

February 13, 2008

The Honorable Patrick J. Leahy  
The Honorable Arlen Specter  
The Honorable Joseph R. Biden, Jr.  
The Honorable Sam Brownback  
The Honorable Benjamin L. Cardin  
The Honorable Tom Coburn  
The Honorable John Cornyn  
The Honorable Richard J. Durbin  
The Honorable Russell D. Feingold  
The Honorable Dianne Feinstein  
The Honorable Lindsey Graham  
The Honorable Charles E. Grassley  
The Honorable Orrin G. Hatch  
The Honorable Edward M. Kennedy  
The Honorable Herb Kohl  
The Honorable Jon Kyl  
The Honorable Charles E. Schumer  
The Honorable Jeff Sessions  
The Honorable Sheldon Whitehouse

United States Senate  
U.S. Capitol  
Washington, DC

CC: The Honorable Harry Reid  
The Honorable Mitch McConnell

Dear Senators,

We write both to express our deep concern about the lack of progress in 2007 in reporting judicial nominees – particularly circuit court nominees – out of the Judiciary Committee, and to discuss reasonable expectations for progress on this issue in 2008.

The remarkably low approval ratings for the 110<sup>th</sup> Congress are a testament to Americans' concern that their representatives are more interested in partisan politics than in serving the people. The American people want you to do your job, and among the most important responsibilities of the Judiciary Committee are processing and voting on the President's judicial nominees.

The impact of the judges issue on Senate campaigns over the last six years demonstrates that the public is watching. Your constituents may not pay close attention to the details of the confirmation process, but they cannot help but notice the personal attacks on nominees, the emphasis on politics over progress, and the basic unfairness of denying qualified nominees a fair up-or-down vote by the committee and full Senate.

A year into the 110th Congress, the Judiciary Committee has held hearings for only four appeals court nominees and has voted on only six. As a result, the full Senate has fallen far short of the confirmation pace necessary to meet the historical average of 17 circuit court confirmations during a president's final two years in office – an average maintained during the Reagan, Bush I, and Clinton presidencies despite opposition control of the Senate.

Instead of seeing progress, the American people are watching judicial nominees stack up in the Judiciary Committee. Ten appeals court nominees – seven of them waiting to fill vacancies declared “judicial emergencies” – and nearly twenty district court nominees languish in committee. Several nominees have been waiting more than a year and a half.

Given the long delays in the federal courts, the American people are unsympathetic to the claim that certain nominees cannot even get a hearing because of the Judiciary Committee's arcane “blue slip” policy. That policy exposes the Senate at its worst and is rightfully perceived as serving senators rather than the public. Consider the senators whose only reason for blocking two circuit court nominees is a decade-old personal grudge, or the senators who can do no better than argue that the nominee they are blocking is so good at his current job that he should be kept there. In the end, responsibility for the resulting delays lies with the Judiciary Committee, because the “blue slip” policy exists entirely at the committee's discretion.

Fortunately, the new year presents the Judiciary Committee with the opportunity for a fresh start. If you and your colleagues are willing to eschew partisan politics, focus on your constitutional duty, and treat nominees in a dignified manner, the Senate can meet or come close to the historical average of 17 circuit court confirmations.

Specifically, there are four pending circuit nominees – Robert Conrad, Steve Matthews, Catharina Haynes, and Gene Pratter – who have the support of home state senators, which Chairman Leahy has said is key to approval by the Judiciary Committee. Including D.C. Circuit nominee Peter Keisler, that makes five appeals court nominees for whom there is no excuse for denying them a committee vote. And, given the outstanding qualifications of these five nominees, there is no reason why the committee should fail to report them to the full Senate for a fair up-or-down vote.

Assuming at least two new nominees to the Fourth and Ninth Circuits in the next several months, that leaves seven circuit nominees in addition to the aforementioned five. Even if the Judiciary Committee meets only a very minimal standard by reporting just four of those seven to the full Senate, the Senate will have an opportunity – contingent on Majority Leader Reid scheduling up-or-down votes – to confirm fifteen appeals court nominees in the 110th Congress. Fifteen confirmations would fall short of the historical average, but would match the number of circuit court confirmations in President Clinton's final two years. Anything less and the members of the Judiciary Committee will be remembered for presiding over historic levels of obstruction.

Lest the individual nominees get lost in a discussion of numbers, we want to draw your attention to the truly exceptional qualifications of D.C. Circuit nominee Peter Keisler, who has inexplicably languished in committee without action since his hearing a year and a half ago. Keisler has been given the American Bar Association's highest rating – “unanimously well-qualified” – and has the enthusiastic support of leading legal scholars and practitioners from across the ideological spectrum, including Yale Law School Dean Anthony Kronman, Professor Neal Katyal of Georgetown, Professor Akhil Amar of Yale, Carter Phillips of Sidley Austin, former D.C. Bar President George Jones, and several former law clerks of Supreme Court Justices Thurgood Marshall and William Brennan. In addition, both the *Washington Post* and *Los Angeles Times* have called for Keisler's confirmation.

This impressive array of supporters surprises no one familiar with Keisler's unmatched credentials. A graduate of Yale Law School, Keisler served as Associate Counsel to President Reagan and clerked for Supreme Court Justice Anthony Kennedy before joining Sidley Austin. At Sidley, he was quickly promoted to partner and argued cases at every level of the federal court system, including the Supreme Court. In 2002, he left Sidley to serve his country at the U.S. Department of Justice, where he was promoted to Assistant Attorney General for the Civil Division a year later. When Attorney General Alberto Gonzales resigned last year, Keisler postponed his plans to leave government service so that he could see the Department and the nation through a difficult transition period as Acting Attorney General.

The least the Judiciary Committee can do to thank Peter for his service to the nation is to report him to the full Senate for an up-or-down vote. There is no rational reason why, after a year and a half of waiting, this exceptional nominee should remain on hold. If his nomination is allowed to die in the Judiciary Committee, it will be a loss to both the federal bench and the reputation of the committee. His confirmation is our highest priority, and it should be yours as well.

President Bush fulfilled his constitutional duty by nominating the men and women who await action in the Judiciary Committee. We respectfully request that you fulfill your responsibility as well, by ensuring that each and every judicial nominee is given a hearing and a vote in committee. If you cannot support a particular nominee, vote him or her out of committee without a positive recommendation, or vote against confirmation on the Senate floor. The full Senate must be allowed to carry out its constitutional duty of advice and consent by providing each nominee with a timely up-or down confirmation vote, and you should not stand in the way. We ask only that you do your job by putting statesmanship above politics and special interests. The American people expect no less.

We would be happy to speak with you in person about this critical matter.

Respectfully,

Curt Levey  
Executive Director

Committee for Justice

James L. Martin  
President  
60 Plus Association

Gary L. Bauer  
President  
American Values

Roger Clegg  
President  
Center for Equal Opportunity

Jeff Ballabon  
President  
Center for Jewish Values

Jim Backlin  
Vice President for Legislative Affairs  
Christian Coalition of America

Paul M. Weyrich  
National Chairman  
Coalitions for America

Kay R. Daly  
President  
Coalition for a Fair Judiciary

Wendy Wright  
President  
Concerned Women for America

Kent Ostrander  
Executive Director  
Family Foundation (Kentucky)

Tom McClusky  
Vice President of Government Affairs  
Family Research Council

Brian Burch  
President  
Fidelis

Tom Minnery  
Senior Vice President of Government and Public Policy  
Focus on the Family

Ron Shuping  
Executive Vice President of Programming  
Inspiration Networks

James Bopp, Jr.  
General Counsel  
James Madison Center for Free Speech

Gary Marx  
Executive Director  
Wendy E. Long  
Counsel  
Judicial Confirmation Network

Day Gardner  
President  
National Black Pro-Life Union

Chris Brown  
Executive Vice President  
National Federation of Republican Assemblies

Raymond J. LaJeunesse, Jr.  
Vice President and Legal Director  
National Right to Work Legal Defense Foundation

Linda Chavez  
President  
One Nation Indivisible

Dr. Randy Brinson  
Chairman  
Redeem the Vote

Joyce E. Thomann  
President  
Republican Women of Anne Arundel County, MD

Dr. Rod D. Martin  
Chairman  
TheVanguard.Org

Rev. Louis P. Sheldon  
Chairman  
Traditional Values Coalition

Dr. Keith Wiebe  
President  
American Association of Christian Schools

Susan A. Carleson  
Chairman and CEO  
American Civil Rights Union

Donald E. Wildmon  
Founder and Chairman  
American Family Association

Micah Clark  
Executive Director  
American Family Association of Indiana

Rev. John C. Holmes, Ed.D.  
Director, Government Affairs  
Association of Christian Schools International

Larry Cirignano  
Founder  
CatholicVOTE.org

Jeffrey Mazzella  
President  
Center for Individual Freedom

Samuel B. Casey  
Executive Director and CEO  
Christian Legal Society

Tom Shields  
Chairman  
Coalition for Marriage and Family

Professor Victor Williams  
Columbus School of Law, Catholic University of America

Karen Testerman  
Executive Director  
Cornerstone Policy Research

Ron Pearson  
President  
Council for America

Brad Miller  
Director, Family Policy Council Dept.  
Focus on the Family Action

Bryan Fischer  
Executive Director  
Idaho Values Alliance

Curt Smith  
President  
Indiana Family Institute

J. C. Willke, M.D.  
President  
International Right to Life Federation

Phillip Jauregui  
President  
Judicial Action Group

Anita Staver  
President  
Liberty Counsel

Mr. Kelly Shackelford  
Chief Counsel  
Liberty Legal Institute

Mathew D. Staver  
Dean and Professor of Law  
Liberty University School of Law

Dr. Patricia McEwen  
Director  
Life Coalition International

Bradley Mattes  
Executive Director  
Life Issues Institute

Steven Ertelt

Editor and CEO  
LifeNews.com

Gene Mills  
Executive Director  
Louisiana Family Forum

Leslee J. Unruh  
President and Founder  
National Abstinence Clearinghouse

Steven W. Fitschen  
President  
National Legal Foundation

Len Deo  
Founder and President  
New Jersey Family Policy Council

Fr. Frank Pavone, M.E.V.  
National Director  
Priests for Life

David Crowe  
Director  
Restore America

Dr. William Greene  
President  
RightMarch.com

Dane vonBreichenruchardt  
President  
U.S. Bill of Rights Foundation

Al Laws, Jr.  
CEO  
WIN Family Services, Inc.