

SUPREME COURT NOMINEE'S RECORD ON SENIORS AND PEOPLE WITH DISABILITIES RAISES ALARMS

President Trump's nomination of Brett Kavanaugh to the Supreme Court threatens the basic rights, health care and economic security of people with disabilities and seniors. A review of Kavanaugh's opinions indicates that he could chip away at the civil rights of people with disabilities, undermine a secure retirement for American workers, eliminate health care protections for people with pre-existing conditions and enable financial predators to take advantage of unsuspecting consumers.

The Record Shows: Kavanaugh Could Eliminate Key Health Care Protections

President Trump is using the courts to sabotage the Affordable Care Act (ACA) and is appointing judges who he believes will strike down the law.¹ Kavanaugh has disagreed with rulings upholding the ACA and could obliterate key health care coverage protections for people with pre-existing conditions.

- [More than 130 million](#) Americans have a pre-existing condition, such as diabetes or cancer, including over [30 million](#) people ages 55 to 64. The ACA advanced critical protections to ensure these individuals cannot be dropped from coverage or charged more due to an existing injury or illness.
- Right now, the courts are considering whether people with pre-existing conditions should continue to be protected from being charged more, being denied coverage or being dropped from their insurance simply because of their health status.² The Supreme Court might be the last line of defense in maintaining these protections for people with pre-existing conditions and Kavanaugh could be the deciding vote.
- In two cases, Kavanaugh disagreed with rulings upholding the ACA.³ A former Kavanaugh law clerk said it best when she [spoke](#) about Kavanaugh's view of the ACA: "No other contender on President Trump's list is on record so vigorously criticizing the law."

The Record Shows: Kavanaugh Would Jeopardize the Rights of People with Disabilities

People with disabilities have faced decades of discrimination, such as forced sterilization, institutionalization and a basic, underlying disregard for their autonomy. Kavanaugh's prior rulings indicate he could roll back decades of progress to secure the civil rights, liberty and individual dignity of people with disabilities.

- **Taking Away the Right of Self-Determination:** Kavanaugh has ruled against the rights of people with disabilities to make decisions about their own lives. In one case, three women with intellectual disabilities

¹ As a candidate, Trump made his intention to overturn the ACA through the courts clear when he [said](#), "[M]y judicial appointments will do the right thing, unlike Bush's appointee John Roberts on *ObamaCare*."

² In [Texas v. United States](#), the Trump Administration has sided with 20 Republican state attorneys general and is refusing to defend the ACA's protections for people with pre-existing conditions.

³ In [Seven-Sky v. Holder](#) and [Sissel v. HHS](#), Kavanaugh dissented from rulings upholding the ACA. The reasoning behind one of his dissents paved the way for other ACA dissenters, including justices on the Supreme Court.

challenged a District of Columbia policy allowing medical professionals to decide what elective surgeries would be performed on them. The District Court ruled in favor of the women, requiring that the city attempt to determine the wishes of individuals before making medical decisions for them. Kavanaugh overturned this decision, questioning the basic liberty of individuals with intellectual disabilities and allowing the government to make medical decisions on their behalf without ever attempting to determine their wishes ([*Doe ex rel. Tarlow v. D.C.*](#)).

- **Siding with Employers Over Employees with Disabilities:** Kavanaugh sided with an employer who placed onerous sick leave requirements on an employee with a disability, citing these actions as “*good institutional administration*” rather than as discrimination and retaliation, as the employee alleged ([*Baloch v. Kempthorne*](#)).
- **Leaving Workers with Disabilities Behind:** When a deaf job applicant was turned down for a job in the public school system, Kavanaugh set a high bar for any allegations of discrimination in the hiring process, stating that an applicant must prove he or she was “*significantly better qualified for the job than those ultimately chosen*” in order to have his or her case tried in front of a jury. The high standard set by Kavanaugh would make it very difficult for an applicant alleging discrimination in the hiring process to have their case heard by a jury of their peers ([*Adeyemi v. D.C.*](#)).
- **Allowing Disability Discrimination:** Kavanaugh sided with the employer in response to allegations of disability discrimination by ruling that a worker had not shown sufficient evidence that his employer terminated him as retaliation for filing disability discrimination complaints. Notably, until a new manager was hired, the employee had not a single performance complaint in over 10 years ([*Johnson v. Interstate Management Company*](#)).

The Record Shows: Kavanaugh Would Favor Wealthy Corporations Over Seniors

At all levels of the federal judicial system, President Trump and Congressional Republicans have nominated judges who are sympathetic to corporations and the wealthy, stacking the deck against all Americans and their families. Time and again, Kavanaugh has sided with the interests of corporations over older and retired workers, jeopardizing their fair shot at economic security and a secure retirement.

- **Facilitating Age Discrimination:** Kavanaugh argued that the Age Discrimination in Employment Act (ADEA), an anti-discrimination law that has protected the rights of older workers for decades, should not apply to certain federal government employees ([*Miller v. Clinton*](#)).
- **Gutting Consumer Protections for Seniors:** Kavanaugh ruled that the Consumer Financial Protection Bureau (CFPB), an independent agency created to protect retirees and consumers from predatory practices engaged in by lenders, banks and other financial institutions, is “*unconstitutionally structured*” and should be dismantled in its current form ([*PHH Corp. v. CFPB*](#)). If the CFPB were dissolved, older Americans would lose a key source of unbiased information on financial products, retirement planning and how to protect themselves from unscrupulous fraudsters.