



For Immediate Release

Date: August 30, 2018

Judge Kavanaugh's Republican Backers Are Refusing To Release His Records And Ignoring His Words. What Are They Hiding?

PRESIDENT TRUMP'S LAWYER HAS DECLARED PLANS TO APPEAL ANY POTENTIAL SUBPOENA TO THE SUPREME COURT - JUDGE KAVANAUGH BELIEVES THE PRESIDENT MUST HAVE "FULL SUPERVISORY CONTROL" OVER ANY INVESTIGATIONS, APPARENTLY INCLUDING OF THE PRESIDENT HIMSELF

Brett Kavanaugh: "The implication is that Congress has to take responsibility for overseeing the conduct of the president in the first instance. That's the role I believe the Framers envisioned, and that's the role that makes sense if you just look at the last 20 years. It makes no sense at all to have an independent counsel looking at the conduct of the president. Now to be sure, most criminal investigations are going to involve multiple subjects, so we still need a criminal investigation ongoing. But when it comes to looking at the conduct of the president, it has to be the Congress. Congress has to get in this game and not - stop sitting on the sidelines." [ABA Panel on the Future of the Independent Counsel Statute at Georgetown University Law Center, [2/19/98](#); 1:02:02-1:02:48; CNN, [7/20/18](#)]

Brett Kavanaugh:

LACOVARA: Do you accept the proposition that the attorney general, or the independent counsel, is the country's chief law enforcement officer?

KAVANAUGH: I do not. The president is the chief law enforcement officer. That is one of the bedrock principles that has gotten lost since Nixon. The power of the president in these situations has diminished dramatically. [Wash. Law. 34 (1999), Lawyers' Roundtable: Attorney-Client Privilege; p. [191](#)]

Brett Kavanaugh:

COSSACK: Brett, the independent counsel law is dead and - but yet we see Janet Reno appoint Senator Danforth to investigate what happened at Waco. It's a different kind of investigation than you worked under. Is it better or worse?

KAVANAUGH: **I think it's better because the attorney general and, ultimately, the president have full supervisory control, which is the way the Constitution set up.** [CNN Burden of Proof, [9/9/99](#); p. 169]

Judge Brett Kavanaugh: “Article II, Section 1, the first fifteen words, ‘The executive Power shall be vested in’ one person—you wonder do they mean that. Yes. You see the debates. There’s discussion of a plural executive. James Wilson, the father of the presidency—one person. **One person. They meant one person. That has—we talk about does this have relevance today. Yes. For me, it does at least. When we have cases with agencies that are accountable to the President, yes.** I think that’s in tension, as I’ve said, with the one person. But they meant it. It applies still today.” [GW Law School, A Dialogue with Federal Judges on the Role of History in Interpretation, [11/4/11](#)]

Brett Kavanaugh: “**Should United States v. Nixon be overruled on the ground that the case was nonjusticiable intrabranched dispute? Maybe so.**” [Wash. Law. 34 (1999), Lawyers' Roundtable: Attorney-Client Privilege; p. [191](#)]

Judge Brett Kavanaugh:

GIGOT: Can you think of a case that deserves to be overturned?

...

KAVANAUGH: Actually, I’m going to say one. *Morrison v. Olson*.

GIGOT: They said that’s the independent counsel statute case.

KAVANAUGH: It’s been effectively overruled but I would put the final nail in. [Remarks at AEI, [3/31/16](#); CNN, [7/18/18](#)]

DESPITE KAVANAUGH’S OWN WORDS, REPUBLICANS CLAIM CONCERNS ABOUT KAVANAUGH’S VIEWS ON EXECUTIVE POWER ARE UNFOUNDED

Republican Leader Mitch McConnell (R-KY): “**One of the flavors of the week was the outlandish claim that in law review articles he wrote 10 or 20 years ago, Judge Kavanaugh supposedly said that sitting Presidents cannot be held accountable under the law.** Some far-left special interests claimed he said that. So did some congressional Democrats. It was the perfect conspiracy theory, catnip for their far-left base. **The only problem was, it wasn't true.**” [Floor Remarks, [7/12/18](#)]

Sen. John Cornyn (R-TX): “Well, this arises out of a misreading and a misunderstanding of a 2009 Minnesota Law Review article he wrote that explored a gray area of the law and suggested that Congress consider legislation that would defer civil lawsuits and criminal charges until after the President leaves office.” [Floor Remarks, [7/16/18](#)]

Sen. Orrin Hatch (R-UT): “By conflating independent counsels and special counsels, Judge Kavanaugh's critics ignore his own record on the matter.” [Floor Remarks, [7/24/18](#)]

JUDGE KAVANAUGH’S OWN WORDS SUGGEST HE WOULD BE HOSTILE TO HEALTH CARE PROTECTIONS, AND HIS FORMER CLERKS AGREE

Judge Brett Kavanaugh: “The second big point from NFIB: the power to regulate commerce does not equal the power to force commerce. Five justices so conclude, the Chief Justice and the four dissenters and that is just, to me, a major principle of constitutional law. I know everything gets lost in the precise holding and the politics and the policy but just thinking, kind of longer term stream of constitutional decision-making, that this was a potential inflection point, the power to regulate commerce, does that give Congress the power to force mandatory purchases of goods and services. And I respect the idea that this would, that some have articulated this would just be health care but **something like this, when it’s out of the shed, when this tool’s out of the shed, it can be used for all sorts of purposes**; mandatory retirement accounts, mandatory college savings accounts, mandatory housing accounts, mandatory food accounts, mandatory disability insurance, mandatory auto insurance at the federal level. This kind of thing, if it had been approved under the commerce clause, would have given Congress a big new tool and I think this is an important structural principle that the court reinforced in NFIB, five justices reinforced in NFIB, **namely the power to regulate commerce does not equal the power to force purchases of goods and services.**” [The Administrative State After the Health Care Cases, [11/17/12](#)]

Justin Walker, Former Clerk to Judge Kavanaugh: “In 2011, two judges on the D.C. Circuit upheld the Obamacare individual mandate under the Commerce Clause. Kavanaugh dissented from that decision, which was authored by the respected Judge Laurence Silberman, a Reagan appointee. Kavanaugh explained that Obamacare could be challenged as unconstitutional, but that a federal jurisdictional statute required such a challenge to be brought in the future.” ... **“Kavanaugh’s thorough and principled takedown of the mandate was indeed a roadmap for the Supreme Court—the Supreme Court dissenters, justices Antonin Scalia, Anthony Kennedy, Clarence Thomas, and Samuel Alito, who explained that the mandate violated the Constitution.”** [The Federalist, [7/3/18](#)]

Sarah Pitlyk, Former Clerk to Judge Kavanaugh: “And as another of Judge Kavanaugh’s former law clerks has explained in depth, any suggestion that his decision paved the way for the Supreme Court’s disastrous ruling is, as Justice Scalia would later put it in an Obamacare dissent, ‘pure applesauce.’ The Supreme Court Justices who followed Judge Kavanaugh in the Obamacare case were *the dissenters*, Justices Scalia, Thomas, Alito, and Kennedy.” [National Review, [7/3/18](#)]

Justin Walker, Former Clerk to Judge Kavanaugh: “Rather, Kavanaugh’s dismissal of the Taxing Clause argument is a roadmap to the conclusion reached by the dissenters—that the individual mandate is unconstitutional under the Taxing Clause.” [The Federalist, [7/3/18](#)]

DESPITE THESE FACTS, SENATE REPUBLICANS CLAIM JUDGE KAVANAUGH IS NO THREAT TO HEALTH CARE PROTECTIONS

Judiciary Committee Chairman Chuck Grassley (R-IA): “Moreover, Judge Kavanaugh had two opportunities to strike down the Affordable Care Act on the DC Circuit, where he now serves. He did not do it. So where do they get the idea that he is a predictable vote to undo the ACA?” [Floor Remarks, [7/17/18](#)]

Sen. John Cornyn (R-TX): “The reality is that Judge Kavanaugh , in his official capacity, has issued two dissenting opinions and legal challenges to the Affordable Care Act, both highly technical in nature. Clearly, he is not against health care. That is really just a dumb comment.” [Floor Remarks, [7/16/18](#)]

Sen. John Cornyn (R-TX): “What a specious idea to suggest that somehow this judge who served on the DC Circuit Court of Appeals for 12 years is some crusader who is determined to undermine pre-existing conditions coverage for the American people. It is just a loony idea.” [Floor Remarks, [7/23/18](#)]

JUDGE KAVANAUGH DESCRIBED HIS YEARS AS WHITE HOUSE STAFF SECRETARY AS “FORMATIVE” AND “MOST INSTRUCTIVE” FOR WHO HE IS AS A JUDGE, MADE HIM “A BETTER INTERPRETER OF STATUTES”

As a top White House staffer, Judge Kavanaugh worked on Medicare prescription drug coverage, immigration reform and terrorism insurance. As White House Staff Secretary, Kavanaugh participated in how a president should select a nominee to the Supreme Court. As Staff Secretary, Kavanaugh handled controversial draft signing statements. While Judge Kavanaugh was Staff Secretary, the Bush White House was embroiled in key controversies over reproductive rights, marriage equality, detainee rights, and Hurricane Katrina. [Remarks to Inn of Court, [5/17/10](#); p. 639-644; Remarks at Opening Session of the ninetieth Annual Meeting of the American Law Institute, [5/20/13](#); 121-135; New York Times, [7/29/18](#)]

Judge Brett Kavanaugh: “I’ve been a judge on the D.C. Circuit for more than eight years. And as Dean Joseph Kearney pointed out in introducing me, I did not arrive to the D.C. Circuit as a blank slate. People sometimes ask what prior legal experience has been most useful for me as a judge. And I say, ‘I certainly draw on all of them,’ but I also say that my five-and-a-half years at the White House and **especially my three years as staff secretary for President George W. Bush were the most interesting and formative for me.** My job in the White House counsel’s office and as staff secretary gave me, I think, a keen perspective on our system of separated powers. And that’s what I’m going to talk about today. I participated in the process of putting together legislation.” [Remarks at Marquette, [3/3/15](#)]

Judge Brett Kavanaugh: “When people ask me which prior legal experience has been most useful for me as a judge, I tell them I certainly draw on all of them, the clerkships, private practice at Kirkland, Independent Counsel’s office, even college jobs on the Hill at Ways and Means, but the five-and-a-half years in the White House, **especially the three years as Staff Secretary for President Bush, are among the most interesting and most instructive,** and so many memories come to mind and I think about so often.” ... “I talked to the president and was able to participate in how should he pick someone for the Supreme Court.” ... “It was not apparent to me at the time, and I am certainly not disinterested, but it seems to me those experiences **helped make me a better student of the administrative process, a better interpreter of statutes.**” [Remarks at Opening Session of the Ninetieth Annual Meeting of the American Law Institute, [5/20/13](#); 121-135; [VIDEO](#)]

DESPITE THESE FACTS, SENATE REPUBLICANS ARE WITHHOLDING DOCUMENTS FROM JUDGE KAVANAUGH'S TIME AS WHITE HOUSE STAFF SECRETARY AND DOWNPLAYING HIS WORK THERE, SAYING HE WAS "MORE OR LESS A TRAFFIC COP"

Judiciary Committee Chairman Chuck Grassley (R-IA): "Indeed, the White House Staff Secretary is essentially the inbox and outbox for the President of the United States. Now, that is not to say that it is not a very important position, but it doesn't get involved in much policy." [Floor Remarks, [7/31/18](#)]

Judiciary Committee Chairman Chuck Grassley (R-IA): "Not only would a broad review of Staff Secretary documents be a waste of time, but it would also be a waste of taxpayers' money." [Floor Remarks, [7/24/18](#)]

Sen. John Cornyn (R-TX): "He was more or less a traffic cop." [Washington Post, [7/24/18](#)]

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