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November 11, 2015

The Honorable Ronald Johnson
Chairman

U.S. Senate Committee on Homeland Security and Governmental Affairs
United States Senate
340 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Johnson:

As President of the Council for Court Excellence (CCE) and former Attorney General of the District of Columbia, I write to express the deep concern of our organization regarding the unprecedented number of judicial vacancies in our District of Columbia courts, and to urge your Committee and the full Senate to move forward with confirmation of the highly qualified nominees President Obama long ago sent to the Senate both for the Superior Court and the Court of Appeals.

As you may know, of the Superior Court's 62 judgeships, there are 7 vacancies, with an eighth to occur in early 2016. This is the most in the history of the Superior Court and represents more than 10% of the total number of Superior Court Judges. In addition, there is a current vacancy on the Court of Appeals. The President's nomination for the Court of Appeals was first made in February, 2014, and the nominee has yet to receive a hearing, let alone a vote by the Committee. These positions are not Article III, lifetime-tenure federal judgeships, but rather they are seats for a period of years on the local DC trial and appellate court. As detailed below, these vacancies are severely impacting the work of the local courts and thus denying the 625,000 citizens of the District of Columbia and the government of the District their right to prompt justice.

Not only are the numbers disturbing, but we are extremely concerned about the duration of this situation. The delays in the process of Senate confirmation have been occurring for over 2 1/2 years; the last time the Senate confirmed a judge to the Superior Court was in May, 2013. While nominees Steve Wellner and William Nooter had hearings in committee despite not being ultimately confirmed by that Congress, nominee Todd Kim has never had a hearing. Four of the nominees have still not received a vote by your committee, and the nominations of the two that did make it out of committee have languished in the full Senate for several months. As you have likely been repeatedly advised, the Family Court is particularly adversely impacted, as a small number of judges are handling numerous neglect and domestic-relations calendars, affecting the most vulnerable youth in the District of Columbia.

For more than three decades, the Council for Court Excellence has been concerned with improving justice for all who live and work in the District. We are a nonprofit, nonpartisan civic organization that since 1982 has worked to improve the administration of justice in the local and federal courts and related agencies in the Washington, DC metropolitan area. We have built a substantial record of success through numerous reform initiatives in civil and criminal law, improving the plight of

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children in the justice system, jury service, and increasing access to justice. Our Board of Directors -- composed of lawyers, business people, judges, and members of the civic community -- works diligently to bring about a better justice system for all District residents. We have had no role in the selection of the nominees whose confirmations have been unconscionably delayed.

In 2011, CCE studied the judicial nomination process in the District of Columbia and published its findings about how judges are selected for the District. Under established procedures, after a vacancy occurs, the Judicial Nomination Commission must submit its proposed nominees to the President within 60 days, and the President has 60 days to send selected nominees to the Senate for confirmation. Unfortunately, after that, the remainder of the process has no deadlines. Among the Council's findings was that the Senate confirmation process was the primary cause of the delay in completing the filling of judicial vacancies. We believe this is a serious problem for the District's courts that need their full complement of judges for several reasons:

First, and foremost, it puts added burdens on the sitting judges. They have to handle additional dockets, and cases which slows down the process for all litigants. It delays trials and the disposition of motions. And, as you know, it is universally recognized that justice delayed is justice denied. The Superior Court has been creative -- up to this point -- in covering the calendars. But we believe that now, the Court is stretched beyond its limit. Senior judges are taking on more responsibilities, and some calendars will not be covered in the new year. In Family Court, the administration has had to ask delinquency judges to take some time every month to handle the domestic relations cases. The demands of their own caseloads are high and having to take on additional new cases is burdensome and time consuming, which can cause some unfairness to litigants. The problems are, of course, compounded when a sitting judge is unavailable due to sickness or injury.

In the Court of Appeals, which generally sits in panels of three, the long-standing vacancy puts burdens on the remaining sitting judges to hear additional cases and produce more written opinions per judge. It also make en banc cases harder to decide, when the number of sitting judges is even, rather than an odd number which can produce a decisive vote.

Judges are also expected to do more than simply preside over trials, other trial-related matters, and appeals. They must contribute to the effective management of the courts, including serving on committees, managing divisions, and managing specialized courts. This places additional burdens on an understaffed court.

There is also a great deal of post-disposition work to be done in parts of the Superior Court, with a host of unresolved issues that require additional judicial actions. This is especially true in child abuse and neglect cases when no neglect is found or child support is ordered, but the case is not closed.

Finally, we are concerned that protracted delays in confirming judicial nominees will dissuade future, highly qualified candidates, especially in the private sector, from applying for judgeships. For many, particularly those in private practice, a long, unjustified delay in the confirmation process means they must -- in effect -- put their professional lives on hold, not taking on new clients and transitioning existing

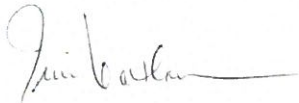
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clients to new lawyers. This is counterproductive to sustaining a diverse, competent, and committed bench. Once again the victims will be the residents of the District, who look to these courts for a prompt and just disposition of their disputes and proceedings against the government.

Accordingly, we respectfully request that you take prompt action and cause your Committee to complete the confirmation process so that these judicial vacancies can be filled. Please note that the Council for Court Excellence does not regularly get involved in the issue of Senate confirmations. The current situation, however, is so urgent and has gone on for such a long period of time that we feel it necessary to make our position known. The people of the District of Columbia expect and deserve a well-functioning judicial system that provides swift and fair justice for all.

Thank you for your consideration.

Sincerely yours,



Irvin B. Nathan, Esq.
President

cc: The Honorable Thomas R. Carper, Senate Committee on Homeland Security and
Governmental Affairs
The Honorable Eleanor Holmes Norton
The Honorable Eric T. Washington, Chief Judge, DC Court of Appeals
The Honorable Lee F. Satterfield, Chief Judge, DC Superior Court