



September 4, 2018

Dear Senator:

We write to urge you to vote against the confirmation of Judge Brett Kavanaugh to a seat on the United States Supreme Court. It is clear that Mr. Kavanaugh's confirmation to a lifetime appointment on our nation's highest court would prevent any semblance of balance on the Court and jeopardize essential protections and freedoms that ensure the ability of all Americans to participate equally in our society. Mr. Kavanaugh's nomination represents a serious threat to voting rights, reproductive freedom, and the civil rights of women, LGBT people, people with disabilities, immigrants, and racial and religious minorities. His confirmation would undermine the Court's ability and responsibility to check executive branch abuses and overreaching—a role that is an essential component of our constitutional system of checks and balances. The Senate and the administration should work together to identify a nominee who is fair-minded, dedicated to protecting equal justice for all, and committed to the Court's role in our tripartite system of government.

We are also deeply concerned that vast swaths of documents from Mr. Kavanaugh's tenure in the White House under President Bush are being wrongfully withheld from review, making it impossible for the Senate to perform its constitutional duty of advice and consent. During the time that Mr. Kavanaugh served in the White House, significant issues of concern to our community, such as an amendment to the Constitution that would have barred marriage equality, were under consideration. The Senate and the public deserve to know the extent of Mr. Kavanaugh's involvement in a major effort to impede civil rights for lesbian, gay and bisexual Americans.

While the concerns about Mr. Kavanaugh's nomination are many, we write to highlight key issues of particular importance to the LGBTQ community.

First, Mr. Kavanaugh's stated views on **fundamental rights** give rise to a well-founded fear that his confirmation to the Court would undermine equality for LGBT people. He has rejected the recognition of any rights not expressly enumerated in the Constitution or rooted in "history and tradition," a view long rejected by the Court and that favors those who were in power at the country's founding. Such an approach leaves out many groups in our society and would make it difficult or impossible for our community to obtain and maintain recognition of our rights to equal treatment under the law. It is through a recognition that our Constitution's core protections for liberty, equality and privacy must be applied in light of our evolving understanding of justice that the Supreme Court has recognized protections for personal decisions around childbearing, family formation, and intimate conduct. It would be a grave mistake to place someone on the Court who has openly expressed disagreement with the extension of these protections to previously excluded groups and would threaten their continued application to LGBT people and to deeply personal reproductive health care decisions.

Second, Mr. Kavanaugh's deference to claims of **religious liberty** pose a threat to the rights of dignity of LGBT people. While religious liberty and LGBT equality are not in tension – many people of faith support LGBTQ equality and of course many LGBT people are people of faith – the unfortunate reality is that many who oppose equal rights for our community couch their opposition in religious terms. Some seek to evade the requirements of antidiscrimination laws and marriage equality by claiming religious exemptions in order to deny to LGBT people equal access to businesses open to the public, health care services, and the recognition of our marriages on equal terms. We know from Judge Kavanaugh's time on the court of appeals that he holds an outlier view of religious exemptions, favoring a stunningly broad view of the deference owed to such claims. Because opposition to equal treatment for LGBT people so often is framed as a matter of accommodating the religious beliefs of the person or entity seeking to discriminate, we are deeply concerned that Mr. Kavanaugh's presence on the Supreme Court would tip the balance too far in favor of such claims, leaving our community vulnerable to job loss, denial of access to essential health care, and the stigma of being turned away from places of public accommodation.

Third, we have grave concerns about Mr. Kavanaugh's extreme views on **deference to the president**. From rescinding agency guidance to protect transgender students to proposed regulations expanding religious exemptions in health care to the president's impulsive and unlawful ban on military service by transgender people, this administration has been advancing an agenda of hostility toward our community bolstered by flawed interpretations of statutory and constitutional law. A Supreme Court justice who believes that the president is above the law is unlikely to hold this administration accountable for its continued attacks on LGBTQ people.

Finally, we oppose Mr. Kavanaugh's confirmation because it would be a serious threat to **racial justice**. In three recent reports, Demos, the NAACP Legal Defense and Educational Fund, Inc. (LDF), and The Lawyers' Committee for Civil Rights Under Law have independently analyzed Mr. Kavanaugh's history on a series of issues bearing on racial justice. They all concluded that his confirmation would be a devastating step backward for communities of color and other marginalized people. Just as we cannot afford a justice who will read LGBT people out of the Constitution, we cannot afford one who adheres to a dangerous "colorblind" view and ignores this nation's history of slavery, segregation, and state-sanctioned violence, and the systemic inequities still experienced by people of color today.

Thank you for your consideration. Should you have any questions, please do not hesitate to contact Julie Gonen, NCLR's federal policy director, at jgonen@nclrights.org or 202-734-3547.

Sincerely,

National Center for Lesbian Rights