

THIRD BRANCH CONFERENCE

Washington, D.C.

June 2, 2009

The Honorable Mitch McConnell
The Honorable Jon Kyl
The Honorable Jeff Sessions
The Honorable John Cornyn
The Honorable John Thune
and copied to all Minority Senators.
United States Senate
Washington, DC

Re: **Debating the Supreme Court Nomination**

Dear Senators:

Senator Sessions recently published a fine column offering his advice to the President on the qualities that should define a Supreme Court nominee. Senator Sessions respectfully explained what he expected of the President. Now that the President has made his nomination, it is up to the Senate to give the President “advice and consent.”

With like respect, and as the petitioners for millions of Americans, we write to express what we expect of you as leaders of the Senate Minority on a matter of the greatest concern to us – the confirmation process of the President’s nominee to the Supreme Court. In fact, we expect the same of the Majority in mirrored fashion.

We assume that Senators and staffs of the Committee on the Judiciary will do all that they can to illuminate the issues that under-gird a Supreme Court nomination. We hope that the time between nomination and hearings, and between hearings and a confirmation debate will be ample enough to alert the American people to the impact of the matter at hand, and comparable to previous nominations reviewed during times that Democrats controlled the Senate.

We say this to point out that the effort from you that we request is ***not at all limited*** to the walls of the Senate Judiciary Committee or its work, or to issues of procedure and timing. In this regard, we have every confidence in the new Ranking Member, Senator Sessions and his staff, and we know that the Members of the Committee, Republican and Democrat, will do their job.

Our concern arises from the little effort and time, Senate-wide, that was devoted to judicial nominations since the Alito confirmation, and during two election cycles. We have good reason to be concerned also given the extent of Senate effort in debate and scrutiny in the confirmations of Associate Justices Breyer and Ginsburg.

In recent years, and unlike the times that surrounded the confirmations of Justices Ginsburg and Breyer, the American people have been increasingly alerted to the Senate's role as the stewards of the federal judiciary.

In fact, Americans have been awakened to their own stewardship of the federal courts. Exit polls in the last election show that as many as *three quarters* of voters consider the Supreme Court nomination process a "significant" factor in their vote. A more significant number is that as many as *seven per cent (7%)* of voters in the last election, an election determined in states by similar margins, indicated that filling seats on the Supreme Court was *the* determining issue of their vote. These are surprisingly high numbers given that the issue was relatively hidden in the debate of the Senate and Presidential candidates in 2008 as compared to those recent years when Republicans won the White House and Senate seats.

And so with these considerations, let us share what, respectfully, we request of you:

A Great Debate

We request that you will lead 40 or more Senators to participate in a great debate that highlights all the issues that come to the fore with a Supreme Court nomination. We urge that you mobilize *all* Republican Members and staffs, and create opportunity for comment and debate, in and out of the Judiciary Committee, on and off the Senate floor, and in and out of Washington, from this moment until the final floor vote.

First and foremost of the issues for you to illumine is the difference in judicial philosophies that *today* clearly distinguishes between the judicial nominees of a Republican and Democrat president.

Secondly, we ask that you engage *the entire Senate*, and in so doing the American people, in a great debate that makes clear the consequences of the two distinct judicial approaches to the Constitution, to our national character, and to the lives of our children.

Third, we ask that you to rise to the extraordinary educable moment that a Supreme Court confirmation process represents, and to teach the American people about the controversial issues that the Supreme Court will decide one way or another as a result of the President's nomination, and any other that he might make, as a result of the differences between judicial philosophies.

Finally, we request that you, in both the great debate and how you conclude it, make crystal clear why Americans should believe that Republicans are intelligent defenders of the Constitution, or not.

A Democratic Filibuster

There has been much distraction in discussing whether the Republican Minority would or could muster a "*Democratic filibuster*," i.e., a filibuster used to obstruct a Senate confirmation vote. We recognize that Senate precedent has been altered by the systematic use of the "*Democratic filibuster*."

As *Senator Ben Nelson of Nebraska (D)* recently pointed out, a minority of Senators may now be well-entitled to prevent a cloture vote of a Supreme Court nominee who is, as Senator Nelson put it, an “*activist.*” Such a result could similarly be justified by a nominee who is *unqualified*, with no judicial or jurisprudential record, or who is clearly an adherent of “Living Constitution” jurisprudence, or otherwise likely to bring to the court their personal politics.

We remind you that the Republican Party Platform, which almost all Republican Senators voted to adopt, establishes that you will not support a “stealth nominee” or a nominee who does not display fidelity to the Constitution.

Even so, no credible person, if any, has called on Senate Republicans to brandish a “*Democratic filibuster.*” *We call on you instead* to display leadership, if the nominee merits it, in preparing for the use of the *traditional filibuster*, not intended to obstruct, together with moderate Democrats, so that the debate on the Senate floor is appropriately long and, therefore, suitably catalyzed to the American people.

The Final Vote

Our national experience in the past decade has changed the standard by which Republicans should cast their confirmation vote for a Supreme Court nominee of a Democrat president. The benefit of a doubt that once arguably might have justified the indifference over the last two nominees of a Democratic president is no longer tenable.

The record is clear that those with the judicial philosophy held by the nominees of a Democratic president have a particular and consistent approach to Constitutional interpretation and application. President Obama has, after all, repeatedly shown that he adheres to “Living Constitution” jurisprudence and favors judicial nominees who will allow personal feeling and personal background to color their judgment with empathy for particular classes of litigants.

The record is similarly clear as to the consequences of confirming Supreme Court nominees with no judicial record or judicial philosophy, which is what prompted the popular rejection of the Miers nomination.

We call on you to lead so that the confirmation vote of the President’s nominee, when it comes, honestly displays the differences between Republicans and Democrats to the American people.

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An argument can be made that in times past Americans slumbered while the Supreme Court hubristically usurped their rights. It can be argued also that we all slumbered during the Clinton Supreme Court nominations and failed, by acquiescence and inertia, to alert Americans to the consequences of the popular vote.

The times have changed, and we expect more from you than once we might have.

Respectfully,

Manuel A. Miranda, Chairman
 Richard Viguerie, ConservativeHQ.com
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 Gary Bauer, American Values
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 Jim Martin, 60 Plus Association
 Rev. Rick Scarborough, Vision America
 Rev. Louis Sheldon, Traditional Values Coalition
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 Debbie Joslin, Alaska Eagle Forum, Republican National Committeewoman, Alaska
 Bruce Ash, Republican National Committeeman, Arizona
 Steve Scheffler, Iowa Christian Alliance, Republican National Committeeman, Iowa
 W. Ross Little, Jr., Republican National Committeeman, Louisiana

Curly Haugland, Republican National Committeeman, North Dakota
 Cathie Adams, Texas Eagle Forum, Republican National Committeewoman, Texas
 Kathy Terry, Republican National Committeewoman, Virginia
 David Ridenour, The National Center for Public Policy Research
 Amy Ridenour, Americans for the Preservation of Liberty
 Jeffrey Mazzella, Center for Individual Freedom
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 Bradley Mattes, Life Issues Institute
 Fr. Thomas J. Euteneuer, Human Life International
 Dr. Patricia McEwen, Life Coalition International
 Austin Ruse, Catholic Family & Human Rights Institute
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 Eric Scheidler, Pro-Life Action League
 John Jansen, Generations for Life
 Mark L. Melcher - The Political Forum
 Deal W. Hudson, Catholic Advocate
 Brian Burch, Fidelis and CatholicVote.org
 John-Henry Westen, LifeSiteNews.com
 Tom Shields, Coalition for Marriage and Family
 Chuck Muth, Citizen Outreach
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 Jason Stern, Louisiana Family Forum Action
 Brian Camenker, MassResistance
 Kris Mineau, Massachusetts Family Institute

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