

August 27, 2018

The Honorable Mitch McConnell
Majority Leader
United States Senate
Washington, D.C. 20510

The Honorable Charles E. Schumer
Minority Leader
United States Senate
Washington, D.C. 20510

Dear Senators McConnell and Schumer, and all Members of the United States Senate:

We, the undersigned 24 organizations working in the public interest to protect net neutrality, write to express our strong concerns about the potential confirmation of U.S. Circuit Court Judge Brett Kavanaugh to the United States Supreme Court. Judge Kavanaugh's confirmation to the nation's highest court could jeopardize protections for the rights of all Americans to freely navigate the internet and express themselves online.

The *United States Telecom Association. v. FCC* case upheld the FCC's 2015 Net Neutrality rules in all respects. But Judge Kavanaugh dissented when the case came before him, betraying his commitment to protect the alleged rights of the big cable and phone companies that provide broadband internet access rather than the communications rights of everyone in America who relies on an open internet.

Furthermore, Judge Kavanaugh's opinion makes clear that he views administrative law and appellate review of agency decisions not as a means to ensure that agencies engage in reasoned decision making, but as a tool to force deregulation and let judges strike down agency actions at will. In sum, his opinion misreads the First Amendment as well as the Communications Act.

In his dissent, Kavanaugh asserted that broadband providers should have the liberty to "exercise editorial discretion about what content to carry or favor" and aligned himself with big cable and phone companies' views. He said that "the Internet's technological architecture may mean that Internet service providers can provide unlimited content; it does not mean that they must." In short, Kavanaugh's views would improperly make the First Amendment a shield for many harmful business practices, suggesting that the "speech" interests of a company in favoring some internet services over others outweigh consumer choice and the free expression interests of all other internet users and services.

This assertion is against what millions of Americans believe, and makes it evident that Judge Kavanaugh would side with big telecommunication companies whenever a free and open internet for all is at stake. **Confirming Judge Kavanaugh to the Supreme Court could stifle the free and open internet that helps our democracy and economy thrive.**

Since the Federal Communications Commission (FCC) reversed the *Open Internet Order* and took away critical net neutrality protections in December 2017, innovators and small business owners across America have made it clear how important net neutrality is for their economic well-being, with thousands signing letters to Congress.

Supporting Judge Kavanaugh's nomination to the Supreme Court would hamper the economic survival and competitiveness of small businesses nationwide. Protecting net neutrality is also a commitment we have to American veterans and service members, who rely on uninterrupted, high-quality internet service to stay in touch with their loved ones and depend on the liberty to access an array of services from the web including health care, education, and employment.

The open internet protections we continue to fight for also strengthen Americans' right to organize for racial justice, social change, and a wide array of political causes, by facilitating unrestricted online expression without fear of blocking and editing by telecom companies. Net neutrality protects essential communications rights that also happen to be incredibly popular with your constituents. Judge Kavanaugh's dissent makes clear that confirming him would be an affront to those constituents' livelihoods and their values.

Kavanaugh reasoned that net neutrality rules are "constitutionally objectionable," dismissing their benefit of "diversifying and increasing the number of voices available on the Internet." **Voting to confirm Judge Kavanaugh is a vote against those increased voices - against all in America who use the internet to stand up and make their voices heard.**

It would strike yet another blow to the 21st century's online mobilization and communication infrastructure, demonstrating support for big cable companies but ignoring the wishes of the American public, 86% of whom support net neutrality protections in recent surveys.

Earlier this year, the Senate took the historic step of showing the American public its support for the free and open internet by voting to reinstate net neutrality protections. A vote to confirm Judge Kavanaugh would be an unacceptable reversal of that achievement. It would be a vote against the entrepreneurs, veterans, and millions of Americans who called on you to protect their freedom of speech online.

We will continue to emphasize and amplify our concerns about the potential confirmation of Judge Brett Kavanaugh to serve as a Justice on the Supreme Court. An open internet is critical to the democratization of entrepreneurship, economic growth, and freedom of speech. It is clear that Judge Kavanaugh would place big telecom companies above the wishes and needs of Americans. We urge you to stand on the right side of this fight.

Sincerely,

Access Humboldt
Center for Media Justice
Color of Change

Courage Campaign
CreaTV San Jose
Demand Progress
Faithful Internet
Fight for the Future
Free Press
Indivisible
Line Break Media
Media Access Project
Media Action Center
Media Alliance
National Hispanic Media Coalition
Native Public Media
Open MIC (Open Media and Information Companies Initiative)
OpenMedia
Popular Resistance
Progressive Caucus Action Fund
Public Knowledge
The Greenlining Institute
United Church of Christ, OC Inc.
Writers Guild of America West