

**Written Testimony of Paul D. Clement, former Solicitor General of  
the United States, in Support of the Confirmation of  
Judge Brett M. Kavanaugh to be an Associate Justice of the  
Supreme Court of the United States**

Chairman Grassley, Ranking Member Feinstein, and members of the Committee. It is a great pleasure and honor to return to the Senate Judiciary Committee where I served as a staffer two decades ago. It is an even greater pleasure and honor to be here to testify in support of the confirmation of Judge Brett M. Kavanaugh of the United States Court of Appeals for the District of Columbia Circuit to serve as an Associate Justice of the Supreme Court of the United States.

Judge Kavanaugh and I first met 25 years ago when we clerked at the Supreme Court during the same Term for different Justices. Although the law clerks were an impressive bunch, Brett immediately stood out. Unlike most of the rest of us whose legal experience consisted of a single appellate clerkship, Brett came to his Supreme Court clerkship with the equivalent of three clerkships already under his belt. He had not only clerked on the Third and Ninth Circuits, but he also had served

as a Bristow Fellow in the Office of the Solicitor General, where he spent a year following the Court closely and working on briefs in opposition and other Supreme Court filings. As a result, while the rest of us were feeling our way, rather blindly, through the process of preparing our first pool memos and sorting through our first briefs, Brett was already fully versed in the Court's certiorari criteria, rules, and even stood ready to handicap the likely quality of upcoming oral arguments by members of the Supreme Court bar. Brett quickly came to be seen by his fellow clerks as a resource on everything from the minutia of Supreme Court practice to matters of high constitutional doctrine.

But what really stood out about Brett was not just his knowledge of the Court and the law, but the undeniable fact that he was a well-rounded, likable, and unpretentious person. You expect a Supreme Court law clerk to have a first-rate legal mind. You do not necessarily expect a Supreme Court law clerk to have a sweet jump shot. I can tell you from first-hand experience that Brett had – and has – both. He was as comfortable talking about how to break a full-court press as he was discussing the *Rooker-*

*Feldman* doctrine. For all these reasons, Brett was admired by fellow clerks from all chambers and across ideological lines. None of us was the least surprised to see him become the first of our ranks to argue a Supreme Court case and the first to become a federal appellate judge, beating out Justice Gorsuch by a nose.

Judge Kavanaugh and I became friends during our clerkship year and have remained friends ever since. But I am not here testifying today out of friendship. Rather, I am testifying today because of what I have seen in observing Judge Kavanaugh in his over twelve years of service on the federal appellate bench. By happenstance, I was in the courtroom to witness one of Judge Kavanaugh's first oral arguments as an appellate judge. He was incredibly well-prepared. He demonstrated a mastery of the record and asked penetrating questions of both sides. He carefully listened to the arguing attorneys' answers as well as the questions emanating from his more seasoned colleagues.

None of this surprised me, but I was struck by the fact that he was expressing a mastery of the record and a profound interest in the legal arguments in the context of a petition for review

from a decision of the Federal Energy Regulatory Commission or FERC. At least in my days as a law clerk on the D.C. Circuit, FERC cases were not among the most coveted by the law clerks or judges. FERC cases were notoriously complex, with long administrative records filled with strange acronyms and doctrines unknown in other areas of the law. I feared for Judge Kavanaugh that he would be saddled with the assignment of the FERC case while his more senior colleagues authored opinions in higher profile cases addressing more accessible legal questions. While my fears were realized, I am quite sure that Judge Kavanaugh did not mind. As I have seen in the ensuing twelve years, he applies the same thorough approach to every appeal that comes before him without regard to the amount in controversy, the degree of notoriety or the agency involved. He recognizes that each case is the most important case for the clients and lawyers involved and treats each case accordingly.

Judge Kavanaugh's written opinions reflect the same careful attention to detail and thoroughness as his approach to oral argument. His majority opinions reflect a search for consensus and a willingness to address each side's argument. His separate

writings reflect scholarly and thorough assessments of difficult areas of the law. Judge Kavanaugh does not dissent lightly, but when he does dissent he offers a complete and clear explanation for his separate views. And in an unusual number of important cases, his dissenting views later shaped the views of a majority of the Supreme Court. In all of his writings, Judge Kavanaugh gives the reader a plain sense of not just what Judge Kavanaugh has concluded but why. One may disagree with his reasoning, but his clear prose and willingness to “show his work” gives the reader a clear target to criticize or praise.

Let me close with a few words about judicial temperament. That concept has been much discussed in the course of other judicial confirmation hearings, but the topic has received less attention in the course of these particular hearings, because Judge Kavanaugh has so plainly demonstrated the requisite judicial temperament over his years on the Court of Appeals. That said, I believe it is a mistake to think of judicial temperament as a binary characteristic — something a judicial candidate either possesses or lacks. Instead, there are degrees of judicial temperament. And I am here to tell you that based on

my own personal experience arguing in front of Judge Kavanaugh and observing other arguments before him, Judge Kavanaugh has judicial temperament in spades. He is respectful of counsel in both his demeanor and in his level of preparation and engagement. Nothing is more discouraging to litigants and attorneys than a cold or underprepared bench. There is no fear of that with Judge Kavanaugh. He understands that appellate cases are serious business for the parties involved and prepares accordingly. But at the same time he recognizes that they need not be dour affairs. He brings a light and deft touch to his questions and his interactions with counsel and judicial colleagues. I think it is largely for these reasons that I was joined by 40 colleagues in the Supreme Court bar across ideological lines in support of Judge Kavanaugh's confirmation. By any conventional measure, Judge Kavanaugh is enormously qualified to serve on the Nation's highest court. I am confident he will serve with distinction. I urge you to vote for his confirmation.