

EXECUTIVE BUSINESS MEETING

- - -

THURSDAY, OCTOBER 5, 2017

United States Senate,

Committee on the Judiciary,

Washington, D.C.

The Committee met, pursuant to notice, at 10:23 a.m.,
in Room S-226, United States Capitol, Hon. Chuck Grassley,
Chairman of the Committee, presiding.

Present: Senators Grassley, Cornyn, Lee, Cruz, Sasse,
Flake, Tillis, Kennedy, Feinstein, Leahy, Durbin,
Klobuchar, Blumenthal, and Hirono.

1 OPENING STATEMENT OF HON. CHUCK GRASSLEY, A U.S. SENATOR
2 FROM THE STATE OF IOWA, CHAIRMAN OF THE COMMITTEE

3

4 Chairman Grassley. We have seven members here, so we
5 can start with our discussion.

6 Today, we have a number of nominees on today's agenda,
7 and I would like to be able to get through the whole
8 agenda. I know that we have votes this morning, as we have
9 just found out, and there will be two more votes this
10 morning, so I will keep my remarks brief and would ask
11 members to consider doing so as well so we can get through
12 this agenda.

13 We have several nominees on the agenda for the first
14 time, and the minority has requested that they be held
15 over, so the nominations of Axon, Brown, Farr, and Ray will
16 be held over when we get enough people here to do that. We
17 also have three U.S. attorney nominees on today's agenda
18 who we should be able to vote on them. Finally, we will be
19 voting on several nominees, and I would like to say a few
20 words about one of the nominees on today's agenda in
21 particular.

22 Professor Barrett is nominated to serve Seventh
23 Circuit. She is imminently qualified and an exceptionally
24 bright nominee who has received praise and support across
25 the legal profession. I was surprised and disheartened by

1 the line of questioning that took place during her hearing.
2 During her hearing, my friends in the minority raised
3 concerns over and asked questions about her personal
4 religious beliefs. Specifically, it was about her Catholic
5 beliefs, and their questions strongly implied that she was
6 too Catholic for their taste, whatever it means to be too
7 Catholic.

8 I mention this because I fear the committee is heading
9 down a dangerous road if continue to ask nominees questions
10 like this. The Constitution specifically provides that,
11 quote, "No religious test shall ever be required as a
12 qualification to any office under the United States." It
13 is one of the most important founding principles, and yet I
14 saw members ask, seeking to understand just how Catholic
15 Professor Barrett considered herself, as if this is
16 relevant to assessing her credentials to be on the bench.
17 I do not think an evaluation of how religious a nominee is
18 or is not should ever be part of our evaluation.

19 I told a reporter in Iowa yesterday on my weekly news
20 conference about -- she asked me how my religious beliefs
21 affected my work as a United States Senator. I told her I
22 take an oath to uphold the Constitution, not the Bible,
23 even though I believe the Bible is the Word of God.

24 We received many letters on this topic, including one
25 from Princeton University president, who is a former law

1 clerk to Justice Stevens and a constitutional scholar. He
2 writes that the question posed to Professor Barrett about
3 her faith were, quote, "not consistent with the principles
4 set forth in the Constitution's no-religious-test clause,"
5 end of quote, and that the views expressed in her law
6 review article on Catholic judges are, quote, "fully
7 consistent with the judges' obligations to uphold the law
8 and the Constitution." Without objection, I will enter
9 that letter in the record.

10 [The information appears in the appendix.]

11 / COMMITTEE INSERT

12 Chairman Grassley. Professor Barrett has assured the
13 committee that she strongly believes it is inappropriate
14 for a judge to place their religious views before their
15 oath to the Constitution. Instead, the main point of her
16 law review article is that if a judge cannot put aside her
17 personal religious convictions, she should not be involved
18 in a case.

19 I will make one more related comment. Professor
20 Barrett and a few other nominees have a relationship with
21 and ties to the Alliance Defending Freedom group, which, as
22 several Senators have recently pointed out, has been
23 labeled a hate group by the Southern Poverty Law Center.
24 Now, the nominees have pointed out that the Law Center
25 designation is highly controversial. I would say it is

1 completely unfounded. ADF is an advocacy organization that
2 litigates religious liberty cases. They have won seven
3 cases in front of the Supreme Court in the past 7 years.
4 They are not outside the mainstream.

5 Any difference in viewpoint folks may have with them
6 boil down to policy differences, but dissent and
7 differences of opinion does not equal hate, and it is wrong
8 to compare an organization like ADF to that of the KKK or
9 the Nazi party, and by extension imply that the nominees
10 before us sympathize with such actual hate groups.

11 Senator Feinstein.

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 OPENING STATEMENT OF HON. DIANNE FEINSTEIN, A U.S.
2 SENATOR FROM THE STATE OF CALIFORNIA, RANKING MEMBER OF THE
3 COMMITTEE
4

5 Senator Feinstein. Thank you very much. I know that
6 there are a number of nominees and three votes on the
7 Floor, so I will be brief.

8 I will support the two district court nominees and
9 three U.S. attorneys whose nominations we are voting on,
10 but I cannot support the nomination of Professor Amy
11 Barrett, Justice Joan Larsen, or Eric Dreiband.

12 With respect to Professor Barrett, who is nominated
13 for the Seventh Circuit Court, this is an appellate court.
14 However, her experience is very limited. She has no
15 experience as a judge. She has only worked on one trial
16 before becoming a professor, so there is very little record
17 to look at except her writings. And of course I think that
18 has been exaggerated out of any reality. And I myself am a
19 product of Catholic education. I have spent more time in a
20 church than I have in a synagogue, and I would be deeply
21 resentful of any comment to the contrary. And I think
22 people who know me know how I feel.

23 In addition, I have heard from approximately 60
24 organizations that have expressed their concerns about
25 Professor Barrett's writings and her testimony before the

1 committee. These organizations have raised serious
2 concerns about whether Professor Barrett would follow the
3 law if she were to become a judge.

4 For example, the National Women's Law Center wrote
5 that her writings, quote, "raise serious concerns about how
6 Ms. Barrett, if confirmed as a circuit court judge, would
7 interpret, apply, and follow precedent, including Supreme
8 Court precedent," end quote. In fact, Ms. Barrett's,
9 quote, "prior writings currently suggests that she believes
10 precedents like Roe and Casey should be considered weaker
11 and are susceptible to challenge," end quote.

12 I have also heard from 30 groups who have expressed
13 their concern about Justice Joan Larsen's nomination to the
14 Sixth Circuit. For example, the Leadership Conference on
15 Civil and Human Rights discussed Justice Larsen's broad
16 view on executive power. They highlighted how she
17 advocated for the Bush administration's view that the
18 President had the authority to disregard a law that
19 Congress had just passed which prohibited the U.S.
20 Government from using torture.

21 I have also heard from Lambda Legal and several other
22 LGBT organizations who noted that Justice Larsen's name
23 appeared on President Trump's list of potential Supreme
24 Court nominees. President Trump said repeatedly during the
25 campaign that one of his litmus tests for the Supreme Court

1 was a Justice who was willing to overturn *Roe v. Wade*. As
2 Lambda Legal wrote, and I quote, "A decision by this
3 committee to advance her nomination will be rightfully
4 understood as not only a threat to *Roe* but also to LGBT
5 cases that were built upon *Roe*'s foundation," end quote.

6 I also find it troubling that Justice Larsen's
7 nomination has been strongly supported by the Judicial
8 Crisis Network, which has spent \$100,000 on ads supporting
9 her nomination. When Justice Larsen was given the
10 opportunity to disavow those ads or to publicly state she
11 did not want this dark money outside group working on her
12 behalf, she declined to do so.

13 Lastly, I would like to speak briefly about Eric
14 Dreiband's nomination to lead the Civil Rights Division.
15 This is a critical time for the Division, which will
16 celebrate its 60th anniversary in December. It is also a
17 critical time for this nation. From the tragic violence in
18 Charlottesville this summer to the ongoing effort by some
19 States to pass laws making it harder to vote, too many
20 Americans are seeing their civil rights under attack.

21 And since January, the Department of Justice has
22 changed its position on several critical civil rights
23 issues. For example, the Department is on record
24 supporting policies to make it harder to vote and harder
25 for LGBT people to keep their jobs. Unfortunately,

1 Mr. Dreiband's record does not demonstrate that he will be
2 a strong advocate for civil rights.

3 As the NAACP Legal Defense and Educational Fund wrote,
4 and I quote, "It is clear from his record, including his
5 hearing testimony and responses to written questions, that
6 Mr. Dreiband was selected not to vigorously enforce civil
7 rights laws but to further and enable the Trump
8 administration's anti-civil rights agenda. That is the
9 NAACP's view.

10 For example, Mr. Dreiband publicly testified against
11 the Fair Pay Restoration Act. That is the bipartisan
12 legislation that was introduced so that women like Lilly
13 Ledbetter can get equal pay for equal work. Regarding this
14 legislation, Mr. Dreiband testified in 2008, and I quote,
15 "I do not believe that the bill would advance the public
16 interest, end quote." Paying women equally is not in the
17 public interest?

18 He also testified against legislation that would
19 protect older workers from age discrimination, and he has
20 no experience with voting rights or with the Division's
21 work in policing cases. As the NAACP Legal Defense Fund
22 said, "Mr. Dreiband is the wrong person in this moment to
23 protect our civil rights."

24 Mr. Chairman, I will vote no on these three nominees
25 but yes on all others.

1 Chairman Grassley. Before I call on Senator Leahy, we
2 have enough members here, 10 members here, but two of the
3 minority, so we can hold over the four names I gave you for
4 holding over. So that will be taken care of now.

5 Senator Leahy?

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 OPENING STATEMENT OF HON. PATRICK LEAHY, A U.S.
2 SENATOR FROM THE STATE OF VERMONT

3

4 Senator Leahy. Thank you, Mr. Chairman. I know we
5 have votes coming up and I am going to have to leave. I
6 want to say I thoroughly agree with what Senator Feinstein
7 said about Mr. Dreiband. As one of the authors of the
8 Lilly Ledbetter act, something that passed with strong
9 bipartisan support in both the House and the Senate, I was
10 distressed when he came, testified -- one of the very few
11 people who testified against it. He said the bill would
12 not be in the best interest of the American people.

13 A bill to have women paid the same as men for the
14 exact same work would not be in the best interest of the
15 American people? I cannot think of anything that was more
16 in the interest of the American people, and that is why it
17 got strong bipartisan support. I was proud to stand there
18 when the President signed it. And Lilly Ledbetter herself
19 was a champion for equal pay for equal work for men and
20 women.

21 And he has just shown a real track record of hostility
22 towards our civil rights laws, and here, he is being
23 nominated to head the Civil Rights Division, the Division
24 charged with upholding the civil and constitutional rights
25 of the most vulnerable members of our society, something

1 both Republican and Democratic administrations have taken
2 seriously because they know the country certainly is not
3 great if we violate the constitutional rights of any
4 members of our country, and here is somebody who has
5 testified that he is willing to violate the constitutional
6 rights of Americans, whether it is women, people of color,
7 minorities, anything else.

8 I cannot help but compare Mr. Dreiband's
9 qualifications to those of the last nominee our committee
10 considered to lead this Division, Debo Adegbile. Debo grew
11 up in poverty. He ultimately followed in the footsteps of
12 the great Thurgood Marshall. He led the NAACP Legal
13 Defense and Educational Fund. He was considered by all as
14 one of the Nation's leading civil rights lawyers, and he
15 was turned down. Now, we have somebody who brags that he
16 does not believe in a lot of the civil rights of our
17 country, things that are on the law.

18 I have no problem with the administration nominating a
19 conservative Republican to that, and I voted for many of
20 those, but this is such a unique position to have the head
21 of the Civil Rights Division somebody who does not believe
22 in our civil rights. This is like saying we are going to
23 put as head brain surgeon in a hospital somebody who may be
24 a good carpenter but has never been in an operating room,
25 or worse than that, maybe somebody who does not believe in

1 brain surgery, does not have the qualifications to do it
2 but does not believe in it anyway, but we will make him
3 head of our brain surgery or heart surgery or whatever it
4 might be.

5 This was a bad mistake. If the President actually
6 cares about making America great, keeping America great,
7 being in favor of everybody, notwithstanding their sex,
8 their race, or anything else, he would withdraw this name
9 and give us somebody qualified. There are a lot of
10 Republican lawyers who are highly qualified who believe in
11 equal rights for everybody. So I will vote no on that.

12 Chairman Grassley. Senator Durbin.

13

14

15

16

17

18

19

20

21

22

23

24

25

1 OPENING STATEMENT OF HON. RICHARD DURBIN, A U.S.
2 SENATOR FROM THE STATE OF ILLINOIS

3

4 Senator Durbin. Mr. Chairman, thank you.

5 I would like to address one nominee of those that we
6 are going to consider this morning, and that is Professor
7 Amy Barrett. Professor Barrett, who has been nominated to
8 sit on the Seventh Circuit, is a distinguished professor at
9 Notre Dame Law School. She has strong academic credentials
10 and endorsements from fellow faculty members at Notre Dame
11 Law and 450 of her former students.

12 Though she has clerked in the Federal court system at
13 the highest levels, she does not have any judicial
14 experience for the committee to evaluate. She told the
15 committee she can only recall three litigation matters that
16 she worked on during her entire career. She has never
17 served as counsel of record in an appellate case or argued
18 an appeal.

19 Given her lack of a judicial record and her minimal
20 record as a practicing lawyer, the committee has had to
21 review Professor Barrett's academic writings to try to
22 understand her judicial philosophy. That is basically what
23 we have to go on. Much of her writings deal with what she
24 believes is acceptable for judges to consider in deviating
25 from precedent like her 2003 law review article in which

1 she called for, quote, "Federal courts to restore
2 flexibility to stare decisis doctrine," unquote, and her
3 2013 article in which she said that it is, quote, "more
4 legitimate for a justice to enforce her best understanding
5 of the Constitution rather than a precedent she thinks
6 clearly in conflict with it," close quote. These quotes
7 reflect an extraordinary view about the obligation of a
8 Federal judge to follow established precedent from someone,
9 Ms. Barrett, who is seeking a lifetime appointment to the
10 bench.

11 But it is the nominee's 1998 *Marquette Law Review*
12 article which she cowrote with John Garvey entitled,
13 "Catholic Judges in Capital Cases" about the recusal
14 obligations of, quote, "orthodox Catholic judges," close
15 quote, that dominated the committee's attention at this
16 hearing. The article said provocative things. Examples,
17 quote, "A judge will often entertain an ideological bias
18 that makes him lean one way or the other. In fact, we
19 might safely say that every judge has such an inclination,"
20 close quote. Another quote, "litigants and the general
21 public are entitled to impartial justice, and that may be
22 something that a judge who is heedful of ecclesiastical
23 pronouncements cannot dispense," close quote. And the
24 authors wrote when discussing the quote, "behavior of
25 orthodox Catholics in capital cases," unquote, that, quote,

1 "the judge's cooperation with evil passes acceptable limits
2 when he conducts a sentencing hearing.

3 Some critics have suggested it was inappropriate, even
4 inconsistent with the Constitution for Senators on this
5 committee to question Nominee Barrett about her religious
6 beliefs on the discharge of her duties as Federal judge.
7 One of my colleagues on this committee, whom I respect very
8 much, even went to the Floor this week and questioned the
9 propriety of such questions in light of the Constitution's
10 clear prohibition of using a religious test for public
11 office. Let me say at the outset it was the nominee
12 herself in her 47-page law review article who raised this
13 issue of whether the teachings of the Catholic Church
14 should have any impact on the discharge of judicial duties
15 of a Catholic judge.

16 So it was no surprise that the gravity of this
17 publication and the issue it raised led members of the
18 committee on both sides of the aisle to ask questions on
19 the subject of the nominee's religion, the contents of her
20 writings, and how it would impact her discharge of her
21 judicial duties if approved by the Senate.

22 The first question asked by Chairman Grassley noted
23 that Professor Barrett has been outspoken about her
24 Catholic faith and asked her when it was proper for a judge
25 to put their religious views above applying the law. The

1 second question asked by Chairman Grassley related to the
2 nominee's views on how she would decide when she needs to
3 recuse herself on grounds of conscience.

4 I do not believe for one moment, nor does any member
5 of the committee, that Chairman Chuck Grassley would ever
6 apply a religious test to any nominee, but he felt it was
7 important to ask Professor Barrett to state her position
8 clearly on the convergence of her faith, her conscience,
9 and her duties as a Federal judge.

10 Similarly, Senator Hatch felt it necessary to ask
11 Professor Barrett to make clear a judge's duties when the
12 laws or Constitution conflict with a judge's personal
13 belief. Again, not a single member of this committee would
14 question whether Senator Hatch would apply a religious
15 test. He would not. But the nominee's writings and the
16 questions they raise led him to ask the nominee this
17 question. Later in the hearing, Senator Cruz, you raised
18 the issue as well, as did Senator Feinstein and as did
19 myself.

20 I take our Constitution seriously when it says there
21 shall be no religious test for public office, but many
22 Senators on this committee, Republicans and Democrats, felt
23 the writings of the nominee warranted an inquiry about her
24 views on the impact of religion on a judge's role. That is
25 not a religious test.

1 I asked Professor Barrett several questions about her
2 1998 article. I asked her whether she still agreed with
3 the article, and she said in general, she did. I said to
4 her, as a Catholic with 19 years of Catholic education, I
5 had never heard the term "orthodox Catholic." I did not
6 know what that meant. And I asked her to explain it. She
7 said it was an imperfect term but explained the context for
8 her use of the term. And I asked her whether she
9 considered herself an orthodox Catholic, her term, which
10 she put forward as carrying obligations regarding judicial
11 recusal. She acknowledged again that term was a proxy and
12 that it was not a term currently in use.

13 Some have argued that I and others sought to impose a
14 religious test with this question or that I was insinuating
15 that Catholics cannot serve on the bench. That is absurd.
16 I am a Catholic. I deeply respect and value the freedom of
17 religion in our country and our Constitution. I voted for
18 many judicial nominees and appointed many people of the
19 Catholic faith, including Judge Ralph Erickson, outspoken
20 about his Catholic faith, who I voted to confirm last week.
21 And I am also sure I voted against many judicial nominees
22 who were Catholic because I did not think they had the
23 experience, judgment, or temperament to be a good Federal
24 judge.

25 At nominations hearings I ask questions to try to

1 understand how the nominee would approach the job of judge.
2 I asked Professor Barrett questions about issues that she
3 had raised in her academic writings that could directly
4 impact the discharge of her judicial duties, and I would
5 note that Professor Barrett put forth her views as part of
6 an academic legal debate, in contrast to Paul Abrams,
7 President Obama's nominee for the Central District of
8 California, who was aggressively questioned by committee
9 Republicans last year about statements he made while
10 speaking at his synagogue. Republicans ultimately blocked
11 his nomination, but no one on this side of the aisle
12 suggested that you were applying a religious test to that
13 decision.

14 When judicial nominees have put forward their views on
15 issues like the intersection of law and faith as part of
16 the academic legal debate, I think it is fair for the
17 members of this committee to ask them about it. At the end
18 of the day, I will oppose Professor Barrett's nomination
19 because I do not believe she has sufficient experience to
20 be a circuit court judge and because of her writings about
21 judges disregarding precedent. No one doubts that she is
22 smart but she has barely spent any time in a courtroom, and
23 the only basis we have to judge her on are her academic
24 writings.

25 Let us be honest. If a Democratic President had put

1 forward a nominee with as little practical legal experience
2 as Professor Barrett and with a similar history of
3 advocating not following precedent, I think we know how the
4 partisan split would have been on this committee. As it
5 stands, I cannot support her nomination.

6 Chairman Grassley. Senator Sasse.

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 OPENING STATEMENT OF HON. BEN SASSE, A U.S. SENATOR
2 FROM THE STATE OF NEBRASKA

3
4 Senator Sasse. Just two sentences. I disagree
5 strongly with Senator Durbin's argument, but I think it is
6 actually really important, so I would love to ask the
7 chairman -- and I will do this after the hearing -- if we
8 could have a hearing on this specific topic of what sort of
9 questions should -- I am not a Catholic, but I do think the
10 questions were inappropriate and I think we should have a
11 debate about what kinds of questions Catholics should be
12 subjected to if they are appointed to the bench. I think
13 it would be a great hearing. Thanks.

14 Chairman Grassley. Okay. Anybody else want to speak?
15 We do not have a quorum so we cannot vote. Senator from
16 Texas.

17
18
19
20
21
22
23
24
25

1 OPENING STATEMENT OF HON. TED CRUZ, A U.S. SENATOR
2 FROM THE STATE OF TEXAS

3

4 Senator Cruz. Thank you, Mr. Chairman.

5 You know, I think this topic that has been raised is a
6 very important one, and there is a reason that considerable
7 attention has been focused on the treatment Professor
8 Barrett received before this committee. I and others are
9 concerned that we are seeing a pattern in the Senate of
10 hostility to faith, a pattern that is in considerable
11 tension with the express terms of article 6 of the
12 Constitution that says, "No religious test shall ever be
13 required as a qualification to any office or public trust
14 under the United States." That is a fundamental
15 requirement of our government. And yet we saw Professor
16 Barrett here questioned not just on her legal views, which
17 is perfectly appropriate, not just on her record, which is
18 perfectly appropriate, but asked questions such as "Do you
19 consider yourself --

20 Chairman Grassley. We have 11 here.

21 Senator Cruz. I will suspend my comments so we can
22 vote.

23 Chairman Grassley. Okay. Could we vote now, please?

24 Call the roll on Professor Barrett.

25 The Clerk. Mr. Hatch?

1 Chairman Grassley. Aye, by proxy.
2 The Clerk. Mr. Graham?
3 Chairman Grassley. Aye, by proxy.
4 The Clerk. Mr. Cornyn?
5 Chairman Grassley. Aye, by proxy.
6 The Clerk. Mr. Lee?
7 Senator Lee. Aye.
8 The Clerk. Mr. Cruz?
9 Senator Cruz. Aye.
10 The Clerk. Mr. Sasse?
11 Senator Sasse. Aye.
12 The Clerk. Mr. Flake?
13 Senator Flake. Aye.
14 The Clerk. Mr. Crapo?
15 Chairman Grassley. Aye, by proxy.
16 The Clerk. Mr. Tillis?
17 Senator Tillis. Aye.
18 The Clerk. Mr. Kennedy?
19 Senator Kennedy. Aye.
20 The Clerk. Mrs. Feinstein?
21 Senator Feinstein. No.
22 The Clerk. Mr. Leahy?
23 Senator Feinstein. No, by proxy.
24 The Clerk. Mr. Durbin?
25 Senator Durbin. No.

1 The Clerk. Mr. Whitehouse?

2 Senator Feinstein. No, by proxy.

3 The Clerk. Ms. Klobuchar?

4 Senator Klobuchar. No.

5 The Clerk. Mr. Franken?

6 Senator Feinstein. No, by proxy.

7 The Clerk. Mr. Coons?

8 Senator Feinstein. No, by proxy.

9 The Clerk. Mr. Blumenthal?

10 Senator Blumenthal. No.

11 The Clerk. Ms. Hirono?

12 Senator Feinstein. No, by proxy.

13 The Clerk. Mr. Chairman?

14 Chairman Grassley. Aye.

15 The Clerk. Mr. Chairman, the votes are 11 yeas, nine
16 nays.

17 Chairman Grassley. The clerk has called the roll,
18 received a majority. We have obviously a quorum present,
19 so the nominee will be reported to the Floor.

20 The clerk will call the roll on Justice Larsen's
21 nomination.

22 The Clerk. Mr. Hatch?

23 Chairman Grassley. Aye, by proxy.

24 The Clerk. Mr. Graham?

25 Chairman Grassley. Aye, by proxy.

1 The Clerk. Mr. Cornyn?
2 Chairman Grassley. Aye, by proxy.
3 The Clerk. Mr. Lee?
4 Senator Lee. Aye.
5 The Clerk. Mr. Cruz?
6 Senator Cruz. Aye.
7 The Clerk. Mr. Sasse?
8 Senator Sasse. Aye.
9 The Clerk. Mr. Flake?
10 Senator Flake. Aye.
11 The Clerk. Mr. Crapo?
12 Chairman Grassley. Aye, by proxy.
13 The Clerk. Mr. Tillis?
14 Senator Tillis. Aye.
15 The Clerk. Mr. Kennedy?
16 Senator Kennedy. Aye.
17 The Clerk. Mrs. Feinstein?
18 Senator Feinstein. No.
19 The Clerk. Mr. Leahy?
20 Senator Feinstein. No, by proxy.
21 The Clerk. Mr. Durbin?
22 Senator Durbin. No.
23 The Clerk. Mr. Whitehouse?
24 Senator Feinstein. No, by proxy.
25 The Clerk. Ms. Klobuchar?

1 Senator Klobuchar. No.

2 The Clerk. Mr. Franken?

3 Senator Feinstein. No, by proxy.

4 The Clerk. Mr. Coons?

5 Senator Feinstein. No, by proxy.

6 The Clerk. Mr. Blumenthal?

7 Senator Blumenthal. No.

8 The Clerk. Ms. Hirono?

9 Senator Hirono. No.

10 The Clerk. Mr. Chairman?

11 Chairman Grassley. Aye.

12 The Clerk. Mr. Chairman, the votes are 11 yeas, nine
13 nays.

14 Chairman Grassley. Justice Larsen will be reported to
15 the Floor.

16 The clerk will call the roll on Mr. Dreiband's
17 nomination.

18 The Clerk. Mr. Hatch?

19 Chairman Grassley. Aye, by proxy.

20 The Clerk. Mr. Graham?

21 Chairman Grassley. Aye, by proxy.

22 The Clerk. Mr. Cornyn?

23 Chairman Grassley. Aye, by proxy.

24 The Clerk. Mr. Lee?

25 Senator Lee. Aye.

1 The Clerk. Mr. Cruz?
2 Senator Cruz. Aye.
3 The Clerk. Mr. Sasse?
4 Senator Sasse. Aye.
5 The Clerk. Mr. Flake?
6 Senator Flake. Aye.
7 The Clerk. Mr. Crapo?
8 Chairman Grassley. Aye, by proxy.
9 The Clerk. Mr. Tillis?
10 Senator Tillis. Aye.
11 The Clerk. Mr. Kennedy?
12 Senator Kennedy. Aye.
13 The Clerk. Mrs. Feinstein?
14 Senator Feinstein. No.
15 The Clerk. Mr. Leahy?
16 Senator Feinstein. No, by proxy.
17 The Clerk. Mr. Durbin?
18 Senator Durbin. No.
19 The Clerk. Mr. Whitehouse?
20 Senator Feinstein. No, by proxy.
21 The Clerk. Ms. Klobuchar?
22 Senator Klobuchar. No.
23 The Clerk. Mr. Franken?
24 Senator Feinstein. No, by proxy.
25 The Clerk. Mr. Coons?

1 Senator Feinstein. No, by proxy.

2 The Clerk. Mr. Blumenthal?

3 Senator Blumenthal. No.

4 The Clerk. Ms. Hirono?

5 Senator Hirono. No.

6 The Clerk. Mr. Chairman?

7 Chairman Grassley. Aye.

8 The Clerk. Mr. Chairman, the votes are 11 yeas, nine
9 nays.

10 Chairman Grassley. Mr. Dreiband will be reported to
11 the Floor.

12 Now, we will turn to the district court nominees. I
13 understand there is a necessity to have a roll call vote,
14 so --

15 Senator Hirono. Mr. Chairman, I am sorry to
16 interrupt, but I would like to be counted as voting in
17 person against Ms. Barrett, not by proxy.

18 Senator Feinstein. She is asking to be recorded --

19 Chairman Grassley. Oh.

20 Senator Feinstein. -- as an aye vote, not by proxy
21 but in person.

22 Chairman Grassley. Yes. You will be so recorded.

23 Senator Hirono. And may I give a short statement?

24 Chairman Grassley. Do you want to ask me a question?

25 Senator Hirono. No, I would like to give a short

1 statement about the votes that we just took.

2 Chairman Grassley. Yes, without objection.

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 OPENING STATEMENT OF HON. MAZIE HIRONO, A U.S. SENATOR
2 FROM THE STATE OF HAWAII

3

4 Senator Hirono. Thank you very much.

5 This morning, I voted no on three of the 12 nominees
6 on our agenda for today. It gives me no pleasure to vote
7 no on these nominees. I would wish that the President
8 would nominate qualified, nonideological, fair-minded
9 people to the judiciary and executive branches, but I
10 cannot endorse the confirmation of nominees to the bench or
11 the DOJ whose careers, philosophies, and affiliations tell
12 us what kind of judges and executives they will be.

13 After attending their confirmation hearing and reading
14 the responses to our written questions, I could not
15 conclude that either Amy Barrett or Joan Larsen could be
16 nonideological and fair-minded in their deliberations and
17 decisions if confirmed.

18 I find the records and testimony of Professor Barrett
19 and Judge Larsen raise serious concerns for me regarding
20 their impartiality in deciding, for example, reproductive
21 rights cases or LGBTQ cases. I cannot support their
22 nominations.

23 As for Eric Dreiband, the head of the DOJ Civil Rights
24 Division should have a breadth of experience in the field,
25 a record of supporting civil rights, and a track record of

1 standing up to the political pressure from superiors. This
2 will be particularly important in the Trump Justice
3 Department where the Attorney General has shown a minimal
4 commitment to advancing civil rights.

5 The mission of the Civil Rights Division is too
6 important and the history of Republican opposition to its
7 mission and independence recently is too concerning for me
8 to support Mr. Dreiband's --

9 Chairman Grassley. Okay.

10 Senator Hirono. -- nomination.

11 [The prepared statement of Senator Hirono appears in
12 the appendix.]

13 / COMMITTEE INSERT

14 Chairman Grassley. We will go to the district judges
15 now --

16 Senator Hirono. Thank you.

17 Chairman Grassley. -- and I hope we can vote on
18 Parker and Campbell en bloc.

19 Those in favor, say aye.

20 [Chorus of ayes.]

21 Chairman Grassley. Those opposed, say no.

22 [No response.]

23 Chairman Grassley. The ayes have it. Those
24 nominations will be reported to the Floor.

25 We will turn to U.S. attorneys. Without objection, we

1 will vote for them en bloc and by voice vote, Mr. Duncan,
2 Mr. Peeler, Mr. Schroder to be U.S. attorneys.

3 Those in favor, say aye.

4 [Chorus of ayes.]

5 Chairman Grassley. Those opposed, say no.

6 [No response.]

7 Chairman Grassley. The ayes have it. Those U.S.
8 attorneys will be reported to the Floor.

9 Meeting adjourned.

10 Senator Cornyn. Mr. Chairman?

11 Chairman Grassley. Yes?

12 Senator Cornyn. May I be recorded as voting in
13 person?

14 Chairman Grassley. Meeting is not adjourned.

15 [Laughter.]

16 Chairman Grassley. Senator Cornyn will be recorded as
17 voting in person as opposed to by proxy.

18 Meeting adjourned.

19 [Whereupon, at 10:53 a.m., the Committee was
20 adjourned.]

21

22

23

24

25

C O N T E N T S

	PAGE
STATEMENT OF:	
THE HONORABLE CHUCK GRASSLEY A United States Senator from the State of Iowa	2
THE HONORABLE DIANNE FEINSTEIN A United States Senator from the State of California	6
THE HONORABLE PATRICK LEAHY A United States Senator from the State of Vermont	11
THE HONORABLE RICHARD DURBIN A United States Senator from the State of Illinois	14
THE HONORABLE BEN SASSE A United States Senator from the State of Nebraska	21
THE HONORABLE TED CRUZ A United States Senator from the State of Texas	22
THE HONORABLE MAZIE HIRONO A United States Senator from the State of Hawaii	30

**Prepared Statement by Senator Chuck Grassley of Iowa
Chairman, Senate Judiciary Committee
Executive Business Meeting
October 5, 2017**

Good morning. Today, we have a number of nominees on today's agenda and I'd like to be able to get through the whole agenda. I know that we have votes this morning as well as other Committee meetings so I'll keep my remarks brief and would ask other Members to consider doing so as well so we can get through the entire agenda.

We have several nominees on the agenda for the first time today and the minority has requested that they be held over, so the nominations of the following are held over:

- Annemarie Axon, Northern District of Alabama
- Michael Brown, Northern District of Georgia
- Thomas Farr, Eastern District of North Carolina
- William Ray, Northern District of Georgia

We also have 3 US Attorney nominees on today's agenda who we'll be able to vote on.

Finally, we'll be voting on several nominees. I'd like to say a few words about one of the nominees on today's agenda in particular.

Professor Amy Barrett is nominated to serve on the 7th Circuit. She is an eminently qualified and exceptionally bright nominee who has received praise and support across the legal profession. But I was surprised and disheartened by the line of questioning that took place during her hearing.

During her hearing, my friends in the minority raised concerns over and asked questions about her personal religious beliefs. Specifically, her Catholic beliefs. And their questions strongly implied that she's too Catholic for their taste, whatever it means to be "too Catholic."

I mention this because I fear the Committee is heading down a dangerous road if we continue to ask nominees questions like this. The Constitution specifically provides that "no religious test shall ever be required as a qualification to any office under the United States." It's one of the most important founding principles.

And yet I saw Members seeking to understand just how Catholic Professor Barrett considers herself, as if this is relevant to assessing her credentials to be on the bench.

I don't think an evaluation of how religious a nominee is—or isn't—should ever be part of our evaluation.

We received many letters on this topic including one from Princeton University's President who is a former law clerk to Justice Stevens and a constitutional scholar. He writes that the questions

posed to Professor Barrett about her faith were “not consistent with the principle set forth in the Constitution’s ‘no religious test’ clause” and that the views expressed in her law review article on Catholic judges are “fully consistent with a judge’s obligation to uphold the law and the Constitution.” Without objection, I’ll enter this letter into the record.

Professor Barrett has assured the Committee that she strongly believes it’s inappropriate for a judge to place their religious views before their oath to the Constitution. Indeed, the main point of her law review article is that if a judge cannot put aside her personal religious convictions, she should not be involved in the case.

I’ll make one more related comment. Professor Barrett, and a few other nominees, have a relationship with or ties to the Alliance Defending Freedom group, which, as several Senators have recently pointed out, has been labeled a “hate group” by the Southern Poverty Law Center.

Now, the nominees have pointed out that the SPLC’s designation is highly controversial. I’d say it’s completely unfounded. The Alliance Defending Freedom is an advocacy organization that litigates religious liberty cases. They’ve won 7 cases in front of the Supreme Court the past 7 years. They’re not outside the mainstream.

Any difference in viewpoint folks may have with them boil down to policy differences. But dissent and difference of opinion does not equal hate and it’s wrong to compare an organization like ADF to that of the KKK or Nazi party, and, by extension, imply that the nominees before us sympathize with such actual hate groups.



President's Room
Nassau Hall
Princeton, New Jersey 08544-0015

September 8, 2017

The Honorable Charles E. Grassley
Chairman
The United States Senate Committee on the Judiciary
Washington, DC 20510

The Honorable Dianne Feinstein
Ranking Member
The United States Senate Committee on the Judiciary
Washington, DC 20510

Dear Chairman Grassley and Ranking Member Feinstein:

I write, as a university president and a constitutional scholar with expertise on religious freedom and judicial appointments, to express concern about questions addressed to Professor Amy Barrett during her confirmation hearings and to urge that the Committee on the Judiciary refrain from interrogating nominees about the religious or spiritual foundations of their jurisprudential views.

Article VI of the United States Constitution provides explicitly that “no religious test shall ever be required as a qualification to any office or public trust under the United States.” This bold endorsement of religious freedom was among the original Constitution’s most pathbreaking provisions. The Supreme Court’s unanimous decision in *Torcaso v. Watkins* (1961), holding that the First and Fourteenth Amendments render this principle applicable to state offices and that it protects non-believers along with believers of all kinds, is among the greatest landmarks in America’s jurisprudence of religious freedom. Article VI’s prohibition of religious tests is a critical guarantee of equality and liberty, and it is part of what should make all of us proud to be Americans.

By prohibiting religious tests, the Constitution makes it impermissible to deny any person a national, state, or local office on the basis of their religious convictions or lack thereof. Because religious belief is constitutionally irrelevant to the qualifications for a federal judgeship, the Senate should not interrogate any nominee about those beliefs. I believe, more specifically, that the questions directed to Professor Barrett about her faith were not consistent with the principle set forth in the Constitution’s “no religious test” clause.

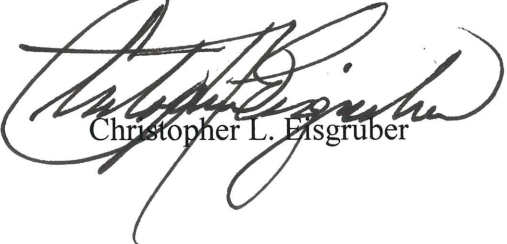
I am sympathetic to the challenges that your committee faces as it considers nominees to the federal bench. In my book *The Next Justice: Repairing the Supreme Court Appointments Process* (Princeton University Press, 2007), I argued that your committee need not defer to

presidential nominations, and that the Constitution permits senators to probe the judicial philosophies of nominees. It is, however, possible to probe those philosophies without reference to the religious affiliation or theological views of a nominee, and Article VI insists that the Senate observe that restriction.

The questions asked of Professor Barrett about her Catholic faith appear to have been provoked in part by her co-authored article, "Catholic Judges in Capital Cases" (1998). I have read that article, and I believe that the views expressed in it are fully consistent with a judge's obligation to uphold the law and the Constitution. As a university president committed to free speech, academic freedom, and religious pluralism, I must add that, in my view, Professor Barrett's qualifications become stronger by virtue of her willingness to write candidly and intelligently about difficult and sensitive ethical questions: our universities, our judiciary, and our country will be the poorer if the Senate prefers nominees who remain silent on such topics.

I am deeply concerned by the harsh and often unfair criticisms that are now routinely levelled from both sides of the political spectrum against distinguished judicial nominees who would serve this country honorably and well. On the basis of her accomplishments and scholarly writing, I believe that Professor Barrett is in that category. She and other nominees ought in any event to be evaluated on the basis of their professional ability and jurisprudential philosophy, not their religion: every Senator and every American should cherish and safeguard vigorously the freedom guaranteed by the inspiring principle set forth in Article VI of the United States Constitution.

Respectfully submitted,



Christopher L. Eisgruber

cc: Senator Orrin G. Hatch
Senator Patrick Leahy
Senator Lindsey Graham
Senator Dick Durbin
Senator John Cornyn
Senator Sheldon Whitehouse
Senator Michael S. Lee
Senator Amy Klobuchar
Senator Ted Cruz
Senator Al Franken
Senator Ben Sasse
Senator Christopher A. Coons
Senator Jeff Flake
Senator Richard Blumenthal
Senator Mike Crapo
Senator Mazie Hirono
Senator Thom Tillis
Senator John Kennedy

Statement of Senator Patrick Leahy (D-VT)
On Nomination of Eric S. Dreiband to be Assistant Attorney General
Senate Judiciary Committee
Executive Business Meeting
October 5, 2017

I cannot in good conscience support the nomination of Eric Dreiband to lead the Justice Department's Civil Rights Division—the division charged with defending the civil and constitutional rights of the most vulnerable members of our society.

This nominee has routinely criticized the very laws he would be enforcing, including protections against sex and age discrimination. He even testified before Congress in his personal capacity against the Lily Ledbetter Fair Pay Restoration Act, which simply sought to ensure that women and men are paid equally for equal work. Inexplicably, he stated that this protection – which is now the law of the land – is not “in the best interest of the American People.”

Unfortunately, I suspect Mr. Dreiband's track record of hostility toward our civil rights laws is precisely why he was nominated to lead this critical division.

I also cannot help but compare Mr. Dreiband's qualifications to those of the last nominee our Committee considered to lead this division, Debo Adegbile. Debo grew up in poverty and ultimately followed in the footsteps of the great Thurgood Marshall to lead the NAACP Legal Defense and Educational Fund. He was one of our nation's leading civil rights lawyers and would have brought a wealth of experience to the position.

Mr. Dreiband does not have that experience. He simply does not have a track record of defending and enforcing the civil rights laws that reflect the best of our society. And he does not have my vote.

#

**STATEMENT OF
SENATOR MAZIE K. HIRONO
ON THE NOMINATIONS OF AMY CONEY BARRET,
JOAN LARSEN, AND ERIC DREIBAND
OCTOBER 5, 2017**

This morning I am voting “no” on three of the 12 nominees on our agenda. I will not be supporting the confirmation of Amy Coney Barrett to the Seventh Circuit, Joan Larsen to the Sixth Circuit, nor Eric Dreiband to be Assistant Attorney General of the Civil Rights Division at the Department of Justice.

It gives me no pleasure to cast these “no” votes. I wish the president would nominate qualified, non-ideological, fair-minded people to the judicial and executive branches.

But I cannot endorse the confirmation of nominees to the bench or the DOJ whose careers, philosophies, and affiliations tell us what kind of judges and executives they will be.

After attending their confirmation hearing and reading the responses to our written questions, I could not conclude that either Amy Coney Barrett or Joan Larsen could be non-ideological and fair-minded in their deliberations and decisions if confirmed. All nominees confirmed by this Committee, but particularly judicial nominees to lifetime appointments to the federal bench, need to be fair when hearing and deciding cases.

Both Professor Barrett and Justice Larsen, like many of the nominees we see here lately, know exactly what to say, and what not to say in response to our every attempt to discern what kind of judges they'll be. We ask questions in person and they disavow their prior positions. We follow up in writing and they fill the pages with "answers" that say nothing. Because we gain little insight into their judicial philosophy, we are left with indications from past decisions, actions and writings.

Taking those into account, I find these nominees raise serious concerns for me regarding their impartiality in deciding, for example, reproductive rights cases or LGBTQ cases. I cannot support their nominations.

I would like to be clear that we need more women on the federal bench. But just as being a woman is not enough of a reason to support a nominee, it cannot be a reason to shy away from having a standard of impartiality and non-ideological decision making for those who would sit on the federal courts for a lifetime.

As for Eric Dreiband, the head of the DOJ Civil Rights Division should have a breadth of experience in the field, a record of supporting Civil Rights, and a track record of standing up to the political pressures from superiors. This will be particularly important in the Trump Justice Department, where the Attorney General has shown a minimal commitment to advancing civil rights.

Attorney General Sessions is working hard to reverse the Obama Justice Department's work to enforce civil rights. He has already changed position in an important voting rights case, and indicated his desire to investigate discrimination in education against white students. We continue to hear reports that career attorneys are being cut out of decisions that are now being made by political appointees for political reasons. In his testimony and record, Mr. Dreiband showed us nothing that would indicate he will stand up for these long-time professionals and the principal of independent decision-making.

The mission of the Civil Rights Division is too important, and the history of Republican opposition to its mission and independence is too recent, for someone with Mr. Dreiband's record to lead it.