

Senator Coons
Opening statement at Judge Neil Gorsuch's confirmation hearing
March 20, 2017

Thank you, Mr. Chairman. Welcome, Judge Gorsuch, and welcome to your family and friends. I want to congratulate you on your nomination and I look forward to the opportunity to ask you questions today.

I believe my constitutional duty to advise the president on this nomination to the Supreme Court is among my most important responsibilities as a senator.

This hearing is our opportunity to ask you, Judge Gorsuch, questions in front of the American people – to better understand how you interpret the text of our Constitution and how you apply Supreme Court precedent.

We will explore how your approach to interpreting our Constitution would impact our lives in the future.

I am committed to ensuring that the consideration of your nomination by this committee is thorough and fair. And I am hopeful that, as our hearing proceeds, it will promote an important dialogue about the Constitution and the courts. Based on our meeting, Judge Gorsuch, I know that you too hope that this moment can serve as a shared civic experience.

I am considering your nomination with an open mind and I would ask that you be forthcoming in your responses to our questions. I would like this hearing to be substantive and to reflect the best traditions of the Senate.

However, I cannot let this moment, commenting on the best traditions of the Senate, pass without expressing my deep regret that Chief Judge Merrick Garland was treated with profound and historic disrespect. The disrespect shown by Senate Republicans to Judge Merrick Garland, to President Obama, and to our institutions was unprecedented and deeply damaging.

For nearly 300 days, longer than any other nominee, Chief Judge Garland's nomination to the Supreme Court sat without action. My Republican colleagues didn't afford him a hearing, and would not give him a vote.

I believe we have a responsibility to work to re-elevate our democratic institutions above these narrow, partisan politics. I will support a process worthy of its important purpose – to carefully evaluate a candidate for the highest court in the land.

The American people are entitled to see you answer probing, thorough, and challenging questions about your views on a wide range of constitutional issues, because the breadth of the issues that come before the Court cannot be overstated.

Just in the last year, the Supreme Court considered cases involving executive power, affirmative action, intellectual property, partisan gerrymandering, racial bias in the courtroom, and reproductive rights.

The seat you would fill, Judge Gorsuch, if elevated, was occupied by Justice Scalia and you've been compared to him. While it may seem at times to many that the Supreme Court is engaged in abstract

intellectual exercises about originalism, or textualism, or living constitution, even a small subset of landmark decisions Justice Scalia took part in his 30 years on the Court demonstrates otherwise.

It's because of Supreme Court decisions that gay men can no longer be criminally prosecuted for engaging in consensual relationships, that loving same-sex couples can get married in every state in our Union, that women cannot be denied attendance at one of our nation's premier military academies, and that women are entitled to a full range of reproductive health care, that juveniles and intellectually disabled people can no longer be executed, and that millions of Americans who have attained health care under the ACA have been able to keep that care, at least for now. These cases impacted the lives of millions of real Americans and Justice Scalia applied his understanding of the Constitution and dissented in every one of them.

I would like to use these hearings to explore your interpretation of the Constitution. I believe that our Constitution, which I view as our nation's secular scripture, includes guarantees of equality and privacy – hallmarks of our modern American society.

I believe in an independent judiciary that safeguards our rule of law from unlawful intrusions of the most powerful – even the president of the United States.

The legitimacy of our Supreme Court transcends the outcome of any one case. But that legitimacy rests on the unyielding responsibility of Justices to put their personal political views aside to decide cases on their merits.

Judge Gorsuch, your nomination has been championed by the ideologically driven Federalist Society and Heritage Foundation. Interest groups are already spending millions of dollars advocating for your confirmation, but as I've told you during our meetings, none of those facts will determine my vote on your nomination. I'm instead looking to you to demonstrate your ability to separate politics from constitutional interpretation.

As my colleague from Utah, Senator Hatch, once noted, "Judges that say what the law is, promote liberty. Judges say what they think the law should be, undermine liberty."

I have spent a great deal of time reviewing your record. I appreciate that you're an engaging and careful writer. I also have some serious questions based on your decisions.

What stands out to me is your tendency to go beyond the issues that need to be resolved in the case before you. I have seen a pattern in which you have filed dissents, dissents from denials of rehearing, concurrences, or even concurrences to your own majority opinions, to explore broader issues than what's necessary, to revisit long-settled precedent, and to promote dramatic changes to the law.

This pattern concerns me because these additional writings hint at an unwillingness to settle on a limited conclusion and forge a narrow consensus with your colleagues.

I want to know that you would apply the Constitution and settled precedent to reach consensus and resolve narrowly the disputes before you. And I want to know that our treasured freedoms will be safe in your stewardship.

Our Constitution, as you know, is designed to protect our diversity of views. It guarantees to all of us the freedom of expression, the right to privacy, the liberty to make our most personal life decisions, equal protection, and the ability to worship freely.

Take the freedom of religion – enshrined in the First Amendment, which says in part “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.”

I believe we must balance our respect for the significance of faith and free exercise with concerns about impacts on other's liberty.

As my colleagues know, I studied law and divinity in school. Some of the most formative and meaningful experiences of my life have been guided by my Christian faith. The command to care for the most vulnerable among us inspires my work as a Senator, and I value opportunities to share with my friends and colleagues in prayer.

Throughout our nation's history, religion has inspired countless acts of charity, kindness, and good work. But when I think about the Founders' wisdom to protect both church and state by ensuring their separation, I am in awe. Our United States were founded by people who came here for many reasons, seeking opportunity, freedom from oppression, and hoping in many cases to be free to practice their faith.

From Pilgrims to Mormons, from the Amish to Jehovah's Witnesses, America from its founding has been home to many faiths from many parts of the world. Part of our Founder's genius was to abandon the European practice of having a state religion, supported by state taxes.

Now today, across the U.S., Churches and Mosques, Synagogues and Temples, find their own way, recruit and raise up their own believers and funds free from state interference. The Supreme Court over decades has sought to strike and preserve a careful balance between the free exercise rights of religious minorities and the power of legislatures to compel compliance with neutral laws.

Recently, the Court has decided several landmark and controversial cases. The Hobby Lobby case, where the free exercise rights of a few were held to prevent the infringement on the personal liberty of many. And in another important line of cases in which substantive due process rights have been held to guarantee a right to privacy and self-determination, even when longstanding practices and religiously motivated statutes are challenged as a result.

Religious freedom must also be freedom to not have our values or practices pushed into the public square.

While other nations have been besieged by wars and persecution of religious minorities, inclusion and equality have been guiding lights in the success of our democracy.

However, at other times in our history, sincerely held religious beliefs have been invoked to deny millions of Americans' full equality under the law. It has been invoked in defense of laws prohibiting interracial marriage, LGBT relationships, and reproductive rights.

We live today in tumultuous times, as you know. The Supreme Court is likely to hear many important cases in the years to come. It will be important that we understand your values and framework for

interpreting the Constitution. On areas as important as executive power, national security, the independence of the judiciary, deference to agencies, and personal liberty.

There are disturbing developments that I see in our modern environment as affronts to religious freedom and personal liberty.

President Trump campaigned on putting in place a Muslim ban, and has signed unlawful, discriminatory executive orders to deliver on that promise.

The new administration's Justice Department has withdrawn guidance supporting protections for transgender individuals.

And the Attorney General testified under oath at his confirmation hearing that secular attorneys may not have the same claim to understanding the truth as religious ones.

Our next Supreme Court Justice will play a pivotal role in sustaining and defending our rights in this critical time for our country in the years to come. America needs a Supreme Court Justice who will protect the Constitution, not one who will countenance faith or fear of some, as a justification for infringing the liberty of many.

It is against that backdrop, Judge, that I will be seeking to understand your commitment to the rule of law, the guarantees of the First Amendment, and individual liberty. I look forward to your testimony.