



INTERFAITH ALLIANCE

PROTECTING FAITH AND FREEDOM

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Members of the Judiciary Committee
United States Senate

Dear Senators:

On behalf of Interfaith Alliance, the nation's only interfaith organization dedicated to preserving faith and freedom, we write to thank you for your commitment to a rigorous assessment of Judge Brett Kavanaugh's record following his nomination to the Supreme Court. Interfaith Alliance celebrates religious freedom by championing individual rights, promoting policies that protect both religion and democracy, and uniting diverse voices to challenge extremism. We recognize the essential role that the Supreme Court plays in ensuring that people of all faiths and of none are afforded equal treatment under the law.

As the Judiciary Committee moves to the next phase of the nomination process, we wish to draw your attention to a number of outstanding concerns regarding Judge Kavanaugh's views on religious freedom. We submitted five proposed questions to your offices before the hearings began and were pleased that your colleagues offered a number of them for his consideration. Unfortunately, many of his answers did not address the substance of matters before him, leaving us with lingering questions about his views on the role of religion in public life.

For instance, Senator Hatch asked Judge Kavanaugh what role, if any, his faith plays in his judicial philosophy. The Free Exercise Clause of the First Amendment grants each of us the right to practice our beliefs as we see fit without government interference – and this private right of conscience certainly extends to those in public office. But, as an active member of his church and devoted community volunteer, Judge Kavanaugh distinguished between his personal faith and his public role as a member of the D.C. Court of Appeals. The Establishment Clause precludes enshrining one set of beliefs into law and we appreciate Judge Kavanaugh's affirmation of that fundamental boundary.

Our First Amendment rights, however, include both the freedom of religion *and* the right to be free from religious coercion. This principle serves as the bedrock of religious freedom jurisprudence and has been particularly well articulated across five decades of Supreme Court precedent on the coercive effects of prayer in public schools. In 1999, Judge Kavanaugh submitted an amicus brief in *Santa Fe v. Doe*,¹ in which a public high school broadcast student-led prayers before football games. In an exchange with Senator Cornyn last week, who argued the case before the Supreme Court, Kavanaugh agreed that the final decision against the high school "still sticks in my craw."

Judge Kavanaugh identified a potential conflict between students' free speech and their classmates' right to be free from religious coercion but gave no clear answer as to how he would resolve it. His involvement in the case, his enduring sympathy for Santa Fe High School after it was found to have violated the Establishment Clause, and his reticence to affirm precedent regarding school prayer gives us great pause.

The same may be said for Judge Kavanaugh’s dissent in *Priests for Life v. HHS*.² Having again found his views among the minority, Senator Hirono asked Judge Kavanaugh to describe the relationship between the Free Exercise Clause and other rights. His response focused exclusively on the interests of religious individuals, proffering an interpretation of the Religious Freedom Restoration Act (RFRA)³ that would permit private employers to impose their religious beliefs on their employees by restricting their health insurance options. He gave no attention to the religious freedom of those employees who, as a result, would face religious coercion by their boss.

Senator Cruz, reflecting on Judge Kavanaugh’s record, characterized him as someone who “stands up for the little guy...against the all-powerful government.” This praise plays into a larger - false - narrative being pushed by many religious conservatives that their rights are under threat, especially when the government places limits on their ability to impose their beliefs on others. But Interfaith Alliance and Americans across the country depend on the Supreme Court to protect our ability to follow our own faith traditions and values. This is the true meaning of religious freedom and, by necessity, these rights end at the very point where another person’s rights begin.

We urge you to examine Judge Kavanaugh’s record closely, given all you have learned in his confirmation hearings, and continue asking difficult questions. Our next Supreme Court justice must ensure that all citizens have equal rights under the law and that our legal system displays equal respect for people of all faiths and of none.

Sincerely,



Rabbi Jack Moline
President



Kathryn Joseph
Policy and Legislation Advisor

¹ *Santa Fe Independent School District v. Doe*, 530 U.S. 290 (2000).

² *Priests for Life v. United States Dept. of Health and Human Services*, No. 13-5368, 20-52 (D.C. Cir. 2014) (Kavanaugh, J. dissenting).

³ Pub. L. No. 103-141, 107 Stat. 1488 (1993) (codified at 42 U.S.C. §§ 2000bb et seq.).