

**OPENING STATEMENT OF SENATOR PATRICK LEAHY (D-VT.)  
U.S. SUPREME COURT NOMINATION HEARING OF JUDGE BRETT KAVANAUGH  
SEPTEMBER 4, 2018**

I have served in the Senate for 44 years, a span that includes 19 nominations to the Supreme Court. I have never seen so much at stake with a single seat. And I have never seen such a dangerous rush to fill it. President Trump promised that he would only nominate judges to the Supreme Court who would overturn *Roe v. Wade*. Judges who would dismantle the Affordable Care Act. Judges who would re-shape our judiciary. If that is not judicial activism, I do not know what is.

Judge Kavanaugh, with your nomination, the President appears to be following through on his promises. It also seems that you may have intrigued him for another reason: your expansive view of executive power — and executive immunity. You've taken the unorthodox position that presidents should not be burdened with a criminal or civil investigation while in office. I find it difficult to imagine that your views on this subject escaped the attention of President Trump, who seems increasingly fixated on his ballooning legal jeopardy.

When questioning you about these concerns, we will certainly look to your record on the bench. Indeed, your 12 years on the D.C. Circuit Court of Appeals will loom large during these hearings. But the unknown looms even larger. Before sitting on the bench, you were a political operative involved in the most partisan controversies of our times. During this time you shared your personal views on contentious issues without regard to restrictions imposed by precedent or *stare decisis*. And it is precisely those views that are being hidden from us today.

The Judiciary Committee's Supreme Court hearings are meant to be an unsparing examination of a nominee to our highest court. They are intended to give the American people a genuine opportunity to scrutinize a nominee's judicial philosophy, beliefs, and character. Because, if confirmed, with the stroke of a pen, a nominee may impact their lives for a generation or more.

How far we have fallen. Judge Kavanaugh, there are so many things wrong with this Committee's vetting of your record that it is hard to know where to begin. Indeed, you should not be sitting in front of us today. Your vetting is less than 10 percent complete. In critical ways, our Committee is abandoning its tradition of exhaustively vetting Supreme Court nominees.

First, inexplicably, my Republican friends refused to request records from your three years as White House Staff Secretary — a time you described as “the most formative” for you as a judge, when you provided advice “on any issue that may cross [the President's] desk.” We know those issues included abortion, same-sex marriage, and even torture. But six weeks ago Senate Republicans huddled in a private meeting with the White House Counsel, and hours later the American people were told those records would be off limits.

Second, in a stark departure from Committee precedent, Chairman Grassley sent a partisan records request to the National Archives. Not only did it omit all one million records from your three years as Staff Secretary, it did not even request a privilege log. That means this Committee

is in the dark as to what specific documents are being withheld and why. Such a move is simply incompatible with transparency.

Third, the Archives told us that it could not produce this partial records request until the end of October. Surely, I would think, the Senate could wait until then, even if that means a Supreme Court with eight justices for a short time. Senate Republicans' treatment of Chief Judge Merrick Garland would seem to attest to their patience with filling Supreme Court vacancies. But, alas, Republicans instead cast aside the Archives, swapping the nonpartisan review process used for every nominee since Watergate for a partisan one.

Every White House record that we have received was hand-picked by your deputy in the Bush White House. A hyper-conflicted lawyer who also represents a half-dozen Trump administration officials in the Russia investigation. This partisan lawyer has decided which of your records the Senate and the American people get to see.

Fourth, countless documents that have been provided to the Committee contain apparent alterations and omissions, with zero explanation. No court in the country would accept this as a legitimate document production. And the Senate should not either.

Fifth, more than 40 percent of the documents we have received — almost 190,000 pages — are considered “committee confidential” by Chairman Grassley. For the vast majority there is not even a conceivable argument to restrict them. Compare this to the mere 860 documents that were designated committee confidential for Justice Kagan, following the request of the nonpartisan Archives.

Sixth, on Friday we learned that President Trump is claiming executive privilege over an additional 102,000 pages of your records. Such a blanket assertion of executive privilege is simply unheard of — and it is outrageous. The last time a president attempted to hide a Supreme Court nominee's records by invoking executive privilege was President Reagan for Justice William Rehnquist. At the time, however, two Republicans joined with Democrats to demand the documents be released. And they were. How times have changed.

Seventh, to date we have received less than half of Chairman Grassley's partial records request. Meaning, we are moving forward even though we have received a fraction of the records that even Republicans claimed they needed in order to vet your nomination just six weeks ago.

Finally, we received an additional 42,000 pages from your record just hours ago. The notion that anyone here has properly reviewed them – or even seen them at all – is laughable. That alone would be reason to postpone during normal times. But nothing about this is normal.

All told, only four percent of your White House record has been shared with the public, and only seven percent has been made available to this Committee. The rest remains hidden from scrutiny. Compare this to the 99 percent of Justice Kagan's White House record that was available to all Americans, as a result of the bipartisan process I ran with then-Ranking Member Jeff Sessions.

If I have not been clear, I will be so now: Today the Senate is not simply ‘phoning in’ our vetting obligation – we are discarding it. It is not only shameful – it is a sham.

From the bits and pieces of your record we have received, it appears that you provided misleading testimony about your involvement in controversial issues at the Bush White House during your previous confirmation hearings. I asked you about these concerns during our meeting last month, and you should expect me to return to them this week.

What I fear most is that the American people will not know the full truth until your full record is public. And, unfortunately, Republicans have done their best to ensure that will not happen.

We thus begin these hearings with gaping holes spanning multiple years of your career that deeply influenced your thinking as a judge. Any claim that this has been a thorough or transparent process would be downright Orwellian. This is the most incomplete, most partisan, and least transparent vetting for any Supreme Court nominee I have ever seen. And I’ve seen more than anyone else in the Senate.

Judge Kavanaugh, this hearing is premature, but I hope you will use it to answer our questions directly, clearly, and honestly. The American people have real concerns about how your confirmation would affect their lives.

The Supreme Court is the guarantor of liberties in our republic. Few, I would argue, are worthy of taking a seat. Only those with unimpeachable integrity. Only those who believe that truth is more important than party. Only those who are committed to upholding the rights of all Americans, not just those in power. As you know, inscribed in Vermont marble above the Court’s entrance are the words “Equal Justice Under Law.” For the millions of Americans fearful they are on the verge of losing hard-fought rights, that aspiration has never been more important than it is today, and it has never been more at risk.

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