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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 31, 2018

The Honorable George W. Bush
43rd President of the United States
Office of George W. Bush
P.O. Box 259000
Dallas, TX 75225

Dear President Bush:

I write today to thank you and the George W. Bush Presidential Library and Museum for your tremendous support in ensuring that the United States Senate Committee on the Judiciary receives up to an estimated one million pages of records related to Judge Kavanaugh's legal service in the White House Counsel's Office during your presidency, along with the records related to your nomination of Judge Kavanaugh to the D.C. Circuit in 2006. Your expedited review of an unprecedented number of records is an incredible service to the American people. It will help to ensure that we have the most transparent and robust review of any Supreme Court nominee in our country's history. It will also significantly shorten to weeks, instead of years, the time required to publicly disclose these presidential records under the Freedom of Information Act (FOIA) and the Presidential Records Act (PRA).

Notwithstanding your performance of this public service, the Senate Minority Leader sent you a letter dated July 26, 2018, simultaneously asking you to release all of the records from Judge Kavanaugh's service in your Administration and objecting to the manner in which you are reviewing the records. In case you have forgotten the partisan ways of our nation's capital, the Senate Minority Leader's letter should remind you that no good deed ever goes unpunished in Washington. Please permit me the opportunity clear up the facts and the law.

The Minority Leader is not a member of this Committee. And, as his letter demonstrates, he appears to be unaware of how my Committee intends to obtain presidential records relating to Judge Kavanaugh's service in your Administration. One would expect, therefore, that the Minority Leader would hesitate before inserting himself into the Committee's affairs. This letter is merely one example of the Minority Leader's ongoing and unprecedented partisan interference in Committee business.

The letter is, unfortunately, not even the worst example. I have learned that, on July 30, the Minority Leader called the Archivist of the United States—an official appointed by President Obama—and attempted to pressure him “to do the right thing” with regard to the documents issue. I was disappointed to learn that the Minority Leader would stoop to pressuring the caretaker of the nation’s most important documents to handle requests for records in a particular way. And I am also disappointed that my Democratic colleagues on the Committee are tolerating the Minority Leader’s behavior.

The Minority Leader falsely accuses me of “declin[ing] to sign a bipartisan request for Judge Kavanaugh’s complete record.” I have offered repeatedly to sign a bipartisan request for records. After days of negotiations between our staffs, the Ranking Member and I agreed that the Committee should obtain records from Judge Kavanaugh’s time in the White House Counsel’s Office. But, incredibly, she declined to join a request for those records unless I acceded to the minority’s demands for millions and millions of pages of additional, irrelevant records. Indeed, the Ranking Member demanded a page-by-page search of every one of the millions and millions of pages of emails and other records of every one of the hundreds of White House staffers who worked for you during Judge Kavanaugh’s more-than-five years of White House service—merely to find documents mentioning Judge Kavanaugh. These demands were unprecedented, unreasonable, and were obviously intended to delay the confirmation process for many months. Any federal judge who follows the law would toss attorneys out of the courtroom if they made such an unreasonable document demand. Accordingly, on July 27, 2018, I sent to the director of your library—appointed to that post by the Archivist of the United States last year—a request for records from Judge Kavanaugh’s time in the White House Counsel’s Office, along with the records related to your nomination of Judge Kavanaugh to the D.C. Circuit in 2006. This request, made pursuant to the PRA, 44 U.S.C. § 2205(2)(C), is the same type of request the Committee made during the confirmations of Justices Kagan and Gorsuch.

Clearly losing on the substantive argument, the Minority Leader has resorted to personally attacking Mr. Bill Burck, your attorney and your designated PRA representative since 2009. As you know, Mr. Burck is a leading partner at one of America’s most respected, and most liberal, law firms. And I’m told that he has insisted that no lawyer be selected to participate in the review on the basis of his or her party affiliation or political ideology. Moreover, Mr. Burck has taken the time to meet personally with the Ranking Member’s staff and answer all of their questions about the document-review process. He has been the consummate professional and contributed considerably to our efforts. It is disappointing that the Senate Minority Leader wants to take political cheap shots at Mr. Burck, but that says more about the Minority Leader than Mr. Burck.

The Minority Leader said during a press conference today that your review “wouldn’t be so bad if we also got a full set of documents from the Archives.” I’m glad to hear him say that because that is precisely what I expect to happen. You have offered to give us access to copies of the documents we requested from the Archivist so that we on the Committee can quickly begin our review of Judge Kavanaugh’s record while the Archives works through our document request.

Finally, I must address the Minority Leader’s request itself. First, his request is reckless. He has asked you to make public “the complete record of Judge Kavanaugh’s service in the White House . . . including his years as Staff Secretary.” Because of the Staff Secretary’s role, however, Judge

Kavanaugh's records surely will include highly sensitive information and analysis sent to you from throughout the Executive Branch, including information relating to the security of our nation. This is precisely the sort of information that *should not* be made public, and it is precisely why we have a statute and regulations which ensure that you and the incumbent President have the opportunity to review documents before they are released.

Second, I do not think that the Minority Leader has made his request in good faith. He has already committed to opposing Judge Kavanaugh's nomination "with everything [he's] got." Many members of his caucus have similarly announced their opposition to Judge Kavanaugh's nomination. One member said that those who support Judge Kavanaugh's nomination are "complicit in evil." With so many of his members having already decided to vote against Judge Kavanaugh's confirmation, I fail to see how any document—including the ones I formally requested on July 27—would be even remotely useful to the Minority Leader. I can conclude only that the Minority Leader's request is a bad-faith attempt to delay the confirmation process. I encourage you to ignore it.

The Minority Leader's request is also ironic. On July 27, the Ranking Member of the Committee wrote to the Archivist of the United States to insist that it would be improper for you to share your documents with the Committee. I cannot square that argument with the Minority Leader's request that you share your documents not just with the Committee, but with the whole world.

This will be my fifteenth Supreme Court confirmation hearing and, even in the face of Democratic obstruction, I believe that this confirmation process will rank among the fairest and most transparent. We already have ample material—307 opinions written by Judge Kavanaugh, hundreds more that he has joined, and more than 6,000 pages of material responding to the Committee questionnaire—to assess Judge Kavanaugh's qualifications and views on the law. And I expect the Committee's records request will yield up to one million additional pages. We will have all that we need to perform our constitutional duty to advise and consent.

Sincerely,



Chuck Grassley
Chairman

CC:

The Honorable Charles E. Schumer
Minority Leader
United States Senate
322 Hart Senate Office Building
Washington, D.C. 20510