Mr. SCHUMER. Could I ask unanimous consent——

Ms. LANDRIEU. I don't know how to do this, but if we could do 3 minutes each and reserve at least 15 minutes for closure.

The ACTING PRESIDENT pro tempore. Time has been consumed during this debate.

The Senator from New York.

Mr. SCHUMER. Madam President, I believe we have 37 minutes remaining; is that right, 19 and 18?

The ACTING PRESIDENT pro tempore. Correct.

Mr. SCHUMER. I know Senator LEAHY wants to close with 5 minutes.

So what we could do, equitably, is give each of the six Members on the floor 5 minutes.

Ms. LANDRIEU. I have to object to that.

Mr. SCHUMER. OK. Madam President, I have the floor and I ask to be recognized.

The ACTING PRESIDENT pro tempore. The Senator from New York.

COURT VACANCIES

Mr. SCHUMER. Madam President, I rise to talk about a serious crisis in the third branch of government; that is, the rate of vacancies in the U.S. district courts.

There is a crisis that is unlike almost all the other issues we grapple with on a daily basis. It has a very simple solution. My colleagues and I deal with a lot of very difficult and very divisive problems every day. Not many of them lend themselves to solutions that are both politically and economically costless, but this one is easy: confirm these judges.

Take the district court nominees who were passed out of committee with bipartisan support, schedule votes on the floor, and confirm them. It sounds easy. Apparently, it is not. It is not easy because my colleagues on the other side of the aisle have slowed the confirmation of district court judges to a trickle, even those nominees who were passed out of the Judiciary Committee with no objection from Republicans.

This Congress, I am grateful for the hard work of Chairman LEAHY, Ranking Member GRASSLEY, Majority Leader REID, and Minority Leader MCCONNELL in beginning to unclog the pipeline, but we still have a long way to go. To go the rest of the distance, to restore the pace of judicial confirmations before the Federal judiciary faces the worst vacancy crisis in history, we need the consent of our Republican colleagues.

Here are the facts: The targeting of district court nominees is unprecedented. Five of the nineteen district court nominees who have received split votes in the last 65 years have been President Obama's nominees. We have only confirmed 61 of his district court nominees. By this time in their Presidencies, we had confirmed 98 of President Bush's and 114 of President Clinton's.

Judicial vacancies affect nearly 100 Federal courtrooms across the Nation. One in nine seats on the Federal bench is vacant. So we should approve these nominees.

As for the current nominee pending on the floor, he is somebody who deserves nomination. When we ask about nominees, we are concerned the standard used by my colleagues is, would I have nominated this person, rather than is this person whom I might not have nominated in the mainstream? Jack McConnell is clearly in the mainstream. He has more than 25 years' experience as a lawyer in private practice. Leading Republican figures in Rhode Island have endorsed him. But he has garnered opposition not because of his qualifications but because of his clients. That is not fair, that is not right, and that is not how we do judicial nominees.

He has chosen his work as a private lawyer, and that has no bearing on his judicial temperament, his interpretive philosophy or his legal acumen. In the interest of my colleagues who require more time, I would urge, at the very least, that people take the standard of the Senator from Tennessee—don't block cloture on this nominee. If you think he is not qualified, vote against him.

Jack McConnell deserves to be on the bench. I am glad Leader REID has called him, and Senators REED and WHITEHOUSE have taken the lead. I urge, at least on cloture, that my colleagues let this nominee be voted upon.

I yield the remainder of the time I have been allotted so others of my colleagues might speak.

The ACTING PRESIDENT pro tempore. The Senator from Texas.

Mr. CORNYN. Madam President, I have been conferring with the Senator from Rhode Island and other Senators who want to speak. Maybe if we could try another attempt at a unanimous consent request that would allow all of us a chance to speak.

Since I have the floor, I assume I can speak for up to 10 minutes under the standing order. I am willing to yield some of that time so everybody can have an opportunity.

Ms. LANDRIEU. Madam President, I object to any unanimous consent request.

Mr. CORNYN. Madam President, I have the floor. The Senator is out of order.

The ACTING PRESIDENT pro tempore. The Senator from Texas has the floor.

Mr. CORNYN. I ask unanimous consent that the Senator from Rhode Island, the Senator from——

The ACTING PRESIDENT pro tempore. Is there objection?

Ms. LANDRIEU. I object.

Mr. CORNYN. I will proceed, then, under the standing order which gives me up to 10 minutes, as I understand.

The ACTING PRESIDENT pro tempore. The Senator is correct.

Mr. CORNYN. I regret that the Senator from Louisiana is unwilling to cooperate and provide everybody a chance to be heard, but I will proceed.

I wish to speak to the nomination of Jack McConnell to the Federal district bench. I spoke on this nomination yesterday. I have authored an op-ed piece in the Washington Times expressing my concern. I wish to summarize my concerns for my colleagues' benefit and their consideration.

I serve as a member of the Judiciary Committee, as does the Senator from Iowa, Mr. GRASSLEY. Before the Senate Judiciary Committee, this nominee was asked about allegations of theft of corporate documents arising out of some lead paint litigation that his law firm was pursuing in the State of Rhode Island. That has been the subject of some discussion.

I will ask unanimous consent to have several documents printed in the RECORD at this time.

First, I ask unanimous consent that after my comments, the complaint of the Sherwin Williams Company v. Motley Rice and others be printed in the RECORD.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

(See exhibit 1.)

Mr. CORNYN. I ask one further unanimous consent, and that would be that an article from Legal Newsline about a discovery dispute still delaying the resolution of the theft case against Motley Rice be printed in the RECORD.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

(See exhibit 2.)

Mr. CORNYN. What I think these documents demonstrate is that not only did Mr. McConnell intentionally mislead the Senate Judiciary Committee with regard to his possession of these stolen documents, but now there has been for some years—even after the lead paint cases have been essentially dismissed by the Rhode Island Supreme Court with the State and Mr. McConnell and his law firm having lost—ongoing litigation by one of the defendants in that case suing for tortious interference with their property; also conversion—in other words, theft, as the Presiding Officer knows—of their private, proprietary documents, including their litigation strategy, including their trade secrets and the like.

The article, dated April 21, 2011, that I have made part of the record shows that dispute over the theft of these documents remains unresolved. In other words, Mr. McConnell and his law firm's participation in this ongoing dispute remains unresolved. I don't know why the majority leader would choose to bring up a nomination of somebody for a lifetime appointment to the Federal bench when serious allegations about his law firm's participation and his personal participation in the theft of corporate documents in pursuit of litigation remains unresolved. I think it is a terrible mistake.

I know the Senator from New York suggests we ought to just go ahead and vote on cloture because he knows then that because our Democratic friends control 53 votes in the Senate, Mr. McConnell will be confirmed. But I am concerned that because the ethical allegations made against Mr. McConnell and his law firm remain unresolved, this is a terrible time for us to be voting on a lifetime tenure. If he were to be confirmed and we find out later on that the court actually finds he did participate in this conspiracy to steal these corporate documents, what would that say about the Senate and about this process, our deliberative process? I think it would be a scandal. It would be a scandal.

Finally, let me say I have expressed my concerns previously about the scheme that a group of very smart trial lawyers have dreamed up to sue legal industries for huge amounts of money by making alliances with State attorneys general and then suing in the name of the State but then in the end settling these cases for billions of dollars—in some cases, hundreds of billions of dollars—and these lawyers reaping a windfall of billions of dollars in attorney's fees. That is something Stuart Taylor—I think one of the more level-headed commentators about legal matters—has said, that this has indeed morphed the rule of law into the rule of lawyers, and ultimately consumers will have to pay more in terms of higher prices and the lawyers reap a windfall.

The very same lawyers who are hired through these no-bid, noncompete contracts are indeed the political supporters of these very same attorneys general, raising at least the appearance of impropriety and a pay-to-play system of providing litigation opportunities to these lawyers from which they reap billions of dollars and after which they funnel campaign contributions back to the very same State officials who have, in fact, authorized them to sue on behalf of the State. This is unseemly, to say the very least about it.

Finally, I would say Mr. McConnell continues by his own admission to be eligible to receive up to $3.1 million a year in one of these shakedown-industry lawsuits where these trial lawyers have worked with State attorneys general to sue on behalf of the State, not in cases that were actually tried but were actually settled under an existential threat to these businesses and these industries.

At a time when we are talking, as Senator PORTMAN did, about job creation, the idea that we would be confirming a lawyer to a lifetime appointment to the Federal bench where he could then serve as a venue, given the venue shopping that frequently goes on in this type of litigation, we can expect, if Mr. McConnell finds himself confirmed as a Federal judge, that in the future litigants will find a warm reception in his court to these ethically dubious schemes.

I think it is an extraordinary circumstance according to the standards set by the so-called Gang of 14. It is not something we will be doing often. But when an ethically flawed nominee such as this nominee is proposed by the President of the United States on three different occasions, and Senator REID, the majority leader, as is his right, tries to slip this stealth nominee through when people are paying attention to other things, and we have not had adequate time to debate and expose in the record so Senators can make a good judgment about the facts and do their duty as individual Senators, I think it is a terrible shame.

I intend to vote against cloture, and I hope my colleagues will so we can have additional time to review this nominee's credentials and make a good-faith assessment on behalf of all of our constituents.

EXHIBIT 1

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNT, OHIO

THE SHERWIN WILLIAMS COMPANY, 101 Prospect Avenue, N.W., Cleveland, OH 44115 (Plaintiff), v. MOTLEY RICE LLC, Motley Rice LLC, 28 Bridgeside Boulevard, Mount Pleasant, SC 29464 And JOHN DOES, Defendants.

Complaint
JOHN P. O'DONNELL
CV 09 689237.

The Sherwin-Williams Company (''Sherwin-Williams''), for its Complaint against Motley Rice LLC (''Motley Rice'') and other unknown persons, alleges as follows:

INTRODUCTION AND NATURE OF CLAIM

1. The law firm of Motley Rice has represented since 1999 the Rhode Island Attorney General, other government officials, and private individuals in highly contentious public nuisance and personal injury lawsuits filed against Sherwin-Williams and other former manufacturers of lead paint and pigments.

2. Without the knowledge or consent of Sherwin-Williams, Motley Rice has somehow obtained stolen copies of PowerPoint slides used by Sherwin-Williams' Associate General Counsel—Litigation to advise the Company's Board of Directors on the costs of defending the lead paint and pigment litigation, among other information, and his analysis of potentially available insurance coverage for that litigation—an issue that Sherwin-Williams was actively litigating with its insurers in a separate action. Those documents contain highly confidential, proprietary business information and are also protected by the attorney-client privilege and the attorney work product doctrine.

3. It appears that Motley Rice, at the time it received those slides, wrongfully obtained other Sherwin-Williams' confidential, proprietary, and privileged documents from the same person who is unknown to Sherwin-Williams. All of Sherwin-Williams' confidential, proprietary, and privileged documents taken without authorization will be referred to as ''Documents'' in this Complaint.

4. Despite repeated requests by Sherwin-Williams, and despite Motley Rice's admission that it obtained Sherwin-Williams' Documents through its own efforts, Motley Rice has refused to reveal how it obtained Sherwin-Williams' stolen Documents; to identify all Sherwin-Williams' Documents in its possession; to provide them to a court for in camera review; or to return Sherwin-Williams' Documents.

5. By this action, Sherwin-Williams seeks to uncover how Motley Rice obtained the Documents, to protect and secure the return of its stolen Documents from Motley Rice, to prevent any use of those Documents or information contained in them, and to be compensated for the harm caused to Sherwin-Williams by Motley Rice's wrongful acquisition and use of those Documents.

THE PARTIES

6. Sherwin-Williams is a corporation organized under the laws of the State of Ohio, with its principal place of business in Cleveland, Ohio.

7. Motley Rice LLC is a limited liability company incorporated under the laws of South Carolina. It has its principal place in Mt. Pleasant, South Carolina and has another office in Providence, Rhode Island.

8. The John Does are persons presently unknown to Sherwin-Williams who assisted, aided, and abetted Motley Rice in the tortious acts alleged in this Complaint. The John Does are believed to be residents of the State of Ohio.

JURISDICTION AND VENUE

9. Motley Rice has caused tortious injury in this State by an act or omission in Ohio and by acts outside of Ohio committed with the purpose of injuring Sherwin-Williams, which resides in Ohio. Motley Rice also regularly conducted business in Ohio during the time of the alleged tortious acts. Thus, this Court has jurisdiction over Motley Rice pursuant to Ohio Revised Code 2307.382(A)(3)–(4), (6), (7).

10. Venue is proper in Cuyahoga County because part of the activity that gave rise to the claim for relief took place in this County. Ohio R. Civ. Pro. 3(B)(3). Additionally, venue is proper in Cuyahoga County because all or part of the claim for relief arose in this County. Ohio R. Civ. Pro. 3(B)(6).

FACTS

11. In the course of conducting its business, Sherwin-Williams creates and maintains confidential, proprietary, and privileged information and documents. Included among those documents are materials generated by Sherwin-Williams' attorneys to provide advice to Sherwin-Williams' Board of Directors concerning ongoing litigation strategy, anticipation of litigation, developments and costs of defense as well as potentially available insurance coverage for litigation liabilities and defense costs.

12. Sherwin-Williams' attorneys have frequently met with the Board of Directors to discuss the lead paint and pigment litigation and the disputes and litigation with its insurers to obtain reimbursement of defense costs and any potential judgments in the lead paint and pigment litigation. The oral and written presentations by Sherwin-Williams' attorneys to the Company's Board of Directors are intended to be confidential and protected by the attorney-client privilege and attorney work product doctrine. Presentations to the Board of Directors may also contain confidential and proprietary business information, such as strategies for other litigation, trade secrets for new products, acquisition plans, employment policies, and other sensitive, competitive information. For these reasons, all minutes of and presentations at Sherwin-Williams' Board of Directors' meetings are kept strictly confidential and are securely maintained with restricted access at the company.

13. Since October 1999, the State of Rhode Island, through its Attorney General, has retained Motley Rice to sue certain former manufacturers of lead pigments used in architectural paints decades ago, including Sherwin-Williams, for allegedly creating a public nuisance (''Rhode Island Litigation''). Under a contingency fee agreement with the Rhode Island Attorney General, Motley Rice

and other counsel are responsible for all costs and expenses of prosecuting the claims in the Rhode Island Litigation.

14. Since the commencement of the Rhode Island Litigation, Motley Rice has been retained by local governments in California, New Jersey, and Ohio to bring similar public nuisance lawsuits against Sherwin-Williams and other former lead pigment manufacturers. Motley Rice also tried unsuccessfully to obtain representation of the cities of St. Louis and Milwaukee as part of its continuing campaign to launch public nuisance lawsuits against Sherwin-Williams and other former lead pigment manufacturers all across the country. The public nuisance lawsuits seek to require several, out of many, former lead pigment manufacturers, including Sherwin-Williams, to remediate all lead paint in all buildings.

15. Also, since 1999, Motley Rice has represented dozens of individual plaintiffs in Wisconsin who have sued Sherwin-Williams and other former lead pigment manufacturers alleging personal injuries from elevated blood lead levels.

16. Motley Rice attorneys frequently came into Ohio in 2006 to meet and communicate with mayors and members of the executive and legislative branches of local governments in order to persuade them to retain Motley Rice to bring public nuisance lawsuits against Sherwin-Williams and other former lead pigment manufacturers. Beginning in September 2006, Motley Rice was retained to sue Sherwin-Williams and others on behalf of the cities of Akron, Athens, Canton, Cincinnati, Columbus, Dayton, East Cleveland, Massillon, Lancaster, Toledo, and Youngstown and the Stark County Housing Authority. It signed a contingency fee agreement for each city. Motley Rice moved for, and was allowed, leave to appear as counsel pro hac vice in state court for each Ohio plaintiff. Motley Rice wrote, appeared as counsel, and submitted complaints for each Ohio plaintiff. It wrote and submitted briefs in every Ohio case in which defendants filed a motion to dismiss or other pre-trial papers. Motley Rice attorneys appeared in Ohio Common Pleas Courts located in Canton, Cincinnati, Cleveland, and Toledo to argue motions, and it responded to public records requests on behalf of various cities.

17. Through the public nuisance and personal injury litigation against Sherwin-Williams and others, Motley Rice was and still is attempting to gain millions of dollars in fees for itself.

18. Motley Rice's representation of cities in Ohio continued until at least July 2008. Its representation was ultimately unsuccessful, as every Ohio city's complaint was either voluntarily dismissed or dismissed by court order.

19. In or about 2006, while Motley Rice was soliciting Ohio cities to retain it, one or more attorneys from Motley Rice, including Fidelma Fitzpatrick, met with a former Sherwin-Williams employee at Cleveland Hopkins Airport. This former employee had been responsible for preparing the PowerPoint slides and other graphics used during presentations made to Sherwin-Williams' Board of Directors in 2004, 2005, and earlier years. Sherwin-Williams did not know of this secret meeting.

20. At no time in meeting with the former Sherwin-Williams employee did any Motley Rice attorney caution him not to disclose or discuss any confidential, privileged, or proprietary information or document belonging to Sherwin-Williams.

21. During the meeting, the former Sherwin-Williams employee provided Motley Rice with the names of other former employees, several of whom may have had a role in preparing, or would likely have had access to, Board presentation materials.

22. On July 1, 2008, the Rhode Island Supreme Court unanimously ruled in favor of Sherwin-Williams and other defendants in the Rhode Island Litigation, reversing a jury verdict in favor of the State and holding that the complaint should have been dismissed at the outset.

23. After the Rhode Island Supreme Court's ruling, Sherwin-Williams filed a motion in the trial court, called the Superior Court, for entry of final judgment in its favor, including an award of costs incurred in defending the lawsuit. Although Sherwin-Williams has not yet submitted an itemized bill of costs, Motley Rice submitted a bill of costs for the State exceeding $1.9 million when it initially prevailed in the trial court.

24. On September 24, 2008, Motley Rice, on behalf of the State of Rhode Island, filed in the Superior Court a Supplemental Memorandum in Opposition to Defendants' Motion for Costs (''Supplemental Memorandum''). Because Motley Rice is obligated under its contingency fee agreement with the Rhode Island Attorney General to pay all costs of the Rhode Island Litigation, it has a direct, personal financial self-interest in whether the Rhode Island Superior Court awards costs to Sherwin-Williams and, if so, the amount of costs.

25. The State's Supplemental Memorandum, which Motley Rice prepared, signed, and filed, contained as an exhibit a copy of the PowerPoint slides used by Sherwin-Williams' Associate General Counsel—Litigation during his presentation to the Board of Directors in October 2004. The first slide identified the speaker as Sherwin-Williams' Associate General Counsel—Litigation. The second slide showed the company's cost to that date of defending the lead paint and pigment litigation. The third slide presented the Associate General Counsel's analysis and opinion regarding potentially available insurance coverage for that litigation, a matter then and still in dispute with its insurers. The presentation contained confidential information, was prepared to provide legal advice to the Board of Directors, and was intended to be confidential and privileged. The Directors were not allowed to keep copies of those slides (hereinafter ''October 2004 Confidential Board Slides''). Because Sherwin-Williams considered the information in the October 2004 Confidential Board Slides to be confidential, proprietary, and privileged, it has not publicly disclosed that information.

26. Sherwin-Williams never produced in any lawsuit the documents or information contained in the October 2004 Confidential Board Slides. Nor has Sherwin-Williams knowingly produced the October 2004 Confidential Board Slides to any person outside the company. On their face, the October 2004 Confidential Board Slides show that they contain confidential and proprietary information and that they were created and used for the purpose of providing legal advice and analysis.

27. The copy of the October 2004 Confidential Board Slides that Motley Rice attached to its Supplemental Memorandum bears a fax line at the top reflecting that it was one page of a 34-page fax sent by an unidentified person from a FedexKinko's in Akron, Ohio. The 34-page fax containing the October 2004 Confidential Board Slides was sent on September 12, 2006 from the fax number (330) 668–1105; the receiving number is not identified.

28. On information and belief, the other 33 pages of the fax contain highly confidential and proprietary business information, including information regarding strategies in other litigation, proposed business strategies, plans for geographic expansion and market growth, potential mergers or acquisitions, retail partnerships, and sensitive information regarding the company's finances.

29. On information and belief, the other 33 pages of this fax are or were in the possession of Motley Rice.

30. To this date, despite Sherwin-Williams' request, Motley Rice has refused to (a) explain how it came into possession of the October 2004 Confidential Board Slides; (b) confirm if it has the other 33 pages of the fax; and (c) identify and return Sherwin-Williams' Documents.

31. Motley Rice deliberately obtained, kept, and used copies of the October 2004 Confidential Board Slides and other documents belonging to Sherwin-Williams while it knew or should have known that those documents had been taken without Sherwin-Williams' authorization and were confidential, proprietary, and privileged. Motley Rice acted for its own financial self-interest and gain and in conscious disregard of Sherwin-Williams' legal rights and property interests.

COUNT I

CONVERSION

32. Sherwin-Williams incorporates by reference its allegations in Paragraph 1 through 31 of this Complaint.

33. Sometime before September 24, 2008, Motley Rice intentionally and wrongfully obtained and kept without Sherwin-Williams' knowledge or permission its Documents, including the October 2004 Confidential Board Slides and, on information and belief, the documents sent with the September 16, 2006 fax. Motley Rice may also have additional Sherwin-Williams' Documents.

34. Motley Rice knew, or should have known, that the October 2004 Confidential Board Slides and the Documents sent with the September 12, 2006 fax are the property of Sherwin-Williams.

35. Motley Rice knew, or should have known, that the Documents were taken from Sherwin-Williams and provided to Motley Rice without Sherwin-Williams' knowledge or permission.

36. Motley Rice also knew, or should have known, that it had no right to possess or use Sherwin-Williams' stolen Documents. Nevertheless, in conscious disregard of Sherwin-Williams' legal rights and property interests, Motley Rice chose to obtain, keep and use those Documents for its own financial benefit in the Rhode Island Litigation and to attempt to cause substantial harm to Sherwin-Williams.

37. At all relevant times until present Motley Rice has acted with malice and conscious disregard of Sherwin-Williams' legal rights and property interests. By wrongfully obtaining, retaining possession of, and using Sherwin-Williams' stolen Documents for Motley Rice's own advantage and self-interest with the intent to harm Sherwin-Williams, Motley Rice has converted and continues to convert Sherwin-Williams' property.

38. By refusing to return Sherwin-Williams' Documents despite Sherwin-Williams' request to identify and return those Documents, Motley Rice continues to the present day to wrongfully convert Sherwin-Williams' property.

39. Wherefore, Sherwin-Williams requests compensatory damages in an amount in excess of $25,000, punitive damages, costs, and reasonable attorneys' fees.

COUNT II

REPLEVIN

40. Sherwin-Williams incorporates by reference the allegations in Paragraphs 1 through 39 of this Complaint.

41. Sherwin-Williams created and is the sole rightful owner of its Documents now wrongfully obtained, possessed, and used by

Motley Rice without Sherwin-Williams' permission, including, but not limited to, the October 2004 Confidential Board Slides and, on information and belief, the documents sent with the September 12, 2006 fax.

42. No one has the right to possess, retain, or use Sherwin-Williams' Documents without the permission of its Board or management.

43. Motley Rice has wrongfully obtained, kept, and used Sherwin-Williams' Documents without Sherwin-Williams' permission.

44. Motley Rice knew or should have known that those Documents were taken from Sherwin-Williams without Sherwin-Williams' knowledge or permission, and that it was wrongfully obtaining, keeping, and using property belonging to Sherwin-Williams.

45. Sherwin-Williams has requested Motley Rice to return Sherwin-Williams' Documents.

46. Motley Rice has deliberately and wrongfully refused to return Sherwin-Williams' property, and it has chosen to use Sherwin-Williams' Documents for its own financial advantage and to the substantial detriment of Sherwin-Williams.

47. Motley Rice continues to retain and refuses to identify and return Sherwin-Williams' Documents without any right or privilege to do so.

48. At all relevant times until present, Motley Rice has acted with malice and conscious disregard of Sherwin-Williams' legal rights and property interests. Motley Rice wrongfully obtained, kept, and used Sherwin-Williams' stolen Documents for the purpose of harming Sherwin-Williams and for Motley Rice's own economic gain.

49. Wherefore, Sherwin-Williams is entitled to the immediate identification and recovery of its Documents in the possession, custody, and control of Motley Rice or its attorneys, employees, and agents, damages in an amount exceeding $25,000, punitive damages, costs, and reasonable attorneys' fees.

COUNT III

AIDING AND ABETTING TORTIOUS CONDUCT

50. Sherwin-Williams incorporates by reference the allegations of Paragraphs 1 through 49 of the Complaint.

51. Each John Doe owed to Sherwin-Williams the duty of loyalty and good faith and the duty to maintain the confidentiality of Sherwin-Williams' proprietary and privileged documents.

52. Each John Doe breached these duties by wrongfully converting Sherwin-Williams' Documents and providing them without Sherwin-Williams' knowledge or permission to Motley Rice, which had no privilege or right to obtain or possess those Sherwin-Williams' Documents.

53. Motley Rice wrongfully obtained, kept, and used Sherwin-Williams' Documents that Motley Rice knew, or should have known, were taken or obtained without Sherwin-Williams' knowledge or permission and in breach of each John Doe's duties to Sherwin-Williams.

54. By using Sherwin-Williams' Documents in the Rhode Island Litigation, Motley Rice assisted, aided, and abetted each John Doe, and each John Doe assisted, aided, and abetted Motley Rice, in tortious conduct harming Sherwin-Williams.

55. By wrongfully obtaining, keeping, and using Sherwin-Williams' Documents that it knew, or should have known, were stolen or wrongfully obtained by each John Doe without Sherwin-Williams' knowledge or permission, Motley Rice assisted, aided and abetted each John Doe's tortious conduct.

56. By wrongfully taking or obtaining Sherwin-Williams' Documents and providing those Documents to Motley Rice without Sherwin-Williams' knowledge or permission, each John Doe assisted, aided, and abetted Motley Rice in its tortious conduct.

57. By wrongfully retaining without permission and refusing to identify and return Sherwin-Williams' Documents, each John Doe has assisted, aided, and abetted Motley Rice's tortious conduct.

58. Each John Doe and Motley Rice have acted at all relevant times until present with conscious disregard for Sherwin-Williams' legal rights and property interests and for the purpose of causing substantial harm to Sherwin-Williams.

59. Wherefore, Sherwin-Williams requests compensatory damages in an amount exceeding $25,000, punitive damages, costs, and reasonable attorneys' fees.

COUNT IV

REQUEST FOR TEMPORARY RESTRAINING ORDER, PRELIMINARY INJUNCTION, AND PERMANENT INJUNCTION

60. Sherwin-Williams incorporates by reference the allegations of Paragraphs 1 through 59 of the Complaint.

61. Pursuant to Ohio Rule of Civil Procedure 65(A), Sherwin-Williams requests the Court to issue a Temporary Restraining Order prohibiting Motley Rice, any of its attorneys, employees, or agents, and each John Doe from:

(a) Using or reproducing Sherwin-Williams' Documents;

(b) transferring, conveying, disclosing, or communicating in any manner Sherwin-Williams' Documents or their contents to any person;

(c) destroying any Sherwin-Williams' Documents or any copies of any such Documents, including electronically stored information;

(d) destroying or disposing of any Documents, including electronically stored information, that constitute, show, or discuss how Motley Rice obtained, received, disclosed, used, or communicated Sherwin-Williams Documents.

In addition, Sherwin-Williams requests that a Temporary Restraining Order require Motley Rice to:

(e) immediately file with the Clerk of Court under seal all originals and copies of Sherwin-Williams' Documents in the possession, custody, or control of Motley Rice or any of its attorneys, employees, or agents; and (f) identify all persons (i) who have possession, custody, or control of Sherwin-Williams' Documents, or (ii) who provided or sent those Documents directly or indirectly to Motley Rice or any of its attorneys, employees, or agents.

62. A temporary restraining order is necessary to preserve Sherwin-Williams' valuable property rights in its Documents and confidential business information.

63. Sherwin-Williams will suffer irreparable harm if Defendants are permitted to transfer, release, possess, use, disclose, or communicate in any manner Sherwin-Williams' Documents and confidential business information.

64. Sherwin-Williams further requests the Court, after appropriate hearing, to enter a preliminary and permanent injunction granting the same relief requested in paragraph 60 (a), (b), (e) and (1) and, in addition, requiring Motley Rice to immediately return all originals and copies of Sherwin-Williams' Documents, all documents discussing the contents of those Documents, and all documents reporting or discussing confidential, proprietary or privileged communications between Sherwin-Williams' attorneys and its directors, officers or employees, in the possession, custody, or control of Motley Rice or any of its attorneys, employees, or agents.

65. Pursuant to Ohio Revised Code §2737.03, Sherwin-Williams requests this Court to issue an order requiring Motley Rice to return all of Sherwin-Williams' Documents, all documents discussing the contents of those Documents, and all documents reporting or discussing confidential, proprietary or privileged communications between Sherwin-Williams' attorneys and its directors, officers or employees, in the possession, custody, or control of Motley Rice or any of its attorneys, employees, or agents.

Dated: April 3, 2009

Respectfully Submitted,

JAMES R. WOOLEY,
Attorney I.D. No. 0033850.
STEPHEN G. SOZIO,
Attorney I.D. No. 0032405.
JONES DAY,
Counsel for Plaintiff, The Sherwin-Williams Company.

EXHIBIT 2

[From Legal Newsline.com, Apr. 21, 2011]

DISCOVERY DISPUTE DELAYING THEFT CASE AGAINST MOTLEY RICE

(By John O'Brien)

CLEVELAND (Legal Newsline)—The court battle over the alleged theft of confidential documents by plaintiffs firm Motley Rice is stagnant as Sherwin-Williams attempts to make the firm respond to its discovery requests.

According to the online docket for the Cuyahoga County Court of Common Pleas, Sherwin-Williams has filed a motion to compel the firm to respond to written discovery deposition requests. Motley Rice, which filed lawsuits against Sherwin-Williams and other paint companies over lead-based paint, allegedly obtained privileged documents stolen by the company from a former employee.

According to a Jan. 31 order, Sherwin-Williams is filing a supplemental brief in support of its motion to compel Motley Rice's answers. Some of the case, which could have an impact on the pending nomination of Motley Rice attorney Jack McConnell to a federal judgeship in Rhode Island, has been filed under seal.

The Wall Street Journal mentioned the case in a recent editorial. McConnell's nomination was recently approved by an 11–7 vote of the Senate Judiciary Committee, and the matter will now go to the full Senate.

''In response to written questions from Arizona Senator Jon Kyle in May 2010, Mr. McConnell told the committee he wasn't very involved in the lead paint case, was not familiar with the documents in question and had no reason to believe he'd be one of the defendants in the Ohio lawsuit. In deposition testimony in September 2010, however, his memory was suddenly refreshed,'' the editorial says.

''He was the first lawyer in his office to review the documents, signed a brief which incorporated portions of them and even helped write an article about the information.''

Because of his ''changing story,'' the WSJ doesn't feel he is worthy of a spot on the bench.

McConnell and Motley Rice's Rhode Island office represented several states and municipalities in the lead paint litigation, which alleged paint companies had created a public nuisance by manufacturing lead paint before its federal ban in 1978. Public nuisance claims have no statute of limitations, like product liability claims do. The suits were largely unsuccessful.

Along the way, Sherwin-Williams claims, Motley Rice obtained a PowerPoint presentation given by the company's attorney's to

its board of directors. The presentation outlined litigation costs and possible coverage by its insurers.

The company said the presentation was protected by attorney-client privilege, but Stephen Walker met with Motley Rice at Cleveland Hopkins Airport in 2006 to hand over the presentation. Walker had been laid off from his job in 2005 and had formerly assisted company officers, attorneys and executives with technical and design aspects of PowerPoint presentations.

Motley Rice did not notify Walker that it could not receive documents protected by privilege, the company says.

A trial was scheduled for last year but it was postponed. No new trail date has been set.

Sens. Sheldon Whitehouse and Jack Reed recommended McConnell to fill a vacancy in U.S. District Court in Rhode Island last year. Whitehouse is a member of the Judiciary Committee.

''Jack McConnell is a brilliant legal mind and an outstanding community leader. We believe he possesses the experience, intellect, and temperament to be a judge on the U.S. District Court for Rhode Island,'' a statement released by the senators said.

Whitehouse, then the attorney general, hired McConnell and his firm Motley Rice to file lawsuit against the former makers of lead paint in 1999.

The state Supreme Court unanimously struck down a verdict for the plaintiffs in 2008. Sherwin-Williams says Motley Rice produced the part of the PowerPoint presentation concerning litigation costs when the company argued the plaintiffs should be liable for its attorney fees.

After Whitehouse left the Attorney General's Office, McConnell and his wife pumped $12,600 into his campaign fund. WHITEHOUSE took office in 2007.

Since 2001, the McConnells have given Reed $13,200, including $8,800 for his 2008 re-election campaign.

McConnell also represented some states in their lawsuits against the tobacco industry. His work, and the work of other private attorneys, led to the 1998 Tobacco Master Settlement Agreement. It has an estimated worth of $246 billion over its first 25 years and allows for annual payments made to the attorneys who litigated the case.

A post by Judicial Watch says McConnell will receive between $2.5 million and $3.1 million annually until 2024 as a result of the settlement.

Through the years, he and his wife have given more than $600,000 to the Democratic Party and its candidates, including Obama. Obama nominated him in March 2010.

The Institute for Legal Reform, an affiliate of the U.S. Chamber of Commerce, is one of the groups opposing McConnell's nomination. The ILR owns Legal Newsline.

Mr. REED. Madam President, I propose a unanimous consent agreement that would recognize myself for 5 minutes, Senator GRASSLEY for 5 minutes, Senator LEAHY for 5 minutes, and then Senator SNOWE and Senator LANDRIEU for 10 minutes each.

The ACTING PRESIDENT pro tempore. Is there objection? Without objection, it is so ordered.

Mr. REED. Madam President, this is not a stealth nomination. Mr. McConnell has been approved and voted by the committee three separate times. This has already lasted years. There is nothing stealthy about it. That is an exaggeration and completely inaccurate.

Let me suggest in response to all the ethical claims or allegations, Mr. McConnell has never had an ethics complaint alleged or filed against him. All of these issues of so-called stolen documents were vetted and reviewed by a court in Rhode Island by Judge Silverstein. Judge Silverstein found no merit to their claims and, in fact, commended Mr. McConnell for his involvement and the involvement of his opposing counsels in this case.

Let me also try to respond to the issue of the so-called shakedown suits. One of the participants in those shakedown suits is a current circuit court judge, whom my colleague voted for. He is on the Third Circuit Court of Appeals in Pennsylvania. He was a Republican Attorney General of Pennsylvania. He worked with Mr. McConnell in a path-breaking suit to bring tobacco companies to justice and to provide States billions of dollars to relieve the dangers and the harm caused by tobacco. This judge, this Federal circuit judge, testifies to the integrity and the character of Jack McConnell. I am indeed appalled that his integrity would be questioned in such a way.

With respect to statements before the Senate Judiciary Committee, they have been consistent. He has said, with respect to these documents, these allegedly stolen documents, ''I saw the documents prior to suit being filed in Ohio.'' Again, this second suit is really retaliation by the companies in order to express their great anger at being sued in Rhode Island. ''I saw the documents prior to suit being filed in Ohio. I briefly saw them when they were first faxed to our law firm and then again a few years later, I saw them when we submitted one page of the documents to the court in Rhode Island. I would not say I was familiar with the documents in any fashion.'' He makes no bones about the fact that he saw those documents. Then the debate seems to be, the quibble seems to be not about a clear misstatement but what—''familiar'' means. I think he was being very careful. I think if a lawyer says: I was familiar with the documents, it means they have read them thoroughly, they read them carefully. He couldn't say that. This came over his desk, was quickly out of his hands and quickly in the hands of others.

Again, all these allegations of unscrupulous behavior, unethical behavior have never been supported by any finding. There is a case in Ohio. It is not directly against Jack McConnell. He is not a named party. It is his law firm. He is one of many people in the law firm. There are suits filed against organizations, I would suspect, frequently. Is every member of the organization involved? I suspect not.

Finally, let me just respond to this notion of, well, this is just an elaborate arrangement between attorneys general and Jack McConnell. Again, the process for this suit started with a Republican attorney general. The succeeding attorney general was, indeed, our colleague SHELDON WHITEHOUSE. They scrupulously had a contract that was reviewed by the court. In fact, the court had to approve any payments to McConnell's firm. That is the judge's call, not the attorney general's call.

Interestingly enough, in response to this whole suggestion that there is this cozy deal going on here—Jack McConnell is such a principled and active Democrat that when my colleague ran for Governor of Rhode Island, Jack McConnell handled the successful campaign of his opponent, a woman with whom he felt more aligned in terms of her philosophy, in terms of her commitment to issues he cared about. Senator WHITEHOUSE lost that race—unfortunate for the State of Rhode Island, fortunate, I think, for the U.S. Senate.

So this suggestion, this notion that this is all a cozy deal that has been worked out is absolutely erroneous.

The overwhelming consensus of lawyers, clergy, everyone in Rhode Island, business leaders, is this is one of the most honest and ethical persons you would ever want to know. Frankly, that was the ultimate issue that prompted me to recommend him to the President of the United States. He is a decent man of character, and I think the assault on his character is unprecedented, as well as this assault on allowing a district court judge to have an up-or-down vote.

Mr. President, I ask unanimous consent to have printed in the RECORD letters of support for Jack McConnell's nomination to the United States District Court for the District of Rhode Island, as well as editorials on the McConnell nomination from the Providence Journal.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Providence Journal, May 14, 2010]

EDITORIAL: CONFIRM MCCONNELL

Providence lawyer John J. McConnell Jr., whom President Obama has nominated to serve on the U.S. District Court for Rhode Island, is a very able attorney. He has also demonstrated much civic commitment and leadership as a very generous philanthropist and board member of various nonprofit organizations in our area.

''Jack'' McConnell's nationally known abilities have gotten him hired to press some very big lawsuits. As with most plaintiffs' lawyers who have practiced at the highly competitive national level for a long time, some of these have been very controversial. The most notable example is the case against lead-paint makers pursued at the behest of then-Rhode Island Atty. Gen. (and now U.S. Sen.) Sheldon Whitehouse.

We remain convinced that that action, which was (happily, to us) terminated by the Rhode Island Supreme Court, was unfortunate. But some other cases Mr. McConnell was involved in, such as against tobacco companies, we agreed with. But then, Mr. McConnell has been a hired hand doing as capably as he could the job he has specialized in—pursuing product-liability and other class-action cases. Mr. McConnell, a graduate of Brown and Case Western Reserve University Law School, has been retained in these high-profile lawsuits because of the ability and strenuous work ethic he has shown time and time again.

Jack McConnell has had very close ties with the Democratic Party, to whose candidates he has given a lot of money. But many federal judges have had close political links before being named to the bench. The judgeship-nomination process can rarely be separated from politics in varying degrees, as even a cursory look at the backgrounds of state and federal judges will demonstrate.

Many over the years had been elected officials and/or highly partisan Democrats or Republicans but have displayed great judicial judgment, disinterestedness and independence when they achieved the protective tenure of the bench.

But in any case, Jack McConnell, in his legal work and community leadership, has shown that he has the legal intelligence, character, compassion and independence to be a distinguished jurist. Indeed, given his understanding of the ''little guy,'' Mr. McConnell could serve as something of a healthy offset to the corporate-lawyer backgrounds and attitudes that so many judges have. And his deep knowledge of environmental law could be of particular importance in coming years as such issues come to the fore more often. We hope that the Senate confirms him.

[From the Providence Journal, Nov. 23, 2010]

EDITORIAL: STILL CONFIRM MCCONNELL

As we have said (''Confirm McConnell,'' editorial, May 14) Providence lawyer John (''Jack'') McConnell is highly qualified to be a U.S. District judge. He's one of America's most able and successful litigators, and has been a very energetic and generous leader in philanthropies and other parts of community life.

But Republicans in the U.S. Senate seem determined to derail his nomination, both because they dislike Mr. McConnell's frequent past support of Democratic candidates and, more generally, because they want to do anything they can to defeat President Obama, who nominated him.

To say that the current mood of Congress is partisan is an understatement.

Yes, like many judicial nominees, Mr. McConnell has taken partisan stands in the past. But his character and deep love of the law suggest strongly that he will function as a disinterested judge—one able to look at the facts of each case in the light of a close and rigorous reading of statutory and constitutional law and precedent. Indeed, his legal work and community leadership suggest that he would be a distinguished jurist.

The Senate should face down a filibuster and approve his nomination.

[From the Greater Providence Chamber of Commerce]

STATEMENT OF THE GREATER PROVIDENCE CHAMBER OF COMMERCE ON THE NOMINATION OF JOHN MCCONNELL TO THE U.S. DISTRICT COURT

On Tuesday May 11, the United States Chamber of Commerce urged the members of the Senate Judiciary Committee to reject the nomination of John J. 'Jack' McConnell for a judgeship on the U.S. District Court in Rhode Island.

The Greater Providence Chamber of Commerce was not consulted at any point in the process by the United States Chamber of Commerce or The Institute for Legal Reform as to our views relative to the nomination of Mr. McConnell.

The Greater Providence Chamber of Commerce has never endorsed nor opposed nominees vying for the federal or state judiciary. In a similar vein, we have never endorsed nor opposed candidates seeking elective office on the federal, state or municipal levels.

The Greater Providence Chamber of Commerce has enjoyed a very positive working relationship with Senator Reed and Senator Whitehouse, and we respect their right and ability to put forth qualified nominees to the United States District Court.

We would point out that Mr. McConnell is a well respected member of the local community, leading important civic, charitable and economic development institutions including Crossroads Rhode Island, the Providence Tourism Council and Trinity Repertory Theatre.

U.S. COURT OF APPEALS
FOR THE THIRD CIRCUIT,
Pittsburgh, PA, May 11, 2010.

Hon. PATRICK LEAHY,
Chairman, Senate Judiciary Committee,
Washington, DC.

DEAR CHAIRMAN LEAHY: I write at this time to most favorably recommend John J. McConnell who has been nominated by the President to the U.S. District Court for the District of Rhode Island.

I met and worked with Mr. McConnell when I was the elected Attorney General of Pennsylvania from 1996–2003. We worked very closely together on the national tobacco litigation which resulted in the $206 Billion 1998 Master Settlement Agreement. I was designated by my Attorney General colleagues to be part of the national negotiating team and worked closely with Mr. McConnell who was part of that team along with his partner from Ness Motley, Joe Rice. We spent considerable time together in New York and at meetings elsewhere and I had the unique opportunity to assess Mr. McConnell's legal abilities and his character, which were both outstanding. He was one of our key people in developing strategy, drafting documents and evaluating various provisions of this landmark settlement.

In addition to his work with the state Attorneys General in that case, Mr. McConnell has been involved in major litigation in the state and federal courts in Rhode Island and elsewhere across the country. He has been honored for his legal skill and acumen by many organizations and has made major contributions to the cause of justice in his state and elsewhere.

John J. McConnell, Jr. is an outstanding nominee to serve on the U.S. District Court for the District of Rhode Island and I enthusiastically support his nomination. If I can provide any additional information, please feel free to contact me.

Very truly yours,

D. MICHAEL FISHER.

LAW OFFICES OF
JEFFREY B. PINE ESQ.,
Providence, RI, May 7, 2010.

Hon. PATRICK LEAHY,
Chairman, Senate Judiciary Committee,
Washington, DC.

DEAR SENATOR LEAHY: I have the pleasure of writing on behalf of John (Jack) McConnell Jr. for a position on the Federal bench. I served as Rhode Island Attorney General from 1993–1999, as a Republican.

I have known Jack for more than fifteen years, both professionally and personally, and feel very qualified to comment on his credentials for such a prestigious position. Throughout his career, Jack has demonstrated the kind of legal ability, integrity, dedication to his client, and Willingness to fight hard for the cause of justice that makes him a truly outstanding candidate for the Federal Judiciary.

During my tenure as Attorney General I worked closely with Jack during the multistate tobacco litigation initiated on a bipartisan basis by more than 40 Attorneys General in the mid-1990's. As Attorney General, I was directly involved in the prosecution of our lawsuit and in the settlement negotiations between the Attorneys General and the tobacco industry. In that capacity I had the ability to work with and observe Jack over an extended period of time as he represented many states' interests, including Rhode Island; in short, what I observed was an attorney who was smart, ethical, diligent and absolutely dedicated to the cause of justice on behalf of his client.

Since our interaction in the public sector I have remained very aware of Jack's talents and abilities as an attorney. I closely followed the lead paint litigation in Rhode Island, where Jack led the fight on behalf of the victims of this public health problem.

He has always fought for those less fortunate who might otherwise not have had a voice in the judicial system. Jack has been that effective voice for many people for many years. I also believe that as an experienced litigator Jack has an outstanding ability to look at legal issues from all perspectives, without bias or predisposition, and I have no doubt that he would be fair to all litigants who appear before him. In my opinion he would bring the kind of experience to the federal bench that would make him an outstanding judge presiding at trials, and a fair and impartial arbiter for those who come before him.

I also have the pleasure of knowing Jack outside of legal circles, and while I consider him a friend, my comments about him as a person and family man are not influenced by our friendship—they are objective assessments that are very easy to make.

Jack and his wife Sara have three children who are very close in age to each of my three children. For most of the past fifteen years our children have attended the same schools at the same time. Jack is a devoted and dedicated father who understands the importance of being there for your family even if the demands of a busy career are always present. All three of their children have grown up with strong values, a sense of giving back to society, and the same kind of commitment to others that Jack and Sara have. Jack understands the balance that needs to be struck between career and family, and while he has achieved great success professionally, he retains the strong values of his own upbringing, which he in turn imparts to his children.

In addition to his professional accomplishments and commitment to his family, Jack has always been very active in the community, involved in a number of civic activities, and he has been honored for his efforts on many occasions. He enjoys an outstanding reputation in both the legal community and the community at large, and many organizations have recognized his commitment to his public service.

In conclusion, there is no question in my mind that Jack would be an honest, principled, ethical and fair judge. He would be a credit to our state and to our judiciary. He has earned this prestigious position for his many years of hard work, legal experience and success as an attorney, as well as his position in the community as a respected civic leader and family man.

I enthusiastically support his candidacy for a position on the federal bench.

If I can answer any questions or be of further assistance to you, please don't hesitate to contact me.

Sincerely,

JEFFREY B. PINE.

PASTER & HARPOOTIAN, LTD.,
COUNSELLORS AT LAW,
Cranston, RI, May 7, 2010.

Hon. PATRICK LEAHY,
Chairman, Senate Judiciary Committee, Washington, DC.

DEAR SENATOR LEAHY: Thank you for allowing me the time to write to you in support of my friend and colleague, John J. McConnell, Jr., for confirmation to the United States District Court for the District of Rhode Island. The Senate Judiciary Committee is scheduled to hold a confirmation hearing on his appointment on May 13, 2010.

I have known Jack McConnell for many years as a professional colleague, fellow dedicated board member of Trinity Repertory Company here in Rhode Island and as a very friendly political rival.

Time and again, Jack has proven that he is a man of great principle and integrity. While being a vigilant advocate for his clients and the causes that he has taken up during his professional career, Jack has always conducted himself in the most ethical and professional manner; a trait unfortunately sometimes not found among lawyers today.

Jack and I also know each other from being on opposites sides of the aisle politically, including some elections as well. As you know, elections can turn bitter and the participants can sometimes allow themselves to get caught up in the bitterness to the extent of it becoming personal. One of the greatest characteristics that I admire about Jack so much is that, despite political differences of opinion, he never allowed those differences to become personal, or to cloud his judgment. As a result, we have always enjoyed spirited conversation regarding political issues, but have remained great friends.

These characteristics lead me to unqualifiedly support Jack's confirmation to the United States District Court for Rhode Island.

Please do not hesitate to contact me if you believe I have information which may be helpful to you in this process.

Thank you very much for your kind consideration.

Very truly yours,
JOHN M. HARPOOTIAN.

EXECUTIVE CHAMBER,
CITY OF WARWICK, RHODE ISLAND,
May 7, 2010.

Hon. JEFF SESSIONS,
Ranking Member, Senate Judiciary Committee, Washington, DC.

DEAR SENATOR SESSIONS: I am pleased to write this letter in support of John J. ''Jack'' McConnell, Jr., who is seeking appointment to the United States District Court for the District of Rhode Island.

Jack had been an acquaintance of mine for many years, but it was not until we began serving together for two non-profit agencies—Crossroads Rhode Island's Board of Directors and the Institute for the Study and Practice of Non-Violence that I got to know him well. Jack is a man of integrity, a strong sense of community and a very fair and forward-thinking individual.

As the Republican Mayor of Rhode Island's second largest community, I have always firmly believed that the ability to reach consensus among people of differing points of view is critical to the well-being of our residents and our state as a whole. In the time I have come to know Jack, I have realized that he shares this same philosophy.

The District Court appointment is a critical one to ensure that our justice system continues to provide victims and their accused with an opportunity to be heard fairly and impartially. I believe that Jack would be a valuable asset to the bench and a good representative of Rhode Island in the federal court system.

I am proud to offer this recommendation and respectfully urge you to give him your serious consideration. Thank you for your attention.

Sincerely,
SCOTT AVEDISIAN,
Mayor.

ARLENE VIOLET, ESQ.,
Barrington, RI, Dec. 10, 2010.

In Re Jack McConnell.

DEAR SENATOR SESSIONS: As a former Republican Attorney General I have followed your career from the day you became the Attorney General for your state. You have acquitted yourself very well and have served the people of Alabama with diligence and competence.

I am writing to you in support of the nomination of Jack McConnell. As an attorney for close to 36 years I have known Jack for about 20 of them. I often appeared in court and on occasion he'd be ahead of me on the docket and I'd be on ''standby'' for my case. I observed a carefully prepared advocate who had done his homework. He is a highly respected attorney here because his word was his bond. His forthrightness as an attorney along with his competence and honesty have convinced me that he will be a fair and balanced judge on the federal bench.

He has also been on the Board of Trustees at Roger Williams University where I am also a trustee. He has been the voice of reason and analysis on the tough issues facing universities today. His judgment is finely honed and I have no doubt that he will apply his analytical skills in service to the highest standards of jurisprudence. I respectfully ask you to confirm his nomination to the bench.

With every best wish for you and your family, I remain,

Sincerely yours,
ARLENE VIOLET.

SUPREME COURT OF RHODE ISLAND,
FRANK LICHT JUDICIAL COMPLEX,
Providence, RI, Feb. 9, 2009.

Re John J. McConnell, Jr.

Hon. JACK REED,
U.S. Senate,
Cranston, RI.

DEAR SENATOR REED: I have recently learned that the subject attorney has applied to your office as a candidate for appointment to the United States District Court for the District of Rhode Island. It may be of assistance in evaluating his application if those who are familiar with his professional background write concerning his outstanding qualifications.

I have known Mr. McConnell since 1983 when he served as a law clerk to Justice Donald F. Shea of the Rhode Island Supreme Court. Prior to this service, he graduated from Brown University and Case Western Reserve University School of Law. His talent and personality were outstanding from the earliest stages of his career.

Since he left our court, I have observed, with great admiration, his meteoric rise as a trial lawyer. He has been lead counsel in a number of extremely high profile cases in both State and Federal Courts. His work in the negotiation of the master settlement agreement with the tobacco industry on behalf of forty-six states is legendary in the annals of litigation. His achievements in asbestos litigation are equally distinguished and involved some of the most complex cases on record. He has been recognized by his peers with numerous awards for service to the profession as well as designation as one of the best lawyers in America. The Rhode Island Bar Association has honored him for his service to the poor and disadvantaged.

His compassion and charitable contributions have benefited agencies in the field of health, education and service to the poor and homeless. His service as a director of Crossroads Rhode Island is only one example of his reaching out to the needy and dispossessed.

He has been active in civic affairs in the City of Providence, the State of Rhode Island as well as on the national level. He is a splendid example of a model citizen whose advice and counsel are sought after and freely given.

His great experience as a litigator has given him exceptional knowledge of the intracies of the rules of practice and procedure in the federal courts. He would be superbly qualified to preside as a federal judge over the most challenging and complex cases. He is a man of keen intelligence and impeccable integrity. He would be a splendid addition to the distinguished bench of the United States District Court of Rhode Island.

Sincerely yours,
JOSEPH R. WEISBERGER,
Chief Justice (Ret.).

The ACTING PRESIDENT pro tempore. The Senator from Iowa.

Mr. GRASSLEY. Madam President, I rise to oppose the cloture motion on Jack McConnell, who has been nominated to be U.S. district judge for Rhode Island.

In the first few months that I have been ranking member of the Judiciary Committee, I have worked in good faith to move forward with consensus nominees. We have taken positive action on 68 percent of the judicial nominees submitted in this Congress. Despite my efforts, friends on the other side of the aisle and the President's top lawyer continue to claim we are not moving fast enough. There are additional consensus nominees the Senate could turn to. We could confirm additional district judge vacancies, as we have been doing. But rather than continuing to move forward with consensus nominees, the majority leader chose to throw up a detour and proceed to one of the President's most controversial nominees, Mr. McConnell. It seems no good deed goes unpunished.

Before turning to Mr. McConnell's record, I want to say a few words about the use of extended debate in considering judicial nominations. My friends on the other side have made some comments on this issue that are pretty difficult to understand given the record there.

First, with respect to district court nominees, and contrary to what my colleagues have suggested, there have been in the past filibusters of district court nominees. Most recently, the Democrats successfully filibustered a district court nominee in 1999, Mr. Brian Stewart by a vote of 55 to 44. Judge Stewart was ultimately confirmed.

But the fact of the matter is that district court nominees have been filibustered, and it was Democrats who first took the step. On circuit court nominees, the record is far worse. I would note that I do not necessarily like to

vote against cloture on judicial nominees. I do not take these votes lightly. But these are the rules that the other side instituted.

Under the precedent and threshold that the Democrats first established, Members must decide whether they believe they should move forward to a vote on confirmation of this nominee. By any fair measure, Mr. McConnell qualifies as a very extraordinary circumstances. I have reached this conclusion based on a number of factors. I want to discuss a couple of these reasons now.

I am particularly troubled by the way Mr. McConnell handled himself before the committee. I believe Mr. McConnell at best misled the committee when he testified about his familiarity with a set of stolen legal documents that his law firm obtained during the lead paint litigation. When asked about these documents during his committee hearing, he testified that he saw the documents ''briefly'' but that he was not familiar with them ''in any fashion.''

But several months after his hearing, Mr. McConnell was deposed under oath about those same documents. In his sworn deposition, Mr. McConnell testified that he was the first lawyer to receive the documents. He drafted a newspaper editorial citing information that came directly from those documents. He testified that he reviewed and signed a legal brief that incorporated the stolen documents. And even though he told the committee that he was not familiar with the documents ''in any fashion,'' during his deposition he testified that he did not see any indication on the documents that they were confidential or secret.

How could he know the documents were not confidential or secret if, as he testified before the committee, he was not familiar with them ''in any fashion?''

Given these facts, it is hard to square Mr. McConnell's testimony before the committee with his sworn deposition testimony a couple of months later.

The litigation over these documents remains ongoing. We do not know how it will conclude. We do not know whether Mr. McConnell and his law firm will be held liable for the theft of these documents. But what is the Senate going to do if we confirm this individual but at some later date he or his law firm are found liable for theft? At that point, it will be too late. Members will not be able to reconsider their votes.

The Wall Street Journal recently opined that Mr. McConnell's ''changing story about his lead paint advocacy is enough by itself to disqualify him from the bench.'' I could not agree more.

There are other aspects of Mr. McConnell's record that concern me a great deal, which I will outline later. I will just conclude by saying this. I have supported the overwhelming majority of President Obama's judicial nominees. If it were up to me, I would not have nominated many of those individuals. But I supported them nonetheless. Mr. McConnell is in an entirely different category. I believe that he misled the committee when he testified before us. For that reason alone, I do not think he should be rewarded with a lifetime appointment to the Federal bench. But even if I did not have that concern, I could not support this nominee.

I yield back the time that was allotted to me.

The ACTING PRESIDENT pro tempore. The Senator from Vermont.

Mr. LEAHY. Madam President, I hope that all Senators have had a chance to consider the remarks of the Senators from Rhode Island on this nomination. I do not think anyone could listen to the remarks of the distinguished senior Senator from Rhode Island yesterday and today and come away doing anything other than voting for cloture. Likewise, Senator WHITEHOUSE, who spoke this morning and has shepherded this nomination through the Senate Judiciary Committee, has done an outstanding job in his statement not only this week but throughout the course of this nomination, which now extends into a second year. They have set forth not only the merits of this nominee, but also what is at stake for the Senate and the country if Senate Republicans take the virtually unprecedented action of filibustering a Federal district court nominee.

Jack McConnell has bipartisan support from those in his home State. Leading Republican figures in Rhode Island have endorsed his nomination. They include First Circuit Court of Appeals Judge Bruce Selya; Warwick Mayor Scott Avedisian; Rhode Island Chief Justice Joseph Weisberger; former Rhode Island Attorneys General Jeffrey Pine and Arlene Violet; former Director of the Rhode Island Department of Business Barry Hittner; former Rhode Island Republican Party Vice-Chair John M. Harpootian; and Third Circuit Court of Appeals Judge Michael Fisher.

With more than 25 years of experience as an outstanding litigator in private practice, Mr. McConnell has been endorsed by the Providence Journal, which wrote:

> In his legal work and community leadership [he] has shown that he has the legal intelligence, character, compassion, and independence to be a distinguished jurist.

That is what Senator REED talked about, the nominee's qualifications, experience, temperament, integrity, and character.

Just a few years ago, Republican Senators argued that filibusters of judicial nominees were unconstitutional, and that every nominee was entitled to an up-or-down vote. Of course, they said that with a Republican President. Now suddenly things have changed. At that time, a number of Republican Senators joined in a bipartisan memorandum of understanding to head off the ''nuclear option'' and agreed that nominees should only be filibustered under ''extraordinary circumstances.'' No one could seriously argue that this Federal district court nomination presents anything approaching ''extraordinary circumstances'' that might justify a filibuster to prevent a vote on the nomination.

It would be unfortunate if Senators were to knuckle under to the demand for a filibuster by special interest business lobbies. Mr. McConnell should not be filibustered for being a good lawyer, yet that is at the root of any opposition. The corporate lobby opposes him because he successfully represented plaintiffs, including the State of Rhode Island itself, in lawsuits against lead paint manufacturers. Some here in the Senate may support the lead paint industry. That is their right. I support the right of this attorney to bring legal claims based on the poisoning of children by the lead in paint and to hold those responsible accountable. You can support the lead paint manufacturers or you can support the children who were poisoned. I will stand with the children. That is what Mr. McConnell did. That is why the business lobbies oppose him. No Senator should oppose Mr. McConnell for doing what lawyers do and vigorously representing his clients in lawsuits. That is not a justification to filibuster this nomination. Mr. McConnell has testified and demonstrated that he understands the differences between the role of the judge and the role of an advocate for one of the parties.

With judicial vacancies at crisis levels, affecting the ability of courts to provide justice to Americans around the country, we should be debating and voting on each of the 13 judicial nominations reported favorably by the Judiciary Committee and pending on the Senate's Executive Calendar. No one should be playing partisan games and obstructing while vacancies remain above 90 in the Federal courts around the country. With one out of every nine Federal judgeships still vacant, and judicial vacancies around the country at 93, there is serious work to be done.

I have made it a practice as the chairman of the Senate Judiciary Committee to respect the views of home State Senators from both sides of the aisle. I have encouraged President Obama to work with home State Senators from both sides of the aisle. Republican Senators used to defer to home State Senators on Federal district court nominations. That was their justification for voting both for or against nominations during the last several years. But if Senate Republicans abandon that deference and engage in a filibuster of this Federal district court nominee, and ignore the strongly held views of home State Senators, then they will be undercutting all those understandings and practices.

When home State Senators as widely respected and as serious about the rule of law as the Senators from Rhode Island endorse a Federal district court

nominee, that nominee should not be filibustered. They never have been. I have been here 37 years. We used to treat each other, as well as such nominees willing to serve on the bench, with respect. I hope that today the Senate will return to that tradition. I trust that Senate Republicans will not go down the dark path on which they are headed.

Senator REED spoke yesterday of the precipice on which the Senate is poised. Senator WHITEHOUSE, Senator FEINSTEIN, and Senator SCHUMER have spoken eloquently on this issue as well. I urge all Senators, Senators on both sides of the aisle, to do the right thing to honor our constitutional role and traditions, and to vote in favor of ending this filibuster so that the nomination of Jack McConnell can then be considered on the merits and voted up or down.

I reserve the balance of my time and I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Maine.

SBIR/STTR

Ms. SNOWE. Madam President, I rise today regrettably, as ranking member of the Small Business Committee, to announce that I will be opposing cloture on the pending legislation regarding small business. I have reached this decision after much deliberation, because I support the underlying legislation. In fact, I have championed the Small Business Innovation Research Program since its inception in 1982, when I was serving in the House of Representatives.

But regrettably there has been a disturbing trend in this body over the past several years of disregarding the minority rights and flat out disallowing votes on our amendments. We were informed early this year that we would have an open amendment process on legislation in this Congress. We were told, let's let the Senate be the Senate again. I could not agree more. Let's allow Senators to offer amendments and have votes on them. That is the Senate that I know, and the one that has served our country so well since it first convened in 1789.

As we all well know, the Senate has traditionally been a place where the rights of the minority were protected, and where constructive debate is the rule, not the exception. It is supposed to be the institutional check that ensures all voices are heard and considered. Because while our constitutional democracy is premised on majority role, it is also grounded in a commitment to minority rights.

The fact of the matter is, we have been considering the small business innovation research legislation since March 14, a month and a half ago. Over the course of that time, when excluding weekends and recesses, the Senate was in session 15 days. And in those 15 days, we had merely 3 days in which the Senate has held votes related to this legislation—3 days.

Furthermore, we have voted on 11 amendments out of 137 amendments filed prior to the Easter recess, which hardly represents an open amendment process. So we have 137 amendments filed. What do we do? We do not hold votes or debate these issues, allowing those amendments to be offered, we go on a 2-week recess, a fact that was not lost on the American people. What they saw was business as usual in Washington, acting as if there is nothing wrong in America today.

So it is disappointing to hear the statements that the Republicans are not allowing this bill to move forward. We are more than ready to move forward with votes on amendments, then onward to final passage. That is how the process works in the Senate.

We could have already been at that point if we had been given the time, instead of having recesses and days off and morning business. Indeed the majority has squandered the time of the past several months not on this legislation but in quorum calls and in morning business. There was nothing else commanding our attention.

There were several days we voted for the continuing resolution. I understand not having votes on those days. But just 3 days for votes out of 15 is unfortunate, not to mention underachieving. We could have held votes on any other day.

Indeed, on April 19, USA Today ran an article titled, ''Two chambers work at different paces.'' It noted that the House of Representatives has held 277 roll call votes as of April 18, the most in that period of time since 1995 following the Republican Revolution. The article then shifted its focus to the Senate, where it noted that our body has held a mere 68 record votes ''the fewest roll-call votes since 1997''! One of our colleagues in the House joked last month that the Senate has two paces—''slow and glacial.'' It would be humorous if it didn't mean that the American people are getting shortchanged by their elected representatives, who were sent here to vote on the critical issues facing our country.

Voting is our primary responsibility, as are amendments to flesh out the legislative process. We should have had a vote on the legislation I was offering as an amendment, in conjunction with Senator COBURN and six other cosponsors on regulatory reform, to reduce the burden on our Nation's small businesses.

This would have had a direct impact, here and now, on the ability of small businesses to create jobs. I am mystified as to why I cannot have a vote on this regulatory reform amendment as the ranking member of the Small Business Committee.

In November, the Senate Small Business Committee held a hearing on regulatory reform. It was noted in that hearing that a 30-percent reduction in regulatory costs in an average 10-person firm would save nearly $32,000, enough to hire one additional individual. After enduring 26 straight months with unemployment at or above 8 percent, it is more imperative than ever that we finally liberate American small businesses from the regulatory burden that diminishes our ability to compete globally and create jobs at home.

The regulatory reform amendment I am proposing with Senator COBURN is strongly supported by a variety of small business community organizations: the NFIB, the Chamber of Commerce, and 28 other groups.

I ask unanimous consent to have that letter printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

MAY 2, 2011.

Hon. OLYMPIA SNOWE,
U.S. Senate,
Washington, DC.
Hon. TOM COBURN,
U.S. Senate,
Washington, DC.

DEAR SENATORS SNOWE AND COBURN: As representatives of small businesses, we are pleased to support Senate Amendment 299, the Small Business Regulatory Freedom Act of 2011. This amendment to S. 493, the SBIR/STTR Reauthorization Act, puts into place strong protections for small business to help ensure that the federal government fully considers the impact of proposed regulation on small businesses.

In an economy with high unemployment, and where almost 2/3 of all net new jobs come from the small business sector, we appreciate that your legislation would require regulators to further analyze the impact of certain proposals on job creation. The annual cost of federal regulation per employee is significantly higher for smaller firms than larger firms. Federal regulations—not to mention state and local regulations—add up and increase the cost of labor. If the cost of labor continues to increase, then job creation will be stifled because small businesses will not be able to afford to hire new employees.

The Small Business Regulatory Freedom Act expands the scope of the Regulatory Flexibility Act (RFA) by forcing government regulators to include the indirect impact of their regulations in their assessments of a regulation's impact on small businesses. The bill also provides small business with expanded judicial review protections, which would help to ensure that small businesses have their views heard during the proposed rule stage of federal rulemaking.

The legislation strengthens several other aspects of the RFA—such as clarifying the standard for periodic review of rules by federal agencies; requiring federal agencies to conduct small business economic analyses before publishing informal guidance documents; and requiring federal agencies to review existing penalty structures for their impact on small businesses within a set timeframe after enactment of new legislation. These important protections are needed to prevent duplicative and outdated regulatory burdens as well as to address penalty structures that may be too high for the small business sector.

The legislation also expands over time the small business advocacy review panel process. Currently, the panels only apply to the Environmental Protection Agency, the Occupational Safety and Health Administration, and the Consumer Financial Protection Bureau. These panels have proven to be an extremely effective mechanism in helping