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U.S. Senate Majority Leader
317 Russell Senate Office Building
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Hon. Charles Grassley
Chairman, U.S. Senate Committee on the Judiciary
135 Hart Senate Office Building
Washington, DC 20510

Hon. Harry Reid
U.S. Senate Minority Leader
522 Hart Senate Office Building
Washington, DC 20510

Hon. Patrick Leahy
Ranking Member, U.S. Senate Committee on the Judiciary
437 Russell Senate Office Building
Washington, DC 20510

Dear Majority Leader McConnell, Judiciary Committee Chairman Charles Grassley, Minority Leader Harry Reid, and Judiciary Committee Ranking Member Patrick Leahy:

As scholars deeply committed to the fair administration of justice, upholding the rule of law, and educating future generations of the legal profession, the undersigned professors of law urge you to fulfill your constitutional duty to give President Barack Obama's Supreme Court nominee a prompt and fair hearing and a timely vote.

The Senate's obligation in this circumstance is clear. Under Article II of the Constitution, the president "shall appoint . . . judges to the Supreme Court," and the Senate's role is to provide "advice and consent." Yet before the president has even made a nomination to fill the current vacancy, a number of senators have announced that they will not perform their constitutional duty. Instead, they plan to withhold advice and consent until the next president is sworn in nearly a year from now. This preemptive abdication of duty is contrary to the process the framers envisioned in Article II, and threatens to diminish the integrity of our democratic institutions and the functioning of our constitutional government.

President Obama was elected to a four-year term in 2012. According to the Constitution, that term has more than 300 days remaining. There is no exception to the Constitution holding that the president lacks the authority or duty to appoint justices to the Supreme Court because he is in the last year of his presidency. In fact, six justices have been confirmed in presidential-election years since 1900, including Louis Brandeis, Benjamin Cardozo, and Republican-appointee Anthony Kennedy, who was confirmed by a Democratically-controlled Senate during President Ronald Reagan's last year in office.

A long-term vacancy jeopardizes the Supreme Court's ability to resolve disputed questions of federal law, causing uncertainty and hampering the administration of justice across the country. Typically, the Supreme Court resolves disagreement among the lower courts to establish national uniformity on important legal issues. But the Court fails in this essential function when eight sitting justices divide evenly 4-4, leaving the matter undecided or forcing reconsideration of it when the Court returns to full strength. If the Senate refuses to consider President Obama's nominee, the potential for deadlock on major constitutional and statutory issues will persist for at least the better part of two terms.

The Senate must not defeat the intention of the Framers by failing to perform its constitutional duty. The Senate Judiciary Committee should hold a prompt and fair hearing and the full Senate should hold a timely vote on the president's nominee.

Sincerely¹
The Undersigned

Cc: Members of the United States Senate

¹ Organizational affiliation for all signatories is included for identification purposes only; individuals represent only themselves, not the institutions where they are teaching or other organizations in which they are active.

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