

September 17, 2018

The Honorable Charles Grassley, Chairman
Committee on the Judiciary
United States Senate
135 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Dianne Feinstein, Ranking Member
Committee on the Judiciary
United States Senate
331 Hart Senate Office Building
Washington, DC 20510

Dear Chairman Grassley and Ranking Member Feinstein:

As we wrote in our August 31, 2018 [letter](#), the Senate's constitutional duty to provide informed "advice and consent" to a president's lifetime Supreme Court appointment carries enormous significance to the rule of law. As the deliberative body of a co-equal branch of government, a rushed confirmation process risks undermining confidence in the Supreme Court. It will do further damage to public trust in government and democratic institutions.

It is abundantly clear that the Senate Judiciary Committee should not move forward with a vote on pending nominee Judge Brett Kavanaugh.

Most recently, after privately disclosing details with Ranking Member Feinstein that were shared with the F.B.I., Professor Christine Blasey Ford has publicly [shared](#) her alarming experience alleging sexual assault by Judge Kavanaugh. Like all survivors, Professor Ford deserves to be heard and treated fairly and respectfully. The abuse she detailed must not be ignored or swept under the rug to jam through a Supreme Court nominee. Judge Kavanaugh should be required to explain himself in public, under oath, to you and to the American people. The Committee has a responsibility to uphold the integrity of the confirmation process by reviewing thoroughly the allegations. We renew our request that you withhold consent to a lifetime Supreme Court appointment at this time.

There are other reasons to pause on a vote. The informational deficit concerning Judge Kavanaugh's record is enormous. Millions of pages of his relevant records have been withheld from the American public's eyes as well as your own. Even the documents Chairman Grassley himself requested have yet to be provided by the National Archives and Records Administration.

Because Chairman Grassley nonetheless moved forward with a hearing earlier this month, Judge Kavanaugh's public vetting was inadequate. He made numerous comments, under oath, that raised questions about whether his answers provided the full truth or were less than forthcoming. This includes his [involvement](#) in Bush Administration judicial nominations, access to [stolen materials](#) from Senate Judiciary Committee members, and knowledge of Bush Administration [warrantless](#) wiretapping policy.

As we also discussed in our prior letter, in part because of ongoing Department of Justice (DOJ) investigations related to President Trump and the electoral process, a cloud hangs over the very constitutional officer who is vested with the power to choose a person for a lifetime appointment to the highest court in our judicial system and who may later sit in judgment of him. Once confirmed, the appointment cannot be undone by a majority vote.

If a nominee confirmed under these circumstances participates in future decisions arising out of the DOJ probes and does not recuse—and Judge Kavanaugh refused to commit to recusal during his hearings—then the Supreme Court's independence will be compromised. The public may view any resulting decisions from the Court about the proceedings as tainted by a conflict-of-interest.

We do not pre-judge the president's guilt or innocence or the outcome of the DOJ's investigation. But because those proceedings are incomplete and go to the heart of the integrity of the electoral process and may later be decided by this nominee, we renew our request to withhold consent on this confirmation.

There is too much at stake to rush this process. Exercising the brakes is fully in keeping with your constitutional obligations.

Sincerely,



Karen Hobert Flynn
President
Common Cause

cc: All United States Senators