August 10, 2018

The Honorable Charles E. Grassley
Chairman, Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Chairman Grassley:

I am concerned with the lack of transparency in this Committee’s consideration of Brett Kavanaugh to the U.S. Supreme Court. As you know, Judiciary Democrats have asked for access to his full record during his tenure in the White House, as was done most recently with the nomination of Elena Kagan. Unfortunately, our request has not been supported by your side of the aisle. Now, I understand that even among the limited documents that are being provided by President Bush’s private attorney, Republicans are requesting that the majority of these documents also not be made available to the public and be treated as “Committee Confidential.” I cannot support such a request.

The longstanding practice of this Committee and the Senate is to ensure as much transparency as possible, and to ensure that the American people and the Senate have access to a nominee’s full record. In fact, during Elena Kagan’s nomination, 99% of her White House record was provided to the Committee and the public.

As stated in prior letters, those on this side of the aisle strongly object to changes in how documents are produced to the Committee and the public. For the first time, the Committee is not receiving presidential library documents from the Archivist, and instead is relying on George W. Bush’s personal lawyer Bill Burck—who also worked as Kavanaugh’s deputy in the Bush White House—to pick and choose which documents are distributed.

Specifically, of the approximately 900,000 pages you requested, Mr. Burck has so far produced roughly 174,000 pages of documents to this Committee—a small fraction of your request (19%) and an even smaller portion of the total pages
relevant to Mr. Kavanaugh’s work in the Bush White House (2%). Now, we learn that Mr. Burck has requested that of all of the documents he has chosen to produce, only 5,700 pages should be provided to the American public—about .08% of Mr. Kavanaugh’s total record.

Simply stated, this is unacceptable. The Senators and the public must have access to Mr. Kavanaugh’s full record. Additionally, this Committee has never allowed a third party to control what information is kept confidential, and should not do so now when we are considering a lifetime appointment to the U.S. Supreme Court. As you know, under longstanding Committee practice, information received by this Committee is never automatically treated as “Committee Confidential”; rather, the Chairman and Ranking Member must agree on what information is to be kept confidential on a case-by-case basis. This is something you have insisted upon, as it is consistent with your longstanding position on keeping Committee information confidential only as absolutely necessary and with your commitment to transparency.

In this instance, I write to inform you I cannot agree to keep Mr. Kavanaugh’s records from his tenure in the White House hidden from the public. Obviously, as has been done historically, the Committee must protect certain records that contain personal information or other sensitive material, and I have directed my staff to work with your staff on this. However, a blanket assertion that documents must be hidden from the public is contrary to the Committee’s longstanding practice and undermines the public interest in transparency.

A full understanding of Mr. Kavanaugh’s White House record, the positions he has taken, and the choices he has made throughout his career is essential to enable the Senate to carry out its constitutional duty to provide advice and consent on his nomination. It’s also necessary to allow the public to make up its own mind about whether Mr. Kavanaugh is suitable for a lifetime appointment to the Supreme Court. The Senate and the American people deserve no less.

Sincerely,

Dianne Feinstein
Ranking Member