

Statement of

The Honorable Patrick Leahy

United States Senator

Vermont

September 23, 2008

Opening Statement of Chairman Patrick Leahy,

Senate Judiciary Committee,

Hearing on Nominations

September 23, 2008

I am holding this exceptional hearing late in a presidential election year as an accommodation to Senator Specter, the Ranking Republican Member of our Committee and a former Chairman. The Thurmond Rule, established and followed by Republicans when there is a Democratic President in the White House, calls for Senate consideration of judicial nominations to stop in the last several months before a presidential election in order to await the outcome of the election. Senator Hatch followed that practice in both 1996 and 2000 when he chaired the Judiciary Committee. In fact, in 1996, no one nominated after June 6 was considered and there were no judicial confirmations after the August recess. In 2000, there were no hearings after July 25.

I have said throughout my chairmanship that I would treat President Bush's nominees better than Republicans treated President Clinton's, and I have done so. This hearing is another example of that. It is the second hearing I have held for judicial nominees in September of this presidential election year. I have already included the five judicial nominees from Utah, California, Florida and Colorado who participated in our September 9 hearing on the Committee's agenda for consideration at our business meeting later this week. Today we hear from five additional nominees for lifetime appointment to the Federal bench in Pennsylvania, Virginia and Kansas.

I have consistently said that by this stage of the year I will be working with the Majority Leader, as well as our Republican counterparts, in order to be able to proceed on consensus nominations. At this late date of a presidential election year, progress on judicial nominees requires consensus and the cooperation of all Senators. I want to thank the Majority Leader, with whom I have consulted, for his willingness to have us proceed with these nominations.

Three of the nominees are included at Senator Specter's request. C. Darnell Jones II, Mitchell S. Goldberg, and Joel H. Slomsky all also have the support of Senator Casey. President Bush did not get around to nominating these men until just before the August recess. At the time I set this hearing last week, we still had not received ABA ratings based on peer reviews of all of them. We are expediting these proceedings as a courtesy to Senator Specter and waiving the one-week notice required by Senate Rules and the rules and practices of our Committee.

I am also happy to accommodate the request of the senior Senator from Virginia that we include the nomination of Anthony J. Trenga to a judicial vacancy in Virginia. Senator Warner is one of our most distinguished members and he is retiring at the end of this Congress. Senator Webb has worked with Senator Warner on nominations and supports this nomination, as well.

The final nominee is Eric Melgren of Kansas. I am accommodating the request of Senator Brownback by including this nomination. I do so despite the Senator's rather constant criticism of my efforts, including his complaining when the Committee worked to provide consideration of long-delayed judicial nominations for Michigan earlier this year, and his having personally delayed Senate consideration of Judge Janet Neff along with a dozen other judicial nominees at the end of the last Congress when the Committee was chaired by Senator Specter.

We have already confirmed more judicial nominations in the 20 months of this Congress than were confirmed during the previous two years when a Republican Senate majority and Republican chairman of this Committee did not have to worry about the Thurmond Rule and an abbreviated session due to a presidential election. Indeed, in the 37 months I have served as Judiciary chairman, the Senate has already confirmed 158 of President Bush's judicial nominees, the same number of President Bush's nominees confirmed in the more than four years the Senate Republicans were in charge. We have cut the judicial vacancies I encountered in the summer of 2001 more than in half. In the prior six years of Senate Republican majority control during the Clinton administration, the pocket filibusters and obstruction of moderate, qualified nominees forced circuit court vacancies to more than double. By contrast, we have cut circuit court vacancies by two-thirds.

We proceed with this hearing at a time when the country is confronting the worst financial crisis we have experienced since the Great Depression, one that has exposed the American taxpayers to trillions in losses. Homeowners and investors are close to panic. The American economy has experienced job losses every month this year and they now total more than 650,000. Even the Republican candidate for President admits that the economy is in recession. We are working with Chairman Dodd and the Senate leadership on those overriding issues and this Committee has reported a number of legislative relief efforts that can help. In addition, just as I held a judicial confirmation hearing two days after the attacks of September 11, I also proceed this afternoon.

Despite our efforts to step away from the tit for tat of the nomination battles of the past, I have yet to hear praise from a single Republican for our fair consideration of this President's nominees. Despite our success in dramatically lowering judicial vacancies by approving the nominees of a President from the other party, those efforts have yet to be acknowledged. Yet despite the persistent difficulties we have had this Congress at gaining Republican cooperation to consider important matters in Committee and in the Senate, including bills with bipartisan support, we proceed with this hearing today.

I intend to continue in this Congress, and with a new President in the next Congress, to work with Senators from both sides of the aisle to ensure that the Federal judiciary remains independent, and able to provide justice to all Americans,

#####