



PRESIDENT  
NAN ARON

CHAIR  
PAULETTE MEYER

November 13, 2020

On behalf of Alliance for Justice, a national association representing over 120 public interest and civil rights organizations, I write to oppose the confirmation of Thomas Kirsch to the Seventh Circuit Court of Appeals. Kirsch's confirmation in a lame duck session would fly in the face of the will of the American people, who have elected Joe Biden as the next President. Further, as the nation is in the midst of a harsh wave of the COVID-19 pandemic, it is shameful that the Senate is rushing to confirm more judges rather than prioritizing providing much needed relief to the American people. Kirsch's confirmation would also do nothing to improve the diversity of the [all-white](#) Seventh Circuit court.

Kirsch is currently the United States Attorney for the Northern District of Indiana, a position in which he has served since 2017. Before entering this role, Kirsch was a partner at Winston & Strawn, serving primarily corporate clients, and an Assistant U.S. Attorney.

Donald Trump announced his [intent to nominate](#) Kirsch on October 21, 2020 to fill the seat then held by Amy Coney Barrett. Despite the fact millions of Americans had already voted, and the last day to vote was just days away, Trump nominated Kirsch even before there was a vacancy — before the Senate had even confirmed Barrett to the Supreme Court. Such has been the Republicans' rush to fill yet another judicial seat regardless of the outcome of the election.

Kirsch's confirmation would represent a galling disregard for the will of the voters in the recent presidential election. On November 3<sup>rd</sup>, the American people decisively repudiated Donald Trump and elected Joe Biden as their next President. After making their voices so clearly heard, it is imperative that judicial vacancies must be filled with nominees selected by President-Elect Biden after he takes office in January 2021. Senate Republicans themselves repeatedly made this very same point in 2016 with respect to both Merrick Garland and scores of lower court appointments.

In fact, since the 1984 presidential election — over the last nine presidential elections — Alliance for Justice is not aware of any court of appeals judge who has been confirmed after Election Day. In 2016, the Senate did not confirm any district court judge after July and did not confirm any appeals court judge after January — a full year before Trump was inaugurated. Breaking from this norm now is extreme and openly partisan.

Eleven Dupont Circle NW, Suite 500 | Washington, DC 20036 | [www.afj.org](http://www.afj.org) | t: 202-822-6070

*Field Offices*

Dallas | Houston | Los Angeles | San Francisco

It is also patently offensive that after refusing, for over a year, to even hold a hearing on [Myra Selby's](#) nomination to this very seat, Senate Republicans now seek to hurriedly confirm Kirsch. In January of 2016, President Obama nominated Selby. Selby was the first woman and first African American to serve on the Indiana Supreme Court and she was the first African American partner in a major Indianapolis law firm. She was a highly respected expert in health care law, earning a spot on the [Best Lawyers in America](#) Health Care law list for seven consecutive years. She would have been the first African American to serve on the Seventh Circuit from Indiana. This is especially significant since the Seventh Circuit does not have a single judge of color, even though people of color make up 30% of the population within the Circuit.

In other words, Republicans refused to even give an African-American woman a hearing for over a year. Yet, they jump at the opportunity to confirm yet another white male judge in the waning days of an outgoing administration.

Unfortunately, this behavior aligns with the Trump administration's pattern of promoting [white men](#) to the federal bench. Of all the judges nominated by Donald Trump and confirmed by the Republican Senate, nearly 90 percent have been white and over 75 percent have been men. Only three percent — or eight out of over 200 judges — have been African American, and not one Circuit Court judge nominated by Trump has been African American. Kirsch is Trump's fifth nominee to the Seventh Circuit, and all have been white. The federal judiciary should look like America, and it is shameful that after intentionally blocking an African-American woman from this seat, Republicans would now further exacerbate demographic disparities in our court system.

It is clearly inappropriate for the Judiciary Committee to consider Thomas Kirsch for this Circuit Court seat, and Alliance for Justice opposes his confirmation. The Senate should reject his nomination to the Seventh Circuit Court of Appeals.

Sincerely,



Nan Aron  
President