

November 18, 2013

Honorable Members
United States Senate
Washington, D.C. 20510

Re: A Communication from the Chief Legal Officers of the District of Columbia and the States of Connecticut, Delaware, Hawaii, Illinois, Iowa, Maryland, Nevada, New Mexico, New York, Vermont, and Washington Regarding the Importance of Filling Vacancies on the U.S. Court of Appeals for the District of Columbia Circuit

Dear Senators:

We, the undersigned Attorneys General, write to urge you to reject S.699, the “Court Efficiency Act of 2013.”¹ That bill, if enacted, would strip the D.C. Circuit of three critically needed judgeships. Instead, the Senate should act promptly to give an up or down vote on the President’s three currently pending highly qualified nominees for that Court for the vacancies that exist under current law.

President Obama, like every other President before him, has a constitutional obligation to fill judicial vacancies. The D.C. Circuit currently has three vacancies, and the President has nominated highly qualified individuals for those vacancies, including a sitting federal district court judge who was confirmed in 2010 with no opposition from any Senator. President Reagan, President George H.W. Bush, President Clinton, and President George W. Bush all appointed at least three judges to the D.C. Circuit, and that was perfectly appropriate.² The Senate should exercise its advice and consent responsibility by likewise voting on President Obama’s nominees to this Court.

The state Attorney General signatories of the October 29, 2013 letter to you urged passage of S.699 because, according to them, the three seats currently vacant on the D.C. Circuit are unnecessary. This claim is unsupported, as many of us with cases before the Circuit can attest. The D.C. Circuit’s caseload is unique, heavily tilted toward complex administrative law cases. It is not directly comparable to the caseload of other Circuit courts. Indeed, as U.S. Supreme Court Chief Justice John Roberts, a former Judge on the D.C. Circuit, has noted: “[i]t is when you look at the docket that you really see the differences between the D.C. Circuit and the other courts. One-third of the D.C. Circuit appeals are from agency decisions. That figure is less than twenty percent nationwide. About one-quarter of the D.C. Circuit’s cases are other civil cases involving the federal government; nationwide that figure is only five percent. All told, about two-thirds of the cases before the D.C. Circuit involve the federal government in some civil capacity, while that figure is less than twenty-five percent nationwide.”³ More recently, in April 2013, the Chief Justice, in his role as chair of the Judicial Conference of the United States, recommended that “based on our current caseload needs,” the D.C. Circuit should continue to

¹ <http://www.govtrack.us/congress/bills/113/s699>

² http://www.americanprogress.org/wp-content/uploads/2013/07/DCCircuitOpposition_7_11_13.pdf

³ John G. Roberts, Jr., *What Makes the D.C. Circuit Different? A Historical View*, Lecture, 92 Va. L. Rev. 375 (2006).

have 11 judgeships.⁴ Similarly, former Chief Judge Patricia Wald, who served on the D.C. Circuit for 20 years, 5 as Chief Judge, has noted that the Circuit's cases arising from federal agency actions "can require thousands of hours of preparation by the judges, often consuming days of argument, involving hundreds of parties and interveners, and necessitating dozens of briefs and thousands of pages of record – all of which culminates in lengthy, technically intricate legal opinions."⁵ There is no basis to reduce, much less slash, the number of judgeships on this Court.

President Obama has nominated three highly qualified individuals to fill the current vacancies on the D.C. Circuit. We urge the Senate to move forward, to reject S.699, and to provide these qualified public servants with an up or down vote on their nominations to this vital, understaffed court of national importance.

Respectfully,



Irvin B. Nathan
District of Columbia Attorney General

George Jepsen
Connecticut Attorney General

Joseph R. Biden, III
Delaware Attorney General

David M. Louie
Hawaii Attorney General

Lisa Madigan
Illinois Attorney General

Tom Miller
Iowa Attorney General

Douglas F. Gansler
Maryland Attorney General

Catherine Cortez Masto
Nevada Attorney General

Gary K. King
New Mexico Attorney General

Eric T. Schneiderman
New York Attorney General

William H. Sorrell
Vermont Attorney General

Bob Ferguson
Washington Attorney General

⁴ <http://www.leahy.senate.gov/press/senate-votes-to-confirm-kelly-to-eighth-circuit>

⁵ http://articles.washingtonpost.com/2013-02-28/opinions/37350554_1_senior-judges-chief-judge-appeals-court-vacancies