Congress of the United States

Washington, DC 20515

April 30, 2008

The Honorable Patrick J. Leahy
Chairman
Committee on Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Leahy:

As you know, President Bush has submitted four nominees to the vacancies on the U.S. Court of Appeals for the Fourth Circuit, which hears appeals from the states of Virginia, Maryland, West Virginia, North Carolina, and South Carolina. The Senate just announced last week a hearing on the first of these nominees and has neither held nor scheduled an up-or-down vote on the Senate floor for any of them. The Senate's inaction on Fourth Circuit judicial nominations negatively affects the lives of the people of Virginia, Maryland, West Virginia, North Carolina, and South Carolina. As Members of Congress who represent citizens of these states, we believe that urgent action is necessary.

By failing to take action on President Bush's nominations, the Senate has permitted the vacancy rate in the Fourth Circuit to reach an unacceptable 33 percent. Only ten of the authorized 15 judges on the Fourth Circuit are doing the work of administering justice in our home states. As the *Washington Post* states, "No federal appeals court is more in need of help than the U.S. Court of Appeals for the 4th Circuit." *A Court in Need: Senate Should Act on Nominations to the U.S. Court of Appeals for the 4th Circuit*, WASH. POST, Dec. 27, 2007. More recently, the *Washington Post* called on the Senate to "expeditiously process the nominees to the U.S. Court of Appeals for the 4th Circuit." *Judges, and Justice, Delayed*, WASH. POST, Apr. 15, 2008.

The prolonged vacancies on the Fourth Circuit adversely affect the management of the appellate judicial process in our home states. Of the five vacancies on the Fourth Circuit, the nonpartisan Judicial Conference of the United States has deemed three of them "judicial emergencies." The Judicial Conference defines a vacancy as a "judicial emergency" when the amount of filings per judicial panel becomes unmanageable (in excess of 700) or if the vacancy has existed for more than 18 months (with filings above 500). In the case of the Fourth Circuit, the seat based in North Carolina has been vacant for more than 5000 days – the longest unfilled vacancy in the country. The vacancy from Maryland has been unoccupied for more than 2780 days – the third longest unfilled seat in the country. The people served by the Fourth Circuit deserve better.

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The effects of these judicial emergencies are not merely counted in days and numbers, but in the direct ways they affect the people who rely on our federal courts. The vacancies hurt average citizens hoping for courts to resolve their disputes, small businesses trying to get by in our uncertain economy, and crime victims seeking justice. Our constituents, through no fault of their own, suffer from the judicial emergencies as they see their cases delayed because there are not enough judges to handle the caseload on the Fourth Circuit.

The Senate's inaction on Fourth Circuit nomination is particularly egregious given the exceptional individuals President Bush has nominated. First, Chief Judge Robert J. Conrad, who was nominated to fill the vacancy in North Carolina with strong home-state Senator support, ably served his country for 20 years as a federal prosecutor. Since he was confirmed by the Senate by a voice vote in 2005, Chief Judge Conrad has earned a reputation as a highly respected jurist who draws praise from lawyers and fellow judges alike for his intellect, fairness, legal acumen, and judicial temperament.

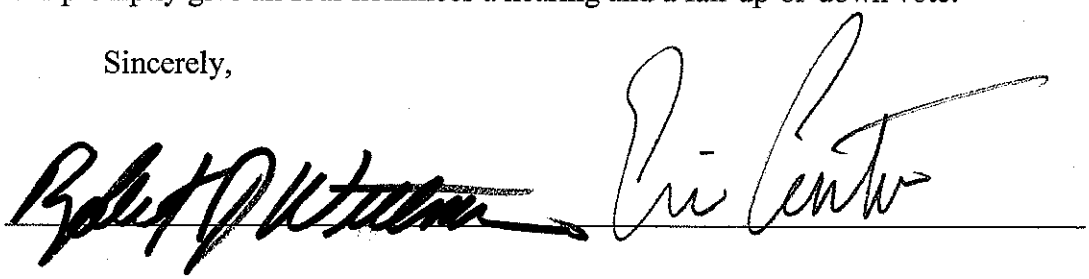
Second, Steve A. Matthews, the President's nominee for the seat based in South Carolina with the support of his home state Senators, has a distinguished record as a practicing attorney in the public and private sectors and impeccable academic and professional credentials. The *Washington Post* agrees that Mr. Matthews "should receive [a] confirmation hearing[] as soon as possible." *A Court in Need: Senate Should Act on Nominations to the U.S. Court of Appeals for the 4th Circuit*, WASH. POST, Dec. 27, 2007

Third, Rod Rosenstein, the nominee for the vacancy seated in Maryland, is a highly accomplished and well-respected U.S. Attorney, who has earned wide bipartisan praise. The *Washington Post* has called him "unquestionably well qualified" and "an excellent and principled lawyer who has all the makings of an excellent and principled judge." *Judges, and Justice, Delayed*, WASH. POST, Apr. 15, 2008.

Finally, Justice G. Steven Agee is an experienced attorney, dedicated public servant, and respected judge, who is highly qualified for the Fourth Circuit seat based in Virginia. Justice Agee enjoys the strong bipartisan home state support of Senators Warner and Webb. While we appreciate the recently noticed hearing for Justice Agee, the other three nominees, whose nominations have been pending far longer than Justice Agee's, also deserve prompt hearings and ultimate confirmation.

At a time when excessive vacancies may be taking a serious toll on the administration of justice in the Fourth Circuit, the Senate's refusal to take action on these four outstanding nominees is inexcusable. The Senate should fulfill its constitutional role and promptly give all four nominees a hearing and a fair up-or-down vote.

Sincerely,



Robin Hayes

Shelley Moore Capito

Joe Wilson

Thelma Drake

Howard Coble

Walter B. Jones

Bob Goodlatte

Virginia Foxx

Sue Myrick

Patrick McHenry

Tom Davis

Bob Inglis

Brad Ellsworth

Virgil Goode

Wayne T. Gilchrest

Cc: The Honorable Arlen Specter
The Honorable Harry Reid
The Honorable Mitch McConnell