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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 22, 2018

The Honorable Sheldon Whitehouse  
Member, United States Senate Committee on the Judiciary  
530 Hart Senate Office Building  
Washington, DC 20510

Dear Senator ~~Whitehouse~~ *Whitehouse*:

I write in response to your letter dated August 20, 2018, requesting that I make publicly available all documents received from the Executive Branch in connection with Judge Kavanaugh's Supreme Court nomination that relate to an association between Judge Kavanaugh and Leonard Leo and/or the Federalist Society.

As you know, during the nominations of Justices Kagan and Gorsuch, the Committee received on a Committee Confidential basis documents containing material restricted from public access by the Presidential Records Act (PRA) and Freedom of Information Act (FOIA). Then-Chairman Leahy explained that he agreed to receive documents on a Committee Confidential basis "to permit the Committee prompt access to them." I have done the same thing here. In order to facilitate the Committee's review of Judge Kavanaugh's record, I agreed to receive documents on a Committee Confidential basis. Keeping these documents initially confidential prevents the public release of PRA-restricted and FOIA-exempt material—including sensitive, confidential advice given to the President as well as personal privacy information like Social Security numbers and bank account numbers.

But the documents do not remain confidential forever. While the Committee begins its review of the documents, President Bush's representatives undertake a second review to identify PRA-restricted material. If the documents do not contain material which the PRA shields from public access, 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 four public releases of Judge Kavanaugh's White House Counsel records, totaling more than 157,000 pages. I expect more public releases this week, and I expect the final public release around Monday, August 27.

During Justice Gorsuch's confirmation, I worked closely with my Democratic colleagues to assist them in asking the Administration to waive the PRA restrictions and FOIA exemptions on a reasonable number of Committee Confidential documents that those colleagues intended to use at

the confirmation hearing. During last week's markup, Senator Feinstein asked me to do the same thing this year.

As I did last year, I stand ready to work with President Trump and President Bush to request that they waive the PRA restrictions and FOIA exemptions for a reasonable number of documents that individual Members intend specifically to use at the confirmation hearing.

Accordingly, I invite all Members of the Committee to submit to me, by noon on August 28, a list of document-control numbers specifically identifying the Committee Confidential documents (or documents publicly released with redactions) that the Member wishes to use at the hearing. So long as the request is reasonable, I will ask President Trump and President Bush on that day to review those documents and agree to waive any applicable PRA restrictions and FOIA exemptions so that Members may use the documents during the public sessions of the confirmation hearing.

Although Members are welcome to submit their lists before August 28, I will not formally request that President Trump and President Bush waive applicable restrictions until August 28. As I have explained, I expect additional documents to be made public on a rolling basis through August 27. I do not want to overburden either President with requests for public release of documents they may be planning to release anyway.

Each Member's request must be reasonable both in size and scope. I will not ask for the release of dozens of documents on the eve of the hearing. I will not request the release of categories of documents. I will ask for the release of specifically identified documents that a Member could reasonably use during the hearing itself. Nor will I request the release of any document for any purpose other than for use at the hearing, where our only task will be to assess Judge Kavanaugh's views on the law and fitness for judicial office.

Your request—for documents that relate to an association between Judge Kavanaugh and Leonard Leo and/or the Federalist Society—is unreasonable in its present form. Please supply me with a reasonable number of specific document-control numbers that you intend to use at the hearing. It is not my or the Majority staff's responsibility to conduct your document review. The Minority staff is well-equipped to search for the documents you describe in order to identify with specificity those you intend to use at the hearing.

Your letter demonstrates some misapprehensions of the process for receiving documents as Committee Confidential. First, there has been Committee action to designate documents Committee Confidential as well as make them publicly available. I agreed to receive documents as Committee Confidential until it could be ascertained whether the produced documents contain PRA-restricted or FOIA-exempted materials. The Chairman acts on behalf of the Committee in these matters in the absence of a contrary vote of the majority of members—just as Chairman Leahy did in 2010. In my judgment, expediting the Committee's receipt of Judge Kavanaugh's documents promotes transparency and allows Members—Democrat and Republican—to begin vetting Judge Kavanaugh as quickly as possible.

Second, as I explained, I expect President Trump and President Bush will agree to waive PRA restrictions and FOIA exemptions on a reasonable number of documents before Judge

Kavanaugh's hearing begins on September 4. As in the past, this process will be completed before the hearing begins—not late October, as you mistakenly assert.

As I've said in numerous public statements, I'm committed to overseeing the most thorough and transparent confirmation process in history. Among Judge Kavanaugh's records available for the Committee's review are the 307 opinions he wrote during his twelve years on the D.C. Circuit, plus the hundreds more he joined. Judge Kavanaugh also submitted more than 17,000 pages in connection with his Committee questionnaire. And the Committee has received more than 430,000 pages of documents from Judge Kavanaugh's time in the Executive Branch—the most ever received for a Supreme Court nomination.

I look forward to continuing to work with you as we prepare to hear from Judge Kavanaugh at his confirmation hearing the week of September 4.

Sincerely,

A handwritten signature in blue ink that reads "Chuck Grassley". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Chuck Grassley  
Chairman