

Open Letter from Yale Law Students, Alumni, and Educators Regarding Brett Kavanaugh

Please sign below. Additional signatories will be added regularly

July 10, 2018

To Dean Gerken and the Yale Law School leadership,

We write today as Yale Law students, alumni, and educators ashamed of our alma mater. Within an hour of Donald Trump's announcement that he would nominate Brett Kavanaugh, YLS '90, to the Supreme Court, the law school published a press release boasting of its alumnus's accomplishment. The school's post included quotes from Yale Law School professors about Judge Kavanaugh's intellect, influence and mentorship of their students.

Yet the press release's focus on the nominee's professionalism, pedigree, and service to Yale Law School obscures the true stakes of his nomination and raises a disturbing question:
Is there nothing more important to Yale Law School than its proximity to power and prestige?

Judge Kavanaugh's nomination presents an emergency — for democratic life, for our safety and freedom, for the future of our country. His nomination is not an interesting intellectual exercise to be debated amongst classmates and scholars in seminar. Support for Judge Kavanaugh is not apolitical. It is a political choice about the meaning of the constitution and our vision of democracy, a choice with real consequences for real people. Without a doubt, Judge Kavanaugh is a threat to the most vulnerable. He is a threat to many of us, despite the privilege bestowed by our education, simply because of who we are.

Since his campaign launched, Trump has repeatedly promised to appoint justices who would overturn *Roe v. Wade*. Overturning that decision would endanger the lives of countless people who need or may need abortions — including many who sign this letter. Trump's nomination of Judge Kavanaugh is a reliable way to fulfill his oath. Just a few months ago, Judge Kavanaugh ruled to deny a detained immigrant minor her constitutional right to abortion. Decades-old Supreme Court precedent makes clear that the government may not place an undue burden on a pregnant person's access to abortion. But Judge Kavanaugh clearly did not feel constrained by precedent: what could be a greater obstacle than a cage? The minor had never wavered in her decision to seek an abortion and had received a judicial bypass from a state judge who found that she was competent to make the decision. Yet Kavanaugh condescendingly and disingenuously held that she must wait weeks until she was in a "better place" to make a choice about her own bodily autonomy — at which point she might not be able to have a legal abortion. Further, Kavanaugh argued that to require immigration authorities to stop blocking her from accessing this right would force the government into complicity.

The judge employed similar spurious reasoning in a 2015 dissent arguing that the ACA's contraceptive mandate violated the rights of religious organizations, even though those organizations were granted an accommodation that allowed them to opt out of providing contraceptive coverage. Kavanaugh's opinions give us grave concern that he will consistently prioritize the beliefs of third-parties over the rights of the oppressed — not only when it comes to abortion and contraception, but also regarding other forms of

medical care (including care for transgender patients), family privacy, and sexual liberty. Litigants harness this same logic when arguing that institutions have a religious right to discriminate against LGBT people — an issue the Court is certain to take up in the years to come.

Judge Kavanaugh would also act as a rubber stamp for President Trump’s fraud and abuse. Despite working with independent counsel Ken Starr to prosecute Bill Clinton, Judge Kavanaugh has since called upon Congress to exempt sitting presidents from civil suits, criminal investigations, and criminal prosecutions. He has also noted that “a serious constitutional question exists regarding whether a president can be criminally indicted and tried while in office.” This reversal does not reflect high-minded consideration but rather naked partisanship. At a time when the President and his associates are under investigation for various serious crimes, including colluding with the Russian government and obstructing justice, Judge Kavanaugh’s extreme deference to the Executive poses a direct threat to our democracy.

As part of his assault on the administrative state — based not in law, as he claims, but on policy preference — Judge Kavanaugh has undermined attempts to protect the environment and regulate predatory lenders and for-profit colleges. He has called now-defunct Net Neutrality regulations violations of the First Amendment. If elevated, the judge would pose an existential threat to the government’s ability to regulate for the common good and further twist the First Amendment beyond recognition, using it as a sword to advance his personal political preferences. His appointment would usher in a new era of *Lochner*, with “black-robed rulers overriding citizens’ choices.”

Judge Kavanaugh has consistently protected the interests of powerful institutions and disregarded the rights of vulnerable individuals. On the D.C. Circuit he denied a student with disabilities access to the remedial education he was promised after he emerged from juvenile detention. In a 2008 dissent, Judge Kavanaugh argued undocumented workers are not protected by labor laws. In 2016, Judge Kavanaugh ruled that employers can require employees to waive their right to picket. In a concurrence, he argued that the National Security Agency’s sweeping call surveillance program was consistent with the Fourth Amendment. As an attorney, he advocated for prayer at open public school events in brazen contravention of our country’s separation of church and state.

The list goes on. We see in these rulings an intellectually and morally bankrupt ideologue intent on rolling back our rights and the rights of our clients. Judge Kavanaugh’s resume is certainly marked by prestige, groomed for exactly this nomination. But degrees and clerkships should not be the only, or even the primary, credential for a Supreme Court appointment. A commitment to law and justice is.

Now is the time for moral courage — which for Yale Law School comes at so little cost. Perhaps you, as an institution and as individuals, will benefit less from Judge Kavanaugh’s ascendent power if you withhold your support. Perhaps Judge Kavanaugh will be less likely to hire your favorite students. But people will die if he is confirmed. We hope you agree your sacrifice would be worth it. Please use your authority and platform to expose the stakes of this moment and the threat that Judge Kavanaugh poses.

Signed,

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Alexandra Brodsky, YLS ‘16
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(the names and graduation years go on for pages and pages)

