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The Honorable Harry Reid
Majority Leader, U.S. Senate
522 Hart Senate Office Building
Washington, DC 20510

The Honorable Mitch McConnell
Minority Leader, U.S. Senate
361-A Russell Senate Office Building
Washington, DC 20510

Dear Majority Leader Reid and Minority Leader McConnell:

On behalf of the American Bar Association, I am writing to urge you to redouble your efforts to fill existing judicial vacancies promptly so that the federal courts will have the judges they need to uphold the rule of law and deliver timely justice.

There is no priority higher to the Association than to assure that we have a fully staffed and fully operating federal bench. That is why I have used my position as ABA president this past year to speak out repeatedly about the urgent need to fill existing vacancies.

We commend the Congress for starting the session by instituting procedural changes and approaching the confirmation process with a fresh sense of urgency, which has helped restore regular order to the process. As a result, the President has made 87 judicial nominations and the Senate has regularly scheduled up-or-down votes and confirmed 31 nominees this session.

However, no significant reduction in the high number of vacancies has been achieved: there are only 4 fewer vacancies on the federal bench today than there were January 1 of this year, and 10 percent of the authorized judgeships remain vacant. During the past two years -- since August 2009 -- the vacancy rate has fluctuated, but it has never dropped below 10 percent.

Thirty-eight of the present vacancies have existed for so long and created such untenable workloads for the remaining judges on the courts that the seats have been declared judicial emergencies by the Administrative Office of the U.S. Courts. As lawyers who practice in federal courts across this nation, ABA members know firsthand that long-standing vacancies on courts with staggering caseloads impede access to the courts and create strains that will

inevitably reduce the quality of our justice system and erode public confidence in the ability of the courts to vindicate constitutional rights or render fair and timely decisions. In Arizona, for example, the Speedy Trial Act has been temporarily waived, and criminal defendants wait up to 6 months for a trial, while businesses and individuals wait up to 2 years before their cases are heard.

We realize that the aging of our federal judiciary has contributed to the growing vacancy crisis. In July alone, 10 new vacancies were created through death, retirement and elevation, and we already know that an additional 11 vacancies will arise before the end of this year solely as a result of planned retirements. According to Department of Justice estimates, 60 new vacancies will be created through attrition each year for the next decade. Obviously, progress toward reducing vacancies requires a confirmation rate that outpaces the attrition rate; at present, it is barely keeping abreast of it.

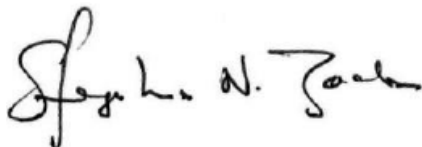
The inescapable conclusion is that despite good intentions and modest progress, the current pace of nominations and confirmations is inadequate to the job. To achieve a significant and lasting reduction in the vacancy rate, both the Administration and the Senate need to engage in a concerted and sustained effort to expedite the process; there is an obvious starting point.

We believe the positions of both Senator Leahy and Senator Grassley with regard to the pending consensus nominees provide useful guidance: Senator Leahy has long urged swift action and up-or-down votes on all consensus nominees, and Senator Grassley, recently attesting to Republican "cooperation and positive action," observed, "We are moving forward on the consensus nominees."

At present there is a backlog of 24 nominees awaiting a floor vote, 20 of whom were reported out of the Senate Judiciary Committee on voice vote with no recorded opposition. We urge you as Majority and Minority Leaders to schedule immediate up-or-down votes on these 20 consensus nominees before the Senate adjourns for the upcoming August recess.

Swift confirmation of these nominees would provide immediate relief to some of the most overburdened courts and would lower the vacancy rate to approximately 8 percent. Long-term permanent progress, however, will require more than this one-time fix. To effect lasting change, we also continue to urge the President and members of the Senate to act with common purpose to fill judicial vacancies promptly throughout this Congress so that the federal courts will not be deprived of the judges they need to do their important work.

Sincerely,

A handwritten signature in black ink that reads "Stephen N. Zack". The signature is written in a cursive, flowing style.

Stephen N. Zack

cc: Honorable Patrick Leahy, Chair, Senate Judiciary Committee
Honorable Charles E. Grassley, Ranking Member, Senate Judiciary Committee