

November 20, 2020

United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Graham, Ranking Member Feinstein, and Committee Members:

The National Council of Jewish Women (NCJW) writes to express its strong opposition to the nomination of Thomas Kirsch to the United States Court of Appeals for the Seventh Circuit. Kirsch is the fifth nominee — all of whom are white — named by President Trump to the Seventh Circuit, making it the only all-white federal appeals court in the nation. Kirsch was also nominated to fill Judge Amy Coney Barrett's seat — a seat Sen. Mitch McConnell held open during Obama's presidency and refused to fill — before Judge Barrett had been confirmed to the US Supreme Court. The transparent rush to fill this seat in the lame duck period, in conjunction with the lack of diversity on the Seventh Circuit, makes this nomination deplorable.

Judges who serve lifetime appointments to our federal courts must reflect the diversity of our nation. It is unacceptable that the Seventh Circuit does not have a single non-white judge, yet people of color comprise 30 percent of the population within the Circuit. Of all the judges nominated by President Trump and confirmed by the Republican Senate, nearly 90 percent have been white and over 75 percent have been men. Only three percent have been Black. This clear effort to de-diversify the court system will have dire consequences to communities of color, which studies show are disproportionately represented in our nation's jails and prisons. It is the responsibility of the Senate to ensure that our courts are representative of the people they serve.

Further, it is unprecedented to confirm judges during a lame duck period. Since the 1984 presidential election — over the last nine presidential elections — NCJW is not aware of any court of appeals judges who has been confirmed after Election Day. In 2016, the Senate did not confirm any district court judges after July and did not confirm any appeals court judges after January — a full year before President Trump was inaugurated. Breaking from this tradition is extreme and openly partisan. Given that an election has occurred, the President-elect should nominate and the next Senate should fill all judicial vacancies.

What's more disgraceful is that the Senate has moved full speed ahead on judges instead of addressing the immediate needs of this country due to COVID-19. The House passed a robust COVID relief measure in March, which the Senate has refused to consider. It is disrespectful to the more than 250,000 Americans who have died and to the more than 20 million citizens who have lost their jobs to prioritize the confirmation of a judge over COVID-19 assistance.

The obligation to ensure and protect a fair and independent judiciary is on all of us. A famous Rabbinic scholar suggested, "The commandment to 'not pervert justice' (Deuteronomy 16:19) is not only addressed to the judges but to all those who by failing to appoint the proper judiciary contribute to unfair judgments being handed down by unauthorized sources." By perpetuating the lack of diversity on the courts, the Senate is not upholding its commitment to justice for all.

Without hesitation, NCJW urges you to oppose Thomas Kirsch for a lifetime appointment to the Court of Appeals for the Seventh Circuit. Not only is his nomination disrespectful to our nation's diversity, but he was rushed through in a lame-duck period after an election and amid a global pandemic. The Senate needs to examine their misguided priorities and consider the will of the American people.

Sincerely,



Jody Rabhan
Chief Policy Officer
National Council of Jewish Women

