

AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS



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LEGISLATIVE ALERT!

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April 26, 2004

The Honorable Orrin G. Hatch
Chairman
Senate Judiciary Committee
Washington, D.C. 20510

The Honorable Patrick Leahy
Ranking Member
Senate Judiciary Committee
Washington, D.C. 20510

Re: **Reject the Nomination of Brett Kavanaugh to the
United States Court of Appeals for the D.C. Circuit**

Dear Senators Hatch and Leahy:

On behalf of the 13 million working men and women represented by the unions of the AFL-CIO, I am writing to express our strong opposition to the nomination of Brett Kavanaugh to the United States Court of Appeals for the D.C. Circuit and to urge that his nomination be rejected.

The D.C. Circuit is widely regarded as the second most important court in America, second only to the U.S. Supreme Court. It has produced more Supreme Court justices than any other court. The D.C. Circuit is the court that most often reviews rules and decisions issued by federal agencies in the area of worker protections, civil rights, environmental protections, and other important concerns. The court reviews more decisions of the National Labor Relations Board than any other court, and frequently hears challenges to health and safety protections adopted by OSHA, MSHA, and other federal agencies. It is clear that the actions and decisions of the D.C. Circuit have a direct and profound impact on the lives of millions of working men and women across the United States.

To this court of such crucial importance to working families, President Bush has nominated an individual whose inexperience and partisan ideology make him a particularly inappropriate choice for a lifetime appointment to this important court. Rather than selecting a nominee with the sort of background and credentials one would expect for the second most important court in America, President Bush has chosen an individual who is known not for his legal excellence but for his political loyalty and his championing of partisan political causes. From the Republicans' attempt to drive President Clinton from office through the Whitewater investigation, to this Administration's drive to pack the courts with right-wing extremist judicial nominees, Brett Kavanaugh has been at the center of the action. In a naked political payback, the Bush Administration has now nominated Mr. Kavanaugh to a lifetime appointment on the second most important court in America.

At 39 years old, Mr. Kavanaugh's political connections to the Republican Party and Republican causes are clear, but his experience and credentials for a lifetime appointment to the D.C. Circuit are exceedingly thin. Mr. Kavanaugh has less legal experience than virtually any

Republican or Democratic nominee to the D.C. Circuit in more than 30 years. Only two nominees – Douglas Ginsburg and Kenneth Starr – had a similar number of years of legal experience when they were appointed to the court: 13 years of legal experience in the case of Judge Ginsburg, and 10 years in the case of Judge Starr. Like many other judges on the D.C. Circuit and other courts of appeals, Judge Ginsburg brought impressive academic credentials to the court, having taught for eight years as a professor of law at Harvard Law School. Mr. Kavanaugh has no such teaching experience. Nor has Mr. Kavanaugh served as a judge or developed a substantial litigation practice in federal court. Of the ten most significant “litigated” matters he reported to the Senate Judiciary Committee, two consisted only of filing a friend of the court brief, and several others did not involve a court appearance. This inexperience contrasts sharply with the credentials and experience of other Republican and Democratic nominees – and indeed, President Bush’s own nominees – to this crucially-important court.

Prior to his appointment as White House Staff Secretary, Mr. Kavanaugh was Associate White House Counsel responsible for federal judicial nominations. In that capacity, he played a key role in developing the Bush Administration’s strategy to pack the federal courts, and particularly the courts of appeals, with nominees cut from the same extreme right-wing ideological cloth. Mr. Kavanaugh was responsible for identifying, interviewing, and vetting the Administration’s judicial nominees, and thus was a key part of the effort to nominate ultra-conservative ideologues such as Priscilla Owen, Jeffrey Sutton, Deborah Cook, Dennis Shedd, Miguel Estrada, Charles Pickering, Janice Rogers Brown, and more for lifetime appointments to the federal courts of appeals. The extreme and controversial nature of these nominees is well-documented, and, indeed, a number of these nominees have been rejected because their views are so far out of the legal mainstream. Mr. Kavanaugh’s championing of the Administration’s court-packing efforts raises serious questions about his own ideology and about his view of the role of the federal courts.

The *Washington Post* has criticized President Bush’s nomination of Kavanaugh and another D.C. Circuit nominee, Janice Rogers Brown, saying President Bush had “nominated two people who will only inflame further the politics of confirmation to one of this country’s highest-quality courts.” “Fueling the Fire,” *Washington Post* (Aug. 1, 2003). The *Post* criticized Bush for not nominating “qualified candidates who easily could win Democratic as well as Republican support,” concluding that it was “too bad Mr. Bush is too busy playing politics to lead.” Similarly, *The New York Times* criticized the nominations, saying the White House was trying to “remake the federal courts in its own ideological image. . . and showing that it has no interest in selecting a judiciary whose views are broadly representative of the American public.” “More Conservatives for the Courts,” *New York Times* (July 29, 2003).

These criticisms are sound. The Senate should reject Mr. Kavanaugh’s nomination in favor of a more credentialed, more moderate, and less politically-driven nominee.

Thank you for your consideration of our views.

Sincerely,



William Samuel
Director of Legislation

c: Members of Senate Judiciary Committee