

March 9, 2016

President Barack Obama
The White House
1600 Pennsylvania Avenue NW
Washington, D.C. 20500

Hon. Chuck Grassley
United States Senate
Chair, Committee on the Judiciary
135 Hart Senate Office Building
Washington, D.C. 20510

Hon. Mitch McConnell
United States Senate
Majority Leader
317 Russell Senate Office Building
Washington, D.C. 20510

Re: **Statement of Corporate Lawyers, General Counsels and Other Legal Practitioners
Regarding U.S. Supreme Court Vacancy**

Dear President Barack Obama, Judiciary Committee Chairman Chuck Grassley, and Majority Leader Mitch McConnell:

We write to express concern within the corporate legal and business community regarding the current vacancy on the United States Supreme Court. The U.S. Supreme Court stands at the helm of one of our three branches of government. Every term, critical cases come before the Court concerning issues of great public importance, including cases alleging violations of the Constitution or federal law. The Supreme Court also considers cases implicating the interests of major corporations, private-sector organizations and businesses across the country. The impact of a stalemate at the Supreme Court may have a profound effect on our economy, creating uncertainty for the financial industry, major corporate employers, as well as small businesses.

When a vacancy on the Court arises, the Constitution is clear. Article II, Section 2 states that the President “shall nominate, and by and with the advice and consent of the Senate, shall appoint. . . judges of the Supreme Court.” U.S. Constitution, Article II, Section 2, Clause 2. Though the Senate may ultimately choose not to consent to the President’s nominee, it would be unprecedented for the Senate to refuse to perform its “advice and consent” role in this context. Not only does the Constitution direct the sitting President to nominate an individual to fill a vacancy on the Court no matter whether it is an election year, nearly one third of all Presidents have nominated a justice in an election year who was eventually confirmed.

Indeed, there is historical precedent for confirming a nominee in an election year. Six Justices have been confirmed in presidential election years since 1900, including Justices

Kennedy (1988), Murphy (1940), Cardozo (1932), Clarke (1916), Brandeis (1916), and Pitney (1912).

Each Term, approximately 7,000-8,000 new cases are filed with the Court. On average, the Court will grant plenary review in about 80 of those cases. An additional 100 cases will be disposed of without such review. In light of the substantial activity that comes before the Court each term, it is imperative that the Court be able to resolve conflicting decisions among the federal circuits and establish uniform interpretation of law to guide the work of lower courts across the country. Allowing the Court to proceed for two terms with an open seat would be unprecedented and have damaging collateral consequences that would be felt across our entire federal judicial system. The Court would be unable to act if it were divided in any case without a majority. Such an untoward situation would also negatively impact the business environment and the economy of the country. The corporate legal community and business interests represented herein seek the assurances that come with a fully staffed nine-member Court.¹

We encourage the President to exercise his constitutional responsibility to nominate a successor to the late Associate Justice Antonin Scalia. We also encourage the Senate to fulfill its constitutional role and grant that nominee fair consideration and a full Senate floor vote.

Respectfully,

The Undersigned²

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¹ The number of justices has now stood at nine for nearly 150 years. Federal law expressly provides that the Court "shall consist" of nine members. Congress settled on a nine member Court in 1869 after considerable deliberation and debate and has stood by its judgment for nearly 150 years.

² Firm and corporate names are provided for identification purposes only and do not indicate support or endorsement by the firm or corporation.

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