

Then last Friday, in a stark departure from committee precedent, Chairman GRASSLEY, who is a friend of mine, shocked me when he sent a partisan request that omitted any and all records from Judge Kavanaugh's three contentious years as Staff Secretary. This was a particularly extraordinary admission, given that Judge Kavanaugh himself singled out his three years as Staff Secretary as "among the most instructive" for him as a judge, when he provided advice "on any issue that may cross the [president's] desk." During this time, Judge Kavanaugh said he helped to "put together legislation," and he "worked on drafting and revising executive orders."

Karl Rove described Judge Kavanaugh as playing a major role in reviewing and improving practically every policy document that made it to the President. Judge Kavanaugh said this experience gave him a "keen perspective on our system of separated power."

Yet, Senate Republicans don't want to see any of it. Not even those memos and other documents that Judge Kavanaugh himself authored and edited.

Just as I worked to provide these same documents when the Republicans requested them in a Democratic administration, I do not believe the Senate can fulfill its constitutional duty to provide advice and informed consent to a nominee for our Nation's highest Court without vetting three years' of such critical records.

That is why, yesterday, I joined Ranking Member FEINSTEIN and the other Judiciary Democrats to send our own records request to the Bush Presidential Library. The request mirrors—not surprisingly—almost word for word the request I sent with then-Senator Jeff Sessions for Justice Kagan.

We simply cannot have a lower standard of transparency for Trump nominees than for past nominees of both Republican and Democratic Presidents. The fact that the Judiciary Committee is willing to move forward without Judge Kavanaugh's full record is especially alarming because the last time Judge Kavanaugh testified before the Senate under oath, he appeared to provide a misleading account of his work at the Bush White House.

In his 2006 confirmation hearing, I and other senators asked about his knowledge of several Bush-era scandals, including warrantless wiretapping, torture, and detainee treatment. Judge Kavanaugh testified he had no knowledge of such issues until he read about it in the paper. He testified in response to a question from Senator DURBIN that he "was not involved in the questions about the rules governing detention of combatants." Again, this was under oath.

After his confirmation, press reports indicated that he had participated in a heated discussion in the White House over the legality of detainee policies. Judge Kavanaugh discussed whether

the Supreme Court would uphold the Bush administration's decision to deny lawyers to certain enemy combatants. Judge Kavanaugh advised that his former boss, Justice Kennedy, would likely reject the argument that the White House was putting forth.

I try to look at this conversation every way I can. I was a trial lawyer. I took depositions. I argued cases. I am trying to reconcile it with Judge Kavanaugh's sworn testimony under oath, but it is impossible. It makes it all the more critical that we review his complete White House record to find out what he really did.

The only records I have seen from Judge Kavanaugh's time as Staff Secretary are a handful of emails previously released through an unrelated FOIA request. One happens to show very clearly that Judge Kavanaugh was looped in, notwithstanding his statement, on the Bush White House's efforts to message the infamous torture memos. From the 1 million records that exist on Judge Kavanaugh, we have but one drop in the bucket, but in that one drop, they are discussing torture. It is something he said that he had read about only in the papers. Yet this email shows he worked on these issues while in the White House.

I am afraid that my Republican friends clearly do not want records from Judge Kavanaugh's three years as staff secretary to be public, but the fact that records may be controversial doesn't mean they should be hidden from the public view. Indeed, just the opposite principle applies. Just as we gave all of the records on President Obama's nominations, we should do this.

The American people must not be in the dark about controversial aspects of a nominee's record. Certain principles are more important than party. Transparency is one of them.

We have learned this lesson before. Wearing blinders when considering a former administration official for a lifetime judgeship presents grave risks.

When President Bush nominated Justice Department lawyer Jay Bybee to the Ninth Circuit in 2003, I and other Senators asked about his involvement in the legal issues surrounding the war on terror. He didn't answer our questions. But a year after he was sworn in for a lifetime position on the Federal court, the American people learned that Judge Bybee gave the legal green light for the official use of torture, something that most people now agree is one of the darkest chapters in our nation's history. Had we known that at the time, Judge Bybee would still be known as Mr. Bybee. He never would have been confirmed. A majority of Republicans and Democrats would have voted against him.

Judge Kavanaugh was directly involved in some of the most politically charged moments of our recent history. The Senate owes the American people an unsparing examination of his nomination—a nomination that could shape their lives for a generation.

It is my hope that Senate Republicans and Chairman GRASSLEY will reconsider their partial records request for Judge Kavanaugh and join the Democrats' request for all of his records. I agreed when they demanded that for Justices Kagan and Sotomayor.

Well, if that is the standard we followed for both of those tremendous jurists—Justice Sonia Sotomayor and Justice Elena Kagan—shouldn't we demand the same of Judge Brett Kavanaugh? He is no different than they are on the issue of what he has had to say. We ought to find out what it is. Then make up your mind; vote for him or vote against him. I am pretty sure that had we gotten the right answers on then-Mr. Bybee, he never would have become Judge Bybee.

I don't believe that many Senators of either party will stand up here and say that it is great that we broke the law on torture for dubious reasons.

I see the Senator from Missouri.

I yield the floor.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BLUNT. I thank my friend, the Senator from Vermont.

NATIONAL DEFENSE AUTHORIZATION BILL

Mr. BLUNT. Mr. President, today the Senate overwhelmingly supported the conference report for the 2019 John S. McCain National Defense Authorization Act. That bill is now on the way to the President's desk.

Many Americans have bravely fought to uphold the values that our country holds dear. There are many people in the Senate who have been stalwart supporters of the military during their time here, but the legislation we passed today is named for one of those Senators, our colleague from Arizona, the chairman of the Armed Services Committee, JOHN MCCAIN.

Senator MCCAIN not only has given much of his life in military service, but he has given tirelessly in service to the country in so many ways, including service here. He has been an incredibly effective advocate for the men and women who serve in uniform and defend us.

There is no Member of the Senate for whom my admiration and appreciation has increased more during the time I have had the opportunity to serve with him. As a House Member, I knew Senator MCCAIN, but I knew him only in the kind of passing that occurs when the House and Senate are trying to work out an issue or deal with a specific problem. I didn't really get to know JOHN MCCAIN until I came to the Senate. That daily contact with him made a real difference in the way I felt about him.

His courage, his sometimes seemingly short fuse, but always his desire to do the right thing as he saw the right thing have continued to make him an important advocate here. Even

in recent days, when he couldn't attend the Senate, he was the first to let his views be known.

Certainly, Senator McCain and I didn't agree on everything. We still don't agree on everything. We don't make any particular pretense that we agree on everything. There has been more than one occasion when he expressed to me his absolute dismay that I voted the way I voted on a certain issue, but that is when I began to think that maybe we really had a relationship I could treasure—and I do treasure it.

I am pleased that we named this bill after our friend Senator McCain. One of the principal responsibilities we have is to defend the country. It is the one job the Federal Government does that almost no American will argue that somebody else could do better, either personally or at a different level of government. It is the No. 1 priority, I think, of the Federal Government. This bill addresses that priority.

In our State, we have Whiteman Air Force Base, Fort Leonard Wood, Rosecrans Air National Guard Base, where people from all over the world come to train on how to use the C-130s. We have the AVCRAD facility, a National Guard facility in Springfield, MI, that repairs helicopters for the armed services and saves a lot of money doing that. We are the home of the National Geospatial-Intelligence Agency's western headquarters, and we are proud to be.

Missourians serve in uniform and are proud to serve. Missourians serve in many ways, including all of those organizations I just mentioned, and they are proud to do that.

The people who serve in the military and the people who serve in the intelligence branch of our government are increasingly challenged. I think the missions we have around the world, the challenges we have around the world, the national security threats we have around the world—as the Presiding Officer knows from his job as Foreign Affairs chairman—are as complex and complicated and multifaceted as they have ever been. Some have said that there are more threats from more directions in more ways than at any other time.

I think this bill begins to recognize that—tries to recognize that—and understands that to remain successful, America has to have a military that creates a military advantage. It has to be able to counter the potential that our adversaries have. We have to be able to defend international order and protect ourselves and those who rely on us in their defense of freedom.

To that end, Secretary Mattis and the senior leaders throughout the Department of Justice put together the plan and the thought that really is the backbone for how this legislation has been crafted. This National Defense Authorization Act authorizes the necessary investments and establishes the policies to carry out our national defense strategy.

First and foremost, President Trump and his administration have prioritized rebuilding the military. This bill, with a total of \$716 billion in authorization, provides the resources, the equipment, and the training necessary to do so.

For 2 years in a row, we authorized a substantial increase in defense spending. We will have a chance, when we get back in a week or so, to bring the defense appropriating bill to the floor, which hopefully will be the second year in a row that our defense spending has matched the plan that has been authorized.

The National Defense Authorization Act provides our servicemembers with a pay raise of 2.6 percent, the biggest pay raise in 10 years. Our troops and their families make a tremendous sacrifice to serve. They move often on a minute's notice, but in the last year's legislation, we gave more flexibility to families on that topic. Still, when you are in the military, you know you are not likely to be wherever you are for very long. That increase in pay is something we should be pleased about as a country.

This bill authorizes critical multiyear procurement authority. Why does that matter? That doesn't sound very exciting—multiyear procurement authority—but it allows people in the military to plan not only what they are getting this year but how that gives them the ability to build on that next year.

We have been using the Super Hornets, for instance, which are made in St. Louis, MO, at a high volume with desert warfare. The desert is harder on our equipment than other places might be. There is a serious shortfall of fighter aircraft in the Navy. All of those things are taken into consideration as this bill moves forward. It is a bill that recognizes the importance of readiness issues.

We had more people die in training accidents last year—by a substantial number—than were killed in combat. That means we hadn't been providing the kind of training or the kind of equipment needed because we had budgets that didn't allow for that. These budgets that we voted on in the last few months, hopefully, will get us back to where we are going to close that readiness gap. We are going to be able to say to those who serve and to their families that we are providing the best equipment, the best training, and an adequate amount of time to fly a helicopter or fly an airplane to try to see what you would do in adverse conditions, which, frankly, we just have not been able to do.

This takes into account actions to really address specific threats from countries that have actively worked to undermine our economic interests and our national security interests.

According to the national defense strategy, China is using what it refers to as an “all-of-nation long-term strategy”—all of the resources of the nation of China, according to that blueprint,

in a long-term strategy of leveraging military modernization, influencing operations, and predatory economic efforts in order to coerce neighboring countries to reorder the structure of the Indo-Pacific region to its advantage. It is not to our advantage or to the world's advantage for China to restructure that part of the world to its advantage. It also classifies China as a strategic competitor that seeks to shape the world toward its authoritarian model through destabilizing activities that threaten the security of the United States and its allies.

To counter China and reassure our allies and partners, this bill takes action to prohibit telecom companies with links to the Chinese Communist Party's intelligence apparatus from doing business with the U.S. Government. Many of us on the Intelligence Committee think we could have gone a step further than that, but at least we are now prohibiting those organizations from being government contractors. We need to continue to be vigilant so as to be sure that their presence in our other systems doesn't also jeopardize us.

This bill, the National Defense Authorization Act, contains modernization language for the Committee on Foreign Investment in the United States in its effort to look at what national security issue may be at risk when a foreign company is able to buy a company or the technology of an American company.

The national defense strategy, in addition to China, also says that Russia seeks to “shatter the North Atlantic Treaty Organization and change European and Middle East security and economic structures to its favor,” which is also not to our advantage or to the advantage of those in the world who would be affected by it.

Russia has violated key arms control treaties. It has expanded and modernized its nuclear arsenal—sometimes outside agreements that have been made. It has tested counterspace weapons. It has used emerging technologies to undermine our election process. It has infiltrated the way that we communicate with each other on social media. It has confronted the elections of our NATO allies and others.

I think this bill shows not only a firm commitment to NATO but a firm commitment to article 5, which means that any NATO country, when attacked, will have the other NATO countries come to its help and aid.

Additionally, this bill authorizes important resources and policies to counter North Korea, Iran, ISIS, al-Qaida, Syria, and others that we should be concerned about as they oppress the people of their countries and try to expand their oppressive governments to other places.

This bill recognizes the critical importance of our allies and our partners around the globe so that we can be willing to stand together and to advance shared values and goals.

The men and women who serve us in uniform, the men and women who serve us in the intelligence agencies, and the civilian employees who come every day to be part of a defense and intelligence structure work hard for America. This bill shows that we appreciate that work. In the Senate today, the overwhelming vote on this bill verifies that, and the President's signature soon to follow will set a blueprint that will allow us to do the No. 1 job of the Federal Government—to defend the United States of America.

I yield the floor.

The PRESIDING OFFICER (Mr. GARDNER). The Senator from Minnesota.

Ms. SMITH. I thank my colleague from Missouri.

NOMINATION OF BRETT KAVANAUGH

Ms. SMITH. Mr. President, I rise to talk about my strong opposition to Judge Brett Kavanaugh's nomination to the Supreme Court. I want to specifically focus on what his confirmation could mean for the future of voting rights in this country.

The right to vote is our most sacred responsibility as citizens of this great Nation. Martin Luther King, Jr., called voting "the foundation stone for political action." That is because when the right to vote is restricted, it undermines the very foundation of our democracy. If certain groups are barred or discouraged from voting, then our elected representatives cannot be held accountable for protecting the rights and interests of all of us.

When you cast your vote, you decide who should be entrusted to protect all of your rights—your right to make private decisions about how and when to start a family, your right to organize and advocate for fair pay and safe working conditions, your right to affordable healthcare, and your right to breathe clean air and drink clean water. Yet, if Judge Kavanaugh is confirmed to the Supreme Court, there is no doubt he will help his friends in far-right special interest groups continue their coordinated campaign to make it harder for millions of Americans to vote. These are the very same groups who recommended his nomination to the President.

These special interest groups have helped to pass State laws that have been designed to create obstacles at every step of the voting process, like making it more difficult to register to vote, to cast your vote, and to have your vote counted equally. These groups also know that they can count on Judge Kavanaugh to uphold these discriminatory laws.

As a judge on the DC Circuit Court of Appeals, Judge Kavanaugh has a record of supporting laws that perpetuate voting discrimination, particularly against communities of color. In 2012, he wrote an opinion for a three-judge panel that upheld South Carolina's

stringent voter ID law even though the Department of Justice had determined that the law would violate the Voting Rights Act of 1965.

Unfortunately, discriminatory voting laws, like the one Judge Kavanaugh upheld, have a long and shameful history in this country. When this country was founded, generally only property-owning White men had the right to vote. It took 80 years to expand the franchise to all male citizens regardless of their race or color. It took another 50 years to grant women the right to vote and another 4 years after that to grant that right to all Native Americans. Yet the expansion of the legal right to vote did not always translate into access at the polls. It took us over a century to pass the Voting Rights Act of 1965, which outlawed discriminatory poll taxes, literacy tests, and other voter intimidation tactics. This landmark civil rights legislation finally put real teeth in the promise of the 15th Amendment—that no one should be denied the right to vote on account of one's race or the color of one's skin.

Unfortunately, in 2013, the Supreme Court gutted one of the most important protections of the Voting Rights Act in *Shelby County v. Holder*. Since then, far-right special interests at the State level have doubled down on their efforts to make it harder for people to vote by eliminating same-day and on-line voter registration, by limiting early voting, by enacting voter ID laws, and by purging infrequent voters from the registration rolls. These latest efforts make it harder rather than easier for people to vote. They show us there is still so much work to be done to fulfill the promise of the 14th and 15th Amendments—that every citizen can vote.

We deserve a Justice who is committed to making our democracy more representative so that we remain a government for the people and not just for some of the people. We need a Supreme Court Justice who appreciates the history of this hard-won fundamental right and who will not reverse course on centuries of progress. Judge Kavanaugh's opinions show that he will uphold State laws that make it harder for communities of color and people of low-income to make their voices heard.

Our voting laws reflect our beliefs about who should have a voice in this country. I am proud to represent Minnesota, the State with the highest voter turnout in the Nation, and I believe that our next Supreme Court Justice should vigorously defend the right of all eligible citizens to exercise their most fundamental constitutional right—the right to vote. Unfortunately, Judge Kavanaugh's record demonstrates he will not be that Justice.

I urge my colleagues to join me in opposing his nomination, and I urge the American people to make their voices heard.

I thank the Presiding Officer.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I rise to discuss the nomination of Judge Brett Kavanaugh, as some of my colleagues have been doing today.

President Trump has chosen a superbly qualified nominee to the Supreme Court—and believe me, I know what is good and what isn't good. Judge Kavanaugh is one of the most widely respected judges in the country. He has authored 300 opinions during his 12 years on the bench in the DC Circuit Court of Appeals—the second highest court in the country. The Supreme Court has adopted the positions in his opinions a dozen times. He has written multiple dissents that have carried the day in the Supreme Court. He has authored articles in the *Harvard Law Review*, the *Yale Law Journal*, and the *Georgetown Law Journal*. He has also taught courses at Harvard, Yale, and Georgetown. None other than Elena Kagan, in fact, hired him to teach at Harvard.

I would like to take some time today to focus on a subject on which Judge Kavanaugh has really made his mark as a jurist. I want to talk about substance. I want to talk about what Judge Kavanaugh has written in his opinions and how he has been a true intellectual leader on the court. I hope my colleagues on both sides listen to this because we haven't had a nominee like him in a long time.

So much of the discussion about Judge Kavanaugh, so far, has been substance-free. Democrats have hurled accusation after accusation that has been divorced from reality. They say those who support Judge Kavanaugh are complicit and evil. They say his nomination threatens the destruction of the Constitution. They say people will die if he is confirmed. Lost in all of this is any actual discussion of Judge Kavanaugh's written opinions, of the way he approaches cases.

When Judge Kavanaugh met with me last month, he said he hoped my colleagues would read his opinions. That is how they can learn what kind of a judge he is. That is how they can learn how he thinks. That is how they can learn why he is so respected by Democrats and Republicans alike who are on the circuit courts of appeals and who hold other judgeships.

Regrettably, my Democratic colleagues have been too busy one-upping each other's apocalyptic rhetoric to take a look at what Judge Kavanaugh has actually written, so I would like to take some time to do that today. I would like to focus in particular on the subject on which Judge Kavanaugh has arguably had his greatest influence as a judge—the separation of powers.

The separation of powers is a core component of our Constitution. It is, in fact, the first and the most important way the Constitution protects our liberty.

Justice Scalia was fond of saying that "the genius of the American constitutional system is the dispersal of