

Open letter to Sens. Deb Fischer and Ben Sasse signed by 25 professors at the University of Nebraska College of Law; June 2016.

Dear Senator Fischer and Senator Sasse,

We write this as citizens, but we all teach at the University of Nebraska College of Law. We hold different political viewpoints and disagree frequently with each other on political and legal issues. As law professors, however, we share a deep commitment to the rule of law and an impartial judiciary. We therefore urge you to hold confirmation hearings and a vote on President Obama's Supreme Court nominee, Chief Judge Merrick B. Garland.

Judge Garland is exceptionally well qualified to serve on the U.S. Supreme Court. Lawyers, scholars, and fellow judges uniformly recognize Judge Garland as an extraordinarily intelligent, hardworking, fair, and meticulous judge. He is also a humble, decent man of great integrity. As Chief Justice John Roberts put it at his confirmation hearings, "If you find yourself on the opposite side of an argument from Judge Merrick Garland, you really better think about your position."

Relatedly, Judge Garland has a deserved reputation for being non-partisan. He does not decide cases based on politics or ideology; he decides them based on the law and the facts before him. In selecting Judge Garland, President Obama deliberately chose a nominee who commands great respect from Democrats and Republicans alike. Indeed, Republican Senators in past years have cited Judge Garland as an example of a Supreme Court nominee they would support.

Many Senate Republicans now signal that they would not hold hearings on any Obama nominee. Such obstruction would risk harming the Court. If the Senate refuses to act, the Court would likely operate with only eight Justices for at least a year and quite possibly much longer. Given the Court's current composition, it is very likely that the Justices would split 4-4 in some cases, leaving important legal issues unsettled. The Court also may decline to accept other controversial cases until it is at full strength.

Even more importantly, if the Senate were to refuse to hold hearings and a vote on Judge Garland, it would set a dangerous precedent encouraging future Senate majorities to obstruct

nominations made by another party's President. No limiting principle restricts this practice to vacancies occurring close to an election. This time the vacancy occurred nine months before the election. Next time it could be a year, or eighteen months. Surely, this precedent would serve neither the Court nor the country well.

The judiciary should be above the political fray. If the Senate refuses to hold hearings and a vote on this exceptionally talented, qualified, respected, moderate, and non-ideological nominee, it would risk infecting the Supreme Court and the entire federal judiciary with the unfortunate toxic political climate plaguing the nation more generally. The resulting damage could persist for years.

For the foregoing reasons, we respectfully request that you urge your Senate colleagues to hold hearings and a vote on Judge Garland.

Eric Berger, Associate Dean for Faculty & Professor of Law; Kristen Blankley, Assistant Professor of Law; Brian Bornstein, Professor of Psychology and Courtesy Professor of Law; Eve Brank, Associate Professor of Psychology and Courtesy Professor of Law; Robert C. Denicola, Margaret R. Larson Professor of Intellectual Property Law; Alan H. Frank, Professor of Law Emeritus; Stephen S. Gealy, Adjunct Law Professor; Justin (Gus) Hurwitz, Assistant Professor of Law; David Landis, Adjunct Law Professor; Craig M. Lawson, Professor of Law; Richard A. Leiter, Director of the Library & Professor of Law; William H. Lyons, Richard H. Larson Professor of Tax Law; Matthew S. Novak, Associate Professor of Law Library & Reference Librarian; Allen Overcash, Adjunct Law Professor; Stefanie Pearlman, Professor of Law Library & Reference Librarian; Ross Pesek, Adjunct Law Professor; Kevin Ruser, M.S. Hevelone Professor of Law; Robert Schopp, Robert J. Kutak Professor of Law; Anthony Schutz, Associate Professor of Law; Anna W. Shavers, Cline Williams Professor of Citizenship Law; Brett C. Stohs, Assistant Clinical Professor of Law & Cline Williams Director of the Entrepreneurship Legal Clinic; Ryan Sullivan, Clinical Assistant Professor of Law; Richard L. Wiener, Charles Bessey Professor of Psychology & Courtesy Professor of Law; Steven L. Willborn, Judge Harry A. Spencer Professor of Law; Sandra B. Zellmer, Robert B. Daugherty Professor of Law.