

Senator Chuck Grassley
Chairman, Senate Committee on the Judiciary
United States Senate
Washington, DC 20510

Senator Dianne Feinstein
Ranking Member, Senate Committee on the Judiciary
United States Senate
Washington, DC 20510

August 21, 2018

Dear Chairman Grassley and Ranking Member Feinstein,

We, the undersigned, write in steadfast opposition to the confirmation of Judge Kavanaugh. We believe his nomination to the Supreme Court poses a dire threat to women's health and wellbeing. Specifically, we are concerned about what his confirmation to the Supreme Court could mean for the 67 million women and girls with pre-existing conditions.¹

The threat Judge Kavanaugh poses to women's reproductive health has been well documented. His appointment would be a disaster for women's reproductive health, including access to abortion and contraception. President Trump has been clear that he will only appoint justices who will overturn *Roe v. Wade* "automatically"² and undo the legal right to abortion care. Judge Kavanaugh was selected for that very reason.³ When Judge Kavanaugh had the opportunity to block access to abortion care, he jumped at it: he recently voted to prevent a young immigrant woman from accessing the abortion care she wanted, arguing for a delay in her release that could have made it too late for her to legally access abortion.⁴

Additionally, there are threats to women's health moving through the courts. Cases involving the Affordable Care Act's (ACA) prohibition on discrimination based on pre-existing conditions are working their way through the court system and may, ultimately, end up at the Supreme Court. Judge Kavanaugh already expressed his opposition to the ACA. Judge Kavanaugh openly criticized Chief Justice Roberts for his decision to uphold the health care law⁵ and, from the bench, repeatedly voiced his opposition to the ACA,⁶ including by suggesting that a president could "decline to enforce" this lifesaving legislation if he personally deems it unconstitutional.⁷

Women simply cannot return to the discriminatory practices that were pervasive before the ACA. For example, in the individual insurance market, a woman could be denied coverage or charged a higher premium if she had experienced HIV or AIDS, , diabetes, lupus, an eating disorder, pregnancy or a previous Cesarean birth, just to name a few.⁸ Recent estimates find that more than half of women and girls nationally (over 67 million) have preexisting conditions.⁹ There also are nearly six million pregnancies each year, a common reason for denying women coverage on the individual market before the ACA.¹⁰ The data

make clear that allowing insurers to return to pre-ACA practices could mean millions of women being denied coverage or charged more based on their health status if they ever sought coverage in the individual market.

Women's health, wellbeing, and economic security – indeed, their very lives – are all at risk with Judge Kavanaugh's nomination. We urge the Senate to stand with the millions of women and girls who would be left without affordable, comprehensive, quality care and to reject Judge Kavanaugh's nomination to the Supreme Court of the United States.

Sincerely,
[List of orgs]

¹ National Partnership for Women & Families. (2018). *Moving Backward: Efforts to Undo Pre-Existing Condition Protections Put Millions of Women and Girls at Risk*. Retrieved 14 August 2018, from <http://www.nationalpartnership.org/research-library/health-care/aca-pre-ex-protections-women-girls.pdf>

² In the final October 2016 presidential debate, Trump replied to a question about whether he would appoint judges to overturn *Roe v. Wade* by saying, "Well, if we put another two or perhaps three justices on, that's really what's going to be — that will happen, . . . And that'll happen automatically, in my opinion, because I am putting pro-life justices on the court. I will say this: It will go back to the states, and the states will then make a determination." Berman, M. (2017, March 21). Trump Promised Judges Who Would Overturn *Roe v. Wade*. *Washington Post*. Retrieved 14 July 2018, from <https://www.washingtonpost.com/politics/2017/live-updates/trump-white-house/neil-gorsuch-confirmationhearings-updates-and-analysis-on-the-supreme-court-nominee/trump-promised-judges-who-would-overturn-roe-v-wade/>

³ Compare the Supreme Court nominee shortlist that President-elect Trump released on January 12, 2017, with the shortlist released on November 17, 2017, just weeks after Judge Kavanaugh's dissent in *Garza v. Hargan*. See de Vogue, A. (2017, January 12). CNN's Donald Trump Supreme Court Nominee Shortlist. *CNN*. Retrieved 14 July 2018, from <https://www.cnn.com/2016/12/06/politics/donald-trump-supreme-court-nominee-shortlist/index.html>; White House. (2017, November 17). *President Donald J. Trump's Supreme Court List*. Retrieved 14 July 2018, from <https://www.whitehouse.gov/briefings-statements/president-donald-j-trumps-supreme-court-list/>

⁴ *Garza v. Hargan*, No. 17–5236, 2017 WL 4707112 (Oct. 19, 2017).

⁵ The Heritage Foundation. (2017, October 25). *The Joseph Story Distinguished Lecture*. Retrieved 14 July 2018, from <https://www.heritage.org/josephstory2017>

⁶ *Seven-Sky v. Holder*, 661 F.3d 1 (D.C. Cir. 2011) (Kavanaugh, J., dissenting), cert. denied, 567 U.S. 951 (2012); *Sissel v. U.S. Dep't of Health & Human Servs.*, 799 F.3d 1035 (D.C. Cir. 2015) (Kavanaugh, J., dissenting), cert. denied, 136 S. Ct. 925 (2016).

⁷ *Seven-Sky*, 661 F.3d at 50 n.43 (Kavanaugh, J., dissenting) ("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.").

⁸ National Women's Law Center. (2008). *Nowhere to Turn: How the Individual Health Insurance Market Fails Women*. Retrieved 19 June 2018, from <https://nwlcw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2015/08/NWLCReport-NowhereToTurn-81309w.pdf>; Kaiser Family Foundation. (2016). *Pre-existing Conditions and Medical Underwriting in the Individual Insurance Market Prior to the ACA*. Retrieved 19 June 2018 from <https://www.kff.org/health-reform/issue-brief/pre-existing-condition-sand-medical-underwriting-in-the-individual-insurance-market-prior-to-the-aca/>

⁹ National Partnership for Women & Families. (2018). *Moving Backward: Efforts to Undo Pre-Existing Condition Protections Put Millions of Women and Girls at Risk*. Retrieved 14 August 2018, from <http://www.nationalpartnership.org/research-library/health-care/aca-pre-ex-protections-women-girls.pdf>

¹⁰ National Partnership for Women & Families. (2018). *Moving Backward: Efforts to Undo Pre-Existing Condition Protections Put Millions of Women and Girls at Risk*. Retrieved 14 August 2018, from <http://www.nationalpartnership.org/research-library/health-care/aca-pre-ex-protections-women-girls.pdf>