

April 11, 2019

Dear Members of the House Committees on the Judiciary and Oversight and Reform:

In just three months, your Committees have begun many vital oversight and investigative efforts and already have made significant progress. We write to urge you to turn your focus next to the sham confirmation process for now-Justice Brett Kavanaugh.

Many issues went unresolved during last year's confirmation process, when Senate Republicans jettisoned all procedural norms and abandoned any sense of fairness, and they must be investigated. Serious questions remain about whether Justice Kavanaugh lied to the Senate; whether he sexually assaulted the women who credibly accused him of doing so; whether there are cases on which his impartiality might reasonably be questioned and from which he must be recused; whether he lied about his financial debt and how it was repaid; and whether he is ultimately fit to be a justice on the Supreme Court. The American people deserve answers to these questions and to know why the usual advice and consent process was so badly broken last year.

A full 83 ethics complaints were filed against Justice Kavanaugh last year, and the Judicial Council called many of the allegations "serious," but was unable to investigate them because Supreme Court justices are not subject to the ethics rules. Instead, the Committee on Judicial Conduct and Disability of the Judicial Conference of the United States has forwarded the complaints to Congress. It is now you, and only you, who can bring transparency and accountability to this process.

Senate Republicans manipulated the confirmation process for Justice Kavanaugh at every turn. At the outset, then-Chairman Grassley rejected the Senate Judiciary Committee's precedent set during consideration of Justice Kagan's nomination: a bipartisan request to the National Archives for records from her entire White House service. Instead, Chairman Grassley made a partisan request for records only from Justice Kavanaugh's tenure in the White House Counsel's Office – completely excluding the records from his most senior and significant position, Staff Secretary to the President, and thereby shielding nearly 75% of the 3.85 million pages of relevant records from disclosure.

When the National Archives indicated that it would take months to fulfill even Chairman Grassley's narrower request, he refused to wait for the non-partisan, career professionals to do their job and instead relied solely on former President George W. Bush's political lawyer to produce the records. In doing so, he allowed a partisan lawyer, William Burck – who himself had served as Justice Kavanaugh's deputy in the George W. Bush White House – to decide what to produce, what to redact, and what to withhold altogether. There isn't even a verified record of the scope of what has been hidden, only Burck's admission that he did not provide 205,000 pages because of claims that they were personal records (and therefore not subject to the Presidential Records Act) or "traditionally protected by constitutional privilege" – without actually following the legally required process to assert such privilege. The Presidential Records Act requires that when there is a claim of constitutionally based privilege against disclosure, the House Committee on Oversight and Reform must be notified, but Republicans skirted this provision of the law – and your role in it – by allowing Burck, instead of the National Archives, to produce the documents.

The National Archives itself *did not produce a single page* of records from Justice Kavanaugh's service in the White House. This entire process – from oversight of the National Archives to the political effort to undermine the Senate's constitutional advice and consent responsibility – demands investigation.

It also remains essential that your Committees make a special access request to the National Archives for the full set of Justice Kavanaugh's records, so you can review those records and make them available to the public. Throughout his testimony before the Senate Judiciary Committee in 2004, 2006, and last year, Justice Kavanaugh was less than forthcoming, and the limited White House records that were produced already show he was outright dishonest at times in his responses. Now that he holds a position on our nation's highest court, a position that he may have gained through his dishonesty, this potential perjury must be investigated. Moreover, the public's faith in the independence of the judiciary depends on the impartiality of judges and justices. The full set of Justice Kavanaugh's records are critical to understanding whether he worked on issues, such as marriage equality or abortion, about which his impartiality would reasonably be questioned should those issues be brought before the Court. Justice Kavanaugh's views on presidential powers are especially relevant since he was hand-picked by a president whose criminal liability he could very possibly be asked to consider. The public must be given an opportunity to review the full records from his tenure in the George W. Bush administration to determine when Justice Kavanaugh's impartiality might reasonably be questioned. We therefore urge you to request and thoroughly review Justice Kavanaugh's complete record, including from his tenure in the Office of Independent Counsel Kenneth Starr, in the White House Counsel's Office, and as Staff Secretary to George W. Bush, to determine whether, when, and about what he committed perjury and to assess whether there are issues and cases from which he should be recused.

Last year's confirmation process was, of course, interrupted and delayed after Justice Kavanaugh was credibly accused of sexual assault by two different women. The Republican majority in the Senate initially resisted opening any sort of investigation into the allegations, but eventually relented to calls for an additional hearing and a supplemental FBI background check. However, the hearing raised more questions than it answered, and the supplemental FBI investigation was so limited as to be virtually meaningless.

The White House dictated the terms of the supplemental FBI investigation, limiting the time given to conduct it, exactly which witnesses could be interviewed, and the lines of questioning that could be pursued. Less than one week and ten witnesses later, the FBI produced a report that was not made available to the public but that by all accounts provided no more information than what had already been reported. This sham FBI investigation warrants oversight and investigation, especially into the terms of its limited scope and who determined it.

Furthermore, the hearing at which Dr. Christine Blasey Ford testified was again riddled with potential perjury by Justice Kavanaugh. Given the questions about his truthfulness in prior testimony, these additional instances of potential perjury demand further examination. Even more importantly, given the seriousness of sexual assault, the allegations made against him and his responses to them deserve your Committees' thorough investigation. Accordingly, we urge you to launch a full investigation into those allegations; into the coordinated responses by Republican Senators, the White House, Justice Kavanaugh, and his allies; and into the truthfulness of Justice Kavanaugh's testimony regarding them.

Finally, during the confirmation process, it was revealed that Justice Kavanaugh had reported a sizable personal financial debt in 2016, but that the debt had disappeared by the time he filed his 2017 financial disclosure statement. The White House suggested that the debt—spread across three credit cards and a loan from his retirement savings—was due to home improvements and baseball season tickets, and that the debt was paid off when Justice Kavanaugh’s friends later reimbursed him for their share of the tickets. This explanation simply makes no sense. His unexplained debt, and its abrupt repayment, demand answers. The White House’s involvement in trying to explain it away only heightens the need for further investigation and public answers. We ask your Committees to investigate the sources of this debt, what documentation the White House relied upon in its improbable explanation, and the true funding sources that repaid this debt, including substantiated documentation.

Senate Republicans made a mockery of their constitutional responsibility to provide “advice and consent” on the president’s nomination of Justice Kavanaugh, and the American people deserve to know how and why the process was such a sham. The public is just as entitled to a thorough review of Justice Kavanaugh’s record now as it was before he was elevated to the Supreme Court and to know whether allegations against him of sexual assault and perjury have any factual basis.

Your Committees now have the power to remedy these wrongs, and we implore you to do so.

We appreciate your attention to this important matter.

Sincerely,

American Family Voices
Center for Biological Diversity
Center for Popular Democracy
Clearinghouse on Women's Issues
CREDO
Demand Justice
Demand Progress Education Fund
Documented Investigations
End Rape on Campus
Feminist Majority
Free Speech For People
Indivisible
Know Your IX

Mason for Survivors
National Council of Jewish Women
National Black Justice Coalition
National Employment Lawyers Association
National Women’s Health Network
Progressive Change Campaign Committee
Progressive Turnout Project
Religious Coalition for Reproductive Choice
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