

Received(Date): 3 MAY 2003 16:20:11
From: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
To: "James C. Ho" <JamesCHo@stanfordalumni.org> ("James C. Ho"
<JamesCHo@stanfordalumni.org> [UNKNOWN])
Subject: : Re: draft op-ed

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 3-MAY-2003 16:20:11.00
SUBJECT:: Re: draft op-ed
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<JamesCHo@stanfordalumni.org> [UNKNOWN])
READ: UNKNOWN
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There probably is some replacement language that work. I just thought that the suggestion of "hey, we won, we get the courts" is not as good a message as "The Constitution provides for Senate majority rule on nominations and a group of obstructionist Dems are preventing that for partisan reasons."

"James C. Ho" <JamesCHo@stanfordalumni.org>
05/03/2003 04:10:29 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Re: draft op-ed

Thanks so much -- sorry to miss your call, call anytime (b)(6)

Good advice on the op-ed. My only reservation about taking out those sentences (you would just delete them without any replacement text, I assume) is that the elections issue might be the only thing to interest the lay reader. Perhaps it's just hopeless and only elites will ever care about the courts. I'd be interested in hearing your advice on this front, and after that I'll probably take those sentences out as you advise (that is, assuming the press guys let me -- I'm technically done with it and it's in our press shop now).

Look forward to talking with you!

At 04:03 p.m. 5/3/2003, Brett_M._Kavanaugh@who.eop.gov wrote:
>This looks great. I might delete the second and third sentences of both the
>first and second paragraphs to take out the suggestion of partisan/packing.

>(I also would delete the word "new" before "majorities" in last sentence of
>second paragraph.) With those deletions, the op-ed reads more "good government"
>and less partisan, I would think, and I think that matches goal of op-ed.
>Thanks.

>
>Record Type: Record
>To: Brett M. Kavanaugh/WHO/EOP@EOP
>cc:
>Subject: draft op-ed

>
>I am sending this to you because I know that you are interested in these issues.
>If you happen to have any thoughts, please let me know. Please do not circulate
>this to anyone. Thanks!

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>-----
>
>Obstructing the Constitution
>by John Cornyn

>
>This week, the Senate marks a dismal political anniversary: two years of
>partisan obstruction of President Bush's judicial nominees, culminating in two
>unprecedented filibusters -- and more threatened to come. This obstruction
>should have ended when the voters returned Senate control to the President's
>party last fall. But Democrat leaders, although now in the minority, refuse to
>let go of power, and instead wreak havoc on the judicial confirmation process
>and the democratic principle of majority rule. Today, the Senate Subcommittee
>on the Constitution will investigate whether their abuse of the filibuster
>against judicial nominees also threatens a dangerous change to the Constitution.

>
>The essence of our democratic system of government is beautiful in its
>simplicity. Elections must matter. The public must be allowed to reject
>gridlock by throwing the old regime out of office and installing new management.
>New majorities must be permitted to govern.

>
>Accordingly, as the Supreme Court has unanimously recognized, our Constitution
>is premised on the democratic doctrine of majority rule. All exceptions to this
>doctrine must be expressly noted in the Constitutional text, such as the
>two-thirds requirement for Senate approval of treaties.

>
>The American public's historic aversion to abusive filibusters is thus well
>grounded, for such tactics not only violate democracy and majority rule,

but

>arguably offend the Constitution as well. Indeed, the abuse of filibusters has

>previously been condemned as unconstitutional by prominent Democrats like

>Senators Tom Harkin, Joe Lieberman, and Tom Daschle, and Lloyd Cutler, the

>former Carter and Clinton White House counsel.

>

>Moreover, the filibustering of judicial nominations uniquely threatens both

>presidential power and judicial independence and is thus even more dubious than

>the filibustering of legislation, an area of preeminent Congressional power.

>

>Harry Edwards, a respected Carter-appointed judge, has written that the

>Constitution forbids the Senate from imposing a supermajority requirement on

>presidential appointments. Otherwise, ?the Senate, acting unilaterally, could

>thereby increase its own power at the expense of the President? and ?essentially

>take over the appointment process from the President.?

>

>As Judge Edwards concludes, ?the Framers never intended for Congress to have

>such unchecked authority to impose supermajority voting requirements that

>fundamentally change the nature of our democratic processes.? (Notably, he

>expressed less concern with legislative filibusters.)

>

>History confirms Judge Edwards?s reading of the Constitution. A majority of the

>Senate has never before been denied its constitutional right to consent to a

>judicial nominee -- until now.

>

>Some have noted the example of Abe Fortas, whom President Lyndon Johnson

>nominated to be Chief Justice in 1968. But Fortas?s nomination was dogged by

>allegations of ethical improprieties and bipartisan opposition, and as a result,

>he was unable to garner the firm support of 51 Senators. What?s more, President

>Johnson withdrew the nomination just three days after the first failed vote.

>

>That is a far cry from the current controversy, where Miguel Estrada, Justice

>Priscilla Owen, and countless others face an uncertain future and indefinite

>debate, despite enthusiastic bipartisan majority support. By brazenly insisting

>that ?there is not a number [of hours] in the universe that would be sufficient?

>for debate, Democrat leaders recognize they are using the filibuster not to

>promote debate, but to change the Constitution by imposing a supermajority
>requirement for judicial confirmations.
>
>The current crisis thus cries out for reform. No one can be satisfied
with this
>destructive process, constitutional or otherwise. As all ten freshman
Senators
>stated in a letter last week, "we are united in our concern that the
judicial
>confirmation process is broken and needs to be fixed." Veteran Senators
from
>both parties repeatedly express similar sentiments.
>
>Today's hearing will accordingly explore various reform proposals.
Senator Zell
>Miller suggests as did Senators Harkin, Lieberman, and 17 other
Democrats in
>1995 that the 60-vote rule for ending debate be reduced incrementally
with each
>succeeding vote until the rule reaches 51 votes. President Bush and
Senators
>Arlen Specter and Patrick Leahy urge the imposition of strict time
deadlines for
>the Senate to vote on judicial nominees. Senator Charles Schumer
advocates a
>total overhaul of the nomination process itself, by eliminating the
President's
>appointment power altogether and instead giving President Bush and Senator
>Daschle "equal roles in picking the judge-pickers." Regardless of the
merits of
>the competing proposals, each of these public officials deserves
recognition for
>acknowledging the current crisis in the United States Senate.
>
>Two years is too long. As Senator Henry Cabot Lodge famously said about
>filibusters: "To vote without debating is perilous, but to debate and
never vote
>is imbecile." Our current state of affairs is neither fair nor
representative
>of the bipartisan majority of this body.. The judicial confirmation
process is
>badly broken, and the Senate needs a fresh start. For democracy to work,
and
>for the constitutional principle of majority rule to prevail, this
>obstructionism must end, and we must bring matters to a vote.
>
>Mr. Cornyn is a U.S. Senator from Texas and chairman of the Senate
Subcommittee
>on the Constitution.
>
>James C. Ho
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>Chairman, Senator John Cornyn
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