



April 3, 2008

Hon. Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Hon. Arlen Specter
Ranking Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Senator Leahy and Senator Specter:

I am writing on behalf of People For the American Way and our nationwide membership regarding further consideration of President Bush's controversial judicial nominees. We are particularly concerned about the pressure that is being placed on Senate leadership from some in the Republican party to speed up consideration of the President's nominees even as his presidency draws to a close.¹ For the reasons discussed below, criticism that the Senate's Democratic leadership has been dilatory in its consideration of the President's nominees is not only unfounded, it is extremely hypocritical in light of the treatment that was accorded President Clinton's judicial nominees by the Senate's then-Republican leadership.

There is no justification for the Judiciary Committee to accede to demands that it speed up the processing of controversial nominees, particularly at this point in a presidential election year. To the contrary, we believe the time has come for the Committee to invoke the Senate's longstanding practice, popularly known as "the Thurmond Rule," of processing only non-controversial judicial nominees during a significant portion of the year leading up to a presidential election. While there has never been a precise date upon which the Thurmond Rule is deemed to take effect, there is ample basis for the Committee to invoke that Rule now.

During much of President Clinton's Administration, Republican leaders in the Senate blocked the President's efforts to fill judicial vacancies, particularly on the Courts of

¹ See, e.g., Vol. 154 Congr. Record S2209 (daily ed. Mar. 31, 2008) (statement of Senator McConnell).

Appeals, stranding 60 judicial nominees at the end of the Clinton presidency.² Through such tactics as secret holds and refusals to schedule hearings or votes, Senate Republicans held judicial vacancies open literally for years in the hope that a Republican would be elected President. As Senator Leahy recently described it, “[t]hey took the Thurmond rule to a whole new stage by utilizing it over a 5-year period, instead of the seven or eight months that normally takes place during a Presidential election year.”³ According to Senator Leahy, “[b]ecause of their irresponsible actions, vacancies in the courts rose to over a hundred. Circuit court vacancies doubled during the Clinton years because Republicans would not allow him to fill those vacancies.”⁴

President Bush’s judicial nominees have fared far better under Senator Leahy’s leadership. As Chairman of the Judiciary Committee, Senator Leahy has worked diligently to fill vacancies and has overseen a fair and efficient confirmation process. Moreover, Senator Leahy has done so even though President Bush has not respected the Senate’s constitutional role as an equal partner on judicial nominations, all too frequently ignoring the Constitution’s requirement that he seek the Senate’s advice on nominees.

Under Senator Leahy’s leadership, the vacancy rate on the courts has been cut in half.⁵ After Senator Leahy assumed the Chairmanship of the Judiciary Committee last year, the Senate confirmed 40 judicial nominees, more than were confirmed in any of the years 1996, 1997, 1999, and 2000 by a Republican-led Senate considering President Clinton’s nominees.⁶ To date, the Senate has already confirmed three quarters of President Bush’s Circuit Court nominees, while only half of President Clinton’s were confirmed.⁷ While we have not agreed with all of the Bush nominee confirmations, certainly no one can fault Senator Leahy or other Senate Democrats for not diligently moving on the President’s nominees. The contrary notion being propagated by some of the President’s supporters is simply groundless.

Moreover, important decisions on nominees for lifetime positions on our federal courts are now being made in the context of a presidency that has lost the confidence of the American people that it is taking the country in the right direction. Although President Bush will leave office in January, he will also leave behind a legacy of hundreds of confirmed judges, many of whom will remain on the bench for decades. Judges named by President Bush are actively dismantling constitutional and statutory protections for workers, for consumers, for women, for minorities, and for the environment. They are closing the courthouse doors to ordinary Americans seeking justice, making it harder for individuals even to get a day in court when they have been wronged.

² Vol. 154 Congr. Record S1730 (daily ed. Mar. 7, 2008) (statement of Senator Leahy).

³ *Id.*

⁴ *Id.*

⁵ *Id.* at S1731

⁶ *Id.* at S1730.

⁷ *Id.* at S1731.

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At this point in the active presidential election season, it is time for the Committee to say enough to such judges, not to speed up consideration of their nominations. If President Bush cannot fill existing vacancies with mainstream, non-controversial nominees, then it should be up to the next President to do so.

For all these reasons, the Committee should reject demands to speed up the confirmation process. To the contrary, the Committee should invoke the Thurmond Rule, and stop processing controversial judicial nominees.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kathryn Kolbert", is written over a light blue rectangular background.

Kathryn Kolbert
President

cc: All Members, Senate Judiciary Committee