

# **DEMAND JUSTICE**

March 19, 2020

Chief Judge Sri Srinivasan  
U.S. Court of Appeals for the District of Columbia Circuit  
E. Barrett Prettyman  
U.S. Courthouse and William B. Bryant Annex  
333 Constitution Avenue NW  
Washington, DC 20001

Chief Judge Srinivasan:

We write to respectfully request that, pursuant to 28 U.S.C. § 352 and Art. IV (11)(b) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings, you conduct an inquiry into the circumstances surrounding Judge Thomas Griffith's intended retirement from the federal bench later this year.

On March 5, 2020, Judge Griffith announced that he will retire in September of this year, two months before the November election.<sup>1</sup> Immediate coverage of the announcement noted that, as a result of Judge Griffith's timing, President Trump would almost certainly have the opportunity to fill another seat on this critical court. Shortly following his announcement, the New York Times published a report that Senate Majority Leader Mitch McConnell has been directly contacting judges who are eligible to assume senior status or retire, and encouraging them to do so.<sup>2</sup> The coordinated manner of Majority Leader McConnell's involvement in the judges' decision-making is quite unprecedented and raises significant ethical questions for the judges who heed his advice.

According to the New York Times, Majority Leader McConnell is seeking to assure eligible judges that if they assume senior status or retire soon, President Trump will nominate, and the Senate will confirm, their successors, thereby guaranteeing that the Republican Party will maintain control of the seat. Yet nothing is known about whether or how Majority Leader McConnell might be attempting to further incentivize these judges. A prompt inquiry into the majority leader's potential efforts to influence Judge Griffith, perhaps through improper means, is essential, particularly because it appears that he has attempted to influence many other federal judges, as well.

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<sup>1</sup> John Kruzel, *DC appeals court judge to retire, handing Trump key vacancy*, *The Hill*, Mar. 5, 2020, available at <https://thehill.com/regulation/court-battles/486178-dc-appeals-court-judge-to-retire-handing-trump-key-vacancy>.

<sup>2</sup> Carl Hulse, *McConnell Has a Request for Veteran Federal Judges: Please Quit*, *New York Times*, Mar. 16, 2020, available at <https://www.nytimes.com/2020/03/16/us/politics/mcconnell-judges-republicans.html>.

Under the Rules for Judicial-Conduct and Judicial-Disability Proceedings, which are mandatory for all federal judges, judicial misconduct occurs when a judge “accept[s] bribes, gifts, or other personal favors related to the judicial office.”<sup>3</sup> The rules also define misconduct as “violating rules or standards pertaining to restrictions on outside income or knowingly violating requirements for financial disclosure.”<sup>4</sup> The rules apply to “conduct occurring outside the performance of official duties if the conduct is reasonably likely to have a prejudicial effect on the administration of the business of the courts, including a substantial and widespread lowering of public confidence in the courts among reasonable people.”<sup>5</sup>

Therefore, if Judge Griffith accepted anything of value in exchange for his retirement from the bench, including the promise of future employment, such as a prestigious professorship, or future income or any bonuses that could have come with an agreement for future employment, he may be violating these Rules. Judge Griffith’s decision to retire outright, instead of assuming senior status, which would allow him to continue hearing active cases while opening the seat for President Trump to fill, makes his announcement particularly suspicious. The public could easily perceive Judge Griffith as making himself available for alternative full-time employment, and the public deserves to know if he has already made arrangements for such employment as a condition of his agreement to retire.

Moreover, even if Judge Griffith did not formally accept anything of value in exchange for his retirement, direct coordination between the judge and Majority Leader McConnell would raise questions about any tacit agreements. A thorough inquiry into the judge’s announcement and scheduled retirement, including when and how the decision to retire was made, and with whose input, is crucial.

The Rules for Judicial-Conduct and Judicial-Disability Proceedings also define misconduct as “engaging in partisan political activity or making inappropriately partisan statements.”<sup>6</sup> If Judge Griffith coordinated directly with Majority Leader McConnell in an express effort to assure that his successor was chosen by President Trump, such activity could fall within this rule.

Public confidence in the federal judiciary is critical to our democracy, but such confidence requires transparency. We urge you to investigate whether Judge Griffith

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<sup>3</sup> Rules for Judicial-Conduct and Judicial-Disability Proceedings Art. II (4)(a)(1)(B).

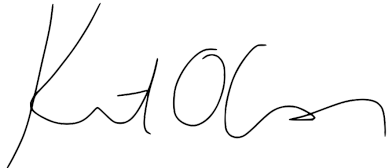
<sup>4</sup> Rules for Judicial-Conduct and Judicial-Disability Proceedings Art. II (4)(a)(1)(F).

<sup>5</sup> Rules for Judicial-Conduct and Judicial-Disability Proceedings Art. II (4)(a)(7).

<sup>6</sup> Rules for Judicial-Conduct and Judicial-Disability Proceedings Art. II (4)(a)(1)(D).

was improperly pressured to retire from the bench and whether his decision was made as a result of inappropriate incentives. An investigation into this issue is especially important given that Majority Leader McConnell is reported to have made similar appeals to dozens of other federal judges. Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Katie O'Connor". The signature is fluid and cursive, with the first name "Katie" and the last name "O'Connor" clearly distinguishable.

Katie O'Connor  
Senior Counsel  
Demand Justice