



April 21, 2008

Hon. Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Hon. Arlen Specter
Ranking Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Re: Peter Keisler

Dear Senator Leahy and Senator Specter:

I am writing on behalf of People For the American Way and our hundreds of thousands of members nationwide regarding the highly controversial nomination of Peter Keisler to fill the 11th seat on the D.C. Circuit. Given the public pressure being placed on this Committee by supporters of President Bush to confirm Mr. Keisler, we believe it important to reiterate why Mr. Keisler's nomination should not be, and indeed cannot properly be, considered at this time.

For the reasons we discussed in our letter to the Committee of April 3, 2008, longstanding Senate policy warrants invocation of the Thurmond Rule and an end to the processing of controversial judicial nominees at this point in a presidential election year. There can be no question that Mr. Keisler is such a nominee.

In fact, with respect to this specific nomination, nothing has changed since July 2006, when Democratic members of the Committee (then in the minority) in a letter to then-Committee Chair Specter identified significant reasons why the Committee could not then properly consider Mr. Keisler.¹ As stated in that letter, Senate Republicans during the Clinton Administration had objected to filling the 11th seat on the D.C. Circuit, claiming that its caseload was insufficient to justify 11 active judges. As the letter noted, the court's caseload had *decreased* in the interim.

¹ A copy of the letter is available at:
<<http://media.pfaw.org/pdf/Judiciary/KeislerLetterToSenSpecter%207-27-06.pdf>>.

In addition, as the letter observed, the Committee could not properly consider Mr. Keisler's nomination without the records from Mr. Keisler's service as an attorney in the Reagan White House, records that would shed light on Mr. Keisler's legal views. To our knowledge, those records still have not been provided.

Indeed, our affiliate, People For the American Way Foundation, on July 20, 2006 submitted jointly with the Alliance for Justice a FOIA request to the Reagan Library seeking disclosure of the records pertaining to Mr. Keisler's work as Associate Counsel to President Reagan in the Office of the Counsel to the President between 1986 and 1988. During that period, Mr. Keisler reportedly worked on AIDS policy, Robert Bork's nomination to the Supreme Court, and other controversial matters.

The Reagan Library notified PFAWF in September 2006 and January 2007 that it had processed the Keisler records for release, and pursuant to the Presidential Records Act and Executive Order 13233 had submitted them for pre-disclosure review to the representatives of the Reagan Administration and the current Bush Administration. But in all of this time, apart from a small number of documents that had been processed for public disclosure prior to the FOIA request, not one page of the Keisler documents has been released. The Bush Administration cannot be permitted to demand action on Mr. Keisler's nomination at the same time that it continues to block public scrutiny of his record.

And Mr. Keisler's record, which includes having co-founded the Federalist Society and serving as a law clerk to then-Circuit Court Judge Robert Bork, raises serious concerns about his legal philosophy and qualifications to serve for life on what is generally considered to be our nation's second highest court. Moreover, in the time since Mr. Keisler's nomination, certain troubling information about his work in the Bush Department of Justice has come to light, specifically including allegations that Mr. Keisler was involved in applying inappropriate political influence in the government's case against the tobacco industry.²

There is no question that without the records from Mr. Keisler's tenure in the Reagan White House and the Bush Department of Justice, and adequate time to examine them, this Committee has no adequate basis on which to carry out its constitutional responsibilities to scrutinize carefully all nominees to our federal courts. A *hearing* could not even properly be held on Mr. Keisler's nomination at this point. The notion that he should be *confirmed*, as the President and his supporters urge, is completely meritless.

² See, e.g., Carol D. Leonnig, "Prosecutor Says Bush Appointees Interfered with Tobacco Case," *Washington Post*, March 22, 2007, page A01.

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For all these reasons, we strongly urge the Committee not to proceed with Mr. Keisler's nomination.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kathryn Kolbert", with a long horizontal flourish extending to the right.

Kathryn Kolbert
President

cc: All Members, Senate Judiciary Committee