



COALITION *for a* FAIR *and* INDEPENDENT JUDICIARY

The Honorable Arlen Specter
Chairman, Senate Committee on the Judiciary
United States Senate
Washington, D.C. 20510

July 31, 2006

Dear Chairman Specter:

We are writing to express our strong opposition to the Senate Judiciary Committee's decision to move forward with the August 1 hearing on the nomination of Peter D. Keisler to a lifetime position on the U.S. Court of Appeals for the D.C. Circuit. Mr. Keisler's nomination must not receive a hearing until his record is fully assembled and the Senate Judiciary Committee can meaningfully exercise its advice-and-consent function.

Of the nation's thirteen federal circuit courts, the U.S. Court of Appeals for the D.C. Circuit holds a uniquely important place because of its exclusive or concurrent jurisdiction under many statutes. The D.C. Circuit is either the one stop, or the most influential stop, for judicial review of a broad range of federal policies covering environmental protection, workplace safety, energy regulation, consumer protection, telecommunications, and enemy combatant and terrorist organization designations.¹ And because the Supreme Court reviews the D.C. Circuit's rulings so infrequently, it often has the final word on all of these enormously significant statutory and administrative matters. The importance of the D.C. Circuit cannot be overstated.

Mr. Keisler was nominated to the D.C. Circuit on June 29th, just one month ago. He submitted his Judiciary Questionnaire on July 17th. The American Bar Association, which has rated every nominee for the past half century, has not yet provided its peer-review rating of his nomination. The speed at which this nomination is proceeding alone is reason for serious concern. Of the last seven confirmed nominees to the D.C. Circuit, the least amount of time between an initial nomination and a Senate hearing was 71

¹ The D.C. Circuit has exclusive jurisdiction over sections of many of our nation's most important federal laws, including; the Federal Communications Commission, (47 U.S.C. §402(b)), the Resource Conservation and Recovery Act (42 U.S.C. §6976(a)(1)), Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund) (42 U.S.C. §9613(a)), national primary drinking water regulations (42 U.S.C. §300j-7(a)(1)), Clean Air Act (42 U.S.C. §7607(b)(1)), designations of "foreign terrorist organizations" (8 U.S.C. §1189(c)(1)), the Federal Energy Regulatory Commission (15 U.S.C. §766(c)), Federal Election Commission determinations as to which presidential candidates are eligible for Federal money (26 U.S.C. §9011(a) and §9041(a)), to name a few.

COALITION *for a* FAIR *and* INDEPENDENT JUDICIARY

days.² The length of time between nomination and Senate hearing reflects the importance of the D.C. Circuit and the need for the Senate to conduct a thorough investigation when considering nominations to this critical court. It is proposed that Mr. Keisler's hearing take place a mere 33 days from the time of his initial nomination, less than half of the shortest investigation period for any recent D.C. Circuit nominee.

Even more importantly, however, there are critical aspects of Mr. Keisler's record that are not currently available to the Senate for review. In the last several years, Mr. Keisler has served in several high ranking positions at the Department of Justice, including Acting Associate Attorney General. During his tenure, the Department has played a central role in developing controversial Administration positions on a number of issues. Mr. Keisler's role in these matters must be documented and explored. In addition, the Reagan Library index lists hundreds of files containing an unknowable quantity of apparently relevant documents related to Mr. Keisler's three-year tenure in the Reagan White House Counsel's office.³ The vast majority of these documents are not currently available for scrutiny by senators or anyone else interested in this important nomination. To fulfill its advice-and-consent function in a meaningful fashion, the Committee ought to examine what might be some of the information most relevant to a lifetime appointment to the second most important court in the country.

Rushing a hearing on Mr. Keisler's nomination now, before his record is completely assembled, is particularly inappropriate given the greater workload on other courts where there are pending vacancies. The day before Mr. Keisler was nominated, four other nominees were announced, each to seats designated by the Judicial Conference of the United States as Judicial Emergencies.⁴ The seat to which Mr. Keisler has been nominated is not such an emergency. It seems only logical to attend to the *emergencies* first. Indeed, the D.C. Circuit has the lightest caseload of the federal circuit courts. The national average of cases terminated on the merits per judge in 2004 was 432,⁵ compared with only 156 cases for the D.C. Circuit.⁶

Mr. Keisler has an extensive and complex record that must be collected and reviewed before a hearing goes forward. Should this hearing proceed at this premature stage, a second hearing may well be required. We therefore strongly oppose any hearing on Mr. Keisler's nomination before his record is assembled and thoroughly reviewed.

² Judith W. Rogers was nominated to the D.C. Circuit on November 17, 1993. A hearing was held on her nomination by the Senate Committee on the Judiciary on January 27, 1994.

³ <http://www.reagan.utexas.edu/resource/findaid/keisler.htm>

⁴ <http://rpc.senate.gov/files/July25JudNomRptSD.pdf>

⁵ <http://www.uscourts.gov/cgi-bin/cmsa2004.pl>

⁶ <http://www.uscourts.gov/cgi-bin/cmsa2004.pl>



COALITION *for a* FAIR *and* INDEPENDENT JUDICIARY

If you have any questions or need further information, please contact Doug Kendall, Community Rights Counsel Executive Director at (202) 296-6889 or Nancy Zirkin, Leadership Conference on Civil Rights (LCCR) Deputy Director at (202) 263-2880.

Sincerely,

ADA Watch/National Coalition for Disability Rights
Alliance for Justice
American Association of University Women
American Federation of Labor - Congress of Industrial Organizations
American Federation of State County and Municipal Employees
(AFSCME)
Americans for Democratic Action
Community Rights Counsel
Defenders of Wildlife
Earthjustice
Feminist Majority
Friends of the Earth
Leadership Conference on Civil Rights
Legal Momentum
NAACP Legal Defense & Educational Fund, Inc.
National Council of Jewish Women
National Council on Independent Living
National Employment Lawyers Association
National Gay and Lesbian Task Force
National Partnership for Women & Families
National Senior Citizens Law Center
National Women's Law Center
Olympic Forest Coalition
People For the American Way
Sierra Club

cc: Members of the Senate Judiciary Committee