been denied -- we have been denied real access to the documents we need to advise (inaudible)...

(UNKNOWN): **Mr.** Chairman, regular order is called for.

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BLUMENTHAL: ... which turns this hearing into a charade and a mockery of our norms.

GRASSLEY: Well...

BLUMENTHAL: And, **Mr.** Chairman, I therefore move to adjourn this hearing.

GRASSLEY: OK.

PROTESTER: This is a mockery and a travesty of justice. This is a travesty of justice. We will not go back (ph). Cancel Brett Kavanaugh, adjourn the hearing.

(CROSSTALK)

BLUMENTHAL: **Mr.** Chairman, I -- I ask for a roll call vote on my motion to adjourn.

PROTESTER: (OFF-MIKE)

GRASSLEY: OK.

BLUMENTHAL: **Mr.** Chairman, I move to adjourn. I ask for a roll call vote. **GRASSLEY**: We're not in executive session. We will continue as planned.

BOOKER: **Mr.** Chairman, may I be recognized, sir? **Mr.** Chairman, I appeal to the chair to recognize myself or one of my colleagues.

GRASSLEY: You're out of order.

BOOKER: **Mr.** Chairman, I appeal to be recognized.

On your sense of decency and integrity -- even the documents you have requested, **Mr.** Chairman, even the ones that you said, the limited documents you have requested, this committee has not received. And the documents we have, you, sir, have (inaudible)...

(CROSSTALK)

(UNKNOWN): Chairman, I'd ask for order.

BOOKER: ... should be transparent.

This committee, sir, is a violation of even the values I've heard you talk about time and time again, the ideals that we should have.

What is the rush? What -- what are we trying to hide by not having the documents out front? What is the rush? What are we hiding by not letting those documents come out?

Sir, this committee is a violation of the values that we as a committee has striven for. Transparency. We are rushing through this process in a way that is unnecessary, and I -- I appeal for the motion to at least be voted on.

(UNKNOWN): **Mr.** Chairman...

BOOKER: At least let's have a vote, because when we wrote you a letter on August 24th...

GRASSLEY: Senator...

BOOKER: ... asking to -- to have a meeting on this issue, you denied us even the right to meet.

So here we are having a meeting. Let's at least debate this issue, let's at least call this for a vote. I...

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GRASSLEY: Senator...

BOOKER: I appeal to your sense of fairness and decency, your commitments that you've made to transparency. This violates what you have even said and called for, sir. You've called for documents, you yourself -- limited documents. We thought there should be more. We have not received the documents that you have even called for.

So, sir, based upon your own principles, your own values, I call for at least to have a debate or a vote on these issues and not for us to rush through this process.

(APPLAUSE)

(UNKNOWN): **Mr.** -- **Mr.** Chairman...

HIRONO: **Mr.** Chairman...

GRASSLEY: Senator...

HIRONO: **Mr.** Chairman...

GRASSLEY: Senator...

HIRONO: I've heard calls for regular order...

GRASSLEY: I'd like to **respond**. I'd -- I'd like to **respond** to Senator Booker.

Senator Booker, I think that -- I respect very much a lot of things you -- you -- you do. But you spoke about my decency and my -- and...

PROTESTER: (OFF-MIKE)

GRASSLEY: You spoke about my decency and integrity, and I think you're take -- you are taking advantage of my decency and integrity. So...

PROTESTER: (OFF-MIKE)

GRASSLEY: OK.

HIRONO: **Mr.** Chairman, I've heard calls for regular order. It is regular order for us to receive all the documents...

PROTESTER: (OFF-MIKE)

HIRONO: ... to receive all the documents that this committee is entitled to.

Mr. Chairman, it is also...

GRASSLEY: I think that I...

HIRONO: **Mr.** Chairman, it is also not regular order for the majority...

GRASSLEY: (inaudible) Senator -- Senator Hirono...

HIRONO: ... to require the minority to pre-clear our questions, our documents and the videos we would like to use at this hearing. That is unprecedented. That is not regular order. Since when do we have to submit the questions and though -- the process that we wish to follow to question this nominee?

GRASSLEY: Senator...

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HIRONO: I'd like your clarification. I'd like your response on why...

GRASSLEY: Senator Hirono...

HIRONO: ... you are requesting the minority submit...

GRASSLEY: I would ask that you...

HIRONO: ... our questions to you.

GRASSLEY: I ask that you stop so we can conduct this hearing the way we have planned it. Maybe it isn't going exactly the way that the minority would like to have it go, but we...

PROTESTER: (OFF-MIKE)

GRASSLEY: ... we have said for a long period of time that we were going to proceed on this very day. And I think we ought to give the American people the opportunity to hear whether Judge Kavanaugh should be on the Supreme Court or not. **GRASSLEY**: And you have heard my side of the aisle call for regular order, and I think we ought to proceed in regular order. There will be plenty of opportunities to **respond** to the questions that the minority is...

PROTESTER: (OFF-MIKE)

GRASSLEY: ... legitimately raising.

(UNKNOWN): Let's throw them out of here.

PROTESTER: (OFF-MIKE)

GRASSLEY: And we will...

(LAUGHTER)

... we will proceed accordingly.

WHITEHOUSE: **Mr.** -- **Mr.** Chairman, under regular order may I ask a point of order? Which is that we are now presented with a situation in which somebody has decided that there 100,000 documents protected by executive privilege, yet there has not been an assertion of executive privilege before the committee.

How are we to determine whether executive privilege has been properly asserted...

PROTESTER: (OFF-MIKE)

WHITEHOUSE: ... if this hearing goes by without the committee ever considering that question? Why is it not in regular order for us to determine, before the hearing at which the documents would be necessary, whether or not the assertion of privilege that prevents us from getting those documents is legitimate, or indeed is even an actual assertion of executive privilege?

I do not understand why that is not a legitimate point of order at this point, because at the end of this hearing it is too late to consider it.

LEAHY: **Mr.** Chairman, if I might add to this, on the integrity of the documents we've received, there really is no integrity. They have alterations. They have (inaudible). Attachments are missing. E-mails are cut off half way through a chain. Recipients' names are missing. The -- they are of -- of interest to this committee, but it's cut off.

We -- the National Archives hasn't had a chance to get us all that we want, even though you said on your website, the National Archives would act as a check against any political interference, but...

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PROTESTER: (OFF-MIKE)

LEAHY: ... a check after the hearings over is no check. I think we ought to...

PROTESTER: (OFF-MIKE)

LEAHY: ... at least have the National Archives finish it.

PROTESTER: (OFF-MIKE)

LEAHY: And to have, for the first time, certainly, in my 44 years here, to have somebody say there's a claim of executive privilege when the president hasn't made such a claim just puts everything under doubt. What are we trying to hide? Why are we rushing?

GRASSLEY: I can answer all of the questions that have been raised, but I think if I answer those questions it's going to fit into the effort of the minority to continue to obstruct. And I don't think that that's fair to our judge. It's not fair to our constitutional process.

PROTESTER: (OFF-MIKE)

GRASSLEY: But let me -- let me **respond** to those...

PROTESTER: (OFF-MIKE)

GRASSLEY: ... now. And then maybe we can proceed.

PROTESTER: (OFF-MIKE)

GRASSLEY: My colleagues on the other side are accusing the administration of using executive privilege to hide documents from the committee. I want to say why they're wrong.

Unlike President Obama's assertion of executive privilege during Fast and Furious, as one example, this assertion is not legitimate (sic).

Judge Kavanaugh was a senior lawyer in the White House. He advised the president on judicial nominations, provided legal advice on separation of powers issues, and handled litigation matters. As the...

PROTESTER: (OFF-MIKE)

GRASSLEY: As the Supreme Court has put it...

PROTESTER: (OFF-MIKE)

GRASSLEY: ... quote, "Unless the president can give his advisers some..."

PROTESTER: (OFF-MIKE)

GRASSLEY: "... assurance of confidentiality..."

PROTESTER: (OFF-MIKE)

GRASSLEY: "... a president could not expect to receive the full and frank submissions..."

PROTESTER: (OFF-MIKE)

GRASSLEY: "... of facts and opinions upon which the effective discharge..." PROTESTER: (OFF-MIKE)

GRASSLEY: "... of his duties depends," end of quote.

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The issues Judge Kavanaugh worked on are exactly the sort of issues that require, according to the Supreme Court, some assurance of confidentiality. We in the Senate and everyone else in America expect exactly the same sort of confidentiality.

Most senators would not agree to turn over their staff's communication to anyone. For example, we didn't ask that Judge Kagan's record for her service with then-Senator Biden be turned over during her nomination.

And because of attorney-client privilege, everybody has a right to keep communication from their lawyers out of governor's (ph) hands. We, therefore, didn't ask for Justice Ginsburg's documents from her time with the ACLU. We didn't ask for Judge Sotomayor's confidential documents from her time in private practice.

It can't be that the Senate and the ACLU are entitled to more protection than the president of the United States.

And then I will speak to the fact about 42,000 pages.

Last night we received additional documents for the committee's review. These were documents we requested before the hearing and we received them before the hearing, just as we requested. The majority staff began reviewing the documents as soon as they arrived and has already completed its review. There is thus absolutely no reason -- that's no reason to delay the hearing,

We have received and read every page of Judge Kavanaugh's extensive public record. This includes 12 years of his judicial service on the most important federal circuit court in the country, where he authored 307 opinions and joined hundreds more, amounting to more than 10,000 pages of judicial writing.

We already -- we also received and read more than 17,000 pages of his speeches, articles, teaching materials, other documents that Judge Kavanaugh submitted with his questionnaire; the most robust questionnaire this committee has ever issued.

And, of course, we received and read more than 483,000 pages of documents from Judge Kavanaugh's extensive executive branch service. This is more pages than the last five Supreme Court nominees combined.

In short, this committee has more materials for Judge Kavanaugh's nomination than we have had on any Supreme Court nominee in history. Senators have had more than enough time and materials to adequately assess Judge Kavanaugh's qualifications, and so that's why I proceed.

I know that this is an exciting day for all of you in the family and all the people that are close to Judge Kavanaugh, and you're rightly proud of the judge. The American people get to hear directly from Judge Kavanaugh later this afternoon.

After this confirmation hearing and process is finished, I expect Judge Kavanaugh will become the next associate justice of the Supreme Court.

(inaudible) again, Judge.

Before I began, I would want to give you, Judge, an opportunity to introduce your family.

KAVANAUGH: Thank you, Mr. Chairman and Senator Feinstein and...

GRASSLEY: Push the red button if it's not on.

FEINSTEIN: (OFF-MIKE)

GRASSLEY: Yes, we're going ahead. KAVANAUGH: Thank you, Mr. Chairman and Senator Feinstein and members of the committee. I'm honored to be here today with my family: my wife, Ashley, proud West Texan, graduate of Abilene Cooper High School, now the town manager of our local community where we live; our daughters Margaret and Liza thank the committee for arranging a day off from school today...

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(LAUGHTER)

... My mom and dad, Martha and Ed Kavanaugh; my aunt and uncle, Nancy and Mark (ph) Murphy, and my first cousins, Rosie (ph) and Elizabeth (ph) Murphy.

I'm very honored to be here, honored to have my family here, I'm here because of them.

Thank you, Mr. Chairman.

GRASSLEY: We're delighted to have your family here.

Before I make my opening remarks, I want to set out the ground rules for the hearing.

I want everyone to be able to watch the hearing without obstruction. If people stand up and block the view of those behind them or speak out of turn, it's not fair or considerate to others, so officers will immediately remove those individuals. And I thank the officers for doing the work that they have to do.

We'll have 10-minute rounds of opening statements with each member. The ranking member and I may go a little over 10 minutes, but I'm going to ask everyone else to limit your remarks to those 10 minutes. I hope everyone will respect that.

We plan on taking a 15-minutes break after Senator Cruz's opening statement. After all the opening statements by senators are complete, we'll take another 15-minute round break to turn to our introducers, who will formally present the judge.

After that, I'll administer the oath to the judge. And we'll close that portion of today's hearing with his testimony.

(UNKNOWN): Mr. Chairman...

GRASSLEY: Tomorrow morning...

(UNKNOWN): Mr. Chairman, when will we review Senator Blumenthal's motion to adjourn?

GRASSLEY: What's your question?

BLUMENTHAL: I -- I renew my motion to adjourn, Mr. Chairman. I think we're entitled to a vote on it.

The -- the responses that, Mr. Chairman, you've given, with all due respect, really fly in the face of the norms of this committee, our traditions and our rules.

COONS: Mr. Chairman, if I might add an additional point, I agree with my colleague, it is striking, given your long history of encouraging the executive branch to treat minority requests equal with majority requests, that you discourage the National Archives from responding to Ranking Member Feinstein's request, which she tried to craft with you to be identical to the request for records from Justice Kagan.

We should not be proceeding until we have the full documents that allow us to review the judge's records.

KLOBUCHAR: And, Mr. Chairman, last Friday we learned that nearly 102,000 pages of documents from Judge Kavanaugh's work in the White House Counsel's Office are being withheld from the committee and the public based on a claim of constitutional privilege.

Executive privilege has never been invoked to block the release of presidential records to the Senate during a Supreme Court nomination. This includes when Justice Kagan was nominated to the Supreme Court as well as Justice Roberts.

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Yesterday my colleagues and I sent a letter to the White House counsel asking that the president withdraw his claim of privilege over these documents so that they can be made available to this committee and to the American people.

We have not yet received a response to that letter, so we should not be proceeding until we have a response and these documents have been available. It is 102,000 documents.

BOOKER: And, Mr. Chairman...

BLUMENTHAL: My motion to adjourn, Mr. Chairman, would raise this issue of executive privilege and whether it has been properly asserted for reasons that have been outlined well by my colleague Senator Whitehouse. There is no valid claim here of executive privilege, even if there were one, it has not been properly asserted.

The question is what is the administration afraid of showing the American people? What is it trying to hide?

BOOKER: And, Mr. Chairman, using your own words in the statement you just read, you said, I quote, "we've had more than enough time to review the documents". Sir, we just got a document dump last night, over 40,000 pages. I would venture to say not one senator here has had time to read through those 40,000 pages.

And so we are continuing to rush through this process, a process that deserves to be scrutinized. I support Senator Blumenthal's motion for -- to adjourn and I hope that we could at least have a vote on that motion.

WHITEHOUSE: Mr. Chairman, I think you'd be hard pressed to find a court in the country that would not give a party litigant a continuance when the party on the other side did a 42,000-page document dump after close of business the night before trial.

DURBIN: Mr. Chairman, we waited for more than a year with a vacancy on the Supreme Court under the direction of your leader in the United States Senate and the republic survived. I think the treatment was shabby of Merrick Garland, President Obama's nominee.

The fact that we cannot take a few days or weeks to have a complete review of Judge Kavanaugh's record is unfair to the American people, it's inconsistent with our responsibility under Section -- Article II, Section 2 of the Constitution to advise and consent on Supreme Court nominees.

GRASSLEY: Senator Cornyn, you want to speak?

CORNYN: I've -- Mr. Chairman, thank you. I'll be very brief.

I would just say that Senator Whitehouse has suggested that we handle this hearing like a court of law, but I would suggest that if this were a court of law, that virtually every side -- every member of the -- on the dais on that side would be held in contempt of court.

(UNKNOWN): Oh come on.

CORNYN: Because this whole process is supposed to be a civil one where people get to ask questions and we get to get answers. And that's the basis upon which we are to exercise our constitutional responsibilities of advice and consent.

So I would just suggest we get on with the hearing.

GRASSLEY: If my colleagues...

BOOKER: Mr. Chairman, if I could just respond...

(CROSSTALK)

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BOOKER: Mr. Chairman, if I can just respond...

(CROSSTALK)

BOOKER: If we could just respond to that...

(CROSSTALK)

GRASSLEY: You can -- you can respond, but just a minute.

If people wonder why the chair is so patient during this whole process, I have found that it takes longer to argue why you shouldn't do anything than let people argue why they want it.

These things are going to be said throughout this hearing. We're going to be in session Tuesday, Wednesday, Thursday, Friday, Saturday, Sunday until we get done this week. So however long people want to take, we're going to not necessarily accommodate all obstruction, but if people got something to say, this chairman's going to let them say it.

But it gets pretty boring to hear the same thing all the time.

Senator Booker, make it quick please.

BOOKER: I really appreciate the -- the deference, Mr. Chairman.

The question was why would we want to delay this?

And this is not an attempt to delay, this is an attempt to be fully equipped to do our constitutional duty, which everybody, Republicans and Democrats, on this committee take seriously.

It is very hard to perform our role of advise and consent when we do not have a thorough vetting of the background of the candidate. In areas which he -- the candidate himself has referred to as the most formative part of his legal career, where he himself has talked about how important this period of his life is, we're denied the full vetting.

And, sir, this is not something the Democrats are asking for. I remind you that you, yourself, asked for a limited set of documents for when he was in the White House Counsel's Office. You, yourself, set that standard. And even on that limited standard, sir, we have not received the documents.(CORRECTED COPY - CORRECT PARAGRAPH 18 BELOW)

BOOKER: And then even the documents -- we've received 7 percent of them -- almost half of those have been labeled "committee confidential." They cannot put -- be put before the American people. Which further undermine and inhibit our ability to ask questions to thoroughly vet this candidate and advise and consent (sic) the president of the United States.

So, sir, just on -- on the basic ideals of fairness, the traditions of this body, we should have a thorough understanding of the nominee that's put before us so that we can vet them. To go into this hearing without those documents is an undermining of the constitutional role to which we have all sworn an oath to uphold -- uphold.

BLUMENTHAL: Mr. Chairman, I have great respect for my colleague from Texas, and...

GRASSLEY: I would like to respond to Senator Booker, and then Senator Feinstein has asked for the floor. I'd like to -- I'd like to respond to...

BLUMENTHAL: Mr. Chairman, I ask to respond to my colleague from Texas.

GRASSLEY: I'd like to respond to Senator Booker.

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BLUMENTHAL: Mr. Chairman?

GRASSLEY: Senator Booker, using a standard set by two members of your political party in the caucus, and I'm going to phrase (ph), because I don't have the exact quotes in front of me, but recently, Senator Schumer said from the floor, "The best judge of whether or not somebody should be on the Supreme Court is decisions that they've made at lower courts."

Senator Leahy said something similar to that when Senator Sotomayor was before us, that, "We know how -- we know how many -- we know what you have done in a lower court. That's the best basis for knowing whether or not you ought to be on the Supreme Court."

So, we have 307 cases that this nominee has written decisions on as a basis for that, and -- and we've -- we've got 488,000 other pages. And maybe the senators haven't read them, but their staff is fully informed, because last night before 11 o'clock on the 42,000 pages that have come to our attention, the staff on the Republican side has gone through them.

BOOKER: But, sir, then why did you ask for the White House counsel documents?

GRASSLEY: Senator...

BOOKER: They were not germane to this hearing. Why would you even ask for them?

GRASSLEY: Senator Feinstein?

(UNKNOWN): For the record, that's a rate of 7,000 pages per hour. That's superhuman.

(LAUGHTER)

(UNKNOWN): Right. Yeah.

(CORRECTED COPY - [CORRECTS SPEAKER])

LEAHY: They're amazing. They're amazing.

FEINSTEIN: Mr. Chairman...

GRASSLEY: Yes, go ahead.

FEINSTEIN: ... if I may...

GRASSLEY: Yeah. Proceed.

FEINSTEIN: ... I've been through nine Supreme Court hearings...

GRASSLEY: Is this your opening statement?

FEINSTEIN: ... and -- it's part of it.

GRASSLEY: Well, why don't you make your opening statement?

FEINSTEIN: Shall I?

GRASSLEY: Yeah, would you please?

(LAUGHTER)

BLUMENTHAL: Mr. Chairman...

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HARRIS: There's a motion pending.

BLUMENTHAL: ... I ask for an opportunity to respond to my colleague from Texas, because he has directly challenged...

GRASSLEY: You're -- I said you're -- you're out of order.

BLUMENTHAL: Well, Mr. Chairman...

GRASSLEY: Senator Feinstein?

BLUMENTHAL: ... I -- I ask in the process...

GRASSLEY: Would you...

BLUMENTHAL: ... of regular order an opportunity to respond...

FEINSTEIN: Well, let me...

BLUMENTHAL: ... to what I believe was a personal attack.

GRASSLEY: I'd like -- I'd like to have you give Senator Feinstein the courtesy of listening to her opening statement.

FEINSTEIN: Well, I was just going to say some things.

And you heard that this is my ninth hearing. And I think we've got to look at this; these are very unique circumstances. Not only is the country deeply divided politically, we also find ourselves with a president who faces his own serious problems.

Over a dozen Cabinet members and senior aides to President Trump have resigned, been fired or failed their confirmations under clouds of corruption, scandal and suspicion. The president's personal lawyer, campaign manager, deputy campaign manager and several campaign advisers have been entangled by indictments, guilty pleas and criminal convictions. (CORRECTED COPY - CORRECTS PARAGRAPH 4 BELOW)

FEINSTEIN: So it's this backdrop that this nominee comes into when what we're looking at is, is he within the mainstream of American legal opinion and will he do the right thing by the Constitution?

We are also experiencing the vetting process that has cast aside tradition in favor of speed.

When Justice Scalia died, Republicans refused to even meet -- even a meeting in their office -- with President Obama's nominee and held the seat open for one year.

(CORRECTED COPY - [SINGLE WORD CHANGE])

Now with a Republican in the White House, they've changed their position. The majority rushed into this hearing and is refusing to even look at the nominee's full record.

In fact, 93 percent of the records from Kavanaugh's tenure in the White House as counsel and staff secretary have not been provided to the Senate, and 96 percent has not been given to the public.

We do know what the White House thinks of this nominee. Don McGahn, the -- the White House counsel, spoke to the Federalist Society and made clear Brett Kavanaugh is exactly the kind of nominee the president wanted. In a speech, Mr. McGahn discussed President Trump's two lists of potential Supreme Court nominees.

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One, he said was filled with mainstream candidates. The other list included candidates that're "kind of too hot for prime time, the kind that really -- would be really hot in the Senate (ph). Probably people who have written a lot. We really get a sense of their views. The kind of people that make people nervous."

That's a quote.

Now, what I'm saying, this is the backdrop into which we come in to this situation.

So yes, there is frustration on this side. We know what happened with the prior nominee, the last one President Obama presented to us. He never even got a meeting, he never got a hearing, he never got a vote. And now the rush to judgment and the inability to really have a civil and process -- and positive process ends up being the result.

I really regret this, but I think you have to understand the frustration on this side of the aisle. Everyone on this side of the aisle wants to do a good job. They want time to be able to consider what the findings are. And there are tens of thousands of pages of e-mails and other items which could constitute findings on a whole host of major subjects that this nominee may be faced with. And they're serious: the torture issues, all of the Enron issues that he's been through, all -- all of the kinds of things that we want to ask questions about. FEINSTEIN: So, I mean, understand where we're coming from. It's not to create a disruption. It's not to make this a very bad process.

It is to say, "Majority, give us the time to do our work so that we can have a positive and comprehensive hearing on the man who may well be the deciding vote for many of America's futures."

BLUMENTHAL: Mr. Chairman, I renew my motion to adjourn and Senator Harris' motion to postpone. I ask for a second.

(UNKNOWN): Second the motion.

BLUMENTHAL: Mr. Chairman, I ask for a vote. I ask that we...

GRASSLEY: I don't...

BLUMENTHAL: ... reconvene in a second session and have a vote.

GRASSLEY: I shouldn't have to explain to you we're having a hearing. It's out of order. We're not in executive session. That'd be the proper forum for entertaining motions.

BLUMENTHAL: I ask that we reconvene in executive session. We -- we would...

GRASSLEY: So, we won't -- we won't vote on Senator Blumenthal's suggestion. We won't follow your suggestion to...

PROTESTER: (OFF-MIKE)

BLUMENTHAL: Well, it's a motion, Mr. Chairman.

GRASSLEY: ... to go into executive session. Motions would not be...

PROTESTER: (OFF-MIKE)

GRASSLEY: ... proper at this time.

PROTESTER: (OFF-MIKE)

HARRIS: Mr. Chairman, it's a pending motion before the committee.

PROTESTER: (OFF-MIKE)

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BLUMENTHAL: Mr. Chairman, if -- if there is no vote on this motion, which has been properly seconded and which could be given a vote in executive session, this process will be tainted and stained forever.

I'm asking, as a member of this committee, it's my right to do so, that we vote on my motion to adjourn and Senator Harris' motion to postpone. And that we do it in executive session, which can be easily and quickly convened right now.

GRASSLEY: Yeah. The motion is out of order. BOOKER: Sir, then I -- I make a very clear and simple motion to move into executive session so that Senator Blumenthal's motion may be considered.

GRASSLEY: The motion is out of order.

BLUMENTHAL: Well, they're -- they're not of order, Mr. Chairman. They're properly before this committee. Simply saying so -- with all due respect, and I have great respect for the chairman -- doesn't make them so. It doesn't make them out of order just because the chairman rules that they're out of order.

We have a number of excellent lawyers in this room, and I ask that this body now do what its responsibility is, to have an executive session so we can vote on a motion to adjourn and then we can deliberately and thoughtfully consider the documents that have been presented and also review the committee documents that have been marked confidential without any reason or rationale.

GRASSLEY: The motion is denied.

BOOKER: Sir, how long would that take? Ten minutes for us to have a motion and a vote on this process?

I -- I don't understand what the rush is that we can't even let senators vote on what is a very important motion germane to our due -- constitutional duties before this -- before this body, before we proceed. I don't understand.

It won't take that much time. What is the rush? What are we afraid of, to hold a vote on the motions before us?

KENNEDY: Mr. Chairman. Mr. Chairman.

GRASSLEY: Senator Kennedy.

KENNEDY: Thank you, Mr. Chairman.

I -- I'm -- I have a question about the process. I understand my colleagues' point, and I understand they feel strongly about this. But what are going to be the ground rules today? Are we going to be allowed to interrupt each other, interrupt the witness? Are we going to -- should we seek recognition from the chair?

I just want to understand the ground rules.

GRASSLEY: Proper -- proper respect and decorum, plus how we normally have done business. In a hearing like this, we wouldn't be having all these motions. You're new to the Senate, so this is something I've never gone through before in 15 Supreme Court nominations that I have been -- since I've been on here.

And every member be -- I was interrupted before I got a chance to say what -- the agenda for today.

But every member is going to get 10 minutes to make their remarks. And then we will go to the introducers of Judge Kavanaugh. There'll be three of those. They will take the usual time of introducers. And then we will have the swearing-in of Judge Kavanaugh. And then we will have his opening remarks. And then we will adjourn for today.

We will reconvene at 9:30 on Wednesday and Thursday. Each member will have 30 minutes to ask questions or make all these points they're making right now for each -- the first round. Then there will be a second round of 20 minutes each.

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So every member is going to get 50 minutes to ask all the questions or make all the statements that they want to make in regard to anything about this candidate or anything about how this meeting's being conducted. And then we will -- we will -- we will go late into Wednesday night or Thursday night until we get done with the questioning of Judge Kavanaugh.

And then on Thursday, we're going to have three panels of six each, evenly divided for people that think Judge Kavanaugh should be on the Supreme Court and people that think he should not be on the Supreme Court. And we hopefully get that done Friday, but if we have to go Saturday and Sunday, we'll go Saturday and Sunday until we get it all done.

HARRIS: Mr. Chairman, how can we possibly talk about...

GRASSLEY: Does that answer your -- does that answer your question, Senator Kennedy?

KENNEDY: Well, if -- if I'd want to -- yes, Mr. Chairman, I appreciate it.

If I want to say something, do I need to be recognized by the chair?

GRASSLEY: That would be the way that it's handled.

I'd tried to explain to you, I'm going to be patient because sometimes if you aren't patient and you argue why something shouldn't be done, it takes longer than it does just to listen to people. But I don't think we should have to listen to the same thing three or four times.

KENNEDY: Well, patience is good, Mr. Chairman. But I just want to understand the rules. If I want to be recognized...

GRASSLEY: Yes, you should be recognized.

KENNEDY: ... I have to...

GRASSLEY: You can understand that I have been patient and listened to people not be recognized and speak anyway, because I would like to have this be a peaceful session.

KENNEDY: Well, before I try your patience, I'm done.

HIRONO: Mr. Chairman, I have a question...

HARRIS: Mr. Chairman...

HIRONO: ... about ground rules.

GRASSLEY: Go ahead.

HIRONO: The question is, before we can proceed, I'd like to know whether the majority is still requiring of all of the Democratic members of this committee to preclear the questions, documents and videos that we would like to use at this hearing.

GRASSLEY: If the -- if the -- if the -- I -- I was hoping that on the subject that you just brought up, that we would have some clarification of how -- what you want to approach that. And -- and I'm not prepared to answer that question, because I don't know what the answer has been and I don't want you to give me what you think the answer has been of -- of discussion between our staff on that subject.

HIRONO: Mr. Chairman, I don't think it's ever been the case in a hearing like this that the members of this committee have to preclear what we propose to query the nominee about. I think that is totally unprecedented.

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HARRIS: And, Mr. Chairman...

TILLIS: Mr. Chairman...

HARRIS: ... if we don't even know what the rules are, how can we proceed with this hearing?

(CROSSTALK)

GRASSLEY: I'd like to respond -- I'd like to respond to Senator Hirono.

The reason why we're having that discussion is, at least in my time on this committee and for 15 nominations, we've never had a request for a video. So I'd like -- it seems to me to be courteous to all the members of the committee, it'd be nice to know the purpose and what it might contain.

You don't -- any questions you want to ask, you can ask questions. It isn't about what questions you were going to ask, it's about the presentation of something that's never been a part of a Supreme Court hearing in the past.

TILLIS: Mr. Chairman...

HARRIS: Mr. Chairman...

GRASSLEY: Who wanted?

HARRIS: The -- the...

TILLIS: Mr. Chairman?

GRASSLEY: I think I'll go back and forth.

Senator Tillis?

TILLIS: Mr. Chairman, I -- I'm confused, because I heard earlier that this was a -- a reaction to the document releases last night. But I -- I'm reviewing a tweet from NBC that said "Democrats plotted coordinated protest strategy over the holiday weekend. All agreed to disrupt and protest the hearing, sources tell me." And subsequent, "Dem leader led a -- Chuck Schumer led a phone call and committee members are executing now."

So I just want to be clear, none of the members on this committee participated in that phone call or that strategy before the documents were released yesterday? Is this -- is -- are you suggesting that this allegation is false?

DURBIN: Mr. Chairman, may I respond?

GRASSLEY: Senator Durbin?

DURBIN: Mr. Chairman, there was a phone conference yesterday. And I can tell you at the time of the phone conference, many issues were raised. One of the issues was the fact that over 100,000 documents related to Judge Kavanaugh have been characterized by the chairman of the committee as committee confidential.

I have been a member of this committee for a number of years. Committee confidential documents have been really limited to extraordinary circumstances. As an example, if someone is accused of taking drugs during the course of an investigation -- and I'm not making any suggestion that that is even the case or close to it here -- it was done in a confidential setting in fairness to the nominee. And the same thing on DUIs and the like.

We used it in extremely rare circumstances where we would meet after this committee hearing and sit down, and it usually related to a handful of pages or a handful of document references. DURBIN: Instead, what we've found now is that we are seeing hundreds of thousands of documents characterized as committee confidential unilaterally. It's not done on a bipartisan basis; it's being done by the chairman.

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So one of the discussions yesterday was this whole question of whether this committee is going to hear a nominee for a lifetime appointment to the highest court in the land without access to basic information about his public record, his public record as secretary to the president of the United States -- staff secretary. Thirty-five months of public service we've been told are -- cannot even be considered -- the documents of that service cannot even be considered.

So I'd say to the gentleman -- or the senator from North Carolina, there was a conversation yesterday about these documents. I had no idea that 11 o'clock last night 42,000 more documents would be put on top of us and we'd be asked to take them up today. So it added insult to injury.

HARRIS: Mr. Chairman...

BLUMENTHAL: Mr. Chairman, I asked to be recognized under Rule IV. Rule IV states, "The chairman shall entertain a non-debatable motion to bring a matter before the committee to a vote. If there is objection to bring the matter to a vote without further debate, a roll call of the committee shall be taken. And debate shall be terminated if the motion to bring the matter to a vote without further debate passes with 11 votes in the affirmative, one of which must be cast by the minority."

I ask for a vote on my motion to adjourn under Rule IV, Mr. Chairman.

These are rules that we are obligated to follow. The chairman has no right, with all due respect, to simply override them by fiat.

GRASSLEY: Yeah. We -- we are obligated...

BLUMENTHAL: I ask for (inaudible)...

GRASSLEY: We are obligated by that rule in executive session. We're not in executive session. I would -- I would...

PROTESTER: (OFF-MIKE)

GRASSLEY: I would respond to the issues brought up by Senator Durbin about confidential documents.

I was criticized for my decision to receive some documents on committee confidential. But I'm doing exactly what I did during Judge Gorsuch's confirmation and what Chairman Leahy did during Justice Kagan's. This is another example of treating regular committee practices as somehow -- somehow out of the ordinary.

Presidential records that we receive often contain highly sensitive advice to the president, as well as personal privacy information like full names, date of birth, Social Security numbers and bank account numbers.

Like my predecessor, I agreed to receive some presidential records as committee confidential so that both Democrats and Republicans could begin reviewing Judge Kavanaugh's materials much earlier. I don't know why my Democrat colleagues object to receiving documents faster.

But not all of these presidential records remain confidential. In fact, nearly two-thirds already became public. These records are posted on the committee's public website and available to the American people. As a result, we've provided unprecedented public access to a record number of presidential records and did it in record time.

The most sensitive presidential records remain committee confidential under federal law, just as they were during the nominations of Kagan or Gorsuch.

But we have expanded access to these documents also. Instead of just providing access to committee members, we've provided access to all 100 senators. Instead of just providing access to a very few committee aides, we've provided access to all committee aides. And instead of just providing access to physical binders of paper, we've provided 24/7 digital and searchable access. This is unprecedented access to committee confidential material.

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I'd also like to add that my staff set up workstations and have been available 24/7 to help senators who -- who are not on committee access confidential materials, but not one...

PROTESTER: (OFF-MIKE)

GRASSLEY: ... but not one senator showed up. I guess senators complaining about lack of access to confidential documents weren't really interested in seeing them in the first place.

But I want to emphasize, more documents are widely available than in any prior Supreme Court nomination.

And then to the issue about hiding committee confidential documents, some colleagues -- and you've heard it this morning -- accused of hiding documents. They're suggesting that some of the committee confidential documents contain information that would be of great interest to the public.

Well, just as I did last year during Justice Gorsuch's confirmation, I put a process in place that would allow my colleagues to obtain the public release of confidential documents for use during the hearing. All I asked was my colleagues to identify the documents they intended to use and I would work to get the Department of Justice and former President Bush to agree to waive restrictions on the documents.

Senator Feinstein secured the public release of 19 documents last year under this process and Senator Klobuchar secured the release of four documents this year. If my colleagues truly believed that other committee confidential documents should have been made public, they never told me about them and request the ones that they wanted.

Instead of scaring the American people by suggesting that we're hiding some incriminating documents, they should have made a request that I work to get the committee confidential designation removed. This year, I received no such request except from Senator Klobuchar, which was honored, and resulted in the disclosure of documents that she wanted to use during this hearing.

PROTESTER: (OFF-MIKE)

LEAHY: **Mr.** Chairman, you -- you stated what I did and you stated inaccurately. I think I have the right...

GRASSLEY: I said I was paraphrasing it.

LEAHY: Well...

GRASSLEY: You can correct me any way you want to.

LEAHY: ... it -- it -- it was one heck of a paraphrase. When you...

GRASSLEY: (OFF-MIKE)

LEAHY: When you speak about doing the same thing as with Elena Kagan, I was chairman when Elena Kagan was here. We had 99 percent of her records from the White House were made public 12 days -- 12 days before the hearing. With -- with Judge Kavanaugh, we have 7 percent and only 4 percent are public.

You can talk about the numbers of pages. The fact is, 99 percent for Elena Kagan 12 days before the hearing, it was all available. For Judge Kavanaugh, 7 percent and only 4 percent made public.

So, you know, if we're going to argue what was precedent, I would -- I would point out that I've -- I've been in the Senate for 19 Supreme Court nominations. What is being done here is unprecedented. LEAHY: And I keep coming back to the same question I asked: What are we trying to hide? What are we hiding? What's being hidden? Why not have it open like all others?

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The only other time we heard a president invoke executive privilege was President Reagan during the Justice William Rehnquist hearing. And Republicans and Democrats together went to him and said, "Don't do that." He said, "OK. You're right." And he withdrew his request for executive privilege and released the documents.

I...

KLOBUCHAR: Mr. Chairman...

LEAHY: No, I -- I -- I'm just sorry to see the Senate Judiciary Committee descend this way. I've felt privileged to serve here under both Republican and Democratic leadership for over 40 years. This is not the Senate Judiciary Committee I saw when I came to the U.S. Senate.

KLOBUCHAR: Mr. Chairman...

GRASSLEY: Here -- here...

KLOBUCHAR: My name was invoked by you. Could I please respond?

GRASSLEY: After I get done.

I want to give the exact quote that I was paraphrasing. Chairman Leahy said, quote, "We have Judge Sotomayor's record from the federal bench. That is a public record that we had even before she was designated by the president. Judge Sotomayor's mainstream record of judicial restraint and modesty is the best indication of her judicial philosophy. We do not have to imagine what kind of a judge she will be, because we see what kind of a judge she has been."

And so that's why my answer to the -- the gold standard of whether Senator Kavanaugh ought to be on the Supreme Court, based upon what Democrats themselves have said is the best judge of whether you should be on the Supreme Court.

Senator Klobuchar?

LEAHY: But wait a minute.

KLOBUCHAR: Thank you...

LEAHY: You -- you -- you mentioned what I said. Let me just finish on that, on Justice Sotomayor. I did say we should look at her cases, just as we should on -- on Judge Kavanaugh's.

But -- but you neglect to mention -- carefully neglect to mention, and I think erroneously neglect to mention, that the Republicans asked for board minutes from her work at a civil rights group in the 1980s, long before she was ever even considered as a judge. You asked for that, and we got it for you. That's the difference.

KLOBUCHAR: Mr. Chairman?

(UNKNOWN): Mr. Chairman?

KLOBUCHAR: Mr. Chairman, you -- you called on me.

GRASSLEY: Before Senator Klobuchar speaks, so we have 488,000 pages of documents.

Go ahead, Senator Klobuchar.

KLOBUCHAR: Thank you very much, Mr. Chairman. A few points here.

Number one, Justice Sotomayor never worked in the White House, so none of these issues of executive privilege or other things that we've been discussing are relevant.

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Number two, while I appreciate you granting my request, Mr. Chairman, on these campaign finance documents, this is all they were. This is it. This is how many pages?

Yet we have 148,000 documents that we can't talk about publicly. And I will say, they are illuminating. It shows that the nominee has a limited view of campaign finance reform. In his own words, he says that his views on the First Amendment are pure, when it comes to this very important issue. And we can talk about that more in the future.

But I do have a question, and that is that, yes I asked for these documents, but I've also joined several letters led by Senator Feinstein asking that all the documents that we have in the committee be made public, so that we can ask questions.

And then finally, on my initial point that I'm so focused on, the 102,000 pages of documents from Judge Kavanaugh's work in the White House Counsel, I would like to know, Mr. Chairman, if you have another example of a time when executive privilege was invoked to block the release of presidential records to the Senate during a Supreme Court nomination.

As far as my research shows, this wasn't done in -- for Justice Kagan or Justice Roberts, and I'd like to know if you have another example of that...

GRASSLEY: (inaudible)

KLOBUCHAR: ... during a Supreme Court nomination hearing.

GRASSLEY: Yeah, it was done for Justice Roberts, and it was the solicitor general position he had.

Senator Cornyn?

KLOBUCHAR: When he was a solicitor general, that is correct. But during the time that they worked in the White House, that is my question.

BLUMENTHAL: Mr. Chairman, I'd like to bring to the attention of the chair...

CORNYN: Thank -- thank you, Mr. Chairman.

GRASSLEY: Senator?

CORNYN: I believe I have the floor, Mr. Chairman

GRASSLEY: Senator Cornyn?

CORNYN: Thank you, Mr. Chairman, for recognizing me.

I haven't been in as many confirmation hearings as some of my colleagues, but this is the first confirmation hearing for a Supreme Court justice I've seen basically according to mob rule.

We have rules in the Senate. We have norms for decorum. Everybody, as you point out, Mr. Chairman, is going to get a chance to have their say.

GRASSLEY: Yeah.

CORNYN: You've given everybody a chance to ask questions for up to 50 minutes. You've given them a chance to make an opening statement. Any one of our colleagues can step out here and talk to the press and make whatever comments they want to the press, and tell the world how they feel about this.

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But the fact is, it's hard to take it seriously when every single one of our colleagues in the Senate Judiciary Committee on the Democratic side have announced their opposition to this nominee even before today's hearing.

So it's hard to take seriously their claim that somehow they can't do their job because they've been denied access to attorney-client or executive-privileged documents when they've already made up their mind before the hearing. There's nothing fair about that.

And we would just ask for an opportunity for the American people to be able to listen to this nominee answer the questions that we have. And I think that's how we ought to proceed, and I hope we will.

(CROSSTALK)

BLUMENTHAL: Mr. Chairman -- Chairman, can I be recognized to respond specifically to that comment?

There is precedent here. There are rules that can guide us. We're asking for those rules to be followed.

In the past, our colleagues on the Republican side that asked for a postponement of these committee proceedings, on nominations, when documents have been denied; on two occasions, from Senator Sessions -- then-Senator Sessions and Senator Kyl. Those requests were granted.

We're asking simply that that precedent be followed, Mr. Chairman. Far from mob rule, far from contempt of the process, we're simply asking for respect here to the normal regular order.

DURBIN: Mr. Chairman?

GRASSLEY: Yeah, go ahead.

DURBIN: Mr. Chairman, I'd like to address this committee confidential issue one more time, because you have explained your point of view.

Here's what we know: The chairman, Chairman Grassley, who's my friend and I respect, said his reason for unilaterally designating 147,000 pages of Burke documents as committee confidential is because that was the condition that Bill Burke imposed on the provision of the documents.

When Judge Kavanaugh was in my office meeting with us, I asked him, "Who is Bill Burke? By what authority can he restrict the information given to the Senate Judiciary Committee and to the American people? Is he a government employee?" No one knew this mysterious Bill Burke, who is filtering these documents.

So I figured since the nominee carries the Constitution in his pocket, there must be some reference to Bill Burke in Article II, Section Two, but it just says, "advice and consent of the Senate." It doesn't include Mr. Burke.

By what authority is this man holding back hundreds of thousands of documents from the American people? Who is he? Who's paying him?

So committee confidential is being determined by a man, a private attorney, and we don't know who he works for or who he's accountable to. DURBIN: Mr. Chairman, in the past when we went into committee confidential, it was in a discrete, specific area of concern involving a handful of words or accusations that had been made in a document.

And we were very careful to do it on a bipartisan basis. That has not been the case here where 147,000 pages have been designated by Bill Burke as outside the reach of the American people and the Senate Judiciary Committee.

That's a further example of why this whole process has gone astray, and I think your explanation ignores that.

KENNEDY: Mr. Chairman.

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(UNKNOWN): Mr. Chairman.

KENNEDY: Mr. Chairman.

GRASSLEY: Who wants the floor?

KENNEDY: The new senator.

(LAUGHTER)

GRASSLEY: Go ahead.

KENNEDY: Thank you, Mr. Chairman. Mr. Chairman, can you tell me again how many documents have been produced?

GRASSLEY: 488,000 minus -- or I mean other than 28,000 pages that Justice Kavanaugh has submitted, including his own judicial opinions.

KENNEDY: Number two, are we in executive session or not?

GRASSLEY: We're having a hearing on the nomination of the -- of a nominee for the Supreme Court.

KENNEDY: Yes, sir, I got that.

GRASSLEY: We're not in executive session.

KENNEDY: All right, number three, at some point are we going to get to hear from the nominee?

GRASSLEY: Hopefully it was going to be before 2:30. It'll probably be later this afternoon now.

KENNEDY: All right, thank you, Mr. Chairman.

GRASSLEY: Yes.

COONS: Mr. Chairman.

GRASSLEY: Can I ask my colleagues on the other side of the aisle how long you want to -- to go on with this? Because I'm not going to entertain any of the motions you're making.

We're not in executive session and I think we ought to level with the American people, do you want this to go on all day, because I have been patient, I've been accused of having a mob rule session.

Now if we have a mob rule session, it's because the chairman's not running the committee properly. But since every one of you on that side of the aisle except Senator Booker, Senator Harris, new to the committee, said during Justice Gorsuch hearing -- every one of you prefaced your comments on how fair I was in running that hearing.

Now this is the same Chuck Grassley that ran the Gorsuch hearings. I'd like to run this hearing the same way, if you'll give me the courtesy of doing it.

COONS: Thank you, Mr. Chairman.

GRASSLEY: How long do you want to go on?

COONS: Mr. Chairman, I'd like to make one more point before we proceed, if I might.

GRASSLEY: Senator Coons.

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COONS: The accusation that this is a mob rule hearing was made by your colleague from the state of Texas. I think you have been conducting this in a respectful, appropriate and deliberate way.

My concerns that I want to renew, given the exchange you just had with Senator Leahy who has participated in or presided over more Supreme Court confirmations than any currently serving member I believe, was over how the document request was handled for now Justice Kagan.

A request was sent to the national archives, Ranking Member Feinstein tried to work with you to send an identical request to the national archives, and before we proceed with the questioning, Mr. Chairman, I simply would like to have a settled heart about why you chose to communicate directly to the archives, not to respond to the ranking member's request.

Members of this committee have raised issues about an unprecedented committee process by which documents were blocked, by which they were considered classified and by which we have been blocked from being able to share them with the American people or ask questions based on them.

This is unprecedented, that's why, as you put it, this side seeks to raise issues to establish ground rules before we proceed.

GRASSLEY: You've asked an appropriate question. I -- I'll -- I have an answer, I don't know whether it'll satisfy you or not. Those documents are the least useful in understanding his legal views and the most sensitive to the executive branch.

And let me -- let me emphasize the most sensitive to the executive branch. The staff secretary serves as an inbox, an outbox to the Oval Office. And if you -- and if -- you're going to have opportunities to ask the nominee himself what he did then, but I'm giving you my judgment about being a person that primarily was responsible for managing the paper that crosses the president's desk.

His job, and if I'm wrong he can satisfy you otherwise in your questions you want to ask him, but his job was to make sure the president sees the advice of other advisers not as staff secretary providing his own advice.

One of President Clinton's staff secretaries, Todd Stern, described the job this way, I quote, "the staff secretary's job is not to influence the president, but to ensure he gets a balanced diet of view points from all relevant people on the staff, you're certainly not trying to put your thumb on the scale between options."

Reviewing Judge Kavanaugh's staff secretary documents would teach us nothing about his legal views. For that, we have the 307 opinions that he wrote and the hundreds more joined, totaling more than 10,000 pages of judicial writings.

We also have more than 17,000 pages of speeches, articles, teaching materials and other materials that Judge Kavanaugh attached to his 120 page written response, which I think was judiciary's questionnaire was probably the most robust questionnaire ever submitted to a Supreme Court nominee.

We also have more than 480,000 pages of e-mails and other documents, from Judge Kavanaugh's service as an executive branch lawyer. This is a half million pages of paper, more than the last five confirmed Supreme Court nominees combined.

In addition to not shedding light on Kavanaugh's legal views, the staff secretary documents are very sensitive to the executive branch. Let's emphasize that word sensitive. These documents contain highly confidential advice, including national security advice that went directly to the president from his advisers.

It would threaten the candor of future advice to presidents, if advisers knew their advice would be broadly disclosed. Senators have more documents for Judge Kavanaugh than any nominee in Senate history, Democratic leaders insistent on getting staff documents I think was a way of -- of not having this hearing take place at this particular time.

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So can I proceed, members of the Democratic Caucus?

HARRIS: Mr. Chairman, if I may be recognized for one final point?

GRASSLEY: After you're done, can I proceed to my opening statement?

HARRIS: I -- I'll defer to my colleagues. But I just -- as a point of information, we sent a letter to you, Mr. Chairman, seven days ago regarding the committee confidential nature of the documents and asked if they would not be designated committee confidential.

As another point of information, it is my understanding there are 6 million to 7 million pages of documents regarding this nominee. And it is my understanding, with all due respect, Mr. Chairman, that you've only requested 10 to 15 percent of the total.

I appreciate that there are a lot of pages documents, but we have to have this conversation in the context of the total and the fact that we've only been given, by your request, 10 to 15 percent of those documents.(CORRECTED COPY - CORRECTS PARAGRAPH 39 BELOW)

HARRIS: And my final point is this. This is a hearing about who will sit on the highest court of our land. This is a hearing that is about who will sit in a house that symbolizes our system of justice in this country.

And some of the most important principles behind the integrity of our system of justice is that we have due process and we have transparency. That is why we have public courtrooms. That is why we have requirements in courts of law in our country that there will be transparency, that both parties will be given all relevant information.

We can argue, then, as to the weight of the documents and the significance, but not as to whether or not they're admissible.

So I object, I ask that we renew and revisit Senator Blumenthal's motion to -- to suspend, or my motion to postpone this hearing.

Thank you.

GRASSLEY: OK. Thank you.

BLUMENTHAL: Mr. Chairman...

GRASSLEY: Appreciate the courtesy of the Democrats for me to proceed.

BLUMENTHAL: May I just have one last opportunity...

GRASSLEY: Yes. Please go ahead.

BLUMENTHAL: ... for my motion? Thank you.

GRASSLEY: Please -- please go ahead.

BLUMENTHAL: I appreciate your giving me the floor.

I've made a motion that is properly before this committee.

The chairman said earlier that he has never been through a confirmation process like this one. The reason is that no administration in the past has engaged in this kind of concealment. That's the reason, very simply.

It is not the chairman's doing, necessarily. It is this administration that has concealed and hidden documents from us and from the American people.

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And so I renew my motion that we adjourn so that we can access the documents that we need, review them in a deliberate and thoughtful way much has been done (sic) for colleagues in the past when they have requested it, and as is required under Rule 4 of our rules.

There is no requirement that we be in executive session to follow this rule, Mr. Chairman. And I respectfully ask that we follow our rules, that we proceed in accordance with those norms -- and I know the chairman has great respect for open government, for whistleblowers, for sunlight as the best disinfectant. We need some sunlight in this process.

Thank you, Mr. Chairman.

And I -- I again renew my motion to adjourn which has been seconded by Senator Whitehouse.

GRASSLEY: Denied because we're not in executive session.

I will proceed with my...

HIRONO: Mr. Chairman, before you proceed, I'd just like to make one correction.

There is a misconception as to what White House staff secretaries do. And in fact, two past staff secretaries, Todd Stern and John Podesta, wrote an op-ed in July 30, 2018, Washington Post titled "Staff Secretaries Aren't Traffic Cops. Stop Treating Kavanaugh Like He Was One."

And in fact, Judge Kavanaugh himself has acknowledged the importance of the time that he was White House staff secretary. So why, Mr. Chairman, you and the others on your side keep saying that this was a kind of -- nothing kind of a job, nothing could be further from the truth.

And this is why we are so adamant about requesting these documents that the judge himself, the nominee himself, has said were among the most formative time of his adult life.

Thank you, Mr. Chairman.

GRASSLEY: Of course that's why we have this hearing.

Judge Kavanaugh...

HIRONO: We don't have the documents.

GRASSLEY: Judge Kavanaugh will have an opportunity to answer every question about his role and almost anything he's done in his lifetime, I assume.

BOOKER: Mr. Chairman, one -- Mr. Chairman, may I be recognized, sir?

GRASSLEY: Yeah. Will you be the last one or do you want to go on all afternoon?

BOOKER: I can't speak for my colleagues, but I -- a lot of people I have a lot of respect for on this committee, especially some of the new folks -- I just want to answer in the most plain spoken way I can possibly do, as we're expected to evaluate a nominee who has a vast record.

And if you look -- and a lot of numbers have been cited, 10,000 here, 40,000 here, 100,000 here -- but an entire body of his record, sir, we've only had 10 percent of his record we've been able to evaluate. Ninety percent of it has been withheld from senators; 90 percent of his record.

So, we're asking to evaluate a candidate, to have intelligent questions and insights into his record, but we only have 10 percent of that record.

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We can go on and on about the numbers of documents, 100,000, 10,000, but the fact is we are about to proceed with a historic hearing, we're about to proceed toward having a hearing on someone having a lifetime appointment on the most important court in the land, that will effectuate (sic) so many of the areas of American life, from civil rights, to women's rights, to access to health care -- all this stuff's being decided and we're going into this only having 10 percent -- access to 10 percent of -- of the body of work of this man's career.

CORRECTED COPY - [ADDS PERCENT]

That seems to me, just common sense -- 90 percent is missing right now -- just common sense says we should have access to thoroughly evaluate this person.

We're not asking for anything out of the ordinary. Other candidates have come before and people've been talking about 10,000 here, 100,000 here. But we have gotten far more for every Supreme Court Justice that has been mentioned here, far more than just 10 percent. Just to scan a bit.

My colleagues talk about what our duty to the American public is. Our duty to the American public is to evaluate a candidate on their body of work, but we're not even getting released that, and why?

Because some political person, not the -- a person who holds public office, not because -- I mean, it's unprecedented to think that this committee has ceded its role to a partisan outside lawyer.

And so, here, we're about to go forward with just 10 percent of this person's record to evaluate to base our questions on, to investigate. Ninety percent is being withheld. Just common sense would say that that's not fair, that's not right. It undermines our ability to do our job. It is just plain wrong.

PROTESTER: I demand that we stop these hearings and vote no so that (OFF-MIKE) have access -- all access to reproductive care.

GRASSLEY: One of the Senate's most solemn constitutional duties is to provide advice and consent to the president on the nomination of Supreme Court justices. We're here this week to hear from Brett Kavanaugh, to hear about his exceptional qualifications, his record of dedication to the rule of law...

PROTESTER: (OFF-MIKE) vote no...

(CROSSTALK)

GRASSLEY: ... and his demonstrated independence, and his appreciation of the importance of the separation of powers.

PROTESTER: (OFF-MIKE) of our democracy.

GRASSLEY: Indeed, to protect individual liberty, the framers designed a government of three co-equal branches, strictly separating legislative, executive and judicial powers. The framers intended...

PROTESTER: (OFF-MIKE)

GRASSLEY: ... for the judiciary to be immune from the political pressures the other two face. That is so that judges would decide cases according to the law...

PROTESTER: (OFF-MIKE)

GRASSLEY: ... and not according to -- to popular opinion. PROTESTER: (OFF-MIKE)

GRASSLEY: Now, 230 years after ratification, our legal system is the envy of the world. It provides our people stability, predictability, protection of our rights and equal access to justice.

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PROTESTER: (OFF-MIKE)

GRASSLEY: But this only possible when judges are committed to the rule of law.

Our legal system's success is built on judges' accepting that their role is limited to deciding cases and controversies.

PROTESTER: (OFF-MIKE)

GRASSLEY: A good judge exercises humility and makes decisions according to specific facts of the case and, of course, according to the law. A good judge never...

PROTESTER: (OFF-MIKE)

(CROSSTALK)

GRASSLEY: ... a -- a good judge never bases decisions on his preferred policy preferences. A -- a good judge also has courage, recognizing that we have an independent judiciary to restrain judges when that government exceeds lawful authority.

President Andrew Jackson said quote, "All the rights secured to the citizens under the Constitution are worth nothing, and a mere bubble, except guaranteed to them by an independent and virtuous judiciary," end of quote. Confirmation hearings for Supreme Court nominees are an independent -- are a very important opportunity to discuss the appropriate role of judges.

PROTESTER: (Inaudible) I am in a wheelchair and I (inaudible)...

(CROSSTALK)

GRASSLEY: As I see it, and I expect many of my colleagues will agree, the role of the judge is to apply the law as written, even if the legal result is not one the judge personally likes.

Justice Scalia has often been quoted because he was fond of saying, "If a judge always likes the outcome of the cases he decides, he is probably doing something wrong."

I don't want judges who always reach a liberal result or a conservative result. I want a judge who rules the law the way the law requires. Judges must leave lawmaking to the Congress, the elected representatives of the people.

Judges and justices have lifetime appointments, they can't be voted out of office if they legislate; whereas, if Congress legislates something the people don't like, then you can vote them out of office. That's why they're to interpret law and not make law.

Now some have a very different view of what a judge's role should be. According to this view, judges should decide cases based upon particular outcomes in order to advance their politics.

But the American people don't want their judges to pick sides before they hear a case. They want a judge who rules based upon what the law commands. This is the reason why all Supreme Court nominees since Ginsburg have declined to offer their personal opinions on the correctness of precedent.

Seeking assurances from a nominee on how he will vote in certain cases or how he views certain precedent undermines judicial independence and essentially asks for a promise in exchange for a confirmation vote. It's unfair and unethical, indeed. What litigant could expect a fair shake if the judge has already pre-judged the case before the litigant even enters the courtroom?

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I expect Judge Kavanaugh -- in fact, it's my advice to him -- to follow the example set by judge -- Justice Ginsburg and all nominees that followed her that a nominee should offer, quote, "No hints, no forecasts, no previews," end of quote, on how they will vote.

Justice Kagan when asked about Roe v. Wade said the following, quote, "I do not believe it would be appropriate for me to comment on the merits of Roe v. Wade other than to say that is settled law entitled to precedential weight. The application of Roe to future cases, and even its continued validity, are issues likely to come before the court in the future," end of quote.

Senators were satisfied with these answers on precedent. So senators should be satisfied if Judge Kavanaugh answers similarly. This is my 15th Supreme Court confirmation hearing since I joined the committee in 1981. Thirty-one years ago, during my fourth Supreme Court confirmation hearing, liberal outside groups and their Senate allies engaged an unprecedented smear campaign against Judge Robert Bork. As Mark Pulliam said in an op-ed over the weekend, quote, "The borking of Robert Bork taught special interest groups that they could demonize judicial nominees based solely on their worldview. Worse, character assassinations proved an effective tactic, nearly sinking Justice Clarence Thomas's appointment four years later."

But he also said, continuing to quote, "By confirming Judge Kavanaugh, the Senate can go some way toward atoning for its shameful treatment of Justice Robert Bork 31 years ago," end of quote.

Judge Kavanaugh is one of the most qualified nominees, if not the most qualified nominee, that I've seen. A graduate of Yale Law School; clerking three federal judges, including a man he nominated to replace. He spent all but three years of his career in public service and has served as a judge for 12 years on the D.C. circuit, the most influential federal circuit court. He has one of the most impressive records for a lower court judge in the Supreme Court.

In at least a dozen separate cases, the Supreme Court adopted positions advanced by Judge Kavanaugh. The American Bar Association, whose assessment Democratic leaders have called the "gold standard of judicial evaluations," rated Judge Kavanaugh unanimously well qualified. A review of Judge Kavanaugh's extensive record demonstrates a deep commitment to the rule of law.

He has written eloquently that both judges and federal agencies are bound by the law Congress enacts. And he has criticized those who substitute their own judgment about what a statute should say for what the statute actually says.

After president nominated Judge Kavanaugh, I said this would be the most thorough and transparent confirmation process in history. I say that statement even regarding all the discussion we've had this morning. It has proven to be. From Judge Kavanaugh's authoring 307 opinions, joined hundreds more, amounting to more than 10,000 pages. **GRASSLEY:** If submitted -- he submitted 17,000 pages of speeches, articles and other materials to the committee along with this 120-page written response to the questionnaire that the committee sent out. These add up to 27,000 pages of Judge Kavanaugh's record already available to the American people and we received just shy of a half a million pages of e-mails and other documents from Judge Kavanaugh's service as an executive branch lawyer which is more than we received for the last five Supreme Court nominees.

Every one of these more than 483 pages of executive branch records are available to any senator, 24/7. I pushed for federal officials to significantly expedite public disclosure process under federal law so that all Americans have online access to more than 290,000 pages of these records right now on our committee Web site.

In order -- in short, the American people have unprecedented access and more materials to review Judge Kavanaugh than ever have had for a Supreme Court nominee. And to support the review of Judge Kavanaugh's historic volume of material, I've worked to ensure that more senators have access to more material than ever.

Since so much of the rest of my statement has been discussed this morning by what the Democrats have said, and I've answered a lot of it, I'm going to put the last seven pages of my statement in the record and I'm going to ask

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Senator Feinstein if she has more to say on her opening statement. And if she doesn't, I'll go to Senator -- Senator Hatch. I think you have some...

FEINSTEIN: Thank you, I do, Mr. Chairman. I will probably truncate it, even so.

But I think it's really important that people, as well as the judge, the nominee, understand how strongly we feel and why we feel that way. Yes, I want to talk a little bit about one of the big decisions that we have the belief that although you told Senator Collins that you believed it was settled law, the question is really, do you believe that it's correct law? And that's *Roe v. Wade*.

I was, in the '50s and '60s, active, but first as a student at Stanford. I saw what happened to young women who became pregnant. And then subsequently, I sat as an appointee of Governor Brown's on the term setting and paroling authority for women in California who had committed felonies. And so I sentenced women who had committed abortions to state prison and granted them paroles, and so came to see both sides. The terrible side and the human and vulnerable side.

And when you look at the statistics during those days, those statistics that the Guttmacher Institute has put out are really horrendous. For you, the president that nominated you, has said, "I will nominate someone who is anti-choice and pro-gun." And we believe what he said. We cannot find the documents that absolve from that conclusion. So what women have won through *Roe* and a host of privacy cases, to be able to control their own reproductive system, to have basic privacy rights, really extraordinarily important to this side of the aisle. And I hope the other side of the aisle as well.

Last year, you drafted a dissent in *Garza v. Hargan*. And that's a case where a young woman in Texas, I believe, was seeking an abortion. In that dissent, you argued that even though the young woman had complied with the Texas parental notification law and secured an approval from the judge, she should nevertheless -- nonetheless be barred.

In making your argument, you ignored, and I believe, mischaracterized Supreme Court precedent. You reasoned that Jane Doe should not be unable to exercise her right to choose because she did not have family and friends to make her decision. The argument rewrites Supreme Court precedent. And if adopted, we believe would require courts to determine whether a young woman had a sufficient support network when making her decision, even in cases where she has gone to court.

This reason, we believe, I believe, demonstrates that you are willing to disregard precedent. And if that's the case, because just saying something's settled law, it really is, is it correct law? The impact of overturning *Roe* is much broader than a woman's right to choose. It's about protecting the most personal decisions we all make from government intrusion.

Roe is one in a series of cases that upheld an individual's right to decide who to marry, it's not the governor's right - the government's right; where to send your children to school, the government can't get involved; what kind of medical care you can receive at the end of life, as well as whether and when to have a family. And I deeply believe that all these cases serve as a bulwark of privacy rights that protect all Americans from overinvolvement of the government in their lives. And to me, that's extraordinarily important.

Next, I'd like to address the president's promise to appoint a nominee blessed by the NRA. In reviewing your judicial opinions and documents, it's pretty clear that your views go well beyond simply being pro-gun, and I'd like to straighten that out.

It's my understanding that during a lecture at Notre Dame Law School, you said you would be the, quote, "first to acknowledge that most other lower judges -- court judges have disagreed with your views on the Second Amendment." For example, in *District of Columbia v. Heller*, you wrote that unless guns were regulated either at the time the Constitution was written, or traditionally throughout history, they cannot be regulated now.

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In your own words, gun laws are unconstitutional unless they are, quote, "traditional or common" in the United States. You concluded that banning assault weapons is unconstitutional because they have not historically been banned. And this logic means that even as weapons become more advanced and more dangerous, they cannot be regulated. FEINSTEIN: Judge Easterbrook, as you know, a conservative judge from the Seventh Circuit, concluded that that reasoning was absurd, and he pointed out that a law's existence can't be the source of its own constitutional validity.

In fact, I'm left with the fact that your reasoning is far outside the mainstream of legal thought and that it surpasses the views of Justice Scalia, who was clearly a pro gun justice. Even Scalia understood that weapons that are like M16 rifles or weapons that are most useful in military service can in fact be regulated.

And there's no question that assault weapons like the AR-15 were specifically designed to be like the M16. The United States makes up 4 percent of the world wide population, but we own 42 percent of the world's guns.

Since 2012, when 20 first graders and six school employees were killed at Sandy Hook Elementary, there have been 273 school shootings. This is an average of five shootings every month and a total of 462 children, teenagers, teachers and staff shot and 152 killed.

I care a lot about this, I authored the assault weapons legislation that became law for 10 years, and I've seen the destruction. If the Supreme Court were to adopt your reasoning, I fear the number of victims would continue to grow and citizens would be rendered powerless in enacting sensible gun laws. So this is a big part of my very honest concern.

You're being nominated for a pivotal seat; it would likely be the deciding vote on fundamental issues. So during your time in the White House when you were staff secretary, some people regard it as kind of a monitor monitoring things going in and going out.

But I think it's much more. And you yourself have said that that's the period of my greatest growth, and so we try to look at it and the only way we can look at it is to understand the documents and it's very, very difficult.

I don't want to take too much time, but we -- we've heard a lot of noise. Behind the noise is really a very sincere belief that it is so important to keep in this country which is multi-ethnic, multi-religious, multi-economic, a court that really serves the people and serves this great democracy.

And that's my worry. That's my worry. So I look forward to your statement and answering the questions.

Thank you, Mr. Chairman.

GRASSLEY: Senator Hatch for 10 minutes.

HATCH: Well thank you, Mr. Chairman. I'd first like to thank you for your tremendous work in organizing this hearing. This has been the most thorough Supreme Court confirmation process that I've ever -- ever participated in.

We've received more than twice as many documents for Judge Kavanaugh as for any Supreme Court nominee in history. This is a -- this is a big deal. We have tens of thousands of pages of Judge Kavanaugh's opinions, speeches and other writings. This has been an exhaustive process and I want to thank you for your leadership on it.

Now, to our witness, Judge Kavanaugh, it's good to see you. Known you for a long time. This is my 15th and final Supreme Court confirmation hearing. I participated in the confirmation of every current justice on the court. I've participated in the confirmation of over half of all federal judges now serving in the federal system or who have ever served in the federal system.

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I know a good nominee when I see one, and you are a great nominee -- I don't think there's any question about it. I've known you for a long time; I remember when you first came before this committee back in 2004 for your first confirmation hearing. I was the chairman of this committee at the time. I got to know you well. I was impressed by your intellect, your legal ability and your integrity -- all of which were very much notable. At only 39 years of age, you knew more about the law than most lawyers who have practiced for a lifetime. And you have been an outstanding judge.

You have earned the -- the -- the respect of your colleagues. And you've earned the respect of the Supreme Court as well. As you know, the Supreme Court has adopted the positions in your opinions no less than 13 times.

That's -- that's something nobody can really argue against. You've authored landmark opinions on the separation of powers, administrative law and national security. You served as a mentor to dozens of clerks and hundreds of law students, male and female.

Your student -- some of whom did not share your philosophy -- your student reviews are off the charts favorable, even by those who may not have completely agreed with your philosophical approaches on some matters.

You volunteer in your community.

(UNKNOWN): With all due respect...

(CROSSTALK)

HATCH: Mr. Chairman, I ask for order.

GRASSLEY: Yes, just go ahead.

HATCH: OK, you volunteer in the community, you coach youth basketball, you're the sort of person many of us would like to have as a friend and a colleague. You also apparently like to -- like to eat pasta with ketchup. But nobody's perfect.

Now this being politics and this being...

PROTESTER: (OFF-MIKE)

HATCH: ... this being a Supreme Court confirmation hearing, my Democratic colleagues actually...

PROTESTER: (OFF-MIKE)

HATCH: I've got to admit, that's -- this is...

PROTESTER: (OFF-MIKE)

HATCH: ... my Democratic colleagues can admit that you're actually a good judge and a good person as well. They have -- they have to turn the volume up to 11 and try to paint you as one of the four horsemen of the apocalypse. Anyone who actually knows you knows that's ridiculous. And the American people will see soon enough that you are a smart, decent, normal person that just so happens to have been nominated to the highest court in our land.

So here are the facts. Judge Kavanaugh is one of the most distinguished judges -- Mr. Chairman, I think we ought to have this -- this loud mouth removed.

PROTESTER: (OFF-MIKE)

HATCH: I mean we don't -- we shouldn't have to put up with this kind of stuff.

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PROTESTER: (OFF-MIKE) we need health care.

HATCH: I hope she's not a law student. GRASSLEY: I -- now that we have quiet, I'd like to explain that I advised, year -- two years ago that at my hearings, I expected the police to do their job and I expect the committee to go on. But if you don't want to continue...

HATCH: No, I'm going to continue.

GRASSLEY: ... we'll -- OK, go ahead.

HATCH: OK. Here are the facts. Judge Kavanaugh's one of the most distinguished judges in the entire country. He has served for over 12 years now in the U.S. Court of Appeals for the D.C. Circuit. The D.C. Circuit is often referred to as the...

PROTESTER: Kavanaugh cannot be trusted...

HATCH: ... second highest court in the land, because it hears many critically important cases involving agency action and the separation of powers.

PROTESTER: (OFF-MIKE)

HATCH: During his time on the bench, Judge Kavanaugh has heard over 1,000 cases. He's written more than 300 opinions. His opinions span nearly 5,000 pages...

PROTESTER: (OFF-MIKE) Kavanaugh is...

HATCH: ... in length. What I -- what's remarkable about Judge Kavanaugh's judicial record is not just its length...

PROTESTER: (OFF-MIKE) Judge Kavanaugh...

HATCH: ... but its depth and its quality. Judge Kavanaugh has been a true thought leader. He's written powerful opinions on the separation of powers and administrative laws. He's shown that he brings a fair-minded approach to questions of criminal law and employment law. On almost every issue of consequence, Judge Kavanaugh has made a significant contribution to our nation's jurisprudence.

And he's won respect from both sides of the political spectrum. The committee has received letters from former clerks, former colleagues, former students, and former classmates, all as -- all attesting to Judge Kavanaugh's sterling character and qualifications, some of whom are Democrats. Eminent members of the Supreme Court Bar and legal academia have all written in strong support of Judge Kavanaugh's nomination.

The authors of these letters emphasize that they have different political views and that they do not agree on every subject, but to a person they speak of Judge Kavanaugh's integrity and judgment and they enthusiastically endorse his nomination. I'd like to highlight one letter in particular from 18 of Judge Kavanaugh's former women law clerks. That's all of his former women clerks, all of them, who were not precluded by their current or pending employment from signing the letter.

They write that, quote, "Judge Kavanaugh has been one of the strongest advocates in the federal judiciary for women lawyers," unquote. They detail the mentoring and encouragement Judge Kavanaugh has given them in their careers, and they say that is -- it is, quote, "not an exaggeration to say that we would not be the professors, prosecutors, public officials, and appellate advocates we are today without his enthusiastic encouragement and unwavering support," unquote.

It bears emphasis that these former clerks span the political divide. A number went on to clerk for liberal justices. That itself shows you the high regard Judge Kavanaugh has across the ideological spectrum. Republican- and Democratic-appointed judges alike have hired his former clerks.

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Judge Kavanaugh is no ideologue. He is no extremist. He is a highly respected, thoughtful, fair-minded judge who is well within the judicial mainstream. Look no further than the letter the committee received from over 40 members of the Supreme Court Bar supporting Judge Kavanaugh's nomination. Among the signers are people like -- like Lisa Blatt, Deanne Maynard, and Kathleen Sullivan.

These are nationally renowned attorneys who practice frequently before the Supreme Court and the Federal Courts of Appeals, and they are not conservatives. To the contrary, they are among the most prominent liberal attorneys at the Bar today and in the country. But they know Judge Kavanaugh, they know his work, they know his character, they know that he is an outstanding judge, and they know that he will make an outstanding justice.

If we could just get the politics out of this, I -- I think we could all agree that Judge Kavanaugh is an indisputably qualified nominee with strong backing in the legal community who is well within the judicial mainstream. Go ask anyone who practices regularly before the Supreme Court who doesn't have a partisan agenda and they'll tell you Judge Kavanaugh is exactly the kind of person we should have on the court or we should want on the court.

Indeed, no less than Bob Bennett -- Bill Clinton's personal lawyer during Clinton's presidency -- wrote to the committee urging support for Judge Kavanaugh's nomination. Here's what we -- here's what he intended to say, quote, "as a Washington attorney, I can attest to the high esteem in which the Bar holds Judge Kavanaugh. Lawyers love arguing before him, for good reason. Because they know he will approach every case with an open mind," unquote.

Then it continues, quote, "Brett is the most qualified person any Republican president could possibly have nominated. Were the Senate to fail to confirm Brett...

PROTESTER: (OFF-MIKE)

HATCH: ... it would not only mean passing up the opportunity to confirm a great jurist, but would also undermine civility in politics twice over. Just in playing politics with such an obviously qualified candidate, and then again in losing the opportunity to put such a strong advocate for decency and civility on our nation's highest court," unquote.

Again, this is President Clinton's personal lawyer during Clinton's presidency who litigated against Judge Kavanaugh. Those who know Judge Kavanaugh hold him in highest regard. This is true of both Republicans and Democrats. Unfortunately, we have all these interest groups screaming from the sidelines and putting pressure on my Democratic colleagues to make this hearing about politics, to make it about pretty much anything except Judge Kavanaugh and his qualifications.

We have folks who want to run for president, who want their moment in the spotlight, who want that coveted TV clip. Frankly, I wish we could drop all the -- drop all the nonsense. Judge Kavanaugh is unquestionable qualified, he's one of the most widely respected judges in the country, he's well within the judicial mainstream. Anyone who wants to argue otherwise wants to banish half the country from the mainstream.

So, Judge, I'm glad you're here today. I'm sorry you're going to have to go through some of -- some of this nonsense that's about to come your way, but I hope you do it well.

PROTESTER: Stop Kavanaugh.

PROTESTER: (OFF-MIKE)

HATCH: You're -- you're smart.

PROTESTER: Stop Kavanaugh...

(CROSSTALK)

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HATCH: You're smart, and you're -- and you're a fundamentally decent, good person. Anyone who actually knows you knows that to be true.

(UNKNOWN): Why do they let them (ph)...

(CROSSTALK)

HATCH: Now Mr. -- Mr. Chairman, I don't know that the committee should have to put up with this type of insolence that's going on in this -- in this room today. And frankly, these people are so out of line they shouldn't even be allowed in the doggone room.

But, Judge Kavanaugh, I'm proud of you. I know how good you are. I know you deserve this position. I'm proud of the president for nominating you, and frankly, I wish you the best because we're going to confirm you.

GRASSLEY: Out of courtesy to Ranking Member Feinstein, she wants to introduce people who are in the audience, and so she can take what time she wants right now. FEINSTEIN: Thank you. I'll be very fast.

I'd like to recognize Marc Morial, the president of the National Urban League; Melanie Campbell, the president and CEO of the National Coalition on Black Civic Participation; Reverend Al Sharpton, the president of National Action Network; Vanita Gupta, president and CEO, Leadership Conference of Civil and Human Rights; Derrick Johnson, president and CEO, NAACP; Sherrilyn Ifill, president, NAACP, Legal Defense Fund; Kristen Clarke, president and executive director, Lawyers Committee for Civil Rights; and Fatima Goss Graves, president and CEO, National Women's Law Center.

I would also like to recognize Fred Guttenberg, the father of Jamie, one of 17 killed in the Parkland shooting; Kelly Gregory, former airman first class, single mother, business owner, living with stage IV metastatic breast cancer; Sarah McBride, an advocate for LGBT rights and protections for patients; Tia Nelis, who works on behalf of people with disabilities; Angel Young (ph), an enrolled member of the Standing Rock Lakota and a veteran; Kim Jorgensen Gane, who advocates for a woman's right to choose; Bobby Jenkins, a longtime resident of Randolph County, Georgia and a voting rights advocate; Carrie Chin (ph), who's been fighting for marriage benefits for same-sex couples; and Carlotta LaNier, a member of Little Rock Nine.

Thank you for this courtesy. I really appreciate it.

GRASSLEY: Yeah.

Senator -- Senator Leahy?

LEAHY: Hello. Thank you, Mr. Chairman, and I was perfectly happy to yield to Senator Feinstein for that.

Mr. -- Mr. Chairman, in the last few minutes, we've heard a lot of rhetoric. I think it might serve the committee well to have some reality.

I've served in the Senate for 44 years; during that span, been able to vote on 19 nominations to the Supreme Court. I mention this because I have a sense of history, and I've never seen in that 44 years so much at stake with a single seat, but I've also never seen such a dangerous rush to fill it.

President Trump promised he -- he would only nominate judges to the Supreme Court who would overturn Roe v. Wade; judges who would dismantle the Affordable Care Act; judges who would reshape our judiciary. Now, if that's not judicial activism, I don't know what is.

And Judge Kavanaugh, with your nomination, the president has made it very clear that he's following through on his promises, and many of us feel he is. It seems that you have made -- you may have intrigued him for another reason -- your expansive view of executive power and executive immunity. You've taken the unorthodox position that presidents should not be burdened with a criminal or civil investigation while in office. This is for a -- now we

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have a president who has declared in the last 24 hours that the Department of Justice shouldn't prosecute Republicans.

You know, it's -- it's Alice in Wonderland, and I find it difficult to imagine that your views on this subject escape the attention of President Trump, who seems increasingly fixated on his own ballooning legal jeopardy. When questioning you about these concerns, we'll certainly look to your record on the bench. All of us, Republicans, Democrats, agree that we should. Indeed, your 12 years on the D.C. Circuit Court of Appeals will loom large during these hearings.

But the unknown looms even larger. Before sitting on the bench, you were a political operative involved in the most political and partisan controversies of our time. During this time, you shared your personal view on contentious issues without regard to restrictions imposed by precedent or stare decisis, and it's precisely those views that are being hidden from us today.

The Judiciary Committee's Supreme Court hearings are meant to be an unsparing examination of a nominee to a lifetime appointment to our highest court. They're intended to give the American people -- all, all, all the American people -- a genuine opportunity to scrutinize a nominee's judicial philosophy, beliefs, and character because, if confirmed with the stroke of a pen, a nominee may impact their lives for a generation or more.

And how far we've fallen. Judge Kavanaugh, there are so many things wrong with this committee's vetting of your record. It's hard to know where to begin.

I've been on this committee under both Republican and Democratic leadership. I never thought the committee would sink to this. In fact, you shouldn't be sitting in front of us today. You should be sitting in front of us only after we've completed a review of your record. Your vetting is less than 10 percent complete. In critical ways, our committee is abandoning its tradition of exhaustively vetting Supreme Court nominees.

First, inexplicably, our Republican friends refused to request records from your three years as White House staff secretary, even though you described those as the most formative for you as a judge when you provided advice on any issue that may cross the president's desk.

Now, we know those issues include abortion, same-sex marriage, and torture -- and torture. But six weeks ago, Senate Republicans huddled in a private meeting with the White House counsel, who is here today, and hours later, the American people were told those records would be off-limits.

Then second, in a stark departure from committee precedent, certainly the committee precedent I've seen for 44 years, Chairman Grassley sent a partisan records request to the National Archives. Not only did it omit all one million records from your three years as staff secretary, it did not even request a privilege log. That means this committee's in the dark as to what specific documents are being withheld, and why. We don't even know what is being hidden. Such a move is simply incompatible with transparency.

Then third, the Archives told us it could not even produce this partial records request until the end of October. That's the nonpartisan Archives. Surely, I would...

PROTESTER: ... sorry, Senator Leahy, but I had to leave the state of Missouri to seek my abortion. You're going to have to -- more women are going to be sent to back alley abortions... (CROSSTALK)

PROTESTER: (OFF-MIKE)

LEAHY: ... so, Chairman, I do not continue. I do not intend, at any point, to continue what I have to say with such interruptions. I don't care whose side they're on.

Now, the archives have said they could not produce this partial records request until the end of October.

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Surely I would think that the United States Senate could wait until then, even if it means a Supreme Court with eight justices for a short time.

After all, Senate Republicans established a tradition of having just eight judges -- eight -- eight justices. They did that with their treatment of Chief Judge Merrick Garland.

They showed they were willing to have patience with filling Supreme Court vacancies when, the first time ever, they refuse to have a vote on a Supreme Court nominee, either up or down, during a presidential election year.

And I've been here when they have had, in the past, such votes.

But Republicans have instead (ph) cast aside the archives. They swapped the nonpartisan review process -- used for every nominee since Watergate -- for a partisan one.

And I think you only have to look at Watergate to see why we have that nonpartisan process. It's followed by every nomination since Watergate until today.

And my question still recurs. What is being hidden? And why? Every White House record that we've received was hand-picked by your deputy in the Bush White House, a hyper-conflicted lawyer who also represents a half-dozen Trump administration officials who are under investigation by prosecutors in the Russian investigation.

And this partisan lawyer has decided which of your records the Senate -- but more importantly, the American people, the American people -- get to see.

And fourth, countless documents that have been provided to the committee contain apparent alterations and omissions with zero explanation.

No court in this country, certainly no court that I ever argued cases before, would accept this as a legitimate document production. And the United States Senate shouldn't either.

And fifth, more than 40 percent of the documents we have received, almost 190,000 pages are considered committee-confidential by Chairman Grassley.

For the vast majority of them, there's not even a conceivable argument to restrict them. Compare this to the mere 860 documents who are designated committee-confidential for Justice Kagan. In that, the request was made by the nonpartisan archives, not by this committee. And we still had 99 percent of her records.

And, sixth, on Friday we learned that President Trump is claiming executive privilege over an additional 102,000 pages of your records.

Such a blanket assertion of executive privilege is simply unheard of in the history of this country. And the reason it's unheard of is because it is so outrageous.

The last time a president attempted to hide a Supreme Court nominee's records by invoking executive privilege was when President Reagan did this for Justice William Rehnquist.

But then Republicans and Democrats came together, and we demanded the documents be released. And President Reagan said OK, and they were released. Boy how times have changed.

And seventh, to date, we've received less than half of Chairman Grassley's partial records request. Meaning we're moving forward even though we've received a fraction of the records even Republicans claimed they needed to vet your nomination just a few weeks ago.

And then we received an additional 42,000 pages for your record a few hours ago. The notion that anyone here has properly viewed them or even seen them at all is laughable. It's laughable. It doesn't pass the giggle test. That alone would be reason to postpone during normal times.

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But nothing about this is normal. All told, only 4 percent -- 4 percent -- of your White House record has been shared with the public. Only 7 percent has been made available to this committee. The rest remains hidden from scrutiny.

Compare this to the 99 percent of Justice Kagan's White House record that was available to all Americans as a result of the bipartisan process I ran with then-Ranking Member Jeff Sessions. When Senator Sessions and I requested it, we got 99 percent.

What is being hidden and why? And if I've not been clear, I will be so now. Today, the Senate is not simply phoning in our vetting obligation, we're discarding it. It's not only shameful, it's a sham.

I felt, on the day when I took my oath of office the first time, 44 years ago, I was told by both the Republican and Democratic leadership of the Senate, people I highly respected, the Senate should be and can be the conscience of the nation. I've represented Vermont here for 44 years. I've served with pride here, believing that the Senate can be and should be the conscience of the nation.

Today, with this hearing, it is not being the conscience of the nation. And from the bits and pieces of your record we've received, it appears you've provided misleading testimony about your involvement in controversial issues of the Bush White House during your previous confirmation hearings, misleading testimony.

I asked you about these concerns last month, and I want to alert you that I will return to those concerns when you are under oath and I'm asking you questions. What I fear is the American people will not know the full truth until your full record is public, and unfortunately, Republicans have done their best to ensure that won't happen.

So what you (ph) get in these hearings, we've (ph) gaping holes spanning multiple years of your career, deeply influenced by your own words, your thinking as a judge.

And any claim that this has been a thorough, transparent process is downright Orwellian. This is the most incomplete, most partisan, least transparent vetting for any Supreme Court nominee I have ever seen, and I have seen more of those than any person serving in the Senate today. LEAHY: So, Judge Kavanaugh, this hearing is premature. I hope you will use it, though, to answer our questions directly, clearly and honestly because the American people have real concerns about how your confirmation would affect their lives.

And I'll conclude with this, Supreme Court is the guarantor of our liberties and our republic. Few, I would argue, are worthy of taking a seat. Only those with unimpeachable integrity, only those who believe that truth is more important than party, only those who are committed to upholding the rights of all Americans -- not just those in power.

As you know, inscribed in Vermont marble above the court's entrance are the words, "equal -- equal justice under law." For the millions of Americans fearful that they're on the verge of losing hard-fought rights, that aspiration has never been more important than it is today. Frankly, as a member of the Supreme Court Bar and as a United States senator, I feel it's never been more at risk.

Thank you.

GRASSLEY: Before I call on Senator Cornyn -- how ridiculous it is to say that we don't have the records that it takes to determine this person qualified to be on the Supreme Court, when all the documents we have add up to more than we have had for the last five Supreme Court nominees. How'd we make those decisions for those other five?

BOOKER: Mr. Chairman?

GRASSLEY: Senator Cornyn?

BOOKER: Mr. Chairman, if I could just respond to that point, because you're not giving the whole picture, sir.

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GRASSLEY: I'll...

(CROSSTALK)

BOOKER: Ninety percent of the documents, we haven't seen; it's not the number of documents.

GRASSLEY: ... and I'll be glad to **respond** to that, but...

BOOKER: We -- you wouldn't -- we wouldn't hire an intern, sir, with only 90 percent of their resume...

GRASSLEY: Senator...

BOOKER: ... and we're -- we're putting somebody on the Supreme Court.

GRASSLEY: ... Senator Cornyn?

CORNYN: Thank you, **Mr.** Chairman.

Judge Kavanaugh, welcome to you, and your family and friends. I'm amazed at the poker faces I've seen on the front row during all of this pandemonium -- unlike anything I've seen before in a confirmation hearing.

In my view, it's not because your opponents don't know enough about you; it's because they do know all they need to know, apparently, to oppose your nomination. And even before you've had a chance to answer our questions, including their questions, many of them have made up their minds. But the American people have not been introduced to you before.

This is an opportunity for all of us to engage in a question and answer format that will, hopefully, illuminate why it is so important to have judges who actually are tethered to the text of the laws passed by Congress, signed by the president as well as the Constitution by the United States. The Senate Judiciary Committee undertakes few more important tasks than the one before us today.

Last year, the committee considered and advanced the nomination of Justice Neil Gorsuch, who was just one of many outstanding judicial nominees by President Trump. This Congress has proudly confirmed not just Judge Gorsuch, but 26 judges to the appellate courts across the nation; this includes three outstanding Texans to the Fifth Circuit Court of Appeals.

Historically, the confirmation of judges to our highest courts was somewhat routine -- routine. Justice Gorsuch was unanimously confirmed by a simple voice vote to the Court of Appeals. Not one senator voted against Justice Kennedy, who both you and Justice Gorsuch clerked for, and who you will succeed on the court. Not one senator voted against Justice Scalia's confirmation, who you have called a role model and a hero.

But that was before judges were viewed as policymakers, rather than fair and neutral interpreters of the Constitution and the laws drafted by Congress. Today, as I suggested, is a wonderful opportunity to re-examine the proper role for judges under our Constitution and the difference between legislators and judges.

As Justice Gorsuch wrote before he joined the Supreme Court, upholding and enforcing this distinction between legislators and judges was the great project of the late Justice Scalia's career. Justice Scalia would always remind us that legislators may appeal to their own moral convictions and to claims about social utility. But judges, instead, should strive to apply the law as it is, looking to the text, structure and history -- not to decide cases based on their own moral convictions or the policy consequences.

PROTESTER: (OFF-MIKE)

CORNYN: So this hearing is a outstanding way to remind the American people the proper role of judges under our Constitution. Our Constitution provides for a federal government of limited and delegated powers, with a Bill of Rights to further protect our individual liberties.

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To that end, the framers created three co-equal branches, as you know -- the legislature, to enact laws; the executive to enforce them; and, and the judicial branch to settle disputes about the meaning of those laws and the Constitution.

PROTESTER: (OFF-MIKE)

CORNYN: Of course, legislature could change the laws, but only an amendment can change the Constitution. For this reason, Alexander Hamilton wrote in the Federalist Papers...

PROTESTER: (OFF-MIKE) hearing. This is not a transparent hearing; release the documents.

CORNYN: Mr. Chairman, can I pause there until the room is cleared out?

GRASSLEY: Yeah.

CORNYN: Thank you.

For this reason, Alexander Hamilton wrote in the Federalist Papers that the judiciary will always be the least dangerous branch because, as he famously wrote, "neither force nor will, but merely judgment."

Today, the Judiciary Committee has gathered to consider whether Judge Kavanaugh will honor that limited role for judges under our Constitution, and whether he will properly exercise the modest and humble power of judgment entrusted to him under our Constitution.

I'm confident the Senate will find that Judge Kavanaugh will faithfully and fairly interpret the Constitution and the laws of this great nation. And I look forward to him succeeding Justice Kennedy. One reason for that is I've been acquainted with Judge Kavanaugh for about 18 years and I can personally attest to his skills as a lawyer.

PROTESTER: (OFF-MIKE) no on Justice Kavanaugh.

CORNYN: When I was attorney general of Texas, as the judge will recall, he helped me get ready for a Supreme Court argument.

PROTESTER: He is not the voice of the people. Vote no; vote for my children's health care (ph).

PROTESTER: (OFF-MIKE) When I joined the military, I was forced to go through (OFF-MIKE) -- I got a background check. They didn't use (ph) two-thirds of it, they did the whole thing.

CORNYN: May I proceed, Mr. Chairman?

GRASSLEY: Yes.

CORNYN: As I was saying -- that is (ph)...

PROTESTER: These hearings are a betrayal of the trust that we've placed in you. CORNYN: When I was attorney general of Texas, I had a chance to argue a couple of cases in front of the United States Supreme Court. One case Judge Kavanaugh helped me prepare for was one involving the question of school prayer at a high school football game at the Santa Fe Independent School District High School.

After that, I was pleased to introduce Judge Kavanaugh to the Judiciary Committee when President Bush first nominated him to be a judge on the D.C. Circuit. What I said back then still stands the test of time today. Judge Kavanaugh has an unparalleled academic and professional record of service. Many will cite his education, his clerkships, his time arguing cases before the court, his experience working for the executive branch.

But I think one of the most important factors to me is he's already exercised excellent judgment in marrying a Texan, Ashley from Abilene.

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PROTESTER: (OFF-MIKE)

CORNYN: So I know he's a good judge. In fact, Judge Kavanaugh's one of the most respected and thoughtful judges in the country.

I am disappointed that despite his exemplary qualifications and outstanding record...

PROTESTER: (OFF-MIKE)

CORNYN: ... so many of our colleagues across the aisle have announced their opposition even before he was nominated.

PROTESTER: (OFF-MIKE)

CORNYN: The level of disingenuousness and hyperbole, even by today's standards, is extraordinary. Members from the other side of the aisle, assuming -- including some have -- serve on this committee have claimed that confirming Judge Kavanaugh would somehow be complicit and evil, and the result in the destruction of the Constitution. Some have even claimed that you testified falsely. We've already heard that alluded to...

PROTESTER: (OFF-MIKE)

CORNYN: ... before the committee, when you were serving our country in the Bush White House. I hope you'll have a chance to explain the apparent misunderstanding on the part of some senators. And -- and I sincerely hope this week we can all take a deep breath. We're not doing very well so far...

(LAUGHTER)

...and get a grip, and treat this process with the respect and gravity it demands. As others have alluded, the American Bar Association, which some have called "the gold standard for judicial evaluations" have unanimously rated you as well-qualified for service on the Supreme Court.

And as we've heard, a number of lawyers and judges across the spectrum have talked about your qualifications and sung your praises. And I'm confident at the end of this hearing, your stellar credentials and your body of work as a judge will demonstrate that you properly understand the role of a judge under the Constitution, and I'm confident you will demonstrate that you will faithfully and fairly interpret the text of the law and the Constitution, and dutifully apply them to the disputes that come before you.

Finally, judge, I expect we'll have a conversation or two about this book which you contributed to, and the law of judicial precedent, because I know that there's a number of questions by members of the Senate about how you will regard previously-decided cases in the Supreme Court, and I trust you'll give us a scholarly and detailed explanation of that, and demonstrate that many of the concerns that have been expressed about a new justice coming on the court somehow wiping away previous decisions single-handedly, not even with the help of other members of the court, is just plain ridiculous.

And we look forward to asking those questions, and getting your answer. Thank you very much.

GRASSLEY: Senator Durbin?

DURBIN: Thank you, **Mr.** Chairman.

Judge Kavanaugh, it's good to see you again, and I thank the members of your family who are weathering this hearing. Thank you very much for being here today.

This is a different hearing for the Supreme Court than I've ever been through. It's different in what's happened in this room just this morning. What we've heard is the noise of democracy. This is what happens in a free country when people can stand up and speak, and not be jailed, imprisoned, tortured or killed because of it. It is not mob

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rule. There have been times when it is uncomfortable, I'm sure it was for your children. I hope you can explain this to them at some point. But it does represent what we are about in this democracy.

Why is this happening for the first time in the history of this committee? I think we need to be honest about why it's happening. I think it's the same reason why, when I go home to Illinois after being in this public service job for over 30 years, I hear a question that I've never, ever heard before, repeatedly, as people pull me off the side and say, "Senator, are we going to be all right? Is America going to be all right?" They're genuinely concerned about the future of this country.

You come to this moment of history in a rare situation. You are aspiring to be the most decisive vote on the Supreme Court on critical issues. Justice Kennedy did that for 12 years, and you are called to that responsibility, and we realize the gravity of that opportunity and that responsibility.

Secondly, of course, your record and the statements of others suggest there's real, genuine concern about changing life and death values in this country, because you see things differently. We've heard that over and over again, and I -- I -- I think you must understand the depth of feeling about that possibility.

And third, try as they might, I'm afraid the majority just can't get beyond the fact that there are parts of your public life that they want to conceal. They don't want America to see them. I think that's a serious mistake, and I'm going to make a suggestion at the end of my remarks.

But over and above all of those things is this: you are the nominee of President Donald John Trump. This is a president whose shown us consistently that he's contemptuous of the rule of law. He has said and done things as president which we've never seen before in our history. He has dismissed the head of the Federal Bureau of Investigation when he wouldn't bend to his will. He harasses and threatens his own attorney general on almost a daily basis in the exercise of his office. And I didn't vote for Jeff Sessions, but I have to tell you, there should be some respect at least for the office that he serves in.

And it's that president who's decided you are his man. You're the person he wants on the Supreme Court. You are his personal choice. So are people nervous about this? Are they concerned about it? Of course they are. I'm sure there'll be a shower of tweets sometime later in the day, harassing people in the cabinet, people in the White House, maybe even dismissing them, and maybe he'll go after me again. Be my guest.

But the point I'm getting to is, if you wonder why this reaction's taking place, because what's happening in this country. There are many of us who are concerned about the future of this country and the future of democracy, and you are asking for a lifetime appointment to the highest court in the land, where you will make decisions, the deciding vote on things that'll decide the course of history and where we are headed.

The Senate has a constitutional responsibility to evaluate your nomination. We do know that before you became a judge, you were faithfully advancing the Republican Party agenda. I jokingly said, in one of your previous appearances, that you're like the Forrest Gump of Republican politics; you always show up in the picture. Whether it's the Ken Starr investigation, Bush v. Gore or the Bush White House, you've been there. DURBIN: We also know that before naming you, President Trump made it clear that he would appoint justices -- only appoint justices to the Supreme Court who would overturn Roe versus Wade and the Affordable Care Act. Those were his litmus tests.

Now, he didn't ask you the question. What he did was to delegate this responsibility to two special interest groups: the Federal Society and the Heritage Foundation, and the other groups that are spending millions of dollars in support of your candidacy. They're confident that you're going to favor the interests of corporations over workers and give the president wide berth when it comes to executive authority.

And your own law clerks -- men and women you chose, men and women who wrote the words that had your signature at the bottom of the page-have told us what they think of you. One wrote in an article entitled, quote, "Brett Kavanaugh said Obamacare was unprecedented and unlawful." That's from one of your clerks.

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Another wrote when it comes to, quote, "enforcing restrictions on abortion, no Court of Appeals Judge in the nation has a stronger more consistent record than Judge Brett Kavanaugh." Big corporate interests solidly behind your nomination. Chamber of Commerce, full support. And President Trump's, whose lawyers say they will fight any effort to subpoena or indict him all the way to the Supreme Court -- that president seems personally eager to have you confirmed as quickly as possible.

Why are your supporters so confident you will rule on these issues as they wish? Why do they think you're such a sure bet to take their side, when in the words of one of your former clerks, "this is no time for a gamble"?

Unfortunately I don't think you're going to tell us much this week. It's interesting to me that people in your position write all these Law Review articles, make all these speeches and come to this room and clam up -- don't want to talk about any issues -- but that's what I expect.

Instead we'll be asked to trust that if you're confirmed you'll have an open mind, that you'll follow the law rather than move the law in your -- direction of your views. I'd like to trust you, but I agree with President Ronald Reagan - - trust but verify. I wanted to trust you the last time you testified before this committee in 2006 after -- but after you were confirmed the D.C. Circuit reports surfaced that contradicted your sworn testimony before this committee.

You said to me unambiguously under oath the following, "I was not involved and am not involved in the questions about the rules governing detention of combatants." But later just a week or so ago you acknowledged to my office that you were involved. For 12 years you could've apologized and corrected this record, but you never did. Instead you and your supporters have argued we should ignore that simple declarative sentence which you spoke and somehow conclude your words mean something far different.

You are a committed textualist, Judge Kavanaugh? If you're going to hold others accountable for their words, you should be held accountable for your own words. So after my personal experience I start these hearings with a question about your credibility as a witness. I know from my history with you that things you said need to be carefully verified.

That brings us to a major problem. I won't retread the ground about all the documents that are being withheld but I'll show you a little calendar here that's interesting. There is a 35-month black hole in your White House career where we've been denied access to any and all documents -- 35 months in the White House. And I asked you in my office, during that period of time President Bush was considering same-sex marriage -- an amendment to ban it; abortion, executive power, detainings, torture, Supreme Court nominees, warrantless wiretapping. One of these issues bears special mention as we mourn the passing of John McCain.

In 2004, 2005 I joined John McCain when he led the effort to pass an amendment affirming that torture and cruel and inhuman and degrading treatment would be illegal in America. As a survivor of unspeakable torture, John McCain spoke with powerful moral authority about American values during the time of war. You were in the Bush White House when that McCain Amendment passed. The Bush administration did everything in its power to stop John McCain's torture amendment then after we passed it 90-to-9, a veto-proof margin, President Bush issued a signing statement asserting his right to ignore the law that John McCain had just passed in Congress.

When we met in my office you acknowledged that you worked on that signing statement, yet we've been denied any documents disclosing your role or your advice to President Bush. I asked you if you wrote, edited, or approved documents about these and other issues while you were staff secretary -- time and again you said, you can't rule it out.

Judge Kavanaugh, America needs to see those documents. We cannot carefully review, advise, and decide whether to consent to your nomination without clarity on the record. The period of time when you worked in the Republican White House led to a change in position on an issue which we have to address directly; your views on executive power and accountability have changed dramatically.

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When you worked for special counsel Ken Starr in the late 1990s, you called him, quote, "an American hero" for investigating President Bill Clinton and you personally urged Starr to be aggressive, confrontational, and even graphic in his questions -- we've seen your memo on that one. But a few years later after working in the Republican White House, you totally reversed your position and argued that presidents should be above the law and granted a free pass from criminal investigation while in office.

What did you see in that Bush White House that dramatically changed your view? What are your views about presidential accountability today?

Judge Kavanaugh, at this moment in our nation's history, with authoritarian forces threatening our democracy, with the campaign and administration of this president under federal criminal investigation we need a direct credible answer from you -- is this president or any president above the law? Equally important, can this president ignore the Constitution in the exercise of his authority?

You dissented in the Seven-Sky case. When the D.C. Circuit upheld the Affordable Care Act's constitutionality you criticized the law, the law which this president has said many times he wants to ignore and abolish. And you said, quote, "the president may decline to enforce a statute that regulates private individuals when the president deems -- when the president deems -- the statute unconstitutional even if a court has held or would hold the statute constitutional."

This statement by you flies in the face of Marbury v. Madison -- our north star on the separation of powers. It gives license to this president, Donald John Trump -- or any president who chooses to ignore the Constitution -- to assert authority far beyond that envisioned by our founding fathers.

There are many people who are watching carefully. I might make a suggestion to you today and it won't be popular on either side of the aisle. If you believe that your public record is one that you can stand behind and defend I hope that at the end of this, you will ask this committee to suspend until we are given all the documents. Until we have the time to review them. And then we resume this hearing.

What I'm saying to you is basically this -- if you will trust the American people, they will trust you, but if your effort today continues to conceal and hide documents, it raises a suspicion.

I'll close, Mr. Chairman; I know you're anxious. When I was a practicing lawyer a long time ago in trial and the other side either destroyed or concealed evidence, I knew that I was going to be able to have a convincing argument to close that case. What were -- were they hiding? Why won't they let you see the speed tape on that train or the documents that they just can't find?

You know that presumption now is against you because of all the documents that held back. For the sake of this nation, for the sanctity of the Constitution that we both honor, step up -- ask this meeting, this gathering -- to suspend until all the documents of your public career are there for the American people to see.

Thank you, Mr. Chairman. GRASSLEY: Senator Lee?

LEE: Thank you, Mr. Chairman.

Thank you, Judge Kavanaugh.

And thank you also, Ashley and Margaret and Liza, for being here.

I'm going to start by saying that the fact that there is so much angst over a single nominee, a single judicial nominee, tells you everything you need to know about why it is that we need judges now more than ever who are willing to read the law and interpret it based on what the law says, rather than on the basis of something else.

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It also tells you more than anything else you could need to know about the need to restore a discussion of civics in this country, to restore a discussion about federalism and separation of powers, about where power is concentrated and where it shouldn't be, what the role of each branch of the federal government is and is not.

Many of the comments -- comments, many outbursts that we've had today suggest that we need to return to some of those fundamental principles. And I don't care whether you're a liberal Democrat or a conservative Republican, or something in between. These principles apply. They are principles to which we have sworn an oath, and they're principles that I think we would do well to restore and focus on once again.

If ever were to return to an era of civility, we will return to that era on the basis of those foundational structural principles within our Constitution.

Over the next few days, Judge Kavanaugh, a number of members of this committee or can ask you questions; questions about cases that you've handled as a lawyer, cases that you've decided as a judge about your record, about your qualifications.

And on that point about your record and your qualifications, the suggestion that you misled this committee at any point in your previous hearings is absurd, and the absurdity of that suggestion will be borne out in the coming days, I am certain of it.

Some of the questions that will be asked of you will in fact be fair, and others will be unfair, and I -- I think it's important for us to acknowledge that at the outset.

When you look back in history, answering these kinds of questions, this is sort of how the practice of holding these hearings began, so that senators could ask nominees how they might vote, how they might rule in particular cases, but this didn't always happen.

In fact, it -- it wasn't until 1916, that this even started. You see, there have been 113 justices confirmed the Supreme Court so far. The first 66 were confirmed without even holding a hearing. The idea of a hearing is relatively new; it's about 102 years old. We went from between 125 and 130 years under our constitutional Republic without ever having a hearing, but regardless, we started having hearings just over a century ago.

The very first Supreme Court confirmation hearing occurred in 1916, with Justice Louis Brandeis. After Louis Brandeis was nominated to the court, some called for a hearing. Now if we're honest with ourselves, if we're honest about history, I think a lot of this maybe had to do with some anti-sentiment (ph) fervor and the fact that Justice Brandeis was Jewish. LEE: But senators also wanted to determine whether Brandeis would use his seat on the Supreme Court to advocate for some of the things that he had advocated for as a private citizen, as a public interest attorney. They wanted to know how he might vote in particular cases. They didn't ask Justice Brandeis to testify significantly, but they did in fact ask some outside witnesses what they thought about his nomination.

The next important moment, one could argue, occurred in 1939, when Felix Frankfurter became the first nominee to himself, testify before the committee. At the time, Frankfurter was controversial in part because he was born overseas. But senators also worried that Frankfurter was a radical, based on his defense of anarchists in court.

So, again, senators wanted assurances about how Frankfurter might rule in particular cases, in particular -- or what results he might reach in a particular type of case. Frankfurter, however, significantly, declined to engage with senators on those topics and insisted that his public record spoke for itself.

Justice Stewart's nomination in 1959 was another turning point. Senators seeking to resist Brown versus Board of Education wanted to grill Stewart on his views on integration. Others still wanted to grill Stewart about his views on national security.

So senators turned up the heat a little bit more in that hearing. Like Frankfurter before him, Justice Stewart did not provide substantive answers to their questions. When they wanted to know how he might rule in particular cases, he appropriately declined, just as his predecessors had.

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Twenty-eight years later, 28 years after Justice Stewart came through this committee, the Senate considered Robert Bork's nomination to the Supreme Court. This was another significant turning point. And in my view, it remains something of a rock-bottom moment for the Senate and for the Senate Judiciary Committee.

Without getting into any of the -- the gory details here, I think it suffices to say that Senator Ted Kennedy and Judge Bork did not agree on certain matters of constitutional law. And Kennedy's response was to savage -- unfairly, in my opinion -- the results that Judge Bork would reach if confirmed to the Supreme Court.

History shows that over the better part of a century, the Judiciary Committee has gradually created something of a new norm. A norm in which members demand that nominees speak about specific cases in return for favorable treatment from the committee as the jurists are going through this process.

Now nominees for the most part have gracefully resisted trading confirmation in exchange for promises about how they might vote in particular cases brought before them. To give two famous examples, Justice Scalia refused to say whether *Marbury v. Madison* was settled law, on the ground that it could come before him.

And sure enough, last term, in *Ortiz v. United States*, the Supreme Court considered a case implicating the scope of *Marbury*. Likewise, Justice Ruth Bader Ginsburg created the so-called Ginsburg Standard. No previews, no forecasts, no hints. Every current member of the Supreme Court had adhered to a similar principle, what we might call the Ginsburg Standard.

Even though nominees have not caved to the pressure, I still believe that there are some aspects of the Senate's approach here that might do a disservice to the country and might be frowned upon by future historians.

If senators repeatedly asked nominees about outcomes, then the public will more entitled -- or at least more inclined -- to think that judges are supposed to be outcome-minded, that that's supposed to be -- their whole approach to be -- to -- to judging, that that's supposed to be what judging is in fact about.

But this, of course, undermines the very legitimacy of the courts themselves, the very legitimacy of the tribunal that you've been nominated by the president to serve on. Over time, no free people would accept a judiciary that simply oppose -- imposes its own policy preferences on the country, absent fidelity to legal principle.

There's a better way for the Senate to approach its work. This process, in my opinion, should be about your qualifications, about your character and, perhaps most importantly, about your approach to judging, your own view about the role of the federal judiciary. It should not be about results in a select number of cases.

Now you're obviously exceptionally well-qualified. Even your staunchest critics would not claim otherwise. Your academic pedigree, your experience as a practicing lawyer, your experience in government and your 12 years' experience sitting on what many refer to as the second-highest court in the land, the U.S. Court of Appeals for the D.C. Circuit.

You are independent. You've written that, quote, "some of the greatest moments in American judicial history have been when judges stood up to the other branches, were not cowed, and enforced the law," close quote.

You've said that judges cannot be buffaloeed, influenced or pressured into worrying too much about transient popularity when we are trying to decide a case. And that one of the most important duties of a judge is to stand up for the unpopular party who has the correct position.

And you've lived up to your words during your time on the bench. Everyone knows that you served in the Bush administration. And yet when you became a judge, in only two years you ruled against the Bush administration a total of eight times. For you, it simply doesn't matter who the parties are. Simply doesn't matter that you may have worked for an administration before you became a judge.

The only thing that matters is your commitment to correctly applying the law to the facts of any particular case.

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As far as your approach to judging, you have appropriate respect for precedent. You've coauthored an 800-page book on precedent, that among -- among other things, explains that a change in a court's membership alone should not throw former decisions open to reconsideration or justify their reversal.

You've explained that for precedent to be overruled, it must not be just wrong but a case with serious practical consequences.

You voted to overturn circuit precedent only four times during your time on the D.C. Circuit, and each of those cases involved a unanimous decision reached by your colleagues. And you follow binding precedent even though - if you believe that binding precedent was itself wrongly decided.

You decide cases based on legal merits, not based on the identity of the parties and certainly not based on any political beliefs that you may harbor.

We've already heard that your nomination will somehow be bad for women, for the environment, for labor unions, for civil rights, for a whole host of other things that Americans hold near and dear. I have a laundry list of cases in which you've ruled for people in each of those groups. But there's a more fundamental point here that I think needs to be made. LEE: The judiciary's decisions are legitimate only to the extent that they're based on sound legal principle and reasoning, and ruling for a preferred party is not itself a sound legal principle. It's quite to the contrary. Jerry-rigging decisions and backfilling legal reasoning to reach a particular result, a particularly politically acceptable result in a particular case, no matter how desirable that result might be in any instance, is not a legitimate mode of judicial decision-making, and no free people purporting to have an independent judiciary should ever be willing to settle for that.

So my plea to my colleagues today is that we asked Judge Kavanaugh hard questions; I believe we're required to do so.

The Senate is not, and never should be, a rubber stamp, particularly when it comes to issuing lifetime appointments, even lifetime appointments on the highest court in the land.

But if you disagree with an opinion he's written, make a legal argument as to that issue. Explain why you think it's wrong. Don't complain about the results as if the result itself is proof that he's wrong, when you separate out the result from the legal analysis from the facts and how they interact with the law in a particular case.

And don't ask him to make promises about outcomes in particular cases. If it's unacceptable for the president to impose a litmus test, it is surely unacceptable for the United States Senate to do so.

Judge Kavanaugh, I look forward to your testimony, and I am grateful to you and your willingness to serve our country and to be considered for this important role.

GRASSLEY: Senator Whitehouse.

WHITEHOUSE: Thank you, **Mr.** Chairman.

When is pattern evidence of bias? In court, pattern is evidence of bias all the time. Evidence on which juries and trial judges rely to show discriminatory intent, to show a common scheme, to show bias. When does a pattern proves bias? I wish this were an idle question. It's relevant to the pattern of the Roberts court when its Republican majority goes off on partisan excursions through the civil law. That is when all five Republican appointees, the Roberts Five, we can call them, go raiding off together, and no Democratic appointee joins them.

Does this happen often? The Roberts Five has gone on almost 80 of these partisan excursions since Roberts became chief. That's a lot of times. And there's a feature to these 80 cases. They almost all implicate interests important to the big funders and influencers of the Republican Party.

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When the Republican justices go off on these five justice partisan excursions, there is a big Republican corporate or partisan interest involved 92 percent of the time. The tiny handful of these cases that don't implicate an interest of the big Republican influencers is so flukishly few that we can set them aside.

Let's look at the 73 cases that all implicate a major Republican Party interest. Again, 73 is a lot of cases at the Supreme Court. Is there a pattern to these 73 cases? Oh yes, there is. Every time a big Republican corporate or partisan interest is involved, the big Republican interest wins; every time.

Let me repeat -- in 73 partisan decisions where there is a big Republican interest at stake, the big Republican interest wins, every damned time. Thus, the mad scramble of big Republican interest groups to protect a Roberts Five that will reliably give them wins, really big wins, sometimes.

I note that when the Roberts Five saddles up these so-called conservatives are anything but judicially conservative. They readily overturn precedent, toss out statutes passed by wide bipartisan margins and decide on broad constitutional issues that they need not reach.

Modesty, originalism, stare decisis, all these supposedly conservative judicial principles all have the hoofprints of the Roberts Five all across their backs, wherever those principles got in the way of those wins for the big Republican interest. The litany of Roberts Five decisions explains why big Republican interests want Judge Kavanaugh on the court so badly, so badly that Republicans trampled so much Senate precedent to push him through.

So let's review the highlights reel. What do big Republican interests want? Well, first they want to win elections. What has the Roberts Five delivered? Help Republicans gerrymander elections, *Vieth v. Jubelirer*, 5-4, license to gerrymander. Help Republicans keep minority voters away from the polls, *Shelby County*, 5-4. In *Bartlett v. Strickland*, 5-4, and *Abbott v. Perez* 5-4, despite the trial judge finding the Texas legislature actually intended to target and suppress minority voters.

And the big one, help corporate front group money flood elections. Big money interests love unlimited power to buy elections, lobby and threaten and bully Congress. *McCutcheon*, 5-4, counting the concurrence, *Bullock* 5-4, and the infamous grotesque 5-4 *Citizens United* decision, which I believe stands beside *Lochner* on the court's role of shame. WHITEHOUSE: What else do big influencers want? To get out of courtrooms. Big influencers hate courtrooms because their lobbying and electioneering and threatening doesn't work, or at least it's not supposed to. In a courtroom, big influencers used to getting their way have to suffer the indignity of equal treatment. So the Roberts Five protects corporations from group class action lawsuits, *Walmart v. Dukes*, 5-4, and this past term, *Epic Systems*, 5-4.

The Roberts Five helps corporations steer customers and workers away from courtrooms, and into mandatory arbitration. *Concepcion*, *Italian Colors* and *Rent-A-Center* -- all Roberts Five. *Epic Systems* does double duty here because now workers can't even arbitrate their claims as a group.

Hindering access to the courthouse for plaintiffs generally -- *Iqbal*, 5-4; protecting corporations from being taken to court by employees harmed through pay discrimination, *Ledbetter* -- 5-4; age discrimination, *Gross* -- 5-4; harassment, *Vance* -- 5-4; and retaliation, *Nassar* -- 5-4; even insulating corporations from liability for international human rights violations, *Jesner* -- 5-4.

Corporations aren't in the Constitution; juries are. Indeed, courtroom juries are the one element of American government designed to protect people against encroachments by private wealth and power. So of course, the Roberts Five rules for wealthy, powerful corporations over jury rights -- every time -- with nary a mention of the Seventh Amendment.

What's another one? Oh, yeah, a classic -- helping big business bust unions, *Harris v. Quinn* -- 5-4; and *Janice v. AFSCME* this year -- 5-4, overturning a 40-year precedent.

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Lots of big Republican influencers are polluters who like to pollute for free, so the Roberts Five delivers partisan decisions that let corporate polluters pollute. To pick a few, Rapanos, weakening wetland protections -- 5-4; National Association of Homebuilders, weakening protections for endangered species -- 5-4; Michigan v. EPA, helping air polluters -- 5-4; and in the face of emerging climate havoc, there's the procedurally aberrant 5-4 partisan decision to stop the EPA Clean Power Plan.

Pattern.

Then come Roberts Five bonus decisions, advancing a far-right social agenda -- Gonzalez v. Carhart, upholding restrictive abortion laws; Hobby Lobby, granting corporations religious rights over the health care rights of their employees; NIFLA, letting states deny women truthful information about their reproductive choices -- all 5-4, all Republican. Add Heller and McDonald, which reanimated for the gun industry a theory a former chief justice once called a fraud -- both decisions, 5-4.

This year, Trump v. Hawaii -- 5-4, rubber-stumping -- rubber-stamping the Muslim travel ban. And in case Wall Street was feeling left out, helping insulate investment bankers from fraud claims, Janus Capital (ph) -- 5-4.

Pattern.

No wonder the American people feel the game is rigged. Here's how the game works -- big business and partisan groups fund the Federalist Society, which picked Gorsuch, and now, you. As the White House counsel admitted, they in-sourced the Federalist Society for this selection. Exactly how the nominees were picked, and who was in the room where it happened, and who had a vote or a veto, and what was said or promised -- that's all a deep, dark secret.

Then big business and partisan groups fund the Judicial Crisis Network, which runs dark-money political campaigns to influence senators in confirmation votes, as they've done for Gorsuch, and now, for you. Who pays millions of dollars for that, and what their expectations are is a deep, dark secret.

These groups also fund Republican election campaigns with dark money and keep the identity of big donors a deep, dark secret. And of course, 90 percent of your documents are to us, a deep, dark secret.

Then, once the nominee's on the court, the same business front groups with ties to the Koch brothers and other funders of Republican political machine file friend of the court, or amicus briefs to signal their wishes to the Roberts Five. Who is really behind those friends is another deep, dark secret.

It has gotten so weird that Republican justices now even send hints back to big business interests about how they'd like to help them next, and then, big business lawyers rush out to lose cases -- to lose cases, just to rush up before the friendly court, pronto. That's what happened in the Friedrichs-Janus episode.

The U.S. Chamber of Commerce is the biggest corporate lobby of them all -- for Big Coal, Big Oil, Big Tobacco, Big Pharma, Big Guns, you name it -- and this year, with Justice Gorsuch riding with the Roberts Five, the Chamber won nine out of 10 cases it weighed in on. The Roberts Five, since 2006, has given the Chamber more than three quarters of their total votes. This year in all civil cases they voted for the Chamber's position fully 90 percent of the time, and in these 5-4 cases I've highlighted -- 100 percent.

People are noticing. Veteran court watchers like Jeffrey Toobin, Linda Greenhouse and Norm Ornstein describe the court's service to Republican interests. Toobin wrote that on the Supreme Court, Roberts has served the interests of the contemporary Republican Party.

Greenhouse has said the Republican-appointed majority is committed to harnessing the Supreme Court to an ideological agenda.

Ornstein described the new reality of today's Supreme Court -- it is polarized along partisan lines in a way that parallels other political institutions, and the rest of society in a fashion we have never seen.

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And the American public knows it, too. The American public thinks the Supreme Court treats corporations more favorably than individuals, compared to vice versa, by a 7-1 margin. Forty-nine percent of Americans think corporations get special treatment there.

Now, let's look at where you fit in. A Republican political operative your whole career who's never tried a case. You made your political bones helping the salacious prosecution of President Clinton, and leaking prosecution information to the press.

As an operative in the second Bush White House, you cultivated relationships with political insiders like nomination guru Leonard Leo, the Federalist Society architect of your court nominations. On the D.C. Circuit, you gave more than 50 speeches to the Federalist Society. That looks like auditioning.

On the D.C. Circuit, you showed your readiness to join the Roberts Five with big political wins for Republican and corporate interests, unleashing specialist -- special interest money into elections, protecting corporations from liability, helping polluters pollute, striking down common-sense gun regulations, keeping injured plaintiffs out of court against corporations -- and perhaps most important for the current occupant of the Oval Office -- expounding a nearly-limitless vision of presidential immunity from the law.

Your alignment with right-wing groups who came before you as friends of the court -- 91 percent. When big business trade associations weighed in -- 76 percent. This, to me, is what corporate capture of the courts looks like. WHITEHOUSE: There are big expectations for you. The shadowy dark money front group -- the Judicial Crisis Network -- is spending tens of millions in dark money to push for your confirmation. They clearly have big expectations about you'll rule on dark money.

The NRA has poured millions into your confirmation promising their members that you'll break the tie. They, clearly, have big expectations on how you'll vote on guns. White House Counsel Don McGahn admitted, there is a coherent plan here where, actually, the judicial selection and the deregulatory effort are really, the flipside of the same coin.

Big polluters, clearly, have big expectations for you on their deregulatory effort. Finally, you come before us nominated by a president named in open court as directing criminal activity, and a subject of ongoing criminal investigation.

You displayed expansive views on executive immunity from the law. If you are in that seat, sir, because the White House has big expectations that you will protect the president from the due process of law, that should give every senator pause.

Tomorrow, we'll hear a lot of confirmation etiquette. It's mostly a sham. You know the game. In the Bush White House, you coached judicial nominees to just tell senators that they have a commitment to follow Supreme Court precedent. "That they will adhere to statutory text (ph), that they have no ideological agenda", end quote, fairy tales.

At his hearing, Justice Roberts infamously said he had just called balls as strikes, but this pattern, 73 to zero of the Roberts' five qualifies him to have NASCAR style corporate badges on his robes.

Alito said in his hearing what a strong, principle stare decisis was, an important limitation on the court. Then, he told the Federalist Society, stare decisis means to leave things decided when it suits our purposes.

Gorsuch delivered the key fifth vote in the precedent busting and union busting, Janus Decision. He too had pledged in his hearing to follow the law of judicial precedent. Assured us he was not a philosopher king, and promised to give equal concern to every person, poor or rich, mighty or meek. How'd that turn out? Great for the rich and mighty.

Gorsuch is the single most corporate friendly justice on a court already full of them. Ruling for big business interests in over 70 percent of cases and in every single case where his vote was determinative.

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(UNKNOWN): (Inaudible).

WHITEHOUSE: The president early on assured evangelicals his Supreme Court picks would attack Roe v. Wade. Despite confirmation etiquette, assurance is about precedent. Your own words make clear you don't really believe Roe v. Wade is settled law since the court, as you've said, can always overrule its precedent.

Mr. Chairman, we've seen this movie before, we know how it ends. The sad fact is that there is no consequence for telling the committee fairy tales about stare decisis and then riding off with the Roberts five, trampling across whatever precedent gets in the way of letting those big Republican interests keep winning five to four partisan decisions, 73 to zero, Mr. Kavanaugh, every damned time. Thank you, Mr. Chairman.

GRASSLEY: Yes. Senator Cruz.

WHITEHOUSE: Chairman, I have some documents to support this. May I ask unanimous consent that they be entered into the record?

GRASSLEY: They -- without objection, so (ph) entered.

WHITEHOUSE: Thank you.

CRUZ: Thank you, Mr. Chairman. Judge Kavanaugh, welcome. Welcome to your family, to your friends. Demonstrating your good judgment, your wife was born and raised in West Texas, and you and she have been friends of Heidi and mine for 20 years. Thank you for your decades of public service.

And I'm sorry that your daughters had to endure the political circus of this morning. That is, alas, the world that is Washington in 2018. I want to discuss what this hearing is about and what it's not about.

First, this hearing is not about the qualifications of the nominee. Judge Kavanaugh is, by any objective measure, unquestionably qualified for the Supreme Court. Everyone agrees he's one of the most respected federal judges in the country. He has impeccable academic credentials, even if you did go to Yale.

And you've served over a decade on the U.S. Court of Appeals for the D.C. circuit, often referred to as the second highest court in the land. So, our Democratic colleagues are not trying to make the argument that Judge Kavanaugh is not qualified. Indeed, I haven't heard anyone even attempt to make that argument.

Second, this hearing is not about his judicial record. Judge Kavanaugh has over 300 published opinions which, all together, amount to over 10,000 pages issued in his role as a federal appellate judge.

Everyone agrees a judge's record is, by far, the most important indicium of what kind of justice that nominee will be. And, tellingly, we've heard very little, today, from Democratic senators about the actual substance of Judge Kavanaugh's judicial record.

Third, it's important to understand, today is also not about documents. We've heard a lot of arguments this morning about documents. There's an old saying for trial lawyers, if you have the facts, pound the facts, if you have the law, pound the law, if you have neither, pound the table.

We're seeing a lot of table pounding this morning. The Democrats are focused on procedural issues because they don't substantive points strong enough to derail this nomination.

They don't have substantive criticism with Judge Kavanaugh's actual judicial record. So, they're trying to divert everyone with procedural issues. But let's talk about the documents for a moment.

The claims that the Democrats are putting forward on documents don't withstand any serious scrutiny. Judge Kavanaugh has produced 511,948 pages of documents. That includes more than 17,000 pages in direct response to this committee's written questionnaire which is the most comprehensive response ever submitted to this committee.

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The more than a half million pages of documents turned into this committee is more than the number of pages we've received for the last five Supreme Court nominees combined. Listen to that fact again. The over a half million documents turned over to this committee is more than the last five nominees submitted to this committee combined.

So, what's all the fuss over the documents that are not turned over? Most of those concern Judge Kavanaugh's three years as the staff secretary for President George W. Bush. Now, many people don't know what a staff secretary does, but that's the position in charge of all of the paper that comes into and out of the Oval Office.

Critically, the staff secretary is not the author of the paper coming into and out of the Oval Office. That paper is, typically, written by the attorney general, by the secretary of state, by other Cabinet members, by other senior White House officials. CRUZ: The staff secretary is simply the funnel for collecting their views, and then for transferring the paper back and forth. In other words, those documents written by other people say nothing, zero, about Judge Kavanaugh's views, and they say nothing, zero, about what kind of justice Judge Kavanaugh would make. But they are by necessity the most sensitive and confidential documents in the White House; they are the documents that are going to the president.

This is the advice and deliberations of the president at the senior level and the staff secretary is the conduit for those documents, so why is it that the Democrats are putting so much energy in saying, "hand over all of those documents"? Because they know -- they know beyond a shadow of doubt that President George W. Bush's White House team is not going to allow every piece of paper that went to the president to be made public any more than any other White House would.

Republican or Democrat, no White House would allow every piece of paper that went to and from the president to may -- be made public. Indeed, there are -- are rules and laws and procedures for when and how presidential papers become public, and the reason the Democrats are fighting so loudly on this issue is they're making a demand they know is impossible to meet, and by the way is utterly irrelevant to what actually Judge Kavanaugh thinks, believes, or has said.

It would open up all sorts of fishing expeditions to attack, relitigate George W. Bush's record as president and what various cabinet members and senior advisers might or might not have said, but it is at the end of the day simply an attempt to distract and delay, and indeed the multiple motions we've seen from Democrats -- delay this confirmation, delay this confirmation -- that reveals the whole joke. Their objective is delay.

So what is this fight about? If it's not about documents, if it's not about Judge Kavanaugh's credentials, if it's not about his judicial record, what is this fight about? I believe this fight is nothing more and nothing less than an attempt by our Democratic colleagues to relitigate the 2016 presidential election.

2016 was a hard-fought election all around. And it was the first presidential election in 60 years where Americans went to the polls with a vacant seat on the Supreme Court, one that the next president would fill. Americans knew who had been in that seat, the late Justice Antonin Scalia, one of the greatest jurists ever to sit on the U.S. Supreme Court, and it was the first time since President Dwight D. Eisenhower's reelection campaign that a Supreme Court seat was directly on the ballot.

Both candidates knew the importance of the vacant Supreme Court seat, and it was a major issue of contention in the presidential election. Donald Trump and Hillary Clinton were both clear about what kind of justices and judges they would appoint. During all three presidential debates, both candidates were asked what qualities were most important to them when selecting a Supreme Court Justice.

Secretary Clinton's answer was clear. She wanted a Supreme Court Justice who would be a liberal progressive willing to rewrite the U.S. Constitution, willing to -- to impose liberal policy agendas that she could not get through the Democratic process, that the Congress of the United States would not adopt, but that she hoped five unelected lawyers would force on the American people. That's what Hillary Clinton promised for her judicial nominees.

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Then-candidate Donald Trump gave a very different answer. He said he was looking to appoint judges in the mold of Justice Scalia. He said he wanted to appoint judges who would interpret the Constitution based on its original public meaning, who would interpret the statutes according to the text, and who would uphold the rule of law and treat parties fairly regardless of who they are or where they come from.

Then-candidate Donald Trump also did something that no presidential candidate has done before; he published a list of nominees that he would choose from when filling Justice Scalia's seat, providing unprecedented transparency to the American people.

All of this was laid before the American people as they went to the polls on November 8th, 2016. And the American people made a choice that night. Now, my Democratic colleagues are not happy with the choice the American people made, but as President Obama famously said, elections have consequences.

Because the American people had the chance to vote, a national referendum on the direction of the Supreme Court -- I have said a number of times that Justice Gorsuch's nomination and Judge Kavanaugh's nomination have almost a -- a super legitimacy in that they were ratified, they were decided by the American people in a direct vote in 2016.

And so the Democratic obstruction today is all about trying to reverse that election; they're unhappy with the choice the American people want. And there's a reason that the American people want strong constitutionalists on the U.S. -- U.S. Supreme Court.

Most Americans -- and I know the overwhelming majority of Texans -- want judges who will follow the law and will not impose their policy preferences on the rest of us, and who will be faithful to the Constitution and the Bill of Rights. Justices who will uphold fundamental liberties like free speech, like religious liberty, like the Second Amendment.

That's what this election was about, and if you look at each of these -- let's take free speech. It's worth noting that in 2014, every Democratic member of this committee voted to amend the United States Constitution to repeal the free speech provisions of the First Amendment. And sadly, every Democrat in the Senate agreed with that position, voting to give Congress unprecedented power to regulate political speech. It was a sad day for this institution.

Years earlier, Ted Kennedy, the great liberal lion, had opposed a very similar effort and Ted Kennedy had said we haven't amended the Bill of Rights in over 200 years; now is no time to start. Ted Kennedy was right then, and not a single Democrat in the U.S. Senate had the courage to agree with Ted Kennedy and support free speech. Indeed, they voted party line to repeal the free speech provisions of the First Amendment.

That is radical, that is extreme, and it's part of the reason the American people voted for a president who would put justices on the court who will protect our free speech.

How about religious liberty? Religious liberty is another fundamental protection that the Democrats in the Senate have gotten extreme and radical on. Indeed, our Democratic colleagues want justices who will rubber stamp efforts like the Obama administration's efforts litigating against the Little Sisters of the Poor. Litigating against Catholic nuns, trying to force them to pay for abortion -- abortion-inducing drugs and others.

That is a radical and extreme proposition, and to show just -- just how dramatic Senate Democrats have gotten, every single Senate Democrat just a few years ago voted to gut the Religious Freedom Restoration Act, legislation that passed Congress with overwhelming bipartisan support in 1993, was signed into law by Bill Clinton, and yet two decades later the Democratic Party has determined that religious freedom is inconvenient for their policy and political objectives. They want justices that will further that assault on religious liberty.

And finally, let's take the Second Amendment. The presidential debates, Hillary Clinton explicitly promised to nominate justices who would overturn *Heller v. District of Columbia*. *Heller* is the landmark decision issued by Justice Scalia, likely the most significant decision of his entire tenure on the bench, and it upheld the individual right

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to keep and bear arms. CRUZ: Now, Hillary Clinton was quite explicit. She wanted judges who would vote to overturn Heller; and, indeed, a number of our Democratic colleagues, that's what -- that's what they want as well. Overturning Heller, I believe, would be a truly radical proposition. To understand why, you have to understand what the four dissenters said in Heller.

The four dissenters in Heller said that the Second Amendment protects no individual right to keep and bear arms whatsoever, that it protects merely a collective right of the militia. The consequence of that radical proposition would mean that Congress could pass a law making it a felony, a criminal offense, for any American to own any firearm. And neither you, nor I, nor any American would have any individual right whatsoever under the Second Amendment. It would effectively erase the Second Amendment from the Bill of Rights.

That is a breathtakingly extreme proposition. It is what Hillary Clinton promised her justices would do. And at the end of the day, it's what this fight is about. We know that every Democratic member of this committee is going to vote no. We don't have to speculate. Every single one of them has publicly announced they're voting no.

Doesn't depend on what they read in documents, doesn't depend on what Judge Kavanaugh says at this hearing, they've announced ahead of time they are voting no and most of the Democrats in the Senate have announced that in the full Senate. But everyone should understand Judge Kavanaugh's handed over more documents than any nominee, more than the last five combined Republican and Democratic nominees.

This is not about documents. It's not about qualification. It's not about record. What it is about is politics. It is about Democratic senators trying to re-litigate the 2016 election; and, just as importantly, working to begin litigating the 2020 presidential election.

But we had an opportunity for the American people to speak. They did. They voted in 2016 and they wanted judges and justices who will be faithful to the Constitution.

That's why I am confident, at the end of what Shakespeare would describe as a lot of sound and fury, signifying nothing -- I am confident that Judge Kavanaugh will become Justice Kavanaugh and will be confirmed to the United States Supreme Court.

Thank you, Mr. Chairman.

GRASSLEY: OK. We're going to take a break now. And -- and -- wait a minute. We're going to take a break now. And 30 minutes is what the Democrats would like to have, so we will return at 1:17. And Gorsuch returned about 10 minutes later than that. So be on time, please. (LAUGHTER)

(RECESS)

GRASSLEY: Before I call on -- first of all, thanks, Judge Kavanaugh, for getting back on the exact time.

Before I call on Senator Klobuchar, I think that some of my colleagues have raised some issues that I demand an answer and I want to speak to those points.

But this issue has never come up from my colleagues but I thought as I sat here and listened to some people criticize the Supreme Court for, in a sense being bought and -- and they always tend to criticize the president of the United States for somehow interfering in the judiciary and I hear all about the criticism of Trump, it seems odd to me that we don't have criticism of people that are saying the same thing about the Supreme Court.

So I want to read, whenever the president criticizes the judiciary or judicial decisions, we hear wails of anguish from my Democratic colleagues. They attacked the president for threatening the independence and the integrity of the judiciary and they applaud the judiciary for standing up to the president. I just listened to some of my colleagues here -- one of them spent 18 minutes attacking the personal integrity of justices of the Supreme Court.

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He said that five justices have been bought and sold by private interests. He accused them of deciding cases to the benefit of favored parties. So I think it's pretty clear, a double standard and we shouldn't have to tolerate such double standards. And particularly from a press that is a policeman of our whole Democratic process, that without a free press our government would be less of what it is, and it seems to me that that's something that I hope some of you will take into consideration -- probably won't, but I at least I said my piece.

Then I also -- senator -- several senators have brought up about the 6 percent and the 99 percent and things like that that I thought I ought to clear up because I can say myself that when I first started finding out how much paper Judge Kavanaugh had on his record -- I mean, for his background, I started talking about 100 -- 1 million pages. And then when we finally get 488,000 then I can say well, I got about 48 percent of what we ought to have but there's a good explanation why we don't have it, so I want to read.

Some of my colleagues keep saying that we have only 6 percent of Judge Kavanaugh's White House records but that 99 percent of Justice Kagan's White House records were made public before the hearing. This is fuzzy math.

My colleagues calibrate their phony 6 percent figure on two inaccurate numbers. First, their 6 percent figure counts the estimated page count by career archivists at the National Archives based upon their historical practice before the on-process e-mails and attachments are actually reviewed.

When Judge Kavanaugh's White House e-mails that we've received, the actual number of pages ended up being significantly less than the number the National Archives estimated before the actual review. One reason is because we're able to use technology to call out the exact duplicate e-mails instead of having to read 13 times an e-mail that Judge Kavanaugh sent to 12 White House colleagues, we only had to read the e-mail once.

Second, the 6 percent figure counts millions and millions of pages of irrelevant staff secretary documents that we never, ever requested or needed. More importantly, we received 100 percent of the documents we requested from Judge Kavanaugh's time as an executive branch lawyer.

And while we may have received 99 percent of Justice Kagan's White House records, we received zero records from her most relevant legal service as a solicitor general, the federal government's top Supreme Court advocate. We received much less than 99 percent of her records as a lawyer. And we didn't receive 60,000 e-mails from Justice Kagan, so 99 percent is an overestimate. **GRASSLEY:** And even though we never receive them, Justice Kagan's solicitor general records were much more needed at the time because Kagan was a blank slate as a judge. Instead unlike Judge Kavanaugh with his 12 years of judicial service and over 10,000 pages of judicial writings on the nation's most important federal circuit courts. Justice Kagan has zero years of judicial service and zero pages of judicial writing before appointment to the highest court.

Senator Klobuchar?

KLOBUCHAR: Well, thank you, **Mr.** Chairman.

And before I begin my opening statement, I just wanted to **respond** to just -- few things. One, none of that takes away from the fact that 42,000 documents were dumped on us last night and I don't think anyone would go to trial and allow a trial to go forward or allow a case to go forward if one side got 42,000 documents the night before and the other side -- and you -- you can't simply review them. As pointed out by Senator Whitehouse, you'd have to review 7,000 documents every hour. That happened last night.

GRASSLEY: Let me **respond** without taking time away from you.

KLOBUCHAR. Thank you.

GRASSLEY: You -- democrats got exactly the same amount of money we did to do the work -- the massive amount of work we had to do. And we got it done at 11 o'clock last night. You see (ph)...

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KLOBUCHAR: The point is that no one could prepare and review 42,000 documents in one evening. We know that. No much -- no matter how much coffee you drink. And the second point is that it is true that executive privilege has never been invoked before to block the release of presidential records during this -- to the Senate during a confirmation hearing.

So I will begin my opening statement, but those are two points that I don't believe are refuted. So ...

GRASSLEY: OK. Well, I'll refute it from this standpoint -- there were 5,000 documents, 42,000 pages.

KLOBUCHAR: OK.

GRASSLEY: Proceed.

KLOBUCHAR: Thank you.

Welcome, Judge Kavanaugh. We welcome your family as well. On its face, this may look like a normal confirmation hearing. It has all the trappings, all of us up here, all of the cameras out there, the statements, the questions -- all of it looks normal.

But this is not a normal confirmation hearing. First, as we have debated this morning, we are being asked to give advice and consent when the administration has not consented to give us over a 100,000 documents, all of which detail a critical part of the judge's career -- the time he spent in the White House. And in addition, the majority party has not consented to make 189,000 of the documents we do have public.

As a former prosecutor, I know that no lawyer goes to court without reviewing the evidence and record. I know and I know you know, Judge Kavanaugh, that a good judge would not decide a case with only seven percent of the key documents. A good judge would not allow a case to move forward if one side dropped 42,000 pages of documents on the other side the night before the case started, and yet, that is where we are today. This isn't normal. It's an abdication of the role of the Senate and a disservice to the American people and it is our duty to speak out.

Secondly, this nomination comes before us at a time when we are witnessing seismic shifts in our democracy. Foundational elements of our government, including the rule of law, have been challenged and undermined. Today, our democracy faces threats that we never would have believed would be occurring not that long ago.

Our intelligence agencies agree that a foreign adversary attempted to interfere in our most recent election and it's happening again. In the words of the president's director of national intelligence, "the lights are blinking red."

There is an extensive ongoing investigation by a special counsel. The president's private lawyer and campaign chairman have been found guilty of multiple federal crimes. The man appointed as special counsel in this investigation, a man who has served with distinction under presidents from both parties has been under siege.

The dedicated public servants who work in our Justice Department, including the Attorney General and the FBI, have been subjected to repeated threats and have had their work politicized and their motives questioned. In fact, just this past weekend, federal law enforcement was called out -- was rebuked -- by the President of the United States for simply doing their jobs, for prosecuting two white collar defendants. One for insider trading, one for campaign theft.

Why? Because the defendants were personal friends and campaign supporters of the President of the United States. As a former prosecutor, as someone who has seen federal law enforcement do their jobs, this is abhorrent to me. So no, this is not normal.

And the last branch, the third branch government, our courts and individual judges have been under assault. Not just by a solitary disappointed litigant but by the President of the United States. Our democracy is on trial. And for the pillars of our democracy and our constitution to weather this storm, our nation's highest court must serve as a ballast in these turbulent times.

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Our very institutions and those nominated to protect these institutions must be fair, impartial, and unwavering in their commitment to truth and justice. So today we will begin a hearing in which it is our duty to carry on the American constitutional tradition that John Adams stood up for many centuries ago, and that is to be, in his words, "a government of laws and not men." To me that means figuring out what your views are, Judge, on whether a president is above the law. It is a simple concept we learned in grade school that no one is above the law, so I think it's a good place to start.

There were many highly credential nominees, like yourself, that could have been sitting before us today. But to my colleagues, what concerns me is that during this critical juncture in history, the president has handpicked a nominee to the court with the most expansive view of presidential power possible.

A nominee who has actually written that the president, on his own, can declare laws unconstitutional. Of course, we are very pleased when a judge submits an article to the University of Minnesota Law Review and even more so when that article receives so much national attention.

But the article you wrote that I'm referring to, Judge, raises many troubling questions. Should a sitting president really never be subject to an investigation? Should a sitting president never be questioned by a special counsel? Should a president really be given total authority to remove a special counsel? KLOBUCHAR: In addition to the article, there are other pieces of this puzzle which demonstrate that the nominee before us has an incredibly broad view of the president's executive power. Judge Kavanaugh, you wrote, for example, in *Seven-Sky v. Holder* that a president can disregard a law passed by Congress if he deems it to be unconstitutional, even if a court has upheld it.

What would that mean when it comes to laws protecting the special counsel? What would that mean when it comes to women's health care? The days of the divine rights of kings ended with the Magna Carta in 1215.

And centuries later in the wake of the American Revolution, a check on the executive was a major foundation of the United States Constitution. For it was James Madison, who may not have a musical named after him but was a top scholar of his time, who wrote in *Federalist 47*, "The accumulation of all powers, legislative, executive and judiciary, in the same hands may justly be pronounced the very definition of tyranny."

So what does that warning mean in real life terms today? Here's one example. It means whether people like Kelly Gregory, an Air Force veteran, mother and business owner, who is here from Tennessee and who is living with stage IV breast cancer can afford medical treatment.

At a time when the administration is arguing that protections to ensure people with pre-existing conditions can't be kicked off their health insurance are unconstitutional, we cannot and should not confirm a justice who believes the president's views alone carry the day.

One opinion I plan to ask about, when judges appointed by presidents of both parties joined in upholding the Consumer Financial Protection Bureau, you, judge, dissented. Your dissent concluded that the bureau, an agency which has served us well in bringing back over \$12 billion to consumers for fraud -- from credit cards, to loans, to mortgages, was unconstitutional.

Or in another case, you wrote a dissent against the rules that protect net neutrality; rules that help all citizens and small businesses have an even playing field when it comes to accessing the Internet. Another example that seems mired in legalese but is critical for Americans, anti-trust law.

In recent years, a conservative majority on the Supreme Court has made it harder and harder to enforce the nation's anti-trust laws, ruling in favor of consolidation and market dominance. Yet, two of Judge Kavanaugh's major anti-trust opinions suggest that he would push the court even further down this pro-merger path. We should have more competition and not less.

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Now to go from my specific concerns and end on a higher plane, all of the attacks on the rule of law and our justice system over the past year have made me -- and, I would guess some of my other colleagues on this committee, pause and think many times about why I decided to come to the Senate and get on this committee; and, much further back, why I even decided to go into law in the first place.

Now, I will tell you that not many girls in my high school class said they dreamed of being a lawyer. We had no lawyers in my family and my parents were the first in their families to go to college. But somehow, my dad convinced me to spend a morning sitting in a courtroom watching a state court district judge handle a routine calendar of criminal cases.

The judge took pleas, listened to arguments and handed out misdemeanor sentences. It was certainly nothing glamorous, like the work for the job you've been nominated for, judge. But it was important just the same.

I realized that morning that behind every single case, there was a story and there was a person no matter how small. Each and every decision the judge made that day affected that person's life. And I noticed how often he had to make that (ph) decisions, and had to take account of what his decisions would mean for that person and his or her family.

This week, I remembered that day and I remembered I had written an essay about it at the ripe old age of 17. I went back and looked at what I had said. It is something that I still believe today, and that is that to be part of an imperfect system, to have a chance to better that system was and is a cause worth fighting for, a job worth doing.

Our government is far from perfect, judge. Nor is our legal system but we are at a crossroads in our nation's history where we must make a choice. Are we going to dedicate ourselves to improving our democracy, improving our justice system, or not?

The question we are being asked to address in this hearing, among others, is whether this judge at this time in our history will administer the law with equal justice as it applies to all citizens, regardless of if they live in a poor neighborhood, or a rich neighborhood, or if they live in a small house or the White House.

Our country needs a Supreme Court justice who will better our legal system. A justice who will serve as a check and balance on the other branches of government, who will stand up for the rule of law without consideration of politics or partisanship, who will uphold our Constitution without fear or favor, and who will work for the betterment of the great American experiment in democracy. That is what this hearing is about. Thank you.

GRASSLEY: Senator Sasse.

SASSE: Thank you, Mr. Chairman. We need to get to Judge Kavanaugh, but I really want to riff with Amy for a while. She -- Amy -- Senator Klobuchar, you did Madison, Lin-Manuel Miranda, the Magna Carta and your dad...

KLOBUCHAR: Thank you. Thank you, I appreciate that.

SASSE: ... taking you to court. Well done. You were (ph)...

KLOBUCHAR: Thank you.

SASSE: ... I had all that on my bingo card. I -- I have -- I have little kids and I've taken my two little girls to court a few times, too. Mostly to juvie just to scare them straight, not to turn them into attorneys. But -- but that's not...

KLOBUCHAR: Who said that that wasn't what my dad was doing, Senator Sasse?

SASSE: There was wisdom in Minnesota.

Congratulations, judge, on your nomination. Actually, congratulations and condolences, this process has to stink. I'm glad your daughters could get out of the room and I hope they still get the free day from school.

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Let's do some good news bad news. The -- the bad news first, judge, since your nomination in July, you've been accused of hating women, hating children, hating clean air, wanting dirty water. You've been declared a quote/unquote "existential threat" to our nation.

Alumni of Yale Law School, incensed that faculty members at your alma mater praised your selection, wrote a public letter to the school saying quote, "People will die if Brett Kavanaugh, is confirmed." This drivle is patently absurd. And I worry that we're going to hear more of it over the next few days.

But the good news is, it is absurd and the American people don't believe any of it. This stuff isn't about Brett Kavanaugh when screamers say this stuff for cable TV news. The people who know you better, not those who are trying to get on TV, they tell a completely different story about who Brett Kavanaugh is.

You've earned high praise from the many lawyers, both right and left, who've appeared before you during your 12 years on the D.C. Circuit and those who've had you as a professor at Yale Law and at Harvard Law. People in legal circles invariably applaud your mind, your work, your temperament, your collegiality, that's who Brett Kavanaugh is.

And to quote Lisa Blatt, a Supreme Court attorney from the left who's known you for a decade, quote, "Sometimes a superstar is just a superstar. And that's the case with this judge. The Senate should confirm him," close quote. SASSE: It's pretty obvious to most people going about their work today that the deranged comments actually don't have anything to do with you. So we should figure out why do we talk like this about Supreme Court nominations now. There's a bunch that's atypical in the last 19, 20 months in America.

Senator Klobuchar is right; the comments from the White House yesterday about trying to politicize the Department of Justice -- they were wrong, and they should be condemned, and my guess is Brett Kavanaugh would condemn them. But really the reason these hearings don't work is not because of Donald Trump. It's not because of anything in the last 20 months.

These confirmation hearings haven't worked for 31 years in America. People are going to pretend that Americans have no historical memory and supposedly there haven't been screaming protests saying women are going to die at every hearing for decades -- but this has been happening since Robert Bork. This is a 31-year tradition; there's nothing really new the last 18 months.

So, the fact that the hysteria has nothing to do with you means that we should ask, what's the hysteria coming from? The hysteria around Supreme Court confirmation hearings is coming from the fact that we have a fundamental misunderstanding of the role of the Supreme Court in American life now. Our political commentary talks about the Supreme Court like they're people wearing red and blue jerseys; that's a really dangerous thing.

And, by the way, if they had red and blue jerseys I would welcome my colleagues to introduce the legislation that ends lifetime tenure for the judiciary because if they're just politicians then the people should have power and they shouldn't have lifetime appointments. So until you introduce that legislation I don't believe you really want the Supreme Court to be a politicized body -- though that's the way we constantly talk about it now.

We can, and we should do better than this. It's predictable that every confirmation hearing now is going to be overblown politicized circus and it's because we've excepted a new theory about how our three branches of government should work and in particular how the judiciary should work.

What Supreme Court confirmation hearings should be about is an opportunity to go back and do Schoolhouse Rock civics for our kids. We should be talking about how a bill becomes a law and what the job of Article II is and what the job of Article III is.

So let's try just a little bit. How did we get here and how can we fix it? I want to make just four brief points.

Number one -- in our system the legislative branch is supposed to be the center of our politics. Number two -- it's not. Why not? Because for the last century and increasing by the decade right now, more and more legislative

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authority is delegated to the executive branch every year. Both parties do it. The legislature is impotent, the legislature is weak, and most people here want their jobs more than they really want to do legislative work and so they punt most of the work to the next branch.

Third consequence is that this transfer of power means the people yearn for a place where politics can actually be done and when we don't do a lot of big actual political debating here, we transfer it to the Supreme Court and that's why the Supreme Court is increasingly a substitute political battleground in America. It is not healthy, but it is what happens and it's something that our founders wouldn't be able to make any sense of.

And fourth and finally, we badly need to restore the proper duties and the balance of power from our constitutional system.

So, point one; the legislative branch is supposed to be the locus of our politics, properly understood. Since we're here in this room today because this is a Supreme Court confirmation hearing we're tempted to start with Article III but really, we need Article III as the part of the Constitution that sets up the judiciary. We really should be starting with Article I, which is us. What is the legislature's job?

The constitution's drafters began with the legislature. These are -- these are equal branches but Article I comes first for a reason and that's because policymaking is supposed to be done in the body that makes laws. That means that this is supposed to be the institution dedicated to political fights.

If we see lots and lots of protests in front of the Supreme Court that's a pretty good litmus test barometer of the fact that our Republic isn't healthy, because people shouldn't be thinking they -- or protesting in front of the Supreme Court; they should be protesting in front of this body.

The legislature is designed to be controversial, noisy, sometimes even rowdy because making laws means we have to hash out the reality that we don't all agree. Government is about power. Government is not just another word for things we do together. The reason we have limited government in America is because we believe in freedom. We believe in souls. We believe in persuasion. We believe in love -- and those things aren't done by power.

But the government acts by power and since the government acts by power we should be reticent to use power. And so it means when you differ about power you have to have a debate and this institution is supposed to be dedicated to debate and should be based on the premise that we know since we don't all agree we should try to constrain that power just a little bit but then we should fight about it and have a vote in front of the American people and then what happens?

The people get to decide whether they want to hire us or fire us; they don't have to hire us again. This body is the political branch where policymaking fights should happen and if we are the easiest people to fire it means the only way that people can maintain power in our system is if almost all the politicized decisions happen here -- not in Article II or Article III.

So, that brings us to a second point. How did we get to a place where the legislature decided to give away its power?

We've been doing it for a long time. Over the course of the last century but especially since the 1930s and then ramping up since the 1960s a whole lot of the responsibility in this body has been kicked to a bunch of alphabet soup bureaucracies. All the acronyms that people know about their government or don't know about their government are the places where most actual policymaking -- kind of in a way, lawmaking -- is happening right now.

This is not what Schoolhouse Rock says. There's no verse of Schoolhouse Rock that says give a whole bunch of power to the alphabet soup agencies and let them decide what the government's decision should be for the people, because the people don't have any way to fire the bureaucrats. And so what we mostly do around this body is not

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pass laws. What we mostly do is decide to give permission to the Secretary or the administrator of bureaucracy X, Y, or Z to make law-like regulations; that's mostly what we do here.

We go home, and we pretend we make laws; no, we don't. We write giant pieces of legislation -- 1,200 pages, 1,500 pages long that people haven't read -- filled with all these terms that are undefined and we say the secretary of such and such shall promulgate rules that do the rest of our dang jobs.

That's why there's so many fights about the executive branch and about the judiciary, because this body rarely finishes its work -- and the House is even worse. I don't really believe that; it just seemed like you needed to try to unite us in some way.

So, I admit that there are rational arguments that one could make for the new system. That Congress can't manage all the nitty-gritty details of everything about modern government and this system tries to give power and control to experts in their fields, where most of us in Congress don't know much of anything or -- about technical matters for sure but you could also impugn our wisdom if you want -- but when you're talking about technical, complicated matters, it's true that the Congress would have a hard time sorting out every final dot and tittle about every detail.

But the real reason at the end of the day that this institution punts most of its power to executive-branch agencies is because it's a convenient way for legislators to have to -- to be able to avoid taking responsibility for controversial and often unpopular decisions.

If people want to get reelected over and over again and that's your highest goal, if your biggest long-term thought around here is about your own incumbency, then actually giving away your power is a pretty good strategy. It's not a very good life but it's a pretty good strategy for incumbency. SASSE: And so at the end of the day, a lot of the power delegation that happens from this branch is because that Congress has decided to self-neuter. Well, guess what? The important -- the important thing isn't whether or not the Congress has lame jobs; the important thing is that when the congress neuters itself and gives power to an unaccountable fourth branch of government, it means the people are cut out of the process.

There's nobody in Nebraska, there's nobody in Minnesota or Delaware who elected the deputy assistant administrator of plant quarantine at the USDA. And yet if the deputy assistant administrator of plant quarantine does something to make Nebraskans lives really difficult -- which happens to farmers and ranchers in Nebraska -- who do they protest to?

Where do they go? How do they navigate the complexity and the thicket of all the lobbyists in this town to do executive agency lobbying? They can't. And so what happens is they don't have any ability to speak out and to fire people through an election.

And so ultimately when the congress is neutered, when the administrative state grows, when there is this fourth branch of government, it makes it harder and harder for the concerns of citizens to be represented and articulated by people that the people know that they have power over. All the power right now or almost all the power right now happens off stage, and that leaves a lot of people wondering who's looking out for me.

And that brings us to the third point, the Supreme Court becomes our substitute political battleground. It's only nine people, you can know them, you can demonize them, you can try to make them messiahs, but ultimately because people can't navigate their way through the bureaucracy, they turn to the Supreme Court looking for politics.

And knowing that our elected officials no longer care enough to do the hard work of reasoning through the places where we differ, and deciding to shroud our power at times, it means that we look for nine justices to be super legislators. We look for nine justices to try to right the wrongs from other places in the process. When people talk about wanting to have empathy from their justices, this is what they're talking about.

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They're talking about trying to make the justices do something that the Congress refuses to do as it constantly abdicates its responsibility. The hyperventilating that we see in this process and the way that today's hearing started with 90 minutes of theatrics that are preplanned with -- with certain members of the other side here, it shows us a system that is wildly out of whack, and thus a fourth and final point.

The solution here is not to try to find judges who will be policy makers. The solution is not to try to turn the Supreme Court into an election battle for TV. The solution is to restore a proper constitutional order with a balance of powers.

We need Schoolhouse Rock back, we need a congress that writes laws and then stands before the people and suffers the consequences and gets to go back to our own Mount Vernon if that's what the electors decide. We need an executive branch that has a humble view of its job as enforcing the law -- not trying to write laws in the congress's absence. And we need a judiciary that tries to apply written laws to facts and cases that are actually before it.

This is the elegant and the fair process that the founders created. It's the process where the people who are elected -- two and six years in this institution, four years in the executive branch -- can be fired because the justices and the judges, the men and women who serve America's people by wearing black robes, they're insulated from politics.

This is why we talk about an independent judiciary. This is why they wear robes. This is why we shouldn't talk about Republican and Democratic judges and justices. This is why we say justice is blind. This is why we give judges lifetime tenure. And this is why this is the last job interview Brett Kavanaugh will ever have, because he's going to a job where he's not supposed to be a super legislator.

So the question before us today is not what does Brett Kavanaugh think 11 years ago on some policy matter; the question before us is whether or not he has the temperament and the character to take his policy views and his political preferences and put them in a box marked irrelevant and set it aside every morning when he puts on the black robe.

The question is does he have the character and temperament to do that? If you don't think he does, vote no. But if you think he does, stop the charades, because at the end of the day, I think all of us know that Brett Kavanaugh understands his job isn't to rewrite laws as he wishes they were, he understands that he's not being interviewed to be a super legislator, he understands that his job isn't to seek popularity. His job is to be fair and dispassionate; it is not to exercise empathy. It is to follow written laws.

Contrary to the Onion-like smears that we hear outside, Judge Kavanaugh doesn't hate women and children, Judge Kavanaugh doesn't lust after dirty water and stinky air. No, looking at his record, it seems to me that what he actually dislikes are legislators that are too lazy and too risk-averse to do our actual jobs.

It seems to me that if you read his 300 plus opinions, what his opinions reveal to me is a dissatisfaction -- I think he would argue a constitutionally compelled dissatisfaction -- with power hungry executive branch bureaucrats doing our job when we fail to do it.

And in this view, I think he's aligned with the founders, for our constitution places power not in the hands of this city's bureaucracy, which can't be fired, but our constitution places the policymaking power in the 535 of our hands because the voters can hire and fire us.

And if the voters are going to retain their power, they need a legislature that's responsive to politics; not a judiciary that's responsive to politics. It seems to me that Judge Kavanaugh is ready to do his job. The question for us is whether we're ready to do our job.

Thank you, Mr. Chairman.

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GRASSLEY: The example I always use to back up what Senator Sasse says about Congress not doing its job and delegating too much is the ObamaCare legislation that was 2,700 pages and there was 1,693 delegations of authority to bureaucrats to write regulations because Congress didn't know how to reorganize healthcare.

Senator Coons?

COONS: Thank you, Mr. Chairman. Welcome, Judge Kavanaugh, welcome to you and to your family and to your friends who are here.

As you know well, we went to the same law school; we clerked in the same courthouse in Wilmington, Delaware. So I've known you and your reputation for nearly 30 years. And I know well that you have a reputation as a good friend, a good classmate, a good roommate, as a good husband and family man, that you've contributed to your community -- I think we'll hear later today that you've even been a great youth basketball coach.

But frankly we're not here to consider you as the president of our neighborhood civic association or even to review whether you've been a great youth basketball coach. We're here to consider you for a lifetime appointment to the United States Supreme Court, where you will help shape the future of this country and have an impact on the lives of millions of Americans for literally decades to come.

And to make that decision to exercise our constitutional role, we have to look closely at your decisions, your statements, your writings to understand how you might interpret our constitution. The next justice will play a pivotal role in defining a wide range of critical issues, including the scope of the president's power in determining whether the president might be above the law.

The next justice will impact essential rights enshrined in our modern understanding of the constitution -- including the right to privacy, rights to contraception, intimacy, abortion, marriage, the freedom to worship as we choose, the ability to participate in our democracy as full citizens and the promise of equal protection.

That's because that come before the court aren't just academic or esoteric or theoretical; they involve real people and have real and lasting consequences. With the stakes this high, I deeply regret the process that's gotten us to the point, the excesses and partisan gamesmanship of the last few years and that history bears briefly repeating.

When Justice Scalia passed in February of 2016, I called the White House and urged then President Obama to nominate a jurist who could gain support from both sides of the aisle and help build a strong center on the court. And he did just that when he nominated Merrick Garland, Chief Judge of the D.C. Circuit, whom I know you also admire. But my Republican colleagues refused to even meet with him, much less hold a hearing or a vote on his confirmation.

During the 400 days that the majority refused to fill the Supreme Court vacancy then-President Trump also released a list of potential nominees to the court, a list compiled by two highly partisan organizations -- the Federalist Society and the Heritage Foundation. And after our president was elected, he picked from that list and nominated Neil Gorsuch to the Supreme Court.

When Judge Gorsuch testified before this very committee, he told us repeatedly how deeply he understood and respected precedent; he even cited a book on precedent he'd co-authored with you. But in his first 15 months of service, Justice Gorsuch has already voted to overrule at least five important Supreme Court precedents and to question many others.

To name just one, given it was just Labor Day, Justice Gorsuch voted to gut public sector unions, overturning a 41-year old precedent on which there were great reliance interests and impacting millions of workers across the country. My point is that Justice Gorsuch was confirmed to the court in one of the most concerningly partisan processes in Senate history, and only after the majority deployed the nuclear option to end the filibuster for Supreme Court nominations.

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This brings us, Judge, to today and your nomination. When Justice Kennedy announced his retirement, I once again called the White House and urged through White House counsel that President Trump consider selecting someone for this seat who could win broad support from both sides of the aisle.

And Judge Kavanaugh, I'm concerned you may not be that nominee. Your record prior to joining the bench places you in the midst of some of the most pitched and partisan battles in our lifetimes -- from Ken Starr's investigation of President Clinton to the 2000 election recount -- recount, to the controversies of the Bush administration, including surveillance, torture, access to justice, and the culture wars.

So, Judge, it's critical that this committee and the American people fully examine your record to understand what kind of justice you would be, and unfortunately, as we've all discussed at length here today, that's been rendered impossible. The majority has blocked access to millions of pages of documents from your service in a critical role in the White House.

For the first time since Watergate, the non-partisan National Archives has been cut out of the process for reviewing and producing your records. Senate Republicans have worked to keep committee confidential nearly 200,000 pages of documents so that the public can't view them and we can't question based on them, and your former deputy's in charge of designating which documents this committee and the American people get to see.

Not only that, but for the first time in our history, the president has invoked executive privilege to withhold more than 100,000 pages of documents on a Supreme Court nominee from the Judiciary Committee. This leads to a difficult but important question, which is what might President Trump or the majority be trying to hide?

Mr. Chairman, I want to make an appeal -- to work together to restore the integrity of this committee. We are better than this process. We are better than proceeding with a nominee without engaging in a full and a transparent process. This committee is failing the American people by proceeding in this way, and I fully support the motions made by my colleagues earlier in this hearing, and regret that we proceeded without observing the rules of this committee.

That said, Judge Kavanaugh, I have reviewed the parts of your record that I've been able to access, and what I've been able to see from available speeches, writings, and decisions, and I -- I have to say, it troubles me. While serving on the bench, you've dissented at a higher rate than any circuit judge elevated to the Supreme Court since 1980, and that includes Judge Bork.

Your dissents reveal some views and positions that fall well outside the mainstream of legal thought. You've suggested, as has been referenced, that the president has the authority to refuse to enforce a law such as the Affordable Care Act were he to decide it was unconstitutional. You voted to strike down net neutrality rules, gun safety laws, the organization of the Consumer Financial Protection Bureau, and many of your dissents would undercut environmental protections or workers' rights or anti-discrimination laws, and you've recently praised Justice Rehnquist's dissent in *Roe*.

You've embraced an approach to substantive due process that would undermine the rights and protections of millions of Americans, from basic protections for LGBT Americans, to access to contraception, to healthcare, the ability -- ability for Americans to love and marry whom they wish.

I am concerned your writings demonstrate a hostility to affirmative action and civil rights, and most importantly, I believe you've repeatedly and enthusiastically embraced an interpretation of presidential power so expansive it could result in a dangerously unaccountable president at the very time when we are most in need of checks and balances.

I want to pause for a moment on this last point, because the context of your nomination troubles me the most. In reviewing your records, Judge, you've -- you've questioned the lawfulness of *United States v. Nixon*, an historic decision in which a unanimous court said the president had to comply with a grand jury subpoena.

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You've questioned the correctness of *Morrison v. Olson*, a 30-year old precedent holding that Congress can create an independent counsel with the authority to investigate the president -- who the president can't just fire on a whim. You've questioned whether a president and his aides should be subject to any civil or criminal investigations while in office.

And given these positions about presidential power, which I view as being at one extreme of the record of circuit judges, we have to confront an uncomfortable but important question about whether President Trump may have selected you, Judge Kavanaugh, with an eye toward protecting himself.

So, Judge Kavanaugh, I'm going to ask you about these issues, as I did when we met in my office, and I expect you to address them. When we spoke, you agreed that we have a shared concern about the legitimacy of the Supreme Court -- that it is critical to our system of rule of law. In my view, it is today in jeopardy.

You're participating in a process that has featured unprecedented concealment and partisanship around your record, and a few moments ago, Senator Durbin proposed a bold step, which would be for you to support suspending this hearing until all your records are produced and available to this committee and the American people, and I encourage you to do this.

There's also members of both parties who have not stated how they will vote on your nomination, and I urge you to answer our questions about your prior work, about your writings, about precedent and the constitution itself, to trust the American people, and to help build our trust in the court on which you may well soon serve.

I've been to too many hearings in which judicial nominees have told us they'll even-handedly apply the text of laws or the Constitution, only to watch them ascend to the bench and whittle away individual rights of Americans or narrow or overturn long-settled precedent.

This Supreme Court vacancy comes at a critical time for our country, when our institutions of law and the very foundations of our democracy are being gravely tested. If we're going to safeguard the rule of law in this country, our courts, and in particular, our Supreme Court must be a bulwark against unprecedented violations of law, deprivations of freedom, and abuses of power by anyone -- including our president.

No one said it better than our former colleague, Senator McCain, who once asked about America, what makes us exceptional? Is it our wealth, our natural resources, our military power, our big and bountiful country? No, it's our founding ideals and our fidelity to them and our conduct in the world; they are the source of our wealth and power -- that we live under the rule of law.

That enables us to face threats with confidence that our values make us stronger than our enemies.

Judge Kavanaugh, we are here to determine whether you would uphold or undermine those founding ideals and the rule of law. We're here to determine whether you would continue in the traditions of the court, or transform it into a body more conservative than a majority of Americans.

We're here to determine whether your confirmation would compromise or undermine the legitimacy of the court itself. I urge you to answer our questions and to confront these significant challenges; these are weighty questions, and the American people deserve real answers.

Thank you, and I look forward to your testimony.

GRASSLEY: Yeah. You can easily get the impression, not just from Senator Coons, but other senators that somehow you, Judge Kavanaugh, are out of the mainstream some way. So I looked at your record in the D.C. Circuit and have found the judges have agreed with you and your rulings in an overwhelming majority of matters across the board; 94 percent of the matters Judge Kavanaugh heard were decided unanimously.

In 97 percent of the matters Judge Kavanaugh heard he voted with the majority. Judge Kavanaugh issued dissenting opinions in only 2.7 percent of the matters that you heard. I would also like to clarify what the

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Presidential Records Act requires. Our documents process has fully complied with the Presidential Records Act, under the federal statute President Bush has the right to request his own administration records.

He also has the authority to review his records before the Senate receives them. Indeed the Archives may not produce them to the committee without giving President Bush and his statutory representatives an opportunity to review first. This is what President Bush has done, and the -- the National Archives does not have the authority to second guess President Bush's decision to release records to us.

The National Archives was not cut out of the process, as President Bush's representative informed the Committee, quote, "because we have sought, received and followed NARA, that means the archivists' views on any documents withheld as personal documents, the resulting productions of documents to the committee is essentially the same as if the archivists had conducted its review first, and then sought our views and the current administration views as required by law."

Senator Flake?

FLAKE: Thank you, Mr. Chairman. Congratulations, Judge Kavanaugh, and congratulations to your family as well.

Let me just say a few things about the issue that has been discussed here a lot today -- the issue of documents and document production. The standard, historically, that we use to look at it -- nominees is -- what is relevant and probative? I would suggest that we certainly get that from the 12 years you've served on the Circuit court, on the D.C. Circuit court, that considers when you look at the docket, items that, you know, more than any other Circuit court that the Supreme Court would be, perhaps, called to rule on.

In the past, senators on this panel have argued on both sides of the aisle that confirming a judge -- confirming a judge, the best we can look at is his or her judicial record. You have that record, and it's a long one. Over 300 opinions, and I would suggest that that's where we need to start.

A lot of the other records have been discussed are mainly (ph) duplicative administrative documents. Many do not meet the standard or relevant or probative. They may not demonstrate the type of justice that you will be.

Senator Sasse talked about what we are called to do here is to look at your temperament, your judgment, your character -- and I think you can see a lot of that by the type of life you've lived outside of the courtroom. When we met in my office I was impressed, obviously with your respect for the law, and quick intellect, but also struck by kindness and decency.

I found out that we share deep love of sports; we both played football back in the day. I'm sure you're looking forward to this weekend -- not just when these hearings are concluded -- but when the Redskins and Cardinals play on Sunday. I learned that you've run the Boston Marathon twice; I wonder if the ABA took that in to account when they gave you favorable rating?

I'm not sure what that says about your soundness of mind, myself, but in all seriousness training for a marathon -- completing two marathons like this is a huge accomplishment. It demonstrates not just your competitive spirit but a strong sense of purpose and commitment, and says something about your temperament and character. Of course, you have no greater commitment than to your family, your wife Ashley, and your two daughters.

I know that you beam with pride when talking about them, and talking about, as has been mentioned earlier, coaching your daughter's elementary school basketball teams. I have a letter for the record, written by a group of parents whose girls play for basketball teams that Judge Kavanaugh coaches, and with -- Mr. Chairman, without objection -- I'd like to enter that letter in to the record.

GRASSLEY: So ordered.

FLAKE: The teams' parents note that Judge Kavanaugh has been a devoted coach and a mentor to their daughters. As these parents note, "Coach K" -- and that's new, you, not the Duke, famous one -- stresses the

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importance of playing as a team and has provided their girls the opportunity to learn about teamwork, honesty, integrity, humility, respect, discipline, hard work, and competitiveness. Again, we're going back to temperament and character.

Judge Kavanaugh, whose dedication and commitment as a volunteer basketball coach, I think demonstrates and says a good deal about that character. And congratulations to you and the Blessed Sacrament Bulldogs for winning the city championship this past year. I know you must be proud of your team. Aside from running marathons, winning basketball championships, you spent -- as I mentioned -- the last 12 years as a Federal Appeals Court judge on the D.C. Circuit.

You have earned a reputation among legal commentators and colleagues on both sides of the aisle of a solid, careful judge, a thorough and clear writer, and someone who promotes collegiality on the court, working with people across ideological lines. FLAKE: I have also a "New York Times" article for the record, written by Professor Akhil Amar, the self-professed liberal who describes Judge Kavanaugh as one who appreciates the craft of judging with seriousness and commands wide and deep respect among scholars, lawyers, and jurors across the political spectrum. Mr. Chairman, I'd like to submit that for the record as well.

GRASSLEY: Without objection, so ordered.

FLAKE: As I mentioned, Judge Kavanaugh, has amassed a astonishingly distinguished and extensive record, writing more than 300 opinions joining his colleagues and issuing thousands of additional cases.

And that is where we need to look first when we're looking at -- at how you will judge on the Supreme Court. Now I know, and it has been brought up today, that a lot of concern on the other side of aisle stems from the concern of an administration that doesn't seem to understand and appreciate separation of powers and the rule of law.

I have that concern as well. If you just look at what was said just yesterday by the president, I think it's very concerning. He said in a tweet, "Two long running Obama era investigations of two very popular republican Congressmen were brought to a well publicized charge just ahead of the midterms by the Jeff Sessions' Justice Department", he calls it.

"Two easy wins now in doubt because there is not enough time. Good job Jeff." That is why a lot of people are concerned about this administration and why they want to insure that our institutions hold. Thus far they have, gratefully. Jeff Sessions has resisted pressure from the president to punish his enemies and relieve pressure on his friends.

And many of the questions that you will get on the other side of the aisle and from me will be how you view that relationship, where you believe Article One powers and Article Two powers of the administration begin.

So I expect to have a number of questions on that subject. I, again, appreciate your willingness to put yourself through this process and I look forward to the hearing moving ahead in the next week. Thank you, Mr. Chairman.

GRASSLEY: OK. Senator Blumenthal.

BLUMENTHAL: Thank you, Mr. Chairman. Thank you, Mr. Chairman, for your conducting these hearings as fairly and patiently as you have and I am going to be remarking further on what procedurally I think is appropriate here.

But I want to begin by thanking Judge Kavanaugh and your family for your commitment to public service. I want to thank the many, many Americans who are paying attention to this hearing, not only in this room but also across the country.

I want to thank them for their interest and indeed their passion. That is what sustains democracy; that commitment to ordinary everyday Americans, participating and engaging in this process.

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There is a t-shirt worn by a number of folks walking around this building. It says, "I am what's at stake." This vote and this proceeding could not be more consequential in light of what is at stake whether women can decide when they want to have children and become pregnant, whether the people of America can decide whom they would like to marry; whether we drink clean water and breathe clean air; whether consumers are protected against defective product and financial abuses; and whether we have a real system of checks and balances or alternatively an Imperial Presidency.

I will not cast a vote more important than this one and I suspect few of my colleagues will as well. And what's at stake is indeed also the rule of law. My colleague Senator Flake quoted the president's tweet yesterday. I'm going to repeat it.

"Two long running Obama era investigations of two very popular republican congressmen were brought to a well publicized charge just ahead of the midterms by the Jeff Sessions' Justice Department. Two easy wins now in doubt because there is not enough time. Good job, Jeff."

I've had my disagreements with this Department of Justice. I want to note for the record that at least one high ranking member of the Department of Justice was in this room. I want to urge the Department of Justice to stand strong and hold fast against this onslaught, which threatens the basic principles of our democracy.

And I want to join my colleague, Senator Sasse, in his hope that you, Judge Kavanaugh, would condemn this attack on the rule of law and our judiciary, because at the end of this dark era when the history of this time is written, I believe that the heroes will be our independent judiciary and our free press.

You are nominated by that very president who has launched this attack on our Department of Justice, on the rule of law, on law enforcement like the FBI, law enforcement at every level who's question -- who's integrity he has questioned, and your responses to our questions will be highly enlightening about whether you join us in defending the judiciary and the rule of law.

That very president has nominated you in this unprecedented time. Unprecedented because he is an unindicted co-conspirator who has nominated a potential justice who will cast the swing vote on issues relating to his possible criminal culpability.

In fact, whether he is required to obey a subpoena, to appear before a grand jury, whether he is required to testify in a prosecution of his friends or associates or other officials in his administration, and whether in fact he is required to stand trial if he is indicted while he is President of the United States.

There is a basic principle of our constitution. And it was articulated by the founders. No one can select a judge in his own case. That's what the president is potentially doing here -- selecting a justice on the Supreme Court who potentially will cast a decisive vote in his own case. That is a reason why this proceeding is so consequential.

Senator Sasse urged us to do our job; I agree. Part of our job is to review the record of the nominee as thoroughly and deliberately as possible, looking to all the relevant and probative evidence. We can't do that on this record.

Mr. Chairman, you have said multiple times that your staff has already reviewed the 42,000 pages of documents produced to this committee at 5:41 p.m. yesterday. Both sides are using the same computer platform to review the documents from **Mr.** Burke. The documents had to be loaded into this platform overnight and couldn't be concluded until 6:45 a.m. this morning.

How is it possible that your staff concluded its review last night before the documents were even uploaded? That's this platform that both sides are using here. It's simply not possible, **Mr.** Chairman, that any Senator has seen these new materials -- much less all of the other relevant documents that have been screened by Bill Burke, who is not the national archivist.

And this situation -- when we say it's unprecedented, it is truly without parallel in our history -- and I'm going to quote from the national archivist, it's, quote, "something that has never happened before." And the archivist

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continued, "this effort by former President Bush does not represent the National Archives or the George W. Bush Presidential Library."

So, Mr. Chairman, I renew my motion to adjourn so that we have time to conclude our review of these documents and so that also my request under the Freedom of Information Act which is now pending to the national archivist, to the Department of Justice, to other relevant agencies can be considered and judged. That Freedom of Information Act will require some time I assume to conclude.

I renew my motion, Mr. Chairman, and ask for a vote on the motion to adjourn. As I said earlier, Rule IV provides, quote, "the committee Chairman shall" -- shall, not may -- "shall entertain a non-debatable motion to bring a matter before the committee to a vote." That seems pretty clear to me, Mr. Chairman. I've made a motion to bring before the committee a motion to adjourn under the rules. With all due respect, you are required to entertain my motion.

And I would just add this final point -- all of these documents will come out. They will come out eventually -- as soon as 2019 and 2020. By law, these documents belong to the American people. They don't belong to President Bush or President Trump; they belong to the American people. It's only a matter of time, my Republican colleagues, before you will have to answer for what's in these documents. We don't know what's in them, but the question is, what are they concealing that you will have to answer to history for?

Mr. Chairman, I renew my motion to adjourn.

GRASSLEY: You quote the rules very accurately, but those rules apply to executive business session. We're not in an executive business session so I deny your motion.

BLUMENTHAL: Mr. -- Mr. Chairman, with all due respect, I ask you to point to me the language in Rule IV or anywhere else in our rule that limits its scope to executive business meetings. There is no such language, Mr. Chairman.

GRASSLEY: I would have you quote language to the -- to the contrary...

BLUMENTHAL: Could you quote me that language?

GRASSLEY: No. I'm asking you. You quote me a language to the contrary of what I wrote.

BLUMENTHAL: There is no language to the contrary. I'm asking for a vote in this session now. There's nothing that precludes a vote in our hearing at this exact time.

GRASSLEY: OK. I've ruled. You want to proceed, do you?

BLUMENTHAL: Well, if the Chair, with all due respect, is ruling against me, I move to appeal the ruling of the Chair. With all due respect, the Chairman is not above the rules of the committee. I ask for a roll call vote to overturn the ruling of the Chair and to allow for a vote on my motion to adjourn these proceedings.

GRASSLEY: That would be an appropriate motion if we were in executive business session but we're not in executive business session, so it's denied.

BLUMENTHAL: Mr. Chairman, I will proceed under protest. We've had a lot of rhetoric so far about rules and norms. I am very regretful that the Chair has adopted this stance which, in my view, contradicts our basic norms and rules but I will proceed.

PROTESTER: Take the vote. Save what's left of our democracy. Take it now.

BLUMENTHAL: Mr. Chairman, I have fears about what this nominee will do with respect to our rule of law but also about basic rights that have been established by past Supreme Court precedent and the only way to test what his fidelity to the rule of law is, in fact, is to ask as I have asked every judicial nominee coming before me when I have

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served on this committee and hearings -- whether he believes past decisions of the Supreme Court were correctly decided.

So, I'm going to be asking you, Judge Kavanaugh, whether you believe Roe v. Wade was correctly decided. I'm going to be asking you ...

(UNKNOWN): Mr. Chairman -- Mr. Chairman, may I ask a question? I was under the impression each of us had 10 minutes for an opening statement. We'll have 50 minutes for questions.

GRASSLEY: Let me -- let me clarify.

(UNKNOWN): And plus I would ask, Mr. Chairman ...

(CROSSTALK)

BLUMENTHAL: ... well, I -- I don't -- I ...

(UNKNOWN): ...the various members have been making speeches all day long and have not been confined time saw their 10-minute opening statement.

GRASSLEY: Yeah. OK. Well, like I told you...

(CROSSTALK)

BLUMENTHAL: I think I have time left on my ...

GRASSLEY: Yeah, you -- you will have time. I'm going to let you finish. Just a minute. I was hoping that the 10-minute rule would stand but we got off to a very bad start ...

(CROSSTALK)

PROTESTER: ... motion to (ph) ...

GRASSLEY: ... and -- and we -- and we got off to a bad start and everybody started exceeding their time limit. So, I guess, as long as we have to -- we have to stay here and get this all done, today. If we have to stay into the night, we're going to stay. But I'm not going to cut anybody off now that I didn't do it right away.

And like you said, mob rule, I've always said to myself when advising other people, either you run the committee, or the committee runs you. And I let the...

PROTESTER: (OFF-MIKE).

GRASSLEY: ... And I let committee run me this time. So, let's just proceed as we have and let Senator Blumenthal take what time he wants. I hope he won't go too long.

BLUMENTHAL: I'll be very judicious, Mr. Chairman.

GRASSLEY: Thank you.

BLUMENTHAL: Thank you.

GRASSLEY: I don't know what that means.

FEINSTEIN: Yes, I don't either. He's not answering (ph).

GRASSLEY: I'm sorry, Senator Cornyn. I can't agree with you. We'll just proceed. Senator Blumenthal.

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BLUMENTHAL: Thank you, Mr. Chairman.

CORNBYN: Next time, Mr. Chairman.

BLUMENTHAL: So, I will be asking Judge Kavanaugh whether he believed Roe v. Wade was correctly decided, whether you believe Brown v. Board of Education was correctly decided.

Judicial nominees have figured out all kinds of ways to avoid answering that question. First, they said they felt it would violate the canons of ethics. There are no canons of ethics that preclude a response. Then they said that they felt a decision might come before them, an issue in a case that might arise.

And more recently, they've adopted the mantra that they think all Supreme Court decisions are correctly decided. But you're in a different position. You've been nominated to the highest court in the land and your decisions, as a potential swing vote, could overturn even well settled precedent.

And there are indications in your writings, your opinions, as well as the articles you've written, and some of the memos that have come to light, that you believe, for example, Roe v. Wade could be overturned. And that's why I want to know from you whether you think it was correctly decided in the first place, and other decisions that are regarded as well settled, or long established.

In fact, I have these fears because, Judge Kavanaugh, this system and process has changed so radically. In fact, you have spent decades showing us, in many ways, what you believe, or to put it more precisely, you've spent decades showing those groups, like the Federalist Society and the Heritage Foundation and others, what you believe.

They're the ones who have really nominated you because the president outsourced this decision to them. In those opinions, and writings, and statements, and interviews, you've done everything in your power to show those far-right groups that you will be a loyal soldier on the court.

And I'm going to use some of those writings, and some of the timing, and other indications, to show that you are more than a nominee, in fact a candidate in a campaign that you have conducted. That seems to be, unfortunately, the way the system has worked in your case.

The norms have been dumbed-down, and the system has been degraded, but I think that we have an obligation to do our job and illicit from you, where you will go as a justice on the United States Supreme Court.

Based on what you've written and said, and also what you will tell the American people in these hearings. I join in the request that's been made of you that you show the initiative and ask for a postponement on these hearings.

I think that this process has been a grave disservice to you, as well as this committee, and the American people. If you are confirmed after this truncated and concealed process, there will always be a taint. There will always be an asterisk after your name, appointed by a President named as an unindicted co-conspirator after the vast majority of documents relating to the most instructive period of his life were concealed.

The question will always be why was all that material concealed? You've coached, and you've mentored judges in going through this process. You are as sophisticated and knowledgeable as anyone who will ever come before us as a judicial nominee.

So, you know that we have an obligation to inquire as to everything that can be relevant. And it's not the numbers of documents. It's the percentage. There were no emails when Justice Ginsburg was the nominee.

The documents that we've been provided contain duplicates. They're full of junk. We need everything that is relevant, including the three years that you served in the Bush White House as Staff Secretary, the most instructive period of your professional career.

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So, let me just conclude by saying, you know, what we share, I think, is a deep respect and reverence for the United States Supreme Court. I was a law clerk, as you were. I've argued cases before the Court. Most of my life has been spent in the courtroom as a U.S. attorney, or as Attorney General.

The power of the Supreme Court depends not on armies or police force, it has none, but on its credibility, the trust and confidence of the American people.

I ask you to help us uphold that trust by asking this committee to suspend this hearing and come back when we have a full picture, with the full sunlight, that our chairman is so fond of espousing, so that we can, fully and fairly, evaluate your nomination. Thank you, Mr. Chairman. **GRASSLEY**: Once again, I would remind everybody, we have...

PROTESTER: (OFF-MIKE)

GRASSLEY: ... A half a million -- half a million documents on this gentleman's record. And also, I'd like to respond to...

PROTESTER: What are you hiding?

GRASSLEY: .. The fact that you can't go 42,000 pages, which I guess is way over the number of documents that -- that we actually received. The majority and minority receive documents in two ways. One is a format that can be uploaded to reviewing platforms and the second is in a standard document file format called PDFs.

Given the importance of reviewing documents in a timely manner, my staff reviewed the PDF versions. The production was relatively small and, therefore, there was no need to upload them to a reviewing (inaudible)...

(CROSSTALK)

PROTESTER: (OFF-MIKE)

Senator -- Senator -- Senator Kennedy -- Senator Kennedy, you're next.

KENNEDY: Say again?

GRASSLEY: You're next, Senator Kennedy.

(CROSSTALK)

PROTESTER: Senators (ph), please vote no.

PROTESTER: Vote no.

PROTESTER: Stop the ...

PROTESTER: Stop the oppression (ph) (inaudible)...

(CROSSTALK)

PROTESTER: (inaudible) stop the (inaudible)...

PROTESTER: ... Stop the oppression of (inaudible).

KENNEDY: Thank you, Mr. Chairman.

I -- I've listened with interest today. I agree so much with what Senator Sasse said. I listened today and -- and it's no -- no wonder to me that so many Americans think that the United States Supreme Court is nothing more than a little Congress, a political body like the United States Senate.

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But let me try to explain what I'm looking for in a Supreme Court justice. I want a judge; I don't want a politician. Now, I'm not naive. It's true; Senator Booker and I are new to the Senate. We -- we didn't come here when Moses walked the earth, but we're not new to politics.

And I understand that -- that human relations are about politics; I get that. But I don't think our founders ever intended for the United States Supreme Court to become a political body; I don't. I'm not looking for an ideologue. I'm not looking for a hater.

What I am looking for is somebody who's whip-smart, who's intellectually curious, who writes cleanly and crisply, who knows what a semicolon is for, and who is willing to protect the United States Constitution and the Bill of Rights, and understands that the Bill of Rights is not an a la carte menu. Every one of them counts.

Let me try to explain further why I agree with so much of what Senator Sasse said. This is not a newsflash; our country is divided. We've been divided before. We'll be divided again. We will survive this. But I confess, the division in our country today is -- seems to me, to be especially sharp.

And what concerns me so much about the -- that division is the basis for it. It's not honest disagreement. So much of it is anger. There have been thousands, millions of pages written about the genesis of that anger.

We all have opinions. You know what they say about opinions. Here's mine. I think a big part of the anger in America today is because we have too many Americans who aren't sharing in the great wealth of this country -- not economically, not socially, not culturally and not spiritually. And -- and those Americans believe that the American dream has become the American game, and that that game is fixed.

Let me give you one example of why I say that. I don't hear it so much today -- I'm biased -- but I happen to think the Tax Cuts and Jobs bill -- Act -- worked. But when I ran two years ago, I would hear it every single day. People would stop me and they would say, Kennedy, you know what's wrong with us economically? They would tell me, I look around, Kennedy, and I see too many undeserving people -- I emphasize undeserving, I don't want to paint with too broad a brush.

They would tell me, Kennedy, I look around and I see too many undeserving people at the top getting bailouts. And I see too many undeserving people at the bottom getting handouts. And I'm here just a working schmuck in the middle, stuck in the middle, and I can't pay the freight anymore because my health insurance has gone up, and my kid's tuition has gone up, and my taxes have gone up but I'll tell you what hadn't gone up, my income.

Now, I happen to think we're doing better in that regard but we've still got to work -- a long way to go. But here's the point, who's supposed to fix that for the American people? It's us. It's the United States Congress. It's not the United States Supreme Court that's supposed to fix this country culturally, economically, socially, spiritually.

And -- and that's why I say I agree with so much of what Senator Sasse said. It's almost become cliché, but the role of a judge is -- or, at least should be to say what the law is not what the law ought to be. Now, that's become cliché, but clichés become clichés because they're true.

Judges are not put there to try to bypass the ballot. Courts should not try to fix problems that are within the province of the United States Congress. Even if the United States Congress doesn't have the courage to address those problems, our courts were not meant to decide these kind of issues.

I'm not -- again, I'm not naive -- I know that judges aren't robots. We -- we can't replace you and shouldn't try to replace you with a software program based on artificial intelligence. You have discretion. We're going to talk about that if we ever get to the questioning part of this exercise.

But I want to say it again, I understand why, listening today, that so many Americans believe that the law which I think all of us revere, has become politics just pursued in another way. That's not the way it's supposed to be, judge. That's not what I'm looking for.

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Now, I'm going to end -- I've still got plenty of time left, I think I had two hours allotted, Mr. Chairman?

(LAUGHTER)

Somebody talked about -- said that they'd seen this movie before. I commented to my friend, Senator Tillis, this thing's as long as a movie. These are the words of Justice Curtis in 1857 when he dissented in the Dred Scott case, "when a strict interpretation of the Constitution, according to the fixed rules which govern the interpretation of laws is abandoned and the theoretical opinions of individuals are allowed to control its meaning, we have no longer a Constitution.

We are under the government of individual men who, for the time being, have power to declare what the Constitution is according to their own views of what it ought to mean. That's not the rule of law.

Justice Scalia put it another way, and I truly will end with that. He said the American people love democracy and the American people are not fools. The people know their value judgments are quite as good as those taught in any law school, maybe better.

Value judgments, after all, should be voted on, not dictated. And that's what I'm looking for, Judge. Thank you, Mr. Chairman.

GRASSLEY: (OFF MIKE)

HIRONO: Thank you, Mr. Chairman. Judge Kavanaugh and your family, welcome.

Mr. Chairman, earlier on today I pointed to an op-ed that had been written by two former White House staff secretaries John Podesta and Todd Stern, entitled "Staff secretaries aren't traffic cops. Stop treating Kavanaugh like he was one."

And I note in their op-ed what they said, I will quote part of it, they said when we -- they -- handled the job for President Bill Clinton in much the same way that staff secretaries did for President George H.W. Bush, we wrote concise cover memos for every decision memo that went to the president.

We summarized the underlying memo, identified the core decision points and options and conveyed the views of key senior staff members from whom we had sought comment. We wrote hundreds of these memos, it is no wonder that Judge Kavanaugh has deemed his time as the White House staff secretary so important to his performance as a judge.

But unfortunately, as we have said many times already, we don't have any of these documents during Judge Kavanaugh's time as staff secretary.

Dana Sabraw, Michael Baylson, Ketanji Brown Jackson, Colleen Kollar-Kotelly, Naomi Reice Buchwald, John Bates, Derrick Kahala Watson: These are the names of some of the federal judges across this country who have vindicated my faith in the rule of law over the last year and a half.

These are the women and men appointed by Republican and Democratic presidents who ordered the government to reunite parents with their children ripped from their arms at the border, who rejected attempts to deny federal funds to cities refusing to be drawn into the war against immigrants, who stopped executive orders aimed at kneecapping public sector unions, who stopped the implementation of an ugly ban on transgender Americans serving in our military, who rule that public officials cannot block citizens from their Twitter feeds, and who stopped the government from banning Muslims from entering the United States. HIRONO: These judges stood firm in defense of the Constitution, the American values it expresses and the systems -- and the system of checks and balances it enshrines. At this moment of peril for our democracy, it is these judges and others like them who have pushed back against the efforts of our president eager to wield unlimited and unchecked power. In normal times, we would be here today to determine the fitness of a nominee to the Supreme Court of the United States chosen for his or her legal talent, and reputation for fairness.

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But these are not normal times. Instead we are here to decide whether or not to rubber-stamp Donald Trump's choice of a pre-selected political ideologue, nominated precisely because he believes a sitting president should be shielded from civil lawsuits, criminal investigation and prosecution, no matter the facts.

Let's not forget, during his campaign, Donald Trump needed to shore up his support from the republican base who questioned whether he was sufficiently conservative. To help, he turned to the Federalist Society and the Heritage Foundation to build a pre-approved list of names, and promised to pick from among them when selecting nominees for the Supreme Court.

These groups are long-standing, right-wing organizations that advocate for conservatives causes and legal positions. The Heritage Foundation focuses on developing policy to, among other things, oppose climate change, repeal the Affordable Care Act, and reduce regulations for big businesses. The Federalist Society focuses on changing the American legal system to align with an ultra conservative interpretation of the Constitution, including, the overturning of *Roe v. Wade*.

When given the opportunity to nominate a new Supreme Court justice, Donald Trump did exactly as he promised. He did not select someone who demonstrates independence and fidelity to the rule of law. Instead, Donald Trump selected a pre-approved name in order to guarantee a fifth vote for his dangerous anti-worker, anti-consumer, anti-women, pro-corporate and anti-environmental agenda.

And Donald Trump selected Brett Kavanaugh from this list for an even more specific reason, the president is trying as hard as he can to protect himself from the independent, impartial and dogged investigation of his abuse of power before the walls close in on him entirely.

Because if there's one thing we know about Donald Trump, it is that he is committed to self-preservation every minute, every hour, every day. Judge Kavanaugh's appointment should be considered in a broader context. The president has been packing our courts with ideologically driven judges who come to the bench with firm positions and clear agendas, who then go on to rule in ways consistent with those agendas.

For example, Trump nominee James Ho, now a judge on the Fifth Circuit, has written in favor of unlimited campaign contributions and, in another case, publicly aired his personal views in opposition to abortion. Trump nominee Don Willett, now a judge on the Fifth Circuit, has already voted to curtail the independence of a federal agency that helped rescue the economy after the mortgage crisis of 2008.

Trump nominee Steven Bibas, now a judge on the Third Circuit, wrote a dissent to explain that he does not believe Title IX requires school districts to provide transgender students appropriate changing facilities and bathrooms. Trump nominee Amy Coney Barrett, now a judge on the Seventh Circuit, ruled to keep out of court employees trying to challenge an arbitration proceeding and cast the deciding vote to allow a business to continue to segregate its workforce.

And Trump nominee John K. Bush, now a judge on the Sixth Circuit, ruled to keep out of court a woman accusing her employer of age discrimination, despite a dissenting judges' view that there was sufficient evidence to go forward.

When these Trump-nominated judges came before this Judiciary Committee as nominees, my democratic colleagues and I tried to find out how they would go about deciding tough cases, what they would base their decisions on when the law did not give a clear enough direction, as is often the case.

And time and again, we were told, don't worry about my personal background, or my history as a partisan political advocate. Don't worry about what I've done, written or said until now. When I get on the bench, I'll just follow the law. But clearly, they have not.

Why should we expect this Supreme Court nominee, you, to be any different? President Trump selected Brett Kavanaugh because of his fealty to the partisan political movement he has been a part of his entire professional life.

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From his clerkship with Judge Alex Kozinski, to his apprenticeship with Ken Starr, to his work on George W. Bush's legal team during the Florida recount and in the White House, Judge Kavanaugh has been knee-deep in partisan politics. The first reward for that service was his nomination to the D.C. Circuit. It was a tough fight. But Republican-aligned special interests fought for more than three years to get him confirmed.

And for the past 12 years as a judge, he has ruled whether in dissent or majority and weighs in line with their political and ideological agenda. Now President Trump has selected Judge Kavanaugh to provide the decisive fifth vote, in cases that will change some of the most basic assumptions Americans have about their lives and their government.

There are more than 730 federal judges working on thousands of cases across the country every day, and most of these cases end in trial courts, some of them are appealed and heard on appellate courts. The closely divided Supreme Court hears very few cases, many times fewer than 100 every year. Before Justice Kennedy retired, so many important constitutional rights were hanging in the balance, decided on narrow grounds by five-to-four votes.

And now that Justice Kennedy has left the court, the forces opposed to worker's rights, women's rights, LGBTQ rights, voting rights, civil rights of all kinds, and environmental protections are eager to secure a solid majority on the court to support their right-wing views. These ultra-right-wing forces have been working for decades to prepare for this moment because they know that a single vote -- a single vote from one justice is all it would take to radically change the direction of this country.

It could take just one vote on the Supreme Court to overturn *Roe v. Wade* and deny women control over their reproductive rights. It could take just one vote to declare the ACA's pre-existing condition protections unconstitutional. It could take just one vote to dismantle environmental protections that keep our air safe to breathe and our water clean to drink.

It could take just one vote to dismantle common-sense gun safety laws that keep our communities safe. And it could take just one vote to further erode protections for working people and unions.

Since his nomination was announced, I have been asked many times why the Democrats would even bother to go through the motions when we know that our Republican colleagues will do anything to support this administration's judicial nominees.

There are battles worth fighting, regardless of the outcome. A lifetime appointment to the Supreme Court of someone who will provide the fifth vote on issues impacting the lives of every working American, is a battle worth fighting.

So I intend to use this hearing to demonstrate to the American people precisely why, who sits on the Supreme Court matters. Why a fifth, ideologically driven, conservative and political vote on the court is dangerous for our country. Why the Senate should reject this president's latest attempt to rig the system in his favor.

As senators begin to ask their questions in the coming days, I ask the American people to listen carefully to what the nominee says and compare it with what we heard only a short time ago from Neil Gorsuch at his confirmation hearing. Just 18 months ago, Judge Gorsuch told us that, quote, "all precedent of the United States Supreme Court deserves a respect of precedent, which is quite a lot. It's the anchor of the law."

Judge Gorsuch said "It's not whether I agree or disagree with any particular precedent, that would be an act of hubris. Because a precedent, once it's decided, it carries far more weight than what I personally think." He said. Judge Gorsuch made these promises when he was asking for our votes but earlier this year, he joined a majority of the court to overturn precedent in a 41-year-old case that protected government workers and their ability to form a union in a five-to-four decision.

I expect Judge Kavanaugh to make similar promises over the next few days only to do, sadly, the exact opposite if confirmed. Our job here is important because every American should be concerned about what our government

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and country would look like if Judge Kavanaugh is confirmed. We owe it to the American people and to all of the independent-minded judges I mentioned at the beginning of my remarks to preserve the integrity of our constitution and the fairness and order of a system that has served us well for so long.

Judge Kavanaugh, what may be going through your mind right now is to simply and stoically endure this hearing. But don't you think you owe it to the American people to disclose all of the documents being requested? Because you have nothing to hide. Because you have nothing to hide. I agree with my colleague, Senator Durbin, Judge Kavanaugh. If you stand behind your full record in public life, fundamental fairness would dictate that you join us in our call for this committee to suspend until we receive all relevant documents and have a chance to review them.

Your failure to do so would reflect a fundamental mistrust of the American people. Thank you, **Mr.** Chairman and I would like to have entered into the record the op-ed piece that I referred to by John Podesta and Todd Stern.

GRASSLEY: Without objection, it will be entered. Let's go to Senator Crapo next.

CRAPO: Thank you, **Mr.** Chairman. Judge Kavanaugh, welcome. Thank you for your service to this country and thank you for the willingness you have expressed to take this additional assignment. And thank you to your family. We welcome them as well.

The process on which we're about to embark is one of, if not the most important duties entrusted to the Senate. The advice and consent on judicial nominations. Ultimately, a fair and proper judge, Supreme Court or otherwise, must follow the laws and not make laws from the bench. Upon receiving his nomination to serve as an associate justice of the Supreme Court, Judge Kavanaugh stated, "My judicial philosophy is straightforward. A judge must interpret statutes as written and a judge must interpret the constitution as written, informed by history and tradition and precedent."

Isn't that the ideal of a judge steadfastly committed to the law? No one seriously questions Judge Kavanaugh's qualifications to serve as an associate justice on our nation's highest court. He is vastly experienced and widely respected for his intellect, his honesty and his legal acumen. With over 300 authored opinions and 12 years of service on the bench, he is a judge with a clear record, demonstrating that he applies the law as written and enforces the constitution.

He values precedent and has written along with Justice Gorsuch and others the law of judicial precedent, a scholarly piece on the importance of stare decisis. Sadly, much of the discourse surrounding Judge Kavanaugh's nomination deals not with the content of his legal opinions, his judicial philosophy or temperament, but rather, as today's discussion has shown, the spurious notion that our distinguished chairman has not been rigorous or fair or transparent in navigating the requisite document production efforts required by this committee.

Those claims are wholly without foundation. There have been 57 days since the announcement of Judge Kavanaugh's nomination on July 9 and today's confirmation hearing. This is a longer period of time than senators had for Justices Sotomayor, Kagan, and Gorsuch. Justice Kavanaugh also submitted over 17,000 pages with his bipartisan Judiciary Committee questionnaire. The most extensive questionnaire ever returned by a nominee to the Supreme Court.

The committee also received more than 440,000 pages of documents related to his service in the executive branch. This too is more than any Supreme Court nominee to date. As has been said earlier, in fact it's more than the last five nominees combined. I applaud Chairman **Grassley** and his dedicated staff for their tireless work in reviewing these documents and making the vast majority publicly available as quickly as possible.

And frankly, **Mr.** Chairman, I believe the American people appreciate your efforts, your transparency and your commitment to a fair process. Now, I want to make one side note. It was said here today that the number of documents provided by Justice - now Justice Kagan, who was also a nominee who had served in the White House and had many, many documents relating to her service, that 99 percent of the documents requested for her were provided.

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One problem with that fact. And that is that when Justice Kagan was before us, she had been the solicitor general. There were probably more pages relevant to her service there than to your service. We don't know the number, because the Republicans agreed, after a strong disagreement with the Democrats, that we wouldn't request those documents because the White House claimed they were sensitive.

The Democrats have not made that agreement with the Republicans this time. But it's notable - I think it's incredibly important to note that this argument that is going on today about the balance of document production is simply a trumped-up argument. These facts aside, many of my colleagues continue to criticize this process. Their motives are clear; use any means available to attempt to delay the confirmation process of a well-qualified jurist fit for the job, indefinitely.

I strongly agree with the comments of many of my colleagues here today. Senator Cruz pointed out what was really at stake. Senator Sasse pointed why it is that Congress needs to be the part of our federal government that makes the law, not the judiciary. Senator Kennedy has followed up on that thought, as have many of my other colleagues here today. I think one point that Senator Cruz mentioned deserves repeating. Much of what we are hearing today, and will hear for the remainder of this process, is ultimately an effort to relitigate the last presidential election. In fact, we had just heard Judge Kavanaugh attacked and stated to be unqualified because he is a Trump nominee.

Other Trump nominees have also been attacked here today. The attack is on President Trump, not on their nominees because of unwillingness to accept the outcome of the last Presidential election.

Judge Kavanaugh, as the nominee, has been widely recognized for his judicial temperament and his detailed legal writings in defense of the constitution. His opinions are widely cited by his fellow appellate judges and even the Supreme Court.

And although his integrity was just challenged, stating that no matter what he says to this committee, he will vote the other way once put into office -- put into the Supreme Court, the fact is that his record, as the Chairman has already outlined, disproves that.

He serves on the D.C. circuit court of appeals. A court on which more of the judges who serve, have been appointed by Democrat presidents than Republican presidents, yet, he has voted 97 percent of the time with his colleagues in the majority on that court, showing that he will follow the law.

And that he does so with the majority support of broad and -- I was going to say bipartisan but nonpartisan judges who are appointed by republican and democrat presidents and who consider some of the most important cases in America today.

That is the judge we have before us. He's a judge's judge. Many critics argue that Justice Kavanaugh would play an instrumental role in reversing a number of Supreme Court precedents. How I -- however, I wonder how one can draw that conclusion given his record of exhaustive and weighty consideration of important legal questions on a court such as the D.C. circuit.

I recognize that it is politics driving these attacks and so do the American people. They know what's at stake here. Moreover, in his legal opinions, Judge Kavanaugh has consistently demonstrated a willingness to reign in both Congress and the Executive Branch when they overstep their respective constitutional grounds.

Judge Kavanaugh understands and is focused on the principle that a judge is a servant of the law, not the maker of it. We should take him at his own words. The judge's job is to interpret the law, not to make the law or policy.

So read the words of the statute as written. Read the text of the constitution as written, mindful of history and tradition. Don't make up new constitutional rights that are not in the text of the constitution.

Don't shy away from enforcing constitutional rights that are in the text of the constitution. Those are Judge Kavanaugh's words. That is the man who sits before us nominated to be a justice on the highest court of our land.

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Judge Kavanaugh has the backing of his former law clerks and law students. His colleagues on the bench, appointed by both Republican and Democrat presidents and many members of his local community in which he remains so closely involved.

He is a man of honor, integrity, and well respected in the legal community. There is no dispute he is qualified to serve on our nation's highest court. Mr. Chairman, I look forward to the hearing from the nominee himself when we all get done with our statements.

PROTESTER: (OFF MIKE).

CRAPO: The next few days will prove insightful as we discuss with Judge Kavanaugh for the public to hear in his own words the proper role of a judge in our constitutional system. I look forward to this hearing. And again, Judge Kavanaugh, thank you for being willing to be here. Thank you, Mr. Chairman.

GRASSLEY: Thank you. Senator Booker.

BOOKER: Thank you Mr. Chairman. Welcome senator -- excuse me, Judge Kavanaugh. And I want to say welcome to your family sincerely as well. We're all Americans and taking part in what is truly a historic moment.

Mr. Chairman -- Chairman Grassley, I hope you do not think earlier this morning that in any way I was questioning your integrity or your decency. I was appealing to it earlier before and you have been conducting this hearing, giving myself and others the opportunity to at least speak and make our case.

And even though you have not ruled in our favor, of which I'm disappointed, I do hope you understand that I value your friendship and, frankly, some of the most valuable moments I've had on the Senate.

I still remember shaking your floor (ph) coming to agreement with you on criminal justice reform. I've come to have a deep respect for you sir. So I hope you do not think that I was doing that earlier.

GRASSLEY: If you worry about our friendship being affected, it will not be. And that gives me an opportunity to say something to the public at large. And that is about this committee. You would think that Republicans and Democrats don't talk to each other.

But I'd like to remind the public that when they think that happens they ought to think of the record of this committee, not just this Chairman, but this committee in the three and a half years and maybe even before I got to be Chairman.

But in the three and a half years I've been Chairman, every bill that got out of this committee has been a bipartisan bill. Precede, Senator Booker.

BOOKER: Thank you very much sir. I appreciate that. It doesn't detract from the fact that I just fundamentally disagree with the way you've been concluding today. When I first got to the Senate I was very fortunate that a lot of senior statesmen; yourself, Senator Hatch included, pulled me aside and gave me hard wisdom at time.

Remember, I came to the Senate in a special election at a time that they were -- that we were changing some of the Senate rules. Senator Levin brought me aside and gave me a hard talking to.

Senator McCain gave me a hard talking to. And all of them made similar points about this idea that sometimes you need to be as objective as possible and see how you would react if the pendulum was the other -- had swung the other way.

In other words, they warned me that what goes around in this place comes around. And to really think that if the shoe was on the other foot. And I've been struggling with that, sir, and with all honesty of what would the republicans be saying, what would we be saying if we had a democratic president right now, a democratic nominee right now and this process was in the reverse.

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And -- and I would like to believe how I would behave, and I'm pretty confident I should be a betting man, be willing to bet that if the republicans were being denied, effectively about 90 percent of the documents about a person's public record and actually do believe that some of the analogies that are made to senator -- to excuse me -- Justice Kagan and her solicitor general time is not a fair analogy.

This is a part of the -- of the nominees history that he himself has said was one of the most formative times. And -- and so I would not hire an intern in my office knowing only 90 percent of their resume.

There's not a person here that would buy a home only seeing 90 percent -- only seeing 10 percent of the rooms. I - - I just believe what we're doing here just on the objective view of fairness, is sincerely unfair and it's insulting to the ideals that we try to achieve in this with some sense of comity and some sense of -- of rules.

But I want to go deeper than that. I'm trying to figure out what the jeopardy would be -- what the jeopardy would be if we just waited for the documents. Last night we had a document dump of tens of thousands of pages -- tens of thousands of pages. As has been said already, there's no judge that would allow a -- a court proceeding to would go on -- no judge that would move forward if one of the parties had just got documents as of five o'clock last night or potentially as of 11 o'clock.

What I don't understand is, what's the jeopardy of just waiting -- not just for us to digest these documents -- but other documents. The reality is, is that --- that, Senator Grassley, you yourself have asked for specific, more finite set, more limited set of documents that you haven't even gotten.

And so whether it's not seeing 90 percent of the resume of the gentleman before us, or 50 percent or 40 percent, that should come within time. And there's no jeopardy when we have a lifetime appointment -- he will be there, should he be confirmed, for decades and decades and decades -- waiting another week or five days or two weeks for those documents that you yourself has (ph) requested, which is a more limited subset -- for even those documents to come through. I don't understand what the rush is, especially given all that is at stake.

And so those are the reasons why I say to you, with sincere respect, that this is an absurd process. It just seems unfair to me and it could easily be solved by us putting a pause here on this process, waiting for the documents, evaluating the documents and it'll be a much more robust set of hearings on this nominee.

As I said, I would not hire an intern if I had not seen -- if I had only seen 10 percent of their resume. And here, to have a fuller body of the work of this gentleman before us, who as one of my colleagues called, popping up in some of the most interesting times in the last decade or two on some of the most important issues.

Already, the limited amount -- what we call seven percent of the documents that I've seen -- unfortunately those are things that are being held committee-confidential, which I don't even know if I could use in my questioning here. I think the penalties are as ousting from -- out -- being ousted from the Senate.

But even the little limited amount of documents that have potentially made my questioning far more rich, far more substantive -- to get to the heart of the issues of this -- of the individual nominee.

And again, sir, I try to summon the spirit of some of the elder statespeople I had the privilege of serving with -- from Rockefeller to Levin to McCain -- to -- to some that spirit to be as objective as possible. I do not think it is unreasonable for us to wait for a week or two to get the full body of those documents. It's -- it will cause no harm or damage, except to have more of a full telling of -- of -- of what is at stake here.

This is -- this is the -- the stakes are too high in what this nominee represents for us to rush through this process without a full sharing of the documents.

And with that, I'll -- I'll continue, sir, with my opening statement.

I -- I have said before, already, that...

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(UNKNOWN): (OFF-MIKE)

(LAUGHTER)

GRASSLEY: I'll take this opportunity to probably say that you said I didn't get all the documents I requested. You - you probably heard the first sentence of something I said after our break.

And that was that I could -- I first started talking about expecting a million documents. And we ended up, I think, with 488,000 but then I went on to explain that the process with all the software and everything else that can speed things up, duplicates were -- were eliminated and et cetera, et cetera.

And so we've gotten all the documents I requested, just to correct you.

BOOKER: Sir, and -- and to my understanding, sir...

GRASSLEY: Go ahead with your opening statement.

BOOKER: No, sir. But I just want to make a point to that, if you don't mind. You requested a limited set of documents of his time as a -- in the White House counsel's office.

We have not received all the documents from his time. They are still being vetted slowly through our system, of a -- of a -- not a representative from the committee, but the Bill Burke individual still -- is still reading through those documents as we speak...

(CROSSTALK)

GRASSLEY: (OFF-MIKE)

BOOKER: I imagine some of them will be dumped on us as this process is going on, and I predict, with quite confidence, that some of those documents might still be trickling out in the days before the actual full Senate vote.

(CROSSTALK)

BOOKER: Please, sir.

GRASSLEY: You're talking about committee-confidential, and you have access to them right now. They just -- there hasn't been a determination that, like -- 80 percent of -- of all the documents are on the Web site so the public can see them.

But in regard to some, they were forwarded to us without a second review. That second review gives -- gives an opportunity to then get them out to the public if there is not -- no reason that they are -- are excluded under the law. And you can read those committee-confidential documents right now.

BOOKER: Well, sir, I've -- I've -- we sent a letter days ago asking for that. I will -- I will re-send it with you in these next 24 hours before our hearing tomorrow.

GRASSLEY: We responded to your letter.

BOOKER: Again, sir, you did not respond to our letter by allowing committee-confidential documents to...

GRASSLEY: Please -- please go to your opening statement.

BOOKER: Thank you very much, sir.

And, look, I -- I was -- you know, former senator, now former Vice President Biden talked about not questioning your colleagues' motives. And some of the colleagues across the aisle have called the efforts by some of us, sincerely to get access to these documents, a sham, a charade.

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I can go through a lot of the words that we use, calling into question the motivations that I have for doing what I believe, sir, is perhaps the most grave and important duty that I have as a senator, to advise and consent.

And -- and yes, as Senator Cornyn pointed out, I have announced my decision already. But my duty to the people of the State of New Jersey and others is to fully vet an individual. That's why I think the documents are important, that as full record is made clear and that we have a chance to ask questions about it.

I also have said that I oppose this nomination happening right now because of the moment we are in American history, which is very unprecedented. I remind you that we have had bipartisan statements by senators working in tangent about the attack on the United States of America, which was a attack going to the core of what our democracy is about -- the voting processes.

A special counsel was put into place, and that has led to dozens of people being indicted, people all around the president of the United States. It has led to dozens and dozens of charges, and that investigation is ongoing. We have seen the president of the United States credibly accused by his own personal lawyer to -- as being an unindicted co-conspirator.

In all of this, we have one judge being chosen who was not on the original list. He wasn't on the outsourced Federalist Society's original list. He wasn't on the second version of that list. He got onto that list after this special investigation got going. In other words, after the president was in jeopardy.

He was added to the list, and then the president pulled the one person from all of that list, late -- that it was added late -- that would give him, in a sense, the ability to pick a judge that has already spoken vastly about a president's ability to be prosecuted, about a president's ability to dismiss or end an investigation.

And so that's the second reason why I've asked for us to put a pause on this process. Fundamental to this -- this -- this -- this nation's very beliefs -- Judge Learned Hand said this -- as powerful and profound as the documents of this country are, our founding documents; they're not worth much if the people themselves lose faith in them.

And I believe the nomination of a judge for (ph) all of this list (ph) that so powerfully speaks to a president's de facto immunity from ongoing investigation prosecution will shake the faith that millions and millions of Americans have in the fairness of the process of the system.

And I've asked Judge Kavanaugh time and time again to recuse himself, to restore that faith, to alleviate the concerns of Americans and he has thus far refused to do so. Now I am upset about the process, and this is not manufactured outrage, this is sincere concern for a process that seems wrong and just not objective and fair.

I am concerned about, as my colleagues are on both sides of the aisle, a Russian attack on our nation. But there's a lot more going on here that makes this nomination of great concern, and it's frankly some of the things I've heard from both sides of the aisle tonight is when we travel this country and what we are hearing from individuals and how that relates to a position on the Supreme Court.

Right now millions of American families are watching this in sincere concern and fear, I've heard them, I've gotten the calls, I've travelled this country, I've talked to Republicans and Democrats.

They're fearful about where the Supreme Court is going and what it will do when it has the power to shape law, shape the lives and liberties for individuals for decades to come. I've talked to workers all over my state, all over this nation, workers that now work in a country where wages are at a 60 year low as a portion of our GDP whose labor protections -- workers whose labor protections are being diluted and whose unions are under attack.

So many of those individuals are asking whether the Supreme Court of their lifetimes will be an institution that elevates the dignity of American workers, or one that allows powerful corporate interest to continue to weaken labor protections.

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It didn't just happen, labor protections that were fought for, that people struggled for, that some -- you know the labor movement actually died for. Are these labor rights going to become aggravated? Are they going to become limited, further increasing the vast disparities of wealth and power in our country?

We know this, we've talked to them, both sides of aisle, we've talked to cancer survivors, Americans with disabilities, survivors of domestic abuse, parents with beautiful children that happen to have disabilities, who because of the Affordable Care Act, can no longer be denied coverage because of, quote, "a preexisting condition".

There's a Texas case where that's being challenged right now, that's moving up, it could likely go before the Supreme Court. Well knowing your record, it is right that these Americans, so many of them with preexisting conditions are asking whether the Supreme Court will be an institution that affirms and protects the rights of people with access to healthcare.

Some -- many people who rightfully believe when they read our founding documents that talk about life, liberty and the pursuit of happiness that healthcare, they believe, is fundamental.

We all know too many people who have set aside prescription drugs because they're too high, because of what corporations are doing there. People who have put off going to see the doctor because a visit is too expensive, that is in the balance with this nomination.

I've gone across the state, and -- and Senator Durbin, I don't know if I've told you this, I was in your state talking to a Republican farmer about how the farm country is changing so dramatically, the livelihoods of so many independent family farmers are being threatened by the consolidation of large multi-national corporations.

These corporations have acquired so much power, this consolidation now from the seeds that they buy, the prices going up, to who they have the ability to side to, this abuse of corporate consolidation is driving so many farmers out of business.

You see, one farmer was telling me about the suicide rates. Now, people are saying that this histrionics, this is not life or death, well I know these things actually are often a matter of life or death.

When uninsurance rate goes up -- when insurance rates go down rather, more people without healthcare often lose their lives. There are -- there is not one senator on the Republican side or Democratic side (ph) who has not seen -- I've only been here five years and I've seen the culture of Washington change because of the obscene amount of dark money pouring into our political process, corrupting our political exhausts (ph), rigging the system.

This -- this nomination will have an effect on that. I've seen Americans all over this country, it's the bipartisan work that I've done with senators on either side who feel entrapped by a broken criminal justice system, one that is, we know and unassailably disproportionately targets black and brown Americans.

Where many Americans believe, and one famous American said we have a system that now treats you better than if you're rich and guilty than poor and innocent. These issues are in the balance now, and everyone who's concerned about these issues and more are wondering what the story of America is.

We -- we had this great leader, man named King who said the arc of the moral universe is long but it bends towards justice. There's so many Americans who fought for these fundamental rights, who family member who they remember, union organizers, civil rights activists, women's rights activists who fought for, struggled for and died for many of these rights.

The right for women to make their own medical decisions, including the right to an abortion and not a back alley butcher. The right of all Americans to marry who they love. The right to - to vote and to work free of discrimination regardless of race and the rights of all Americans. These are our rights, these are American rights. And so we know the answer to these questions, I have looked through the record I have had access to, to see the pattern of your decisions.

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And that's the pattern that really troubles me, judge, and I know we're going to get a chance to go through this, and I know my colleagues will as well. But it seems so clear that in your courts, the same -- the same folks seem to win over and over again, the powerful, the privileged, big corporations, special interests, and over and over again.

The folks that lose are the folks that -- why I came to Washington to fight. Working folks, consumers, women, immigrants, minorities, the disadvantaged, the poor, this is the challenge before -- this is why so much is at stake. I love that my colleagues keep going back to the constitution, but understand this, I laud our founders, I think they were geniuses.

But you got to understand that there are millions of Americans who understand that they were also flawed people. We're the oldest constitutional democracy, we're the oldest one. We were founded in a break with human events, you know this, judge. I've read your writings.

We were not founded on some kind of tribalism as much as we think it's breaking out in our country, we weren't founding because we all look alike, we all pray alike, because we're all the same race. We're not a monarchy or theocracy; we broke with the course of human events and formed this nation.

God bless America, God bless our founders, but we know our founders and their values and their ideals. We know that they -- that they were flawed and you can see that in the documents. Native Americans were referred to as savages, women weren't referred to at all, African Americans, blacks, slaves were referred to as factions of human beings. As one civil rights activist -- I think it was Stokely Carmichael used to always say, "Constitu, Constitu (ph), I can only say three-fifths of the word."

GRASSLEY: Senator Booker...

BOOKER: But -- I'm almost done, sir.

GRASSLEY: OK, go ahead. How...

(LAUGHTER)

BOOKER: I've got -- I've got my three more minutes.

GRASSLEY: The only reason I -- the only reason I stopped you at this point is I -- I thought that I would let people go at least as far as Senator Blumenthal went, and you have reached that point.

BOOKER: I'm a -- I'm -- I appreciate that I'm a bit of a trailblazer, sir, I'm going to push just two or three more minutes.

GRASSLEY: OK.

BOOKER: My point -- my point, sir, is that I'm proud of this history.

GRASSLEY: Your clock, when it reaches 10, is your 2 1/2 minutes...

BOOKER: And I want to -- I just want to point out right here, from the activism of Stonewall, Selma, Seneca Falls, there's an activism that I worry -- rights that were gained were rolled back, and the example I have here is there's an amazing activist here right not, Ms. Carlotta Walls LaNier, and Ms. LaNier -- I -- I thank her for coming today. It was 61 years ago on this very day, on September 4th, 1957 that Ms. LaNier, at the age of 14, faced crowds that were shouting racial slurs, she was jeered.

And on that day, Ms. LaNier joined eight other students, a group that would become known as the Little Rock Nine, to try to desegregate an all-white high school in Little Rock, Arkansas. We know what they did that day was much more -- much bigger than a first day of school, is was the first major test of the Supreme Court's landmark decision, the 1954 Brown versus Board of Education decision.

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I've been shocked sitting here that there are now some judges that Trump has appointed that refuse to even say -- and I'm not saying this is you, sir -- that that's settled law. There are people, like Ms. LaNier, who are part of gaining rights in this country, advancing the ideals of this nation towards the purity of the ideals put forth by the founders despite the imperfections, and now the fear and the worry is where the trend of the court is doing -- is rolling back those gains, is undermining that progress, is restricting individual rights as the rise of corporations, the rise of dark money, the rise of the interests of the powerful and the privileged and the elite.

And so I just say, in conclusion, sir -- I said this to you in a heart-to-heart moment in the last seconds that you were -- you've -- you came to my office to meet with me one-on-one, which I appreciated, I -- I pointed to the map behind my desk, which is the Central Ward of Newark, New Jersey, a place with mighty people, it's a low-income community, people still struggling for the fullness and the richness of the promises of America, that that's -- that's the concern that I have right now, that is what is at stake.

And so I say in conclusion, sir, this to me is a profound and historical moment. I cannot support your nomination, not just because of the body of your work, but also the perverse process by which this comes forward. We should not vote now. We should wait. And if we're not waiting, we should object to your nomination. Thank you.

GRASSLEY: Senator Tillis.

TILLIS: Thank you, **Mr.** Chairman. I have a 12-minute preamble, and 18 minutes of comments.

(LAUGHTER)

In all seriously, I hope to beat Senator Flake in being brief. First off, to Ashley, I know that Margaret and Liza are gone, but you've gone through a very difficult day and you've held up well. You've -- to your parents, Judge Kavanaugh, I've got to compliment you on your mother's composure. I'm pretty sure my mother would have been out of the chair by now, so I appreciate all that you've -- all you've done. You've obviously raised your son right.

You know, I think we need to go back and -- and recognize, we were going to be here, this wasn't going to be a kumbaya moment, we had every member on this committee either publicly state or participate in a press conference before the sun had set on the first 24 hours of your nomination that they were going to vote against you.

Now we're asking for all kinds of documents and you're getting them. As a matter of fact, I think that the chair has done an extraordinary job. He started out on this process by offering -- acquiring as many as a million documents, we determined because of duplication and relevance, it was only a half a million, and they've all been provided.

And I'm not an attorney, but I am a technologist and I'm also a process person and I know damn well that if you get documentation electronically, you can get through it in a matter of hours. And for the documents that got sent yesterday, you could get through it in a matter of hours. They had plenty of time to get documents that they only need the run up this floor (ph) because they already know they're going to vote against you.

I also want to compliment you on your composure. You've taken a lot of notes, and I, for one, tomorrow am going to spend more of my time listening to your responses rather than talking over you and trying to simplify things into yes/no answers that you know you can't **respond** to.

So I look forward to your testimony tomorrow.

I -- you know, the -- as the hearing was going on, there were two things that just caught me. I'm not doing my prepared statements. I'll submit them for the record, **Mr.** Chair, but we're talking about all of this dark money and efforts going on the other side. Well, I just got an email from Organizing for Action -- you all would know that as the legacy campaign of President Obama -- telling me to oppose you because you're going to deny reproductive rights, deny healthcare coverage, advance climate change in a bad way, and end gun violence prevention.

I don't know near as much about the institutions of government as -- let's say Senator Sasse, but I'm pretty sure once you get confirmed on the bench, you're not going to be able to file a bill to do any of that. What you may end

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up doing is finding out that we got lazy, we didn't work hard enough, we didn't understand the Constitution, we didn't reach across the aisle to create enduring value, which is largely the reasons why people get frustrated with you. They want you to do our job.

Justice Gorsuch said numerous times in his confirmation hearing, that I had the privilege of participating in, "It's not my job to do your job, Mr. Senator." If you're frustrated and worried about the prospects of somebody being able -- denied coverage for preexisting convictions (ph), then let's fix it. That's why I filed a bill a couple of weeks ago. Let's fix it. Don't play politics and blame the Supreme Court for your inadequate architecture of a bill. Let's fix it.

If you're worried about the balls and strikes that Judge Kavanaugh's called on the bench around regulatory issues, it seems to me you've called balls and strikes on both sides of the Administrative Procedures Act, and there seem to be flaws in there that need to be fixed.

For the attorneys in the room who are studied on the law, rather than trying to get Judge Kavanaugh to commit one way or another on these policy initiatives that President Obama and others around this table are -- are interested in, get them to explain to you the legal theory behind his position that may have in fact produced an outcome that he didn't particularly like, but because he did it based on his interpretation of the Constitution and the laws.

Don't expect him to be a politician. And as for motivations, you know, I have to say that -- it's been said by at least one person on this committee, that on the one hand we shouldn't question other people's motivations, on the other hand, I find it personally insulting to think that because I think we have before us an eminently qualified judge, someone who's going to call balls and strikes -- strikes, to suggest that because I'm inclined to support him that I'm complicit in evil, really makes me wonder the sincerity about questioning other people's motives. TILLIS: So Judge Kavanaugh, I am glad that you're before us. I believe that you have 300 opinions that people should look at and read and try and spar with you on the basis of your legal knowledge, your constitutional understanding and the statutory constructs. It would be great -- and I hope that people have actually taken time to look at the single most important factor in your resume.

It's not, maybe, where you went to school. I guess that's good. It's not maybe where you practiced law, but it's the 307 different opinions you can read, and the descent (ph) you can read. Spar on the basis of your legal knowledge, those of you who want to prove to be the smartest lawyer in the room.

And see if you can actually prove a better theory that may actually give Judge Kavanaugh pause. But that's not what this hearing's been about. And I am so glad that I'm one of the last people to do an opening statement because what I hope I hear tomorrow -- and by the way, just from process standpoint, the -- we're going to have 30 minute rounds which in Senate time is about an hour and a half per member...

(LAUGHTER)

...tomorrow. And then, we're going to have 20 minute rounds the following day. Everybody take time to actually talk about legal theory. Stop the theater and start talking about what's really meaningful here.

And I think if we do that, I have every confidence, Judge Kavanaugh, you're going to be Justice Kavanaugh. And I'm proud to actually see you compose yourself the way you have today. I'll be asking you several questions on some judgments that, frankly, I didn't like, but I know you probably made the right decision.

And I believe that when you get confirmed to the bench, you're actually going to take some other opinions that I don't like because it's what I wished you could do for me because we fail to get it done here.

But it will be done for the right reasons. And I think if people, objectively, look at your record, they're going to be hard-pressed to take all of this theater we've heard today and boil it down into something that makes you look like you're an activist judge just waiting to be one of the members of that nine member legislative branch down the street.

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I think you're one of the single greatest opportunity -- great opportunities that we have to make the Supreme Court make us do our job, and to reign (ph) in the, dangerously, high amount of authority that our administrative branch has. And that's all I want you to do. And I look forward to asking you questions tomorrow. I yield back the rest of my time.

GRASSLEY: Senator Harris.

HARRIS: I see Senator Graham has joined us -- rejoined us. I think he was here before me. He's more senior.

GRASSLEY: Just go (inaudible).

HARRIS: OK, great. So, I -- I thank you, **Mr.** Chairman. I'd like to restate my objection from earlier for the record which is my motion to postpone this hearing. A number of comments have been made by my honored and respected colleagues. I'd like to address a few of them.

One, there was some mention of a concern about Elena Kagan's hearing. And that the White House, at the time, there was an agreement that those certain records are sensitive and should, therefore, not be disclosed.

It's my understanding that as a point of distinction between that time and today, that those were active cases in the White House. And for that reason, there was an understanding and agreement that they were of the sensitive nature and should not be disclosed. In terms of the point that has been made about playing politics, and blaming the Supreme Court.

I think that we have to give pause when those kinds of concerns are expressed, to also think about the fact that there have been many a political campaign that has been run indicating an intention to use the United States Supreme Court as a political tool to end things like the Affordable Care Act, the Voting Rights Act, and campaign finance reform which makes this conversation a legitimate one in terms of a reason -- concern about whether this nominee has been nominated to fulfill a political agenda, as it relates to using that court, and the use of that court.

As it relates to the 42,000 documents -- or 42,000 pages of documents, I find it interesting that we get those documents less than 24 hours before this hearing is scheduled to begin. But it took 57 days for those documents to be vetted before we would even be given those documents.

So, there's some suggestion that we should be speed readers and read 42 pages -- 42,000 pages of documents in about 15 hours when it took the other side 57 days to review those same documents. So, the logic, at least on the math, is not applying.

Now, the Chairman has request 10 percent of the nominee's documents, that's 10 percent of 100 percent of his full record. The nominee's personal lawyer has only given us 7 percent of his documents, 7 out of 100 percent of the full record.

Republicans have only given 4 percent of these records or made them public. That's 4 percent of 100 percent of a full record. Ninety six percent of his record is missing, 96 percent of his record is missing.

It is reasonable -- it is reasonable that we should want to review his entire record. And then we can debate among us, the relevance of what is in his record, to his nomination. But it should not be the ability of this -- the leadership of this committee to, unilaterally, make decisions about what we will and will not see in terms of its admissibility, instead of arguing about the weight of whatever is made admissible.

The late Senator Kennedy of Massachusetts called these hearings a Supreme Court nominee's, quote, "job interview with the American people." And by that standard, the nominee before us is coming into his job interview with more than 90 percent of his background hidden.

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I would think that anyone who wanted to sit on the nation's highest court would be proud of their record, and would want the American people to see it. I would think that anyone privileged to be nominated to the Supreme Court of the United States would want to be confirmed in a process that is not under a cloud, that respects due process.

I would think that anyone nominated to the Supreme Court of the United States would want to have a hearing that is characterized by transparency, and fairness, and integrity, and not shrouded by uncertainty, and suspicion, and concealment, and doubt.

We should not be moving forward with this hearing. The American people deserve better than this. So, Judge Kavanaugh, as most of us know, and I will mention to you, and you have young children, and I know they're very proud of you, and I know you are a great parent. And I applaud all that you have done in the community.

And so, as you know, as we all know, this is a week when most students in our country go back to school. And it occurs to me that many of years ago, right around this time, I was starting kindergarten. And I was a bus -- in a bus -- a school bus, on my way to Thousand Oaks Elementary School as part of the second class of students, as busing desegregated Berkeley, California public schools.

This was decades after the Supreme Court ruled *Brown v. Board of Education* that separate was, inherently, unable. And as I've said many of times, had Chief Justice Earl Warren not been on the Supreme Court of the United States, he could not have led a unanimous decision, and the outcome, then, of that case may have been very different. Had that decision not come down the way it did, I may not have had the opportunities that allowed me to become a lawyer or a prosecutor. I likely would not have been elected district attorney of San Francisco, or the attorney general of California. And I most certainly would not be sitting here as a member of the United States Senate.

So for me, a Supreme Court seat is not only about academic issues of legal precedent or judicial philosophy; it is personal. When we talk about our nation's highest court and the men and women who sit on it, we're talking about the impact that one individual on that court can have; impact on people you'll never meet, and whose names you will never know.

Whether a person can exercise their Constitutional right to cast a ballot -- that may be decided if Judge Kavanaugh sits on that court. Whether a woman with breast cancer can afford healthcare or is forced off life-saving treatment; whether a gay or transgender worker is treated with dignity or may be treated as a second-class citizen; whether a young woman who got pregnant at 15 is forced to give birth, or in desperation, go to a back alley for an abortion; whether a president of the United States can be held accountable, or whether he'll be above the law.

All of this may come down to Judge Kavanaugh's vote, and that's what's at stake in this nomination. And the stakes are even higher because of the moment we're in, and many of us have discussed this. These are unprecedented times. As others have already observed, less than two weeks ago, the president's personal lawyer and campaign chairman were each found guilty or pleaded guilty to eight felonies. The president's personal lawyer, under oath, declared that the president directed him to commit a federal crime, yet that same president is racing to appoint to a lifetime position on the highest court in our land, a court that very well may decide his legal fate.

And, yes, that's essentially what confirming Judge Kavanaugh could mean. So it is important, more important, I'd say, than ever that the American people have transparency and accountability with this nomination. And that's why it is extremely disturbing that Senate Republicans have prevented this body, and most important, the American people from fully reviewing Judge Kavanaugh's record, and have disregarded just about every tradition and practice that I heard so much about before I arrived in this place.

Judge Kavanaugh, when you and I met in my office, you said, with respect to judicial decisions, that rushed decisions are often bad decisions. I agree with you. I agree with you. And when we are talking about who will sit on the Supreme Court of the United States, I believe your point couldn't be more important.

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Mr. -- Mr. Chairman, when Judge Kavanaugh was nominated in July, he expressed his belief that a judge must be independent, must interpret the law and not make law. But in reviewing this nominee's background, I am deeply concerned that what guides him is not independence or impartiality. It's not even ideology. I would suggest it is not even ideology.

What I believe guides him, and what his record that we've been able to see shows, is what guides this nominee is partisanship. This nominee has devoted his entire career to a conservative Republican agenda, helping to spearhead a partisan investigation into President Clinton; helping George W. Bush's legal team ensure that every vote was not counted in Bush v. Gore; helping to confirm partisan judges and enact partisan laws as part of the Bush White House. And in all of these efforts he has shown that he seeks to win at all cost, even if that means pushing the envelope.

And if we look at his record on the D.C. Circuit and in his recent writings and statements, it is clear that the nominee has brought his political bias to the bench. He has carried out deeply conservative partisan agendas as part -- as a judge, favoring big business over ordinary Americans, polluters over clean air and water, and the powerful over the vulnerable. Just last year, Judge Kavanaugh praised the dissent in Roe v. Wade, and ruled against a scared 17-year-old girl seeking to end her pregnancy. He has disregarded the Supreme Court precedent to argue that undocumented workers weren't really employees under our labor laws.

We have witnessed horrific mass shootings, from Parkland, to Las Vegas to Jacksonville, Florida. Yet Judge -- Judge Kavanaugh has gone further than the Supreme Court, and has written that because assault weapons are, quote, "in common use," assault weapons and high-capacity magazines cannot be banned under the Second Amendment. When he was part of an independent counsel investigation into the Democratic president, the nominee was dogged in demanding answers. And yet, he has since changed his tune, arguing that presidents should not be investigated or held accountable, a position that I am sure is not lost on this president.

These positions are not impartial; they are partisan. Judge Neil Gorsuch, Judge Kavanaugh's classmate, insisted before this committee that judges are not merely, quote, "politicians in robes." I fear that Judge Kavanaugh's record indicates that is exactly what he may very well be.

Now, I know members of this committee and the nominee's friends and colleagues have assured us that he is devoted to his family, and supportive of his law clerks, and volunteers in his community, and I don't doubt that at all. But that's not why we are here. I'd rather that we think about this hearing in the context of the Supreme Court of the United States, and the impact it will have on generations of Americans to come. And do we want that court to continue a legacy of being above politics and unbiased, or are we prepared to participate in a process that is tainted, and that leaves the American public questioning the integrity of this process?

And I'll close by saying this: We have a system of justice that is symbolized by a statue of a woman holding scales, and she wears a blindfold. Justice wears a blindfold because we have said in the United States of America, under our judicial system, justice should be blind to a person's status. We have said that in our system of justice, justice should be blind to how much money someone has; to what you look like or who you love; to who your parents are, and the language they speak. And every Supreme Court justice must understand and uphold that ideal.

And sir, should those cases become -- become before you, Judge Kavanaugh, I am concerned whether you would treat every American equally or, instead, show allegiance to the political party and the conservative agenda that has shaped and built your career. I am concerned your loyalty would be to the president who appointed you and not to the Constitution of the United States.

These concerns, I hope you will answer during the course of this hearing. I believe the American people have a right to have these concerns. I also believe the American public has a right to full and candid answers to the questions that are presented to you during the course of this hearing.

I will be paying, of course, very close attention to your testimony, and I think you know the American public will be paying very close attention to your testimony. Thank you.

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GRASSLEY: Senator Graham.

GRAHAM: Am I the last person?

GRASSLEY: Yes.

GRAHAM: All right.

GRASSLEY: But -- but don't forget, we're going to hear from the nominee...

GRAHAM: OK.

GRASSLEY: ... and his introducers before you can go home and go to bed.

(LAUGHTER)

GRAHAM: OK. Thank you. I was going to ask you to take me to dinner. But that's not going to happen.

GRASSLEY: You know the answer to that.

GRAHAM: You know that. That's right.

So to my colleagues on the other side, I -- I look forward to working with you, but we have a different view here. I think you've got to be blind as to what's going on here.

Have you heard of Justice Breyer? Do you know him? You can't say anything, I guess. Where did he come from? He was Ted Kennedy's Senate Judiciary person. Where do you think Republicans are going to go find a judge?

The whole argument is, you can be a conservative Republican president but you've got to nominate a liberal to be fair to the country. That's absurd. Where do you think Ruth Bader Ginsburg came from? She was the general counsel of the ACLU, wonderful person.

What groups do you all use to pick from? This is shaping up to be the hypocrisy hearing. And that's hard to do in the Senate in today's time, to be hypocritical.

But let me just point to a few of these things. Clinton, it didn't bother anybody for Clinton to nominate Breyer while he was under investigation. We actually did it. It didn't bother any of you all that Ted Kennedy's staff person was his pick. It didn't bother me either because that's who I expected you to pick. This is ridiculous.

You're one of the best choices any Republican could make. As I said with Justice Gorsuch, I am glad you're here because there were days I'm wondering who he would have picked.

(LAUGHTER)

GRAHAM: And this is a homerun from my point of view. Let's talk about Roe v. Wade, who would ever play politics on the campaign trail with Roe v. Wade? What a bastard Donald Trump is, until you hear about Hillary Clinton.

February 3, 2016, this is what Hillary Clinton said when asked does she have a litmus test for SCOTUS nominations, Supreme Court nominees, "I do have a litmus test, I have a bunch of litmus tests, because the next president could get as many as three appointments," and I hope she's right. "We've got to make sure to preserve Roe v. Wade, not let it be nibbled away or repealed." She sounds very open-minded.

October 2016, "We need a Supreme Court that will stand up on behalf women's rights ... it is important that we not reverse Roe v. Wade." "I want a Supreme Court that will stick with Roe v. Wade and a woman's right to choose," I understand where she's coming from.

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Anybody running for president over there, I dare you to disagree with her. You'll wind up like I did, getting one percent.

(LAUGHTER)

GRAHAM: If you even suggest that you will pick a nominee that's not going to uphold Roe v. Wade, that's the end of you. But you've figured that out, you don't need me to tell you.

So this is the way we do politics. This is a big decision called Roe v. Wade. There are two sides and a bunch of nuances. Here's what I know about you, you're going to take as precedent -- you wrote a big book which I will never read -- and you're going to tell us what it takes to overturn longstanding precedent.

Nobody on this side will care if you overturn Citizens United; matter of fact, they will cheer you on. Somebody will challenge Citizens United and you'll probably say let me hear both sides of the story, then I'll tell you whether or not I should uphold it.

So Hillary Clinton, we know where she's at on Roy v. -- Roe v. Wade. And that's just the way it is.

Now, what other things? Executive power. This idea that Trump picked you to save him, amazing concept since you said what you said back in 1998 and 2008. The bottom line is when Clinton was being impeached, my good friend -- and, this is true he is my good friend -- on February 12, 1999, introduced into the record during the deliberations of the Clinton impeachment trial an article by Brett Kavanaugh, suggesting that you should wait, if there is an indictment, until after the president is out of office.

The same concept we're talking about here today when the shoe was on the other foot, here's what Joe (ph) said about your thinking, "The president is not simply another individual, he is unique. He is the embodiment of the federal government and the head of a political party.

If he is to be removed, the entire government likely would suffer, and the military or economic consequences to the nation could be severe. These repercussions, if they are to occur, should not result from the judgment of a single prosecutor -- whether it be the attorney general or the special counsel -- and a single journey -- jury. Prosecution or non-prosecution of a president is, in short, inevitable, unavoidably a political act.

Thus, as the Constitution suggests, the decision about the president while he's in office should be made where all great national political judgments in our country should be made, in the Congress of the United States, according to Joe Biden; the gift that keeps on giving for us.

I think that's pretty hypocritical. During the Clinton days, you were right, but all of a sudden you're a danger to the Republican. So let's talk about -- well, there's so many -- how many minutes do I have here?

The bottom line is...

GRASSLEY: Don't -- don't -- don't exceed what Whitehouse had (ph)...

GRAHAM: I will not.

(UNKNOWN): That'd be impossible.

GRAHAM: Guns. Somehow, you're going to make sure that Congress -- the bottom line on guns, Dianne Feinstein's a wonderful lady and has passion on this issue about assault weapons. She was able to succeed politically after 10 years, the gun assault weapons ban expired and it's been hard to get it re-established.

She introduced legislation in 2013 that got 16 no votes, 16 Democrats. So I don't believe they see you as a threat to the nation if you come out on the idea that the Second Amendment has some meaning. In other words, the political process when it comes to guns is a work in progress. And I'd rather us decide that than you.

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When it comes to the pillar of virtue, Comey -- Harry Reid -- that he's been a supporter of Comey and led the fight to get him confirmed, as he believed Comey was a principled public servant. With the deepest regret, I now see that I was wrong. Mr. Nadler from New York (ph), "The president can fire him for cause and ought to. He violated all the guidelines and put his thumb on the scale of an election."

Mr. Cohen from Tennessee, a Democrat, called on Comey to resign his position effective immediately, and I'm sure upon reflection of this action he will submit his letter of resignation for the nation's good. To my Democratic friends, you were all for getting rid of this guy, now all of a sudden the country's turning upside down because Trump did.

There's a process to find out what happened in the 2016 election, it's called Mr. Mueller, and I will do everything I can to make sure he finishes his job without political interference, and I'm here to tell anybody in the country who listens that this is so hypocritical of my friends on the other side. When it was their president, Kavanaugh was right. When you're talking about Roe v. Wade, it's OK to promise the nation it will never be overturned. It's OK to pick a Democratic staff member of this committee, but it's not OK to pick somebody who's been a lifelong Republican.

People see through this. You had a chance and you lost. If you want to pick judges from your way of thinking, then you better win an election. I voted for two of your choices, Sotomayor and Kagan, got a lot of crap. I would suggest you think long and hard if you've got a political ambition of voting for this guy, because it will not play well on your side.

And why did I do it? I thought they were qualified by any reasonable measure given the history of the Senate. But we have turned the history of the Senate upside down. I found that they were different than I would have picked, Sotomayor and Kagan, but by any reasonable measure, they were qualified.

You've been on the court for 12 years, you've had 307 decisions, you've been approved before, so I hope people in the country understand this game. It's a game that I am sad to be part of. It's gotten really bad.

The antidote to our problems in this country when it comes to judges and politics is not to deny you a place on the Supreme Court. This is exactly where you need to be, this is exactly the time you need to be there, and I am telling President Trump you do some things that drive me crazy and you do some great things.

You have never done anything better in my view than to pick Gorsuch and Kavanaugh, because you had an opportunity to put well qualified conservatives on the court, men steeped in the rule of law who will apply analysis, not politics, to their decision making. And you knocked it out of the part (ph) into my friends on the other side. You can't lose the election and pick judges. If you want to pick judges, you better win.

GRASSLEY: Let me tell you what -- let me tell everybody what the rest of the day holds for us. Judge -- Judge Kavanaugh, you can take a break now that we had originally scheduled for 15 minutes, and it may take 15 minutes, but we've got to put a different table in here for the people that are going to introduce you.

So if your staff will watch and we get done in less than 15 minutes, I'd like to start just as soon as the table is set. So we'll take a 15-minute break now and then we have the introducers and then we will give the oath to the nominee and then we will hear the statement from the nominee and then we will adjourn until 9:30 tomorrow morning.

And tomorrow morning, my -- my approach is going to be the same for the 30 minutes as it would be for the five minutes that we normally have in just an otherwise normal hearing. And that is that if you've got one second left, you can ask a question, but don't take all day to ask a question, and I hope you can give a short answer if their time is up.

But then we will -- then we will -- we'll move onto the next person. So I want tomorrow not to happen -- maybe I better speak to myself. I'm not going to let happen tomorrow what I shouldn't have let happen today, because I've been instructing people that run committees either you run the committee or it runs you. And you guys have been very successful today in running the committee. I don't want it to happen tomorrow.

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Take your -- take your time, sir. Or I mean, until we get the table set. Recess.

(RECESS)

GRASSLEY: We are fortunate to have Condoleezza Rice, Senator Rob Portman and Lisa Blatt to introduce the nominee. We will now start with Condoleezza Rice.

RICE: Thank you very much. Chairman **Grassley**, Senator Feinstein, members of the committee, I'm really honored to join Lisa Blatt and Rob Portman in introducing Brett Kavanaugh at these hearings to consider his confirmation as a justice of the Supreme Court of the United States of America.

My personal relationship with Judge Kavanaugh goes back 17 years to our time as White House colleagues in the administration of George W. Bush. Those were remarkable times, and I loved serving. They were, however, not easy times, and the guidance and counsel of those with whom I worked was both a joy and a blessing. I am so grateful to have had Brett Kavanaugh as a colleague. He was always supportive and strong and caring, and someone whose integrity and good judgment I valued enormously.

I knew Brett early in his years as a family member. As a matter fact, I was there when he married Ashley. I remember well the birth of his children. He is a great father and husband and son. In short, he's just a very good human being.

Since the nomination of Brett Kavanaugh, I have been able to reflect back on those times, and what my experience tells me about Brett in this crucial role. Many have given testimony to his extraordinary legal mind, the depth of his experience, his intellect and his good common sense. You have heard, and you will hear from his clerks and other jurists and great legal thinkers, as well as colleagues from throughout his career. I do not need to repeat their praise. Only to -- to say that I know firsthand that Brett is really, really smart.

Here is the Brett Kavanaugh that I know: He is hard-working. He has a sense of humor. He seeks truth in facts. There is no detail too small to gain his attention. He makes those around him better. Brett is wise. He is an old soul who is made to help steady us in these complicated times. Brett listens, especially to those with whom he disagrees, and in our charged environment, when we have become almost tribal, living in echo chambers, and often finding comfort in the company of only those with whom we agree, this is an indispensable quality for the responsibilities of the Supreme Court.

The only thing that would be better is if Brett had gone to the same college that his mentor and friend, Anthony Kennedy went to; that would be Stanford University. But for that, I'll forgive him, and I have to say, Yale University seems to have done a pretty good job.

In recent weeks, we've also had the chance to reflect on our Constitution, the Supreme Court itself and the trust that we place in the justices of it. As a scholar and as a diplomat, I have watched the struggle of people across the world to achieve democracy and to keep it. Every day, I am more amazed by the brilliance of the institutional design that the framers left to us. They carefully balanced powers and responsibilities between the three branches of government. Knowing that human beings are fallible, they constructed institutions that both enable and constrain those who would govern us.

Scholars often speak of the American spirit of constitutionalism. We Americans believe that the Constitution is our personal protection. We take our rights very seriously, and we will go all the way to the Supreme Court if we think those rights have been violated. A democracy is only stable when there is that kind of trust in the institutions; a belief that those institutions will be fair and just, and secure the rights of citizens.

The strength of America's institutions is a cause for optimism, but they cannot be taken for granted. The Supreme Court's special role in protecting the careful balances that the Constitution seeks to achieve is crucial to our democratic stability. This is true even as times and customs change, and it is more important with every passing year in our increasingly complicated nation.

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As a little girl born in segregated Birmingham, Alabama who grew up to be secretary of state, I know personally our country's long journey to guarantee equal rights. I know the power of the Constitution, and I know the gift of our democracy. The Supreme Court is a crucial guardian, both of our Constitution and of our democracy.

That is why I am so honored to introduce Brett Kavanaugh for these hearings. He will be an outstanding Supreme Court justice. His intellect is unquestioned. His judgment is highly regarded, and I can personally attest to his character and integrity as a colleague.

Brett Kavanaugh will thoroughly and faithfully uphold the trust that is our heritage, the Constitution of the United States of America, the most remarkable governing document in human history. Thank you.

GRASSLEY: Thank you, Secretary Rice. Now is our colleague, Senator Portman. **PORTMAN:** Chairman **Grassley**, Ranking Member Feinstein and colleagues on this committee on the Republican and the Democratic side, it's a privilege to join Condi Rice and Lisa Blatt here this afternoon in introducing a friend, Judge Brett Kavanaugh.

I have known Brett and his wife, Ashley, since before they were married, and I had the opportunity to work with Brett during his service in the George W. Bush White House.

As Secretary Rice has just said very well, those of us who worked with him universally praise his work ethic, his intelligence and his integrity.

I visited with George W. Bush a few days ago, and we talked about Brett. He put it simply. "Brett Kavanaugh is a class act." In endorsing Brett, former lawyer to President Bill Clinton, Bob Bennett, called him "a strong advocate of decency and civility."

By the way, of all the attributes you look for in a judge, what could be more important than good judgment? Brett definitely showed good judgment in marrying Ashley. So did she, and they are a great family.

It's wonderful to have their daughters, Margaret and Liza, with us here today. Brett's parents, Edward and Martha, are also here. That's especially appropriate since Brett's first introduction to the law came from listening to his mom practice closing arguments at the dinner table.

She was a trailblazer who went to law school at age 34 and eventually became a trial judge. Brett has said, to him, Martha Kavanaugh will always be the true Judge Kavanaugh.

During the process of this hearing there will be more spirited discussions about Brett's legal philosophy, his experience and background as a lawyer and a judge. I heard quite a bit of it already today. And there should be this discussion. This is about a lifetime appointment to the highest court in the land.

In my view, there is not a better qualified person to be on that court. Just last Friday, the American Bar Association gave Judge Kavanaugh a unanimous well-qualified rating, which is the highest rating they offer. Unanimous.

I saw how he conducted himself as associate counsel to the president in the White House Counsel's office, a job I once had in the first Bush White House.

And I have watched him for the past 12 years on the D.C. Circuit where he has been praised as fair, smart and independent.

He has authored more than 300 published opinions, an impressive number. And the Supreme Court has adopted his reasoning a remarkable 13 times, a testament to his thoughtful and well-reasoned decisions, and a record that few, if any, other appellate judges can match. Again, no one more qualified.

For more than a decade, he has also taught classes at Harvard, Yale and Georgetown Law Schools. He is a well-respected judge and a well-respected professor, and a thought leader among his peers.

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That's why so many of his former students, his law clerks, his judicial colleagues and legal scholars -- by the way, from across the political spectrum -- have come out in support of his nomination.

Judge Kavanaugh is guided by the Constitution and by the rule of law. He has said, "The judge's job is to interpret the law, not to make the law or make policy."

I agree. And by the way, as do most of the people we represent. Judges shouldn't be legislating from the bench.

Clearly, Brett Kavanaugh has the right qualifications and he has a judicial philosophy that is very much in the mainstream.

Just as important to me is the kind of person you want on the Supreme Court. I have known Brett, not so much as a legal scholar or a judge or a professor, but as a friend, a father and a husband.

He is thoughtful and compassionate, and someone who has a big heart and the humility to listen. To me, that might be the single most important attribute for a member of the Supreme Court, the humility to listen.

Throughout this confirmation hearing, I hope the American people will get to know the Brett Kavanaugh I've had the privilege of knowing.

A couple days after he was announced, Brett came to my office one evening to discuss his confirmation, just as he's been to your offices.

He then went straight from our meeting to serve dinner to the homeless through his church, a regular occurrence that was long-scheduled, scheduled long before his nomination.

I only found out about it because that night, someone recognized him and took a photo that got tweeted. It was a photo of him in a baseball cap in this soup kitchen. It's classic Brett, that he didn't tell me this was where he was going after meeting with me. To my colleagues, I know the man. He does things because it's the right thing to do.

Brett's also involved, as some of you know, in his daughter's sports teams. Last season, Margaret's sixth grade girls' basketball team he coached had an undefeated season, and went on to win a city-wide championship.

Way to go, Margaret.

To show you where his priorities are, Judge Kavanaugh -- or Coach K., as he is known by his players -- has the team photograph and trophy prominently displayed in his judicial chambers.

Julie O'Brien (ph), whose daughter goes to school with Margaret, has another telling story about Brett.

A few years ago, Julie's husband passed away. With no one to accompany her daughter to the annual father-daughter dance, Brett stepped up.

That year and every year since, Brett has taken her daughter alongside his own to the dance. That's the kind of person he is. That's the Brett Kavanaugh I know.

I'm proud to introduce Brett Kavanaugh before this committee, and I'm proud to strongly support his nomination to be the next associate justice of the United States Supreme Court.

I know these are partisan times here in Washington. But this is an extraordinary nominee in every respect. Based on his record, his qualifications and his character, I believe he deserves broad support.

My hope, Mr. Chairman, is that, as was the case with Justices Sotomayor and Kagan, nominated by President Obama, this committee will report his nomination favorably, and the full Senate will confirm him with the strong bipartisan vote that he deserves. Thank you, Mr. Chairman.

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GRASSLEY: Thank you, my colleague.

Ms. Lisa Blatt?

BLATT: Thank you, **Mr.** Chairman and committee members.

It is a privilege to appear before you today. My name is Lisa Blatt, and I know Judge Kavanaugh in my capacity as an appellate lawyer here in Washington.

I have argued 35 cases before the Supreme Court of the United States, more than any other woman in history.

I am also a liberal Democrat and an unapologetic defender of a woman's right to choose. My hero is Justice Ruth Bader Ginsburg, for whom I had the great fortune of serving as a law clerk.

I proudly voted for Hillary Clinton. I voted for President Obama twice. And with my apologies, **Mr.** Chairman, for this one, I wish Senator Feinstein were chairing this committee.

(LAUGHTER)

And yet I am here today to introduce Judge Kavanaugh, and urge the Senate to confirm him as the next associate justice of the Supreme Court.

I've received many angry calls from friends and even strangers, for supporting Judge Kavanaugh. But I was raised to call it like I see it, and I don't see the choice before you as difficult.

By any objective measure, Judge Kavanaugh is clearly qualified to serve on the Supreme Court. After law school, he clerked for Justice Anthony Kennedy, the justice he would succeed. He spent 12 years on the nation's most prestigious Court of Appeals, the United States Court of Appeals for the District of Columbia Circuit.

His opinions are invariably thoughtful and fair, and many are known as instant classics -- not just because they are important but because they are written so clearly and well. The Supreme Court has adopted the reasoning in his opinions more than a dozen times.

Judge Kavanaugh's judicial temperament and integrity are also flawless. He has meticulously prepared and he treats litigants with respect, asking probing questions of both sides. He approaches judging by determining what the law requires, no matter his personal preference.

Judge Kavanaugh has taught at the nation's top law schools, published thoughtful law review articles and co-authored a leading treatise on judicial precedent, and as just mentioned, the ABA strongly endorsed him because, quote, "he meets the very highest standards of integrity professional competence and judicial temperament."

On a personal level, I just can't say enough nice things about the judge. I first met him almost 10 years ago when he e-mailed me completely out of the blue to say that he liked an article I had written about arguing before the Supreme Court. Since then we've become friends and he has become a mentor to me in my career.

Judge Kavanaugh has spent countless hours listening to me talk about the challenges I have faced as a working mother in a profession dominated by men. He has been a great source of advice on these and many other issues about work-life balance. He understands that life is not always perfect and he **responds** to life's challenges with a self-deprecating sense of humor.

More generally, Judge Kavanaugh has been remarkably committed to promoting women in the legal profession. More than half of his law clerks have been women -- something that is sadly by-no-means common. And almost all of his clerks, women and men, have gone on to clerk at the Supreme Court, including for Justices Kagan and Sotomayor.

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As his former women law clerks told this committee, the legal provision is, quote, "fair and more equal" because of Judge Kavanaugh. He's mentored countless other women through the classes he teaches at Yale and Harvard law schools. Obviously, I know that Judge Kavanaugh has a conservative judicial outlook and if he is confirmed he will have one of nine votes to definitively decide the meaning of the Constitution, including just how far to read it to protect the reproductive rights of women.

Now if it were up to me Justice Ginsburg would have all nine votes but that's not our system and the reality is that the presidency and the Senate are in Republican hands. Judge Kavanaugh is the best choice that liberals could reasonably hope for in these circumstances.

I am sure that some members of the Senate knew that they would disagree with Justice Ginsburg's legal views when she was a nominee, but Justice Ginsburg was confirmed 96 to 3. This body has obviously treated some nominees differently since then to the detriment of our courts.

I strongly disagree with the Senate's treatment of Judge Garland. Judge Kavanaugh himself spoke glowingly of Judge Garland during his pending nomination stating that, quote, "chief Judge Garland is a brilliant tourist. He's thoughtful, he's considerate, he's collegial, he works well with others. He's a good man -- great integrity. And he's supremely qualified by the objective characteristics of experienced temperament, writing ability, scholarly ability to the Supreme Court." All of this is equally true of Judge Kavanaugh.

I do not think it is fair to hold Judge Kavanaugh responsible for the fact that Judge Garland is not a justice today. Instead I would urge this committee to treat him as we expect him to treat litigants that appear before him -- on his own merits and with an open mind towards someone whose views may differ from our own. Our judicial system is not well served by tit-for-tat politics.

At the end of the day I enthusiastically support Judge Kavanaugh and I am proud to introduce him because he is unquestionably qualified by his extraordinary intellect, experience, and temperament and he does easily fit within the mainstream of legal thought.

I look forward to the committee over the next few days getting to know the Judge Kavanaugh that I know and at the end of that process I hope you will agree that he should be confirmed to succeed his former boss on the Supreme Court.

GRASSLEY: Thank you, Ms. Blatt. Thanks, each of the panel for their introduction and you're dismissed now.

And then, Judge Kavanaugh, can you shake your head? I was told that you might want five minutes right now. Do you need that?

KAVANAUGH: Yes.

GRASSLEY: OK. Then just stay seated until we change the table in a little bit and then we'll get to you.

Judge Kavanaugh, do you swear that the testimony that you are about to give before this committee will be the truth, the whole truth, and nothing but the truth, so help you god?

KAVANAUGH: I do.

GRASSLEY: Thank you. Proceed with your statement or anything else that you want to tell the committee right now.

KAVANAUGH: Thank you, **Mr.** Chairman, Senator Feinstein, members of the committee. I thank Secretary Rice, Senator Portman, and Lisa Blatt for their generous introductions. They are patriots who represent the best of America. I'm humbled by their confidence. I'm proud to call each of them a friend.

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Over the past eight weeks I've witnessed firsthand the Senate's deep appreciation for the vital role of the American judiciary. I have met with 65 senators, including almost every member of this committee. Those meetings are sometimes referred to as courtesy calls, but that term understates how substantive and personal our discussions have been. I have greatly enjoyed all 65 meetings. KAVANAUGH: In listening to all of you I have learned more about our country and the people you represent. Every senator is devoted to public service and the public good and I thank all the senators for their time and their thoughts. I thank President Trump for the honor of this nomination. As a judge and as a citizen I was deeply impressed by the president's careful attention to the nomination process and by his thorough consideration of potential nominees.

I'm also very grateful for his courtesy. At the White House on the night of the announcement, the president and Mrs. Trump were very gracious to my daughters, my wife and my parents. My family always cherished that night, or as my daughter Liza calls it, her debut on national television.

(LAUGHTER)

KAVANAUGH: As a nominee to the Supreme Court, I understand the responsibility I bear. Some 30 years ago, Judge Anthony Kennedy sat in this seat. He became one of the most consequential justices in American history. I served as his law clerk in 1993. To me, Justice Kennedy is a mentor, a friend and a hero.

As a member of the court, he was a model of civility and collegiality. He fiercely defended the independence of the judiciary. And he was a champion of liberty. If you had to sum up Justice Kennedy's entire career in one word, liberty, Justice Kennedy established a legacy of liberty for ourselves and our posterity.

I'm here today with another of my judicial heroes, my mom. Fifty years ago this week in September 1968, my mom was 26 and I was 3. At that time, my mom started as a public school teacher at McKinley Tech High School here in Washington, D.C.

1968 was a difficult time for race relations in our city and our country. McKinley Tech had an almost entirely African American student body. It was east of the park. I vividly remember days as a young boy, sitting in the back of my mom's classroom as she taught American history to a class of African American teenagers.

Her students were born before Brown versus Board of Education or Bolling versus Sharpe. By her example, my mom taught me the importance of equality for all Americans, equal rights, equal dignity and equal justice under law.

My mom was a trailblazer. When I was 10, she went to law school at American University and became a prosecutor. I am an only child and my introduction to law came at our dinner table when she practiced her closing arguments on my dad and me. Her trademark line was: use your common sense. What rings true? What rings false?

One of the few women prosecutors at the time, she overcame barriers and was later appointed by Democratic governors to serve as a Maryland state trial judge. Our federal and state trial judges serve on the frontlines of American justice.

My mom taught me that judges don't deal in abstract principles. They decide for real cases, for real people in the real world. And she taught me that good judges must always stand in the shoes of others. The chairman referred to me today as Judge Kavanaugh; but, to me, that title will always belong to my mom.

For 12 years I've been a judge on the U.S. Court of Appeals for the D.C. Circuit. I have written more than 300 opinions and handled more than 2,000 cases. I have given it my all in every case.

I am proud of that body of work and I stand behind it. I tell people, don't read about my judicial opinions, read the opinions. I have served with 17 other judges, each of them a colleague and a friend, on a court now led by our superb Chief Judge Merrick Garland.

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My judicial philosophy is straightforward: a judge must be independent and must interpret the law, not make the law; a judge must interpret statutes as written; a judge must interpret the Constitution as written, informed by history, and tradition and precedent.

In deciding cases, a judge must always keep in mind what Alexander Hamilton said in Federalist 83, "The rules of legal interpretation are rules of common sense." A good judge must be an umpire, a neutral and impartial arbiter who favors no litigant or policy. As Justice Kennedy explained in *Texas versus Johnson* -- one of his greatest opinions -- judges do not make decisions to reach a preferred result, judges make decisions because the law and the Constitution as we see them compel the result.

Over the past 12 years, I have ruled sometimes for the prosecution and sometimes for criminal defendants, sometimes for workers and sometimes for businesses, sometimes for environmentalists and sometimes for coal miners. In each case I have followed the law.

I do not decide cases based on personal or policy preferences. I am not a pro-plaintiff or pro-defendant judge. I'm not a pro-prosecution or pro-defense judge. I am a pro-law judge.

As Justice Kennedy showed us, a judge must be independent, not swayed by public pressure. Our independent judiciary is the crown jewel of our constitutional republic. In our independent judiciary, the Supreme Court is the last line of defense for the separation of powers and for the rights and liberties guaranteed by the Constitution.

The Supreme Court must never, never be viewed as a partisan institution. The justices on the Supreme Court do not sit on opposite sides of an aisle. They do not caucus in separate rooms.

If confirmed to the Supreme Court, I would be part of a team of nine committed to deciding cases according to the Constitution and laws of the United States. I would always strive to be a team player on the team of nine.

Throughout my life, I've tried to serve the common good in keeping with my Jesuit High School's motto -- men for others. I've spent my career in public service. I have tutored at Washington Jesuit Academy, a rigorous, tuition-free school for boys from low-income families.

At Catholic Charities at 10th and G, I serve meals to the homeless with my friend, Father John Enzler. In those works, I keep in mind the message of Matthew 25 and try to serve the least fortunate among us.

I know I fall short at times. But I always want to do more and do better. For the past seven years, I've coached my daughters' basketball teams. I love coaching. All the girls I've coached are awesome. And special congratulations to the girls on this year's sixth grade CYO championship team; Anna (ph), Quinn (ph), Kelsey (ph), Shawnee (ph), Chloe (ph), Alex (ph), Ava (ph), Sophia (ph), and Margaret (ph).

(LAUGHTER)

I love helping the girls grow into confident players. I know that confidence on the basketball court translates into confidence in other aspects of life. Title IX helped make girls' and women's sports equal. And I see that law's legacy every night when I walk into my house, as my daughters are getting back from lacrosse or basketball or hockey practice. I know from my own life that those who teach and coach America's youth are among the most influential people in our country.

With a kind word here and a hint of encouragement there, a word of discipline delivered in a spirit of love, teachers and coaches change lives. I thank all of my teachers and coaches who've gotten me to this point and I thank all the teachers and coaches throughout America. As a judge, I've sought to train the next generation of lawyers and leaders. For 12 years, I've taught constitutional law to hundreds of students, primarily at Harvard Law School.

I teach that that constitution's separation of powers protects individual liberty. I'm grateful to all my students. I have learned so much from them and I'm especially grateful to the dean who first hired me, Now-Justice Elena Kagan.

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One of the best parts of my job as a judge is each year, hiring four recent law school graduates to serve as my law clerks for the year. I hire the best. My law clerks come from diverse backgrounds and points of view.

A majority of my 48 law clerks have been women. More than a quarter of my law clerks have been minorities. And I've had far more African-American law clerks than the percentage of African-American students in U.S. law schools. I am proud of all my law clerks. I'm grateful for my friends. This past May, I delivered the commencement address at Catholic University Law School.

I gave the graduates this advice. Cherish your friends, look out for your friends, lift up your friends, love your friends. Over the last eight weeks, I've been strengthened by the love of my friends and I thank all my friends. I'm grateful to have my family behind me. My mom rightly gets a lot of attention. But a few words about my dad.

(LAUGHTER)

He has an unparalleled work ethic and the gift for making friends with people, regardless of who they are or where they come from. My dad and I are both passionate sports fans. When I was seven, he took me to the 1972 NFC championship game at RFK stadium, just two miles from here. Upper deck, Section 503, Row 3, Seats 8 and 9. When I was 17, we sat in the same seats for the 1982 NFC championship game. In 1995, when I was 30, we were at Camden Yards together when Cal Ripken played his 2,131st consecutive game and broke Lou Gehrig's seemingly unbreakable record. And so many other games with my dad. A lifetime of friendship forged in stadium seats over hot dogs and beer.

My daughters, Margaret and Liza, will be in and out of this hearing room over the next few days. They are strong girls, dedicated students, outstanding athletes. In the time since you last saw them at the White House ceremony on July 9th, I'm pleased to report that Margaret's gotten her braces off...

(LAUGHTER)

...and has turned 13. Margaret is the sweetest girl you'll ever know. As for Liza, I tell her every night that no one gives a better hug than Liza Kavanaugh.

Finally, I thank my wife, Ashley. She's a strong West Texan, a graduate of Abilene Cooper Public High School and the University of Texas at Austin. She's now the popular town manager of our local community. This has not exactly been the summer she had planned for the family. But I'm grateful for her love and inspiration. Ashley is a kind soul; she always sees the goodness in others. She's made me a better person and a better judge.

I thank God every day for my family.

Mr. Chairman, Senator Feinstein, members of the committee, I look forward to the rest of the hearing and to answering your questions.

I am an optimist. I live on the sunrise side of the mountain, not the sunset side of the mountain. I see the day that is coming, not the day that is gone. I am optimistic about the future of America. I am optimistic about the future of our independent judiciary.

I revere the Constitution. If confirmed to the Supreme Court, I will keep an open mind in every case. I will do equal right to the poor and to the rich. I will always strive to preserve the Constitution of the United States and the American rule of law.

Thank you, Mr. Chairman.

GRASSLEY: Thank you, Judge Kavanaugh.

I have something I want to say to the committee, but before that, we've been here approximately eight hours, you've had a lot to hear today and listen to. I think it's very noteworthy that no one has seriously questioned your

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qualifications to receive a promotion to the nation's highest court, and they've learned a lot about you being an exceptional teacher, coach, volunteer, and dad in addition to being an exceptional judge. So I thank you very much for your statement.

Question -- questions for the record are due Monday, September the 10th at noon. Will notice Judge Kavanaugh's markup meeting for Thursday, September 13th. This timeline is consistent with how we've handled past Supreme Court nominations. I want everybody to know that right now so that members and their staff can be working on written questions throughout the week.

With that, we'll recess until tomorrow morning at 9:30, when we will start the first round of questions. Again, each senator will have 30 minutes for the first round of questions, and I intend to go like we have with Gorsuch -- that people will have a chance to ask the questions they want to ask. But we start out with the 30 minutes and the 20-minute second round, so everybody's going to have a chance for a 50-minute crack at this strong judge.

Meeting adjourned.

END

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