

**Senator Chris Coons**  
**Kavanaugh Confirmation Hearing Opening Statement**  
**September 4, 2018**

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

As you know, we both went to the same law school and even clerked in the same courthouse in Wilmington, Delaware, so I have long known you and your reputation for nearly 30 years. And I know well that you have a reputation as good classmate, good roommate, a good husband and a 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, and we're not here to consider you to be a basketball coach.

We're here to consider you for a lifetime appointment to the Supreme Court, where you would help shape the future of this country and have an impact on the lives of millions of Americans for decades to come.

To make that decision, to exercise our constitutional role, we have to look very closely at your decisions, statements, and writings to understand how you might interpret our Constitution.

The next Justice will play a pivotal role in defining a wide range of political issues, including the scope of the President's power and determining whether the President might be above the law.

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

That's because the cases that come before the Supreme Court aren't just academic, esoteric, or theoretical. They involve real people and they have real and lasting consequences.

With stakes this high, I deeply regret the process that has gotten us to this 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 President Obama to nominate a jurist who could gain support from both sides of the aisle and help build a strong center on the Supreme Court.

He did just that when he nominated Merrick Garland, the Chief Judge of the DC Circuit, whom I know you also admire, but my Republican colleagues refused to even meet with him, much less hold a hearing or vote on his confirmation.

During the 400 days that Republicans refused to fill the vacancy, then-candidate Donald Trump also released a list of potential nominees to the Supreme Court, a list compiled by two highly partisan organizations: the Federalist Society and the Heritage Foundation.

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 respected precedent and he even cited a book on precedent that 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 several 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 and impacting millions of workers across the country.

My point is that Justice Gorsuch was confirmed to the Court in one of the most partisan processes in Senate history, only after Republicans deployed the nuclear option to end the filibuster for Supreme Court nominations, that brings us to today and to your nomination.

When Justice Kennedy announced his retirement, I once again called the White House and encouraged President Trump to select someone for this seat who could win support from both sides of the aisle.

Judge Kavanaugh, I'm concerned that you may not that nominee.

Your record prior to joining the bench places you in the midst of some of the most pitched partisan battles of recent history – from Ken Starr's investigation of President Clinton, to the 2000 election recount, to the controversies of the Bush administration, including surveillance, torture, access to justice, and the culture wars.

So, Judge Kavanaugh, it is critical that this Committee and the American people fully examine your record to understand what kind of Supreme Court Justice you would be.

Unfortunately, as we've all discussed at length today, that has been rendered impossible.

The majority has blocked access to millions of pages of documents from your service in the White House.

For the first time since Watergate, the nonpartisan 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 the documents we were given so the public could not view them.

Your former deputy, who has made his career representing Republicans, is in charge of designating what documents this Committee and the American people get to see.

Not only that, but for the first time in history, the President has invoked executive privilege to withhold more than 100,000 documents on a Supreme Court nominee from the Judiciary Committee.

That leads to a difficult, but important, question: 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 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 the committee.

That said, Judge Kavanaugh, I have reviewed the parts of your record that I've been able to access. What I have been able to see from your available speeches, writings, and decisions, and I have to say it troubles me.

While serving on the bench, you have dissented at a higher rate than any circuit judge elevated to the Supreme Court since 1980 – that count includes even Judge Bork.

Your dissents also reveal some interesting views and positions that fall well outside of the mainstream of legal thought.

You have suggested, as have been referenced, that the President has the authority to refuse to enforce the Affordable Care Act were he to decide it was unconstitutional.

You have 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, workers' rights, and antidiscrimination laws, and you've recently praised Justice Rehnquist's dissent in *Roe v. Wade*.

You have embraced a view of substantive due process that would undermine the rights and protections of millions of Americans, from basic protections for LGBT Americans to access to contraception, access to health care, and the ability for Americans to love and marry whom they wish.

I'm concerned your writings demonstrate a hostility to civil rights, including affirmative action.

Finally, you have repeatedly and enthusiastically embraced an interpretation of presidential power so expansive that 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 have questioned the lawfulness of *United States v. Nixon*, an historic decision in which a unanimous Court said that the President had to comply with a grand jury subpoena for evidence.

You have questioned the correctness of *Morrison v. Olson*, a 30-year-old precedent holding that Congress can create an independent counsel with authority to investigate the President, who the President can't just fire on a whim.

You have 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 towards protecting himself.

So, Judge Kavanaugh, I am going to ask you about these issues, as we did when we met in my office, and I expect you to address them fully.

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 are participating in a process that is featured in unprecedented concealment and partisanship around your record. A few moments ago, Senator Durbin proposed a bold step, which would be for you to support suspending this hearing until all of your records are produced and available to this Committee and the American people, and I encourage you to do this.

There are also members of both parties who have not stated how they will vote on your nomination, and I urge you to answer questions about your prior work; 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 have been to too many hearings in which judicial nominees tell us that they will evenhandedly apply the text of laws or the Constitution only to watch them ascend to the bench and whittle away the individual rights of Americans or to narrow and overturn long-settled precedent.

This Supreme Court vacancy comes at a critical time for our country, when our institutions of law that are the foundations of our democracy are being gravely tested.

If we are going to safeguard the rule of law in this country, our courts – and in particular, our Supreme Court – must be a constitutional bulwark against violations of law, deprivations of freedom, and abuses of power by anyone – including the President.

No one said it better than our former colleague, Senator John McCain, who once asked:

“What makes us exceptional? Our wealth? Our natural resources? Our military power? Our big, bountiful country?”

No, our founding ideals and our fidelity to them at home and in our conduct in the world make us exceptional. They are the source of our wealth and power. Living under the rule of law. Facing 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 are here to determine whether you would continue in the traditions of the Court or transform it into a body far more conservative than a majority of Americans.

We are here to determine whether your confirmation would compromise the legitimacy of the Court itself.

I urge you to answer our questions and confront these significant challenges.

These are weighty questions, and the American people deserve real answers. Thank you, and I look forward to your testimony.