



ASSOCIATION OF UNIVERSITY CENTERS ON DISABILITIES

THE LEADERSHIP, EDUCATION, ADVOCACY & RESEARCH NETWORK

AUCD Opposes the Nomination of Judge Brett Kavanaugh to the Supreme Court of the United States

The Association of University Centers on Disabilities (AUCD) is a national organization that supports the right of self-determination for individuals with intellectual and other disabilities. After carefully reviewing opinions that fail to affirm this right and jeopardize access to healthcare for people with disabilities, AUCD has decided to oppose the nomination of Judge Brett Kavanaugh to serve on the U.S. Supreme Court. "The appointment of Judge Kavanaugh threatens civil rights protections for people with disabilities including access to health care," said Andrew Imparato, Executive Director of AUCD. "Judge Kavanaugh's record on the D.C. Circuit has failed to support the critical principle of self-determination for people with intellectual disabilities and the importance of access to healthcare for millions of Americans with disabilities." Two cases in Judge Kavanaugh's record form the primary basis for our concerns.

In the 2007 ruling *DOE v. District of Columbia and Mental Retardation and Developmental Disabilities Administration*, Judge Kavanaugh ruled that people with intellectual disabilities could be presumed incompetent to make medical decisions:

Judge Kavanaugh [overruled multiple district court orders](#) that had given people with intellectual disabilities who had been deemed not legally competent the right to have input into whether or not they would be subject to elective surgery. The lower courts had affirmed that a legally incompetent individual may be capable of expressing a choice or preference regarding medical treatment. The court therefore ordered the District of Columbia to make "documented reasonable efforts to communicate" with patients "regarding their wishes." If communication was unsuccessful and a patient's wishes couldn't be determined, however, the lower court had allowed the government to determine the patient's "best interests" by considering the "totality of the circumstances."

In his written decision, Judge Kavanaugh neither acknowledged nor appeared to consider that a person could have an intellectual disability but still might understand the nature of a surgery or have a right to know, think about, or decide whether to undergo a procedure. Making an effort to communicate was viewed as an unnecessary standard to apply to the government when it wanted to perform surgery on a person with an intellectual disability because, in Judge Kavanaugh's words, they were "by definition" incompetent so their input was not relevant to the decision. In his view, the Constitution would not protect people with intellectual disabilities from a state agency policy that allowed non-emergency

elective surgery without informing them or making any effort to ascertain whether they wanted it. Liz Weintraub, Senior Advocacy Specialist at AUCD, commented on the ruling, "As a woman with an intellectual disability, I know what it is like for other people to try to make decisions about my life, my relationships, and my body. Judge Kavanaugh seems to think people like me don't deserve a say in our own healthcare, and that to me is dangerous, discriminatory, and shows he doesn't really understand the idea of 'nothing about us without us'."

Judge Kavanaugh's dissent in *Seven-Sky v. Holder* illustrates his belief that the Affordable Care Act is unconstitutional:

Judge Kavanaugh's [dissent](#) from the D.C. Circuit Court ruling that upheld the Affordable Care Act reflects his view that the law is unconstitutional and beyond the power of Congress. He rejected all of the government's defenses of the ACA, concluding specifically that the individual mandate to purchase health insurance could not be justified under either the Taxation or Spending Clauses of the Constitution. Judge Kavanaugh's rationale for overturning on the ACA was so extensive that it formed the basis of the four-vote dissent that would have struck down the ACA at the Supreme Court. "The Affordable Care Act is what stopped insurance companies from excluding people with pre-existing conditions, making it foundational to the lives of people with disabilities. If Judge Kavanaugh leads the Supreme Court to overturn the ACA, people with disabilities will lose access to health insurance and affordable medical care," says AUCD Executive Director Andrew Imparato.

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AUCD urges individuals and organizations to learn about Judge Kavanaugh's record on the DC Circuit and use this opportunity to educate your Senators about the importance of self-determination and access to healthcare for millions of Americans with disabilities and their families.

The Association of University Centers on Disabilities, located in Silver Spring, MD, is a national, nonprofit organization that promotes and supports the national network of interdisciplinary centers advancing policy and practice through research, education, leadership, and services for and with individuals with developmental and other disabilities, their families, and communities. For more information, visit www.aucd.org or contact aucdinfo@aucd.org.

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