

### Basic Background on SCOTUS Nominee Brett Kavanaugh:

Brett Kavanaugh's previous rulings, dissents and writings suggest that he does not support the Affordable Care Act and would support the President's current refusal to uphold the law:

- Kavanaugh disagreed with a 2011 D.C. Circuit Court decision that upheld the constitutionality of the Affordable Care Act. He wrote in his [dissent](#) that *"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."*
- Kavanaugh publicly criticized Chief Justice Roberts after Roberts voted to uphold the Individual mandate in the ACA in a ruling that affirmed the constitutionality of the ACA (*NFIB vs. Sebelius*, 2012).
- Kavanaugh called the ACA's individual mandate "a law that is unprecedented on the federal level in American history." [According to his former law clerk](#), Kavanaugh's dissent served as roadmap for the Supreme Court dissenters in the later *NFIB v. Sebelius* case that upheld the constitutionality of the ACA. Justices Antonin Scalia, Anthony Kennedy, Clarence Thomas and Samuel Alito argued that the mandate violated the Constitution.
- Kavanaugh dissented against another D. C. Circuit Court (*Priests for Life vs. U.S. Dept of HHS*) ruling which upheld the Obama Administration's no cost birth control rule as making sufficient accommodation for employers' rights. Kavanaugh argued that religious employers should have more latitude to deny their employees coverage for birth control based on the bosses' personal religious views.

### Health Care Key Talking Points:

- Constituents are extremely concerned about the nomination of a candidate to the Supreme Court who has a history of opposing the Affordable Care Act and is not likely to act as a fair and neutral decision-maker if he were to become a member of the Supreme Court.
- Millions of people's health care is at stake. There are [already a number of cases](#) on their way to the Supreme Court including the Kentucky lawsuit about Medicaid work requirements and *Texas v. Azar*, which could invalidate the entire ACA including Medicaid expansion for about 12 million people and important protections for people with pre-existing conditions.
  - **Download a state fact sheet on people with pre-existing conditions [in your state](#).**
- Moreover, it's extremely concerning that Kavanaugh has argued that presidents may simply ignore or refuse to enforce existing laws that they deem to be unconstitutional even when a court has previously upheld that law. No one, including the President, should be above the law or able to subvert the will of the voters, elected representatives in Congress or decisions made by the highest court in the land. President Trump has already done significant damage to health care, [increasing the number of uninsured](#) and [raising costs](#) for consumers because of his refusal to enforce the ACA and continuous efforts to [sabotage](#) the law.
- <<More on Medicaid>> Additionally, the Court could impact coverage via Medicaid and Marketplace Waiver Authority. On June 29, a District Court rejected the federal justification for

approving Kentucky's draconian waiver. States may appeal these legal challenges to the Supreme Court, and they go to the heart of whether there are enforceable statutory parameters for state operation of the Medicaid program.

- With the Trump administration likely to try to rework the state waiver authority in the marketplaces as well, the Supreme Court could be deciding on the scope of executive branch waiver authority across health programs covering nearly 1 in 3 Americans.

### **Talking Points on Reproductive Health:**

- President Trump [promised in his campaign for president](#) that he will only put justices on the Supreme Court that would overturn *Roe V. Wade*, the landmark legal decision that created the constitutional right to abortion in 1973.
- Kavanaugh, who interprets the Constitution as it was written, has already made clear his position on abortion rights. He gave a speech praising Justice Rehnquist's dissent in *Roe V. Wade*, calling the decision part of a "general tide of freewheeling judicial creation of unenumerated rights that were not rooted in the nation's history and tradition."
- In last year's high-profile *Garza v. Hargan* case about an undocumented immigrant minor seeking an abortion, Kavanaugh dissented even though the minor met all the conditions to qualify for an abortion.
- Retracting the guaranteed constitutional right to abortion takes women backwards and diminishes their freedom and opportunity. [One in four](#) women in America will have at least one abortion in her lifetime; most of those women already have children. Taking away abortion rights means taking away women's ability to decide if, when and how many children they will have, denying them the control over their own lives.

### **About Kavanaugh--More Issues & Perspectives:**

*Kavanaugh's Record Doesn't Bode Well for Voting Rights*

<https://www.motherjones.com/politics/2018/07/kavanaughs-record-doesnt-bode-well-for-voting-rights-1/>

*Supreme Court Nominee Brett Kavanaugh Has Troubling Record on Racial Equity and Civil Rights*

<http://www.demos.org/press-release/demos-supreme-court-nominee-brett-kavanaugh-has-troubling-record-racial-equity-and-civ>

*Brett Kavanaugh's Track Record*

<https://www.politico.com/story/2018/07/09/brett-kavanaugh-track-record-675294>

*Three Things You Should Know About Trump's Supreme Court Nominee Brett Kavanaugh*

<https://nwl.org/blog/three-things-you-should-know-about-trumps-supreme-court-nominee-brett-kavanaugh/>