

15 October 2018

Chief Judge Timothy M. Tymkovich  
Tenth Circuit Court of Appeals  
1823 Stout Street  
Denver, CO 80257

Dear Judge Tymkovich,

I can imagine wanting to avoid this, but it seems to have come down to you—you and your judicial colleagues. The United States is enduring a governmental / constitutional crisis. The question may ultimately be: Will the *nation* endure? And if so, in what form, and under what rule? A rule of law?

With institutional faith “collapsing” in multiple arenas, the nation’s judicial system, which looks to, and is derived from, the Supreme Court, is one of many domain where confidence is evaporating under the pressures of late modernity. It seems that now the nation’s interests, as a democratic plurality of voting citizens, may not be adjudicated by genuinely just deliberations.

The nation witnessed an astonishing, *unjudicial* display of barely contained affects and emotions on 27 September 2018. Would a reasonable person conclude that that was “cognizable misconduct”? Polls seem to indicate that a substantial majority of the nation’s citizens would say “yes.”

Several legal rules are available to guide your ruling. The court’s own definition of “misconduct,” detailed in the Federal *Rules for Judicial-Conduct and Judicial-Disability Proceedings*, is:

**3. Definitions ...**


(h) Misconduct. **Cognizable misconduct:**

(1) is conduct prejudicial to the effective and expeditious administration of the business of the courts. Misconduct includes, but is not limited to: ...

(D) *treating litigants, attorneys, or others in a demonstrably egregious and hostile manner;*

(E) *engaging in partisan political activity or making inappropriately partisan statements;*<sup>1</sup>

So it comes down to you. Must the country bear this rupture, or should we (the people) turn back this politically forced move, and try again? The executive branch and legislative branch have failed. Can the judicial branch uphold the just integrity of our courts?

Sincere thanks, for all your good work, for all of us, 

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<sup>1</sup> “Rules for Judicial-Conduct and Judicial-Disability Proceedings,” *Guide to Judiciary Policy*, Vol. 2E, Ch. 3, Judicial Conference of the United States, last revised May 4, 2016. 5. <<http://www.uscourts.gov/judges-judgeships/judicial-conduct-disability>>



This Washington Post-ABC News poll was conducted by telephone Oct. 8-11, 2018, among a random national sample of 1,144 adults and 991 registered voters, with 65 percent reached on cell phones and 35 percent on landlines. Overall results and the sample of registered voters both have a margin of sampling error of plus or minus 3.5 percentage points, including design effects due to weighting. Sampling, field work and data processing by Abt Associates of Rockville, MD.

\*= less than 0.5 percent

Questions 1-10 held for release.

11. Do you approve or disapprove of the U.S. Senate's vote to confirm Trump's nomination of Brett Kavanaugh to the U.S. Supreme Court? Do you feel that way strongly or somewhat?

	----- Approve -----			----- Disapprove -----			No
	NET	Strongly	Somewhat	NET	Somewhat	Strongly	opinion
10/11/18	41	33	8	51	8	42	8

Compare to: Trump has nominated Brett Kavanaugh to serve on the U.S. Supreme Court. Do you think the U.S. Senate should or should not confirm Kavanaugh's nomination to the Supreme Court?

	Should	Should not	No opinion
8/29/18	38	39	23

12. (ASK IF REGISTERED TO VOTE) Does the debate over Kavanaugh's confirmation make you more likely to support (Democratic) candidates in the midterm election, more likely to support (Republican) candidates, or does it make no difference in your vote?

	Democratic candidates	Republican candidates	No difference	No opinion
10/11/18	33	27	39	1

13. With Kavanaugh on the Supreme Court, do you think the court's rulings will be (more) politically motivated than in the past, (less) politically motivated, or will having him on the court make no difference?

	More politically motivated	Less politically motivated	No difference	No opinion
10/11/18	43	10	39	8

14. Do you think the Senate committee handling Kavanaugh's nomination did or did not do enough to investigate allegations that he committed sexual misconduct in high school and college? Do you feel that way strongly or somewhat?

	----- Did do enough -----			--- Did not do enough ---			Went too far (vol.)	No op.
	NET	Strongly	Somewhat	NET	Somewhat	Strongly		
10/11/18	41	31	10	50	10	40	3	6

15. Would you support or oppose further investigation of Kavanaugh by Congress, which could potentially lead to an effort to remove him from the court? Do you feel that way strongly or somewhat?

	----- Support -----			----- Oppose -----			No
	NET	Strongly	Somewhat	NET	Somewhat	Strongly	opinion
10/11/18	53	41	12	43	9	34	5