

# Stop Kavanaugh: Workplace Discrimination

*Judge Kavanaugh would threaten hard-won workplace discrimination protections today and for generations to come.*

Judge Kavanaugh has ruled for discriminatory employers and denied **racial discrimination** relief to employees.

- Argues in *Howard v. Office of the Chief Admin. Officer* dissent that the Constitution precludes the racial discrimination and retaliation claim of a Black deputy budget director fired by the U.S. House of Representatives<sup>i</sup>—an expansive interpretation that would bar legislative branch employees from filing such claims in federal court and force them to file administrative claims under an inadequate and secretive process<sup>ii</sup>
- Argues in *Rattigan v. Holder* dissent that an ongoing FBI security investigation precludes the racial discrimination and retaliation claims of a Black agent—the majority noted there was no precedent requiring such a ruling and allowed the claim to go forward as long as unreviewable FBI security decisions weren't questioned<sup>iii</sup>

Judge Kavanaugh has ruled for discriminatory employers and denied **age discrimination** relief to employees.

- Argues in *Miller v. Clinton* dissent that the State Department should be allowed to set a mandatory retirement age for certain employees abroad and terminate them solely based on age—violating the Age Discrimination in Employment Act<sup>iv</sup>
- The majority noted that this argument's dangerous consequences would not stop at simply eviscerating age discrimination protections: "[T]he necessary consequence of the Department's position is that it is also free from any statutory bar against terminating an employee like Miller solely on account of his disability or race or religion or sex"<sup>v</sup>
- The majority continued: "[W]e must hesitate even longer before inferring that Congress meant to exempt them from the protections of the entire edifice of its antidiscrimination canon. Congress has made clear that it regards those protections as extremely important."<sup>vi</sup>

Judge Kavanaugh disregards the experiences of **people with disabilities** in his narrow understanding of employment discrimination and his expansive view of employers' rights.

- *Adeyemi v. District of Columbia* ruling demonstrates a great reluctance to scrutinize employers' actions and sets a high bar for applicants alleging hiring discrimination in siding with the D.C. public school system and against a deaf job applicant<sup>vii</sup>
- *Johnson v. Interstate Management Company* ruling defers to the employer's questionable testimony of "repeated performance failings" and ignores significant evidence provided

by the employee in his disability discrimination and retaliation claim, including his largely unblemished record<sup>viii</sup>

With **workplace harassment and sexual harassment** holding national attention, Judge Kavanaugh's close association with Judge Alex Kozinski raises serious concerns.

- Judge Alex Kozinski resigned from the bench in December 2017 following numerous allegations by at least 15 former law clerks of severe sexual harassment and abuse<sup>ix</sup>
- Following his 1991-1992 Kozinski clerkship, Judge Kavanaugh and Judge Kozinski served together as clerkship screeners for Justice Anthony Kennedy—elevating the Supreme Court profile of a Kozinski clerkship and no doubt encouraging more to apply despite widespread rumors of the judge's predatory and abusive behavior<sup>x</sup>
- Senators must ask Judge Kavanaugh what he knew about Kozinski's behavior, when he learned of it, and what actions he took in response<sup>xi</sup>

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<sup>i</sup> <http://www.pfaw.org/report/the-dissents-of-judge-brett-kavanaugh-a-narrow-minded-elitist-who-is-out-of-the-mainstream/#discrimination>

<sup>ii</sup> <http://www.pfaw.org/blog-posts/more-than-100-civil-and-human-rights-organizations-oppose-scotus-nominee-brett-kavanaugh/>

<sup>iii</sup> <http://www.pfaw.org/report/the-dissents-of-judge-brett-kavanaugh-a-narrow-minded-elitist-who-is-out-of-the-mainstream/#discrimination>

<sup>iv</sup> <http://www.pfaw.org/report/the-dissents-of-judge-brett-kavanaugh-a-narrow-minded-elitist-who-is-out-of-the-mainstream/#discrimination>

<sup>v</sup> [https://www.cadc.uscourts.gov/internet/opinions.nsf/B65D15DDE4EE579F85257A53004E90E1/\\$file/10-5405-1387823.pdf#page=2](https://www.cadc.uscourts.gov/internet/opinions.nsf/B65D15DDE4EE579F85257A53004E90E1/$file/10-5405-1387823.pdf#page=2)

<sup>vi</sup> [https://www.cadc.uscourts.gov/internet/opinions.nsf/B65D15DDE4EE579F85257A53004E90E1/\\$file/10-5405-1387823.pdf#page=8](https://www.cadc.uscourts.gov/internet/opinions.nsf/B65D15DDE4EE579F85257A53004E90E1/$file/10-5405-1387823.pdf#page=8)

<sup>vii</sup> <http://www.bazelon.org/wp-content/uploads/2018/07/Kavanaugh-Disability-Report-2018.pdf#page=5>

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<sup>xi</sup> <https://abovethelaw.com/2018/07/did-brett-kavanaugh-know-about-alex-kozinski/>