

September 14, 2018

Senator Richard Shelby
304 Russell Senate Office Building
Washington, DC 20510

Dear Senator Shelby:

On behalf of the undersigned organizations, including the Southern Poverty Law Center with more than 5,000 supporters in Alabama, we write to express our strong opposition to the confirmation of Brett Kavanaugh to the United States Supreme Court. Judge Kavanaugh's troubling record on protecting the rights of the most vulnerable in our society convinces us that he is not suited for a lifetime appointment to the Court. Our concerns about him have been exacerbated by his seeming lack of candor during the confirmation process. We urge you to vote against his confirmation.

Alabama is a state that knows well the historical importance of the federal judiciary and of independent judges such as Frank M. Johnson Jr. when it comes to enforcing and protecting the civil rights of the least among us. Judge Kavanaugh is certainly not cut from the same mold as Judge Johnson. Indeed, his confirmation will significantly erode our ability to rely on the federal judiciary to protect the human and civil rights of the poor, the marginalized, and the powerless in our society. We are deeply concerned by his record on a broad range of civil rights issues, including marriage equality, voting rights, access to health care, worker rights, reproductive and privacy rights, racial equality, religious freedom, and more.

Judge Kavanaugh has been hostile to affirmative action and is likely to depart from Justice Anthony Kennedy's support under some circumstances for race-conscious measures in college admissions to promote racial diversity. As a White House employee, Judge Kavanaugh was involved in the Bush Administration's 2003 decision to file briefs asking the Supreme Court to strike down the University of Michigan's admissions policies, which used race as one factor among many.¹ The Supreme Court rejected that position with respect to the University of Michigan's law school, ruling that the admissions process was narrowly tailored and therefore constitutional.

We also have serious concerns about Judge Kavanaugh's record on cases involving the criminal justice system. He has demonstrated a pro-government bias in Fourth Amendment cases, endorsing randomized drug testing of at-risk youth in the Department of Agriculture's Job Corps Civilian Centers. The D.C. Circuit held that the testing policy was "a solution in search of a problem" and that the Department had failed to identify "special needs" for the testing, such as evidence of a drug problem among staff. In his dissent, Judge Kavanaugh indicated he would have upheld the testing on grounds of "common sense."²

In another case, Judge Kavanaugh strongly disagreed with a majority of the D.C. Circuit sitting *en banc*, including three Republican-appointed judges, and adopted an expansive view of the police's "stop

¹ [https://www.judiciary.senate.gov/imo/media/doc/08-09-18%20GWB%20Document%20Production%20\(Set%201,%20Pages%2010,001-20,000\).pdf](https://www.judiciary.senate.gov/imo/media/doc/08-09-18%20GWB%20Document%20Production%20(Set%201,%20Pages%2010,001-20,000).pdf).

² *National Federation of Federal Employees-LAM v. Vilsack*, 681 F.3d 483 (D.C. Cir. 2012)

and frisk” power.³ In *United States v. Asken*, the police conducted a “stop and frisk” search that produced no results, then, without a warrant, unzipped a suspect’s jacket, revealing a gun. The majority determined that the police violated the defendant’s Fourth Amendment rights. Kavanaugh wrote a 32-page dissent, arguing that the police action was justified because it was a reasonable continuation of the stop and frisk and helped show the defendant to a witness at an alleged robbery. “Prohibiting the police during [stop and frisk] stops from conducting identification procedures that constitute searches would lead to absurd and dangerous results.” He wrote that not allowing limited moving of clothing to identify suspects would “hamstring the police and prevent them from performing reasonable identification procedures that could solve serious crimes and protect the community from violent criminals at large.”

Finally, during his tenure on the D.C. Circuit Court, Judge Kavanaugh repeatedly voted to uphold the interests of the wealthy and powerful and large corporations at the expense of workers, consumers, and communities of color. In *SeaWorld of Fla. LLC, v. Perez*, he ruled in favor of an employer in a case where an employee lost her life on the job. In that case, he characterized workplace safety protections as “paternalistic.”⁴ As a foe of consumers, he ruled that the entire Consumer Financial Protection Bureau was unconstitutional in *PHH Corp. v. Consumer Fin. Prot. Bureau*. And he wrote the decision upholding South Carolina’s photo ID law in *South Carolina v. Holder*, after the Department of Justice rejected the law as discriminatory under Section 5 of the Voting Rights Act.⁵

In 1987, Alabama Senator Howell Heflin exercised his voice courageously on behalf of our state when he cast a key vote to reject the Supreme Court nomination of another extreme ideologue, Robert Bork. The time has come once again to reject a nominee whose record clearly demonstrates a hostility to the rights of those in Alabama and across America who most need and deserve the protection of the federal judiciary. We strongly oppose Judge Kavanaugh’s nomination and urge you to vote “no.”

Sincerely yours,

Southern Poverty Law Center
Alabama affiliate, National Employment Lawyers Association
Alabama Coalition for Immigrant Justice
Alabama State Conference of the NAACP
Central Alabama Fair Housing Center
Fair Housing Center of North Alabama
Greater Birmingham Ministries
Mobile Fair Housing Center
Planned Parenthood Southeast Advocates
URGE: Unite for Reproductive & Gender Equity

³ *United States v. Asken*, 529 F.3d 1119 (D.C. Cir. 2008) (en banc)

⁴ 748 F.3d 1202 (D.C. Cir. 2014).

⁵ 839 F.3d 1 (D.C. Cir. 2016), *vacated and remanded*, *PHH Corp. v. Consumer Fin. Prot. Bureau*, 881 F.3d 75 (D.C. Cir. 2018) (*en banc*); 898 F. Supp. 2d 30 (D.D.C. 2012).