

August 8, 2018

Senator Charles Grassley
Chairman, Senate Judiciary Committee
135 Hart Senate Office Building
Washington, DC 20510

Senator Dianne Feinstein
Ranking Member, Senate Judiciary Committee
331 Hart Senate Office Building
Washington, DC 20510

Re: Senate access to records relevant to Brett Kavanaugh Supreme Court nomination

Dear Chairman Grassley and Ranking Member Feinstein,

As organizations committed to open government and accountability, we are concerned by reports of incomplete requests for access to government records related to the nomination of Judge Brett Kavanaugh to the Supreme Court. We are concerned that the curtailed document requests will hinder the Senate's ability to fully assess Judge Kavanaugh's background and qualifications and makes an assumption of privilege without requiring the White House to assert a claim. We believe it is the role of the White House to assert privilege claims over documents, not the role of the Senate Judiciary Committee to save them the trouble. The Senate's decision on whether to confirm a Supreme Court nominee has vast and long-lasting ramifications for the nation, and it is vital that senators from all parties are able to request and access the documents they need to make that decision.

In the case of Judge Kavanaugh, it appears that senators belonging to the majority party are using outside channels to secure preferential access to records and to determine which documents will be released, and therefore have undue influence over both the Senate's and the public's perceptions of the nominee. Minority senators are being denied the right to request documents related to Judge Kavanaugh, while Majority senators appear to have access to documents via former President George W. Bush's personal access to his presidential library. This process gives an unfair advantage to senators supporting Judge Kavanaugh's nomination, at the expense of a fully transparent process that allows for full disclosure and scrutiny by all voting lawmakers.

Senator Grassley, we support you in your fight to ensure that all senators are able to conduct oversight of the executive branch and request information from federal agencies.¹ We believe the same principle should hold true for requests under the Presidential Records Act. Even if an individual Senator may not act as a committee, the Chair has the authority to include both majority and minority requests for documents in his own request. We ask that, for the sake of the Senate's

¹ "Grassley Wins Commitments of Cooperation from Administration on Oversight Requests," July 28, 2017, available at: <https://bit.ly/2ABMcr4>.

ability to fulfill its constitutional role, you work to ensure that the George W. Bush Presidential Library and Museum provides the Senate Judiciary Committee with the documents requested in the July 31 letter from Democratic senators.² Senator Feinstein, we also ask that you and all Democratic senators commit to honoring Republican requests for documents should they hold the majority in the future.

In order for the Senate to fulfill its constitutional “advice and consent” responsibility, senators from *both* parties must have equal access to all documents relevant to a nominee, in as timely and complete a manner as possible. Both Senator Feinstein’s and Senator Grassley’s letters to Archivist David Ferriero illustrate unequal access is a problem that spans administrations, and we are calling on the committee to rise above partisan politics in order to ensure that all senators are adequately informed prior to making a decision on the nomination of Judge Brett Kavanaugh to the Supreme Court.³

Thank you for your attention to these requests. For more information, please contact Lisa Rosenberg at Open the Government, lrosenberg@openthegovernment.org or 202-332-6736.

Sincerely,

American-Arab Anti-Discrimination Committee (ADC)

American Oversight

Campaign for Accountability

Center for Media and Democracy

Center for Victims of Torture

Defending Rights & Dissent

Demand Progress

Electronic Privacy Information Center

Human Rights Watch

Liberty Coalition

National Coalition Against Censorship

National Religious Campaign Against Torture

National Security Archive

Open the Government

Project On Government Oversight

Sunlight Foundation

² Letter to George W. Bush Presidential Library & Museum, July 31, 2018, available at: <https://bit.ly/2Aq13oi>.

³ Letters to Archivist David S. Ferreiro from Senator Feinstein, July 27, 2018, available at: <https://bit.ly/2M3hBY8>; Letter from Senator Grassley, July 30, 2018, available at: <https://bit.ly/2KmOcmv>.

August 8, 2018

The Honorable George W. Bush
Office of George W. Bush
P.O. Box 259000
Dallas, TX 75225-9000

Re: Access to records relevant to Brett Kavanaugh Supreme Court nomination

Dear Mr. Bush,

As organizations committed to open government and accountability, we are alarmed by your role contributing to the lack of transparency and selective access to records related to Supreme Court nominee Brett Kavanaugh.¹ In order for the Senate to fulfill its constitutional “advice and consent” responsibility, senators from *both* parties must have equal access to all documents relevant to a nominee, in as timely and complete a manner as possible. Your agreement with Chairman Grassley that allows Republican senators to secure access to records in your possession and dictate which documents will be released threatens the integrity of the Senate’s review of Supreme Court nominees and undermines a process which has enormous consequences for the country.

The records now under review reportedly include only documents from Judge Kavanaugh’s tenure in the White House Counsel’s office, not his time as Staff Secretary, excluding documents that shed light on Judge Kavanaugh’s qualifications to be a Supreme Court Justice.² Minority senators are being denied the right to request documents related to Judge Kavanaugh, while majority senators appear to have access to documents via your Presidential Records Act representatives. Giving such an unfair advantage to senators supporting Judge Kavanaugh’s nomination comes at the expense of a fully transparent process needed for full disclosure and scrutiny by all voting lawmakers.

Selective disclosures of documents with partisan political motivations hinder the Senate’s ability to fully assess Judge Kavanaugh’s background and qualifications. As a former president in possession of archives that are fundamentally important to preserving historical memory of government policy, you have a responsibility to ensure equal access to these records in a non-partisan and transparent manner. The Senate’s decision on whether to confirm a Supreme Court nominee has vast and long-lasting ramifications for the nation, and we implore you to do your part to make certain that lawmakers from all parties are able to request and access the documents they need to make that decision.

We ask that you refrain from continuing selective negotiations with senators for records, and instead ensure that all requests for documents in your possession and in your presidential library related to

¹ Letter to Senator Dianne Feinstein from Archivist David S. Ferriero, July 26, 2018: <https://bit.ly/2M7pPuV>.

² Senator Leahy Remarks on Judge Kavanaugh and Torture, August 1, 2018: <https://cs.pn/2Axsywy>.

Judge Kavanaugh's tenure at the White House are fulfilled, and do you part to provide full transparency and protect the integrity of the nomination process.

Thank you for your attention to these requests. For more information, please contact Lisa Rosenberg at Open the Government, lrosenberg@openthegovernment.org or 202-332-6736.

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