LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW

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March 7, 2019

The Honorable Mitch McConnell
Senate Majority Leader
United States Senate
Washington, DC 20510

The Honorable Charles Schumer
Senate Minority Leader
United States Senate
Washington, DC 20510

United States Senate
Washington, DC 20510

Re: Opposition to Senate Resolution 50

Dear Senate Majority Leader McConnell, Minority Leader Schumer and Senators:

On behalf of the Lawyers' Committee for Civil Rights Under Law (hereinafter Lawyers' Committee), we write to strongly oppose the approval of Senate Resolution 50, which would limit consideration on all district court nominees and the majority of executive branch nominees by more than ninety-percent to two post-cloture hours from thirty hours.

The Lawyers' Committee is a nonprofit civil rights organization founded in 1963 by the leaders of the American bar, at the request of President John F. Kennedy, to help defend the civil rights of racial minorities and the poor. For over fifty years, the Lawyers' Committee has been at the forefront of many of the most significant cases involving race and national origin discrimination. We have seen firsthand the importance of having impartial judges in the federal courts to secure equal rights for all. As such, the Lawyers' Committee fully appreciates the importance of the Senate's constitutionally-mandated advice and consent role in vetting the full records of all judicial nominees before they are given lifetime appointments and we have fought to protect the integrity of this role. Last fall, we filed suit seeking to uphold the Senate's advice and consent responsibility during then-Judge Brett Kavanaugh's nomination to an Associate Justice position on the United States Supreme Court when the executive branch blocked the Senate's access to key documents bearing on Kavanaugh's views and character thus inhibiting the Senate's ability to fully review his record.[1]

Senate Resolution 50's limitation on post-cloture consideration to two hours equally divided between the majority leader and the minority leader, or their designees is a significant

[1] Merkley v. Trump, No. 1:18-cv-02226 (D.D.C.).

and unnecessary reduction designed for ideological gains that jeopardizes the ability of the Senate to thoroughly vet judicial nominees. The reduction is a dramatic shift from the current rule permitting thirty hours of post-cloture consideration and debate, which was approved without significant dissent and has been in place for more than thirty years. Two hours is not a sufficient amount of time for Senators to directly address issues concerning a judicial nominee up for a lifetime appointment as that time will also be consumed by necessary proceedings, such as quorum calls and roll call votes, among others. Moreover, the resolution would effectively reduce the amount of time each Senator is entitled to speak from one hour to one minute and twelve seconds. The Senate has long been regarded as the "world's greatest deliberative body," but stark procedural rule changes such as Resolution 50 serve only to decrease the ability of the Senate to live up to that title.

The American public relies on the United States Senate to fulfill its Article II obligation to provide advice and consent on judicial nominees and properly vet all candidates to ensure unqualified candidates are not given lifetime appointments to the district courts. Over the past year and a half, several judicial nominations have been defeated in the final hours of debate following disturbing revelations of the respective nominees' backgrounds defending the Ku Klux Klan, driving efforts to block access to the ballot box and writing inflammatory articles on race.[2] In all of those instances, the nominees rightfully were not given lifetime appointments to our federal courts as a result of the Senate taking the time to *fully* review the records of the nominees. These final hour revelations underscore the importance of thorough vetting to ensure that only qualified nominees secure lifetime seats on the bench.

The Senate's full and thorough review of judicial nominees also serves as an important check on the executive branch. The current Administration's selection of judicial nominees has shown the primary qualification is adherence to extremist legal ideology, with virtually no vetting by the Administration to weed out nominees harboring biases and racial animus. This makes it even more essential for the Senate to spend adequate time thoroughly reviewing the records of nominees to ensure the current Administration, and future ones, are not given free rein to mold the federal courts to fit their political ideology thus infringing upon the independence and integrity of the judiciary. As Chief Justice John Roberts said in defense of the independence and integrity of the federal judiciary, it is "an extraordinary group of dedicated judges doing their level best to do equal right to those appearing before them"[3]— many of the aforementioned nominees being set forth by the current Administration do not fit that mold. The proposed

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[2] Charlie Savage, "Poor Vetting Sinks Trump's Nominees for Federal Judge" Dec. 18, 2017, N.Y. Times, https://www.nytimes.com/2017/12/18/us/politics/matthew-petersen-judge-nominee-withdraws-trump.html; Jessica Taylor & Kelsey Snell, "Trump Judicial Nominee Set to Fail Amid Voter Suppression Charges" Nov. 29, 2018, NPR, https://www.npr.org/2018/11/29/671591929/trump-judicial-nominee-set-to-fail-amid-voter-suppression-charges; Burgess Everett, "Trump Judicial Nominee Pulled Over Racially Charged Writings" July 19, 2018, Politico, https://www.politico.com/story/2018/07/19/bounds-senate-withdrawn-733414.

[3] Mark Sherman, "Roberts, Trump spar in extraordinary scrap over judges" Nov. 21, 2018, Associated Press, https://apnews.com/c4b34f9639e141069c08cf1e3deb6b84?utm_medium=AP&utm_source=Twitter&utm_campaign=SocialFlow.

reduction by more than ninety-percent in post-cloture consideration hours will increase the chances of ideologically extreme and biased nominees being appointed to the federal bench.

Additionally, there is no present need for this significant reduction as the Senate has confirmed a record number of nominees for the current Administration, surpassing the number of judicial confirmations of any Senate during the past five administrations.[4] This record pace undercuts the Senate Majority's argument that the rule change is needed because nominations are being delayed. There is no need for any reduction in post-cloture hours, let alone such a significant reduction from thirty to two hours. This proposed rule change along with the Senate's abandonment of centuries-old traditions like the blue-slip represent a troubling trend in the Senate shirking its constitutional duties in favor of ideological packing of the federal courts. The public expects and deserves impartial judges who have been thoroughly vetted by the Senate.

We do not believe the significant reduction in post-cloture consideration hours, from thirty to two, proposed by Senate Resolution 50 allows the Senate to fulfill its obligations under our Constitution. It is imperative that the full Senate reject Senate Resolution 50 and not abdicate its critical advice and consent obligation.

Respectfully submitted,

Kristen Clarke
President & Executive Director

Lawyers' Committee for Civil Rights Under Law
Washington, D.C.

[4] Jordan Carney, "Senate GOP breaks record on confirming Trump picks for key court" July 18, 2018, The Hill, https://thehill.com/blogs/floor-action/senate/397754-senate-gop-breaks-record-on-confirming-trump-picks-for-key-court.