



IndivisibleEB.org

Senator Dianne Feinstein
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To: Senator Dianne Feinstein
From: Indivisible East Bay
Date: September 5, 2018
Subject: Resisting the Trump Agenda

Kavanaugh's Nomination for the Supreme Court:

We very much appreciate Sen. Feinstein's strong opposition to Kavanaugh's confirmation, and especially the way she balances discussion of the impact his confirmation would have on people's lives and rights with discussion of the impact the Senate's mishandling of the confirmation process is having on the role of the Senate and the legitimacy of the Supreme Court. We want her to keep talking about both, and particularly to push the nominee and her colleagues on these issues of "settled law" and "calling balls and strikes."

We appreciate Senator Feinstein's criticism of the abnormal and secretive process by which documents on Kavanaugh's political and legal career have been released. The actions of the Republican leadership in this process have raised valid concerns for Democratic senators and the American people. We encourage the Senator's continued focus on these issues.

-- *Failure of Republicans to allow for adequate vetting of Kavanaugh's nomination.* On the evening of the Labor Day holiday, the White House dumped 42,000 documents on the Senate, 14 hours before Kavanaugh's hearing was about to begin before the Judiciary Committee. This action was not only impractical (how fast can any Senator or staffer read?), it was--in one word--*contemptuous* of the process for selecting a member of our Supreme Court. We point out that this action does not affect Democratic senators alone. *No Senator*, whether Democratic or Republican, will be able to examine that document dump before a Committee vote or even a final Senate floor vote under the current schedule. Senator Grassley and the Trump administration have further hampered efforts for an open and complete record of Kavanaugh's career. If the Committee proceeds on Kavanaugh's nomination without an adequate compilation and review of his record, their failure will reflect badly on the credibility of Democratic and Republican senators alike.

What strategies, if any, are the Senator and her colleagues planning for an adequate vetting of Kavanaugh's record, including delivery of requested documents from the National Archives? Will the Senator and other Democratic Senators on the Judiciary Committee consider deliberate absence at the Executive Business Meeting vote on Kavanaugh, in order to prevent the quorum necessary for the vote? This action would not be an obstruction of a final vote, which should take place, but it would allow for an extension of time to build and vet Kavanaugh's complete record. Such action would indicate that every Senator, whether Democratic or Republican, is fulfilling his/her constitutional responsibility regarding this Supreme Court nomination.

We're asking the Senator to explore strategies with her colleagues to adjust the schedule of Kavanaugh's hearing and vote(s) in order to complete and vet his record. We support actions by the Senator and her colleagues that would permit enough time for all Senators to review Kavanaugh's total record properly.

-- *Kavanaugh's views on Presidential power.* We're asking the Senator to work with her colleagues to highlight Kavanaugh's positions on Presidential power during his Senate hearing. His statements are alarming and comport

more with a dictatorship than a constitutional democracy. Specifically, we are referring to these statements made by Kavanaugh:

- (1) A sitting president should be immune from prosecution and investigation. ([93 Minn. L. Rev. 1454 \(2009\)](#) at page 1459 et seq.)
- (2) A president has the power to stop any federal prosecution. ([93 Minn. L. Rev. 1454 \(2009\)](#) at page 1459 et seq.)
- (3) A president has absolute and unlimited power to pardon federal offenders, even before trial. ([89 Notre Dame L. Rev. 1907 \(2014\)](#) at page 1912.)
- (4) A president may decide a law is unconstitutional and choose not to enforce it. ([Seven-Sky v. Holder \(2011\)](#) at page 58, see also footnote 43.)

Some senators have spoken about Kavanaugh's statements on presidential immunity as described under (1). But the statements described under (2), (3) --*especially (3)!*-- and (4) have not been addressed much if at all. We believe these statements are equally important, and we're asking the Senator to bring them to public attention during Kavanaugh's nomination hearing.

Judicial Nominees:

We're asking the Senator to vote against these judicial nominees.

-- **Jonathan Kobes**, nominated for 8th Circuit Court of Appeals. Kobes has a long history as a conservative partisan against women's reproductive rights. He also has inadequate courtroom experience for this position. (Source: <https://www.afj.org/blog/afj-opposes-judicial-nominee-kobes>)

-- **Stephen Clark**, nominated for a federal judgeship in Eastern District Court of Missouri. Clark is a right-to-life attorney who has counseled groups on how to obstruct abortion providers. He is one of the most partisan nominees for a federal judgeship we have seen in the last year. (Source: <https://vettingroom.org/tag/stephen-clark/>)

-- **Carl Nichols** for a judgeship in federal district court in the District of Columbia. Nichols is another nominee who may not be able to set aside his partisan bias as a judge. Also, as an attorney in the Justice Dept under the Bush-Cheney administration, Nichols defended warrantless wiretapping of Americans. (Source: <https://vettingroom.org/2018/08/14/carl-nichols/>)

Family separation: Hundreds of children are still separated from their parents[1], made orphans by this government. We want to see many more oversight hearings into both what is being done to reunite the remaining families and what the government did or failed to do that allowed these parents to be lost in the first place.

Questions:

- Will she call for another Judiciary Committee hearing?
- What else can the Senate do to help reunite these families?

Sexual abuse of detained immigrants: Reports of abuse of minors is especially troubling[2].

Questions:

- Any updates or next steps from visits to detention facilities?

Passport denials for citizens born near the border:

- What is Senate Judiciary doing about this overstepping of authority by the State Department[3], in effect making immigration policy by choosing to revoke passport privileges for people born near the border?
- Will the Senator call for an oversight hearing?

Bank account closure pending proof of citizenship: Banks demanding proof of citizenship (at the behest of some federal agency) for financial accounts[4] seems like an overreach. We'd like some investigation or a letter to Treasury or FDIC at the very least about this case.

Questions:

-Is this another case of an executive agency making policy that infringes upon Congress's power (in particular SJC's jurisdiction) over immigration law?

-Is this a violation of the Administrative Procedure Act, in particular, the arbitrary and capricious standard?

Yemen: Saudi led coalition just admitted that targeting a civilian bus (killing 40 children and 11 adults) was an error[5], though initially, they defended the targeting as legitimate. Mattis has said that US support of the Saudi led coalition is not unconditional but is still providing the same support to same Saudi led coalition. The administration has not set any new policies for our involvement in the ongoing hostilities in Yemen.

Questions:

-What conditions are there if 40 dead children in a school bus don't qualify?

-Did US CENTCOM aid in the commission of war crimes? How will Congress ensure meaningful limits to civilian deaths or possible violations of international law with regard to our involvement in Yemen?

North Korea: We continue to share Sen. Feinstein's concerns about the administration's dealings with North Korea and we thank her for her work to ensure Congress has its proper role. We want her to continue to work to prevent war.

Drug Policy: We have heard that Congress is hoping to pass bipartisan legislation related to the opioid epidemic this fall. We want Sen. Feinstein to support legislation that addresses this public health crisis with funding for treatment and programs that support those at risk for addiction. We have concerns about bills like The STOP Act[6] which seem to waste time focusing on criminalization and cutting off the supply of drugs which has been ineffectual in the past and does nothing to address the root of the problem.

Election Security: We saw that the Rules Committee markup meeting for S.2593 - Secure Election Act originally scheduled for August 22, got indefinitely postponed. We want Sen. Feinstein to push the committee to reschedule the hearing and strengthen the bill. The current bill includes provisions for studying and funding for paper ballots and risk-limiting audits for federal elections but seem to stop short of mandating them. We also want her to look at mandating those provisions in the Department of Homeland Security funding bill.

Farm Bill: We want Sen. Feinstein to encourage her colleagues working on the Farm Bill to stand strong for SNAP and against work requirements. And, of course, we would want her to vote against a final bill that harms those programs.

Puerto Rico: Now that the U.S. Government Accountability Office's report has been released, what will Congress do to make sure that FEMA addresses the issues it describes such as underqualified staff and unpreparedness for the difficult but foreseeable problems getting help to the island?

Homelessness: Any updates on her homelessness legislation?

Town Hall: We are still asking for one.

Sources:

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