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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

KOLAN L. DAVIS, *Chief Counsel and Staff Director*
JENNIFER DUCK, *Democratic Chief Counsel and Staff Director*

July 25, 2018

The Honorable Chuck Schumer
Minority Leader
322 Hart Senate Office Building
Washington, D.C. 20510

Dear Minority Leader Schumer:

I write in response to your letter from yesterday urging me to request all documents pertaining to Judge Kavanaugh's service in the White House from 2001 to 2006. I want you to know I appreciate your kind words regarding my commitment to transparency and openness throughout my career. You will be pleased to know that I anticipate Judge Kavanaugh's confirmation will be the most transparent in history and will involve the largest disclosure of White House records of any Supreme Court nomination ever before. I expect we could receive up to one million pages of documents from Judge Kavanaugh's service in the White House Counsel's Office. This is in addition to the thousands of pages of Judge Kavanaugh's most relevant records—those that evidence his legal thinking and qualifications—that are publicly available right now, which I discuss in more detail below. The Senate will receive more White House records for Judge Kavanaugh than it did for the previous five Supreme Court nominees combined. I'm proud to serve as Chairman of the Senate Judiciary Committee during this moment of unprecedented transparency.

You urge me to also request all documents pertaining to Judge Kavanaugh's tenure as White House Staff Secretary. Although your letter contains your position as to the importance of the Staff Secretary position, it does not explain how these records will provide senators any meaningful insight into Judge Kavanaugh's legal thinking in light of the fact that Judge Kavanaugh has served as a federal appellate judge for more than twelve years on the D.C. Circuit. During that time, he has written more than 300 opinions and joined hundreds more, weighing in on some of today's most significant legal issues. These materials are by far the most relevant to evaluating Judge Kavanaugh's fitness for the bench.

It is true that I asked to see Justice Kagan's relevant, law-related White House records when she was nominated in 2010. And, for a very good reason, that request does not apply here. Justice Kagan had never served as a judge before. Her White House records from the White House Counsel's Office and from her legal-policy role in the Domestic Policy Council were some of the few sources that could provide senators with some insight into her legal thinking. By contrast, Judge Kavanaugh's extensive writing on the D.C. Circuit affords the Senate a clear picture of how he approaches legal issues as a federal judge. Justice Kagan simply did not have a comparable judicial record—*any* judicial record, in fact. Therefore, senators had a more compelling need for

relevant White House documents. Comparing Judge Kavanaugh's nomination to Justice Kagan's is like comparing apples and oranges.

Despite the fact that Judge Kavanaugh's White House records are less useful to the Senate's consideration of his nomination, given his twelve years of judicial service, I nevertheless anticipate that we will receive a substantially larger volume of White House documents than we did in connection with Justice Kagan's nomination. I expect to receive up to one million pages of White House records from the George W. Bush Presidential Library. By comparison, we received only about 170,000 pages related to Justice Kagan's White House tenure. We will also receive documents from Judge Kavanaugh's time in the Office of the Independent Counsel and the White House's file for his nomination to the D.C. Circuit. And, of course, the Senate has already received 6,168 pages of records from Judge Kavanaugh's Senate Judiciary Committee Questionnaire—the broadest questionnaire ever required of a Supreme Court nominee.

Of all the records you are demanding, documents from Judge Kavanaugh's time as Staff Secretary are the least probative of Judge Kavanaugh's legal thinking and the most sensitive to the Executive Branch. As your letter describes, the Staff Secretary is an extremely important position, controlling the flow of paper in and out of the Oval Office. The papers that pass through the office run the gamut from daily news clippings to memos addressing the day's most pressing national security issues. The Staff Secretary's primary charge is not to provide his own substantive work product. Rather, it is to make sure that the President sees memos and policy papers produced elsewhere in the Executive Branch. As you can imagine, many of the documents that pass through the Staff Secretary's office contain some of the most sensitive information and advice going directly to, and directives coming from, the President. At the end of the day, I am not aware of any precedent whereby the Senate asked for and received essentially all Staff Secretary documents in connection with a nomination.

Justice Kagan's nomination, however, supports my contention that it would be inappropriate to ask for all the Staff Secretary documents. Senators on both sides declined to ask for documents from the Office of the Solicitor General during Justice Kagan's time there, even though those records would have been substantially more probative of her views on the law than documents from Judge Kavanaugh's service as Staff Secretary. Senators recognized the importance of confidentiality to the continued candor and effectiveness of internal deliberations in the office. This was so despite Justice Kagan's own statement that senators should look at her tenure as Solicitor General as indicative of the kind of justice she would be and despite the comparative paucity of other documents probative of her legal thinking. As I noted above, the Senate has access to substantially more documents indicative of Judge Kavanaugh's legal thinking. There is no reason to ask for a massive volume of additional documents that is unlikely to shed additional light on his legal thinking while compromising the most sensitive internal White House communications.

Finally, I am skeptical that your request for Staff Secretary documents is made in good faith. After all, you stated that you will oppose Judge Kavanaugh's confirmation "with everything [you've] got." Just yesterday, another Democratic senator made the galling comment that supporters of Judge Kavanaugh's nomination are "complicit" in "evil." If most Democrats have already made up their minds about Judge Kavanaugh, given the considerable record already available for review,

I fail to see how additional documents will be useful. On top of this, you have refused to meet with Judge Kavanaugh. This refusal is highly irregular. In light of the outright opposition to Judge Kavanaugh from Democratic leadership and many members of your caucus, it is clear to me that your demand for millions of additional pages of comparatively irrelevant documents is an attempt to obstruct the confirmation process.

I am committed to maintaining a process that is both transparent and efficient. Senators already have access to a wide range of the most relevant materials to assess Judge Kavanaugh's qualifications for the Supreme Court. And they will get hundreds of thousands of more pages of emails and other records from Judge Kavanaugh's service in the White House Counsel's Office and the Office of the Independent Counsel. But, as I have made clear, I'm not going to put American taxpayers on the hook for the Democrats' fishing expedition, especially when many on your side have already said that they will oppose Judge Kavanaugh's confirmation.

Sincerely,

A handwritten signature in blue ink that reads "Chuck Grassley". The signature is written in a cursive, flowing style.

Charles E. Grassley
Chairman