

On the one hand, for example, the FBI stonewalls legitimate requests from the people's elected representatives, whom they "hate," in the words of Agent Strzok. On the other hand, FBI employees are accepting meals, sports tickets, and golf outings from reporters.

Now the Department and the FBI are refusing to comply with congressional subpoenas while lecturing Congress about the need to control access to sensitive information. While FBI agents are breaking the rules by talking to reporters left and right, the Bureau goes after legitimate whistleblowers who expose waste, fraud, and abuse, according to law.

The level of hypocrisy is staggering. The Bureau was investigating Secretary Clinton for her use of private communications to transact public business, but the employees in the Bureau who were handling that very investigation, including the Director, did exactly the same thing. Of course, these employees were not exclusively using a private server that was highly vulnerable to outside attacks. There truly is a difference in the order of magnitude, but the FBI's employees' behavior could help explain their apparent lack of enthusiasm for investigating Clinton's clear alienation of the Federal records. After all, how could they accuse her of violating the Federal Records Act when it appears they may also have been violating the very same law?

These are only some of the examples in the inspector general's latest report that we had a hearing on before my Judiciary Committee a couple of weeks ago.

Former Director Comey said his people "didn't give a rip about politics." We can see clearly now that that is just not true, at least not for five top individuals involved in this very high-profile, very important investigation. They now need to be held accountable for their actions. There is no place in the FBI for the kind of arrogance displayed in those text messages.

There is no place in the FBI for the kind of political timing and calculations made by the former Director. His subordinates openly discussed the enormous pressure they were under to close the Clinton email investigation before the political conventions. That was completely improper. Decisions at the FBI need to be made on merit, not on a political calendar.

The FBI needs to stay out of politics. It needs to submit to oversight. It needs to focus on doing its job to regain its reputation for objectivity. No one in this country is above the law. No one should be independent of accountability, especially not the FBI.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant legislative clerk proceeded to call the roll.

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

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

NOMINATION OF BRETT KAVANAUGH

Mr. MARKEY. Madam President, the retirement of Supreme Court Justice Anthony Kennedy has created one of the most consequential vacancies on the High Court that this country has ever seen. There is a reason pundits have often referred to the Supreme Court as the "Kennedy Court." His influence on so many politically salient cases cannot be overstated. During his 30 years on the Supreme Court, Justice Kennedy was often the swing vote in decisions decided 5 to 4 on a divided bench of the Supreme Court. These include some of the most historic cases in our Nation's history: on a woman's right to choose, environmental protections, and same-sex marriage.

In 1992 Justice Kennedy wrote the controlling opinion in *Planned Parenthood v. Casey*, which reaffirmed *Roe v. Wade*'s core holding that the Constitution protects a woman's right to make a fundamental decision about her own healthcare, including a woman's right to choose.

In 2007 Justice Kennedy joined a 5-to-4 opinion in *Massachusetts v. EPA*, which held that greenhouse gas emissions are pollutants under the Clean Air Act and that the EPA must regulate those emissions under that statute, unless it can provide a scientific basis for its refusal to do so.

In 2013 Justice Kennedy wrote the majority opinion in *United States v. Windsor*, striking down as unconstitutional the Defense of Marriage Act because it violated basic due process and equal protection principles by extending certain Federal benefits to opposite-sex married couples but denying those same benefits to same-sex married couples.

In 2015 Justice Kennedy wrote the landmark opinion on same-sex marriage in *Obergefell v. Hodges*, which held that the Constitution guarantees same-sex couples the right to marriage.

In 2016 Justice Kennedy wrote the majority opinion in *Whole Woman's Health v. Hellerstedt*, which struck down a restrictive anti-choice law in Texas because it put an undue burden on women's access to reproductive healthcare services.

All of these decisions were decided by the single vote of a single Supreme Court Justice. That Justice was Anthony Kennedy. The Justice who succeeds Anthony Kennedy on the Supreme Court will have the opportunity to leave a deep and lasting mark on issues of the highest constitutional magnitude—issues that impact the health and freedom of women, the environment, LGBTQ rights, consumer protection, labor protections, affirmative action, criminal justice, gun safety, and more.

There are, without a doubt, important issues that will be decided. These will be the most important decisions of our generation, and this Supreme Court will be in a position to make that history.

Justice Kennedy's retirement handed President Trump the opportunity to fulfill his campaign promise to shift the balance of power on the Supreme Court to the far right on these issues. So the President dusted off a preapproved list of candidates for the High Court—a wish list prepared and presented to him by the ultraconservative Federalist Society. This is the same list of candidates that the Federalist Society assured President Trump would satisfy his litmus test of overturning *Roe v. Wade* and striking down critical healthcare protections. This is the same set of candidates from which the President selected Neil Gorsuch to fill the late Justice Antonin Scalia's seat—the seat that Senate Republicans stole when they violated all norms of Senate procedure by refusing even to hold a hearing on President Obama's nominee, Merrick Garland. In the short time that Justice Gorsuch has been on the Supreme Court, he has proven himself to be every bit of the far-right conservative Justice that the Federalist Society promised he would be.

DC Circuit Court Judge Brett Kavanaugh's name was on that Federalist Society's wish list as well. With the President's nomination of him to the Nation's highest Court, the President has found another Federalist Society-approved jurist whom he believes will pass his litmus test, and that should concern every single American.

Brett Kavanaugh is a judicial conservative's dream come true—a young jurist who will push the Supreme Court to the right for decades to come. His record on issues such as access to healthcare, consumer and environmental protections, and a free and open internet portend a rubberstamp for a conservative, right-wing agenda that would move us backward as a nation.

At the same time, it is very concerning that Judge Kavanaugh, who once served as Ken Starr's top deputy in the White Water and Monica Lewinsky investigations of President Clinton, has said that a sitting President should not be investigated for allegations of wrongdoing, should not be indicted or tried while he is in office, and should not have to participate in civil legal proceedings until he leaves office. This is from a veteran of Ken Starr's staff, leading the investigation against President Clinton throughout the Monica Lewinsky investigation. It is no coincidence that a President who now fears all of these legal actions would nominate a judge who could shield him from those legal actions.

Perhaps the gravest concern that the Kavanaugh nomination raises is the fate of *Roe v. Wade*. For 45 years, *Roe* has not just protected access to safe and legal procedures for women in our country, but it has affirmed the constitutional right to privacy. *Roe* recognizes that all Americans must be able to make their own personal health decisions based on their own beliefs, needs, and circumstances.

Judge Kavanaugh's record on the DC Circuit inspires no confidence that he will protect this fundamental right. He has supported restricting access to contraception, and he recently would have forced an undocumented minor in Texas to delay receiving a safe and legal termination of her pregnancy despite her taking all of the necessary steps to access that procedure under Texas State law. If confirmed, Judge Kavanaugh will almost certainly have more opportunities to inject the government into women's decisions about their own bodies.

Over recent years, State legislators across the country and their allies have pushed the boundaries of restrictions on legal abortion. Challenges to these laws are winding their way through the judicial system now and could certainly land in the welcoming arms of a nominee whom the Federalist Society have assured the President would reverse *Roe v. Wade*.

Confirming Judge Kavanaugh to the Supreme Court is an invitation for anti-choice advocates to intensify their crusade against women having access to procedures which they choose to make, taking them closer to their dream of overturning *Roe v. Wade* and turning back the clock on women's health freedom and economic security.

Let's be clear. Overturning *Roe* wouldn't end these procedures across this country. It would just end safe abortions that women would have access to.

Those across the country who care about protecting individual liberty and autonomy in healthcare decisions, including access to safe and legal procedures, are galvanized and mobilized politically in a way we haven't seen in a generation. They are organized, and I believe they will bring that political power to bear in opposition to the Kavanaugh nomination. Our judicial system—and the Supreme Court, in particular—has a special role in our democracy as a neutral arbiter of the law. The American people must have faith that this institution and its Justices will uphold this sacred responsibility.

Stepping back and from a larger perspective, looking at the Affordable Care Act, we have to ensure that, ultimately, protections for those with pre-existing conditions in the healthcare system, which are guaranteed under *ObamaCare*, are continued. Every family in our country has somebody with a pre-existing condition, and we have to make sure this nomination does not lead to such fundamental changes in the Affordable Care Act, eviscerating those protections and rights.

The President had an opportunity to choose a nominee that would unify this country and assure the public of the independence of the judicial branch. Instead, he shamelessly, in a partisan way, picked someone who would only serve to propel our highest Court into a far-right orthodoxy for generations to come, becoming the "supreme right-wing court."

If Judge Kavanaugh is confirmed, women's freedom to make decisions about their bodies, reforms to our healthcare system, the quality of our air and water, and much more will be at risk. This is a critical moment for our country and much too important for any Senator to rubberstamp this nominee in the name of deference to the President.

I am going to fight this nominee every step of the way, and I ask every American to join me in this fight. We will need all Americans to organize, to march, to raise their voices, and to say: Judge Kavanaugh does not represent the values we need on the Supreme Court of the United States of America.

Thank you.

I yield back.

The PRESIDING OFFICER. The Senator from Colorado.

COLORADO FOREST FIRES

Mr. GARDNER. Madam President, I come to the floor today to talk about fires that Colorado faces right now—some of the most devastating fires in Colorado history. As of the writing of our comments this morning, there were 40 fires so far in 2018. This is one of them. I think this is the 416 fire, which I had the opportunity to visit just a couple of weeks ago.

This past week I was in Colorado, where we were able to see the Sugarloaf fire. I drove by the Weston Pass fire. This is some distance away from the Lake Christine fire, and obviously, the Spring Creek fire in Colorado. As a result of these fires, over 355,000 acres in Colorado have burned. That is simply devastating right now.

Congress has not been inattentive to the needs of our forests. Over the past several months, we passed legislation that would fix the fire borrowing crisis that had gripped the Forest Service. That was something that was forcing them to cannibalize dollars that could be used to reduce the next year's forest fires on this year's forest fires. We fixed that. We put fixes in place for that.

We also passed legislation to give our land managers more tools to help address dead trees and insect- and disease-ridden forests so we could have healthier forests. I hope the work we do on healthy forest policies, which we have already made progress on, will continue in this Congress. These fires are certainly devastating.

These communities remain open. No matter where you are in the country, if you have a summer vacation in Colorado, I hope you will still come. These communities need you now more than ever. They need your dollars. They need your resources. They want you to come and visit.

In the meantime, we have to make sure that we provide our firefighters—the great men and women on the frontlines of these fires—the tools they need to protect our communities and the tools our land managers need to make sure they can prevent these fires from happening.

In this Congress we have also considered policies addressing categorical exclusions. That is a fancy way of saying that it gives line managers tools to reduce the fire risks in certain areas. We have helped to provide tools in fire regimes I, II, and III. There are five fire regimes: fire regimes I, II, III, IV, and V. They are defined by how likely they are to burn and how frequently they are to burn in certain conditions. Much of the West, though, is what is called fire regimes IV and V. You can see the colors of fire regimes IV and V, the orange and reddish color, and the purple color. The green, the light green, the yellowish colors are I, II, III.

We have been able to provide new tools for fire regimes I, II, and III, but we haven't provided as many tools in fire regimes IV and V. That happens to be a significant portion of the West. That is where most of the beetle and other insect kill has occurred in Colorado. When a tree is killed by an insect, it creates a significant fire hazard.

We have also been able to provide the amendments that we filed in the farm bill. Unfortunately, they didn't succeed. I hope we can get them through to provide help in these high-risk areas of disease and insect-ridden forests.

Past management practices have created conditions where we may have monoculture forests, where you have a forest with the same age of trees. You have the same conditions that allow them to be susceptible to the same insects and the same diseases, and you end up with thousands of acres that are susceptible to catastrophic wildfire.

Where a lot of Colorado's beetle kill and insect kill can be found is also where the headwaters of some of our Nation's most significant water sources are. Colorado is the only State in the country where all water flows out of and no water flows into. I know the Presiding Officer is a beneficiary of Colorado water as well—probably not enough of it, she would say. But it is important to Nebraska that we protect Colorado forests because the headwaters of the Platte River are in Colorado—the North Platte and the South Platte.

There is work we have to be doing to make sure that we protect these watersheds, because what happens when a forest burns is that you end up with hydrophobic soil conditions and that runoff from a rainstorm goes directly into the water. It destroys the watershed. If you have a forest that has four or five times the undergrowth that it should, then that takes more water out of what would naturally go to the waterway and the watershed, meaning there is less water available for other uses downstream.

I want to talk more about forest management. We had another fire in Colorado called the Buffalo fire in Summit, CO. If you have ever driven up I-70 through the Eisenhower Tunnel, toward Breckenridge, you go by a town called Silverthorne. You can see in