

MEMORANDUM

TO: Gary Marx and Wendy E. Long
Judicial Confirmation Network

FROM: Whit Ayres

DATE: March 15, 2005

RE: Republicans Should Welcome Judicial Confirmation Battles

A national survey our firm conducted of 800 registered voters March 6-9, 2005, with a margin of error of ± 3.46 percent, indicates that Republicans should welcome a battle over confirming President Bush's nominees to the federal courts. Arguments made by supporters of those nominees garner overwhelming support, while arguments made by opponents of those nominees are highly suspect. Highlights of the survey include:

1. **By overwhelming margins, Republican, Independent, and Democratic voters all think that well-qualified judicial nominees deserve an up or down vote on the floor of the Senate, and Senators have a constitutional duty to give them that vote.**
 - By an eight-to-one margin, voters think that "if a nominee for the U.S. Supreme Court is well-qualified, he or she deserves an up or down vote on the floor of the Senate." Eighty-one percent of voters agree with that statement, and only 10 percent disagree. Agreement cuts across partisan lines: Republicans agree by 83 to 6 percent, Independents agree by 80 to 11 percent, and Democrats agree by 81 to 13 percent.
 - Support for an up or down vote on the Senate floor for a Supreme Court nominee extends to a nominee for any federal judgeship. Eighty-two percent of voters agree that "if a nominee for any federal judgeship is well-qualified, he or she deserves an up or down vote on the floor of the Senate. Eighty-five percent of Republicans, 81 percent of Independents, and 81 percent of Democrats agree with that statement.
 - By similar margins, voters think that "Senators have a constitutional duty to give an up or down vote to a nominee for the U.S. Supreme Court." By 78 to 12 percent, voters agree that Senators have a constitutional duty to vote. Eighty percent of Republicans, 78 percent of Independents, and 77 percent of Democrats agree with that statement.

It is clear that denying judicial nominees an up or down vote on the Senate floor violates Americans' fundamental sense of fairness, and makes Senators appear to be shirking their constitutional duties.

2. Voters want Supreme Court justices who will apply existing law, not make new law.

- Seventy-five percent of voters agree that "President Bush should keep his promise made during the campaign to nominate a U.S. Supreme Court justice who will apply existing law, not make new law," while only 18 percent disagree. That statement generates agreement from 85 percent of Republicans, 75 percent of Independents, and 66 percent of Democrats.

3. Voters are overwhelmingly against recent examples of judges' activism.

	<u>For</u>	<u>Against</u>
• Allowing child pornography because it's a form of free speech	2%	97%
• Taking the words "under God" out of the Pledge of Allegiance	11%	85%
• Allowing a minor to get an abortion without her parent's consent	17%	77%
• Allowing burning the American flag because it's a form of free speech	19%	77%
• Eliminating the death penalty for murderers and terrorists	24%	67%
• Legalizing gay marriage	31%	61%

4. Consequently, voters want decisions about controversial political issues made by their elected representatives, not by unelected judges.

- By a margin of 65 to 25 percent, voters think that "decisions about political issues like gay marriage should be made by elected representatives, not by unelected judges." Republicans agree by 70 to 19 percent, Independents by 66 to 25 percent, and Democrats by 58 to 30 percent.

5. Voters of both parties, and Independent voters in particular, think "we should take politics out of the courts and out of the confirmation process."

- Overall, 67 percent of voters agree we should take politics out of the courts and out of the confirmation process, while 26 percent disagree. Independents agree by 73 to 22 percent, Republicans do so by 69 to 25 percent, and Democrats agree by 61 to 31 percent.

6. **Consequently, by almost a five-to-one margin, voters disagree that pro-life views on abortion should disqualify someone from serving on the U.S. Supreme Court.**
 - When asked "if a well-qualified nominee is pro-life on abortion, he or she should be disqualified from serving on the U.S. Supreme Court," 79 percent of voters disagree, and only 16 percent agree. Republicans disagree with this statement by 81 to 16 percent, Independents disagree by 79 to 16 percent, and Democrats disagree by 77 to 17 percent.
7. **On the other hand, voters reject assertions that a conservative nominee will roll back the clock on constitutional rights.**
 - By a margin of 57 to 33 percent, voters disagree that "a conservative nominee to the U.S. Supreme Court will roll back the clock on women's rights, civil rights, worker's rights, and the environment." Republicans disagree by 69 to 20 percent and Independents disagree by 59 to 33 percent, while Democrats agree, but by a margin of only 48 to 42 percent.
8. **Voters of all political persuasions are very cynical about the motives of opponents of judicial nominees.**
 - Seventy percent of voters think that Senators who are opposing judicial nominees are "just playing partisan politics," while 18 percent think they are "doing so out of a sincere concern about their qualifications." Republicans think they are just playing partisan politics by a 77 to 12 percent margin, Independents do so by 73 to 16 percent, and Democrats agree by 61 to 27 percent.

Judicial nomination battles are winning issues for Republicans. Voters overwhelmingly endorse the Republicans' fundamental argument that qualified nominees deserve an up or down vote on the floor of the Senate. Because they reject so strongly recent examples of judicial activism, voters want judges who apply rather than make new law, and they want decisions about controversial issues made by their elected representatives rather than unelected judges. They want politics out of the courts and the confirmation process; therefore they reject the suggestion that pro-life views should disqualify a judicial nominee. Republicans and Independents overwhelmingly reject the arguments of the left that a conservative nominee will roll back the clock on constitutional rights, and even Democrats barely endorse that assertion. Republicans, Independents, and Democrats all believe that opponents of judicial nominees are just playing partisan politics.

So Republicans should welcome judicial confirmation battles. They offer the opportunity to paint opponents of judicial nominees as blind obstructionists grinding a partisan ax. They give Republicans a chance to rise above seamy partisan politics to promote well-qualified judges who will resist the temptation to inject their own personal views into interpretations of the law. And they create an environment where Republicans can talk about what is good for the country and good for the courts, while their opponents talk about what is good for their own ideological special interest groups. On this issue, Republicans are supported by the overwhelming majority of American voters, while judicial opponents are supported by a distinct minority.

Methodology

The sample for this survey consists of 800 respondents drawn randomly from throughout the 50 states plus the District of Columbia. Respondents were selected by random digit dialing to insure that households with both listed and unlisted numbers are included. All respondents indicated they are registered to vote. The margin of error is ± 3.46 percent.

Demographics of the sample are consistent with recent national surveys of registered voters. By gender, 48 percent of the respondents are male and 52 percent are female. By political party, 35 percent are Republican and 33 percent Democrat, with the remainder Independent or other. By race, the sample is 80 percent white, 10 percent African-American, 8 percent Hispanic, and 1 percent Asian.