

October 1, 2018

**Re: On the Kavanaugh Nomination: You Must Demand a Full, Independent FBI Investigation, and Also Demand Your Right as a Senator to Read the Full, Unredacted FBI Report**

Dear Senator:

As the Senate and the entire country start a new week of considering the nomination of Brett Kavanaugh to the Supreme Court and the grave allegations of sexual abuse made against him, the American Civil Liberties Union strongly urges you to take the following two steps this week:



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Susan Herman  
President

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Director

- 1) demand that the Federal Bureau of Investigation be able to follow the facts and law wherever they may lead, without political interference; and
- 2) demand your right as a senator to read the full, unredacted FBI report--and then actually read the FBI report and the committee hearing record on Judge Kavanaugh before voting.

Both of these steps are necessary for senators to fulfill the constitutional obligation to provide "advice and consent" on this nomination for a lifetime position as an Associate Justice on the Supreme Court.

On Friday, the National Board of the ACLU took the extraordinary step of opposing the confirmation of Judge Kavanaugh, stating:

*The ACLU opposes the confirmation of Judge Brett Kavanaugh to the Supreme Court. There are credible allegations that Judge Kavanaugh has engaged in serious misconduct that have not been adequately investigated by the Senate. Dr. Christine Blasey Ford's credible testimony, subsequent allegations of sexual misconduct, the inadequate investigation, and Judge Kavanaugh's testimony at the hearing lead us to doubt Judge Kavanaugh's fitness to serve as an Associate Justice of the Supreme Court.*

*This is not a decision taken lightly. We cannot remain silent under these extraordinary circumstances about a lifetime appointment to the highest court of the land. The standard for such an appointment should be high, and the burden is on the nominee. That burden is not met as long as there are unresolved questions regarding the credible allegations of sexual assault.*

After Dr. Ford's courageous and credible testimony inspired survivors of sexual assault across the country to share their own experiences with senators and Senate staff, the Senate Judiciary Committee, at the urging of Senator Jeff Flake, paused the proceedings for a week to provide the FBI with time to investigate the multiple allegations against Judge Kavanaugh.

To be clear, to date, Judge Kavanaugh has failed to meet his burden of showing that he has met the high standard of demonstrating fitness to serve on the Supreme Court. The ACLU has argued in front of the Supreme Court more than any other private organization over our nearly 100-year history—and we do not take this position lightly. After hearing from both Judge Kavanaugh and Dr. Ford, it is strikingly clear that Judge Kavanaugh is not someone who can sit on the highest court for life and make decisions about civil rights and civil liberties for generations to come.

### You Must Demand a Full FBI Investigation With No Political Interference

The ACLU strongly urges you to demand that the FBI be able to conduct its investigation, and write its report, without political interference. The FBI must be able to investigate the significant allegations of sexual misconduct, including the alleged attempted rape of Dr. Ford, and follow the facts and law wherever they may lead. Multiple media outlets reported over the weekend about strict limitations being placed on the scope and breadth of the FBI investigation, with the limitations being imposed by the White House, perhaps in collaboration with the majority staff of the Senate Judiciary Committee.

White House or Judiciary Committee political interference in the FBI investigation, including by sharply circumscribing the scope of the investigation or by requiring White House piecemeal approval of each interview or other investigatory activity, will hobble the FBI investigation and undermine the confidence of all Americans in the integrity of the confirmation process---and ultimately undermine the confidence of all Americans in the integrity of the Supreme Court and the judicial branch.

We strongly urge you to make a public statement of support for a full FBI investigation, in which the FBI can comply with the law and its own guidelines in following up with allegations and leads, rather than be constrained by the White House and the Judiciary Committee. We also urge you to make clear to the White House and the leadership of the Judiciary Committee that a report that is the result of political interference will have little to no value, and will further erode confidence in all three constitutional branches of government.

You Cannot Meet Your Constitutional Duty Unless You Demand Your Right as a Senator to Read the Full, Unredacted FBI Report—and Then Read It

**You and all 100 senators must assert your right and constitutional duty to have access to the full, unredacted FBI report.**

After an entire confirmation process built around hiding Judge Kavanaugh's record not only from the American public, but also from you and your colleagues in the Senate, we fully expect that the White House and some members of the Judiciary Committee will try to block senators from being able to read the full, unredacted FBI report. There is no reason that you or any other senator should accept reading anything less than the full, unredacted FBI report. The stakes are too high for the nation, and the allegations far too serious, for you or any other senator to accept anything other than the right to read the full, unredacted report yourself.

The Appointments Clause of the Constitution, in Article II, Section 2, Clause 2, provides for the "Advice and Consent of the Senate" for "Judges of the Supreme Court." In our constitutional system of checks and balances, this power of "advice and consent" by the Senate is a core check by the Legislative Branch on the other two branches of government.

No senator can meet his or her constitutional obligation of "advice and consent" on the nomination of Judge Kavanaugh without reading every word of both the full, unredacted FBI report at the end of this week, as well as the full hearing record. The ACLU strongly urges you to set aside the time to read both documents, and to be ready to determine whether Judge Kavanaugh met his burden of proving himself fit to serve on the Supreme Court.

After reading these two documents, you must decide whether Judge Kavanaugh has met his burden of demonstrating that he is fit to serve as an Associate Justice on the Supreme Court. To be clear, the burden is high—and the burden belongs to the nominee, not to Dr. Ford or anyone else alleging abuse or other misconduct.

You must not accept any substitute for reading the full FBI report yourself. Specifically, you must not accept a summary of the full FBI report, even if the summary is provided by the FBI itself, and you certainly should not accept reading a redacted report. While there may be a need, consistent with the Privacy Act, for limited redactions before an FBI report is made available to the American public, you as a United States Senator should not accept reading anything other than the full, unredacted FBI report when it is complete. The allegations against Judge Kavanaugh, including alleged attempted rape, are far too serious for you to rely on anyone else's characterization of the results of an investigation.

Thank you for your attention to this matter, and please do not hesitate to call us if you have any questions regarding this issue.

Sincerely,

A handwritten signature in black ink, appearing to read 'Faiz Shakir'.

Faiz Shakir  
National Political Director  
National Political Advocacy Department

A handwritten signature in black ink, appearing to read 'Christopher Anders'.

Christopher Anders  
Deputy Director  
Washington Legislative Office