

Congress of the United States
House of Representatives
Washington, DC 20515

September 24, 2020

The Honorable Bob Casey
393 Russell Senate Office Building
United States Senate
Washington, D.C. 20510

Dear Senator Casey,

As you know, seven of our Pennsylvania House Democrat colleagues sent a letter to Senator Pat Toomey this week, urging him to reconsider his recent statement of support for moving forward with a vote on President Trump’s Supreme Court nominee during a presidential election year.

This letter is based on two inaccurate claims: first, that Senator Toomey’s statements in 2016—regarding the nomination of Judge Merrick Garland—contradict his position today; second, that the Senate Republican majority set a “new precedent” in 2016 by exercising their constitutional authority not to confirm Judge Garland to fill the vacancy created by Justice Antonin Scalia’s death prior to the 2016 election.

It is concerning to see members of Congress intentionally misconstrue the meaning of the word “precedent” to politicize this pivotal moment in our history. Historical precedent supports both the president’s decision to nominate a new Supreme Court justice, as well as Leader McConnell’s decision to hold a confirmation vote in the Senate.

There have been eight instances in American history when a Supreme Court vacancy opened during a presidential election year, the White House and the Senate were controlled by the same party, and the president nominated someone that year. In every instance but one, the nominees were confirmed by the Senate. The only exception involved a nominee who faced bipartisan opposition due to serious ethics concerns.

In 2016, with a divided government, Senate Republicans, consistent with the Senate’s historical precedent, voiced their opposition to the confirmation of Judge Garland. There have now been seven instances in American history when a Supreme Court vacancy opened during a presidential election year, the White House and the Senate were controlled by the same party, and the president nominated someone that year. Only two of these seven nominations were confirmed by the Senate, the last in 1888. Senator Toomey’s recent statement reflected this precedent.

You also commented in 2016 on Judge Garland’s nomination and took the position, even though it was a presidential election year, that the Senate had responsibility to vote on a president’s Supreme Court nominee. On March 16, 2016, you made the following statement:

“The President has done his job as is proscribed under the Constitution, and it’s time for Senate Republicans to commit to doing their job by giving this nominee a fair hearing and a timely vote.

“The Constitution is clear. Article II, Section 2 of the Constitution explicitly requires the President to select a nominee for any vacancy to the Supreme Court, and the Senate to advise and consent on that nominee.”

The American people elected President Trump and a Senate Republican majority. In this instance, the will of the American people is reflected in the agreement of President Trump and the Republican Senate majority to proceed with a confirmation vote.

In closing, as the late Justice Ruth Bader Ginsburg noted in 2016, “[t]he president is elected for four years not three years, so the power he has in year three continues into year four.” Once President Trump names a nominee, we urge you to follow the Senate’s historical precedent and stand by your previous emphatic position of supporting a Senate vote on a Supreme Court nominee during a presidential election year.

Respectfully,



FRED KELLER
Member of Congress



GLENN “GT” THOMPSON
Member of Congress



MIKE KELLY
Member of Congress



JOHN JOYCE, M.D.
Member of Congress



SCOTT PERRY
Member of Congress



GUY RESCHENTHALER
Member of Congress



DANIEL P. MEUSER
Member of Congress



LLOYD SMUCKER
Member of Congress