

THE WHITE HOUSE

WASHINGTON

September 6, 2017

The Honorable Ron Wyden  
United States Senator  
221 Dirksen Senate Office Building  
Washington, DC 20510

The Honorable Jeffrey Alan Merkley  
United States Senator  
313 Hart Senate Office Building  
Washington, DC 20510

**Re: Oregon Vacancy on the U.S. Court of Appeals for the Ninth Circuit**

Dear Senators Wyden and Merkley:

I am writing today about judicial vacancies in Oregon, specifically regarding the current Ninth Circuit vacancy created by Judge Diarmuid O'Scannlain's assumption of senior status. In May, the White House first provided the name of native Oregonian and longtime Portland federal prosecutor, Ryan Bounds, as the President's likely preferred candidate for the O'Scannlain vacancy. As we have continued to seek your input and advice, my staff has exchanged numerous phone calls and emails with Senator Wyden's staff and I have appreciated the opportunity to speak with Senator Merkley personally about this vacancy. I recently sought to speak to Senator Wyden directly, but the request was declined by his staff.

Although your offices have each informed mine that you were convening a judicial selection commission for this vacancy, my staff received a phone call from Senator Wyden's staff inviting the President to consider Oregon District Judge Marco A. Hernández for this vacancy. Senator Wyden's staff assured us that Senator Wyden would support Judge Hernández. As part of the White House's consultative efforts, my staff immediately began seeking input regarding Judge Hernández from federal court practitioners in Oregon and nationwide. The review process included an interview of Judge Hernández at the White House by White House Counsel's Office and Department of Justice Office of Legal Policy staff.

While we enjoyed meeting with Judge Hernández and gave him careful consideration, we are now prepared to recommend Ryan Bounds to the President for nomination to the Ninth Circuit. Mr. Bounds is well-known among members of the Oregon Bar. For the last seven years, he has served as an Assistant United States Attorney for the District of Oregon, where he prosecutes criminal cases on behalf of the United States. Previously, he was a Special Assistant United States Attorney for the District of Columbia. Before becoming a federal prosecutor, Mr. Bounds served as Special Assistant to the President for Domestic Policy, acting as the White House's primary policy expert on criminal and civil justice issues. He also served as a Deputy Assistant Attorney General and Chief of Staff in the Office of Legal Policy at the United States Department of Justice. Earlier in his career, Mr. Bounds practiced commercial law for Stoel Rives LLP in Portland, Oregon. Mr. Bounds served as a law clerk to Judge O'Scannlain on the United States Court of Appeals for the Ninth Circuit in Portland. He earned his B.A. in psychology and political science, with Honors and Distinction, from Stanford University and his J.D. from Yale Law School, where he was an editor on the *Yale Law Journal* and Editor-in-Chief of the *Yale Law & Policy Review*.

Judge O'Scannlain's seat has been vacant for nine months and we have tried to work with your offices for at least four of them. In May, your staff informed us you would need four to six weeks to complete your process and send us a list of suggested candidates. In the months since, we have received only a single suggestion. Within days, we arranged to interview your suggested candidate, though to date, neither of your offices have apparently engaged with Mr. Bounds. While we had hoped the month-long August recess would have afforded an opportunity for you to meet with Mr. Bounds in Oregon, that did not happen. More cases are awaiting adjudication in the Ninth Circuit than in any other federal court in the country, and this delay directly impacts Oregonians' access to justice. Filling this seat is one of the President's priorities given the dire situation in the Ninth Circuit. By any objective measure, Mr. Bounds is an outstanding candidate for the Ninth Circuit vacancy in Oregon, and from the White House's first outreach in May, we have worked diligently and in good faith to seek your advice on this nomination.

As you may be aware, the President nominated Professor Amy Coney Barrett of Indiana, Justice Joan Larsen of Michigan, Justice Allison Eid of Colorado, and Judge Ralph Erickson of North Dakota, to similarly vacant seats on the United States Courts of Appeals in other states. In part because we have sought significant senatorial advice and input prior to making a nomination, Senators from both parties have returned blue slips for these exceptional candidates and each candidate has either concluded—or is soon scheduled for—their Judiciary Committee hearings. As we continue seeking input and proceeding with nominations, we anticipate a number of other Senators on your side of the aisle to continue returning their blue slips to fill the 144 existing federal judicial vacancies.

As we have made clear, the President will seriously consider senatorial recommendations, and we have worked to consult with you for months. Despite our efforts, neither Mr. Bounds nor the White House has received active engagement from your teams. Based on the foregoing, we plan to nominate Mr. Bounds and are confident that, upon review and consideration, you will agree that he is an outstanding choice for the Ninth Circuit and for the people of Oregon.

If you have any questions, please do not hesitate to call me directly or have your staff contact Associate Counsel Robert Luther ([Robert.Luther@who.eop.gov](mailto:Robert.Luther@who.eop.gov)).

Respectfully yours,



Donald F. McGahn II  
Counsel to the President

Enclosure