Open Letter to the United States Senate from Law Professors Around the Country

[Note: We invite law professors to sign this open letter to the United States Senate. We will deliver the letter to the Senate on Thursday, October 4, 2018, at 12:00 noon EST. If you are a law professor and interested in signing this letter, please follow the instructions on the Google Document that is available here: https://bit.ly/2OwdBAr]

Open Letter to U.S. Senate

Judicial temperament is one of the most important qualities of a judge. As the Congressional Research Service explains, to be a judge requires that an individual have "a personality that is evenhanded, unbiased, impartial, courteous yet firm, and dedicated to a process, not a result."[1] The concern for judicial temperament dates back to our founding; in Federalist Paper 78, entitled "Judges as Guardians of the Constitution," Alexander Hamilton expressed the need for "the integrity and moderation of the judiciary."

We are law professors who teach, research, and write about the judicial institutions of this country. Many of us appear in state and federal court, and our work means that we will continue to do so, including before the United States Supreme Court. We regret that we feel compelled to write to you to provide our views that at the Senate hearings on Thursday, September 28, 2018, the Honorable Brett Kavanaugh displayed a lack of judicial temperament that would be disqualifying for any court, and certainly for elevation to the highest court of this land.

The question at issue was of course painful for anyone. But Judge Kavanaugh exhibited a lack of commitment to judicious inquiry. Instead of being open to the necessary search for accuracy, Judge Kavanaugh was repeatedly aggressive with questioners. Even in his prepared remarks, Judge Kavanaugh located the hearing as a partisan question, referring to it as "a calculated and orchestrated political hit," rather than acknowledging the need for the Senate, faced with new information, to try to understand what had transpired. Instead of trying to sort out with reason and care the allegations that were raised, Judge Kavanaugh responded in an intemperate, inflammatory, and partial manner, as he interrupted and, at times, was discourteous to questioners.

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[1] See Congressional Research Service, "Supreme Court Appointment Process: President's Selection of a Nominee," June 27, 2018, at 12 (available at https://fas.org/sgp/crs/misc/R44235.pdf) (citing Miller Center of Public Affairs, *Improving the Process of Appointing Federal Judges* at 10 (Charlottesville, VA: University of Virginia, May 1996)).

As you know, under two statutes governing bias and recusal, judges must step aside if they are at risk of being perceived as or of being unfair. See 28 U.S.C. §§ 144, 455. As this Congress has put it, a judge or justice "shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." 28 USC § 455. These statutes are part of a myriad of legal commitments to the impartiality of the judiciary, which is the cornerstone of the courts.

We have differing views about the other qualifications of Judge Kavanaugh. But we are united, as professors of law and scholars of judicial institutions, in believing that Judge Kavanaugh did not display the impartiality and judicial temperament requisite to sit on the highest court of our land.

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