



For Immediate Release

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Republicans And Trump White House Offer Misleading Defense of Supreme Court Nominee Judge Brett Kavanaugh's Dangerous Views On Executive Power

SCOTUS Nom Kavanaugh Has Repeatedly Expressed An Almost Imperial View Of Presidential Power

Kavanaugh Defenders – Including Leader McConnell – Have Attempted to Minimize The Potential Danger Of A SCOTUS Nominee's Apparent Belief In An Imperial Presidency

New Evidence Shows Judge Kavanaugh May Believe Any Counsel Investigation Of A President Is Illegitimate, Raising New Concerns About His Nomination

Legal Expert: "What He [Kavanaugh] Seems To Be Implying Here Is Not Only That Congress Should Take The Lead, But That The Constitution Might Itself Foreclose Independent Prosecutors Like Independent Counsel Starr And Special Counsel Mueller."

Earlier this week, CNN reported that in 2016, Judge Kavanaugh specifically stated that he would overturn Supreme Court precedent in the case of Morrison v. Olson, which upheld the constitutionality of the independent counsel law.

CNN: Trump Supreme Court pick: I would 'put the nail' in ruling upholding independent counsel. "Judge Brett Kavanaugh two years ago expressed his desire to overturn a three-decade-old Supreme Court ruling upholding the constitutionality of an independent counsel, a comment bound to get renewed scrutiny in his confirmation proceedings to sit on the high court. Speaking to a conservative group in 2016, Kavanaugh

bluntly said he wanted to 'put the final nail' in a 1988 Supreme Court ruling." [CNN, [7/18/18](#)]

Democrats, including Sen. Schumer, immediately noted that this is yet another indication that Judge Kavanaugh holds extreme views about executive power.

Sen. Chuck Schumer (D-NY): "Second, and more immediately, considering everything we know about Judge Kavanaugh's expansive view of executive power and accountability, the fact that Morrison v. Olson of all the cases in the history of the Supreme Court is the first case he could think of overturning is deeply, deeply troubling. We already know he believes that a president shouldn't be investigated while in office, that a president can't be indicted while in office, that a president doesn't have to follow laws that the president 'deems', in his words, are unconstitutional. Clearly, Judge Kavanaugh's judicial philosophy incorporates an almost monarchical view of executive power and accountability, animated by a belief that our chief executive gets to play by a different set of rules." [Floor Remarks, [7/18/18](#)]

Top Republicans cried foul, suggesting that Judge Kavanaugh's reasoning and views on the independent counsel statute are somehow not relevant and have no impact on his views on a special counsel investigation.

White House Principal Deputy Secretary Raj Shah: "The Dem attacks on Kavanaugh's 2016 speech today are laughable, and show a total lack of understanding. There is a clear legal difference between the Independent Counsel statute and the Special Counsel regulation. Let's not play fast and loose." [Verified Twitter Account, [7/18/18](#)]

Republican Leader Mitch McConnell (R-KY): "They don't seem to care whether it's honest or not. They don't seem to care whether it's accurate or not. The latest made-up controversy is an attempt this week to make hay out of comments Judge Kavanaugh made about the long-ago expired 'independent counsels' statute. But, once again, there is no 'there' there whatsoever." [Floor Remarks, [7/19/18](#)]

Republican Leader Mitch McConnell (R-KY): "This has nothing to do with special counsels, or any of the other tools that are currently in place for elected officials to be held accountable. This has nothing to do with any investigations that are in the headlines today. What Judge Kavanaugh was talking about was a law that has not existed for two decades, and which the Supreme Court upheld with only a single dissenting vote." [Floor Remarks, [7/19/18](#)]

Now, new evidence shows that Judge Kavanaugh may believe that no counsel can even *investigate* any president – that only Congress can investigate the president.

CNN: Kavanaugh said Congress should investigate a president, raising questions about his views on Mueller. "President Donald Trump's Supreme Court nominee Brett Kavanaugh has raised concerns about indicting a sitting president and expressed his desire to overturn a ruling upholding the constitutionality of an independent counsel. And in newly unearthed video reviewed by CNN, Kavanaugh also implies that he believes there's

only one institution that should be allowed to investigate the conduct of a president: the United States Congress. While the comments are consistent with Kavanaugh's long-standing legal views, **they raise new questions about whether the appeals court judge believes a president can be subjected to an investigation conducted outside of Congress -- significant now that a federal investigation looms over Trump, legal experts say.** 'The implication is that Congress has to take responsibility for overseeing the conduct of the president in the first instance,' Kavanaugh said at a 1998 event at the Georgetown Law Center in Washington when asked about his view that a sitting president cannot be indicted. '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.' Kavanaugh then added: '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.' ... The 1998 comments, which have not been previously reported, are once again bound to add to speculation about whether Kavanaugh accepts the Mueller probe -- or is hostile to it. 'It's impossible to disagree with Kavanaugh that, in a perfect world, Congress would take the lead when it comes to investigating misconduct and malfeasance by the President,' said Stephen Vladeck, a University of Texas law professor and CNN analyst. 'But **what he seems to be implying here is not only that Congress should take the lead, but that the Constitution might itself foreclose independent prosecutors like Independent Counsel Starr and Special Counsel Mueller.**' [CNN, 7/20/18]

This was only the latest indication that Kavanaugh holds dangerous views on expansive executive power. These statements demonstrate the importance of having full access to Judge Kavanaugh's record.

Judge Kavanaugh wrote "In short, the Constitution establishes a clear mechanism to deter executive malfeasance; **we should not burden a sitting president with civil suits, criminal investigations, or criminal prosecutions.** The president's job is difficult enough as is. And the country loses when the president's focus is distracted by the burdens of civil litigation or criminal investigation and possible prosecution."

Judge Kavanaugh raised his hand to indicate his belief that a sitting president cannot be indicted.

Judge Kavanaugh wrote that a President may decline to enforce a law he deems unconstitutional even if a court has held it constitutional.

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