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MICHIGAN SENATORS' CRUCIAL ROLE IN KEEPING FEDERAL COURTS FULL

*Carl Tobias**

One critical responsibility that the American Constitution assigns senators is the provision of comprehensive advice and consent respecting accomplished federal judicial candidates suggested by the President to serve, particularly in their home states.¹ Democratic Senator Debbie Stabenow, who is completing her fourth term representing Michigan, has always joined with her colleague Democratic Senator Gary Peters in the administration of President Joe Biden and Vice President Kamala Harris to astutely discharge this crucial responsibility.² Stabenow and Peters exercised sound judgment, intelligence, hard work, and keen appreciation for the distinct roles that the Constitution accords the President and senators in the confirmation and nomination processes, the central rules and customs that govern selection, and their constituents' interests. Stabenow's virtually four, and Peters' nearly two, terms of experience in the Senate filling vacancies have permitted both senators to assume leadership positions.

Representative Elissa Slotkin, the Democratic Party nominee who is campaigning for Stabenow's post, has diligently represented a Michigan

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¹ U.S. CONST. art. II, § 2.

² *See, e.g.*, Press Release, Debbie Stabenow, U.S. Senator, Stabenow, Peters Introduce Judicial Nominee Robert White in Senate Committee Hearing (Feb. 8, 2024), <https://www.stabenow.senate.gov/news/stabenow-peters-introduce-judicial-nominee-robert-white-in-senate-committee-hearing>; *id.*, Stabenow, Peters Introduce Judicial Nominee Susan DeClercq in Senate Committee Hearing (June 8, 2023), <https://www.stabenow.senate.gov/news/stabenow-peters-introduce-judicial-nominee-susan-declercq-in-senate-committee-hearing>; *id.*, U.S. Senators Stabenow and Peters Introduce Michigan Judicial Nominees in Senate Committee Hearing (Oct. 6, 2021), <https://www.stabenow.senate.gov/news/us-senators-stabenow-and-peters-introduce-michigan-judicial-nominees-in-senate-committee-hearing>.

congressional district for six years.³ That valuable service has provided Slotkin numerous opportunities to collaborate with Michigan's present senators regarding pertinent judicial nomination and confirmation matters during the Biden/Harris Administration. Slotkin, as a Congress member, has also shown a distinct interest in the federal courts. Examples are the Senate nominee's co-sponsorship of Supreme Court ethics reform legislation while signing amicus briefs in high-profile cases.⁴ These factors suggest that, if promptly elected to succeed the current politician, Slotkin would personally assure a seamless transition in the Michigan confirmation and nomination processes.

The endeavors of Stabenow, Peters, and Slotkin, in conjunction with the Biden/Harris Administration, have produced excellent, mainstream candidates, who increase experiential, ideological, ethnic, gender, and sexual orientation diversity. As Slotkin pursues the election in November, the effective performance of the Michigan judicial confirmation and nomination systems, which Slotkin promises to continue, should resonate with voters.

Stabenow and Peters crafted numerous efficacious selection procedures that tracked and filled court vacancies that arose in Michigan by canvassing,

³ *Slotkin, Elissa*, BIOGRAPHICAL DIRECTORY OF THE U.S. CONG., <https://bioguideretro.congress.gov/Home/MemberDetails?memIndex=S001208> (last visited Nov. 2, 2024).

⁴ Press Release, Elissa Slotkin, Congresswoman, Slotkin Co-Sponsors Bill to Preserve Integrity of Supreme Court (May 10, 2023), <https://slotkin.house.gov/media/press-releases/slotkin-co-sponsors-bill-preserve-integrity-supreme-court>; Brief for 171 Members of Congress as Amici Curiae Supporting Petitioner, *United States v. Rahimi*, 144 S. Ct. 1889 (2024) (No. 22-915); Brief for 263 Members of Congress as Amici Curiae Supporting Applicants, *Danco Lab's, LLC v. All. for Hippocratic Med.*, 143 S. Ct. 1075 (2023) (No. 22A901, 22A902).

interviewing, and submitting numbers of extremely capable, moderate prospects for Biden/Harris Administration consideration and nomination. Stabenow, Peters, and White House Counsel staff helped prepare the aspirants tapped for the Senate confirmation process.

Stabenow and Peters introduced most nominees to Judiciary Committee members at hearings, carefully praising their strong qualifications while explaining the nomination process implemented.⁵ The aspirants – one Sixth Circuit, six Michigan Eastern District, and one Western District, nominees – were very qualified centrists with measured temperament whose records showed their intelligence, ethics, diligence, independence, and public service commitment.⁶

⁵ See, e.g., *Hearing on Nominees Before the S. Judiciary Comm.*, 118th Cong. (Feb. 8, 2024) (nominating Robert White for the Eastern District); *Hearing on Nominees Before the S. Judiciary Comm.*, 118th Cong. (June 7, 2023) (nominating Susan DeClercq for the Eastern District); *Hearing on Nominees Before the S. Judiciary Comm.*, 117th Cong. (Mar. 2, 2022) (nominating Stephanie Davis for the Sixth Circuit).

⁶ Press Release, White House, President Biden Names Forty-Fourth Round of Judicial Nominees (Jan. 10, 2024), <https://www.whitehouse.gov/briefing-room/presidential-actions/2024/01/10/president-biden-names-forty-fourth-round-of-judicial-nominees/> (naming Robert White for the Eastern District); Press Release, White House, President Biden Names Thirty-Fifth Round of Judicial Nominees (June 28, 2023), <https://www.whitehouse.gov/briefing-room/statements-releases/2023/06/28/president-biden-names-thirty-fifth-round-of-judicial-nominees-and-one-new-nominee-to-serve-as-u-s-attorney/> (naming Brandy McMillion for the Eastern District); Press Release, White House, President Biden Names Thirty-Third Round of Judicial Nominees (May 3, 2023), <https://www.whitehouse.gov/briefing-room/statements-releases/2023/05/03/president-biden-names-thirty-third-round-of-judicial-nominees/> (naming Susan DeClercq for the Eastern District); Press Release, White House, President Biden Names Twenty-Sixth Round of Judicial Nominees (Sept. 2, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/09/02/president-biden-names-twenty-sixth-round-of-judicial-nominees/> (naming Jonathan Grey for the Eastern District); Press Release, White House, President Biden Names Twentieth Round of Judicial Nominees (June 29, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/06/29/president-biden-names-twentieth-round-of-judicial-nominees/> (naming Frances Behm for the Eastern District); Press Release, White House, President Biden Names Fourteenth Round of Judicial Nominees (Feb. 2, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/02/02/president-biden-makes-fourteenth-judicial-nominations-announcement/> (naming Stephanie Davis for the Sixth Circuit); Press Release, White House, President Biden Names Fifth Round of Judicial Nominees (June 30, 2021), <https://www.whitehouse.gov/briefing-room/statements->

Sixth Circuit nominee Stephanie Davis was highly experienced. The jurist most recently was an Eastern District Judge for nearly three years, after Magistrate Judge service in this court for over four years and Assistant U.S. Attorney (AUSA) service there for practically two decades.⁷ The Western District nominee was Jane Beckering who served on the Michigan Court of Appeals over fourteen years preceded by seventeen years in private practice.⁸

The Eastern District nominees included Shalina Kumar, who most recently served as the Chief Judge for the Oakland County Sixth Circuit Court during three years after eleven on this court;⁹ Kay Behm, who served on the Genesee County Circuit and Probate Courts for thirteen years;¹⁰ Jonathan Grey, who most recently served as an Eastern District Magistrate Judge for practically a year and as an AUSA over nine years before that;¹¹ Susan DeClerq, who served as an Eastern District AUSA for nearly twenty years;¹² Brandy McMillion, who served as an Eastern District AUSA for eight years after engaging in private practice for nine years;¹³ and Robert White, who served as an AUSA primarily in the Eastern District over a decade.¹⁴ Indeed, Michigan has experienced *no* vacancies since White's

releases/2021/06/30/president-biden-names-fifth-round-of-judicial-nominees/ (naming Jane Beckering for the Western District and Shalina Kumar for the Eastern District).

⁷ Press Release, White House, Fourteenth Round, *supra* note 6.

⁸ Press Release, White House, Fifth Round, *supra* note 6.

⁹ *Id.*

¹⁰ Press Release, White House, Twentieth Round, *supra* note 6.

¹¹ Press Release, White House, Twenty-Sixth Round, *supra* note 6.

¹² Press Release, White House, Thirty-Third Round, *supra* note 6.

¹³ Press Release, White House, Thirty-Fifth Round, *supra* note 6.

¹⁴ Press Release, White House, Forty-Fourth Round, *supra* note 6.

April 2024 confirmation. This is notable, because many of the forty-five current district openings have lacked nominees over multiple years.¹⁵

Most of the nominees enjoyed relatively smooth, uncontroversial Judiciary Committee hearings in which they directly afforded comprehensive and clear responses to questions, especially from GOP members.¹⁶ The panel discussed the nominees, approving many on bipartisan committee votes.¹⁷ All nominees received bipartisan cloture and confirmation votes after debates, rather swiftly and easily winning confirmation.¹⁸

Stabenow and Peters have thoroughly discharged their constitutional responsibility to suggest talented, mainstream prospects for the Biden/Harris

¹⁵ See *Current Judicial Vacancies*, U.S. COURTS, <https://www.uscourts.gov/judges-judgeships/judicial-vacancies/current-judicial-vacancies> (last updated Nov. 2, 2024); *Future Judicial Vacancies*, U.S. COURTS, <https://www.uscourts.gov/judges-judgeships/judicial-vacancies/future-judicial-vacancies> (last updated Nov. 2, 2024).

¹⁶ See, e.g., Melissa Nann Burke, *Michigan Judicial Nominee Moves Senate Panel with Immigrant Story*, DETROIT NEWS (June 7, 2023), <https://www.detroitnews.com/story/news/politics/michigan/2023/06/07/michigan-judicial-nominee-biden-detroit-court-susan-declercq-south-korean-immigrant/70297521007/>; Melissa Nann Burke, *Judicial Nominee Behm Sails Through Senate Judiciary Committee Hearing*, DETROIT NEWS (July 27, 2022), <https://www.detroitnews.com/story/news/politics/2022/07/27/judicial-nominee-behm-sails-through-senate-judiciary-committee-hearing/10161990002/>.

¹⁷ See, e.g., Melissa Nann Burke, *U.S. Senate Panel Advances White Nomination to Federal Bench*, DETROIT NEWS (Mar. 7, 2024), <https://www.detroitnews.com/story/news/politics/2024/03/07/senate-panel-advances-robert-j-white-nomination-to-federal-bench-detroit/72881098007/>; Melissa Nann Burke, *U.S. Senate Panel Advances Grey Nomination to Federal Court in Detroit*, DETROIT NEWS (Feb. 9, 2023), <https://www.detroitnews.com/story/news/local/detroit-city/2023/02/09/senate-panel-advances-judge-jonathan-grey-nomination-to-federal-district-court-in-detroit/69888435007/>.

¹⁸ See, e.g., Melissa Nann Burke, *Senate Confirms Prosecutor McMillion for Federal Bench in Michigan*, DETROIT NEWS (Nov. 9, 2023), <https://www.detroitnews.com/story/news/politics/2023/11/09/senate-confirms-prosecutor-mcmillion-for-federal-bench-in-michigan/71515125007/>; Melissa Nann Burke, *U.S. Senate Confirms Michigan's Davis to 6th Circuit U.S. Court of Appeals*, DETROIT NEWS (May 24, 2022), <https://www.detroitnews.com/story/news/politics/2022/05/24/stephanie-dawkins-davis-confirmed-congress-sixth-circuit-court-of-appeals/9907753002/>.

Administration, which has correspondingly nominated the aspirants. Moreover, Stabenow and Peters solicitously helped prepare nominees for confirmation processes and introduced them before hearings. The senators also collaborated with Democratic *and* Republican Party colleagues around the country, urging their support for the prominent nominees. Stabenow and Peters concomitantly insured that Biden, Harris, and senators promptly and smoothly filled open posts. Thus, when casting November ballots for U.S. Senate and President, Michigan voters need to remember how well Stabenow and Peters cooperated with Biden and Harris in fulfilling this critical aspect of public service while proffering examples that Slotkin would likely continue.