



October 4, 2018

Submitted Via Email

Dear Senator:

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 confirmation of Judge Brett Kavanaugh to the United States Supreme Court.

NELA is the largest professional membership organization in the country comprised of 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 litigation, and particularly employment litigation, affects individual working people seeking justice in our nation's courts. The focus of NELA's public policy work is on protecting the rights of our members' clients, and fighting for fair wages and workplaces free of discrimination, harassment, and retaliation. We fight for laws and courts that will place employees' safety and livelihoods over corporate profit and interests; and we seek to ensure that individuals will have effective legal representation to enforce their rights in the workplace and have access to adequate remedies when they are subject to illegal treatment.

NELA's Executive Board voted initially to oppose Judge Kavanaugh because, as a member of the DC Circuit Court of Appeals, he 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 or his 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. Judge Kavanaugh's record of opinions reflects a jurist who places the interests of employers over the rights of employees. This is of grave concern.

Every working person in the U.S. deserves to be treated decently and fairly on the job. 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. Judge Kavanaugh's initial confirmation hearing did not assuage our concerns that his views on employment matters and on the "rights" of corporations will ensure fairness for individual workers who face illegal treatment in the workplace, or in a hiring process.

Since the early September confirmation hearing, as you and our nation are aware, Christine Blasey Ford came forward as a courageous individual woman, to disclose her account of an attempted sexual assault by Judge Kavanaugh when they were both in high school. Subsequently others came forward with similar disclosures. NELA fully supported the request of the American Bar Association for a thorough FBI investigation of these serious allegations.

The allegations that Dr. Blasey Ford and other women have made against Judge Kavanaugh are extremely serious. They bear directly on his fitness for the job and the ability of the Supreme Court to continue to serve its essential role as a neutral and non-partisan enforcer of the rule of law, including the laws about sexual assault and harassment. Today's report of the FBI investigation revealed that the investigation itself was incomplete at best, and driven by partisan concerns of the President at worst. To confirm this nominee without a complete and rigorous investigation would be antithetical to the process that should properly precede confirmation of a U.S. Supreme Court Justice. As lawyers, we have been dismayed by the repeated attempts to rush this confirmation. The process was rushed in early September, when hearings took place without waiting to receive and share with the Senate Judiciary Committee thousands of pages of records of Judge Kavanaugh's work in the Bush Administration. Tomorrow, the Senate is scheduled to move forward without a full and fair investigation of all credible allegations of sexual assault and sexual misconduct. In short, every aspect of this confirmation process has failed to adhere to democratic principles of transparency, careful consideration based on access all relevant information, and nonpartisanship. As the ABA aptly stated in its letter, the Supreme Court must remain an institution that will reliably follow the law and not politics.

At this time, we call on you to vote no on Judge Kavanaugh's confirmation based on his conduct at the September 27 hearing. As lawyers, we cannot overstate the profound importance of the qualities of honesty, nonpartisanship, integrity, and judicial temperament in a judge. The Founders brilliantly designed our system with an independent judiciary that serves as a cornerstone of our democracy. Every litigant in this nation, including every Supreme Court litigant, deserves to appear before a judge whose honesty, integrity, judicial temperament, and impartiality are beyond reproach.

In addition to the importance of these qualities in ensuring fairness for individual litigants, the strength and integrity of the Court itself, demands that every judge live up to these qualities without question. Fair courts are foundational to our democracy and ensuring these qualities of honesty, profound integrity, impartiality and judicial temperament in every judge is central to protecting our democracy.

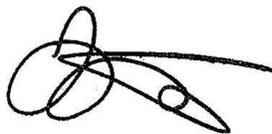
Our members represent your constituents when they face illegal treatment in the workplace. Every one of your constituents counts on you to ensure that the federal judges that rule on matters affecting them are fair. Judge Kavanaugh's conduct before the Senate Judiciary Committee on September 27, should be disqualifying. As Senator Flake publicly commented, Judge Kavanaugh's hyper-partisan testimony at the September 27 hearing poses a grave threat to the reputation of the Court if he were confirmed. For example, Judge Kavanaugh openly attacked Democrats, and accused those with concerns about his confirmation as being angry "about President Trump and the 2016 election" or seeking "revenge on behalf of the Clintons." Indeed, he all but promised to be a partisan member of the Court when he stated, "what goes around comes around."

Not only did Judge Kavanaugh express disgust with one party in our two-party system, he also evaded and refused to answer legitimate questions asked of him. Judge Kavanaugh's actions made crystal clear that he lacks the integrity, honesty, impartiality, or judicial temperament required of the job. If confirmed, he will be seated on the Court having taken a posture of extreme partisanship, having failed the test of rock-solid honesty and integrity, and having demonstrated that he considers it acceptable to rage and attack those with whom he disagrees, and who question him under oath in a Senate proceeding.

When you cast your vote on this lifetime appointment to the U.S. Supreme Court you will make a decision with grave and far-reaching consequences for every one of your constituents, for all working people, and for the nation. You will also cast a vote with long lasting consequences for the integrity of the Supreme Court itself. Our democracy depends on the integrity of our judicial branch and on *your* integrity with regard to this choice. We are counting on you to protect our nation's highest court, which should be your paramount concern.

We respectfully request that you commit to vote against confirmation of Brett Kavanaugh. If you wish to contact us, please contact Laura Flegel, Legislative & Public Policy Director at (202) 898-2880 ext. 115 or lflegel@nelahq.org.

Sincerely,

A handwritten signature in black ink, appearing to read 'James H. Kaster', with a long horizontal stroke extending to the right.

James H. Kaster
NELA President

A handwritten signature in black ink, appearing to read 'Terry O'Neill', with a stylized, cursive script.

Terry O'Neill
Executive Director