



WOMEN LAWYERS ON GUARD

September 4, 2018

The Honorable Charles E. Grassley, Chair
Committee on the Judiciary
United States Senate
135 Hart Senate Office Building
Washington, DC 20510

The Honorable Dianne Feinstein, Ranking Member
Committee on the Judiciary
United States Senate
331 Hart Senate Office Building
Washington, DC 20510

RE: Nomination of Judge Brett Kavanaugh to the Supreme Court

Dear Senators Grassley and Feinstein,

Every Supreme Court nomination is critically important for women's rights. But as lawyers (and their colleagues) working to uphold the democratic values of equality and justice, we think the stakes could not be higher than at this moment.

A large amount of Judge Brett Kavanaugh's documents are still not available (and won't be, before his scheduled Senate Judiciary Committee hearing). But what we know about his record does not bode well for women's equality and legal rights - including their constitutional rights to birth control and choices in reproductive health, their right to have affordable health care coverage, and for laws protecting against workplace harassment and discrimination. It's not hyperbole to say that Kavanaugh's confirmation to the Supreme Court would shift the balance of the Court for an entire generation. Here's how.

- **Birth control.** Taken for granted in the modern age, birth control is a constitutional right under siege. In *Priests for Life v. H.H.S.*, Kavanaugh would have allowed an employer's religious beliefs to supersede an individual's right to insurance coverage of birth control. His dissent went against not only the majority on the U.S. Court of Appeals for the D.C. Circuit, but also the decisions of seven other appeals courts.

The Trump Administration's rules (now being litigated) allow virtually any employer to deny birth control coverage.

- **Healthcare/ACA.** Kavanaugh has expressed contempt for the Affordable Care Act (ACA) in cases that came before him on the D.C. Circuit. In speeches that he gave right before being named to President

Women Lawyers On Guard Action Network, Inc. • P.O. Box 100551 • Arlington, VA 20010

A national non-profit, harnessing the power of lawyers and the law to protect, preserve and defend equality, justice and opportunity for all.
www.womenlawyersonguard.org

Trump's "short list," he criticized Chief Justice John Roberts's reasoning in *NFIB v. Sebelius*, a landmark decision that upheld the ACA against constitutional challenge. And, in a dissent in *Seven-Sky v. Holder* that was criticized by legal scholars as "bizarre," Kavanaugh embraced the extreme position that the President can ignore a law if he thought it was unconstitutional.

Opponents of the ACA (including the Trump administration) continue to bring challenges to this law—including putting in jeopardy protections for individuals with pre-existing conditions. That could send us back to the day when simply being a woman could once again be considered a pre-existing condition and a reason to deny women health insurance – a lifeline for many women and their families. Kavanaugh could hear these, and many other critical cases, and the consequences for women and their families could be devastating.

- **Abortion.** Kavanaugh has consistently shown hostility towards the constitutional right to abortion. In a speech last year, he praised Justice Rehnquist's dissent in *Roe v. Wade*. More recently, Kavanaugh tried to block a young immigrant woman from getting an abortion, despite her having satisfied the legal and logistical barriers to obtain an abortion in Texas. Fortunately, his colleagues on the D.C. Circuit overruled Kavanaugh's order. But if confirmed to the Supreme Court, four other Justices are ready to join him in restricting abortion access, creating a majority.

Cases threatening *Roe v. Wade* are already making their way through the lower courts—including a challenge to Mississippi's blatantly unconstitutional ban on abortion 15 weeks after a woman's last menstrual period. At least 20 states are poised to immediately ban abortion if *Roe* is overturned. Make no mistake, if Kavanaugh is the next Supreme Court justice, women could be sent to jail if they have an abortion or, as in pre-*Roe* days, will die undergoing illegal abortions.

- **Sexual harassment.** Last, but not least, at a moment when women have inspired a national reckoning about the destructive impact of sexual harassment in workplaces across the country, Kavanaugh's narrow interpretation of anti-discrimination protections and his willingness to defer to employers are especially alarming. In one judicial opinion, Kavanaugh accepted the argument that laws protecting against workplace harassment and other forms of discrimination are anti-competitive and a liability for employers.

For women across the country, regardless of political affiliation, these issues cut to the heart of their daily lives. But the threat to valued rights does not end there. Kavanaugh's record fails to inspire confidence that he would serve as a **check on other branches of government**. After working with Kenneth Starr to investigate President Clinton, he wrote that he had changed his views to conclude that sitting Presidents should "be excused from some of the burdens of ordinary citizenship," such as civil lawsuits, criminal investigations and prosecutions. He also opined that Presidents should have more authority over independent agencies. This troubling view suggests Kavanaugh would fail to provide a check against the executive branch stripping us of our constitutional rights.

While some have expressed support for Brett Kavanaugh based on the fact that he is personable, intelligent or attended elite educational institutions, we respectfully submit that these qualities alone are insufficient - especially at this time and with the effect that his jurisprudence would have on our country.

When Senators consider the full record, they should weigh one key question: How would Kavanaugh impact the law- and our lives- if he is confirmed? Based on Kavanaugh's public record, his nomination is a threat especially to women's lives, civil liberties and civil rights. For all these reasons, we strongly urge the Senate to vote against confirmation of Brett Kavanaugh for the United States Supreme Court.

Sincerely,

Cory M. Amron
Deborah Barron
Paulette Chapman
Lorelie Masters
Corrine Propas Parver

Women Lawyers On Guard Action Network, Inc.

184 Signatures follow from Past Presidents of the American Bar Association and other bar associations, attorneys general, state senators, law professors, non-profit CEO's and other leaders of the legal profession. They hail from 32 states and the District of Columbia.

Institutional, organizational or firm affiliation for all signatories is included for identification purposes only; individuals represent only themselves, not the entities listed.

Cc: Senator Richard Blumenthal
Senator Cory A. Booker
Senator Christopher A. Coons
Senator John Cornyn
Senator Mike Crapo
Senator Ted Cruz
Senator Richard Durbin
Senator Jeff Flake
Senator Lindsey Graham
Senator Kamala D. Harris
Senator Orrin Hatch
Senator Mazie K. Hirono
Senator John Neely Kennedy
Senator Amy Klobuchar
Senator Patrick J. Leahy
Senator Mike Lee
Senator Ben Sasse
Senator Thom Tillis
Senator Sheldon Whitehouse
Senator Susan Collins
Senator Lisa Murkowski

Institutional, organizational or firm affiliation for all signatories is included for identification purposes only; individuals represent only themselves, not the entities listed.

Michael	P.	Allen		Seattle	WA
Lynn		Allingham		Anchorage	AK
Susan		Altfeld		Chicago	IL
Cory	M.	Amron	Women Lawyers on Guard Action Network, Inc.	Arlington	VA
Alma		Angotti		Washington	DC
Jewel		Arrington		Austin	TX
Ruthe	Catolico	Ashley		Vallejo	CA
Aurora		Austriaco		Chicago	IL
Sheryl	L.	Axelrod	The Axelrod Firm, P.C.	Philadelphia	PA
Jennifer		Bailey		Cape Elizabeth	ME
Maryellen		Baker		Elkhart	IN
David	J.	Baldwin		Wilmington	DE
Deborah		Barron	Women Lawyers On Guard Action Network, Inc.	San Francisco	CA
Michael		Bauer		Chicago	IL
Olivia	Luk	Bedi		Chicago	IL
Tricia		Bedi		Chicago	IL
Laurel	G.	Bellows	Past President, American Bar Association	Chicago	IL
Debra	R.	Bernard		Chicago	IL
Nicole	G.	Berner	SEIU General Counsel	Washington	DC
Georgia		Berner		Pittsburgh	PA
Sheila	L.	Birnbaum		New York	NY
Daniel		Biss	Illinois State Senator	Evanston	IL
Ramona	Newell	Bracker		Elkhart	IN
Ruth	Hill	Bro		Chicago	IL
Tiffany		Brown		Washington	DC
Timothy	W.	Burns		Madison	WI
Elizabeth	J.	Cabraser		San Francisco	CA
Patricia	S.	Cain		Chicago	IL
Mary	Craig	Calkins		Los Angeles	CA
Becky		Carroll		Chicago	IL
Emilia	R.	Castillo		Seattle	WA
Susan		Cefai		Austin	TX
Paulette	E.	Chapman	Women Lawyers On Guard Action Network, Inc.	Falls Church	VA
Erik	A.	Christiansen		Salt Lake City	UT
Rai	Saint	Chu	Founder Hawaii Women Lawyers; Past President Hawaii State Bar	Honolulu	HI
David	W.	Clark		Jackson	MS
Ivy		Cohen		New York	NY

Leslee		Cohen		Deerfield	IL
Terry		Cosgrove		Chicago	IL
Jill	F.	Dash		Rockville	MD
Suzanne		Davidson		New York	NY
Prof. Angela	J.	Davis	American University, Washington College of Law	Washington	DC
Betsy		Davis		Austin	TX
Ken		Davis		Austin	TX
Kelly	M.	Dermody		San Francisco	CA
Rachel		DiMasi		Austin	TX
Eileen		Dordek		Chicago	IL
Deborah		Enix-Ross		Westfield	NJ
Pamela		Enslin		Kalamazoo	MI
Howard		Epstein		Chicago	IL
Tred	R.	Eyerly		Honolulu	HI
Natalie	Scurton	Federle		Chicago	IL
Kenneth		Fiduk		Austin	TX
Maryann		Foley		Anchorage	AK
Paula		Frederick		Atlanta	GA
Stacy	Fleisher	Friedland		Deerfield	IL
Andrea	D.	Friedman		Chicago	IL
Michelle	M.	Gallardo		Detroit	MI
Patricia	A.	Garcia	Past President, New Orleans Bar Association	New Orleans	LA
Neil	A.	Gever		Basking Ridge	NJ
Jennifer		Gilbert		Chicago	IL
Patricia	K.	Gillette	Author and Keynote Speaker	San Francisco	CA
Paul		Goldberg		Brooklyn	NY
Lynn	H.	Goldschmidt		Chicago	IL
Susan		Goldsmith		Basking Ridge	NJ
Dana		Gordon		Chicago	IL
Nancy		Grant		Chicago	IL
Sally		Greenberg	National Consumers League	Washington	DC
Marcia	D.	Greenberger	Founder and Co-President <i>Emerita</i> , National Women's Law Center	Washington	DC
Bridgette		Greene		Elkhart	IN
Barbara		Guttman		Chicago	IL
Margaret	Laura	Hanson		New York	NY
Clare		Hanusz		Honolulu	HI
Alton		Harris		Chicago	IL
William		Harwood		Portland	ME
Leslie	A.	Hayashi		Honolulu	HI
Theresa		Heamon		South Bend	IN
Erik		Heipt		Seattle	WA
Wendy		Heipt		Seattle	WA
Wendy	Rothschil	Heltzer		Chicago	IL

	d				
Shirley		Higuchi	Past President, DC Bar	Washington	DC
Pamela	A.	Hopper		Austin	TX
Norma	B.	Hutcheson		Washington	DC
Elaine	Johnson	James		West Palm Beach	FL
Susan		Jaworowski		Honolulu	HI
Christina	M.	Jepson		Salt Lake City	UT
Adam		Klein		Chappaqua	NY
Nancy		Kohn		Chicago	IL
Alan		Kopit		Cleveland	OH
Andrea		Kramer		Chicago	IL
Frances	H.	Krasnow		Chicago	IL
Carolyn	B.	Lamm	Past President, American Bar Association	Washington	DC
Fritz	H.	Langrock		Middlebury	VT
Therese		Lawless		San Francisco	CA
Wendi	S.	Lazar		New York	NY
Cindi		Leive	Journalist	New York	NY
Susan		Livermore		Ribera	NM
Karen	M.	Lockwood		Louisville	CO
Nancy	C.	Loeb		Chicago	IL
Catherine	A.	Louisell		Ifeld	NM
Prof. Myles	V.	Lynk		Phoenix	AZ
Prof. Gwendolyn	Roberts	Majette	Cleveland-Marshall College of Law	Cleveland	OH
Connie	Sue	Martin		Seattle	WA
Lorelie	S.	Masters	Women Lawyers On Guard Action Network, Inc.	Washington	DC
Mary	E.	McCutcheon		San Francisco	CA
Matt		McWhinney		Chicago	IL
Elaine		Metlin		Washington	DC
Helen		Michael		Washington	DC
Laura		Michalchyshyn		New York	NY
Katherine		Minarik		Chicago	IL
Suzanne		Mitchell		Austin	TX
Brenda	E.	Morris		Honolulu	HI
Gail	H.	Morse		Chicago	IL
Ed		Mullen		Chicago	IL
Elaine		Nekritz		Northbrook	IL
Tracey		Nelson		Austin	TX
Emily	K.	Neuberger		Evanston	IL
Grace		Newton		Chicago	IL
Sheila	Markin	Nielsen		Chicago	IL
Kimberly	Walz	Obando		Chicago	IL
Judith	R.T.	O'Kelley		Seattle	WA
Wayne		Outten		Manhasset	NY

Corrine	Propas	Parver	Women Lawyers On Guard Action Network, Inc.	Potomac	MD
Katherine		Paspalis		Culver City	CA
Sherilyn		Pastor		Newark	NJ
Drucilla	Stender	Ramey		San Francisco	CA
Alethea	K.	Rebman		Honolulu	HI
Cynthia	Napoli-Abella	Reise		Chicago	IL
Alice		Richmond	Richmond & Associates	Boston	MA
Lauren	Stiller	Rikleen		Boston	MA
Estelle	H.	Rogers		Forestville	CA
Hon. Ellen	F.	Rosenblum	Oregon Attorney General	Portland	OR
Nancy		Rotering		Chicago	IL
Emma		Ruby-Sachs		Chicago	IL
Judith		Sack		Los Angeles	CA
Jane	M.	Saks		Chicago	IL
Bettylu	K.	Saltzman		Chicago	IL
Lisa	J.	Savitt	The Axelrod Firm, P.C.	Bethesda	MD
Tracy	Alan	Saxe		Orange	CT
Dr. Robert	S.	Schachter		Brooklyn	NY
Lynn	Hecht	Schafran		New York	NY
Stephanie	A.	Scharf		Chicago	IL
Stephanie	H.	Schlatter		Washington	DC
Kelley		Schweinzger		Elkhart	IN
John		Selent		Louisville	KY
Tanya		Selvaratnam		New York	NY
Lauren		Sharkey		Honolulu	HI
Anne		Shaw		Chicago	IL
Charna	E.	Sherman		Cleveland	OH
Gabrielle		Sigel		Chicago	IL
Leslie	S.	Silverstein		Portland	ME
Douglas	P.	Skelley		Austin	TX
Virginia		Sloan	President <i>Emeritus</i> , The Constitution Project	Washington	DC
Chris		Smith			VA
Mary	L.	Smith		Lansing	IL
Steven		Smith		Chicago	IL
Sunghee		Sohn		Chicago	IL
Ally	Coll	Steele	The Purple Campaign	Washington	DC
Ashley		Steinberg		Washington	DC
Randi		Sterrett		Orlando	FL
Melyssa		Stone		Seattle	WA
W.	Mary	Stowell		Chicago and Winnetka	IL
Christie		Susi		Philadelphia	PA
Sharon	A.	Taber		Juneau	AK

Camilla		Taylor		Chicago	IL
Tina	M.	Tchen	Buckley Sandler LLP	Chicago	IL
Robert		Thavis		Mendota Heights	MN
Christopher		Thomson		Ribera	NM
Lucy	L.	Thomson		Alexandria	VA
Jason		Tougaw		Cochecton	NY
Marna	S.	Tucker	Past President, District of Columbia Bar	Chevy Chase	MD
Michelle		Tucker		Honolulu	HI
Alan		Van Etten	Past President, Hawaii State Bar Association	Honolulu	HI
Paul		Van Osselaer		Austin	TX
Lauren		Verdich		Chicago	IL
James	R.	Wagner		Cape Elizabeth	ME
Deborah	P.	Wais		Chicago	IL
Marshall	I.	Wais		Chicago	IL
Elizabeth		Wang		New York	NY
Kai		Wang		Honolulu	HI
Melissa		Widen		Chicago	IL
Ann	M.	Williams		Chicago	IL
April	L.	Wilson-South		Honolulu	HI
Carole		Worthington		Knoxville	TN