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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*

August 24, 2018

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Hon. Benjamin L. Cardin  
Hon. Bernard Sanders  
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Hon. Kirsten Gillibrand  
Hon. Cory A. Booker  
Hon. Edward J. Markey  
Hon. Tammy Duckworth  
Hon. Chris Van Hollen  
Committee on Environment & Public Works  
United States Senate  
Washington, DC 20510

Dear Colleagues:

I received your August 24, 2018, letter regarding the documents we have received in connection with Judge Kavanaugh's nomination to the Supreme Court. I write to respond to some of your assertions regarding the confirmation process.

You ask for me to provide copies of all of Judge Kavanaugh's White House documents under my control related to the environment. I assume that you are asking for documents that the Senate Judiciary Committee has received on a Committee Confidential basis and not the more than 202,000 pages already released to the public. This is common practice during Supreme Court confirmations. When we received documents during the nominations of Justices Kagan and Gorsuch containing material restricted by the Presidential Records Act (PRA) or exempted from public disclosure by the Freedom of Information Act (FOIA), we agreed to keep them on a Committee Confidential basis. Then-Chairman Leahy explained that he did so in 2010 "to permit the committee prompt access to them."

I am following that precedent here. In order to permit the Committee to begin reviewing Judge Kavanaugh's record as quickly as possible, President Bush's representatives have been producing to the Committee documents that contain PRA-restricted and FOIA-exempted material—including sensitive, confidential advice given to the President as well as personal privacy information like Social Security numbers and bank account numbers. I have agreed to receive these documents on a Committee Confidential basis in order to prevent the public exposure of this information. My doing so has given the Committee access to more than 430,000 pages of records since the Committee first requested records on July 27—an unprecedented pace of production.

But these documents do not remain Committee Confidential forever. While the Committee begins its review of the documents, President Bush's representatives undertake a second review to identify PRA-restricted and FOIA-exempted material. If the documents do not contain such material, we quickly release the documents to the public. We thus end up in exactly the same place as we did with Justices Kagan and Gorsuch: Material restricted by the PRA or FOIA is held Committee Confidential, while non-restricted material is released to the public. To date, President Bush's representatives have authorized the release of more than 202,000 pages of White House records, in addition to the more than 20,000 pages of records from the Office of the Independent Counsel released to the public from the National Archives and Records Administration (NARA). I expect more public releases of White House documents in the coming days.

I have repeatedly stated that, consistent with Rule 26.10a of the Standing Rules of the Senate, I am happy to provide any Member of the Senate with access to every Committee Confidential document we have received to date. Any Member who wishes to access those documents need only contact my staffer at [Andrew.Ferguson@judiciary-rep.senate.gov](mailto:Andrew.Ferguson@judiciary-rep.senate.gov) to schedule a time to access those documents in the Committee front office. My staff is available anytime (24/7). I have computer terminals set up and the documents are searchable. My staff can help you run searches. You are welcome to take notes.

Your letter also asks that I provide copies of records from Judge Kavanaugh's time in the White House Counsel's Office related to the environment that we have received or have not yet been produced. I have requested *all* of Judge Kavanaugh's White House Counsel records. In fact, we have received more than 400,000 pages of them. As I mentioned, these are available for you to access at any time, and my staff can help you run searches.

Your letter expresses concern that I did not request documents from Judge Kavanaugh's time as White House Staff Secretary. But, as I've explained in numerous public statements, I did not request these documents, because they are the least revelatory of his views on the law and the most sensitive to the Executive Branch. For one thing, the primary responsibility of the Staff Secretary is to serve as the President's inbox and outbox by coordinating the flow of papers to and from the Oval Office. He is responsible for making sure that policy advice from *other* advisors is presented to the President. It's an important position, to be sure, but not one particularly revelatory of Judge Kavanaugh's legal thinking.

Judge Kavanaugh's Staff Secretary documents are minimally probative of his judicial philosophy in light of the substantial amount of more relevant materials already available to senators. I encourage you to read the 307 judicial opinions that Judge Kavanaugh authored and the hundreds more he joined during his twelve years of service on the D.C. Circuit, the second highest court in the country. These amount to more than 10,000 pages of judicial writings publicly available right now. As Senator Schumer said in 2009 during Justice Sotomayor's confirmation hearing, a nominee's "record on the bench . . . is the best way to evaluate a nominee." Your letter, which recites your interpretation of Judge Kavanaugh's extensive judicial record, underscores that Judge Kavanaugh's judicial opinions are the most revelatory component of his record.

Moreover, I encourage you to read the more than 17,000 pages of speeches, articles, and other materials that Judge Kavanaugh submitted with his 120-page written response to the most robust Senate Judiciary Committee Questionnaire ever issued to a Supreme Court nominee. These materials are publicly available right now on the Senate Judiciary Committee's website. So are many letters supporting Judge Kavanaugh's confirmation, including from his former law clerks, law students, classmates, and colleagues, along with parents of the Catholic Youth Association athletes he coaches, state governors, state attorneys general, state representatives, an association representing 17,000 African-American farmers, and many others who know Judge Kavanaugh. The Committee's website also includes more than 202,000 pages of emails and other records from Judge Kavanaugh's legal service in the White House Counsel's Office and the Office of the Independent Counsel. I have instructed my staff to make available to any senator, any time (24/7), the remaining approximately 228,000 pages of currently non-public records produced to the Committee.

In 2010, we did not request internal documents from Justice Kagan's time as Solicitor General because of their sensitivity to the Justice Department, even though they would have been the most revelatory of her views on the law in light of her lack of a judicial record. Her time as Solicitor General was certainly a "formative" one. Indeed, Justice Kagan testified that senators should look to her time as Solicitor General to evaluate what kind of justice she would be. Nevertheless, Democratic and Republican senators agreed not ask for them. Documents from the Staff Secretary's office are even more sensitive, because they contain advice that went directly to the President. This advice is at the heart of executive privilege. I see no reason to depart from the precedent we established during Justice Kagan's nomination by seeking even more sensitive records from Judge Kavanaugh's non-lawyer work in the White House when we have hundreds of thousands of pages of more relevant material available to assess Judge Kavanaugh.

Even though I believe that these documents are irrelevant to Judge Kavanaugh's nomination, I worked hard to find a way to obtain Staff Secretary documents that my Democratic colleagues believed were most important. Specifically, my staff offered to use targeted search terms to help the Minority get the Staff Secretary documents that were of the greatest interest to them. Indeed, those terms could very well have been used to obtain documents on the environmental topics you mention in your letter. But the Ranking Member's staff refused our offer of search terms, demanding the search of *every* email and *every* scrap of paper from *every* one of the hundreds of White House aides who came and went for the *entire* eight years of the George W. Bush presidency. They refused to move from this unreasonable and unprecedented position during the course of negotiations. I would not accede to this unreasonable demand, the hardly veiled purpose of which was to delay Judge Kavanaugh's confirmation. As I have said repeatedly, I will not put American taxpayers on the hook for Senate Democrats' fishing expedition.

Finally, I note that most of the Democratic members of the Environment & Public Works Committee have already announced their opposition to Judge Kavanaugh's confirmation. Some announced their opposition before the President nominated him and well before I announced the range of White House documents I would request. The insistence on obtaining Staff Secretary documents before voting on Judge Kavanaugh's confirmation appears to be a tactic to delay his confirmation rather than a good-faith request in furtherance of evaluating Judge Kavanaugh's qualifications with an open mind.



I am committed to overseeing the most open and transparent confirmation process in the history of the Senate. We have received more materials indicative of Judge Kavanaugh's fitness for the Supreme Court than we have received in connection with any previous Supreme Court nominee. I am confident senators have more than enough information to make an informed judgment on Judge Kavanaugh's confirmation.

Sincerely,

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

Chuck Grassley  
Chairman