

Nomination of Judge Brett Kavanaugh to the Supreme Court  
Senate Judiciary Hearing: September 4, 2018  
Senator Blumenthal Opening Remarks

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.

There is a t-shirt worn by a number of folks walking around this building that says, “I am what’s at stake.”

This vote, and this proceeding, could not be more consequential in light of what’s at stake: whether women can decide when they want to have children and become pregnant, whether the people of American can decide whom they would like to marry, whether we drink clean water and breathe clean air, whether consumers are protected against defective products 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 Mid-Terms, 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 whose

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 related 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, or 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's 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 PM yesterday. Both sides are using the same computer platform to review the documents from Mr. Burck. The documents had to be loaded into this platform overnight and couldn't be concluded until 6:45 AM 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. 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 Burck, who is not the National Archivist.

And this situation, when we say it's unprecedented, is truly without parallel in our history and I'm going to quote from the National Archivist, "[it's] something that has never happened before." And the Archivist 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 Four provides, "The committee chairman 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 respect, you are required to entertain my motion.

And I would just add this final point. All 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.

...

So, I will be asking Judge Kavanaugh whether you believe *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 ethic. There are no canons of ethics that preclude 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'll wanted 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 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 elicit 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 great 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 full of junk.

We need everything that is relevant, including the three years that you served in the White House as Staff Secretary, the most instructive period of your professional career.

So, let me just conclude by saying, you know, what we share 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 U.S. Attorney or as Attorney General. The power of the Supreme Court depends not 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 can fully and fairly evaluate your nomination. Thank you, Mr. Chairman.