

United States Senate

WASHINGTON, DC 20510

August 15, 2018

The Honorable Charles E. Grassley
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Building
Washington, DC 20510

Dear Chairman Grassley:

I am writing to respectfully request that you share with me and my staff all records under your control pertaining to Judge Brett Kavanaugh's involvement in any Native American matters during his tenure at the White House as Staff Secretary and as White House Counsel. I also respectfully ask that you request all records from the National Archives regarding Judge Kavanaugh's time as Staff Secretary and as White House counsel related to Native American matters and share those with me and my Staff. As the Committee responsible for overseeing Indian Affairs, the Senate Committee on Indian Affairs must have Judge Kavanaugh's record so we may perform our constitutional duties with the thought and care necessary to advise the President.

Decisions made by the Supreme Court have a significant impact on nearly all aspects of the everyday lives of Native Americans. In the past few years alone, the Supreme Court has ruled on cases that further defined the contours of the United States' government-to-government relationship with Indian Tribes, including the extent to which an Indian Tribe's treaty with the United States protects its subsistence practices from state intrusion;¹ the scope of an Indian Tribe's sovereign immunity;²³ and the scope and extent of a Tribal member's parental rights over a Native American child.⁴ Just this year, the Court upheld legislation that this Committee duly considered and reported favorably, the Gun Lake Restoration Act,⁵ the repercussions of which extend far beyond Indian Affairs and go to the core of Congress's role in shaping the Judiciary's jurisdiction.⁶ This upcoming term is no different with respect to the Supreme Court's profound influence on Indian Affairs, having granted petitions for certiorari in three cases -- treaty hunting rights,⁷ taxation of tribal members,⁸ and how the United States defines reservation boundaries.⁹

¹ *Washington v. United States*, 138 S.Ct. 1832 (2018).

² *Upper Skagit Indian Tribe v. Lundgren*, 138 S.Ct. 1649 (2018).

³ *Tein v. Miccosukee Tribe of Indians of Florida*, 227 So.3d 656 (Fla. App. 3rd Dist. 8/9/2017), *cert. denied*, 138 S.Ct. 741 (2018).

⁴ *Adoptive Couple v. Baby Girl*, 133 S.Ct. 2552 (2013).

⁵ Pub. L. No. 113-179.

⁶ *Patchak v. Zinke*, 138 S.Ct. 897 (2018).

⁷ *Herrerra v. Wyoming*, CT-2014-2688, 2016 WL 11430462 (Wyo. Dist. Apr. 18, 2016), *cert. granted*, 138 S.Ct. 2707 (2018).

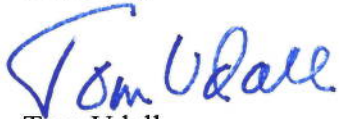
⁸ *Washington State Department of Licensing v. Cougar Den*, 188 Wash.2d 55 (2018), *cert. granted*, 138 S.Ct. 2671 (2018).

⁹ *Royal v. Murphy*, 875 F.3d. 896 (10th Cir. 2017), *cert. granted*, 138 S.Ct. 2026 (2018).

The Supreme Court's influence is particularly acute in Indian Country, given the United States' treaty and trust responsibility. Access to Judge Kavanaugh's record relating to Native American matters, both currently under your control and within the National Archives, is therefore critical for the members of this Committee—and the entire Senate—to adequately fulfill our constitutional obligation to advise the President on his nominee.

Please contact my staff director on the Senate Committee on Indian Affairs, Jennifer Romero, at (202) 224-2251 or via email at jennifer_romero@indian.senate.gov with any questions.

Sincerely,



Tom Udall
Vice Chairman
Senate Committee on Indian Affairs