

of encroachment tends to consolidate the powers of all the departments in one, and thus to create whatever the form of government, a real despotism.” He said this “is the customary weapon by which free governments are destroyed.”

Here we have this issue of the President having chosen as a nominee, off a long list of possibilities, an individual who has gone to great lengths to talk about the President being above the law. Therefore, we have every right to worry.

About this expansive view of Executive power, in a 2009 Minnesota Law Review article, he said:

We should not burden a sitting President with civil suits, criminal investigations, or criminal prosecutions.

He said:

[A] possible concern is that the country needs a check against a bad-behaving or law-breaking President. But the Constitution already provides that check. If the President does something dastardly, the impeachment process is available.

So here he is saying directly that his reading of the Constitution is that the check on the President is through impeachment.

“The President,” he says, “should have absolute discretion . . . whether and when to appoint an independent counsel.”

In another point, he argued that it should be the President who has the power to dismiss an independent counsel and to do so without cause. In a 1998 panel discussion called “The Future of the Independent Counsel Statute,” he said: “If the President were the sole subject of a criminal investigation, I would say no one should be investigating that.”

When the moderator asked how many on the panel believed a sitting President cannot be indicted, it is Mr. Kavanaugh who raised his hand.

In his dissent in *Seven-Sky vs. Holder*, Kavanaugh wrote a footnote stating: “Under the Constitution, the president may decline to enforce a statute that regulates private individuals when the president deems the statute unconstitutional, even if a court has held or would hold that statute constitutional.”

Wow, not only does this nominee believe that the only power to address a misbehaving President is impeachment—the power granted to the Congress—but also that the President has the power to ignore laws just by virtue

of feeling that they are unconstitutional, even if a court says they are constitutional. That is not the system of checks and balances set up in our Constitution.

That is a big concern, and it leads us to the conclusion that when a President is under investigation for the possibility of a serious crime of collaborating with the enemy, that President should not have this Chamber considering holding hearings and proceeding to take a debate and a vote on that nominee. Let that cloud be cleared first.

There is more to be concerned about. There is a lot to be concerned about in healthcare. In *Garza v. Hargan*, he dissented from a decision protecting a woman’s constitutional right to control her own reproductive health decisions. Then, there is *Priests for Life v. U.S. Department of Health and Human Services*, where he wrote a dissenting opinion in which he stated that the Affordable Care Act’s contraceptive coverage requirement violated religious nonprofits’ religious freedom. The nonprofits said that even submitting the one-page form from the Obama administration to allow religious nonprofits to opt out might make them complicit.

As for net neutrality, in *U.S. Telecom Association v. Federal Communications Commission*, he wrote an opinion in favor of striking down the FCC’s net neutrality rule. He argued that the net neutrality rule violated the First Amendment by “restricting the editorial discretion of internet service providers.”

The editorial discretion of internet service providers? This issue of net neutrality is whether or not an internet service provider can charge a series of fees based on the content of the information. If you want to protect freedom of speech, then you protect net neutrality. This net neutrality issue was about whether an internet service provider can charge fees based on the type of platform you are using or the computer program you are using. It was about whether you can create a fast lane on the internet for those wealthy enough to afford it while the rest of us in America are stuck in the slow lane behind a truck going 30 miles per hour. That is what net neutrality is about.

Did he even understand the basic fundamentals of the issue? He said it is about the editorial decision of the internet service providers—talk about

a decision warped and twisted and crafted to support the powerful or the fundamental opportunity for us as a nation to make rules that regulate fair opportunity on the internet.

Our Nation is at a pivotal moment. We have a Court that in a 5-to-4 decision, a 5-to-4 decision, and a 5-to-4 decision has proceeded to weigh in on behalf of the powerful, against the people, against the workers of America, against the consumers of America, against the women of America and healthcare rights in America. Now we have the possibility of a nominee being considered who wants to make the Presidency of the United States above the law, not subject to investigation, not subject to the possibility of indictment, not subject to the courts saying that a law is constitutional or unconstitutional.

Perhaps it is appropriate for a King in a kingdom but not for a democratic republic, not for a “we the people” constitution. That is why we absolutely should not proceed to consider this nominee until the President is cleared of the investigation for conspiring, for collaborating with an enemy of the United States of America. It is absolutely why if that cloud is cleared, we should still be dramatically concerned about the viewpoints of this nominee, who doesn’t respect the healthcare opportunities and rights of Americans, who doesn’t respect the government’s ability to create a fair playing field, equal lanes for individuals on the internet, and who certainly doesn’t understand that no one is above the law under the vision of the Constitution, not even the President of the United States.

Thank you.

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ADJOURNMENT UNTIL 10 A.M.  
TOMORROW

The PRESIDING OFFICER. Under the previous order, the Senate stands adjourned until 10 a.m. tomorrow.

Thereupon, the Senate, at 6:38 p.m., adjourned until Thursday, July 12, 2018, at 10 a.m.

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CONFIRMATION

Executive nomination confirmed by the Senate July 11, 2018:

DEPARTMENT OF JUSTICE

BRIAN ALLEN BENCZKOWSKI, OF VIRGINIA, TO BE AN ASSISTANT ATTORNEY GENERAL.