Law professors want hearing, vote on Garland

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Law professors want hearing, vote on Garland

The following open letter to
Sens. Deb Fischer and Ben Sasse
was signed by 25 professors at the
University of Nebraska College of
Law.

Dear Senator Fischer and
Senatør Sasse,

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

Judge Garland is exception­
ally well qualified to serve on
the U.S. Supreme Court. Lawyers,
scholars, and fellow judges uni­
formly recognize Judge Garland
as an extraordinarily intelligent,
hardworking, fair, and meticu­
lous 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 bet­
ter think about your position."

Relatedly, Judge Garland has
deserved a reputation for be­
ing 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 Republi­
cans 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 cur­
rent composition, it is very likely
that the Justices would split 4-4
in some cases, leaving impor­
tant 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 encourag­
ing future Senate majorities to
obstruct nominations made by
another party's President. No
limiting principle restricts this
practice to vacancies occur­
ing 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 not 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 infect­
ing the Supreme Court and the
entire federal judiciary with the
unfortunate toxic political cli­
mates 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; Richard Blankley,
Assistant Professor of Law; Brian
Bornstein, Professor of Psychology and Cour­
tesy Professor of Law; Robert Frank, Assoc­
ted Professor of Psychology and
Professor of Law; Robert C.
Dinccolo, Margaret R. Larson Professor
of Intellectual Property Law; Alan H.
Frank, Professor of Law Emeritus; Ste­
phen S. Geady, 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; Stephanie Pearson, Professor
of Law Library & Reference Librarian;
Ross Pesek, Adjunct Law Professor;
Kevin Rosas, M. S. Howe, Adjunct
Professor of Law; Robert Schopp, Robert J. Kutak Pro­
tessor of Law; Anthony Schulz, Associate
Professor of Law; Anna W. Shavers,
Cline Williams Professor of Citizenship
Law; Brett C. Stols, Assistant Clinical
Professor of Law & Cline Williams Direc­
or of the Entrepreneurial Legal Clinic;
Ryan Sullivan, Clinical Assistant Pro­
nominee of Law; Richard L. Wiener, Charles
Bessey Professor of Psychology &
Professor of Law; Steven L.
Willborn, Judge Harry A. Spencer Pro­
nominee of Law; Sandra A. Pollin,
Robert B. Daugherty Professor of Law.