

United States Senate

WASHINGTON, DC 20510-3802
specter.senate.gov

April 10, 2008

The Honorable John McCain
United States Senate
241 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator McCain:

I write seeking your position on a prospective motion to discharge from the Senate Judiciary Committee the pending nominations of Mr. Peter Keisler, nominee to the Court of Appeals for the D.C. Circuit, Judge Robert Conrad of North Carolina, nominee to the Court of Appeals for the Fourth Circuit, and Mr. Steve Matthews of South Carolina, nominee to the Court of Appeals for the Fourth Circuit.

Mr. Keisler's nomination has been on the agenda since June 29, 2006, without a Committee vote despite his excellent credentials. He graduated *magna cum laude* from Yale University and then received his Juris Doctor from Yale Law School. In addition to clerking for Supreme Court Justice Anthony Kennedy, Mr. Keisler has held several high level positions in the Department of Justice. Most recently, he served as Acting Attorney General, providing much needed leadership after the resignation of Attorney General Gonzales. Prior to that, Mr. Keisler served as the Assistant Attorney General managing the Civil Division of the Justice Department. He is currently a partner in the D.C. office of Sidley Austin LLP. The American Bar Association has awarded him its highest rating, a "unanimous well qualified," and the editorial boards of the *Los Angeles Times* and *The Washington Post* have called him a "moderate conservative," a "highly qualified nominee," and someone who "certainly warrants confirmation."

The only objections raised to Mr. Keisler's nomination have nothing to do with his qualifications or suitability to sit on the D.C. Circuit. Instead, the objections concern whether the Senate needs to fill the 11th seat on the D.C. Circuit, the seat to which Mr. Keisler is nominated. On the contrary, there is recent precedent of the Senate confirming a nominee to fill the 11th seat on the D.C. Circuit. In 2005, the Senate voted to confirm Thomas Griffith to fill the 11th seat on the D.C. Circuit. Judge Griffith was voted out of the Judiciary Committee and confirmed with bipartisan support, including the support of Senators Biden, Feinstein, Durbin, Kohl, and Schumer. In addition, Congress recently validated the 11th seat of the D.C. Circuit when it passed the Court Security Improvement Act last year. Further, arguments against filling the 11th seat based on the decrease in the D.C. Circuit's caseload since 1997 are premature due to the recent addition of detainee cases to the circuit's jurisdiction and the possibility of an increase in administrative law cases due to choice of venue options.

I include Judge Conrad and Mr. Matthews in the proposed motion due to the critical need to expeditiously fill the vacancies on the Court of Appeals for the Fourth Circuit. Currently, one-third of the seats on the Fourth Circuit are vacant, leaving the court inexcusably understaffed.

Judge Conrad and Mr. Matthews are also exceptional appellate court nominees. Judge Conrad is the Chief Judge of the Western District of North Carolina, a position to which he was unanimously confirmed in 2005. Prior to his service on the bench, he had a long career as a federal prosecutor, working in both Republican and Democratic administrations. He has the support of both his home state senators, and the ABA has rated him unanimously "well qualified." The vacancy to which Judge Conrad has been nominated has been declared a "judicial emergency" by the nonpartisan Administrative Office of the Courts. In fact, there is a protracted history to this particular seat, which has been vacant since 1994. However, Judge Conrad has been waiting for a hearing for over 260 days.

Mr. Matthews is another outstanding circuit court nominee. A graduate of Yale Law School, Mr. Matthews has had a distinguished career in private practice in South Carolina. He also served for several years in appointed positions in the Department of Justice, including positions in the Civil Division, the Civil Rights Division, the Office of Legal Policy, and the Office of the Attorney General. He has been a shareholder of a prominent South Carolina law firm since 1991, and from 2004 to 2008 served as the managing director. He has the strong support of both of his home state senators. Despite his impressive and varied professional credentials, Mr. Matthews has been waiting for a hearing for over 200 days. Notwithstanding my repeated requests, no Committee action is planned at this time on any of the aforementioned nominees.

Another nominee, Justice Stephen Agee of Virginia was recently nominated to fill another judicial emergency on the Fourth Circuit. I remain hopeful that Justice Agee will be listed on a hearing agenda and acted on by the Committee in the very near future. If the Committee delays in processing his nomination, I may return to him, given the judicial emergency on the Fourth Circuit.

I write to find out how you would vote on the proposed discharge petition, but also, candidly, to focus the public's attention on these nominations. I know you are aware of the ongoing controversy as to whether the Judiciary Committee is processing nominations with appropriate dispatch. This type of delay has been a recurrent problem during the last two years of every President's Administration for the past two decades when the White House is controlled by one party and the Senate by the other.

I am also seeking the responses of Senator Clinton and Senator Obama on this subject. I do not plan to make the news media aware of my inquiries until April 15th in order to give you ample opportunity to advise me of your response.

Thank you very much for your consideration of this request.

Sincerely,



Arlen Specter

Good Luck!

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April 10, 2008

The Honorable Hillary Rodham Clinton
United States Senate
476 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Clinton:

I write seeking your position on a prospective motion to discharge from the Senate Judiciary Committee the pending nominations of Mr. Peter Keisler, nominee to the Court of Appeals for the D.C. Circuit, Judge Robert Conrad of North Carolina, nominee to the Court of Appeals for the Fourth Circuit, and Mr. Steve Matthews of South Carolina, nominee to the Court of Appeals for the Fourth Circuit.

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Arlen Specter

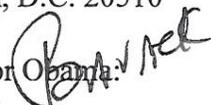
GOOD LUCK!

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April 10, 2008

The Honorable Barack Obama
United States Senate
40B Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Obama: 

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