



Written by [R. Cort Kirkwood](#) on July 12, 2022

Leftists Push False Claim That Gorsuch, Kavanaugh, Lied About Roe in Confirmation Hearings

Hard-left Democrats continue to push the debunked conspiracy theory that Associate Justices Neil Gorsuch and Brett Kavanaugh “lied” during their confirmation hearings for the U.S. Supreme Court.

The supposed lie: They called 1973’s unconstitutional *Roe v. Wade* decision unchangeable legal precedent. But neither Gorsuch nor Kavanaugh said any such thing, not least because a judge cannot, as an ethical matter, say how he will vote on a case before he hears it.

That truth, though, is lost on hysterical leftists so upset about the decision to overturn *Roe*, which wrongly struck down abortion laws in all 50 states.

Thus, Representatives Ted Lieu (D-Calif.) and Alexandria Ocasio-Cortez (D-N.Y.) want the Senate to determine whether the justices did, indeed, “lie” during their confirmation hearings given that both voted to overturn *Roe*.

The Letter

Ocasio-Cortez has been pushing the false claim for weeks, using the remarks of Senators Susan Collins (R-Maine) and Joe Manchin (D-W.V.), to justify her claims. Both said Gorsuch and Kavanaugh misled them.

On July 8, Lieu, [a Taiwanese immigrant](#), and Ocasio-Cortez, a former barmaid, wrote to Senate Democrat chief Chuck Schumer.

“We respect the right of individual Justices to have their own views on various constitutional issues,” the [two wrote](#). “But we cannot have a system where Justices lie about their views in order to get confirmed.”

Noting that the opinion in *Dobbs v. Jackson Women’s Health Organization* says *Roe* was “egregiously wrong from the start,” and that “*Roe* and [*Planned Parenthood v.*] *Casey* represent an error that cannot be allowed to stand,” the two absurdly claim that the “the Justices did not tell the American people, or the United States Senate” those things:

In fact, they expressed the exact opposite position. While several Justices made misleading statements during their confirmation hearings, two examples are particularly egregious:

Justice Gorsuch (2017): “I would tell you that *Roe v. Wade*, decided in 1973, is a precedent of the United States Supreme Court. It has been reaffirmed. A good judge will consider it as



AP Images
Neil Gorsuch and Brett Kavanaugh



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precedent of the U.S. Supreme Court worthy as treatment of precedent like any other.” He also stated he would have “walked out the door” if the former President had asked him to overturn *Roe*.

Justice Kavanaugh (2018): “It is settled as a precedent of the Supreme Court, entitled the respect under principles of stare decisis. The Supreme Court has recognized the right to abortion since the 1973 *Roe v. Wade* case. It has reaffirmed it many times.” He also stated “It is not as if it is just a run of the mill case that was decided and never been reconsidered, but *Casey* specifically reconsidered it, applied the stare decisis factors, and decided to reaffirm it. That makes *Casey* a precedent on precedent.”

It is impossible to reconcile the sweeping majority opinion in *Dobbs* with the statements made by Justices Gorsuch and Kavanaugh during their confirmation hearings.

If They Lied, Kagan Did

But the justices did not lie; indeed, the Lieu-AOC missive nowhere says they promised to uphold *Roe*. Thus, nothing need be “reconciled.”

As *Washington Post* columnist [Marc Thiessen explained](#), Justice Elena Kagan answered similarly during her confirmation hearing to become Barack Hussein Obama’s solicitor general.

“Sen. John Cornyn (R-Tex.) asked her point-blank: ‘Do you believe that there is a federal constitutional right to same-sex marriage?’ She replied with one sentence: ‘There is no federal constitutional right to same-sex marriage.’”

That answer sufficed during her confirmation hearings for SCOTUS.

Yet after she landed on the U.S. Supreme Court, she voted for the imagined right to “same-sex marriage” in *Obergefell v. Hodges*.

But that doesn’t mean she lied, [Thiessen wrote](#):

As she explained in a March 2009 letter to then-Republican Sen. Arlen Specter (Pa.), she was simply describing the state of existing case law, which did not at the time recognize a federal constitutional right to same-sex marriage. “Constitutional rights are a product of constitutional text as interpreted by courts and understood by the nation’s citizenry and its elected representatives,” Kagan wrote. “By this measure, which is the best measure I know for determining whether a constitutional right exists, there is no federal constitutional right to same-sex marriage.”

Likewise, the conservative justices did not vow to uphold *Roe*.

“If they had done so — if they had promised to vote a certain way in a case in exchange for something of value, a senator’s vote — that would be an impeachable offense,” Thiessen continued:

It would be a serious violation of judicial ethics for a nominee to the federal bench to say how they would vote in a case before hearing the facts and evidence. As Ruth Bader Ginsburg explained during her 1993 confirmation hearings, “It would be wrong for me to say or preview in this legislative chamber how I would cast my vote on questions the



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Supreme Court may be called upon to decide.” Ginsburg added, “A judge sworn to decide impartially can offer no forecasts, no hints, for that would show not only disregard for the specifics of the particular case, it would display disdain for the entire judicial process.”

If Gorsuch and Kavanaugh lied, Thiessen rightly concluded, then so did Kagan.

If Kagan didn't, neither did Gorsuch and Kavanaugh.



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