

Wm. T. (Bill) Robinson III
President

AMERICAN BAR ASSOCIATION

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June 20, 2012

The Honorable Harry Reid
Majority Leader, U.S. Senate
522 Hart Senate Office Building
Washington, DC 20510

The Honorable Mitch McConnell
Republican Leader, U.S. Senate
361-A Russell Senate Office Building
Washington, DC 20510

Dear Majority Leader Reid and Republican Leader McConnell:

Amid concerns that the judicial confirmation process is about to fall victim to presidential election year politics through the invocation of the “Thurmond Rule,” I am writing on behalf of the American Bar Association to reiterate our grave concern for the longstanding number of judicial vacancies on Article III courts and to urge you to schedule floor votes on three pending, noncontroversial circuit court nominees before July and on district court nominees who have strong bipartisan support on a weekly basis thereafter.

Three of the four circuit court nominees pending on the Senate floor are consensus nominees who have received overwhelming approval from the Senate Judiciary Committee. Both William Kayatta, Jr. of Maine, nominated to the First Circuit, and Robert Bacharach of Oklahoma, nominated to the Tenth Circuit, have the staunch support of their Republican senators. Richard Taranto, nominated to the Federal Circuit, enjoys strong bipartisan support, including the endorsement of noted conservative legal scholars. All three nominees also have stellar professional qualifications and each has been rated unanimously “well-qualified” by the ABA’s Standing Committee on the Federal Judiciary.

As you know, the “Thurmond Rule” is neither a rule nor a clearly defined event. While the ABA takes no position on what invocation of the “Thurmond Rule” actually means or whether it represents wise policy, recent news stories have cast it as a precedent under which the Senate, after a specified date in a presidential election year, ceases to vote on nominees to the federal circuit courts of appeals. We note that there has been no consistently observed date at which this has occurred during the presidential election years from 1980 to 2008. With regard to the past three election years, the last circuit court nominees were confirmed in June during 2004 and 2008 and in July during 2000. In deference to these historical cut-off dates and because of our conviction that the Senate has a continuing constitutional duty to act with due diligence to reduce the dangerously high vacancy rate that is adversely affecting our federal judiciary, we exhort you to schedule votes on these three outstanding circuit court nominees this month.

We also urge you to continue to work together to move consensus district court nominees to the floor for a vote throughout the rest of the session, lest the vacancy crisis worsens in the waning months of the 112th Congress. With five new vacancies arising this month and an additional five announced for next month, this is not just a possibility; it is a certainty, absent your continued commitment to the federal judiciary and steady action on nominees.

Thank you for your past efforts and for your consideration of our views on this important issue.

Sincerely,

A handwritten signature in black ink, appearing to read "Wm. T. Robinson III", enclosed within a large, loopy circular flourish.

Wm. T. (Bill) Robinson III

cc: Honorable Patrick J. Leahy, Chair, Senate Judiciary Committee
Honorable Charles E. Grassley, Ranking Member, Senate Judiciary Committee