October 13, 2011

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

Dear Republican Leader McConnell:

I am writing on behalf of the American Bar Association to commend you on the confirmation of ten judges during the past two weeks. Your agreement with Senator Reid allowed a higher number of judges to be confirmed than in any prior month this Congress. Moreover, your scheduling of the first six nomination votes on the same day was a welcome departure from the general pattern observed this Congress of considering only one or two nominees at a time. We strongly encourage you to continue to schedule same-day votes on multiple nominees throughout the rest of the session. Nothing less than a sustained, concerted, and cooperative effort will be sufficient to make discernible progress in reducing the longstanding and dangerously high vacancy rate on the federal courts. And, as important, nothing less will assure litigants -- businesses and aggrieved individuals alike -- that our federal courts have sufficient judges to hear their cases in a timely and thorough fashion.

Filling existing vacancies on the federal bench has become a matter of increasing urgency. Across the nation, federal courts with high caseloads and longstanding or multiple vacancies have no choice but to delay or temporarily suspend their civil dockets due to Speedy Trial Act requirements. This deprives our federal courts of the capacity to deliver timely justice in civil matters and has real consequences for the financial well-being of businesses and for individual litigants whose lives are put on hold pending resolution of their disputes.

The effect of the recent confirmations on the overall vacancy rate amply attests to the need for continued bipartisan action to achieve progress. On September 7, the day after the Senate’s first confirmation vote since its return from the August recess, there were 91 vacancies on the federal bench. Despite the recent confirmation of ten judges, there are 92 vacancies on the bench today because of recent retirements and a death. Regrettably, this outcome is not an aberration or product of selective statistical reporting; even though the Senate has confirmed from one to seven judges every month this Congress, the
vacancy rate continues to hover around 10 percent -- right where it has been for the past 24 months.

However, if the Senate were to confirm by the end of this month the 29 nominees currently pending on the floor who were reported from the Judiciary Committee by bipartisan voice vote, the vacancy rate would drop to approximately seven percent, absent unanticipated events. That would be a real accomplishment.

We urge you to build on your recent success by continuing to reach agreements to schedule multiple nominees for votes on the same day at regular intervals throughout the remainder of this session. Given the long-term backlogs, it is important that confirmations outpace attrition and that the Senate has the opportunity to achieve significant success in reducing the vacancy rate and providing the federal judiciary with the judges it needs to evaluate each case on its merits and dispense timely justice to all.

Sincerely,

Wm. T. (Bill) Robinson III

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