

**REPORT OF THE
CHIEF LEGISLATIVE ANALYST**

DATE: May 6, 2016

TO: Honorable Members of the Rules, Elections, Intergovernmental Relations, and
Neighborhoods Committee

FROM: Sharon M. Tso 
Chief Legislative Analyst
Council File No: 15-0002-S166
Assignment No: 16-04-0353

SUBJECT: Resolution (Koretz-Buscaino) to SUPPORT action by U.S. Senate to provide
advice and consent on Merrick Garland's U.S. Supreme Court nomination.

CLA RECOMMENDATION: Adopt Resolution (Koretz-Buscaino) to include in the City's
2015-2016 Federal Legislative Program, SUPPORT for action by the U.S. Senate to provide
advice and consent on Merrick Garland's U.S. Supreme Court nomination.

SUMMARY

Resolution (Koretz-Buscaino), introduced April 22, 2016, reports that the U.S. Senate's constitutional duty to provide advice and consent on U.S. Supreme Court judicial nominees has been fulfilled in past Presidential election years, with or without divided government. To add, the Resolution states that the U.S. Senate Judiciary Committee has never denied a hearing to a U.S. Supreme Court nominee since it began holding public confirmation hearings. If the U.S. Senate refuses to consider a U.S. Supreme Court nominee until after the next President is sworn into office, the Resolution reports that it will result in the longest U.S. Supreme Court vacancy caused by Senate inaction since the Civil War. The Resolution cautions that an eight-member U.S. Supreme Court creates numerous instances in which the Court is evenly divided on the outcome of a case, which ultimately undermines the Supreme Court's role as the final arbiter of the law. Per the Resolution, the President's Supreme Court nominee, Merrick Garland, has more judicial experience than any other Supreme Court nominee in U.S. history. The Resolution therefore requests that the City support action by the U.S. Senate to provide advice and consent on the President's U.S. Supreme Court nominee by: (1) Promptly scheduling a hearing in the U.S. Senate Judiciary Committee for Judge Merrick Garland; (2) Holding a confirmation vote on the U.S. Senate floor; and (3) Ensuring that the vacancy on the U.S. Supreme Court is filled without undue and unnecessary delay.

BACKGROUND

On March 16, 2016, the President nominated Merrick Garland, Chief Judge of the U.S. Court of Appeals for the District of Columbia Circuit, to fill the vacancy left by the death of Justice Antonin Scalia on February 13, 2016. Since Justice Scalia's death, U.S. Senate leaders have announced that they would not meet with any of the U.S. Supreme Court nominees, and the U.S. Senate Judiciary Committee Chairman and concurring members officially confirmed their intention to not hold any confirmation hearings for U.S. Supreme Court nominees on February

23, 2016.

Currently, the U.S. Supreme Court is in the middle of its term, and in the process of reviewing a number of high-profile cases. If the vote on a case ends in a four-to-four tie, the lower-court decision being reviewed continues to stand in the particular court's jurisdiction and has no binding effect on the rest of the nation. On March 29, 2016, a major case regarding organized labor, *Friedrichs v. California Teachers Association*, was decided on a tied vote, affirming the Appeals Court's decision in favor of unions but setting no precedent. These are some of the issues being considered in pending cases:

- Immigration: whether the implementation of the President's immigration plan, which would shield more than four million undocumented immigrants from deportation, should be allowed to continue
- Contraception: whether religious non-profits, including charities, schools, and hospitals, should be exempt from the Affordable Care Act's mandate that employers pay for contraceptives as part of standard health insurance plans
- Abortion: whether a Texas law that imposes new burdensome restrictions on doctors and facilities performing abortions should be allowed to stand
- Affirmative action: whether university admissions programs should be allowed to take race into consideration



Deborah Choi
Analyst

Attachment: 1. Resolution (Koretz-Buscaino)

RESOLUTION

WHEREAS, any official position of the City of Los Angeles with respect to legislation, rules, regulations or policies proposed to or pending before a local, state or federal governmental body or agency must have first been adopted in the form of a Resolution by the City Council with the concurrence of the Mayor; and

WHEREAS, the U.S. Senate's Constitutional duty to provide advice and consent on U.S. Supreme Court judicial nominees is one of its most important and solemn responsibilities; and

WHEREAS, the Senate has confirmed more than a dozen Supreme Court justices in Presidential election years, including five in the last hundred years; and

WHEREAS, the Senate has confirmed justices in Presidential election years despite having a politically divided government, as was the case in Justice Anthony Kennedy's confirmation in 1988; and

WHEREAS, the Senate Judiciary Committee has never denied a hearing to a Supreme Court nominee since it began holding public confirmation hearings; and

WHEREAS, the President has nominated Merrick Garland, Chief Judge of the U.S. Court of Appeals for the District of Columbia Circuit, who has a track record of building consensus as a thoughtful, fair-minded judge; and

WHEREAS, Judge Garland is well-qualified and has more judicial experience than any other Supreme Court nominee in U.S. history; and

WHEREAS, with the vacancy caused by the death of Justice Antonin Scalia occurring 269 days before the 2016 Presidential election, if the Senate refuses to consider a Supreme Court nominee until after the next President is sworn into office, it will result in the longest Supreme Court vacancy caused by Senate inaction since the Civil War; and

WHEREAS, every Supreme Court nominee who was not withdrawn by the President has received an up-or-down vote within 125 days of the President's nomination announcement, and since 1975, the average number of days from nomination to confirmation vote for a Supreme Court nominee has been 70 days; and

WHEREAS, forcing the Supreme Court to function with only eight justices risks creating numerous instances in which the Court is evenly divided on the outcome of a case, thereby preventing the Court from resolving conflicting interpretations of the Constitution among different regions of the Nation and undermining the Supreme Court's role as the final arbiter of the law; and

WHEREAS, the Supreme Court serves an essential function resolving critical questions of law that affect the community, economy, and people of the United States;

NOW, THEREFORE, BE IT RESOLVED, with the concurrence of the Mayor, that by the adoption of this Resolution, the City of Los Angeles hereby includes in its 2015-2016 Federal Legislative Program SUPPORT for the U.S. Senate to provide advice and consent on the President's U.S. Supreme Court nominee by: (1) Promptly scheduling a hearing in the Senate Judiciary Committee for Judge Merrick Garland, so that his nomination can be considered on his own merits in an open and transparent manner; (2) Holding a confirmation vote on the Senate floor, with opportunity for debate on Judge Garland's nomination; and (3) Ensuring that the vacancy on the Supreme Court is filled without undue and unnecessary delay so that the Supreme Court can effectively serve its essential constitutional function as the final arbiter of the law.



APR 22 2016

PRESENTED BY: 
PAUL KORETZ
Councilmember, 5th District

SECONDED BY: 

ORIGINAL