

SENATE STATEMENT TRACKER

(Senators marked with an *asterisk are up for reelection this year)

Senate Judiciary Committee:

Republicans:

Chuck Grassley (IA)

- (Re: Documents) “What would be fair for me starting out as chairman of the committee would be what documents have we required of other people being appointed for the Supreme Court. We will start at that point and beyond that point I can’t make any predictions or make any judgment or make any decision you might want me to make, because I don’t know what the global evidence is out there that people might want. But I do know this: a lot of Democrats have said they’re gonna vote no for sure.” ([Tweet](#))

Orrin G. Hatch (UT)

- Hatch has continued to defend Kavanaugh on twitter (example tweets [here](#) and [here](#)).

Lindsey Graham (SC)

- Graham spoke glowingly to reporters after meeting with Judge Kavanaugh. ([Video](#))

John Cornyn (TX)

- “I’ve known Judge Kavanaugh a long time, and I’ve followed his career closely. He is the type of judge that we need on the Supreme Court. I look forward to supporting his nomination.” ([Tweet](#))

Michael S. Lee (UT)

- Senator Lee spoke about the judicial selection process on a Deseret podcast. ([Link](#))

*Ted Cruz (TX)

- Nothing new.

Ben Sasse (NE)

- Nothing new.

Jeff Flake (AZ)

- Nothing new.

Thom Tillis (NC)

- Nothing new.

John Kennedy (LA)

- Nothing new.

Democrats:

*Dianne Feinstein (CA)

- “Texas v. United States could make its way to the Supreme Court in an upcoming term, giving Pres. Trump’s nominee a critical role in determining whether Americans with pre-existing conditions will continue to have access to affordable, quality health care or will be punished.” ([Tweet](#))

Patrick Leahy (VT)

- Nothing new.

Dick Durbin (IL)

- Nothing new.

*Sheldon Whitehouse (RI)

- Nothing new.

*Amy Klobuchar (MN)

- Nothing new.

Christopher A. Coons (DE)

- [July 11] “I am leaning against Judge Kavanaugh given what I know so far about his decisional record, but I’ve known Brett nearly thirty years, I met him in law school, and I’ve followed his career. He is very smart, he is very capable, he is very conservative. But I couldn’t yet articulate to you in like three sentences, here’s why I’m convinced his jurisprudence will take us far too far to the right, but I am concerned across a wide range of important topics.” ([Comments on NPR Morning Edition](#)).

Richard Blumenthal (CT)

- Nothing new.

*Mazie Hirono (HI)

- Nothing new.

Cory Booker (NJ)

- Nothing new.

Kamala Harris (CA)

- “No one can afford to sit on the sidelines if we’re going to win this Supreme Court fight. Add this number to your speed dial and give your Senators a call: (202) 224-3121.” ([Tweet](#))
- Harris was on PBS talking about the importance of abortion rights. ([Tweet](#))

Senate Leadership:

Republican:

Mitch McConnell (KY)

- McConnell created a video compiling some of his comments in support of Judge Kavanaugh. ([Video](#))

Democrat:

Chuck Schumer (NY)

- Schumer sent a tweet out about Kavanaugh in Spanish. ([Tweet](#))

Other Key Senators:

Republican:

Susan Collins (ME)

- Nothing new.

Lisa Murkowski (AL)

- Nothing new.

*Dean Heller (NV)

- Nothing new.

Rand Paul (KY)

- Nothing new.

Democrat:

*Jon Tester (MN)

- Nothing new.

*Joe Manchin (WV)

- “I thought he came across as a good family person, good, decent human being,” Mr. Manchin said of his initial reaction to Judge Kavanaugh. But he said he would not be making a hasty decision about a Supreme Court appointment mere hours after the announcement, noting his concern about Judge Kavanaugh’s views of the Affordable Care Act given the “lives at stake” in West Virginia. ([NYTimes Article](#))

*Heidi Heitkamp (ND)

- Nothing new.

Joe Donnelly (IN)

- Nothing new.

*Claire McCaskill (MO)

- Nothing new.

*Bob Casey (PA)

- Nothing new.

*Sherrod Brown (OH)

- Nothing new.

*Tammy Baldwin (WI)

- Nothing new.



State of West Virginia
Office of the Attorney General

Patrick Morrissey
Attorney General

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July 12, 2018

Via Certified Mail & Email

The Honorable A. Mitchell McConnell
Majority Leader
United States Senate
317 Russell Senate Office Building
Washington, D.C. 20510
senator@mcconnell.senate.gov

The Honorable Charles Schumer
Minority Leader
United States Senate
322 Hart Senate Office Building
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The Honorable Charles Grassley
Chairman
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chuck_grassley@grassley.senate.gov

The Honorable Dianne Feinstein
Ranking Member
United States Senate Judiciary Committee
331 Hart Senate Office Building
Washington, D.C. 20510
senator@feinstein.senate.gov

Re: A communication from the States of West Virginia, Alabama, Arizona, Arkansas, Colorado, Florida, Georgia, Idaho, Indiana, Kansas, Louisiana, Michigan, Missouri, Montana, Nebraska, Nevada, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, Wisconsin, and Wyoming regarding the nomination of Judge Brett M. Kavanaugh to the Supreme Court of the United States

Dear Senators McConnell, Schumer, Grassley, and Feinstein:

As the chief legal officers of our States, we write to urge the United States Senate to promptly hold a hearing on and confirm the nomination of Judge Brett M. Kavanaugh to the Supreme Court of the United States. Judge Kavanaugh is an outstanding jurist with a proven commitment to upholding the Constitution and the rule of law. We have no doubt that he possesses the qualifications, temperament, and judicial philosophy to be an excellent Associate Justice.

State Capitol Building 1, Room E-26, 1900 Kanawha Boulevard East, Charleston, WV 25305

Throughout his career, Judge Kavanaugh has demonstrated an abiding commitment to the principles and freedoms on which our country was founded, and an unshakable respect for the proper role of the courts within our constitutional structure. The Senate should confirm Judge Kavanaugh without delay.

Confirmation of Judge Kavanaugh to the Supreme Court will have profound and long-lasting consequences for the people in our States. For too long we have suffered the ill effects of federal overreach as all three branches have at times exceeded the constitutional limits on their authority. Judge Kavanaugh will help reverse that trend by reviewing challenged laws and regulations with an eye to ensuring that all branches of our government act within their constitutionally assigned roles—regardless of which party is in power. A judiciary committed to the fundamental principles enshrined in the Constitution can ensure that the work being done now is safeguarded for decades to come.

As the Attorneys General of our respective States, we have a special interest in ensuring that the federal government respects the important role of the States in crafting and tailoring regulatory policy on matters of local concern. Federal judges, including the next Associate Justice of the United States Supreme Court—must respect principles of federalism and the balance of power reflected in our Constitution. We are confident Judge Kavanaugh appreciates that balance, and that he will protect the prerogatives of the States to manage their own regulatory framework.

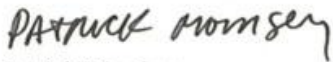
Judge Kavanaugh is particularly well-suited to enforce the Constitution's structural limitations and safeguard the freedoms of the States and the People. In a speech two years ago commemorating the late Justice Scalia, he emphasized that the role of a judge "is to interpret the law, not to make the law or make policy." Just as judges must not "shy away from enforcing constitutional rights that are in the text of the Constitution," so too they cannot "make up new constitutional rights that are not in the text." Of great importance to the States, he also underscored that "the structure of the Constitution—the separation of powers and federalism—are not mere matters of etiquette or architecture, but are at least as essential to protecting individual liberty as the individual rights guaranteed in the text."

Judge Kavanaugh has lived up to these ideals during his tenure on the D.C. Circuit. As one of the nation's most distinguished jurists, his nearly 300 opinions highlight his principled and consistent judicial philosophy. Time and again, he has upheld the judiciary's obligation to act as a meaningful check on government interference—from championing religious freedom and other individual rights, to checking federal agencies that overstep their authority. We are convinced that, as the next Associate Justice, Judge Kavanaugh will continue this commitment to protecting individual liberties, resisting unlawful government overreach, and respecting the democratic process.

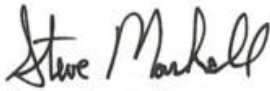
The Honorable Senators McConnell, Schumer, Grassley, and Feinstein
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We strongly urge all Senators—and particularly the home-state Senators of the undersigned Attorneys General—to express their public support for the prompt confirmation of Judge Kavanaugh to the Supreme Court of the United States.

Sincerely,



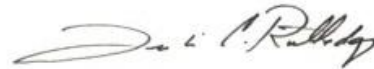
Patrick Morrisey
West Virginia Attorney General



Steve Marshall
Alabama Attorney General



Mark Brnovich
Arizona Attorney General



Leslie Rutledge
Arkansas Attorney General



Cynthia H. Coffman
Colorado Attorney General



Pam Bondi
Florida Attorney General



Christopher M. Carr
Georgia Attorney General



Lawrence Wasden
Idaho Attorney General



Curtis T. Hill, Jr.
Indiana Attorney General



Derek Schmidt
Kansas Attorney General



Jeff Landry
Louisiana Attorney General



Bill Schuette
Michigan Attorney General



Josh Hawley
Missouri Attorney General

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Tim Fox
Montana Attorney General



Doug Peterson
Nebraska Attorney General



Adam Paul Laxalt
Nevada Attorney General



Wayne Stenehjem
North Dakota Attorney General



Mike DeWine
Ohio Attorney General



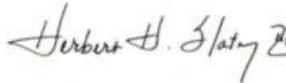
Mike Hunter
Oklahoma Attorney General



Alan Wilson
South Carolina Attorney General



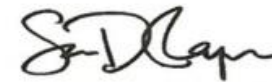
Marty Jackley
South Dakota Attorney General



Herbert H. Slatery, III
Tennessee Attorney General and Reporter



Ken Paxton
Texas Attorney General



Sean D. Reyes
Utah Attorney General



Brad D. Schimel
Wisconsin Attorney General



Peter Michael
Wyoming Attorney General

cc: President Donald J. Trump
Vice President Michael R. Pence

Ferguson, Andrew (Judiciary-Rep)

From: Ferguson, Andrew (Judiciary-Rep)
Sent: Monday, July 16, 2018 8:38 PM
To: Abegg, John (McConnell); Kenny, Steve (Judiciary-Rep); Lacy, Megan M. EOP/WHO; Davis, Mike (Judiciary-Rep)
Cc: Talley, Brett (OLP); Fragoso, Michael (OLP)
Subject: RE: Questions from Friday
Attachments: 05.18.2010 SJC to Clinton Library re special access request.pdf; 06.22.2010 Sessions to Leahy re mentions.pdf; 06.22.2010 Sessions to NARA re mentions.pdf; 06.23.2010 Leahy to Sessions re mentions.pdf

John,

I was working on this issue separately, so Steve asked me to respond. The original special access request (attached) asked for "mentions" ("documents referencing Elena Kagan by name, initials, or title"). After the Clinton Library failed to produce any mentions, Senator Sessions wrote a letter to Senator Leahy (attached) asking him to join Sessions in a request to the Archivist demanding that he comply with the request for mentions. Senator Sessions similarly wrote a letter to NARA (attached) asking it to produce the mentions. Senator Leahy responded by letter the next day that the mentions were unnecessary because they were "not likely to aid in our consideration of the nomination," and searching for mentions "would have distracted from their efforts to produce her files and work product."

Andrew

From: Abegg, John (McConnell)
Sent: Monday, July 16, 2018 6:46 PM
To: Kenny, Steve (Judiciary-Rep) (b) (6) >; Lacy, Megan M. EOP/WHO (b) (6) >; Davis, Mike (Judiciary-Re (b) (6) >; Ferguson, Andrew (Judiciary-Re (b) (6) >
Cc: Talley, Brett (OLP) <Brett.Talley@usdoj.gov>; Fragoso, Michael (OLP) <Michael.Fragoso@usdoj.gov>
Subject: RE: Questions from Friday

Thanks, all.

Steve, per our conversation, would you check on the minority view on the committee at that time with respect to the "mentions" issue about which Senator Leahy was writing?

From: Kenny, Steve (Judiciary-Rep)
Sent: Monday, July 16, 2018 6:22 PM
To: Lacy, Megan M. EOP/WHO (b) (6) >; Abegg, John (McConnell) (b) (6) >; Davis, Mike (Judiciary-Re (b) (6) >; Ferguson, Andrew (Judiciary-Re (b) (6) >
Cc: Talley, Brett (OLP) <Brett.Talley@usdoj.gov>; Fragoso, Michael (OLP) <Michael.Fragoso@usdoj.gov>
Subject: RE: Questions from Friday

Looping in Andrew Ferguson. A review of the Kagan hearing transcript also reveals that senators were primarily concerned with the policy and legal advice contained in the documents that were attributable to Kagan, something the Staff Secretary emails would not be probative of.

Leahy's letter also appears to foreclose the Dems from asking for "mentions" of Kavanaugh's name:

You acknowledge in your recent letter that insisting at this junction on further production of a large sampling of additional emails on which the nominee's name appears or in which she was in the distribution chain is likely to turn up numerous nonresponsive documents. Yet, contrary to the approach of the Democrats in 2005 who sought to ensure that the documents most likely to be relevant would be provided in time for the Roberts hearing, you now seek to continue to search for additional documents not likely to aid in our consideration of the nomination.

From: Lacy, Megan M. EOP/WHO [mailto: (b) (6)]
Sent: Monday, July 16, 2018 6:07 PM
To: Abegg, John (McConnell) (b) (6); Davis, Mike (Judiciary-Rep) (b) (6); Kenny, Steve (Judiciary-Rep) (b) (6) >
Cc: Talley, Brett (OLP) <Brett.Talley@usdoj.gov>; Fragoso, Michael (OLP) <Michael.Fragoso@usdoj.gov>
Subject: Questions from Friday

John, Mike, Steve,

We've pulled together some information on the questions we took home after our meeting Friday. Happy to discuss at your convenience.

Thanks,
Megan

1. What did Leahy and Sessions say about documents during the Kagan nomination?

1a. Leahy—Senator Leahy focused on the volume and the "unprecedented access" to "all emails sent or received" by Kagan.

"[T]he Clinton Library produced more materials than were produced in connection with previous Supreme Court nominations and did so more quickly.... They numbered nearly 90,000 pages, which is more than were produced in connection with either the Roberts or Alito nominations." Ltr to JBS, June 23, 2010.

"The Clinton Library provided unprecedented access to all emails sent or received by Elena Kagan during her time in the Clinton administration, something that has never been provided for any prior nominee." *Id.*

1b. Sessions—Sessions and Kagan had an exchange at her [hearing](#) (p. 293-294) where he explains why he did not ask for SG documents and she says it was appropriate not to ask. Have not found anything he said about DPC documents.

Senator SESSIONS. A bit early. But it is not an exact copy.
You talked about Miguel Estrada. I so admired him and still do,
and I think without a doubt spoke more on the floor in support of
his confirmation than probably any other Senator. One of the big

issues that occurred was whether or not the internal memoranda of the Department of Justice should have been produced so that people in the Senate, mainly my Democratic colleagues who filibustered his nomination and kept it from ever coming up to a vote, which he would have been confirmed had that occurred. Their objection in large part seemed to be that those internal memoranda should have been produced, whereas every living Attorney General—every living former Solicitor General wrote that those documents should not be produced.

So I guess I would ask you, Solicitor General, do you think now that you should produce those documents? Or do you think the better policy is the one the Bush administration pursued, which was not to go down the road of producing such documents?

Ms. KAGAN. Senator Sessions, before you said it, I was just going to say that, in fact, every living Solicitor General did say that those documents ought not to be produced, and they said that because of an understanding about how the office works and how important confidentiality within the office is to effective decision-making. And I think that that's absolutely right, and it is one of the reasons why I have not wanted to talk about any internal deliberations that have occurred within the office, and I certainly think that it was the right view then that those documents from within the office should not have been produced.

Senator SESSIONS. Well, I would say I have been interested in what might be in those internal documents you were involved in in the Solicitor General's office, but have refrained from asking for it. But based on that answer, I assume that you would advise other members of the Senate that in the future they should not be demanding such documents of a nominee, absent some special, discrete problem that may justify it in an unusual case.

Ms. KAGAN. I do think that the Office of Solicitor General is a very special kind of office where candor and internal really truly thorough deliberation is the norm and that it would very much inhibit that kind of appropriate deliberation about legal questions if documents had the potential to be made public generally in that way.

Senator SESSIONS. Thank you. United States Code 983, the Solomon Amendment, I believe the last of the four amendments that we passed to try to make sure that our law schools could not con-

1c. Schumer—at the hearing, he said: “She has also provided unprecedented supporting documentation. She gave us, from her time as Solicitor General, nearly 150 briefs by her office; from her time at Harvard, all of her previous academic work, and all of the letters, e-mails, and press releases that went out during her tenure as dean; from her work in the Clinton Administration, over 170,000 pages of documents, including 80,000 pages of e-mails, which is more than twice the material received in connection with the nominations of Chief Justice Roberts and Justice Alito.”

2. What is the breakdown of the Counsel's office v. DPC production for Kagan?

The Kagan docs were produced in three tranches; for tranches 2 and 3, NARA did not break down the content as between WHC and DPC:

Tranche 1: 47,000 pages of DPC documents

Tranche 2: 42,00 pages of WHC, DPC, and CADC nomination documents

Tranche 3: 80,000 pages of WHC and DPC emails

WH Counsel Bauer's original request letter (May 15) also notes that the staff files for DPC were larger (50k) than for WHCO (30k).

Beyond that, we haven't been able to find a strict breakdown of the email production.

3. What did BK say about Staff Secretary work during his hearing?

In July of 2003, I became staff secretary to President Bush. This is what I call an honest broker for the President, someone who tries to ensure that the range of policy views on various subjects in the administration are presented to the President in a fair and even-handed way.

Chairman Specter. Do you have anything to do with the President's policy on so-called signing statements?
Mr. Kavanaugh. Mr. Chairman, signing statements come through the Staff Secretary's Office, and I help ensure that relevant members of the administration have provided input on the signing statements. In the first instance they're drafted in the Justice Department, but I do help clear those before the President sees them.

Sen. Graham: **** The question comes up, how can you assure us that you will be fair?****

Mr. Kavanaugh.**** And your question really goes to how do you assess someone's record. And I think that's done through an assessment of going back, in my case 16 years in my career, and looking at the things I've done. In the Staff Secretary's Office now, where I'm an honest broker, where I have to be fair and even-handed in the kind of role I perform for the President...

4. What did Ds say about Staff Secretary during Miers?

Interestingly, Miers's [withdrawal letter](#) refers to the risk that sensitive Executive documents would be disclosed. But Democrats, including Sen. Kennedy, called this issue a "[red herring](#)."

As you know, members of the Senate have indicated their intention to seek documents about my service in the White House in order to judge whether to support me. I have been informed repeatedly that in lieu of records, I would be expected to testify about my service in the White House to demonstrate my experience and judicial philosophy. While I believe that my lengthy career provides sufficient evidence for consideration of my nomination, I am convinced the efforts to obtain Executive Branch materials and information will continue.

As I stated in my acceptance remarks in the Oval Office, the strength and independence of our three branches of government are critical to the continued success of this great Nation. Repeatedly in the course of the process of confirmation for nominees for other positions, I have steadfastly maintained that the independence of the Executive Branch be preserved and its confidential documents and information not be released to further a confirmation process. I feel compelled to adhere to this position, especially related to my own nomination. Protection of the prerogatives of the Executive Branch and continued pursuit of my confirmation are in tension. I have decided that seeking my confirmation should yield.