

United States Senate

WASHINGTON, DC 20510

July 24, 2018

The Honorable Chuck Grassley
Chairman
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Grassley:

I write today to express my concern regarding the planned document request for Judge Kavanaugh. In the nearly two decades I've served with you in the Senate, I've always known you to be fair and to prioritize transparency and openness above all else. That is precisely why I am so troubled by the apparent unwillingness to allow for a full and thorough examination of Judge Kavanaugh's record.

I have heard from some Members of the Majority that Judge Kavanaugh's record as a Judge on the DC Circuit provides all the information Senators need to properly consider his nomination for the Supreme Court. Some have argued that Judge Kavanaugh's record from his time in the White House counsel's office is relevant to his nomination, but his record from his time as Staff Secretary is not. This contention is directly contrary to the Senate's past practice and to the arguments you yourself made about the necessity of reviewing the complete record of previous Supreme Court nominees.¹

The Staff Secretary is one of the most senior officials in the White House. In fact, when he occupied the position, Mr. Kavanaugh was one of only 17 presidential aides to be paid the maximum allowable White House salary. One need look no further than Judge Kavanaugh's own statements to understand why review of his White House Staff Secretary records is so critically important. In 2006, when the Senate was considering Judge Kavanaugh's nomination to the D.C. Circuit, he urged us to look at the entirety of his 16-year career, specifically including his time as Staff Secretary, to determine his fitness to serve as an appellate judge.² In a 2010 speech, Judge Kavanaugh pointed to his three years as Staff Secretary as his most instructive experience for his eventual role as a federal judge.³ He noted that in that role his duties included, among other things, participating in the process of writing and negotiating legislation on issues ranging from terrorism insurance to Medicare prescription drug coverage to immigration reform; drafting and revising Executive Orders; and participating in President Bush's meetings with foreign heads of state. Judge Kavanaugh's belief in the relevance of a judicial nominee's time as Staff Secretary is not limited merely to his own experience. In 2005, then-Staff Secretary

¹ <https://www.gpo.gov/fdsys/pkg/CREC-2010-06-15/pdf/CREC-2010-06-15-pt1-PgS4928.pdf>

² <https://www.gpo.gov/fdsys/pkg/CHRG-109shrg27916/pdf/CHRG-109shrg27916.pdf>

³ [https://www.judiciary.senate.gov/imo/media/doc/Brett%20M.%20Kavanaugh%2012\(d\)%20Attachments.pdf](https://www.judiciary.senate.gov/imo/media/doc/Brett%20M.%20Kavanaugh%2012(d)%20Attachments.pdf)

Kavanaugh argued that then-Supreme Court nominee Harriet Miers' earlier experience as Staff Secretary was an important qualification for her nomination to be a Supreme Court justice.⁴

Many of our colleagues have also stressed the Staff Secretary role as indicative of one's preparedness to serve on the federal bench. In 2006, Sen. Hatch stated that then-nominee Kavanaugh's background as Staff Secretary "may prove to be particularly good judicial training."⁵ Echoing Sen. Hatch's point, Sen. Cornyn described the position of Staff Secretary as "a job whose title belies the very serious and important responsibilities that that individual performs."⁶ Indeed, Sen. Cornyn reiterated that position two weeks ago when, in detailing Judge Kavanaugh's qualifications to be a Supreme Court Justice, he described the Staff Secretary position as "a very, very important job."⁷ Likewise, Majority Leader McConnell, echoing the sentiments of then-Staff Secretary Kavanaugh, pointed to then-Supreme Court nominee Miers' time as Staff Secretary when detailing her fitness to serve on the Court.⁸

In conclusion, there simply is no basis to withhold Judge Kavanaugh's Staff Secretary record from review by the Senate, nor is there any cause to depart from the scope of the bipartisan document request submitted in connection with Justice Kagan's nomination. It has been more than a week since Senator Feinstein sent you the draft request that is substantively identical to the Kagan request. In order for the public to be informed and the Senate to perform its constitutional obligations in relation to the Kavanaugh nomination, I strongly urge you to sign that request as soon as possible.

Sincerely,



Charles E. Schumer
United States Senator

⁴ <https://www.nytimes.com/2005/10/16/politics/politicsspecial1/plenty-of-praise-for-a-nominee-but-few-details.html>

⁵ <https://www.gpo.gov/fdsys/pkg/CREC-2006-05-25/pdf/CREC-2006-05-25-pt1-PgS5191.pdf#page=10>

⁶ <https://www.gpo.gov/fdsys/pkg/CREC-2006-05-25/pdf/CREC-2006-05-25-pt1-PgS5191.pdf#page=6>

⁷ <https://www.gpo.gov/fdsys/pkg/CREC-2018-07-10/pdf/CREC-2018-07-10-pt1-PgS4848-3.pdf>

⁸ <https://www.gpo.gov/fdsys/pkg/CREC-2005-10-04/pdf/CREC-2005-10-04-pt1-PgS10916-2.pdf#page=10>