

Statement of

The Honorable Patrick Leahy

United States Senator
Vermont
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Senate Judiciary Committee
Judicial Nominations Hearing
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Today the Committee will hear from three judicial nominees, including two for district court seats and the nominee for the last vacancy on the Court of Federal Claims. For the record, this hearing is the 17th judicial nominations hearing held so far this year. This pace stands in sharp contrast to the way President Clinton's nominees were treated by the Republican majority.

Chairman Hatch never held 17 judicial nominations hearings in any comparable time period during his six years as chairman during the Clinton Administration. In most of those years, there were far fewer hearings and far fewer nominees. For example, I recall that during the entire year of 1996, when the vacancy rate was higher and rising, the Committee held only six hearings all year, and those hearings included only five Circuit Court nominees. During that 1996 session, not a single judge was confirmed to the Circuit Courts -- not one. That represents a stark difference to the 11 circuit court confirmations this year.

In fact, Chairman Hatch has now held more hearings for President Bush's judicial nominees in just 9 months than he held in all 24 months of 1999 and 2000 combined for President Clinton's judicial nominees. During the entire year of 2000, only eight judicial nominations hearings were held. In 1999, the Committee did not have a hearing to consider a single judicial nominee until June 16th, and during the rest of 1999, it held only seven hearings to consider judicial nominees. That was the third year of President Clinton's second term. Like 1999, this year, 2003, is the third year of this President's term, and Chairman Hatch has held more than twice as many hearings for President Bush's judicial nominees as for President Clinton's that year.

This accelerated rate of review has resulted in 146 of President Bush's nominees winning confirmation. It is a pace that has put this Administration ahead of previous ones in stacking the federal bench with judges. In just two and a half years, he now has more active judges on the bench than the former President Bush.

It is clear from these statistics that with a Republican in the White House, the Senate Republican majority has gone from second gear -- the restrained pace it had said was required for Clinton nominees -- to overdrive for President Bush's judicial nominees.

This morning the Senate Judiciary Committee will hear from Roger W. Titus to be United States District Judge for the District of Maryland. Mr. Titus, who is a partner at Venable LLP in Maryland, has been practicing law for 37 years and received a unanimous rating of "Well Qualified" from the American Bar Association. His lengthy record as an attorney and the esteem of members of the local bar stand in stark contrast to the types of nominations this President has made for circuit court vacancies.

For example, five of the 12 circuit court candidates nominated by President Bush and rated by the ABA so far this year have earned a rating of "Not Qualified" in the view of some members of the bar. Many of those circuit court nominees have proven to be quite controversial and have practiced law for far fewer years than Mr. Titus. In fact, the nominee that President Bush has put forward for the Maryland seat on the Fourth Circuit, created upon the death of Judge Francis Murnaghan, is a young Virginian who earned some "Not

Qualified" votes from the bar. Yet, the nomination of Mr. Titus clearly demonstrates that there are well qualified, experienced and uncontroversial Maryland Republicans who could be chosen for the Court of Appeals for the Fourth Circuit had the President and his advisors looked for a mainstream nominee rather than a young ideologue. I welcome Senator Sarbanes and Senator Mikulski for coming today to introduce Mr. Titus to the Committee.

Judge Margaret Catharine Rogers, who is nominated to be a United States District Judge for the Northern District of Florida, is also on today's hearing. Like Mr. Titus, Judge Rodgers has earned bipartisan support for her nomination. She has been admitted to the bar for about ten years and has served for about a year as a United States Magistrate Judge in the district to which she is nominated. Judge Rodgers served honorably in the Army, earning a Commendation Medal and a Good Conduct Medal, and she has also volunteered a great deal of time to help others in the community. I welcome Senator Nelson to the Committee today who has come to support this nominee, who is the product of Florida's bipartisan judicial selection commission that Senator Nelson and Senator Graham have worked hard to establish with this White House.

Finally, on today's agenda is George W. Miller, who is nominated to be a Judge for the United States Court of Federal Claims. Mr. Miller is a partner at Hogan & Hartson and he specializes in cases filed under the "Takings Clause" of the Fifth Amendment, which is an area of special jurisdiction for this Article I court.

Like so many of this President's judicial nominees, Mr. Miller is a member of the Federalist Society for Law & Public Policy Studies. In fact, more than 17 of this President's circuit court nominees were members of the Federalist Society and five others were frequent speakers at Federalist Society events, in addition to many trial court nominees. Mr. Miller also serves on the Board of Advisors for the Defenders of Property Rights, which according to its mission statement, "was founded in 1991 to counterbalance the governmental threat to private property as a result of a broad range of regulations."

As I have mentioned in connection with the other six nominations to the Court of Federal Claims (CFC) by this President, the CFC hears many cases alleging "takings" due to environmental or other laws which involve billions of dollars in potential governmental liability. Because of its special takings jurisdiction, the CFC has been targeted as a place where the Reagan and Bush Administrations have been able to place top-notch conservative judges without getting much attention," according to Clint Bolick of the Institute for Justice. By expanding regulatory takings jurisprudence, some seek to chill the federal government from passing laws that protect the health, safety and welfare of American citizens by increasing the cost of such regulations through lawsuits. The CFC has been ground zero of the "property rights movement," with its anti-environmental agenda. I hope that Mr. Miller was not chosen for this important position with the hope that he will join some of the other Republican appointees to this court in trying to impose their ideological agenda in this area through judicial decisions.

Additionally, this nomination was put forward without any consultation with Democratic Members of the Senate, despite the insistence of Chairman Hatch during the Clinton Administration that bipartisan consultation and appointments were important for this court. However, Senator Allen has come to testify in support of the confirmation of this nominee for the last open seat on this court, and I welcome him to today's hearing.

As I have repeatedly remarked throughout the last three years, the Senate is able to move expeditiously when we have consensus nominees. I look forward to receiving testimony from the three nominees on today's hearing and hope that we can continue to act in a bipartisan manner in considering the lifetime appointments to our federal district courts.