36 Interfaith Groups Urge Senate to Fulfill Constitutional Duty, Ensure Fully Functioning US Supreme Court

February 23, 2016

Dear Senator:

We, the undersigned interfaith groups urge the president and Senate to fulfill their constitutional duties and move ahead in filling the current vacancy on the US Supreme Court. While we might not all take the same position on the eventual nominee, we are united in our desire to see a civil, fair, and expeditious process.

We join those who salute the service of the Associate Justice of the Supreme Court Antonin Scalia, and send sincere condolences and prayers of comfort to his family and all who mourn his sudden passing. While we may not all agree with all of the views and opinions authored by the late-Justice Scalia, we do appreciate his fierce dedication to the US Constitution and the Supreme Court as an institution central to our democratic society.

We believe it is crucial that the Supreme Court be able to fully and fairly function. Article II of the US Constitution makes clear that, in the event of a vacancy on the Supreme Court, the sitting president has a duty to fill the vacancy with the advice and consent of the Senate. The timing of this vacancy could not have been predicted, but it is no different than any other vacancy and should be addressed immediately by the president and the Senate.

We are disappointed that there are those, including some senators, who are calling for a delay in the nomination and confirmation of a new Supreme Court justice — in disregard of the Constitution so cherished by the late Justice Scalia.

As people of diverse faiths, we are inspired and informed by the pursuit of justice. We must do all we can to ensure that our nation's highest court is fully functioning. If we fail to expeditiously advance the filling of the current vacancy, we abdicate our responsibility to justly serve the dignity of all.

If Congress fails to act, the Supreme Court will go two terms — well over a year — with a vacancy.

The American people expect that the legislative branch will do its job so that the judicial branch can carry out its duties. **The Senate should fulfill its responsibility to the institution to which Justice Scalia dedicated his professional life and ensure it may function as the beacon of justice that our founders envisioned.**

Ameinu (Our People)
American Atheists
Anti-Defamation League
AVODAH: The Jewish Service Corps
Aytzim: Ecological Judaism
Bend the Arc Jewish Action
Beth El - The Heights Synagogue (BETHS) (Ohio)
Casa Esperanza
Catholics for Choice
Christ Congregation (New Jersey)

Concerned Clergy for Choice (New York)
Conversations With Friends (Minnesota)
DignityUSA
Dominican Sisters of Houston
Evangelical Lutheran Church in America Advocacy
Faith in Public Life
Interfaith Action of Greater Saint Paul
Interfaith Alliance
JALSA-the Jewish Alliance for Law and Social Action (Massachusetts)
Jewish Labor Committee
National Council of Churches
National Council of Jewish Women
National Religious Campaign Against Torture
New Ways Ministry
Planned Parenthood Federation of America Clergy Advocacy Board
Reconstructionist Rabbinical Association
Reconstructionist Rabbinical College/ Jewish Reconstructionist Communities
Religious Coalition for Reproductive Choice
Religious Institute
South Florida Interfaith Worker Justice
The Sisters of Mercy of the Americas, Institute Justice Team
Union for Reform Judaism
Unitarian Universalist Congregation of the Lowcountry (South Carolina)
Unitarian Universalist Women's Federation
UU Voices for Reproductive Freedom New Orleans
Women's Alliance for Theology, Ethics, and Ritual (WATER)

Statement of Constitutional Law Scholars on the Supreme Court Vacancy

February 24, 2016

We write as constitutional law scholars to urge President Obama and the United States Senate to fulfill their constitutional duties with regard to the vacancy that exists on the Supreme Court because of the death of Justice Antonin Scalia. We do not write in support of or in opposition to any specific candidate. Rather, our position is simply that the President has the duty to nominate a candidate to fill the current Supreme Court vacancy and the Senate has the duty to "advise and consent," which means to hold hearings and to vote on the nominee.

Article II of the Constitution is explicit that the president "shall nominate . . . judges of the Supreme Court." There is no exception to this provision for election years. Throughout American history, presidents have nominated individuals to fill vacancies during the last year of their terms.

Likewise, the Senate's constitutional duty to "advise and consent" – the process that has come to include hearings, committee votes, and floor votes – has no exception for election years. In fact, over the course of American history, there have been 24 instances in which presidents in the last year of a term have nominated individuals for the Supreme Court and the Senate confirmed 21 of these nominees.

The Senate, of course, has discretion in the method of carrying out its constitutional duty to "advise and consent," but for the Senate not to consider a nominee until after the next president is inaugurated would be unprecedented and would leave a vacancy that would undermine the ability of the Supreme Court to carry out its constitutional duties. It would mean that the Court would have to function with eight justices for the remainder of this term and virtually all of the next. This inevitably would mean 4-4 splits in a significant number of cases. During the October Term 2014 there were 66 decisions of which 19 were 5-4. A vacancy on the Court for a year and a half likely would mean many instances where the Court could not resolve a split among the circuits. There would be the very undesirable result that the same federal law would differ in meaning in various parts of the country.

We urge the President to nominate as soon as reasonably possible an individual to fill the vacancy existing on the Court and the Senate to hold hearings and vote on the nominee.

Signed,

Kate Andrias
Assistant Professor of Law
University of Michigan Law School

Dmitry Bam
Associate Professor
University of Maine School of Law

Joseph Blocher
Professor of Law
Duke University School of Law

Elise Boddie
Professor of Law
Rutgers Law School–Newark

Erwin Chemerinsky
Founding Dean and Distinguished Professor of Law
and Raymond Pryke Professor of First Amendment Law
University of California, Irvine School of Law

Caroline Mala Corbin
Professor of Law
University of Miami School of Law

Joshua Douglas
Robert G. Lawson & William H. Fortune
Associate Professor of Law
University of Kentucky College of Law

Peter Edelman
Carmack Waterhouse Professor of Law and Public Policy
and Faculty Director, Center on Poverty and Inequality
Georgetown University Law Center

Edward Fallone
Associate Professor of Law
Marquette University Law School

Ruben Garcia
Professor of Law
UNLV William S. Boyd School of Law

Frederick Mark Gedicks
Guy Anderson Chair and Professor of Law
Brigham Young University Law School

Abner Greene
Leonard F. Manning Professor
Fordham Law School

Jamal Greene
Professor of Law
Columbia Law School

Kent Greenfield
Professor of Law and Dean's Research Scholar
Boston College Law School

Ariela Gross
John B. and Alice R. Sharp Professor of Law and History
University of Southern California Gould School of Law

Pratheepan Gulasekaram
Associate Professor of Law
Santa Clara University School of Law

Melissa Hart
Professor of Law, Director of the Byron R. White Center
University of Colorado Law School

B. Jessie Hill
Associate Dean for Academic Affairs and
Judge Ben C. Green Professor of Law
Case Western Reserve University School of Law

Nicole Huberfeld
Associate Dean of Academic Affairs and
Ashland-Spears Distinguished Research Professor of Law
University of Kentucky College of Law

Mark Kende
Professor of Law, James Madison Chair in Constitutional
Law, and Director of the Drake Constitutional Law Center
Drake Law School

William Marshall
William Rand Kenan, Jr. Distinguished Professor of Law
University of North Carolina School of Law

Alan Morrison
Lerner Family Associate Dean for Public Interest &
Public Service Law
George Washington Law School

Gene Nichol
Boyd Tinsley Distinguished Professor
University of North Carolina School of Law

Kermit Roosevelt
Professor of Law
University of Pennsylvania Law School

Steve Sanders
Associate Professor of Law
Indiana University Maurer School of Law

Steven Schwinn
Associate Professor of Law
John Marshall Law School

Peter Shane
Jacob E. Davis and Jacob E. Davis II Chair in Law
Ohio State University Moritz College of Law

Theodore Shaw
Julius L. Chambers Distinguished Professor of Law and
Director of the Center for Civil Rights
University of North Carolina School of Law

Neil Siegel
David W. Ichel Professor of Law
Professor of Political Science
Co-Director, Program in Public Law
Director, DC Summer Institute on Law & Policy
Duke Law School

Barry Sullivan
Professor of Law and Cooney &
Conway Chair in Advocacy
Loyola University Chicago School of Law

Verna Williams
Judge Joseph P. Kinneary Professor of Law
University of Cincinnati College of Law

Adam Winkler
Professor of Law
UCLA School of Law

Rebecca E. Zietlow
Charles W. Fornoff Professor of Law and Values
University of Toledo College of Law

University affiliation provided for identification purposes only.

Uphold the Constitution: Fairly Consider the President's Nomination for the Supreme Court Vacancy

February 25, 2016

RECEIVED FEB 25 2016

Dear Senator:

The American Association of University Women (AAUW) joined the nation in mourning the passing of U.S. Supreme Court Justice Antonin Scalia who served on the court for nearly 30 years. The Supreme Court has pending cases that will greatly affect the everyday lives of women and their families, and Justice Scalia's untimely death creates a vacancy at a critical juncture. It is in the face of losing such a legal giant that we remember how fortunate we are, as a nation, to have a constitutional process to see us smoothly through this transition.

On behalf of the 170,000 bipartisan members and supporters of AAUW, I urge you uphold the U.S. Constitution by moving forward to fairly and expeditiously consider any nominee put forward by President Obama to fill the Supreme Court vacancy. In so doing, the American people will be reassured that a fully staffed court will be available to deliver this year's critical Supreme Court decisions.

The Appointments Clause of the Constitution lays out three sequential acts in order to fill a vacancy. First, the nomination of the president, second the advice and consent of the U.S. Senate, and third the appointment by the president. There is no exception for the president to refuse to nominate a successor nor is there an exception for senators to refuse to provide advice and consent. Public statements by Senate Majority Leader Mitch McConnell and Republican members of the Senate Judiciary Committee that they will take no action on <u>any</u> nominee put forward by the president, before a nominee has even been named, impedes the function of government to ensure equal access to a fully functioning judicial system.[i] AAUW and our members feel compelled to urge all senators to reject cynical tactics to preemptively disqualify the president's nominee or to obstruct any nominee for purely partisan reasons.

Proponents of obstruction have attempted to mislead the public by claiming there is not enough time left in the president's term and that appointments should not occur in election years. These statements are false. Not only are these tactics a strong indication of the naked partisanship of this obstructionism, but it severely undermines the function of the Supreme Court and the integrity of the Senate. Waiting until January 2017 for a replacement would mean that for the first time in history, the Supreme Court would be without its full complement of justices for a good portion of two terms of the court.

Retired Supreme Court Justice Sandra Day O'Connor responded quickly to this delay tactic by stating, "I don't agree [with waiting] ... I think we need somebody there now to do the job and let's get on with it."[ii] Editorial boards from Colorado, Wisconsin, Ohio, New

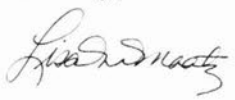
1111 Sixteenth St. NW, Washington, DC 20036 | 202.785.7793 | www.aauw.org | advocacy@aauw.org

Hampshire, Pennsylvania, Iowa, Kentucky, Illinois, Maine and all over the country agree that the Senate should follow the Constitution and fairly consider President Obama's nominee.[iii] Furthermore, a majority of Americans (56%) say the Senate should hold hearings and vote on President Obama's choice to fill the vacancy.[iv]

AAUW urges senators to demand that Majority Leader McConnell and the Republican members of the Judiciary Committee rethink this unprecedented course of obstructionism and fairly consider any nominee put forward by President Obama to fill the Supreme Court vacancy. Furthermore, the full Senate should be given the opportunity for an "up or down" vote on any qualified nominee.

Votes associated with this issue may be included in the AAUW Action Fund *Congressional Voting Record* for the 114th Congress. If you have any questions or need additional information, feel free to contact me at 202/785-7720, or Erin Prangley, associate director for government relations, at 202/728-7730.

Sincerely,



Lisa M. Maatz
Vice President for Government Relations

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[i] Herszenhorn, David. "G.O.P. Senators Say Obama Supreme Court Pick Will be Rejected." New York Times. February 24, 2016. http://www.nytimes.com/2016/02/24/us/politics/supreme-court-nomination-obama.html?hp&action=click&pgtype=Homepage&clickSource=story-heading&module=first-column-region&region=top-news&WT.nav=top-news&_r=0

[ii] Zorthian, Julia. "Sandra Day O'Connor Says Obama Should Name New Supreme Court Justice." Time. February 18, 2016. http://time.com/4228800/oconnor-scalia-obama-supreme-court/

[iii] Sugermeli, Glenn. "Nearly 200 Editorial Boards Across the Country Agree: This year the Senate Should Hold a hearing and Vote on Nominee to Fill Scalia Supreme Court Vacancy – State by State Links/Excerpts." February 23, 2016. http://www.judgingtheenvironment.org/press/op_eds/op-ed-full-texts/Editorials-on-Scalia-vacancy-by-state-Feb-23-2016.pdf

[iv] Pew Research Center. "Majority of Public Wants Senate to Act on Obama's Court Nominee." February 22, 2016. http://www.people-press.org/2016/02/22/majority-of-public-wants-senate-to-act-on-obamas-court-nominee/

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37 Interfaith Groups Urge Senate to Fulfill Constitutional Duty, Ensure Fully Functioning US Supreme Court

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We believe it is crucial that the Supreme Court be able to fully and fairly function. Article II of the US Constitution makes clear that, in the event of a vacancy on the Supreme Court, the sitting president has a duty to fill the vacancy with the advice and consent of the Senate. The timing of this vacancy could not have been predicted, but it is no different than any other vacancy and should be addressed immediately by the president and the Senate.

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AVODAH: The Jewish Service Corps
Aytzim: Ecological Judaism
Bend the Arc Jewish Action
Beth El - The Heights Synagogue (BETHS) (Ohio)
Casa Esperanza
Catholics for Choice
Christ Congregation (New Jersey)

Concerned Clergy for Choice (New York)
Conversations With Friends (Minnesota)
DignityUSA
Dominican Sisters of Houston
Evangelical Lutheran Church in America Advocacy
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Interfaith Action of Greater Saint Paul
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JALSA-the Jewish Alliance for Law and Social Action (Massachusetts)
Jewish Labor Committee
Jewish Women International
National Council of Churches
National Council of Jewish Women
National Religious Campaign Against Torture
New Ways Ministry
Planned Parenthood Federation of America Clergy Advocacy Board
Reconstructionist Rabbinical Association
Reconstructionist Rabbinical College/ Jewish Reconstructionist Communities
Religious Coalition for Reproductive Choice
Religious Institute
South Florida Interfaith Worker Justice
The Sisters of Mercy of the Americas, Institute Justice Team
Union for Reform Judaism
Unitarian Universalist Congregation of the Lowcountry (South Carolina)
Unitarian Universalist Women's Federation
UU Voices for Reproductive Freedom New Orleans
Women's Alliance for Theology, Ethics, and Ritual (WATER)

February 26, 2016

The Honorable Charles Grassley, Chairman
The Honorable Orrin Hatch
The Honorable Jeff Sessions
The Honorable Lindsey Graham
The Honorable John Cornyn
The Honorable Michael Lee
The Honorable Ted Cruz
The Honorable Jeff Flake
The Honorable David Vitter
The Honorable David Perdue
The Honorable Thom Tillis

Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Senators:

We, the undersigned organizations, urge you to reconsider your unprecedented and destructive refusal to give fair consideration to any Supreme Court nomination until after the next President is sworn into office on January 20, 2017, as announced in your February 23rd letter to Senate Majority Leader Mitch McConnell.

Your letter claims that your refusal to hold a hearing on—or to even meet with— any potential nominee is part and parcel to executing your "constitutional authority to withhold consent on any nominee." This is a clear perversion of your constitutional duties as understood by almost every scholarly authority on the topic and by most Americans.

It is a dereliction of your constitutional duty to handcuff the Supreme Court for two terms**.** Your proposed course of action would cause a constitutional crisis that would shake the very foundation of our democracy.

We condemn this unprecedented overreach, and call on you to uphold the Constitution by giving fair consideration, including timely hearings and votes, to the next nominee to the Supreme Court.

Under Article II, Section 2 of the U.S. Constitution, the President shall nominate a Justice to the Supreme Court "by and with the Advice and Consent of the Senate." This does not give a select few senators veto power over the President's role in selecting and nominating a candidate. The Senate's duty is to evaluate a nominee's fitness and qualifications, not to pick the President making the nomination.

Our legal system is based on the rule of law and requires stability and certainty. The course you have charted would mean that a new justice would not be confirmed until well into 2017 at the earliest. Shackling the court for two terms would undermine the rule of law, leave legal questions unresolved, and hamper the administration of justice across our nation.

Refusing to consider any nominee, without due evaluation of his or her merits, credentials, and experiences, is a direct repudiation of your constitutional duties.

We believe in upholding the Constitution. So should you.

Sincerely,

The Leadership Conference on Civil and Human Rights
Philip Randolph Institute
AFL-CIO
African American Ministers In Action
Alliance for Justice
American Association for Access, Equity and Diversity
American Association For Justice
American Family Voices
American Federation of State, County, and Municipal Employees
American Federation of Teachers
American-Arab Anti-Discrimination Committee
Americans for Democratic Action (ADA)
Americans United for Change
Andrew Goodman Foundation
Asian & Pacific Islander American Health Forum
Asian American Legal Defense and Education Fund (AALDEF)
Asian Americans Advancing Justice | AAJC
Asian Pacific American Labor Alliance, AFL-CIO (APALA)
Association of Asian Pacific Community Health Organizations (AAPCHO)
Bazelon Center for Mental Health Law
Bend the Arc Jewish Action
Center for American Progress
Center for Community Change
Center for Pan Asian Community Services, Inc. (CPACS)
Coalition on Human Needs
Common Cause
Communications Workers of America
Constitutional Accountability Center
Defenders of Wildlife
Disability Rights Education & Defense Fund
Earthjustice
Equal Justice Society
Feminist Majority Foundation
Human Rights Campaign
International Association of Official Human Rights Agencies (IAOHRA)
Iota Phi Lamda Sorority, Inc.
Japanese American Citizen League
Jewish Labor Committee
Korean American Resource & Cultural Center
Korean Resource Center
Lambda Legal
Lawyers' Committee for Civil Rights Under Law
League of Conservation Voters
League of United Latin American Citizens
MALDEF

MoveOn.org Civic Action
NAACP
NAACP Legal Defense and Educational Fund, Inc.
NAACP-National Voter Fund
NARAL Pro-Choice America
National Asian Pacific American Families Against Substance Abuse
National Association of Social Workers (NASW)
National Black Justice Coalition
National Coalition for Asian Pacific American Community Development
National Congress of American Indians
National Council of Asian Pacific Americans (NCAPA)
National Council of Jewish Women
National Education Association
National Employment Law Project
National Employment Lawyers Association
National Fair Housing Alliance
National Korean American Service & Education Consortium
National LGBTQ Task Force Action Fund
National Partnership for Women & Families
National Queer Asian Pacific Islander Alliance
National Tongan American Society
National Urban League
National Women's Law Center
People For the American Way
Planned Parenthood Federation of America
PolicyLink
Project Vote
Reconstructionist Rabbinical Association
Service Employees International Union
Sierra Club
South Asian Bar Association of North America
Southeast Asia Resource Action Center (SEARAC)
Southern Poverty Law Center
TASH
Union for Reform Judaism
United Auto Workers (UAW)
Workmen's Circle

CC: The Honorable Mitch McConnell, Senate Majority Leader

New York Office
40 Rector Street, 5th Floor
New York, NY 10006-1738

T 212.965.2200
F 212.226.7592

www.naacpldf.org

LDF
DEFEND EDUCATE EMPOWER

Washington, D.C. Office
1444 Eye Street, NW, 10th Floor
Washington, D.C. 20005

T 202.682.1300
F 202.682.1312

Via Electronic and First Class Mail

The Honorable Charles Grassley, Chairman
The Honorable Orrin Hatch
The Honorable Jeff Sessions
The Honorable Lindsey Graham
The Honorable John Cornyn
The Honorable Michael Lee
The Honorable Ted Cruz
The Honorable Jeff Flake
The Honorable David Vitter
The Honorable David Perdue
The Honorable Thom Tillis

Committee on the Judiciary
United States Senate
Washington, D.C. 20510

March 2, 2016

Dear Senators:

On behalf of the NAACP Legal Defense and Educational Fund, Inc. ("LDF"), I write to urge you to reconsider your position—announced in your February 23, 2016, letter to Senate Majority Leader Mitch McConnell and reiterated to the President on March 1, 2016 — in which you indicate your refusal to consider any potential Supreme Court nominee before the 45th President of the United States is sworn into office on January 20, 2017.

Your stated intention to refuse to hold a hearing on — and even meet with — any potential nominee for the Supreme Court also threatens to create an unprecedented (and unnecessary) constitutional crisis. Article II, section 2 of the Constitution empowers the President to appoint justices to the Supreme Court "by and with the advice and consent of the Senate." Nothing in the text or history of that constitutional provision supports your extraordinary position that the President cannot fill a Supreme Court vacancy during his or her second term in office. Accordingly, there is no lawful basis to categorically refuse to consider such an appointment until the next President is sworn into office.

Since 1875, every nominee to the Supreme Court has received either a hearing or a vote, and the Senate has never taken more than 125 days to act on a Supreme Court nomination. Moreover, nearly a quarter of all Presidents (10) have appointed a total of at least 14 justices to the Court who were confirmed during election years, most recently President Reagan's nominee, then-Judge Anthony Kennedy.

As the country's first and foremost civil and human rights law firm, LDF understands the critical role that the Supreme Court plays in the civic life of this nation. Since its founding in 1940, under the leadership of Thurgood Marshall, LDF has litigated numerous significant cases before the Supreme Court addressing a wide range of fundamental rights in the areas of criminal justice, economic justice, education, and political participation. *See, e.g.*, *Brown v. Board of Education*, 347 U.S. 483 (1954); *see also Smith v. Allwright*, 321 U.S. 649 (1944); *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971); *Furman v. Georgia*, 408 U.S. 238 (1972); *Lewis v. Chicago*, 560 U.S. 205 (2010); *Shelby County v. Holder*, 570 U.S. ___ (2013). LDF is, and always has been, an active member of the Supreme Court bar.

Our decades of experience in the Supreme Court confirm the importance of a full complement of nine justices. The Court plays a pivotal role in resolving some of the most crucial legal questions affecting the country and its social and economic life. The public interest in the rule of law will be harmed if the Court, because it is short-staffed, is unable to resolve these matters in a clear, conclusive, and timely manner. This is particularly true in cases where the lower courts disagree on a resolution to the question at hand. Indeed, one of the most important functions of the Supreme Court is to resolve these splits. Depriving the Court of a ninth justice and increasing the risk of an equally divided Court will hamper the Court's ability to ensure the uniform and consistent application of federal law across the country.

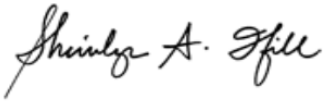
In addition, I urge the Senate Judiciary Committee to move expeditiously on the numerous still-pending nominations for the lower federal courts, including that of Judge Abdul K. Kallon to the United States Court of Appeals for the Eleventh Circuit, and to move promptly on filling the numerous longstanding vacancies that remain. As Chief Justice Roberts made clear several years ago, "[t]he judiciary depends not only on funding, but on its judges, to carry out [its] mission. . . . Over many years, however, a persistent problem has developed in the process of filling judicial vacancies." This problem has become especially acute over the last fourteen months. Indeed, since the beginning of this session of Congress in January 2015, the Senate has confirmed only sixteen nominations for the lower federal courts while approximately two dozen nominations currently remain pending in the Judiciary Committee and there are 81 total judicial vacancies and 31 judicial emergencies. For lower courts across the country, these vacancies translate to backlogs, overburdened judges, and increased obstacles to the fair and efficient access to justice.

These nominations include that of Judge Kallon for the Eleventh Circuit, who is unquestionably qualified. In 2009, he was confirmed by unanimous consent to the U.S. District Court for the Northern District of Alabama, with strong home-state support from Senators Sessions and Shelby. Since then, Judge Kallon has served with distinction on the bench. If confirmed, Judge Kallon would bring much-needed diversity to the Eleventh Circuit. He would be the first African-American judge from Alabama on the Eleventh Circuit and the second African-American active judge on that court. Finally, Judge Kallon's appointment would fill a seat that has been empty for nearly 900 days, a vacancy which the Administrative Office of the

U.S. Courts has declared a judicial emergency. Judge Kallon's nomination must move forward without delay.

Overall, I fear that the Judiciary Committee is at a crossroads: will it force an unprecedented constitutional crisis by stymying some of the Supreme Court's critical functions and cement the divisive politics of obstruction? Or will it faithfully carry out its constitutional duties, and return to the mainstream practice of holding a hearing for Supreme Court nominees – a historical norm that has spanned party lines since 1875? We urge the latter.

Sincerely,



Sherrilyn A. Ifill
President and Director Counsel
NAACP Legal Defense and Educational Fund, Inc.

Cc: The Honorable Mitch McConnell, Senate Majority Leader

March 3, 2016

The President
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Dear Mr. President:

We write to you as scholars of American history, politics, and the law. We express our dismay at the unprecedented breach of norms by the Senate majority in refusing to consider a nomination for the Supreme Court made by a president with eleven months to serve in the position. We believe the idea that a "lame duck" president should not submit a nominee when there is a vacancy on the highest court in the land is a novel and absurd notion, as is the claim that for eighty years or more, no Supreme Court vacancy occurring in an election year has been filled before the election.

In fact it is standard practice when a vacancy occurs on the Supreme Court to have a president, whatever the stage in his term, to nominate a successor and have the Senate consider it. And standard practice (with limited exception) has been for the Senate, after hearings and deliberation, to confirm the president's choice, regardless of party control, when that choice is deemed acceptable to a Senate majority. The most recent example, of course, is Justice Anthony Kennedy, confirmed by a Senate with a Democratic Party majority in February of 1988, during President Ronald Reagan's last year. It is true that Kennedy was nominated in November, 1987, but that is irrelevant—and, of course, the Senate commendably expedited the time between nomination and confirmation despite the election ahead.

The claims of an eighty-year precedent by Republican Senate leaders are artfully phrased deliberately to exclude the current situation, which itself is new: it is rare for a justice to die in office, and even more rare for that to happen in a presidential election year. History, however, is replete with instances where a vacancy on the Supreme Court was filled during a presidential election year. In 1912, a nominee of President Taft was confirmed to fill the vacancy created by the death of John Marshall Harlan; in 1916, Woodrow Wilson had two nominees confirmed by the Senate; in 1932, President Roosevelt had a nominee confirmed after Oliver Wendell Holmes retired; FDR had another vacancy filled with confirmation by the Senate in 1940.

President Eisenhower picked William Brennan in 1956 to fill a vacancy and used his recess appointment power to install Brennan, who was subsequently confirmed by a Senate controlled by Democrats in 1957. It is important to note that there was no objection to Eisenhower's use of the recess appointment—there was instead a widespread recognition that it was bad to have a Supreme Court operate for months without its full complement of nine members.

True, Lyndon Johnson's nomination of Abe Fortas to be Chief Justice, made in 1968, was blocked by the Senate via an extended filibuster. But there was at the time no vacancy on the Court; Chief Justice Warren stayed on until his successor could be confirmed, and Fortas was an associate justice. While some senators did object to Fortas on the grounds that it was an election year, most of the objections were based on ideology and ethical considerations. And it is important to note

that the Fortas nomination was considered by the Senate and there were votes on the floor, even if those were votes on cloture.

Divided government can bring sharp differences of opinion about the qualifications and character of nominees to the Supreme Court. But consider the precedent set by a Democratic Senate with the highly contentious nomination of Clarence Thomas. The Senate Judiciary Committee deadlocked 7-7 on his nomination—but instead of letting the nomination die, the committee voted 13-1 to allow the full Senate to make the decision. Thomas ultimately was confirmed by a narrow margin with no filibuster.

If we accept the logic that decisions made by "lame duck" presidents are illegitimate or are to be disregarded until voters make their choice in the upcoming election, that begs both the questions of when lame duck status begins (after all, a president is technically a "lame duck" from the day of inauguration), and why senators up for reelection at the same time should not recuse themselves from decisions until the voters have decided whether to keep them or their partisans in office.

It is technically in the power of the Senate to engage in aggressive denial on presidential nominations. But we believe that the Framers' construction of the process of nominations and confirmation to federal courts, including the Senate's power of "advice and consent," does not anticipate or countenance an obdurate refusal by the body to acknowledge or consider a president's nominee, especially to the highest court in the land. The refusal to hold hearings and deliberate on a nominee at this level is truly unprecedented and, in our view, dangerous.

We are well aware that politics intervenes when judicial nominations are made, and increasingly reflect the broader partisan and ideological polarization in American politics. We do not believe any party is without blame. But we also recognize that confirmation at all levels of the federal judiciary has been increasingly driven by partisan obstructionism, which has reached a peak during the Obama presidency. The refusal by the Republican Senate to confirm any nominees to the D.C. Circuit Court of Appeals is the poster child for that phenomenon.

The Constitution gives the Senate every right to deny confirmation to a presidential nomination. But denial should come after the Senate deliberates over the nomination, which in contemporary times includes hearings in the Judiciary Committee, and full debate and votes on the Senate floor. Anything less than that, in our view, is a serious and, indeed, unprecedented breach of the Senate's best practices and noblest traditions for much of our nation's history.

Respectfully,

Norman J. Ornstein

Resident Scholar
American Enterprise Institute

Vikram David Amar

Dean and Iwan Foundation Professor of Law
University of Illinois College of Law

Sarah Binder

Senior Fellow, Governance Studies
Brookings Institution
Professor of Political Science
George Washington University

Erwin Chemerinsky

Dean of the School of Law
Distinguished Professor of Law
Raymond Pryke Professor of First Amendment Law
University of California, Irvine

Robert Dallek

Emeritus Professor, History
University of California, Los Angeles

Lee Epstein

Ethan A.H. Shepley Distinguished University Professor
Washington University, St Louis

Joel K. Goldstein

Vincent C. Immel Professor of Law
Saint Louis University School of Law

Doris Kearns Goodwin

Presidential Historian

Mark A. Graber

Jacob A. France Professor of Constitutionalism
University of Maryland
Frances King Carey School of Law

Pamela S. Karlan

Kenneth and Harle Montgomery Professor of Public Interest Law
Co-Director, Supreme Court Litigation Clinic
Stanford Law School

David M. Kennedy

Donald J. McLachlan Professor of History Emeritus
Stanford University

Harold Hongju Koh

Sterling Professor of International Law
Yale Law School

Thomas E. Mann

Senior Fellow, Brookings Institution
Resident Scholar, Institute of Governmental Studies
University of California, Berkeley

James M. McPherson

George Henry Davis ’86 Professor Emeritus of United States History
Princeton University

David M. O'Brien

Leone Reaves and George W. Spicer
Professor of Politics
The University of Virginia

Geoffrey R. Stone

Edward H. Levi Distinguished Service
Professor of Law
University of Chicago Law School

NOTE: Affiliations are for identification only; views are of the individuals

COMMONWEALTH OF MASSACHUSETTS

THE GENERAL COURT

STATE HOUSE, BOSTON 02133-1053

RECEIVED MAR 14 2016

March 3, 2016

The Honorable Mitch McConnell, U.S. Senate Majority Leader
317 Russell Senate Office Building
Washington DC 20510

The Honorable Harry Reid, U.S. Senate Minority Leader
522 Hart Senate Office Building
Washington DC 20510

Dear Mr. Majority Leader McConnell and Mr. Minority Leader Reid:

We, the undersigned Members of the Massachusetts Senate, write to respectfully urge you to timely consider President Barack Obama's next nominee to the Supreme Court.

The people of the Commonwealth deserve to have a fully functioning Supreme Court with nine justices to preside over the hundreds of cases the Court chooses to hear each year. Serving as the final arbiter of the Constitution and the highest court in the nation, the Supreme Court is essential to our constitutional system of government. Its power of judicial review acts as a vital check on the power of the executive and legislative branches of government.

Article II, section 2 of the U.S. Constitution authorizes the president to nominate and, with the advice and consent of the senate, appoint judges to the Supreme Court. Nothing in the Constitution limits the president's power to nominate and appoint judges to the Supreme Court in the final year of his or her term or in an election year. In fact, there are several recent examples in history where a judge has been successfully nominated, confirmed and appointed to the Supreme Court in the year preceding a presidential election, including:

- Justice Anthony Kennedy by President Reagan;
- Justice John Paul Stevens by President Ford;
- Justice Frank Murphy by President Franklin Roosevelt;
- Justice Benjamin Cardozo by President Hoover;
- Justices Louis Brandeis and John Clarke by President Wilson; and
- Justice Mahlon Pitney by President Taft.

The tragic and unexpected passing of Justice Antonin Scalia has left a vacancy on the Supreme Court since February 13. Failing to timely consider a nominee to fill that vacancy for partisan political reasons undermines the plain meaning and intent of the Constitution and

serves as a profound disservice to the American people. As such, we respectfully urge you to swiftly and diligently fulfill your constitutional responsibility by granting a fair hearing and a timely vote to President Obama's next nominee to the Supreme Court.

Sincerely,

Senator Kenneth J. Donnelly
Fourth Middlesex

Senate President Stanley C. Rosenberg
Hampshire, Franklin & Worcester

Senator Michael J. Barrett
Third Middlesex

Senator Michael D. Brady
Second Plymouth & Bristol

Senator William M. Brownsberger
Second Suffolk & Middlesex

Senator Harriette L. Chandler
First Worcester

Senator Sonia Chang-Diaz
Second Suffolk

Senator Cynthia S. Creem
First Middlesex & Norfolk

Senator Sal N. DiDomenico
Middlesex & Suffolk

Senator Eileen M. Donoghue
First Middlesex

Senator Benjamin B. Downing
Berkshire, Hampshire, Franklin & Hampden

Senator James B. Eldridge
Middlesex & Worcester

Senator Brian A. Joyce
Norfolk, Bristol & Plymouth

Senator Marc R. Pacheco
First Plymouth & Bristol

Senator Linda Dorcena Forry
First Suffolk

Senator Anne M. Gobi
Worcester, Hampden, Hampshire & Middlesex

Senator Patricia D. Jehlen
Second Middlesex

Senator John F. Keenan
Norfolk & Plymouth

Senator Barbara L'Italien
Second Essex & Middlesex

Senator Eric P. Lesser
First Hampden & Hampshire

Senator Jason M. Lewis
Fifth Middlesex

Senator Joan B. Lovely
Second Essex

Senator Thomas M. McGee
Third Essex

Senator Mark C. Montigny
Second Bristol & Plymouth

Senator Michael O. Moore
Second Worcester

Senator Kathleen O'Connor Ives
First Essex

Senator Karen E. Spilka
Second Middlesex & Norfolk

Senator James T. Welch
Hampden

Senator Daniel A. Wolf
Cape and Islands

cc: The Honorable Charles Grassley, Chairman, U.S. Senate Judiciary Committee

The Honorable Patrick Leahy, Ranking Member, U.S. Senate Judiciary Committee

The Honorable Edward Markey, U.S. Senate

The Honorable Elizabeth Warren, U.S. Senate

Hon. Mitch McConnell
U.S. Senate Majority Leader
317 Russell Senate Office Building
Washington, DC 20510

Hon. Charles Grassley
Chairman, U.S. Senate Committee on the Judiciary
135 Hart Senate Office Building
Washington, DC 20510

Hon. Harry Reid
U.S. Senate Minority Leader
522 Hart Senate Office Building
Washington, DC 20510

Hon. Patrick Leahy
Ranking Member, U.S. Senate Committee on the Judiciary
437 Russell Senate Office Building
Washington, DC 20510

Dear Majority Leader McConnell, Judiciary Committee Chairman Charles Grassley, Minority Leader Harry Reid, and Judiciary Committee Ranking Member Patrick Leahy:

As scholars deeply committed to the fair administration of justice, upholding the rule of law, and educating future generations of the legal profession, the undersigned professors of law urge you to fulfill your constitutional duty to give President Barack Obama's Supreme Court nominee a prompt and fair hearing and a timely vote.

The Senate's obligation in this circumstance is clear. Under Article II of the Constitution, the president "shall appoint . . . judges to the Supreme Court," and the Senate's role is to provide "advice and consent." Yet before the president has even made a nomination to fill the current vacancy, a number of senators have announced that they will not perform their constitutional duty. Instead, they plan to withhold advice and consent until the next president is sworn in nearly a year from now. This preemptive abdication of duty is contrary to the process the framers envisioned in Article II, and threatens to diminish the integrity of our democratic institutions and the functioning of our constitutional government.

President Obama was elected to a four-year term in 2012. According to the Constitution, that term has more than 300 days remaining. There is no exception to the Constitution holding that the president lacks the authority or duty to appoint justices to the Supreme Court because he is in the last year of his presidency. In fact, six justices have been confirmed in presidential-election years since 1900, including Louis Brandeis, Benjamin Cardozo, and Republican-appointee Anthony Kennedy, who was confirmed by a Democratically-controlled Senate during President Ronald Reagan's last year in office.

A long-term vacancy jeopardizes the Supreme Court's ability to resolve disputed questions of federal law, causing uncertainty and hampering the administration of justice across the country. Typically, the Supreme Court resolves disagreement among the lower courts to establish national uniformity on important legal issues. But the Court fails in this essential function when eight sitting justices divide evenly 4-4, leaving the matter undecided or forcing reconsideration of it when the Court returns to full strength. If the Senate refuses to consider President Obama's nominee, the potential for deadlock on major constitutional and statutory issues will persist for at least the better part of two terms.

The Senate must not defeat the intention of the Framers by failing to perform its constitutional duty. The Senate Judiciary Committee should hold a prompt and fair hearing and the full Senate should hold a timely vote on the president's nominee.

Sincerely[1]
The Undersigned

Cc: Members of the United States Senate

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[1] Organizational affiliation for all signatories is included for identification purposes only; individuals represent only themselves, not the institutions where they are teaching or other organizations in which they are active.

William Andreen	University of Alabama School of Law
Norman J. Singer	University of Alabama School of Law
Tiffany Murphy	University of Arkansas School of Law
Cyndi Nance	University of Arkansas School of Law
Susan Schneider	University of Arkansas School of Law
Paul Bender	Arizona State University, Sandra Day O'Connor College of Law
Myles Lynk	Arizona State University, Sandra Day O'Connor College of Law
Michal Belknap	California Western School of Law
Jessica Fink	California Western School of Law
Glenn C. Smith	California Western School of Law
Jan Stiglitz	California Western School of Law
Marisa Cianciarulo	Chapman University School of Law
Theodore Seto	Loyola Law School, Los Angeles
Barbara Babcock	Stanford Law School
Mark G. Kelman	Stanford Law School
Deborah Rhode	Stanford Law School
Marjorie Cohn	Thomas Jefferson School of Law
Julie Greenberg	Thomas Jefferson School of Law
Richard Winchester	Thomas Jefferson School of Law
Herma Kay	UC Berkeley School of Law
Rose Cuison Villazor	UC Davis School of Law
Richard Frank	UC Davis School of Law
Lesley McAllister	UC Davis School of Law
Leticia Saucedo	UC Davis School of Law
Carol Izumi	UC Hastings College of the Law
Alejandro Camacho	UC Irvine School of Law
Erwin Chemerinsky	UC Irvine School of Law
Catherine Fisk	UC Irvine School of Law
Carrie Menkel-Meadow	UC Irvine School of Law
Richard Abel	UCLA School of Law
Luz Herrera	UCLA School of Law
Christine Littleton	UCLA School of Law
Joanna Schwartz	UCLA School of Law
Christina Chong	University of San Francisco School of Law
Tim Iglesias	University of San Francisco School of Law
Richard Sakai	University of San Francisco School of Law
Carol Wilson	University of San Francisco School of Law
Rebecca Brown	University of Southern California Gould School of Law
Ariela J. Gross	University of Southern California Gould School of Law
Gregory C. Keating	University of Southern California Gould School of Law
Raquel Aldana	University of the Pacific, McGeorge School of Law
Michael S. Mireles	University of the Pacific, McGeorge School of Law
John Cary Sims	University of the Pacific, McGeorge School of Law

Neil Cogan	Whittier Law School
KK DuVivier	University of Denver Sturm College of Law
Loftus Becker	University of Connecticut School of Law
Sara Bronin	University of Connecticut School of Law
Timothy Everett	University of Connecticut School of Law
Stephen Wizner	Yale Law School
Nancy Abramowitz	American University Washington College of Law
Wil Burns	American University Washington College of Law
Brandon Butler	American University Washington College of Law
Michael Carroll	American University Washington College of Law
Angela Davis	American University Washington College of Law
Christine Farley	American University Washington College of Law
Sean Flynn	American University Washington College of Law
John Heywood	American University Washington College of Law
David Hunter	American University Washington College of Law
Deena Hurwitz	American University Washington College of Law
Peter Jaszi	American University Washington College of Law
Elizabeth Keith	American University Washington College of Law
Elliott Milstein	American University Washington College of Law
Jennifer Mueller	American University Washington College of Law
Victoria Phillips	American University Washington College of Law
Jamie Raskin	American University Washington College of Law
Ira P. Robbins	American University Washington College of Law
Herman Schwartz	American University Washington College of Law
William Snape, III	American University Washington College of Law
William Yeomans	American University Washington College of Law
Hope Babcock	Georgetown University Law Center
Peter Edelman	Georgetown University Law Center
Susan Ross	Georgetown University Law Center
Phyllis Goldfarb	The George Washington University Law School
Cynthia Lee	The George Washington University Law School
Susan Goldberg	Widener University School of Law
David Hodas	Widener University School of Law
Serena Williams	Widener University School of Law
Rachel Deming	Barry University Dwayne O. Andreas School of Law
Markita D. Cooper	Florida A&M University College of Law
William D. Henslee	Florida A&M University College of Law
Nise Nekheba	Florida A&M University College of Law
Kalyani Robbins	Florida International University College of Law
Kathy Cerminara	Nova Southeastern University Law Center
Olympia Duhart	Nova Southeastern University Law Center
Michael Flynn	Nova Southeastern University Law Center
Joseph D. Harbaugh	Nova Southeastern University Law Center

Joel Mintz	Nova Southeastern University Law Center
Stuart Freeman	Stetson University College of Law
Rebecca Trammell	Stetson University College of Law
Mary Jane Angelo	University of Florida, Levin College of Law
George Dawson	University of Florida, Levin College of Law
Christine Klein	University of Florida, Levin College of Law
David Abraham	University of Miami School of Law
Elizabeth Iglesias	University of Miami School of Law
Helen de Haven	Atlanta's John Marshall Law School
Martha Albertson Fineman	Emory University School of Law
Johan van der Vyver	Emory University School of Law
Ellen Taylor	Georgia State University College of Law
Suzianne Painter-Thorne	Mercer University School of Law
David T. Ritchie	Mercer University School of Law
Scott Titshaw	Mercer University School of Law
Ronald Brown	The University of Hawaii at Manoa William S. Richardson School of Law
Virginia E Hench	The University of Hawaii at Manoa William S. Richardson School of Law
Charles Lawrence	The University of Hawaii at Manoa William S. Richardson School of Law
Mari Matsuda	The University of Hawaii at Manoa William S. Richardson School of Law
Andrea Charlow	Drake University Law School
Matthew Dore	Drake University Law School
Mark Kende	Drake University Law School
David McCord	Drake University Law School
Nancy Hauserman	University of Iowa College of Law
Linda Kerber	University of Iowa College of Law
James Macdonald	University of Idaho College of Law
Joan Steinman	Chicago-Kent College of Law
Leonard Cavise	DePaul University College of Law
Sumi Cho	DePaul University College of Law
Ted Donner	Loyola University Chicago School of Law
Allen Shoenberger	Loyola University Chicago School of Law
Marc Falkoff	Northern Illinois University College of Law
Nancy C. Loeb	Northwestern University School of Law
Sylvia Neil	Northwestern University School of Law
Christopher T. Sheean	Northwestern University School of Law
Cliff Zimmerman	Northwestern University School of Law
Patricia McCubbin	Southern Illinois University School of Law
Michael G. Heyman	The John Marshall Law School
Anthony Niedwiecki	The John Marshall Law School
Albert Alschuler	University of Chicago Law School
Jennifer Drobac	Indiana University Maurer School of Law
Carwina Weng	Indiana University Maurer School of Law
Florence Roisman	Indiana University School of Law - Indianapolis

Joseph Bauer	Notre Dame Law School
Rosalie Levinson	Valparaiso University School of Law
Joyce Mccray Pearson	Kansas University School of Law
William Westerbeke	Kansas University School of Law
Daniel Weddle	University of Missouri–Kansas City School of Law
Sharlene Boltz	Northern Kentucky University Salmon P. Chase College of Law
Judith Fischer	University of Louisville, Louis D. Brandeis School of Law
Ariana Levison	University of Louisville, Louis D. Brandeis School of Law
Cedric Powell	University of Louisville, Louis D. Brandeis School of Law
Enid Trucios-Haynes	University of Louisville, Louis D. Brandeis School of Law
Lucy S. McGough	Louisiana State University Law Center
M Isabel Medina	Loyola University New Orleans College of Law
Paul Barron	Tulane University Law School
Mark Brodin	Boston College Law School
Zygmunt Plater	Boston College Law School
Ed Richards	Boston College Law School
James Fleming	Boston University School of Law
Linda McClain	Boston University School of Law
Elizabeth Bartholet	Harvard Law School
Harris Freeman	Harvard Law School
Daniel Halperin	Harvard Law School
Charles J. Ogletree	Harvard Law School
Richard Reibstein	Harvard Law School
Laurence H. Tribe	Harvard Law School
Lucie White	Harvard Law School
Libby Adler	Northeastern University School of Law
Kathleen Engel	Suffolk University Law School
Christopher Gibson	Suffolk University Law School
Ilene Seidman	Suffolk University Law School
David Yamada	Suffolk University Law School
Andrew Leong	University of Massachusetts School of Law
Matthew Charity	Western New England University School of Law
Margaret E. Johnson	University of Baltimore School of Law
Douglas L. Colbert	University of Maryland School of Law
Marley Weiss	University of Maryland School of Law
Peter Pitegoff	University of Maine School of Law
Sarah Schindler	University of Maine School of Law
Hannah Brenner	Michigan State University College of Law
Melanie Jacobs	Michigan State University College of Law
Jacqueline Hand	University of Detroit Mercy School of Law
Alicia Alvarez	University of Michigan Law School
Robert Hirshon	University of Michigan Law School
Theodore J. St. Antoine	University of Michigan Law School

David M. Uhlmann	University of Michigan Law School
Christine Ver Ploeg	Mitchell Hamline School of Law
Beverly Balos	University of Minnesota Law School
Mary Fellows	University of Minnesota Law School
Ed Butterfoss	William Mitchell College of Law
Sarah Deer	William Mitchell College of Law
Marie Failinger	William Mitchell College of Law
Jada Fehn	William Mitchell College of Law
Derik Fettig	William Mitchell College of Law
Jim Hilbert	William Mitchell College of Law
Raleigh Levine	William Mitchell College of Law
Denise Roy	William Mitchell College of Law
Anthony Winer	William Mitchell College of Law
Jasmine Abdel-khalik	University of Missouri–Kansas City School of Law
Stanley Foreman	University of Missouri–Kansas City School of Law
Nancy Levit	University of Missouri–Kansas City School of Law
Norman Plate	University of Missouri–Kansas City School of Law
Irma Russell	University of Missouri–Kansas City School of Law
Barbara Wilson	University of Missouri–Kansas City School of Law
Jon Baris	Washington University in St. Louis School of Law
Kelly Dineen	Washington University in St. Louis School of Law
Robert Gatter	Washington University in St. Louis School of Law
William Johnson	Washington University in St. Louis School of Law
Peter Joy	Washington University in St. Louis School of Law
Daniel Mandelker	Washington University in St. Louis School of Law
Elizabeth Pendo	Washington University in St. Louis School of Law
Karen Tokarz	Washington University in St. Louis School of Law
Sidney Watson	Washington University in St. Louis School of Law
Judith Johnson	Mississippi College School of Law
John Bradley	University of Mississippi School of Law
Bari Burke	University of Montana School of Law
Katharine Bartlett	Duke Law School
Eric Fink	Duke Law School
Michelle Nowlin	Duke Law School
Jane Wettach	Duke Law School
Maxine Eichner	University of North Carolina School of Law
Deborah M. Weissman	University of North Carolina School of Law
Margaret Taylor	Wake Forest University School of Law
James Grijalva	University of North Dakota School of Law
Christine Venter	University of North Dakota School of Law
Susan Apel	University of New Hampshire School of Law
John Greabe	University of New Hampshire School of Law
Lucy Hodder	University of New Hampshire School of Law

Ann Freedman	Rutgers School of Law–Camden
Phillip Harvey	Rutgers School of Law–Newark
Alan Hyde	Rutgers School of Law–Newark
David Troutt	Rutgers School of Law–Newark
Sanford Gaines	University of New Mexico School of Law
Margaret Montoya	University of New Mexico School of Law
Mary Berkheiser	William S. Boyd School of Law, University of Nevada, Las Vegas
Sara Gordon	William S. Boyd School of Law, University of Nevada, Las Vegas
Ann McGinley	William S. Boyd School of Law, University of Nevada, Las Vegas
Garcia Ruben	William S. Boyd School of Law, University of Nevada, Las Vegas
Keith Hitokawa	Albany Law School
Nancy Ota	Albany Law School
David Rudenstine	Benjamin N. Cardozo School of Law
Ellen Yaroshefsky	Benjamin N. Cardozo School of Law
Elizabeth Schneider	Brooklyn Law School
Beryl Blaustone	City University of New York School of Law
Rebecca Bratspies	City University of New York School of Law
Susan Bryant	City University of New York School of Law
Frank Deale	City University of New York School of Law
Pamela Edwards	City University of New York School of Law
Raquel Gabriel	City University of New York School of Law
Julie Goldscheid	City University of New York School of Law
Natalie Gomez-Velez	City University of New York School of Law
Victor Goode	City University of New York School of Law
K. Babe Howell	City University of New York School of Law
Stephen Loffredo	City University of New York School of Law
Andrea McArdle	City University of New York School of Law
Sherry Ramsey	City University of New York School of Law
Allie Robbins	City University of New York School of Law
Franklin Siegel	City University of New York School of Law
Nicole Smith	City University of New York School of Law
Steven Zeidman	City University of New York School of Law
Stephen Zorn	City University of New York School of Law
Michael W. Doyle	Columbia Law School
Subha Narasimhan	Columbia Law School
Cynthia Bowman	Cornell University Law School
Angela Cornell	Cornell University Law School
Robert A. Hillman	Cornell University Law School
Mitchell Lassar	Cornell University Law School
Beth Lyon	Cornell University Law School
Martin Flaherty	Fordham University School of Law
Rachel Vorspan	Fordham University School of Law
Hillary Exter	Fordham University School of Law

Jennifer Gordon	Fordham University School of Law
Susan H. Joffe	Hofstra University Law School
Arthur Leonard	New York Law School
Carlin Meyer	New York Law School
Edward Purcell, jr.	New York Law School
Kenji Yoshino	New York Law School
Margot Pollans	Pace Law School
Ann Powers	Pace Law School
David Driesen	Syracuse University College of Law
Paula Johnson	Syracuse University College of Law
Robert Rabin	Syracuse University College of Law
Eileen Kaufman	Touro Law Center, NY Law School
Richard Klein	Touro Law Center, NY Law School
Lucinda Finley	University at Buffalo Law School
Martha T. McCluskey	University at Buffalo Law School
Susan Looper-Friedman	Capital University Law School
Roberta Mitchell	Capital University Law School
Juscelino Colares	Case Western Reserve University
Robert Strassfeld	Case Western Reserve University
April Cherry	Cleveland State University Cleveland-Marshall College of Law
Dena Davis	Cleveland State University Cleveland-Marshall College of Law
James Lawrence	The Ohio State University Moritz College of Law
Joseph Stulberg	The Ohio State University Moritz College of Law
Dana Cole	University of Akron School of Law
Howard Friedman	University of Akron School of Law
Brant Lee	University of Akron School of Law
Joseph Slater	University of Akron School of Law
Verna Williams	University of Cincinnati College of Law
Shannon Roesler	Oklahoma City University School of Law
Marla Mansfield	University of Tulsa College of Law
Paula Abrams	Lewis and Clark Law School
Michael C. Blumm	Lewis and Clark Law School
Kathy Hessler	Lewis and Clark Law School
Ofer Raban	University of Oregon School of Law
Dominick Vetri	University of Oregon School of Law
Gilbert Paul Carrasco	Willamette University College of Law
Tabatha Abu El-Haj	Drexel University Thomas R. Kline School of Law
Anil Kalhan	Drexel University Thomas R. Kline School of Law
Rona Kitchen	Duquesne University School of Law
Victor Romero	Pennsylvania State University
Craig Green	Temple University Beasley School of Law
Nancy Knauer	Temple University Beasley School of Law
Robert J. Reinstein	Temple University Beasley School of Law

David Sonenshein	Temple University Beasley School of Law
Howard F. Chang	University of Pennsylvania Law School
Robert N. Gorman	University of Pennsylvania Law School
Sarah Paoletti	University of Pennsylvania Law School
Michael J. Yelnosky	Roger Williams University School of Law
Daniel Kiel	University of Memphis Cecil C. Humphreys School of Law
Fran Ansley	University of Tennessee College of Law
Ellen Wright Clayton	Vanderbilt University Law School
Terry Maroney	Vanderbilt University Law School
Patricia Wilson	Baylor University Law School
Mark E. Steiner	South Texas College of Law
John S. Lowe	Southern Methodist University Dedman School of Law
Jenia Turner	Southern Methodist University Dedman School of Law
John Teeter	St. Mary's School of Law
Michael Green	Texas A&M University School of Law
Jensie L. Anderson	University of Utah S.J. Quinney College of Law
Alan Clarke	University of Utah S.J. Quinney College of Law
Jorge Contreras	University of Utah S.J. Quinney College of Law
Laura Kessler	University of Utah S.J. Quinney College of Law
Clifford J. Rosky	University of Utah S.J. Quinney College of Law
John Ruple	University of Utah S.J. Quinney College of Law
Linda Smith	University of Utah S.J. Quinney College of Law
Debora Threedy	University of Utah S.J. Quinney College of Law
Ann C. Hodges	University of Richmond School of Law
Darryl Brown	University of Virginia School of Law
Jonathan Cannon	University of Virginia School of Law
Stanley Henderson	University of Virginia School of Law
Corinna Lain	University of Virginia School of Law
Mildred Wigfall Robinson	University of Virginia School of Law
J.H. (Rip) Verkerke	University of Virginia School of Law
Thomas R. White, 3rd	University of Virginia School of Law
Liz Ryan Cole	Vermont Law School
Stephanie Farrior	Vermont Law School
Jessica Scott	Vermont Law School
Joan Vogel	Vermont Law School
Mary Pat Treuthart	Gonzaga University School of Law
Steven Bender	Seattle University School of Law
Carmen Gonzalez	Seattle University School of Law
Henry W. McGee, Jr.	Seattle University School of Law
Madeline Kass	Thomas Jefferson School of Law
Robert H. Aronson	University of Washington School of Law
Susan Bay	Marquette University Law School
Ed Fallone	Marquette University Law School

Jay Gold	Marquette University Law School
Harvey Kurtz	Marquette University Law School
Lisa Mazzie	Marquette University Law School
Richard Reider	Marquette University Law School
Paul Secunda	Marquette University Law School
Craig Fieschko	University of Wisconsin Law School
Ted Finman	University of Wisconsin Law School
Margaret Maroney	University of Wisconsin Law School
Thomas Mitchell	University of Wisconsin Law School
Alan Jay Weisbard	University of Wisconsin Law School
David Janes	West Virginia University College of Law
Michael Duff	University of Wyoming College of Law

March 8, 2016

The Honorable Mitch McConnell
Majority Leader
United States Senate
317 Russell Senate Office Building
Washington, DC 20510

The Honorable Harry Reid
Minority Leader
United States Senate
522 Hart Senate Office Building
Washington, DC 20510

RE: Filling the Supreme Court Vacancy

Dear Majority Leader McConnell and Minority Leader Reid:

President Obama has announced that he will nominate a replacement for the vacancy on the Supreme Court bench left by the passing of Justice Antonin Scalia, and we believe the President has a clearly prescribed constitutional responsibility to do so. On behalf of our millions of members and supporters, we call on the United States Senate to commit to doing its job by conducting fair confirmation hearings and holding a timely vote on that nominee.

In November 2012, the American public gave the President another four-year term that does not expire until noon on January 20, 2017. In doing so, Americans entrusted in President Obama the right and responsibility to fill any vacancies on the Supreme Court through the entirety of his term. To ensure a fully functioning legal system, the Senate must do its job by carrying out its end of this process. There is ample precedent for a nominee to be confirmed in election years, even when the Senate and White House are controlled by opposite political parties. Willful obstructionism is simply a dereliction of duty, and not what the American people expect from their elected representatives.

For the protection of our air, water, wildlife and lands, a strong and intact judiciary system is as important as ever. In an era when powerful interests who profit from pollution have an unprecedented level of access and influence, it is imperative that we have functioning courts – particularly our nation's highest. With so many critical issues expected to come before the Supreme Court, including those dealing with public health and environmental safeguards, this is not the time to hobble our judiciary with extended vacancies caused by political gamesmanship.

Sincerely,

Cindy Shogan
Executive Director, Alaska Wilderness League

Kierán Suckling
Executive Director, Center for Biological Diversity

Robert Wendelgass
President and CEO, Clean Water Action

Jamie Rappaport Clark
President and CEO, Defenders of Wildlife

Trip Van Noppen
President, Earthjustice

Margie Alt
Executive Director, Environment America

Michael Noble
Executive Director, Fresh Energy

Erich Pica
President, Friends of the Earth

Mark Magaña
President, GreenLatinos

Annie Leonard
Executive Director, Greenpeace USA

Gene Karpinski
President, League of Conservation Voters

Rhea Suh
President, Natural Resources Defense Council

Catherine Thomasson, MD
Executive Director, Physicians for Social Responsibility

Robert Weissman
President, Public Citizen

Michael Brune
Executive Director, Sierra Club

Ken Berlin
President and CEO, The Climate Reality Project

Peggy M. Shepard
Executive Director, WE ACT for Environmental Justice

Open Letter to the President and Senate From California Bar Associations Regarding Filling the Vacancy on the Supreme Court of the United States

March 8, 2016

The President
The White House
1600 Pennsylvania Avenue
Washington, D.C. 20500

The Honorable Mitch McConnell
United States Senate
Majority Leader
317 Russell Senate Office Building
Washington, D.C. 20510

The Honorable Harry Reid
United States Senate
Minority Leader
522 Hart Senate Office Building
Washington, D.C. 20510

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

The Honorable Patrick Leahy
United States Senate
Ranking Member, Committee on the Judiciary
437 Russell Senate Office Building
Washington, D.C. 20510

Dear Mr. President, Senator McConnell, Senator Reid, Senator Grassley, and Senator Leahy:

We write on behalf of numerous California bar associations and as bar leaders who have taken an oath to defend the Constitution. We call on President Obama to act with deliberate speed to nominate an exceptionally qualified person to the Supreme Court. We also urge the Senate to fulfill its constitutional duty to advise and consent, so that our highest Court may continue to perform its critical function at the apex of our third branch of government.

Article II of the Constitution requires the President, "with the advice and consent of the Senate," to appoint judges to the Supreme Court. Through this section, the framers placed in the hands of the executive and legislative branches of our government a duty to ensure that the third pillar of our democracy, our courts, would be protected from entanglement in partisan politics. We trust that you will fulfill this duty.

While careful evaluation and reasoned debate regarding the qualifications of the nominee are central to the Senate's role to advise and consent, it would undermine the rule of law and risk nullifying the Supreme Court's power to serve its constitutional role as arbiter of disputes, were the confirmation process to be delayed until a new president is inaugurated. Were such a path to be followed, the Court would be forced to sit for two terms, and over a year, with a vacancy. The implications of this course of action would be significant, subjecting people in different regions of the country to different legal standards on matters of constitutional importance and leaving open the specter of an unresolved constitutional crisis. The rule of law requires an ultimate arbiter. The Constitution has placed the Supreme Court in that role.

We ask that you carry out your constitutionally prescribed roles with full fealty to the oaths you have taken so that our Supreme Court is returned to its full membership.

Sincerely,

Alameda County Bar Association
Los Angeles County Bar Association
Lake County Bar Association
Yolo County Bar Association
Asian Americans Advancing Justice – Asian Law Caucus
Asian American Prosecutors Association
Asian Pacific American Bar Association of Los Angeles County
Bay Area Lawyers for Individual Freedom – BALIF
California Employment Lawyers Association
Charles Houston Bar Association
East Bay La Raza Lawyers Association
Filipino Bar Association of Northern California
Korean American Bar Association of Northern California
Korean American Bar Association of Southern California
Marin County Women Lawyers
Mexican American Bar Association
Queen's Bench Bar Association of the San Francisco Bay Area
Women Lawyers of Alameda County
David Pasternak, President, California State Bar *

cc: United States Senators

* Title for identification only. Signed in personal capacity and not official capacity.

March 9, 2016

President Barack Obama
The White House
1600 Pennsylvania Avenue NW
Washington, D.C. 20500

Hon. Chuck Grassley
United States Senate
Chair, Committee on the Judiciary
135 Hart Senate Office Building
Washington, D.C. 20510

Hon. Mitch McConnell
United States Senate
Majority Leader
317 Russell Senate Office Building
Washington, D.C. 20510

Re: **Statement of Corporate Lawyers, General Counsels and Other Legal Practitioners Regarding U.S. Supreme Court Vacancy**

Dear President Barack Obama, Judiciary Committee Chairman Chuck Grassley, and Majority Leader Mitch McConnell:

We write to express concern within the corporate legal and business community regarding the current vacancy on the United States Supreme Court. The U.S. Supreme Court stands at the helm of one of our three branches of government. Every term, critical cases come before the Court concerning issues of great public importance, including cases alleging violations of the Constitution or federal law. The Supreme Court also considers cases implicating the interests of major corporations, private-sector organizations and businesses across the country. The impact of a stalemate at the Supreme Court may have a profound effect on our economy, creating uncertainty for the financial industry, major corporate employers, as well as small businesses.

When a vacancy on the Court arises, the Constitution is clear. Article II, Section 2 states that the President "shall nominate, and by and with the advice and consent of the Senate, shall appoint. . . judges of the Supreme Court." U.S. Constitution, Article II, Section 2, Clause 2. Though the Senate may ultimately choose not to consent to the President's nominee, it would be unprecedented for the Senate to refuse to perform its "advice and consent" role in this context. Not only does the Constitution direct the sitting President to nominate an individual to fill a vacancy on the Court no matter whether it is an election year, nearly one third of all Presidents have nominated a justice in an election year who was eventually confirmed.

Indeed, there is historical precedent for confirming a nominee in an election year. Six Justices have been confirmed in presidential election years since 1900, including Justices

Kennedy (1988), Murphy (1940), Cardozo (1932), Clarke (1916), Brandeis (1916), and Pitney (1912).

Each Term, approximately 7,000-8,000 new cases are filed with the Court. On average, the Court will grant plenary review in about 80 of those cases. An additional 100 cases will be disposed of without such review. In light of the substantial activity that comes before the Court each term, it is imperative that the Court be able to resolve conflicting decisions among the federal circuits and establish uniform interpretation of law to guide the work of lower courts across the country. Allowing the Court to proceed for two terms with an open seat would be unprecedented and have damaging collateral consequences that would be felt across our entire federal judicial system. The Court would be unable to act if it were divided in any case without a majority. Such an untoward situation would also negatively impact the business environment and the economy of the country. The corporate legal community and business interests represented herein seek the assurances that come with a fully staffed nine-member Court.[1]

We encourage the President to exercise his constitutional responsibility to nominate a successor to the late Associate Justice Antonin Scalia. We also encourage the Senate to fulfill its constitutional role and grant that nominee fair consideration and a full Senate floor vote.

Respectfully,

The Undersigned[2]

Alan K. Zeigler	Birmingham	AL	Bradley Arant Boult Cummings LLP
Angela Holt	Huntsville	AL	Bradley Arant Boult Cummings LLP
Anne Knox Averitt	Birmingham	AL	Bradley Arant Boult Cummings LLP
Anne Marie Seibel	Birmingham	AL	
Daniel F. Murphy	Birmingham	AL	Bradley Arant Boult Cummings LLP
Dawn Helms Sharff	Birmingham	AL	
Denetra Hartzog	Birmingham	AL	
Dorothy D. Pak	Birmingham	AL	
Dylan Black	Birmingham	AL	
E. Cutter Hughes	Huntsville	AL	Bradley Arant Boult Cummings LLP
Emily S. Craft	Huntsville	AL	
Gary L. Howard	Birmingham	AL	Bradley Arant Boult Cummings LLP
J.S. "Chris" Christie, Jr.	Birmingham	AL	
Jessica Givens	Birmingham	AL	Bradley Arant Boult Cummings LLP
Kathleen Manson	Huntsville	AL	
Kay K. Bains	Birmingham	AL	

[1] The number of justices has now stood at nine for nearly 150 years. Federal law expressly provides that the Court "shall consist" of nine members. Congress settled on a nine member Court in 1869 after considerable deliberation and debate and has stood by its judgment for nearly 150 years.

[2] Firm and corporate names are provided for identification purposes only and do not indicate support or endorsement by the firm or corporation.

Keith Covington	Vestavia Hills	AL	
Laura P. Washburn	Birmingham	AL	
Margaret Darlene Ehinger	Huntsville	AL	
Patrick H. Graves, Jr.	Huntsville	AL	
Paul S. Ware	Birmingham	AL	
Polly H. Robb	Huntsville	AL	
Stuart J. Frentz	Birmingham	AL	Bradley Arant Boult Cummings LLP
Susan Doss	Birmingham	AL	
Tammy Baker	Birmingham	AL	Jackson Lewis P.C.
Virginia C. Patterson	Birmingham	AL	Bradley Arant Boult Cummings LLP
Barry Mitchell	Phoenix	AZ	
Daniel C. Barr	Phoenix	AZ	Perkins Coie LLP
David Rosenbaum	Phoenix	AZ	Osborn Maledon, PA
Evan Schlack	Scottsdale	AZ	Martin & Bonnett, PLLC
Judith K. Weiss	Phoenix	AZ	
Karin Aldama	Phoenix	AZ	Perkins Coie LLP
Katherine May	Phoenix	AZ	Perkins Coie LLP
Paul F. Eckstein	Phoenix	AZ	Perkins Coie LLP
Sarah Gonski	Phoenix	AZ	
Priya Sanger	San Francisco	CA	Google Inc.
Andrew Hinton	Mountain View	CA	Google Inc.
Aaron Jacoby	Beverly Hills	CA	Arent Fox LLP
Bradley S. Phillips	Los Angeles	CA	Munger, Tolles & Olson LLP
Brian K. Landsberg	Sacramento	CA	
Collin Seals	Glendale	CA	Arent Fox LLP
Diane B. Roldán	Los Angeles	CA	Arent Fox LLP
Donna Mo	Los Angeles	CA	
Douglas E. Hewlett, Jr.	Los Angeles	CA	
Dr. Sandra Thompson	Irvine	CA	Slater Hersey & Lieberman, LLP
Erin Muellenberg	Yorba Linda	CA	
Frank Petrilli	Oakland	CA	Arent Fox LLP
Ian Gore	Los Angeles	CA	
Jack W. Londen	San Francisco	CA	Morrison & Foerster LLP
Jacob R. Sorensen	San Francisco	CA	Pillsbury Winthrop Shaw Pittman LLP
Khaldoun Baghdadi	San Francisco	CA	
Kim Boras	Los Angeles	CA	
Larry Tabb	Los Angeles	CA	Musick Peeler & Garrett
Loren Kieve	San Francisco	CA	Kieve Law Offices
Louis R. Cohen	Newport Beach	CA	Arent Fox LLP
Mark Field	Los Angeles	CA	
Michael Traynor	Berkeley	CA	
Peter Graham Cohn	Petaluma	CA	
Sharon D. Mayo	Mill Valley	CA	Arnold & Porter LLP
Susan J. Field	Los Angeles	CA	Musick Peeler & Garrett
Thomas V. Loran III	San Francisco	CA	

Vincent A. Ruiz	San Francisco	CA	Ruiz Law Group
Jeff Leung	San Francisco	CA	
Laura Smolowe	Los Angeles	CA	
David H. Miller, Esq.	Denver	CO	Sawaya & Miller Law Firm
Marjorie Sussman	Avon	CT	Allied World Assurance Company
Owen M. Fiss	Hamden	CT	Yale University
Jane Sherburne	Washington	DC	Sherburne PLLC
Alex Young K. Oh	Washington	DC	Paul, Weiss, Rifkind, Wharton & Garrison LLP
Andrew Solinger	Washington	DC	
Andrew W. Kentz	Washington	DC	Picard Kentz & Rowe LLP
B. Donovan Picard	Washington	DC	Picard Kentz & Rowe LLP
Barbara S. Wahl	Washington	DC	Arent Fox, LLP
Brian D. Schneider	Washington	DC	Arent Fox LLP
Brian Stevens	Washington	DC	Arent Fox LLP
Carol Connor Cohen	Washington	DC	Arent Fox LLP
David M. Dorsen	Washington	DC	Sedgwick, LLP
David T. Beddow	Washington	DC	O'Melveny & Myers LLC
Eleanor H. Smith	Washington	DC	
Erin Atkins	Washington	DC	
Gerald P. Norton	Washington	DC	
Hillary Stemple	Washington	DC	Arent Fox LLP
James N. Bierman	Washington	DC	Foley & Lardner LLP
James P. Joseph	Washington	DC	Arnold & Porter LLP
Kelli Scheid	Washington	DC	Arent Fox LLP
Lianne Childress	Washington	DC	
Linda T. Makings, Esq.	Washington	DC	Arent Fox LLP
Lynne Bernabei	Washington	DC	
Marc E. Rivera	Washington	DC	Arent Fox LLP
Marc Fleischaker	Washington	DC	Arent Fox, LLP
Mark Brent Joachim	Washington	DC	Arent Fox LLP
Michael H. Chanin	Washington	DC	Bryan Cave LLP
Naima Walker Fierce	Washington	DC	Fierce & Associates
Rachel Richardson	Washington	DC	Arent Fox LLP
Ralph A. Taylor	Washington	DC	
Reginald Turner	Washington	DC	
Ria M. Williams, Esq.	Washington	DC	Arent Fox LLP
Richard T. Seymour	Washington	DC	Law Office of Richard T. Seymour, P.L.L.C.
Sarah Cohn	Washington	DC	
Stephen J. Pollak	Washington	DC	
Tammy Mitchell	Washington	DC	
Doneene Damon	Wilmington	DE	
Edward Soto	Miami	FL	
Charles T. Lester, Jr.	Atlanta	GA	
Harold E. Franklin, Jr.	Atlanta	GA	
R. William Ide	Atlanta	GA	

Devon Bruce	Chicago	IL	
Jack Block	Chicago	IL	
John W. Borkowski	Chicago	IL	Husch Blackwell
Lowell Sachnoff	Chicago	IL	Reed Smith LLP
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Judy Y. Barrasso	New Orleans	LA	Barrasso Usdin Kupperman Freeman & Sarver
Kim M. Boyle	New Orleans	LA	
Michelle D. Craig	New Orleans	LA	Transcendent Legal
Stephen H. Kupperman	New Orleans	LA	Barrasso Usdin Kupperman Freeman & Sarver
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Terrel J. Broussard	New Orleans	LA	
Neil V. McKittrick	Boston	MA	
Ashley Briggs	Silver Spring	MD	Arent Fox LLP
Benjamin B. Klubes	Bethesda	MD	
Carolyn Osolinik	Bethesda	MD	Correia & Osolinik, Washington, DC
David H. Dickieson	Bethesda	MD	Schertler & Onorato, LLP
Edward Correia	Bethesda	MD	Correia & Osolinik, Washington, DC
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Karolyn Blumer Lewandowski	Bethesda	MD	Arent Fox LLP
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Laura Wilkinson	Potomac	MD	
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Portia L. Roberson	Detroit	MI	City of Detroit
Reginald Turner	Detroit	MI	Clark Hill PLC
Richard Pins	Minneapolis	MI	Stinson Leonard Street, LLP
Robert McDuff	Jackson	MI	McDuff & Byrd
W. Wayne Drinkwater	Ridgeland	MI	
Wendy Mullins	Jackson	MI	
Kevin Armstrong	Minneapolis	MN	DST Market Services, LLC.
Meghan Worthington-Largent	St. Louis	MO	Arent Fox LLP
Peter D. Van Cleve	St. Louis	MO	
Nancy Campbell	Jackson	MS	Baptist Premier Medical Clinic
Roy D. Campbell, III	Jackson	MS	Bradley Arant Boult Cummings LLP
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Marion Cowell	Charlotte	NC	
Naho Kobayashi	Charlotte	NC	
Robert E. Harrington	Charlotte	NC	
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David L. Harris	South Orange	NJ	

Laura A. Kaster	Princeton	NJ	
Lawrence M. Lawson	Freehold	NJ	McElroy Deutsch Mulvaney & Carpenter
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Audrey Yayon-Dauvet	New York	NY	
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Carl Reisner	New York	NY	Paul, Weiss, Rifkind, Wharton & Garrison LLP
Christine Berry	New York	NY	Berry Campbell
Christopher Boehning	New York	NY	Paul, Weiss, Rifkind, Wharton & Garrison LLP
Claudine Meredith-Goujon	New York	NY	
Conrad K. Harper	New York	NY	
Daniel F. Kolb	New York	NY	
David A. Crichlow	New York	NY	
David T. Washburn	New York	NY	Paul, Weiss, Rifkind, Wharton & Garrison LLP
David W. Brown	New York	NY	Paul, Weiss, Rifkind, Wharton & Garrison LLP
Edward Labaton	New York	NY	Labaton Sucharow LLP
Elizabeth H. Cohen	New York	NY	Arent Fox LLP
Eric Goodison	New York	NY	Paul, Weiss, Rifkind, Wharton & Garrison LLP
Evelyne Kay Carson	New York	NY	Arent Fox LLP
Gerard E. Harper	New York	NY	
Jay Greenfield	New York	NY	Paul, Weiss, Rifkind, Wharton & Garrison LLP
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John H. Doyle, III	Bridgehampton	NY	
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John Nonna	New York	NY	Squire Patton Boggs
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Mary Shepard Hughes	Huntsville	NY	
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Monica K. Thurmond	New York	NY	Paul, Weiss, Rifkind, Wharton & Garrison LLP
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Paulette M. Caldwell	New York	NY	New York University School of Law
Richard A. Rosen	New York	NY	Paul, Weiss, Rifkind, Wharton & Garrison LLP
Richard Krainin	New York	NY	Arent Fox LLP
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Robert L. Laufer	New York	NY	Paul, Weiss, Rifkind, Wharton & Garrison LLP
Rossie E. Turman, III	New York	NY	
Roswell B. Perkins	New York	NY	
Salvatore Gogliormella	New York	NY	Paul, Weiss, Rifkind, Wharton & Garrison LLP
Sanford ("Sandy") Litvack	New York	NY	Hogan Lovells LLC
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Stanley J. Brown	New York	NY	
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Todd R. Chandler	New York	NY	
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Michael Lehr	Philadelphia	PA	
Bob Hannon	Nashville	TN	
Chris Bowles	Nashville	TN	
Christopher E. Thorsen	Nashville	TN	Bradley Arant Boult Cummings LLP
David K. Taylor	Nashville	TN	Bradley Arant Boult Cummings LLP
E. Berry Holt	Nashville	TN	Bradley Arant Boult Cummings LLP
Heather Wright	Nashville	TN	
Daniella D. Landers	Houston	TX	Katten Muchin Rosenman LLP
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Donald B. Mitchell, Jr.	Arlington	VA	
Eva Pulliam	Springfield	VA	
G. Allen Dale	McLean	VA	Law Offices of G. Allen Dale PLLC
Justine K. Mitchell	Ashburn	VA	Arent Fox LLP
Siahn Rein	Alexandria	VA	
Stephen Rosenblatt	Fairfax	VA	Sheet Metal Workers' National Pension Fund
Greg Landis	Seattle	WA	
Michael Licata	Seattle	WA	Savitt, Bruce, & Willey LLP
Robert S. Mucklestone	Seattle	WA	
Brian Butler	Madison	WI	Stafford Rosenbaum LLP
David G. Walsh	Madison	WI	
Franklyn Gimbel	Milwaukee	WI	Gimbel, Reilly, Guerin & Brown
Harvey L. Temkin	Verona	WI	Reinhart Law Firm
John Skilton	Madison	WI	
Randall Crocker	Milwaukee	WI	
Timothy Burns	Madison	WI	

National Hispanic Leadership Agenda

MEMBER ORGANIZATIONS

Alianza Americas
American G.I. Forum
ASPIRA Association
Avance Inc.
Casa de Esperanza: National Latin@ Network
Congressional Hispanic Caucus Institute
Cuban American National Council
Farmworker Justice
Hispanic Association of Colleges & Universities
Hispanic Federation
Hispanic National Bar Association
Inter-University Program for Latino Research
Labor Council for Latin American Advancement
Latino Justice PRLDEF
League of United Latin American Citizens
MANA, A National Latina Organization
Mexican American Legal Defense and Educational Fund
National Association of Hispanic Federal Executives
National Association of Hispanic Publications
NALEO Educational Fund
National Association of Latino Independent Producers
National Conference of Puerto Rican Women, Inc.
National Council of La Raza
National Hispana Leadership Institute
National Hispanic Caucus of State Legislators
National Hispanic Council on Aging
National Hispanic Environmental Council
National Hispanic Foundation for the Arts
National Hispanic Media Coalition
National Hispanic Medical Association
National Institute for Latino Policy
National Latina Institute for Reproductive Health
National Puerto Rican Coalition
Presente.org
SER Jobs for Progress National
Southwest Voter Registration Education Project
United States Hispanic Chamber of Commerce
United States Hispanic Leadership Institute
United States-Mexico Chamber of Commerce
U.S.- Mexico Foundation

March 9, 2016

The Honorable Mitch McConnell
Senate Majority Leader
317 Russell Senate Office Building
Washington, DC 20510

The Honorable Chuck Grassley
Chairman, Senate Judiciary
135 Hart Senate Office Building
Washington, DC 20510

Re: Urgent Need for the Senate to Consider and Vote on a Presidential Supreme Court Nominee

Dear Senators:

On behalf of the National Hispanic Leadership Agenda (NHLA), a coalition of 40 leading Hispanic advocacy organizations in the United States, we write to express our deep frustration with your current position to refuse to allow proper vetting, a hearing, or a floor vote for any nominee made by the President to the Supreme Court of the United States. Our coalition includes a broad range of perspectives, as indicated by the members listed, and the board voted **unanimously** to urge you to fulfill your constitutional duties and move a candidate through the process to an eventual floor vote, once a nominee has been named.

The consideration of Supreme Court nominees is a fundamental constitutional responsibility of the Senate. The refusal to hold a hearing or meet with a nominee to the Supreme Court is a clear dereliction of duty, and inconsistent with normal order of the Senate. The politicization of the current vacancy and the President's duty to nominate a Supreme Court justice violates the very principles of order and rule of law that uphold our Constitution and values as a nation.

The Constitution states that with advice and consent of the Senate, the President shall appoint justices to the Supreme Court.[1] This language provides no constitutional or legal argument for the Senate to deny any deliberation, hearing, or vote on a nominee to the Court. By choosing to act in direct contradiction of its constitutional responsibilities, this Senate is choosing to place politics above the rule of law and justice, which is a threat to the democratic process each Senator has vowed to protect.

The impact of Senate inaction will ultimately fall on everyday Americans, whose issues and cases appear before the Court. The nation relies on a fully-staffed and fully-functioning Court to resolve matters conclusively and in a timely manner. Saddling the court with only eight justices for possibly two terms, potentially preventing the court from making decisive rulings on those questions of utmost concern to the public, can only be perceived as a self-serving maneuver that compromises our justice system and constitutional values. The Latino community is acutely aware of the need for a fully constituted Court because of the cases now and in the future that directly affect us, including a number of cases coming out of Texas, where Latinos make up 38 percent of the population.

[1] U.S. CONST. art. II, § 2, cl. 2.

There remains more than sufficient time to consider, vet, and vote on a nominee. Over the past four decades, the time from nomination to confirmation has averaged 67 days. Moreover, no nominee has waited more than 125 days for a confirmation vote. We fully expect the Senate to live up to its fundamental constitutional obligations by holding a hearing and taking a vote on the President's nominee, and to reverse your position of obstructionism and delay. Just as millions of Americans go to work each day, the Senate must do the same, and must show the country that it is capable of carrying out its basic functions for the good of the country.

Sincerely,

Hector Sanchez
Chair, NHLA
Executive Director, LCLAA

Thomas A. Saenz
Vice-Chair, NHLA
President and General Counsel, MALDEF

AAUW
empowering women since 1881

Uphold the Constitution: Fairly Consider the President's Nomination for the Supreme Court Vacancy

March 10, 2016

RECEIVED MAR 10 2016

Dear Senator:

The American Association of University Women (AAUW) joined the nation in mourning the passing of U.S. Supreme Court Justice Antonin Scalia who served on the court for nearly 30 years. The Supreme Court has pending cases that will greatly affect the everyday lives of women and their families, and Justice Scalia's untimely death creates a vacancy at a critical juncture. It is in the face of losing such a legal giant that we remember how fortunate we are, as a nation, to have a constitutional process to see us smoothly through this transition.

On behalf of the 170,000 bipartisan members and supporters of AAUW, I urge you uphold the U.S. Constitution by moving forward to fairly and expeditiously consider any nominee put forward by President Obama to fill the Supreme Court vacancy. In so doing, the American people will be reassured that a fully staffed court will be available to deliver this year's critical Supreme Court decisions.

The Appointments Clause of the Constitution lays out three sequential acts in order to fill a vacancy. First, the nomination of the president, second the advice and consent of the U.S. Senate, and third the appointment by the president. There is no exception for the president to refuse to nominate a successor nor is there an exception for senators to refuse to provide advice and consent. Public statements by Senate Majority Leader Mitch McConnell and Republican members of the Senate Judiciary Committee that they will take no action on <u>any</u> nominee put forward by the president, before a nominee has even been named, impedes the function of government to ensure equal access to a fully functioning judicial system.[i] AAUW and our members feel compelled to urge all senators to reject cynical tactics to preemptively disqualify the president's nominee or to obstruct any nominee for purely partisan reasons.

Proponents of obstruction have attempted to mislead the public by claiming there is not enough time left in the president's term and that appointments should not occur in election years. These statements are false. Not only are these tactics a strong indication of the naked partisanship of this obstructionism, but it severely undermines the function of the Supreme Court and the integrity of the Senate. Waiting until January 2017 for a replacement would mean that for the first time in history, the Supreme Court would be without its full complement of justices for a good portion of two terms of the court.

Retired Supreme Court Justice Sandra Day O'Connor responded quickly to this delay tactic by stating, "I don't agree [with waiting] ... I think we need somebody there now to do the job and let's get on with it."[ii] Editorial boards from Colorado, Wisconsin, Ohio, New

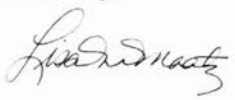
1111 Sixteenth St. NW, Washington, DC 20036 | 202.785.7793 | www.aauw.org | advocacy@aauw.org

Hampshire, Pennsylvania, Iowa, Kentucky, Illinois, Maine and all over the country agree that the Senate should follow the Constitution and fairly consider President Obama's nominee.[iii] Furthermore, a majority of Americans (56%) say the Senate should hold hearings and vote on President Obama's choice to fill the vacancy.[iv]

AAUW urges senators to demand that Majority Leader McConnell and the Republican members of the Judiciary Committee rethink this unprecedented course of obstructionism and fairly consider any nominee put forward by President Obama to fill the Supreme Court vacancy. Furthermore, the full Senate should be given the opportunity for an "up or down" vote on any qualified nominee.

Votes associated with this issue may be included in the AAUW Action Fund *Congressional Voting Record* for the 114th Congress. If you have any questions or need additional information, feel free to contact me at 202/785-7720, or Erin Prangley, associate director for government relations, at 202/728-7730.

Sincerely,



Lisa M. Maatz
Vice President for Government Relations

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[i] Herszenhorn, David. "G.O.P. Senators Say Obama Supreme Court Pick Will be Rejected." New York Times. February 24, 2016. http://www.nytimes.com/2016/02/24/us/politics/supreme-court-nomination-obama.html?hp&action=click&pgtype=Homepage&clickSource=story-heading&module=first-column-region&region=top-news&WT.nav=top-news&_r=0

[ii] Zorthian, Julia. "Sandra Day O'Connor Says Obama Should Name New Supreme Court Justice." Time. February 18, 2016. http://time.com/4228800/oconnor-scalia-obama-supreme-court/

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1111 Sixteenth St. NW, Washington, DC 20036 | 202.785.7793 | www.aauw.org | advocacy@aauw.org

Hon. Mitch McConnell
U.S. Senate Majority Leader
317 Russell Senate Office Building
Washington, DC 20510

Hon. Charles Grassley
Chairman, U.S. Senate Committee on the Judiciary
135 Hart Senate Office Building
Washington, DC 20510

Hon. Harry Reid
U.S. Senate Minority Leader
522 Hart Senate Office Building
Washington, DC 20510

Hon. Patrick Leahy
Ranking Member, U.S. Senate Committee on the Judiciary
437 Russell Senate Office Building
Washington, DC 20510

Dear Majority Leader McConnell, Judiciary Committee Chairman Charles Grassley, Minority Leader Harry Reid, and Judiciary Committee Ranking Member Patrick Leahy:

As scholars deeply committed to the fair administration of justice, upholding the rule of law, and educating future generations of the legal profession, the undersigned professors of law urge you to fulfill your constitutional duty to give President Barack Obama's Supreme Court nominee a prompt and fair hearing and a timely vote.

The Senate's obligation in this circumstance is clear. Under Article II of the Constitution, the president "shall appoint . . . judges to the Supreme Court," and the Senate's role is to provide "advice and consent." Yet before the president has even made a nomination to fill the current vacancy, a number of senators have announced that they will not perform their constitutional duty. Instead, they plan to withhold advice and consent until the next president is sworn in nearly a year from now. This preemptive abdication of duty is contrary to the process the framers envisioned in Article II, and threatens to diminish the integrity of our democratic institutions and the functioning of our constitutional government.

President Obama was elected to a four-year term in 2012. According to the Constitution, that term has more than 300 days remaining. There is no exception to the Constitution holding that the president lacks the authority or duty to appoint justices to the Supreme Court because he is in the last year of his presidency. In fact, six justices have been confirmed in presidential-election years since 1900, including Louis Brandeis, Benjamin Cardozo, and Republican-appointee Anthony Kennedy, who was confirmed by a Democratically-controlled Senate during President Ronald Reagan's last year in office.

A long-term vacancy jeopardizes the Supreme Court's ability to resolve disputed questions of federal law, causing uncertainty and hampering the administration of justice across the country. Typically, the Supreme Court resolves disagreement among the lower courts to establish national uniformity on important legal issues. But the Court fails in this essential function when eight sitting justices divide evenly 4-4, leaving the matter undecided or forcing reconsideration of it when the Court returns to full strength. If the Senate refuses to consider President Obama's nominee, the potential for deadlock on major constitutional and statutory issues will persist for at least the better part of two terms.

The Senate must not defeat the intention of the Framers by failing to perform its constitutional duty. The Senate Judiciary Committee should hold a prompt and fair hearing and the full Senate should hold a timely vote on the president's nominee.

Sincerely[1]
The Undersigned

Cc: Members of the United States Senate

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[1] Organizational affiliation for all signatories is included for identification purposes only; individuals represent only themselves, not the institutions where they are teaching or other organizations in which they are active.

William Andreen	University of Alabama School of Law
Norman J. Singer	University of Alabama School of Law
Tiffany Murphy	University of Arkansas School of Law
Cyndi Nance	University of Arkansas School of Law
Susan Schneider	University of Arkansas School of Law
Paul Bender	Arizona State University, Sandra Day O'Connor College of Law
Myles Lynk	Arizona State University, Sandra Day O'Connor College of Law
Michal Belknap	California Western School of Law
Jessica Fink	California Western School of Law
Glenn C. Smith	California Western School of Law
Jan Stiglitz	California Western School of Law
Marisa Cianciarulo	Chapman University School of Law
Theodore Seto	Loyola Law School, Los Angeles
Barbara Babcock	Stanford Law School
Mark G. Kelman	Stanford Law School
Deborah Rhode	Stanford Law School
Marjorie Cohn	Thomas Jefferson School of Law
Julie Greenberg	Thomas Jefferson School of Law
Richard Winchester	Thomas Jefferson School of Law
Herma Kay	UC Berkeley School of Law
Rose Cuison Villazor	UC Davis School of Law
Richard Frank	UC Davis School of Law
Lesley McAllister	UC Davis School of Law
Leticia Saucedo	UC Davis School of Law
Carol Izumi	UC Hastings College of the Law
Alejandro Camacho	UC Irvine School of Law
Erwin Chemerinsky	UC Irvine School of Law
Catherine Fisk	UC Irvine School of Law
Carrie Menkel-Meadow	UC Irvine School of Law
Richard Abel	UCLA School of Law
Luz Herrera	UCLA School of Law
Christine Littleton	UCLA School of Law
Joanna Schwartz	UCLA School of Law
Christina Chong	University of San Francisco School of Law
Tim Iglesias	University of San Francisco School of Law
Richard Sakai	University of San Francisco School of Law
Carol Wilson	University of San Francisco School of Law
Rebecca Brown	University of Southern California Gould School of Law
Ariela J. Gross	University of Southern California Gould School of Law
Gregory C. Keating	University of Southern California Gould School of Law
Raquel Aldana	University of the Pacific, McGeorge School of Law
Michael S. Mireles	University of the Pacific, McGeorge School of Law
John Cary Sims	University of the Pacific, McGeorge School of Law

Neil Cogan	Whittier Law School
KK DuVivier	University of Denver Sturm College of Law
Loftus Becker	University of Connecticut School of Law
Sara Bronin	University of Connecticut School of Law
Timothy Everett	University of Connecticut School of Law
Stephen Wizner	Yale Law School
Nancy Abramowitz	American University Washington College of Law
Wil Burns	American University Washington College of Law
Brandon Butler	American University Washington College of Law
Michael Carroll	American University Washington College of Law
Angela Davis	American University Washington College of Law
Christine Farley	American University Washington College of Law
Sean Flynn	American University Washington College of Law
John Heywood	American University Washington College of Law
David Hunter	American University Washington College of Law
Deena Hurwitz	American University Washington College of Law
Peter Jaszi	American University Washington College of Law
Elizabeth Keith	American University Washington College of Law
Elliott Milstein	American University Washington College of Law
Jennifer Mueller	American University Washington College of Law
Victoria Phillips	American University Washington College of Law
Jamie Raskin	American University Washington College of Law
Ira P. Robbins	American University Washington College of Law
Herman Schwartz	American University Washington College of Law
William Snape, III	American University Washington College of Law
William Yeomans	American University Washington College of Law
Hope Babcock	Georgetown University Law Center
Peter Edelman	Georgetown University Law Center
Susan Ross	Georgetown University Law Center
Phyllis Goldfarb	The George Washington University Law School
Cynthia Lee	The George Washington University Law School
Susan Goldberg	Widener University School of Law
David Hodas	Widener University School of Law
Serena Williams	Widener University School of Law
Rachel Deming	Barry University Dwayne O. Andreas School of Law
Markita D. Cooper	Florida A&M University College of Law
William D. Henslee	Florida A&M University College of Law
Nise Nekheba	Florida A&M University College of Law
Kalyani Robbins	Florida International University College of Law
Kathy Cerminara	Nova Southeastern University Law Center
Olympia Duhart	Nova Southeastern University Law Center
Michael Flynn	Nova Southeastern University Law Center
Joseph D. Harbaugh	Nova Southeastern University Law Center

Joel Mintz	Nova Southeastern University Law Center
Stuart Freeman	Stetson University College of Law
Rebecca Trammell	Stetson University College of Law
Mary Jane Angelo	University of Florida, Levin College of Law
George Dawson	University of Florida, Levin College of Law
Christine Klein	University of Florida, Levin College of Law
David Abraham	University of Miami School of Law
Elizabeth Iglesias	University of Miami School of Law
Helen de Haven	Atlanta's John Marshall Law School
Martha Albertson Fineman	Emory University School of Law
Johan van der Vyver	Emory University School of Law
Ellen Taylor	Georgia State University College of Law
Suzianne Painter-Thorne	Mercer University School of Law
David T. Ritchie	Mercer University School of Law
Scott Titshaw	Mercer University School of Law
Ronald Brown	The University of Hawaii at Manoa William S. Richardson School of Law
Virginia E Hench	The University of Hawaii at Manoa William S. Richardson School of Law
Charles Lawrence	The University of Hawaii at Manoa William S. Richardson School of Law
Mari Matsuda	The University of Hawaii at Manoa William S. Richardson School of Law
Andrea Charlow	Drake University Law School
Matthew Dore	Drake University Law School
Mark Kende	Drake University Law School
David McCord	Drake University Law School
Nancy Hauserman	University of Iowa College of Law
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James Macdonald	University of Idaho College of Law
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Sumi Cho	DePaul University College of Law
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Allen Shoenberger	Loyola University Chicago School of Law
Marc Falkoff	Northern Illinois University College of Law
Nancy C. Loeb	Northwestern University School of Law
Sylvia Neil	Northwestern University School of Law
Christopher T. Sheean	Northwestern University School of Law
Cliff Zimmerman	Northwestern University School of Law
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Michael G. Heyman	The John Marshall Law School
Anthony Niedwiecki	The John Marshall Law School
Albert Alschuler	University of Chicago Law School

Jennifer Drobac	Indiana University Maurer School of Law
Carwina Weng	Indiana University Maurer School of Law
Florence Roisman	Indiana University School of Law - Indianapolis
Joseph Bauer	Notre Dame Law School
Rosalie Levinson	Valparaiso University School of Law
Joyce Mccray Pearson	Kansas University School of Law
William Westerbeke	Kansas University School of Law
Sharlene Boltz	Northern Kentucky University Salmon P. Chase College of Law
Judith Fischer	University of Louisville, Louis D. Brandeis School of Law
Ariana Levison	University of Louisville, Louis D. Brandeis School of Law
Cedric Powell	University of Louisville, Louis D. Brandeis School of Law
Enid Trucios-Haynes	University of Louisville, Louis D. Brandeis School of Law
Lucy S. McGough	Louisiana State University Law Center
M Isabel Medina	Loyola University New Orleans College of Law
Paul Barron	Tulane University Law School
Mark Brodin	Boston College Law School
Zygmunt Plater	Boston College Law School
Ed Richards	Boston College Law School
James Fleming	Boston University School of Law
Linda McClain	Boston University School of Law
Elizabeth Bartholet	Harvard Law School
Harris Freeman	Harvard Law School
Daniel Halperin	Harvard Law School
Charles J. Ogletree	Harvard Law School
Richard Reibstein	Harvard Law School
Laurence H. Tribe	Harvard Law School
Lucie White	Harvard Law School
Libby Adler	Northeastern University School of Law
Kathleen Engel	Suffolk University Law School
Christopher Gibson	Suffolk University Law School
Ilene Seidman	Suffolk University Law School
David Yamada	Suffolk University Law School
Andrew Leong	University of Massachusetts School of Law
Matthew Charity	Western New England University School of Law
Margaret E. Johnson	University of Baltimore School of Law
Douglas L. Colbert	University of Maryland School of Law
Marley Weiss	University of Maryland School of Law
Peter Pitegoff	University of Maine School of Law
Sarah Schindler	University of Maine School of Law
Hannah Brenner	Michigan State University College of Law
Melanie Jacobs	Michigan State University College of Law
Jacqueline Hand	University of Detroit Mercy School of Law
Alicia Alvarez	University of Michigan Law School

Robert Hirshon	University of Michigan Law School
Theodore J. St. Antoine	University of Michigan Law School
David M. Uhlmann	University of Michigan Law School
Christine Ver Ploeg	Mitchell Hamline School of Law
Beverly Balos	University of Minnesota Law School
Mary Fellows	University of Minnesota Law School
Ed Butterfoss	William Mitchell College of Law
Sarah Deer	William Mitchell College of Law
Marie Failinger	William Mitchell College of Law
Jada Fehn	William Mitchell College of Law
Derik Fettig	William Mitchell College of Law
Jim Hilbert	William Mitchell College of Law
Raleigh Levine	William Mitchell College of Law
Denise Roy	William Mitchell College of Law
Anthony Winer	William Mitchell College of Law
Jasmine Abdel-khalik	University of Missouri–Kansas City School of Law
Stanley Foreman	University of Missouri–Kansas City School of Law
Nancy Levit	University of Missouri–Kansas City School of Law
Norman Plate	University of Missouri–Kansas City School of Law
Irma Russell	University of Missouri–Kansas City School of Law
Daniel Weddle	University of Missouri–Kansas City School of Law
Barbara Wilson	University of Missouri–Kansas City School of Law
Jon Baris	Washington University in St. Louis School of Law
Kelly Dineen	Washington University in St. Louis School of Law
Robert Gatter	Washington University in St. Louis School of Law
William Johnson	Washington University in St. Louis School of Law
Peter Joy	Washington University in St. Louis School of Law
Daniel Mandelker	Washington University in St. Louis School of Law
Elizabeth Pendo	Washington University in St. Louis School of Law
Karen Tokarz	Washington University in St. Louis School of Law
Sidney Watson	Washington University in St. Louis School of Law
Judith Johnson	Mississippi College School of Law
John Bradley	University of Mississippi School of Law
Bari Burke	University of Montana School of Law
Katharine Bartlett	Duke Law School
Eric Fink	Duke Law School
Michelle Nowlin	Duke Law School
Jane Wettach	Duke Law School
Maxine Eichner	University of North Carolina School of Law
Deborah M. Weissman	University of North Carolina School of Law
Margaret Taylor	Wake Forest University School of Law
James Grijalva	University of North Dakota School of Law
Christine Venter	University of North Dakota School of Law

Susan Apel	University of New Hampshire School of Law
John Greabe	University of New Hampshire School of Law
Lucy Hodder	University of New Hampshire School of Law
Ann Freedman	Rutgers School of Law–Camden
Phillip Harvey	Rutgers School of Law–Newark
Alan Hyde	Rutgers School of Law–Newark
David Troutt	Rutgers School of Law–Newark
Sanford Gaines	University of New Mexico School of Law
Margaret Montoya	University of New Mexico School of Law
Mary Berkheiser	William S. Boyd School of Law, University of Nevada, Las Vegas
Sara Gordon	William S. Boyd School of Law, University of Nevada, Las Vegas
Ann McGinley	William S. Boyd School of Law, University of Nevada, Las Vegas
Garcia Ruben	William S. Boyd School of Law, University of Nevada, Las Vegas
Keith Hitokawa	Albany Law School
Nancy Ota	Albany Law School
David Rudenstine	Benjamin N. Cardozo School of Law
Ellen Yaroshefsky	Benjamin N. Cardozo School of Law
Elizabeth Schneider	Brooklyn Law School
Beryl Blaustone	City University of New York School of Law
Rebecca Bratspies	City University of New York School of Law
Susan Bryant	City University of New York School of Law
Frank Deale	City University of New York School of Law
Pamela Edwards	City University of New York School of Law
Raquel Gabriel	City University of New York School of Law
Julie Goldscheid	City University of New York School of Law
Natalie Gomez-Velez	City University of New York School of Law
Victor Goode	City University of New York School of Law
K. Babe Howell	City University of New York School of Law
Stephen Loffredo	City University of New York School of Law
Andrea McArdle	City University of New York School of Law
Sherry Ramsey	City University of New York School of Law
Allie Robbins	City University of New York School of Law
Franklin Siegel	City University of New York School of Law
Nicole Smith	City University of New York School of Law
Steven Zeidman	City University of New York School of Law
Stephen Zorn	City University of New York School of Law
Michael W. Doyle	Columbia Law School
Subha Narasimhan	Columbia Law School
Cynthia Bowman	Cornell University Law School
Angela Cornell	Cornell University Law School
Robert A. Hillman	Cornell University Law School
Mitchell Lassar	Cornell University Law School
Beth Lyon	Cornell University Law School

Martin Flaherty	Fordham University School of Law
Rachel Vorspan	Fordham University School of Law
Hillary Exter	Fordham University School of Law
Jennifer Gordon	Fordham University School of Law
Susan H. Joffe	Hofstra University Law School
Arthur Leonard	New York University School of Law
Carlin Meyer	New York University School of Law
Edward Purcell, jr.	New York University School of Law
Kenji Yoshino	New York University School of Law
Margot Pollans	Pace Law School
Ann Powers	Pace Law School
David Driesen	Syracuse University College of Law
Paula Johnson	Syracuse University College of Law
Robert Rabin	Syracuse University College of Law
Eileen Kaufman	Touro Law Center, NY Law School
Richard Klein	Touro Law Center, NY Law School
Lucinda Finley	University at Buffalo Law School
Martha T. McCluskey	University at Buffalo Law School
Susan Looper-Friedman	Capital University Law School
Roberta Mitchell	Capital University Law School
Juscelino Colares	Case Western Reserve University
Robert Strassfeld	Case Western Reserve University
April Cherry	Cleveland State University Cleveland-Marshall College of Law
Dena Davis	Cleveland State University Cleveland-Marshall College of Law
James Lawrence	The Ohio State University Moritz College of Law
Joseph Stulberg	The Ohio State University Moritz College of Law
Dana Cole	University of Akron School of Law
Howard Friedman	University of Akron School of Law
Brant Lee	University of Akron School of Law
Joseph Slater	University of Akron School of Law
Verna Williams	University of Cincinnati College of Law
Shannon Roesler	Oklahoma City University School of Law
Marla Mansfield	University of Tulsa College of Law
Paula Abrams	Lewis and Clark Law School
Michael C. Blumm	Lewis and Clark Law School
Kathy Hessler	Lewis and Clark Law School
Ofer Raban	University of Oregon School of Law
Dominick Vetri	University of Oregon School of Law
Gilbert Paul Carrasco	Willamette University College of Law
Tabatha Abu El-Haj	Drexel University Thomas R. Kline School of Law
Anil Kalhan	Drexel University Thomas R. Kline School of Law
Rona Kitchen	Duquesne University School of Law
Victor Romero	Pennsylvania State University

Craig Green	Temple University Beasley School of Law
Nancy Knauer	Temple University Beasley School of Law
Robert J. Reinstein	Temple University Beasley School of Law
David Sonenshein	Temple University Beasley School of Law
Howard F. Chang	University of Pennsylvania Law School
Robert N. Gorman	University of Pennsylvania Law School
Sarah Paoletti	University of Pennsylvania Law School
Michael J. Yelnosky	Roger Williams University School of Law
Daniel Kiel	University of Memphis Cecil C. Humphreys School of Law
Fran Ansley	University of Tennessee College of Law
Ellen Wright Clayton	Vanderbilt University Law School
Terry Maroney	Vanderbilt University Law School
Patricia Wilson	Baylor University Law School
Mark E. Steiner	South Texas College of Law
John S. Lowe	Southern Methodist University Dedman School of Law
Jenia Turner	Southern Methodist University Dedman School of Law
John Teeter	St. Mary's School of Law
Michael Green	Texas A&M University School of Law
Jensie L. Anderson	University of Utah S.J. Quinney College of Law
Alan Clarke	University of Utah S.J. Quinney College of Law
Jorge Contreras	University of Utah S.J. Quinney College of Law
Laura Kessler	University of Utah S.J. Quinney College of Law
Clifford J. Rosky	University of Utah S.J. Quinney College of Law
John Ruple	University of Utah S.J. Quinney College of Law
Linda Smith	University of Utah S.J. Quinney College of Law
Debora Threedy	University of Utah S.J. Quinney College of Law
Ann C. Hodges	University of Richmond School of Law
Darryl Brown	University of Virginia School of Law
Jonathan Cannon	University of Virginia School of Law
Stanley Henderson	University of Virginia School of Law
Corinna Lain	University of Virginia School of Law
Mildred Wigfall Robinson	University of Virginia School of Law
J.H. (Rip) Verkerke	University of Virginia School of Law
Thomas R. White, 3rd	University of Virginia School of Law
Liz Ryan Cole	Vermont Law School
Stephanie Farrior	Vermont Law School
Jessica Scott	Vermont Law School
Joan Vogel	Vermont Law School
Mary Pat Treuthart	Gonzaga University School of Law
Steven Bender	Seattle University School of Law
Carmen Gonzalez	Seattle University School of Law
Henry W. McGee, Jr.	Seattle University School of Law
Madeline Kass	Thomas Jefferson School of Law

Robert H. Aronson	University of Washington School of Law
Susan Bay	Marquette University Law School
Ed Fallone	Marquette University Law School
Jay Gold	Marquette University Law School
Harvey Kurtz	Marquette University Law School
Lisa Mazzie	Marquette University Law School
Richard Reider	Marquette University Law School
Paul Secunda	Marquette University Law School
Craig Fieschko	University of Wisconsin Law School
Ted Finman	University of Wisconsin Law School
Margaret Maroney	University of Wisconsin Law School
Thomas Mitchell	University of Wisconsin Law School
Alan Jay Weisbard	University of Wisconsin Law School
David Janes	West Virginia University College of Law
Michael Duff	University of Wyoming College of Law

March 9, 2016

President Barack Obama
The White House
1600 Pennsylvania Avenue NW
Washington, D.C. 20500

Hon. Chuck Grassley
United States Senate
Chair, Committee on the Judiciary
135 Hart Senate Office Building
Washington, D.C. 20510

Hon. Mitch McConnell
United States Senate
Majority Leader
317 Russell Senate Office Building
Washington, D.C. 20510

Re: **Statement of Corporate Lawyers, General Counsels and Other Legal Practitioners Regarding U.S. Supreme Court Vacancy**

Dear President Barack Obama, Judiciary Committee Chairman Chuck Grassley, and Majority Leader Mitch McConnell:

We write to express concern within the corporate legal and business community regarding the current vacancy on the United States Supreme Court. The U.S. Supreme Court stands at the helm of one of our three branches of government. Every term, critical cases come before the Court concerning issues of great public importance, including cases alleging violations of the Constitution or federal law. The Supreme Court also considers cases implicating the interests of major corporations, private-sector organizations and businesses across the country. The impact of a stalemate at the Supreme Court may have a profound effect on our economy, creating uncertainty for the financial industry, major corporate employers, as well as small businesses.

When a vacancy on the Court arises, the Constitution is clear. Article II, Section 2 states that the President "shall nominate, and by and with the advice and consent of the Senate, shall appoint. . . judges of the Supreme Court." U.S. Constitution, Article II, Section 2, Clause 2. Though the Senate may ultimately choose not to consent to the President's nominee, it would be unprecedented for the Senate to refuse to perform its "advice and consent" role in this context. Not only does the Constitution direct the sitting President to nominate an individual to fill a vacancy on the Court no matter whether it is an election year, nearly one third of all Presidents have nominated a justice in an election year who was eventually confirmed.

Indeed, there is historical precedent for confirming a nominee in an election year. Six Justices have been confirmed in presidential election years since 1900, including Justices

Kennedy (1988), Murphy (1940), Cardozo (1932), Clarke (1916), Brandeis (1916), and Pitney (1912).

Each Term, approximately 7,000-8,000 new cases are filed with the Court. On average, the Court will grant plenary review in about 80 of those cases. An additional 100 cases will be disposed of without such review. In light of the substantial activity that comes before the Court each term, it is imperative that the Court be able to resolve conflicting decisions among the federal circuits and establish uniform interpretation of law to guide the work of lower courts across the country. Allowing the Court to proceed for two terms with an open seat would be unprecedented and have damaging collateral consequences that would be felt across our entire federal judicial system. The Court would be unable to act if it were divided in any case without a majority. Such an untoward situation would also negatively impact the business environment and the economy of the country. The corporate legal community and business interests represented herein seek the assurances that come with a fully staffed nine-member Court.[1]

We encourage the President to exercise his constitutional responsibility to nominate a successor to the late Associate Justice Antonin Scalia. We also encourage the Senate to fulfill its constitutional role and grant that nominee fair consideration and a full Senate floor vote.

Respectfully,

The Undersigned[2]

Alan K. Zeigler	Birmingham	AL	Bradley Arant Boult Cummings LLP
Angela Holt	Huntsville	AL	Bradley Arant Boult Cummings LLP
Anne Knox Averitt	Birmingham	AL	Bradley Arant Boult Cummings LLP
Anne Marie Seibel	Birmingham	AL	
Daniel F. Murphy	Birmingham	AL	Bradley Arant Boult Cummings LLP
Dawn Helms Sharff	Birmingham	AL	
Denetra Hartzog	Birmingham	AL	
Dorothy D. Pak	Birmingham	AL	
Dylan Black	Birmingham	AL	
E. Cutter Hughes	Huntsville	AL	Bradley Arant Boult Cummings LLP
Emily S. Craft	Huntsville	AL	
Gary L. Howard	Birmingham	AL	Bradley Arant Boult Cummings LLP
J.S. "Chris" Christie, Jr.	Birmingham	AL	
Jessica Givens	Birmingham	AL	Bradley Arant Boult Cummings LLP
Kathleen Manson	Huntsville	AL	
Kay K. Bains	Birmingham	AL	

[1] The number of justices has now stood at nine for nearly 150 years. Federal law expressly provides that the Court "shall consist" of nine members. Congress settled on a nine member Court in 1869 after considerable deliberation and debate and has stood by its judgment for nearly 150 years.

[2] Firm and corporate names are provided for identification purposes only and do not indicate support or endorsement by the firm or corporation.

Keith Covington	Vestavia Hills	AL	
Laura P. Washburn	Birmingham	AL	
Margaret Darlene Ehinger	Huntsville	AL	
Patrick H. Graves, Jr.	Huntsville	AL	
Paul S. Ware	Birmingham	AL	
Polly H. Robb	Huntsville	AL	
Stuart J. Frentz	Birmingham	AL	Bradley Arant Boult Cummings LLP
Susan Doss	Birmingham	AL	
Tammy Baker	Birmingham	AL	Jackson Lewis P.C.
Virginia C. Patterson	Birmingham	AL	Bradley Arant Boult Cummings LLP
Barry Mitchell	Phoenix	AZ	
Daniel C. Barr	Phoenix	AZ	Perkins Coie LLP
David Rosenbaum	Phoenix	AZ	Osborn Maledon, PA
Evan Schlack	Scottsdale	AZ	Martin & Bonnett, PLLC
Judith K. Weiss	Phoenix	AZ	
Karin Aldama	Phoenix	AZ	Perkins Coie LLP
Katherine May	Phoenix	AZ	Perkins Coie LLP
Paul F. Eckstein	Phoenix	AZ	Perkins Coie LLP
Sarah Gonski	Phoenix	AZ	
Priya Sanger	San Francisco	CA	Google Inc.
Andrew Hinton	Mountain View	CA	Google Inc.
Aaron Jacoby	Beverly Hills	CA	Arent Fox LLP
Bradley S. Phillips	Los Angeles	CA	Munger, Tolles & Olson LLP
Brian K. Landsberg	Sacramento	CA	
Collin Seals	Glendale	CA	Arent Fox LLP
Diane B. Roldán	Los Angeles	CA	Arent Fox LLP
Donna Mo	Los Angeles	CA	
Douglas E. Hewlett, Jr.	Los Angeles	CA	
Dr. Sandra Thompson	Irvine	CA	Slater Hersey & Lieberman, LLP
Erin Muellenberg	Yorba Linda	CA	
Frank Petrilli	Oakland	CA	Arent Fox LLP
Ian Gore	Los Angeles	CA	
Jack W. Londen	San Francisco	CA	Morrison & Foerster LLP
Jacob R. Sorensen	San Francisco	CA	Pillsbury Winthrop Shaw Pittman LLP
Khaldoun Baghdadi	San Francisco	CA	
Kim Boras	Los Angeles	CA	
Larry Tabb	Los Angeles	CA	Musick Peeler & Garrett
Loren Kieve	San Francisco	CA	Kieve Law Offices
Louis R. Cohen	Newport Beach	CA	Arent Fox LLP
Mark Field	Los Angeles	CA	
Michael Traynor	Berkeley	CA	
Peter Graham Cohn	Petaluma	CA	
Sharon D. Mayo	Mill Valley	CA	Arnold & Porter LLP
Susan J. Field	Los Angeles	CA	Musick Peeler & Garrett
Thomas V. Loran III	San Francisco	CA	

Vincent A. Ruiz	San Francisco	CA	Ruiz Law Group
Jeff Leung	San Francisco	CA	
Laura Smolowe	Los Angeles	CA	
David H. Miller, Esq.	Denver	CO	Sawaya & Miller Law Firm
Marjorie Sussman	Avon	CT	Allied World Assurance Company
Owen M. Fiss	Hamden	CT	Yale University
Jane Sherburne	Washington	DC	Sherburne PLLC
Alex Young K. Oh	Washington	DC	Paul, Weiss, Rifkind, Wharton & Garrison LLP
Andrew Solinger	Washington	DC	
Andrew W. Kentz	Washington	DC	Picard Kentz & Rowe LLP
B. Donovan Picard	Washington	DC	Picard Kentz & Rowe LLP
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Brian D. Schneider	Washington	DC	Arent Fox LLP
Brian Stevens	Washington	DC	Arent Fox LLP
Carol Connor Cohen	Washington	DC	Arent Fox LLP
David M. Dorsen	Washington	DC	Sedgwick, LLP
David T. Beddow	Washington	DC	O'Melveny & Myers LLC
Eleanor H. Smith	Washington	DC	
Erin Atkins	Washington	DC	
Gerald P. Norton	Washington	DC	
Hillary Stemple	Washington	DC	Arent Fox LLP
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James P. Joseph	Washington	DC	Arnold & Porter LLP
Kelli Scheid	Washington	DC	Arent Fox LLP
Lianne Childress	Washington	DC	
Linda T. Makings, Esq.	Washington	DC	Arent Fox LLP
Lynne Bernabei	Washington	DC	
Marc E. Rivera	Washington	DC	Arent Fox LLP
Marc Fleischaker	Washington	DC	Arent Fox, LLP
Mark Brent Joachim	Washington	DC	Arent Fox LLP
Michael H. Chanin	Washington	DC	Bryan Cave LLP
Naima Walker Fierce	Washington	DC	Fierce & Associates
Rachel Richardson	Washington	DC	Arent Fox LLP
Ralph A. Taylor	Washington	DC	
Reginald Turner	Washington	DC	
Ria M. Williams, Esq.	Washington	DC	Arent Fox LLP
Richard T. Seymour	Washington	DC	Law Office of Richard T. Seymour, P.L.L.C.
Sarah Cohn	Washington	DC	
Stephen J. Pollak	Washington	DC	
Tammy Mitchell	Washington	DC	
Doneene Damon	Wilmington	DE	
Edward Soto	Miami	FL	
Charles T. Lester, Jr.	Atlanta	GA	
Harold E. Franklin, Jr.	Atlanta	GA	
R. William Ide	Atlanta	GA	

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Stephen H. Kupperman	New Orleans	LA	Barrasso Usdin Kupperman Freeman & Sarver
Steven Usdin	New Orleans	LA	
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Neil V. McKittrick	Boston	MA	
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Edward Correia	Bethesda	MD	Correia & Osolinik, Washington, DC
Jeremy B. Fox	Potomac	MD	
Karolyn Blumer Lewandowski	Bethesda	MD	Arent Fox LLP
Kay Georgi	Rockville	MD	Arent Fox LLP
Laura Wilkinson	Potomac	MD	
Nicholas T. Christakos	Rockville	MD	
Mary Clay Morgan	Jackson	MI	
Portia L. Roberson	Detroit	MI	City of Detroit
Reginald Turner	Detroit	MI	Clark Hill PLC
Richard Pins	Minneapolis	MI	Stinson Leonard Street, LLP
Robert McDuff	Jackson	MI	McDuff & Byrd
W. Wayne Drinkwater	Ridgeland	MI	
Wendy Mullins	Jackson	MI	
Kevin Armstrong	Minneapolis	MN	DST Market Services, LLC.
Meghan Worthington-Largent	St. Louis	MO	Arent Fox LLP
Peter D. Van Cleve	St. Louis	MO	
Nancy Campbell	Jackson	MS	Baptist Premier Medical Clinic
Roy D. Campbell, III	Jackson	MS	Bradley Arant Boult Cummings LLP
Andrew D. Hendry	Pinehurst	NC	Retired Vice Chairman, Chief Legal Officer and Secretary, Colgate-Palmolive Company
April Miller Boise	Charlotte	NC	
Dana C. Lumsden	Charlotte	NC	Bradley Arant Boult Cummings LLP
Marion Cowell	Charlotte	NC	
Naho Kobayashi	Charlotte	NC	
Robert E. Harrington	Charlotte	NC	
Sabrina C. Beavens	Portsmouth	NH	Iurillo Law Group, P.A.
David L. Harris	South Orange	NJ	

Laura A. Kaster	Princeton	NJ	
Lawrence M. Lawson	Freehold	NJ	McElroy Deutsch Mulvaney & Carpenter
Matthew Trokenheim	South Orange	NJ	Arent Fox LLP
Rachel Witriol	Maplewood	NJ	
Hank Bjorklund	Manhasset	NY	Retired, Chase Bank, NA
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Adam Klein	New York	NY	Outten & Golden LLP
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Carl Reisner	New York	NY	Paul, Weiss, Rifkind, Wharton & Garrison LLP
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Edward Labaton	New York	NY	Labaton Sucharow LLP
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Eric Goodison	New York	NY	Paul, Weiss, Rifkind, Wharton & Garrison LLP
Evelyne Kay Carson	New York	NY	Arent Fox LLP
Gerard E. Harper	New York	NY	
Jay Greenfield	New York	NY	Paul, Weiss, Rifkind, Wharton & Garrison LLP
Jennifer Scullion	New York	NY	
John C. Ericson	New York	NY	
John H. Doyle, III	Bridgehampton	NY	
John Kiernan	New York	NY	
John Nonna	New York	NY	Squire Patton Boggs
Lisa Mazure	Armonk	NY	
Louise Firestone	New York	NY	
Marc Gary	New York	NY	
Marjorie Press Lindblom	New York	NY	Kirkland & Ellis LLP
Marsha E. Simms	New York	NY	
Martha Campbell	New York	NY	Berry Campbell Gallery
Martin Flumenbaum	New York	NY	Paul, Weiss, Rifkind, Wharton & Garrison LLP
Mary Shepard Hughes	Huntsville	NY	
Michelle Marsh	New York	NY	
Monica K. Thurmond	New York	NY	Paul, Weiss, Rifkind, Wharton & Garrison LLP
Moses Silverman	New York	NY	Paul, Weiss, Rifkind, Wharton & Garrison LLP
Neale M. Albert	New York	NY	
Nicholas Groombridge	New York	NY	Paul, Weiss, Rifkind, Wharton & Garrison LLP

Paulette M. Caldwell	New York	NY	New York University School of Law
Richard A. Rosen	New York	NY	Paul, Weiss, Rifkind, Wharton & Garrison LLP
Richard Krainin	New York	NY	Arent Fox LLP
Richard Sussman	New York	NY	
Robert A. Atkins	New York	NY	Paul, Weiss, Rifkind, Wharton & Garrison LLP
Robert C. Fleder	New York	NY	Paul, Weiss, Rifkind, Wharton & Garrison LLP
Robert L. Laufer	New York	NY	Paul, Weiss, Rifkind, Wharton & Garrison LLP
Rossie E. Turman, III	New York	NY	
Roswell B. Perkins	New York	NY	
Salvatore Gogliormella	New York	NY	Paul, Weiss, Rifkind, Wharton & Garrison LLP
Sanford ("Sandy") Litvack	New York	NY	Hogan Lovells LLC
Sidney S. Rosdeitcher	New York	NY	
Stanley J. Brown	New York	NY	
Stuart Robinowitz	New York	NY	Paul Weiss Rifkind Wharton & Garrison LLP
Todd R. Chandler	New York	NY	
Victoria B. Bjorklund	New York	NY	Retired, Simpson Thacher & Bartlett LLP
David Smith	Philadelphia	PA	Schnader Harrison Segal & Lewis LLP
Michael Lehr	Philadelphia	PA	
Bob Hannon	Nashville	TN	
Chris Bowles	Nashville	TN	
Christopher E. Thorsen	Nashville	TN	Bradley Arant Boult Cummings LLP
David K. Taylor	Nashville	TN	Bradley Arant Boult Cummings LLP
E. Berry Holt	Nashville	TN	Bradley Arant Boult Cummings LLP
Heather Wright	Nashville	TN	
Daniella D. Landers	Houston	TX	Katten Muchin Rosenman LLP
Warren Seay, Jr.	DeSoto	TX	Arent Fox LLP
Alison Andersen	Alexandria	VA	
Donald B. Mitchell, Jr.	Arlington	VA	
Eva Pulliam	Springfield	VA	
G. Allen Dale	McLean	VA	Law Offices of G. Allen Dale PLLC
Justine K. Mitchell	Ashburn	VA	Arent Fox LLP
Siahn Rein	Alexandria	VA	
Stephen Rosenblatt	Fairfax	VA	Sheet Metal Workers' National Pension Fund
Greg Landis	Seattle	WA	
Michael Licata	Seattle	WA	Savitt, Bruce, & Willey LLP
Robert S. Mucklestone	Seattle	WA	
Brian Butler	Madison	WI	Stafford Rosenbaum LLP
David G. Walsh	Madison	WI	
Franklyn Gimbel	Milwaukee	WI	Gimbel, Reilly, Guerin & Brown
Harvey L. Temkin	Verona	WI	Reinhart Law Firm
John Skilton	Madison	WI	
Randall Crocker	Milwaukee	WI	
Timothy Burns	Madison	WI	

March 10, 2016

The Honorable Charles E. Grassley
U.S. Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Patrick Leahy
U.S. Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, D.C. 20510

RE: Filling the Vacancy on the Supreme Court of the United States

Dear Chairman Grassley and Ranking Member Leahy:

The Hispanic National Bar Association (HNBA), the National Asian Pacific American Bar Association (NAPABA), the National Bar Association (NBA), the National LGBT Bar Association (National LGBT Bar), and the National Native American Bar Association (NNABA) have a long history of supporting judicial nominees from both Democratic and Republican presidents. Our non-partisan organizations represent the interests of almost two hundred thousand lawyers, judges, and legal professionals of diverse backgrounds across the country.

As professional legal membership organizations and representatives of diverse American attorneys, we have consistently maintained that it is both the President's and the Senate's constitutional responsibility to ensure that our courts are fully functioning.

The President has the constitutional duty to nominate Article III judges—including U.S. Supreme Court Justices—"by and with the Advice and Consent of the Senate," under Article II, Section 2 of the U.S. Constitution.

Article II, Section 2 of the U.S. Constitution further makes it clear that the Senate fulfills its constitutional responsibility to ensure the effective functioning of our courts by giving that nominee fair consideration on the merits and a timely up or down vote.

The Constitutional obligations of the President and the Senate hold true irrespective of who is in the White House, the identity of the individual nominee, or the political affiliation of any individual Senator.

As attorneys, we are deeply concerned about the effect and impact that the current rhetoric and stated positions will have on the effective operation of the judiciary, and on public perception of the American justice system. A full complement of Supreme Court Justices is critical to ensuring the smooth functioning of the judiciary and our legal system. The mere prospect of two terms of the Court without a full bench opens the door to uncertainty in the legal system. Any actuality of an incomplete Court will hamper the administration of justice. The Court must be able to resolve questions of constitutional and statutory importance and resolve disagreements between the lower courts to ensure uniformity of federal law. As an institution, the Court must be complete in order to be able to do so effectively. Delay in the Supreme Court's ability to fulfill its duties caused by intentionally leaving the Court incomplete will have a direct impact on the legal rights of Americans, individuals and businesses of all backgrounds, across the country, and further erode public confidence in our legal system and in the functioning of our democracy.

We strongly urge the Senate to uphold its Constitutional duty by holding a fair hearing and timely vote on any Supreme Court nominee to ensure the effective operation of our judicial system.

Sincerely,

Robert Maldonado
President
Hispanic National Bar Association

Eduardo Juarez
President
National LGBT Bar Association

Jin Y. Hwang
President
National Asian Pacific American Bar Association

Linda Benally
President
National Native American Bar Association

Benjamin Crump
President
National Bar Association

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THE ATTORNEYS GENERAL OF

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DISTRICT OF COLUMBIA ◆ HAWAII ◆ ILLINOIS
IOWA ◆ MAINE ◆ MARYLAND ◆ MASSACHUSETTS ◆ MINNESOTA
MISSOURI ◆ NEW MEXICO ◆ NEW YORK ◆ NORTH CAROLINA
OREGON ◆ PUERTO RICO ◆ RHODE ISLAND
VERMONT ◆ VIRGINIA ◆ WASHINGTON

March 10, 2016

The Honorable Mitch McConnell
Majority Leader
United States Senate
Washington, D.C. 20510

The Honorable Harry Reid
Minority Leader
United States Senate
Washington, D.C. 20510

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

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

Dear Leader McConnell, Leader Reid, Chairman Grassley and Ranking Member Leahy:

We, the undersigned, are Attorneys General representing 19 states, the District of Columbia and the Commonwealth of Puerto Rico. We are united in the belief that the United States Senate must act promptly to consider a nominee to fill the vacancy on the United States Supreme Court. We believe that a failure to do so would undermine the rule of law and ultimately impair the functioning of state governments within our federal system.

The Constitution clearly sets out the process for filling a Supreme Court vacancy. The President has a duty to make a nomination. President Obama, duly elected twice by the American people, has pledged to do so. The Senate, then, has the responsibility to consider and approve or disapprove the nomination. While simple, this is the law and it should be followed.

Throughout our history, the Senate —without exception— has acted promptly to consider qualified nominees to the Supreme Court. The longest the Senate has ever taken to confirm a President's Supreme Court nominee is 125 days and since 1975, a nominee has, on average, received a vote by the full Senate within 67 days of his or her nomination. Moreover, every nominee since 1875 has received a confirmation hearing. And since 1900, six justices have been confirmed during election years, including Justice Anthony Kennedy, who was confirmed in the final year of the Reagan Administration.

The states and territories have a unique and pressing interest in a full and functioning Supreme Court. We rely on the Supreme Court to resolve questions of federal law, to resolve disputes

between the states, to evaluate the constitutionality of state laws, and to ensure that federal and constitutional law are interpreted and applied uniformly across all states and territories. The Supreme Court not only resolves disputes that implicate States' vital interests, it often does so in closely divided cases.

We urge the Senate to carry out its responsibilities by allowing for full consideration of a qualified nominee to the Supreme Court by holding a hearing and a vote without unnecessary delay.

Sincerely,

Kamala Harris
California Attorney General

George Jepsen
Connecticut Attorney General

Matt Denn
Delaware Attorney General

Karl A. Racine
District of Columbia Attorney General

Douglas Chin
Hawaii Attorney General

Lisa Madigan
Illinois Attorney General

Tom Miller
Iowa Attorney General

Janet Mills
Maine Attorney General

Brian Frosh
Maryland Attorney General

Maura Healey
Massachusetts Attorney General

Lori Swanson
Minnesota Attorney General

Chris Koster
Missouri Attorney General

Hector Balderas
New Mexico Attorney General

Eric Schneiderman
New York Attorney General

Roy Cooper
North Carolina Attorney General

Ellen F. Rosenblum
Oregon Attorney General

César Miranda
Puerto Rico Secretary of Justice

Peter F. Kilmartin
Rhode Island Attorney General

William H. Sorrell
Vermont Attorney General

Mark Herring
Virginia Attorney General

Robert W. Ferguson
Washington Attorney General

March 10, 2016

Senate Majority Leader McConnell
317 Russell Senate Office Building
Washington, DC 20510

Senate Judiciary Committee Chair Grassley
135 Hart Senate Office Building
Washington, DC 20510

Senate Minority Leader Reid
522 Hart Senate Office Building
Washington, DC 20510

Senate Judiciary Committee Ranking Member Leahy
437 Russell Senate Office Building
Washington, DC 20510

Dear Senate Majority Leader McConnell, Senate Judiciary Committee Chair Grassley, Senate Minority Leader Reid, and Senate Judiciary Committee Ranking Member Leahy:

We are retired Chief Judges of federal courts of appeal in the D.C. and the Third Circuits., appointed respectively by Democratic and Republican presidents. We write to urge the U.S. Senate to fulfill its constitutional role to advise and consent on a nominee selected by the President to fill the vacancy created by the death of Justice Antonin Scalia in an appropriately expeditious manner. Only in that way can the Supreme Court continue its vital work of declaring and harmonizing national law in our rapidly changing economy and areas of social concern.

Our several decades of judicial service at the Court of Appeals level have instilled a profound awareness of the critical need for a full component of nine Justices on the Supreme Court. This number is not only necessary to resolve conflicts among circuits but, just as important, it is essential to the Court's primary function of declaring what the law is in a rapidly moving society where crises frequently arise that must be decided at the highest judicial level whether conflicts in lower courts exist or not. How should captures from the terrorist conflicts be treated; should executions of domestic criminals be carried out or stayed; should regulations of monumental environmental impact and enormous cost be allowed to proceed or be stopped? These are decisions that should not be imposed by an equally divided Court on one part of the country but not other parts solely on the basis of the geographical boundaries of a circuit. In this term alone, decisions on the right to vote, the right of immigrants to resist deportation, of women to access assistance in reproductive decisions, and of public servants to organize effectively are slated for Supreme Court resolution and could well produce an even split on the Court. Surely the drafters of our Constitution did not envision a country whose citizens would not be treated equally under law by the Highest Court in such matters. Single instance recusals of Justices on grounds of conflict of interest or illness, inevitable though they may be, have been infrequent; Justice Scalia wrote "[e]ven one unnecessary recusal impacts the functioning of the Court," *Cheney v. United States District Court,* 541 U.S. 913 (2004)(memorandum of Justice Scalia), and in no case have they lasted over substantial parts of two terms, as could occur here were the Senate to delay action on a nominee until after the November 2016 presidential election.

Article II of the Constitution states that the President "shall nominate, and by and with the Advice and Consent of the Senate, shall appoint…Judges of the supreme Court." There is no express exception for years when a Presidential election is pending and no reason to infer one. There is instead ample precedent for confirming Justices during an election year; Justices Kennedy, Cardozo and Brandeis

were all confirmed in an election year. To recognize such an exception would set a dangerous precedent, and invite attempts to extend it to other situations where the Executive and Legislative branches are in political conflict with one another. The Supreme Court would be in danger of becoming a bargaining chip in such situations, although the Framers expressly sought to make it independent of the political desires or ambitions of the other branches.

It is in that spirit of reverence toward the intent of the drafters of the Framers, and against the backdrop of our experience with the workings of the federal courts of appeal and their special relationship with the Supreme court, that we urge you as leaders of the Senate conscientiously to fulfill your "advise and consent" role on any forthcoming nomination by the President to fill Justice Scalia's seat on the Supreme Court.

Sincerely,

Hon. Patricia M. Wald
Retired Chief Judge
United States Court of Appeals
for the District of Columbia Circuit

Hon. John J. Gibbons
Retired Chief Judge
United States Court of Appeals
for the Third Circuit

Hon. Mitch McConnell
U.S. Senate Majority Leader
317 Russell Senate Office Building
Washington, DC 20510

Hon. Charles Grassley
Chairman, U.S. Senate Committee on the Judiciary
135 Hart Senate Office Building
Washington, DC 20510

Hon. Harry Reid
U.S. Senate Minority Leader
522 Hart Senate Office Building
Washington, DC 20510

Hon. Patrick Leahy
Ranking Member, U.S. Senate Committee on the Judiciary
437 Russell Senate Office Building
Washington, DC 20510

March 11, 2016

Dear Majority Leader McConnell, Judiciary Committee Chairman Charles Grassley, Minority Leader Harry Reid, and Judiciary Committee Ranking Member Patrick Leahy:

The Lawyers' Committee for Civil Rights Under Law writes to express grave concern regarding the stated refusal of Republican members of the Senate Judiciary Committee to consider any nominee put forth by the President to fill the current vacancy on the United States Supreme Court. The position that you and other members of the Senate Judiciary Committee have taken, that the right to fill the vacancy on the Court should be reserved for the next President, who will not take office until late January 2017, is unprecedented. This position is inconsistent with the roles of the President and the Senate as envisioned by the Framers of the Constitution. It threatens to create legal uncertainty that would be unfair to all Americans, particularly minorities, and would create a dangerous historical precedent. We urge all members of the Senate Judiciary Committee to carry out their constitutional role and responsibility.

Our Constitution states that the President "shall nominate, and with the advice and consent of the Senate shall appoint… Judges of the supreme Court…." U.S. Constitution, Article II, Section 2, Clause 2. This provision imposes duties on both the President and the Senate to fill vacancies on the U.S. Supreme Court, on the President to nominate and on the Senate to provide advice and consent, to assure that the nominee the President appoints is qualified for the position.

The President has made clear his intention to faithfully carry out this obligation and has publicly expressed his commitment to appointing an eminently qualified nominee with "an independent mind, rigorous intellect, impeccable credentials, and a record of excellence and integrity." Refusal by the Senate to participate in the advice and consent process would undermine the separation of powers by abdicating the Senate's constitutional role and preventing the President from carrying out his duty to fill the vacant office. As we explain in the attached analysis, based on our historical review, the Senate has never taken the position that it would flatly refuse to consider a nominee under the current circumstances.

The purpose of the appointments clause is to fill the offices needed to operate the government the Framers created. This is confirmed by the Framers' insertion of the recess appointments clause to give the President authority to unilaterally fill vacancies temporarily, if the Senate is in recess and unable to provide advice and consent. A refusal to provide advice and consent, when it is in session, would thus frustrate the entire purpose of the appointments clause.

This understanding of the distinction between the President's and Senate's duties under the appointments clause is confirmed by Alexander Hamilton, in Federalist No. 76. Hamilton explains that "no [person] can be appointed but on the President's previous nomination"—because the President is best qualified to do so.

Hamilton also makes clear the limits on the role of the Senate's advice and consent power, which is to "act as an excellent check on a spirit of favoritism in the President, and would tend greatly to prevent the appointment of characters from State prejudice, from family connections, from personal attachment, or from a view to popularity" – not to prevent the President from appointing any person. Most importantly, Hamilton acknowledges that while "[the President's] nomination may be overruled [by the Senate] … yet it can only be to make place for another nomination by [the President] himself. The person ultimately appointed must be the object of his [the President's] preference, although perhaps not in the first degree."

The Constitution includes no language that calls for a suspension of the President's constitutional obligations during a presidential election year, nor any other period. While vacancies on our Court during election years are rare, there are nonetheless many examples of Senate confirmation of Supreme Court nominees in an election year. John Adams' appointment in 1800 of John Marshall, a month before Jefferson's inauguration, the confirmation of Woodrow Wilson's appointment of Brandeis in 1916 during Wilson's election year contest with Charles Evans Hughes, the confirmation of Herbert Hoover's nomination of Cardozo in 1932, shortly before the election of

Franklin Roosevelt, and the 1988 confirmation of Reagan's nomination of Justice Kennedy – a clear historical record supporting the need for the Senate to participate and vote on President Obama's nominee. These confirmations also provide strong historical precedent for the Senate's consideration of a nominee under the current circumstances and make clear the need for the Senate to consider President Obama's nominee.

Finally and most importantly, our nation requires clarity and certainty with respect to cases concerning the interpretation of the Constitution and application of federal civil rights laws. Historically, the Supreme Court, with a full complement of nine justices,[1] has proven to be the most important forum for resolving disputes regarding the legal rights that lie at the heart of our democracy, particularly those affecting protected minority groups.

Many of the most momentous pending cases during the current term involve highly controversial issues which might have been decided on a 5-4 basis, but could now result in a 4-4 tie or chosen for reargument until an unknown date after the vacancy were filled. Ties would leave controversial lower court decisions in place, but the state of the law uncertain; reargument could result in delays into the 2017 term. Such cases now pending could include issues involving race conscious admissions policies in higher education, the interpretation and application of "one person, one vote" in the apportionment and redistricting process, the constitutionality of state restrictions on abortion providers, the validity of executive actions affecting millions of undocumented immigrants, Dodd-Frank whistle blower protections, among others. It also could affect cases to be granted review for the October 2016 term. Leaving the vacancy unfilled also could affect future applications to the Court for emergency stays involving imminent executions of persons on death row or enforcement of government regulations—and of particular importance in this election year-- voting rights and election law decisions.

Indeed, numerous cases demonstrate the important role that the Court has played in resolving significant civil rights cases, often by a narrow 5-4 decision. *See Texas Department of Housing v. Inclusive Communities Project, Inc*., 575 U.S. --- (2015) (In a 5-4 decision, the Supreme Court held that disparate impact claims are cognizable under the Fair Housing Act); *Alabama Legislative Black Caucus v. Alabama*, 575 U.S. --- (2015) (In a 5-4 decision, the Supreme Court issued a ruling concerning Alabama's state legislative redistricting maps; the Court reinstated plaintiff's racial gerrymandering claim under the Equal Protection Clause and remanded the case to a lower court to evaluate the on a district-by-district basis rather than a statewide basis); *Lafler v. Cooper*, 566 U.S. --- (2012) (In a 5-4 decision, the Supreme Court ruled that a defendant could challenge his conviction resulting from his reliance upon his public defender's alleged ineffective assistance of counsel);

[1] The importance of having a tie-breaking vote to resolve critical issues of civil rights law extends to cases in which the Court decides against the Lawyers' Committee's position. *See*, for example, *Alexander v. Sandoval*, 532 U.S. 275 (2001), holding 5-4 that there is no private right of action to enforce disparate-impact regulations promulgated under Title VI; and *Shelby County v. Holder*, 570 U.S. --- (2013), holding 5-4 that Section 5 of the Voting Rights Act of 1965 places an unconstitutional burden on the affected states without sufficient evidence of ongoing civil rights violations.

Grutter v. Bollinger, 539 U.S. 306 (2003) (In a 5-4 decision, the Supreme Court held that the Equal Protection Clause does not prohibit public higher education institutions' narrowly tailored use of race in admissions policies to further their compelling interest in obtaining the educational benefits that flow from a diverse student body); *National Railroad Passenger Corporation v. Morgan*, 536 U.S. 101 (2002) (In a 5-4 decision, the Supreme Court held that courts may consider the entire scope of a hostile work environment claim under Title VII, including behavior alleged outside the 300 day statutory period, so long as any act contributing to the hostile environment takes place within the statutory period); *Zadvydas v. Davis*, 533 U.S. 678 (2001) (In a 5-4 decision, the Supreme Court held that a post-removal period statute does not permit indefinite detention of the immigrant, but rather requires her release after a reasonable amount of time).

In all these cases, an eight-member Court may have resulted in a 4-4 tie, with the result that the decisions of the lower courts would have been affirmed without binding precedent for the country. The lower court decisions would have remained the law only in their jurisdictions, leaving uncertainty about the state of the law, and in some cases, a conflict among the circuits. Individuals whose lives were directly affected by the principles at stake would have been bound by decisions that were not authoritative. Individuals whose rights were at stake in subsequent cases would have been subject to a climate of legal uncertainty and potential unfairness.

The unfilled seat on the Court could also affect cases to be granted review for the October 2016 term. Leaving the vacancy unfilled also could affect future applications to the Court for emergency stays involving imminent executions of persons on death row or enforcement of government regulations—and of particular importance in this election year-- voting rights and election law decisions.

There are ten months remaining in President Obama's term. If required, the next President will inevitably take some time to choose a nominee, and the Senate will invariably take some time to act. Realistically, a nominee by the next President may not be confirmed until April 2017 or later, resulting in the vacancy resulting from Justice Scalia's death lasting for 14 months or longer. As we explain in the attached analysis, no vacancy during the 20th century has lasted more than a year except for exceptional circumstances caused by the rejection of a nominee. For these reasons, we strongly urge the Senate to carry out its constitutional role by providing full and fair consideration of the President's nominee.

Sincerely,

Kristen Clarke
President and Executive Director
Lawyers' Committee for Civil Rights Under Law

cc: Members of the United States Senate

March 10, 2016

Senate Majority Leader McConnell
317 Russell Senate Office Building
Washington, DC 20510

Senate Judiciary Committee Chair Grassley
135 Hart Senate Office Building
Washington, DC 20510

Senate Minority Leader Reid
522 Hart Senate Office Building
Washington, DC 20510

Senate Judiciary Committee Ranking Member Leahy
437 Russell Senate Office Building
Washington, DC 20510

Dear Senate Majority Leader McConnell, Senate Judiciary Committee Chair Grassley, Senate Minority Leader Reid, and Senate Judiciary Committee Ranking Member Leahy:

We are retired Chief Judges of federal courts of appeal in the D.C. and the Third Circuits., appointed respectively by Democratic and Republican presidents. We write to urge the U.S. Senate to fulfill its constitutional role to advise and consent on a nominee selected by the President to fill the vacancy created by the death of Justice Antonin Scalia in an appropriately expeditious manner. Only in that way can the Supreme Court continue its vital work of declaring and harmonizing national law in our rapidly changing economy and areas of social concern.

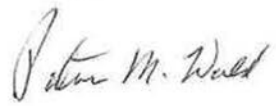
Our several decades of judicial service at the Court of Appeals level have instilled a profound awareness of the critical need for a full component of nine Justices on the Supreme Court. This number is not only necessary to resolve conflicts among circuits but, just as important, it is essential to the Court's primary function of declaring what the law is in a rapidly moving society where crises frequently arise that must be decided at the highest judicial level whether conflicts in lower courts exist or not. How should captures from the terrorist conflicts be treated; should executions of domestic criminals be carried out or stayed; should regulations of monumental environmental impact and enormous cost be allowed to proceed or be stopped? These are decisions that should not be imposed by an equally divided Court on one part of the country but not other parts solely on the basis of the geographical boundaries of a circuit. In this term alone, decisions on the right to vote, the right of immigrants to resist deportation, of women to access assistance in reproductive decisions, and of public servants to organize effectively are slated for Supreme Court resolution and could well produce an even split on the Court. Surely the drafters of our Constitution did not envision a country whose citizens would not be treated equally under law by the Highest Court in such matters. Single instance recusals of Justices on grounds of conflict of interest or illness, inevitable though they may be, have been infrequent; Justice Scalia wrote "[e]ven one unnecessary recusal impacts the functioning of the Court," *Cheney v. United States District Court,* 541 U.S. 913 (2004)(memorandum of Justice Scalia), and in no case have they lasted over substantial parts of two terms, as could occur here were the Senate to delay action on a nominee until after the November 2016 presidential election.

Article II of the Constitution states that the President "shall nominate, and by and with the Advice and Consent of the Senate, shall appoint…Judges of the supreme Court." There is no express exception for years when a Presidential election is pending and no reason to infer one. There is instead ample precedent for confirming Justices during an election year; Justices Kennedy, Cardozo and Brandeis

were all confirmed in an election year. To recognize such an exception would set a dangerous precedent, and invite attempts to extend it to other situations where the Executive and Legislative branches are in political conflict with one another. The Supreme Court would be in danger of becoming a bargaining chip in such situations, although the Framers expressly sought to make it independent of the political desires or ambitions of the other branches.

It is in that spirit of reverence toward the intent of the drafters of the Framers, and against the backdrop of our experience with the workings of the federal courts of appeal and their special relationship with the Supreme court, that we urge you as leaders of the Senate conscientiously to fulfill your "advise and consent" role on any forthcoming nomination by the President to fill Justice Scalia's seat on the Supreme Court.

Sincerely,



Hon. Patricia M. Wald
Retired Chief Judge
United States Court of Appeals
for the District of Columbia Circuit

Hon. John J. Gibbons
Retired Chief Judge
United States Court of Appeals
for the Third Circuit

Zeta Phi Beta Sorority, Inc.
INTERNATIONAL HEADQUARTERS
1734 New Hampshire Avenue, N.W.
Washington, D.C. 20009
202.387.3103

Mary Breaux Wright
INTERNATIONAL PRESIDENT

Established 1920

March 11, 2016

RECEIVED MAR 11 2016

Dear Ranking Member Leahy:

The members of Zeta Phi Beta Sorority, Inc., representing more than 120,000 professional women across the world, express our strong support for US Senate hearings to confirm President Obama's eventual nominee for the next US Supreme Court Justice.

In the coming months, the Court will continue to debate critical issues including the death penalty, women's health, workers' rights, access to higher education and voting. It is imperative that we have a full Court to hand down decisions on these important cases.

On six previous occasions the Senate has confirmed the President's Supreme Court nominee during an election year. President Barack Obama should be afforded the same opportunity and respect as he carries out his duties in accordance with our governing document--the Constitution of the United States of America.

Since 1920, Zeta Phi Beta Sorority has been committed to improving the lives of our members and our communities. As mentors and teachers, we are keenly aware that we are developing future CEOs, educators, leaders, and Supreme Court Justices, who will carry on the mantles of leadership and justice. Today, we have a responsibility to be their voices, and help create a world where they can flourish and succeed.

President Obama is ready to fulfill his constitutional responsibility to select a qualified nominee. We ask the US Senate to do the same--and urge you to hold hearings on President Obama's eventual nominee, and call for an up or down vote. Our communities are counting on a full court to continue debating the issues which shape our nation, and make America the best it can be for generations to come.

Sincerely,

Mary Breaux Wright

Mary Breaux Wright
International President
Zeta Phi Beta Sorority, Inc.

Monday, March 14, 2016

Dear Majority Leader Mitch McConnell, Minority Leader Harry Reid, Judiciary Committee Chairman Charles Grassley, and Judiciary Committee Ranking Member Patrick Leahy:

As current and former deans of law schools from across this country, we write to urge President Obama and the United States Senate to fulfill their constitutional duties to ensure a fully functioning Supreme Court.[1] As lawyers and professors, we read Article II, Section 2 of the Constitution as directing action without qualification: the President "shall nominate, and by and with the Advice and Consent of the Senate, shall appoint… judges of the Supreme Court." As deans and chief administrators for our schools, our respect for the importance of fully functioning institutions compels us to underscore the importance of having a full complement of justices on our nation's highest court.

The Supreme Court and the system of law over which it presides are materially hampered by having only eight Supreme Court justices for the remainder of this Supreme Court term, and likely for most of the next term. An eight-member Court risks uncertainty and the prospect of numerous 4-4 split decisions. In many cases, the Supreme Court is asked to resolve differences amongst decisions made by the Circuit Courts of Appeals. Split 4-4 decisions would prevent the Supreme Court from fulfilling its role as final arbiter of federal law, permitting federal law to have different meanings in different parts of the country. Such conflict and ambiguity jeopardize respect for the rule of law.

The Senate's constitutional duty to provide "advice and consent" on the President's nominee is one of the most important responsibilities for those elected to serve in the Senate. The Senate has no good reason to wait to consider a nominee until after the next president is elected, assumes office, and selects a nominee; such delay poses real harm to individuals, businesses, and the legal system itself. The Senate should fulfill its constitutional duties and established traditions not only to preserve the functioning of our nation's judicial branch, but also to demonstrate and fulfill the important role of our legislative branch in this process.

[1] Institutional affiliation for all signatories is included for identification purposes only; individuals represent only themselves, not the institutions where they are or were deans.

We might not all agree on who the ideal nominee might be to fill the current Supreme Court vacancy. Our own personal views and political perspectives differ. We agree, however, on the importance of the President nominating an individual to fill the vacancy and the Senate giving that nominee meaningful consideration by holding hearings and providing an up-or-down vote on the nominee.

Respectfully,

Nicholas W. Allard
President, Joseph Crea Dean and Professor of Law
Brooklyn Law School

Michelle J. Anderson
Dean and Professor of Law
The City University of New York School of Law

Jessica Berg
Tom J.E. and Bette Lou Walker Professor of Law, Professor of Bioethics & Public Health and Co-Dean
Case Western Reserve University School of Law

Luke Bierman
Dean and Professor of Law
Elon University School of Law

Katherine S. Broderick
Dean and Professor of Law
University District of Columbia David A. Clarke School of Law

Jennifer M. Collins
Judge James Noel Dean and Professor of Law
Southern Methodist University-Dedman School of Law

Danielle M. Conway
Dean and Professor of Law
University of Maine School of Law

Phyllis Crocker
Dean and Professor of Law
University of Detroit Mercy School of Law

Darby Dickerson
Dean and W. Frank Newton Professor of Law
Texas Tech University School of Law

JoAnne A. Epps
Dean and Professor of Law
Temple University Beasley School of Law

Timothy Fisher
Dean and Professor of Law
University of Connecticut School of Law

Cynthia L. Fountaine
Dean and Professor of Law
Southern Illinois University School of Law

Jon M. Garon
Dean and Professor of Law
Nova Southeastern University Shepard Broad College of Law

Mark C. Gordon
President, Dean and Stephen B. and Lisa S. Bonner Distinguished Chair
Mitchell Hamline School of Law

Lisa A. Kloppenberg
Dean and Professor of Law
Santa Clara University School of Law

U. S. Amb, (ret) Douglas W. Kmiec
Caruso Chair in Constitutional Law
Pepperdine University School of Law
Former Dean, The Catholic University of America Columbus School of Law

Eric Lane
Dean and Eric J. Schmertz Distinguished Professor of Public Law and Public Service
Maurice A. Deane School of Law at Hofstra University

Martha Minow
Morgan and Helen Chu Dean and Professor of Law
Harvard Law School

Christopher M. Pietruszkiewicz
Dean and Professor of Law
Stetson University College of Law

Robert C. Post
Dean and Sol & Lillian Goldman Professor of Law
Yale Law School

Susan Westerberg Prager
Dean, Chief Executive Officer and Professor of Law
Southwestern Law School

Kathryn Rand
Dean and Floyd B. Sperry Professor of Law
Co-Director Institute for the Study of Tribal Gaming Law and Policy
University of North Dakota School of Law

Margaret Raymond
Fred W. & Vi Miller Dean and Professor of Law
University of Wisconsin Law School

Thomas J. Romig
Dean and Professor of Law
Washburn University School of Law

Laura Ann Rosenbury
Dean and Levin, Mabie & Levin Professor of Law
University of Florida Fredric G. Levin College of Law

Vincent Rougeau
Dean
Boston College Law School

Theodore W. Ruger
Dean and Bernard G. Segal Professor of Law
University of Pennsylvania Law School

Patricia E. Salkin
Dean and Professor of Law
Touro College Jacob D. Fuchsberg Law Center

Michael Scharf
Director of the Frederick K. Cox International Law Center, Joseph C. Hostetler - BakerHostetler Professor of Law and Co-Dean
Case Western Reserve University School of Law

Niels B. Schaumann
President and Dean
California Western School of Law

Cathy R. Silak
Dean and Professor of Law
Concordia University School of Law

Nancy Staudt
Dean and Howard & Caroline Cayne Professor of Law
Washington University School of Law

Andrew L. Strauss
Dean and Professor of Law
University of Dayton School of Law

Deanell Reece Tacha
Duane and Kelly Roberts Dean and Professor of Law
Pepperdine University School of Law

Kellye Y. Testy
Toni Rembe Dean and Professor of Law
University of Washington School of Law

John Transviña
Dean
University of San Francisco School of Law

William M. Treanor
Dean and Professor of Law
Georgetown University Law Center

Rachel Van Cleave
Dean and Professor of Law
Golden Gate University School of Law

Robert K. Vischer
Dean and Mengler Chair in Law
University of St. Thomas School of Law

Gary R. Wade
Dean and Vice President
Lincoln Memorial University John J. Duncan School Law

Ronald Weich
Dean and Professor of Law
University of Baltimore School of Law

Matthew J. Wilson
Dean and Professor of Law
University of Akron School of Law

Frank H. Wu
Former Chancellor and Dean
University of California Hastings College of Law

March 14, 2016

The Honorable Charles E. Grassley
U.S. Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Patrick Leahy
U.S. Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, D.C. 20510

RE: Filling the Vacancy on the Supreme Court of the United States

Dear Chairman Grassley and Ranking Member Leahy:

We the undersigned fifty-four (54) national, state, and local Asian Pacific American bar associations have a long history of supporting judicial nominees from both Democratic and Republican presidents. Our bipartisan organizations represent the interests of Asian Pacific American attorneys across the country.

As professional legal membership organizations and representatives of Asian Pacific American attorneys, we have consistently maintained that it is both the President and the Senate's constitutional responsibility to ensure that our courts are fully functioning.

The President has the constitutional right to nominate Article III judges—including U.S. Supreme Court Justices—"by and with the Advice and Consent of the Senate," under Article II, Section 2 of the U.S. Constitution.

Article II, Section 2 of the U.S. Constitution further makes it clear that the Senate fulfills *its* constitutional responsibility to ensure the effective functioning of our courts by giving that nominee fair consideration on the merits and a timely up or down vote.

The Constitutional obligations of the President and the Senate hold true irrespective of who is in the White House, the identity of the individual nominee, or the political affiliation of any individual Senator.

As attorneys, we are deeply concerned about the effect and impact that the current rhetoric and stated positions will have on the effective operation of the judiciary, and on public perception of the American justice system. A full complement of Supreme Court Justices is critical to ensuring the smooth functioning of the judiciary and our legal system. The mere prospect of two terms of the Court without a full bench opens the door to uncertainty in the legal system. Any actuality of an incomplete Court will hamper the administration of justice. The Court must be able to resolve questions of constitutional and statutory importance and resolve disagreements between the lower courts to ensure uniformity of federal law. It needs a full Court to be able to do so effectively. Delay in the Supreme Court's ability to fulfill its duties by intentionally leaving it incomplete will have a direct impact on the legal rights of Americans, individuals and businesses of all backgrounds, across the country, and further erode public confidence in our legal system and in the functioning of our democracy.

We strongly urge the Senate to uphold its Constitutional duty by holding a fair hearing and timely vote on any Supreme Court nominee to ensure the effective operation of our judicial system.

Sincerely,

National Organizations
National Asian Pacific American Bar Association
National Filipino American Lawyers Association
South Asian Bar Association of North America
Thai American Bar Association

State and Local Bar Associations
Asian American Bar Association of the Greater Bay Area (California)
Asian American Prosecutors Association (California)
Asian Bar Association of Sacramento (California)
Asian Pacific American Bar Association of Los Angeles County (California)
Asian Pacific American Bar Association of Silicon Valley (California)
Filipino American Lawyers of San Diego (California)
Filipino Bar Association of Northern California
Korean American Bar Association of the Northern California
Orange County Asian American Bar Association (California)
Pan Asian Lawyers of San Diego (California)
Philippine American Bar Association (California)
South Asian Bar Association of Northern California
South Asian Bar Association of Southern California
Vietnamese American Bar Association of Northern California
Vietnamese American Bar Association of Southern California
Asian Pacific American Bar Association of Colorado
Connecticut Asian Pacific American Bar Association
Asian Pacific American Bar Association – Tampa Bay (Florida)
Asian Pacific American Bar Association of South Florida

Greater Orlando Asian American Bar Association (Florida)
NAPABA – Hawaii
Asian American Bar Association of Greater Chicago (Illinois)
Chinese American Bar Association of Greater Chicago (Illinois)
Filipino American Lawyers Association of Chicago (Illinois)
Indian-American Bar Association of Chicago (Illinois)
Korean American Bar Association of Chicago (Illinois)
Asian Pacific American Bar Association of Indiana
Louisiana Asian Pacific American Bar Association
Asian American Lawyers Association of Massachusetts
Asian Pacific American Bar Association – Maryland
Michigan Asian Pacific American Bar Association
Minnesota Asian Pacific American Bar Association
Asian American Bar Association of Kansas City (Missouri)
Missouri Asian American Bar Association
Asian Pacific American Lawyers Association of New Jersey
Asian American Bar Association of New York
Korean American Lawyers Association of Greater New York
Asian American Bar Association of Ohio
Asian Pacific American Bar Association of Central Ohio
Asian Pacific American Bar Association of Southwest Ohio
Oregon Asian Pacific American Bar Association
Asian Pacific American Bar Association of Pennsylvania
Tennessee Asian Pacific American Bar Association
Asian American Bar Association of Houston (Texas)
Austin Asian American Bar Association (Texas)
Dallas Asian American Bar Association (Texas)
Asian Pacific American Bar Association of Virginia
Asian Bar Association of Washington
Filipino Lawyers of Washington
South Asian Bar Association of Washington

March 14, 2016

VIA EMAIL

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

The Honorable Patrick J. Leahy
Ranking Member
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

RE: Supreme Court Justice Nomination

Dear Chairman Grassley and Ranking Member Leahy:

The Colorado Indian Bar Association, Minnesota American Indian Bar Association, Native American Bar Association of D.C., Native Hawaiian Bar Association, Northwest Indian Bar Association, Oklahoma Indian Bar Association, and the South Dakota Indian Country Bar Association have a long history of supporting judicial nominees from Democratic and Republican Presidents. Our non-partisan organizations represent the interests of hundreds of lawyers, judges, and legal professionals, with a particular focus on matters affecting American Indian, Native Hawaiian, and Alaska Native communities, lands, and individuals.

The U.S. Constitution speaks plainly regarding the President and Senate's role in selecting a Supreme Court Justice. Article II, Section 2 of the Constitution unequivocally requires that the President "shall nominate, and by and with the Advice and Consent of the Senate, shall appoint" U.S. Supreme Court Justices. The Senate fulfills this important obligation by giving a nominee fair consideration on the merits and a timely up or down vote. These constitutional duties apply to the President and the Senate at all times.

A full complement of Supreme Court Justices is critical to ensuring the smooth functioning of the judiciary and our legal system. The Court must be able to resolve questions of constitutional and statutory importance and resolve disagreements between the lower courts to ensure uniformity of federal law. As an institution, the Court must be complete in order to operate effectively.

Delay in the Supreme Court's ability to fulfill its duties will have a direct impact on the legal rights of Americans, individuals, and businesses of all backgrounds, across the country, and will further erode public confidence in our legal system and in the functioning of our democracy.

We strongly urge the Senate to uphold its constitutional responsibility by holding a fair hearing and timely vote on any Supreme Court nominee to ensure the effective operation of our judicial system.

Sincerely,

Philip Brodeen
President
Minnesota American Indian Bar Association

Paul F. Nahoa Lucas
President
Native Hawaiian Bar Association

Seth Pearman
President
South Dakota Indian Country Bar Association

Joel West Williams
President
Native American Bar Association of D.C.

Padraic McCoy
President
Colorado Indian Bar Association

Lee Shannon
President
Northwest Indian Bar Association

Arvo Mikkanen
President
Oklahoma Indian Bar Association

THE UNITED STATES CONFERENCE OF MAYORS

1620 EYE STREET, NORTHWEST
WASHINGTON, D.C. 20006
TELEPHONE (202) 293-7330
FAX (202) 293-2352
URL: www.usmayors.org

Adopted March 14, 2016

Filling the Vacancy on the Supreme Court

1. **WHEREAS,** the sudden death of Justice Antonin Scalia on February 13, 2016 created a vacancy on the Supreme Court; and

2. **WHEREAS,** Justice Scalia made immeasurable contributions to our legal system and our nation; and

3. **WHEREAS,** the U.S. Constitution states that the President "shall nominate, and by and with the advice and consent of the Senate, shall appoint…judges of the Supreme Court…;" and

4. **WHEREAS,** mayors know that it is critical that government at all levels be fully functioning and that this is especially true of the Supreme Court, which has a full docket and several major cases pending this term,

5. **NOW, THEREFORE, BE IT RESOLVED,** that The United States Conference of Mayors urges the President to nominate an individual to fill the vacancy on the Supreme Court of the United States, and the Senate to fulfill its constitutional duty to consider that nomination.

March 15, 2016

Hon. Mitch McConnell
Majority Leader
Russell Senate Office Building
SR-317
Washington, DC 20510-1702

Hon. Harry Reid
Minority Leader
Hart Senate Office Building
SH-522
Washington, DC 20510-2803

Dear Majority Leader McConnell and Minority Leader Reid:

We, the undersigned, are members of the Supreme Court Bar who practice before the Supreme Court. We work in various settings, including private law firms, state governments, and law schools, and we practice in a variety of areas, including business, civil rights, criminal law, constitutional law, energy, environmental law, and employment law. While our practices and backgrounds may differ, one thing we all have in common is the belief that a fully functioning Supreme Court is critical to the rule of law and an effective federal judiciary.

As Supreme Court practitioners, we know that it is crucial for the Supreme Court to have a full complement of nine Justices, so that it can perform its important function of establishing a uniform rule of law for the entire country. As we well know from practicing before the Court, one of the primary reasons the Supreme Court hears cases is to resolve disputes of law among the lower courts. If the Justices split 4-4 in these cases, the Court cannot resolve these conflicts because it will be unable to establish a precedential decision binding the entire country. As a result, the law will be different in different parts of the country. These splits can arise in countless areas of law, and it would undermine the rule of law for the Supreme Court to be unable to address them.

We believe it is imperative that the President expeditiously name a nominee, and that the Senate expeditiously consider and vote on that nominee. Otherwise, the Supreme Court could be without a full complement of Justices for a significant period of time, perhaps as much as the majority of two Terms if the vacancy were left open until after the presidential election and thus into 2017. If that were the case, approximately 120 cases spanning two Terms would be decided by an eight-member Court. It would be harmful to our Nation for so many cases to be heard by only eight Justices, inviting split decisions that do not resolve important legal questions and, even worse, potentially leaving unresolved conflicts among the lower courts.

Again, we practice in different settings and in different areas of the law. We have different ideologies and no doubt would have many different views on any given case. But we are united in the belief that a fully functioning Supreme Court is of vital importance to the country.

Sincerely,

Jessica Ring Amunson
Jenner & Block LLP

Tillman J. Breckenridge
Bailey & Glasser LLP

Mark S. Davies
Orrick, Herrington & Sutcliffe LLP

Roy T. Englert, Jr.
Robbins, Russell, Englert, Orseck, Untereiner & Sauber LLP

Steven H. Goldblatt
Georgetown University Law Center

Roberta A. Kaplan
Paul, Weiss, Rifkind, Wharton & Garrison LLP

Katharine M. Mapes
Spiegel & McDiarmid LLP

Anna-Rose Mathieson
California Appellate Law Group LLP

Andrew J. Pincus
Mayer Brown LLP

Noah G. Purcell
Washington State Attorney General's Office

E. Joshua Rosenkranz
Orrick, Herrington & Sutcliffe LLP

Thomas G. Saunders
Wilmer Cutler Pickering Hale & Dorr LLP

Eric Schnapper
University of Washington School of Law

Clifford M. Sloan
Skadden, Arps, Slate, Meagher & Flom LLP

Paul M. Smith
Jenner & Block LLP

Laurence H. Tribe
Harvard Law School

*Affiliations are listed for purposes of identification only

JONES, OTJEN, DAVIS & BLOYD

Attorneys at Law

214-A North Independence
Post Office Box 472
Enid, Oklahoma 73702
(580) 242-5500 Telephone
(580) 242-4556 Facsimile

Reply to Post Office Box

Stephen Jones
April McCurdy Davis
Jamie L. Bloyd
Megan Hickman
Laura LaBianca Puente
Ashley Morey

www.stephenjoneslaw.com

414 NW 4th Street, Suite 100
Oklahoma City, Oklahoma 73102
(580) 242-5500 Telephone
(580) 242-4556 (Facsimile)

W.J. OTJEN, SR.
(1880-1973)

MERL OTJEN BARNS
(1947-1994)

March 17, 2016

The Honorable Patrick J. Leahy
Ranking Minority Member
Senate Judiciary Committee
437 Russell Senate Office Building
Washington, D.C. 20510

RECEIVED MAR 3 1 2016

Re: A Republican Criminal Lawyer Supports the Nomination of Merrick Garland to the Supreme Court

Dear Senator Leahy:

I write to you in your capacity as the ranking Democrat and former Chairman of the Senate Judiciary Committee.

I am a partisan Republican and have been so since I was 12 years old. I support the nomination the President has made of Judge Merrick Garland to the Supreme Court. I do so because I was the principal lead attorney for Tim McVeigh, appointed by the United States District Court for the Western District of Oklahoma when Mr. McVeigh was arrested, indicted and tried for the bombing of the Alfred P. Murrah Federal Building in Oklahoma City and the use of a weapon of mass destruction (the first such prosecution under the Statute). I accepted the appointment and we defended Mr. McVeigh vigorously and, I hope, competently.

Although I was critical of some aspects of the prosecution's case and the process, I have only the highest regard for Judge Garland. At the time, he was the acting Associate Deputy Attorney General and charged with the responsibility for supervising the investigation and prosecution of the bombing case. I had many telephone conversations with him and met him when he came to Oklahoma for the preliminary hearing of Terry Nichols.

The President's description of Judge Garland in making the announcement of his nomination of his nomination is a statement with which I agree 100%. And, Judge Garland's response was typical of his modesty, restraint and self-effacement.

There is no qualified basis to reject his nomination on professional or personal grounds. He has integrity, rectitude, learning, discretion and many human qualities as a husband and father that speak well of him. He graduated with honors from the Harvard Law School, served on the Harvard Law Review, was a member of a prestigious Washington law firm, an Assistant United States Attorney, and rose to be number three in the Department of Justice. He has studied the law, taught the law, enforced the law and judged the law. He is free from rancor or active partisan partnership, though I am sure he is a Democrat. He is a moderate. He is not so young he would have a lifetime on the Supreme Court of 30 years, but that is an argument on his favor. Although he is a Circuit Judge (and Chief Judge at that), he also has active background in teaching the law, writing about it, prosecuting cases, and has been in private practice. He is well rounded personally, professionally and judicially.

I spoke of being a Republican. I served briefly as Republican State Chairman, for four years was a member of the Republican State Finance Committee, served as legal counsel to three of the four Republican Governors of this State, and served as General Counsel of the Party for six years. I also was a member of the Republican State Committee. In 1974, I was the Republican nominee in Oklahoma for Attorney General and in 1990 for the United States Senate.

This is not a partisan issue. Republicans who want to wait until the next President may find themselves with a less attractive moderate choice with keen professional instincts than the present nominee. It is said by many "better the devil you know, than the devil you don't know." I hardly consider Merrick Garland a "devil," but the political point is well taken. We have a man, who is incidentally a Democrat, but who is supremely qualified to be a member of the Supreme Court. He should be judged on that basis instead of seeking narrow political opportunism or advantage. Indeed, for reasons stated herein and other reasons, I believe Republicans in their own self-interest should support him. But, I do not urge his confirmation as a partisan matter. I urge it because I have confidence in Judge Garland.

The Oklahoma City bombing case was, until 2011, the largest mass murder in American history and the largest act of terrorism. One hundred sixty-eight people died, nineteen of whom were children under the age of six and eight of whom were with federal law enforcement agencies. Over 500 people were seriously injured and hospitalized, 200 buildings in Oklahoma City had to be leveled because of structural damage, and there was nearly a billion dollars in uninsured loss. Perhaps most telling, over 30,000 Oklahomans sought therapeutic intervention for emotional or mental stress caused by the bombing. Senator Leahy, this is a small state of about 3 million people. Almost everyone knew someone who was killed or injured in the bombing or suffered greatly from it. It is for us in Oklahoma, Senator, our Pearl Harbor. Any of us living in this state above the age of 6 or 7 remembers where he or she was when they heard of the bombing.

Mr. Garland, as he was then, acted in the highest traditions we would expect of the Department of Justice. I urge your support of his nomination. I hope a sufficient number of Republicans go along with you.

Sincerely,

Stephen Jones

SJ:kw
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The Honorable Mitch McConnell
Majority Leader
United States Senate
317 Russell Senate Office Building
Washington, D.C. 20510

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

The Honorable Harry Reid
Minority Leader
United States Senate
522 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Patrick Leahy
Ranking Member, Committee on the Judiciary
United States Senate
437 Russell Senate Office Building
Washington, D.C. 20510

March 21, 2016

Dear Senators McConnell, Grassley, Reid, and Leahy:

Cities for Action is a coalition of over 100 mayors and municipalities who have joined together to lead a national movement for immigration policies and reforms that will empower stronger, safer and more economically prosperous cities and counties. **We are writing to urge you to fulfill your duty to the American people by considering and voting on President Obama's nominee to the United States Supreme Court.**

The constitutional obligations of the President and the Senate are clear and unambiguous, and should be above politics – the President appoints justices to the Supreme Court, and the Senate shall advise and consent on his nominee.

Issues that impact our jurisdictions are regularly before the Supreme Court. We have a strong interest in ensuring that the work of the Court and the welfare of our constituents are not adversely affected by an extended vacancy. Especially now, when so much is at stake – from immigration reform, to other issues of national importance – your oath to support and defend the Constitution and faithfully discharge the duties of your office becomes even more important.

When in January 2016, the Supreme Court decided to hear the case of *United States v Texas*, we had hope that the wheels of justice would finally be shifted out of neutral for millions of immigrant families. News reports indicating that members of the Senate would not consider any nominee, further echoed by the letter signed by Republican Senators on the Judiciary Committee, injects political gamesmanship into a legal system we rely on to protect our constituents.

Our coalition of cities, counties and municipal governments represents over 55 million people from more than half the states in the nation. Our immigrant populations are part of the economic and cultural fabric of our communities, yet the justice they seek has been put on hold. Adding any delay in considering a new nominee will further deny a resolution for the future of their families.

The Senate has a responsibility to act, both under the oath they have sworn and to the people for whom they have pledged to work. Your willingness to meet this responsibility is not just a test of your commitment to fulfill the duties of your job, but your fidelity to the democratic values that are at the heart of our nation and our country's history.

Thus we respectfully request that you embrace the role of leadership that the people of this country have entrusted in you, and promptly consider the President's nominee to the Court without obstruction or undue delay.

Thank you for your time and consideration in this matter,

Ed Pawlowski, Mayor of Allentown, PA
Steve Adler, Mayor of Austin, TX
Stephanie Rawlings-Blake, Mayor of Baltimore, MD
William Bell, Mayor of Birmingham, AL
Edward Terry, Mayor of Clarkston, GA
Stephen Benjamin, Mayor of Columbia, SC
Frank Cownie, Mayor of Des Moines, IA
Dianne Martinez, Mayor of Emeryville, CA
Sly James, Mayor of Kansas City, MO
Eric Garcetti, Mayor of Los Angeles, CA
Paul Soglin, Mayor of Madison, WI
Toni Harp, Mayor of New Haven, CT
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Jim Kenney, Mayor of Philadelphia, PA
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William Peduto, Mayor of Pittsburgh, PA
John Dickert, Mayor of Racine, WI
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Edward Murray, Mayor of Seattle, WA
Stephanie Miner, Mayor of Syracuse, NY
Andrew Gillum, Mayor of Tallahassee, FL

March 31, 2016

The Honorable Dan Coats
493 Russell Office Building
Washington, D.C. 20510

Dear Senator Coats:

We the undersigned are law professors in Indiana. We urge you to give fair consideration to the nomination of Chief Judge Merrick B. Garland to the Supreme Court of the United States, and encourage Senate leadership to hold a confirmation hearing and schedule a timely up-or-down vote on his nomination.

Chief Judge Garland's fitness to serve on the Supreme Court is unquestioned. He has more federal judicial experience than any Supreme Court nominee in history, having served the past 19 years on the United States Court of Appeals for the District of Columbia Circuit. In that time, he has demonstrated a proven judicial temperament, enormous intelligence, and an unwavering commitment to impartiality, fairness, and the rule of law. It is therefore no surprise that he enjoys support from across the political spectrum, including from conservative legal luminaries like Miguel Estrada, Alberto Gonzales, and Kenneth Starr. Indeed, Judge Garland's judicial record has validated the votes cast by you and a majority of Senate Republicans (including then-Indiana Senator Richard Lugar) to confirm him to the D.C. Circuit in 1997.

Of course, it is entirely appropriate for every senator to thoroughly review Judge Garland's record and qualifications. But an outright refusal to even consider his nomination runs counter to the Senate's obligation, under Article II of the Constitution, to provide "advice and consent." There is no exception that allows senators to withhold advice and consent during a presidential election year, nor is there an insufficient amount of time remaining to complete the confirmation process. Over the past two decades, the longest confirmation process for a Supreme Court nominee lasted 99 days, and President Obama has nearly 300 days remaining in his term.

Chief Judge Garland is an eminently qualified nominee who deserves fair consideration of his nomination. Refusing to do so is an abdication of the Senate's constitutional duty to provide advice and consent. We hope that you will meet with Chief Judge Garland and urge your Senate colleagues to hold a prompt hearing and timely confirmation vote.

Sincerely
The Undersigned

Cc: Senator Donnelly

Cynthia M. Adams, Clinical Professor of Law, Indiana University McKinney School of Law

Jeannine Bell, Richard S. Melvin Professor of Law, Indiana University Maurer School of Law

Kerry Hyatt Bennett, Adjunct Professor of Law, Indiana University McKinney School of Law

Kevin D. Brown, Richard S. Melvin Professor of Law, Indiana University Maurer School of Law

Derrick Augustus Carter, Associate Professor of Law, Valparaiso University Law School

Daniel H. Cole, Professor of Law and of Public and Environmental Affairs, Indiana University Maurer School of Law

David Cook, Adjunct Professor of Law, Indiana University McKinney School of Law

Jeffrey O. Cooper, Associate Professor of Law, Indiana University McKinney School of Law

Eric R. Dannenmaier, Professor of Law, Indiana University McKinney School of Law

Robert E. Downey, Lecturer in Law, Indiana University Maurer School of Law

Jennifer A. Drobac, R. Bruce Townsend Professor of Law, Indiana University McKinney School of Law

Fernand N. Dutile, Professor of Law Emeritus, University of Notre Dame Law School

Donna R. Eide, Adjunct Professor of Law, Indiana University McKinney School of Law

Judith Fox, Clinical Professor of Law, University of Notre Dame Law School

Charles Gardner Geyh, John F. Kimberling Professor of Law, Indiana University Maurer School of Law

Gabrielle L. Goodwin, Lecturer in Law, Indiana University Maurer School of Law

William D. Henderson, Professor of Law and Val Nolan Faculty Fellow, Indiana University Maurer School of Law

Max Huffman, Professor of Law, Indiana University Robert H. McKinney School of Law

Richard E. Humphrey, Reference and Instruction Librarian, Ruth Lilly Law Library, Indiana University McKinney School of Law

Dawn Johnsen, Walter W. Foskett Professor of Law, Indiana University Maurer School of Law

Eleanor D. Kinney, Hall Render Professor of Law Emerita, Indiana University McKinney School of Law

Andrea D. Lyon, Dean and Professor of Law, Valparaiso University Law School

Norman Lefstein, Professor of Law and Dean Emeritus, Indiana University McKinney School of Law

Rosalie Berger Levinson, Phyllis and Richard Duesenberg Professor of Law, Valparaiso University Law School

Jennifer Mason McAward, Associate Professor of Law, Notre Dame Law School

Michael A. Mullett, Adjunct Professor of Law, Indiana University McKinney School of Law

Xuan-Thao Nguyen, Gerald L. Bepko Chair in Law, Director, Center for Intellectual Property & Innovation, Indiana University McKinney School of Law

Robert J. Palmer, Adjunct Professor of Law, University of Notre Dame Law School

Florence Wagman Roisman, William F. Harvey Professor of Law and Chancellor's Professor, Indiana University McKinney School of Law

Jeffrey Evans Stake, Robert A. Lucas Chair of Law, Indiana University Maurer School of Law

Susan Stuart, Associate Dean of Academic Affairs, Valparaiso University Law School

J. Alexander Tanford, Professor Emeritus of Law, Indiana University Maurer School of Law

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Deborah Widiss, Professor of Law, Indiana University Maurer School of Law

Diana R. H. Winters, Associate Professor of Law and Dean's Fellow, Indiana University McKinney School of Law

Del Wright, Associate Professor of Law, Valparaiso University Law School

Meaghan M. Zore, Adjunct Professor of Law, Indiana University McKinney School of Law

Please note: Organizational affiliation for all signatories is included for identification purposes only; individuals represent only themselves, not the institutions where they are teaching or other organizations in which they are active.

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Dear Majority Leader Mitch McConnell, Minority Leader Harry Reid, Judiciary Committee Chairman Chuck Grassley, and Judiciary Committee Ranking Member Patrick Leahy:

We write as bar leaders who have taken an oath to defend the Constitution. We call on the Senate to fulfill its constitutional duty to duly and promptly consider President Obama's nomination, so that our highest Court may continue to perform its critical function at the apex of our third branch of government.

Article II of the Constitution requires the President, "with the advice and consent of the Senate," to appoint judges to the Supreme Court. Through this section, the framers placed in the hands of the executive and legislative branches of our government a duty to ensure that the third pillar of our democracy, our courts, would be protected from entanglement in partisan politics. We trust that you will fulfill this duty, and, in the words of Justice Sandra Day O'Connor, "pick the best person you can under these circumstances, as the appointing authority must do."

While careful evaluation and reasoned debate regarding the qualifications of the nominee are central to the Senate's role to advise and consent, it would undermine the rule of law and risk nullifying the Supreme Court's power to serve its constitutional role as arbiter of disputes, were the confirmation process to be delayed until a new president is inaugurated. Were such a path to be followed, the Court would be forced to sit for two terms, and over a year, with a vacancy. The implications of this course of action would be significant, subjecting people in different regions of the country to different legal standards on matters of constitutional importance and leaving open the specter of an unresolved constitutional crisis. The rule of law requires an ultimate arbiter. The Constitution has placed the Supreme Court in that role.

As Justice O'Connor has said, the position of Supreme Court justice is "an important position and one we care about as a nation, as a people." We ask that you carry out your constitutionally prescribed roles with full fealty to the oaths you have taken so that our Supreme Court is returned to its full membership.

Sincerely,

The Board of Directors of Oregon Women Lawyers

cc: United States Senators - Oregon
President Barack Obama

P.O. Box 40393 | Portland, OR 97240 | 503.841.5720 | www.oregonwomenlawyers.org

March 31, 2016

VIA ELECTRONIC MAIL

The Honorable Charles Grassley
Chairman, Committee on the Judiciary
United States Senate
Dirksen Senate Office Building
Room 224
Washington, DC 20510-6275

The Honorable Patrick Leahy
Ranking Member, Committee on the Judiciary
United States Senate
Dirksen Senate Office Building
Room 152
Washington, DC 20510-6275

RE: Merrick Garland's Nomination and the Senate's Advice-and-Consent Duty

Dear Senators Grassley and Leahy:

We, the undersigned professors with expertise in the Second Amendment, write to express our concern with recent statements suggesting that the Judiciary Committee will hold neither hearings nor a vote on Chief Judge Merrick Garland's nomination to the Supreme Court, and to urge the Committee to fulfill its constitutional duty by doing so.

Senate Majority Leader Mitch McConnell and others have justified taking no action on Judge Garland's nomination based on serious misrepresentations of the Senate's constitutional obligations and a substantial distortion of Garland's record.

Senator McConnell recently stated that he "can't imagine that a Republican majority in the United States Senate would want to confirm, in a lame duck session, a nominee opposed by the National Rifle Association." For the United States Senate to outsource its constitutional advice-and-consent duty to any special interest group would set a dangerous precedent for future judicial nominations, and would pose a severe threat to our impartial judiciary. We are particularly troubled, in this case, because the N.R.A.'s stated reasons for opposing Judge Garland are based on an extraordinary misrepresentation of his record.

Of course, the N.R.A., like any other organization, can and should express its views on Supreme Court nominees, and Senators should give whatever consideration they deem appropriate to such advocates' arguments as they decide whether to confirm or oppose a nominee. The Senate, however, should give Judge Garland the opportunity to explain, for himself, his views—by holding hearings on his nomination, as is the ordinary and traditional practice in the case of Supreme Court nominations.

The N.R.A. claims that Judge Garland is hostile to gun rights and the Second Amendment, but there is nothing in his record that supports such an attack. Garland's opponents base their specious claims on his actions in two cases that came before the D.C. Circuit during his tenure, but in neither case did Judge Garland take a substantive position on the Second Amendment, the individual right to keep and bear arms, or the Supreme Court's landmark decision in *District of Columbia v. Heller*.

In *Parker v. District of Columbia*, a case challenging the D.C. handgun ban the Supreme Court ultimately found to violate the Second Amendment in *Heller*, Judge Garland was one of four judges—including conservative, George H.W. Bush-appointee, A. Raymond Randolph—who voted for the entire D.C. Circuit to rehear, *en banc*, a three-judge panel's ruling that the ban violated the Second Amendment. Under the Federal Rules of Appellate Procedure, *en banc* review is called for when a panel decision conflicts with prior judicial precedent and when the case involves a "question of exceptional importance." *Parker* fit both criteria.

It is well established that such procedural votes say nothing about a judge's views on the substance of the case, or how he or she would have voted on the merits. Yet, Judge Garland's critics assert that his vote for *en banc* review "proves" his hostility to the Second Amendment. Any argument that a purely procedural vote reflecting no substantive judgment on the merits of the underlying case is proof that Judge Garland would vote to overturn *Heller* is specious and dishonest, and unworthy of acceptance by the Committee or the Senate as a whole.

Similarly, Judge Garland's vote in *National Rifle Association v. Reno* is misleadingly characterized as further evidence of an anti-gun position and a desire to create a national gun registry. In that case, Judge Garland joined an opinion holding that the Department of Justice acted lawfully—and did not establish any gun registry—by temporarily retaining records on background checks performed pursuant to the Brady Act. The information the Department temporarily retained—which did not include "addresses of persons approved to buy firearms, nor any information on specific weapons, nor even whether approved gun purchasers actually completed a transaction"—enabled audits designed to ensure an accurate, secure, and private background check system. The information was destroyed within six months, in keeping with the Brady Act. When the N.R.A. appealed, the Bush Department of Justice, under John Ashcroft, defended the opinion Judge Garland joined, writing that "[t]he court of appeals' decision is correct."

The Supreme Court agreed, and declined to hear the N.R.A.'s appeal. But Judge Garland's critics have again distorted the record, portraying his vote in *Reno* as anti-gun and claiming it upheld, in the words of N.R.A. executive Chris Cox, "a federal registry of law-abiding gun owners."

The First Amendment may grant interest groups like the N.R.A. the right to distort the facts and attempt to mislead the public. Nothing in the Constitution justifies the Senate acceding to such misrepresentations.

As with other issues of national importance, we believe that the health and vitality of our democratic republic benefits when people express their diverse opinions on a Supreme Court nominee's qualifications, record, and views. It weakens our system of government, however, for the Senate to effectively grant a special interest lobbying organization veto power over a nominee—especially when its opposition is based on an unfair and fundamentally flawed assessment of the nominee's record.

To prevent such an abdication of responsibility, we urge the Judiciary Committee to fulfill its role by leading the Senate in a sober, objective and fair assessment of Judge Garland's record, experience,

and qualifications by holding hearings on his nomination. This would provide critics and supporters alike the opportunity to hear from the nominee himself, in a process that, in the past, has been available to scores of past Supreme Court nominees as part of the ordinary course of the nomination process.

Failure to grant a hearing and a vote would not only do a disservice to Judge Garland, it would risk incalculable damage to the Senate, the Supreme Court, and our democracy.

Signed,

Erwin Chemerinsky
Founding Dean and Distinguished Professor of Law and Raymond Pryke Professor of First Amendment Law, University of California, Irvine School of Law

Jamal Greene
Professor of Law, Columbia Law School

Ariela Gross
John B. and Alice R. Sharp Professor of Law and History, USC Gould School of Law

Mark R. Killenbeck
Wylie H. Davis Distinguished Professor, University of Arkansas

Sanford Levinson
W. St. John Garwood and W. St. John Garwood Centennial Chair of Law, University of Texas Law School; Professor of Government, University of Texas at Austin

Gregory Magarian
Professor of Law, Washington University School of Law

Allen Rostron
Associate Dean for Students and the William R. Jacques Constitutional Law Scholar and Professor of Law, University of Missouri-Kansas City School of Law

Lawrence E. Rosenthal
Professor of Law, Chapman University, Dale E. Fowler School of Law

Sonja R. West
Associate Professor of Law, University of Georgia School of Law

Adam Winkler
Professor of Law, UCLA School of Law

University affiliation provided for identification purposes only.

cc: Members of the Senate Judiciary Committee

April 4, 2016

The Honorable Mitch McConnell
Majority Leader
United States Senate
317 Russell Senate Office Building
Washington, DC 20510

The Honorable Harry Reid
Minority Leader
United States Senate
522 Hart Senate Office Building
Washington, DC 20510

The Honorable Chuck Grassley
Chairman
Committee on the Judiciary
United States Senate
135 Hart Senate Office Building
Washington, DC 20510

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

Dear Majority Leader McConnell, Minority Leader Reid, Chairman Grassley, and Ranking Member Leahy:

We had the privilege and pleasure of serving as law clerks to Chief Judge Merrick B. Garland of the United States Court of Appeals for the District of Columbia Circuit. Although our lives and careers have taken us in many different directions—from private law firms to corporate counsel positions, from prosecutors' offices to indigent defense providers—we are united in our deep admiration of Chief Judge Garland and our support for his swift confirmation to the United States Supreme Court.

In nominating him, President Obama described Chief Judge Garland's "decency, modesty, integrity, even-handedness, and excellence." As his former law clerks—the people who worked most closely with him for the past eighteen years—we witnessed those qualities in chambers every day.

Throughout his career, Chief Judge Garland has demonstrated an unwavering commitment to the Constitution and the rule of law. As a prosecutor, that meant serving as an advocate for justice and for victims of terrible crimes, while also respecting the rights of criminal

defendants. As a judge, it has meant relentlessly seeking the right answer to legal questions. In neither role did he ever seek, or settle for, a politically expedient solution or a result that conformed to any predetermined political view. On more than one occasion, he reminded us that the role of judges is to apply the law to the facts before them. For Chief Judge Garland, that statement has never been a sound bite; it is a credo that has guided him across eighteen years on the federal bench.

Chief Judge Garland's years on the bench have also been characterized by an unrelenting work ethic. He treated every matter before him with the same care and attention to detail, whether it affected the national interest or a single ordinary life. By the time of oral argument, Chief Judge Garland had mastered the relevant case law. He typically knew the record better than the clerk who was assigned to help him on the case, and often times better than the advocates themselves. When it came time for him to draft an opinion, he labored over every word, making sure that the finished product was just, faithful to the law, and clearly written—always thinking of the courts and litigants who would rely on it in the future.

Chief Judge Garland also taught us the value of diversity, in all its forms. We observed how Chief Judge Garland forged meaningful connections with others from a wide array of backgrounds and ideological perspectives—from the law clerks he hires to the personal and professional relationships he maintains. He finds camaraderie with his fellow judges without regard to who nominated them to the bench. Chief Judge Garland deeply believes that our system of justice works best when those who see things differently are able to work together, in a collegial manner, to arrive at a just result. And when he must disagree with his colleagues, he always does so respectfully.

There are not many bosses who so uniformly inspire the loyalty that we all feel toward Chief Judge Garland. Our enthusiasm is both a testament to his character and a reflection of his commitment to mentoring and encouraging us long after we left his chambers. He has stood by our side during the happiest moments of our lives—quite literally, having officiated the weddings of seven of his former clerks. He has welcomed us and our growing families into his home. He is a constant source of career advice and guidance. And he has offered love and support in the dark times, too, when we have suffered setbacks, losses, and uncertainty.

We, in turn, have always looked to Chief Judge Garland as a role model. He instilled in all of us an abiding appreciation for the importance of public service and volunteerism. It was not lost on us that, as a younger lawyer, he gave up a lucrative law firm partnership to serve as a line prosecutor. We saw firsthand how, no matter how busy his docket was, he took the time to tutor elementary students in Northeast Washington. And we listened as he urged us to seek out concrete ways of giving back to our own communities throughout our careers. Following Chief Judge Garland's lead, in the years since our clerkships we have collectively gone on to work in a wide variety of public service positions, offered legal services *pro bono* to those in need, and devoted our careers to educating the next generation of lawyers.

Chief Judge Garland led by example in other important ways as well. More than anything else, Chief Judge Garland sees himself as a husband and a father. His great love and partnership with his wife, Lynn, and his dedication to and pride in his two daughters, Becky and

Jessie, know no bounds. We noticed how, despite the heavy burdens of his professional obligations, Chief Judge Garland always made time for his family, whether it involved summer vacations to America's national parks, reading the Harry Potter series to his daughters in its entirety, or personally scouring the neighborhood when a beloved pet rabbit escaped its hutch.

Having worked by his side, we also know how much Chief Judge Garland loves his country. Those of us who clerked for him at the time will always remember the morning of September 11, 2001. From his chambers, we watched with horror the news about the attacks on the World Trade Center and the Pentagon. In the days after, we remember the explicit importance Chief Judge Garland placed on coming to the office every day and continuing to prepare for upcoming cases. In the aftermath of that terrible tragedy, he believed it was more important than ever for the American people to see that their system of government was functioning without interruption—that the rule of law endured.

Never one to put personal advantage over public duty, Chief Judge Garland has exemplified throughout his career a commitment to the highest ideals of our system of justice. We have every confidence that, when confirmed, Chief Judge Garland will serve his country ably and honorably as an Associate Justice of the United States Supreme Court.

Respectfully Submitted,

Priya Aiyar, 2001-02

Jessica Ring Amunson, 2005-06

Samantha Bateman, 2011-12

Jeffrey Bellin, 1999-2000

Eric Berger, 2003-04

Ishan Bhabha, 2009-10

Sophia M. Brill, 2011-12

Jessica Bulman-Pozen, 2007-08

Martine Cicconi, 2010-11

David M. Cooper, 2004-05

Justin Driver, 2005-06

Karen Dunn, 2006-07

Kristen Eichensehr, 2008-09

Benjamin Eidelson, 2014-15

Heather Elliott, 2000-01

Nora Freeman Engstrom, 2003-04

Sam Erman, 2009-10

Matthew X. Etchemendy, 2012-13

Tali Farhadian Weinstein, 2003-04

Brian Fletcher, 2006-07

Chad Golder, 2005-06

Danielle C. Gray, 2003-04

Craig Green, 2000-01

Alex L. Groden, 2014-15

David Gunter, 2001-02

Kathleen R. Hartnett, 2000-01

Kate Heinzelman, 2009-10

Rachel Heron, 2012-13

Serena Hoy, 2000-01

Clare Huntington, 1997-98

Ben Keith, 2002-03

Joshua A. Klein, 2002-03

Jonathan Kravis, 2004-05

Albert Lin, 1997-98

Janine M. Lopez, 2014-15

Daniel E. Matro, 2010-11

Robin M. Meriweather, 1998-99

Anton Metlitsky, 2006-07

Jay Michaelson, 1998-99

Michael J. Mongan, 2006-07

Erin Murphy, 1999-2000

Lindsey Powell, 2007-08

David Pozen, 2008-09

Elizabeth B. Prelogar, 2008-09

J.J. Prescott, 2002-03

Michael J. Pyle, 2005-06

Mitchell Pearsall Reich, 2012-13

Christopher S. Rhee, 1998-99

Charles W. Scarborough, 1997-98

Zachary C. Schauf, 2011-12

Paul Schlaud, 1999-2000

Thomas P. Schmidt, 2011-12

Miriam Seifter, 2007-08

Joshua M. Segal, 2004-05

Colleen E. Roh Sinzdak, 2010-11

Sonja Starr, 2002-03

Benjamin Taibleson, 2010-11

Elisabeth S. Theodore, 2009-10

Benjamin H. Torrance, 2001-02

Kendall Turner, 2013-14

Meaghan VerGow, 2004-05

Dana R. Wagner, 1999-2000

Joshua Waldman, 1998-99

Alexandra M. Walsh, 2001-02

Previn Warren, 2012-13

Elizabeth Wilkins, 2013-14

Damian Williams, 2007-08

David M. Zionts, 2008-09

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Stamford, CT

Carol A. Robles-Román
New York, NY

Executive Director
Jenny Waters
Chicago, IL

April 13, 2016

RECEIVED APR 19 2016

Via Federal Express

The Honorable Chuck Grassley
Chair
Committee on the Judiciary
United States Senate
135 Hart Senate Office Building
Washington, DC 20510

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

Re: Nomination of Judge Merrick Garland for Associate Justice of the United States Supreme Court

Dear Chairman Grassley, Ranking Member Leahy, and Members of the Senate Judiciary Committee:

The National Association of Women Lawyers ("NAWL") Supreme Court Committee has completed an extensive evaluation of the qualifications and background of the Honorable Merrick Garland, President Obama's nominee to fill the vacancy on the Supreme Court. Based on its review of over 330 opinions and dissents authored by Judge Garland and articles authored or coauthored by him, its interviews of dozens of individuals, and its consideration of the information publicly available as of the date of this letter, NAWL's Supreme Court Committee concluded that Judge Garland is "well-qualified" for the position of Associate Justice. "Well-qualified" is the highest rating that the Committee is authorized to confer upon a nominee.

On March 16, 2016, President Obama announced his nomination of Judge Garland. The NAWL Supreme Court Committee, which includes a distinguished array of law professors, appellate practitioners, corporate counsel, and non-profit lawyers, convened immediately to do the work of reviewing Judge Garland's credentials. (A listing of the NAWL Committee members and their affiliations is included for your information.) Specifically, the Committee reviewed all of Judge Garland's publicly available writings and decisions and conducted in-depth personal interviews with key individuals who have information regarding Judge Garland, his various professional roles, and his treatment of litigants, attorneys, employees, and colleagues, particularly those who are women.

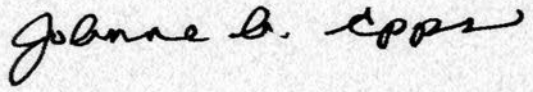
Although the Committee emphasized a review of cases that might be of particular importance to women, the members of the Committee did not limit their review, focusing on a wide range of criminal and civil issues. The Committee concluded that Judge Garland consistently displayed both a superior intellect and a comprehensive understanding of the issues with which he was presented. The Committee found his opinions well written, his ability to analyze statutory and case law excellent, and his judicial reasoning sound and unbiased.

The Committee's interviews persuaded it that Judge Garland is an excellent judge, a brilliant legal mind, thoughtful, extremely hard working, highly prepared, thorough, open-minded, fair, and committed to reaching the correct result as dictated by the applicable law. He was described as a consensus builder with a high degree of integrity. Interviewees noted his high level of respect and regard for women, his commitment to equality and equal opportunity in his workplaces, and his commitment to making

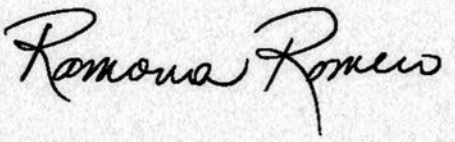
decisions without regard to the gender of the litigants. Interviewees also affirmed the importance Judge Garland placed on treating litigants and counsel before him, including women, with the utmost respect and professionalism. The Committee was impressed by Judge Garland's commitment to hiring and mentoring female law clerks, which carries increased importance given that his clerks have a high rate of success in their applications for US Supreme Court clerkships.

Based on its review of the written record and information derived from interviewees, the NAWL Supreme Court Committee is confident that Judge Garland has demonstrated the intellectual and analytic talent, judicial temperament, commitment to the rule of law, and professional demeanor required to serve on our Nation's highest court.

Very Truly Yours,



JoAnne Epps, Co-Chair
NAWL Supreme Court Committee



Ramona E. Romero, Co-Chair
NAWL Supreme Court Committee

cc: The White House
Judge Merrick Garland

American Bar Center | 321 North Clark Street, M.S. 19.1 | Chicago, IL 60654
Phone: 312.988.6186 | Fax: 312.932.6450 | nawl@nawl.org | www.nawl.org

Supreme Court Committee Members

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Lisa Horowitz, Founder and Principal Advisor	Attorney Talent Strategy Group
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Paulette Morgan Mara, Partner	Schoeman Updike & Kaufman
Suzette Recinos, General Counsel	Daymon Worldwide
Collin Udell, Of Counsel	Jackson Lewis
Marisa Van Saanen, Associate	Skadden, Arps, Slate, Meagher, & Flom

April 19, 2016

The Honorable Mitch McConnell
Majority Leader
United States Senate
Washington, DC 20510

The Honorable Harry Reid
Minority Leader
United States Senate
Washington, DC 20510

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

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

Dear Majority Leader McConnell, Minority Leader Reid, Chairman Grassley, and Ranking Member Leahy:

As former prosecutors, law enforcement agents and victim advocates who worked as a team with Merrick Garland, as well as state and local authorities, to secure justice for the thousands of victims of the Oklahoma City bombing, we write to offer our enthusiastic support for Chief Judge Garland to serve on the Supreme Court of the United States.

We are a diverse group: we live in different parts of the country and work in a variety of fields, we have no common political affiliation, and indeed some of us are occasionally adversaries in court. But despite those differences we are united today, as we were united two decades ago, in our respect and admiration for the integrity, brilliance, leadership, and judgment of Merrick Garland. Twenty years ago, the nation could not find a better lawyer to manage the investigation and prosecution of what was then the worst crime ever committed on American soil. Today, our nation could not find a better judge, nor a more honorable man, to join its highest court.

On April 19, 1995, while first responders were still searching for the injured and the dead in the ruins of the Alfred J. Murrah Federal Building, Merrick Garland worked with the folks on the ground to provide the best federal resources, personnel and counsel to assist with the investigation and prosecutions. He knew that the best thing he could do was to leave Washington and travel to Oklahoma City to ensure that the investigators, the prosecutors, the victims and the survivors had the full support of the Justice Department. He arrived to find the largest and most complex crime scene anyone in American law enforcement had ever encountered. He helped to ensure that the many different local, state, and federal law enforcement agencies worked together as a team, despite their

sometimes differing ideas about how best to build a case. At the same time, he made sure the victims, the survivors and their families had the critical resources they needed to deal with the unspeakable losses they had suffered.

Once the two men responsible for the bombing had been identified and arrested, Judge Garland was careful to ensure that each was treated fairly and with dignity to ensure that no one could reasonably accuse the government of a rush to judgment. He meticulously oversaw every step of the prosecution's initial proceedings, building an overwhelming case and ensuring that no legal error would allow the bombers to escape responsibility for their atrocity. And with the victims' families and the nation desperate for information and justice, Judge Garland ensured that they would have both.

After the case was on a sound footing, Judge Garland returned to his critical responsibilities at the Justice Department, but maintained close contact with the rest of us who continued to work on the case. With his towering intellect, exceptionally sound judgment, and extraordinary decency, he provided the leadership and wise counsel that helped us face both novel legal issues in the courtroom and unprecedented challenges in supporting a community of victims that numbered in the thousands.

On a personal level, we all benefitted from having Judge Garland in our corner. For some of us, the bombing had ripped through our home town and killed and wounded neighbors and colleagues; for the rest of us who came to the task force from across the country, the case required many months away from friends and family. For all of us, working to secure justice for the victims and to reassure the nation that our judicial system could respond fairly but forcefully to such an act of domestic terrorism, the pressure to get it right was unyielding – and Judge Garland's support was critical. He was not just a supervisor; he was a mentor, a counselor, and a friend.

From the day of the Oklahoma City bombing until his judicial appointment at the start of the first of the trials, Merrick Garland provided our team with leadership, confidence, determination, and hope. If confirmed, he will bring to the Supreme Court the same humanity, talent, and judgment that we have seen in him for two decades. We unconditionally support his nomination and urge you to support his confirmation as an Associate Justice of the Supreme Court.

Very truly yours,

Donna Bucella	Joseph Hartzler	James Orenstein
Vicki Zemp Behenna	Carolyn Hightower	Patrick Ryan
Sean Connelly	Arlene Johnson	Beth Wilkinson
David Chipman	Wan Kim	
Aitan Goelman	Larry Mackey	
Jamie Gorelick	Scott Mendeloff	

April 20, 2016

The Honorable Mitch McConnell
Majority Leader
United States Senate
317 Russell Senate Office Building
Washington, D.C. 20510

The Honorable Harry Reid
Minority Leader
United States Senate
522 Hart Senate Office Building
Washington, DC 20510

The Honorable Chuck Grassley
Chairman
Committee on the Judiciary
United States Senate
135 Hart Senate Office Building
Washington, DC 20510

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

Re: Nomination of Judge Merrick Garland

Dear Majority Leader McConnell, Minority Leader Reid, Chairman Grassley, and Ranking Member Leahy:

We write to urge the Senate to give the President's nomination of Judge Merrick Garland for the vacant seat on the United States Supreme Court the hearing and due consideration that Judge Garland so clearly deserves.

Judge Garland is widely recognized as one of the finest and most respected judges on the federal bench today. Early in his career, Judge Garland – like Chief Justice John Roberts – served as a law clerk to the former Chief Judge of the U.S. Court of Appeals for the Second Circuit, Henry Friendly. Each of the undersigned attorneys and law professors likewise clerked for Judge Friendly at the outset of our careers. (The many judges among Judge Friendly's former clerks are unable to consider signing this letter because it arguably is not permitted by the Code of Conduct for U.S. Judges.) Many of us know Judge Garland personally, and know first-hand his outstanding qualifications for appointment to the Supreme Court.

All of us know well the model that Judge Friendly set for us, which Judge Garland has successfully emulated.

Judge Friendly is generally regarded as one of the great appellate judges of the Twentieth Century. He was a brilliant man, with an encyclopedic knowledge of the law and an extraordinary vision of how different components of the law fit together to form a seamless whole. While Judge Friendly was a Republican appointed to the bench by President Eisenhower, he brought no political agenda to his judicial decisions, and evaluated each case solely on its legal merits. His legal analysis was rigorous, and he explored legal issues in great depth, yet he had a remarkable ability to explain his decisions by reference to first principles and common sense. He was committed to excellence in his judicial opinions and demanded nothing but the best from himself and his law clerks.

Judge Garland is a judge cut out of the same mold. In his nearly twenty years on the D.C. Circuit bench, he has demonstrated that he shares many of these same qualities. He is a brilliant lawyer, and is universally respected for his legal craftsmanship and the quality of his legal opinions. Like Judge Friendly, he insists on excellence in everything that he does. He is a judge's judge: he has no political or ideological agenda; he is unbiased, and approaches each case on its legal merits. He is exceptionally fair-minded and open to argument, and gives careful consideration to all the legal arguments presented to him before making a decision. He has a superb judicial temperament, and is unfailingly polite, fair and even-tempered.

There is simply no one in the country who is more qualified than Judge Garland to sit on the Supreme Court. We urge you to give his nomination fair consideration, and are confident that, if you do so, you will see that he should be confirmed.

Respectfully submitted,

Bruce Ackerman
Robert M. Berger
Donald P. Board
Philip Bobbitt

Henry S. Bryans
Mary I. Coombs
Thomas Curtis
Thomas G. Dagger
Frederick T. Davis
Richard Daynard
Peter Edelman
Ira M. Feinberg
A. Richard Feldman
Richard B. Glickman
Walter Hellerstein
Reinier Kraakman
Larry Kramer
William Lake
Michael R. Lazerwitz
Raymond B. Ludwiszewski
Jonathan Macey
Theodore N. Mirvis
Paul Mogin
William F. Pedersen
Lawrence B. Pedowitz
Todd Rakoff
David J. Seipp
Warren R. Stern
Stuart C. Stock
Ruth Wedgwood
Marc Wolinsky

April 21, 2016

Re: *Senate Consideration of Supreme Court Nominee*

Dear Senator:

On behalf of the undersigned organizations committed to advancing women's legal rights and protections, we write to urge you to consider the nomination of Judge Merrick Garland to be an Associate Justice of the United States Supreme Court.

The Supreme Court's decisions give meaning to legal rights for women, including women's constitutional right to equality under the law and to make the most personal and private decisions, such as whether to have an abortion or to use contraception. The Court's decisions likewise are key in determining the scope and interpretation of statutes prohibiting sex discrimination at work and at school, and laws establishing civil rights, voting rights, and health and safety regulations. The Court's decisions in these and many other areas of the law, such as affirmative action and immigration, affect the lives of women and girls across the country for generations. That is why women, and all those who rely on the courts for justice, need the Court to be functioning at full force.

Article II, Section 2 of the Constitution provides that the President "shall nominate, and by and with the Advice and Consent of the Senate, shall appoint . . . Judges of the supreme Court." The Constitution does not create exceptions for presidential election years. In fact, since 1900, the Senate has voted on eight nominations to the Supreme Court during election years, including, most recently, the nomination of Associate Justice Anthony Kennedy. The nomination of any Supreme Court Justice is too important to be subject to political gamesmanship.

We urge you to ensure that the Senate Judiciary Committee holds fair and expeditious hearings and a vote on the nomination of Judge Garland. We also urge you to press for a timely vote before the full Senate.

Please do not hesitate to contact Amy Matsui at the National Women's Law Center, at amatsui@nwlc.org, should you have any questions or wish to discuss this issue further.

Sincerely,

9to5, National Association of Working Women
Advocates for Youth
Alliance for a Just Society
American Association of University Women (AAUW)
American Sexual Health Association
Association of Asian Pacific Community Health Organizations (AAPCHO)
Atlanta Women for Equality
Center for Reproductive Rights
Coalition of Labor Union Women
Institute for Science and Human Values

Legal Momentum
Legal Voice
Mabel Wadsworth Women’s Health Center
Maine Women's Lobby
MANA, A National Latina Organization
Medical Students for Choice
Ms. Foundation for Women
NARAL Pro-Choice America
National Abortion Federation
National Black Justice Coalition (NBJC)
National Center for Lesbian Rights
National Center for Transgender Equality
National Congress of Black Women, Inc.
National Council of Jewish Women
National Institute for Reproductive Health
National Latina Institute for Reproductive Health
National LGBTQ Task Force Action Fund
National Partnership for Women & Families
National Women's Health Network
National Women's Law Center
North Dakota Women's Network
OWL - The Voice of Women 40+
PathWays PA
Planned Parenthood Federation of America
Population Connection Action Fund
Reproductive Health Technologies Project
Sargent Shriver National Center on Poverty Law
SEIU
Southwest Women’s Law Center
Ultraviolet
URGE: Unite for Reproductive & Gender Equity
USAction
Women Employed
Women’s Bar Association of the District of Columbia
Women's Law Project
Women's Media Center
YWCA USA

April 25, 2016

The Honorable Mitch McConnell
United States Senate
317 Russell Senate Office Building
Washington, DC 20510-1702

The Honorable Harry Reid
United States Senate
522 Hart Senate Office Building
Washington, DC 20510-2803

Dear Senators McConnell and Reid:

As history, civics, and social studies educators, we urge the United States Senate to do its job and hold a hearing and an up-or-down vote on the President's nominee for the United States Supreme Court: Merrick Garland, chief judge of the U.S. Court of Appeals for the D.C. Circuit.

As we teach our students, Article 2, Section 2 of the Constitution stipulates that it is the President's duty to nominate Supreme Court justices and the Senate's duty to provide "advice and consent"—take action on such nominations. Moreover, as Alexander Hamilton wrote in the Federalist Papers, the Senate should not reject a nominee unless there are "special and strong reasons for the refusal." Judge Garland is clearly qualified and holds the high ethical standards expected of a Supreme Court justice.

If a student answered on an exam that our Presidents lose the power to appoint Supreme Court justices in the fourth year of their term, that answer would be marked "incorrect"—neither the text of the Constitution nor tradition justify it. In fact, since 1875, every Supreme Court nominee has received either a hearing or a vote. Those nominated or confirmed in the final year of a President's term include John Marshall, one of the earliest chief justices, and Anthony Kennedy, who was nominated by President Ronald Reagan and still serves.

As educators in the classroom, we believe it is our responsibility to help students learn about—and appreciate—the role citizens play in our democracy. We teach that being a good citizen requires cooperation, mutual respect, and the ability to compromise. When our students work in groups, they work together and do their jobs, even when they are not friends or have disagreements.

Please help us teach our students the true meaning of democracy. Demonstrate that America's leaders can put aside their differences to do their jobs. For the sake of the students who are the future of America, we urge you to hold a hearing and up-or-down vote on Judge Garland, the President's nominee for the Supreme Court.

Sincerely,

Joanne Beaver
High School AP Government
Mechanicsburg, PA

Patrick Chambers
High School AP Government
Indianapolis, IN

Pete Clancy
High School Social Studies
Cedar Rapids, IA

Gina Daniels
High School History
Blacklick, OH

John deVille
High School AP U.S. History & U.S. History
Franklin, NC

Marisol Garcia
8th Grade Social Studies
Phoenix, AZ

Jim Griffin
11-12th Grade Government
Salem Hills, UT

Valarie Jackson
High School World History
Beaufort, SC

Kerry Konda
9th Grade Government
Aberdeen, SD

Lisa Petrey-Kirk
Middle School Social Studies
Lawrenceburg, KY

Megan Tuttle
8th Grade Social Studies
Pembroke, NH

Nathan Ugoretz
10th Grade AP U.S. History
Port Washington, WI

The Honorable Mitch McConnell
Majority Leader
United States Senate
317 Russell Senate Office Building
Washington, DC 20510

May 5, 2016

The Honorable Harry Reid
Minority Leader
United States Senate
522 Hart Senate Office Building
Washington, DC 20510

The Honorable Chuck Grassley
Chairman
Committee on the Judiciary
United States Senate
437 Hart Senate Office Building
Washington, DC 20510

The Honorable Patrick Leahy
Ranking Member
Committee on the Judiciary
United States Senate
437 Russell Senate Office Building
Washington, DC 20510

Dear Majority Leader McConnell, Minority Leader Reid, Chairman Grassley, and Ranking Member Leahy:

Each of us headed the Office of the Solicitor General. Our service took place under both Republican and Democratic Presidents. We write collectively in support of Judge Merrick Garland's qualifications to serve as an Associate Justice of the United States Supreme Court. We believe that Judge Garland has demonstrated the temperament, intellect, and experience to serve in this capacity.

Merrick Garland has a history of excellence in the Law. He served in high ranking Justice Department posts, as a partner at a major law firm, an Assistant United States Attorney, a law clerk on the United States Supreme Court, a law clerk on the Second Circuit for the legendary Judge Henry Friendly, and, of course, for nearly the last two decades, as a Judge on the United States Court of Appeals for the D.C. Circuit. He presently serves as the Chief Judge of that Circuit, where he is known for his collegiality and is widely respected by his colleagues and litigants who have come before him.

As a group, we have argued hundreds of cases before the United States Supreme Court and the federal Courts of Appeals. Each of us has served as the United States Government's top representative before the Supreme Court. And while we have served in different Administrations, we are unified in our belief that Judge Garland is superbly qualified to serve on the Supreme Court if he were confirmed.

We are confident that Judge Garland would bring his brilliance, work ethic, and broad experience to the cases that come before him. Please do not hesitate to contact us if you have questions.

Respectfully submitted,

Neal K. Katyal (Acting Solicitor General, 2010-2011)

Gregory G. Garre (Solicitor General, 2008-2009)

Paul D. Clement (Solicitor General, 2005-2008)

Theodore B. Olson (Solicitor General, 2001-2004)

Barbara D. Underwood (Acting Solicitor General, 2001)

Seth P. Waxman (Solicitor General, 1997-2001)

Walter E. Dellinger III (Acting Solicitor General, 1996-1997)

Drew S. Days III (Solicitor General, 1993-1996)

Kenneth W. Starr (Solicitor General, 1989-1993)

Maine State Bar ASSOCIATION

1891-2016

Celebrating 125 Years

124 State Street
Post Office Box 788
Augusta, Maine 04332-0788

T 207.622.7523
F 207.623.0083
info@mainebar.org
www.mainebar.org

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The Honorable Patrick Leahy
United States Senate
Ranking Member, Committee on the Judiciary
437 Russell Senate Office Building
Washington, D.C. 20510

RECEIVED MAY 26 2016

May 13, 2016

Dear Senator Leahy:

I write on behalf of the Board of Governors of the Maine State Bar Association and as a bar leader who has taken an oath to defend the Constitution. The Board calls on President Obama to act with deliberate speed to nominate an exceptionally qualified person to the Supreme Court. We also urge the Senate to fulfill its constitutional duty, so that our highest Court may continue to perform its critical function at the apex of our third branch of government.

Article II of the Constitution requires the President, "with the advice and consent of the Senate," to appoint judges to the Supreme Court. Through this section, the framers placed in the hands of the executive and legislative branches of our government a duty to ensure that the third pillar of our democracy, our courts, would be protected from entanglement in partisan politics. We trust that you will fulfill this duty.

While careful evaluation and reasoned debate regarding the qualifications of the nominee are central to the Senate's role, it would undermine the rule of law and risk nullifying the Supreme Court's power to serve its constitutional role as arbiter of disputes, were the confirmation process to be delayed until a new president is inaugurated. Were such a path to be followed, the Court would be forced to sit for two terms, and over a year, with a vacancy. The implications of this course of action would be significant, subjecting people in different regions of the country to different legal standards on matters of constitutional importance and leaving open the specter of an unresolved constitutional crisis. The rule of law requires an ultimate arbiter. The Constitution has placed the Supreme Court in that role.

We ask that you carry out your constitutionally prescribed roles with full fealty to the oaths you have taken so that our Supreme Court is returned to its full membership.

Sincerely,

Stephen D. Nelson

President
Maine State Bar Association

cc: U.S. Senators Angus King and Susan Collins
U.S. Representatives Chellie Pingree and Bruce Poliquin
The President
The Honorable Mitch McConnell United States Senate
The Honorable Chuck Grassley United States Senate
The Honorable Harry Reid United States Senate

June 16, 2016

The Honorable Chuck Grassley
Chairman
The Honorable Patrick J. Leahy
Ranking Member
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510-6050

Dear Chairman Grassley and Ranking Member Leahy:

We write regarding Chief Judge Merrick Garland's nomination to be an Associate Justice of the Supreme Court of the United States.

Each of us serves as the General Counsel of a major company doing business in the United States. Although we write in our personal capacities and not on behalf of our companies, we each believe that Chief Judge Garland's nomination should be considered in normal order by the Committee because (i) his intellect, legal experience, and judicial temperament render him exceptionally well qualified to serve on the Supreme Court; and (ii) the business community has a great interest in avoiding the legal uncertainty that could result if the vacancy remains unfilled for an extended period of time.

First, Chief Judge Garland's qualifications for the Court are outstanding and beyond dispute. His many years of private practice and government work before becoming a judge, including his tenure both as a federal prosecutor and as a senior official in the Department of Justice, are well-documented and demonstrate a first-class legal mind, great respect for the institutions of the law, and an enduring commitment to public service. He has served with distinction for 19 years on the United States Court of Appeals for the District of Columbia Circuit, the last three as Chief Judge. His track record as a jurist demonstrates a consistent commitment to and respect for legal precedent, judicial restraint, principled fairness, and intellectual honesty.

Second, the companies that employ us are representative of companies that conduct economic activity in the United States worth hundreds of billions of dollars and employ millions of people in cities and towns across the country. These companies depend on the certainty of timely judicial decisions to help us advise our management teams and employees and to provide clarity to our shareholders and the markets. The Supreme Court plays a vital role in this regard, frequently granting *certiorari* in cases involving important business issues such as intellectual property rights, labor and employment law, administrative law, securities law, and many other areas of great importance to those engaged in commercial activity. While these types of issues can sometimes be decided by a majority from among eight sitting justices, we are concerned about the uncertainties and delays to the impartial administration of justice that could arise if the Court is left without a tie-breaking ninth vote for an extended period of time.

Accordingly, we urge the Committee to schedule hearings as soon as reasonably practicable regarding Chief Judge Garland's nomination.

We very much appreciate the Committee's consideration of this letter.

Sincerely,

Richard N. Baer	*Liberty Media Corporation*
Sharon Barner	*Cummins Inc.*
Marc Baum	*Serengeti Asset Management*
Mark Brazeal	*SanDisk Corporation*
Steven M. Cohen	*MacAndrews & Forbes Incorporated*
Christopher Crain	*Houlihan & Lokey*
Jay Dubiner	*Authentic Brands Group*
David Ellen	*Cablevision Systems Corp.*
Samuel A. Flax	*American Capital Ltd.*
Ivan Fong	*3M*
Adam Frankel	*Evercore*
Lisa Beattie Frelinghuysen	*David Yurman Co.*
Michael Fricklas	*Viacom Inc.*
Jamie Gallagher	*AMC Networks*
Lauren Goldberg	*VEREIT, Inc.*
Horacio Gutierrez	*Spotify*
Robert J. Ingato	*CIT Group Inc.*
John Junek	*Ameriprise Financial*
Ali Kazemi	*Squarespace, Inc.*
Hilary Krane	*Nike*
Seth Krauss	*WME/IMG*
David Kris	*Intellectual Ventures*
Brian Levey	*Upwork Inc.*
John M. Liftin	*D. E. Shaw & Co, L.P.*

Richard Lucas	*Walker & Dunlop Inc.*
Lori J. Marco	*Hormel Foods Corporation*
Sara Moss	*Estée Lauder*
Michael C. Neus	*Perry Capital LLC*
Amy Fliegelman Olli	*Avaya*
Donald J. Rosenberg	*Qualcomm Inc.*
Michael Rowles	*Live Nation Entertainment, Inc.*
Sharon Ryan	*International Paper*
Jacob Schatz	*Electronic Arts*
Lori Schechter	*McKesson Corp.*
Jonathan Schwartz	*Univision Communications Inc.*
Nikhil Shanbhag	*Instacart*
Audrey Strauss	*Alcoa Inc.*
Richard P. Swanson	*York Capital Management*
Julie Swidler	*Sony Music Entertainment*
Melissa Tidwell	*Reddit, Inc.*
Dana R. Wagner	*Square, Inc.*
Laura H. Witte	*Cargill, Incorporated*
Michael Yang	*Pinterest*
Steven Zipperstein	*BlackBerry Ltd.**

**All company affiliations are listed for identification purposes only*