

September 24, 2020

United States Senate
Washington, D.C. 20510

**Re: Board of Directors of the Lawyers' Committee for Civil Rights Under Law
Urges Postponement of Supreme Court Nomination Process Until the Presidential
Election Has Been Decided and the Next President Inaugurated on January 20, 2021**

Dear Senator:

We, the undersigned members of the Board of Directors of the Lawyers' Committee for Civil Rights Under Law ("Lawyers' Committee"), urge the Senate to postpone consideration of the next United States Supreme Court nominee until after the federal elections now in process have been decided, the new Senate seated, and the President inaugurated on January 20, 2021. Since its founding in 1963, at the request of President John F. Kennedy, the Lawyers' Committee has been devoted to the principle of equal justice for all with a particular focus on racial justice.

As members of the bar, we expect and rely upon adherence to the rule of law and the legitimacy of our courts in upholding our democracy. The passing of Justice Ruth Bader Ginsburg is a grievous loss for our country as she valiantly fought for the protection of civil rights for all throughout her career. The court vacancy created by her death comes at a time when absentee and early voting are already underway in this year's presidential and senatorial elections. In this unprecedented circumstance, we believe it is highly inappropriate for a Supreme Court nominee to be confirmed until after the elections have been decided, the new Senate seated, and the President inaugurated. Never before in our country's history has a Supreme Court nominee been confirmed while a presidential election was already underway.¹ When a Supreme Court vacancy occurred near the end of President Abraham Lincoln's first term, he waited until after he was re-elected to nominate Salmon Chase.²

In 2016, when the Senate was faced with a nomination of a new Justice following the death of Associate Justice Antonin Scalia in February of an election year, the Senate Majority Leader refused to allow a hearing or a vote on President Barack Obama's nomination of Judge Merrick Garland. While there is precedent for the consideration and confirmation of nominees by the Senate more than six months before the election, which would have made prompt consideration of Judge Garland's nomination appropriate, proceeding with the nomination

¹ <https://www.scotusblog.com/2016/02/supreme-court-vacancies-in-presidential-election-years/>;
<https://www.nytimes.com/interactive/2020/09/19/us/politics/supreme-court-vacancies-election-year.html>.

² Supreme Court Chief Justice Roger B. Taney died in October 1964.
https://supremecourthistory.org/timeline_taney.html. President Abraham Lincoln nominated Salmon Chase to become the next Chief Justice on December 6, 1964 after the November election.
https://supremecourthistory.org/timeline_salmonchase.html.

process while the election is underway and its conclusion only six weeks away would unduly politicize the selection of a new Associate Justice and risk lasting damage to the confidence of the American people in the Supreme Court and thus to our democracy.

It is imperative to members of the bar and all who call America home that we apply rules and processes with consistency. Surely, if the Senate believed that consideration of President Obama's nominee was inappropriate nine months before the election, then the Senate must conclude that consideration of President Trump's expected nominee would be even less so as it comes fewer than 40 days before election day. As voters continue to head to the polls and cast their ballots over that short time, they will decide both who will be the next President and the composition of a new Senate. The voters must be allowed to determine the persons who will nominate and confirm our next Associate Justice of the Supreme Court.

Thank you for your consideration of our position.

Respectfully,³

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