

YWCA IS ON A MISSION

August 6, 2018

United States Senate
Washington, D.C.
20510

Dear Members of the United States Senate,

On behalf of YWCA USA, I write to express our concerns about the nomination of Judge Brett Kavanaugh to the United States Supreme Court, and to urge you to vote against his confirmation.

In all matters of national leadership, YWCA USA is concerned first and foremost with the needs of those who are at greatest risk of marginalization, including women, people of color, immigrants and refugees, survivors of violence and abuse, the LGBTQ+ community, and others whose rights and safety are all too often threatened. At the time of his nomination, YWCA USA expressed opposition to Judge Kavanaugh's nomination based on his judicial record on reproductive rights, women's access to contraception, health care, and worker and consumer rights, particularly as they relate to workplace discrimination, and we urged the Senate to oppose his nomination.

Rather than assuaging these concerns, further review has made clear that Judge Kavanaugh's judicial philosophy and record raise serious concerns about his ability to render decisions that will advance health, safety, and racial and gender equity for the people and communities who are at the heart of YWCA's mission.

I write today to share concerns about Judge Kavanaugh's record, and to urge you to explore these issues with Judge Kavanaugh in any meetings or interviews you hold with him, to insist on full disclosure of Judge Kavanaugh's record prior to any confirmation hearings, and to vote against his confirmation should it come to the Senate floor for a vote.

Access to Health Care and the Affordable Care Act

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The Affordable Care Act (ACA) has provided a healthcare lifeline to 9.5 million women who could not otherwise afford health insurance. The ACA not only expanded health insurance coverage to millions of individuals who were previously uninsured, it changed the landscape for women's health insurance coverage and access. The ACA has been particularly beneficial for women of color, whose uninsured rates have dropped dramatically. Protections for survivors of domestic violence, coverage for the full array of essential health benefits, and full and affordable coverage for people with pre-existing are among the ACA's coverage, affordability, and accessibility provisions that are critical to women's health—and that would be jeopardized by the appointment of a Supreme Court justice whose judicial philosophy is hostile to preservation of the ACA.

Judge Kavanaugh's record raises significant concerns that he would overrule the constitutionality of the ACA in matters that may come before the Supreme Court. While on the DC Circuit Court, Judge Kavanaugh dissented from the opinion upholding the constitutionality of the Affordable Care Act (ACA). And, just weeks before being added to President Trump's short list of potential candidates, Kavanaugh criticized Chief Justice Roberts for the reasoning he used in *NFIB v. Sebelius* to uphold the ACA's individual mandate. Judge Kavanaugh's actions and reasoning suggest that if he were confirmed, millions of Americans — including many women, women of color, and survivors of domestic violence — stand to lose their health care coverage.

Women's Access to Reproductive Health Services

The right to access the full range of reproductive health care services safely and legally in this country—including birth control and abortion care—will be seriously threatened if Judge Kavanaugh is confirmed. President Trump has been explicit that he would only nominate someone who would “automatically overturn” *Roe v. Wade*. Judge Kavanaugh was on the list of candidates who met that criteria, and his judicial record and off-the-bench comments confirm the anti-abortion views he will carry to the Supreme Court. Most recently, in the well-known “Jane Doe” case (*Garza v. Hargan*), Kavanaugh tried to block a young immigrant woman's access to abortion care. Over Kavanaugh's dissent, the DC Circuit rightly allowed the young woman to seek the medical care she needed.

Moreover, Judge Kavanaugh's dissent in *Priests for Life vs. US Department of Health and Human Services* makes clear that he would prioritize other's religious beliefs over women's constitutional rights and access to contraception and other needed health care. Allowing an employer's religious beliefs to override an individual's right to insurance coverage for birth control and access to reproductive health services gives license to discriminate and deny essential health care.

Judge Kavanaugh's record of arguing against access to abortion, birth control, and

health care is of significant concern. Protecting access to the full range of reproductive health care is an especially important issue for women, and YWCA opposes efforts to limit the ability of reproductive health service providers to provide accessible, safe, and comprehensive services to patients. Confirmation of Judge Kavanaugh would turn the balance of the Supreme Court against women's constitutional rights, including abortion, and undermine our health and safety.

Fairness and Equity in the Workplace

The Supreme Court plays a critical role in ensuring fairness and safety in the workplace that are critical for women's economic empowerment and security. Yet here, too, Judge Kavanaugh's record is troubling. Judge Kavanaugh has consistently dissented and voted to dismiss employment discrimination claims that a majority of his DC Circuit colleagues found to be meritorious and has demonstrated deference to employers to the detriment of workers. Judge Kavanaugh's record in this arena demonstrates a particularly narrow understanding of anti-discrimination protections, which is reinforced by public comments that he has made. In a 1999 interview with the Christian Science Monitor, Judge Kavanaugh commented that, "I see as an inevitable conclusion within the next 10 to 20 years when the court says we are all one race in the eyes of government." This, coupled with his reasoning in employment discrimination cases, reflects a profound misapprehension of the myriad ways in which racism, sexism, and other inequities are deeply embedded in our nation's history and in the lived experiences and current reality of women, people of color, LGBT individuals, and other marginalized groups. Such a perspective on the Supreme Court threatens the critical role the Court plays in safeguarding our nation's constitutional freedoms and values, with profound implications for the many groups and individuals who experience historical and continuing marginalization.

Knowledge of Ongoing Sexual Assault by a Federal Judge

Particularly within this context, YWCA strongly urges you to ascertain and hold Judge Kavanaugh accountable for his knowledge of ongoing sexual assault by Judge Alex Kozinski.

Judge Kavanaugh clerked for Judge Alex Kozinski of the Ninth Circuit and has reportedly remained close to his former boss, who left the Ninth Circuit in late 2017 after over a dozen allegations of sexual harassment by his former clerks. Long before the Washington Post exposed the allegations against him in 2017, Kozinski's sexualized and abusive behavior was an open secret in the legal profession. Kavanaugh and Kozinski reportedly worked together for years as "screeners" for Justice Kennedy, essentially hiring the Justice's clerks for him. This process led to many applicants who had previously clerked for Kozinski obtaining clerkships with Justice Kennedy. As a result, Kavanaugh helped maintain the prestige of a Kozinski

clerkship, which no doubt had the effect of encouraging many young attorneys to continue to seek Kozinski clerkships despite the widespread rumors of abusive behavior. The White House has asserted that Judge Kavanaugh “had never heard any allegations of sexual misconduct or sexual harassment” by Kozinski prior to the story becoming public last year, but some in the legal community have asserted that this strains credulity.

Judge Kavanaugh must speak fully to the question of what he knew about Kozinski’s abusive behavior, when he learned of it, and what actions he took in response. Too much is at stake for women for the Senate to move forward on his nomination without a thorough vetting of these questions.

Gun Violence

Judge Kavanaugh’s record of ruling against gun violence protection measures is of particular concern to YWCA, given our extensive work with survivors of domestic violence and the prevalence of gun violence in the US. As detailed more fully in YWCA’s [position statement on gun violence](#), women’s experiences of gun violence are inextricably linked to domestic violence. Some 4.5 million women in the U.S. have been threatened with a gun by an intimate partner, and nearly 1 million women alive today have been shot, or shot at, by an intimate partner. In an average month, 50 women in the U.S. are shot to death by intimate partners, and many more are injured. The presence of a gun in a domestic violence situation makes it five times more likely that a woman will be killed. Gun violence is particularly dangerous for women of color, who are nearly three times as likely to be murdered with a gun than white women.

Moreover, most mass shootings in the US—those in which four or more individuals are killed—are related to domestic violence: shooters killed intimate partners or other family members in at least 54 percent of mass shootings. While women make up only 15 percent of all gun violence, they make up 50 percent of victims in mass shootings, largely due to the correlation between intimate partner violence and mass shootings. Even when strangers are targeted instead of family members, there are connections between mass shootings and domestic violence: while most mass shootings occur in the home, the shooters in one third of the 46 mass shootings that took place entirely in public between 2009 and 2016 had a history of violence against women.

In this context, YWCA has included eliminating access to automatic weapons and high capacity ammunition among our policy recommendations to decrease gun violence for women and girls. Unfortunately, Judge Kavanaugh’s record indicates he is opposed to this kind of common-sense step and would vote to strike down such a law.

Notably, after the Supreme Court decided 5-4 in the 2008 case *District of Columbia v. Heller* that the Second Amendment protects an individual's right to bear arms, the District of Columbia passed laws that prohibited assault weapons and high-capacity

magazines, and that required certain firearms to be registered. The same plaintiff, Richard Heller, argued again that the new gun laws violated the Second Amendment. In the 2011 case *Heller v. District of Columbia*, a panel of three Republican-appointed judges ruled 2-1 that DC's ban on assault weapons and high-capacity magazines was constitutional. Judge Kavanaugh dissented and would have held that the ban on assault weapons was unconstitutional. He wrote: "In *Heller*, the Supreme Court held that handguns — the vast majority of which today are semi-automatic — are constitutionally protected because they have not traditionally been banned and are in common use by law-abiding citizens. There is no meaningful or persuasive constitutional distinction between semi-automatic handguns and semi-automatic rifles."

It is deeply troubling that Judge Kavanaugh sees no difference between assault weapons and handguns, and particularly alarming given the intersection of domestic violence and firearms.

Conclusion

The Supreme Court is the ultimate arbiter of our most cherished and constitutionally-protected rights, and it is no place for an outside-the-mainstream jurist who will roll back the clock on hard-won freedoms. Unfortunately, on core issues likely to come before the Supreme Court, Judge Kavanaugh's record and judicial philosophy are at odds with the principled pragmatism required to make decisions that protect the people and communities we serve. We urge you to vote against his confirmation to the Supreme Court. I would welcome the opportunity to meet with you or your staff and further discuss our concerns regarding Judge Kavanaugh's nomination.

Best regards,



Alejandra Y. Castillo
CEO, YWCA USA

YWCA USA is on a mission to eliminate racism, empower women, stand up for social justice, help families, and strengthen communities. Our more than 50,000 employees and volunteers in 46 states and the District of Columbia help over 2 million women, girls and their families each year. To learn more about YWCA USA, visit www.ywca.org.

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