



# NAACP

## **BRETT KAVANAUGH POSES A SEVERE THREAT TO CIVIL RIGHTS: THE SENATE MUST REJECT HIS NOMINATION**

### **I. INTRODUCTION**

- **STAKES ARE INCREDIBLY HIGH:** The stakes in filling the vacancy created by Justice Anthony Kennedy’s retirement from the Supreme Court could not be higher. During his thirty years on the Court, Justice Kennedy provided a crucial fifth vote in closely divided rulings by the Supreme Court. Although Kennedy was a reliably conservative justice, he occasionally cast votes to protect civil rights. For example, Kennedy voted to uphold consideration of race in higher education to promote diversity, to uphold using disparate impact to prove discrimination in housing, and to uphold marriage equality for same-sex couples.
- **SUPREME COURT WILL LURCH TO FAR RIGHT:** Without Justice Kennedy’s influence, the Supreme Court would dramatically move to the far right. Civil rights hanging in the balance could be undermined or even eliminated by a majority of the Court specifically intent on protecting the wealthy and powerful rather than the rights of all Americans.
- **PRODUCT OF CORRUPT PROCESS:** Brett Kavanaugh was selected from Trump’s short-list of Supreme Court candidates developed by radical right groups with litmus tests on issues such as choice and civil rights. Kavanaugh’s record reveals a hard-core ideologue who will not protect civil rights and civil liberties and who has been auditioning for a Supreme Court seat during his entire tenure on the D.C. Circuit. He will provide a consistent vote against communities of color across civil rights issues. This will prove disastrous for civil rights jurisprudence for decades.
- **AN ILLEGITIMATE NOMINEE:** On August 21, Donald Trump was named as an unindicted co-conspirator in federal crimes involving his own election as president. Kavanaugh’s nomination is tainted and must be considered illegitimate. In [calling](#) for a halt to the confirmation process, NAACP President Derrick Johnson said: “The Senate owes it to the American people to see how these legal proceedings play out before even considering whether to confirm a SCOTUS nominee selected by a President linked to federal crimes. This is especially true with a nominee like Brett Kavanaugh who believes the President is immune from federal investigation.”
- **KAVANAUGH’S RECORDS ARE MISSING:** The Senate has a constitutional duty to rigorously and thoroughly review a Supreme Court nominee. But the White House has refused to produce millions of records from Kavanaugh’s work at the highest levels of the George W. Bush Administration when he was at the center of political and policy decisions, including civil rights, torture, and warrantless wiretapping. Kavanaugh has [acknowledged](#) that this period shaped his views of the executive branch and influenced his perspective as a judge. The NAACP has [stated](#) that a hearing without full, complete and comprehensive disclosure of his records “strikes a devastating blow to the integrity of the confirmation process.”

## II. BACKGROUND

- **A LIFETIME OF PRIVILEGE:** Brett Kavanaugh is a 53-year-old white male who was born in Washington D.C. and raised in its wealthy suburbs. He has led an exceedingly privileged life. His father was a lobbyist for the cosmetics industry. He attended only private schools, including Georgetown Preparatory School where Trump Supreme Court appointee Neil Gorsuch was a classmate. He received his B.A. from Yale University in 1987 and his J.D. from Yale Law School in 1990. Kavanaugh has none of the hard-scrabble or working class experience that could produce an appreciation for others struggling to make better lives for themselves and their families in the face of strong social and economic headwinds. He simply does not understand the experiences of average people, and his opinions consistently reflect that.
- **CLERKED FOR THREE JUDGES:** Kavanaugh served as law clerk to Third Circuit Judge Walter Stapleton (Reagan appointee) and to Ninth Circuit Judge Alex Kozinski (Reagan appointee), who [retired](#) in disgrace last year after multiple claims of sexual harassment by law clerks, law students, lawyers and even a fellow judge. Kavanaugh clerked, along with Neil Gorsuch, for Justice Anthony Kennedy on the Supreme Court in the 1993-94 term.
- **HISTORY OF EXTREME PARTISANSHIP:** Kavanaugh has a deeply partisan background. He worked for Independent Counsel Kenneth Starr during his wide-ranging investigation into President Clinton and Hilary Clinton. He co-authored the infamous Starr Report which made the case for impeaching President Clinton, wrote the articles of impeachment against Clinton, and investigated the tragic suicide of Vince Foster. During the George W. Bush Administration, he served in the White House Counsel's office for two years and then as a top advisor to President Bush for three years, where he wielded extraordinary influence on controversial positions involving civil rights and civil liberties.
- **SELECTED JUDGES HOSTILE TO CIVIL RIGHTS:** Kavanaugh helped to select George W. Bush's controversial judicial nominees such as Charles Pickering, Terrence Boyle, and Dennis Shedd, who were opposed by the NAACP. Evidence suggests that Kavanaugh lied to the Judiciary Committee during his own judicial confirmation about his role in aiding these controversial nominees. He denied assisting Charles Pickering, who was defeated by the Senate because he reduced the sentence of a cross-burner, but the New York Times [revealed](#) Kavanaugh played a lead role. Kavanaugh also [assisted](#) with Bush's selection of Supreme Court nominee John Roberts, whose record against voting rights was legendary. Once confirmed, Roberts authored the opinion in [Shelby County v. Holder](#), which gutted the heart of the Voting Rights Act.
- **NAACP OPPOSED KAVANAUGH'S CIRCUIT COURT APPOINTMENT:** When George W. Bush nominated Kavanaugh to the D.C. Circuit in 2003, the NAACP [opposed](#) his nomination because he "was responsible for overseeing efforts to pack our nation's courts with extreme right-wing judicial nominees." Senator Chuck Schumer said: "Brett Kavanaugh's nomination is not just a drop of salt in the partisan wounds, it is the whole shaker." His controversial nomination stalled for three years. The ABA conducted three separate evaluations of Kavanaugh and downgraded its rating, with a majority concluding he did not meet its highest standard. Kavanaugh was eventually confirmed in 2006, in a 57-36 vote.

### III. RECORD OF HOSTILITY TO COMMUNITIES OF COLOR

- **TO FAR RIGHT OF COLLEAGUES:** Kavanaugh’s tenure as a judge was exactly as the NAACP predicted when it opposed him. The D.C. Circuit currently has 11 judges, with seven appointed by Democratic presidents and four appointed by Republicans. Kavanaugh staked out radical positions to the far right of his colleagues, even Republican appointees. He consistently voted to uphold the interests of the wealthy and powerful and ruled against the rights of average Americans. He has the highest number of dissents per year of any judge on the D.C. Circuit.
- **HOSTILE TO AFFIRMATIVE ACTION:** Kavanaugh shows every sign of deviating from Justice Anthony Kennedy’s support under some circumstances for race-conscious measures in college admissions to promote racial diversity. He [assisted](#) the Bush Administration in asking the Supreme Court to strike down the University of Michigan’s admissions policies which used race as one factor, writing: “The Michigan program is unconstitutional because race-neutral programs should be employed, where possible...” The Supreme Court rejected that position, ruling that the admissions process was narrowly tailored and therefore constitutional. As a private lawyer, Kavanaugh co-authored a [brief](#) with failed Supreme Court nominee Robert Bork on behalf of the Center for Equal Opportunity, a group vehemently opposed to affirmative action. He argued that Hawaii violated the Constitution by permitting only Native Americans to vote in elections for the Office of Hawaiian Affairs. He wrote that “the intent, meaning, history, and policy of the Equal Protection Clause all suggest that the Constitution does not allow governmental racial classifications.” In an [op-ed](#), Kavanaugh called the Hawaii restrictions a “racial spoils system” and urged the Court to “adhere to the fundamental constitutional principle most clearly articulated by Justice Antonin Scalia: In the eyes of government, we are just one race here. It is American.” In an [interview](#), Kavanaugh stated, “This case is one more step along the way in what I see as an inevitable conclusion within the next 10 or 20 years when the Court says we are all one race in the eyes of government.” NAACP President Derrick Johnson has [written](#) that, with Kavanaugh’s nomination, “now is simply not the time to do away with affirmative action.”
- **THREAT TO FAIR HOUSING:** One of retiring Justice Anthony Kennedy’s signature civil rights opinions [upheld](#) the “disparate impact” method for proving housing discrimination. This method—which allows facially neutral practices to constitute discrimination if they disproportionately impact communities of color—is a longstanding tool for proving discrimination of any kind. But Kavanaugh needlessly and harshly questioned the disparate impact doctrine at a time when the Supreme Court had not yet settled that the Fair Housing Act allows this type of claim. [Greater New Orleans Fair Housing Ctr. v. HUD](#). Civil rights organizations sued HUD under the Fair Housing Act for its policy of reimbursing homeowners after Katrina for the pre-storm value of the property or rebuilding costs, whichever was lower; they claimed that African Americans whose home values were lower than those in white areas, were disproportionately impacted. Kavanaugh joined an opinion rejecting the disparate impact claim but also launching a broad-based attack on the doctrine itself. It speculated about whether plaintiffs could ever “identify a sound benchmark” for assessing disproportionate impact in these circumstances and whether white homeowners might have disparate impact claims under a different formula. The concurring opinion called this a “strange turn” and correctly noted that it seemed to lack any purpose “other than to posit hurdles for future disparate impact claims” and was “unnecessary” to resolve the case.

- **RESTRICTED POLITICAL PARTICIPATION TO WEALTHY & POWERFUL:** Brett Kavanaugh poses a severe threat to our democracy based on his record of voting rights and campaign finance issues, which signals willingness to further restrict communities of color from the political process and to limit exercise of the franchise to the wealthy and powerful.

\* **WITH KAVANAUGH, VOTING RIGHTS CAN BE FURTHER ERODED:** Five years ago, in [Shelby County v. Holder](#), the Supreme Court gutted the heart of the Voting Rights Act by dismantling the requirement that jurisdictions with a history of discrimination preclear voting changes. State legislatures and municipalities quickly enacted measures to suppress the vote. But voting rights jurisprudence can get even worse. Just this past term, the Court [upheld](#) the most heinous voter purge law in the nation, transforming voting rights into a “use it or lose it” proposition, and then [upheld](#) racially gerrymandered districts in Texas. A future Court could decide that the Voting Rights Act does not cover challenges to redistricting or that its other provisions are unconstitutional or subject to death by a thousand cuts. Read NAACP President Derrick Johnson’s [op-ed](#), “On Voting Rights We Have Much More to Lose with Brett Kavanaugh.”

\* **UPHELD PHOTO ID LAW:** Judge Kavanaugh wrote the unanimous three-judge court opinion upholding South Carolina’s photo ID law in a challenge under the Voting Rights Act. [South Carolina v Holder](#). The Justice Department had rejected the law under Section 5 of the Voting Rights Act on the basis that it would disenfranchise tens of thousands of voters of color. After South Carolina modified the law, Kavanaugh upheld it. Significantly, Kavanaugh refused to join a concurrence that stated “one cannot doubt the vital function that Section 5 of the Voting Rights Act has played here.” Section 5 is the heart of the Voting Rights Act that was completely disabled by the Supreme Court only one year later in [Shelby County v. Holder](#). And, although South Carolina offered no evidence whatsoever of voter fraud, Kavanaugh wrote: “We conclude that South Carolina’s goals of preventing voter fraud and increasing electoral confidence are legitimate: those interests cannot be deemed pretextual merely because of an absence of recorded incidents of in-person voter fraud in South Carolina.” Kavanaugh dissented in an earlier discovery [ruling](#) rejecting South Carolina’s effort to invoke attorney-client privilege to shield material prepared by state senate staff attorneys when the voter ID law was drafted. He wanted to allow South Carolina to keep information private from the Justice Department and civil rights organizations which intervened.

\* **FAVORS MORE MONEY IN POLITICS:** Kavanaugh’s record in election law cases indicates he would move more aggressively than Justice Kennedy in lifting restrictions on money in politics. He wrote the opinion striking down Federal Election Commission regulations to restrict spending by outside organizations, helping to fuel the creation of super PACs. [Emily’s List v. FEC](#). Although the case could have been decided on administrative law grounds, Kavanaugh issued a sweeping constitutional ruling, invoking a sharp rebuke by the extremely conservative Judge Janice Rogers Brown for disregarding precedent that instructs courts to avoid constitutional questions unless necessary and adding: “The court, however, is not content just answering a gratuitous constitutional question. Its holding is broader than even the plaintiff requests.” In another ruling, Kavanaugh sought to revive a challenge to federal “electioneering communications” disclosure provisions in the McCain-Feingold Act although they had been twice upheld by the Supreme Court. [Independence Institute v. FEC](#). For more on Kavanaugh’s “unsettling record on democracy,” see this [report](#) by Demos and the Campaign Legal Center.

- **NARROW VIEW OF FAIR EMPLOYMENT LAWS:** In several cases in which the D.C. Circuit upheld the rights of employees under anti-discrimination laws, Judge Kavanaugh dissented and argued that the federal laws had no application and were not even necessary to protect against discrimination in the workplace.

- \* **LIMITED APPLICATION OF TITLE VII:** Kavanaugh wanted to ban Title VII's application to employees in all national security situations, despite precedent banning application only to denials or revocations of security clearances. [Rattigan v. Holder](#). A black FBI employee accused officials of retaliation for reporting unfounded security concerns which prompted an investigation into his security clearance eligibility. The D.C. Circuit ruled that the claim could proceed if it challenged the reporting of the employee and not the decision to investigate, rejecting the federal government's request for "sweeping immunity from Title VII liability." The Court reasoned: "Were we to declare all reporting-based claims nonjusticiable, federal employees could no longer seek redress for the harm caused when a coworker fabricates security concerns in retaliation for statutorily protected activity, and Congress's purpose in enacting Title VII would be frustrated." Kavanaugh dissented, saying that the majority opinion suffered from a "basic flaw" "by insisting that some agency security clearance decisions are judicially reviewable." Kavanaugh believed that reliance on civil rights laws was unnecessary since sanctions such as agency discipline might deter such behavior.

- \* **FORECLOSED CLAIMS BY LEGISLATIVE EMPLOYEES:** Kavanaugh argued that an African-American woman fired from her position working as Capitol Hill staff could not pursue claims of race discrimination and retaliation under the Congressional Accountability Act, which extends the protections of fair employment statutes to legislative branch employees. [Howard v. Office of the Chief Administrative Officer of the U.S. House of Representatives](#). Kavanaugh would have held these claims were barred by the Constitution's Speech or Debate Clause, a position which would have foreclosed federal lawsuits by workers throughout the federal legislative branch including those pursuing sexual harassment claims in the #MeToo era. In this situation, Kavanaugh believed that administrative complaint procedures were an acceptable substitute for discrimination victims deprived of federal court claims. The majority, however, held that the employee's claims could in fact proceed under the Congressional Accountability Act because they were not precluded or limited by the evidentiary, testimonial or non-disclosures privileges that emanate from the Speech or Debate Clause.

- \* **ARGUED AGE DISCRIMINATION LAWS DO NOT APPLY:** Kavanaugh tried to exclude federal employees from laws prohibiting age discrimination. [Miller v. Clinton](#). The D.C. Circuit held that the State Department violated such laws by imposing a mandatory retirement age and firing an employee when he reached 65. It rejected the Department's attempt to exempt from coverage citizens employed abroad. But Kavanaugh dissented, favoring the exemption. This prompted the majority to note—without disagreement by Kavanaugh—that this position would free the Department from "any statutory bar against terminating [an employee] on account of his disability or race or religion or sex." Kavanaugh argued that the Constitution was sufficient to protect against discrimination on the basis of race, sex and religion but conceded that they would be entitled to limited remedies without the protection of federal anti-discrimination laws.

- **ELIMINATED FEDERAL AGENCY PROTECTIONS:** One of Donald Trump’s top priorities is to reduce or eliminate the power of federal agencies to adopt protections for communities of color, workers, consumers, and the environment. Former Trump aide Steve Bannon [vowed](#) to fight daily for the “deconstruction of the administrative state.” White House Counsel Donald McGahn [told](#) the Federalist Society that “the ever-growing, unaccountable administrative state is a direct threat to individual liberty.” Kavanaugh’s appointment plays a large role in fulfilling Trump’s promise to his base. Kavanaugh has taken a harsh stance against the “Chevron doctrine,” a longstanding legal principle that courts should defer to federal agency interpretations of laws where the law is ambiguous and the agency’s position is reasonable. He has [stated](#): “The Chevron doctrine encourages agency aggressiveness on a large scale. Under the guise of ambiguity, agencies can stretch the meaning of statutes enacted by Congress to accommodate their preferred policy outcomes.” Immediately after nominating Kavanaugh, the White House [boasted](#) to business groups that Judge Kavanaugh “has overruled federal agency action 75 times.”
- **OPPOSED AGENCY TO PROTECT CONSUMERS:** In one of his most egregious rulings against agency protections, Kavanaugh ruled that the entire Consumer Financial Protection Bureau was unconstitutional. [PHH Corp. v. Consumer Fin. Prot. Bureau](#). This is the independent agency created by the Dodd-Frank Wall Street Reform and Consumer Protection Act in the wake of the 2008 financial crisis to protect consumers from abusive practices and lending discrimination by financial institutions. Kavanaugh concluded it was unconstitutional for the agency to be headed by single director who could be removed by the President only for “inefficiency, neglect of duty or malfeasance in office.” He claimed that independent agencies constitute “a headless fourth branch of the U.S. government.” He stated: “Because of their massive power and the absence of Presidential supervision and direction, independent agencies pose a significant threat to individual liberty and to the constitutional system of separation of powers and checks and balances.” The *en banc* D.C. Circuit upheld the agency’s constitutionality and said that Kavanaugh’s argument “flies in the face” of Supreme Court precedent and “defies the historical practice.”
- **RULED AGAINST ENVIRONMENTAL JUSTICE:** In numerous instances, Kavanaugh undermined the authority of the Environmental Protection Agency to fulfill its mission to protect the environment, with significant consequences on communities of color. First, he ruled that the EPA overstepped its authority by adopting the Cross-State Air Pollution Rule, called the “good neighbor rule.” [EME Homer City Generation, L.P v. EPA](#). This is a clean air safeguard which protects downwind states from harmful air pollution emitting from distant power plants, which are often located in communities of color, and then crossing state borders. The Supreme Court [reversed](#) his decision. In another case, Kavanaugh strongly dissented from the D.C. Circuit’s decision not to rehear a ruling upholding the EPA’s finding that carbon dioxide was a pollutant and its emissions could be regulated. [Coalition for Responsible Regulation, Inc. v. EPA](#). Kavanaugh wrote: “[T]he ultimate clincher in this case is one simple point: EPA chose an admittedly absurd reading over a perfectly natural reading of the relevant statutory text. An agency cannot do that.” Kavanaugh dissented when the D.C. Circuit upheld the EPA’s first emission standards for mercury and other hazardous pollutants from coal and oil-fired plants. [White Stallion Energy Center v. EPA](#). In another dissent, Kavanaugh would have reversed an EPA penalty against a company that improperly shipped a corrosive chemical that caused “significant risks to public health.” [Howmet Corp. v. EPA](#).

- **RULED AGAINST WORKERS' RIGHTS:** Donald Trump has already installed Justice Neil Gorsuch on the Supreme Court, who voted to [overturn](#) 40 years of precedent on collective bargaining law. The labor law record of Trump's second nominee to the Court, Brett Kavanaugh, reveals deep hostility to the rights of workers and threatens to undermine workplace protections even further. As the nation commemorates the 50<sup>th</sup> anniversary year of Dr. Martin Luther King's assassination, we must remember the clear message from Dr. King's last march in Memphis that workers' rights are civil rights: "The issue is injustice. The issue is the refusal of Memphis to be fair and honest in its dealings with its public servants who happen to be sanitation workers."

- \* **THREAT TO WORKERS' SAFETY:** In an extremely consequential [opinion](#), Kavanaugh challenged the ability of federal agencies to protect employees from harm in the workplace. [SeaWorld of Florida, LLC v. Perez](#). When a SeaWorld trainer drowned after an attack by a killer whale, the D.C. Circuit upheld a Labor Department fine on SeaWorld for failing to keep the trainer from "recognized hazards" under workplace safety laws. But Kavanaugh blasted the sanction and asked: "When should we as a society paternalistically decide that the participants in these sports and entertainment activities must be protected from themselves." As commentators have [noted](#), Kavanaugh's view has "real world consequences for federal safeguards covering workers, consumers and the environment."

- \* **REJECTED UNDOCUMENTED IMMIGRANTS AS UNION MEMBERS:** Kavanaugh dissented from a D.C. Circuit ruling that ordered a company to bargain with a union, on the grounds that certain employees were ineligible to vote as undocumented immigrants. [Agri Processor Co. v. NLRB](#). The majority opinion harshly criticized Kavanaugh's "misreading" of both the plain language of the National Labor Relations Act (NLRA) and clear Supreme Court precedent which held that undocumented immigrants are covered by the NLRA. The majority stated: "There is absolutely no evidence that ... Congress intended to repeal the NLRA to the extent its definition of 'employee' includes undocumented aliens."

- \* **SHARPLY CURTAILED UNION RIGHTS AT FEDERAL AGENCY:** Kavanaugh wrote the majority opinion which allowed the Defense Department to proceed with what the Washington Post [called](#) "some of the most dramatic workplace changes planned for civil service employees in 30 years" and would "curb union rights at Defense and overhaul how the Department's civil employees are paid, promoted and disciplined." [AFGE v. Gates](#). The district court had blocked the Pentagon from implementing a substantial portion of the regulations on the basis they would "entirely eviscerate collective bargaining." But Kavanaugh reversed the decision. A partial dissent argued that Kavanaugh's opinion would allow the Secretary of Defense to "abolish collective bargaining altogether—a position with which even the Secretary disagrees."

- **PRO-GOVERNMENT BIAS IN FOURTH AMENDMENT CASES:** A significant portion of the Supreme Court’s docket each year is comprised of criminal justice cases, including those addressing racism in the criminal justice system. Kavanaugh’s record on and off the bench reveals a strong pro-government bias in criminal and other cases involving the Fourth Amendment. Indeed, Kavanaugh authored 12 [dissents](#) in criminal justice cases, ruling for the government in 10.

- \* **PRAISED REHNQUIST FOR LIMITING RIGHTS OF DEFENDANTS:** In a recent [speech](#), Kavanaugh called former Chief Justice William Rehnquist his “first judicial hero.” He praised Rehnquist for “[leading] the charge in rebalancing Fourth Amendment law,” noting that Rehnquist “fervently believed that the Supreme Court had taken a wrong turn in the 1960s and 1970s, and nowhere was he more forceful on this point than in the Fourth Amendment context, especially in cases involving violent crime and drugs.” Specifically, Kavanaugh lauded Rehnquist for making “the probable cause standard more flexible and commonsensical,” “expanding the category of special needs searches, those that could be done without a warrant or individualized suspicion,” and opposing the “exclusionary rule by which courts would exclude probative evidence from criminal trials because the police had erred in how they obtained the evidence.” According to Kavanaugh, Rehnquist viewed this “judge-created rule” as “beyond the four corners of the Fourth Amendment’s text and imposed tremendous costs on society.”

- \* **ENDORSED RANDOMIZED DRUG TESTING:** Kavanaugh dissented from an important drug testing ruling under the Fourth Amendment. [National Federation of Federal Employees v. Vilsack](#). A union challenged randomized drug testing of all employees of the Department of Agriculture’s Job Corps Civilian Centers which operated residential job programs for at-risk youth, aged 16 to 24. The D.C. Circuit held that the 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, which would have rendered the requirement for individualized suspicion impractical. But Kavanaugh would have upheld the testing on grounds of “common sense.” He wrote: “In residential schools for at-risk youth, many of which have previously used drugs, it seems eminently sensible to implement a narrowly targeted drug testing program for the schools’ employees. ... [I]ndeed, it would seem negligent not to test.”

- \* **SUPPORTED EXPANSIVE ‘STOP AND FRISK’ BY POLICE:** Kavanaugh strongly disagreed with a majority of the D.C. Circuit, including three Republican-appointed judges, which held that a defendant’s Fourth Amendment rights were violated. [United States v. Askew](#). The police conducted a “stop and frisk” search which produced no results, and then moved the defendant to where he could be identified by a witness and unzipped his jacket, revealing a gun. 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 limiting moving of clothing to identify suspects would “hamstring the police and prevent them from performing reasonable identification procedures that could solve serious crimes and the protect the community from violent criminals at large.”



- **ROE V. WADE IN JEOPARDY:** Kavanaugh poses a severe threat to the reproductive rights of women. His presence on Trump’s shortlist confirmed his willingness to overturn *Roe v. Wade*. The vehemently pro-life Susan B. Anthony List organization [praised](#) Kavanaugh as an “outstanding choice” and “principled jurist with a strong record of protecting life and constitutional rights.” Indeed, Kavanaugh reversed a lower court ruling allowing a 17-year-old undocumented immigrant in government custody to secure an immediate abortion consistent with Texas law which bans abortions after 20 weeks. [Garza v. Hargan](#). When the full court swiftly [overturned](#) Kavanaugh’s decision, he accused his colleagues of inventing “a new right for unlawful immigrant minors in U.S. Government detention to obtain immediate abortion on demand.” With Kavanaugh providing a fifth vote, the Court could overturn *Roe* outright or uphold abortion restrictions on the ground they pose no “undue burden.” These decisions would have a tremendous impact on low-income women of color, who lack unfettered reproductive choices.
- **WOULD LIMIT ACCESS TO CONTRACEPTION:** Kavanaugh also sought to limit access to contraceptive care for employees of religious non-profit organizations. The D.C. Circuit upheld an Affordable Care Act regulatory accommodation for religiously affiliated non-profit employers to opt out of paying employees’ contraception coverage. [Priests for Life v. U.S. Department of Health and Human Services](#). Kavanaugh dissented when the entire court refused to rehear the case, arguing that the objecting employers should have prevailed under the Religious Freedom Restoration Act. He wrote: “[T]he regulations substantially burden the religious organizations’ exercise of religion because the regulations require the organizations to take an action contrary to their sincere religious beliefs or else pay significant monetary penalties.” His view raises serious questions about his willingness to use religion as a defense to discrimination.
- **FOE OF AFFORDABLE CARE ACT:** Judge Kavanaugh poses a threat to ensuring access to health care regardless of preexisting conditions and to a minimal level of health care for everyone. Both are tremendously important for communities of color, who face longstanding and systemic barriers to quality health care. Significantly, Kavanaugh dissented in the D.C. Circuit’s ruling upholding the constitutionality of the Affordable Care Act. [Seven-Sky v. Holder](#). He said the court lacked jurisdiction to rule on the individual mandate because the tax penalty first would have to be assessed. Alarming, he stated: “Under the Constitution, the president may decline to enforce a statute that regulates private individuals when the president deems the statute unconstitutional, even if a court has held or would hold the statute constitutional.” Several [challenges](#) to the Affordable Care Act are currently percolating in the lower courts; Kavanaugh may soon have an opportunity to strike a devastating blow to health care protections for all.
- **ARGUED D.C.’S GUN REGULATIONS WERE UNCONSTITUTIONAL:** After the Supreme Court [held](#) that the Second Amendment protects an individual’s right to bear arms, Washington, D.C. passed gun laws banning assault weapons and high-capacity magazines and requiring certain firearms to be registered. In a constitutional challenge to the new laws, a panel majority of two Republican-appointed judges held that the bans were constitutional. [Heller v. D.C.](#) But Kavanaugh dissented, arguing that the assault weapons ban was unconstitutional: “[T]he Supreme Court held that handguns—the vast majority of which today are semi-automatic—are constitutionally protected because they have not traditionally been banned and are in common use by law-abiding citizens. There is no meaningful or persuasive constitutional distinction between semi-automatic handguns and semi-automatic rifles.”

- **BELIEVES PRESIDENT IS ABOVE LAW:** Finally, and perhaps most importantly given shocking developments about Donald Trump’s personal legal jeopardy, Brett Kavanaugh has asserted extreme views on presidential power. On August 21, Donald Trump was identified as an unindicted co-conspirator in the guilty plea of his personal lawyer, Michael Cohen, to felony violations of campaign finance laws relating to the presidential election. Judge Kavanaugh’s views on the scope of executive power, immunity and the ability of the courts to act as a check on executive power are deeply alarming, especially at this moment in history. Along with consideration of Judge Kavanaugh’s extremely disturbing record on civil rights, these views must be at the forefront of the Senate’s examination of the Kavanaugh nomination.

- \* **NO CRIMINAL INVESTIGATION OR PROSECUTION OF PRESIDENT:** Despite his leading role during Kenneth Starr’s independent counsel investigation of President Bill Clinton, Kavanaugh now believes presidents are immune from criminal investigations or prosecutions while in office, no matter what evidence of wrongdoing has been uncovered. In 2009, he [wrote](#): “[W]e should not burden a sitting President with civil suits, criminal investigations, or criminal prosecutions.” He continued: “And the country loses when the President’s focus is distracted by the burdens of civil litigation or criminal investigation and possible prosecution.” In another [article](#), he proposed that Congress adopt a statute “to establish that a sitting president cannot be indicted.” He argued that “[t]he Constitution itself seems to dictate, in addition, that congressional investigation must take place in lieu of criminal investigation when the President is the subject of investigation, and that criminal prosecution can only occur after the President has left office.” When asked on a [panel](#) at Georgetown Law School, “How many of you believe, that a sitting president cannot be indicted during the term of office,” Kavanaugh responded in the affirmative.

- \* **PRESIDENT HAS ABSOLUTE DISCRETION OVER SPECIAL COUNSEL:** Kavanaugh has [said](#) the president should have “absolute discretion” to determine whether and when to appoint a special counsel like Robert Mueller. He also said that special counsels should be “removable in the same manner as other high-level executive branch officials” -- in other words, at the president’s prerogative. He would not serve as a desperately needed independent check on the executive branch.

- \* **QUESTIONED RULING IN *UNITED STATES V. NIXON*:** In [United States v. Nixon](#), a unanimous Supreme Court ordered President Nixon to turn over his secret tape recordings involving Watergate, rejecting his claim of absolute privilege against a subpoena related to internal communications. Astonishingly, Kavanaugh has [questioned](#) this ruling. In a 1999 lawyer roundtable, he stated: “Maybe Nixon was wrongly decided – heresy though it is to say so. Maybe the tension of the time led to an erroneous decision.” He stated that the case “took away the power of the president to control information in the executive branch by holding that the courts had power and jurisdiction to order the president to disclose information in response to a subpoena sought by a subordinate executive branch official.”