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President

AMERICAN BAR ASSOCIATION

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September 6, 2016

The Honorable Mitch McConnell
Senate Majority Leader
S-230 Capitol Building
Washington, DC 20510

The Honorable Harry Reid
Senate Democratic Leader
S-221 Capitol Building
Washington, DC 20510

Dear Majority Leader McConnell and Democratic Leader Reid:

I am writing on behalf of the American Bar Association to urge you to address the backlog of judicial vacancies by promptly scheduling floor votes on the 20 district court nominees pending on the Senate calendar. These nominees have waited a long time for an up-or-down vote: twelve were nominated over 300 days ago and six others were nominated over 200 days ago. The Senate Judiciary Committee found all 20 nominees to be fully qualified for life-time appointments and reported them to the Senate for final action with overwhelming bipartisan support. While we believe every nominee deserves a timely floor vote, we are not including the two pending circuit court nominees in this request.

Over the course of this Congress, the number of judicial vacancies has almost doubled. At present, 89 Article III judgeships are vacant, and five more will become vacant by the end of this year due to scheduled judicial retirements. With over ten percent of authorized judgeships now vacant, the prompt filling of vacancies is becoming a matter of increasing urgency. This is especially true for vacancies that have existed for so long and created such untenable workloads for the remaining judges on the court that the Administrative Office of the U.S. Courts has declared them to be judicial emergencies.

As lawyers who practice in federal courts across this nation, ABA members know firsthand that long-standing vacancies on courts with high caseloads create strains that inevitably will reduce the quality of our justice system and, as importantly, deprive litigants of the opportunity to resolve their civil disputes in a timely matter. This has real consequences for the financial well-being of businesses and for individuals who have to put their businesses and personal lives on hold while waiting for their day in court. Trial court judges do the bulk of the work in the federal court system, and litigants should not have to suffer the consequences of inaction over judicial vacancies.

Failure of the Senate to vote on pending nominees before adjournment also will waste taxpayer dollars and government resources: once the 115th Congress convenes, the

September 6, 2016

Page 2 of 2

President and the Senate will have to begin the entire process again to fill the same vacancies that could be filled today.

These outcomes are avoidable.

We realize that some might counter by saying that there is insufficient time left in the session to vote on pending nominees and, even if time were available, it is customary to stop confirming judges at this point in a presidential election year. We disagree with both statements.

While we appreciate the time constraints under which the Senate will be operating for the remainder of this Congress, the Senate will not have to spend undue time on confirmation matters if you will schedule votes on multiple noncontroversial nominees on the same day. Rather than scheduling only one or two votes at a time, we urge you to schedule at least six confirmation votes at a time, as you did in September 2011.

We also note that there is ample precedent for confirming multiple district court nominees on the same day during the final months of a presidential election year. According to a January 27, 2016, report of the Congressional Research Service, nine district court nominees were confirmed in October of the last year of the Reagan administration; four were confirmed in October of the last year of the Clinton administration; and 10 were confirmed in September of the last year of the George W. Bush administration.

For the benefit of the business community and the general public, we urge you to follow these precedents and promptly schedule votes on the 20 district court nominees pending on the floor. Thank you for the opportunity to present the views of the American Bar Association.

Sincerely,



Linda A. Klein

cc: Sharon Soderstrom, Chief of Staff, Office of the Senate Majority Leader
Brian McGuire, Chief of Staff, Office of Senator Mitch McConnell
Drew Willison, Chief of Staff, Office of the Senate Democratic Leader
Members of the U.S. Senate