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September 14, 2018

VIA E-MAIL ONLY

The Honorable Charles E. Grassley
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

VIA E-MAIL ONLY

The Honorable Dianne Feinstein
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Re: Nomination of Jonathan A. Kobes to the United States Court of Appeals for the Eighth Circuit

Dear Chairman Grassley and Ranking Member Feinstein:

I write to offer a brief explanation of the ABA Standing Committee on the Federal Judiciary's "**Not Qualified**" rating of Mr. Kobes. As I have discussed with Senate staff members, the rating is based on the Standing Committee's criteria as set forth in its *Backgrounder*, available at: <http://ambar.org/fjcbbackgrounder>.

The Committee believes that Mr. Kobes has neither the requisite experience nor evidence of his ability to fulfill the scholarly writing required of a United States Circuit Court Judge. Our *Backgrounder* makes the following point on evaluating a nominee for the Court of Appeals:

The Committee believes that appellate court nominees should possess an especially high degree of legal scholarship, academic talent, analytical and writing abilities, and overall excellence. The ability to write clearly and persuasively, to harmonize a body of law, and to give meaningful guidance to the trial courts and the bar for future cases are particularly important. Because an appellate judge deals primarily with the review of briefs and the records of lower courts, the Committee places somewhat less emphasis on the importance of trial experience as qualification for the appellate courts.

The Standing Committee had difficulty analyzing Mr. Kobes' professional competence because he was unable to provide sufficient writing samples of the caliber required to satisfy Committee members that he was capable of doing the work of a United States Circuit Court judge. Although Mr. Kobes provided some writing samples, they are either from Mr. Kobes' early days as a lawyer, relating to relatively simple criminal law matters, or from his recent legislative work for Senator Rounds. None of the writing that we reviewed is reflective of complex legal analysis,

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knowledge of the law, or ability to write about complex matters in a clear and cogent manner – qualities that are essential for a Circuit Court judge.

We conducted two separate evaluations of Mr. Kobes, and the Committee came to a split vote, as indicated. Mr. Kobes is a very accomplished, competent, and capable person, but his career path has not resulted in sufficient evidence of a developed ability to do the written work of a United States Circuit Court Judge. Without sufficient evidence that the nominee possesses an especially high degree of legal scholarship and excellent analytical and writing experience, the Standing Committee voted that the nominee was “Not Qualified” to serve on the Eighth Circuit Court of Appeals.

The Standing Committee does not have any question about Mr. Kobes’ integrity or temperament. There were no issues raised by any of his peers with respect to those two criteria.

Additionally, I write to express our disappointment that we were not able to coordinate the timing of Mr. Kobes’ hearing to assure a smoother process. I respectfully request that in the future your committee wait to hold a hearing on a nominee for whom we have indicated that a second evaluator has been appointed. If the nominee in question receives a “Not Qualified” rating, this would allow your committee the opportunity to have us testify to explain the basis of the rating at the nominee’s hearing.

Thank you for the opportunity to present the views of the ABA Standing Committee on the Federal Judiciary’s regarding Mr. Kobes.

Sincerely,



Paul T. Moxley

PTM/mc

cc: Jonathan A. Kobes (via e-mail and U.S. Mail)
Donald F. McGahn, II, Esquire (via e-mail only)
Lola A. Kingo, Chief Nominations Counsel, Office of Legal Policy,
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