

New York Office
40 Rector Street, 5th Floor
New York, NY 10006-1738

T 212.965.2200
F 212.226.7592

www.naacpldf.org

Washington, D.C. Office
700 14th Street, NW, Suite 600
Washington, D.C. 20005

T 202.682.1300
F 202.682.1312



November 29, 2018

Senator Mitch McConnell
United States Senate
317 Russell Senate Office Building
Washington, D.C. 20510

Senator Chuck Schumer
United States Senate
322 Hart Senate Office Building
Washington, D.C. 20510

Dear Senators McConnell and Schumer:

As President and Director-Counsel of the NAACP Legal Defense and Educational Fund, Inc, I write to express extreme concern regarding recent reports that some Senate leaders are considering downsizing the number of members on the Senate Judiciary Committee for the incoming 116th Congress. While we have been unable to confirm these reports, we are sufficiently alarmed by the suggestions we have read, to write this letter and share our vehement opposition to any such a plan.

The NAACP Legal Defense and Educational Fund, Inc. (LDF) is the nation's first and foremost civil rights law organization. Founded by Thurgood Marshall in 1940, LDF has worked to pursue racial justice and eliminate structural barriers for African Americans in the areas of criminal justice, economic justice, education, and political participation for over 75 years. Many of LDF's historic victories have been in the United States Supreme Court, and other federal courts. In fact, LDF has been involved in over 700 cases before the United States Supreme Court, a docket second only to the United States Department of Justice (DOJ). In landmark LDF cases such as *Brown v. Board of Education*¹, *Newman v. Piggie Park Enterprises, Inc.*,² *Swann v. Charlotte-Mecklenburg Board of Education*³, and many others, the Supreme Court's decisions

¹ 347 U.S. 483 (1954)

² 390 U.S. 400 (1968)

³ 402 U.S. 1 (1971)



have transformed the meaning of equality and justice for millions of Americans. LDF lawyers litigate almost exclusively in the federal courts and for decades have engaged with the Department of Justice on a variety of civil rights matters. We have a direct and sincere interest in the integrity of the federal courts, and in the confirmation of judicial nominees who have the requisite experience, integrity, and fairness to adjudicate cases involving important and often complex issues of civil rights.

While we have many concerns regarding the implications of any action to reduce the size of the Senate Judiciary Committee, we write here to express our concern about the inevitable impact of such a decision on the ability of the Senate to fulfill its duty to advise and consent on nominees to the executive and judicial branches. The Constitutional duty of the Senate to advise and consent, as outlined in Article II, Section 2, is a fundamental underpinning to the checks and balances system of our democracy. The last two years have demonstrated the importance of this duty and the need for more rather than less committee capacity and fewer resources. During this time, we have seen judges nominated at an unprecedented pace (over 180 since January 2017), inundating the Senate Judiciary Committee with a hefty docket. These judicial nominees are being considered to serve lifetime appointments by constitutional mandate. Accordingly, a careful, thorough and deliberate review of the records and qualifications of each nominee is required to legitimately provide advice and consent. We therefore call on the Senate to expand, rather than reduce Committee membership, in order to ensure that the Committee can responsibly undertake its delegated obligation to thoroughly evaluate judicial nominees as part of the Senate’s constitutional “advise and consent” function.

Recent events in the judicial nomination process reinforce the importance of the Senate Judiciary Committee’s role and the need for the Committee to be adequately resourced. Specifically, the confirmation process has exposed nominees who were woefully unqualified, inexperienced and generally unfit to serve on the federal judiciary. In a number of instances, the disqualifying characteristics of nominees were uncovered only by the research of outside groups or were revealed late in the confirmation process. For example:

- Brett Talley, nominated for the United States District Court for the Middle District of Alabama who was found unanimously not qualified by the nonpartisan ABA, failed to disclose that he is married to the White House Counsel’s chief of staff. Additionally, outside advocacy groups revealed thousands of online posts he authored, including one

defending the “first KKK” and posts in which he referred to the Supreme Court decisions in *Roe v. Wade* and *Miranda v. Arizona* as “indefensible,” all of which he also failed to disclose in his questionnaire. He withdrew from consideration on December 13, 2017.

- Ryan Bounds, a nominee for the 9th Circuit Court of Appeals, also did not fully disclose on his Committee questionnaire writings that came to light as a result of research and disclosure by advocacy groups. He withdrew from consideration after it became clear he lacked the votes for confirmation.
- Matthew Peterson was nominated for a seat on the United States District Court for the District of Columbia. Despite listing on his Committee questionnaire numerous cases that he “personally litigated,” it was revealed at his confirmation hearing during questioning by Senator John Kennedy (R-La) that Mr. Petersen had never tried a case, argued a motion, or questioned a witness at trial, and did not understand the basics of trial motion practice. He withdrew from consideration after video of his testimony went viral.
- Jeff Mateer, who was nominated for the United States District Court for the Eastern District of Texas, said in a 2015 speech that transgender children are evidence of “Satan's plan”, indicated that he supported conversion therapy, and suggested that gay marriage could lead to polygamy and bestiality. His nomination was withdrawn in December 2017 after the speech and its contents were revealed by outside advocacy groups and Senator John Cornyn expressed concerns that Mr. Mateer had not disclosed the speeches where he made the remarks.
- Thomas Farr, a nominee for the United States District Court for the Eastern District of North Carolina, appears to have [misled](#) the Senate about his role in a notorious scheme to confuse and intimidate Black North Carolinians and stop them from voting in the 1990 midterm elections. The Jesse Helms for Senate Campaign, for which Farr served as counsel, sent over 100,000 postcards to mostly African-American voters, suggesting that they could be prosecuted for voting. In his initial testimony, Farr told the Judiciary Committee that he had no knowledge of the postcards until they were sent. However, a former Justice Department lawyer who investigated the scheme recently said that Farr “was certainly involved in the scheme as it was being developed.”

These serious revelations about nominees to the federal judiciary dictate that the Senate Judiciary Committee must be adequately resourced to vigorously vet and review all nominees put forward. A thorough review of the record and qualifications of a judicial nominee requires time, capacity and some familiarity with or knowledge of the legal and judicial system. Just last

month, the Chairman of the Senate Judiciary Committee, Senator Chuck Grassley, himself remarked about the “heavy workload” carried by the Committee.⁴ Given the impetuous nature of the current judicial nominations process, a solid and well-staffed Senate Judiciary Committee is critical to ensure the Senate’s constitutional obligation to provide its advice and consent is dutifully met.

In addition to its duties related to judicial nominations, the Committee also plays a critical role in providing oversight of the Department of Homeland Security, the Department of Justice (DOJ), and the various agencies within DOJ, including the Federal Bureau of Investigation. Recent events such as the increased presence of border control and Homeland Security agents at the Mexico Border, the use of excessive force against those seeking asylum at the Mexico border, the appointment of an *acting* Attorney General (a status that cannot be maintained indefinitely), the significant rise in hate crimes, the numerous instances of voter suppression during the midterm elections, etc., all warrant dedicated attention and examination by the Senate Judiciary Committee. These additional duties will expand an already “heavy workload” and thus again validate the critical need for increased, not diminished, capacity and resources.

Concurrently, the Committee is poised to lose Committee members who collectively represent approximately 40 years of experience on the Senate Judiciary Committee. Under these circumstances, the Senate should be working to keep as many of its current members as possible and should not consider removing members.

Finally, as Senator McConnell has acknowledged, women are woefully underrepresented as members of the Senate Judiciary Committee⁵. Only 4 of the 21 members are women. The Committee recently added Senator Kamala Harris, the only African American woman to ever serve on the Committee in its 200-year history. It would be unconscionable at this moment in our country, to contemplate reversing this progress. We would also note that Senator Harris, like many of her peers on the Committee, has a record of highly distinguished leadership as a lawyer, most recently serving as the Attorney General of her state after serving as the elected

⁴ See “Grassley suggests absence of women on Judiciary due to committee’s heavy workload”, October 5, 2018, Washington Post, https://www.washingtonpost.com/powerpost/grassley-suggests-absence-of-women-on-judiciary-due-to-committees-heavy-workload/2018/10/05/b289c0fe-c8e7-11e8-b1ed-1d2d65b86d0c_story.html?utm_term=.7835065663d2

⁵ See, “McConnell: GOP trying to recruit more women for Judiciary Committee” October 6, 2018, The Hill, <https://thehill.com/homenews/senate/410240-mcconnell-gop-trying-to-recruit-more-women-for-judiciary-committee>



District Attorney of San Francisco. Her contributions to the complex work and deliberations of the Committee in evaluating of the record and fitness of judicial nominees are unique and important.

In sum, the unprecedented workload and exceptional responsibility of the current Senate Judiciary Committee, dictates that additional capacity is needed on the Committee not less. Any call for a reduction in the size of the Committee represents a serious disregard for its critical oversight function and the need to provide robust vetting of nominees. LDF therefore asks that the Committee be expanded, or at a minimum left in its current configuration, to ensure that the Senate is able to meet its Constitutional obligation to advise and consent.

Sincerely,

Sherrilyn Ifill
President and Director-Counsel

cc: Senator Chuck Grassley, Chairman – Senate Judiciary Committee
Senator Dianne Feinstein, Ranking Member – Senate Judiciary Committee