

March 21, 2016

Hon. Chuck Grassley  
United States Senate Chair  
Committee on the Judiciary  
135 Hart Senate Office Building  
Washington, D.C. 20510

Hon. Mitch McConnell  
United States Senate Majority Leader  
317 Russell Senate Office Building  
Washington, D.C. 20510

**Re: March 9 Statement of Corporate Lawyers, General Counsels and Other Legal Practitioners Regarding U.S. Supreme Court Vacancy**

Dear Judiciary Committee Chairman Chuck Grassley and Majority Leader Mitch McConnell:

The undersigned Pennsylvania lawyers and business executives write to join the 200 lawyers and legal practitioners around the country who expressed their concern in the attached letter regarding the current vacancy on the United States Supreme Court. Now that the President has exercised his Constitutional responsibility to nominate a successor to the late Associate Justice Antonin Scalia, we encourage the Senate to fulfill its constitutional role and grant the nominee fair consideration and a full Senate floor vote.

Respectfully,

The Undersigned<sup>1</sup>

Alice G. Abreu  
James E. Beasley Professor of Law  
Temple University Beasley School of Law

Matthew Adler

Mark F. Anderson  
Associate Professor of Law  
Temple University Beasley School of Law

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<sup>1</sup> Firm and corporate names are provided for identification purposes only and do not indicate support or endorsement by the firm or corporation.

Marina Angel  
Professor of Law  
Temple University School of Law

Nancy Baron-Baer  
Regional Director  
Anti-Defamation League

Robert J. Bartow

Robert Blacksberg

Ronnie L. Bloom

Keelin F. Boyle

David A. Bralow

Karen Buck  
Executive Director  
SeniorLAW Center

Scott Burris  
Director, Center for Health Law, Policy and  
Practice  
Beasley School of Law, Temple University

Bernard Chanin

Thomas M. Chapin, CFA  
Mill Creek Capital Advisors, LLC

Nicholas E. Chimicles

Andrew A. Chirls  
Past Chancellor, Philadelphia Bar Association

Jennifer R. Clarke  
Executive Director  
Public Interest Law Center

Abbi L. Cohen

Marsha I. Cohen, Esq.  
Executive Director

Homeless Advocacy Project

Erin Colleran

Hope Comisky

Margaret deGuzman  
Professor, Temple University Beasley School  
of Law

Therese Dennis  
Steve Harvey Law LLC

Susan L. DeJarnatt  
Professor of Law  
Temple University Beasley School of Law

Francis Devine

Catherine M. Dunn  
Director of the Law Library  
& Associate Professor of Law  
Temple University Beasley School of Law

Alexandra Edsall

Dean Joanne A. Epps  
Temple University Beasley School of Law

Brian T. Feeney

H. Robert Fiebach  
Cozen O'Connor  
Past President of the Pennsylvania Bar  
Association

Audrey B. Fingerhood  
Law Offices of Audrey B. Fingerhood

Brian P. Flaherty

Hope S. Freiwald

Ellen S. Friedell

Jill Friedman  
Associate Dean for Pro Bono and Public  
Interest  
Rutgers Law School

Lloyd Freeman

Ronnie Fuchs

Rachel Gallegos  
Steve Harvey Law LLC

Amy Ginensky

Henry Gladstone

Matthew A. Glazer  
Cozen & O'Connor

Theresa Glennon  
Professor of Law  
James E. Beasley School of Law

Steven A. Goldfield

Gerald Gornish

M. Duncan Grant

Craig Green

Kaitlin Gurne

Nina M. Gussack

F. John Hagele

Stephen G. Harvey  
Steve Harvey Law LLC

Melissa Hatch

Geoffrey Hillsberg, Law Office of Geoffrey

Hillsberg

Michael J. Hynes  
Hynes Keller & Hernandez, LLC

Sara Jacobson  
Director of Trial Advocacy Programs and  
Associate Professor  
Temple University, Beasley School of Law

Jill Jenkins

Ernest E. Jones, Esquire  
EJones Consulting, LLC

Donald K. Joseph  
Visiting Professor Retired  
Rutgers Law School

David Kairys  
Professor of Law  
Temple University, Beasley Law School

Jennifer J. Lee  
Clinical Assistant Professor of Law  
Temple University Beasley School of Law

Andrew Palsky

Christina Palsky

Linda Palsky

Andrew Kantra

Sarah Katz  
Assistant Clinical Professor of Law  
Temple University Beasley School of Law

Paul Kennedy

Deborah Gordon Klehr

Lea D. Knight  
Nicholas Kouletsis

Deborah Gross Kurtz

Erin E. Lamb  
Rawle & Henderson LLP  
Chair, Young Lawyers' Division, Philadelphia  
Bar Association

Susan Lessack

Jan Levine

Laura E. Little  
Charles Klein Professor of Law and  
Government and Senior Advisor to the Dean  
Temple University's Beasley School  
of Law

Kassem Lucas

Andrew Margolis  
A Margolis Realty Co.

Charles Marion

Steve Masters, Esq  
JustLaws PLLC

Michael McKeever

Ellen Merriwether, individually and on behalf  
of Cafferty, Clobes, Merriwether and Sprengel  
LLP

Adam Michaels

Carlos Montoya  
Philadelphia 76ers

Kristen E. Murray  
Professor of Law  
Temple University, Beasley School of Law

Terry Mutchler

Arthur Newbold  
Dechert LLP

Seth Oltman

Lauren M. Ouziel  
Assistant Professor  
Temple University Beasley School of Law

Curtis Pontz

Daniel Promislo

Mark Rahdert  
Professor of Law  
Temple University Beasley School of Law

Jaya Ramji-Nogales  
I. Herman Stern Professor of Law  
Co-Director, Institute for International Law  
and Public Policy Temple University, Beasley  
School of Law

Ashley Reibach

Henry J. Richardson III  
Professor of Law  
Temple University, Beasley School of Law

Hershel Richman

E. Gerald Riesenbach

Cozen O'Connor

Noah S. Robbins

Andrew Rogoff

Paul R. Rosen

Steve Rothberg  
Eric J. Rothschild

Louis S. Rulli  
Practice Professor of Law, and  
Director of Clinical Programs  
University of Pennsylvania Law School

Paul Saint-Antoine

Carl W. Schneider

Colleen F. Shanahan  
Associate Clinical Professor of Law  
Director, Justice Lab at the Sheller Center for  
Social Justice Temple University Beasley  
School of Law

Barbara Sicalides

David A. Sonenshein

Kathryn M. Stanchi  
Professor of Law  
Temple University

Hyung Steele

Kathleen Stephenson

M. Kelly Tillery

Marc Topaz

Jodi Torres

Stella Tsai



Kelly Tucker  
Cafferty Clobes Meriwether & Sprengel LLP

Karen J. Vaughn

Judy Yun

Eric Weitz

Phillip E. Wilson, Jr.

Megan Willoughby  
Attorney  
U.S. Dept. of Education

Flora Barth Wolf

Thomas Zemaitis

M. Michael Zuckerman JD, MBA, AC

March 9, 2016

President Barack Obama  
The White House  
1600 Pennsylvania Avenue NW  
Washington, D.C. 20500

Hon. Chuck Grassley  
United States Senate  
Chair, Committee on the Judiciary  
135 Hart Senate Office Building  
Washington, D.C. 20510

Hon. Mitch McConnell  
United States Senate  
Majority Leader  
317 Russell Senate Office Building  
Washington, D.C. 20510

**Re: Statement of Corporate Lawyers, General Counsels and Other Legal Practitioners  
Regarding U.S. Supreme Court Vacancy**

Dear President Barack Obama, Judiciary Committee Chairman Chuck Grassley, and Majority Leader Mitch McConnell:

We write to express concern within the corporate legal and business community regarding the current vacancy on the United States Supreme Court. The U.S. Supreme Court stands at the helm of one of our three branches of government. Every term, critical cases come before the Court concerning issues of great public importance, including cases alleging violations of the Constitution or federal law. The Supreme Court also considers cases implicating the interests of major corporations, private-sector organizations and businesses across the country. The impact of a stalemate at the Supreme Court may have a profound effect on our economy, creating uncertainty for the financial industry, major corporate employers, as well as small businesses.

When a vacancy on the Court arises, the Constitution is clear. Article II, Section 2 states that the President “shall nominate, and by and with the advice and consent of the Senate, shall appoint. . . judges of the Supreme Court.” U.S. Constitution, Article II, Section 2, Clause 2. Though the Senate may ultimately choose not to consent to the President’s nominee, it would be unprecedented for the Senate to refuse to perform its “advice and consent” role in this context. Not only does the Constitution direct the sitting President to nominate an individual to fill a vacancy on the Court no matter whether it is an election year, nearly one third of all Presidents have nominated a justice in an election year who was eventually confirmed.

Indeed, there is historical precedent for confirming a nominee in an election year. Six Justices have been confirmed in presidential election years since 1900, including Justices

Kennedy (1988), Murphy (1940), Cardozo (1932), Clarke (1916), Brandeis (1916), and Pitney (1912).

Each Term, approximately 7,000-8,000 new cases are filed with the Court. On average, the Court will grant plenary review in about 80 of those cases. An additional 100 cases will be disposed of without such review. In light of the substantial activity that comes before the Court each term, it is imperative that the Court be able to resolve conflicting decisions among the federal circuits and establish uniform interpretation of law to guide the work of lower courts across the country. Allowing the Court to proceed for two terms with an open seat would be unprecedented and have damaging collateral consequences that would be felt across our entire federal judicial system. The Court would be unable to act if it were divided in any case without a majority. Such an untoward situation would also negatively impact the business environment and the economy of the country. The corporate legal community and business interests represented herein seek the assurances that come with a fully staffed nine-member Court.<sup>1</sup>

We encourage the President to exercise his constitutional responsibility to nominate a successor to the late Associate Justice Antonin Scalia. We also encourage the Senate to fulfill its constitutional role and grant that nominee fair consideration and a full Senate floor vote.

Respectfully,

The Undersigned<sup>2</sup>

Alan K. Zeigler	Birmingham	AL	Bradley Arant Boult Cummings LLP
Angela Holt	Huntsville	AL	Bradley Arant Boult Cummings LLP
Anne Knox Averitt	Birmingham	AL	Bradley Arant Boult Cummings LLP
Anne Marie Seibel	Birmingham	AL	
Daniel F. Murphy	Birmingham	AL	Bradley Arant Boult Cummings LLP
Dawn Helms Sharff	Birmingham	AL	
Denetra Hartzog	Birmingham	AL	
Dorothy D. Pak	Birmingham	AL	
Dylan Black	Birmingham	AL	
E. Cutter Hughes	Huntsville	AL	Bradley Arant Boult Cummings LLP
Emily S. Craft	Huntsville	AL	
Gary L. Howard	Birmingham	AL	Bradley Arant Boult Cummings LLP
J.S. "Chris" Christie, Jr.	Birmingham	AL	
Jessica Givens	Birmingham	AL	Bradley Arant Boult Cummings LLP
Kathleen Manson	Huntsville	AL	
Kay K. Bains	Birmingham	AL	

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<sup>1</sup> The number of justices has now stood at nine for nearly 150 years. Federal law expressly provides that the Court "shall consist" of nine members. Congress settled on a nine member Court in 1869 after considerable deliberation and debate and has stood by its judgment for nearly 150 years.

<sup>2</sup> Firm and corporate names are provided for identification purposes only and do not indicate support or endorsement by the firm or corporation.

Keith Covington	Vestavia Hills	AL	
Laura P. Washburn	Birmingham	AL	
Margaret Darlene Ehinger	Huntsville	AL	
Patrick H. Graves, Jr.	Huntsville	AL	
Paul S. Ware	Birmingham	AL	
Polly H. Robb	Huntsville	AL	
Stuart J. Frentz	Birmingham	AL	Bradley Arant Boult Cummings LLP
Susan Doss	Birmingham	AL	
Tammy Baker	Birmingham	AL	Jackson Lewis P.C.
Virginia C. Patterson	Birmingham	AL	Bradley Arant Boult Cummings LLP
Barry Mitchell	Phoenix	AZ	
Daniel C. Barr	Phoenix	AZ	Perkins Coie LLP
David Rosenbaum	Phoenix	AZ	Osborn Maledon, PA
Evan Schlack	Scottsdale	AZ	Martin & Bonnett, PLLC
Judith K. Weiss	Phoenix	AZ	
Karin Aldama	Phoenix	AZ	Perkins Coie LLP
Katherine May	Phoenix	AZ	Perkins Coie LLP
Paul F. Eckstein	Phoenix	AZ	Perkins Coie LLP
Sarah Gonski	Phoenix	AZ	
Priya Sanger	San Francisco	CA	Google Inc.
Andrew Hinton	Mountain View	CA	Google Inc.
Aaron Jacoby	Beverly Hills	CA	Arent Fox LLP
Bradley S. Phillips	Los Angeles	CA	Munger, Tolles & Olson LLP
Brian K. Landsberg	Sacramento	CA	
Collin Seals	Glendale	CA	Arent Fox LLP
Diane B. Roldán	Los Angeles	CA	Arent Fox LLP
Donna Mo	Los Angeles	CA	
Douglas E. Hewlett, Jr.	Los Angeles	CA	
Dr. Sandra Thompson	Irvine	CA	Slater Hersey & Lieberman, LLP
Erin Muellenberg	Yorba Linda	CA	
Frank Petrilli	Oakland	CA	Arent Fox LLP
Ian Gore	Los Angeles	CA	
Jack W. Londen	San Francisco	CA	Morrison & Foerster LLP
Jacob R. Sorensen	San Francisco	CA	Pillsbury Winthrop Shaw Pittman LLP
Khaldoun Baghdadi	San Francisco	CA	
Kim Boras	Los Angeles	CA	
Larry Tabb	Los Angeles	CA	Musick Peeler & Garrett
Loren Kieve	San Francisco	CA	Kieve Law Offices
Louis R. Cohen	Newport Beach	CA	Arent Fox LLP
Mark Field	Los Angeles	CA	
Michael Traynor	Berkeley	CA	
Peter Graham Cohn	Petaluma	CA	
Sharon D. Mayo	Mill Valley	CA	Arnold & Porter LLP
Susan J. Field	Los Angeles	CA	Musick Peeler & Garrett
Thomas V. Loran III	San Francisco	CA	

Vincent A. Ruiz	San Francisco	CA	Ruiz Law Group
Jeff Leung	San Francisco	CA	
Laura Smolowe	Los Angeles	CA	
David H. Miller, Esq.	Denver	CO	Sawaya & Miller Law Firm
Marjorie Sussman	Avon	CT	Allied World Assurance Company
Owen M. Fiss	Hamden	CT	Yale University
Jane Sherburne	Washington	DC	Sherburne PLLC
Alex Young K. Oh	Washington	DC	Paul, Weiss, Rifkind, Wharton & Garrison LLP
Andrew Solinger	Washington	DC	
Andrew W. Kentz	Washington	DC	Picard Kentz & Rowe LLP
B. Donovan Picard	Washington	DC	Picard Kentz & Rowe LLP
Barbara S. Wahl	Washington	DC	Arent Fox, LLP
Brian D. Schneider	Washington	DC	Arent Fox LLP
Brian Stevens	Washington	DC	Arent Fox LLP
Carol Connor Cohen	Washington	DC	Arent Fox LLP
David M. Dorsen	Washington	DC	Sedgwick, LLP
David T. Beddow	Washington	DC	O'Melveny & Myers LLC
Eleanor H. Smith	Washington	DC	
Erin Atkins	Washington	DC	
Gerald P. Norton	Washington	DC	
Hillary Stemple	Washington	DC	Arent Fox LLP
James N. Bierman	Washington	DC	Foley & Lardner LLP
James P. Joseph	Washington	DC	Arnold & Porter LLP
Kelli Scheid	Washington	DC	Arent Fox LLP
Lianne Childress	Washington	DC	
Linda T. Makings, Esq.	Washington	DC	Arent Fox LLP
Lynne Bernabei	Washington	DC	
Marc E. Rivera	Washington	DC	Arent Fox LLP
Marc Fleischaker	Washington	DC	Arent Fox, LLP
Mark Brent Joachim	Washington	DC	Arent Fox LLP
Michael H. Chanin	Washington	DC	Bryan Cave LLP
Naima Walker Fierce	Washington	DC	Fierce & Associates
Rachel Richardson	Washington	DC	Arent Fox LLP
Ralph A. Taylor	Washington	DC	
Reginald Turner	Washington	DC	
Ria M. Williams, Esq.	Washington	DC	Arent Fox LLP
Richard T. Seymour	Washington	DC	Law Office of Richard T. Seymour, P.L.L.C.
Sarah Cohn	Washington	DC	
Stephen J. Pollak	Washington	DC	
Tammy Mitchell	Washington	DC	
Doneene Damon	Wilmington	DE	
Edward Soto	Miami	FL	
Charles T. Lester, Jr.	Atlanta	GA	
Harold E. Franklin, Jr.	Atlanta	GA	
R. William Ide	Atlanta	GA	

Devon Bruce	Chicago	IL	
Jack Block	Chicago	IL	
John W. Borkowski	Chicago	IL	Husch Blackwell
Lowell Sachnoff	Chicago	IL	Reed Smith LLP
Terrence J. Dee	Chicago	IL	McDermott Will & Emery LLC
Edward A. Sullivan, III	South Bend	IN	Faegre Baker Daniels
Brent Barriere	New Orleans	LA	Fishman Haygood
Judy Y. Barrasso	New Orleans	LA	Barrasso Usdin Kupperman Freeman & Sarver
Kim M. Boyle	New Orleans	LA	
Michelle D. Craig	New Orleans	LA	Transcendent Legal
Stephen H. Kupperman	New Orleans	LA	Barrasso Usdin Kupperman Freeman & Sarver
Steven Usdin	New Orleans	LA	
Terrel J. Broussard	New Orleans	LA	
Neil V. McKittrick	Boston	MA	
Ashley Briggs	Silver Spring	MD	Arent Fox LLP
Benjamin B. Klubes	Bethesda	MD	
Carolyn Osolinik	Bethesda	MD	Correia & Osolinik, Washington, DC
David H. Dickieson	Bethesda	MD	Schertler & Onorato, LLP
Edward Correia	Bethesda	MD	Correia & Osolinik, Washington, DC
Jeremy B. Fox	Potomac	MD	
Karolyn Blumer Lewandowski	Bethesda	MD	Arent Fox LLP
Kay Georgi	Rockville	MD	Arent Fox LLP
Laura Wilkinson	Potomac	MD	
Nicholas T. Christakos	Rockville	MD	
Mary Clay Morgan	Jackson	MI	
Portia L. Roberson	Detroit	MI	City of Detroit
Reginald Turner	Detroit	MI	Clark Hill PLC
Richard Pins	Minneapolis	MI	Stinson Leonard Street, LLP
Robert McDuff	Jackson	MI	McDuff & Byrd
W. Wayne Drinkwater	Ridgeland	MI	
Wendy Mullins	Jackson	MI	
Kevin Armstrong	Minneapolis	MN	DST Market Services, LLC.
Meghan Worthington-Largent	St. Louis	MO	Arent Fox LLP
Peter D. Van Cleve	St. Louis	MO	
Nancy Campbell	Jackson	MS	Baptist Premier Medical Clinic
Roy D. Campbell, III	Jackson	MS	Bradley Arant Boult Cummings LLP
			Retired Vice Chairman, Chief Legal Officer and Secretary, Colgate-Palmolive Company
Andrew D. Hendry	Pinehurst	NC	
April Miller Boise	Charlotte	NC	
Dana C. Lumsden	Charlotte	NC	Bradley Arant Boult Cummings LLP
Marion Cowell	Charlotte	NC	
Naho Kobayashi	Charlotte	NC	
Robert E. Harrington	Charlotte	NC	
Sabrina C. Beavens	Portsmouth	NH	Iurillo Law Group, P.A.
David L. Harris	South Orange	NJ	

Laura A. Kaster	Princeton	NJ	
Lawrence M. Lawson	Freehold	NJ	McElroy Deutsch Mulvaney & Carpenter
Matthew Trokenheim	South Orange	NJ	Arent Fox LLP
Rachel Witriol	Maplewood	NJ	
Hank Bjorklund	Manhasset	NY	Retired, Chase Bank, NA
A. Mark Getachew	New York	NY	Willkie Farr & Gallagher LLP
Adam Klein	New York	NY	Outten & Golden LLP
Allen G. Reiter	Larchmont	NY	Arent Fox LLP
Asra Syed	Brooklyn	NY	Arent Fox LLP
Audrey Yayon-Dauvet	New York	NY	
Bettina B. Plevan	New York	NY	Proskauer Rose LLP
Bruce A. Gutenplan	New York	NY	Paul, Weiss, Rifkind, Wharton & Garrison LLP
Carl Reisner	New York	NY	Paul, Weiss, Rifkind, Wharton & Garrison LLP
Christine Berry	New York	NY	Berry Campbell
Christopher Boehning	New York	NY	Paul, Weiss, Rifkind, Wharton & Garrison LLP
Claudine Meredith-Goujon	New York	NY	
Conrad K. Harper	New York	NY	
Daniel F. Kolb	New York	NY	
David A. Crichlow	New York	NY	
David T. Washburn	New York	NY	Paul, Weiss, Rifkind, Wharton & Garrison LLP
David W. Brown	New York	NY	Paul, Weiss, Rifkind, Wharton & Garrison LLP
Edward Labaton	New York	NY	Labaton Sucharow LLP
Elizabeth H. Cohen	New York	NY	Arent Fox LLP
Eric Goodison	New York	NY	Paul, Weiss, Rifkind, Wharton & Garrison LLP
Evelyne Kay Carson	New York	NY	Arent Fox LLP
Gerard E. Harper	New York	NY	
Jay Greenfield	New York	NY	Paul, Weiss, Rifkind, Wharton & Garrison LLP
Jennifer Scullion	New York	NY	
John C. Ericson	New York	NY	
John H. Doyle, III	Bridgehampton	NY	
John Kiernan	New York	NY	
John Nonna	New York	NY	Squire Patton Boggs
Lisa Mazure	Armonk	NY	
Louise Firestone	New York	NY	
Marc Gary	New York	NY	
Marjorie Press Lindblom	New York	NY	Kirkland & Ellis LLP
Marsha E. Simms	New York	NY	
Martha Campbell	New York	NY	Berry Campbell Gallery
Martin Flumenbaum	New York	NY	Paul, Weiss, Rifkind, Wharton & Garrison LLP
Mary Shepard Hughes	Huntsville	NY	
Michelle Marsh	New York	NY	
Monica K. Thurmond	New York	NY	Paul, Weiss, Rifkind, Wharton & Garrison LLP
Moses Silverman	New York	NY	Paul, Weiss, Rifkind, Wharton & Garrison LLP
Neale M. Albert	New York	NY	
Nicholas Groombridge	New York	NY	Paul, Weiss, Rifkind, Wharton & Garrison LLP

Paulette M. Caldwell	New York	NY	New York University School of Law
Richard A. Rosen	New York	NY	Paul, Weiss, Rifkind, Wharton & Garrison LLP
Richard Krainin	New York	NY	Arent Fox LLP
Richard Sussman	New York	NY	
Robert A. Atkins	New York	NY	Paul, Weiss, Rifkind, Wharton & Garrison LLP
Robert C. Fleder	New York	NY	Paul, Weiss, Rifkind, Wharton & Garrison LLP
Robert L. Laufer	New York	NY	Paul, Weiss, Rifkind, Wharton & Garrison LLP
Rossie E. Turman, III	New York	NY	
Roswell B. Perkins	New York	NY	
Salvatore Gogliormella	New York	NY	Paul, Weiss, Rifkind, Wharton & Garrison LLP
Sanford ("Sandy") Litvack	New York	NY	Hogan Lovells LLC
Sidney S. Rosdeitcher	New York	NY	
Stanley J. Brown	New York	NY	
Stuart Robinowitz	New York	NY	Paul Weiss Rifkind Wharton & Garrison LLP
Todd R. Chandler	New York	NY	
Victoria B. Bjorklund	New York	NY	Retired, Simpson Thacher & Bartlett LLP
David Smith	Philadelphia	PA	Schnader Harrison Segal & Lewis LLP
Michael Lehr	Philadelphia	PA	
Bob Hannon	Nashville	TN	
Chris Bowles	Nashville	TN	
Christopher E. Thorsen	Nashville	TN	Bradley Arant Boult Cummings LLP
David K. Taylor	Nashville	TN	Bradley Arant Boult Cummings LLP
E. Berry Holt	Nashville	TN	Bradley Arant Boult Cummings LLP
Heather Wright	Nashville	TN	
Daniella D. Landers	Houston	TX	Katten Muchin Rosenman LLP
Warren Seay, Jr.	DeSoto	TX	Arent Fox LLP
Alison Andersen	Alexandria	VA	
Donald B. Mitchell, Jr.	Arlington	VA	
Eva Pulliam	Springfield	VA	
G. Allen Dale	McLean	VA	Law Offices of G. Allen Dale PLLC
Justine K. Mitchell	Ashburn	VA	Arent Fox LLP
Siahn Rein	Alexandria	VA	
Stephen Rosenblatt	Fairfax	VA	Sheet Metal Workers' National Pension Fund
Greg Landis	Seattle	WA	
Michael Licata	Seattle	WA	Savitt, Bruce, & Willey LLP
Robert S. Mucklestone	Seattle	WA	
Brian Butler	Madison	WI	Stafford Rosenbaum LLP
David G. Walsh	Madison	WI	
Franklyn Gimbel	Milwaukee	WI	Gimbel, Reilly, Guerin & Brown
Harvey L. Temkin	Verona	WI	Reinhart Law Firm
John Skilton	Madison	WI	
Randall Crocker	Milwaukee	WI	
Timothy Burns	Madison	WI	