

January 21, 2002

Dear Senator Daschle,

We write to express our concern over the Senate's misuse of its "Advise and Consent" role under the U.S. Constitution with respect to the President's nominees to the federal bench.

As you are well aware, when the Senate adjourned on December 20, there were 94 vacancies in the federal judiciary, 37 of which have been designated as judicial emergencies. During his first year in office, President George W. Bush nominated 66 men and women to fill these vacancies. The President's nominees are a diverse group of eminently well-qualified lawyers who share the President's commitment to the Constitution, the administration of justice, and the rule of law. Nevertheless, on December 20, the Senate had confirmed only 28 of these nominees—a record low confirmation rate. As of this date there are 38 more nominations pending before you (23 to the U.S. Courts of Appeal). Of these, the Senate has yet to schedule hearings for 32 of the nominees. As the vacancies continue to mount, the situation can only worsen.

We are particularly concerned that the Senate has chosen to delay the confirmation of many highly esteemed women and minority nominees. For example, you have even failed to schedule hearings for such distinguished nominees as Justice Priscilla Owen of the Texas Supreme Court, whom the President nominated in May 2001 to the U.S. Court of Appeals for the Fifth Circuit; Judge Carolyn Kuhl of the Superior Court of California, whom the President nominated in June 2001 to the U.S. Court of Appeals for the Ninth Circuit; attorney Miguel Estrada, whom the President nominated in May 2001 to the U.S. Court of Appeals for the District of Columbia; and Justice Deborah Cook of the Ohio Supreme Court, whom the President nominated in May 2001 to the U.S. Court of Appeals for the Sixth Circuit. In the case of Justice Deborah Cook, the Senate's failure to act is particularly disturbing, given that the 16-member federal appeals court to which she was appointed is currently operating at half strength and has been declared in a state of judicial emergency.

At a time in our nation's history when we should be coming together in the spirit of bipartisanship, delays in the confirmation process create the troubling impression that judges are being required to pass a political or ideological litmus test.

While the Senate drags its feet, the number of cases on the federal court docket continues to rise. As dockets grow, cases take longer to make their way through the judicial system, thus increasing the chance that justice will be denied or that the law will not be enforced.

In June 1998, you spoke eloquently of the risk that 72 federal judicial vacancies posed to our system of justice, and you criticized your colleagues for failing to act swiftly to confirm or dispose of the President's nominees. Specifically, you called upon the Senate to "reject partisan politics and significantly accelerate the pace of scheduled judicial confirmations" in order to prevent a crisis in the third branch of government.

A fully-staffed, balanced, and independent judiciary is necessary for the protection of every American's safety, freedom, and civil rights. Accordingly, we hereby call upon you to live by your earlier pronouncements with respect to the confirmation process, to reject political litmus tests as the standard for confirming federal judges, and to act with all deliberate speed to conduct hearings and schedule floor votes on all of the President's judicial nominees.

Respectfully,
Nancy M. Pfothenhauer
President, Independent Women's Forum
Arlington, VA

Jennifer C. Braceras, Esq.
Commissioner, U.S. Commission on Civil Rights
Concord, MA

Jodi S. Balsam, Esq.
New York, NY

Lillian R. BeVier
Doherty Charitable Professor and
Class of 1963 Research Professor,
University of Virginia Law School
Charlottesville, VA

Diana Culp Bork, Esq.
McLean, Virginia

Diane Richards Brey, Esq.
Columbus, Ohio

Mona Charen
Syndicated Columnist, Creators Syndicate
Washington, DC

Linda Chavez
President, Center for Equal Opportunity
Sterling, VA

Candace de Russey, Ph.D.
Trustee, State University of New York
Bronxville, NY

Harmeet K. Dhillon, Esq.
Palo Alto, CA

Elaine Donnelly
President, Center for Military Readiness
Livonia, MI
Theresa S. Finnegan, Esq.
Springfield, MA

Elizabeth K. Dorminey, Esq.
Athens, GA

Nicole Garnett
Assistant Professor of Law,
Notre Dame Law School
South Bend, ID

Renee L. Giachino, Esq.
General Counsel,
Center for Individual Freedom
Alexandria, VA

Mary Ann Glendon
Learned Hand Professor of Law,
Harvard University
Cambridge, MA

Teresa Gorman
Senior Fellow for Environmental Policy,
Independent Women's Forum
Washington, DC

Marci A. Hamilton
Paul R. Verkuil Chair in Public Law,
Benjamin N. Cardozo School of Law
Yeshiva University
New York, NY

Gail Heriot
Professor of Law,
University of San Diego School of Law
San Diego, CA

Leslie Davis Hiner, Esq.
Republican Policy Director and Caucus Attorney,
Indiana House of Representatives
Indianapolis, IN

Marianne Jennings
Professor of Legal and Ethical Studies in Business,
Arizona State University College of Business
Tempe, AZ

Renee Lettow Lerner
Associate Professor of Law,
George Washington University Law School
Washington, D.C.

Meredith Munger Leyva
Founder, CinCHouse.com
Carlsbad, CA

Nanci Marzulla
President, Defenders of Property Rights
Washington, DC

Jennifer Roback Morse, Ph. D.
Senior Fellow, Independent Women's Forum
Sunnyvale, CA

Dorothy Gray
President, DCS, Ltd.
St. Louis, MO

Carol M. Hehmeyer, Esq.
San Francisco, CA

Margot Hill
Lieutenant, Boston Police Department
Boston, MA

Judith Richards Hope, Esq.
Washington, D.C.

Anne G. Kimball, Esq.
Chicago, IL

Norma S. Lindsey, Esq.
Miami, Florida

Margaret A. Little, Esq.
Stratford, CT

Joanne T. Medero, Esq.
San Francisco, CA

Kimberly Ziev Niehaus, Esq.
New York, NY

Judyth Pendell
Director, Center for Legal Policy
The Manhattan Institute
Bloomfield, CT

R. Gaull Silberman
Chairman, Independent Women's Forum
Arlington, VA

Lisa Schiffren
New York, NY

Abigail Thernstrom
Commissioner,
U.S. Commission on Civil Rights
Lexington, MA

Amy L. Wax
Professor,
University of Pennsylvania Law School
Philadelphia, PA

cc: Senator Patrick Leahy, Chairman of the Senate Judiciary Committee
Senator Orrin Hatch, Ranking Member of the Senate Judiciary Committee