

July 20, 2018

The Honorable Charles Grassley
Chairman, Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Dianne Feinstein
Ranking Member, Senate Committee on the Judiciary
152 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Grassley and Ranking Member Feinstein:

In order for the Senate to fulfill its constitutionally prescribed duty to “advise and consent” on a Supreme Court nomination, it must first ensure that it has conducted a full and fair review of that nominee. Just as this review encompassed all records that the Senate Judiciary Committee was entitled to see from Justice Elena Kagan’s service in the Clinton Administration, it now must include all records that the Committee is entitled to see from Judge Kavanaugh’s extensive service in the George W. Bush Administration.

It has been less than a decade since the Senate considered Elena Kagan’s Supreme Court nomination. When Justice Kagan was nominated to the U.S. Supreme Court, then-Chairman Leahy and then-Ranking Member Sessions jointly [sent a letter](#) requesting records from her tenure in the White House Counsel’s Office and the Domestic Policy Council during the Clinton Administration. Critically, more than [170,000 pages](#) of responsive materials were produced, including virtually every email sent and received by Justice Kagan while she was at the White House. Even more important than the sheer number of pages produced are the following:

- [President Obama did not assert executive privilege](#) over a single document.
- Even the small number of records on which President Clinton asserted statutory restrictions against public release were [provided to the Senate Judiciary Committee](#) on a “Committee Confidential” basis.
- Only 1,600 pages of records—less than 1% of the total number of pages of records—were withheld, and [only on personal privacy grounds](#).

There is no reason that the Committee should undertake a different process for considering Judge Kavanaugh’s nomination than it undertook for Justice Kagan’s. While Justice Kagan was a pending Supreme Court nominee, then-Ranking Member Jeff Sessions noted that the Committee had special authority to obtain records from presidential libraries. On May 24, 2010, Senator Sessions [spoke extensively](#) about the document requests that had been submitted to the Clinton Library and noted that “[t]he restrictions that apply to run-of-the-mill Freedom of Information Act requests do not apply when the Committee requests document[s]” and that “under the Presidential Records Act, President Clinton would normally be able to block the release of certain documents for up to 12 years. But under the PRA, the Committee’s request overrides any attempt by President Clinton to block the release of these records. Faced with a Committee request, the only basis for withholding documents is executive privilege, and President Obama has apparently decided not to do that.” To be clear: no records were withheld from the Senate Judiciary Committee on the basis of executive privilege by President Obama or statutory restrictions asserted by President Clinton.

The Senate should require similar disclosure for Judge Kavanaugh.

Fix the Court, a nonpartisan watchdog group, filed Freedom of Information Act requests last year, seeking Kavanaugh's records from the George W. Bush Presidential Library and Museum. The Library identified [approximately 429,870 pages and 667,824 electronic files of potentially responsive records.](#)

We agree with Senator Sessions' statement from May 24, 2010, that "[t]he public record of a nominee to such a lifetime position as Justice on the Supreme Court is of such importance that we cannot go forward without these documents."

Chairman Grassley, you [echoed](#) Senator Sessions' concerns on June 15, 2010, and said that "[i]n order for the Senate to fulfill its constitutional responsibility of advise and consent, we must get all of her documents from the Clinton Library and have enough time to analyze them so we can determine whether she should be a Justice." The Senate's constitutional responsibility remains the same today.

While some of the undersigned organizations believe that further conditions must be met before Judge Kavanaugh's nomination is considered by the Senate, all of us agree that **Judge Kavanaugh's hearing must not be scheduled until the Senate has seen every single record it is entitled to see.**

Sincerely,

Action NC	Change Begins With Me (Indivisible San Diego District 52)
Advocates for Youth	CHOICES. Memphis Center for Reproductive Health
Alliance for Justice	Citizen Action of the Hudson Valley (NY)
American Association of University Women	Citizen Action/Illinois
American Civil Liberties Union	Communications Workers of America (CWA)
American Constitution Society	Connecticut Citizen Action Group
American Federation of State, County and Municipal Employees (AFSCME)	Constitutional Accountability Center
American Federation of Teachers	CREDO Action
Americans for Democratic Action (ADA)	Daily Kos
Americans United for Separation of Church & State	Demand Justice
Asian Pacific American Labor Alliance (APALA)	End Citizens United
Autistic Self Advocacy Network	Equal Rights Advocates
Battle Born Progress (NV)	Equality California
Bend the Arc Jewish Action	Every Voice
Blue Future	Faith in Indiana
Center for American Progress	Faith in Public Life
Center for Biological Diversity	Family Equality Council
Center for Reproductive Rights	Freedom for All Americans
	Gender Justice

Generation Progress
Health Care for America Now
Healthy and Free Tennessee
Herd on the Hill
Human Rights Campaign
Human Rights Watch
Indivisible Acton (MA)
Indivisible CA-33
Indivisible Carbondale (IL)
Indivisible Elk Grove Township (IL)
Indivisible Evanston (IL)
Indivisible Illinois
Indivisible Metro East (IL)
Indivisible Norman (OK)
Indivisible South Suburban Chicago
Indivisible Western Springs (IL)
Iowa Citizen Action Network
Iowa Main Street Alliance
Jobs With Justice
Joint Action Committee
Lambda Legal
League of Conservation Voters
Maine Women's Lobby
Mainers for Accountable Leadership
MomsRising
Muslim Advocates
NARAL Pro-Choice America
National Action Network
National Center for Lesbian Rights
National Center for Transgender Equality
National Council of Jewish Women
National Education Association
National Employment Law Project
National Employment Lawyers Association
National Equality Action Team (NEAT)
National Health Law Program

National Institute for Reproductive Health (NIRH)
National Partnership for Women & Families
National Resources Defense Council
National Women's Law Center
New Jersey Citizen Action
Organize Florida
Orinda Progressive Action Alliance (CA)
People For the American Way
Postcards for America – MN
Progress Iowa
Progress Virginia
Progressive Change Campaign Committee
Progressive Indivisible Berwyn (IL)
Progressive Turnout Project
ProgressOhio
Protect Our Care
Service Employees International Union (SEIU)
Sierra Club
Stand Up America
States United to Prevent Gun Violence
Strong Economy For All Coalition (NY)
The Leadership Conference on Civil and Human Rights
The Washington Bar Association Young Lawyers Division
TIME'S UP
Toledoans United for Social Change (OH)
United Vision for Idaho
Universal Health Care Action Network
Violence Policy Center
Voices for Progress
Working America North Carolina
WV Citizen Action Group