

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>.