



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

May 5, 2016

Re: Statement of Lawyers' Committee for Civil Rights Under Law Regarding Nomination of Judge Merrick Garland as an Associate Justice of the United States Supreme Court

We, the undersigned members of the Board of Directors and Trustees of the Lawyers' Committee for Civil Rights Under Law, write to present our Statement Regarding the Nomination of Judge Merrick Garland as an Associate Justice of the United States Supreme Court. Since its creation in 1963 at the urging of President John F. Kennedy, the Lawyers' Committee for Civil Rights Under Law has been devoted to the recognition and enforcement of civil rights in the United States. While we have seen significant progress, the challenges of unlawful discrimination remain. Recognizing the Supreme Court's critical role in civil rights enforcement and the central role that the Court plays in our democracy, the Lawyers' Committee has long reviewed the record of nominees to the Court to determine if the nominee demonstrates views that are consistent with the core civil rights principles for which we have long advocated.

Every term, critical cases come before the Supreme Court concerning issues of great public importance, including cases concerning the interpretation and application of the Constitution and federal civil rights laws. In evaluating nominees to the Court, the Lawyers' Committee has employed a rigorous standard with two distinct components: (1) exceptional competence to serve on the Court, and (2) profound respect for the importance of protecting the civil rights afforded by the Constitution and the nation's civil rights laws. The Lawyers' Committee believes that Judge Garland possesses the exceptional competence necessary to serve on the Court. During his time on the D.C. Circuit, Judge Garland has been focused on having cases decided in accordance with established precedent. Most of his written decisions are unanimous, which reflects his ability to build a consensus, even on difficult legal issues. Judge Garland's credentials are impressive and his experience broad and extensive. He has a record that demonstrates careful, astute analysis and fidelity to the intent of Congress and reveals a commitment to fairness. Based on his distinguished record, we do not believe that any reasonable Senator of any party could find Judge Garland unqualified to sit on the United States Supreme Court.

While the current record does not provide extensive information for the Lawyers' Committee to assess whether he meets the high standards of commitment to civil rights principles that we have historically considered in our review of nominees, we certainly believe that Judge Garland has demonstrated views that are consistent with core civil rights principles. The sparse number of core civil rights rulings may be attributable, in part, to the unique nature of the D.C. Circuit Court, which hears proportionately more cases involving administrative law than any other circuit court in the country. In the few opinions that Judge Garland has authored in civil rights cases, the record reveals him to be fair but moderate and generally careful in going no further than the relevant statutes and precedent warrant. His main focus is fidelity to application of the law to the facts, whether that cuts for or against a plaintiff in a discrimination case. We also note that safeguarding access to the courts is a key element of respect for civil rights. Most of the civil rights opinions he has authored are in employment cases, in which he has shown a tendency to side with discrimination plaintiffs in overcoming motions to dismiss. This allows them to obtain discovery, which is key to the ability to show civil rights violations, since defendants are normally in possession of most of the



relevant facts. In other categories of civil rights cases – housing, voting, education and environmental justice – Judge Garland does not have as many written opinions, but his decisions have likewise been consistent with core civil rights principles. As with all nominees, we believe that Judge Garland’s civil rights record is an area appropriate for evaluation during Senate hearings.

For all of the reasons noted above, we believe Judge Garland is exceptionally highly qualified and should be given an immediate hearing on his nomination to the Supreme Court. As we have previously expressed to the leadership of the Senate Judiciary Committee, we have great concerns regarding the current stalemate at the Supreme Court, which impairs the Court’s ability to resolve some of the most significant civil rights cases and controversies that routinely come before the Court. When a vacancy on the Court arises, the Constitution is clear. Article II, Section 2 states that the President “shall have power . . . [to] 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. Based on our review of the historical record, we could find no case where the Senate, or even a single Senator, took the position that the Senate should flatly refuse to consider a nominee to the Supreme Court under the circumstances of this nomination.

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 this activity, 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 without nine justices will have damaging collateral consequences that would be felt across our entire federal judicial system for years to come. Indeed, we are beginning to see, in the context of decisions recently issued and those under consideration, the deleterious impact of a stalemate at the Court on our system of justice. We encourage the Senate to fulfill its constitutional role and grant Judge Garland fair consideration and a full Senate floor vote.

cc: The Senate Judiciary Committee

Respectfully,

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