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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510–6275

February 29, 2008

The Honorable Patrick J. Leahy
Chairman
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Patrick:

I write in the hope that you and I can work out an accommodation on the confirmation of federal judges without our respective caucuses coming to an impasse. Without going into an elaborate history on the confirmation of federal judges, the essence of the situation is that 15 circuit judges and 57 district court judges were confirmed in the last two years of President Clinton's Administration, compared to 6 circuit court and 34 district court judges for President Bush in 2007-2008. That means there must be confirmations or at least up-or-down votes on 9 additional circuit and 23 district court judges to equal President Clinton's record.

President Bush is even farther behind President Clinton in total confirmations when contrasting their entire terms, since President Clinton confirmed 65 circuit court and 305 district court judges while President Bush has so far confirmed only 57 circuit and 237 district court judges. In addition, thus far in the 110th Congress, only 5 of President Bush's circuit court nominees have been granted hearings. By this date in President Clinton's final two years in office, the Committee had held hearings for 10 circuit court nominees. Until the hearing for Ms. Catharina Haynes on February 21, 2008, we had not had a circuit court hearing since September 25, 2007, some 5 months ago.

While there have been many hotly contested issues in the Senate in recent years, the most bitter controversies have involved federal judicial nominations. In 2005, the battle over judges reached a high point, or low point, with the Republican caucus threatening to employ the "nuclear option" to combat the Democrats' filibusters. In my judgment, in the past twenty years, there has been a great deal of blame split evenly between both sides.

As the record shows, I dissented from the Republican caucus's position by casting key votes in favor of several circuit court nominees, including controversial nominees such as Judge Marsha Berzon, who was confirmed to the Ninth Circuit Court of Appeals on March 9, 2000, Judge Timothy Dyk, who was confirmed to the Federal Circuit on May 24, 2000, Judge Richard Paez, who was confirmed to the Ninth Circuit on March 9, 2000, and Judge H. Lee Sarokin, who was confirmed to the Third Circuit on October 4, 1994. Similarly, I supported President Clinton's nomination of Judge Gerard Lynch, who was confirmed to the District Court for the Southern District of New York by a vote of 63-36 on May 24, 2000. I also supported other controversial non-judicial confirmations such

as Lani Guinier to be Assistant Attorney General for the Civil Rights Division of the Justice Department and the subsequent nomination of Bill Lann Lee for the same position.

Now I believe that my caucus is correct in insisting on up-or-down votes on nominees with extraordinary records, including several who are nominated to fill seats deemed judicial emergencies. A listing of these nominees with their superb qualifications proves the point:

Circuit Court Nominees:

Nominee: Peter D. Keisler, of MD, to the D.C. Circuit; **Pending over 600 days**
Nominated: June 29, 2006; Hearing August 1, 2006; Renominated January 8, 2007
ABA Rating: Unanimous Well Qualified
Education: B.A., *magna cum laude*, Yale University, 1981
J.D., Yale Law School, 1985; Notes/Comments Editor, *Yale Law Journal*
Career Highlights: *Law Clerk*, Judge Robert H. Bork, D.C. Circuit Court of Appeals
Law Clerk, Justice Anthony M. Kennedy, U.S. Supreme Court
Assistant Attorney General, Civil Division, Department of Justice
Acting Attorney General, United States Department of Justice (DOJ)
Editorials in the *Los Angeles Times* and *The Washington Post* have called for confirmation of Mr. Keisler calling him a "moderate conservative" and "highly qualified nominee" who "certainly warrants confirmation."

Nominee: Robert Conrad, of NC, to the 4th Circuit (*Judicial Emergency*); **Pending over 220 days**
Nominated: July 17, 2007
ABA Rating: Unanimous Well Qualified
Education: B.A., *magna cum laude*, Clemson University, 1980
J.D., University of Virginia, 1983
Career Highlights: *U.S. Attorney*, Western District of N.C.
District Judge, District Court for the Western District of N.C.
Chief Judge, Western District of N.C.
An editorial in *The Charlotte Observer* stated that it is "outrageous" that the Judiciary Committee has not held a hearing for Judge Conrad, calling him a "well-qualified judge who only three years ago received unanimous Senate confirmation" and who "was appointed by Democratic Attorney General Janet Reno to head the Justice Department's Campaign Finance Task Force."

Nominee: Steve A. Matthews, of SC, to the 4th Circuit; **Pending over 170 days**
Nominated: September 6, 2007
ABA Rating: Substantial Majority Qualified, Minority Not Qualified
Education: B.A., University of South Carolina, 1977
J.D., Yale Law School, 1980
Career Highlights: *Deputy Assistant Attorney General*, Civil Division, DOJ
Deputy Assistant Attorney General, Office of Legal Policy, DOJ
Managing Director, Haynsworth Sinkler Boyd, P.A.

Nominee: Catharina Haynes, of TX, to the 5th Circuit (*Judicial Emergency*); **Pending over 220 days**
Nominated: July 17, 2007; Hearing February 21, 2008
ABA Rating: Unanimous Well Qualified
Education: B.S., *with highest honors*, *first in her class*, Florida Institute of Technology, 1983
J.D., *with distinction*, *order of the coif*, Emory University School of Law, 1986
Career Highlights: *Partner*, Baker Botts, LLP
Judge, State of Texas, Dallas County, 191st District Court, Dallas, TX
Partner, Baker Botts, LLP

Nominee: Rod Rosenstein, of MD, to the 4th Circuit (*Judicial Emergency*); **Pending over 100 days**
Nominated: November 15, 2007
ABA Rating: Unanimous Well Qualified
Education: B.S., *summa cum laude*, University of Pennsylvania, 1986
J.D., *cum laude,* Harvard Law School, 1989
Career Highlights: *Law Clerk*, Judge Douglas Ginsburg, D.C. Circuit
Special Assistant to the Assistant Attorney General, Criminal Division, DOJ
Associate Independent Counsel, Office of the Independent Counsel
Principal Deputy Assistant Attorney General, Tax Division, DOJ
U.S. Attorney, U.S. Attorney's Office for the District of Maryland
Two editorials in *The Washington Post* urged Senate confirmation of Mr. Rosenstein and one stated "blocking Mr. Rosenstein's confirmation hearing … would elevate ideology and ego above substance and merit, and it would unfairly penalize a man who people on both sides of this question agree is well qualified for a judgeship."

Nominee: Stephen Murphy, of MI, to the 6th Circuit (*Judicial Emergency*); **Pending over 1100 days**
Nominated: February 17, 2005; Renominated June 28, 2006; Renominated March 19, 2007
ABA Rating: Substantial Majority Well Qualified, Minority Qualified
Education: B.S., Marquette University, 1984
J.D., St. Louis University, 1987
Career Highlights: *Assistant U.S. Attorney*, U.S. Attorney's Office for the E.D. of Michigan
Attorney, General Motors
U.S. Attorney, U.S. Attorney's Office for the Eastern District of Michigan

Nominee: Raymond Kethledge, of MI, to the 6th Circuit (*Judicial Emergency*); **Pending over 600 days**
Nominated: June, 28, 2006; Renominated March 19, 2007
ABA Rating: Substantial Majority Well Qualified, Minority Qualified
Education: B.A., University of Michigan, 1989
J.D., University of Michigan Law School, 1993
Career Highlights: *Law Clerk*, Justice Anthony M. Kennedy, U.S. Supreme Court
Counsel, Senator Spencer Abraham, U.S. Senate Judiciary Committee
Partner, Bush Seyferth Kethledge & Paige

Nominee: William Smith, of RI, to the 1st Circuit (*Judicial Emergency*); **Pending over 80 days**
Nominated: December 7, 2007
ABA Rating: Substantial Majority Well Qualified, Minority Qualified
Education: B.A., Georgetown University, 1982
J.D, *cum laude*, Georgetown University Law Center, 1987
Career Highlights: *Counsel/Partner*, Edwards & Angell, LLP
Staff Director, Senator Lincoln Chafee
District Judge, District of Rhode Island

Nominee: Shalom Stone, of NJ, to the 3rd Circuit (*Judicial Emergency*); **Pending over 220 days**
Nominated: July 18, 2007
ABA Rating: Substantial Majority Qualified, Minority Well Qualified
Education: B.A., *magna cum laude*, Yeshiva College
J.D., *cum laude*, New York University School of Law
Career Highlights: *Associate*, Sills, Cummis, Tischman, Epstein & Gross
Member, Walder Hayden & Brogan, P.A.

Nominee: Gene Pratter, of PA, to the 3rd Circuit; **Pending over 100 days**
Nominated: November 15, 2007
ABA Rating: Unanimous Well Qualified
Education: A.B., Stanford, University, 1971
J.D., University of Pennsylvania Law School, 1975
Career Highlights: *Partner*, Duane Morris, LLP
District Judge, Eastern District of Pennsylvania

District Court Nominees:

Nominee: Thomas A. Farr, of NC, to the Eastern District of North Carolina (*Judicial Emergency*)
Nominated: December 7, 2006
ABA Rating: Unanimous Well Qualified
Education: B.A., *summa cum laude*, *co-salutatorian*, Hillsdale College, 1976
J.D., Emory University School of Law, 1979
L.L.M., Georgetown University School of Law, 1982
Career Highlights: *Counsel*, U.S. Senate Committee on Labor and Human Resources
Staff Attorney, Office of Personnel Management
Law Clerk, Judge Frank W. Bullock, Jr., U.S. District Court for the M.D. of NC
Adjunct Professor, Campbell University School of Law

Nominee: James R. Hall, to the Southern District of Georgia (*Judicial Emergency*)
Nominated: March 19, 2007; Hearing Feb. 12, 2008; Scheduled for markup Feb. 28, 2008
ABA Rating: Substantial Majority Well Qualified, Minority Qualified
Education: B.A., Augusta College, 1979
J.D., University of Georgia Law School, 1982
Career Highlights: *Partner*, Avrett & Hall
Corporate Vice President & General Counsel, Bankers First Corporation
22nd District State Senator, Georgia State Senate
Partner, Warrick, Tritt, Stebbins & Hall

Nominee: Gustavus Adolphus Puryear, of TN, to the Middle District of Tennessee
Nominated: June 13, 2007; Hearing February 12, 2008
ABA Rating: Unanimously Qualified
Education: B.A., *with highest honors*, Emory University, 1990
J.D., *with honors*, University of North Carolina School of Law, 1993
Career Highlights: *Law Clerk,* Judge Rhesa Hawkins Barksdale, Court of Appeals for the 5th Cir.
Legislative Director, Office of U.S. Senator Bill Frist
Executive VP, *General Counsel & Secretary*, Corrections Corporation of America

Nominee: Brian Stacy Miller, of AR, to the Eastern District of Arkansas
Nominated: October 16, 2007; Hearing February 12, 2008; Markup February 28, 2008
ABA Rating: Unanimously Well Qualified
Education: B.S., *with honors*, University of Central Arkansas, 1992
J.D., Vanderbilt Law School, 1995
Career Highlights: *Deputy Prosecuting Attorney*, Arkansas Prosecuting Attorney's Office
Judge, Arkansas Court of Appeals (current)

Nominee: John A. Mendez, of CA, to the Eastern District of California (*Judicial Emergency*)
Nominated: Sept. 6, 2007; Hearing February 21, 2008
ABA Rating: Substantial majority Well Qualified, minority Qualified
Education: B.A., *with distinction*, Stanford University, 1977
J.D., Harvard Law School, 1980
Career Highlights: *United States Attorney*, United States Attorney's Office for the N.D. of CA
Shareholder, Somach, Simmons & Dunn
Judge, Sacramento County Superior Court

Nominee: Richard H. Honaker, of WY, to the District of Wyoming
Nominated: June 29, 2006; Hearing February 12, 2008
ABA Rating: Unanimous Well Qualified
Education: B.A., Harvard College, *cum laude*, 1973
J.D., University of Wyoming College of Law, John J. Bugas Scholarship, 1976
Career Highlights: *State Public Defender*, State of Wyoming
Member, Wyoming House of Representatives, 1987-1993
Partner, Honaker, Hampton & Newman

Nominee: Lincoln D. Almond, of RI, to the District of Rhode Island
Nominated: November 15, 2007
ABA Rating: Unanimous Well Qualified
Education: B.S., University of Rhode Island, 1985
J.D., *with High Honors*, University of Connecticut School of Law, 1988
Notes/Comments Editor, *Connecticut Law Review*
Career Highlights: *Law Clerk*, Judge Peter C. Dorsey, District Court for the District of Connecticut
Partner, Edwards & Angell, LLP
Magistrate Judge, U.S. District Court for the District of Rhode Island

Nominee: Mark S. Davis, of VA, to the Eastern District of Virginia
Nominated: November 15, 2007
ABA Rating: Unanimous Well Qualified
Education: B.A., University of Virginia, 1984
J.D., Washington and Lee University School of Law, 1988
Career Highlights: *Law Clerk*, Judge John A. MacKenzie, U.S. District Court for the E.D. of VA
Partner, McGuire Woods LLP
Partner, Carr & Porter, LLC
State Court Judge, Third Judicial Circuit of Virginia

Nominee: David J. Novak, of VA, to the Eastern District of Virginia
Nominated: November 15, 2007
ABA Rating: Substantial Majority Well Qualified, Minority Qualified
Education: B.S., *magna cum laude*, St. Vincent College, 1983
J.D., Villanova University Law School, 1986
Career Highlights: *Assistant District Attorney*, Philadelphia District Attorney's Office
Trial Attorney, Criminal Division, DOJ
Assistant U.S. Attorney, U.S. Attorney's Office for the S.D. of Texas
Assistant U.S. Attorney, U.S. Attorney's Office for the E.D. of Virginia

Nominee: William J. Powell, of WV, to the Northern District of West Virginia
Nominated: May 24, 2007
ABA Rating: Substantial Majority Well Qualified, Minority Qualified, 1 abstention
Education: B.A., *magna cum laude*, Salem College, 1982
J.D., West Virginia College of Law, 1985
Career Highlights: *Assistant United States Attorney*, Southern District of WV
Member, Jackson Kelly, PLLC

Nominee: David R. Dugas, of LA, to the Middle District of Louisiana
Nominated: March 19, 2007
ABA Rating: Unanimously Well Qualified
Education: Cadet, United States Air Force Academy, 1973
J.D., Louisiana State University Law Center, 1978
Career Highlights: *Partner*, Caffery, Oubre, Dugas & Campbell, L.L.P.
United States Attorney, Middle District of Louisiana (current)
Exec. Director, Hurricane Katrina Fraud Task Force Joint Command Center

Nominee: Stephen N. Limbaugh, Jr., of MO, to the Eastern District of Missouri
Nominated: December 6, 2007
ABA Rating: Unanimously Well Qualified
Education: B.A., Southern Methodist University, 1973
J.D., Southern Methodist University School of Law, 1976
Master of Laws in the Judicial Process, UVA School of Law, 1998
Career Highlights: *Circuit Judge*, 32nd Judicial Circuit of Missouri
Supreme Court Judge, Supreme Court of Missouri
Chief Justice, Supreme Court of Missouri

Nominee: David Gregory Kays, of MO, to the Western District of Missouri
Nominated: Nov. 15, 2007
ABA Rating: Substantial Majority Qualified/Minority Not Qualified
Education: B.S., Southwest Missouri State University, 1985
J.D., University of Arkansas School of Law, 1988
Career Highlights: *Prosecutor*, Laclede County Prosecuting Attorney's Office
Associate Circuit Judge, Laclede County Circuit Court
Presiding Circuit Court Judge, Twenty-Sixth Judicial District

Nominee: James Edward Rogan, of CA, to the Central District of California (*Judicial Emergency*)
Nominated: January 9, 2007
ABA Rating: Substantial Majority Well Qualified/Minority Qualified
Education: B.A., University of California at Berkeley, 1979
J.D., University of California Los Angeles School of Law, 1983
Career Highlights: *Deputy District Attorney*, Los Angeles County District Attorney's Office
Judge, Glendale Municipal Court
Member, California State Assembly
Member, United States House of Representatives
Judge, California Superior Court

Nominee: William T. Lawrence, of IN, to the Southern District of Indiana (*Judicial Emergency*)
Nominated: February 15, 2008
ABA Rating: Not yet rated
Education: B.A., Indiana University, 1970
J.D., Indiana University School of Law-Indianapolis, 1973
Career Highlights: *Public Defender* (part-time), Marion County Superior Court, Criminal Division
Master Commissioner (part-time), Marion County Circuit Court
Judge, Marion County Circuit Court
Magistrate Judge, District Court for the Southern District of Indiana (current)

Nominee: G. Murray Snow, of AZ, to the District of Arizona
Nominated: Dec. 11, 2007
ABA Rating: Not yet rated
Education: B.A., *magna cum laude*, Brigham Young University, 1984
J.D., *magna cum laude*, J. Reuben Clark Law School, Brigham Young University, 1987
Career Highlights: *Law Clerk*, Judge Stephen H. Anderson, Tenth Circuit Court of Appeals
Member, Meyer, Hendricks, Victor, Osborn & Maledon, P.A.
Judge, Arizona Court of Appeals

Nominee: Glenn T. Suddaby, of NY, to the Northern District of New York
Nominated: December 11, 2007
ABA Rating: Not yet rated
Education: B.A., State University of New York at Plattsburgh, 1980
J.D., Syracuse University College of Law, 1985
Career Highlights: *Assistant District Attorney*, Onondaga County District Attorney's Office
First Chief Assist. District Attorney, Onondaga County Dist. Attorney's Office
United States Attorney, Northern District of New York

Nominee: Colm Connolly, of DE, to the District of Delaware
Nominated: February 26, 2008
ABA Rating: Not yet rated

Education:	B.A., University of Notre Dame
	M.Sc., London School of Economics
	J.D., Duke University Law School
Career Highlights:	*Law Clerk*, Judge Walter Stapleton, Third Circuit Court of Appeals
	Assistant U.S. Attorney, U.S. Attorney's Office for the District of Delaware
	U.S. Attorney, U.S. Attorney's Office for the District of Delaware

It is my hope that we can work together to ensure that all of these nominees receive timely hearings and prompt votes in the Committee.

In light of my extensive consultation with you in scheduling the hearings for Chief Justice Roberts and Justice Alito, as well as our collaboration on numerous other Committee hearings, I was surprised when you scheduled a hearing for Judge Catharina Haynes on February 21st during the recess. I know you offered to postpone that hearing for a relatively brief period of time, but a formal, written request for a postponement would only have provided more grist for the argument mill on these issues. I was prepared to cancel my previously scheduled work in Pennsylvania to attend the Haynes hearing until Senator John Warner, who was in Washington, agreed to attend.

Given the uncertainty of who the next President will be, now would be a good time to change the confirmation process to guarantee prompt action on nominees with up-or-down votes. I again urge you to work with me to establish a schedule for prompt consideration of all currently pending judicial nominees and ensure they receive up-or-down votes in Committee and on the Senate floor. I have shared this letter with the other Republican members of the Committee.

Sincerely,

Arlen Specter

CC:

Senator Edward Kennedy
Senator Joseph Biden
Senator Herb Kohl
Senator Dianne Feinstein
Senator Russell Feingold
Senator Charles Schumer
Senator Richard Durbin
Senator Benjamin Cardin
Senator Sheldon Whitehouse

Senator Orrin G. Hatch
Senator Charles E. Grassley
Senator Jon Kyl
Senator Jeff Sessions
Senator Lindsey Graham
Senator John Cornyn
Senator Sam Brownback
Senator Tom Coburn