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## Trump unites MAGA world with GOP establishment in SCOTUS defense

*Historically, Trump relied on the MAGA echo chamber to amplify and source his defenses. But he's using GOP establishment talking points after Ruth Bader Ginsburg's death.*

September 25, 2020

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By the time White House officials faced questions about replacing Ruth Bader Ginsburg, they were armed with two arguments from different corners of the conservative world.

In one corner, establishment Republican circles spent the weeks prior to Ginsburg's death laying out a technocratic case that President Donald Trump had both a constitutional mandate and historical precedent to lean on.

In the other corner, the fervent, pro-Trump MAGA crowd mobilized after Ginsburg's death to make a more tribalistic argument that Trump had to fill the seat to prevent communism and Democratic power grabs.

Both arguments have since been deployed at the White House as it defends the decision to move quickly to replace Ginsburg. During a press briefing on Tuesday, White House press secretary Kayleigh McEnany cited an August column from Dan McLaughlin, a senior writer at the genteel conservative National Review who openly dislikes Trump, that argued norms and laws “are all on their side.” At that same briefing, McEnany also urged viewers to “contrast the president’s solemn constitutional duty with Democrats’ ‘search and destroy’ politics,” echoing the headlines in MAGA media outlets like American Greatness, where one story called the confirmation battle a “referendum on communism and revolution.”

The development is a bit of a first-term coup for Trump: after years of mostly courting his base while stiff-arming the GOP establishment, the president has successfully brought them together for his Supreme Court confirmation fight. Historically, Trump and his team relied on the MAGA echo chamber to amplify and source his defenses. But now, Trump can also lean on establishment Republicans who have so often been a foil during his presidency. It’s a fact that has allowed the White House to appeal to both Trump’s close allies in the Senate — which confirms Supreme Court picks — more more traditional Republicans, like Sen. Mitt Romney, who were seen as potential obstacles to getting Trump’s choice on the court.

“This is an issue that the conservative base cares a lot about, and in particular, is something that social conservatives who may not love Trump — or, like me, may not even *like* Trump — care very much about,” McLaughlin said in an interview.

It was McLaughlin's column that partly seeded the replace-Ginsburg argument as far back as August, five weeks before her death last Friday.

"It would be political suicide for Republicans to refrain from filling a vacancy unless some law or important traditional norm was against them," he wrote. "There is no such law and no such norm; those are all on their side."

Shortly after Ginsburg's passing, the column went viral on the right, with conservative academics joining in full agreement. By the next week, Romney was echoing McLaughlin's premise and McEnany was citing the article from the press room podium.

Outside the realm of old-school conservative thinkers, though, the mood was darker and fatalistic.

Across the internet and cable news, powerful MAGA voices claimed Democrats and their media allies would stop at nothing to keep the seat open, perhaps by baselessly smearing the Republican choice. If Democrats didn't get their way, these MAGA pundits said, they would resort to impeachment or work to expand the court when next in power. The Federalist, a far-right news site, ran headlines calling the upcoming nomination battle "Kavanaugh 2.0," referencing the contentious confirmation fight over Justice Brett Kavanaugh, and claiming that the Constitution itself was "on the ballot."

This argument soon made its way to the campaign trail, where Republican Senate candidates started accusing their opponents of wanting to expand the court, even though few Senate Democrats have come out in favor of doing so.

Senate Majority Leader Mitch McConnell himself seeded the argument just days before Ginsburg's death, predicting that Democrats would "destroy" the courts, among other institutions in an attempt to "alter" and control the country.

"They'll pack the Supreme Court, the circuit courts, the district courts ... and America won't look two years later like it does today," he said on Fox News a week before Ginsburg's death.

The variety of arguments were an attempt to justify how Republicans could move forward on a Supreme Court pick in an election year after McConnell had used the exact same justification for blocking President Barack Obama's nominee to replace Justice Antonin Scalia in 2016.

Back then, McConnell had said voters should choose which president gets to appoint the next Supreme Court justice. Now, McConnell was saying that it was imperative to swiftly confirm a new justice, even with a presidential election just over a month away.

"Honestly, in 2016, I was skeptical of the whole Garland filibuster at the time," McLaughlin said, referencing the blockade of Obama's pick, Merrick Garland.

The first justification for the apparent flip came from traditional conservatives like McLaughlin and conservative think tanks. They made a historical argument. Ilya Shapiro, director of the Robert A. Levy Center for Constitutional Studies at the libertarian-leaning Cato Institute and author of the new book, "Supreme Disorder," noted that out of the 19 times a justice was

nominated to the Supreme Court when one party held the White House and Senate, 17 were confirmed.

Moreover, the two exceptions failed for nonpartisan reasons. President George Washington temporarily withdrew the nomination of William Paterson since it accidentally violated a constitutional clause. And President Lyndon Johnson's attempt to promote Justice Abe Fortas to become chief justice angered conservative members of his own party, who disliked Fortas' liberal-leaning rulings and openly questioned whether it was ethical for Johnson to promote his former personal lawyer to the position.

The confirmation rate goes down to just under 60 percent when the White House and Senate are controlled by two different parties, Shapiro said.

“And that difference is heightened significantly in election years,” he added.

Many Republicans, from McConnell to Romney — the lone Republican who voted to convict Trump on one article of impeachment earlier this year — echoed this reasoning.

“It is appropriate for a nation that is ... center-right to have a court which reflects center-right points of view,” Romney said on Tuesday.

Other Republicans — including some on the campaign trail — have adopted elements of the more hyperbolic arguments, specifically that Democrats are hell-bent on expanding the Supreme Court if they assume power.

Although several prominent progressives have pushed Biden to consider endorsing an enlarged Supreme Court, the Democratic nominee has frequently declined to do so. Nevertheless, Republicans are raising concerns that progressives will bully Biden into acquiescing to their demands — a common charge in general, but a potent one when it comes to the court.

“Talk of court packing as a retaliatory move is very much something that was already in the air throughout 2019 in the Democratic primaries,” said McLaughlin, citing the flirtation with the idea in the Democratic primaries. Challengers like Elizabeth Warren and Kamala Harris did not rule out the concept, while fellow challenger Pete Buttigieg endorsed the idea of overhauling the court.

Several statements from the House Democrats — such as Rep. Alexandria Ocasio-Cortez's threat to begin a second round of impeachment hearings to delay a confirmation — have done little to quell the conservative movement's accusations. And frequently, the right has invoked Kavanaugh's confirmation — during which the then-nominee faced numerous charges of sexual harassment and assault — as proof the Democrats had already sullied the process.

McEnany herself floated these arguments, quoting elected Democrat officials and media figures — Rep. Joe Kennedy, Sen. Ed Markey and CNN's Don Lemon — to show the left was, in her words, trying to “destroy” the Constitution in order to keep power.

“That's the difference between Republicans and Democrats,” she said during the press briefing on Tuesday. “We fight to protect the system. We fight to protect the Constitution when

Democrats say outright, ‘We are going to blow up the entire system because we do not get our way.’”

Elizabeth Wydra, president of the nonpartisan, left-leaning Constitutional Accountability Center, said such apocalyptic terms might fit a pandemic-year election, where mail-in balloting is on the rise and the very outcome may be left up in the air come November.

“One is, what is the right thing to do for the legitimacy of the court? And then the second question is, what are the votes in the Senate?” she said. “Simply because Mitch McConnell might be able to get enough of his Republican colleagues to go along with putting a justice on the bench while the American people are in the midst of voting doesn't mean that that is the right thing to do for the legitimacy of the Supreme Court.”