

August 31, 2018

The Honorable Brett Kavanaugh
U.S. Court of Appeals for the District of Columbia Circuit
E. Barrett Prettyman United States Courthouse
333 Constitution Avenue, NW
Washington, DC 20001

Dear Judge Kavanaugh,

As a member of the Senate Judiciary Committee, I am tasked with evaluating your nomination to the United States Supreme Court. To fulfill my constitutional responsibility, I have been reviewing your background, credentials, experience, speeches, writings, documents, and judicial opinions. I have also received input from Delawareans and the legal community. Even though the Judiciary Committee and, in turn, the American people, will have access to only a small percentage of your extensive record before your nomination is considered by the Senate, your confirmation hearing is scheduled to begin next week. As we discussed in our private meeting, I have significant concerns about several of your judicial opinions, and I remain troubled by your view of executive power. I am not satisfied with your responses to me during our private meeting, and I believe that you owe the Committee and the American people more thorough, candid answers during your hearing next week.

Americans, irrespective of party, understand the genius of our democracy and the importance of checks and balances in our constitutional system. It is imperative that you, as a nominee for the Supreme Court, accept mainstream constitutional interpretations that cabin executive power and support presidential accountability. No one, including the President, is above the law. I am very concerned that your record suggests you may not hold that belief. For example, you have strongly criticized *Morrison v. Olson*, a seminal 1988 decision establishing the principle that Congress can prevent an independent counsel from being fired by the President without cause. Despite the Supreme Court's 7-1 decision that it was fully within Congress's power to pass such legislation, you have publicly stated on numerous occasions that you disagree with the majority's decision and would overrule it. Given those statements, and given your frequent invocation of the lone dissent in *Morrison*, I want to know why you subscribe to an interpretation of executive power that courts have repeatedly rejected.

I am similarly concerned by your critical comments about another landmark Supreme Court decision, *United States v. Nixon*, which also upholds the foundational principle that the President is not above the law. As you know, a unanimous Supreme Court ruled that the President had to comply with a grand jury subpoena. You have suggested that this case was

wrongly decided. The American people have a right to know whether you believe that *Nixon* should remain the law of the land and whether you believe that a President must comply with a subpoena to produce evidence for a criminal investigation or trial. Your previous statements give me serious pause: an expansive view of presidential power held by a Supreme Court Justice occupying Justice Kennedy's seat would undoubtedly mark a significant shift from our historical understandings and Supreme Court jurisprudence recognizing constitutional limits on the executive.

As a United States Senator, I believe that the American people deserve full transparency as we are considering a lifetime appointment to the Supreme Court. Though I remain deeply troubled by the decision to rush through this process without providing the Senate—or the American people—the necessary information to complete a comprehensive review of your record, I will nonetheless be prepared to question you extensively, and I request that you be prepared to give me complete and accurate responses. The American people deserve no less. If confirmed, the decisions that you will make alongside the other Justices on the Court will impact how the Constitution is applied to our society, our lives, and our families for generations to come.

Sincerely,

A handwritten signature in blue ink, reading "Chris Coons". The signature is fluid and cursive, with the first name "Chris" and last name "Coons" clearly distinguishable.

Christopher A. Coons
United States Senator