



August 30, 2018

United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Grassley, Ranking Member Feinstein, and Committee Members:

On behalf of our hundreds of thousands of members throughout the United States, People For the American Way strongly opposes the confirmation of Brett Kavanaugh for the Supreme Court. His record on the D.C. Circuit shows that he approaches cases not with an open mind, but with a political agenda. In addition, his statements both on and off the bench demonstrate that he would not be an independent check on presidential power.

The genius of our Constitution is its structural protections of liberty: Power is divided among three branches, each of which has the ability to check abuses by another. [But Kavanaugh's vision of the Constitution gives the president enormous authority, essentially placing him above the law.](#)

Off the bench, Kavanaugh has made clear his belief that the unanimous and foundational case of *Nixon v. United States*—requiring President Nixon to comply with an order to hand over the Watergate tapes—was wrongly decided; that the president has the authority to fire a special prosecutor without cause; and that a president engaged in criminal behavior cannot be indicted while in office. It is no surprise that Donald Trump would want this person as one of his judges in any upcoming litigation involving the Mueller investigation.

Kavanaugh brought that ideology with him to the bench as a judge on the D.C. Circuit. He has written that Congress cannot insulate an agency from politics by restricting the president's ability to fire its chair at will (*PHH Corp. v. Consumer Finance Protection Bureau*); that the president can unilaterally designate someone arrested on U.S. soil as an "enemy combatant" and thereby remove them from the constitutional protections of the federal judicial system (*Bahlul v. United States*); and that a president can simply choose not to enforce a law he disagrees with even if a court has upheld it. (*Seven-Sky v. Holder*)

That last assertion came in the context of the Affordable Care Act, an ominous statement both in terms of untrammelled presidential power and for its implications for [access to health care](#). Indeed, a commitment to overturning the ACA is one of the litmus tests that President Trump has for potential Supreme Court nominees. Kavanaugh's dissent in *Seven Sky v. Holder* concluded that the court could not yet address the merits of the case; but he then proceeded to sharply criticize the individual mandate, the lynchpin of guaranteeing coverage to people with pre-existing conditions. [With yet another challenge to the mandate currently in the lower courts](#) (*Texas v. United States*), he could cast the vote leading families across the country to financial ruin, illness, and death.


He also [threatens women's constitutional right to abortion](#), having passed the president's litmus test on overruling *Roe v. Wade*. This is no surprise, given his high praise for the dissent in that case.

Indeed, not only Kavanaugh's [radical dissents](#) but also his overall judicial record show that in important cases that concern hotly contested policy and political issues, [Kavanaugh consistently favors conservative Republican positions that reflect his conservative Republican political background](#). This includes cases on [the rights of working people](#), [voting rights](#), [environmental protection](#), [LGBTQ equality](#), and a host of other issues that shape the lives of everyday Americans.

There is more than enough in the public record to warrant our opposition to this nomination. However, even putting the content of the record aside, so much of it is being concealed that no responsible senator should even consider voting for confirmation. Because [of the corrupt manner in which records are being filtered by Kavanaugh's fellow Republicans](#) before being given to the Judiciary Committee, [the nominee should not even be having a hearing](#). Making matters worse, the chairman has refused to even request records from Kavanaugh's three years as staff secretary in the George W. Bush White House, years that Kavanaugh himself has called among the most important in his career and relevant to his qualifications to the federal bench.

We urge senators to oppose confirmation.

Sincerely,

A handwritten signature in cursive script that reads "Marge Baker".

Marge Baker
Executive Vice President for Policy and Program