

Sept. 7, 2018

Dear Senator:

The undersigned national organizations come together in deep concern that the confirmation of Judge Brett Kavanaugh as Supreme Court Justice would result in millions of Americans losing health care as well as worker, voter, and consumer protections. We represent human service providers, faith communities, policy experts, civil rights, labor, and other advocacy organizations, united in seeking federal programs and policies to ensure that low-income people have the resources and opportunities they need to escape poverty. Based on Judge Kavanaugh's public record available thus far, we see a troubling pattern of repeated rulings against the rights and interests of ordinary people. His opinions threaten people across the income spectrum, but their consequences will fall especially heavily on the poor and near poor, communities of color, immigrants, and people with disabilities. The rule of law in a democracy requires vigilant defense of the rights of people without the advantages of wealth and power. Judge Kavanaugh's record is instead on the side of powerful institutions and employers. If he were to attain the position of Supreme Court Justice, his record suggests a profoundly negative impact on the lives of your constituents. We therefore respectfully urge you to oppose Judge Kavanaugh's nomination.

Backward Steps on Health Care: Judge Kavanaugh's opinions related to the Affordable Care Act (ACA) show tremendous skepticism about the law's constitutionality. In his dissent in [Seven-Sky v. Holder](#), Judge Kavanaugh writes, referring to the individual mandate in the law:

"To uphold the Affordable Care Act's mandatory-purchase requirement under the Commerce Clause, we would have to uphold a law that is unprecedented on the federal level in American history. That fact alone counsels the Judiciary to exercise great caution."

He suggests that a President could choose not to enforce the individual mandate if he "...concludes that enforcing it would be unconstitutional." Judge Kavanaugh's dissents from the majority opinions of several courts give us the concern that he would vote against the constitutionality of the ACA in lawsuits approaching the Supreme Court. One such suit is *Texas v. Azar*, in which Texas and other plaintiffs claim that the ACA is not constitutional because the individual mandate is not being enforced.

If the ACA were overturned, current coverage requirements for people with pre-existing conditions would be wiped out, as would basic minimum standards for most health insurance. One-half of non-elderly adults have pre-existing conditions, including 67 million women and girls. With no legal requirement that insurance policies include basics like maternity, substance use or mental health treatment, large numbers of insured people would lack this coverage. A vote to confirm Judge Kavanaugh opens up the enormous risk that millions of people will either lose insurance altogether or will lose access to vital benefits.

The stakes are particularly high for low-income people. People of modest means who rely on ACA marketplace insurance, or the minority of low-income people who get insurance through work, will be unable to afford insurance with adequate benefits if the ACA is ruled unconstitutional. People qualifying for Medicaid are also at risk, because of the Trump Administration's approval of Medicaid 1115 waivers. These waivers allow states to deny Medicaid to those who cannot frequently document compliance with new work requirements or pay premiums, calculated to result in hundreds of thousands losing

Medicaid. Such waivers are being contested in court, and would be expected to rise to the Supreme Court.

Rights of People with Disabilities: In a number of opinions, Judge Kavanaugh has sided with landlords, employers, and public institutions over people with disabilities. In [Baloch v. Kempthorne](#), Kavanaugh denied a worker's claims of disability discrimination and retaliation, despite a supervisor requiring doctor's notes for each sick leave time request, giving low performance ratings, and engaging in multiple episodes of "profanity-laden yelling" after the worker filed a complaint. In [Doe ex. Rel. Tarlow v. D.C.](#), Judge Kavanaugh went against the policies of numerous states and courts that consider the wishes of individuals with intellectual disabilities, even if they were not legally competent, in deciding whether to perform elective surgery. The law in the District of Columbia required consultations with residents with disabilities, but in reality, officials had approved every surgery over the past 30 years, and did not even attempt to ask the individuals with disabilities what they wanted. While a lower court issued an injunction, Judge Kavanaugh vacated it on appeal, saying that considering such a patient's wishes is not "deeply rooted in this Nation's history and tradition." He issued a dissent in [Redman v. Graham](#), unwilling to allow claims of disability discrimination against a landlord's attorney to proceed in court. These are troubling examples of Judge Kavanaugh's inclination to rule against the vulnerable rather than defend protections for them.

Further Stacking the Deck Against the Disadvantaged: Whether upholding a [South Carolina voter ID law](#) despite acknowledging that people of color were disproportionately likely to lack the form of identification required by the law, dissenting against a ruling in [Agri Processor Co. v. NLRB](#) that required an employer to bargain with a union (basing the dissent on the grounds that undocumented workers were allowed to vote in the election), or ruling against the constitutionality of the [Consumer Financial Protection Bureau](#), Judge Kavanaugh stands against people who particularly need the protection of the law. Low-income people and communities of color make progress when the law ensures their right to vote, to bargain collectively, and to be protected against unscrupulous lenders who would trap them in a mountain of debt. Judge Kavanaugh's decisions would reverse some of the progress that has been made.

These are just some examples in a public record that would set the nation backward in our needed progress towards greater access to health care and rights basic to a democracy. It is based on this troubling record that we urge you to oppose Judge Kavanaugh's nomination.