

Memorandum

TO: Interested Parties
FROM: Dana Singiser, Vice President of Public Policy and Government Relations,
Planned Parenthood Federation of America
DATE: Thursday, September 6, 2018
RE: What to pay attention to coming out of the first day of questions in the Kavanaugh Hearing

In the first two chaotic days of Judge Kavanaugh's hearing before the Senate Judiciary Committee, we've seen Kavanaugh get grilled on everything from racial discrimination to how to be a great coach. So what's rising to the top -- and what's worth paying attention to going into day two of questions?

1. **Brett Kavanaugh was given at least 12 opportunities to give a straight answer on *Roe v. Wade* and he dodged every time.** Brett Kavanaugh dodged, ducked, and danced --- all to avoid answering whether he believes *Roe v. Wade* was rightly decided, or if there is a constitutional right to have an abortion.
 - a. Kavanaugh refused to respond on whether he thought *Roe* was rightly decided -- minutes after he made clear he thought the *U.S. v. Nixon* case was rightly decided.
 - b. Kavanaugh refused to answer whether he agreed that a woman's right to control her reproductive life impacts her ability to participate in the economic and social life of the nation.
 - c. Kavanaugh danced around questions on the Garza case -- where he ruled to allow the government to continue to block a young, undocumented woman from accessing abortion -- but made clear he did not consider the indefinite delay of the young woman's abortion to be imposing an unconstitutional burden on her.
 - d. When asked if he believed immigrants have a constitutional right to access abortion, he stopped short, and sat in awkward silence.
 - e. He was asked directly by Senator Harris if he believed the constitutional right to privacy includes the right to access abortion --- and he refused to answer.

2. **When talking about precedent, he cherry-picked which cases he claimed were the "precedent" he was following.** It's notable that not once all day did Judge Kavanaugh mention *Whole Woman's Health*, the Court's most recent precedent affirming a woman's right to choose. Furthermore, Brett Kavanaugh claimed that in the *Garza v. Hargan* case (where he ruled on a young, undocumented woman seeking an abortion) he wrongly asserted that he was following the Supreme Court's cases allowing states to enact laws requiring minors to get the consent of a parent prior to an abortion. Those cases actually hold that the state cannot allow the parent to exercise a "veto" over the minor's decisions. In fact, the Supreme Court has made clear that a state must give a minor an alternative mechanism to bypass a parental consent requirement if the minor is mature enough to make the decision on her own or if the abortion is in her best interest. And in

that case, Jane Doe had met that requirement and obtained a bypass, but Judge Kavanaugh dismissed that as “irrelevant.”

This disregard for precedent was noted by one of Judge Kavanaugh’s colleagues (Judge Patricia Millett) on the D.C. Circuit Court in her concurrence:

“Settled precedent from *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 112 S.Ct. 2791, 120 L.Ed.2d 674 (1992), to *Whole Woman’s Health v. Hellerstedt*, — U.S. —, 136 S.Ct. 2292, 195 L.Ed.2d 665 (2016), establishes that the government may not put substantial and unjustified obstacles in the way of a woman’s exercise of her right to an abortion pre-viability. The government, however, has identified no constitutionally sufficient justification for asserting a veto right over J.D. and Texas law.”

3. **This is not business as usual.** During her confirmation, Justice Ruth Bader Ginsburg gave real answers and affirmatively declared the constitutional right to safe, legal abortion. That is the real Ginsburg Standard.

Justice Ginsburg: “The argument was it's her right to decide either way, her right to decide whether or not to bear a child. . . . But you asked me about my thinking about equal protection versus individual autonomy, and my answer to you is it's both. This is something central to a woman's life, to her dignity. It's a decision that she must make for herself. And when Government controls that decision for her, she's being treated as less than a fully adult human responsible for her own choices.”

Kavanaugh ducked questions about his views on abortion---and refused to answer questions about this very Ginsburg quote--- because he knows the American people won’t like what he has to say. [The vast majority of Americans do not want to see Roe overturned](#), and Kavanaugh [has already ruled to limit access to safe, legal abortion](#). Throughout the day, he claimed to be following the “nominee precedent” of the eight sitting justices, invoking the Ginsburg standard. However, when faced with Justice Ginsburg’s actual testimony by Senator Harris in the 12th hour of the hearing, he suddenly revised his statement and referred only to seven justices.

4. **This isn’t theoretical — it’s likely the Supreme Court will rule on the right to access abortion, access birth control, and get care at Planned Parenthood, in the next two years.** There are currently 13 cases related to abortion that are one step away from the Supreme Court. Every single one of these 13 cases provides an opportunity for the Court to overrule or severely weaken a woman’s constitutional right to access abortion, including:

- A law in Kentucky that would effectively ban abortion by shutting down the one health center in the state that provides safe, legal abortion. This would force women to travel out of state to access an abortion, if they can at all.
- A law in Arkansas that would ban medication abortion entirely and leave only one health center in the state that provides safe, legal abortion. This means women in areas like Fayetteville would be forced to make a 380-mile round trip to access an abortion in Little Rock or travel out of state.
- Missouri continues to enforce similar laws that make abortion nearly inaccessible for countless women.
- A policy of the Department of Health and Human Services under the Trump-Pence administration prevents young, undocumented women in the custody of Scott Lloyd and the Office of Refugee Resettlement from accessing safe, legal abortion.

The court is also poised to determine a person's basic right to access affordable birth control, sex education, and preventive care at Planned Parenthood. These cases include:

- Cases from Louisiana and Kansas that will determine if politicians can block access to birth control, cancer screenings, and other care at Planned Parenthood through Medicaid. Cases in Ohio and Texas are close behind.
- [Three cases](#) that will determine whether the Trump-Pence administration can roll back the birth control benefit, which would allow employers to refuse to provide workers with insurance coverage for affordable birth control.
- Three cases that will decide if the Trump-Pence administration can dismantle the Teen Pregnancy Prevention program and turn it into an abstinence-only program.
- A case to stop the Trump-Pence administration from dramatically remaking Title X — the nation's program for affordable birth control and reproductive health care — to focus on abstinence and less effective forms of contraception.

In short: Kavanaugh was given at least 12 times to affirm that women have a constitutional right to abortion; and every single time he dodged. The answer to that question is clear. Kavanaugh is supported by anti-abortion groups like Susan B. Anthony -- which is running a grassroots campaign in six states supporting his nomination. Kavanaugh has already tried to blocked a young, undocumented woman from accessing abortion. And Trump made clear he would only appoint justices who would overturn *Roe v. Wade* when nominating people to the Supreme Court.

Today made it clearer than ever: if confirmed, Judge Kavanaugh would gut access to safe, legal abortion --- and is doing backflips to avoid having to say that out loud.