

**Prepared Statement by Senator Chuck Grassley of Iowa
Chairman, Senate Judiciary Committee
Executive Business Meeting
December 7, 2017**

Good morning.

Today, we have 10 judicial nominees on today's agenda and all are ready for a vote.

Of note, if confirmed, Terry Moorner would be the first African-American to serve as a United States District Judge for the Southern District of Alabama. And, if confirmed, James Ho would be the first Asian-American to serve as a United States Circuit Judge for the Fifth Circuit.

The three circuit-court nominees – one from Nebraska and two from Texas – are all exceptionally well qualified to serve as appellate judges.

The first is Steve Grasz for the Eighth Circuit. Like me, Mr. Grasz grew up on a Midwest farm. He is a very experienced and accomplished appellate lawyer in the Omaha office of the law firm Husch Blackwell. Prior to going into private practice, Mr. Grasz served as the Number 2 attorney in the Nebraska Attorney General's Office for nearly 12 years.

Mr. Grasz has extensive experience before the Eighth Circuit, the court to which he is nominated. Mr. Grasz has also briefed nine cases before the Supreme Court of the United States. This includes a case Mr. Grasz argued on behalf of his client – the State of Nebraska – regarding Nebraska's ban on partial-birth abortions. And this appears to be the driving force in the ABA's head-scratching decision to argue that Mr. Grasz is "not qualified" to serve as an appellate judge on the Eighth Circuit.

Last week, Senator Feinstein asked that the Committee hold over Mr. Grasz's nomination for another week so that she could ask the ABA some follow-up questions regarding the rating they gave him. As I mentioned last week, I was willing to accommodate the request. But I emphasized that holding over nominees for more than a week will continue to be a rare exception.

The Committee has now received a response from the ABA, so we're ready to proceed on Mr. Grasz's nomination.

I believe Senator Sasse will speak to the ABA's rating of Mr. Grasz in more detail. But I'll say that we've reviewed all the materials we've received from the ABA, along with other sources, regarding his ABA rating.

The Committee has also received letters of support from hundreds of people who know Mr. Grasz both personally and professionally. And in all these letters, we haven't heard from any accuser who has said that Mr. Grasz will insert personal bias into his judging, which is one of the

ABA's unverified—and unverifiable—claims against him. All we have is the ABA's claim that an unspecified number of anonymous accusers believe that Mr. Grasz can't separate his personal preferences from applying the law in the cases before him.

The ABA refuses to tell us the identity of these alleged accusers, so we can assess for ourselves whether these accusers are credible or have their own personal biases. The ABA certainly knows that no good judge would ever permit this type of hearsay evidence into a courtroom, because it is completely unfair and violates the most basic notions of due process. How can Mr. Grasz respond to vague and anonymous charges, when he has no idea who made these charges – or even what they specifically charge?

Moreover, the testimony of the ABA's evaluators reveals many of Mr. Grasz's peers find him courteous and able to set aside his personal views in order to even-handedly apply the law. We certainly saw that in him when he came to testify at his nominations hearing. Indeed, Mr. Grasz was the model of a temperate potential judge at his hearing.

The ABA's explanation as to why it credited the views of some anonymous accusers over hundreds of Mr. Grasz's peers was not, at all, satisfactory. I can't trust such a secretive process, especially when the ABA won't even shed any light on with whom it spoke.

Given all this, the ABA's "not qualified" rating of Mr. Grasz appears nothing more than a "hit job" on an exceptionally well-qualified nominee, simply because the nominee is pro-life and conservative. The ABA's politicizing of the evaluation process for Mr. Grasz raises a number of questions and concerns.

When the Ranking Member asked that I hold over Mr. Grasz's nomination for another week so that she could ask the ABA some follow-up questions, I mentioned that this indicated to me that she was still seriously considering how she would vote on his nomination. If she's already made up her mind and knew how she intended to vote on this nomination, the extra letters and questions seem like a meaningless endeavor and a waste of our time and resources.

So, I'm curious to see how my friends in the minority vote on Mr. Grasz's nomination today. If they vote against him for doing his job in in the Nebraska Attorney General's Office to defend Nebraska's statute related to partial-birth abortions, then all this back and forth with the ABA seems to have been pointless.

If the minority ultimately votes against Mr. Grasz because of the rating the ABA gave him, then I'd urge them to consider the ABA's rating of the two Fifth Circuit nominees from Texas. Both received a "Well-Qualified" rating. The ABA had no concerns regarding today's two Fifth Circuit nominees. They found that both would be able to act as circuit judges free from bias. Either these ratings matter to the Minority or they don't.

The next nominee on today's agenda is James Ho for the Fifth Circuit. This week, I received a letter from Democrats on Committee asking me to postpone the vote on his nomination because

the Department of Justice hasn't provided a legal memo Mr. Ho wrote in 2002 during his service as a line attorney in the critically important Office of Legal Counsel.

The OLC essentially serves as the general counsel to the Executive Branch. The legal advice that OLC lawyers provide relate to the most pressing issues facing our nation, including our national security, and the legal advice they provide constitutes some of the "crown jewels" of Executive Privilege and attorney-client privilege. Yesterday, I sent the Democrats on Committee a letter explaining my view on this, but I'll mention it here as well.

First, Mr. Ho is not at liberty to decide whether or not to disclose the OLC memo. He wrote it for the Department of Justice and it's the Department's to share or to keep confidential. And the Department has declined to furnish the memo due to "substantial confidentiality interests." The Department also indicated that it "needs to protect the ability of attorneys within OLC to engage in candid internal discussion and avoid the chilling of deliberations that would result from disclosing such communications outside the Department."

I agree. This isn't a partisan issue. The Committee has respected the Department's decision to not disclose OLC memos during both Republican and Democratic Administrations. As I said in my letter, I am concerned that requests for disclosure of OLC memoranda may simply be fishing expeditions with no apparent purpose beyond scoring political points.

Mr. Ho is a very accomplished attorney who is unquestionably qualified to serve on the Fifth Circuit. He clerked for a judge on the Fifth Circuit and for a Supreme Court Justice. He served in the highly prestigious Office of Legal Counsel in the Department of Justice, as Chief Counsel to Senator Cornyn on this Committee, and as Solicitor General of Texas. For the past seven years, he has been a renowned partner at the law firm of Gibson Dunn in Dallas. He will make an excellent addition to the Fifth Circuit.

Justice Don Willett is also on today's agenda. He's served as a member of the Texas Supreme Court since 2005. He's been reelected twice by wide margins. Before serving on the Texas Supreme Court, Justice Willett served as Deputy Texas Attorney General for Legal Counsel and as Deputy Assistant Attorney General for the Office of Legal Policy in the United States Department of Justice. He's served each of these offices with distinction.

I look forward to supporting all of these Circuit Court nominees today.

We will also vote on 7 nominees to District Courts today.

I'll now turn to Senator Feinstein for her remarks.