

January 23, 2019

The Honorable Charles Schumer
Minority Leader
U.S. Senate
322 Hart Senate Office Bldg.
Washington, D.C. 20002

Dear Senator Schumer,

As you know, one of the key prerogatives of the party in the Senate that does not control the White House is the long-established de facto ability to choose minority commissioners for multi-member independent agencies.

Many of us wrote to you and other members of the leadership of Senate Democrats in the spring of 2017 urging Senate Democrats to recognize that “the need for public minded watchdogs has never been greater.” At that time, we noted that Senate Democrats would have numerous opportunities to select members of a diverse collection of independent agencies.

In 2017, it appeared our urgings were heeded. Indeed, several strong nominees were recommended by Senate Democrats and ultimately confirmed. We strongly commend you and the Leadership for the actions you took. However, in 2018, Senate Democrats did not bring the necessary focus to ensure strong leadership at these agencies. Senate inaction has left critical agencies rendered partially (e.g., the Equal Employment Opportunity Commission) or completely (e.g., the Merit Systems Protection Board) non-functioning. Democratic selections for the Securities and Exchange Commission (SEC) and Federal Deposit Insurance Corporation (FDIC) have been denied previously rote nominations from the president without even a pretextual basis offered by the president. Nominees for the National Labor Relations Board (NLRB) and EEOC have been denied votes and will now need to be both renominated as well as granted an up or down vote before the Senate.

It is true that these agencies, nominees, and selections have been undermined by President Trump and Senate Majority Leader McConnell. It is true that Trump and Senate Republicans have been not acted in a timely manner on appointments. But such terrible behavior was not only predictable, it was predicted.¹

Democrats seemingly had ample leverage with which to elevate the need for filling leadership positions at these critical agencies. By way of illustration, rather than agreeing to unanimous consent for batches of Trump’s judicial nominees in August² and October³ – a process highly valued by McConnell and Senate Republicans – Democrats could have denied unanimous consent repeatedly until an agreement was reached that included action on stalled nominations and recommended nominees.⁴

¹ E.g., “Chopra aside, reform-minded Democrats like Warren, D-Mass., or Sherrod Brown, D-Ohio, have not had similar success installing their staffers on regulatory boards. In fact, Stein has been a lame duck for months without any action from Schumer. If Roisman gets confirmed first without pairing a replacement for Stein, the agency could be down a Democrat for who knows how long.

“[Senate Majority Leader Mitch] McConnell doesn’t mess around, that’s how a well-oiled machine operates,” said Jeff Hauser of the Revolving Door Project, whose organization helped coordinate the May 24 letter to Schumer. “Democrats are belatedly trying to come up with people. It’s embarrassing, incompetent, and could result in confirming someone disloyal to the values Democrats purport to represent,” David Dayen & Ryan Grim, *The Intra-Democratic War Over Personnel Zeroes in on Chuck Schumer*, *The Intercept*, June 13, 2018, <https://theintercept.com/2018/06/13/chuck-schumer-democratic-sec-fdic/>.

² Li Zhou, *Schumer’s Deal to Fast-Track Trump Judges Makes Progressive Activists Furious*, *Vox*, Aug. 30, 2018, <https://www.vox.com/2018/8/30/17797770/chuck-schumer-trump-judicial-nominees>.

³ Burgess Everett, *Democrats agree to confirmations of 15 Trump judges*, *Politico*, Oct. 11, 2018, <https://www.politico.com/story/2018/10/11/senate-democrats-judges-895168>.

⁴ Adam Lentleson, *Senate Democrats have the power to stop Trump. All they have to do is use it*, *Washington Post*,

It is true that denying unanimous consent could have meant that some Senate Democrats running for re-election would have had to choose between campaigning in their states and missing low-profile votes on judicial nominations. However, fighting to secure the continuing effectiveness of Democrats' voice in these agencies would have been worth it. Agencies such as these have broadly popular but little understood missions—being caught fighting on behalf of workers and bank customers and against the worst employers and bankers is unlikely to have engendered significant political costs.

From the right of workers to organize to whether our Internet will be free and open and from climate change to corporate consolidation, more and more Americans are realizing how much say independent agencies have over the life of the country. These agencies need leadership with the willingness and ability to shine a bright, public light of scrutiny on misguided deregulation designed to enhance corporate profits at the expense of public safety and well-being.

Now more than ever, Democrats need to be willing to fight for critical agencies filled with commissioners who are of unimpeachable independence. This will not happen unless Senate Democrats make it a priority. Democrats must demonstrate to Trump and Senate Republicans a willingness to use every tool at their disposal in pursuit of functional agencies carrying out critical tasks in the public interest. Aligning your political party with the cause of the federal government protecting workers from sexual harassment, the economy from unregulated Wall Street, civil servants from Trump's cronies, and the like would be both good politics and good policy.

The undersigned organizations write to indicate that they are following these issues closely. Each organization writes with the expectation that Senate Democrats will pursue strong independent agencies our country needs with the energy these critical agencies warrant.

Sincerely,

American Family Voices
Center for Popular Democracy
Citizen Action of New York
Color of Change
CREDO
Daily Kos
Demand Progress Education Fund
Democracy for America
Global Witness
Indivisible
Justice Democrats
New York Communities for Change (NYCC)
Our Revolution
People Demanding Action
Presente
Progressive Change Campaign Committee
Revolving Door Project
Social Security Works
Strong Economy For All Coalition
UltraViolet

CC: Members of the Democratic Caucus

Jan. 27, 2017,

https://www.washingtonpost.com/posteverything/wp/2017/01/27/democrats-in-congress-can-block-trumps-agenda-if-they-want-to-heres-how/?utm_term=.1fdc60be20eb.