United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510–6275

August 27, 2018

The Honorable Dianne Feinstein, Ranking Member
The Honorable Patrick J. Leahy
The Honorable Richard J. Durbin
The Honorable Sheldon Whitehouse
The Honorable Amy Klobuchar
The Honorable Christopher A. Coons
The Honorable Richard Blumenthal
The Honorable Mazie K. Hirono
The Honorable Cory A. Booker
The Honorable Kamala D. Harris
United States Senate Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Colleagues:

I received your letter dated August 24, 2018, requesting a special meeting of our Committee pursuant to Rule XXVI(3) of the Standing Rules of the Senate to discuss "the process being used to consider this nomination and requests for relevant documents." You also demand that I "postpone the hearing on [Judge] Brett M. Kavanaugh to ensure that we have adequate information and time to evaluate his record." I write to address both requests.

A special meeting is unnecessary. Rule XXVI(3) provides that "[e]ach standing committee … shall fix regular weekly, biweekly, or monthly meeting days for the transaction of business before the committee." Our Committee has "fixed regular weekly … meeting days for the transaction of business before the committee." Those meetings take place every Thursday at 10:00am. Indeed, we have had four meetings in the six weeks we have been in session since the President announced Judge Kavanaugh's nomination on July 9, and two meetings since I made my document request on July 27. Each Member had ample opportunity to air any concerns at those meetings. But Minority attendance has been sparse, to put it mildly. Indeed, in our two markups since July 27, only handful of Minority Members have even bothered to discuss this matter. These matters were nevertheless discussed and explained in great detail at these meetings. Consequently, I'm not going to convene an additional special meeting to discuss an issue that has been live for nearly a month when most members of the Minority have not availed themselves of the opportunity to discuss the matter at our regularly scheduled meetings.

We should instead be focusing on reviewing the voluminous record we already have. The Senate Judiciary Committee has received the most Executive Branch records for any Supreme Court

nominee ever—more than 430,000 pages. The public also has access to more records than for any other Supreme Court nominee ever—more than 202,000 pages. Of course, we also have Judge Kavanaugh's 12-year judicial record, during which he authored 307 opinions and joined hundreds more. Judge Kavanaugh's more than 10,000 pages of these judicial writing are available to the public right now. Then-Chairman Leahy emphasized during Justice Sotomayor's confirmation process that a Supreme Court nominee's judicial record is "the best indication of [a nominee's] judicial philosophy." I see no reason why that would be true in 2009, but not now. We also have 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 Questionnaire ever submitted to a Supreme Court nominee. We have everything we need to make an informed judgment about Judge Kavanaugh's fitness for the Supreme Court.

Unfortunately, some Minority members continue to suggest that this review is somehow tainted by Bill Burck's involvement in the document review. As I have explained repeatedly for weeks, Mr. Burck is President Bush's Presidential Records Act (PRA) representative. The PRA entitles the former president and his representatives to review documents from his administration before the Senate can access them. During Justice Kagan's nomination, for example, Bruce Lindsey oversaw President Clinton's review of documents before they reached the Senate. Mr. Lindsey was the hyper-partisan lawyer who served as President Clinton's national campaign director, his White House "fixer," and longtime CEO of the Clinton Foundation. A lawyer with deep ties to Democratic politics, Leslie Kiernan, reviewed documents in connection with Justice Sotomayor's nomination in 2009 before the Senate received them. Mr. Burck has comparatively fewer connections to partisan politics than these two individuals. Indeed, he is a well-respected partner at one of America's most liberal law firms, Quinn Emanuel Urquhart & Sullivan. And I do not recall complaints about Mr. Burck's involvement in the review of White House documents last year during Justice Gorsuch's confirmation process.

You also claim that the National Archives "has played no role in the processing or production of these documents to the Committee." Again, this is untrue. I sent a formal request under § 2205 of the PRA—one that the Ranking Member flatly refused to join—asking for all of Judge Kavanaugh's records from his service in the White House Counsel's Office, and I expect the Archives to produce documents in response to that request. Moreover, I have asked the Archives to prioritize its review by first examining every document withheld from the Committee by President Bush as a non-responsive "personal record" under 44 U.S.C. § 2201(3), and to produce any responsive documents within that set to the Committee by August 31. The Archives' review will ensure that the Committee will receive every non-privileged Presidential record I requested.

Your letter also requests that, in light of the legal issues confronting some of the President's former associates, I delay the hearing. As I explained at our weekly markup meeting on August 23, I'm not going to delay Judge Kavanaugh's hearing. The Constitution gives the President the power to nominate Supreme Court Justices and does not limit that power because of legal proceedings involving other people—or even the President himself.

Your argument not only lacks any legal foundation, it also lacks any historical basis. In fact, there's overwhelming precedent pointing the other way. When President Clinton nominated Justice Ginsburg to the Court in 1993, the federal government's investigation into the President

Clinton's involvement with the Whitewater transactions was already underway. But the Senate confirmed her 96-3. I don't recall anyone questioning Justice Ginsburg's nomination because of Whitewater. And when President Clinton nominated Justice Breyer to the Court in 1994, Independent Counsel Robert Fiske had subpoenaed President Clinton's records as part of the Whitewater grand-jury investigation. We nevertheless confirmed Justice Breyer by a vote of 87-9. And between June 1993 and February 1999—a period during which all can agree President Clinton "face[d] significant legal jeopardy"—the Senate confirmed 248 district judges and 50 circuit judges, including three of Judge Kavanaugh's D.C. Circuit colleagues. That is all to say that your argument in favor of delaying the hearing because of the legal troubles of the President's former associates is unsupported by law or history.

Nor can anyone claim that I am "rushing" to confirm Judge Kavanaugh. When we convene the hearing on September 4, fifty-seven days will have passed since the President announced his nomination. That's a longer period than for any of the three previous Supreme Court nominees who received confirmation hearings.

I am committed to overseeing the most open and transparent confirmation process in the history of the Senate. We have received more materials revelatory 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,

Chuck Grassley

Chuck Grassley
Chairman