

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.<sup>1</sup> 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.

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<sup>1</sup> 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,

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