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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

KOLAN L. DAVIS, *Chief Counsel and Staff Director*
JENNIFER DUCK, *Democratic Chief Counsel and Staff Director*

November 14, 2018

VIA ELECTRONIC TRANSMISSION

The Honorable Dianne Feinstein
The Honorable Patrick Leahy
The Honorable Richard J. Durbin
The Honorable Sheldon Whitehouse
The Honorable Amy Klobuchar
The Honorable Christopher Coons
The Honorable Richard Blumenthal
The Honorable Mazie K. Hirono
The Honorable Cory A. Booker
The Honorable Kamala Harris
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Colleagues:

I write in response to your letter dated November 13, 2018, requesting second hearings for nominees who appeared before the Committee on October 17 and 24. I am unable to accommodate this request.

The Ranking Member specifically agreed to these hearing dates as part of an accommodation that I made to the Minority to reschedule previously planned hearings and alleviate the workload during Justice Kavanaugh's reopened confirmation hearing. If you remember, we had to reopen the hearing because Dr. Ford's letter was held in secret for nearly seven weeks. And then the letter was leaked after we held the original confirmation hearing, and after Justice Kavanaugh responded to more written questions than *all* prior Supreme Court nominees *combined*, and on the eve of his confirmation. But, as usual in Washington, no good deed goes unpunished.

Your new complaint is that these rescheduled hearing dates fell during a three-week recess period before the midterm elections when American taxpayers continued to pay our salaries. But, as we saw with the results of the midterm elections, the confirmation of judges is an important priority for the American people. I was not—and am not—willing to get off-track on this critical constitutional duty we have as senators.

As background, I informed the Ranking Member in August of my intent to hold hearings on September 26, October 10, and October 24. As a courtesy and accommodation to the Ranking

Member, I twice postponed the hearing originally scheduled for September 26 and also postponed the hearing originally scheduled for October 10. On October 1, the Ranking Member agreed to hold hearings on October 10, 17, and 24. Because I was cognizant of the fact that there might be an objection to holding hearings three weeks in a row and potentially during a pre-election recess, I sought an agreement from the Ranking Member that the Minority would not object to the timing of these hearings. The Ranking Member agreed to these terms, fully aware of the possibility the Senate could go into recess in October.¹

I was disheartened to learn that, in the days leading up to the October 17 and 24 hearings, the Minority attempted to renege on this agreement. The Committee relies on trust and comity in order to accomplish its important work. Respecting agreements about scheduling is essential to the functioning of this Committee. And it's important that nominees and their families know in advance when we will hold their hearings so that they can make the necessary travel arrangements. Indeed, it is a tremendous financial burden for nominees and their extended families to take time off work, buy airline tickets, book hotels, and make other travel arrangements for the hearings. It is very unfair to these good Americans, who are oftentimes already making a sacrifice to step forward to serve, to have their plans wrecked at the last minute.

These hearings were scheduled well in advance of Senate leadership's decision to go into recess. All members who had planned on attending the hearings could still have attended. If a member who originally planned to attend the October 17 and 24 hearings decided to change their plans upon the Senate leadership's decision to go into recess, that was that member's prerogative. But, as your letter points out, Republican members attended the hearings and asked questions of the nominees. Additionally, the October 17 and 24 hearing records remained open for an additional week, and Democratic members sent numerous written questions to the nominees. I'm confident that each member of this Committee had ample opportunity to question the nominees.

I'll add that this Committee has held hearings where only a single senator questioned a nominee. For example, only one senator attended now-Justice Neil Gorsuch's hearing when he was nominated to the Tenth Circuit. And it's not out of the ordinary to hold hearings during recess, particularly when the Ranking Member has consented to the hearing dates, as was the case here. The Committee has held at least eight nominations hearings since 2001, under chairmen of both parties, while the Senate was not in session.

Finally, you ask that I accommodate your request to hold another set of hearings for ten nominees based on the fact that Chairman Leahy once held a second hearing for a single nominee in 2009. Respectfully, I believe I already made substantial accommodations to the Minority by postponing nominations hearings three times. I will not further delay the confirmation process for these eminently qualified nominees for whom each member already had the opportunity to question under oath. And I am not going to make these nominees and their families make another tremendous financial sacrifice to come to another hearing because you decided not to attend previously scheduled hearings to which the Ranking Member agreed.

¹ The relevant correspondence between the Chairman and Ranking Member's staffs is attached.

Sincerely,

A handwritten signature in blue ink that reads "Chuck Grassley". The signature is written in a cursive style with a prominent initial "C" and a stylized "G".

Chuck Grassley
Chairman

From: [Davis, Mike \(Judiciary-Rep\)](#)
To: [Hearron, Marc \(Judiciary-Dem\)](#)
Cc: [Duck, Jennifer \(Judiciary-Dem\)](#); [Sawyer, Heather \(Judiciary-Dem\)](#)
Subject: Next 3 non-SCOTUS hearings this fall
Date: Monday, October 01, 2018 1:28:00 PM

CONFIDENTIAL

Marc,

As an accommodation to, and agreement with, the Minority, we are moving the 9/26 hearing again.

Here are the next 3 hearings:

9/26 to 10/3 to 10/10

1. Chad Readler (CA6 / Ohio) (nomination received on 6/18/2018)
2. Eric Murphy (CA6 / Ohio) (nomination received on 6/18/2018)
3. Pamela Barker (N.D. Ohio) (nomination received on 4/12/2018)
4. Sarah Morrison (S.D. Ohio) (nomination received on 4/12/2018)
5. Rossie Alston (ED VA) (nomination received on 6/18/2018)
6. NONE, due to 2 circuit nominees.

NOTE: Emailed Minority and ABA on 8/27

1010 to 10/17 (Tillis to chair)

1. TENTATIVELY: Allison Jones Rushing (CA4 / N.C.) (nomination received on 8/27/2018)
2. TENTATIVELY: Wendy Berger (M.D. Fla.) (nomination received on 4/10/2018)
3. TENTATIVELY: Thomas P. Barber (M.D. Fla.) (nomination received on 5/7/2018)
4. TENTATIVELY: Rodney Smith (S.D. Fla.) (nomination received on 5/7/2018)
5. TENTATIVELY: T. Kent Wetherell (N.D. Fla.) (nomination received on 5/7/2018)
6. TENTATIVELY: Corey Landon Maze (N.D. Ala.) (nomination received on 5/15/2018)

NOTE: Emailed Minority and ABA on 8/27

10/24 (Flake to chair)

1. TENTATIVELY: Bridget Bade (CA9 / Ariz.) (nomination received on 8/27/2018)
2. TENTATIVELY: Eric Miller (CA9 / Wash.) (nomination received on 7/19/2018)
3. TENTATIVELY: Karin Immergut (D. Ore.) (nomination received on 6/11/2018)
4. TENTATIVELY: Richard A. Hertling (Fed. Claims) (nomination received on 5/7/2018)
5. TENTATIVELY: Shannon Lee Goessling, nominee for Director, Violence Against Women Office (nomination received on 6/18/2018)
6. NONE, due to 2 circuit nominees.

NOTE: Emailed Minority and ABA on 8/29

This gives your side “breathing room” during SCOTUS, while still staying on track overall this fall.

You agreed that the Minority will not complain about timing, including 3 hearings in a 3-week period.

But we also agreed that it is fair game for your side to complain about hearings with 2 circuits.

See how reasonable I am? #MikeDavis 😊

Thank you,

Mike Davis

Mike Davis, Chief Counsel for Nominations
United States Senate Committee on the Judiciary
Senator Chuck Grassley (R-IA), Chairman
224 Dirksen Senate Office Building
Washington, DC 20510

██████████ (direct)

██████████ (cell)

██████████ (fax)

████████████████████

From: [Davis, Mike \(Judiciary-Rep\)](#)
To: [Hearron, Marc \(Judiciary-Dem\)](#)
Subject: RE: Next 2 non-SCOTUS nominations hearings
Date: Wednesday, August 29, 2018 5:43:00 PM

CONFIDENTIAL

Marc,

With the upcoming SCOTUS hearing, I already gave you plenty of advanced notice of the 9/26 and 10/10 nominations hearings.

I also want to give your side plenty of advanced notice of our 2nd hearing in October:

10/24

1. TENTATIVELY: Bridget Bade (CA9 / Ariz.) (nomination received on 8/27/2018)
2. TENTATIVELY: Eric Miller (CA9 / Wash.) (nomination received on 7/19/2018)
3. TENTATIVELY: Karin Immergut (D. Ore.) (nomination received on 6/11/2018)
4. TENTATIVELY: Richard A. Hertling (Fed. Claims) (nomination received on 5/7/2018)
5. TENTATIVELY: Shannon Lee Goessling, nominee for Director, Violence Against Women Office (nomination received on 6/18/2018)
6. NONE, due to 2 circuit nominees.

For your planning purposes for the rest of the year, we are also looking at nominations hearings on 11/14, 11/28, and 12/12.

Thank you,
Mike Davis

Mike Davis, Chief Counsel for Nominations
United States Senate Committee on the Judiciary
Senator Chuck Grassley (R-IA), Chairman
224 Dirksen Senate Office Building
Washington, DC 20510

[REDACTED] (direct)

[REDACTED] (cell)

[REDACTED] (fax)

From: Davis, Mike (Judiciary-Rep)
Sent: Monday, August 27, 2018 8:10 PM
To: Hearron, Marc (Judiciary-Dem) <[REDACTED]>
Subject: RE: Next 2 non-SCOTUS nominations hearings

Ha!

Thank you,
Mike Davis

Mike Davis, Chief Counsel for Nominations
United States Senate Committee on the Judiciary

Senator Chuck Grassley (R-IA), Chairman
224 Dirksen Senate Office Building
Washington, DC 20510

[REDACTED] (direct)

[REDACTED] (cell)

[REDACTED] (fax)

[REDACTED]

From: Hearnon, Marc (Judiciary-Dem)

Sent: Monday, August 27, 2018 8:07 PM

To: Davis, Mike (Judiciary-Rep) <[REDACTED]>

Subject: RE: Next 2 non-SCOTUS nominations hearings

Thanks, Mice, I mean Mike

From: Davis, Mike (Judiciary-Rep)

Sent: Monday, August 27, 2018 7:40 PM

To: Hearnon, Marc (Judiciary-Dem) <[REDACTED]>

Subject: RE: Next 2 non-SCOTUS nominations hearings

*Marc (sorry!)

Thank you,
Mike Davis

Mike Davis, Chief Counsel for Nominations
United States Senate Committee on the Judiciary
Senator Chuck Grassley (R-IA), Chairman
224 Dirksen Senate Office Building
Washington, DC 20510

[REDACTED] (direct)

[REDACTED] (cell)

[REDACTED] (fax)

[REDACTED]

From: Davis, Mike (Judiciary-Rep)

Sent: Monday, August 27, 2018 7:38 PM

To: Marc A. Hearnon ([REDACTED]) <[REDACTED]>
[REDACTED] >

Subject: Next 2 non-SCOTUS nominations hearings

CONFIDENTIAL

Mark,

With the upcoming SCOTUS hearing, I want to give your side plenty of advanced notice of our next 2 non-SCOTUS hearings:

-
9/26

1. TENTATIVELY: Chad Readler (CA6 / Ohio) (nomination received on 6/18/2018)
2. TENTATIVELY: Eric Murphy (CA6 / Ohio) (nomination received on 6/18/2018)
3. TENTATIVELY: Pamela Barker (N.D. Ohio) (nomination received on 4/12/2018)
4. TENTATIVELY: Sarah Morrison (S.D. Ohio) (nomination received on 4/12/2018)
5. TENTATIVELY: Rossie Alston (ED VA)) (nomination received on 6/18/2018)
6. NONE, due to 2 circuit nominees.

10/10

1. TENTATIVELY: Allison Jones Rushing (CA4 / N.C.)
2. TENTATIVELY: Wendy Berger (M.D. Fla.) (nomination received on 4/10/2018)
3. TENTATIVELY: Thomas P. Barber (M.D. Fla.) (nomination received on 5/7/2018)
4. TENTATIVELY: Rodney Smith (S.D. Fla.) (nomination received on 5/7/2018)
5. TENTATIVELY: T. Kent Wetherell (N.D. Fla.) (nomination received on 5/7/2018)
6. TENTATIVELY: Corey Landon Maze (N.D. Ala.) (nomination received on 5/15/2018)

Thank you,
Mike Davis

Mike Davis, Chief Counsel for Nominations
United States Senate Committee on the Judiciary
Senator Chuck Grassley (R-IA), Chairman
224 Dirksen Senate Office Building
Washington, DC 20510

██████████ (direct)

██████████ (cell)

██████████ (fax)

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