

Testimony of

The Honorable Orrin Hatch

July 23, 2003

Statement of Chairman Orrin G. Hatch

Before the United States Senate Committee on the Judiciary

Executive Business Meeting

On the Nomination of

William Pryor to the

United States Court of Appeals for the Eleventh Circuit

We will turn once again to the nomination of William Pryor to be United States Circuit Judge for the Eleventh Circuit.

When I recessed this markup last Thursday, our Democratic colleagues on this Committee had requested a delay in the vote on this nomination. This request was based on documents pertaining to General Pryor's activities on behalf of the Republican Attorneys General Association, commonly known as RAGA. I directed Committee staff to work together to interview two individuals before the Committee took up the Pryor nomination again: Kelly Foradori, the Democrats' source of the documents at issue, and General Pryor. I also left open the possibility of Committee staff contacting Ms. Foradori's employer for a second interview.

I want to report to what has happened in the week that has elapsed since then. When Committee staff contacted Ms. Foradori, she declined to answer questions until she had retained counsel. A subsequent attempt to contact Ms. Foradori was unsuccessful.

Committee staff did interview, for a second time, Ms. Foradori's employer - and, at the request of Democratic staff, placed her under oath. Her sworn testimony has indicated no contradiction in what General Pryor has told the Committee.

However, much to my dismay, Democratic staff STILL refused to interview General Pryor. This was the second time that he has made himself available to be interviewed, and both times the Democratic staff refused to ask him any questions.

Instead, Democratic staff proceeded with a full-scale fishing expedition by interviewing or attempting to interview every person whose name appears in the documents provided to them by Kelly Foradori -- who refuses to talk to Republican staff, whose employer stated under oath that she stole the documents, and who has yet to disclose when and how she first provided the documents to Democratic staff. Ms. Foradori has not explained who drafted each of the documents, when they were drafted, why they were drafted, who had access to them for the past four years, or to whom they have been circulated. In short, our Democratic colleagues have launched a full-scale political fishing expedition based on unauthenticated and, in my view, unreliable documents.

The Democrats proceeded with their investigation despite clear Republican objection at the last markup to the unlimited scope and duration of what they contemplated, and the utter lack of a legitimate basis for a scattershot series of calls whose only real point was to attempt to extract some isolated statement that could be construed to smear General Pryor in a classic game of Beltway GOTCHA. As my friend Senator Graham noted last Thursday, it appears that Democrats on this Committee have become prosecutors of our judicial nominees. It is sad and it is wrong.

Last night I received a letter signed by all of the Committee Democrats complaining of Republican staff actions that allegedly delayed or impeded their investigation. This letter appears to me to be nothing more than an effort to blame Republican staff for the failure of the Democrats' investigation to produce ANY credible evidence that General Pryor misled this Committee. In fact, what's notable about this letter is its COMPLETE FAILURE to specify ANY EVIDENCE that General Pryor misled the Committee. Despite having called 35 persons and interviewed 17 of them, including two whom they placed under oath, our Democratic colleagues have failed to find the smoking gun that continues to elude them. In my view, the results of this investigation underscore the unreliable nature of the documents provided by Ms. Foradori and have only served to CORROBORATE the testimony of General Pryor.

Here's one prime example: General Pryor told the Committee that he did not know whether any tobacco companies were members of RAGA, and that he did not solicit RAGA donations from tobacco companies. Democratic staff contacted the three individuals affiliated with tobacco companies who are listed in the Foradori documents. All three of them verified that Bill Pryor did not ask them to contribute to RAGA on behalf of their companies.

In short, having found nothing in the six weeks since his hearing with which to smear General Pryor, the Democrats' answer appears to be to redouble their efforts to find something. Their inquiry, based on unauthenticated, unreliable documents, has amounted to a far-flung fishing expedition that has succeeded only in undeservedly trashing a good man's reputation. It is time for Bill Pryor to have his vote before this Committee.

The manufactured controversies that have sought to derail this Committee's consideration of Bill Pryor's nomination have obscured the real record of this excellent nominee.

General Pryor is a magna cum laude graduate of Tulane University School of Law, where he was editor-in-chief of the Tulane Law Review. He then clerked for Judge John Minor Wisdom on the U.S. Court of Appeals for the Fifth Circuit, a civil rights legend who helped implement desegregation in the South. While working at two of Alabama's top private law firms, General Pryor was also an adjunct professor of law at Samford University's Cumberland School of Law. In 1995, then-Attorney General Jeff Sessions hired him as deputy attorney general, and in 1997, he was appointed to serve out Senator Sessions's term. In 1998, Alabamians elected General Pryor to this position, and he was re-elected in 2002 with a remarkable 59% of the vote.

In Alabama, he is enormously popular. Among the many letters of support that the Committee has received are letters from Democrats, African-Americans, women's organizations, and members of Alabama's Jewish community. He has received the support of Alabama state representatives Joe Reed and Alvin Holmes, former county commissioner Chris McNair, and Congressman Artur Davis, all African-American Democrats. So while I, the people of Alabama, and especially the Alabamians who know him best, agree that General Pryor is an excellent, well-qualified nominee, the radical left and its Beltway sympathizers believe he has already disqualified himself. Why?

Because the left is trying to enforce an anti-religious litmus test: it appears that nominees who openly adhere to Catholic and Baptist doctrines, as a matter of personal faith, are unqualified for the federal bench in the eyes of the liberal Washington interest groups. Period. No exceptions. Not for Carolyn Kuhl or Leon Holmes, and certainly not for General Pryor.

General Pryor's record of enforcing the Supreme Court's dictates on abortion is unquestioned--he has enforced them all, despite criticizing them all--but this is irrelevant to the left. The litmus

test, whether you call it an abortion litmus test or a religious litmus test, is being applied with full force against General Pryor because of his faith and the personal views consistent with it.

The left's other accusations against General Pryor have followed an all-too familiar script. I have no doubt that during the course of this debate we will hear repeated the allegations that we have heard leveled against so many other of President Bush's nominees: That he is anti-this and pro-that, and so on and so forth. Such sound bites are easy to make, but the truth of the matter is that General Pryor's record speaks with far more authority than any of the fulminations against him.

For example, those who attack General Pryor for his federalism arguments before the Supreme Court--many of which he won--are really attacking the federalist structure of the Constitution itself. Arguing that Congress doesn't have the power that it has assumed through certain legislative acts is not activist or radical--it is principled, entirely consistent with our Constitution's separation of powers, and is General Pryor's duty as state attorney general.

In all of the federalism cases that General Pryor has argued, he advocated that only certain portions of federal laws were unconstitutional; in all cases, multiple remedies remain available for aggrieved parties or the federal government. And in Garrett, Kimel, Morrison, and SWANCC, Justices O'Connor and Kennedy were part of the Supreme Court majorities that agreed with General Pryor's arguments. Are they extreme and activist, some have characterized General Pryor? General Pryor's sworn testimony at his hearing shows he understands that in the past, the so-called states' rights mantra has been used as what he called "an illegitimate defense of evil." But his and the Rehnquist Court's federalism is not the states' rights of Calhoun and Wallace. Suggesting otherwise is simply not accurate.

General Pryor's critics have also attempted to portray him as an official without respect for the separation of church and state. Again, it simply is beyond dispute that his record proves his repeated ability to enforce the law regardless of his strong personal beliefs. In an effort to defeat challenges to school prayer and the display of the Ten Commandments in the Alabama Supreme Court, both the Governor that appointed General Pryor and Alabama Chief Justice Roy Moore urged General Pryor to argue that the Bill of Rights does not apply to the states. General Pryor refused and argued the case on much narrower grounds, despite his own deeply held Catholic faith and personal support for both of these issues.

General Pryor has also been attacked for his statements urging modification or repeal of Section 5 of the Voting Rights Act. As an initial matter, it is important to point out that General Pryor is not alone in his criticism of that section of the Act. In fact, Thurbert Baker, the African-American

Democrat Attorney General of Georgia, called Section 5 an "extraordinary transgression of the normal prerogatives of the states" and "a grave intrusion into the authority of the states." The late Justice Powell also criticized Section 5 of the Act.

However, despite General Pryor's well documented concerns about Section 5 of the Voting Rights Act, he has vigorously enforced all provisions of the Act. He successfully defended before the Supreme Court several majority-minority voting districts approved under Section 5 from a challenge by a group of white Alabama voters. He also issued an opinion that the use of stickers to replace one candidate's name with another on a ballot required pre-clearance under Section 5. Again, General Pryor enforced the law despite its conflict with his personal beliefs.

At General Pryor's inauguration as Attorney General, he opened with the statement: "Equal under law today, equal under law tomorrow, equal under law forever." Despite the distortions, half-truths, and outright falsehoods we have heard from the usual leftist Beltway interest groups, General Pryor is a diligent, honorable man whose loyalty as a public servant has been to the law and its impartial administration. He has told us under oath that he will continue to follow the law, just as he has demonstrated during his distinguished career in Alabama. We should be proud to take him at his word and send his nomination to the Senate floor.

General Pryor was thoroughly questioned during a five-hour hearing. He answered roughly 288 written questions from Committee Democrats. It is time for us to vote. I urge you all to join me in supporting his nomination.

#