

**REMARKS OF SENATOR MAZIE K. HIRONO AT THE
CONFIRMATION HEARING OF JUDGE BRETT KAVANAUGH**

AS DELIVERED

Dana Sabraw.

Michael Baylson.

Ketanji Brown Jackson.

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John Bates.

Derek 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 the children ripped from their arms at the border;
- Who rejected attempts to deny federal funds to cities refusing to be drawn into the war on 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 ruled that public officials cannot block citizens from their Twitter feeds; and,
- Who stopped the government from banning Muslims from entering the U.S.

These judges stood firm in defense of the Constitution, the American values it expresses, 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 a 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.

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 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 conservative 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 business.

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 5th vote for his dangerous anti-worker, anti-consumer, anti-women, pro-corporate, and anti-environment 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 5th Circuit – has written in favor of unlimited campaign contributions and, in another case, publically aired his personal views in opposition to abortion.
- Trump nominee Don Willet – now a Judge on the 5th 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 Stephanos Bibas – now a Judge on the 3rd 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 Barret – now a Judge on the 7th 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 6th Circuit – ruled to keep out of court a woman accusing her employer of age discrimination, despite a dissenting Judge’s view that there was sufficient evidence to go forward.

When these Trump-nominated judges came before the 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.

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 haven’t.

Why should we expect this Supreme Court nominee 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.

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 3 years to get him confirmed.

And for the last 12 years as a judge, he has ruled, whether in dissent or majority, in ways in line with their political and ideological agenda.

Now, President Trump has selected Judge Kavanaugh to provide the decisive 5th 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. Most of these cases end in trial courts. Some of them are appealed and heard in 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 5-4 votes.

And now that Justice Kennedy has left the Court, the forces opposed to workers' 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 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 own reproductive rights.

It could take just one vote to declare the ACA's preexisting 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 this nomination was announced, I have been asked many times why the Democrats would even bother going 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 5th 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 5th 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, Justice Gorsuch told us that, "[a]ll precedent of the United States Supreme Court deserves the respect of precedent, which is quite a lot. It's the anchor of the law."

Justice 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."

Justice 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 5-4 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 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.

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 the documents being requested because you have nothing to hide?

I agree with my colleague Senator Durbin. If you stand behind your full record in public life, fundamental fairness dictates 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.