



## **International Union of Bricklayers and Allied Craftworkers**

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**James Boland**

President

September 21, 2018

Dear Senator:

On behalf of the International Union of Bricklayers and Allied Craftworkers and our approximately 70,000 members in the United States, I am writing to express our strong opposition to the nomination of Judge Brett Kavanaugh for Associate Justice of Supreme Court of the United States. Throughout his career, Judge Kavanaugh has demonstrated a strong bias toward protecting the rich and powerful, and diminishing the rights of workers, consumers, and those at the margins of our society. There is every indication that, should he assume this position, he would continue down this path at a time when we can least afford it.

As a Union, we are particularly concerned with Judge Kavanaugh's apparent disdain for the rights of workers. This disdain should be extremely concerning to anyone who cares about the plight of workers in America. In the decades following World War II, the United States enjoyed a strong middle-class and an economy that allowed both employers and workers to share in the benefits of growth in productivity. It was no coincidence that during these years, American union density was at its peak.

Sadly, those days are gone. Today, the United States has vast inequality in income and wealth. And that inequality is growing every day. Unsurprisingly, this rise in inequality corresponds with a sharp decline in union density. This shift is no accident; it is the direct result of policy choices made by anti-worker politicians and activist judges and an aggressive effort by the ultra-rich and corporate interests to rig the system to protect their interests at the expense of the rest of us. Throughout his career, Judge Kavanaugh has vigorously pursued an anti-worker agenda that has made him the poster child of this elitist agenda.

There is no shortage of cases from which to draw this conclusion, but one of the worst examples of Judge Kavanaugh's anti-worker bias was in a case involving a trainer who was killed on the job by a killer whale at SeaWorld in Florida.<sup>1</sup> The Occupational Safety and Health Administration (OSHA) investigated and found that SeaWorld was well aware of the threat posed to workers—in fact it was the third trainer death involving that particular whale. OSHA fined SeaWorld, finding that the theme park had willfully endangered its employees. An Administrative Law Judge upheld OSHA's fine, and on appeal the United States Court of Appeals for the District of Columbia Circuit—the powerful appellate court on which Judge Kavanaugh currently sits—also upheld the decision. But Judge Kavanaugh would not have done so; he wrote a dissent arguing that it was “paternalistic”<sup>2</sup> to expect the theme park to take actions to provide a safe workplace. Judge Kavanaugh essentially took the position that the employer bore no responsibility; the employees assumed the risk by taking the job. This opinion exemplifies Judge

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<sup>1</sup> *SeaWorld of Fla., LLC v. Perez*, 748 F.3d 1202 (D.C. Cir. 2014).

<sup>2</sup> *Id.* at 1217.

Kavanaugh's extreme and outdated ideology that harkens back to the days when mining companies argued against child labor laws because the children "voluntarily" chose to work in dangerous mines

Unfortunately, this is not the only example of Kavanaugh's anti-worker animus. He has routinely attacked National Labor Relations Board decisions when they have protected the rights of workers. He once voted, despite clear Supreme Court precedent to the contrary, that undocumented immigrants could not be considered "employees" under the National Labor Relations Act (NLRA), advancing a legal theory under which undocumented immigrants could potentially be excluded not only from the NLRA but from laws guaranteeing other basic labor protections such as the minimum wage or overtime pay.<sup>3</sup> He has made it easier for employers to avoid their obligations under collective bargaining agreements,<sup>4</sup> he has voted to silence the voice of workers in disputes,<sup>5</sup> and he has voted to protect union busters who work to prevent workers from joining together to protect their rights in the workplace.<sup>6</sup>

In our view, Kavanaugh's extreme anti-worker bias is reason enough to oppose his confirmation. However, in taking a broader view of his potential impact as a member of the nation's highest court, there are many other good reasons to oppose his confirmation. His radical ideology threatens to upend established law and precedent and turn back the clock on women's reproductive rights, civil rights, consumer rights, environmental protections, and other rights that provide essential protections to ordinary Americans and serve as the bedrock for our society today. Perhaps most acutely troubling, given the current officeholder, Kavanaugh's extreme views on holding the President responsible for violating the law are disturbing.

Moreover, the serious allegations regarding his personal behavior present additional cause for concern. Any credible accusation leveled against Judge Kavanaugh should be investigated by the proper authorities. Further, we urge the Chairman and Ranking Member to ensure that all members of the Committee have a reasonable opportunity to collect and weigh all the relevant evidence before proceeding with the nomination.

Lastly, the process for consideration of this nomination has been irresponsible, to say the least. Judge Kavanaugh has been nominated for a lifetime position on the highest court in the land. Yet the nomination is being rushed through in a way that does not allow for thoughtful deliberation. The decision to conceal thousands of pages of documents relevant to Judge Kavanaugh's public service demonstrates an intentional effort to thwart the kind of transparency the Senate and the public should expect when considering an appointment that will have a profound impact on generations to come.

For these reasons, we urge you to vote against the confirmation of Judge Kavanaugh. Americans deserve better representation.

Sincerely,



James Boland  
President

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<sup>3</sup> *Agri Processor Co. v. NLRB*, 514 F.3d 1 (D.C. Cir. 2008).

<sup>4</sup> *Island Architectural Woodwork, Inc. v. NLRB*, 892 F.3d 362 (D.C. Cir. 2018).

<sup>5</sup> *Verizon New England Inc. v. NLRB*, 826 F.3d 480 (D.C. Cir. 2016).

<sup>6</sup> *NLRB v. CNN Am., Inc.*, 865 F.3d 740 (D.C. Cir. 2017).