The Burden of Proof in a Supreme Court Nomination

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Normally, when an allegation of wrongdoing is made about a Supreme Court nominee, a background investigation by the FBI is conducted before the accuser and the accused are asked by the Senate Judiciary Committee to testify. That was the case for Anita Hill. What is unique about the current case? Why won’t the Senate wait to make sure America gets a lifetime appointment to the highest court in the land absolutely right? Why the rush? Let us not forget that Senate Republicans wouldn’t meet or hold hearings for Merrick Garland, President Obama’s nominee; as a result, the court had a vacancy for 422 days. Why the rush now?

What are Kavanaugh supporters afraid an investigation might discover? If nothing, then take the time, providing Americans confidence that partisan politics will not trump the rule of law. As Lawrence O’Donnell suggests: “Lying to the FBI is a crime. Dr. Christine Blasey Ford wants to talk to the FBI. Brett Kavanaugh doesn’t want to talk to the FBI. Kavanaugh’s friend & witness Mark Judge doesn’t want to talk to the FBI. They all know lying to the FBI is a crime.”

It should be noted that, if this case was in a court of law, the accuser would have the burden of proof. But the question here is whether to promote the accused to the Supreme Court. The burden of proof, therefore, is on the Senate to make sure there are no reasonable doubts about the appointment. The distinction between a court of law and a Supreme Court nomination is important: in a court of law, if there is reasonable doubt, the accused should be found not guilty; in a Supreme Court nomination, when there is reasonable doubt, the nomination should not be approved.

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