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Letters

United States Senate
WASHINGTON, DC 20510

March 16, 2001

President George W. Bush
The White House
Washington, DC 20500

Dear President Bush:

We are writing to you as Ranking Member of the Senate Judiciary Committee and Ranking Member of the Courts Subcommittee to express our serious concern that your Administration is considering terminating the policy of soliciting comment from the American Bar Association on prospective nominees for the federal courts. The policy of obtaining ABA review – half a century old and uniformly followed by Republican and Democratic Presidents alike – has served our nation well, and ending it would imperil the process of selecting and confirming federal judges.

Since 1952, the ABA has reviewed the professional qualifications of potential nominees to the federal bench before the person under consideration is formally nominated and submitted to the Senate. The ABA considers only the integrity, professional competence and temperament of persons identified as potential nominees – not their philosophy or ideology.

To ensure complete insulation from politics, members of the ABA committee that evaluates potential nominees refrain from participating in or contributing to political campaigns, or taking part in political activity of any kind. The ABA's views remain confidential until after a judicial candidate is formally nominated.

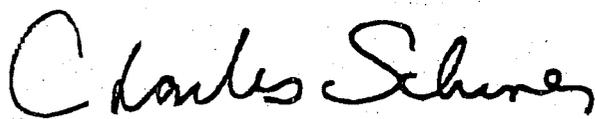
We firmly believe that ending the long established practice of ABA review would dilute the quality of the federal bench. The process of judicial selection needs *more* information about the competence and integrity of potential nominees, not less. If ABA evaluation did not provide unique, unbiased and essential information, presidents of both parties would not have so heavily relied on it for almost 50 years.

ABA evaluation has been the gold standard by which judicial candidates are judged, which is why presidents have rarely elected to proceed with a nomination after the ABA found the candidate unqualified in the confidential pre-nomination stage. Indeed, for every candidate the ABA finds unqualified, there are undoubtedly scores of others never submitted for ABA review because it is known they cannot meet that body's rightfully exacting scrutiny. Without having to clear the bar of ABA review, nominees will inevitably be of lower quality.

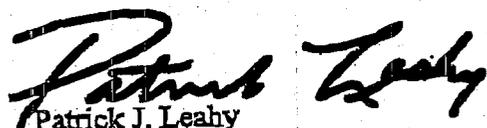
Eliminating ABA review will also further polarize a process that, by now, all Senators agree cries out for less partisanship. The void of information about a candidate's merits that will result from elimination of ABA review will inevitably be filled with politics. And if the Administration chooses not to consult the ABA, we and others of our committee will. Far from saying time, that will delay Senate consideration of nominees, end the Administration's ability to withdraw a nomination in a confidential manner because of a poor ABA rating (which will also publicly embarrass nominees), and drive Senators apart over ideology rather than bring them together.

In sum, we urge you to continue the nearly 50 year old tradition of independent, apolitical ABA evaluation of potential nominees for federal judgeships. Our system of justice can only benefit as a result.

Sincerely,



Charles E. Schumer
UNITED STATES SENATOR



Patrick J. Leahy
UNITED STATES SENATOR

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EXEC. DEC. PRESIDENT
COUNSEL TO THE PRESIDENT
United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-4225

EXEC. DEC. PRESIDENT
COUNSEL TO THE PRESIDENT
2002 JUN 25 AM 5:42

June 24, 2002

The Honorable George W. Bush
President of the United States
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20501

Dear Mr. President:

The Senate Judiciary Committee has been working diligently and consistently to consider your judicial nominations during the past 11 months. During that time, the Senate Judiciary Committee has held 20 hearings for 75 of your nominees for lifetime appointment to the federal bench and we are planning another hearing for this week. We have given hearings to more of your judicial nominees in less than one year than were granted to the judicial nominees of other presidents in 20 of the last 22 years.

It was unfortunate to see the Senate's bipartisan cooperation on judicial confirmations distorted in the weeks leading up to May 9th of this year. It was disappointing to see White House officials asserting that the Senate's pace of confirmation of judges was the "worst pace set in recent history" when, in fact, in less than one year since the reorganization of the Senate Judiciary Committee, the Democratic-led Senate had already confirmed 57 judges as of May 9, 2002. This constitutes more judicial nominees confirmed under Democratic leadership than were confirmed in four of the last six full years of Republican control.

Rather than acknowledge the better pace at which your nominees have been considered than those of the last President, members of your staff and political party have chosen to make fund-raising speeches to conservative activists focusing on the few nominees who have not yet had a hearing. The Committee is working hard to evaluate all of your judicial nominees, as part of the Senate's role under the Constitution of preserving the independence of the federal courts. A number of your nominations have not been without controversy, and the difficult ones have taken more time.

Senator Hatch himself acknowledged, when he was Chair, that the Committee can set its own pace depending on the difficulty of the nominees, stating: "If nominees were only considered in the order there were nominated, the process would grind to a halt as more qualified nominees would back up behind questionable nominees." In attempting to address responsibly the 110 vacancies we inherited last summer, the Committee has endeavored to move as quickly as possible on the less controversial of the nominees, in order to provide some much needed relief to the federal courts. Confirming 57 judicial nominees in fewer than 11 months demonstrates our willingness to act fairly, expeditiously and in a bipartisan way.

The Honorable George Bush
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With all of those appointments, the current number of vacancies in the 862-member federal judiciary is 89. The additional 42 judicial vacancies which have arisen since last summer contribute to that number. Of course, had Senate Republicans not blocked more than 50 of your predecessor's judicial nominees, the current vacancy level would be closer to a total of 40,

At the beginning of this year I offered some suggestions on how we could proceed more cooperatively. Unfortunately, the White House has uniformly rejected them. Most importantly, there has been no significant improvement in the consultation with home-state Senators of which I am aware. Fully a dozen of your current judicial nominees do not have the required support of home-state Senators to be considered by the Committee. As you know, the Committee's long-standing policy in this regard remains unchanged. At the risk of another wasted effort, I again urge increased and improved consultation.

I reiterate my request that you allow the American Bar Association (ABA) peer review process to occur simultaneously with the FBI investigation of judicial nominees. That would allow more nominees to be ready for hearings more quickly. I think that your staff would have to concede that the ABA process has been quite fair to your nominees and that it has not posed the kinds of difficulties that perhaps you had anticipated. I can recall only one of your nominees who received a not qualified rating, and the Committee and Senate nonetheless proceeded to confirm even that nominee.

I again urge your staff to abandon their practice of hoarding nominations and grouping them for simultaneous transmission to the Senate. Larger groupings of nominees may make for a fine press release but create bottlenecks in the review process for the Committee.

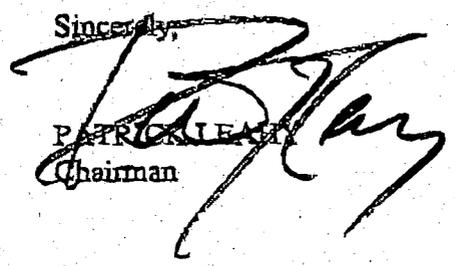
Today almost half of the open seats on the federal courts, 44 of 89, are without nominees. While we are moving to consider your judicial nominees, we obviously cannot confirm those who have not yet been nominated. The lack of nominations is particularly acute in the district courts. In fact, we are almost out of district court nominees whose paperwork is complete and are ready to be given hearings. As it is now late June -- and because you have declined to allow the ABA to conduct its independent evaluation concurrent with the FBI investigation prior to nomination, as was the practice of Republican and Democratic presidents dating back to President Eisenhower -- anyone that you nominate in the next month will likely not have an opportunity to receive an ABA rating and be eligible for a hearing prior to the August recess. Accordingly, we likely will have only September and a very few days in October to hold additional hearings.

It was also disheartening to hear members of your Administration admit that they are making no efforts to work out differences on judicial nominations and that your Administration has made the political decision to wait to see what happens in the upcoming elections. This kind of approach is counter-productive.

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The Constitution contemplates both the Executive and Legislative Branches working together with respect to lifetime appointments to the Judicial Branch. The nomination and confirmation process can be improved through more cooperation, not less. We could accomplish more and help fill more vacancies more quickly with greater consultation and cooperation. I look forward to working with you more closely on the important work of identifying judicial nominees who will follow precedent, be fair and impartial to all people, respect the independence of the federal judiciary, and protect the rights of all Americans.

Sincerely,



PATRICK LEAHY
Chairman

United States Senate

WASHINGTON, DC 20510

May 14, 2002

5/14/02

The Honorable George W. Bush
The White House
Washington, DC 20500

Dear Mr. President:

I am writing today about the nation's federal appellate courts in the hope we can create a more constructive, fair, and balanced approach to filling the vacancies on the federal bench.

As you know, the judges sitting on the circuit courts of appeals have tremendous power. In an era when the Supreme Court hears fewer than 100 cases a year, the federal appellate courts have nearly unchecked authority. Their rulings have a massive impact on national policy, especially when it comes to areas I care most about such as the environment, workers' rights, women's rights, and the right to vote.

We agree on at least one thing when it comes to judicial nominations: ideology matters. You have made no bones about your desire to nominate conservatives. I respect and appreciate your candor. It creates an atmosphere in which we can engage in honest dialogue about what is happening to the courts instead of being forced to play "gotcha" politics, searching for minor personal peccadillos when ideology is really what the dispute is all about.

That said, I must tell you that with all due respect that your strategy is troubling in the opinion of many members of the Senate. Trying to tilt the bench too far to either side is dangerous for the courts, the country, and the average, everyday Americans for whom these judges have the last word on some of the most important issues in their lives.

Your mission to stock the courts with judges in the mold of Justices Scalia and Thomas, without offering balance on the other side, endangers the legitimacy of our vaunted independent judiciary. Personally, I have no objection to one or two Scalias or Thomases when there is balance on the other side. But a bench full of them will throw the courts out of the mainstream for decades to come.

The Constitution gives the Senate the power of both advice and consent when it comes to federal judicial nominations. Therefore, I am writing to offer some suggestions to improve the process and to expedite the confirmation of judges.

Last week, I chaired a hearing at which four of President Clinton's nominees to the federal bench testified. Judge Jorge Rangel and Enrique Moreno from Texas, former Iowa Attorney General Bonnie Campbell, and Professor Kent Markus from Ohio, have a lot in common. All four are eminently qualified to be federal judges. They are an impressive, accomplished, moderate, and

diverse group of men and women. And they share one other thing in common. Not one of them received a vote in the Senate Judiciary Committee under Republican control.

Vacancies exist on all three circuits from which they hail: the 5th, 6th, and 8th. Were you to renominate these four compelling and ideological moderates, it would go a long way toward convincing us that you share our goal of maintaining balance on our nation's courts. While these four compelling people would be extraordinary jurists, they are by no means the only candidates for renomination. I would be pleased to provide you with a more thorough list candidates who are legally excellent, ideological moderate, and diverse.

At a minimum, I encourage you to consider seeking advice from the Senate, especially when it comes to these circuit court nominations that have such far-reaching impact. We would much rather work together to ensure the federal judiciary remains the thoughtful, balanced system envied by the world, instead of becoming so politically charged that it loses the respect and reverence it has enjoyed since the founding of our country.

You and I have worked together successfully in a bipartisan manner on any number of matters. For one reason or another, we have been unable to reach agreement with the Administration on how to fill open judgeships. It is precisely because I have so much respect for you and because I have such a strong desire to end the partisan wrangling over who will serve in our third branch of government that I write to propose this first step toward a solution.

I look forward to discussing this matter with you in the near future.

Sincerely,

A handwritten signature in cursive script that reads "Charles E. Schumer". The signature is written in dark ink and is positioned below the word "Sincerely,".

Charles E. Schumer
United States Senator

May 19, 2002

Dear Chuck:

This is to acknowledge the receipt of your letter to the President regarding the Nation's federal appellate courts and offering some suggestions on how to improve the process and expedite the confirmation of judges.

I have shared your letter with the President's advisors and the appropriate agencies who have been formulating policy recommendations in this area. Your letter is receiving their close and careful attention. You will be receiving a more detailed response in the near future.

Thank you for your comments.

Sincerely,

Nicholas E. Calio
Assistant to the President and
Director of Legislative Affairs

The Honorable Charles Schumer
United States Senate
Washington, DC 20510

Bcc w/ copy for appropriate action: Counsel
For Information:

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