

April 22, 2016

The Honorable Shelley Moore Capito
172 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Capito:

We the undersigned are members of the West Virginia University College of Law faculty. We write to you as West Virginians who are legal scholars familiar with constitutional structure and the respective powers and duties of each branch of the government of the United States. We urge you to give fair consideration to the nomination of Chief Judge Merrick B. Garland to the Supreme Court of the United States and to encourage Senate leadership to hold a confirmation hearing and schedule a timely up-or-down vote on his nomination.

Chief Judge Garland's fitness to serve on the Supreme Court is unquestioned. He has more federal judicial experience than any Supreme Court nominee in history, having served the past 19 years on the United States Court of Appeals for the District of Columbia Circuit. In that time, he has demonstrated an exemplary judicial temperament, acute intelligence, and an unwavering commitment to impartiality, fairness, and the rule of law. It is therefore no surprise that he enjoys support from across the political spectrum, including conservative legal luminaries like Miguel Estrada, Alberto Gonzales, and Kenneth Starr. Indeed, Chief Judge Garland's judicial record has validated the votes cast by a majority of both Senate Democrats and Republicans in 1997 to confirm his nomination to serve on the United States Court of Appeals for the District of Columbia Circuit.

Of course it is entirely appropriate for every senator to thoroughly review Chief Judge Garland's record and qualifications. However, an outright refusal to even consider his nomination runs counter to the Senate's obligation, under Article II of the Constitution, to provide "advice and consent." There is no exception that allows senators to withhold advice and consent during a presidential election year, and there is ample time remaining to complete the confirmation process. Over the past two decades, the longest confirmation process for a Supreme Court nominee lasted 99 days, and nearly 300 days remain in the President's term of office.

In sum, Chief Judge Garland is an eminently qualified nominee who deserves fair consideration of his nomination. Refusing to do so is an abdication of the Senate's constitutional duty to provide advice and consent. We hope that you will meet with Chief Judge Garland and urge your Senate colleagues to hold a prompt hearing and timely confirmation vote.

Sincerely,
The Undersigned

cc: Senator Manchin

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Please note: Organizational affiliation for all signatories is included for identification purposes only. Individuals represent only themselves, not West Virginia University, the West Virginia University College of Law, or other organizations in which they are active.