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From: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
To: [REDACTED] P6/b(6)
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BY ORRIN G. HATCH

ÿÿÿ Editorial boards are entitled to their own opinions, but not to their own set of facts. The Salt Lake Tribune's editorial against President Bush's plan to reform the judicial selection process ("Federal Bench Fiasco," Nov. 5) puts The Tribune in the extremely rare company of those who argue against speeding up a process that virtually every sensible observer thinks is too slow.

ÿÿÿ No one can honestly defend the current 77 empty seats in the federal judiciary, which means that 9 percent of the judicial branch sits vacant. This is one of the highest vacancy rates in modern times.

ÿÿÿ The Senate's goal -- regardless of who is president and which party controls the Senate -- should be to evaluate and confirm judicial nominees in a timely way in order to ensure a fully functioning federal judiciary. That is difficult to achieve due to the amount of work involved in researching the personal and professional backgrounds of nominees. It is also complicated by too much partisan politics. President Bush's plan to start the process earlier, and to establish a time frame for hearings and votes, is an honorable and practical way to streamline the review process and minimize divisive partisanship.

ÿÿÿ It is difficult to understand The Tribune's opposition to the idea of judges announcing their retirements in advance. Most other high-level public officials are selected before their offices are vacated; we elect presidents, senators, representatives and governors -- to name just a few -- while their predecessors remain in office. This method ensures continuity.

ÿÿÿ Moreover, it is entirely possible for the Senate to hold a hearing within three months, and a vote within six months, of the president's nominations. A rule forcing such a timetable would go a long way toward removing the partisan power to slow the process.

ÿÿÿ Selective statistics from narrow time periods in the past, such as those included in your editorial, only confuse the issues. My record as chairman of the Senate Judiciary Committee demonstrates that, contrary to your assertion, the Republicans who controlled the Senate during the past six years of the Clinton administration did not start the current

controversy. In fact, those six years saw the number of judicial vacancies decrease by three.

ÿÿÿ Overall, during President Clinton's eight years in office, the Senate confirmed 377 judges, essentially the same (only five fewer) as it confirmed for President Reagan, who, by the way, had more judges confirmed than any other president in history. Note that President Reagan had six years of a Senate controlled by his own party, while President Clinton had only two.

ÿÿÿ Finally, although the Republicans get a lot of blame for the 41 Clinton nominees who did not receive hearings, that number is 13 fewer than the 54 nominees who suffered the same fate at the hands of Democrats during the first Bush administration. By the way, nine of the Clinton 41 were nominated so late in Clinton's eighth year that they could not possibly have been processed by the Senate.

ÿÿÿ Although neither party has a perfect record in the Senate, President Bush came to the judicial selection process with clean hands, having had no involvement in any of the prior controversies. And he began his term with an astonishing olive branch: The first-ever renomination of a circuit court nomination first submitted by a president of the other party.

ÿÿÿ It is even more ludicrous to accuse President Bush of failing to nominate fast enough. President Bush has responded to the vacancy crisis in the appellate courts by nominating a total of 32 top-notch men and women. The Senate Democrats have simply stalled them, confirming only 14 and leaving 17 more pending in committee. This disregards precedent. At the end of President Clinton's first year in office, there were only two circuit court nominees left pending in committee without hearings or votes; after President Bush's first year, there were 23.

ÿÿÿ There is great wisdom behind President Bush's call for the Senate to hold timely hearings and votes for all judicial nominees, regardless of who is president and who controls the Senate. By streamlining the process and limiting the power of partisan politicians on both sides of the political aisle, such a rule would serve the long-term interests of the judiciary and the American people. I simply don't understand The Salt Lake Tribune's concern here.