

**EARTHJUSTICE
COMMUNITY RIGHTS COUNSEL**

April 26, 2006

The Honorable Arlen Specter
Chairman, Senate Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable Patrick J. Leahy
Ranking Member, Senate Committee on the Judiciary
United States Senate
Washington, DC 20510

Re: Nomination of Brett M. Kavanaugh to a Lifetime Position on the U.S. Court of Appeals for the District of Columbia Circuit

Dear Chairman Specter and Ranking Member Leahy:

As you review and decide upon the re-nomination of Brett M. Kavanaugh to a lifetime position on the United States Circuit Court of Appeals for the District of Columbia – the second most important environmental court in the nation, behind only the U.S. Supreme Court – we urge the Committee to hold a hearing this Congress on this controversial nominee.

Two years have passed since the Committee's April 27, 2004 hearing on this nomination. This is a significant and unprecedented period of time to lapse between a hearing and a Committee vote on a nominee. During this time Mr. Kavanaugh served as White House staff secretary, a high ranking position in the White House where his job is to review and comment on just about every piece of paper that goes to the desk of the President, yet virtually nothing is known about his actions in that position. What is known is that the ABA's Standing Committee on the Federal Judiciary which conducted a new evaluation of Mr. Kavanaugh during this Congress decided to downgrade his rating from Well Qualified to only Qualified. It is rare that the ABA will downgrade a nominee. Typically, additional experience will make a nominee more qualified, not less. This fact alone would justify an additional hearing for Mr. Kavanaugh.

We also have very serious concerns with Mr. Kavanaugh's lack of relevant experience as of his hearing in April 2004 and his role on the Judicial Selection Committee as Associate White House Counsel. During his tenure, several very controversial individuals were nominated, and in several cases, renominated to the federal appellate bench, even after the nominees' hostility to environmental safeguards was well-documented. Mr. Kavanaugh also has relatively little trial, appellate and academic scholarship experience, particularly for a lifetime position on this critically important court. In response to the Judiciary Committee questionnaire, Mr. Kavanaugh was able to list only five court appearances out of the requested ten most significant "litigated" matters. Mr. Kavanaugh has never been a trial lawyer and his most recent legal experiences

were high political posts within the executive branch. We would encourage the Committee to offer Mr. Kavanaugh an opportunity to discuss the ways in which his public service over the past several years provides the requisite qualifications for a lifetime appointment to the D.C. Circuit.

Finally, it is vital to consider the unique nature of the D.C. Circuit and its impact on environmental protections. The D.C. Circuit is justifiably viewed as the most crucial court for environmental protection after the Supreme Court. Its exclusive jurisdiction to hear challenges under many laws results in rulings on whether to uphold or strike down many critical national environmental safeguards that are seldom reviewed by the Supreme Court. At his hearing several years ago Mr. Kavanaugh stated that if he were confirmed he would "follow and enforce" the laws of the United States. However, he has not yet demonstrated any relevant experience with or knowledge of the critical environmental laws regularly before the D.C. Circuit.

Thank you for consideration of our views on this nomination to a lifetime seat on this critically important court of appeals.

Sincerely yours,

Glenn P. Sugameli
Senior Legislative Counsel
Earthjustice

Doug Kendall
Executive Director
Community Rights Counsel

c: Members, Senate Committee on the Judiciary