

August 27, 2018

Dear Senator:

The undersigned 37 national faith-based, nontheist, and religious liberty organizations share a commitment to individual freedom and the separation of religion and government, two of the tenets on which this country was founded. We are united in our our genuine concerns about the nomination of Judge Brett Kavanaugh to be the next Supreme Court justice. In particular, Judge Kavanaugh's record suggests that he would not preserve the wall of separation between church and state, long used to ensure the protections guaranteed to us in the First Amendment to the U.S. Constitution. As you fulfill your role to advise and consent on the nomination, we urge you to ask Judge Kavanaugh hard questions and demand the release of relevant records that will help to determine whether he will uphold the protections guaranteed to all by the Establishment Clause of the United States Constitution.

The separation of church and state is the linchpin of religious freedom and one of the hallmarks of American democracy. It ensures that each person has the right to choose whether to be religious or nonreligious without pressure from the government. It safeguards houses of worship from intrusion by the government and prevents religious institutions from using the mechanisms of government to impose their religion on others. It protects parents who want to send their children to public schools without fear that they will be coerced into participating in prayer or religious activities. It protects taxpayers from being forced to fund the religious activities and education of others. And, it ensures that all Americans feel welcome and treated equally under the law regardless of their religion.

Judge Brett Kavanaugh, however, appears to reject the commonly accepted legal principle that the Establishment Clause creates a "wall of separation." In a 2017 lecture given to the American Enterprise Institute, he praised former Chief Justice William Rehnquist for, in Judge Kavanaugh's words, "convincing the Court that the wall metaphor was wrong as a matter of law and history." Before voting on his nomination, it is important that the Senate determine whether Judge Kavanaugh supports or rejects this fundamental constitutional principle. We cannot afford to have a Supreme Court that undermines the separation of church and state.

In his AEI speech, Judge Brett Kavanaugh also applauded Justice Rehnquist for dissenting from opinions that struck down public school-sponsored prayer at graduations and sporting events. This speech, along with the amicus brief he authored in *Santa Fe Independent School District v. Doe* in the Supreme Court, suggests the he may reject five decades of Supreme Court rulings that bar public schools from sponsoring prayer and religious activities. In his brief, Judge Kavanaugh not only contends that school-sponsored prayers at football games are constitutional, but that the Constitution requires public schools in some circumstances to allow students to deliver prayers and religious messages to a captive audience of other students in the classroom and at public school events. Justice Kennedy joined the 6-3 opinion rejecting the arguments Judge Kavanaugh made in his brief, but Judge Kavanaugh's nomination could change the outcome of future cases. The Senate must ensure that Judge Kavanaugh will protect the right of parents and students to

attend our public schools without being coerced to participate in religious activities or proselytized at school events.

In addition, Judge Kavanaugh's writings and positions suggest that if he were confirmed, the Court could erase one of the Establishment Clause's most important protections: the prohibition on taxpayer dollars being used to fund religious organizations, activities, and institutions. In the briefs he authored in both *Santa Fe* and *Good News Club v. Milford Central School*, Judge Kavanaugh indicated that he opposes the constitutional bar on using taxpayer dollars to pay for religious activities in circumstances where the funds are available to both religious and nonreligious applicants. And in *Bush v. Holmes*, he argued that a Florida private school voucher program that funded religious schools did not violate the state constitution's bar on funding religious institutions. Although unsuccessful in *Holmes*, the adoption of his arguments could leave Florida's constitutional provision and those like it in 37 other states with little to no meaning, ushering in private school voucher programs that fund religious schools and education. We urge the Senate, therefore, to ensure that Judge Kavanaugh would follow longstanding constitutional jurisprudence holding taxpayers should never be forced to fund religious activities and education. That is not the role of the government.

Judge Brett Kavanaugh's opinions and writings raise concerns that he would allow broad religious exemptions that could harm other people. He issued a dissent in *Priests for Life v. U.S. Department of Health and Human Services*, siding with a religious organization that argued that filling out a form to request a religious exemption burdened its religious exercise. His opinion, which would have made it more difficult for the government to ensure that women had access to birth control, is at odds with eight of the nine federal appeals courts that heard challenges to the same religious exemption. It raises concerns that Judge Kavanaugh could require the government to carve out religious exemptions even when they would cause real harm to other people.

The separation of church and state ensures religious freedom for all. Accordingly, we urge you to ask Judge Kavanaugh pointed questions and seek relevant documents that will shed light on whether he will uphold this fundamental protection.

Sincerely,

African American Ministers in Action
African Methodist Episcopal Church - Social Action Commission
Ameinu
American Atheists
American Conference of Cantors
American Humanist Association
Americans United for Separation of Church and State
Aytzim: Ecological Judaism
Bend the Arc Jewish Action
Center for Inquiry
Central Conference of American Rabbis
Disciples Center for Public Witness
Disciples Justice Action Network

Friends Committee on National Legislation
Global Justice Institute
Hindu American Foundation
Interfaith Alliance
Interfaith Worker Justice
Jewish Council on Urban Affairs
Jewish Women International (JWI)
Keshet
Men of Reform Judaism
Metropolitan Community Churches
Muslim Public Affairs Council
National Council of Churches
National Council of Jewish Women
New Ways Ministry
Reconstructionist Rabbinical Association
Religious Coalition for Reproductive Choice
Religious Institute
Secular Coalition for America
Union for Reform Judaism
United Church of Christ, Justice and Witness Ministries
Unitarian Universalist Association
Unitarian Universalist Women's Federation
Women of Reform Judaism
Women's Alliance for Theology, Ethics, and Ritual (WATER)