



April 7, 2016

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

Dear Chairman Grassley:

On behalf of The Leadership Conference on Civil and Human Rights and the 42 undersigned organizations, we write to express our dismay with the failure of the Judiciary Committee to address a growing backlog of federal judicial nominations. With only 16 judges confirmed so far, the 114th Congress is on pace to have the lowest number of judges confirmed since the 82nd Congress in 1951-1952. Even worse, in the face of rising caseloads and continuing judicial emergencies, it appears that the Committee is determined to shut down the confirmation process entirely – putting political considerations ahead of the national interest in a well-functioning judicial branch, and ahead of the constitutional responsibility of the Senate to do its job of providing advice and consent on presidential appointments.

While a great deal of public attention has rightly been focused on the pending nomination of Chief Judge Merrick Garland to the U.S. Supreme Court, vacancies on the lower courts must not be lost amidst the debate. This year, President Obama has nominated seven individuals to serve on U.S. Courts of Appeal in various circuits throughout the country, including several in circuits that are currently experiencing judicial emergencies. While some senators have expressed vague and superficial reasons for opposing consideration of individual nominees, the qualifications of these nominees cannot be seriously disputed – every one of the nominees below has an outstanding background, as well as the widespread respect of those in the legal community who know them best:

- Rebecca Ross Haywood (Third Circuit): Nominated on March 15, Ms. Haywood has spent most of her legal career as an Assistant U.S. Attorney for the Western District of Pennsylvania, including as the Appellate Chief of the Civil Division since 2010. She regularly practices before the court to which she has been nominated – and, if confirmed, would be the first African-American woman to serve there.
- Lisabeth Tabor Hughes (Sixth Circuit): Nominated on March 17, Judge Hughes was appointed to the Kentucky Supreme Court in 2007 by then-Governor Ernie Fletcher and was reelected twice, including without opposition in 2014. She previously served on the Kentucky Court of Appeals (also having been appointed by Gov. Fletcher), and has extensive experience in both private practice and as a trial judge in Jefferson County, Kentucky. She would be the first woman from Kentucky on the court.
- Donald Karl Schott (Seventh Circuit): Nominated on Jan. 12, Mr. Schott graduated *cum laude* from Harvard Law School in 1980. Since then, he has spent most of his legal career in private practice at Quarles & Brady, where he became a partner in 1987, and has extensive trial and appellate litigation experience, at both the state and federal levels, specializing in securities and business fraud, commercial disputes, health care, and energy-related issues.

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- Myra C. Selby (Seventh Circuit): Nominated on Jan. 12, Ms. Selby spent 15 years in private practice and Indiana state government before being nominated in 1995 to the Indiana Supreme Court. She was the first African American and first woman to serve there, and authored more than 100 majority opinions, before returning to private practice in 1999. Since then, she has specialized in commercial and health care litigation. She would be the first African American from Indiana and the first woman from Indiana on the Seventh Circuit.
- Jennifer Klemestrud Puhl (Eighth Circuit): Nominated on Jan. 28, Ms. Puhl spent several years in private practice and as a clerk on the North Dakota Supreme Court. In 2002, she joined the criminal division of the U.S. Attorney's Office for the District of North Dakota, where she prosecutes a wide range of criminal cases and specializes in computer hacking and cybersecurity, intellectual property, and human trafficking. She would be the first woman federal judge at any level in North Dakota.
- Lucy H. Koh (Ninth Circuit): Nominated on Feb. 25, Judge Koh became the first Asian American judge to serve on the U.S. District Court for the Northern District of California, having been confirmed in 2010 by a 90-0 vote. Prior to her current position, she worked for the Senate Judiciary Committee, held several positions within the Department of Justice, and spent six years in private practice. In 2008, she was appointed as a judge to the Superior Court of California for Santa Clara County by then-Governor Arnold Schwarzenegger. She would be only the second Asian American woman ever to serve on a federal circuit court.
- Abdul K. Kallon (Eleventh Circuit): Nominated on Feb. 11, Judge Kallon has served on the U.S. District Court for the Northern District of Alabama since 2009, after being confirmed by the Senate by unanimous consent. For the previous fifteen years, Judge Kallon specialized in labor and employment law as a partner at the Birmingham, Alabama firm Bradley Arant Boult Cummings LLP. If confirmed, Judge Kallon would be the first African American from Alabama to serve on the Circuit.

In addition, the committee has failed to act on dozens of pending district court nominees – too many to list here – from throughout the country. As with the above appellate nominees, many of these nominees would fill seats in districts that are currently facing judicial emergencies. Many of the district and appellate nominees come from states in which both senators have returned their so-called “blue slips,” indicating their approval of the nominees. Normally, this should clear the way for hearings and up-or-down confirmation votes. Instead, these nominees have fallen victim to election-year gamesmanship.

The complete obstruction of nominees is unprecedented, and the arguments some are making in defense of this obstruction are wholly unpersuasive. In 2008, the Democratic party-controlled Senate confirmed 22 judges in the last seven months of George W. Bush's presidency, including 10 in September 2008. During Ronald Reagan's presidency, the Senate on average confirmed 16 judges in the second half of presidential election years. There is no legitimate reason why things should be any different in the last year of President Obama's second term.

While the Committee refuses to do its job, the American people are left to pay the price. There are currently 32 judicial emergencies nationwide (16 of the pending nominees would fill these seats), and more than 40 total nominees pending in committee or on the Senate floor. Many of the pending nominees would fill vacancies in courts that have been left shorthanded for years. Donald Schott would fill a



Seventh Circuit seat that has been vacant for more than six years, and more than 30 of the 46 pending nominees are nominated to seats that have been empty for more than a year.

Meanwhile, the inaction is slowing the wheels of justice for all types of parties who are seeking to vindicate their legal and constitutional rights. Numerous judges have explained the consequences they and litigants face: long delays on even the most simple filings and motions, protracted waits for post-conviction sentences, spoiled evidence, witnesses whose memories fade, lost businesses and the jobs that go with them while waiting for trials, and many more. Not only is the situation rife with injustices, but it is also completely unsustainable.

The Committee has a constitutional responsibility to provide advice and consent on presidential nominees, and a duty to the American people to simply do its job. In the coming weeks and months, our organizations will continue to make the case until it does.

If you have any questions, please contact Rob Randhava, Senior Counsel at The Leadership Conference on Civil and Human Rights at (202) 466-3311, or any of the organizations listed below. As organizations that collectively represent millions of diverse Americans who have a stake in a fair, effective judicial system, we thank you for considering our views.

Sincerely,

The Leadership Conference on Civil and Human Rights
AFL-CIO
Alliance for Justice
American Constitution Society for Law and Policy
American Federation of State, County, and Municipal Employees
American Federation of Teachers
American-Arab Anti-Discrimination Committee
Americans for Democratic Action
Asian Americans Advancing Justice | AAJC
Asian Pacific American Labor Alliance, AFL-CIO (APALA)
Association of Asian Pacific Community Health Organizations
The Center for Asian Pacific American Women
Coalition of Black Trade Unionists
Constitutional Accountability Center
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Earthjustice
Human Rights Campaign
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League of Conservation Voters
NAACP
NAACP Legal Defense and Educational Fund, Inc.
National Association of Human Rights Workers
National Association of Social Workers
National Black Justice Coalition



National Center on Time & Learning
National Community Reinvestment Coalition
National Congress of American Indians
National Council of Asian Pacific Americans (NCAPA)
National Council of Jewish Women
National Education Association
National Employment Lawyers Association
National Fair Housing Alliance
National Hispanic Media Coalition
National LGBTQ Task Force Action Fund
National Partnership for Women & Families
National Women's Law Center
People For the American Way
Pride at Work
South Asian Americans Leading Together (SAALT)
United Auto Workers (UAW)
The Workmen's Circle