

# Stop Kavanaugh: Presidential Power

*Our federal judicial system provides an essential check on presidential power.  
Judge Kavanaugh would not check Trump.*

Judge Kavanaugh believes that presidents under investigation should be able to **influence, defy, and even shut down investigations**—making them the arbiter of their own wrongdoing.

- Judge Kavanaugh at a Georgetown Law School symposium: "A special prosecutor should be nominated by the President and confirmed by the Senate. Not by an isolated panel of judges. The prosecutor should be removable at will by the President."<sup>i</sup>
- Judge Kavanaugh has also said that *U.S. v. Nixon* may have been "wrongly decided"—a critical and unanimous decision holding that the president is not above the law, and that President Nixon had to produce the Watergate tapes in response to a special counsel subpoena<sup>ii</sup>
- President Trump has repeatedly tried to influence and even shut down the Mueller investigation, including this tweet: "This is a terrible situation and Attorney General Jeff Sessions should stop this Rigged Witch Hunt right now, before it continues to stain our country any further."<sup>iii</sup>
- A Kavanaugh confirmation could give Trump his long-awaited greenlight to remove Special Counsel Robert Mueller or seriously threaten the Mueller investigation in other ways<sup>iv</sup>

Judge Kavanaugh believes that a sitting president **cannot be criminally indicted**.

- Chides "time-consuming and distracting" criminal investigations<sup>v</sup> and argues that "[i]f the President were the sole subject of a criminal investigation, I would say no one should be investigating that"<sup>vi</sup>
- Any criminal indictment of Trump that results from the Mueller investigation or by other cause will likely be challenged all the way to the Supreme Court, where, if confirmed, Judge Kavanaugh is likely to vote in Trump's favor<sup>vii</sup>

Judge Kavanaugh has already proven himself likely to vote in favor of **presidential power**.

- *Seven-Sky v. Holder* dissent editorializes against the Affordable Care Act's individual mandate and suggests that presidents succeeding Obama would have no obligation to enforce it<sup>viii</sup>
- Overturned by his own D.C. Circuit Court in *PHH Corporation v. Consumer Financial Protection Bureau* after he argued that independent agencies like CFPB infringe on presidential power and "pose a significant threat to individual liberty"<sup>ix</sup>

But senators and the American people still require **all Kavanaugh documents** in order to fully understand his record on presidential power.

- February 2002: President Bush exempts "war on terror" detainees from the Geneva Convention prohibition on "mutilation, cruel treatment and torture"<sup>x</sup>
- December 2005: President Bush signs a torture ban but reserves the right to override it<sup>xi</sup>
- Judge Kavanaugh served as White House staff secretary—a senior advisor role deeply involved in major policy decisions—from 2003-2006,<sup>xii</sup> during the CIA torture program and the administration's response to its exposure<sup>xiii</sup> and the Bush signing statements<sup>xiv</sup>
- A responsible senator defending the rule of law will not recklessly allow a vote on this lifetime nominee until they have a chance to review his full record, including documents from his staff secretary tenure<sup>xv</sup>

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<sup>i</sup> <https://www.c-span.org/video/?101056-1/independent-counsel-statute-future>

<sup>ii</sup> <https://apnews.com/3ea406469d344dd8b2527aed92da6365/High-court-nominee-gets-started-answering-questions>

<sup>iii</sup> <https://www.nytimes.com/2018/08/01/us/politics/trump-sessions-russia-investigation.html>

<sup>iv</sup> <http://www.pfaw.org/blog-posts/congress-must-take-every-step-necessary-to-protect-mueller-and-rosenstein/>

<sup>v</sup> [http://www.minnesotalawreview.org/wp-content/uploads/2012/01/Kavanaugh\\_MLR.pdf](http://www.minnesotalawreview.org/wp-content/uploads/2012/01/Kavanaugh_MLR.pdf)

<https://www.demos.org/publication/kavanaugh-has-unsettling-record-democracy>

<sup>vi</sup> <https://www.c-span.org/video/?101055-1/independent-counsel-structure-function>

<sup>vii</sup> <http://www.pfaw.org/blog-posts/brett-kavanaugh-would-put-trump-above-the-law/>

<sup>viii</sup> <http://www.bazon.org/wp-content/uploads/2018/07/Kavanaugh-Disability-Report-2018.pdf>

<sup>ix</sup> <http://www.bazon.org/wp-content/uploads/2018/07/Kavanaugh-Disability-Report-2018.pdf>

<sup>x</sup> <https://www.nytimes.com/interactive/2014/12/09/world/timeline-of-cias-secret-interrogation-program.html>

<sup>xi</sup> <https://www.nytimes.com/2018/07/29/us/brett-kavanaugh-signing-statements.html>

<sup>xii</sup> <https://www.washingtonpost.com/news/monkey-cage/wp/2018/08/04/this-is-why-the-senate-should-care-about-brett-kavanaughs-time-as-bushs-staff-secretary/>

<sup>xiii</sup> <https://www.intelligence.senate.gov/sites/default/files/publications/CRPT-113srpt288.pdf>

<https://www.humanrightsfirst.org/senate-report-cia-torture>

<sup>xiv</sup> <https://www.nytimes.com/2018/07/29/us/brett-kavanaugh-signing-statements.html>

<sup>xv</sup> <http://www.pfaw.org/press-releases/pfaw-statement-on-gop-scheduling-kavanaugh-hearing-without-full-record-their-corruption-and-hypocrisy-is-mind-boggling/>