



FACT

FOUNDATION FOR
ACCOUNTABILITY
AND CIVIC TRUST

October 29, 2018

Hon. Johnny Isakson, Chairman
Hon. Christopher A. Coons, Vice Chairman
Senate Select Committee on Ethics
220 Hart Building
United States Senate
Washington, DC 20510

Re: Senators Warren and Harris Fundraising Based Upon Official Action

Dear Senators Isakson and Coons:

The Foundation for Accountability and Civic Trust (FACT) is a nonprofit organization dedicated to promoting accountability, ethics, and transparency in government and civic arenas. We achieve this mission by hanging a lantern over public officials who put their own interests over the interests of the public good.

We request the Senate Select Committee on Ethics immediately investigate Senators Elizabeth Warren and Kamala Harris for violating the Senate Ethics prohibition against linking a promise of official action to a solicitation of campaign contributions. The ethics rules implicated are those that ensure our Senators act based upon merit and not to fund their political campaigns. Violations of this rule threaten the underpinnings of public trust and must be investigated.

Senators Warren and Harris sent campaign fundraising emails based upon their official actions during the confirmation process and upcoming vote of Supreme Court Justice Brett Kavanaugh.¹ Senator Warren's fundraising email stated her position on the ongoing hearing and "demand to delay the confirmation vote."² The email then states: "Elizabeth Warren is running for reelection in 2018 . . . DONATE NOW."³ Senator Harris sent numerous emails fundraising based upon her official duties. For instance, one of Harris's fundraising emails stated she "question[ed] Judge Kavanaugh during his Supreme Court confirmation hearings" and indicates her position on the confirmation.⁴ Then she requested a contribution with a "CONTRIBUTE" button.⁵ Both Senators' emails were sent during the confirmation process and before the Senators were to vote, and their requested campaign donations were intertwined with their official duties as Senators.

¹ Exhibit A; Exhibit B.

² Exhibit A.

³ Exhibit A.

⁴ Exhibit B.

⁵ Exhibit B.

Senators must conduct themselves according to the Senate Ethics rules. Under the Senate Ethics Manual's Scope of The Authority, the Senate "may discipline a Member for any misconduct, including conduct or activity which does not directly relate to official duties, when such conduct unfavorably reflects on the institution as a whole."⁶ A Senator who solicits campaign contributions related to official action certainly casts an unfavorable reflection on the Senate. In addition, the use of official action for political fundraising is directly related to official duties. Thus, the Senate Select Committee on Ethics is well within the bounds of its Scope of Authority in investigating and ultimately penalizing this type of unethical behavior.

Senate Ethics Rules prohibit Senators from soliciting campaign contributions based upon any action taken in their official capacity.⁷ By linking a promise of official action with campaign contributions, a Senator violates a "basic principle" of Senate Ethics that guards against conflicts of interest.⁸ The Senate Ethics Manual is clear that a Senator "should never use the prestige or influence of a position in the Senate for personal gain This provision was intended 'as a broad prohibition against members, officers or employees deriving financial benefit, directly or indirectly, from the use of their official position.'"⁹ Moreover, Senators are to act based upon merit, not on partisan affiliation or for campaign contributions.¹⁰

Senators Warren and Harris's campaign fundraising emails inextricably intertwine their official acts with a campaign donation. Warren and Harris stand to gain considerable campaign income as well as important donor information by promising to use their official position as a Senator. This directly violates basic principles underlying Senate Ethics Rules regarding conflicts of interest. "The Senate's commitment to avoiding conflicts of interest is embodied in Senate Rule 37. These provisions target the **possibility or the appearance** that Members or staff are 'cashing in' on their official positions (i.e., using their positions for personal gain) or that they have personal financial stakes in the outcome of their official duties." Senators Warren and Harris's campaign solicitations rely on this "possibility or appearance" of influence in order to acquire a considerable sum of campaign contributions.

This Senate Ethics prohibition is central to the legislative process: Senators should not take action or use official resources in exchange for personal political gain. The public rightly expects its Senators to exercise impartial judgment in performing their duties, completely independent of the prospect of personal political gain. With this fundraising tactic, Senators Warren and Harris indicate to potential contributors that their votes can be influenced by campaign contributions. This is exactly what the Senate Ethics Manual sets out to prohibit. Moreover, this fundraising tactic dangerously incentivizes Senators to take action and positions based on their estimation of what will raise the most campaign contributions—not on the merits of an issue.

⁶ Senate Ethics Manual, at 13.

⁷ Official business and campaign fundraising are explicitly distinguished in the Ethics Manual. *See* Senate Ethics Manual, at 141 (The Senate Ethics Manual explains that "[w]hile some legitimate representative duties, such as services and communications to constituents, might yield some political benefits, they are generally distinguishable from those activities typically understood by congressional rule, statute, and practice to be political 'campaign' activities, such as the **solicitation of political contributions**.")

⁸ Senate Ethics Manual, at 66.

⁹ *Id.* at 65-66 (citing S. Rep. No. 95—49, The "Nelson Report").

¹⁰ *Compare* House Ethics Manual, at 147.

For the reasons set forth above, The Senate Select Committee on Ethics should enforce the prohibition against fundraising on the promise of taking official action. Senators Warren and Harris must be held accountable for this violation.

Respectfully submitted,

A handwritten signature in blue ink that reads "Karnold". The signature is written in a cursive, slightly stylized font.

Kendra Arnold
Executive Director, Foundation for Accountability & Civic Trust

Sign now to stop Kavanaugh  [Inbox x](#)



Elizabeth Warren info@elizabethwarren.com [via](#) [bounce.bluestatedigital.com](#)
to me -

Mon, Sep 17, 2:02 PM (2 days ago)



I've said it before, and I'll say it again: **Brett Kavanaugh is absolutely unqualified to be the next Supreme Court Justice of the United States.**

The whole confirmation process of Kavanaugh has been riddled with chaos, lies, and corruption. But the more we learn about him, the more it becomes clear that we need to stop this confirmation process in its tracks altogether.

Christine Blasey Ford has done a brave thing in coming forward with allegations about Brett Kavanaugh. She deserves to be heard and treated with respect.

[Will you add your name right now to support delaying the confirmation vote of Brett Kavanaugh? Join us in demanding that these allegations are fully examined and considered by the Senate before this process goes any further.](#)

Given these serious allegations, the Senate should have the integrity to immediately stop the confirmation process to investigate and demand answers. After all, they are voting to confirm a Supreme Court Justice – someone who will hold this office for the *rest of their lives*.

But this entire process has been a charade. Kavanaugh's name came off a pre-screened list of two far-right organizations. There has been an unprecedented effort by Senate Republicans and the White House to hide important documents from Kavanaugh's past.

Because here's the deal: Senate Republicans are more concerned about their own selfish priorities. They would rather ram through Kavanaugh's confirmation so they can start digging into their wishlist: rolling back Roe v. Wade, gutting the Affordable Care Act, even protecting the president from criminal investigations.

Kavanaugh's confirmation to the Supreme Court already threatens Americans' rights like never before. It also puts our values at stake. The American people deserve to know exactly the kind of person their Supreme Court justice is. And if they don't prove themselves worthy, they shouldn't be allowed to reach the highest bench.

[If you agree, add your name and demand that the Senate delay the confirmation vote of Brett Kavanaugh. If the Senate Republicans won't do the right thing themselves, then we must fight for it.](#)

Thanks for being a part of this,

Elizabeth

SIGN THE PETITION

Elizabeth Warren is running for reelection in 2018,
and we're trying to build the strongest grassroots
team in history. Will you chip in for the first time and
join us?

DONATE NOW



Paid for by Elizabeth for MA

What happened when I questioned Kavanaugh again  Inbox x**Kamala Harris** <info@kamalaharris.org> [Unsubscribe](#)
to me -

Fri, Sep 7, 1:56 PM (12 days ago)



Late last night, I again had the opportunity to question Judge Kavanaugh during his Supreme Court confirmation hearings. Here's what happened:

I repeatedly asked him if he believed *Obergefell v. Hodges* — the historic Supreme Court case that made it a constitutionally protected right for all couples to marry who they love — was correctly decided.

It was a very specific question — and he refused to answer.

Again.

I then continued to press Judge Kavanaugh on his opposition and hostility to *Roe v. Wade* and a woman's right to choose. I asked:

"Can a state prevent a woman from using the most common or widely accepted medical procedure to terminate her pregnancy?"

Once again, he refused to give a definitive answer.

That is the story of these hearings: A nominee who refuses to answer our questions and Republican leaders who continue to rush the hearings and conceal documents that could give us insight into his record.

They're trying to hide Kavanaugh's record from the public, so that he can tilt the balance of the Supreme Court to the far right for a generation — all without the American people ever knowing his true nature as a partisan political operative.

That's not right.

I would think that anyone who wanted to sit on the nation's highest court would be proud of their record and would want the American people to see it.

I would think that anyone privileged to be nominated to the Supreme Court of the United States would want to be confirmed in a process that is not under a cloud.

I would think that anyone nominated to the Supreme Court of the United States would want to have a hearing that is characterized by transparency and fairness and integrity and not shrouded by uncertainty and suspicion, and concealment and doubt.

We should never have moved forward with this hearing, which is why I was the first Senator to object to the hearings on Tuesday and demand they be postponed. Sadly, I was ignored. The American people deserve better than this.

Today is the final day of Kavanaugh's hearings and I'm asking you to continue fighting and making your voice heard. Call this number — (202) 224-3121 — and tell your U.S. Senator to oppose Kavanaugh's confirmation before it's too late.

Thanks for reading and take care,

— Kamala

CONTRIBUTE »

“Every moment is an organizing opportunity, every person a potential activist, every minute a chance to change the world.”

– Dolores Huerta

PAID FOR BY KAMALA HARRIS FOR SENATE

This email was sent to [REDACTED]
You received this message because you are subscribed to Senator Kamala Harris' mailing list. Join us today in fighting for justice, equality, and an economy that works for everyone by [making a contribution to Kamala's campaign here.](#)

[Unsubscribe](#)

[Sign our petition calling on the U.S. Senate to reject Kavanaugh's nomination to the Supreme Court. This process has been corrupted and rushed, and the very last thing we need is a right-wing political operative serving on the Supreme Court.](#)

[SIGN THE PETITION »](#)

This is outrageous:

Judge Kavanaugh was hand-picked by conservative special interest groups because of his opposition to Roe v. Wade, and we know his loyalty will be with the president who appointed him, not to the Constitution or the American people who deserve someone who will treat everyone equally under the law.

As Kamala said yesterday:



[We need you to add your name to Kamala's petition opposing the nomination of Judge Kavanaugh to the Supreme Court. The only chance we have to stop Trump's ideologically-driven takeover of the highest court in the land is by working together. Can we count on you?](#)

[SIGN THE PETITION »](#)

Make no mistake: the most critical and hotly debated legal cases could be decided by Judge Kavanaugh, including:

- Access to health care and contraception;
- Money in politics and environmental protections;
- LGBT and voting rights;
- Executive power — and whether a sitting president can be indicted or subpoenaed (a question Kavanaugh failed to answer today.)

Kamala is going to get the chance to ask Kavanaugh questions under oath this evening and tomorrow, and we know she is going to ask tough, pointed questions to expose his record and right-wing leanings to the American people.

Let's make sure she knows we've got her back:

[Can you add your name to Kamala's petition opposing Judge Kavanaugh's nomination to the Supreme Court right now?](#)

This is a personal fight for millions of Americans who are demanding equal rights and fairness under the law. We owe it to them to keep fighting.

Thanks for all you do.

— Team Kamala

SIGN THE PETITION »




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[Unsubscribe](#)

I questioned Judge Kavanaugh last night. Here's what happened:  [Inbox](#)  

Kamala Harris <info@kamalaharris.org> [Unsubscribe](#)
to me -

Thu, Sep 6, 3:22 PM (13 days ago)  

As I continue to object to the continuation of these outrageous Supreme Court confirmation hearings, I had the opportunity to question Judge Kavanaugh under oath last night. Here's what happened:

I started by asking him a series of pointed questions about the Mueller investigation and then began pressing him about his opposition to *Roe v. Wade* and a woman's right to choose.

I asked him if he could think of "any laws that give government the power to make decisions about the male body?"

KAMALA HARRIS:

"Can you think of any laws that give the government the power to make decisions about the male body?"

BRETT KAVANAUGH:

"I'm not... I'm not thinking of any right now, Senator."

(Reproduced 9/5/2018) | Source: Confirmation or Hearing for Justice Brett Kavanaugh

Of course, he couldn't.

I then continued to press him on his record, especially on voting rights and racially-motivated gerrymandering in states like North Carolina. Kavanaugh once again refused to answer my questions.

So, what we have here is a rushed confirmation process, hundreds of thousands of withheld or missing documents, and a nominee handpicked by right-wing special interest groups who won't even answer our questions.

This is not a game. This nomination to the Supreme Court is personal to millions of Americans. Judge Kavanaugh may never know their names, but his rulings could change their lives — from women's rights to health care to our privacy and even the future of our democracy and government.

I wouldn't be part of these confirmation hearings had Chief Justice Earl Warren not been on the Supreme Court to lead the unanimous decision in *Brown v. Board of Education*. Had someone else been on the court, I may not have had the opportunities that allowed me to become a U.S. Senator.

When we talk about our nation's highest court, and the men and women who sit on it, we're talking about the impact that one judge on the Supreme Court can have. It's a deeply personal one.

That's why I am taking this so seriously. I will continue to demand a fair hearing and a Supreme Court nominee who will do right by our Constitution and the American people, not the conservative movement that shaped his career or the president who nominated him.

I know you're standing with me in this fight, and I appreciate everything you've done so far. I hope you keep making your voice heard. Make those calls to your senators: (202) 224-3121

Thanks and take care,

—Kamala

CONTRIBUTE »

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[Unsubscribe](#)

Christine Blasey Ford  [Inbox x](#)



Kamala Update <info@kamalaharris.org> [Unsubscribe](#)
to me +

Tue, Sep 18, 2:32 PM (1 day ago)



Team —

Kamala was on *CBS This Morning* earlier today to talk about Christine Blasey Ford's serious and credible allegations against Brett Kavanaugh. If you missed it, you can watch the interview here:

[Click here to watch Kamala's interview now >>](#)



Blasey Ford has shown an extraordinary amount of courage by stepping forward to share her story, and the public deserves to know the character of someone who will serve his entire life on the highest court in our country.

"I believe that the FBI... should be compelled to do its job in terms of completing their background investigation and that's not being done."

— Senator Kamala Harris

[Please take a moment to watch Senator Kamala Harris' interview this morning on CBS about the serious allegations made against Kavanaugh by Christine Blasey Ford.](#)

Thanks for watching.

— Team Kamala

[WATCH THE VIDEO >](#)

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