



August 31, 2018

Submitted Via Email:

Oliver.Mittelstaedt@judiciary-dem.senate.gov

The Honorable Chuck Grassley, Chairman
United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Dianne Feinstein, Ranking Member
United States Senate Committee on the Judiciary
152 Dirksen Senate Office Building
Washington, DC 20510

Dear Chair Grassley and Ranking Member Feinstein:

On behalf of the National Employment Lawyers Association (NELA), and its 4,000 circuit, state, and local affiliate members across the country, I write to express our strong opposition to the nomination of Judge Brett Kavanaugh to the United States Supreme Court.

NELA is the largest professional membership organization in the country comprising lawyers who represent workers in labor, employment and civil rights disputes. Founded in 1985, NELA advances employee rights and serves lawyers who advocate for equality and justice in the American workplace. Our members litigate daily in every circuit, affording NELA a unique perspective on how employment cases actually play out on the ground. NELA strives to protect the rights of its members' clients, and envisions a workplace in which employees will be paid at least a living wage in an environment free of discrimination, harassment, retaliation, and capricious employment decisions; employees' safety and livelihood will not be compromised for the sake of corporate profit and interests; and individuals will have effective legal representation to enforce their rights to a fair and just workplace, adequate remedies, and a right to trial by jury.

As a member of the DC Circuit Court of Appeals, Judge Kavanaugh has demonstrated a troubling propensity to both draw inferences against plaintiff-employees and make improper determinations regarding the credibility of the respective parties when deciding whether an employee should be permitted to present her claims to a jury (the procedural posture in most employment cases on appeal). This practice runs afoul of the applicable provisions of the Federal Rules of Civil Procedure and rulings from the Supreme Court. Judge Kavanaugh has shown an affinity for deploying legal reasoning unsupported by the text and purposes of the particular employment laws at issue, and adopting inappropriately narrow readings of both the facts and law in ways that operate to the detriment of employees seeking to vindicate their statutory rights. This pattern reveals Judge Kavanaugh as someone who places the interests of employers over the

rights of employees. This is of grave concern to us, and should be fully explored during his confirmation hearing. Every working person in the U.S. deserves to be treated decently and fairly on the job. But unfortunately this is often not the reality and when an employee faces discriminatory, or illegal treatment on the job; or a job applicant faces discrimination *before* being hired, and the worker chooses to seek to vindicate his or her rights in a court of law, it is the job of the Senate to be able to ensure, through rigorous examination of all judicial nominees, that every litigant will face a fair and impartial judge. Unfortunately, Judge Kavanaugh's record on employment matters is not reflective of those fundamental standards. We oppose his confirmation and we also associate ourselves with the comments and concerns raised in the attached letter of opposition from the Leadership Conference on Civil and Human Rights.

Sincerely,

A handwritten signature in black ink, appearing to read "Terry O'Neill". The signature is fluid and cursive, with the first name "Terry" being more prominent and the last name "O'Neill" following in a similar style.

Terry O'Neill
Executive Director