



August 3, 2018

The Honorable Charles E. Grassley, Chairman
The Honorable Dianne Feinstein, Ranking Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Chairman Grassley and Ranking Member Feinstein,

On behalf of the American Network of Community Options and Resources (ANCOR), we would like to address the nomination of Judge Kavanaugh for the U.S. Supreme Court. ANCOR is the national trade association for providers of disability services that support individuals with intellectual and developmental disabilities (I/DD) to live and thrive in the community. ANCOR represents over 1,400 private providers of community services and 55 state provider associations serving over one million individuals with intellectual and developmental disabilities.

We look forward to the Senate discussion on the nomination of Judge Kavanaugh and would like to respectfully request that the *Doe ex rel Tarlow v. D.C.* 489 F.3d 376 (2007) decision receive a fair amount of discourse during the nomination hearing. As a trade association that focuses on the independence and self-determination of individuals with disabilities, we are concerned about this specific decision and hope that Judge Kavanaugh can further explain his legal reasoning in this case. This specific case dealt with plaintiffs who were individuals with intellectual and developmental disabilities who filed suit against the District of Columbia and Mental Retardation and Developmental Disabilities Administration based on a 2003 policy that allowed the government to make determinations about elective surgeries on behalf of the individuals without establishing the patient's consent.

In finding for the District, Judge Kavanaugh wrote “accepting the wishes of patients who lack (and have always lacked) the mental capacity to make medical decisions does not make logical sense and would cause erroneous medical decisions-with harmful or even deadly consequences to intellectually disabled persons... **Consideration of the wishes of patients who are not and have never been competent is therefore not required by the Supreme Court's procedural due process cases.**” Judge Kavanaugh expressed that people with I/DD by the nature of their disability “by definition lack ‘sufficient mental capacity to appreciate the nature and implications’ of the preference expressed.”

ANCOR members support over one million individuals with I/DD who express their preferences every day with evidence-based safeguards in place to ensure their true preferences and consent are fully informed and independent of coercion. Americans with I/DD, like any American,

should not be deprived of due process or the equal rights of our fellow citizens. ANCOR strongly endorses supported decision-making principles to ensure that people with I/DD and even those with significant communication challenges can still express their free will.

The reality of an American's equality must not waiver based on the circumstances of that person's birth. While Judge Kavanaugh has a thorough record and respectable history in our nation's courts, we believe the decision in this case was misinformed and is problematic for an individual who is preparing to serve in the highest court of our land. For this reason, ANCOR respectfully requests that the Judiciary Committee enter this letter into the record and reflect our concern during the course of the hearing, providing Judge Kavanaugh an opportunity to address it and hopefully explain that his legal positioning has now evolved to ensure that all people with disabilities have full access to their constitutional rights.

Sincerely,

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CC: Members, Senate Judiciary Committee