

Editorial: Brett Kavanaugh doesn't belong on the Supreme Court

By THE TIMES EDITORIAL BOARD
OCT. 5, 2018

Brett Kavanaugh was right about one thing: This confirmation process has been a circus. Now, after weeks of accusations and anger and surprises and protests and tears and bitter partisanship, the full Senate is finally expected to take up Kavanaugh's nomination to the Supreme Court. We urge senators to vote against this damaged and divisive nominee.

We oppose Kavanaugh's nomination not because of his judicial philosophy — any replacement nominee likely would be equally conservative, perhaps more so — and not because we feel confident that Kavanaugh was guilty of sexual assault in his youth. That is something we simply can't know with any certainty.

But lingering doubts about these serious allegations, together with Kavanaugh's evasive and intemperate testimony before the Senate Judiciary Committee, convince us that the court and the country would be better served if someone else succeeded Justice Anthony M. Kennedy.

Last week a rapt nation watched as Christine Blasey Ford, a psychology professor, told the same committee that she was 100% certain Kavanaugh tried to force himself on her when they were teenagers. Ford told a poignant and plausible story, but Kavanaugh's emotional and categorical denials also sounded reasonably genuine.

The question for us, and for the Senate, is whether confirming this hugely controversial nominee is worth the price. Our answer is no.

We had hoped that the FBI background check of Kavanaugh reopened this week would help resolve the conflict, but by all accounts it has failed to do so. Republican senators said the investigation, which included interviews with people Ford said were at the gathering where she says she was assaulted, produced no corroboration of her account. If so, that's obviously good news for Kavanaugh.

But agents don't appear to have found information that contradicted Ford's story, either. Nor did they interview either Ford or Kavanaugh, as they should have if the investigation were to be fully credible. And while the FBI also interviewed Deborah Ramirez, who claimed that Kavanaugh exposed himself to her at a college party, Ramirez's lawyer complained that several potential witnesses weren't interviewed.

There is no guarantee that a less rushed and more comprehensive investigation would have established the truth. But the effort should have been made. Now the Senate confronts the agonizing decision of whether to bestow a lifetime seat on the Supreme Court on a nominee against whom serious but unproved accusations have been leveled. As they do so, it is worth remembering two things: that Ford has no known motivation for making up these charges, and that many of the details she provided have turned out to be true. She knew, for instance, who Kavanaugh's closest high school friends were and that one of them, Mark Judge, worked at a local supermarket.

But these accusations from years ago aren't the only reasons for senators to vote no. Kavanaugh's behavior after Ford's allegations surfaced raised serious questions about his temperament and judgment.

It's entirely understandable that Kavanaugh would be angry about these accusations, if in fact they're not true, and about how they were handled by the committee. But in his testimony last week he went beyond righteous outrage to engage in a partisan rant utterly inappropriate for a sitting federal judge, let alone a nominee for the Supreme Court.

The nominee railed against a "calculated and orchestrated political hit, fueled with apparent pent-up anger about President Trump and the 2016 election" and speculated that he was the victim of "revenge on behalf of the Clintons." In what sounded like a threat, he warned: "What goes around comes around." This isn't how judges are supposed to talk — or think, frankly.

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After Kavanaugh was nominated, some Democrats insisted on judging him on his previous activities as a staffer in the George W. Bush administration and the office of independent counsel Kenneth Starr. Sen. Richard J. Durbin (D-Ill.) complained that Kavanaugh "has Republican blood coursing through his veins."

It's far easier for Democrats to make that accusation after Kavanaugh's tirade — and if he were confirmed, the charge of partisanship would be revived every time he ruled in a case with political overtones.

Kavanaugh's testimony was troubling for another reason. He repeatedly provided evasive or disingenuous answers to questions designed to elicit information about his youthful personal conduct, including drinking, that might help senators evaluate the more serious allegations. As our columnist Doyle McManus observed: "The sum of all these misleading parts was an indelible picture of a not-fully-honest witness."

In opposing Kavanaugh's confirmation, we don't endorse all of the attacks on him (including by Democrats, some of whom seemed most interested in preening for their base). The question for us, and for the Senate, is whether confirming this hugely controversial nominee is worth the price. Our answer is no.