

Republican Perspective
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by Ed Manning

ADVISE AND RESIST

“judges don't play at being legislators - they leave that job to our elected representatives.”

Edwin Meese, past Republican Attorney General

Senate confirmation hearings for Supreme Court nominee Brett Kavanaugh are underway. We have the opportunity to watch the “resistance” in full display. It is like a child’s temper tantrum. Suffice it to say that these hearings are more about the left’s ideology than the qualifications of the nominee.

For years, the Democrat left has used the federal court’s to confirm progressive ideology. The court’s have been their savior after voters reject policies at the ballot box. The left wants judges that make law, imposing policies by manipulating the meaning of the Constitution and statutes.

Democrats are hard pressed to attack the nominee on his qualifications. He is a graduate of Yale law school. He has taught at Yale, Harvard and Georgetown. He was actually hired to teach at Harvard by then Harvard Law Dean Elena Kagan, now on the Supreme Court. He worked in George W. Bush's administration and as a staffer for Kenneth Starr's investigation of President Clinton. Like Justice Gorsuch, he clerked for retired Justice Kennedy.

Judge Kavanaugh has served on the U.S. Court of Appeals for the D.C. Circuit for twelve years. That court is widely considered the second-most important court in the nation; three current Supreme justices also served there. He has written opinions in nearly three hundred cases. Thirteen Supreme Court decisions have endorsed positions advocated in his opinions. A judicial record is an accurate predictor of a prospective justice’s philosophy on the issues that matter most.

Judge Kavanaugh is both an “originalist” and a “textist.” He believes that the Constitution and laws should be interpreted based on their actual text and original public meaning.

“The judge’s job is to interpret the law, not to make the law or make policy. So read the words of the statute as written. Read the text of the Constitution as written, mindful of history and tradition. Don’t make up new constitutional rights that are not in the text of the Constitution. Don’t shy away from enforcing constitutional rights that are in the text of the Constitution. Changing the Constitution is for the amendment process. Changing policy within constitutional

bounds is for the legislatures.” Lecture in Honor of Justice Scalia at the Antonin Scalia Law School at George Mason University, 2016.

When it comes to one of the left’s litmus tests, abortion, the Judge believes it is “settled law.” “We talked about whether he considered Roe to be settled law. And he said that agreed with what Justice Roberts said at his nomination hearing, at which he said that it was settled law,” Republican Senator Susan Collins told reporters.

Confirmation of Judge Kavanaugh is a direct threat to the administrative state. He has consistently ruled against regulatory overreach by administrative agencies.

- In *Coalition for Responsible Regulation v. Environmental Protection Agency (EPA)*, the Judge argued in dissent that the Obama EPA’s burdensome greenhouse gas regulations for power plants and other facilities exceeded its authority. In a 5-4 decision, the Supreme Court agreed.
- In *White Stallion Energy Center LLC v. EPA*, the Judge argued in dissent that EPA must consider costs before imposing significant new regulations on electric utilities – regulations that would have cost utilities about \$9.6 billion a year. In a 5-4 decision, the Supreme Court agreed.
- In *Loving v. IRS*, Judge Kavanaugh ruled that the IRS lacked authority to regulate small tax preparation businesses.
- In *SeaWorld of Florida v. Perez*, Judge Kavanaugh voted against the regulation of whale shows at SeaWorld, stating that “the bureaucracy at the U.S. Department of Labor has not traditionally been thought of as the proper body to decide whether to ban fighting in hockey, to prohibit the punt return in football, to regulate the distance between the mound and home plate in baseball, to separate the lions from the tamers in the circus, or the like.”

The New York Times and the Associated Press spared no limits in attempting to disparage the Judge. Both filed requests under the Maryland Public Information Act. The agencies sought e-mails that Ashley Kavanaugh, the wife of the nominee, sent as town manager of The Village of Chevy Chase. They searched key words: abortion, gay, gun, Federalist, Clinton, Obama, Trump. The Times found nothing: “Ultimately, our request yielded 85 pages of emails, none of which provided any substantive insights into Mr. Kavanaugh’s judicial philosophy.”

Several women’s groups on the left are opposing the nomination and have suggested that the Judge doesn’t have the support of women. Eighteen of his female former law clerks told the Senate Judiciary Committee that he is a strong supporter of women in the legal profession. The women said the Judge achieved “rare gender parity” on the Court of Appeals for the D.C. Circuit, hiring 25 women and 23 men as law clerks. “And he has sent 21 of those 25 women clerks — an impressive 84 percent — on to clerkships at the Supreme Court,” they wrote. “We are proud that so many of those hires have been talented women.”

Understand, the Judge's mortal sin — he is nominated by President Trump.