Testimony of the Honorable Cedric L. Richmond, Member of Congress
United States Senate Committee on the Judiciary
"United States Supreme Court Nomination"
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I would like to thank Chairman Grassley, Ranking Member Feinstein, and the Members of this esteemed Committee for allowing me to testify before you today.

Earlier this week my Louisiana Senator argued that, "It's not the U.S. Supreme Court that's supposed to fix this country – culturally, economically, socially, spiritually. Courts should not try to fix problems that are within the province of the U.S. Congress, even if the U.S. Congress does not have the courage to address those problems. Our courts were not meant to decide these kinds of issues." That flawed logic would mean that African Americans wouldn't be able to attend integrated schools, buy a home previously owned by a white person, or sleep at certain hotels. In many cases, the high court has acted when Congress has failed to.

For nearly eight decades, African Americans have arduously and successfully fought to secure historic legal victories that have significantly bent the moral arc of the universe towards justice, even at times when progress felt incremental. Nonetheless, we know that reversing meaningful progress for decades to come would be profoundly devastating and an affront to all who courageously fought on the front lines—some of whom I currently represent as Chair of the Congressional Black Caucus (CBC).

Prior to the 2016 presidential election, Senate Republicans engaged in an egregious obstruction strategy against the previous administration's nominees. This misguided scheme reached a shameful crescendo when the Senate Majority Leader refused to grant a hearing to D.C. Circuit Chief Judge Merrick Garland—a supremely qualified, dispassionate U.S. Supreme Court nominee. Truthfully, this should really be President Trump's first nomination for the high court—not his second. These nefarious practices, which left federal courts across the nation irresponsibly unfilled, paved the way for a staggering 112 judicial vacancies when President

Trump was inaugurated. By comparison, President Obama inherited less than half that amount in January 2009.

President Trump has seized on this opportunity to pack the courts by selecting judicial nominees who lack pragmatism, and are often strikingly unqualified and proven intolerant bigots. We are in the midst of a fundamental shift towards nominees that embrace ideology at the fringes of mainstream legal thought. The current administration has nominated, and with help of Senate Republicans, has confirmed a range of nominees whose confirmation hearings portend a precarious legal fate for communities of color moving forward. Many of their records demonstrate callous racism, ignorance of critical racial dynamics or other abhorrent forms of discrimination that hearken back to a darker time when structural and institutional bigotry worked to ensure that the rights of the underrepresented classes in this country were trampled upon.

Sadly, the nomination of D.C. Circuit Judge Brett Kavanaugh to the United States Supreme Court is merely the latest, and undoubtedly the most consequential, episode in this administration's scheme to dramatically reshape the federal judiciary as we know it. First nominated to the bench by President Ronald Reagan as an Associate Judge in 1987, the recently retired Chief Justice Anthony Kennedy's 30-year tenure underscores the true gravity of a lifetime appointment. Mr. Kavanaugh's confirmation would fortify a generation of destructive conservative ideology at a time when several historically significant legal challenges will come before the high court. As Members of the CBC, we cannot overstate what is at stake for African Americans and communities of color across the nation.

If Judge Kavanaugh is confirmed, we are concerned about his likely rulings on several matters that disproportionately impact the historically disenfranchised African-American

community. Judge Kavanaugh, who relies heavily on the same "textualist" reading of the Constitution employed by former Justice Antonin Scalia, possesses a conservative judicial record that leads us to believe that voting rights, education, criminal law, and access to affordable health care could be greatly endangered in the coming years. A careful, in-depth evaluation of his record, which has largely been shrouded in secrecy and withheld from public examination, uncovers a litany of writings that distinctly illustrate sparse commitment to equal protection under the law or judicial restraint. Additionally, Judge Kavanaugh's lack of deference to precedent is staggering and inconsistent with other conservative judges who currently preside on the D.C. Circuit Court with him. A judge who frequently questions key legal precedents represents a grave danger to many key legal frameworks that have benefitted the black community.

Voting Rights

From Ohio, to Wisconsin, to Georgia, the vestiges of Jim Crow have resurfaced under a new cloak unchecked and unabated. While these states are no longer conducting literacy tests, the effects of their new policies have been implemented with staggering precision and efficiency. By a 5-4 vote more than five years ago, the U.S. Supreme struck down Section 4 of the Voting Rights Act of 1965, making Section 5 of the law essentially unworkable. Section 4's coverage formula was designed to determine which states would be required to preclear with DOJ any modifications made to voting practices. In its wake, the decision has precipitated a myriad of voter suppression efforts across the country. Most recently, the Randolph County Board of Elections and Registration in Georgia inexplicably considered a proposal calling for the closure of more than three quarters of the polling locations in the county—including one of which that is 97 percent African American. Despite the eventual rejection of this ill-fated proposal, the federal

government never bothered to even intervene and fulfill its statutorily obligated responsibilities. Even after Section 4 was struck down in 2013, former Attorney General still prioritized oversight of voting laws across the country. Predictably, under Attorney General Jeff Sessions' lifeless leadership, DOJ has conspicuously failed to sustain this focus with any rigor or meaningful commitment. The DOJ has wholly abdicated its responsibility to protect the American people from the impact of racially charged voter suppression and as a result there is no longer any federal government mechanism or resource dedicated to safeguarding an individual's constitutionally protected right to vote. As I told you in January 2017, Jeff Sessions doesn't care about civil rights—this proves that point.

It is within this context that we have grave concerns about Judge Kavanaugh's opinion on the 2012 case of *State of South Carolina v. United States of America and Eric Holder.* In 2011, under the fully workable Voting Rights Act of 1965, the Obama administration blocked enforcement of South Carolina's state issued photo identification voting law because it affected up to eight percent of black South Carolinians. In his ruling to uphold the law, Mr. Kavanaugh claimed it "does not have the effects that some expected and some feared." Not only is this statement inexplicably tone deaf, it is also inconsistent with reality. Ninety-two-year-old South Carolina native Larrie Butler is one of many law-abiding, civically-engaged members of our community who was maliciously stripped of their opportunity to participate in the democratic process. These same real-life consequences palpably reverberate to other elements of everyday life for Black families that would be negatively impacted should Kavanaugh have the opportunity to assume a tenured position on the high court.

Criminal Justice

Judge Kavanaugh's record on criminal justice is entirely unsatisfactory for a country persistently struggling to hold law enforcement accountable for mass incarceration and police brutality. He has expressed a strong desire to overturn precedent that protects civilians from officers engaging in activities inconsistent with the Constitution—and more specifically the Fourth Amendment. By suggesting that the probable cause standard should be more flexible, his jurisprudence would expose more African Americans to failed policing tactics like "Stop and Frisk." Additionally, Judge Kavanaugh's misguided support for narrowing individuals' Miranda rights would adversely impact people of color who are disproportionately subject to excessive law enforcement engagement in their respective communities. It's clear that the very foundation of the justice system, which is already tenuous, would perilously erode with this judge on the bench.

Affirmative Action

Among the troublesome constitutional interpretations Mr. Kavanaugh has penned while on the bench, his record on affirmative action is particularly disturbing and ripe for intense scrutiny. Almost 20 years ago, while in private practice he wrote that in the future the Supreme Court would agree that, "in the eyes of the government, we are just one race." Given the Department of Justice's (DOJ) recent investigation into Harvard University's admissions practices, we are deeply troubled by the increased likelihood this issue will come before the Supreme Court in short order.

Cloud of Criminality & Lack of Transparency

Lastly, the omnipresent cloud of criminality surrounding the White House gives us legitimate skepticism that a U.S. Supreme Court justice with such an expansive view of

executive power can act impartially on Special Counsel Mueller's ongoing investigation into reported collusion with foreign governments. Despite playing a pivotal role in the investigation of President Clinton in the 1990's, Mr. Kavanaugh has since softened his stance on the necessity of such investigations of sitting presidents and heightened his rhetoric on the president's expansive executive power—including his authority to terminate high level administration officials. With the looming possibility that an appeal related to the investigation's outcome could be considered by the Supreme Court in the future, we are justifiably worried about this nominee's ability to remain objective and independent. Sadly, it appears that our concerns regarding his dismal record and potential conflict of interest with an ongoing investigation are contributing to the Majority's unwillingness to conduct this confirmation process with any genuine transparency.

There is no way any sitting Senator can look the American people in the eye and say they are faithfully executing their constitutional obligation to provide advice and consent when hundreds of thousands of documents from his time at the White House have not yet been produced. The flippant attempt by former President George W. Bush attorney William Burck to privately release more than 5,000 documents with over 42,000 pages Monday night is insufficient and unreasonable for Senators to thoroughly review in time. Those materials, and the remaining outstanding documents, may hold additional substantive background into his views on criminal justice, voting rights, affirmative action, hate crimes and more. These hearings should have been postponed until those documents were produced in full so that we could have seen what the administration was hiding in his record.

During a speech he delivered a mere three years ago, Mr. Kavanaugh ironically quipped that interpreters of the law should, "check those political allegiances at the door." Unfortunately,

after thorough review of what little has been made available, we have concluded that nearly every decision and dissent he has written throughout his career is reflective of a jurist who overwhelmingly serves as a partisan activist.

A lifetime appointment on the highest court in the land deserves a justice who is highly qualified, reflects our nation's values, and commits to the 14th amendment's promise that guarantees all citizens equal protections of the law. As the first African-American Supreme Court Justice Thurgood Marshall once said, "I wish I could say that racism and prejudice were only distant memories…We must dissent because America can do better, because America has no choice but to do better."

Just last year I sat before this very same panel and asked, "will you stand with him and allow history to judge you for doing so? If the tables were turned, do you believe he would stake his legacy on your record as he's asking you to stake your legacy on his?" I was referring to then-Senator Jeff Sessions, who now as U.S. Attorney General has attacked vulnerable communities with surgical precision that will take decades to reverse. Now, the stakes couldn't be higher. Like Chief Justice Kennedy, Mr. Kavanaugh could go onto serve for more than 30 years. So, I ask you all again, where do you stand? Once again, history will be your judge.