The Senate met at 9:30 a.m. and was called to order by the Honorable SHELLEY MOORE CAPITO, a Senator from the State of West Virginia.

PRAYER
The Chaplain, Dr. Barry C. Black, offered the following prayer:
Let us pray.
Eternal God, our help in ages past and hope for years to come, we honor Your Name.
Today, have mercy upon us. According to Your loving kindness and tender mercies, have Your way in this Chamber and in the hearts of our lawmakers. Lord, our Senators are the clay, and You are the divine potter. Using Your wisdom, mercy, and might, mold and make our legislators to be instruments of Your divine purposes. Give them the courage and wisdom to surrender and yield to the unfolding of Your unstoppable providence as they acknowledge that our times are in Your hands.
We pray in Your sovereign Name. Amen.

PLEDGE OF ALLEGIANCE
The Presiding Officer led the Pledge of Allegiance, as follows:
I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE
The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. HATCH).
The bill clerk read the following letter:

U.S. SENATE
PRESIDENT PRO TEMPORE
Washington, DC, October 5, 2018.
To the Senate:
Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable SHELLEY MOORE CAPITO, a Senator from the State of West Virginia, to perform the duties of the Chair.

President pro tempore.

Mrs. CAPITO thereupon assumed the Chair as Acting President pro tempore.

RESERVATION OF LEADER TIME
The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

CONCLUSION OF MORNING BUSINESS
The ACTING PRESIDENT pro tempore. Morning business is closed.

EXECUTIVE SESSION

EXECUTIVE CALENDAR
The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will proceed to executive session to resume consideration of the following nomination, which the clerk will report.
The bill clerk read the nomination of Brett M. Kavanaugh, of Maryland, to be an Associate Justice of the Supreme Court of the United States.
The ACTING PRESIDENT pro tempore. The Senator from Iowa.
Mr. GRASSLEY. Madam President, would you inform me of the amount of time I have to speak.
The ACTING PRESIDENT pro tempore. There has been no time agreement made.
Mr. GRASSLEY. I thank the Acting President pro tempore.
Madam President, 100 days ago, Justice Kennedy announced his retirement from the Supreme Court. Shortly thereafter, on July 9, the President announced the nomination of Judge Brett Kavanaugh to serve as the newest Justice.

Judge Kavanaugh has spent 25 years of his career in public service. He spent the last 12 years on the DC Circuit—considered the second most important Federal court in the country. His record there has been extremely impressive because the Supreme Court adopted a position advanced in Judge Kavanaugh’s opinions no fewer than a dozen times.
Judge Kavanaugh is also a pillar of his community and in the legal profession. He serves underprivileged communities, coaches girls’ basketball, and is a lector at his church. He has shown a deep commitment to preparing young lawyers for their careers. He has been a law professor at three prestigious law schools and a mentor to dozens of judicial law clerks.

This should have been a respectable and dignified confirmation process. In a previous era, this highly qualified nominee would have received unanimous support in the Senate. Before leftwing, outside groups and Democratic leaders had him in their sights, Judge Kavanaugh possessed an impeccable reputation and was held in high esteem by the bench and the bar alike. Even the American Bar Association, which the Democrats say is their gold standard for judges, gave him its unanimous “well-qualified” rating.

What leftwing groups and their Democratic allies have done to Judge Kavanaugh is nothing short of monstrous. I saw what they did to Robert Bork. I saw what they did to Clarence Thomas. That was nothing compared to what we have witnessed in the last 3 months. The conduct of leftwing, dark money groups and their allies in this body has shamed us all.

The fix was in from the very beginning. Before the ink was even dry on the nomination, the minority leader announced he would oppose Judge Kavanaugh’s nomination with everything he had. Even before he knew the President’s nominee, the minority leader said he was opposed to all 25
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CONGRESSIONAL RECORD — SENATE

October 5, 2018

well-qualified potential nominees list-
ed by this President. One member of
my committee said those who would
vote to confirm Judge Kavanaugh
would be “complicit in evil.” Another
member of the committee revealed the
degende when she suggested that Sen-
ate Democrats hold the nomination
open for 2 years if they defeated Judge
Kavanaugh and took control of the
Senate in these midterm elections.

I oversaw the most transparent con-
firmed judicial process in Senate history
based on the fact of the more than
500,000 pages of judicial writings, pub-
lications, and documents from Judge
Kavanaugh’s executive branch service.
This is on top of the 307 judicial opin-
ions he authored. Despite the Demo-
crats’ efforts to bury the committee in
even more paperwork, the Senate Judi-
ciciary Committee held a timely, 4-day
hearing on Judge Kavanaugh’s nomina-
tion last month. Judge Kavanaugh tes-
tified for more than 32 hours over the
course of 3 days. The Judiciary Com-
mittee showed the Nation exactly why he
deserves to be on the Supreme Court—
because of his qualifications.

Judge Kavanaugh’s antagonizers
couldn’t land a punch on him during his 3 days. Even when they made false or misleading argu-
ments, they couldn’t touch him. Some of
my colleagues accused Judge Kava-
nough of committing perjury. For
that false claim, the Washington Post
Fact Check awarded my colleague and
three Pinocchios. Another colleague
claimed Judge Kavanaugh described
counterpartives as “abortion-inducing”
drugs. The video my colleague shared
on the internet was doctored to omit
the fact that Judge Kavanaugh was de-
scribing the plaintiffs’ claims in a case
that he had decided and not his own
views. My colleague was awarded four
Pinocchios. Those, of course, are the
most Pinocchios you can get.

Yet another one big card to play,
which they had kept way up their
sleeves for a month—actually, for 45
days, I think. In July, the ranking
member received a letter from Dr.
Christine Blasey Ford, alleging that
Judge Kavanaugh sexually assaulted
her in high school 36 years ago. Instead
of referring Dr. Ford to the FBI or
sharing these allegations with her col-
leagues—either of which would have re-
spected and preserved Dr. Ford’s con-
fidentiality and is what Dr. Ford re-
quested—the ranking member refused
Dr. Ford to Democratic-activist attor-
neys who were closely tied to the Clin-
tons. The ranking member shamefully
sat on these allegations for nearly 7
weeks, only to reveal them at the ele-
venth hour, when it appeared that Judge
Kavanaugh was headed toward con-
firmation because he was so qualified.

The ranking member had numerous
opportunities to raise these allega-
tions with Judge Kavanaugh personally.
I will provide examples.

She could have discussed them with
Judge Kavanaugh during their private
meeting on August 20—a meeting
which took place after her staff had
sent Dr. Ford to Democratic lawyers—
or shared with them 64 of her Senate
colleagues who had also met with him
individually; the ranking member’s staff
could have raised them with
Judge Kavanaugh during a background
investigation followup call in late Au-
gust; Senators could have asked Judge
Kavanaugh about the allegations dur-
ing his 32 hours of testimony over the
course of 3 days; Judiciary Committee
members could have asked Judge
Kavanaugh about the allegations during
his closed session of the hearing, which the ranking
member didn’t attend. The closed ses-
tion is the appropriate place to bring
up issues about which confidentiality
is supposed to be respected, and there
were no questions about these allega-
tions among the 1,300 written questions
that had been sent to Judge Kavanaugh
after the hearing. This amounts to
more written questions being sub-
mitted to this nominee after a hearing
than to all Supreme Court nominees
combined.

Keeping the July 30 letter secret de-
prived Senators of having all the facts
they needed to have about this nomina-
tion. It was not until September 13—July
30 to September 13, nearly 7 weeks
after the ranking member received
these allegations and on the eve of the
confirmation vote—that the ranking
member referred them to the FBI.
Rachel Mitchell, who had previously
interviewed Judge Kavanaugh in 2006,
finally agreed to a public hearing. As
was Judge Kavanaugh, who emphati-
cally denied the allegations.

It is true that confirmation hearings
aren’t a trial, but trials have rules
based on commonsense notions of fair-
ness and due process, not the other way
around. It is a fundamental aspect of
fairness and a fundamental aspect of
due process that those who have the
burden of proving allegations. Judge
Kavanaugh was publicly accused of a
crime, and his reputation and liveli-
hood were at stake. So it was only fair
that his accuser have the burden of
proof. The consensus is, the burden was
not met.

Ultimately, the existing evidence, in-
cluding the statements of the three al-
leged eyewitnesses named by Dr. Ford,
refuted Dr. Ford’s version of the facts.
Our investigative nominations counsel,
Rachel Mitchell, who has nearly 25
years of experience in advocating for
sexual assault victims and in inves-
tigating sex crimes, concluded there
was a lack of specificity and simply too
many inconsistencies in Dr. Ford’s al-
legations to establish that Judge
Kavanaugh committed sexual assault
even under the lowest standard of
proof. She concluded:

“A ‘he said, she said’ case is incredi-
ably difficult to prove. But this case is
even weaker than that. Dr. Ford identified other wit-
nesses to the event, and those witnesses ei-
ther refuted her allegations or failed to cor-
roborate them. For the reasons discussed
below, I do not think that a reasonable pro-
secutor would bring this case based on the
evidence before the Committee. Nor do I be-
lieve this evidence is sufficient to satisfy the
preponderance-of-the-evidence standard.

We have thoroughly investigated
Judge Kavanaugh’s background.

In addition to the prior six FBI full-
field background investigations with
the interviews of nearly 150 people who
have known Judge Kavanaugh his en-
tire life, the committee also separately
and thoroughly investigated every allega-
tion against him.

Our Office of General Counsel
and more than 20 committee staff members
have worked night and day over the
last many weeks in tracking down vir-
tually all leads, and at the request of
undecided members, the FBI reopned
Judge Kavanaugh’s background inves-
tigation for another week.

The FBI interviewed 10 more people
related to the latest credible sexual as-
sault allegations, and the FBI con-
irmed what the Senate investigators
already concluded, which is this: There
is nothing in the FBI background investi-
gation report that we didn’t already know.

These uncorroborated accusations
have been unequivocally and repeat-
extly rejected by Judge Kavanaugh,
and neither the Judiciary Committee nor
the FBI could locate any third parties
who can attest to any of the allega-
tions. There also is no contempora-
neous evidence.

Judge Kavanaugh’s background found no hint of
mishand, and the same is true of six
prior FBI investigations conducted
during Judge Kavanaugh’s 25 years
of public service. Nothing an investigator,
including career FBI special agents,
does could ever be good enough to sat-
fice the Democratic leadership in
Washington, who staked out opposition
to Judge Kavanaugh before he was even
nominated.

There is simply no reason, then, to
deny Judge Kavanaugh a seat on the
Supreme Court on the basis of the evi-
dence presented to us. The Democratic
strategy used against Judge
Kavanaugh has made one thing clear:
They will never be satisfied, no matter
how fair and thorough the process is.

Thirty-one years after the Senate
Democrats’ treatment of Robert Bork,
their playbook remains the same. For
the leftwing, advice and consent has
become search and destroy, a demo-
liation derby.

I am pleased to support Judge
Kavanaugh’s confirmation. I am sorry for
what the whole family has gone through
the last several weeks. We
should all admire Kavanaugh’s willingness to serve his country, despite the way he has been treated. It would be a travesty if the Senate did not confirm the most qualified nominee in our Nation’s history.

The multitude of allegations against him have proved to be false. They have also proved that no discussion of his qualifications have shown he wasn’t qualified. We had a campaign of distraction from his outstanding qualifications, a campaign of destruction of this most difficult decision.

What we have learned is the resistance that has existed since the day after the November 2016 election is centered right here on Capitol Hill. They have encouraged mob rule.

When you hear about things like “Get in their face; bother people at every restaurant where you can find a Cabinet Member”—these are coming from public servants who ought to set an example of civility in American society, and this hasn’t been made worse by what has happened to Judge Kavanaugh.

I hope we can say no to mob rule by voting to confirm Judge Kavanaugh.

I yield the floor.

The Senator from California.

Mrs. FEINSTEIN. Madam President, I understand that in the order I have 15 minutes; is that correct?

The Acting President pro tempore. The Senator is recognized.

Mrs. FEINSTEIN. Thank you very much.

Madam President, this has been my ninth Supreme Court nomination hearing, and I must say, I have never experienced anything like this.

Never before have we had a Supreme Court nominee where over 90 percent of his record has been hidden from the public and the Senate. Never before have we had a nominee display such flagrant partisanship and open hostility at a hearing, and never before have we had a nominee facing allegations of sexual assault.

The nominee before us being considered for a pivotal swing seat, if confirmed, would be the deciding vote on some of the most important and divisive issues of our day.

I would like to start by speaking about some of the issues in relation to Judge Kavanaugh.

President Trump promised to nominate to the Supreme Court only individuals who would be pro-life and pro-gun nominees and who would automatically overturn Roe v. Wade. In my judgment, Judge Kavanaugh clearly meets the test.

In a speech in 2017, Judge Kavanaugh focused on praising Justice Rehnquist and his dissent in Roe v. Wade. In my judgment, Judge Kavanaugh clearly meets the test.

Also, last year, Judge Kavanaugh argued that a Texas case that a Jane Doe should not be able to exercise her right to choose because she did not have family and friends help her make the decision. If adopted, this argument could rewrite Supreme Court precedent and require courts to determine whether a young woman has a sufficient support network when making her decision, even in cases— as is in this one—where she had gone before a court.

His reasoning demonstrates that Judge Kavanaugh not only is willing to disregard precedent, but his opinions fail to appreciate the challenging realities women face when making these most difficult decisions.

When I asked him about whether Roe and Casey were settled law and whether they were correctly decided, he refused to answer. He would say only that these cases are “entitled to respect.”

As we all know, Roe v. Wade is one of a series of cases that upheld an individual’s right to decide who to marry, where to send your children to school, what kind of medical care you can receive, where and when to have a family.

According to these cases, the government cannot interfere with these decisions.

Another issue that gives me great pause is Judge Kavanaugh’s extreme view on guns. In reviewing his record and judicial opinions, it is clear his views go well beyond simply being pro-gun.

During a lecture at Notre Dame Law School, Judge Kavanaugh himself said he would be the “first to acknowledge that most lower-court judges have disagreed” with his views on the Second Amendment.

Specifically, in District of Columbia v. Heller, Judge Kavanaugh wrote in a dissenting opinion that “unless guns were regulated either at the time the Constitution was written or traditionally throughout history, they cannot be regulated now.”

In his own words, he said gun laws are unconstitutional unless they are “traditional or common in the United States.”

Judge Kavanaugh would have struck down DC’s assault weapons ban because they have not historically been banned. This logic means that as weapons become more advanced and more dangerous, they cannot be regulated at all.

When I asked Judge Kavanaugh about his views that if a gun is in “common use,” then it can be regulated, he replied this way:

There are millions and millions of millions of semi-automatic rifles that are possessed. So that seemed to fit “common use” and not be a dangerous and unusual weapon. I think about that, Judge Kavanaugh made up a new standard that had nothing to do with “common use” but instead relied on whether a gun is widely possessed and owned as determinative of whether it is subject to any regulation.

The United States makes up 4 percent of the worldwide population, but we own 42 percent of the world’s guns. By Judge Kavanaugh’s standard, no State or locality will be able to place any limitation on guns because of widespread ownership in this country.

I am also concerned about his views on Presidential power. Specifically, he has said that sitting Presidents cannot be investigated, can’t be prosecuted, and should not be investigated. I should have the authority to fire a special counsel at will. In other words, the President of the United States is above and outside the law.

These views raise serious concerns that should concern us all, especially at a time when the President continually threatens to fire the leadership of the Department of Justice for failing to be loyal and reigning in the Mueller investigation.

These views alone are sufficient for me to vote against Judge Kavanaugh, but what we have seen and experienced in the past several weeks has raised serious new concerns—concerns I believe we should worry about all.

Judges are expected to be “even-handed, unblased, impartial, and courteous”; however, at the hearing last week, we saw a man filled with anger and aggression. Judge Kavanaugh raised his voice. He interrupted Senators. He declared纤维的 of “lying in wait,” and replacing “advice and consent with search and destroy.”

He even went so far as to say that Dr. Ford’s allegations were nothing more than a calculated and orchestrated political hit, fueled with pent-up anger about President Trump and the 2016 election, and “revenge on behalf of the Clintons.” How could he?

This behavior revealed a hostility and belligerence that is unbecoming of someone seeking to be elevated to the U.S. Supreme Court. His display was so shocking that more than 2,400 law professors from around the country have expressed their opposition.

They wrote: “Instead of trying to sort out with reason and care the allegations that were raised, Judge Kavanaugh responded in an intemperate, inflammatory and partial manner, as he interrupted and, at times, was discourteous to senators.”

The professors concluded: “We have differing views about other qualifications of Judge Kavanaugh. But we are united as professors of law and scholars of judicial institutions, in believing he displayed the personal and judicial temperament requisite to sit on the highest court of our land.”

Madam President, finally, I want to mention the serious and credible allegations raised by Dr. Christine Blasey Ford and Deborah Ramirez—the women who came forward to tell their experiences facing sexual assault.

When Dr. Ford decided to make her story public, she faced all her worst fears. She was harassed. She received death threats. She had to relocate her home, her husband, and two children.

Yet, in less than a week, she came before the Senate and told 21 Senators she had never met, along with millions
of Americans, about the most tragic, traumatic, and difficult experience of her life. She did so with poise, grace, and, most importantly, bravery.

Unfortunately, she was met with partisanship and hostility. My Republican colleagues were largely chosen to ignore her powerful testimony.

Senators weren’t allowed to hear from any witnesses who could corroborate or refute her account. They refused to gather evidence or do an impartial investigation into her allegations, including naming over two dozen witnesses each.

Unfortunately, the limited investigation that was conducted by the FBI failed to interview any one of the witnesses these women identified who could support her account.

Let me say that again. They refused to investigate—to talk with—any of the 21 witnesses that could have supported their accounts.

I think it is important to remember why we are here today. We are here to determine whether Judge Kavanaugh has demonstrated the impartiality, the temperament, and the even-handedness that is needed to serve on this great High Court of our land.

If confirmed, he will join eight other individuals who are charged with deciding how the laws of the land are interpreted and applied. He would be a deciding vote on the most important issues affecting our country and every American for generations to come.

Based on all of the factors we have before us, I do not believe Judge Kavanaugh has earned this seat.

Thank you.
in a Supreme Court Justice. He has repeatedly misled the Senate about his involvement in some of the most serious controversies of the Bush administration, including warrantless wiretapping of American citizens, our policy against torture, the theft of electronic records from Democratic Senators, and his involvement in the nomination of very controversial judges. Faced with credible allegations of various types of misconduct, Judge Kavanaugh's credibility was again tested, and he continued to dissemble and even prevaricate about easily refuted facts.

Beyond the issue of credibility, Judge Kavanaugh presented to the Senate the bitterest partisan testimony I have ever heard coming from a candidate seeking the Senate's approval, whether they be for the bench or the executive branch. There are many who think that what happened when Judge Kavanaugh was 17 years old should not be dispositive. Even if you believe that, his actions at age 53 in terms of demeanor, partisanship, and, above all, credibility, should be dispositive. Judges at every level of the Federal bench should be held to the highest standard of ethics and moral character. Judges at every level should be judicious and credible and independent but especially—especially—on the Supreme Court.

I do not see how it is possible for my colleagues to continue with perfect confidence that Judge Kavanaugh has the temperament, independence, and credibility to serve on the U.S. Supreme Court. So I ask my colleagues on the other side of the aisle: Why Judge Kavanaugh? There is no dictate that you have to march blindly forward with a nominee when there are others available to you. There are many judges whom I am sure conservatives would be happy to have on the Court. I would remind my colleagues, the button that Brett Kavanaugh aspires to fill was held by a Justice who assumed the mantle by any means necessary. The very night Judge Kavanaugh was

If Judge Kavanaugh is rejected, President Trump will select another nominee—likely right-of-center, probably not to my liking but without the cloud that hangs over this nominee—and we can proceed to consider that nomination heartburn-free much better, less partisan way. A bipartisan majority of Senators, considering fully the weight of Judge Kavanaugh's testimony, record, credibility, trustworthiness, and temperament, considering fully the weight of the testimony of Dr. Christine Blasey Ford, can vote to reject Judge Kavanaugh's nomination and ask the President to send the Senate another name.

For the sake of the Senate, of the Supreme Court, and of America, I hope, I pray, my colleagues will do so. I yield the floor.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

Mr. McCONNELL. Madam President, it was 88 days ago that President Trump announced his nomination of Judge Brett Kavanaugh to fill the current vacancy on the Court.

Judge Kavanaugh is a nominee of the very highest caliber, a brilliant legal mind and an accomplished jurist with a proven devotion to the rule of law. Today, the Senate has the opportunity to advance his nomination. Every one of us will go on record with one of the most consequential votes you ever cast in the Senate.

The stakes are always high for a Supreme Court justice, but, colleagues, the extraordinary events of recent weeks have raised them even higher this time. When we vote later this morning, we will not only be deciding whether to elevate a stunningly well-qualified judge to our highest Court. Not anymore. Not after all this. The Senate will also be making a statement.

We will either state that partisan politics can override the presumption of innocence that in the United States of America, every-one is innocent until proven guilty.

We will either state that facts and evidence can simply be brushed aside when politically inconvenient and signal that media bullying and mob intimidation are valid tactics for shaping the Senate and that the mob can attack and the Senate will cave, or we will stand up and say that serious, thoughtful, fact-based deliberation will still define this body.

We will either give notice that totally uncorroborated allegations are now officially enough to destroy an American's life, or we will declare that our society must not, will not set the bar so low.

Today is a pivotal day in the nomination process of this excellent judge, but it is a pivotal day for us here in the Senate as well. The ideals of justice that have served our Nation so well for so long are on full display.

So let's step back and sample a few of the choice moments that the Senate and the American people have been treated to during the disgraceful—absolutely disgraceful—spectacle of the last 2 weeks.

The very night Judge Kavanaugh was announced as the President's choice, the junior Senator from Oregon declared that this nominee would "pave the path to tyranny." His audience? Crowds of far-left protesters, still filling in the blanks on their picket signs. They weren't quite sure who the nominee was going to be yet.

We heard the junior Senator from New Jersey describe Judge Kavanaugh's nomination as a great moral struggle in which there are just two camps: "You're either complicit in the evil . . . or you are fighting against it."

More recently, we heard the junior Senator from Hawaii argue that her personal disagreement with Judge Kavanaugh's judicial philosophy meant—now, listen to this—he didn't have a vote of the presumption of innocence when it came to allegations of misconduct. If you agree with her, you are not entitled to the presumption of innocence when it comes to allegations of misconduct. That is from a member of the Judiciary Committee. That is the definition of 'due process'?

Apprently, you get due process only if you agree with her.

Even more recently, we saw the junior Senator from Rhode Island hold floor with great confidence—offering his expert interpretations of goofy jokes in a high school yearbook from the early 1980s. That was incredibly enlightening. Innocent jokes? Beer-drinking references? Oh, no. Our colleague was quite positive there must be some other hidden or sinister meanings at play—until, of course, a number of Judge Kavanaugh's classmates set him straight earlier this week.

We stop and consider these snapshots. The absurdity. The absurdity. The in-dignity. This is our approach to confirming a Supreme Court Justice? This is the Senate's contribution to public discourse?

Before the ink had dried on Justice Kennedy's retirement, our Democratic colleagues made it perfectly clear what this process would be about: delay, obstruct, and resist.

Before the ink had dried on Judge Kavanaugh's nomination—great headlines across the aisle—including Democratic members of the Judiciary Committee—were racing to announce they had made up their minds and were totally opposed to his confirmation.

Mere hours after Judge Kavanaugh was nominated, my friend the Democratic leader promised—"I will oppose him with everything I've got," he said hours after he was nominated. It was thus abundantly clear that his No. 1 political goal was to defeat the nomi-nation by any means necessary.

It was right there from the beginning, a clear declaration, plain as day: Nothing—nothing—could get most
Democrats to consider this nominee with an open mind. It would be delaying tactics, obstruction, and the so-called resistance until the final vote was called.

For a few weeks, their efforts played out as a sideshow that had slowly become somewhat ordinary around here. There were excuses for delay. Those fell flat. There were gross distortions of Judge Kavanaugh's record that were batted down by outside fact-checkers. There were all the usual phony, apocalyptic pronouncements that are shouted whenever a Republican President dares to nominate a Supreme Court Justice. It happens every time. Hostile to women. Hostile to vulnerable people. Hostile to workers. The same old playbook. But here was the problem: The old plays weren't working. The distortions were being literally drowned out by the facts.

Senators received and reviewed more pages of background materials on Judge Kavanaugh's nomination than for every previous Supreme Court nomination combined. We read Judge Kavanaugh's 12-year record of judicial rulings from our Nation's second highest court—300-plus opinions. We heard sworn testimony and written accounts from hundreds of character witnesses from all stages of Judge Kavanaugh's life and career. The picture painted by these facts was nothing like the caricature—nothing like the caricature.

So it was true that the old tactics weren't working and weren't going to get the job done. The resistance demanded more. Try something new, they said. Well, we all know what happened next. Un corroborated allegations of the most sensitive, most serious sort were quickly sharpened into political weapons.

One such allegation, shared by Dr. Ford in confidence with the Democrat side of the Judiciary Committee, somehow mysteriously found its way into the Senate. Chairman GRASSLEY immediately set out on a sober, focused search for the truth. The committee collected testimony, organized a new hearing, and most recently asked for a supplemental FBI background investigation. Judge Kavanaugh's seventh—fifth FBI investigation.

By any fair standard, the facts—the actual facts—proved to be straightforward: no corroborating evidence. None—none—was produced to support any of the allegations leveled against Judge Kavanaugh. There was no corroborating evidence from the FBI inquiry or from anywhere else. Nothing.

Well, that wasn't enough for our Democratic colleagues, of course. The facts were not exactly the point. After all, we sort of get it by now. When the very FBI investigation for which they had been clamoring turned up no new evidence, the Democrats moved the goalposts yet again.

I believe the latest story is that the whole investigation is invalid—listen to this—because individuals who had only recently been told secondhand or thirdhand about nearly 40-year-old allegations weren't treated as essential witnesses.

Let me say that again. The latest story is that the whole investigation is invalid. It has been only recently been told secondhand or thirdhand about nearly 40-year-old allegations weren't treated as essential witnesses—never mind that they didn't actually witness anything. They didn't witness anything.

So let's litigate. These are not witnesses. These are people supposedly in possession of hearsay that they first heard 35 years after the supposed fact. What nonsense.

The people whom Dr. Ford claimed were witnesses have spoken with the FBI. We know that because they, through their attorneys, put out public statements saying so. What we know now is what we knew at this time a week ago: There is absolutely no corroborating evidence for these allegations—the same thing we heard a week ago. If there were, you bet we would have heard about it, but there isn't.

Notwithstanding that, the leak of Dr. Ford's letter—in violation of her privacy and her family—opened the floodgates. The feeding frenzy was full-on. The weaponization of her letter by the left led to a torrent of other, equally uncorroborated allegations. They were dumped on Judge Kavanaugh's career, mindlessly, breathlessly, the media seized on them—the more outlandish, the better.

Americans were informed that Judge Kavanaugh masterminded violent drug gangs as a young teenager, until that accuser walked her story back. We were informed that Judge Kavanaugh beat someone up on a boat in a Rhode Island harbor, until that accuser totally recanted. We heard another tall tale of physical assault, until that accusation was thoroughly debunked by a sitting Federal judge. Oh, and, yes, we were informed that juvenile jokes in high school yearbook were actually sinister secret references.

Oh, the Keystone Kops were on the case, and Senate Democrats cheered them on. They read parts of this uncorroborated, unbelievable mudslide into the Senate RECORD. They cited them in an official letter, demanding that Judge Kavanaugh's nomination be withdrawn.

We're we're true? That was quite besides the point, so long as they were convenient. Every effort was made to ensure the fact-free verdict of the mob and the media would win out over the actual evidence; make sure the mob prevailed. The uncorroborated mud and the partisan noise and the physical intimidation of Members in the Senate will not have the final say around here. The Senate will have the final say.

We are almost at the end of the run, and the crosswinds of anger and fear and partisanship have blown strong these past weeks. They have harmed a good man and his family. They have tarnished the dignity of this institution, but all of it can end today. The time has come to vote. The Senate stands on the threshold of a golden opportunity.

We have the opportunity to advance the nomination of an incredibly qualified and well-respected jurist to a post that demands such excellence. We have the opportunity to put Judge Brett Kavanaugh on the Supreme Court, where his distinguished service will make us and our Nation proud for years to come. We have the opportunity to do even more.

Today, we can send a message to the American people that some core principles remain unfettered by the partisan passions of this moment. Facts matter. Fairness matters. The presumption of innocence is sacrosanct. The Senate has turned its back on these things before but never for long and never without deep regret.

This institution does not look back. It stands on the threshold of a golden opportunity to do even more.

Mr. MCONNELL. I ask unanimous consent that the mandatory quorum call be waived.

Mr. MITCHELL. The Acting President pro tempore. As a reminder to our guests in the Galleries, expressions of approval for a floor vote are not permitted in the Senate Galleries.

The Acting President pro tempore. Pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will state.

The Acting President pro tempore. Pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will state.

The senior assistant legislative clerk read as follows:

The Acting President pro tempore.

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the nomination of Brett M. Kavanaugh, of Maryland, to be an Associate Justice of the Supreme Court of the United States.

Mitch McConnell, Orrin G. Hatch, Thom Tillis, Roger F. Wicker, Tim Scott, Deb Fischer, Roy Blunt, Cindy Hyde-Smith, John Cornyn, Johnny Isakson, Lamar Alexander, John Barrasso, Joni Ernst, Mike Crapo, John Thune, John Barrasso, Pat Roberts.

Mr. MCONNELL. I ask unanimous consent that the mandatory quorum call be waived.

The Acting President pro tempore.

Is there objection?

Without objection, it is so ordered.
By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on the nomination of Brett M. Kavanaugh, of Maryland, to be an Associate Justice of the Supreme Court of the United States shall be brought to a close?

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The senior assistant legislative clerk called the roll.

The yeas and nays resulted—yeas 51, nays 49, as follows:

[Rollcall Vote No. 222 Ex.]

YEAS—51

Alexander Flake Moran
Barrasso Gardner Paul
Blunt Graham Perdue
Boozman Grassley Portman
Burr Harris Risch
Capito Heller Roberts
Cassidy Hoeven Rounds
Collins Hyde-Smith Rubio
Corker Inhofe Sasse
Cornyn Isakson Scott
Cotton Johnson Shelby
Crapo Kennedy Sullivan
Cruz Kyl Thune
Daines Lee Tills
Enzi Lee Toomey
Ernst Manchin Wicker
Fischer McCaskill Young

NAYS—49

Baldwin Hassan Peters
Bennet Heinrich Reid
Blumenthal Heston Sanders
Booker Hirono Schatz
Brown Jones Schumer
Cantwell Kaine Shaheen
Cardin Klobuchar Sinema
Carper Klobuchar Stabenow
Casey Leach Tester
Coons Markey Udall
Donnelly Menendez Van Hollen
Durbin Menendez Warner
Durbin Markowski Warren
Emhoff Murphy Whitehouse
Gillibrand Murray Wyden
Harris Nelson

( Disturbance in the Visitors’ Galleries.)

The ACTING PRESIDENT pro tempore. As a reminder to our guests in the Galleries, expressions of approval or disapproval are not permitted in the Senate Galleries.

On this vote, the yeas are 51, the nays are 49.

The motion is agreed to.

The ACTING PRESIDENT pro tempore. The Senator from Texas.

Mr. CORNYN. Madam President, as the world knows now, we just held a successful cloture vote on the nomination of Brett Kavanaugh to become the next Associate Justice on the U.S. Supreme Court.

I am glad we were successful in closing off debate. We now know that under the Senate rules, 30 hours are available for Senators to debate, and I am sure there will be many Senators who will be coming to the floor and offering their thoughts.

To my mind, what the Senate just voted for was to end the games, the character assassination, and the intimidation tactics that unfortunately have characterized so much of this confirmation process. Our vote today was important, not only because it will allow us to move forward and conclude this confirmation process, but it was important because it showed the Senate will not be intimidated. We will not be bullied by the streams of paid protesters and name-calling by the mob. We will not allow implicit in the attempts to tarnish a man’s character, destroy his career, and further delay this confirmation process—a constitutional process of advice and consent.

What has been particularly galling on the part of some of our colleagues over the last 24 hours is the fact that the FBI investigation they called for, they are virtually ignoring or, in some cases, disparaging. They called for that supplemental background investigation just last Friday. Let’s all remember what our friend the senior Senator from Minnesota said last weekend. He said: Let’s give this 1 week. Well, that is what we gave them. The junior Senator from Delaware asked for the same period of time at the hearing—a 1-week-long FBI investigation.

Our colleagues got what they asked for, and unfortunately, since they had already decided to vote against the nomination, they must have been somewhat disappointed that the supplemental background investigation came up with no new information, no corroboration at all.

I actually think, in some ways, our colleagues who called for a 1-week delay have done us a favor because every lead that could be followed has been followed and exhausted. As the majority leader was saying earlier, in America, under our constitutional system, where we don’t presume you are guilty and require you to prove your innocence and where we believe in due process of law, I think the FBI investigation was a useful way to demonstrate to the American people that none of these allegations that had been made against Kavanaugh of sexual misconduct has been proven.

It also, I think, gives us a chance to pivot from what has been a shameful and disgraceful confirmation process. If this is the new norm for the Senate—that somebody could be denied a confirmation based on an unproven allegation—I can’t imagine people would be willing to subject themselves to that in the future. It would be a dark day for the Senate, for the United States, and for our system of justice that believes in a fair process and a constitutional presumption of innocence. When an allegation is made, the person making that allegation actually has to come forward with some evidence.

A number of Senators—actually, it was a bipartisan consensus—wanted the FBI to conduct a limited investigation into current, credible allegations that were pending. They wanted the FBI to interview individuals like Mark Judge, who had already offered a sworn statement, and others who may have had information who were identified by Dr. Ford as being present on the day this alleged activity took place. There was no confirmation. There was no corroboration.

In fact, there was a refutation. The people she said were there and could be witnesses to what happened said: I have no knowledge of that.

Dr. Ford’s best friend, Leland Kaiser, said: I don’t even know Brett Kavanaugh. I never met him.

Well, we have all had an opportunity to read the confidential report. We have seen who was interviewed, what they were asked, and people may have had should now have been put to rest by what the contents reveal. These fantasies about Judge Kavanaugh being some sort of serial high school or college predator have been exposed as only that—myths not based on fact. There is no reliable evidence, whatsoever, to support any of these baseless allegations against Judge Kavanaugh.

As we know, this wasn’t exactly designed to be a truth-finding process. This wasn’t a search for the truth. Our colleagues across the aisle already made up their mind a long time ago, some even before Judge Kavanaugh had been nominated. This was more of, as the majority leader said earlier today, not a search for the truth but a search-and-destroy mission.

Obviously, as they continue to move the goalposts, calling for more delays, more investigations, there have been seven background investigations by the FBI of Judge Kavanaugh during his public service. The FBI talked to more than 150 witnesses. Don’t you think, if there were anything as the outlandish allegations, some of that would have come up at some point in the seven FBI background investigations that have been conducted?

But our colleagues across the aisle continue to resist, putting a definitive end to this process and unfortunately calling for more. I am willing to subject ourselves to the reputations of somebody who has demonstrated his outstanding qualifications and his commitment to public service. I think some of these attacks have become exhausting, politically exhausting, quite frankly.

Our colleagues don’t realize what they have unleashed when Senators get coat hangers mailed to their home, paid protesters show up on their doorstep or at their office or they are accosted in the Halls of the U.S. Congress. These paid protesters reportedly, once they get arrested, actually make more money from their fundraisers than they do if they don’t get arrested. That is what has been unleashed.

Chairman GRASSLEY called it mob rule, and that is exactly right—where the Judiciary Committee, during the first confirmation hearing for Judge Kavanaugh, Senators said: I am breaking the rules, I am releasing committee confidential information. I know the rules prohibit me from doing that—and they don’t care.
If there are no rules and there are no norms and if we don’t have enough respect for this institution and the people whose lives we touch, this is what gets unleashed.

I feel bad for Dr. Ford, in particular. She was the victim of this three-ring circus. She sent a letter to the ranking member and asked that her identity remain confidential, only to find, after the first confirmation hearing, that it was leaked to the press. Then the press came knocking on my door, and I guess she had no other recourse but to actually tell her story to the press once her wishes were violated. She didn’t consent to that. She didn’t authorize the release of that confidential letter to the press, but that is what happened.

When we gave her an opportunity to have a bipartisan, professional investigation, to have staff go out to California and conduct an examination to be administered. Other lawyers arranged for a polygraph without revealing the identity of Dr. Ford. She came up during the course of the back-and-forth between us, and in working with each other, and in working in putting our heads together, in talking to the press, in giving our testimony, in showing that this fight would devolve into the mob rule game. As the junior Senator from Nebraska, I said the other day, it is not about being for the MeToo movement or against it. Who could be against it? I hope there is some good that comes out of this disgraceful display. One of the things that might be good would be that more women would feel confident in coming forward and telling their stories to the appropriate authorities and producing the sort of information that would be necessary to make a criminal case—to investigate the case, to charge the case, to try the case, and to convict the people who commit sexual offenses. I hope there is some good that comes out of this. There is also, if you maybe, if you could work together to try to heal the wounds that have been caused by this abominable process.

I have worked a lot with colleagues here to pass anti-human trafficking legislation, to end the rape kit backlog, and on other things to try to help victims. I think, maybe—just maybe—putting our heads together, in talking with each other, and in working in good faith, we could come up with some legislative responses that might find some good from this terrible situation.

Once Dr. Ford was identified, in consultation with colleagues—both Republicans and Democrats—we decided Dr. Ford should be given an opportunity to tell her side of the story. Unfortunately, we were not able to mitigate or reverse a lot of the awful circumstances under which she had found herself because of what had already been unleashed on our court. We tried to do whatever we could to accommodate her. As I said, investigators offered to go to California. We brought in an experienced sexual crimes investigating attorney to ask questions in a respectful sort of way in order to illicit as much information as we possibly could get about her claim even though it was 35 years old.

Throughout the hearing, we listened to Dr. Ford, and we tried to understand what she was telling us. We took her allegations seriously and treated her in the same way we would have wanted our wives or our daughters to have been treated if they had found themselves in similar circumstances. Yet we also knew, that day, there was no other witness to corroborate or to confirm what she had said, even by the ones she had identified as having been present.

This is not about believing women or believing men. It is not a zero-sum game. As the junior Senator from Nebraska, I said the other day, it is not about being for the MeToo movement or against it. Who could be against it? I hope there is some good that comes out of this disgraceful display. One of the things that might be good would be that more women would feel confident in coming forward and telling their stories to the appropriate authorities and producing the sort of information that would be necessary to make a criminal case—to investigate the case, to charge the case, to try the case, and to convict the people who commit sexual offenses. I hope there is some good that comes out of this. There is also, if you maybe, if you could work together to try to heal the wounds that have been caused by this abominable process.

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The other thing about these allegations that have been made against Judge Kavanaugh is that they are completely out of character. We know he has been a circuit court judge for 12 years, authored more than 300 opinions, clerked for Anthony Kennedy on the Supreme Court, worked at the White House as a lawyer and as Staff Secretary for the President, taught at Harvard law school, clerked, and has been a prosecutor for the United States Attorney for the District of Columbia and interview her confidentially, and had been hired by now Secretary for the President, taught at Harvard, and had been hired by now Harvard law school professor, as well as having taught at Georgetown and Yale.

By all accounts—every account of anyone with personal knowledge of Judge Kavanaugh’s character and treatment of women—he has treated women with respect. And it is not just conservatives who sing his praises. A liberal law school professor, a self-described liberal feminist lawyer who has argued numerous cases before the U.S. Supreme Court, has said Judge Kavanaugh is supremely qualified. That echoes what the American Bar Association has said—the gold standard for some of our colleagues when it comes to judicial nominees. The American Bar Association has said that Judge Kavanaugh is unanimously well qualified. That goes for his temperament as well. So I believe this nominee is as good as it gets.

On July 10, the day after Judge Kavanaugh was nominated, I said that my Republican colleagues and I would not back down from this all-out assault on this nominee, but never in my dreams could I have imagined that this fight would devolve into the mob rule that we have seen—of Senators and staff taunted, threatened, and of millions of dollars spent in advertising and in paying protesters to show up on Senators’ front lawns, to harass them at restaurants, and to attack them in the halls of Congress. I never imagined that this would get this bad, when Senators would say “I am breaking the rules” and would dare anybody to do anything about it. This has turned into the kind of nasty and venomous politics that I had hoped never to experience.

This also has demonstrated the dark underbelly of Washington, DC, where power is so important to some people that they will do anything to get it. They will destroy you. They will tarnish your good name. They will con- done threats on family members, including on children. They will harass you. This has really been disgusting. I am an optimist, so I don’t believe this is our fate. I don’t believe we are condemned to work in a Senate and live in a country where this kind of activity is condoned or ignored. Actually, I think, by my Republican colleagues and I would be signaling that this is somehow the new normal. We would be setting the precedent of, yes, that kind of thing works, so let’s try it again. I am not saying it is a one-party or the other.

The day after Judge Kavanaugh was nominated, I also said we would defend the record of Judge Kavanaugh, who is a thoughtful public servant, against deliberate attempts to denigrate him. I stand by that statement, and we have defended him but have defended the Constitution, fundamental notions of fairness and fair play that are reflected in
our commitment to the due process of law, and the rights of somebody who has been accused of a crime, which Judge Kavanaugh has been accused of on multiple occasions.

Even as the mud has been slung on all sides, it is important to note that no credible and powerful she answered every question and tried to be helpful whenever she could.

I was struck by the statement from the Senator from Texas. He said that in some way, we want to make sure that our wives and daughters are treated fairly and heard with this kind of information. I couldn’t agree with him more, but we all know what happened after her testimony. Even President Trump, before a Mississippi rally, ridiculed and belittled Dr. Ford. After once calling her a credible witness, she became the butt of his joke at a rally in Mississippi. That is unfortunate.

When Dr. Ford came before us, she had nothing to hide. The Republicans on the committee were so concerned about her testimony and their relationship in the questioning of her that they were unwilling to risk direct questioning as she sat in front of them. They repeatedly cited that woman as prosecutor to do their job. The prosecutor’s examination was meandering and without any clear focus other than as an attempt to try to discredit Dr. Ford.

It was clear, however, that despite this testimony, even despite this hearing, many Republicans had made up their minds, as the majority leader had characterized it, to blow right through regardless of Dr. Ford’s testimony. We hear so many tributes to Dr. Ford from the Republican side out of one side of their mouths, and then they turn around and say that it is a smear. A smear is a lie.

I don’t believe she was lying. They can’t praise her on one hand and call her testimony a smear on the other. This isn’t justice. This is an election. I just don’t get it.

Unfortunately, those who wanted to take down this nominee viewed Judge Kavanaugh as a sacrificial lamb in some sort of vengeance campaign.

Thankfully, they have now failed to stop his nomination from going forward.

This nomination is no longer simply about Judge Kavanaugh and the current Senate Republican majority. It is also about the principles we must stand up for and defend. It is about validating public service and decades of honorable conduct. It is not about forgettings all that a man has done, all that he has done, all that has worked for at the drop of a hat based on unsubstantiated, uncorroborated allegations. It is about standing firm in the turbulent political winds. If I think about any institution in this country, I think about how it should be the place in which standing firm against the turbulent political winds occurs.

We all had a chance to read the FBI report, which failed to corroborate Dr. Ford’s allegations. Then we did exactly what we needed to do today, which was to vote—to stop the circus, to stop the high jinks, to stop the character assassination, and vote. And I glad our colleagues decided to close off debate now as this investigation period ensues. I look forward to concluding the confirmation process and confirming Judge Kavanaugh to be the next Associate Justice on the U.S. Supreme Court.

The ACTING PRESIDENT pro tempore, the Senator from Illinois.

Mr. DURBIN. Madam President, I would like to respond to my colleague from Texas with regard to at least one or two aspects of what he said.

He accused the opposition to Judge Kavanaugh as “mob rule.” I don’t think that is a fair characterization. The opposition to Judge Kavanaugh is on many different levels. My colleagues on both sides of the aisle have looked at this nomination seriously, and they have come to opposite positions. I don’t believe we are influenced, frightened, or in any way moved by mob rule. I just don’t get it.

Have I seen conduct that I think is untoward and really should not be condoned? I don’t feel strongly about this issue. Of course. Do I believe that people should have their freedom of speech limited or stifled?
Some of my Republican colleagues have claimed that the FBI’s supplemental investigation provides no corroboration of Dr. Ford’s or Ms. Ramirez’s complaints, but, of course, you will not find corroboration if the investigation systematically excludes corroboration where it exists. Unfortunately, the effort by the White House and Senate Republicans to tie the FBI’s hands in the Kavanaugh investigation is part of a pattern of concealment when it comes to the FBI and Brett Kavanaugh.

The Senator from Texas says: I hope this isn’t a new standard for hearings on Supreme Court nominations. I hope it isn’t either. There are some things we have done in this particular nomination hearing that were unheard of.

Millions of pages of Judge Kavanaugh’s public service record have been blocked from release to the public and even to the Senate. There was a time when Senator Jeff Sessions—now Attorney General—demanded documentation on Democratic nominees, and at that time the Democratic chairman agreed with him. We provided all of the information requested, as we should have. In this case, with Republicans controlling the committee, we were limited.

We have been denied access to an entire 35-month period in Judge Kavanaugh’s White House career when he worked as one of the President’s closest advisers as the White House Staff Secretary. During that time, he worked on controversial issues, such as same-sex marriage, abortion, torture, and Executive power.

It is likely that there are documents in Kavanaugh’s Staff Secretary record that would impact how Senators would vote on his nomination, and that is why they were hidden.

There was also an unprecedented partisan effort to screen and limit the documents that the Judiciary Committee itself would see. I listened as the Senator from Texas said: Dr. Ford had a partisan lawyer. Well, guess who screened the documents that were going to go from the official archives to our Judiciary Committee to review for the nomination of Brett Kavanaugh. The man’s name is Bill Burch. He is Kavanaugh’s former deputy. By every measure, Bill Burch is a partisan lawyer. I guess it is no surprise. What I was surprised was to find that an individual lawyer would have such a role and the Senate itself would endorse it.

Overall, when all is said and done, after the denials from the White House of certain records, after the claims of Executive privilege, after Bill Burch went through and screened what he considered to be appropriate and inappropriate documents for the American people to see, less than 10 percent of Judge Kavanaugh’s White House record has been disclosed.

These documents are going to come out some day, and those who are quick to voting for him now without reading them run the risk that they are making a mistake, which they are going to have to explain at a later time.

Just yesterday we learned from a FOIA lawsuit that the National Archives has hundreds of documents concerning Brett Kavanaugh’s work in the White House on warrantless surveillance programs. We will not see those documents before tomorrow’s vote. The White House apparently fears their contents and prefers to plow through. Why has Judge Kavanaugh’s record been concealed? Most likely because these documents contradict what he said. We have seen a pattern with Judge Kavanaugh from his Senate testimony in 2004, 2006, and again last month. When he is asked about controversial issues that he has been involved with in the past, he tries to deny or downplay them. He has done this repeatedly when testifying about matters he worked on at the White House. When he is asked about detention of combatants; warrantless surveillance; controversial judicial nominations, such as Pryor, Pickering, and Haynes; communicating with the press during the Starr investigation; and his work with Manuelito, a Republican Senate staff who stole documents from Democratic Senators’ computers, including my own, and shared them with Brett Kavanaugh when he was working at the White House.

On each issue, we have seen documents and reports showing that Judge Kavanaugh had far more involvement than his testimony let on. On issue after issue, Judge Kavanaugh’s sworn testimony was either misleading or false.

This is a judge who claims that words matter. He says that he is a strict textualist who holds other people accountable for the law. But when it comes to his own words, he is happy to take liberties and refuses to take responsibility. We have been forewarned of what we can expect if he is given a lifetime appointment on the Court.

I saw this pattern last week when he was asked about his high school yearbook and excessive drinking. They were legitimate questions that were relevant to the sexual assault allegations at hand. Many of Kavanaugh’s answers to these questions simply weren’t credible. His explanation of things he wrote in the yearbook didn’t pass the laugh test. Multiple people who knew him and so-called friends and family members publicly rebuffed his denial that he ever drank, in their words, “to the point that it would be impossible for him to state with any degree of certainty that he remembered everything that he did.”

I want to note: Try as he might when Senator Amy Klobuchar of Minnesota explained that she understands alcohol abuse because her father was an alcoholic and then asked Judge Kavanaugh if he had been blacked out. Instead of responding, Kavanaugh said: “Have you?” Conservative columnist Jennifer Rubin has written: “It was a moment of singular cruelty and disrespect.”

It has been hard to take Judge Kavanaugh’s testimony at his word on matters both large and small. That matters a lot when we are talking about a nominee’s judgment, temperament, and integrity.

Judge Kavanaugh’s judicial record and his academic writings raise even more concerns. Not only did he check the box on President Trump’s litmus test of opposition to the Affordable Care Act and Roe v. Wade, his judicial opinions consistently find ways to favor corporate businesses, provide protection for workers, consumers, women, and the environment.

He claims to be a textualist, but he has a habit of creatively defining words. In the Agriprocessors case, which I asked him about directly in the hearing, his dissent abandoned the text of the controlling statute. Instead, he borrowed a definition from another statute in order to argue against the right of slaughterhouse workers to organize. We asked Judge Kavanaugh whether he ever worked in a job himself that was dirty and dangerous, as dangerous as a slaughterhouse, he told me he used to cut grass and worked one summer in construction.

Look at his dissents in the White Stallion and Mingo Logan cases, where the judge gave his own definitions to key terms in the Clean Air and Clean Water Acts—so much for stare decisis. Kavanaugh claims he follows precedent, but as we have seen in case after case, he goes his own way.

Look at his interpretation in the Supreme Court’s 2008 Heller decision. Judge Kavanaugh believes the Supreme Court created a history and tradition test for considering challenges to gun safety laws. This test would have courts ignore the public safety impact of gun laws. Judge Kavanaugh admitted that he is “a lonely voice in reading that way.”

His approach would put at risk many commonsense laws, such as keeping guns out of the hands of domestic abusers. Judge Kavanaugh is not a lonely voice on gun safety; he is an extreme and frightening voice on gun safety.

After he wrote a dissent laying out his interpretation of the Heller precedent, a majority panel of DC Circuit judges—all of them Republican appointees—said this of his interpretation: “Unlike our dissenting colleague, we read Heller straightforwardly and his approach would put at risk many commonsense laws, such as keeping guns out of the hands of domestic abusers. Judge Kavanaugh is not a lonely voice on gun safety; he is an extreme and frightening voice on gun safety.”

Judge Kavanaugh’s reading of Heller may be music to the ears of the gun lobby, but it is manipulating precedent, nothing else.

Judge Kavanaugh’s claim that he follows precedent is also contradicted by his view of the Supreme Court decision Morrison v. Olson. Rather than admit the majority’s decision in the case still holds, Judge Kavanaugh clings to Justice Scalia’s dissent, which lays out the so-called “unitary executive theory” of Presidential power.

Judge Kavanaugh has been explicit that he would overturn Morrison. Let’s
be clear. While Judge Kavanaugh may claim that he will scrupulously follow precedent, he has shown he is willing to overturn it when it suits him. I have cited just a few examples.

Also particularly troubling is this judge’s view of Presidential power. Judge Kavanaugh wrote a striking passage in the Seven-Sky decision, dissenting from the majority’s upholding of the Affordable Care Act. He wrote: “Under the Constitution, the President may decline to enforce a statute that regulates individuals when the President deems the statute unconstitutional, even if a court has held or would hold the statute constitutional.”

This is a truly breathtaking claim of Presidential power, a claim particularly problematic at this moment in history.

Then there is Judge Kavanaugh’s evolving view on investigations of sitting Presidents. When he was working for Ken Starr and investigating President Clinton, he was pretty ferocious. But in 2008, he gave a speech and wrote a law review article arguing that sitting Presidents should be immunized from criminal investigations and civil suit. This was after Judge Kavanaugh spent a period of time working in the Bush White House.

He claims that he has an open mind on the constitutionality of criminal investigations of sitting Presidents, but consider what he wrote in that law review article in the Minnesota Law Review:

If the President does something dastardly, the impeachment process is available. No single prosecutor, judge, or jury should be able to accomplish what the Constitution assigns to Congress.

These are not the words of a judge with an open mind.

It was a telling moment when Judge Kavanaugh at his hearing would not answer whether he believed a President should comply with a grand jury subpoena.

Here is the reality: We have to consider why this President chose this Supreme Court nominee at this moment in history when the Mueller investigation is closing in.

Just a few weeks ago, Judge Kavanaugh himself said: “The Supreme Court must never be viewed as a partisan institution.” But the testimony and demeanor of Judge Kavanaugh last Thursday belies any claim he makes of nonpartisanship.

I can understand emotion and indignation from Judge Kavanaugh when one considers the gravity of the charges against him and the pain he and his family must feel. But there was fire in his eyes when he read the words he assured us he had personally written.

Benjamin Wittes has been a colleague of Brett Kavanaugh. He has published his writings, and he even lent his name for an individual reference for the judge. He called Judge Kavanaugh’s performance before the Senate Judiciary Committee “a howl of rage.”

Wittes went on to describe Kavanaugh’s partisanship as “raw, undisguised, naked and conspiratorial.”

Charlie Sykes, a conservative commentator, said of Kavanaugh’s statement at the committee last Thursday: “Even if I support Brett Kavanaugh . . . that was breathtaking as an abandonment of any pretense of having a judicial temperament.”

Judge Kavanaugh abandoned any veneer of neutrality last week before our committee.

Out of one side of his mouth, he claimed that he bore “no ill will” toward Dr. Ford. Then he called her allegations “a calculated and orchestrated political hit,” citing “apparent pent-up anger about President Trump and the 2016 election and revenge on behalf of the Clintons.” He even threatened Democrats when he said: “What goes around comes around.”

In my 20 years on the Judiciary Committee, I have never heard anything like that—or even close to that—from a judicial nominee. It is hard to imagine how a nominee who has displayed such raw partisanship could then claim to serve as a neutral umpire on the Supreme Court. Judge Kavanaugh, through his testimony, has called his own impartiality into serious doubt.

Retired Supreme Court Justice John Paul Stevens, a man who is respected for his integrity and service to this Nation, said this week that the performance by Judge Kavanaugh shows he should not serve on the Supreme Court. I agree. At a time when our President plumbs the depths of bad behavior on a daily basis, we should not allow the highest Court in our land to now sink to that same standard in their ranks.

From a broader perspective, let’s be clear what is at stake in this decision. We are at a moment in American history where our system of checks and balances is being profoundly tested. We have a President who has shown disrespect for the rule of law and the role of an independent judiciary. It is likely the Supreme Court will soon consider fundamental questions about Presidential authority and accountability. With so much at stake, we should not confirm a nominee to the Court unless we are sure of that nominee’s credibility, integrity, independence, and judgment.

Serious questions have been raised about Brett Kavanaugh. Dr. Ford’s testimony was serious and credible. When I asked her directly what degree of certainty do you have that Brett Kavanaugh was your attacker, Dr. Ford answered, without hesitation: “100 percent. I believe her.”

Judge Kavanaugh’s testimony was simply not credible. From his contrived explanations of his embarrassing yearbook entries, to his “I love beer” declarations, he was a sharp contrast to Dr. Ford’s measured accounting of a horrible day in her life she cannot forget.

I had hoped the FBI would be able to provide us with information to resolve unanswered questions, but they can’t do their job if their hands are tied.

When the Republicans in the committee and the White House decided to limit the number of witnesses,Unfortunately, the investigation could not be completed to meet professional standards.

I will say this to my colleagues. We have to think about what it would mean if Judge Kavanaugh were to be confirmed to the Supreme Court with credible sexual assault allegations against him. Specifically, what it would mean to the millions of women across America who are survivors of sexual assault—women who have been scared to come forward with their stories for fear of being mocked, ridiculed, and shunned. What would it mean for them to see Brett Kavanaugh sitting on that bench in that Court across the street, day after day, for decades, casting the deciding vote in cases that profoundly affect their rights. It would shake the confidence of millions of Americans in the integrity of our Supreme Court. We should not take that risk.

There are other qualified lawyers besides Brett Kavanaugh who could be nominated for this vacant seat—nominees whose legal views I may not agree with but who do not have serious questions about their fitness for office. If there are serious questions about a nominee’s temperament, credibility, or judgment—as there clearly are for Judge Brett Kavanaugh—we owe a duty of caution. We should give the benefit of the doubt to protect the integrity of the Supreme Court.

With so much at stake, we should not confirm a nominee to the Court unless we are sure the nominee’s qualifications are beyond question. I do not have that confidence in Brett Kavanaugh. I will vote no on his nomination.

The PRESIDING OFFICER (Mr. KENNEDY). The Senator from North Carolina.

Mr. TILLIS. Mr. President, I would like to summarize. The Presiding Officer and I have had a front row seat in this process. We both serve on the Judiciary Committee.

I think oftentimes people come to the floor, and they want to just give their version of what is going on that benefits their narrative rather than stepping back and thinking about what has happened since early July when Judge Kavanaugh was nominated to be on the Supreme Court. That happened on July 9.

Before July 9, there were many people on the other side of the aisle who had already announced their opposition not to Judge Kavanaugh but to anyone whom President Trump would nominate. We know who they are. They are very well publicized. I understand that. As a Member of the Democratic conference, I wouldn’t deny them their
right to do that. They oppose the President and anything he stands for.

Then, on July 10, there was a press conference, now that we knew who the nominee was, and a majority of the Democratic Members also said they opposed. Another leader of fact by the minority leader said he would fight the nomination with everything he has, and he has, but there are some pieces to the mechanics that I think are important to understand.

Briefly, after Judge Kavanaugh was nominated, the chair and the ranking member got together, and they tried to come up with a framework for releasing as many documents as possible. In fact, that went on for 2 or 3 weeks. In fact, the documents some of my colleagues on the other side of the aisle said the Republicans refused to produce documents were going to be made available on a very focused basis but with what they call search terms—the way to get into those 100,000 secret documents they are talking about. We estimate that if our colleagues on the other side of the aisle would have done what they have traditionally done—that is, come up with an agreement on document production—then they would have gained a lot of insights into the documents we considered relevant but not necessarily the documents they would like to use to create another political narrative, but they refused to cooperate, and we moved forward. As a matter of fact, we moved forward and provided more documents for this Supreme Court nominee than the total number of documents provided for all, in total, of the last three or four Supreme Court nominees.

We also went on to question—they call it questions for the record. What that means is that any member on the committee is entitled to compel the nominee to answer questions after the hearing. Judge Kavanaugh was subjected to over 1,200 questions for the record, under oath, that he had to submit back to the committee members. Those are the questions for the record, a multiple of any one nominee in the past; and, in fact, I understand it is probably the sum total of questions for the record that all the nominees on the bench were subjected to.

So the questions were asked. The documents were presented. All of that document production was going on in the latter part of July and August; the first tranche of documents came in about the second week of August.

What else was going on in the latter part of July and August? A letter, which was first submitted to a Congresswoman from California, was then routed to the ranking member, the senior Senator from California, at the end of July—a document that was expected to be held in confidence. It is a document we now know was authored by Dr. Ford, provided to the Judiciary Committee, with the understanding that her name would not become public.

In the past, the chair and the ranking member have a great relationship. They have a trusting relationship. In the past, when you had something you thought was material to the consideration of a nominee, a ranking member and a chair would try to figure out how to actually assess that information to treat the nominee. In this case, Dr. Ford fairly and to hold her information in confidence. That didn't happen here. Actually, there was no communication with the chair by the ranking member.

A few weeks into it, we do know there was some consultation from what Dr. Ford says was a committee staffer to retain an attorney who has a very well-publicized reputation for being partisan. I don't have any problem with that because we have partisan attorneys on both sides of the aisle, but at the recommendation of the committee staff, which is what Dr. Ford said under oath, they retained an attorney who is working pro bono.

Now, I am asking whether some—not all but some—of the people on the other side of the aisle genuinely cared about what I believe is a traumatic experience in Dr. Ford's life, genuinely care about trying to go through a process that would provide Dr. Ford with some closure. If they had, maybe they would have gotten someone who could interview her in the way that people experienced with sex crimes interview persons who have experienced a traumatic event. They were retained, in theory, but they didn't do that. Maybe, when the attorneys she retained, who are pro bono attorneys—that means they are not being paid, they are doing it at no cost or at least no cost to Dr. Ford—if the attorneys really cared about Dr. Ford versus the outcome, maybe they should have recommended to Dr. Ford to have the hearing, but that didn't happen either.

Now we move further through, and at the hearing—we had 32 hours of hearings. The letter was known to the ranking member. Dr. Ford didn't believe it was known to any other member on the committee—32 hours of hearings. Each one of us had two rounds, virtually an hour to ask questions of Judge Kavanaugh, not even an abstracted series of questions protecting the identity of Dr. Ford but questions that could have potentially raised the issues we now saw after the hearing. Thirty-two hearings, nobody mentioned. An hour and a half private hearing that, unfortunately, Senator FEINSTEIN, for whatever reason, wasn't able to attend, never brought up. After the hearing, then we heard about these allegations.

Now, I have had some people on the other side of the aisle say we rushed the committee process. The fact is, it was delayed for 2 weeks after we found out about the allegation; 1 week was to get to a point to where we could accommodate Dr. Ford and have her come and testify before the committee. Chairman GRASSLEY was criticized by some of the folks on my side of the aisle because they said he shouldn't be accommodating, delaying; set a deadline and moving forward. He didn't. He spent the weekend trying to figure out a setting, a method, that Dr. Ford would be comfortable with. Then, we built up to that week earlier. A week earlier, the chairman and the committee offered to Dr. Ford to go to California to interview her outside of the lights, outside of the circus that sometimes occurs here, and have the testimony performed in private. In the hearing we had with Dr. Ford, the question was asked: Were you aware that the committee offered to come to California in a confidential setting and allow you to give your testimony? Her response to that question was: I did not understand that. So that really raises a lot of doubts in my mind about either the competence or the agenda of her counsel.

So now, at this point, I believe there are two sets of people who are opposed to Judge Kavanaugh's nomination. There are some who just genuinely disagree with his judicial philosophy. I actually vote for some judges when I disagree with their judicial philosophy. There are some on the agenda that I would disagree with, but I vote for them—and I am going to get criticized by people on the right side of the aisle—because they are considered unanimously “well qualified” and just because I don't like the way they rule in certain cases, that is not enough reason to vote against them, but maybe for people on the other side of the aisle there is.

Then there is another group of people over there who I genuinely believe have used witnesses, have used this process, to just advance a political message and a political agenda.

Another reason I believe that is how the narrative changes depending on what sticks. We have received the additional background. I should mention Judge Kavanaugh has had seven background investigations over the last 25 years. I saw a stack of documents in a secure facility that is about that thick; I would estimate 600 to 1,000 pages of prior Federal FBI background investigations to clear him for other roles he has had, as well as in this case. Over 25 years talking to 150 people, some as recently as about 10 years, or less than 10 years after he was nominated, in college, and not a whiff of any of the allegations we have seen put forward—not a single note.

So as more information comes up, we see the narrative going from the weight of the allegations—because, honestly, in every instance where an accuser has made an allegation and said these people were present, those people have been interviewed if they were willing to, and none of them have corroborated the allegations that were made—none. In the follow-up investigations, the same sort of inference you draw when somebody says: Yes, these people were there. Check with them. We went back
and checked with them, and it further undermined the veracity of the allegations that were made.

Now it looks like the narrative on the allegations is beginning to wane, so now the new narrative—and this is the last one I will be talking about—is that, well, even if the allegations are untrue, the way Judge Kavanaugh behaved in the hearing—he was angry—raises a question about his judicial temperament. Ladies and gentlemen, first, the American Bar Association has voted Judge Kavanaugh unanimously “well qualified” twice. In at least the most recent rating, they even spoke specifically to his temperament on the bench. I saw his temperament during the hearing for 22 hours. He sat in that chair in some cases for 2 or 3 hours without getting up and was patient when some unfair questions were being asked. He was cut off repeatedly, and he maintained his composure. He did well in about 31, 32 hours of testimony and is accountable for that act. But I don’t believe by any stretch of the imagination, based on the information presented to us, that that is Judge Brett Kavanaugh. For that reason, I will be voting no tomorrow; I will be voting yes tomorrow.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Mr. President, the deeply marginalized vote to move forward on Brett Kavanaugh’s nomination has taken the Senate a step closer to a moment that will cause enormous pain for millions of Americans, particularly women and survivors of assault.

Some may say that the Senate is rolling back the clock on women in America by confirming Brett Kavanaugh. After seeing what has happened to the women who have spoken out and talking to women in Oregon, I question how much the clock ever ticked forward. Indeed, this process has shown a spotlight on the double standard women across this country face just so that their lives can be defined.

On the other hand, Dr. Ford never wanted any of this. The way she has been treated by Republicans in the Senate and the President of the United States is inexcusable. In one of the most un-Presidential speeches I have ever seen or heard, the President belittled a survivor in front of a crowd of thousands.

Dr. Ford came to us as a citizen who was doing her civic duty to provide the Senate with crucial information about a Supreme Court nominee. She called the front desk of her Congressperson; she didn’t run to the news media or the cable shows or try to sell a book. She volunteered to tell her story under oath. She recounted the details of her assault and the lifetime of witness that will not soon be forgotten. It was heartbreaking to watch. At times, it was just excruciating.

What did Dr. Ford get for her courage? She was put on trial by the Republican on the Judiciary Committee, who actually hired an experienced prosecutor to grill her. The questioning was clearly designed to tar Dr. Ford as a political pawn. It attempted to delegitimize the trauma caused by her assault. It attempted to paint her as a liar.

It was stunning how little of the questioning Republicans subjected her to was focused on what Brett Kavanaugh did on the night in question. It was clearly not the focus was on undermining Dr. Ford’s story and destroying her credibility. But Dr. Ford’s credibility held up. I have said that I can’t imagine a more credible witness, nor can I imagine how difficult it must have been for her to relive that experience and maintain such extraordinary composure. What she did took unknowable strength. Her testimony, delivered under what amounted to prosecution, was unforgettable. She is trained in psychology. She was even doing her civic duty to provide the court with direct and compelling evidence of the impact directly to his binge drinking and sex—both of which he denies—relate Kavanaugh and the possibility of perjury—both of which he denies—relate directly to his binge drinking and sexual behavior. Thus, the FBI background check should have been a robust inquiry into those matters. It is clear now that didn’t happen. You ask yourself, why not? It is hard to find an explanation other than the investigation was handcuffed to predetermine the outcome.

Dr. Ford has said publicly that the FBI didn’t talk to her, and they didn’t look at the therapy notes she offered to turn over. They didn’t talk to Mr. Kavanaugh. They didn’t talk to the dozens of individuals who Deborah Ramirez said could potentially corroborate her story. They closed the investigation a full day ahead of the arbitrariness of their deadline, and they didn’t ask why.

Based on that, in my view, this investigation was a whitewash. It was not legitimate. It was the product of intense political meddling, in my view, by the Trump administration. That means, if Brett Kavanaugh’s nomination is confirmed, there are going to be questions about his legitimacy looming large for years to come.
I believe Dr. Ford. I have heard the Presiding Officer discussing this this morning on television. I respectfully would say I know the Presiding Officer doesn't share my view. But I felt that Brett Kavanaugh's behavior before the Senate last week ought to be disqualified for his part in the case you compare with what he said last week to what he wrote ought to be the requirements for how a judge behaves, there is a very large gap between what Brett Kavanaugh said ought to be expected of a judge's behavior that we saw last week when he testified.

From the time his nomination was announced, Kavanaugh portrayed himself as a trustworthy individual who had the kind of levelheaded temperament Americans expect and deserve from members of the judiciary. My view was that appearance last week before the committee my colleagues serves on was a textbook case of raw partisanship.

In the afternoon testimony last week, Brett Kavanaugh was disdainful and sarcastic toward the Democratic Senators who questioned him. Brett Kavanaugh responded to what he considered to be unsubstantiated allegations by making truly unsubstantiated allegations of his own. Without any evidence, he declared the credible accusations that had been brought forward a “calculated and orchestrated political hit” by the Democrats. He pushed these baseless conspiratorial comments about how this was all just revenge for the Clintons. And in a tone that just struck me as dripping with menace, he just said: “What goes around comes around.”

If you look last week at how he presented himself to the chairman of the Senate's committee, I think you have to ask yourself: How can anybody expect that Brett Kavanaugh would offer a fair hearing in a politically charged case?

My conclusion, based on what I have described, is pretty simple. You just do not get to behave the way Brett Kavanaugh behaved last week and get to serve on the United States Supreme Court.

Finally, my concerns go further than the temper tantrum we saw last week. There is hard evidence that shows that Brett Kavanaugh lied repeatedly and on a variety of subjects. For example, just yesterday was new evidence in scores of emails that the nominee lied about his involvement in government wiretapping programs.

The Presiding Officer of the Senate has been very gracious over the years in talking to me about these issues. He knows I care deeply, as a member of the Senate Intelligence Committee, about government wiretapping programs. I am here this afternoon to say I am not alone. Millions of Americans care about this issue. As I have said in my capacity as the—not the Senate of the Senate, security and liberty are not mutually exclusive. You can have both.

What these emails—scores of them yesterday—prove is there is new evidence that Brett Kavanaugh did not tell the truth about his involvement in government wiretapping programs. There is hard evidence that shows he lied about using stolen documents, which he said he was not. He said he lied about his involvement in the confirmation process of certain Bush nominees, hard evidence about the statements made by the other individuals who were present at the party where Dr. Ford was assaulted. Or he said he lied about when he learned of the second set of allegations made against him. The nominee even lied about small stuff. When you can’t trust somebody to tell the truth, they don’t belong on the Supreme Court.

It is important, before I wrap this up, to take a hard look at what has happened to the Court over the last few years. In 2016, Senate Republicans blocked a mainstream nominee to the Supreme Court—an individual who many Republicans had praised extensively—extensively—in the past. They held a Supreme Court seat open for nearly a year until a Republican President picked someone to their liking. In '92, the Trump White House interfered with the vetting of a second nominee, hiding key information from the Senate and the American people.

The floor debate on this nomination is going to be cut off before all the questions about what can be answered and before the statements I have outlined here today—ones where there is hard evidence—can be examined for perjury. These actions by the Republicans and the Trump White House, in my view, are taking a sledgehammer to the public's trust in the Court as an institution.

The Court used to have a healthy separation from the partisan battles that take place here in the Congress. I heard the collector talking about that this morning on television. That healthy separation doesn’t exist today. I just say, we have a lot of heavy lifting to do in the U.S. Senate to revive the vision of the Supreme Court held by the Founding Fathers after what has happened.

I am going to close by going back to the question of whether anything has changed since 1991 and the tragedy of Professor Hill. When Professor Hill testified, she was not only bravely speaking through the mud. She was called a scorned woman. Perhaps you can say it represents some measure of progress that Dr. Ford wasn’t slandered and insulted in quite the same way. But I don’t know how much that matters if this nominee is confirmed.

The language used during the debate might sound different, but the outcome is the same. The failure by my colleagues on the other side to step back, suspend the partisan warfare, and recognize the seriousness and legitimacy of this information, in my view, will go down over time as a historic disappointment.

This was never a smear campaign. It wasn’t a political hit job. Dr. Ford came forward out of a sense of civic duty. She knew the sacrifice she faced, and she wondered to herself if it would really make a difference. Why suffer through annihilation if it will not make a difference?

Senators ought to consider the dangerous signal being sent to survivors of assault and to young people across the country from this debate. Dr. Ford wasn’t on trial; nonetheless, she was prosecuted by the majority party. She got smeared as a political pawn, a liar, belittled, with her accusations dismissed by many almost immediately.

I made notion of how, a few days ago, the President mocked Dr. Ford, mocked her in front of thousands. What a cruel and un-Presidential moment. If the mockery and dismissiveness are not bad enough—if they weren’t bad enough, there is the return of the sickening old notion that boys will be boys, what happened in the bedroom was “roughhousing,” and what happened was just too long ago. Today, survivors from sea to shining sea are asking: How are we going to be heard? How will we find justice?

I fear many survivors are going to conclude that coming forward with their story is going to be pointless, and there is very little likelihood of justice—very little likelihood of justice. Even if you are strong, composed, and constantly courteous, it will not help.

On the other hand, the signal to boys is this: Even if you engage in violence against women and lie about your conduct, the power structure is going to step up and protect you. The Senate has to be better than this. I hope Senators are going to recognize that it is time to take these horrifyingly outdated attitudes towards women and sweep them out like the cobwebs from an abandoned theater stage and start over. It can begin by rejecting this nomination today.

I will be voting no.

I yield the floor.

The PRESIDING OFFICER. The Senator from Florida.

Mr. RUBIO. Mr. President, as a Member of the U.S. Senate, my role in providing advice and consent to the President on his or her nominations to the Supreme Court is among our most important constitutional duties.

In fulfilling that duty, I have a pretty clear criteria, on how I go about making these decisions. The first is whether the nominee has the character to serve on the Supreme Court; the second is whether the nominee has the intellect and the experience and the acumen to serve on the Supreme Court that hears complex and difficult questions of law; and the third is does the nominee believe in the proper role of
Mr. Chairman, many of the nomination fights around here center around the third part of my criteria. In fact, it goes to the heart of most of the nomination fights we have. There are some who would like the Supreme Court to become a policymaking branch, a place that makes policy and makes laws, but I believe the job of an appellate court is to decide whether a policy decision of the political branches is constitutional. Appellate courts and trial courts are different. Trial courts are triers of fact. Appellate courts are triers of law.

The question before the Court in Roe v. Wade was not whether it was good or bad for abortion to be criminalized or constricted, the question was whether the Constitution gave the State or Federal Government the authority to pass laws that banned or restricted abortions.

The debate about the proper role of the Court plays out most vividly on some of the most divisive cultural issues, and it always has. For example, on the issue of abortion, the question before the Court in Roe v. Wade was not whether it was good or bad for abortion to be criminalized or constricted, the question was whether the Constitution gave the State or Federal Government the authority to pass laws that banned or restricted abortions.

First, I was briefed on these interviews and information; then I had occasion to review them for myself. Here is what I know about the allegations against Judge Kavanaugh. I have the sworn and unequivocal testimony of Dr. Ford and Ms. Ramirez making these allegations. I have the sworn and unequivocal denial of Judge Kavanaugh, and I have the sworn and unequivocal denial of Dr. Ford and Ms. Ramirez. I have the sworn and unequivocal denial of Dr. Ford and Ms. Ramirez. I have the sworn and unequivocal denial of Judge Kavanaugh. I have the sworn and unequivocal denial of Dr. Ford and Ms. Ramirez. I have the sworn and unequivocal denial of Judge Kavanaugh. I have the sworn and unequivocal denial of Dr. Ford and Ms. Ramirez. I have the sworn and unequivocal denial of Judge Kavanaugh. I have the sworn and unequivocal denial of Dr. Ford and Ms. Ramirez.
witnessed it. From what I read yesterday, every single person the accuser said was present when it happened testified that they do not know anything about it.

By the way, the other point I would make is that these interviews that we saw yesterday, the 10 additional ones—it would be unfair to view them in a vacuum, as if they were the only information we have to go off of. Here is a fact: Over nearly the last two decades, the Federal Bureau of Investigation has interviewed over 150 people, asking questions about Judge Kavanaugh’s background and past. Over 150 people have been interviewed about Judge Kavanaugh over the last two decades and across seven background checks, and not a single one of them has ever testified as to any sexual assault against anyone at any time.

It struck me that there isn’t a single Member of the U.S. Senate, I think—maybe I am wrong, but I doubt seriously that there is any Member in the U.S. Senate who has had the FBI question over 150 people about what they have done throughout their life. In fact, I would venture to guess that there are probably few, if any, Americans or the FBI have been interviewed over 150 people about what they have done throughout the course of their lives. I believe it is reasonable to assume that if Judge Kavanaugh was someone who had engaged in a pattern of abusive behavior toward women it would have been noticed and would have said something about it. Yet not a single one of them did.

I would be remiss if I didn’t mention that there is clearly another factor that is driving much of the anger and passion around this nomination, and it has nothing to do with partisan politics or politics at all, for that matter. It is the fact, as I mentioned earlier, that, if anything, there is a disinterest of women who come forward with allegations of harassment, abuse, or assault are ignored, dismissed, and even blamed. The fact is, because of this, there are potentially millions of victims who have never come forward and who suffer in silence.

I understand that for the victims and for those who love them and for those who are survivors, to hear about these allegations brings back powerful and painful memories of what happened to them, of how they were ignored, how they were not believed, how they were blamed, and how their abuser got away with it. What has happened to these survivors is an injustice. It is wrong. It is something that we as a nation must reckon with and we as a people must fix. But the solution to injustice is not to turn this nomination into a proxy fight over the broader, important issue of how we have treated victims of sexual assault.

As important as that topic is, this debate is about a specific case involving specific people and specific allegations. Fairness and justice require us to make our decision on this matter based on the facts before us on this matter.

It was wrong for some to immediately dismiss these allegations almost as a reflex, but it is also wrong to claim that Judge Kavanaugh’s nomination means that you do not care about and do not as a matter of course believe victims of sexual violence.

My colleagues and my fellow Americans, this is why the fight over the broader, important issue to turn this nomination into a proxy fight. But the solution to injustice is for us as a people must reckon with and we as a nation must account for the injustice that was done to Merrick Garland and to our Constitution in 2016.

Mr. CARPER. Mr. President, good afternoon. I rise today to address the nomination of Judge Brett Kavanaugh to serve on the U.S. Supreme Court.

As we all know, the stakes are always high when this Chamber vets and considers nominees to the highest Court in our land. More than 12 years ago, I met with Judge Kavanaugh in my office here in the Capitol when the Senate considered his nomination to the
For example, just last year, Scott Pruitt’s attempt to delay rules limiting methane emissions from oil and gas drilling was challenged in the DC Circuit Court, where Judge Kavanaugh now serves. In that case, Judge Kavanaugh, in agreement with Scott Pruitt and the fossil fuel industry, voting against his colleagues who found Pruitt’s delay illegal.

Judge Kavanaugh also attempted to severely limit EPA’s authority to regulate toxic greenhouse gases under the Clean Air Act. In 2012, he blocked the air pollution restrictions that covered nearly half of our country, endangering thousands of lives. This is especially concerning to me, as I live in neighboring States like Delaware, where over 90 percent of our air pollution comes from dirty emissions in States to our west that drift across our borders.

When I learned of this, my reaction may pose to this country and its people.

The greatest threat Brett Kavanaugh may pose to this country and its people is with respect to our environment. In all my years, I have yet to meet someone who doesn’t want to make sure we have clean air to breathe and clean water to drink. A review of Judge Kavanaugh’s nearly 300 opinions over the last 12 years, both concurrences and dissents, shows Judge Kavanaugh has voted to weaken or block environmental protections a staggering 89 percent of the time. In fact, Judge Kavanaugh has never dissented in a case that would weaken environmental protections permitted as a matter of law. In his response to questions for the record from Senators FEINSTEIN and HARRIS.

In other words, almost 9 out of 10 times, he has sided with those who weaken environmental protections over those who work to strengthen them.

I fear that if confirmed, Judge Kavanaugh could well turn out to be the next Scott Pruitt. We remember him. However, unlike former EPA Administrator Pruitt, whose tenure ended only a few years ago, Judge Kavanaugh could damage our environment for a quarter century or more if he serves on the Supreme Court.

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When I learned of this, my reaction was: You have got to be kidding. Apparentely, he was not kidding. Ironically, that declaration came 11 years after Brett Kavanaugh played a key role in drafting the Starr Report, which led to the impeachment of then-President Bill Clinton.

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the Delaware Superior Court, and the Delaware Court of Chancery, to name a few. While the roles of those courts differed, the qualities I looked for in my judicial nominees were similar. I looked for men and women who were bright. I looked for men and women who knew the law. I looked for men and women who had good judgment, who are able and willing to make a decision, including a difficult decision. I looked for men and women with a strong work ethic. I didn’t want to nominate a sitting tribunal chairman so I could watch them retire on the job.

I looked for nominees who were collegial and able to build consensus in courts that had a larger panel, but there were three qualities that were most important to me: judicial temperament, impartiality—treating everyone before them fairly and not showing partiality—and, finally, truthfulness.

In fact, in my first term as Governor, I denied a sitting Justice of the Delaware Supreme Court the opportunity to serve an additional 12-year term because he lacked appropriate judicial temperament. I am told that was unacceptable to the judicial establishment and what I thought was appropriate were not one and the same.

It gives me no joy to say what I am about to say, but the temperament Judge Kavanaugh exhibited at the Judicial hearing last week was just not unacceptable for a Supreme Court Justice, it would be unacceptable for a judge in Delaware serving on the Delaware Court of Common Pleas.

Last week, in an effort to actually get to the truth and ensure that body could have all the facts before taking such an important and consequential vote, my Delaware colleagues and I called for the FBI to conduct a non-partisan investigation. Unfortunately, what I thought was an unprecedented judicial investigation was not acceptable to the judicial establishment and what I thought was appropriate were not one and the same.

What we got was a process that was still wavering on Judge Kavanaugh’s nomination—and I will leave you with this—that we will not only be judged by voters this November; we will be judged by history. We say that a lot. Sometimes it is trite and overstated. Judge Kavanaugh will be judged by history in this regard.

I would implore each of you who are still wavering on Judge Kavanaugh’s nomination—and I will leave you with this—that we will not only be judged by voters this November; we will be judged by history. We say that a lot. Sometimes it is trite and overstated. In this case, it is not. We are going to be judged by history in this regard.

I would implore each of you who is still thinking this through, who is trying to figure out what is the right thing to do, to show that we are still worthy of the world’s greatest deliberative body. Let’s show that we have made progress since 1991 in a previous Supreme Court nomination—confirmation episode. Let’s show that we are willing to take a stand and do what is right. We are not, any short-term political wins will be forever eclipsed by the permanent stain left on our legacy in this body from which there may be no recovery.

I yield the floor.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. INHOFE. Will the Senator yield? Mr. BLUNT. I yield to the Senator.

Mr. INHOFE, at the conclusion of the remarks of the Senator from Missouri, I ask unanimous consent that I be recognized for such time as I may consume.

The PRESIDING OFFICER. Without objection, Mr. BLUNT. Mr. President, I want to talk a little bit about what my good friend from Delaware talked about with regard to our being judged by history. Some of what I want to talk about is of the history of this system and of others who have served.

I have read several times in the last 30 days, particularly, that the Democratics feel they can do anything because of the way Merrick Garland was treated. I don’t think there is any comparison between the way Merrick Garland was treated and the way Judge Kavanaugh has been treated. The only other occasion that they are both on the DC Court of Appeals and that they have both said very kind things about each other, but there is no comparison.

Merrick Garland was nominated in the last year of a Presidency. The last time someone was put on the Supreme Court who was nominated in the last year of a Presidency was in 1932. The last time that happened was in 1932. The last time someone went on the Supreme Court when the President was of one party and the Senate was of the other and when it was a Presidential election year was in 1888. There is no comparison.

It is just unacceptable for a Supreme Court judge in Delaware serving on the Delaware Court of Common Pleas.

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have asked him anything you had wanted to ask.

He had 65 private meetings with Senators, during which they could have asked him everything they wanted to ask—including, by the way, the ranking member on the Judiciary Committee, who had had this information available to talk about.

More than 500,000 pages of executive branch documents had been provided—more than the last 4 nominees combined. Of all of his opinions as a judge and of all the cases he was part of, there were about 300 of those. By the way, that is the best way to look at what kind of judge he would be.

He was asked over 1,200 questions for the record. That is like, after you have asked all of the questions you could publicly think of, then one has about a week to answer any questions that have been submitted for the record. He had a week, and even his record that he had to answer in that short period of time.

There were three confidential calls with the committee.

The last FBI, our colleagues decided—and I think, as it turned out, maybe wisely so—to do one more final FBI review of whatever they might not have asked about in the other seven FBI interviews that had occurred over the years. The outside number was 1 week. A week ago, 1 week was what was going to be plenty of time. I think some Members in the minority at that time said: Well, maybe even 3 or 4 days. That is what it took with the Clarence Thomas nomination, and I think there has never been anything like this: Hold on to information that can’t be corroborated. Only release it after it is clear that the judge has the votes to be confirmed and when you want to do, as the majority leader said, anything you can possibly do as the minority leader to slow down and stop this nomination.

We have plenty to look at here. We cannot set a standard of guilty until proven innocent because then anybody can make any charge at any time, particularly when there are many reasons to believe that there is nothing in 7 background checks, that there is nothing in 150 interviews, that there is nothing in a very visible public career that anybody can possibly do as the minority leader to slow down and stop this nomination.

We have a judge for whom you could look at 12 years of judging, and you could look at 300 opinions, and you could look at his law school classes he taught. There is plenty to look at. It all adds up, I believe, to a couple of conclusions:

One, the way this nomination has been treated has been outrageous. I think my good friend who spoke before said he had never seen anything like it. We cannot set a standard of guilty until proven innocent because then anybody can make any charge at any time, particularly when there are many reasons to believe that there is nothing in 7 background checks, that there is nothing in 150 interviews, that there is nothing in a very visible public career that anybody can possibly do as the minority leader to slow down and stop this nomination.

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At some time tomorrow we will actually have this vote. I start by saying that I am enthusiastically a “yes” vote tomorrow. I think that goes without saying.

I met with Judge Kavanaugh in my office back when he was first nominated. In fact, I have studied him before. I remembered him when he was nominated the first time, about 6 years ago, and I talked to him at that time. I thought: Well, has he really changed? Is it necessary? I even said: It is really not necessary; I have followed his career and all of that. But he came by anyway.

The things that I like—and I am not a lawyer—are the things that would do that show him as a human being, more than just a nominee to be a Justice on the U.S. Supreme Court—the human things that he did. I know for a fact because I talked to her—one of his good friends who died had a wife and two girls. When back-to-school night comes, he takes those two girls with his to back-to-school night. This is the type of thing he does.

We have heard all of the warm things about him. Has he, for example, done Adama and other things. That is the human being I know. Meeting with him wasn’t necessary because I was sold on him anyway after looking at his record.

On Judge Kavanaugh’s nomination, heading toward certain nomination, we were hit by a bomb. It was an uncorroborated attack that the Democrats sat on for 2 months. That is critical. You have to stop and think about that. Why wouldn’t something that they thought was so important to destroy this fine man and wait for 2 months and sit on it? I am surprised they didn’t let it slip. It is just because they wanted to make sure people were talking about it.

The details of the allegation were of the worst kind—an aggressive, ugly sexual assault.

Sexual assault and violence is wrong, period. It is wrong, and so many women, who experience sexual assault and harassment do not feel empowered to come forward even years later—maybe never.

It is unjust for someone to be accused of a crime that he or she did not commit and be convicted in the court of public opinion without any evidence or corroborated accounts.

It is hard to wrap your head around the fact that someone who has been in the public eye for decades, respected by his colleagues, his law clerks, his students, his friends, his family—everyone—and never had a whisper of wrongdoing in all of those years, and all of a sudden he is accused of such a heinous crime.

Like many Americans, I watched the hearing last Thursday in the hope that it would provide more clarity and some answers, and I think it did. It would be easy to get wrapped up in the conflicting media coverage and all the spin and so on; instead, I looked at what we know to be true—what we know to be true.

The people Dr. Ford places at the scene that might have either denied the events or do not recall any party or gathering that matches her description, so that is an idle accusation.

Her lifelong friend—in fact, some people think she is his best friend—is a person Dr. Ford named in her allegations as the only other girl at that small gathering. So here is a small gathering; she is accusing him of this behavior. There was one other girl there, and the other girl says that she does not know Kavanaugh and has never attended a party where he was there. It can’t be more definite than that, and that is from her best friend.

When Dr. Ford’s testimony is compared to other statements that she made to her therapist, to the Washington Post, to the ranking member, and her statement for the polygraph exam, there are various inconsistencies that should not be ignored.

Dr. Ford’s inability to remember key details of the alleged attack—things like the date, the place, and other circumstances surrounding the event—places Judge Kavanaugh in a difficult position to defend himself as Democrats are only shifting the burden of proof from the accuser to the accused. I don’t remember that happening before. This is still America.

From the beginning, Judge Kavanaugh has categorically denied the accusations and has never wavered or equivocated on this point.

He has cooperated with the Judiciary Committee’s investigation—that is Senator Grassley’s committee—every step of the way, including speaking with committee staff under oath several times over the course of the last couple of weeks and providing documentation to help clear his name. He has done it all. Everything we have asked of him, he has done.

On the other hand, Dr. Ford’s attorneys have refused to turn over key evidence that her testimony relied on to corroborate her claims: her therapist’s notes that were shown to the Washington Post but not to the committee, messages she exchanged with the reporter, the documentation, and the recordings related to the polygraph test she took in early August. They were refusing to turn over key evidence. They didn’t have any evidence they could turn over, so no wonder there are no corroborating claims to corroborate the accusations that have been made against this fine man.

I am not going to go into the other allegations. There are two others that came along.

The timing of this is kind of interesting. First of all, they withheld this document that Dr. Ford had for 2 months. It is hard to keep a secret around this place, and I am surprised that didn’t come out. They did it for a purpose. What do you think that purpose was? What other purpose could it have been, other than they were waiting for the last minute to come out with something that was never discussed before? No other accusation had been made. That is what happened.

Based on the totality of what we know, to condemn anyone for an offense that has been denied and not proven would be doing anyone against doing the same thing.

John Adams, our second President of the United States, wrote—now listen to this—“But if innocence itself is brought to the bar and perhaps to die, then the citizen will say ‘whether I do good or whether I do evil is immaterial, for innocence itself is no protection,’ and if such an idea as that were to take hold in the mind of the citizen to the bar and counsel of security whatsoever.” That is what he said.

Let’s look at what Scripture says. Numbers 35:30 says:

If anyone kills a person, the murderer shall be put to death on the evidence of witnesses. But no person—

No person—shall be put to death on the testimony of one witness.

Think about that. That is a direct violation of what they are trying to do.

Scripture says—now listen to this—Deuteronomy 17:6:

No person—shall be put to death on the evidence of witnesses. But no person—

I am not a lawyer, but everyone knows the saying that if the law is on the side, argue the facts. If the facts are on your side, argue the facts. If neither the facts nor the law are on your side, pound the table. That is what we are hearing right now. The difference here is that the Democrats are trying to outdo each other in pounding the table.
They know the allegations are not proven. They know that Judge Kavanaugh remains committed to his innocence and the process, and they know that Republicans will remain committed to the facts, so they must change the career near the goalline one more time, and attack him on other grounds.

The first of these is to question his temperament. Because he defended himself and his family, and answered questions about his drinking any time he was asked. He never hid him. He's never had the courage to admit to drinking too much. He did not demonstrate the calm, measured, and detached demeanor that one should expect of a judge. Well, the problem with this characterization is that it ignores the fact that Judge Kavanaugh was not a disinterested party while hearing the arguments of opposing counsel. He was the subject of the accusations, and it was he who was being attacked and condemned. There is a basic disconnect.

I dare anyone to be calm and dispassionate if they had to sit by for 10 days and watch and listen to everything they have worked for and have built over a long career of public service be criticized and attacked without any proof—without any proof at all—to see your high school yearbook picked apart by conspiracy theorists who seek nefarious meanings behind juvenile jokes and 30-year-old slang, to see your friends and family be threatened and harassed, and you can do nothing to stop the angry mob.

This idea completely ignores the fact that Judge Kavanaugh has proved, over the last several weeks, the truth that he is more knowledgeable than I in that department who have thoroughly de-constructive of the second most powerful court in the country, that he does have the temperament we look for in our judges. This fact is supported by an ABA ranking of unanimously “well qualified”—which is considered to be the gold standard for Democrats—and the countless testimonies by people across the political spectrum who have worked with him, who have argued a case in front of him, and who know him well.

In the last few days, the discourse has further devolved into perjury claims based on the judge’s drinking habits in high school and college. I will leave the legal arguments to those more knowledgeable than I in that department who have thoroughly de-bunked that particular myth. Suffice it to say, he testified that he liked beer. He drank beer, and sometimes he drank too much. He did some things in high school that maybe he now thinks he shouldn’t have done, but that is what he did. He wasn’t hiding anything when it came to drinking in his youth. He said that right up front in one of his hearings.

There were six background investigations by the FBI over the course of lengthy public service, decades in the public eye, and never has anyone brought any allegations or concerns to the attention of the investigators or the press in all of that time.

I was here when he was up for the appellate judgeship, and none of this came up at that time. There is a difference here. I think the other side is—

October 5, 2018

CONGRESSIONAL RECORD — SENATE

The PRESIDING OFFICER. Without objection, it is so ordered.

Ms. HIRONO. Mr. President, I rise today in opposition to the nomination of Brett Kavanaugh to the United States Court of the United States. Based on an in-depth examination of the legal, career, academic writings, and judicial record, I conclude that he has a long pattern of misstating facts and misapplying the law in order to further his partisan political agenda.

His partisan, ideologically driven agenda is particularly troubling in cases involving women’s intimate personal decisions.

Roe v. Wade and its progeny represent an acknowledgment in American law and life that women ought to have control over whether and when to bear children, but it is more than that. As Justice O'Connor explained in Casey v. Planned Parenthood, “It is a promise of the Constitution that there is a realm of personal liberty which the government may not enter.”

The Supreme Court’s jurisprudence on reproductive rights is based on case law going back decades that has assured Americans the right to educate their children as they see fit; to marry, raise children, and choose professions; to create families, choose professions, to develop and control their reproductive choices and affiliations, as well as his legal and judicial writings, has told us loud and clear that he does not respect a woman’s right to make her own intimate, personal decisions and will do whatever he can, once confirmed, if confirmed, to narrow and overturn Roe v. Wade.

A recent speech Kavanaugh delivered gives us further insight into his own legal views on the topic. In 2017, at the American Enterprise Institute, Kavanaugh gave a speech in tribute to the late Chief Justice William Rehnquist. In his remarks, Kavanaugh praised Rehnquist’s dissent—dissent—in Roe v. Wade where the late Chief Justice found no constitutional right to abortion because the right was not “rooted in the traditions and conscience of our people.” Thank goodness the rest of the Supreme Court did not follow Chief Justice Rehnquist.

To learn about Brett Kavanaugh’s own legal views on reproductive rights, we need only look at his dissent in last year’s DC Circuit case Garza v. Hargan. Here, a 17-year-old undocumented immigrant sought release from government custody to obtain an abortion.

Kavanaugh’s first fundamental misstatement in this case was mischaracterizing it as a “parental consent” case. It was not. The young woman had already received a proper judicial bypass from a Texas judge and therefore did not need parental consent.
For a judge applying for a promotion to the Supreme Court to completely misstate the issue in the case was astounding to me. In my view, a first-year law student would not have deemed the Garza case to be a parental consent case, but that is what he said.

Then, when applying the legal test under Roe and Casey to determine whether the young woman’s rights were being subject to an “undue burden,” Judge Kavanaugh would have ruled against her. He thought nothing of leaving out the fact that she was a prisoner of the government Office of Refugee Settlement instead of releasing her to get an abortion that was entirely within her rights to seek.

Compare that to the ease with which Judge Kavanaugh found that religious employers, in the case of Priests for Life v. Department of Health and Human Services, were burdened by filling out a two-page form. The employers there were seeking to avoid paying for contraception coverage to an employee, that covered contraception, saying it burdened their free exercise of religion.

The majority of the DC Circuit held that asking the employers to fill out a brief form to let the government know of their objection was not a substantial burden, but Judge Kavanaugh disagreed and would have ruled to deny the female employees their proper health coverage, siding with the Priests for Life. Judge Kavanaugh’s colleague on the Circuit went out of her way to write a concurring opinion to directly rebut Judge Kavanaugh’s dissent and correct his misstatements of the case.

To Judge Kavanaugh, holding a woman in government custody unnecessarily and against her will does not represent an undue burden on the exercise of her constitutional right to an abortion, but when it comes to a religious employer opting out of providing contraception coverage to an employee, a two-page form is too great a burden.

The pattern of Judge Kavanaugh’s views on the right to abortion is clear. Anyone who feels assured he will uphold Roe v. Wade is living in a fantasy world.

Laws that narrow women’s reproductive rights in States like Texas, Iowa, and Louisiana are currently making their way to the Supreme Court, and all evidence shows that Judge Kavanaugh will side with them. Advocates for women’s reproductive rights are against Judge Kavanaugh’s ascent to the Supreme Court with good reason.

Another aspect of his judicial record that argues against confirmation is Judge Kavanaugh’s pattern of dissents. Dissents are revealing. It is where judges go out of their way to voice their disagreement with the majority on the court to show what their views are. Judge Kavanaugh has the highest dissent rate among active DC Circuit judges at 51 dissents per year.

One study I introduced at his hearing showed that he consistently sided against workers and immigrants and only once favored consumers in his dissents.

Another study showed he consistently sided against protecting the air we breathe and the water we drink. So environmental and consumer rights groups are against Judge Kavanaugh’s ascent to the Supreme Court with good reason.

Yet another study analyzed his dissents and found that Judge Kavanaugh tended to dissent more often along partisan lines than his colleagues and his “divisiveness . . . ramped up during political campaigns” before Presidential elections. This is more than mere coincidence. It also found that he had the highest rate of what the study called “partisan dissents”—where the other judges in the majority were appointed by the opposing party; in other words, by Democratic Presidents. Again, this is not the sort of fairminded consideration of the facts and the law necessary for fair and equal justice.

His partisanship was clearly on display at the Thursday hearing.

For me, as a Senator from Hawaii, Judge Kavanaugh’s pattern of misstating the facts and misapplying the law is evident in his work on the case of Rice v. Cayetano and the rights of Native peoples.

President Trump has demonstrate through signing statements, budget proposals, and regulations that he views programs for our indigenous communities as unconstitutional racial classifications, and he found a like-minded Supreme Court nominee in Brett Kavanaugh.

Brett Kavanaugh has a long history of misstating facts and misapplying the law in order to curtail the rights of indigenous peoples—Native Hawaiians, Alaska Natives, and American Indians. As an attorney in private practice in 1999, he authored a friend-of-the-court brief in support of the plaintiffs in a civil rights case. He called OHA’s voting structure a “naked racial spoils system” into question under the 14th Amendment.

His op-ed argues that Native Hawaiians are not entitled to constitutional protections given to indigenous Americans because, as he put it, “They don’t have their own government. They don’t have their own system of laws. They don’t have their own elected leaders. They don’t live on reservations or on territorial enclaves. They don’t even live together in Hawaii.”

Judge Kavanaugh is saying that Native groups in the United States derive only on the 15th Amendment. They are not afforded any protections.

After Judge Kavanaugh made his troubling and misleading arguments in the amicus brief and op-ed, the U.S. Supreme Court decided Rice v. Cayetano. They ruled that Hawaii’s voting structure for the Office of Hawaiian Affairs violated the 15th Amendment’s voting rights guarantees.

In the Bush White House, Judge Kavanaugh continued to misapply the law in Rice to argue that Native Hawaiians could not be the beneficiaries of targeted programs, when clearly the case stands for a much narrower proposition having nothing to do with government benefits.

In fact, the Supreme Court declined to address Judge Kavanaugh’s question of whether the Office of Hawaiian Affairs’ voting structure was an unconstitutional racial voting set-aside. But Judge Kavanaugh and his conservative allies continued to misstate and misconstrue the holding in Rice for their own political purposes.

In the Bush White House, Judge Kavanaugh continued to misapply the law in Rice to argue that Native Hawaiians could not be the beneficiaries of targeted programs, when clearly the case stands for a much narrower proposition having nothing to do with government benefits.

In one email, when he was in the Bush White House, Kavanaugh wrote: “I think the testimony needs to make clear that any program targeting Na- tive Hawaiians as a group is subject to strict scrutiny and of questionable validity under the Constitution.”

In another, he wrote: “White House Counsel objects and raises questions
about the constitutionality of this bill, including but not limited to the portions that refer to Native Hawaiians. See Rice v. Cayetano."

At his hearing in front of the Judiciary Committee, when I asked him about implications of the law, Judge Kavanaugh again mistrusted the holding of Rice and refused to correct his misstatement when I asked him to clarify. He testified before the Judiciary Committee that Rice "was simply about the application of the 14th and 15th amendments of the U.S. Constitution." He was wrong, but when I pressed him on this point and asked him to show me where the majority decision in Rice cited the 14th amendment, he refused to answer. Why? Because he was clearly wrong.

It is deeply troubling to have a Supreme Court nominee for a lifetime position who doesn't adhere to facts or correctly present the law. Judge Kavanaugh just went on this topic fit his pattern of evading and skirting the truth.

His reliance on these stereotypes and bigoted tropes about Native Hawaiians, as well as evading any citation of the law, represent a clear and present danger to Native people all over this country, including Hawaii.

Notably, in his writings against Native Hawaiians, Judge Kavanaugh completely avoided any reference to the Alaska Native Claims Settlement Act, ANSCA. Under ANSCA, Alaska Natives organized themselves not as a tribe in Judge Kavanaugh's understanding of the word but as village and regional corporations with shares that individual Alaska Natives hold. This is a novel and unique system for facilitating the U.S. trust responsibilities and arguably not at all in keeping with the ability for anyone else in the courtroom and outside of the sight and sound of the accused, the accused's attorney, a judge, and a courtroom full of prospective jurors, and we would engage in a process called voir dire, where we personally prosecute sexual assault cases, I would be there as the prosecutor, with the accused, the accused's attorney, a judge, and a courtroom full of prospective jurors, and we would engage in a process called voir dire, where we would raise their hand and ask the accused, the accused's attorney, a judge, and a courtroom full of prospective jurors, and we would engage in a process called voir dire, where we would raise their hand and ask whether they had been a victim of sexual assault and had never told anyone, not even their spouse, but because of what they had experienced, they knew they could not possibly sit in a courtroom and hear the testimony that was related to the charges they knew the case was about.

This is an issue that impacts so many Americans, most of whom don't report it and don't tell anyone, and usually when they do, it is because something precipitated the telling of their story that was beyond the time during which they endured the assault itself.

The PRESIDING OFFICER. The Senate can not interview Kavanaugh's roommate and, with tears in their eyes, then asked me to show me where the majority decision in Rice cited the 14th amendment, he refused to answer. Why? Because he was clearly wrong.

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This is an issue that impacts so many Americans, most of whom don't report it and don't tell anyone, and usually when they do, it is because something precipitated the telling of their story that was beyond the time during which they endured the assault itself.

Dr. Ford's experience in this regard is no different from the majority of sexual assault victims, and she should be believed. I know what it means to engage in an investigation and a search for the truth, having been a part of investigating into Dr. Ford's allegations. Ours was not a search to determine whether a crime occurred. Ours was not a search to determine whether we had enough facts to prove beyond a reasonable doubt that a crime had occurred. No. Ours was an investigation to figure out enough about what happened to determine if Brett Kavanaugh is fit to serve on the highest Court in our land. Is he fit to be a jurist in the place where we try cases? Is it a search to figure out if a crime occurred, in the house where we listen to evidence and truth and make determinations based on the veracity and truthfulness of what has occurred? That is our role when it comes to Dr. Ford's allegations, and we fell short. We did not do her justice, and we did not do the American people justice.

We were given 1 week to investigate. The Republicans said: You will get 1 week. They threw out 1 week—an arbitrary amount of time. The FBI did not interview Dr. Ford's husband or a number of others who made meaningful investigation into the allegations that are before us, and this, most importantly, was not a search for the truth.

Media outlets have reported that there are more than 40 people with potential relevant information who are willing to share their information but only 9 people were interviewed. This is a travesty. They did not interview the Georgetown Prep alumni or others from that era. They did not interview the former FBI special agent who conducted the investigation into Dr. Ford's allegations. They did not interview Kavanaugh's roommate at Yale who has contradicted Kavanaugh's testimony. They did not...
interview another one of Kavanaugh's neighbors in the dorm at Yale. They did not interview three of Kavanaugh's friends from Yale who wrote in the Washington Post just last night:

Brett also belonged to a Yale senior secret society called Truth and Courage. We believe that Brett neither tells the former nor em- bodies the latter.

They did not interview Dr. Ford at all—they did not interview Dr. Ford at all. They did not give her the ability to speak her truth during the so-called in- vestigation, and they did not interview Judge Kavanaugh about these allega- tions.

This was not a search for the truth. This was not an investigation. This was an abdication of responsibility and duty. This is on the heels of a process that began with hiding more than 90 percent of Judge Kavanaugh's record. We only received approximately 400,000 pages out of an estimated 6.9 million pages of documents. The Republicans have been saying: You should be happy you received thousands of pages of doc- uments because they want us to treat crumbs on the table like it is a feast. These were crumbs on the table com- pared to the vast amount of informa- tion that was available to some about his background.

This process has left the American people with more questions than an- swers. This has not been a search for the truth.

The minimum standard for a Su- preme Court nominee should be some- one who we are confident will dem- onstrate impartiality, integrity, and truthfulness, but the nominee we are voting on has not demonstrated those qualities.

Every American is entitled to the benefit of the doubt, but nobody is en- titled to a seat on the U.S. Supreme Court.

I yield to my colleague Senator MUR- RAY.

Mrs. MURRAY. Mr. President, I thank the Senator from California for very clearly outlining, for all of us to hear, why this was not a search for truth on an issue that affects so many people in this country, the victims of sexual assault who often, as she just described, do not talk about it, do not speak about it, do not ever tell anyone until there is a reason to, which is what Dr. Ford did.

When the Senator from California is here, you said this was not a search for truth. When it comes to victims of sexual assault—and you have dealt with them time and again as a district at- torney and attorney general in the State of California—what message does this send when they see the U.S. Sen- ate?

Ms. HARRIS. Senator MURRAY, you and I have talked about it. We all talked about it. Part of the pain of this process is a real concern that sexual assault victims and survivors may take away from this process that their sto- ries will not be heard or believed. Part of the pain I am taking away from this process is those who have a story to tell or might have been prepared to have the courage to report may decide: Look what happened to Dr. Ford. It doesn't matter. No one will believe me, and why should I go through that?

I have to say this. You and I have dis- cussed it, and Senator BLUMENTHAL and I have discussed it together. Part of what we must message—even if our Republican colleagues will not—is to tell all of the women and men who have experienced this: We will hear you. We will see you. We will re- spect you. We will give you dignity. Speak your truth. Do not be afraid. Do not let this system or any aspect of it bully you into silence. This is critical we talk about this issue. I believe this is an issue right now that is where the issue of domestic violence was about 30 years ago. There was a perception about domestic violence in the 1990s and 2000s: The King's castle is where we deal with our business. That is private business. That is not our business.

Then we evolved as a society and re- alized, no, she is walking around with a black eye or a busted lip; that is everybody's business. She deserves to be safe, and we must stand up for her. In that same way, this is an inflection point on the issue of sexual assault, and I hope and pray this is a moment where everyone will agree, no one should sil-ently suffer. Let's talk about this. Let's talk about the fact that every 98 seconds in 2017 in the States of Amer- ica, someone is sexually assaulted. Let's talk about the fact that 63 per- cent of sexual assaults are not reported to the police. Let's talk about the fact, since Dr. Ford had the courage to speak about herself, the biggest national organizations that addresses sexual as- sault saw a 738-percent increase in the calls they received from survivors of these cases.

Mrs. MURRAY. I thank the Senator from California, and I so agree. This is one of my biggest fears about this mo- ment. Let me talk about why that is true. I was a mom at home in 1991. I was a State senator but not interested in what was happening here at all. My interest came because I watched the Clarence Thomas-Hill hearings, and I watched how a woman shared a very difficult story with an all-male panel of the Judicial Committee at the time. She was disbelieved. She was swept aside. She was treated as if her voice wasn't important, and she was not believed.

I was so angry as a woman because like so many women in this country, I through experiences much like hers who, too, at work at that time had been dismissed, not believed, and were afraid to speak up. I was angry, and I went to a gathering that night and told some of my friends in 1991 that what I was going to do to the U.S. Senate because I need to be inside that to speak up for these women.

That is what motivated me to run. I was not given one chance of winning that Senate race. Here I am today, 27 years later. Why? Because so many women and men who understood shared that experience and knew that that voice needed to be heard. That is what brought me to the U.S. Senate. Let me talk about Dr. Ford because I listened to her, like everyone else did, and I heard her voice and it rang so true to me. I watched her with tears in my eyes because she was honest, she was sincere, she was credible. She had no reason to lie—none. In fact, I think we should remem- ber, she did not want to come forward initially. She was worried about the attac- ks that would come. She knew the history, as every one of us do, what happens to those courageous voices when they speak up, the invasion of privacy they have. She knew what it would mean for her family.

She only came forward when Judge Kavanaugh was on the very short list for the Supreme Court, before he was ever sent to us. She came forward and spoke out, but no one called her. She didn't want to do it publicly. She didn't want to have this become what was known for in her life, but she did. If it weren't for her, we would not be at this point.

Judge Kavanaugh was selected, and only then was Dr. Ford able to get her information to the people who would pay attention. She kept it confidential, to none of our surprise. She didn't want a spectacle. She didn't want a show. Why did she do that? She felt it was her civic duty that we as U.S. Senators—who were giving, essen- tially, a job interview to a man who wanted a position on the highest Court in the land and would be judging people in front of him—should know what his character was.

Her story was compelling. She took a polygraph test. She did everything right. She had told people before. She presented her case credibly. It is ex- tremely disconcerting to me, as some- one who watched the Clarence Thomas-Hill hearings and is sitting here, that I have heard people dismiss her, put her down, all the way up to the President of the United States. What message does that send across the country today and to other women who are so bravely now telling their stories so it will not happen to anyone else? What does this say to them? What does this say to young girls in high school and col- lege today? They are going to get away with it, so be quiet because it will only ruin your life, not theirs.

I have heard my colleagues say: Well, it was high school, it was college. Really? Is that what we want young boys in high school today to think; that it is OK, don't worry, whatever you do in high school does not count— whatever you do in college doesn't count?

I do not want my grandson to hear that message. I do not want my grand- daughters to hear that message. I want...
my country to be better than that. Dr. Ford is a real person. She is not alone.

If any Senator in the U.S. Senate is listening, they will hear voices in their own States, from places they know, from their own relatives, from friends they have not ever known about, bravely come forward because Dr. Ford did. This Senate, with the action we are pursuing, could crush those voices forever.

To my friends out there and to everyone who has a story, do not be silent. That is not how we win this for the future, but know we do believe you. The Senate has changed since then. I was proud of the Judiciary Committee members on our side, because unlike when I watched the Senate in 1991, there were women and men there who were listening, and they are today.

We have to, in this Senate, think about the consequence of this vote to so many people who are listening today and asking: Do I say anything or do I let it happen?

I urge my colleagues to remember the lesson of 1991, where too many people felt “I can’t speak out.” We are changing. We are growing. We are speaking out. It is so imperative this Senate has the courage to hear you. We believe you. We know that happened to you. You need to tell your story. You need to have the courage, and we will be behind you.

I say to the Senators who are joining me today, both who have been involved in these cases, I am concerned this message could be the wrong one for young men and women who are coming behind us. We have to stand up for them.

I yield to the Senator from Connecticut.

Mr. BLUMENTHAL. Mr. President, I am honored to join these two eloquent colleagues who have each been champions for this cause as women speaking about the epidemic of sexual assault in our country—the epidemic of sexual assault that continues to be a scourge across our country. Most of my career in law enforcement, like my distinguished colleague from California, has been involved in making laws work for people and deterring exactly this kind of heinous lawbreaking. It is criminal. It is a crime, but it is one of the least reported crimes because of the public shaming and character assassination and ridicule that we have seen from men in power over just the last few days and weeks.

I want to say, as a man speaking on the Senate floor—and greatly honored to do so—to other men in this country, those men in power who have mocked and ridiculed Dr. Blasey Ford cannot be our role model. Those men in power—they may be colleagues and they may be the President of the United States who have belittled and demeaned and dismissed Dr. Blasey Ford. But Friendship to the survivors across the country—do not speak for us. I believe Dr. Blasey Ford. I believe Dr. Blasey Ford because she was credible and powerful as a witness before us in what she remembered and what she so candidly said she couldn’t remember. I believe Deborah Ramirez. I believe all of you who have written my office or called us, as many of you have done in other States to my colleagues, who shared the horrors of your personal experience with sexual assault, who have come to me as I have been in airports or rallies or other public meetings and shared with me your horrific story. I believe you. America believes you.

Let me say to Dr. Blasey Ford’s sons, you should be proud of your mom. You should be proud of your mom because she is a profile in courage.

To Mr. Ford, you should be proud of your wife.

To all the men in America, we need to believe survivors of sexual assault. We need to protect and respect them, not just in word but in deed so they will come forward and tell us their stories so we can change.

We should be proud of the brave women who have brought us truth that cannot be denied no matter how much character assassination and public shaming they have endured. We know those who have come forward. Those who have come forward tell us their crime, and it has moved forward on sexual assault is bigger than this nomination. It will last beyond the vote tomorrow. It will be a defining question for each of us as men, as human beings.

Judge Kavanaugh, in facing these allegations, has also revealed something profoundly significant about himself. When he came to the committee after Dr. Blasey Ford, he revealed his true character. He pulled back the mask on the judge and revealed the man. What we saw was someone filled with rage and spite, self-pitying and arrogant, deeply partisan, and threatening. We can disagree on Judge Kavanaugh’s views on jurisprudential issues and policy issues. We can disagree on issues relating to his out-of-the-mainstream, far-right ideological position, but what cannot be denied is that picture of Judge Kavanaugh before our committee that indicated profoundly a lack of temperament and trustworthiness. That picture led former Justice John Paul Stevens to revoke his endorsement and to say his performance was disqualifying.

What we saw—as they say, a picture is worth a thousand words—was a man who refused to answer questions; he snapped at my colleagues; he spouted partisan conspiracy theories. That is the real Brett Kavanaugh—the Brett Kavanaugh who characterized Dr. Ford’s serious and credible allegations as nothing more than “a calculated and orchestrated political hit.” He, in effect, depicted her as a puppet or a pawn of Senators or political figures, not people who came forward voluntarily in their own right and on their own initiative, as truly they did.

He was the Brett Kavanaugh who alleged that it was all “revenge on behalf of the Clintons.” He is the Brett Kavanaugh who, as the Portland Press Herald characterized it, “ripped off the nonpartisan mask” and never looked back.

He is the Brett Kavanaugh who threatened us, saying, “What goes around comes around.”

In Brett Kavanaugh’s own words, a judge must be someone who is “even-handed, unbiased, impartial, courteous yet firm, and dedicated to a process, not a result.” Those are his own words. What Brett Kavanaugh is the man. It will not be Brett Kavanaugh the Justice if he is confirmed.

Brett Kavanaugh revealed himself to be a partisan—an angry and bitter partisan—not an impartial jurist, and he did so in prepared remarks, planned and premeditated, well calculated, written word for word, and delivered word for word as he angrily turned the pages, and that is the message that, for me, resonates because I have argued cases in the Supreme Court. I have argued on a career standing before judges. Some of their rulings I liked; some of them I disliked. Some of their conclusions I thought were maybe incorrect. But I knew that those men and women wanted to be impartial. When they put on the judicial robe, they did not want to be partisan. After that appearance before our committee, they left party and partisan interests at the door.

Now, when I go to the U.S. Supreme Court, if Brett Kavanaugh is confirmed, there can be no trust or confidence that he will be impartial. It is and will be a stain, a cloud, on the U.S. Supreme Court. All the Supreme Court has in the way of power is the trust and credibility and confidence of the American people, which will be diminished forever.

So let me pose a question to my colleague from California because she has so well described the voir dire process. It is jury selection, where we make an effort to pick jurors who are impartial and nonpartisan.

I say to Senator HARRIS, if Brett Kavanaugh came to a courtroom where the Senator was trying a case as an attorney general, and he were in the jury pool to be picked for a jury, would the Senator pick him as a juror? After that appearance before our committee, would the Senator allow him to sit on a case where the Senator was litigating?

Ms. HARRIS. I say to Senator Blumenthal, my response would be no. My response is no, and I will tell you why—because one of the most important qualities of a juror in our system of justice is that they have the ability to receive information without bias, without any interest in the outcome, and Judge Kavanaugh has made it very clear to the American public that he is biased, that he is receiving information and perceives it through the lens of a partisan and through the lens of the person he has been his entire career, which is not a partisan and nonpartisan.

There were moments, perhaps during his initial testimony, where he may have distracted us from that part of his
Courtrooms are sometimes really emotional places and sometimes they are angry places. The function of the judge is to remove the emotion and the anger to be impartial and balanced and even keeled.

So for a judge on the DC Circuit Court of Appeals to engage in the kind of angry outburst—it was not spontaneous; it was not the result of some accusation in the moment. It was calculated. It was premeditated. It was written the day before. It was inexcusable and unacceptable.

I will say, when I was a law professor in the late 1990s, when I left the University of Virginia to go to the State of Washington, since she is not a lawyer, perhaps to her credit: If the Senator were appearing in a courtroom with Judge Kavanaugh, wouldn’t the Senator ask that he step away from the case, that he recuse himself in light of all that he said and what all the Democrats, about vast classes of people—this anger that he has expressed?

Mrs. MURRAY. I thank the Senator from Connecticut. No, I am not a lawyer. I was a preschool teacher, and one of the things I do know is that I wanted my students to know it is not OK to bully. You have to take a pause and do what is right.

But let me tell you, what I would want for every one of the kids I have ever taught is to know that if anything they deeply care about—an issue or they themselves—ever appears in a court, then they should feel, in the United States of America, that they would be given a fair shot. That judge, if presiding over them would leave them with that feeling at the end of the day. That, to me, is why temperament is so important.

If Americans lose the sense that no matter what their issue is or where they come from or how much money they make in our court of law, they stand a chance to be heard, even if they lose or if they win—that is why temperament is so important to me as a nonlawyer and someone who cares deeply about this country.

Mr. BLUMENTHAL. I yield back to my colleague from California, but let me just close my part of this colloquy by saying that we saw the real Brett Kavanaugh before us on that day. That is what he showed us also are two things people when you are feeling hot about an issue or they themselves—this anger that he has expressed?

Mr. BLUMENTHAL. I think this is one of the reasons the President nominated him, and I don’t have confidence that Judge Kavanaugh will hold the President accountable to the law.

First, the Nation needs a Justice with the backbone to stand up as an independent check against both the President and Congress. That is why our Nation gives judges life tenure, so they can render independent rulings without fear of losing their jobs.

In a whole series of writings, speeches, and rulings over the course of many years, both as a lawyer and as a judge, Judge Kavanaugh has embraced an unfettered power. I think this is one of the reasons the President nominated him, and I don’t have confidence that Judge Kavanaugh will hold the President accountable to the law.

Second, Judge Kavanaugh’s writings as a Bush administration lawyer—at least those that the majority has allowed us to see—demonstrate his personal view that settled law is settled only until five Justices decide to do something different. This is true, as a matter of real-politik, but I am left with serious questions about what other areas of settled law might be unsettled, should he ascend to the Court.

I can understand how my colleagues might reach different conclusions on the two issues that led me to oppose this nominee, but since I announced my position, two additional issues of great importance have arisen.

First, the Nation needs a Justice whose temperament, for other persons.

People who have suffered from sexual assault or harassment are watching to see how the Senate responds to these serious charges. And what do they see?
To confirm Judge Kavanaugh under these circumstances would send a powerful message that the Senate—and now possibly the Supreme Court—is a hostile environment for survivors of sexual assault.

The second issue raised by these allegations is how partisan we want the Court to be. A person accused of any offense—especially sexual assault—is entitled to defend themselves. It is natural to be emotional and even angry when our offenses are felt falsely accused. But Judge Kavanaugh went far beyond that. He claimed that the allegations of Dr. Ford and Ms. Ramirez were part of a political conspiracy connected to the Democratic Party, outsid activitites, and the Clintons.

The performance was insulting, and the conspiracy charge was a complete fabrication. There is no evidence to suggest that politics created Dr. Ford's account of being attacked at a party, her history of seeking counseling years before the attacks, the notes from her therapist, her willingness to take a polygraph, the results of that polygraph, the extensive corroboration of her story of alcohol-fueled house parties in the DC suburbs in 1982, or the admitted details of the alleged co-assailant, Mark Judge.

There is no evidence to suggest that politics created Ms. Ramirez's account of being sexually humiliated at Yale. Indeed, if the FBI were willing to interview witnesses who are not speaking publicly, there is ample evidence corroborating the account.

So when a nominee who in the past advocated slash-and-burn partisan tactics as part of the Starr investigation reveals that he still harbors partisan resentment and attempts to shrug off serious claims of sexual assault as a political conspiracy connected to "outside left-wing... groups" or the Clintons, he reveals a temperament that befits a position in the DC suburbs in 1982, or the admitted details of the alleged co-assailant, Mark Judge.

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their personal views or politics, but I fully expect them to be able to put aside any and all personal preferences in deciding the cases that come before them. I have never considered the President's identity or party when evaluating Supreme Court nominations. As a result, I voted in favor of Justices Roberts and Alito, who were nominated by President Bush; Justices Sotomayor and Kagan, who were nominated by President Obama; and Justice Gorsuch, who was nominated by President Trump.

I began my evaluation of Judge Kavanaugh’s nomination by reviewing his 12-year record on the DC Circuit Court of Appeals, including his more than 300 opinions and his many speeches and law review articles. Nineteen attorneys, including lawyers from the nonpartisan Congressional Research Service, briefed me many times each week and assisted me in evaluating the judge’s extensive record. I met with Judge Kavanaugh for more than 2 hours in my office. I listened carefully to the testimony at the committee hearings. I spoke with people who knew him personally, such as Candoloeza Rice and many others. I talked with Judge Kavanaugh a second time by phone for another hour to ask him very specific additional questions.

I also have met with thousands of my constituents, both advocates and many opponents, regarding Judge Kavanaugh. One concern that I frequently heard was that the judge would be likely to eliminate the Affordable Care Act’s vital protections for people with preexisting conditions. I disagree with this contention. In a dissent in Seven-Sky v. Holder, Judge Kavanaugh rejected a challenge to the ACA on narrow procedural grounds, preserving the law in full. Many experts have said that his dissent informed Justice Roberts’ opinion upholding the ACA at the Supreme Court.

Furthermore, Judge Kavanaugh’s approach toward the doctrine of severability is narrow. When a part of a statute is challenged on constitutional grounds, he has argued for severing the invalid clause as surgically as possible while allowing the overall law to remain intact.

This was his approach in his dissent in a case that involved a challenge to the structure of the Consumer Financial Protection Bureau. In his dissent, Judge Kavanaugh argued for “severing any problematic portions while leaving the remainder intact.” Given the current challenges to the ACA, proponents, including myself, of protections for people with preexisting conditions should want a Justice who would take just this kind of approach.

Another assertion I have heard often is that Judge Kavanaugh cannot be trusted if a case involving alleged wrongdoing by the President were to come before the Court. The basis for this argument seems to be twofold.

First, Judge Kavanaugh has written he believes Congress should enact legislation to protect Presidents from criminal prosecution or civil liability while in office. I believe opponents miss the mark on this issue. The fact that Judge Kavanaugh offered this legislative proposal suggests he believes the Constitution does not have such protection currently.

Second, there are some who argue that given the current special counsel investigation, President Trump should not even be allowed to nominate a Justice. That is the exact opposite that has been the Court’s history. President Clinton, in 1993, nominated Justice Ginsburg after the Whitewater investigation was already underway, and she was confirmed 96 to 3.

The next year, just 3 months after Independent Counsel Robert Fiske was named to lead the Watergate investigation, President Clinton nominated Justice Breyer. He was confirmed 87 to 9. Seven-Sky v. Holder, Judge Kavanaugh rejected a challenge to the ACA on narrow procedural grounds, preserving the law in full. Many experts have said that his dissent informed Justice Roberts’ opinion upholding the ACA at the Supreme Court.

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The next year, just 3 months after Independent Counsel Robert Fiske was named to lead the Watergate investigation, President Clinton nominated Justice Breyer. He was confirmed 87 to 9. Seven-Sky v. Holder, Judge Kavanaugh rejected a challenge to the ACA on narrow procedural grounds, preserving the law in full. Many experts have said that his dissent informed Justice Roberts’ opinion upholding the ACA at the Supreme Court.

Furthermore, Judge Kavanaugh’s approach toward the doctrine of severability is narrow. When a part of a statute is challenged on constitutional grounds, he has argued for severing the invalid clause as surgically as possible while allowing the overall law to remain intact.

This was his approach in his dissent in a case that involved a challenge to the structure of the Consumer Financial Protection Bureau. In his dissent, Judge Kavanaugh argued for “severing any problematic portions while leaving the remainder intact.” Given the current challenges to the ACA, proponents, including myself, of protections for people with preexisting conditions should want a Justice who would take just this kind of approach.

Another assertion I have heard often is that Judge Kavanaugh cannot be trusted if a case involving alleged wrongdoing by the President were to come before the Court. The basis for this argument seems to be twofold.

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Court relied in Griswold v. Connecticut, a case that struck down a law banning the use and sale of contraceptives. Griswold established the legal foundation that led to Roe 8 years later. In describing Griswold as “settled” law, Judge Kavanaugh asserted that it was inappropriate application of two famous cases from the 1920s, Meyer and Pierce, that are not seriously challenged by anyone today.

Finally, in his testimony, he noted repeatedly that Roe had been upheld by Planned Parenthood v. Casey, describing it as precedent on precedent. When I asked him whether it would be sufficient to overturn a long-established precedent if five current Justices believed it was wrongly decided, he emphatically said no.

Opponents frequently cite then-candidate Donald Trump’s campaign pledge to nominate only judges who would overturn Roe. The Republican platform for all Presidential campaigns has included this pledge since at least 1980. During this time, Republican Presidents have appointed Justices O’Connor, Souter, and Kennedy to the Supreme Court. These are the very three Republican President-appointed Justices who authored the Casey decision which reaffirmed Roe.

Furthermore, pro-choice groups vigorously opposed each of these Justices’ nominations. Incredibly, they even circu- lated buttons with the slogan: “Stop Souter, O’Connor, Kennedy.” Just 2 years later, Justice Souter coauthored that Casey opinion, reaffirming a woman’s right to choose. Suffice it to say, prominent advocacy organizations have been wrong.

These same interest groups have speculated that Judge Kavanaugh has selected to do the bidding of conservative ideologues, despite his record of judicial independence. I asked the judge point-blank whether he had made any commitments or pledges to anyone at that time, to the Federalist Society, or to any outside group on how he would decide cases. He unequivocally assured me he had not.

Judge Kavanaugh has received rave reviews for his 12-year track record as a judge, including for his judicial temperament. The American Bar Association gave him its highest possible rating. Its Standing Committee on the Federal Judiciary conducted an extraordinarily thorough assessment, soliciting input from almost 500 people, including his judicial colleagues. The ABA concluded that “his integrity, judicial temperament, and professional confidence met the highest standard.”

Lisa Blatt, who has argued more cases before the Supreme Court than any other woman in history, testified:

By any objective measure, Judge Kavanaugh is clearly qualified to serve on the Supreme Court.

His opinions are invariably thoughtful and fair.

Ms. Blatt, who clerked for and is an ardent admirer of Justice Ginsburg, and who is, in her own words, “an unapologetic defender of a woman’s right to choose,” said Judge Kavanaugh “fit[s] within the mainstream of legal thought.” She also observed “Judge Kavanaugh is remarkably committed to promoting women in the legal profession.”

That Judge Kavanaugh is more of a centrist than some of his critics maintain is reflected in the fact that he and Chief Judge Merrick Garland voted the same way in 93 percent of the cases they heard together. Indeed, Chief Judge Garland joined in more than 96 percent of the majority opinions authored by Judge Kavanaugh, dissenting only once.

Despite all of this, after weeks of reviewing Judge Kavanaugh’s record and in listening to 32 hours of his testimony, the Senate’s advice and consent role was thrown into a tailspin following the allegation of sexual assault by Professor Christine Blasey Ford. The confirmation process now involves evaluating whether Judge Kavanaugh committed sexual assault and lied about it to the Judiciary Committee.

Some argue that because this is a lifetime appointment to our highest Court, the public interest requires that allegations be resolved against the nominee. Others see the public interest as embodied in our long-established tradition of affording to those accused of misconduct a presumption of innocence. In cases in which the facts are unclear, they argue the question should be resolved in favor of the nominee.

I understand both viewpoints. This debate is complicated further by the fact that the Senate confirmation process is not a trial. But certain fundamental legal principles about due process, the presumption of innocence, and fairness do bear on my thinking, and I cannot abandon them.

In evaluating any given claim of misconduct, we have served in the long run if we abandon the presumption of innocence and fairness, tempting though it may be. We must always remember when passions are most inflamed that fairness is most in jeopardy.

The presumption of innocence is relevant to the advice and consent function when an accusation departs from a nominee’s otherwise exemplary record. I worry that departing from this presumption could lead to a lack of public faith in the judiciary and would be hugely damaging to the confirmation process moving forward.

Some of the allegations levied against Judge Kavanaugh illustrate why the presumption of innocence is so important. I am thinking, in particular, of the allegations raised by Professor Ford but of the allegation that when he was a teenager, Judge Kavanaugh drugged multiple girls and used their weakened states to facilitate sexual assault. The allegation was put forth without any credible supporting evidence and simply parroted the public statements of others. That such an allegation can find its way into the Supreme Court confirmation process is a stark reminder of why the presumption of innocence is so ingrained in our American consciousness.

Mr. President, I listened carefully to Christine Blasey Ford’s testimony before the Judiciary Committee. I found her testimony to be sincere, painfully, and compelling. I believe she is a survivor of a sexual assault and that this trauma has upended her life. Nevertheless, the four witnesses whom she named could not corroborate any of the events of the evening gathering where she said the assault occurred. None of the individuals Professor Ford said were at the party has any recollection at all of that night.

Judge Kavanaugh forcefully denied the allegations under penalty of perjury. Mark Judge denied, under penalty of felony, that he had witnessed an assault. PJ Smyth, another person allegedly at the party, denied, under penalty of felony, that he had been there. Professor Ford’s lifelong friend, Leland Keyser, indicated that under penalty of felony, she does not remember that party. Ms. Keyser went further. She indicated that not only does she not remember that night like that, but also that she does not even know Brett Kavanaugh.

In addition to the lack of corroborating evidence, we also learned some facts that raised more questions. For example, the professor testified that not a single person has contacted her to say: “I was at the party that night.”

Furthermore, the professor testified that although she does not remember how she got home that evening, she knew, because of the distance, she would have needed a ride. Yet not a single person has come forward to say that he or she was the one who drove Professor Ford or was in the car with her that night. Professor Ford also indicated that even though she left that small gathering of six or so people abruptly and without saying goodbye and was distraught, none of them called her the next day—or ever—to ask why she left or was she OK, not even her closest friend, Ms. Keyser.

The Constitution does not provide guidance on how we are supposed to evaluate these competing claims. It simply states that decisions that discharge the Senate’s advice and consent are made by the Senate. This is not a criminal trial, and I do not believe claims such as these need to be proven beyond a reasonable doubt. Nevertheless, fairness would dictate that the claims should at least meet a threshold of “more likely than not” standard. Therefore, I do not believe these charges can fairly prevent Judge Kavanaugh from serving on the Court.
Let me emphasize that my approach to this question should not be misconstrued as suggesting that unwanted sexual contact of any nature is not a serious problem in this country. To the contrary, if any good at all has come from this ugly confirmation process, it has been to show that we have underestimated the pervasiveness of this terrible problem.

I have been alarmed and disturbed, however, by some who have suggested that unless Judge Kavanaugh's nomination is rejected, the Senate was condoning sexual assault. Nothing could be further from the truth.

Every person—man or woman—who makes a charge of sexual assault deserves to be heard and treated with respect. The #MeToo movement is real; it matters; it is needed; and it is long overdue. We know rape and sexual assault are less likely to be reported to the police than other forms of assault. On average, an estimated 211,000 rapes and sexual assaults go unreported every year. We must listen to survivors, and every day we must seek to stop the criminal behavior that has hurt so many. We owe this to ourselves, our children, and generations to come.

Since the hearing, I have listened to many survivors of sexual assault. Many were total strangers who told me their heartbreaking stories for the first times in their lives. Some were friends whom I have known for decades. Yet, with the exception of one woman who had confided in me years ago, I had no idea they had been the victims of sexual attacks. I am grateful for their courage and their willingness to come forward, and I hope that in heightening public awareness, they have also lightened the burden they have been quietly bearing for so many years. To them, I pledge to do all I can to ensure that their daughters and grandchildren never have to experience.

Over the past few weeks, I have been emphatic that the Senate has an obligation to investigate and evaluate the serious allegations of sexual assault. I called for and supported the additional hearing to hear from both Professor Ford and Judge Kavanaugh. I also pushed for and supported the FBI’s supplemental background investigation. This was the right thing to do.

Christine Ford never sought the spotlight. As she was testifying, she was asked by people who wanted to engineer the defeat of this nomination cared little, if at all, for her well-being.

Professor Ford testified that a very limited number of people had access to her letter. Yet that letter found its way into the public domain. She testified she never gave permission for that very private letter to be released. Yet here we are. We are in the middle of a fight she never sought, arguing about claims she wanted to raise confidentially.

One theory I have heard espoused repeatedly is that our colleague Senator Feinstein leaked FBI’s letter at the eleventh hour to derail this process. I want to state this very clearly: I know Senator DIANNE FEINSTEIN extremely well, and I believe she would never do that. I knew that to be the case before she even stated it at the hearing. She is a person of integrity, and I stand by her.

I have also heard some argue that the chairman of the committee somehow treated Professor Ford unfairly. Nothing could be further from the truth. Chairman GRASSLEY, along with his excellent staff, treated Professor Ford with compassion and respect throughout the entire process. That is the way the Senate from Iowa has conducted himself throughout a lifetime dedicated to public service.

The fact remains that someone leaked this letter against Professor Ford’s express wishes. I suspect, regrettably, that we will never know for certain who did it.

To that woman, who I hope is listening now, let me say that what you did was unconscionable. You have taken a survivor who was not only entitled to your respect but also trusted you to protect her, and you have sacrificed her ability to try to win whatever political crusade you think you are fighting. My only hope is that your callous act has turned this process into such a dysfunctional circus that it will cause the Senate—and, indeed, all Americans—to reconsider how we evaluate Supreme Court nominees. If that happens, then the appalling lack of compassion you afforded Professor Ford will at least have some unintended positive consequences.

The political and public atmosphere surrounding this nomination had reached a fever pitch even before these allegations were known, and it was challenging even then to separate fact from fiction. We live in a time of such great disunity, as the bitter fight over this nomination both in the Senate and among the public clearly demonstrates. It is not merely a case of differing groups having different opinions; it is a case of people using extrinsic ill will toward those who disagree with them.

In our intense focus on our differences, we have forgotten the common values that bind us together as Americans. With some of our best minds seeking to develop ever more sophisticated algorithms designed to link us to websites that only reinforce and cater to our views, we can only expect our differences to intensify.

This would have alarmed the drafters of our Constitution, who were acutely aware that different values and interests could prevent Americans from becoming and remaining a single people. Indeed, of the six objectives they invoked in the preamble to the Constitution, the one that they put first was the formation of “a more perfect Union.” Their vision of “a more perfect Union” does not exist today. If anything, we appear to be moving far away from it. It is particularly worrisome when we consider the Supreme Court as that institution that most Americans see as the principal guardian of our shared constitutional heritage—is viewed as part of the problem through a political lens. Mr. President, we have heard a lot of charges, and it is a shame to see so many brilliant people having different opinions; it is a shame to see so many brilliant people having so little common sense.

Despite the turbulent and bitter fights surrounding his nomination, my fervent hope is that Brett Kavanaugh will work to lessen the divisions in the Supreme Court so that we have fewer 5–4 decisions and that public confidence in our judiciary and our highest Court is restored.

Mr. President, I will vote to confirm Judge Kavanaugh.

Thank you. 

(Appause, Senators rising.)

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. ALEXANDER. Mr. President, it is sometimes said that today’s Senate does not measure up to the Senate’s previous years because we have no eloquent Senator who can make compelling speeches. I think Senator COLLINS has just disproved that today. Whether or not one agrees with her, she was eloquent. Her speech was compelling, and she has presented her case in the tradi-

I had thought of following Senator COLLINS with some remarks of my own about what I found when I read the background checks today. I went to the section where we read classified docu-

I want to thank Senator COLLINS for her insistence on an extra week so that we could have a seventh FBI investiga-

I took the time to review that as carefully as I could. I have never been more pleased with the work of the FBI. They had specifically been asked a question about whether they saw any evidence of alcohol use. They had not. And every single one said no. And there was no evidence of sexual impropriety.

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The PRESIDING OFFICER. The Senator from Maine.
have reached what she said she hopes is the rock bottom in the Senate confirmation process. This is not the way things should be. Whether you are a Democrat or a Republican, we know that the most awful allegations—sexual assault—certainly is as awful as any—deserve a modicum—there is a standard of fairness. She used the words “more likely than not” in her case. But in the U.S. Senate, we should be able to deal with such issues in a much better way than we have dealt with this.

We—all of us; the confirmation process—have victimized Dr. Ford, and we have victimized Judge Kavanaugh. Until 2 weeks ago, Judge Kavanaugh had a reputation among most people who had ever heard of him as one of the leading scholars, judges, and teachers in America. I believe he is that, which is why I am voting for him. I am glad we are voting for him.

I hope we all pause for a moment and listen to what Senator Collins said. I will conclude where I started. There may have been a time when there were more eloquent Senators who made more eloquent speeches during the hall in the Old Senate Chamber—we know their great names—but her speech today stacks up with the best of them.

I have heard speeches in this body for nearly half a century, both as a young aide and as a Member of the U.S. Senate, and I will remember this one. It is not just because I happen to agree with her, but because she showed characteristic diligence, independence, fairness, and a suggestion of the lessons that we should have for the future of this unique institution and this unique country that we prize so much.

I am going to think about what she has said. I hope other Members of the body do, and I hope many other Americans do as well.

Thank you.

The PRESIDING OFFICER. The majority leader, Mr. McConnell.

Mr. McConnel. Mr. President, in listening to the Senator from Tennessee, I am reminded that he and I were here in those days as young staffers. I was working for the Senator from Kentucky when Margaret Chase Smith was still here. She had already made her reputation by being the first Member of the U.S. Senate to take on Joseph McCarthy and his tactics. It took the Senate a couple of years to finally develop the courage to stand up to this demagogue and the tactics he employed.

Those of us who are in the Chamber today have had a unique opportunity to listen to a great statesman from Maine. I have not heard a better speech in my time here, and I have been here a while. It was absolutely inspirational.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. Graham. This is as close to McCarthyism as I hope we get in my lifetime. You are guilty until you are proven innocent. Whatever it takes to take him down, we will do. If one allegation is not enough, how about five? To the people who have come forward, we will do whatever we have to do to get the outcome we want.

There are two ways of doing this: Senator Collins’s way or what we have seen in the committee. If you want to go down the road of the committee, God help those who will follow.

The biggest winners today are those who still want to be judges. You may have saved those who want to come after Judge Kavanaugh from humiliation to the nth degree because you rejected it today.

For every woman who comes forward about a sexual assault, only God knows how many never say a word. But to right one wrong, seldom does it help to create another.

Senator Collins explained the dilemma the society and rejected the idea that sacrificing Judge Kavanaugh’s good name would make anything better.

To the extent that individuals matter in America, you rose to the occasion. To the extent that you rejected the mob rule and accepted the rule of law, we will all be better.

You have to have some way of judging. Yes, we want people to come forward. They have heard. But there needs to be a process, for the good of us all, to make sure it is disposed of right. If this is enough, to be accused of something that happened 36 years ago and nobody can corroborate it, God help us all in any line of public service.

All I can say is that it is not about you. I have never admired you more, and we often agree, and sometimes we don’t. It is about the system that you take you down, we will do. Whatever it takes to take you down, we will do. It is about the test of time. I don’t know what kind of pressure there has been for you. I can only imagine because you are in a purple State.

I remember what Sotomayor and Kagan were for me—not very comfortable, but I tried to embrace a system that has stood the test of time. But whatever happened to me, it has been 100 times worse for you.

Senator Flake, thank you. Without Susan Collins and Jeff Flake, we would not have heard from Dr. Ford, maybe, but you stood up and said that she needs to be heard. Without their insistence that the FBI check the committee’s homework, we wouldn’t be here where we are today. So you did a good thing.

The one thing you wouldn’t do is be intimidated. The one thing you wouldn’t do is destroy Judge Kavanaugh’s life for no good reason. The one thing you wouldn’t do is play politics with the law. God bless you. I doubt if I will ever hear anybody more courageous in my political life.

So when they write the history of our times, you will be in it. If John McCain were here, he would be your greatest cheerleader.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. Merkley. Mr. President, I wish my colleagues were here to share in this dialogue because there is such an absence of other Members sharing with each other their perspectives. We have a world that is enhanced by a media that lives in a different universe that accentuates the differences between the parties.

I think we are on a course that does deepen the differences across America. I hope there is some way we can find in this Senate to be able to communicate across that growing chasm in a more effective manner.

I have heard many of my colleagues speak to the issue of fairness on this floor. I offer just a brief, couple of sentences of points for you to consider as to why not all Americans share the perspective that this has been fair.

When Dr. Ford was invited to come to speak to the committee, she said that she would like to come, but she wanted some time, and she would like to have corroborating individuals be able to appear before the committee. That was denied by the committee, and that bothered many people in this Chamber a great deal. Even in 1991, Anita Hill was given that opportunity.

There is also very bothersome to individuals is that Dr. Ford had put forward a list of eight individuals whom she had asked the FBI to talk to, to be corroborating witnesses, and the FBI could talk only to those within the sweeping document that comes from the White House because at that moment, they are not doing a criminal investigation, they are doing a background investigation, and they have to follow the President’s instructions. Those instructions, we are told, were not to talk to any of the corroborating witnesses, not the 8 she put forward and not the 20 who were put forward by Debbie Ramirez. So 28 individuals were not brought before the committee and not talked to by the FBI.

I hope we have lots of opportunities to share our perspectives across the aisle to understand as we struggle with the issue of fairness because for many of us, fairness has not been achieved.

The bigger message to these two women who are forward to share their journeys, to share their experiences, is that the U.S. Senate was unwilling to hear them out, unfortunately.

Thank you.

The PRESIDING OFFICER (Mr. Sasse). The Senator from Michigan.

Ms. Stabenow. Mr. President, I am rising today at a very important time for our country because who sits on the Supreme Court matters. It really matters. From healthcare to civil rights, to the safety of the air we breathe and the water we drink, to the ability to raise our families and pursue the
American dream, to the very health of our democracy, decisions made by the Supreme Court affect us every single day.

As my colleagues know, I was born in Michigan. I have lived in Michigan my whole life. My whole family is still in Michigan. I am so grateful for that. Every decision I make in the U.S. Senate puts the people of Michigan first.

My decision to oppose Judge Brett Kavanaugh is no exception.

The allegations that have been made against Judge Kavanaugh deserve to be taken extremely seriously. Even before the allegations came to light, Judge Kavanaugh’s record and his writings too often speak against what is best for Michigan families.

When confronted with cases that have special interests on one side and the people on the other side, he has consistently sided with the special interests. That is certain and if it comes to healthcare. Healthcare isn’t political; it is personal for every single one of us. Michigan families know what they need: quality, affordable healthcare, including prescription drugs, and Michigan women deserve to make their own reproductive health decisions.

Right now, a court case is pending in which the Trump administration is refusing to defend the law that protects people with preexisting conditions—people like Amy, a small business owner with chronic leukemia, and Louisa, a beautiful little girl born with half a heart. Half of Michigan families include someone with a preexisting condition, like high blood pressure, heart disease, asthma, diabetes, cancer. They deserve to know that healthcare will be there when they need it.

Yet, if this case were to come before the U.S. Supreme Court, and Judge Kavanaugh were a member, I believe many families in Michigan would find themselves with no coverage and no care. We need judges who will make decisions based on what is best for people—not labor unions, not insurance companies, but for people.

A second issue on the minds of our families is our water and the Great Lakes, just like the people of Flint who still struggle with lead in their water. Ask the people in at least 15 Michigan communities whose water is contaminated with what we now call PFAS chemicals. That is an industrial chemical that has been linked to cancer and other diseases. Again and again, Judge Kavanaugh has ruled on behalf of polluters, not people.

In one case, he argued that the Environmental Protection Agency exceeded its authority by trying to address pollution that drifted from Michigan to another State—as if somehow the air was going to stop at the border. Thankfully, the Supreme Court voted 6 to 2 to overturn his decision. What would happen to our air and water if he is one of those people who is deciding this, particularly if he were to be the tie vote?

Third, I am deeply concerned by his belief in essentially unlimited Presidential power. In 2016, when asked what single case he would like to see overturned, Judge Kavanaugh said he would like to “put the final nail” in a three-decades-old Supreme Court decision that said independent counsel investigating the President are constitutional.

Judge Kavanaugh has also written that if a President doesn’t like the law, he can simply decide it is unconstitutional. He can simply refuse to enforce it. That might be how things work in Russia, North Korea, or Syria. It is not how things are supposed to work in America under our democracy.

We have three separate branches of government. We need judges who will ensure that no one—no one, not even the President of the United States—is above the law.

Also, Judge Kavanaugh’s views on what we now call dark money in our elections also concerns me greatly. In one 2011 case, Judge Kavanaugh ruled that foreign nationals could contribute money to candidates. That sounds good. Unfortunately, he then went on to say that foreign nationals can take part in issue advocacy—giving money for issue advocacy in America. In other words, Russians can contribute as much as they want to an issue group, which can then spend on behalf of candidates.

In this way, Judge Kavanaugh opened the door for unlimited dark money from foreign nationals—foreign entities in our American elections. Do we imagine he will rule differently from a seat on the U.S. Supreme Court?

Finally, there are the very serious allegations made against Judge Kavanaugh and serious questions about how he has responded to them.

In this country, we have due process. We want accused to be heard and the accused to be able to defend themselves. That is why it is so important that we heard from both Judge Kavanaugh and Dr. Christine Ford.

I found Dr. Ford to be highly credible. Her testimony was heart-wrenching. I believe Dr. Ford. Her story resonated with so many women because many of us have felt that same fear and heard the same laughter that she described. It takes an incredible amount of courage to speak up, and I know women across the country are grateful for her bravery. And I am grateful for the countless women who have called or written me with their stories of what has happened to them, oftentimes decades ago. I hope we are going to come to a point when all of this is over and use this as an opportunity to make sure that when something happens, women feel they can report it immediately and will be taken seriously, and we will have a due process system that works immediately to address these issues.

I reviewed the FBI background file on Judge Kavanaugh. Unfortunately, I was very disappointed in the very limited scope. It did nothing to alleviate my concerns about the allegations, his truthfulness before the Senate Judiciary Committee, or his suitability to sit on the Supreme Court.

Judge Kavanaugh’s demeanor during the hearing was a shocking display of respect for Dr. Ford. No on one is entitled to a Supreme Court seat or entitled to a job interview. There are many people qualified to hold that kind of a position. But his sense of entitlement and condescension toward members of the Senate committee who were simply doing their jobs was shocking to me.

Again, no one is owed a seat on the U.S. Supreme Court. We are talking about a lifetime appointment and an immense amount of power over people’s lives.

Someone once said this: “The Supreme Court must never be viewed as a partisan institution. The Justices on the Supreme Court do not sit on opposing sides of a Nation’s leaders but caucus in separate rooms.”

That person was Brett Kavanaugh. He clearly has failed to meet his own standard. I know he has failed to meet mine.

The people of Michigan deserve better. The people of America deserve better. They deserve someone on the Supreme Court who understands their lives and will stand up for them, not special interests.

They deserve someone on the Supreme Court who understands that nobody—not even the President of the United States—is above the law.

They deserve someone on the Supreme Court who will work to keep dark money from foreign entities out of our elections.

And they deserve someone on the Supreme Court who has consistently lived up to the high standards we ought to demand of our Nation’s leaders.

In Michigan, we teach our children that character matters. Now it is time to show that we mean it.

I urge my colleagues to vote no on Brett Kavanaugh’s confirmation to the U.S. Supreme Court.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. HASSEN, Mr. President, I rise today to join my colleagues in expressing my opposition to Judge Kavanaugh’s nomination. I will speak later in the evening about my overall assessment of Judge Kavanaugh’s judicial philosophy and qualifications.

And I think why I think some of my colleagues on the other side of the aisle are focusing on the wrong thing in deciding to support him.

To echo my colleague from Michigan just now, no one has a right to a seat on the U.S. Supreme Court. What we should be focused on is that the country has a right to an impartial, non-partisan U.S. Supreme Court. They have a right to Justices whose character and fitness for the Office is beyond reasonable doubt.

Despite everything I have heard from Judge Kavanaugh’s supporters, I do not think they can make that case.
My purpose in speaking right now is to express my deep concerns with Judge Kavanaugh’s record of ruling against access to healthcare.

If confirmed, Judge Kavanaugh will be a deciding factor in the lives and livelihoods of millions of Americans. Yet, time and again, he has demonstrated a commitment to a partisan agenda that would strip away care from some of our most vulnerable people.

As recently as 2017, Judge Kavanaugh criticized Chief Justice Roberts’ decision upholding the Affordable Care Act, and in his confirmation hearing, Judge Kavanaugh would not commit to upholding legal protections for people with preexisting conditions—preexisting conditions such as asthma, cancer, diabetes, and more.

Confiming Judge Kavanaugh to the Supreme Court would put those protections at risk. I have heard from people across New Hampshire who are concerned this will happen to them if they are denied coverage because of their preexisting condition. People like Kristen from Derry, NH. Kristen relies on medications that cost more than $1,200 every month to stay healthy, but if she is denied coverage because of her preexisting condition, she would not be able to afford that medication. Kristen said:

I wouldn’t be able to breathe correctly. My COPD would worsen. My current standard of living—working full time as a social worker, a runner, active with my children—would quickly come to an end.

That is what is at stake with this vote.

Republican attorneys general, backed by the Trump administration, are suiting to eliminate protections for preexisting conditions. This case will soon be in front of the Supreme Court, and the next Supreme Court Justice could very well be the deciding vote in that decision.

We need a Justice who would rise above partisanship, someone who will act impartially and rule on behalf of what is right for the American people. It is evident Judge Kavanaugh is not that person, and there is no reason to believe he would be an impartial arbiter when it comes to issues related to healthcare.

Throughout this confirmation process, Judge Kavanaugh has revealed himself to be a particularly partisan, and never was that more clear than during his hearing on the allegations raised by Dr. Christine Blasey Ford.

During that hearing, he called those credible allegations against him “revenge on behalf of the Clintons” and seemed to threaten his political enemies by saying: “What goes around comes around.”

There is ample reason to believe that Judge Kavanaugh would be an ally on the Supreme Court for the Trump administration and Republicans in Congress who are seeking to undermine our healthcare system, and for the health and well-being of Granite Staters and all Americans, I cannot support his nomination.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Jersey, Mr. MENENDEZ, Mr. President, I rise to support Brett Kavanaugh’s nomination to the Supreme Court and to ask my colleagues—Republicans and Democrats alike—to recognize exactly what is at stake here. The philosopher Nietzsche once said that if you stare long enough into the abyss, the abyss will stare back into you.

My friends, we here in the U.S. Senate are staring into the abyss. What is staring back at us is a future in which the American people’s trust in the Supreme Court is being irreparably damaged.

To vote yes on Brett Kavanaugh is to send a message to every woman in America that your voice doesn’t matter. If you risk everything—your security, your safety, your ability to come forward and speak truth to power about a sexual assault, they will call you credible. They will call you courageous. Yet they will not believe you.

It is a message that says, if you have survived a sexual assault, don’t bother telling anyone because you must be mistaken. This traumatic and unforgettable moment in your life never happened. It must have been someone else.

My friends, to confirm Judge Brett Kavanaugh with what we now know would be to forever tarnish the credibility and reputation of the highest Court in our land. Here is what we know. We know Judge Kavanaugh faces multiple credible allegations of sexual assault. Yet the investigation that was conducted looks nothing like the FBI investigation that was promised—not by President Trump, not by the Senators who called for it, or by anyone else.

We know neither Dr. Ford nor Judge Kavanaugh was interviewed by law enforcement—the very essence of what the subject of the investigation is. Neither of them was interviewed. We know dozens of people with corroborating evidence were flatout ignored by investigators.

I have heard some of my colleagues call this investigation thorough. How do you call an investigation thorough when neither the accused nor the accuser was interviewed by the FBI?

How do you call an investigation thorough when 40 corroborating witnesses who volunteered information to the FBI in recent days were reportedly ignored? You can’t get corroboration if you don’t talk to corroborating witnesses. The answer is simple: It is not thorough, and it is not trustworthy.

This entire process, including the use of Executive privilege to deny the Senate access to hundreds of thousands of documents of Judge Kavanaugh’s, has been shrouded in secrecy. And why the secrecy? Because President Trump and his team are desperate to get Judge Kavanaugh confirmed by any means necessary.

Let’s remember what is going on. The President of the United States is the subject of a Federal investigation into whether his campaign accepted assistance from a hostile foreign power during the 2016 election. Already, the President’s campaign chairman, Foreign Policy Advisor, and former National Security Advisor have pled guilty to Federal crimes.

If there could be chosen any of the judges included on the rightwing list assembled by the Heritage Foundation and the Federalist Society, instead, he picked the one judge with unprecedented views of Presidential power. There is no other explanation for President Trump choosing Brett Kavanaugh that I can think of other than he hopes this will be his get-out-of-jail card.

The last few weeks have been a flurry of breaking news alerts and breathless gossiping in the halls. I am thankful for Dr. Ford’s courage and candor. She spoke her truth and has inspired countless others to break their silence. I believe her. I believe survivors. New Jersey is home to 1.8 million survivors. That is 1.8 million reasons to oppose Brett Kavanaugh.

According to the Bureau of Justice Statistics, less than a quarter of sexual assault victims reported those incidents to police in 2016. After this past week, it is all too easy to see why.

Leader MCCONNELL has called the allegations of Dr. Ford “unsubstantiated smears.” What an insulting statement. What will we as a society begin to believe women, to trust women? It can’t come soon enough.

I was in the midst of my first campaign for Congress when Anita Hill’s allegations of sexual assault against Justice Clarence Thomas were investigated but ultimately disregarded by the Senate. I am proud to have been elected to the House in 1992, the so-called Year of the Woman. Across the Capitol that record four women were elected to the Senate. My colleague PATTY MURRAY decided to run after watching what happened to Anita Hill. She is still here fighting for survivors, and I am proud to have her as my colleague.

We look back at the Clarence Thomas hearings as a moment that failed America and failed all survivors of sexual assault. Yet here we are in 2018, and it appears as though we have made little progress.

After Dr. Ford’s testimony, my Republican colleagues and even conservative pundits praised her credibility. It only took Judge Kavanaugh’s outrageous performance—a performance we know was best and untruthful at worst—for these same Republicans to cast her aside. The message they have sent to survivors who are brave enough to come forward is clear: We will listen to you, but we will not believe you, and we will not trust you.

Despite having the cards stacked against her, I was shaken to the core
by Dr. Christine Blasey Ford's words last week. She answered every question with bravery, with candor, and with humility. Meanwhile, Judge Kavanaugh was evasive, belligerent, and, according to many of his accusers, repeatedly untruthful. What my Republican colleagues can't seem to grasp is that you can be at the top of your wealthy prep school class and still abuse women. You can be a Yale Law graduate and still abuse women. Unfortunately, you can even be the President of the United States and still abuse women.

Furthermore, Judge Kavanaugh's partisan outburst was downright disturbing for a potential Supreme Court Justice. How many norms did Judge Kavanaugh shatter in that hearing room? It is one thing to be emotional; it is another to call the allegations of Dr. Ford or Deborah Ramirez and others a coordinated leftwing conspiracy and an act of political retribution for the Clintons. He said the questions posed by Democratic Senators during his confirmation hearing were “an embarrassment” and “the precise kind of circus—this coming from a man who pressed Ken Starr to ask President Clinton sexually explicit questions. And we all know the circus the Starr investigation turned out to be. But I guess the same standards don’t apply to Brett Kavanaugh. If you are Brett Kavanaugh, you can lie under oath about things big and small and never face the consequences.

At the end of the day, Judge Kavanaugh has had a lifetime of political rant confirmed what many of us already knew about this man: He is a political operative cloaked in judicial robes. As Kavanaugh himself said, “What goes around, comes around.” Do those sound like the words of an impartial, independent judge?

Never before in my life have I seen a nominee, let alone a Supreme Court nominee, behave as though he were entitled to the privileges of a presidential nominee. This is not. It is the American people who are entitled to a Justice who tells the truth, who conducts himself in a dignified manner, a Justice who doesn’t face credible accusations of sexual assault.

The Supreme Court deserves better than Brett Kavanaugh, and so do the American people. More than 1,000 legal scholars—and counting—agree, coming out against Kavanaugh’s nomination because his partisan and venomous rhetoric has no place on the Supreme Court.

This process has further poisoned the confirmation process. It was Senate Republicans who orchestrated the theft of a Senate seat with more than 9 months left in President Obama’s term. Apparently, being nominated by President Obama is more disqualifying than being accused by multiple women of sexual assault. It is clear the more true that is, the less willing to tip the scales of justice against women, consumers, and patients for generations to come.

For women, the stakes couldn’t be higher. President Trump promised to only nominate judges who would overturn Roe v. Wade. And, yes, earlier today, a colleague of mine pointed out that the Republican National Committee platform has long included overturning Roe. In my view, that is precisely why we cannot trust a longtime GOP political operative like Brett Kavanaugh to uphold a woman’s right to choose. There is a difference between saying that precedent deserves respect and it cannot be overturned. They are not the same. I think some of the things I have heard about the aspirations of some of my colleagues about Judge Kavanaugh are unlikely to be realized.

This is what is at stake here: the basic principle that women have a right to make their own private medical decisions. My daughter has grown up never knowing what it was to live in a country where women were denied reproductive rights. I fear my granddaughter may grow up never knowing what it was like to live in a country where women had reproductive rights.

It isn’t just women’s health that is at stake. The Trump administration is arguing in Federal court as we speak that the ACA’s protections for preexisting conditions are unconstitutional, which makes Judge Kavanaugh’s record of ruling against consumers and siding with corporate interests all the more alarming.

There are 3.8 million New Jerseyans who have preexisting conditions—some illness during the course of their lives, heart attack, diabetes, Parkinson’s, maybe some birth defect that in the past had denied them insurance coverage. We eliminated that under the Affordable Care Act. No more discrimination. There are 3.8 million New Jerseyans who have preexisting conditions. For me, those are another 3.8 million reasons to oppose Kavanaugh’s confirmation.

So, yes, the stakes have never been higher. The threat to our democracy is real. The decisions coming down from a Supreme Court with Kavanaugh will change the course of America for decades to come.

The Republican majority views the Supreme Court as an instrument to force an unpopular, anti-woman, anti-worker, anti-civil rights agenda on the American people. Meanwhile, President Trump views the Court as yet another weapon to flout the rule of law.

Well, it is time we take a stand for the integrity of our democratic institutions. It is time we live up to our duty set forth by Article II of the Constitution to provide advice and consent on Supreme Court nominations. In stowing on us this responsibility, the Framers entrusted us with protecting the reputation and credibility of the highest court in our land.

To confirm Judge Kavanaugh in the face of these allegations; in the face of the secrecy of the documents we could not obtain; in the face of the positions he took that are clearly, in the minds of many of us, untruthful before the committee, risks forever tarnishing one of the crown jewels of our democracy.

My friends, we are standing on the edge of a cliff. Should we blindly go over that edge, we risk doing irreparable damage to the reputation and credibility of the Supreme Court. I implore my colleagues in the majority to push us back in the direction of truth and decency. This isn’t about right or left; this is about right and wrong.

A vote to confirm Brett Kavanaugh is a vote against survivors of sexual violence. A vote to confirm Brett Kavanaugh is a vote to overturn Roe v. Wade and end safe and legal abortion in this country. A vote to confirm Brett Kavanaugh is a vote to roll back civil rights and voting rights. It is a vote that will take us back to a time and place none of us, I believe, wants to go to. And it is a vote the American people will not forget—not today, not tomorrow, not this November, not ever.

I yield the floor.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. JOHNSON). The clerk will call the roll.

The senior assistant legislative clerk proceeded to call the roll.

Mr. LEE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEE. Mr. President, it is an understatement to say that the last few weeks have been unusual in Senate history. We have never seen anything like it in the 8 years that I have been serving in this body. Every day when we show up to work, as we walk to our offices, we have to walk through a sea of angry protestors, people screaming, shouting, yelling things at us—not pleasant things. In many instances, Members have to be accompanied as they walk to and from their offices, to and from the Senate floor where they cast their votes, to and from their committee hearings, in and out of rooms where they have to conduct their business.

This is unusual. It is unpleasant. It is relatively unprecedented, certainly, in the time that I have been here. It is unfortunate and unnecessary. You see, the point is not how the process is supposed to work.

This is not what the Constitution contemplates or requires in connection with the confirmation of a Supreme Court nominee. It doesn’t need to work that way, but in this case, it did. It did because a lot of people, starting with a small handful of people, made a deliberate choice to depart from the norm,
to depart from rules, practices, and operating procedures that are designed to protect the innocent and the guilty, designed to protect accusers and the accused, designed to protect the privacy of people who come forward with allegations as well as those who have been nominated to serve in high positions.

The allegations brought forward by Dr. Christine Blasey Ford were serious. I still remember and will never forget the precise moment when I was briefed on those allegations on September 13, 2018. I was briefed by a small handful of Judiciary Committee staffers who had clearance to read to me an FBI document they had just received. I wasn’t allowed to share the details of that communication with anyone—not even members of my own staff—because at the time they were confidential, couldn’t be discussed with the public, and couldn’t be discussed with anyone who hadn’t received specific clearance from the FBI to do so. At the time, all allegations brought forward, I was able to tell my staff only the following: The allegations raised by this individual—I didn’t know her name at the time—are serious. They are serious to the point that I will support this nominee if these allegations are true, but the allegations are of such a nature that they could be looked into. We can discern whether or not they could be corroborated. We can discern if the witness interviewed in that case is to get to the truth.

Over the last roughly 3 weeks, that is what has happened. We have undertaken everything we know how to do to get to the truth.

We have had FBI agents interviewing witnesses. We have had witnesses interviewed by committee staff. We ourselves have interviewed Dr. Ford and Judge Kavanaugh. It was at the hearing where we heard from Dr. Ford and Judge Kavanaugh when we learned for the first time that Dr. Ford’s attorneys—I will just state here parenthetically—were oddly recommended by the ranking Democrat on the Senate Judiciary Committee. But Dr. Ford’s attorneys—those same attorneys recommended by the ranking Democrat on the Senate Judiciary Committee—failed to ever inform Dr. Ford that, from the outset, she wouldn’t have to go through the process this way. From the outset, she could have and would have had the opportunity to tell her story in private to FBI agents who would have met her at her home in Palo Alto, CA, interviewing her in the privacy and comfort and protection of her own home with confidentiality.

That separate group of FBI agents could have and would have then visited Judge Kavanaugh and any of the other alleged eyewitnesses to this event, and at that point those reports would have been collected and eventually handed over to the Senate Judiciary Committee.

The committee then could have and would have had the opportunity to convene a closed hearing and to investigate these allegations without having to subject anyone to the indignity of discussing very detailed private circumstances of their lives in front of the American people.

It remains clear to me that Dr. Ford never went to the circus. She never asked for any of this. She was reluctant to come forward. Ultimately, she agreed to allow her name to be released at the moment she recognized that there were enough people who were going to figure out who she was at some point that she didn’t want to have to tell her story in public. She could have and would have and should have been given the opportunity to tell her story in private, but that is not how it happened because her lawyers didn’t tell her.

Even after her name came forward, even after she felt compelled to disclose her name, her lawyers apparently didn’t tell her that Judiciary Committee staff would be willing to fly out to California and meet with her in private in her home or anywhere else she wanted to meet. That apparently was not communicated to her. One must ask the question why. Why didn’t they tell her that? I don’t know. At this point I can’t tell you.

The conversations that occur between attorneys and their clients are typically and permanently confidentiel, but just as an objective witness to a lot of this and, again, not privy to their private thoughts. I have to wonder whether at best her lawyers may have been negligent in telling her that she had those options. At worst, they may have deliberately sacrificed her privacy, her comfort, and her interests in pursuit of their own vain ambitions or perhaps a political agenda. Either outcome is unfortunate. Either way we got there led to the same outcome, and we are where we are.

For the last 3 weeks we have done everything we can to get to the bottom of these allegations. We have had witnesses interviewed. We ourselves have interviewed Dr. Ford and Judge Kavanaugh.

At the end of this, what we see is someone who has been badly hurt. It is apparent to me that Dr. Ford was harmed and has endured deep pain. Someone hurt her, and they hurt her badly, but there is nothing to corroborate her allegation that it was Judge Kavanaugh who hurt her. Not only that, but the alleged eyewitnesses to this event can confirm that such a gathering ever occurred, either in the summer of 1982 or at any other time—not one. A number of the witnesses have said that not only do they not remember such an event ever occurring but that this type of event with this set of circumstances and with this combination and number of people would not have happened. This is not how they gathered.

So left with an uncorroborated accusation against an individual who has led an exemplary life, a life of public service that includes now 7 FBI background investigations and some 150-plus interviews conducted by the FBI. Again, a lot of that was conducted prior to his appointment to the U.S. Court of Appeals for the DC Circuit, where he served for 12 years and published some 300 opinions. Asking him to sit through a hearing of 7 FBI background investigations other than to find the right answer under the law.

This is someone who is a model, exemplary citizen from everything we tell. He serves the public with integrity. He feeds the hungry. He clothes the naked. He serves his fellow beings with a love and an admiration for them that is genuine, distinct, and consistent. Against this backdrop, we cannot, we will not, we must not take a single uncorroborated allegation and sink this man’s hard-earned good name. The demands of justice are such that we have to hear accusers and those who have been harmed, but without corroboration we cannot assume someone who has been injured in any of these cases has an adequate evidentiary foundation.

So I would add here that maybe we do know something more than that because other allegations have come forward. Well, yes, there are other allegations and let’s just say that the other allegations for a minute.

The Ramirez allegation came forward about a week after the Washington Post announced Dr. Ford’s name. A story by The New Yorker was itself debunked less than 24 hours after the story was run—debunked by the New York Times, which acknowledged having interviewed literally dozens upon dozens of witnesses in an effort to find corroboration for the Ramirez allegations. Not one person could or would corroborate the story—not one. Moreover, as the New York Times concluded, there were a number of instances in which Ms. Ramirez herself, in calling former classmates from Yale, acknowledged that she didn’t know whether or not it was Brett Kavanaugh who engaged in the conduct she alleged.

The other allegation brought forward by the client of Mr. Avenatti was itself on its face of a different sort than the others. This allegation was brazen in what it assumed about Judge Kavanaugh and what it asked the public to believe. It accused this man, this lifelong public servant, of engaging deliberately in a sexual enterprise that had as its object the deliberate drugging and gang rape of young women. Here, again, is a story that could not find a single shred of corroboration and was severely undercut by a number of other factors, including the fact that the accuser herself was not even in high school at the same time as Judge Kavanaugh, and no one alleged to have been present had any recollection either of the parties described or of any of the circumstances surrounding these alleged events.

But the timing of these other allegations coming forward was nonetheless...
used to smear the good name of Judge Kavanaugh and to imply some sort of guilt on the part of Judge Kavanaugh and some sort of corroboration of the Ford allegation. Again, the Ford allegation was itself serious and had a lot of indicia of credibility on its face. That is why I was very concerned with the moment I heard about it. That is why we have now spent 3 weeks doing everything we can to get to the bottom of it and finding no corroboration.

But with these protests going on, with a sea of angry people shouting at us everywhere we go; chasing Senator Cruz and his wife out of a restaurant as they were peacefully enjoying dinner; verbally and physically assaulting Senator Perdue and his wife as they were making their way from a flight into Reagan National Airport to their vehicle, for a sustained period of 30 minutes, including a moment when Mrs. Perdue was nearly pushed down a flight of stairs. These incidents come in the wake of other unfortunate events, including a moment when RAND PAUL was attacked at his home and broke six ribs, causing him excruciating pain and injuries that have the potential of affecting him for the rest of his life. RAND PAUL was himself also the potential victim of a shooting when a crazed leftist decided to show up at a Republican baseball practice and opened fire on Republican Members of Congress simply because they were Republican. Members of Congress simply because the Republicans.

This moment of emotional intensity came as a result of a process that some are now struggling to say is broken. I insist that it is not. The process isn’t broken. There is nothing wrong with the Constitution. It certainly is not broken. To the extent something wrong happened here, it is not because the thing itself doesn’t work or because it is flawed by its very nature. It is because in this instance, the left broke it. The left sabotaged it. The left deliberately impeded its ability to do what it was supposed to do.

It is not as though this isn’t without precedent. They have done this in the past. They have done it for decades. They did it with Judge Bork, when they converted his last name into a verb when they accused him of being a racist and a sexist. They pretended to be outraged when they found out that Judge Ginsburg had smoked marijuana. Then, a few years later, they engaged in a high-tech public lynching of Clarence Thomas. They later did it again to Sam Alito, calling him a racist. Then they did it to Neil Gorsuch, calling him a sexist.

These efforts aren’t limited, of course, to Supreme Court nominees. They also deliberately went after Miguel Estrada, specifically and admit- tedly because he was Latino. They tried to take down Amy Coney Barrett’s nomination to a Federal appellate court because they considered her “too Catholic.”

This is unacceptable. We have been asked to settle for this. It is not time to settle. It is time to expect more. It is time to demand more. It is time to demand a process that is respectful of human beings—of the accusers and the accused in the world. It is time to do this in a way that is consistent and allows us to respect each other.

You have to remember that when we reduce our arguments from matters of policy, in which we acknowledge good faith disagreements, simple and emotional questions of good versus evil, people are going to tend to believe that characterization. Ultimately, they are going to tend to act on that characterization.

The results will not always be pretty. At some point, this descends to a moment when the victim will no longer be someone’s character or reputation or pride or the quiet enjoyment of someone’s dinner or the ability of someone to tend to his lawn. At some point, this is going to be one of us or it is going to be someone’s husband or wife, someone’s children.

Earlier this week, we received news that someone had deliberately released personal information regarding Members of the Senate—Republican Members of the Senate, not coincidentally—with the promise and the threat that even more information would be released, including information about and histories of our children, for the specific purpose of influencing and intimidating Members into taking a particular position on this nomination. This is unacceptable.

It is also unacceptable that in the response to the attack on RAND PAUL, which I mentioned a moment ago, an MSNBC anchor actually referred to that horrific event for Senator Paul and his family as one of her favorite stories. That is not OK.

All of this hurts real people, not just Members of the Senate, not just Dr. Ford and her family or Judge Kavanaugh and his family, although it certainly hurts them. It also hurts the Senate. It hurts the Supreme Court. It hurts our very constitutional Republic as it was set up, as it was designed.

So again, we get back to this question: Why does this happen? I think a lot of it has to do with the fact that it happens because you cannot take the eggs from the American people and put them in one basket without creating a lot of really high, intense emotions.

You cannot require the American people to work many weeks or many months out of any year just to pay their Federal taxes and not have them be very emotional about what happens in Washington.

You cannot concentrate this much power in Washington, DC, and take power away from the American people, where the power is supposed to be mostly exercised at the State and local levels, and move it away from them in two steps: first, from the people to Washington and then, within Washington, from the people’s elected representatives, who are supposed to make law, to unelected, unaccountable bureaucrats, who make law without any accountability to the people. You cannot do this in a way that is inevitably, and unsustainably raising the political temperature in this country. It cannot be done. It is the nature of the thing itself.

Sometimes we have to stop giving in to the impulse to expand the size and scope and reach of the Federal Government because it tends to make the people less powerful. The whole system was set up so as to lower the political temperature in the country.

We are a diverse country. In one way or another, there has always been great diversity within the country, among and between the States and their different populations. This was understood by the Founders; it is understood today. This is one of the reasons why, by divine design, this whole thing was set up in such a way as to lower the political temperature in Washington by keeping most decisions close to the people at the State and local levels, keeping most decisions that there is a whole lot more unity at the State and local levels than there is at the national level. That is why most powers are supposed to remain close to the people through the States and localities.

Sometimes our instincts are wrong. Sometimes our instincts lead us into danger. Sometimes we fear the wrong things.

People in this country, understandably, are terrified, scared to death of rattlesnakes. I myself am scared to death of rattlesnakes. We have them in my State of Utah. We don’t like them. Most people are shocked, however, to discover there are many times more people killed every year as a result of something else, which turns out, cause all kind of accidents, which, in turn, result in a lot of deaths—many more deaths, many times more deaths every year than rattlesnakes. But we fear the rattlesnake more because it looks scary.

Sometimes our instinct leads us in the wrong direction. Sometimes our instinct is to do something through government that might make matters worse rather than better.

Sometimes we have just the time when I worked across the street at the Supreme Court of the United States. I was a law clerk to Justice Alito. My co-clerks and I worked in a relatively small office. We discovered something during the summer when we started our job. The air conditioning in our office made our office unbearably cold. It was so cold as we sat at our desk and wrote memoranda to the Justices and did our jobs, sometimes our hands would get so cold that we couldn’t feel them. What did we do? We went over to the thermostat and turned up the thermostat, thinking that would solve the problem. But after
we turned up the thermostat, it didn’t do any good. It was still freezing cold. At that point, we opened the window and let in the hot, muggy air that is known to inhabit and pervade Washington, DC, during the summer months. It was inefficient, but we couldn’t figure out another way. We talked to the maintenance people in the building. They weren’t sure what to make of it, so we moved on.

As summer faded into fall and fall became December, it got cold. We had a very similar problem, but in the other direction. When it got to be winter, when it was really cold outside, it was burning hot inside our office. It was so hot, we were sweating, so hot we felt compelled to walk over to the thermostat and turn the thermostat down, hoping and expecting, reasonably, that it would lower the temperature and alleviate our discomfort.

It didn’t do a bit of good. It was still burning hot. What did we do? We opened the window. It was inefficient, and created a weird feeling in the office—at times burning hot, at times freezing cold, depending how close you were to the window.

After many months of this, the head main heating and air conditioning contractor for the whole building came in and looked at the heating and air conditioning system within the office. After taking it all apart, he came to us and said: I think I have found your problem. Your thermostat was installed backward. I was always warmer than I thought I was. When you lowered the thermostat, it was, in fact, raising the temperature.

Sometimes things have the opposite effect from what we want. I believe it has often been with the best of motives and instincts and intentions that we have taken power to Washington, DC, concentrating, centralizing, more power here in Washington, DC, and then decentralizing it to unelected, unaccountable bureaucrats and, in some cases, Federal judges.

In the process, we disempowered the American people. We disconnected them from their own government. This, in turn, has raised the temperature when it comes to things like confirming a Supreme Court Justice. This, by the way, was often done in the past by a voice vote without even the need for a record vote. Sometimes it was done unanimously; sometimes it was done overwhelmingly. Not every nominee was confirmed. I don’t think that should ever be the case.

Even in George Washington’s administration, not every nominee to the Supreme Court was confirmed, but nominees were treated with dignity and with respect. This occurred in part, I believe, because the Constitution kept the temperature appropriately moderated; the Federal Government was doing those things that the Constitution unambiguously placed in the hands of the Federal Government and of Congress, which sets policy for the Federal Government. The people, in turn, remained in touch and connected to that government, to the extent it affected them, because that policy was still being set by the people’s elected representatives in Congress and not by unelected, unaccountable jurists or bureaucrats.

The opposite has happened since then. It is not the case that every Supreme Court nominee in recent history has brought about so much contention. Just look at the confirmation process that led to the ultimate appointment of Ruth Bader Ginsburg, of Stephen Breyer, of Elena Kagan, of Sonia Sotomayor. These occurred in recent decades. These Justices were confirmed overwhelmingly, and they were confirmed with a lot of votes from Members of both political parties.

It doesn’t have to be as contentious as it always is, but in this instance, with Republican nominees—with conservative nominees to the Supreme Court—there just has been a left unwilling to allow the process to even move forward as it should and has chosen instead to smear these individuals and to treat them in an unkind, undignified manner.

No mother and no father would want to see a son or a daughter subjected to this kind of treatment, not in our country, not for a position like this. No one would want that. It does not have to be this way.

If we can correct course, if we can figure out that we have in some ways been working with a broken thermostat, if we can acknowledge the fact that in varying ways, either sometimes we make them worse by bringing more power to Washington and then handing this power over to unelected, unaccountable bureaucrats and judges, we can do this. We can lower the temperature, lower the stakes in the United States of America.

We live in a diverse Republic. We need to allow the people in all of their diverse viewpoints throughout the various States to work things out as they deem fit. Let New York be New York; let Nebraska be Nebraska. We don’t have to make as many decisions in Washington, DC, as we have been.

I believe, ultimately, this will come down to a question like this. We have a choice to make—a choice between federalism; that is, restoring the proper balance of power between different actors within our system of government. That is the one hand, contention and, ultimately, violence on the other hand.

I choose the peaceful way. I choose the way that doesn’t result in as much contention. I choose the constitutional way. I believe that document was written in order to protect our liberty, to respect our divergent interests, and to allow the American people to flourish and prosper because not every decision would have to be made by the same people, and the government would remain accountable to the government. Federalism is the answer.

At the end of this long and grueling process, I am grateful for the system we have. I hope we can return to its constitutional origins and respect the letter and the spirit of the Constitution of the United States.

I yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CRUZ. Mr. President, I rise today to discuss the impending confirmation of Judge Brett Kavanaugh. It now appears that tomorrow, Judge Brett Kavanaugh will become Justice Brett Kavanaugh, an Associate Justice on the United States Supreme Court.

It is worth pausing for a moment to reflect why it is that of such great consequence for our country. In recent decades, the courts have seized more and more policymaking authority, have intruded into the authority of the democratically elected legislature, and have taken policy issue after policy issue from the hands of the American people and usurped it instead into the hands of unelected and unaccountable jurists or bureaucrats.

Given those stakes, the 2016 election in a very real sense was waged over what direction the Supreme Court would go, and there was a markedly different vision, a markedly different promise that was made by Donald Trump and Hillary Clinton. Donald Trump promised to nominate constitutionalists who would defend the Constitution and who would defend the Bill of Rights. That is what the people of Texas want, and I believe that is what the American people who will follow the law, who will be faithful to the Constitution, who will uphold our fundamental liberties—free speech, religious liberty, the Second Amendment, the 10th Amendment—the fundamental liberties protective of every American in the U.S. Constitution.

The stakes here are high, particularly with this seat—the seat that was held by Justice Kennedy, a Justice who has been the swing vote for three decades now.

Even though the stakes are high, what we have witnessed the last seven weeks is unprecedented in the annals of confirmation battles. We saw initially a confirmation hearing that was relatively straightforward. It was marred by protests, coordinated with Democratic Senators, according to media reports. On the first day of the hearing, 70 individuals were arrested for protesting and disrupting the hearing.

But at the end of that opening week of hearings, not a single Senator on the committee had made the argument that Justice Kavanaugh was not qualified to be a Justice—by any measure, he is one of the most respected Federal appellate judges in the country—nor did any of the Senators on the Judiciary Committee make any meaningful argument that raised serious concerns about Judge Kavanaugh’s jurisprudence. He has been a court of appeals judge for over a decade.

It appeared at that point that the confirmation was a foregone conclusion and that indeed Judge Kavanaugh was
likely to get a substantially bipartisan confirmation. Then, on the eve of the vote, it was leaked in the press that there were allegations of sexual misconduct and sexual assault. Those allegations sadly had been in the possession of the ranking Democrat on the committee since July 30 in the form of a written letter that had been submitted by Dr. Ford on July 30 detailing the allegations. The allegations were serious. The allegations deserved to be treated with respect.

In that letter, Dr. Ford requested to be allowed to stay confidential. She did not want her name thrust into the national news. The Judiciary Committee has a process for handling allegations. As nominations go forward, there are all sorts of allegations that are raised, and the ordinary process would be for the ranking member to refer that letter to the full committee, to the chairman, refer it to the FBI for an investigation, and then the committee has a standing procedure to conduct a hearing—either in a closed hearing—a closed hearing—where the allegations raised by Dr. Ford could have been considered without dragging her name into the public. That would have been the right way to do it. It would have been the Senate operating the way it is supposed to operate, but sadly it didn’t operate that way. Instead, it appears the Democratic Members of Congress made the decision to leak the letter to the press and to drag Dr. Ford unwillingly into the public square. That did enormous damage to Dr. Ford and her family, and it did enormous damage to Judge Kavanaugh and his family.

When that happened, the Judiciary Committee—the Republican members of the committee met, and I urged my colleagues, once these allegations were made public, that there needed to be a public hearing and that Dr. Ford deserved a full and fair opportunity to tell her story; that she needed to be treated with respect. That, I am glad to say, is exactly what happened. I also believed Judge Kavanaugh deserved a full and fair opportunity to defend himself and that he, too, should be treated with respect. That, sadly, is not what happened. The hearing we had last week featured one Democratic member of the committee after another dragging Judge Kavanaugh and his family through the mud, raising smears and innuendo, after smear after smear that are, unsurprisingly, their statements are very much the same. They are more detailed, and they are more extensive because the FBI agents questioned them at greater length, but at the end of the day, all three named fact witnesses and all three of those witnesses—including Dr. Ford and his family. They did so on penalty of perjury. All three of them swore that they were telling the truth. All three of them swore that the FBI did 10 interviews. I flew back to DC from Texas last night. At 10 o’clock last night, I came to the Capitol and in a classified setting read all 10 of those 302s—the reports the FBI agents prepared coming out of those interviews. Having read every single one of those reports, not one of them provides additional corroborating evidence for Dr. Ford’s allegations. Indeed, the key fact witnesses who had been interviewed by the FBI agents and that fact witnesses—all of whom gave statements to the Judiciary Committee under penalty of perjury. All three of the named fact witnesses—not only did they not corroborate the allegations, but they affirmatively refuted the allegations in perjury, meaning if they were lying, they could face up to 5 years in prison.

For me, the fact that all of the corroborating evidence contradicted the allegations and the fact that Judge Kavanaugh’s name was dragged through the mud without any allegations made before any allegation had been made. Indeed, a great many of the Democratic Senators announced their opposition to Judge Kavanaugh within minutes or hours of his being named. Every Democratic member of the Judiciary Committee announced their opposition to Judge Kavanaugh before the opening minutes of the confirmation hearing, before hearing a word Judge Kavanaugh had to say. That was last week was a whole lot of political theater. It featured some Democratic Senators, I believe, vying for the 2020 Presidential nomination and seeing who could be more extreme and put on a bigger spectacle. But the American people expect this body to be fair. The American people expect this body to respect the law and the rule of law. We have been through a process that I believe has been fair, has heard out these claims. It is my hope that, coming out of this, the anger and rage that have been stoked dissipates. It is my hope that Members on both sides of this aisle and, more importantly, Americans on both sides of the political aisle across the country can reflect and ask, how can remember how to disagree, to disagree passionately. We can have passionate arguments about whether taxes should be higher or lower. We can have passionate arguments about immigration policy or any other policy matter. But I hope that we can remember how to disagree without being disagreeable, to disagree while being civil, to disagree while respecting each other, while respecting each other’s humanity.

It would have been wrong to vilify and demonize Dr. Ford, and I am glad the Judiciary Committee did not go down that road, but it is equally wrong
for Democratic Senators to demonize and vilify Judge Kavanaugh based on a lone accusation without corroborating evidence. That is not fair, and that is not right. It is empty politics. And if we continue down this politics of personal destruction, we are going to find fewer and fewer people willing to step forward and serve, fewer and fewer people willing to serve on the Federal judiciary, willing to serve in the Cabinet.

There was a time when this body was called the Senate's greatest deliberative body. That was a long time ago, but I do think it is possible for us to get back to that, for us to keep disagreements focused on substance and issues and remember the fundamental humanity even of those who disagree with us.

The American people—certainly the people of Texas—I think a great many were horrified by what they saw last week. Some in the media have characterized that women should necessarily oppose Judge Kavanaugh's confirmation to the Supreme Court. As a member of the Senate Judiciary Committee, I said on the first day that Judge Kavanaugh appeared before the Senate that this proceeding was not normal. On its face, it looked like a normal confirmation hearing. The family was there. He was sitting in the chair with the table in front of him, ready to address the committee. The cameras were on. The Senators were all seated, prepared to ask questions. All of it looked normal, but nothing about this confirmation process has been normal.

These hearings began at a time when we had seen only a tiny fraction of the documents from Judge Kavanaugh's record. In fact, the night before the proceedings started, we got a document dump of 42,000 pages. Even less of the information—the 3 years of his time as a Staff Secretary in the White House—has been available to the American people or to us. That is still true today.

These hearings were about a nominee, in the end, who was handpicked by President Trump and confirmed by a Senate majority that recognizes the rule of law. There are absolutely no doubt about that. There are many nominees—potential nominees—who have good credentials. In this case, this particular person was picked at a time when we have the most expansive view of Presidential power possible—a nominee who has actually written in an opinion that a President should be able to declare laws unconstitutional.

There are dozens of such nominations. The headstream, and this confirmation process has only gone farther astray. With what happened during the last 2 weeks and in light of Dr. Ford's compelling testimony, it was deeply troubling. I will talk about this at length.

I want to begin where I first started—what we know about Judge Kavanaugh's record and what it suggests about the kind of Justice he would be. In the last decades, the Supreme Court has decided whom you can marry, where you can go to school, who can vote, and for people like my grandpa, who worked 1,500 feet underground in the mines in Ely, MN, his entire life, the Supreme Court has decided how safe your workplace is.

The next Supreme Court Justice will make decisions that affect people across the country—theirs and ours. But women can and they can go to school, who can vote, and for people like my grandpa, who worked 1,500 feet underground in the mines in Ely, MN, his entire life, the Supreme Court has decided how safe your workplace is.

The next Supreme Court Justice will make decisions that affect people across the country—theirs and ours. But women can and they can go to school, who can vote, and for people like my grandpa, who worked 1,500 feet underground in the mines in Ely, MN, his entire life, the Supreme Court has decided how safe your workplace is. It has been our responsibility—every Senator in this Chamber—to determine if Judge Kavanaugh would protect the careful balance of power among the three coequal branches that our Founders designed. We must determine if he would stand up for the rule of law without consideration of politics or partisanship, if he believes in the simple idea that no one is above the law.

I knew coming into these hearings that Judge Kavanaugh’s views of Executive power were among the most expansive we have ever seen and that he has been making the case for strong Presidential powers for decades. In a 2009 piece in the University of Minnesota law review, Judge Kavanaugh wrote that a sitting President should not be the subject of an investigation or even be required to answer questions as part of a special counsel’s investigation. In that article, he argued, it is not good for the American people’s time to prepare for an interview or questioning by special counsel. He made no exception for an investigation addressing threats to our national security, even when a foreign power has somehow interfered in our affairs.

It is not hard to see why these views are relevant during this critical constitutional moment. There is an extensive, ongoing investigation by a special counsel, and the President's private lawyers and representatives have been found guilty of multiple Federal crimes.

The man appointed as special counsel—a man who has served with distinction under Presidents from both parties—has been under siege, as well as the Attorney General and the Deputy Attorney General.

In the same article that Judge Kavanaugh wrote, he made the point that if a President did something “dastardly,” then Congress could act, arguing that a criminal investigation should be put on hold until the end of the President’s term. When I asked him what “dastardly” means, he could not answer, even when I asked about a dozen times. Who knows what a President could do—commit murder, jeopardize our national security, obstruct an investigation, or engage in white collar crime? I still didn’t get an answer about what “dastardly” means.

The judge’s expansive view of Presidential power is part of a much broader pattern of writing and commentary. More than a decade before, in a 1998 piece in the Georgetown Law Journal, Judge Kavanaugh wrote that the President should be able to remove a special counsel at will.

This is the opposite direction from what we did in the Judiciary Committee when we passed bipartisan legislation earlier this year on a 14-to-7 vote to enact additional protections for the special counsel and all future special counsels.

At a 2016 event at the American Enterprise Institute, the judge was animated and almost gleeful when he said he was thrilled to “put the final nail in Morrison v. Olson.” A Supreme Court decision that upheld the now-expired independent counsel statute. It is hard to imagine that he would respect a 30-
year-old precedent and protect the integrity of a special counsel investigation in light of that statement.  

At a roundtable discussion in 1999, he criticized the Supreme Court’s unan- 
imous ruling in U.S. v. Nixon that compelled the White House to comply with the subpoena to produce tapes and documents written by a Minnesotan, Jus-
tice Warren Berger.

When this came up in the hearing, Judge Kavanaugh repeatedly charac-
terized the issue as one of the greatest moments in our country’s judicial his-
tory, but he refused to answer, when asked, the question of whether that case was correctly decided.

These are incredible statements with implications that are clear when you think about what is going on in our country today. The dedicated public servants who work in our Justice De-
partment—including the Attorney Gen-
eral, the Deputy Attorney General, the special counsel, and the FBI—have been subjected to repeated threats and their motives questioned.

I asked Judge Kavanaugh if these statements reflect his views today, but he said only that he wasn’t making constitutional arguments. He did not dis- 
pute that he believes, as a matter of policy, that these are the types of broad powers a President should be 
able to exercise. He said that he was thinking of ways to make the Presi-
dency more effective.

These are not just abstract legal con-
cepts; they are ideas that could di-
rectly impact the future of our democ-
cracy, as well as the lives of Americans.

There are other pieces of this puzzle that make clear what a broad view of Execu-
tive power Judge Kavanaugh has.

To cite one example, his opinion in Seven-Sky v. Holder discusses when a President can decline to enforce a law, even if a court has upheld it as con-
stitutional. The judge wrote that “the President may decline to enforce a statute . . . when the President deems the statute unconstitutional.”

What does that mean? That means the President could decide he could just hold a statute unconstitutional even if a court has held it is, in fact, constitutional. That is what that means. It is not a law review writing. It is not something written when he was in college or in law school. It is actu-
ally written in a case.

What would that mean for women’s health? What would that mean at a time when the administration is chal-

lenging protections for people who are sick or have preexisting conditions? I asked him if he believed the President could declare these protections uncon-
stitutional, even if a court upheld them. This isn’t a hypothetical exam-
ple. The administration is now arguing in a Texas district court that the Af-
fordable Care Act’s preexisting condi-
tions protection is unconstitutional.

The judge refused to answer whether a President could simply ignore a law, even one upheld by the courts. He didn’t answer when Senator Durbin asked it, when Senator Blumenthal asked it, and when Senator Harris posed the same question.

The days of the divine rights of Kings ended with the Magna Carta in 1215. The end of the American Revolution, a check on the executive was a major foundation of our country’s Constitution, for it was James Madison who wrote in Fed-
eralist 47: “The accumulation of all powers legislative, executive, and judi-

cial in the same hands, would just-
ly be pronounced the very definition of tyranny.”

There is more. None of the judge’s colleagues joined the section of his opinion in Aiken County outlining his views on when Presidents can ignore the law, and one who was an appointee of President George H.W. Bush stated explicitly that reaching that issue was unnecessary to decide the case.

Judge Kavanaugh has made very clear over the years that he has an in-
credibly broad view of the types of pro-
tections that should be extended to a sitting President. Without further an-
swers from him during the hearing, we are left only with his writings and his conversations with other directors. He says that a sitting President should not have to be subject to a criminal investi-
gation; that a sitting President should be able to remove a special counsel; that a sitting President should not have to negotiate with the special counsel; and that a sitting President has the legal authority to ig-
nore the law.

At this time in our history, we need a Justice who is independent and who will serve as a check on the other branches, which is what our Founding Fathers set up—not a judge who would allow the President to avoid account-
ability or who believes the President’s views alone should carry the day. As I said in that same Minnesota Law Re-
view article I mentioned that outlined his expansive view of Executive power, the judge criticized the 80-year-old precedent that upheld the constitu-
tional law of our independent agencies.

I asked Judge Kavanaugh about his conclusion that the Bureau was unconsti-
tutional. He did not dispute this conclusion, but he did say his opinion simply called for a change to the law so the Director of the Bureau could be fired by the President at will. I found that answer problematic.

When Congress drafted the law that created the Bureau, it made the choice—we made the choice right here in this Chamber—to give the Director a 5-year term to provide some independ-
ence from politics. This was a choice that we made in this Chamber. Not ev-
eryone agreed with it, but by majority vote it passed. It passed in the Senate, and it passed in the House. We made that decision.

During our discussion on the judge’s expansive views of Executive power at the hearing, he kept telling me that the scope of Presidential authority was a matter of policy that Congress should decide. He repeated this answer often to many others. When it comes to Presidential power, he said that Congress should decide.

Look at what happened here when it comes to protecting consumers. In this case, Congress did decide; we actually passed a law. We wanted this independent Director to have a 5-year term over this very important agency that returned $12 billion to consumers.
who have been victims of scams and mortgage fraud. It was Congress’s decision. Did that matter to the judge in this dissent that he wrote? It did not.

It seems to me, just looking at all these opinions, that the judge’s record is that he likes what Congress decides, he says: Hey, Congress has the final say. When he doesn’t like what Congress decides, he then thinks the judge should make decision.

What does that mean? In this case, he wrote that the old dusty law books. No, it’s not. That is what he said.

Judicially orchestrated shift of power.”

There are cases called Trinko, Twombly, Leegin, and Ohio v. American Express. There has been a whole series of them.

First Amendment rights of individuals. In another case, he argued that the net neutrality rules were unconstitutional. This judge went the opposite way. They brought it to court. They asked him about this in his hearing. He said that he had ruled both for and against executive agencies, but he ruled that the agency that is designated to protect them was unconstitutional, and it is not an isolated example.

In another case, he argued that the net neutrality rules were unconstitutional. That is why that case is such a problem.

Everyone would gather at the mines and run over there every time the sirens went off because it meant someone was hurt. My dad went down in that mining cage a year degree—all that because my grandpa went down in that mining cage and saved money in a coffee can in his basement to send my dad to college.

When I asked him about this in his hearing, he said that he had ruled both for and against executive agencies, but his record makes clear that he has ruled against them in the overwhelming majority of cases.

This judge went the opposite way. They asked him about this in his hearing. He said that he had ruled both for and against executive agencies, but his record makes clear that he has ruled against them in the overwhelming majority of cases.

There are cases called Trinko, Twombly, Leegin, and Ohio v. American Express. There has been a whole series of them.

What does that mean today? Well, the failed merger between Norfolk Southern Railway and Canadian Pacific, something I took on only immediately when it was announced—we defeated that. But even without that merger, where are we today? Ninety percent of the freight rail traffic is handled by only four railroads. That is the same number of railroads on the Monopoly board. I don’t think that is a coincidence.

So as we look at his rulings in this area, we realize this isn’t just a game. No, this is our economy, and we want judges who are a check and balance, just as the Founders cared a lot about monopoly, actually, and they wanted a check and balance in our courts. They set up an independent judiciary.

The last point I want to focus on is Judge Kavanaugh’s record and his views on campaign finance.

I requested a number of these campaign finance documents to become public because I thought they raised serious concerns about Judge Kavanaugh’s views in this area of law. I actually got those documents public, and it is one of the reasons that a number of my colleagues who are opposed to the judge have been able to talk about the judge’s views right here on the floor and the public has been able to see them.

In one email from March of 2002, he discussed limits on contributions to candidates saying these are his words: “And I have heard very few people say that the limits on contributions to candidates are unconstitutional, although I for one tend to think those
limits have some constitutional problems." That is a big deal because we have very few campaign finance laws left that allow us to be protected from dark money and unlimited money coming into companies.

He also described in another email his "1A"—that is the First Amendment—views as "pure." This is very concerning when it comes to campaign finance. I have serious doubts, based on his record, as to whether he thinks that Congress has the authority to pass any campaign finance reform that could restrain the action to rein in the flood of dark money that has drowned out the voices of ordinary citizens.

What does that mean? Well, when the Court stripped away the rules that opened that door to unlimited super-PAC spending—and that is what we have right now—it wasn't the campaign financiers or the ad men who were hurt. No, it was the grandma in Lanesboro, MN, who thought it mattered when she sent in $10 to support her Senator. That is what we are dealing with, and if we get even narrower or get rid of all the limits on campaign finance, it is only going to get worse.

The American people would not have even known about Judge Kavanaugh's extreme views on campaign finance if I had not sought to have those documents made public. That is because there are still 186,000 pages of documents that have been produced to the Judiciary Committee, but they have not been made available to the American people.

Let me put it another way. Even now, only about 7 percent of Judge Kavanaugh's White House record has been produced to the Judiciary Committee, and even less—that is about 4 percent—is available to all of you, to the public.

On top of that, we are missing 3 years of documents from his time as Staff Secretary. So we have no records to review from that part of Judge Kavanaugh's previous work in the White House.

We also don't have 102,000 pages of documents that the White House has withheld under a claim of constitutional privilege, even though executive privilege has never been used to block the release of Presidential records to the Senate during a Supreme Court nomination under Presidents from both parties.

As a former prosecutor, I know that no lawyer goes to court without reviewing the evidence and the record, and a good judge would not decide a case with only 7 percent of the key documents.

In fact, as I mentioned, we received 42,000 documents the night before. We could not even look at them when we were starting to ask him questions because we had only gotten them the night before.

So I asked him if he thought that a judge would grant a continuance in a situation like that when one party dumped 42,000 pages of documents on the other the night before trial. I didn't get much of an answer.

We have already learned that the information in documents from Judge Kavanaugh's time in the White House is relevant to the consideration of his nomination. We should have those documents before we have this vote, but we don't.

Having full information about the judge's record brings me to the compelling testimony of Dr. Ford. Since Dr. Ford had asked for the FBI to reopen its background investigation and follow up on what she had said.

When I think of my work, we always would have those investigations and that information before any kind of a hearing. Back in Minnesota, our office handled all the judicial matters in our county from the juvenile area. In fact, we had about 12,000 cases every year, as well as all adult felonies. We investigated reports like Dr. Ford's. That job gave me a window into how these types of cases hurt women and impact everyone.

I would always tell those stories of those coming before us. I would tell them: You know what. This is going to be hard. You have to tell your story to a jury box of strangers, but you are doing it for justice. You are doing it for the right reason.

As for Dr. Ford, she had to tell her story to a nation. It was a moment. So many people in our country were watching her. I don't think people thought she would believe her when they first went in there and they first turned on their TVs, but then they watched her. They watched her grace and her dignity.

But, then, sadly, in the afternoon, for my colleagues on the other side, we saw a lot of anger and chest beating. I believe the strategy was to distract and deflect from the moving and incredible testimony of someone who told her story to the Nation.

This was a woman with a political background, who made an attempt to call the front office of her congressional Representative. That is all she did. All this stuff about her being part of some kind of smear campaign—she did it even before he was a nominee. She had read that he was one of the people under consideration, and she thought she should warn people.

Now, she wanted her name confidential. She explained why she decided during the hearing. She simply called the front desk of her congressional Representative.

This wasn't the first time that the Senate had confronted this type of situation. When Anita Hill came forward with her allegations against then-Judge Clarence Thomas, President George H.W. Bush immediately requested that the FBI reopen its background investigation.

Dr. Ford was another person who made a credible claim. Chairman Grassley actually thanked her for her bravery in coming forward last week. Several of my Republican colleagues asked about how much they respected her.

Well, I said: You know, if you really want to respect her and you really want to be brave, then, you at least have to give her the minimum of respect by following up on her allegations, and that should have been done the minute that letter went public.

I found out about it by the way, on the very same day that my Republican colleagues found out about it. That was just a few weeks ago. I have heard a lot of complaints about that, and I am not going to get into that issue except to say one thing: The justice system is messy. Things come out at the very last minute sometimes. Evidence comes out before trial, but the issue is, When that happens, what do you do with it? What do you do with it when you are in a position of power? Do you just sweep it under the rug, as has happened too many times in this Chamber, in this building? No, you give them a chance to make their case, but also to give them that underlying investigation, and you reopen a background check—not a criminal background check simply a background check like we do for any other high-level nomination in the Senate.

As I told my colleagues last week, if you want to make a political speech about keeping nominees off the floor, here is exhibit A for you: Merrick Garland, 10 months. For 10 months he was kept off the floor. Yet people have acted in a sanctimonious way that this was some cataclysmic event—to simply go in and do an FBI investigation.

Dr. Ford's testimony was powerful. I asked her not about what she remembers about that night but what she couldn't forget. Here is what she said:

The stairwell. The living room. The bedroom. The bed on the right side of the room.

The bathroom in close proximity. The laughter, the uproarious laughter.

We also heard from Dr. Ford about how she came forward because she felt she had a civic duty, just like we have a civic duty to look at the record that I just laid out for you in the last hour. That is our civic duty. That is why she came forward.
She talked about how she brought this up in therapy 6 years before and how she had given her husband the name of Judge Kavanaugh. This is before he was famous. This is before he was up for the Supreme Court.

As a prosecutor, I understand the critical role that law enforcement has in gathering the information necessary to evaluate reports like this one. I don’t like living in an evidence-free world, and while I am glad the White House reopened the background check and at least went in and talked to some of the witnesses, if you go down there—which you can’t do, but I could do and the other Senators could do—you’ll realize and you can see this from the public reports, that a lot of people weren’t interviewed. For a lot of the names from Dr. Ford and one of the other victims involved in some allegations, Ms. Ramirez, they were not able to hire those witnesses interviewed. That is what you see when you are down there. So this was not a fair process that Judge Kavanaugh said he wanted and that Dr. Ford wanted.

What we heard from the judge later in the hearing has been a sharper contrast from what we heard from Dr. Ford in the morning. She told her story, and it was a story that so many times in our Nation’s history has been, as I said, swept under the rug because for so long, people have been told that what happens in a house should never end up in a courthouse.

Now what we can say to Dr. Ford is, well, this may not end up the way you wanted it, but do not feel that it has to come forward to have your life turned upside down. But you know what—there is one reason it was worth it, and that is because the American people learned something and they are speaking out because the times, they are a changing.

To conclude, I want to return to some of the thoughts on what this nomination means at this uncertain moment in our history. This nomination comes before us at a time when we are witnessing seismic shifts in our democracy. Foundational elements of our government, including the rule of law, have been challenged and undermined.

Today our democracy faces threats that would have seemed unbelievable not long ago.

A man who was appointed special counsel in the investigation that is going on right now involving a foreign country interfering in our democracy—this is a man who served with distinction under Presidents from both parties—under siege. Dedicated persons in the Justice Department are under siege. Dedicated persons in the courts and dedicated judges have been under assault, not by a solitary disappointed litigant but by the President of the United States.

Our democracy is on trial. It is our duty to carry on the American constitutional tradition that John Adams stood up for centuries ago, and that is to be “a government of laws and not of men.”

The next Supreme Court Justice should serve as a check on the other branches of government, someone who is fairminded and independent, who will uphold the motto on the Supreme Court building to help all Americans achieve “equal justice under law.”

We have a lot about the separation of powers in the last few weeks. All the attacks on the rule of law and our justice system have made me—and, I would guess, some of my other colleagues—pause and think very, very seriously about what we are going to do. We are going to come to the Senate in the first place, and in my case, why I decided to go into law in the first place. So I went back and I found an essay that I had written back in high school.

I can tell you that not many girls in my high school class said they dreamed of being a lawyer. We had no lawyers in our family, and both of my parents were the first in their families to go to college. But somehow, when I was in high school, I decided to spend a morning sitting in a courtroom and watching a State court district judge handle a routine calendar of criminal cases. The judge took pleas, listened to arguments, and handed out misdemeanors. It was nothing glamorous—and nothing glamorous like the judge before us is being nominated to do—but it was important just the same.

I realized that morning that behind each and every case, no matter how small, there was a story, a person. Each and every decision that judge made that day affected someone’s life, and I noticed how he had to make gut decisions and try his best to take account of what his decisions would mean.

There is something I said back then in that essay that I still believe today, and that is this: To be part of an imperfect system, to have a chance to make a difference—that is a cause worth fighting for, a job worth doing.

Our government is far from perfect, and so is our legal system, and so was this hearing, but we are at a crossroads in our Nation’s history where we must make a choice: Are we going to dedicate ourselves to improving the justice system or not? Is this nominee going to administer the law with equal justice as it applies to all citizens regardless of whether they live in a poor neighborhood or a rich one, in a small house or the White House?

Many Americans are troubled today. When they watched the hearing, they were given some hope. They wanted to be fair, and they wanted due process, and I get that, but they also saw the blind partisanship of Washington and its crushing weight.

For many of us, this nomination process does not look like it is going to end the way we want it to, but Dr. Ford opened a window on sexual assault that may never going to be closed. Anyone who works here knows they have heard stories, and people tell stories they had never told before. Then there are those who want to see change in government. Well, they opened a door that will never close, and we welcome them. We need some new people around here.

So I am going to end with a quote from a song I listened to this morning, and it is a Minnesotan—Bob Dylan. He was born in Duluth, and he grew up very close to where my dad grew up on the Iron Range of Minnesota. These are the last words of his song:

As the present now will later be past, the one rapidity these things will take place. The days will pass, and the years will later be last, for the times they are a changing.

And they are changing. People’s reactions to what happened this week and their focus on government and their focus on making things better—that is changing.

As I said last Friday at the committee hearing, the Constitution does not say “we the ruling party”; the Constitution says “we the People.” And the American people responded like never before. They stood up for something real, for something larger than themselves, for the hope of tomorrow. So that is how we the people prevail, because the times, they are a changing.

Thank you, Mr. President.

I yield the floor.

The PRESIDING OFFICER (Mr. Cassidy). The Senator from Alabama.

JONES. Mr. President, at least of all, let me thank my colleague and friend, Senator Klobuchar, for those sober words. As former prosecutors, we share a lot of the same bonds and knowledge, and we come to this in different ways sometimes than our colleagues. She expressed so many sentiments that I am going to try—and not as eloquently as she—to express today. So I say thank you for those comments.

I come to the floor today both as a member of this body and as a longtime admirer and student of the Senate to offer my perspective on the situation in which this distinguished body finds itself today.

I am deeply disappointed and concerned by the process, the posturing, and the partisanship that have degraded what should be one of the most serious, deliberate, and thoughtful decisions we in the Senate are entrusted to make.

Over the course of my almost 40-year career as a trial lawyer, I have represented just about every kind of client you can imagine, from the indigent to the CEO, major corporations and small business owners, individuals charged with serious crimes and those charged with petty offenses. I have also had the incredible honor of serving in the Department of Justice and representing the United States of America. Every one of my clients and every one of those who were on the other side of the litigation in which I was engaged expected and deserved fair, impartial treatment in our courts, and rightly so. But from the moment Justice Kennedy...
announced his retirement, the conversation about his replacement seems to have rarely been about fairness and impartiality; instead, it has been about power and politics.

The Supreme Court nomination almost immediately turned into a divisive political campaign, with millions of dollars being spent to sway Senators on both sides of the aisle, including me. In the partisan-fueled tirade last week, Judge Kavanaugh lashed out at the so-called liberal groups who spent so much money attacking his nomination, but he never acknowledged and others in this body have never acknowledged that conservative groups have spent a like amount of money, if not more, promoting Judge Kavanaugh.

I want to make my position clear today. I think that this kind of political campaign for a seat on the Supreme Court of the United States—a political campaign run by either political party—should be condemned as completely contrary to the independence of the judicial branch of our government.

Throughout this nomination process, I have repeatedly expressed my concerns about the way it has been conducted. It was flawed from the beginning, and it will be incomplete at the end because of a needless rush to a confirmation. From the beginning, I have done my best, the best that I know how, in my experience, to exercise my constitutional duty—my duty of advice and consent—in a fair and impartial manner, putting aside the political considerations that were being thrown at me from every angle.

You know, I have often said in the last few months that it seems that for those who supported Judge Kavanaugh’s nomination, if I voted to oppose, I would be seen as nothing but a puppet for my party. On the other hand, for those people who opposed Judge Kavanaugh, I would be seen as bending to a political party to try to get reelected in a conservative State. Neither of those is true.

My staff and I have dedicated an incredible amount of time almost every single day since July 10 to reading Judge Kavanaugh’s opinions, his speeches, and his articles; reviewing documents at the time he worked at the White House; and past those documents we were able to get ahold of; watching his Senate hearing testimony and his television appearances; meeting with my constituents and advocates; and reading statements and emails both in support of and in opposition to Judge Kavanaugh. This was all done in a very serious effort to give thoughtful and fair consideration to Judge Kavanaugh’s nomination without rushed or preset decisions. The one thing I did not get a chance to do was to meet with Judge Kavanaugh. Judge Kavanaugh and the White House called my office a couple of times early on in the process to try to get a meeting with me, and I told them at that time or my staff told them that my process was to listen and to read, to understand and do my deep dive into his record and to know all that I can know about him. As a lawyer, I wanted to watch that hearing. I wanted to see what would occur at the hearing and how he would answer himself, the questions that he answered and the questions he avoided, so that when I did meet with him following that hearing, it would be meaningful. It would not be a meet-and-greet, like so many of us have in this body, but a meaningful meeting.

As soon as Chairman Grassley called for the hearing shortly after Labor Day, we were called in August, my staff started calling the White House to get a meeting. We were told that they would still want a meeting, but we continued to get rebuffed. We never got that meeting. We continued to call after the hearing, and we continued to call at least until the time that Dr. Ford’s allegations were made public, and at that point, we knew a meeting was probably not likely to happen.

So for all of those detractors who say that I didn’t try to get a meeting and that I didn’t have the time, I did my best to follow the process of deliberation that I felt appropriate in my due process sense. It was meaningful, and it never happened, through no fault of mine or my staff.

After all that, we find ourselves in this moment of significance, where we as a body have an opportunity to send a loud and clear message to women and men throughout this country.

As I previously have said, I believe Dr. Ford made an incredibly brave decision to come forward publicly and to testify to the full Senate Judiciary Committee. It was hard to do, knowing that I felt appropriate in my due process sense that I didn’t have the time, I did my best to follow the process of deliberation that I felt appropriate in my due process sense. It was meaningful, and it never happened, through no fault of mine or my staff.

After all that, we find ourselves in this moment of significance, where we as a body have an opportunity to send a loud and clear message to women and men throughout this country.

We have heard time and again that victims must be heard—time and again. So often we have heard that in the last 2 weeks, that victims must be heard, but the message from the President of the United States and those who have surrounded him is, yes, let them be heard. Just don’t listen. Just don’t listen to them.

Unfortunately, that message isn’t new. The President used his platform to try to intimidate survivors into staying quiet and hiding their pain from the world, but I am going to find that while he is focused on stirring up his political base with misogynistic comments, women around this country are rising up, and they are gaining their strength. They are finding their foothold. They are finding their voices in an effort to expose what for far too long has been swept under the carpet.

Regardless of the vote tomorrow, we cannot and will not ignore where we are in this moment of history. This is a movement that will not be quieted, nor should it be quieted.

For Judge Kavanaugh’s part, I was very disappointed in his testimony last week. If the incident did not happen, then I understand full well his frustration and his anger. I get it. Any man would be. It is understandable. Both he and Dr. Ford have endured the ugliness of our society. But, in my view, he simply went too far by leveling unnecessary and inappropriate partisan attacks and accusations, demonstrating a temperament that is unbecoming a sitting judge, much less a Supreme

In last week’s public hearing, I found Dr. Ford to be a compelling and credible witness. Yes, there were gaps in her testimony. There always are. There are always gaps and lapses of certain memories in situations like these. Those who have worked with victims of assault know that the most traumatic details are seared into memories, while extraneous facts may fade over time. Reactions of the women, when they see their perpetrators, are different, depending on the circumstances, but they never forget the pain. They never forget the pain of what happened to them rather than relive it or face condemnation or retribution, they simply keep it to themselves and go on day after day after day.

If you watched our President this past week at his political rallies, you can understand exactly why these women are afraid to speak out. I am actually appalled at the President’s attacks on Dr. Blasey Ford just days after he called her a credible witness—just days after so many in this body called her a credible and compelling witness. His message was simply this: Nothing. Nothing. Nothing. Nothing. Don’t ruin this man’s life. Let’s continue to stoke the political fires surrounding his nomination.

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Court nominee. His testimony ran completely counter to the image he attempted to portray in his earlier hearing, in all of his interviews on television, and in the photo opportunities with the various Senators.

In this, this was incredibly important to me because I had watched it for some time—in simply refusing to acknowledge the need for further investigation, for a further review of his record, as Senator KLOBUCHAR discussed a few moments ago, by failing to acknowledge the need for further review and investigation into these allegations, he demonstrated anything but the independence necessary for our judiciary. Instead, he has bowed to the White House and to the majority of the Judiciary Committee to plow through this nomination process without a full review of his record and without a full, fair, and complete investigation into the very serious and credible allegations made by Ford.

I am certainly not alone in my views. It is not just people in the Democratic Party or Senators on my side of the aisle. At last count, I saw that there are some 3,000 law professors, about 40 of which are at Yale Law School, from which Judge Kavanaugh graduated. Those law professors have called for his nomination to be either withdrawn or rejected. Religious organizations, including the editors of the Jesuit Review, have done the same. I am told that that morning the American Bar Association—the gold standard of review for judicial nominations—has notified the Judiciary Committee that they are reopening their evaluation of Judge Kavanaugh’s character and fitness based on what they witnessed in the testimony last week. That is a significant development that just occurred this morning shortly before our vote to proceed.

Even before the recent serious allegations of sexual assault, I called for a pause so that we could get the documents that are needed, including those that Chairman GRASSLEY himself had requested. The National Archives reported that due to the volume, even producing those documents on a rolling basis would not take place until sometime this month, in October. Well, it is October now, and although we don’t have those documents, we have had two hearings and now are scheduled to vote in the next few days. Of those documents that we have had produced for review were withheld after being screened by a lawyer representing a number of people under investigation or at least witnesses in the investigation by Special Counsel Mueller, which raises serious questions as to what documents we got, which ones were being held, and why they were being held.

Despite the lack of documents, the Judiciary Committee forged ahead and conducted its hearings. Before a vote was taken, Dr. Blasey Ford courageously came forward with her very serious allegations regarding a sexual assault that occurred when she and Judge Kavanaugh were in high school. Again, not for the first time, I and others called for a pause to allow for further investigation, to update the background check that every nominee goes through. That call was rebuffed for some period of time.

Finally, faced with mounting public pressure, the Judiciary Committee agreed to a second hearing. Both the committee and the White House subsequently agreed to a supplemental background investigation to be conducted by the FBI. As it turned out, my colleague Senator FLAKE felt compelled to call for such an investigation on the morning of the vote, which delayed the confirmation process for another week.

While I am certainly grateful and glad that the chairman and the majority leader and the President agreed to delay the vote in order to allow for an FBI investigation, I believe the investigation was far too limited to have any real use, and no further hearings would ever be held.

In my career of almost 40 years as a lawyer, I have examined many FBI reports, and I have examined many background checks. In my review of what happened as a result of Senator FLAKE’s request, the FBI was simply not allowed to do what it does best, which is to follow the evidence and the leads. In this case, we put the proverbial cart before the horse. The investigation should have taken place before the hearing so that the Senators on the Judiciary Committee could have had the benefit of all the information they needed when questioning witnesses and evaluating credibility, which is where this is coming down.

I believe that in cases like this, the witnesses should be compelled by subpoena—not just Dr. Ford, not just Judge Kavanaugh, but other witnesses who are named should have been compelled to come before the committee. In fact, we agreed to have testimony, whether in the public hearing or by deposition—procedures that have been invoked by this body on many occasions.

This leads me to another more procedural point. Many of those who want to press forward with this nomination have been invoking the presumption of innocence, and I understand that. The presumption of innocence, however, is afforded to those in this country in our criminal justice system. It is afforded to those who are accused of criminal activity, and it requires the government to prove, to rebut that presumption. In other words, that presumption stands between someone accused of a crime and their going to prison and having their liberty taken away from them.

They have now said that the presumption of innocence should be applied to judicial nominations. But the presumption applies in a court before we can deprive someone of their liberty, incarcerate them. It is not necessarily applicable when we are simply looking to provide someone with a life-time appointment to the judiciary. The presumption of innocence for a nominee would, in effect, turn into a presumption of confirmability that I do not believe is called for in the Constitution.

I certainly would agree, however, that given the most recent circumstances, we, as a body, need to establish some type of standard, some guidelines for our nominees so that this doesn’t happen again.

I learned from one of my most influential mentors, the late Senator Howell Heflin, a former chief justice of the Alabama Supreme Court. Judge Heflin often talked about the Supreme Court as the “People’s Court.” Every day, he said, the Supreme Court of the United States deals with real people, their basic human rights and liberties. It has a direct impact on the daily lives of every American, and the people who serve on the Court should be held to a higher standard than the average American if it means the Supreme Court operates with eight members for a period of time. That is OK. I went to the arguments just the other day, and they got along just fine, listening to the arguments that were heard that day.

The American people are understandably disgusted by the way this has been handled. They are disgusted with people on both sides of the aisle, and they were disgusted even before these allegations came to light. They have reason to have a certain mistrust in an independent judiciary now more than ever, with a Supreme Court that will be so divided and appears to be so partisan. There will forever be a cloud over this nomination and this nomination process, regardless of the outcome of tomorrow’s vote.

Many also have reason to doubt the integrity of this body for the way this has been handled. When facing difficult decisions, I often reflect on what I learned from one of my most influential mentors, the late Senator Howell Heflin, a former chief justice of the Alabama Supreme Court. Judge Heflin often talked about the Supreme Court as the “People’s Court.” Every day, he said, the Supreme Court of the United States deals with real people, their basic human rights and liberties. It has a direct impact on the daily lives of every American, and the people who serve on the Court should be held to a higher standard than the average American if it means the Supreme Court operates with eight members for a period of time. That is OK. I went to the arguments just the other day, and they got along just fine, listening to the arguments that were heard that day.

I therefore conclude that in this case we can deprive someone of their liberty, incarcerate them. It is not necessarily applicable when we are simply looking to provide someone with a life-time appointment to the judiciary. The presumption of innocence for a nominee would, in effect, turn into a presumption of confirmability that I do not believe is called for in the Constitution.

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about this nominee. People across this country have serious doubts about this nominee. To quote the late Senator Robert Byrd:

No individual has a particular right to a Supreme Court seat. If we are going to give the benefit of the doubt, let us give it to the Court. Let us give it to the country.

It was my hope that this body would wind up being on the right side of history with this vote and not a political side of history. My appearance would have been for the President to send us a new, consensus nominee, much as President Reagan did many years ago when he nominated Justice Kennedy. Send us another nominee and give the Senate a second chance to act as a uniter, not a divider.

It now appears, however, that we will need to find another way that we, as a body—which has been described in the past as the most deliberative body in the world; many would say the description is too must—must find another way to show the American people that we can uphold the lofty ideals we have ascribed to.

Tomorrow, this nomination process will go on in its course, but our work for our constituents and all of those sitting in the Galleries tonight and all of those watching across this country who will see and follow this vote tomorrow—our work for our constituents will go on. Our work for this country will go on. Regardless of this vote tomorrow, it will go on, and we, as a body, have to get to a place where we look forward, not backward.

I am going to know in my heart that we can restore the Senate to the place it was when I worked here as a young lawyer, a place where compromise meant progress, not a lost battle. Think about that—compromise meant progress, not a lost battle or war. We must set aside the divisiveness, shoulder our responsibilities, and work together. We must do so for the good of this body, for the sake of the country that we all love.

Ms. MURKOWSKI. Mr. President, I come to the floor this evening to share my thoughts on what has been an extraordinarily long, difficult, and truly painful process.

As we took up the cloture motion on the nomination of Brett Kavanaugh to the U.S. Supreme Court, the process that has led to this vote today has been, in my view, a horrible process, a gut-wrenching process, where good people—good people—have been needlessly hurt, where a woman who never sought the public spotlight was, I think, cruelly and gratuitously brought into our deliberations—where children were harmed, their families have, too, and we need to, we must, do better by them. We must do better as a legislative branch. We have an obligation, a moral obligation, to do better than this.

I have spent more time evaluating and considering the nomination of Judge Kavanaugh than I have of any of the previous nominations to the U.S. Supreme Court that I have been privileged to review. I have had the opportunity to examine this, and I took my time. I was deliberate; I was thoughtful. Some accused me of being too deliberate, too thoughtful, taking too much time, but this is important to me. It should be important to all of us. I studied the record. I sat with Judge Kavanaugh for a lengthy period of time—about an hour and a half—and asked discussions and I, and then I did more due diligence, reviewed the cases, and did my homework, listened to the concerns that were raised by many in my State on issues that were all over the board, whether it was a woman, whether it was the Affordable Care Act, whether it was Executive authority, deference to the agencies, Native issues. I took considerable time.

When the hearings came, not being there on the Judiciary Committee, I paid attention. I followed the testimony of the judge, the very critical questioning from many of my colleagues on the other side of the aisle, and then at the end of the process, or, seemingly, what we believed to be the end of the process—there were more questions. I went back to Judge Kavanaugh and had a good conversation with him.

Then the allegations that we have seen discussed and asked discussions trying to understand more about came forward, and we all moved from focusing on the issues to truly a discussion that none of us ever thought we would be having when it came to a confirmation process for someone to the highest Court in the land.

There was more work to be done. I was one who wanted to make sure there was a process going forward, and when there were more questions that were raised after the initial process, I was one who joined in asking that the FBI step in and do further review.

I have been engaged in this lengthy and deliberative process for months and months, working toward, looking toward, supporting Judge Kavanaugh in his nomination as I looked to that record. But we know that in our role of advice and consent, it is not just the record itself. There is more that is attached to it. In the State of Alaska, nominations for judges go forward, you rate them not only on their professional competence—which they have demonstrated through their record— but also on matters of temperament and demeanor, which are very, very important.

So we moved—we shifted—that conversation from so many of the issues that I had been focused on to other areas that are also important in evaluating a nominee for the courts. But I listened very carefully to the remarks, the strong, well-articulated remarks, of my colleague and my friend who sits next to me here, and I found that I agreed with many of the points that she raised on the floor earlier.

I do not think that Judge Kavanaugh will be a vote to overturn Roe v. Wade, and I join with that. I do not think that protections for those with preexisting conditions will be at risk.

I also do not think that he will be a threat to Alaska Natives. This was an issue that certainly had been raised, but I had an extended conversation with the judge on just these issues, and I believe that he recognizes, as he told me, that Alaska Natives are not in a majority status as on Native Hawaiians. Alaskan Tribes are included on the list of federally recognized tribes, and the fact remains that Native Hawaiians are not. This is a distinction; this is a difference.

I also believe in this body who has said that I would like to see Native Hawaiians there, and I worked with my friend Senator Akaka when he was in this body to help advance that; I supported that. But the fact remains that the constitutional status of Native Hawaiians and the Indian Commerce Clause are simply not at play with this nomination. I don’t believe that. So the question is fairly asked: Do you think he is going to be there on issues that matter to Alaskans, that you have taken strong positions on?

The reason I could not support Judge Kavanaugh in this cloture motion this afternoon is that in my role, in my role in this body, to support a nominee for the courts. But I have spent more time evaluating him. I think that he recognizes, as he told me, that Alaska Natives are not in a minority status as on Native Hawaiians. Alaskan Tribes are included on the list of federally recognized tribes, and the fact remains that Native Hawaiians are not. This is a distinction; this is a difference.

The Code of Judicial Conduct rule 1.2—this is one that many, many people in this body know—states that a "judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary and shall avoid impropriety and the appearance of impropriety.

I took strong positions on that. I think that he will be there on issues that matter to Alaskans; that you have taken strong positions on. It was my hope that this body would get to a place where we, as a body, have to get to a place where we, as a body, have to get to a place where we can uphold the lofty ideals we have ascribed to.

I am one in this body who has said—political process, politicized process, that is what we have seen. We have seen a political process, political process, political process, political process, political process, even when one side of this Chamber is absolutely dead set on defeating his nomination from the very
get-go, before he was even named, even in these situations, the standard is that a judge must act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary and avoid impropriety and the appearance of impropriety.

After the hearing that we all watched last week, last Thursday, it became clear to me—or was becoming clearer—that the appearance of impropriety has become unavoidable.

I have been deliberating, agonizing, about what is fair. Is this too unfair a burden to place on somebody who is dealing with the worst, the most horrific, allegations that go to your integrity, that go to everything you are?

I think we all struggle with how we would respond, but I am reminded that there are only nine seats on the Bench of the highest Court in the land, and these seats are occupied by these men and women for their lifetime. So those who lose these seats must meet the highest standards in all respects at all times, and that is hard.

We are in a time when many in this country have lost faith in the Executive branch, and it is not just with this administration. I saw much of that in the last as well.

Here in Congress, many around the country have just given up on us. They have completely said: We have had enough. But I maintain that the public still has hope that that public confidence that must be seen is a recognition by both sides that we must do more to protect and prevent sex assault and help the victims of these assaults.

There has been a national discussion. There has been an outpouring of discussions that we need to have as a country.

We need to bring these survivors to a place where they feel they can heal, but until they come out of the shadows and do so without shame, it is pretty hard to heal.

I have met with so many survivors, and I know that every single one of us has. I have heard from colleagues as they shared with me that they have been truly surprised—many stunned—by what they are learning is the prevalence of this, unfortunately, in our society today.

In Alaska and, as the President of the Senate, the levels of sexual assault we see within our Native American and Alaskan Native communities are incredibly devastating. It is not something that we can say we will get to tomorrow. We heard those voices, and I hope that we have all learned something. We owe it to the victims of sexual assault to do more and to do better and to do it now, with them.

I am going to close. I truly hope that we can be at a place where we can move forward in a manner that shows respect for one another, and I hope and I pray—that we don’t find ourselves in this situation again.

But I am worried. I am really worried that this will become the new normal, where we find new and even more creative ways to tear one another down, and good people are just going to say: Forget it. It is not worth it.

I am looking at some of the comments and the statements that are being made about Judge Kavanaugh—my good friend, my dear friend from Maine—the hateful, aggressive, truly, truly awful manner in which so many are acting now. This is not who we are. This is not who we should be. This is not who we are meant to be.

So as we move forward, again, through a very difficult time for this body and for this country, I want to urge us to a place where we are able to engage in that civil discourse that the Senate is supposed to be all about—that we show respect for one another’s views and differences and that when a hard vote is taken, there is a level of respect for the decision that each of us makes.

There is something else that I do hope. Again, I refer to my friend from Maine. I will note that if there has been a silver lining in these bitter weeks—which, quite honestly, remains to be seen—there have seen a recognition by both sides that we must do more to protect and prevent sexual assault and help the victims of these assaults.

There has been a national discussion. There has been an outpouring of discussions, conversations, fears, tears, frustration, and rage. There is an emotion that really has been unleashed in these recent weeks, and these are discussions that we need to have as a country.

We need to bring these survivors to a place where they feel they can heal, but until they come out of the shadows and do so without shame, it is pretty hard to heal.

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She treated every member of the committee on the Republican side and the Democratic side with respect. She extended them grace. She was cross-examined by a prosecutor for the Republicans. She engaged with that prosecutor with directness and honor. She didn’t stretch the truth or try to dodge questions. She spoke honestly and candidly and from her heart.

She shared details that she said had been seared into her memory.

She talked about the narrow set of stairs in that house that she climbed to use the restroom. She talked about being pushed from behind into a bedroom. She talked about the music being turned up louder as she struggled. She talked about Brett Kavanaugh on top of her, hand over her mouth, trying to stop her as she yelled for help. She said she thought she was going to be raped. She said she thought she might be accidentally killed.

There was Mark Judge, a person she identified as being responsible for laughing and mocking. People were laughing and mocking Dr. Ford. The President of the United States, the most powerful person in the country—perhaps the most powerful person in the world—mocked her and got uproarious laughter between the two and their having fun at my expense.”

I believe her. I believe Dr. Ford. I still believe her, and many of my colleagues on both sides of the aisle spoke up, calling laughter a testimonial credible. Many have said they believe her or, at least, that they believe someone assaulted her. They gave credence to the power of that experience—an experience that reflects that of many people who experience trauma. You don’t remember it like a video recording, but there are moments that are seared into your mind. Her experience was consistent with people who have experienced trauma. Even though the Senate hearings didn’t allow her to come in, we all know enough now to know that the way she described her experiences and the things she remembered all spoke to the ability of a courageous American doing their civic duty.

It was surprising that even the President of the United States called her sincere and called her testimony compelling. That was until he stood at a rally and mocked her. The President of the United States called the most powerful person in the country—perhaps the most powerful person in the world—mocked her and got uproarious laughter. The same thing that was seared in her memory: People were laughing at her. The President ignored that in a crowding that callously turned again the focus of laughter and mocking.

To this body that I revere, this body that I love; to my colleagues, whom I respect, on both sides of the aisle; to this body that was designed to be the most deliberative body; to this body that was designed to be thoughtful, to take the time to analyze, the question is this: We heard words about her testimony, but what followed those words? Were they like dust in the wind or were they substantive words that cause us to believe her, admiring and honoring her courage for coming forward? Did we treat her that way?

We didn’t do honor to her words and her courage and the risk she took, then this body and the Judiciary Committee, of which I am a part, would have insisted on a full, fair, thorough, and complete FBI investigation. That is what many witnesses—men who stepped forward—who could have corroborated her testimony and could have contradicted Judge Kavanaugh’s testimony. This body would have insisted that we take the time to do a thorough investigation because it is not just about Dr. Ford. There are millions of survivors, women and men, watching how this body will deal with the seriousness of sexual assault.

Will we listen to survivors? Will we honor them enough to fully investigate their charges? These are not just charges alone. These are charges against someone who is up for one of the most important positions in our Nation—a lifetime appointment to the Supreme Court.

No, they did not honor them. If they had honored them, they would have insisted on a full FBI investigation. Indeed, when another survivor, Ms. Ramirez, came forward, talking about her incident during college days—when Judge Kavanaugh diminished her drinking, evasively talked about his drinking—classmate after classmate, after his testimony, came forward and said he was lying and he was misleading. Republican and Democratic classmates were offended by the way he talked about his behavior. It was in those college days that Ms. Ramirez said Judge Kavanaugh exposed himself to her. She identified 20 witnesses that were either eyewitnesses or could have corroborated the evidence.

She talked in detail about who could have substantiated her claims about the kind of drunkenness that we heard in public statements from his friends, which seemed consistent and seemed to implicate the truthfulness of someone who was going to the highest Court. Did we honor that woman? Did we honor that survivor by doing an investigation, by going to and at least talking to the 20 people that she had put forward—another woman who is being mocked, another woman who is a victim of hate being spewed at her, belittling her? Did we honor a survivor and simply listen and interview the 20 people that she would have prevailed to the facts of her allegation?

No, we didn’t. We didn’t honor a survivor. We didn’t listen to a survivor. We didn’t take the time in the world’s most deliberative body to listen to a woman’s claims and take the steps to see if they were true or not.

This is what to me is so deeply offensive. It is that you have two women who come forward making claims that even the President said, at first, seemed sincere and compelling, but we didn’t take the next step to fully investigate their claims so that we could know what the facts are.

Dr. Ford said it is nothing that the American public deserves. An investigation that gets to the truth is something that the American public deserves, that Dr. Ford deserves, that Ms. Ramirez deserves, and that even Brett Kavanaugh deserves; let the truth come out. But this FBI investigation was part of a larger sham.

People on the right, colleagues of mine, accused Dr. Ford, with her sincerity testimony—they accused her of being part of a coordinated, partisan smear campaign. Think about that. She told her husband in 2012 about the attack. Was she somehow coordinating with Democrats back in 2012 before Judge Kavanaugh was anywhere near being on the Supreme Court? No. She talked about being a teenager while she was trapped in the room with two drunken boys. That was not a coordinated, partisan attack back in 2013.

In 2016, she told another friend she had been sexually assaulted in high school by someone who went on to become a Federal judge. In 2017, she told yet another friend about the assault. She told each of these three friends that a person who had assaulted her had become a Federal judge. This does not sound like some kind of partisan smear tactics; this sounds like a survivor who has been telling the truth for years about Brett Kavanaugh.

The least this body could do is pause for a moment and not do a sham FBI investigation where they talk to just a handful of people but do a full FBI investigation, because these charges are serious.

Meanwhile, millions of Americans—survivors themselves and others—are watching to see how we deal with something that the Centers for Disease Control says happens to one out of every three women in America. How do we deal with those charges? It happens to one out of every six men in America. How do we deal with those charges? When a survivor comes forward, how does the world’s most deliberative body honor that?

What are we seeing here is a coordinated, partisan effort to put blinders on, to not seek the truth, and to rush this to tomorrow to a final vote.

Long before Dr. Ford’s bravery, I was one of those Democrats, one of those Senators, one of those Americans who expressed their sincere and deeply held concerns about Judge Kavanaugh’s
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record. I said early that I would not support him. I opposed his nomination. Then, I opposed his nomination because I was deeply concerned that we have a President of the United States who is the subject of a criminal investigation, and that President picked the one person from the Heritage Foundation and Federalist Society list who had a view of Presidential power that I believed would give that President immunity should issues relating to that investigation come before the Supreme Court.

I am deeply troubled about his views on women’s right to make their own medical decisions. I am troubled about his views on workers’ rights to organize, on voting rights, on civil rights, and on the principle of equal justice under the law. I am concerned about things that he said about foreign dark money influencing our campaigns. His record demonstrated very clearly to me that, if confirmed to the Supreme Court, Judge Kavanaugh would continue to prioritize the interests of the powerful few over the rights of everyday Americans and that we would see an erosion of individual rights in this country. But I still believed we needed to have a fair and thorough vetting of this nominee consistent with our constitutional obligations and that it would eventually get to the floor and we would have our vote.

In the many weeks leading up to Judge Kavanaugh’s hearing before the Judiciary Committee, many Democratic colleagues and I pushed for the same kind of transparency and a process. Even if we knew where we were going to go, the process should have been fair. The process should have been bipartisan.

The Judiciary Committee has a long history of the majority and minority working together to set ground rules for the committee process. I watched the Judiciary Committee for many years before I came to this body. It was the No. 1 committee I wanted to be on 5 years ago when I came to the Senate. There are legends still on that committee, statesmen on both sides of the aisle, men I respect. But this process from the very beginning has been a sham. It has undermined the ability of Senators to perform our constitutional duty to advise and consent on the nominee because of the withholding of critical information that I believe is absolutely necessary to evaluate someone.

This constitutional duty means that we should have a process that allows transparency into that person’s record. The public has a right to know who the individual is that we are voting on tomorrow, what their record is. The public has a right to know. Why would we hide their record from public scrutiny?

Step 1 of the sham was the Republican majority’s refusal to request any records from Judge Kavanaugh’s time as Staff Secretary to President George Bush. Zero records were requested whatsoever. Brett Kavanaugh himself held that position for 3 years. He called those 3 years of his year the “most interesting and most formative years” of his career, the most interesting and formative in shaping his approach to serving as a judge and during which he worked on every possible type of everything from national security policy to a proposed constitutional ban on same-sex marriages. So many critical issues that are germane to his job and his experience and the formation of his ideas—so many that when I raised those times, but they said we could see nothing from his record, even things that are not classified, not national security, things that would give us a better window into who he is.

Step 2 of the sham was to create a wholly unaccountable process for the fraction of the White House records that the Republican majority did request from Kavanaugh’s time in the White House. This process was essentially made up. It had no reflection on the history of his body of work—no reflection at all.

What happened was they put it into place a practice where a private lawyer, Bill Burck, would be the legal shill to be the expert, to determine what was “committee confidential” in order to hide them from the public because they might harm the nomination. Imagine this: With the public having a right to know, the public needing transparency, now they are hiding yet again, under the nebulous constitutional privilege. As a member of this committee, I was not able to see critical documents. They withheld 10,020 pages from the committee altogether, threatening to invoke some constitutional privilege. As a result, today, just hours before the vote on final advice and consent, 90 percent of Kavanaugh’s record from the Bush White House has been released to Senators. We are making a decision knowing only 7 percent of his work product. What about basic workers’ rights, LGBTQ rights, voting rights, and affordable healthcare are all in the balance, we know so little about this candidate. Because of all that is at stake, several colleagues and I made a decision to release those documents, but it was still just a fraction.

Meanwhile, Judge Kavanaugh’s initial testimony before the Judiciary Committee raised my concern because he continued to evade questions, refused to answer our questions.

After Dr. Blasey Ford came forward, he gave his testimony, and I was stunned. You see, at Judge Kavanaugh’s initial hearing in early September, he testified that he wanted to stay “three zip codes away from politics.” He insisted that the Supreme Court must never—I emphasize that word—never be viewed as a partisan institution. But when before the Judiciary Committee again last week, Judge Kavanaugh jettisoned his own advice, his own belief in judicial temperament, his own belief in how a judge should behave and be nonpartisan, and he leveled blatantly political accusations. He said that the allegations against him were nothing more than “an orchestrated political hit,” even speculating that they were motivated by “a revenge on behalf of the Clintons.” He cast blame on outside, left-wing opposition groups. He told the Democrats who were questioning him that the hearings had been “an embarrassment.” He was belligerent. He was evasive. At times, he was outright deceptive, and at times, he was deeply disrespectful to my Senate colleagues.

He displayed the type of fierce partisanship that no American should ever want to see in a Federal judge. He went on to say almost as a menacing threat that “what goes around, comes around.”

Is this someone who can sit on the highest Court in the land, where political issues might come before him? Has he not already revealed himself to be deeply partisan? Has he not already revealed himself to have a deep-seeded anger toward people of certain political stripe? Is this someone who shows the kind of judicial temperament, not for a district court, not for a circuit court, but for the highest Court in the land, the Court of last resort? He told us he didn’t say all of this in response to questions. These weren’t off-the-cuff comments. This was part of his prepared testimony. Those quotes were in his prepared testimony.

In another instance during his testimony, he warned that “this is a circus.” He said, “The consequences will extend long past my nomination. The consequences will be with us for decades.”

That is how I want to end. What are the consequences for the sham process, for a sham FBI investigation? What are the consequences in relation to women who came forward before the world’s most deliberative body with credible accusations of sexual assault, of sexual harassment, of sexual violence? What are the consequences to a body that runs a partisan process, that ignores the truth, that shields relevant aspects of his record—90 percent—from the public? What are the consequences to the Senate floor? Nobody knows the truth and ignoring investigating some of the most serious charges that could be leveled against
someone—charges of violence, charges of assault? What are the consequences for us in this body behaving in this way? What are the consequences for Dr. Christine Blasey Ford, who has forever altered her life for her civic duty, for her patriotism, for her love of country? How do we know what this body would do? Hundreds of thousands came forward to march and to protest and to sit in. They didn’t know what this body would do, but they stood anyway and they fought anyway. Sometimes they were beaten. In one case, on a bridge in Alabama, they were beaten and driven off the bridge. And we learned later in the other chamber, John Lewis, had his head split open. They eventually got over that bridge and got to Montgomery, and a man named King gave this speech to those people who were then tempers. And he said, at that time, he gave this speech to those people who wanted to give up. He gave this speech to those people who were hurting. This is what he said:

I know you’re asking today, “How long will it take? Somebody’s asking, “How long will prejudice blind the visions of men, darken their understanding, and drive bright-eyed wisdom from her sacred throne?” Somebody’s asking, “When will wounded justice, lying in prostrate on the streets . . . be lifted from this dust of shame to reign supreme among the children of men?” Somebody’s asking, “Where is the spirit of hope that was plucked from the nocturnal bosom of this lonely night, plucked from the weary soul with chains of fear and the manacles of death? How long will justice be crucified, and truth bear it?”

I come to say to you this afternoon, however difficult the moment, however frustrating the hour, it will not be long, because “truth crushed to the earth will rise again.” How long? Not long, because “no lie can live forever.” How long? Not long, because “you shall reap what you sow.” How long? Not long, because the arc of the moral universe is long, but it bends toward justice.

I say to every American who is hurting tonight, every American who is angry tonight, tomorrow we face a defeat, but we shall not be defeated. Tomorrow, it may seem like a loss, but all hope is not lost.

I have faith in this country. I know it has been a long journey. I know we have suffered much, but I have a faith in this country that is abiding and cannot be destroyed because we are a nation that always finds a way to move forward, to learn, to grow. What is dependent upon us doing that is for us to never ever give up. Never give up.

The days ahead will be difficult. It will not be easy, but I have faith in America. We will learn. We will grow. We will get up and get back together if we never give up.

Tomorrow, the vote may be what it is. The die may be cast, but I will never give up on this country. I will never give up on women. I will never give up on the ideals and principles we all swear an oath to that this Nation, one day, truly will be a nation of liberty and justice for all.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. SANDERS. Mr. President, several Republican colleagues have mentioned that some of us came out in opposition to Judge Kavanaugh almost immediately after he was nominated by the President. Count me in. I was one of those people. I say that without any apologies whatsoever because I was familiar with the record of Brett Kavanaugh on the court where he sits. I was familiar with his record as a member of the Bush administration. I did not have all the information, but I surely had enough to understand that if confirmed and seated, he would absolutely be a member of the hard-right majority, which has done so much harm to the people of this country over the last many years. Right off, within 24 hours, I was opposed, and that was exactly the right decision. That is why tomorrow I will vote against the seating of Judge Kavanaugh.

Many people in this country do not fully appreciate the role the Supreme Court plays in our lives. They know what the President does. Maybe they know what Congress does. They don’t know what the Supreme Court does. I think we as your delegates from South Dakota and Vermont and all over this country, you have people who are saying: What kind of corrupt campaign finance system do we have? It is not just progressives who say that. Conservatives say that. Republicans—some Democrats, mostly Republicans—can spend hundreds and hundreds of millions of dollars to elect candidates who represent their interests. Who thinks that is right? Not many people do.

People do not understand that we are in that position today because of a 5-to-4 Supreme Court decision regarding Citizens United—a decision that is now undermining American democracy. There are those who think Citizens United did not go far enough, that billionaires should be able to give money directly to Senators and Congressmen, many of whom are directly their interests. I have zero doubt that Judge Kavanaugh will continue that majority approach to allowing billionaires to control our political system.

In 1965, an enormously important act was signed by Lyndon Johnson, called the Voting Rights Act. It said that all of our people, regardless of the color of their skin, should have the right to vote. It is not a very radical idea. Yet a few years ago, the majority of the country and Governors were working overtime to figure out how they could suppress the vote, how they could make it easier on themselves to deny people of color, poor people, and young people, the right to vote. That was a Supreme Court decision.

If you are upset and you are wondering about how in America we have States trying to make it harder for people to vote when your voter turnout
numbers are pretty low compared to the rest of the world, that was a Supreme Court decision. I have zero doubt again, when it comes to protecting our democracy and the rights of people to vote, that Judge Kavanaugh will be on the right side of that issue.

Today, in America we are the only major country on Earth not to guarantee healthcare to all people. The Affordable Care Act was an important step forward. By a 5-to-4 decision, the Supreme Court ruled that expanding Medicaid in a State was optional. Now we had many—I think 17—States that said: No, we are not going to expand Medicaid. Millions of low-income people, children were denied the healthcare this Congress voted to give them. I have zero doubt that Mr. Kavanaugh will continue that effort to make it impossible for us to guarantee healthcare to all of our people.

The Janus decision attacking unions was a 5-to-4 decision; the Muslim travel ban, a 5-to-4 decision. I didn't vote for any of those. I come from a small ER, in expressing what we are hearing from files stolen by Republican staff. We have received comments in our own office. I have zero doubt that Mr. Kavanaugh will continue that effort to make it impossible for us to guarantee healthcare to all of our people.

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and whether or not we are going to have a member on the Supreme Court who, in fact, is honest. It has aroused the American people in understanding that the function of the U.S. Supreme Court is to render justice with impartiality, with justice for all—not to simply rubber-stamp a policy and protect powerful and billionaire campaign contributors.

So I think this whole process has been an enormous learning experience for the American people. While we may lose, I think the end result of what has taken place here—the disgrace of what has taken place here—will reverberate in a very positive way for the American people.

I yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. WHITEHOUSE. Mr. President, as a U.S. Senator and a member of the Judiciary Committee, giving careful consideration to Supreme Court nominations is among the most important responsibilities. These lifetime appointments can change not only the course of the Nation but the course of lives.

I began with deep concerns about Judge Kavanaugh: his unfiltered views of executive power, effectively believing that the President is beyond the law; his refusal to commit to well-established precedents on critical issues, like women's constitutional rights regarding abortion; his affinity for unlimited dark political money and his studied blindness to its harm to our democracy; and his very selection and support by big special interest groups. I had significant concerns about his truthfulness and temperament—concerns proven more than justified over the course of these hearings.

Another warning sign was flashing. Senate Republicans were stopping at nothing to get this nominee through. Why? It made us wonder. Why?

Believe all of the shattered norms and traditions of the Senate, behind all of the hidden documents and unanswered questions, stands the looming question: Why?

In my opening comments in the committee, I chronicled a pattern under Chief Justice Roberts, an unpleasant pattern of 5-to-4 partisan rulings for the big corporate and special interests that are the lifeblood of the Republican Party—not 3 or 4 times, not even a dozen times, not even 100 times—73 times—73 times and all 5-to-4 partisan decisions, all wins for the big corporate and special interests that are the lifeblood of the Republican party—73 times.

The pattern is clear in these 5-to-4 partisan decisions. Every time big corporate and Republican special interests are involved, the big interest wins—every time, 73 to 0.

On its way to delivering these Republican interests their victories, the Roberts Court—so I should say the five of them who do this; call it the “Roberts Five”—leaves a trail—a trail of wrecked precedents, a trail of sketchy, nonfactual fact-finding, a trail of long-standing statutes ignored or rewritten, and a trail of supposedly conservative judicial principles, like modesty, deference, originalism, and stare decisis, all violated. The pattern of these 73 partisan “Roberts Five” decisions explained why Republican interests want Kavanaugh on the Court so badly and why Republicans shielded so much Senate precedent to shove him through.

The big Republican interests want to be able to pull 5-to-4 on the Roberts Court as if it were a legislature they controlled. What are the areas of law where the big Republican corporate and special interests have a stake where the Roberts Five delivered for those big Republican Party stakeholders?

Well, first, they helped Republicans to gerrymander elections in Vieth v. Jubelirer, 5 to 4. This was a big deal. It let Republicans gerrymander their way to control of Congress, to control of the Senate. It was a year and a half after Republicans lost by a million votes. They lost the House by a million votes and won it by gerrymandering.

The Roberts Five also helped to unlash big-money political influence, giving big interests unlimited power to buy elections and threaten and bully Congress, McCutcheon and Bullock and the infamous, grotesque 5-to-4 Citizens United decision were their tools.

This is the sockdolager, the really big deal, by the way. There is a very small number of big interests that have unlimited money to spend and a business strategy to spend it to influence politics. It is not a big group, but it is a powerful group, and it is the heart of the Republican funding machine. These few but big Republican interests were given unprecedented political artillery by the Roberts Five, at least unprecedented since Teddy Roosevelt cleaned house over a century ago.

Our politics since Citizens United has been corrupted, but those big influences are, oh, so happy. What else do the big influences want to get out of courtrooms?

Big special interests that can muscle their way around Congress and capture executive agencies hate courtrooms. There is this annoying thing in courtrooms of being treated equally with regular people. There is this annoying thing in courtrooms about having to turn in your actual documents. There is this annoying thing in courtrooms about having to tell the truth. So, bingo, the Roberts Five protected corporations from group class-action lawsuits—Walmart v. Dukes, 5 to 4; Comcast, 5 to 4; Epic Systems, 5 to 4—and helped corporations to steer customers and workers away from courtrooms and into corporate friendly mandatory arbitration—Concepcion, Italian Colors, and Rent-a-Center, all 5 to 4. With the hands of the Roberts Five.

What else? Of course, to bust unions, a perennial Big Business special interest classic, kind of a golden oldie for big Republican influencers: Harris v. Quinn, 5 to 4; Janus v. AFSCME, 5 to 4.

Behind all of the shattered norms of anti-choice, pro-gun, religious-right sentiments can change not only the course of precedent and principle to get there.

The list goes on. It totals 73 partisan 5-to-4 decisions under Chief Justice Roberts, giving big interests more power to influence Republican interests. It is an indelible pattern.

Although the American people might not be keeping exact score—they might not know that the number is 73—they see the results. When the Roberts Five or the Roberts Five plus one are on the court, the big Republican corporate interests want to be able to pull 5-to-4 on the Roberts Court. And they can do this. The Senate Republicans are stopping at nothing to get this nominee through.

How do I know this? I know this because Kavanaugh’s record tells me. That is why he is the nominee, after all. That is the why. He has been signaling with his speeches to the Federalist Society, saying he has the human record for speeches to the Federalist Society, signaling that he is their guy.

And he has been signaling with his record as a judge on the DC Circuit Court of Appeals in the most controversial and salient civil cases, those decided by bare 2-to-1 majorities. When Kavanaugh was in the majority with another Republican-appointed judge, he voted to advance the far-right corporate interests 50 percent of the time. That is almost a perfect match for the Roberts Five majority rulings in 5-to-4 cases where these conservative groups show up.

The Roberts Five gives conservative groups a 92 percent win rate. Kavanaugh gives conservative groups a 91 percent win rate. No wonder he is their guy.

Ninety-one percent—remember that number.

Kavanaugh reliably voted for polluters and for dark money and for corporate interests with a healthy dollop of anti-choice, pro-gun, religious-right
It shows where we are in this country and how politics are driven by money. The multimillion-dollar scorched-earth war waged by dark money interests to prevent Kavanaugh from getting a lifetime seat in the judiciary is one of the worst examples of the use of the so-called amicus brief, where big special interests fund amicus briefs to intervene in cases to influence court outcomes. Kavanaugh's 91-percent club and the Federalist Society architect of the dark money interests was raw, undisguised, naked, and conspiratorial. The overlap between the groups in the multimillion-dollar scorched-earth war waged by dark money interests and the conservative groups like the Judicial Crisis Network is funded by big dark money interests.

The NRA poured its own millions into campaigning for Kavanaugh. They promised NRA members that Kavanaugh would break the tie. They are 91 percent sure. In the face of all this, Kavanaugh feigned impartiality, but then came the "tell." When Kavanaugh returned to the Judiciary Committee to defend himself from allegations of sex assault, his veneer of impartiality was pulled away, and we saw—America saw—the fierce and rabid conspiracy-mongering partisan within. His performance was recently described by a right-of-center columnist as his "par-tisan, unhinged diatribe and non-judicial demeanor."

Mr. President, I ask unanimous consent that the article from which I am quoting be appended to the end of my remarks.

(Mr. LANKFORD assumed the Chair.)

He even blamed Bill and Hillary Clinton—seriously. It shows where we are in this country and how this display was not by itself disqualifying. This was reassuring. This was great stuff. It just confirmed what they knew: Judge 91 percent would be their boy. The Roberts Five would get back in the saddle, and Kavanaugh would get 73 more 5-to-4 partisan victories.

But that moment gave the rest of the country the opportunity to take true measure of a man who claims he is impartial—a man who asks the Senate to grant him a lifetime seat in judgment of others and claims he will judge fairly—fat chance.

One long-time observer of the judiciary who was an early supporter of Kavanaugh recently withdrew his support. He wrote in the Atlantic magazine:

I cannot condone the partisanship which was raw, undisguised, naked, and conspiratorial from someone who asks for public faith as a dispassionate and impartial judicial actor. His performance was wholly inconsistent with the conduct we should expect from a member of the judiciary.

Extraordinarily, even former Supreme Court Justice Stevens has warned against Kavanaugh for the same reasons. Kavanaugh's raw, undisguised, naked, and conspiratorial partisan screed may have excited the donors, but it did nothing to address the concerns that had prompted the hearing in the first place. So in addition to an epic fail of any reasonable test of impartiality, Judge Kavanaugh still bears credible allegations of sexual assault levied against him.

I will come back to Dr. Blasey Ford. We have a big dispute here, but I do hope that in this Senate we at least can agree on one thing. If Dr. Blasey Ford's testimony was true, I hope we can all agree that Kavanaugh has no business on the Court.

Well, I believed her then, and I believe her now, and I did not find him credible at all. I found him belligerent and aggressive—just as his Yale drinking buddies said he was while drunk in college—and evasive and nonresponsive.

Dr. Ford's allegations were credible enough to get her here before the Senate. Her testimony here was quiet, open, and powerful. She was calm, composed, and vulnerable. Even President Trump called her testimony "credible" and "compelling." So did many of my Republican colleagues.

But then came the smear campaign to discredit and demean her, led by the President's sickenin taunts and mockery in Mississippi. Then came the majority leader's criticisms. He knew it wouldn't do to say outright that she lied, but his every accusation fell to pieces if she was telling the truth. His attacks were a bank shot—a relentless, indirect back-shot smear of Dr. Ford's credibility.

One element of the smear of Dr. Blasey Ford was to describe her testimony as "uncorroborated." We have heard that over and over. The majority leader said that again just this morning—on the floor—uncorroborated. Well, first, that just isn't true. Prior consistent statements are a well-known form of corroboration, and Dr. Ford's prior consistent statements are abundant. It is ironic to have Republicans call for corroboration when Republicans did everything possible to prevent corroboration evidence from coming forward. It is deeply unfair to Dr. Ford to dissipate, prevent, and freeze out corroborating evidence and then call her testimony uncorroborated, which bring us to the, to put it politely, abridged FBI investigation.

First, the FBI background investigation was closed to this new evidence in an unprecedented break from the entire history of background investigations. Then, the investigation was limited by secret orders from the White House we still have not seen.

What do we see? We see the dozens of credible, peremptory, and corroborating witnesses who came forward to say that they couldn't get an interview from the FBI, who were never contacted when they made themselves known to the FBI.

I ask unanimous consent that that two letters from the representatives of Ms. Ramirez and Dr. Ford explaining this be added at the end of my remarks.

Mr. President, many witnesses were fobbed off into a black hole of a tip line from which no tip appears ever to have been pursued, a tip line that was just a dumping ground for unwelcome evidence. As a U.S. attorney, I had received the set of witness summaries we saw, I would have sent the package back for more investigation.

A sincere and thorough investigation designed to get at the truth would have broadly interviewed Kavanaugh and Blasey Ford's known contemporaries to probe their recollections. An investigation to get at the truth would have interviewed the witnesses who corroborated Dr. Blasey Ford's prior consistent statements.

An investigation designed to get at the truth would have tested Kavanaugh's calendar and yearbook entries with contemporaneous witnesses.

An investigation designed to get at the truth would have done interviews of witnesses who corroborate the incident alleged by Ms. Ramirez, like the classmate "100 percent sure" he was told at the time that Kavanaugh had exposed himself to Ramirez.

An investigation designed to get at the truth would have interviewed people who recalled Kavanaugh's propensity to drink to excess and his behavior relevant to these incidents.

An investigation designed to get at the truth would have certainly sought to interview the alleged victims, like Christine Blasey Ford and the accused perpetrator, Brett Kavanaugh.

From public reporting, we know that none of this happened. It is difficult to escape the conclusion that like everything else in this nomination, such as hiding 90 percent of the records from the Bush White House days, putting bogus "Executive Privilege" cover over other documents, and claiming documents are "committee confidential" through a nonexistent process that was
partisan from start to finish—like everything else, it is hard to escape the conclusion that this investigation was designed not to get at the truth, but to step carefully around it.

I am a huge fan of the FBI. I admire that agency immensely. It must have killed the agents to do such a half-baked and incomplete job because of marching orders from the White House. My heart goes out to the experienced FBI professionals hamstrung by the 9/11 White House through this investigation. They know better than anyone the holes in what they did, but in this matter they don’t have the independence of a criminal investigation. The White House is the client. They must do what they are told. This was yet another Trump abuse of a proud American institution.

So here we are.

A defendant in a criminal prosecution enjoys a presumption of innocence until proven guilty. A defendant in a civil trial must be found culpable by a preponderance of the evidence. An executive agency must make decisions based on substantial evidence. The question before us is whether Brett Kavanaugh is not that. He is not close, and Americans know it. But the Republican interest groups don’t care because they see that 91 percent, and they yearn for 73 more 5-to-4 partisan victories.

Service to the law has at its heart an earnest pursuit of the truth. In Kavanaugh’s pursuit of office, truth has too often not been his goal but his casualty. The history of falsehoods is well chronicled: denying that he worked on the nomination of the controversial Judge Pryor, denying that he knew about the 9/11 attacks stolen from Judiciary Committee Democrats when he was at the Bush White House, denying that he was involved in questions about the knowledge of the secret detention program or the warrantless wiretapping program, denying what he himself said about Presidential immunity from investigation, and complicit in the coverup of millions of documents we should have seen, and on and on.

Once Dr. Blasey Ford and then Ms. Ramirez came forward with sexual assault allegations, the lies came fast and furiously—that he knew nothing about the Ramirez allegations until the “New Yorker” story was published; that he had no alcohol problem and never drank to the point of impairment of his memory; that he had unique definitions of phrases in common parlance he related to binge drinking and sex; that he “always treated women with dignity and respect”; and that claiming both girl friends’ “Alumnius” was a sign of affection. As the woman herself retorted: “There is nothing affectionate or respectful in bragging about making sexual conquests that never happened.”

On they came, little lies and big lies about not having connections to get into Yale, about honoring grand jury secrecy while helping the Ken Starr investigation; that he knew individually fatal but together adding up to a pattern of dissembling and prevarication. Even before Kavanaugh was nominated, Leader McConnell smelted trouble and urged the President not to nominate someone he knew was a badly flawed nominee with a lengthy paper trail that would likely disclose how extreme and partisan Judge Kavanaugh truly is.

So much has been left by the wayside in the mad rush to jam this nomination through—documents, facts, Senate rules and traditions, real investigation, simple respect for truth—all smashed up wreckage in the wake of this nomination. But as my fellow New Englander, the late Adlai Stevenson, said: “Facts are stubborn things.” The truth has a way of coming out. The millions of hidden pages of Kavanaugh’s White House records will come out. The nonassertion of Executive privilege will fail or yield to time. The unheard Kavanaugh’s words to the other heart, and others may come forward, which brings me back to the question I began with: Why all the wreckage? Why all the rush? Why all the damage? Why all the violation? The answer is in the numbers: 5 to 4. At the end of the day, we go back to a Supreme Court far too often dancing to the tune of a handful of big Republican special interests. The record of this—the pattern of this—is undeniable. As I said, it will be a disaster for the Court, and Kavanaugh will eagerly contribute to that disaster.

This whole mess has been a dark episode for the U.S. Senate, for the Supreme Court, for our image around the world. But there is one bright jewel that can be picked in the midst of all the filth and wreckage and lies; that is that something very special is happening out there. The testimony of Dr. Christine Blasey Ford of her assault at the hands of Brett Kavanaugh, though studiously ignored by so many Republicans and mocked by the President of the United States, has lit a fire.

Just in my small State of Rhode Island, at least 10 women have written to me to share their own personal stories of survival of sexual assault. Like all of us, I get mail everyday about various policies that are being debated here in the Senate. I am coming up on 12 years, and I have never, never had mail like this. These women have come forward from widely different ages and backgrounds—college students and grandmothers—to tell their stories. Some have held these secrets close for years, even for decades. Several of these stories touched my imagination to share their words—they have allowed me to free on the Senate floor after years of silence. What a privilege it is. What an honor for me to be trusted in this way by these remarkable women.

Some were moved to tell their stories because they see their own fears reflected in Dr. Blasey Ford’s brave testimony. Some fear being believed, the fear of losing the respect of family or of friends. But they knew that Dr. Blasey Ford’s memories were real, and they told me they wanted me to trust the Dr. Blasey Ford. They were real because they knew that their own memories were real, because their own memories of their assaults were seared into their minds. One told me: “I am Dr. Ford…”

A woman wrote to me:

I am sure my rapist hasn’t thought of me since that night 21 years ago either. In fact, he, like Kavanaugh, would likely deny anything had ever happened. But here’s the thing about rape—the victims never forget.

The coverage of Dr. Blasey Ford’s appearance before the Senate for some stirred deep and disquieting emotions. As one woman wrote:

The past few weeks have been doubly difficult with Dr. Ford coming forward and all of the constant news threads and social media threads. I have been triggered with nightmares, fear of being alone and emotionally wrecked. PTSD and triggers are real. No matter how much therapy and time goes by, one small statement or physical interaction can trigger someone who has experienced a traumatic assault.

One letter read:

As a rape survivor (I was 19 years old—I am now 66 years old), I want you to know that this experience does color the rest of a person’s life, informing decisions that you make, where and how you go somewhere, how you raise your children and relate to your husband and all other people. Sometimes through the decades, you think about it consciously and on purpose, and sometimes outside events can bring it back without your willing it to be so.

Dr. Blasey Ford’s quietly compelling testimony has forced our Nation to face up to the tough questions about how women have been treated. The redemption, if there is one, for this fool nomination process will be to grasp the power of this moment, for our country to act on the power of this moment. This is about far more than a troubled and troubling nominee. Something big is happening. Women across this country, like these extraordinary women in Rhode Island, are reconciling with their truth, fighting through a long and deeply unfair legacy of shame, fear, and stigma. They are stepping up. They are coming forward, determined, as one wrote to me to leave a different world for their daughters and granddaughters than the world that silenced them for years, for decades.

For me, it is a true personal honor to share this moment with them, to be trusted with these long-held stories, to have the chance to help end that bitterly unfair legacy, and to support them toward that new and better world for their daughters and granddaughters.
The Supreme Court can do its part as well. It has resisted adopting its own ethics rules, including guidelines for recusal. That should end. Justices have become less reticent about making public, political remarks. That should end as well. Judges should eschew appearances before overly ideological groups. If they act more like judges of old, they might not lose one of the last shreds of legitimacy the Supreme Court once had.

We’ve witnessed the destruction of a slew of executive branch norms and the collapse of partisan propriety. In the 20th century was a mixed blessing to be the left’s nemesis; now it is a political prize and a midterm election base-pleaser. Judicial independence, an FBI inquiry designed to hopscotch around the 20th century was a mixed blessing to be the right’s nemesis; now it is a political prize and a midterm election base-pleaser. Judicial independence, an FBI inquiry designed to hopscotch around the mid-term election. The Supreme Court can do its part as well. It has resisted adopting its own ethics rules, including guidelines for recusal. That should end. Justices have become less reticent about making public, political remarks. That should end as well. Judges should eschew appearances before overly ideological groups. If they act more like judges of old, they might not lose one of the last shreds of legitimacy the Supreme Court once had.


Jim Gensheimer: In interviews with the media, Mr. Gensheimer described a lunch meeting at a beachside restaurant with Dr. Ford in early July 2018, before Judge Kavanaugh became public. Ms. McLean is a family friend of Dr. Ford’s and can attest to her character and credibility. The FBI whose interviews would have challenged the credibility of Judge Kavanaugh’s testimony before the Senate Committee on the Judiciary on September 27, 2018. They remain available to talk with law enforcement.

Jeremiah Hanafin: Mr. Hanafin is a former FBI agent and professionalpolygraph examiner. He consulted Dr. Ford’s polygraph examination on August 7, 2018, and determined that Dr. Ford’s responses were not indicative of deception. Mr. Hanafin can attest to her character and credibility.

Keith Koegler: As described in his sworn declaration provided to the Judiciary Committee, in 2013 Dr. Ford told Mr. Koegler that she was previously sexually assaulted by a man who was then (in 2013) a federal judge. Ms. Gildon-Mazzone has been friends with Dr. Ford for over ten years and can attest to her character and credibility.

Rebecca Olson: As described in her sworn declaration provided to the Judiciary Committee, in 2013 Dr. Ford told Ms. Olson that she was previously sexually assaulted by a man who was then (in 2013) a federal judge. Ms. Olson has been friends with Dr. Ford for over ten years and can attest to her character and credibility.

Kirsten Leimroth: As described in her sworn declaration provided to the Judiciary Committee, in 2013 Dr. Ford told Ms. Leimroth that she was previously sexually assaulted by a man who was then (in 2013) a federal judge. Ms. Leimroth is a family friend of Dr. Ford’s and can attest to her character and credibility.
We know this much, however: If your agents had been permitted to investigate Ms. Ramirez’s allegations, they would have uncovered substantial corroboration. Just last night, The New Yorker published a new article: https://www.newyorker.com/news/newsdesk/will-the-fbi-ignore-testimonies-from-kavanaugh-former-classmates. That article highlights Dr. Richard Oh’s—Professor Dr. Oh, a professor of medicine at the Princeton Theological Seminary. The article reports that, at the time of the relevant incident, Dr. Appold was a Yale undergraduate student resident in a relevant dormitory (Lawrence Hall), and a suitemate of Mr. Kavanaugh. The article further reports that Dr. Appold has confirmed that, shortly after the relevant incident occurred, he learned of it, including that Ms. Ramirez was the victim and Mr. Kavanaugh the perpetrator. Dr. Appold is one of the witnesses that Ms. Ramirez had suggested that the FBI contact; the FBI never did.

Dr. Appold apparently himself recounted this incident, years ago, to another individual, Michael Wetstone. The New Yorker article cited immediately above reports that Mr. Wetstone has confirmed that Dr. Appold in fact relayed the story in late 1983 or early 1984. We know, given that your agents were barred from investigating. What we do know, deplorable and compelling information—as every one of those individuals could corroborate. Ms. Ramirez’s allegations. Respectfully, your agents should have been permitted to develop that information.

Sincerely,

DEBRA S. KATZ,
LISA J. BANKS,
MICHAIL R. BROMWICH,
Attorneys for Dr. Christine Blasey Ford.

KAIser DiLLON PLLC,
Washington, DC, October 4, 2018.
Hon. CHRISTOPHER A. Wray,
Director, Federal Bureau of Investigation.
\c/o Dana Boente, General Counsel.

DEAR DIRECTOR Wray: My firm represents Deborah Ramirez, as does the law firm of Hutchison Black and Cook, LLC. As you likely know, a reporter recently reached out to Ms. Ramirez to ask about an incident involving President Trump’s nominee for the United States Supreme Court. Ms. Ramirez answered the reporter’s questions, and he, after interviewing a number of additional witnesses, wrote a story: https://www.newyorker.com/news/newsdesk/senate-democrats-investigate-a-new-allegation-of-sexual-misconduct-from-the-supreme-court-nominee-brett-kavanaugh-college-years-deborah-ramirez.

As you likely also are aware, two of your agents met with Ms. Ramirez this past Sunday, September 30, 2018, in Colorado. Ms. Ramirez spoke with the agents for approximately two hours, answering a host of detailed questions. She further confirmed that she, Ms. Ramirez, possesses credible and compelling information—as everyone in the room would acknowledge.

Later that day, Ms. Ramirez, through counsel, and through me, requested that FBI agents be permitted to interview, without delay, at least twenty additional witnesses likely to have relevant information. Ms. Ramirez suspected that a number of those individuals could corroborate—the corroboration of Ms. Ramirez’s allegations.

Fewer than four days later, however, the FBI apparently closed its investigation—without permitting its agents to investigate. We are deeply disappointed by this failure. We can only conclude that the FBI—or their investigation—did not wish to learn the truth behind Ms. Ramirez’s allegations.

Therefore, I don’t believe you have to believe Dr. Ford to conclude that Judge Kavanaugh should not be elevated to the Supreme Court—first, because of his judicial philosophy. If you will pardon me, I want to digress for a moment into constitutional history—preconstitutional history, if you will. There is no such thing as an ironclad box of government. We give power to something called the government in order to protect our security, to protect us as individuals, to provide our liberty. The paradox is that we then have to worry about the government to which we have given the power abusing us.

James Madison captured this in the 51st Federalist:

If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men—

And, of course, today Madison would say men and women over men and women—

the great difficulty lies in this: you must first enable the government to control the governed, and in the next place oblige it to control itself.

The Romans put it this way: “Quis custodiet ipsos custodes.” Who will guard the guardians?

Other philosopher who talked about this was the English philosopher Lord Acton: “All power corrupts and absolute power corrupts absolutely.”

The American Constitution, in my view, is the most sublime answer to this ancient question. The instrument of government ever formed by people on this Earth. It is based upon a profound understanding of human nature: If you give people power, there is the potential for it to be abused—not the potential, the likelihood that it will be abused.

So the Constitution is an elaborate scheme for preventing that abuse. The first line of defense is the structure of the government itself. What Madison wanted to do was oblige the government to control itself—this herky-jerky, complicated, Rube Goldberg device involving two Houses, checks and balances, the President, the veto, submitting treaties, two-thirds votes, advise and consent, and then the whole level of the State government and local government, the division of responsibilities between the governments, and enumerated powers. The Framers wanted it to be difficult for majorities to rich roughshod over minorities. They wanted it to be difficult to legislate, and they succeeded beyond their wildest dreams.

It is a very difficult piece of machinery to bring into action, but even after the Framers had designed this elaborate structure specifically in the name of protecting the rights of the people, they weren’t satisfied. They wanted to take another step, because going back to our other fundamental document, the Declaration of Independence talks about certain inalienable rights—life, liberty, and the pursuit of happiness—and that word “inalienable” isn’t defined much. Not much attention is paid
to it. "Inalienable" means neither can you give it away nor can it be taken from you. To alienate is to give away or have it taken from you. That is what "inalienable rights" mean.

Going back to when they said we have a structure that will be very complicated to operate, what if the majority makes this structure work in such a way that is amicable to the fundamental rights of people? The first thing the 13th Amendment did was to adopt the Bill of Rights. The Bill of Rights is the second shield for us as individuals. I always thought of it as a force field around individuals that protects the basic rights, even if the government followed its procedures.

Congress shall make no law abridging the freedom of speech, establishing religion, or controlling the free exercise thereof. Search and seizure must be reasonable. You don't have to give testimony against yourself. All of these rights in the Bill of Rights are designed to protect us as individuals from the government.

The framers then had an interesting problem when they got to the Bill of Rights, and they listed the rights. Somebody—and I can't remember who it was—right now—came up with the problem that if you list the rights, then people will later say: Well those rights are listed. Therefore, there aren't any other rights that can be protected. So they added the Ninth Amendment, which is one of the most unappreciated and undisputed amendments to the Constitution. The Ninth Amendment says: "The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people." In other words, there are rights that exist—they recognize that—that aren't the ones listed that we all think of in the First through the Fifth Amendment—rights such as freedom of speech, the press, freedom from unreasonable searches, the right to bear arms. They were afraid they would appear out of the basic structure. So they passed as part of the Bill the rights the Ninth Amendment.

What does this have to do with Judge Kavanaugh? To understand Judge Kavanaugh's jurisprudence, what kind of a judge he will be by the way, that is what we are all doing here. This is an exercise in forecasting the future. What will this person decide? What kind of judge will they be? That involves things like demeanor and temperament, but it also involves judicial philosophy.

To understand the judicial philosophy of Judge Kavanaugh, you have to understand the judicial philosophy of Justice Rehnquist. In 1976 written by Justice Rehnquist, the first book about precedent to be written was "The Federalist Bar, New York Times, where he characterized Justice Rehnquist as his judicial hero. He gave a speech about him in 2017. He says that the article in the Texas Law Review in 1976 written by Justice Rehnquist is one of the most important legal documents ever written.

What do Justice Rehnquist and Justice Kavanaugh have in common? They have a very expansive view of what States can do to limit your rights and a narrow view of what the Federal Government can do to protect your health, welfare, the environment—you name it.

Justice Rehnquist voted against Roe v. Wade. Justice Rehnquist criticized Griswold v. Connecticut. He voted against Roe v. Wade because he said the right of a woman to control her own reproductive health is not enumerated in the Constitution. Obviously, it is not listed in the first two or three Amendments, but the Court found that it was a basic human right of women, and that is the basis of Roe v. Wade.

The problem with Justice Rehnquist's approach and Judge Kavanaugh's approach to unenumerated rights is that they say unenumerated rights could be recognized by the courts only if the asserted right was rooted in the Nation's history and tradition. That is called rigorously originalism. In other words, you can't assert a right unless you can show that the Framers thought about it when they passed the amendments, or that it was somehow rooted in the tradition. If short of a case where the Framers thought about it in 1897 or 1867 or 1787, then you couldn't do it. The Court would be making law.

The problem is that this approach freezes rights in history, and it allows for no room for the evolution of ethics and morality. A good example is Loving v. Virginia, which is the case that overturned anti-misogynation laws that made it illegal in many States in the country, including Virginia, at the time—and this was in the 1960s—for people of different races to marry one another.

It is hard to argue using the Kavanaugh philosophy that that is a legitimate exercise of judicial authority because certainly, at the time of the passage of the Bill of Rights and the passage of the 14th Amendment, anti-misogynation laws were all over the place. Rehnquist and Kavanaugh would say you can't do that. This isn't judicial lawmaking. This is judicial protection of individuals' rights from State incursion.

In Griswold v. Connecticut, in many ways, Griswold was the case that said the State of Connecticut could not constitutionally prohibit the sale of contraception to married couples. It has no restrictive ways that it could. The Griswold case, I believe, was the founding document of the Federalist Society. It was in reaction to Griswold and the following cases that the Federalist Society arose in the 1980s. So this philosophy is that the States have wide latitude to restrict these rights—enumerated or not. That is why I believe there is—I don't know—a 50-50 chance, 60-40, or 70-30 that a Justice Kavanaugh would repeal Roe v. Wade. I give it 99 percent that he will gut Roe v. Wade. I have like 15 cases headed for the Supreme Court right now from various States around the country where the right of a woman to control her reproductive future is under assault. The decisions may not be an outright repeal, but by piecemeal, chopping away at that right, making it harder and harder to exercise Roe v. Wade, it will be a hollow shell.

Judge Kavanaugh said in his hearing: I am not going to make these value judgments, ideological judgments. I am going to call balls and strikes like an umpire.

I have a new principle for judging Supreme Court nominees: Anybody who says all they are going to do is call balls and strikes is an automatic no because they are coming us. Deciding whether a particular rule in a State that restricts the ability of a woman to control her reproductive future is unduly burdensome is not a mechanical ball and strike. It is a value-laden judgment call. Don't tell me there is some easy ball-and-strike thing here. You are making judgment calls based upon values.

I don't have any doubt that a Justice Kavanaugh is going to vote to restrict, to control, to limit, and ultimately, to gut Roe v. Wade. Indeed, that is what the President said he was going to do—put a judge to take that step. That is why he is so widely supported in some parts of the country.

By the way, he said Roe v. Wade is a precedent. That is like saying this is a chair. That is a statement of fact. That is not a value. That is not a philosophy. That is just a statement of fact. Then he says: Well, we have Planned Parenthood v. Casey. So we have a precedent on a precedent. That is like saying this is a chair and this is a desk. That is a statement of fact. That is not anything that gives you any indication of what he says he is going to do.

By the way, Justice Gorsuch sat in my office and talked to me about precedent and how committed he was to precedent. He had written a whole book about precedent. I don't think he was on the Court even a year, and he voted in the Janus case to absolutely trample 40 years of precedent in a very important area of American law. So when somebody tells me it is a precedent or it is settled law, that doesn't convince me of very much. That is not a predictor of what they will do.

He has an expansive view of the State power to determine how and how committed he was to precedent. He has a narrow view of the national legislature's ability to protect individuals, whether it is healthcare, and I will give you 75 percent that he is going to start voting to undercut and destroy the Affordable Care Act.

In 16 out of 18 cases on the environment that came before his court, the DC Court of Appeals, he voted with the polluters. He narrowed the authority of the Environmental Protection Agency. In one case particularly relevant to my State of Maine, he decided against the right of the EPA to tell upwind States they had to control their pollution in order to benefit downwind States. Maine is in
the tailpipe of the Northeast. All the air moves from west to east and ends up in Maine. We could shut off every automobile and every factory in Maine and still have air pollution problems. Telling the EPA they can't regulate air that moves across State lines is a direct shot at the State of Maine.

As for campaign finance reform, I predict he will join with the 5-to-4 majority to continue the deregulation of campaign finance, one of the most serious issues facing this country.

He even said that net neutrality was unconstitutional because of the right of large internet service providers to have free speech. That is a case that would deny free speech and freedom of activity to millions of internet users across the country. You don't have to believe Dr. Ford to oppose and believe that Brett Kavanaugh should not be elevated to the Supreme Court.

You also don't have to believe Dr. Ford. If Brett Kavanaugh should not be elevated to the Supreme Court because of his views on Presidential power, but first let's establish what he said. In the Minnesota Law Review, he said we should not burden a sitting President with civil suits, criminal investigations, or criminal prosecutions. He has an elaborate argument about that involving impeachment and that the Congress should pass a statute and a whole lot of other things. We can argue about that. They are disputes about the meaning of article III and how it relates to impeachment and how it relates to the subject of the President being subject to criminal prosecutions.

I understand that. I understand we can have those arguments, but once he stated that position, he should have announced that he would recuse himself from any case involving the President who appointed him—the first rule of the judicial canons.

Canon No. 2 is that a judge shall avoid not only impropriety but the appearance of impropriety, and 2a, from the Code of Judicial Responsibility says that a "judge should act at all times in a manner that promotes public confidence in the integrity and impartiality of the Judiciary." Let me read that again: "A judge should act at all times in a manner that promotes public confidence in the integrity and impartiality of the Judiciary." The reason to believe that Brett Kavanaugh should not be elevated to the Supreme Court because of his views on Presidential power, but first let's establish what he said. In the Minnesota Law Review, he said we should not burden a sitting President with civil suits, criminal investigations, or criminal prosecutions. He has an elaborate argument about that involving impeachment and that the Congress should pass a statute and a whole lot of other things. We can argue about that. They are disputes about the meaning of article III and how it relates to impeachment and how it relates to the subject of the President being subject to criminal prosecutions. I understand that. I understand we can have those arguments, but once he stated that position, he should have announced that he would recuse himself from any case involving the President who appointed him—the first rule of the judicial canons.

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and caught up in the moment and said something he regretted—it was in written testimony. He had written it down, his answers to the questions.

Back to canon No. 2, avoid anything that would undermine confidence in the judiciary. Kavanaugh will eventually make its way to the Supreme Court based on the emoluments clause. How can RICHARD BLUMENTHAL possibly believe he was looking at RICHARD BLUMENTHAL himself wasn't even questioned or the dozen-plus people Dr. Ford and Deborrah Ramirez have said could help collaborate their stories? Why in Washington and will eventually be declared to shoulder to ensure that thou-

I think that based upon judicial philos-

I begin speaking tonight, we are less

Mr. President, I yield the floor.

With Dr. Ford to conclude, as I have, that Judge Kavanaugh should not be elevated to the Supreme Court.

I do believe Dr. Ford. Mr. President, I yield the floor. "The PRESIDING OFFICER. The Sen-

Ms. DUCKWORTH. Mr. President, as

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Like Neil Gorsuch just a year ago, there are countless other conservatives scattered throughout the Federal judi-

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the sins of confirmations past. We must condemn efforts to shame survivors even when—especially when it is when the President himself doing the bullying.

By refusing to confirm Brett Kavanaugh, we can send the message that victims of sexual assault matter, that their voices will be heard, and that seeking justice for these survivors is more important than the confirmation of any single individual. We can recognize the bravery it took for these women to come forward. Doing so would make clear that, at least in the U.S. Senate, if not in the White House, time is truly up for any judicial nominee credibly accused of sexual assault. Doing so would at least begin to restore integrity to how the Senate carries out its constitutional responsibility to provide advice and consent.

To any of my colleagues considering voting yes on this nominee, please take just a few minutes to listen again to the opening words of Dr. Ford last Thursday. Hear the pain in her words, the truth in her voice.

I will be voting no on Judge Kavanaugh’s nomination. On behalf of Dr. Ford and survivors everywhere, I am bringing—be—each of my colleagues to do the same.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Hampshire.

Ms. HASSAN. Mr. President, I rise to join Senator Durbin and Senator King and so many of my colleagues in opposing Brett Kavanaugh’s nomination to the Supreme Court.

One of the most solemn responsibilities of a U.S. Senator is providing advice and consent upon the President’s nominating an individual to the Supreme Court. This is a duty and a decision that I do not take lightly. This is a lifetime appointment to the highest Court in our land, which will impact the lives of every single person in this country.

Supreme Court Justice is not a position that any person is entitled to. Any individual nominated to the Court must be subject to security on the totality of their record, their temperament, and their past actions.

Yet, throughout the process of this nomination, my colleagues in the majority have made clear that they will stop at nothing to get Judge Kavanaugh on the Court, no matter his record, no matter his temperament, no matter his character.

When Dr. Christine Blasey Ford’s serious and credible allegations came to light, we saw a truly disturbing scene from both Judge Kavanaugh and my colleagues on the other side of this aisle. Judge Kavanaugh himself lashed out, claiming a political conspiracy against him, refusing to answer questions, and seemingly threatening those who raised serious, good-faith questions about his character. He said words: “What goes around, comes around.” His behavior and his words reflected a partisan who sees those with whom he differs as enemies, not opponents.

While many of my colleagues in the majority praise Dr. Ford’s bravery in sharing her story, and even agreed that her testimony was credible, they blocked every professional attempt to get to the facts.

I want to take a minute here to address one of the most disingenuous claims I have heard from the majority when it talks about Dr. Blasey Ford. Over the last week, Members on the other side of the aisle have expressed concern and regret that Dr. Blasey Ford’s letter outlining her allegations was leaked, forcing her story into public view. But the fact that Dr. Blasey Ford didn’t choose if and when to reveal her allegation to the public does not relieve the U.S. Senate of its duty to pursue the truth or to treat Dr. Blasey Ford with the respect and compassion the majority says it feels for her, something it could simply demonstrate by accepting her request for what normally happens after a report of sexual assault: a full investigation before the hearing.

I, too, will note that I watched and listened to Dr. Blasey Ford’s testimony. I was so hopeful that there would be a thorough, intensive process in order to get to the truth.

Even though the committee rejected the doctor’s request for an investigation prior to the hearing, which would have been normal course, which would have produced a much more meaningful and insightful and fact-based hearing, I was hopeful when it was announced last week that the nomination process was going to constitute the FBI to investigate Dr. Blasey Ford’s allegations. I was so hopeful that there would be a thorough, intensive process in order to get to the truth.

But after reading the FBI report that was presented to Senators, it is clear that the FBI was not allowed to conduct a serious investigation.

I am an attorney, and I have to say that any good attorney allowed to read the FBI’s supplemental background investigation would say—calling the report here—would tell you that it is not the type of comprehensive investigation that could lead to the truth. The limited scope of the investigation produced a sham.

Let me be clear. Nothing in the FBI report exonerated Judge Kavanaugh. It wasn’t comprehensive enough to prove or disprove Dr. Blasey Ford’s allegations or Judge Kavanaugh’s denials. It was clearly designed just to provide cover so the majority could vote yes and jam this nomination through.

Even before Dr. Ford bravely stepped forward with her allegations of sexual assault, I had concluded that Judge Kavanaugh’s nomination should not go forward, that Judge Kavanaugh did not belong on the Supreme Court of the United States.

Having reviewed his record and hearing his testimony before the Senate Judiciary Committee, I was so hopeful that he does not have the impartiality that is required to serve on the Supreme Court. His record shows that he is a partisan who promotes a partisan rightwing ideology deeply at odds with the will of the American people.

On issue after issue, Judge Kavanaugh has promoted a judicial philosophy that diminishes the rights of individuals, particularly women, and puts corporations before people.

On healthcare, Judge Kavanaugh’s agenda has been clear. As recently as October 2017, Judge Kavanaugh criticized Chief Justice Roberts’ decision to uphold the Affordable Care Act. In his concurring opinion, Judge Kavanaugh would not commit to upholding protections for people who have pre-existing conditions, such as asthma, cancer, diabetes, and more.

The Trump administration and the majority in Congress have been relentless in their attempts to sabotage our healthcare system, undercutting the need to have a Supreme Court that would rise above partisanship, but Judge Kavanaugh would not do that.

On the issue of reproductive rights and a woman’s right to chart her own destiny, Judge Kavanaugh has repeatedly tried to dodge and mislead, but none of his judicial opinions or comments indicate that he believes Roe v. Wade was rightly decided or that he would respect Roe’s precedent if he had the opportunity to do so.

With Judge Kavanaugh on the Bench, Roe and the personal, economic, and reproductive freedoms that it has delivered to women is directly threatened.

When it comes to checks and balances on the President’s power, Judge Kavanaugh’s record and opinions are alarming. Most recently in October 2017, Judge Kavanaugh wrote that he would respect Roe’s precedent if he had the opportunity to do so.

On issue after issue, Judge Kavanaugh has a history of supporting an unchecked Presidency. He has written that Presidents should be essentially above the law by claiming that they should not be the subject of civil lawsuits, criminal prosecutions, or even criminal investigations. On issue after issue, Judge Kavanaugh has repeatedly refused to commit to recusing himself from matters involving investigations of the very President who nominated him. Especially at a time like this, it is too dangerous to place a Justice on the Supreme Court who believes in virtually no checks and balances on the President’s power, but it appears that the majority is committed to doing just that.

This nomination has been an outrage, and the way it has been handled is a failure of this institution. The majority has put the interests of the party and a nominee who has made clear he will serve those interests before the interests of the court and the country.
October 5, 2018

The nominee, who will apparently—given today’s developments—be confirmed tomorrow, is without the character or temperment needed to serve on the Supreme Court without the credibility that the American people deserve. He is, in fact, the antithesis of that impartial arbiter that a Supreme Court Justice has to be.

The people of New Hampshire deserve better. The people of the United States of America deserve better. That is why I will, with my voting no on Brett Kavanaugh’s nomination tomorrow, and I would urge all my colleagues on both sides of the aisle to do the same. I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

Mr. LEE. Mr. President, I come before this body this evening after having heard several remarks from a number of my distinguished colleagues, whom I like, whose judgment, whom I respect, whom I admire, and with whom I greatly and substantially disagree on many matters discussed tonight.

Just in the last little while I have heard—well, presented first by the Senator from Maine, a good friend of mine, who made some arguments that he put into roughly four categories. He opposes Judge Kavanaugh on the basis of judicial philosophy, on the basis of his refusal to agree to certain types of recusals, to the absence of documentation he claimed was available to the committee, and to Judge Kavanaugh on issues of demeanor. I would like to address each of these allegations in turn.

First, with regard to judicial philosophy, my friend from Maine—who truly is a friend—explained that, in his view, Judge Kavanaugh was unacceptable because, among other things, he counts among his judicial role models the late William Rehnquist, Chief Justice of the United States. The reason that is apparently a bad thing, according to my colleague from Maine, is that somehow it indicates that he views himself sort of as an umpire, calling the balls and the strikes, reading the law on the basis of what it says rather than on the basis of what he or anyone else might wish were the law.

Jurists, you see, are not philosopher kings, not even when they get onto the Supreme Court of the United States. They are not there to impose will but judgment.

You see, as Alexander Hamilton explained in Federalist 78, there is a difference between the type of government activity that goes on in the judiciary and the type of government activity that goes on in the legislative branch, extraordinary, they explain, is judgment; that is, they read the law. They figure out what the law says. When two or more parties come before the court’s proper jurisdiction, they interpret the law on the basis of what the law says. That, Hamilton explains, is judgment.

Will, on the other hand, is deciding what the law should say, what policies are best for the U.S. Government. That is the prerogative of this branch. That is the prerogative of the political arms of the Federal Government. That is not the prerogative of our friends across the street who wear black robes.

So I was surprised to hear that my colleague from Maine, the junior Senator from Maine, Mr. KING, was saying that he objects to the judicial philosophy of Judge Kavanaugh on the basis that he says he would call the balls and the strikes as he sees fit. It seems to me that this is the essence of what Federalist 78 was talking about, about the difference between will and judgment.

Hamilton explained that if ever the judiciary started exercising will instead of judgment, it would upset the entire constitutional order. That, we cannot have. That is not how it should be.

Next my colleague from Maine went on to explain that Judge Kavanaugh’s association with the Federalist Society was somehow a problem, that the Federalist Society is somehow some sort of demonic conspiracy to overthrow the U.S. Government—or something to that effect. I embellished slightly his characterization of it, but you would think from the way my colleagues say about the Federalist Society that there is something terribly wrong with it. Let me tell you about the Federalist Society.

I have been aware of the Federalist Society for most of my life. I attended my first Federalist Society event while I was still in high school. I mean, what teenager doesn’t want to attend a Federalist Society event at a nearby law school? That was something we considered to be a lot of fun in Provo, UT.

At every Federalist Society event that I have ever attended, starting when I was in high school, all the way through college, through law school, throughout my career as an attorney, and since I entered politics, one thing has been consistent: The Federalist Society, when it puts on an event, allows for all sides to be represented. You will see views that are widely divergent. You have people, such as Nadine Strossen, former president of the American Civil Liberties Union, who have long been affiliated with the Federalist Society and participated in their symposium. This, you see, makes the Federalist Society rather than law school experiences, wherein one side is presented—not both. The Federalist Society prides itself in focusing on open, robust, honest debate.

So if some people want to criticize the Federalist Society or those who, heaven forbid, have ever attended a Federalist Society event, what they are doing is criticizing academic freedom, criticizing a robust discussion of law and public policy. We should all be grateful for the Federalist Society for creating an enterprise that really represents the core of what the American people should value—certainly what those who study and admire and respect the law should value. This is not something people should be criticized for participating in. Last I checked, academic freedom and robust discussion of what the law says and which branch of government ought to exercise will and which ought to exercise judgment—that is something to be rewarded. That is part of America’s bedrock. Its core institutions of civil society are people who are willing to come together, not under the auspices of government, not under the control of some bureau or bureaucracy, but rather on their own to discuss and debate things that will inure ultimately to the benefit of the people.

Next, my colleague from Maine, Senator KING, referred to Judge Kavanaugh’s refusal to agree anticipatorily to a recusal in certain cases. As Judge Kavanaugh very capably explained in his hearing, this is not the kind of judgment a person makes before taking the Bench, before assuming a particular judicial office to which he or she has been nominated. It wouldn’t be appropriate for him to anticipatorily agree to recuse himself in a type of case that he has even yet to see.

I am not sure why some of my colleagues wanted to put him on the record as taking himself off of a certain broad category of cases, but that, nonetheless, seems to be what they were after. That, I think, in my opinion, in the circumstances, is improper, just as it would be improper to get Judge Kavanaugh to agree in advance of his confirmation as to how he would vote in a particular type of case.

This, too, many of my colleagues find troubling, by the way; yet this, too, is part of the canons of judicial ethics. We don’t want people campaigning as if on political issues to get onto the Supreme Court of the United States. We don’t want that to go back to that a little bit more later.

Next, Senator KING referred to the supposed lack of documentation from the Bush administration where Judge Kavanaugh worked—the lack of documentation, meaning the lack of documents coming out of the White House. It is important to know that Judge Kavanaugh doesn’t own the documents in question. No, those are owned by the Bush administration. They own the privilege, and under the Presidential Records Act, which Congress itself has enacted, there are terms set. There are agents identified, agents who get to assert certain privileges and decide when, whether, and to what extent certain documents will be released and available for our review. I am not sure what it is that they are so terrified might be out there, but whatever it is, it is in a document that doesn’t belong to us, a document to which we have no access, to which we have no right to see, yet Judge Kavanaugh has refused to agree anticipatorily to recuse himself.

To see, as Alexander Hamilton explained in Federalist 78, there is a difference between the kind of government activity that goes on in the judiciary and the type of government activity that goes on in the legislative branch, extraordinary, they explain, is judgment; that is, they read the law. They figure out what the law says. When two or more parties come before the court’s proper jurisdiction, they interpret the law on the basis of what the law says. That, Hamilton explains, is judgment.

Will, on the other hand, is deciding what the law should say, what policies would be improper to get Judge Kavanaugh to agree in advance of his confirmation as to how he would vote in a particular type of case. This, too, many of my colleagues find troubling, by the way; yet this, too, is part of the canons of judicial ethics. We don’t want people campaigning as if on political issues to get onto the Supreme Court of the United States. We don’t want that to go back to that a little bit more later.
conducted into allegations involving Judge Kavanaugh were "a sham." A sham. Think about what that means. It means that she is suggesting that those investigating didn't want to get to the truth. I don't know what documents she has reviewed, but I can tell you the documents that I have reviewed. Those compiled by the Federal Bureau of Investigation and those compiled by the very faithful investigative staff on the Senate Judiciary Committee. We have been thorough in what we have gone through, and to call this a sham is simply disingenuous. It is inaccurate. It is inconsistent with anything I have seen.

I heard my colleague from Illinois also refer to what she characterized as "sham proceedings." The court of Judge Kavanaugh in connection with Judge Kavanaugh's alleged participation in the development of the so-called torture policies in the Bush administration.
into current credible allegations of sexual misconduct, and that is what they did. We, the Senate Judiciary Committee, didn’t put guardrails around that, didn’t tell them they couldn’t follow up on leads they deemed significant, didn’t tell them to look past a certain witness, didn’t tell them they couldn’t follow up on something that might shed light on this candidate’s credibility or his eligibility to serve in judicial office.

This brings us to a third point. This man has now endured 7 FBI background investigations, with over 150 people interviewed during that time—150 people interviewed extensively about what they know about him and about their knowledge of his character. Those interviews and the report that was produced back up this man’s character. And separate and apart from the fact that there is no corroborating evidence for these allegations, these independent findings tell us otherwise.

My colleague from New Hampshire, like my colleague from Illinois, also brought up the Affordable Care Act, as if assuming from the outset that, on the basis of policy, Judge Kavanaugh would rule a certain way in this or that aspect of anything having to do with healthcare. Here again, we have characterizations that would be much more fitting in a political debate for a political candidate. It won’t, alas, that is not what we have here.

My colleague from New Hampshire referred to the Mueller investigation. I don’t know how that is tied to the nomination of Brett Kavanaugh to be an Associate Justice of the Supreme Court of the United States, but somehow she tried to make that an issue.

I don’t know what she is talking about. I don’t know how that could possibly be relevant here.

She made the argument—the very serious accusation—that Judge Kavanaugh somehow believes that the President of the United States is above the law. I challenge my colleague from New Hampshire to tell me what evidence she has that he believes that. This is a serious accusation and one that should not be made lightly.

I have never ever heard of Judge Kavanaugh having said or written anything suggesting that the President of the United States is above the law. Yes, Judge Kavanaugh acknowledged, as he has repeatedly on a number of occasions in a number of settings, that there is a dispute among scholars as to the timing and manner of liability that might be faced by a current sitting President of the United States, but he has never said the President of the United States is above the law—never acknowledged it, never concluded that, and it is therefore unfair to attribute that view to him.

Finally, my colleague from New Hampshire characterized Judge Kavanaugh as being someone who is without character and sort of the antithesis of being an impartial arbiter.

I think the very best way we can view that with regard to his character is through his life of public service, through the way he has interacted with those he knows, those who have truly known him not just over the last 36 years but for his entire lifetime.

The best we can evaluate his ability to be an impartial arbiter is to review the 300 published opinions he has written while serving as a judge on the U.S. Court of Appeals for the DC Circuit. I challenge any one of my colleagues to bring me any one of those opinions or any number of opinions that show that he is incapable of being impartial or that he is in any way challenged as to impartiality. They can’t do it. They won’t do it. They haven’t done it because such opinions don’t exist.

Judge Kavanaugh is a good man. He is eminently qualified to serve on the Supreme Court of the United States. I endorse President Trump’s nomination of him. I was pleased to vote in favor of cloture, and I look forward to voting for his confirmation in the coming hours.

Thank you, Mr. President.

I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut, Mr. BLUMENTHAL. Thank you, Mr. President.

At some point during the confirmation hearing—now seemingly years ago but probably only just a month or so ago—I saw young women going through the halls of the Capitol with T-shirts that said “I am what’s at stake.” I want to thank those young women for all of the countless women and men of all ages who have come to our Nation’s Capitol to show us what democracy looks like.

I know that some of my colleagues have been displeased—in fact, have called it mob rule—but the power and force of democracy within those voices and faces—a lot of them were from Connecticut, and I am proud of your coming here to tell us what you think—and faces is the message those women were conveying to us in real time.

It is of equal importance to the town-halls and the meetings and parades and all we do at home, I do a lot of it at home, but I was proud of the folks from Connecticut who came here and the folks who came from all over the country from as far away as Alaska and Hawaii to give us the benefit of their insight and perspective. “I am what’s at stake” is the message those women were conveying to us in real time.

We talk here in words. Sometimes we hold up posters. We talk in abstract; I yield the floor.

It would be like introducing your wife as “my current wife.” How long do you think that wife is going to be around?

He referred to abortion-on-demand. These kinds of code words sent a signal to the Federalist Society and the Heritage Foundation, and they were the direct cause—or at least one of them—for his being on the President’s short list after he hadn’t been on it before he issued that dissent.

Looking to what he has actually written and said is a much keener, more reliable insight into what he will do as a Supreme Court Justice for the women and men of Connecticut and the rest of the country, how he would rule a certain way in this or that case. We have here.

His writings indicate that he believes, in effect, in a President who can refuse to enforce the Affordable Care Act simply because he deems it unconstitutional. He concludes, in his vision of the Constitution and his interpretation of the statute, that they are in conflict, even after the Supreme Court of the United States upholds it and a prior President signs the law and a Congress passes it.

That kind of monarchial power is an anathema to our constitutional sense of checks and balances, and the result could well be—in fact, he marches by— that millions of Americans will be deprived of protections when they suffer from diabetes and heart disease, Parkinson’s, high blood pressure, pregnancy—the preexisting conditions for which the Affordable Care Act was designed to afford people protections in insurance.

Healthcare, women’s reproductive rights, the right of a woman to decide when she wants to have children, the greatest democracy in the world and the most enduring of any democracy. They are lifetime appointments. They are insulated generally from attack or even criticism because folks who criticize a judge in his or her presence can be held in contempt. They have no power to punish or immediately jailing someone. They are anti-democratic so long as they fail to reflect the will of the people if there are excesses, if the nomination and confirmation process goes off the rails.

And that is what we are facing here—a broken promise and process that has caused a rush to judgment simply for the sake of arbitrary deadlines and irrational timelines placed on a nomination that is fundamentally flawed.

A lot of my colleagues have relied on personal assurances, assuming that Brett Kavanaugh in their chambers. He talked to me an hour, and he assured me, I heard my colleagues say. He assured me that he will not overturn Roe v. Wade, but his answers to us under oath on those topics were evasive and misleading.

When I asked him, for example, in our hearings about Roe v. Wade, he repeated the vague commitment to settled precedent, but he couldn’t explain why he referred to that precedent in his Garza dissent as “existing prece-dent.” It would be like introducing your wife as “my current wife.” How long do you think that wife is going to be around?

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Healthcare, women’s reproductive rights, the right of a woman to decide when she wants to have children, the
right of people across America to decide when they want to marry the person they love, consumer rights, workers' rights, environmental protection—all are at stake to real people in their real lives for generations to come. "I am what is at stake" applies to every American.

I have never been angrier or sadder since coming to the Senate. This nomination was essentially the result of a rush to judgment and of a coverup, starting with the concealment of millions of pages of documents. Those documents are in the National Archives. They belong to the people of the United States, but the White House chose to hide them.

Then, there was a straitjacketed sham of an investigation into sexual assault—yes, a sham; really, a white-wash—that refused to interview dozens of witnesses, some of them eye-witnesses who could corroborate the credible and powerful allegations made by survivors.

My office spoke directly to Kerry Berchem. There is a more recent report out tonight—an excellent report by NBC—about how she and others tried to be interviewed. They sought and been asked to talk to the FBI. The FBI was given a list because the purpose of that investigation was not to find the facts. It was to offer cover. It was to permit our colleagues to say there has been a seventh investigation. How many times do you read those six investigations? Do they understand that the general practice—we can’t talk about the details on the floor, of course—if the FBI is to begin at age 18, not before? Do they understand that the general practice of an FBI background investigation is to interview professional colleagues, coworkers, supervisors, and references that are suggested by the nominee to any particular position?

The seventh investigation was really the crucial one regarding those allegations of an individual 17 years old or even 18, in college, where there was no reason in those earlier six investigations to go back. The FBI was straitjacketed, and that is a disservice to the U.S. Supreme Court, to the Senate in our constitutional responsibility, to the people of the United States, and, ultimately, to Brett Kavanaugh, himself, because these allegations were going to come forward very soon. They will hang over him and the Court as a cloud and a stain for years and years to come. Facts and evidence have a really powerful way of coming out. Eventually, facts and evidence have a way of finding a way to the public realm—rightly or wrongly—who came forward. Actually, she expressed concerns to friends before the nomination was made about Brett Kavanaugh’s possible nomination. She recounted her story years before even the seat opened, as documented by her therapist’s notes and her husband, who, by the way, was never interviewed. Her husband was never interviewed. Talk about corroborating witnesses. Her therapist was never interviewed, and she herself was never interviewed by the FBI. That is an absence of fact-finding. And, of course, Judge Kavanaugh was never interviewed, as well.

She came forward to say she was sexually assaulted by Brett Kavanaugh, and the details of her claim were lacking in some part. She was frank to admit that she couldn’t remember everything, which is not atypical of sexual assault survivors, as the experts would have told the FBI if they had interviewed some experts. But she could remember some parts of that story, and they are details that I will never forget: the laughter from Brett Kavanaugh, Judge Kavanaugh, the third person she knew to be in that room—the laughter at her expense. The mocking and ridiculing laughter are so vivid in her memory. It is the same mocking and ridiculing laughter that we heard last Sunday when President mocked and ridiculed her—the same mocking and ridiculing that, for decades, has been applied to survivors of sexual assault who come forward.

She has endured the same nightmare of publishing her sexual assault and threats—potential retaliation that all too often has silenced sexual assault survivors. She bravely that nightmare, knowing full well what was coming, but maybe she thought it would not come from Members of the Senate. Maybe she had had that naïve hope, and if she had it, she was wrong.

Our colleagues here said she was mixed up. They said they believe her, they find her credible, but she must be confused about the identity of the person who attacked her. Well, that echoes to the second point that rung true and vividly in her testimony when she was asked: Could it be mistaken identity? Absolutely not. Was she sure it was Brett Kavanaugh? 100 percent sure.

I have a message for my Republican colleagues: You can’t believe the survivors only when they say what you want to hear. You can’t believe the survivors for only those parts of the story that are comfortable and convenient. You can’t believe them only when they say what you want to hear. You can’t believe the survivors for only those parts of the story that are comfortable and convenient. They deserve a full understanding of what the investigation would have found. They deserve full access to Judge Kavanaugh’s record—those millions of pages of documents that were concealed and that raise the question: What are they hiding? What are they afraid of? What are they afraid of? What are the American people seeing from the time that Brett Kavanaugh served in the White House as Staff Secretary?

I filed a FOLA suit to force disclosure of millions of pages of Judge Kavanaugh’s documents that have been hidden from the country. The majority leader chose to vote without seeing these documents, but I have no intention of stopping until they have been disclosed—and they will be. They will come out, adding to the cloud and the stain.
The allegations here are desperately serious. They are credible and powerful, and our job was to make sure that the facts and the evidence either supported them or not.

Debates over the Supreme Court often focus on civil rights and civil liberties, those protections enshrined in the first 10 Amendments to the Constitution. Make no mistake. Those rights and liberties are at stake here. But the Court debate is also about the fight between powerful corporate interests and ordinary Americans. Corporations have become adept at using the courts when their arguments fail to persuade policymakers and the American people.

When the EPA bans polluters from spewing poison into the environment, polluters go to court to stop that Agency. When the FCC prevents cable giants from censoring the internet, those companies go to court to stop that enforcement.

When the Labor Department or the NLRB take action to protect workers or when the CFPB or FTC take action to protect consumers, big employers and financial services firms go to court to stop them. If you want to breathe clean air and drink clean water, if you want a free and open internet, if you want to work or purchase products free of corporate abuse and fraud, this fight is about your life. It is about you.

This nomination poses a clear and present danger to those enforcement efforts. He poses a danger to the rights of women to decide when they want to have children and to millions of Americans with preexisting conditions who want to keep their affordable health insurance. He poses a danger—clear and present—to workers and consumers who want to live free of corporate domination. He poses, most dangerously, a threat to the checks and balances that prevent a President from running this country like his own personal fiefdom.

In his opinions, his speeches, his writings, and his testimony, we can see where this nominee will take the country if he is a swing vote, as he is likely to be on so many of these issues. He has used those dog whistles or bumper stickers in his campaign for his nomination, those terms and buzz words, “abortion on demand.” Sometimes he uses a bullhorn, as when he promises conservative organizations that he will overturn longstanding, near-unanimous Supreme Court decisions that have fallen out of favor with the rightwing or when he goes out of his way to publish long dissections, articulating a radical understanding of the law and its value.

He has been not so much a nominee as a political operative. He has been campaigning for this job since law school. Like many candidates for office, he has spent that time demonstrating to potential political patrons that if they pick him, he will diligently represent their interests. He is their guy. That is how he became a member of that elite group on the President’s short list.

I will conclude by saying that most chilling—indeed, frightening for me—was his appearance before this committee when he gave a rant and a screech that was written the day before, so he said. It was delivered word for word from that text. It was hardly the result of some spontaneous outburst. It was calculated and planned. It took back the mask of the judge and revealed the man—bitter, self-pity, rageful, and a deep partisan, which he had demonstrated before throughout his party operative but perhaps not on the bench. The man revealed there said to us: “What goes around comes around.”

He said that the powerful allegations of the sexual assault survivors were the result of a leftwing conspiracy fueled by revenge on behalf of the Clintons. Those remarks demean the brave and courageous survivors who came forward on their own initiative, without any encouragement by any Senator, and they were unraveled by Christine Blasey Ford and Deborah Ramirez and to the survivor community. They were directly contrary to Judge Kavanaugh’s own test of what a judge should do:

The Supreme Court must never be viewed as a partisan institution. The Justices on the Supreme Court do not sit on opposite sides of the aisle.

He was sitting on one side of the aisle. In fact, he was sitting on one distinctly side of the aisle. That is the reason former Justice John Paul Stevens found his appearance before that committee—not only his prepared remarks but what he said after—as disqualifying. That is the reason the 2,400 lawyers and professors and former judges have written urging that his nomination be rejected. That is the reason I find most frightening. I have appeared four times before the U.S. Supreme Court. Every time has been an experience and I have spent a good part of my career standing in front of judges, sometimes with juries and sometimes not. What I prized in judges most importantly was that they were objective and neutral. I don’t know how lawyers or ordinary parties to any case could stand before Judge Kavanaugh now and feel they will be judged fairly and impartially.

My colleagues have come to accept these vague assurances from nominees that they will simply call balls and strikes, that they will follow settled precedent, but we have seen those vague promises betrayed when judges or Justices actually reach the Court. I look to what he said in that hearing before the Judiciary Committee as a warning about what will happen if Justice Kavanaugh is confirmed. What he wrote in the op-ed today in the Wall Street Journal provides no assurance because the real Brett Kavanaugh did not write that piece, and the real Brett Kavanaugh wrote down in advance what he felt. The real Brett Kavanaugh should not be confirmed to the U.S. Supreme Court. Even at this late hour, I hope my colleagues will heed that warning.

We may lose this battle, but we cannot lose the broader struggle for justice in this country. I will stay angry. I hope my colleagues and others around the country will as well.

To the young people who came to these halls wearing that T-shirt, “I am what’s at stake,” you are right. You are and I am at stake. Stay angry.

I yield the floor.

The PRESIDING OFFICER (Mr. TILLIS). The Senator from Oregon.

Mr. MERKLEY. Mr. President, our party put in a very strong case for the ability to put individuals into high posts of great responsibility. They really wrestled with it. They considered giving the ability to appoint judges and executive officers to the assembly, as it was referred to. I think we have to worry a lot about individuals swapping favors. One person saying: You support my friend, and I will support yours—that wouldn’t lead to those with the best qualities serving in these key posititions.

They concluded after great debate that it would go to a single individual, the President, to nominate. They realized that the President can go off track. They thought the President might express favoritism in a variety of sorts. Alexander Hamilton talked about this at some length: maybe favoritism to people in the home State, maybe favoritism to a close group of friends, maybe favoritism to individuals who were doing favors for the President. Who knows? Therefore, there had to be a check on the potential abuse of the appointment process. That is where the Senate came in, to advise and consent. The President, to nominate; the Senate, to consent.

What that meant is that the Senate could not interfere with the President on the nomination process, and the President was not to interfere with the nomination process. Yet we have right now, for the first time in U.S. history, as far as anyone has been able to ascertain, a case in which the President of the United States has interfered greatly, first of all by requesting that the Senate not look at all 3 years in which this individual, Kavanaugh—the nominee—served as Staff Secretary to President Bush. Second of all, the President appointed an individual to provide the Senate with presidential privilege on documents for when he served at the White House that they did not want the Senate to see. We have some of those documents. He said: Those are OK. Yet they censored 100,000 documents with the Presidential privilege stamp. This has never been done, ever, as far as we can determine.

This body, on a bipartisan basis, requested all of those documents. This was not a case of the President saying “Please, Mr. President, don’t give us the documents;” this is a case in which the Senate together said “Give us the documents,” and the President refused.
This is something we should all stand together and say: Unacceptable. It is unacceptable that the President stepped across the separation of powers to interfere with the work of this body to review the nominee’s record. The fact that there have not been loud cries of protest is something that this body is a shame on this institution—that it has not fought for the separation of powers embodied in the Constitution. It has not fought for the ability of each and every Senator to be able to fully responsibly when we took our oath of office to review the records of nominees, engage in the advice and consent exercise.

Is this to be a precedent for the future because the leadership here has so shamefully abandoned the core principles of the Constitution and the responsibilities of this Chamber? I hope not. I hope that, together, all 100 Senators will find in the future they will make sure the President cannot interfere with our responsibility.

This is only one of the many problems, the many concerns, about Brett Kavanaugh. Brett Kavanaugh didn’t raise a single voice about the interference of the President with the exercise of powers. He is being nominated to the Supreme Court. He is supposed to have read the Constitution at some point. He is supposed to understand the separation of powers. He is supposed to stand up for the principles embodied in that great document, and he did not. That alone should tell you this man does not belong on the Supreme Court.

Then, of course, there is the fact that he has a view of Presidential power that is above and beyond the law. Try to find that in the Constitution.

Among the 25, he was the one who had the most expansive view of Presidential power. He is the one the President chose. Why is that? Because the President is under investigation for conspiring with Russia to fix the election. That is why. He is worried. He is up at night. He wakes up early. He tweets out to the world—an angry, hostile. He wants to make sure he has a Justice on that Court who can help write a “get out of jail free” card.

What a conflict of interest. What a conflict of interest that this Court might have to rule on whether a President can pardon himself. It is something we have never had to worry about before, whether a President can fire a special prosecutor, despite the writing under the law.

That is not all. We have before us a nominee who has been deceptive and misleading to this Chamber at time after time. Different articles have put up different lists. They all come down to one list. They all come down to different lists. They all come down to one list. They all come down to one list. They all come down to different lists. They all come down to one list.

I heard earlier on the floor of this Chamber a number of my colleagues across the aisle use the word “fairness.” “We want fairness.” I heard it from one, two, three, four colleagues, “fairness.” Did a single one of them express any regret that when Dr. Ford came forward and asked the FBI to corroborate her testimony, asked for the Judiciary Committee to hold a hearing with those folks able to testify? Did they express any regret they turned her down? Even then, the Judiciary Committee brought forward people to corroborate Anita Hill’s story. Here we are 27 years later, and we don’t treat a woman coming forward to share an experience of sexual abuse—we don’t even allow those individuals who can corroborate to testify before the Judiciary Committee.

Did I hear a single Republican stand up and say “I am embarrassed we treated her so poorly.”

Let’s take the case of Debbie Ramirez. She laid out a list of 20 individuals. The Judiciary Committee had a lot to say about her experience. Did they invite her to testify and be able to tell her side of the story? No, they did not. She had a list of 20 people she said could provide corroborating information. Did they ask a single one of those to come before the committee? Did they allow a single one to come? No, they did not. There was no fairness in that committee. Let’s not hear more highfalutin arguments about fairness from the other side of the aisle when these two women were treated in such an egregious and awful fashion.

Then, there is the phony FBI investigation. I praise my colleague who insisted that the record be reopened, the background check be reopened for the FBI to provide an opportunity to check out these experiences shared by Debbie Ramirez and Dr. Ford. On the background check, it is not a criminal investigation, and the FBI can’t decide who to talk to.

Did I hear a single Member across the aisle express any embarrassment about the fact that they let the President constrain the investigations so not one—not one—of the eight people Dr. Ford asked to be talked to was talked to? Not one. Zero. You call that fair? That is not fair. That is not fair to her, that none of the people she asked to be talked to talked to her.

Did I hear a single person across the aisle express any reservations about the fact that FBI investigation was so constrained by the President of the United States, with advice from the Republican leadership, that they did not talk to one of the 20 people Debbie Ramirez asked to be talked to about her experiences in college?

You know, I of the 20 was a suite mate of Mr. Kavanaugh’s. Well, when you look through your freshman year and you are a suite mate, you share a common living area, and there is one bedroom here and one bedroom here, so you are with each other all the time. You know a lot about the other folks. Well, that is a pretty powerful association. That individual is now a professor at Princeton Theological Seminary, and he heard this story when it happened. He heard about it, and he lived down there in the suite, and he thought it was horrific.

I heard some colleagues say there was no one who could substantiate her story. That is simply false, and it is shameful to allege that there is no one. Of course there is one. It is unacceptable to call something fair when you deliberately instruct or encourage the President to make sure that the people who can provide the information are not talked to.

This individual, now a professor at Princeton Theological Seminary, has a very fine reputation. He was so upset about this, he talked about it with his roommate his first year in graduate school long before Mr. Kavanaugh ever came close to any type of nomination discussion. So you can’t really say that he made it up now when he told another person about it long ago. And that individual was on the list to be talked to, but did the FBI talk to him? No, because the President wouldn’t let the FBI talk to him, and the President consulted with the Republican leadership, and they didn’t want anybody talked to who could actually corroborate these stories.

That is a rigged system. For anyone on this floor to say that is anywhere close to a form of justice, that is not true.

These women have been horrifically treated by this Chamber. Just as the country knew Anita Hill was treated so poorly, so will, for decades from now, people talk about the abuse of power that emanated from my colleagues across the aisle against these women.

Across this land right now, women have been reliving their own experiences of abuse. It has been an extraordinarily painful experience. They have been calling all of our offices. I am sure they have been calling all of our offices. I got on the phone and took many calls today. I heard story after story. It takes a lot of energy out of your heart to listen to individuals say, I am sharing this with you, and they start crying on the phone—person after person.

I also have all of the stories that have been written and sent to me as letters. I thought I would share a few of them with you.

Here is a letter:

What a farce! The disrespect to Dr. Ford and to victims everywhere. I am sincere in saying that this TRIAL is turning my stomach. I have fought back tears. I am a victim of similar offenses. It is no better, and in some ways worse, that is a woman going after Dr. Ford in a subtle attempt to cloud the truth of her experience.

What is she referring to when she says it is a woman going after Dr. Ford? She is talking about the fact that the leadership on the Judiciary Committee hired a prosecutor to come...
in and act as if Dr. Ford were a criminal on trial and to interrogate her as if she were a criminal on trial. That is what this individual said "is turning my stomach." And it turned my stomach, too, to see that abuse of power here in the U.S. Senate.

And if you hear your fellow Senators say, "But it happened almost 40 years ago," please assure them that in the victim's heart, mind and life, it happened last week. It happened yesterday. It happened today. Because you never get past what was done to you. Ever. You cannot.

She went on to share that she wrote this letter to me and deleted it and wrote it again and deleted it several times. She had just deleted it again when her husband came in the door carrying a statement that someone had posted on the doors in the neighborhood. The statement quoted me. It was from me, one of her two Senators, and she took it as a sign, and she decided to write that letter again and send it.

She said:

Now maybe what happened to me will bring about some change.

I know all of us are getting letters like this.

When she said she never came forward because it would be "his word against mine and as a female I would lose," she is relating exactly what happened to Dr. Ford.

It was set up he said, she said, with no corroborating witnesses called even though Dr. Ford asked for them. And then because it was he said, she said, my colleagues could stand up and say: Just can't prove it.

But why didn't my colleagues stand up and say: It is an outrage that we didn't call the people she asked us to call. It is an outrage that there was this phony FBI investigation that didn't talk to any of those people.

What she was talking about right here is how Dr. Ford was treated in this Chamber, that she would lose because men in power would rig the system and find for the man. That is what has happened here.

That is what happened with Ms. Ramirez, Debbie Ramirez. She had corroborating information from the suite mate of Brett Kavanaugh, but we here, this Senate, we rigged the system so that that information could not be considered. She was talking about how easily our power structure can be manipulated.

Another constituent wrote to say that although he was not a direct victim of assault, both of his brothers were repeatedly sexually abused by a Catholic priest who spent 8 years in prison for abusing as many as 150 boys.

He went on to say that this priest was in charge of a boys' choir even though it was known that he had issues with sexual abuse.

His brothers were part of the choir, and he is troubled, he writes, that his younger brother served in the same choir he did, and even though he was aware there was a problem, he didn't intervene.

He says, referring to the priest:

He ruined our lives. Though I was not directly a victim of his abuse, I carry with me shame for not knowing to speak up about what I saw.

He says that shame is amplified because his younger brother sang in the same choir for a time.

He goes on to talk about a culture of power and privilege where people think they can abuse others and get away with it.

He says:

We are seeing this behavior being accepted at the highest level of office in our country.

He goes on to relate that this is similar to the culture of abuse towards women.

He says:

The culture of abuse towards women is being openly perpetuated by the leaders of our country. The people we are supposed to put trust in.

That was the end of his quote.

He went on to say:

I have never felt like it was my story to tell. The only reason I tell it is because it illustrates how dangerous these power structures can be and how easily they can be abused. We have to take great care when choosing who to give great responsibility to.

Have we in this Chamber recognized how easily our power structure can be abused? Did we rise to insist on fairness for individuals who brought their stories forward? Did we insist that they had the opportunity of their witnesses and corroborating information considered by this Chamber? We did not. We failed them. We failed this country. And when he says that we have to take great care when choosing who to give great responsibility to, he is saying we should have taken great care. And we know that in this particular nomination, there are two powerful pieces of it. One, it is lifetime, so the person will serve for decades. The second is, it is the top Court.

Are there not individuals in this land of hundreds of millions of people who have stellar records of character who could serve on that Court?
I hope that across America, it will come to great discussion and lead to changes in how we think and how we behave. I hope that between now and the vote tomorrow afternoon, there will be some Members of this Chamber who want to comprehensively look at the responsibility that we had and why we failed to exercise appropriately. We will decide that, you know what, yeah, we are going to close debate, but we haven’t yet voted to put this man on the bench, and with the committee having completed their work, in the process, we need to stop and rethink what we are doing and not put Brett Kavanaugh on the Court.

Thank you, Mr. President.

Mr. UDALL. Mr. President, the Supreme Court nomination before us is of historic importance. We have a nominee whose nomination is clouded with credible allegations of sexual assault, whose truthfulness before Congress is questionable, and who showed himself as part of a culture in which judicial temperament before this body in his supplemental hearing.

As of today, more than 2,400 law professors throughout the country are on record that Judge Kavanaugh’s display of lack of candor during that hearing is disqualifying. The growing list includes professors from all political stripes and professors who had previously supported his nomination. Indeed, former Justice John Paul Stevens, long considered an independent counsel, has taken the unusual step of publicly opining the same.

Yesterday, I spoke on the Senate floor about why Judge Kavanaugh should not be confirmed in light of the allegations swirling around him, his lack of candor with this body, and his demeanor during the supplemental hearing. But, Mr. President, on the merits as well, Judge Kavanaugh has not shown himself deserving of elevation to this Court.

Let’s start with his overly expansive view of Executive power—a view that could shield our current President from being held to account for potential crimes and misdeeds.

Judge Kavanaugh has written and spoken extensively about the need to shield the President from criminal investigation while in office. He is on record that, in his opinion, the President has authority under the Constitution to immunize an independent counsel at will. Indeed, there is probably no other viable candidate to the seat who has argued more strenuously in favor of Presidential immunity and the President’s absolute authority to fire a special prosecutor. It is no coincidence, then, that this President, who is under criminal investigation by a special counsel, selected Brett Kavanaugh to sit on the Court.

Judge Kavanaugh is clear that, as a matter of policy, Presidents should be completely immunized from criminal and civil suit while in office. He writes that “the President should be free from some of the burdens of ordinary citizenship.” For Judge Kavanaugh, freeing the President of “burdens” the rest of us must bear takes precedence over ensuring the President follows the law.

Judge Kavanaugh’s supporters point out that his writings in support of the President do not represent his policy views, not his constitutional analysis. But his writings do not tell us that he would uphold Special Counsel Mueller’s investigation, nor would he tell us during his confirmation hearing that he would hold the President accountable for crimes.

In my view, the “burdens” of a criminal investigation do not outweigh the dangers of a criminal occupying the Oval Office.

There is nothing in the Constitution that immunizes a President from criminal investigation and prosecution while in office. The drafter knew how to immunize public officials if they wanted. Members of Congress, for example, have express immunity “from arrest or interrogation for any speech or debate entered into during a legislative session.” The speech and debate immunity for Congress is narrowly tailored. The drafter gave no immunity—narrow or broad—to the President or members of his Cabinet. While Judge Kavanaugh’s views are not instructive, as an Instructionalist, I have no confidence he would stick to the text of the Constitution and not grant the President immunity.

There is evidence in the public record that close associates and even family of the President may have conspired with Russia, and we have the President’s own inexplicable behavior cozying up to and trying to curry favor with Vladimir Putin. There is abundant evidence in the public record that the President has worked to undermine the investigation into Russian interference in our election and investigation into himself. And we have sworn testimony from the President’s former personal lawyer that the President directed the commission of two campaign-related felonies. If the President has committed crimes, he should be held responsible, just like the rest of us.

Judge Kavanaugh has said he would “put the final nail in” Morrison v. Olson. Morrison v. Olson is the 1988, 8-to-1 decision written by Chief Justice Rehnquist that upheld the Independent Counsel Act. That act was passed in the aftermath of Watergate to curb Executive overreach. The obvious conflict of interest the U.S. Department of Justice would have investigating the President. Judge Kavanaugh sides with the lone dissent in that case and with the idea that the President should be able to fire the person who is investigating him—with no check. If the constitutionality of Special Counsel Mueller’s investigation comes before the Supreme Court—and it is likely that it will—there is every reason to believe Justice Kavanaugh would give his chance to hammer in that nail.

Judge Kavanaugh espouses a “unitary executive” theory of the separation of powers. Hidden behind this legalese is a simple and dangerous idea: that the President holds absolute power over the executive branch. Under his theory, President Trump could actually fire Special Counsel Mueller because he uncovered wrongdoing by the President. In plain terms, he would let the fox raid the henhouse.

Judge Kavanaugh’s theory that the Constitution requires no checks on the President’s authority strains that document to the point of breaking. Our entire constitutional system of separation of powers is built on the principle of checks and balances—so that one branch of government does not accumulate and exercise an inordinate amount of power.

Under DOJ regulations, the Attorney General, or Acting Attorney General if the Attorney General is recused, may only appoint a special counsel if it is warranted and there is a conflict with the Department or other “extraordinary circumstances.” Only the Attorney General—not the President—may remove a special counsel. And the Attorney General—or in the case of Special Counsel Mueller, the Deputy Attorney General—may only do so for misconduct, dereliction of duty, or incapacity, conflict of interest, or for other good cause, including violation of Departmental policies.” The DOJ regulations provide appropriate and constitutionally sound checks on the executive authority.

The American people deserve to know the truth about Russia’s attack on our democracy. They deserve to know whether Candidate Trump or his campaign was part of the attack. And they deserve to know all the facts behind the President’s efforts to stop DOJ’s investigation into Russian interference and any Trump collusion. The President should not be able to hide the truth and the facts by firing Special Counsel Mueller.

And that is not all. There is open speculation that the President may pardon close associates. His family. Even himself. The new Justice may be called upon to determine the scope of the President’s power to pardon and whether that power may be exercised for corrupt purpose. Given Judge Kavanaugh’s overly expansive view of Executive authority, I am concerned he would set no limits on the President’s power to pardon and would allow a Presidential pardon even if wielded to obstruct justice.

At this point in our history, with so many questions whether the President, his family, or others close to him committed crimes, the American public must be assured that the new Justice will provide a check on the President. And not give him a blank check to commit crimes.

I am proud that New Mexico is a majority minority State, but I am really worried that a Justice Kavanaugh will not protect minority rights. Ten percent of our State’s population is Native American. Judge Kavanaugh, however,
has shown a distinct hostility to indigenous people’s rights. For example, in Rice v. Cayetano, he argued in the Supreme Court against a voting system limited to Native Hawaiians, arguing they should not be treated like Tribes even though Native Hawaiians and Tribes share the characteristics of a prior political organization. In that case, he represented the Center for Equal Opportunity—a fervently anti-affirmative action group. While the case was pending, he authored an op-ed in the Wall Street Journal arguing “any racial group with creative reasoning can qualify as an Indian tribe.” He called the voting system a “naked-racial spoils system.” Such an offensive view demonstrates a level of misunderstanding—perhaps even willful ignorance—unworthy of a nominee to our highest Court. While the Court ultimately struck down the voting system, it did not do so on Mr. Kavanaugh’s claimed grounds.

Recently disclosed emails that Judge Kavanaugh wrote as a White House lawyer confirm he is a threat to indigenous communities. In his view, if Native peoples are not organized into Tribes and live on reservations, they are not entitled to any special recognition. But not all Tribes are alike. Not all indigenous peoples are organized the same way. Alaska Natives, for example, are organized as Tribes, villages, and regional corporations. Alaska Natives are rightfully organized the same way. Kavanaugh’s documents related to Native Americans—his view that Native peoples, Hispanics, African Americans, and Asian Americans have faced over time and continue to face. Supreme Court equal protection jurisprudence is informed by this history.

Whether it is affirmative action, voting rights, or redistricting, we must have a Supreme Court who protects minority rights, and Judge Kavanaugh has not shown himself to be that Justice.

The same is true for women’s reproductive rights. Trump the candidate promised only to appoint Justices who would overturn Roe v. Wade. Potential Supreme Court candidates can only make it onto the Federalist Society list if they will vote to overturn Roe.

Judge Kavanaugh’s record does not bode well for women. He tried to stand in the way of a 17-year-old pregnant girl, an immigrant held in Federal detention, who wanted an abortion. He would have required her to find a “sponsor” in the United States who would provide housing for her and allow her to terminate her pregnancy. And if the Federal Government couldn’t find a sponsor, the young woman could return to the district court in 2 weeks. Of course, the longer the pregnancy continues, the greater the risk to the woman’s health and safety.

Judge Kavanaugh did not believe these onerous, bureaucratic requirements represented an “undue burden” on the young woman’s constitutional right to terminate her pregnancy. Fortunately, however, the full DC Court of Appeals did. They quickly overturned the decision and allowed the young woman to immediately exercise her right.

The American public—Democrats, Republicans, and independents—support a woman’s right to choose. If Judge Kavanaugh would have this country go back to the days of back-alley abortions, he should have said so during his confirmation hearings, but he would not. I cannot vote for a nominee who is not willing to affirm a woman’s right to choose.

A woman’s reproductive right is not the only health care right at risk with Judge Kavanaugh’s nomination. Our entire system of health care rights and benefits under the Affordable Care Act is in jeopardy. A group of Republican and Trump-administration attorneys that Kavanaugh has filed suit to gut critical ACA protections. They want to take away protections from the millions of Americans with preexisting conditions and allow insurance companies to discriminate on this basis again. They want to take away the prohibition against lifetime limits on benefits, and go back to the days when you could get booted off insurance because you have high medical expenses. They want to take away the right to cover children up to age 26, to limit inpatient treatment for preexisting conditions, and get rid of prescription drug coverage for seniors. And they want to eviscerate Medicaid expansion, which has given 11 million Americans healthcare they didn’t have before.

The Trump administration has sided with the Republican attorney Generals and Governors who want to decimate our health care system despite the President’s repeated campaign promises to cover everyone, protect people with preexisting illnesses, and cover children up to age 26.

This case is now before a Federal court in Texas and will likely make its way to the Supreme Court. We do not want a Justice who sided with corporate interests over consumers, who is willing to throw statutory language and constitutional principles aside to get the results he wants. I am concerned that a Justice Kavanaugh would do the President’s bidding and gut critical health care rights that Congress has enacted and that the American people overwhelmingly stand by.

But there is more at stake. In his legal opinions, Judge Kavanaugh inevitably sides with business and against the environment, workers, and consumers. His environmental record deserves a spotlight. Interpreting environmental statutes, Judge Kavanaugh will veer far from the legal text he claims to honor to reach the result he wants. For example, Judge Kavanaugh once blocked the Environmental Protection Agency from protecting “downwind” states from nitrogen oxide and sulfur dioxide coming from “upwind” States under the “Good Neighbor Provision” of the Clean Air Act. Nitrogen oxide and sulfur dioxide develop into ozone and cause respiratory illnesses and other health problems. However, the Supreme Court reversed Judge Kavanaugh. In a 6-2-to-2 decision that included Justice Kavanaugh and Chief Justice Roberts in the majority, the Court found that Judge Kavanaugh “rewrites a decades-old statute whose plain text and structure” are clear.
In case after case, whether in dissent or the majority, Judge Kavanaugh votes against the environment and with industry. He voted to invalidate EPA rules to regulate emission of greenhouse gasses by plants and factories, EPA’s mentions of air toxics standards limiting hazardous emissions from powerplants, to allow EPA to delay implementation of its methane control rule, to overturn an EPA rule regulating greenhouse gas emissions from cars and trucks, to overturn an EPA decision to revoke a coal company permit that would harm the environment. This is not the record the American people want from a Justice likely to rule for decades on the most important environmental law cases.

His record on matters addressing climate change is especially troubling. Climate change can hit minorities and low-income communities the hardest. In New Mexico, traditional land grant and acequia communities depend on the land to sustain their families. The climate change-induced drought we are experiencing in New Mexico and the Southwest threatens our way of life.

If we are looking for a Justice who will put finance back into our campaign finance system, Judge Kavanaugh is not a likely candidate. He has been clear that he believes that money equals free speech. So it is a good bet we will not scrutinize Citizens United or the other Supreme Court cases that now allow unlimited, dark money to run roughshod over our campaigns and tear at the fabric of our democracy. Our campaign finance system is broken beyond repair. Unless we change the rules—either through Supreme Court decision or congressional action and constitutional amendment—we will continue to see the kinds of perverse results we now see where a few superwealthy individuals and big corporations drown out the voices of the many. But we are pretty much assured that a Justice Kavanaugh will not change the rules that now allow unfettered dark money to pollute our elections.

It is hard to overstate the importance of the Supreme Court nomination before the Senate. New Mexicans and the American people want a nominee who has been 100 percent honest, whose nomination is not tainted by credible allegations of sexual assault and misconduct. New Mexicans and the American people want a nominee who will act as a check on the powerful, but President Trump chose this nominee to do the opposite.

At this critical point in our Nation’s history—when we have a President who is under DOJ investigation for conspiracy with Russia to undermine our national election and obstruction of justice, who may have broken campaign finance laws to win the Presidency, who have Justice on the Court who believe in the rule of law, who believe that no one is above the law, even the President. At this historic juncture, the American people must have assurance that any judicial nominee will hold the President true to our laws, true to our Constitution, but Judge Kavanaugh cannot give the American people this assurance, and I cannot support his nomination.

MORNING BUSINESS

200TH ANNIVERSARY OF BROWN BROTHERS HARRIMAN & CO.

Mr. SCHUMER. Mr. President, I would like to bring the Senate’s attention to the 200th anniversary of the New York City-based institution, Brown Brothers Harriman & Co. The firm, which was founded in 1818, is still in operation in the United States and has had a major presence in New York. The firm evolved from a 19th-century family-operated linen import business among Brown relatives in Northern Ireland, Liverpool, Baltimore, Philadelphia, and New York City and is one based on more than a century and a half of the world’s storied financial houses.

The first office in New York was located at 191 Pearl Street near the wharfs of South Street. By 1835, the firm had moved to Wall Street as the city experienced the growth in trade from the recently completed Erie Canal and innovations in overseas shipping.

Philanthropy has been a passion of the partners who were early benefactors of the Union Theological Seminary, as well as the New York Association for Improving the Condition of the Poor. Brown Brothers partners also served on a council whose work led to the enactment of New York State’s first tenement house law in 1867.

On October 5, family and partners of the firm will gather to celebrate 200 years of their banking history. I wish them congratulations.

ENDANGERED SPECIES ACT

Mr. BARRASSO. Mr. President, today I wish to submit for the RECORD a column written by Mr. Dennis Sun, a Wyoming journalist and rancher, entitled “The Act is Broken.” The article was published in the Wyoming Livestock Roundup on August 29, 2018.

Since its passage in 1973, the Endangered Species Act has contributed to the recovery of iconic species like the bald eagle. It has been an important conservation tool, but it is in need of an update.

Wyoming has invested more than $50 million for the recovery of the grizzly bear alone. Twice in the last decade, the U.S. Fish and Wildlife Service has found that the grizzly bear met all recovery targets and no longer should be protected as “threatened” under the Endangered Species Act. Courts have twice overturned the delisting decisions, and the Obama Administration has endorsed the expert opinion of wildlife biologists who set, approved, and met recovery goals.

Mr. Sun’s article highlights the case of the grizzly bear as a prime example for why my efforts to give states more opportunities to engage in conservation under the Act have merit. The successful recovery of the grizzly bear tells a hopeful story, but it will be able to improve the act and improve conservation much faster.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

(From Wyoming Livestock Roundup, Aug. 29, 2018)

THE ACT IS BROKEN

(By Dennis Sun, Publisher)

On Sept. 24, U.S. District Court Judge Dana Christensen issued his decision that stopped the delisting of the Greater Yellowstone Ecosystem grizzly bear.

This ruling was not unexpected, as Judge Christensen had already for recovery acted on the planned grizzly bear hunting season.

The case was brought by some wildlife advocates and a couple of tribes. They argued the bears face continued threats from climate change and loss of habitat. The case was based on more than that. They felt was not included the delisting study. During this trial, the questions Judge Christensen asked gave lawyers for Wyoming and the Mountain States Legal Foundation the notion he was going to rule against the state, and he did. An appeal to the Ninth Circuit Court in San Francisco, Calif., is most likely not going to happen, as that court doesn’t rule in favor of the western states often. The Ninth Circuit tends to be pretty liberal in its views.

The grizzly is now under the jurisdiction of the U.S. Fish and Wildlife Service (FWS).

Gov. Matt Mead said, “I am disappointed with this decision. Grizzly bear recovery should be viewed as a conservation success story. Due to Wyoming’s investment of approximately $50 million for recovery and management, grizzly bears have exceeded every scientifically established recovery criteria in the Greater Yellowstone Ecosystem since 2003. Numbers of bears have risen from fewer than 136 bears when they were listed in 1975, to more than 700 today.”

Mead also noted, “Biologists correctly determined grizzly bears no longer needed Endangered Species Act (ESA) protections. The decision to return grizzly bears to the list of threatened species is further evidence the ESA is not working as its drafters intended. Congress should modernize the ESA so we can celebrate successes and focus our efforts on species in need.”

Government biologists contended that Yellowstone’s grizzlies were starving, having adapted to changes in their diet, and are among the best managed bears in the world. If the judge’s ruling would have different, FWS would have another protection for around 1,000 grizzly bears in the Glacier National Park and the Bob Marshall Wilderness Area of Montana, but the ruling stopped that as well.

Just like dealing with the wolf issues, this ruling will take some time to get straightened out. Hopefully President Trump, our colleague Sen. Barrasso and others will get an improved and revised ESA bill passed—that is what it will take to delist bears. Many of the states are having issues with endangered species. In Washington, ranchers see wolf predation on livestock, so we should have more sympathy to get ESA corrected.

This is a big push to address many of the risks faced by many species today resulting from habitat modifications caused by