



January 11, 2005

Honorable Bill Frist
Majority Leader
United States Senate
Washington, DC 20510

Honorable Harry Reid
Minority Leader
United States Senate
Washington, DC 20510

Honorable Arlen Specter
Committee on the Judiciary
United States Senate
Washington, DC 20510

Honorable Patrick Leahy
Committee on the Judiciary
United States Senate
Washington, DC 20510

- ★ Justice
- ★ Independence
- ★ Dignity
- ★ Security

Dear Senators Frist, Reid, Specter, and Leahy:

As representatives of organizations dedicated to promoting and protecting the interests of older Americans, we are writing to urge that the Senate fulfill with great care and diligence its constitutional role in the consideration of Supreme Court nominees, should vacancies arise during the 109th Congress. Specifically, we wish to underscore the need for substantive committee hearings that will enable nominees to explain the philosophies they will bring to bear on the broad range of constitutional issues now being debated on the Court and across the nation, enable committee members to understand the implications of these issues and the nominees' views, and make a record that will enable the full Senate and the American public to meaningfully debate what is at stake. It is especially important that both the Senate and the public are genuinely well-informed because so little is known about many and perhaps the most consequential of the relevant issues.

In particular, few Senators or members of the public are aware of the possibility that a reconstituted Supreme Court could embrace an

agenda to strip Congress as well as the courts of authority, established generations ago, to manage the national economy, ensure safety net health and retirement protection, protect the environment, health, and safety, and protect all American citizens against invidious discrimination. Such activism would be the antithesis of the commitment to “judicial restraint” appropriately favored by President Bush. Nevertheless, this radical agenda has received indications of support, often under the banner of ideological labels like “federalism” and “originalism,” from individuals frequently mentioned as potential Supreme Court nominees. For example, candidates on widely circulated “short lists” have said that the Supreme Court – in 1937 – took a “wrong turn” and wrought a “disaster of epic proportions,” when it upheld Congress’ authority to regulate the national economy. If advocates of this point of view gain control of the Court, will they overturn those landmark decisions – which upheld federal wage and hour laws, collective bargaining protections, and, even, social security? Will they strike down or undermine the myriad other federal laws dependent on the principles established by these 1937 precedents – which include protections long taken for granted by older Americans, such as prohibitions against discrimination based on age or disability, minimum standards for long-term care and other essential services and products, and guarantees of access to affordable health care? It would truly be an epic disaster if the Senate were to act without getting meaningful answers to these, and similar questions.

We therefore view with concern suggestions that the Senate Judiciary Committee should give judicial nominees “quick” hearings or that parliamentary “nuclear options” should be invoked to silence floor debate on judicial nominations. Under current circumstances, Senate procedures are not simply defenses for the Senate minority party, but safeguards for national majorities, who strongly support and depend on statutory protections and constitutional rights that could be at risk, when judicial nominees, especially Supreme Court nominees are under consideration. Meaningful committee hearings and extended floor debate are traditions precisely to enable the Senate to fulfill its indispensable role of ensuring that designs by small but strategically located factions are publicly and thoroughly vetted before they can be adopted.

Dispensing with traditional procedures could also risk impairing the legitimacy of successful confirmations. The federal judiciary is the universally accepted balance wheel, and arbiter of final justice, in our system of government. No one wants that universal acceptance undermined by widespread perceptions of a politically driven and orchestrated campaign to control the direction of the courts.

In closing, we should note that, while the concerns expressed in this letter apply with particular force to the consideration of Supreme Court nominees, rushing to judgment is also not a sound approach to Senate consideration of candidates for the lower federal courts. In this regard, our concerns have been heightened by the White House's year-end statement of intent to renominate certain appellate court nominees rejected in 2003 and 2004. That list includes individuals who have derided senior citizens dependent on social security and other safety net programs for "blithely cannibaliz[ing] their grandchildren," and promoted constitutional doctrines that would imperil established statutory nondiscrimination and health security guarantees – guarantees not only vital to older Americans, but broadly supported by Americans of all ages.

In sum, we respectfully convey our hope that the Senate will adhere to judicial confirmation procedures that facilitate broad recognition of the issues and nominees and widespread support for the results.

Sincerely,



Edward King, Executive Director,
National Senior Citizens Law Center

FOR:

Alliance for Retired Americans
AFSCME Retirees Program
Center for Medicare Advocacy
FamiliesUSA
Gray Panthers
National Health Law Program
National Senior Citizens Law Center
Service Employees International Union
Retired Members Program