

United States Senate

WASHINGTON, DC 20510

March 8, 2019

The Honorable Lindsey Graham
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Graham,

We understand there will be a hearing on March 13th to consider the nomination of Kenneth Lee to the Ninth Circuit. As you know, neither of us have returned our blue slips for Mr. Lee. Mr. Lee has *repeatedly* failed to turn over to our in-state judicial nominating commissions, and now to the Judiciary Committee, writings that have been requested. In these writings, Mr. Lee takes a number of controversial positions on issues involving race, civil rights, and voting rights. We ask that you reconsider moving forward with this hearing in light of Mr. Lee's disregard for the Senate vetting process and his failure to turn over requested materials.

Specifically, Mr. Lee was first asked to produce all of his writings over 18 months ago, in August 2017, 14 months before he was nominated. At that time, Mr. Lee provided only 11 publications dating back to 2009. Yet, Committee staff and the press quickly identified that this production was incomplete.

On June 20th, 2018 — almost a year after he was first asked to turn over his publications — Mr. Lee supplemented his initial production with only four more writings. Notably, however, Mr. Lee once again failed to provide *dozens of articles*.

On February 1st, 2019 — nearly three months after President Trump announced his intent to nominate Mr. Lee, and a year and a half after the initial request — the Department of Justice submitted Mr. Lee's Senate Judiciary Questionnaire, which requires nominees to provide all materials that the nominee has published, including "books, articles, reports, letters to the editor, editorial pieces, or other published material that [the nominee has] written or edited, including material published only on the Internet."

In response, Mr. Lee provided 47 articles, *32 of which had not been provided* to one of our in-state nominating commissions. He also signed an

affidavit, which was subsequently notarized, stating that “the information provided” to the Committee was “to the best of [his] knowledge, true and accurate.” However, over the course of the next month, an additional 45 articles that were not provided have been identified on *five separate occasions*:

- **February 25th, 2019**: Mr. Lee first supplemented his Questionnaire, a year and a half after the original request, with **27** articles not previously provided.
- **March 1st, 2019**: After Committee staff identified additional missing items, Mr. Lee provided a second supplement of **four** articles.
- **March 2nd, 2019**: Again after Democratic staff identified additional missing items, Mr. Lee provided a third supplement that included **two** articles.
- **March 4th, 2019**: For a third time after Democratic staff identified missing items, Mr. Lee provided a fourth supplement that included **one** article.
- **March 6th, 2019**: Mr. Lee provided a fifth supplement that included **seven** more articles.

In fact, in the last month, Mr. Lee has submitted to the Committee *more than 75 articles* that he failed to submit to our in-state nominating commissions. What is most telling is that many of these supplemental writings were from the *exact same date and same publication* as articles that were produced in Mr. Lee’s original Questionnaire. It is simply not the case that the publication was unidentifiable or that these are negligible omissions. Mr. Lee’s repeated failure to provide responsive materials to this Committee is a breach of the Committee’s standards and processes — it is not a partisan issue.

A nominee for a lifetime appointment to the federal bench must be forthcoming and demonstrate respect for the prerogatives of the United States. It is clear that Mr. Lee’s production of materials to the Committee has not been “true and accurate.”

Finally, Mr. Chairman, we would like to point out that we attempted to work with the White House to identify strong Republican candidates for the Ninth Circuit — who, as you said, “would not be our choice” but whom we could support. In fact, we submitted two Republican candidates — one who came recommended by President Bush’s Secretary of State George Shultz. We also

agreed to support several candidates who the White House identified as its top choices for the Ninth Circuit.

Yet, despite our willingness to compromise and work with the Trump Administration, Mr. Lee was put forward. As you so aptly stated at the Committee's Executive Business Meeting on March 7th, "I do believe in consulting. We may not be able to reach an agreement, but we're going to try." We have been trying and there is no reason a consensus, Republican nominee for the Ninth Circuit cannot be identified. However, Mr. Lee is not that candidate.

We respectfully ask that you do not proceed with Mr. Lee's hearing, and that you instead work with us and the White House to follow through on your promise and try to reach an agreement to fill this and California's Ninth Circuit vacancies.

Sincerely,


DIANNE FEINSTEIN
Ranking Member


KAMALA D. HARRIS
United States Senator