

Statement of

# The Honorable Patrick Leahy

United States Senator  
Vermont  
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Opening Statement of Senator Patrick Leahy  
Judiciary Executive Business Meeting  
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It is good to see the Chairman looking so well. We have been working hard together to try to find a consensus on legislation to fairly compensate asbestos victims. That is important work and we have undertaken it in good faith.

Earlier this week he chaired the third hearing on one of the President's controversial circuit court renominations. That is three major hearings within barely more than a week. Chairman Specter is affording each of these nominees, Judge Boyle, Mr. Myers, and Mr. Griffith another opportunity to provide the Committee and the Senate with additional information and assurance that they have earned and merit the consent of the Senate to their lifetime appointment as a custodial of the rights of all Americans.

The Chairman has pressed a most ambitious schedule. Three hearings in eight days stands in sharp contrast to 1999 when a Republican Chairman refused to hold any hearings on President Clinton's judicial nominees until June. That was when Republicans were successfully pressuring President Clinton to nominate Republicans that they recommended for federal judgeships.

I do, however, regret that our Chairman has chosen to list one judicial nomination prematurely on today's agenda. When this nomination was first listed, the record was indisputably incomplete. That nomination is not ready to be considered. Written questions after his hearing were submitted Tuesday. The nominee has not taken the time to consider and answer those inquiries fully and Senators have not had a fair opportunity to evaluate the responses.

Listing matters on an agenda before they are ready is an ill-advised practice. It was regularly employed by the prior Chairman to circumvent minority rights under our rules. It is not appropriate or appreciated. This year Democrats have cooperated with the Chairman to report a class action bill and a bankruptcy bill that many of us viewed as significantly flawed. We have cooperated at hearings and established the quorum for business meetings. We have offered, debated and voted on amendments without delay. We have even withheld amendments and agreed not to offer them when we were assured that Republicans would work with us on the Senate floor. Instead, in connection with both bills, virtually all amendments were voted down and there was little in the way of bipartisan effort from Republicans to improve either measure through floor amendments.

What is driving this Committee and the Senate toward conflict is this White House's efforts to create unnecessary confrontation over judicial nominees. The President insisted on renominating troublesome and divisive choices rather than working with us to find more consensus nominees who would be fair judges, who would serve only to protect the rights of all Americans and who would not be selected to advance a partisan or personal agenda. That is what we all should be seeking. That is why the Founders and the Constitution afforded the Senate its role as a check and a balance on the choices of a powerful President.

Four years ago, after Senate Republicans had abused their power to prevent more than 60 moderate and qualified judicial nominations of President Clinton from being considered and confirmed, I nonetheless urged this White House and Senate Republicans to work with all Senators to fill judicial vacancies. I pressed forward in the 17 months I chaired the Judiciary Committee to put the Senate in position to confirm 100 of President Bush's lifetime appointments to the federal courts. During the other 33 months, almost twice the time, Republicans have succeeded in adding 103 confirmations.

I tried to meet Republicans half way by making and fulfilling commitments to do what Republicans had not done, and we held hearings on even some of President Bush's most controversial nominees. For all of our efforts we were rewarded with vilification and personal attacks. With respect to judicial nominations, it appears that no good deed by Senate Democrats goes unpunished.

Over the last two years the Bush Administration continued down its course of politicizing judicial nominations. The Senate Republican leadership has abandoned its responsibilities to the Senate in this regard, choosing instead to serve as a wholly-owned subsidiary of the White House in their effort to turn the federal judiciary into an arm of a particular ideological wing of the Republican Party. Over the last two years Senate Republicans bent, broke or ignored our traditional rules governing Committee consideration of judicial nominees.

This year Senate Republicans are working to exercise the "nuclear option" to destroy the one Senate rule left that allows the minority any protection and with it any comity in the Senate and any hope of making bipartisan progress on anything. Changing the rules to remove the threat of the filibuster, which has allowed the Senate to serve as a check on a powerful Executive, would destroy the Senate, undermine the independence and fairness of the federal judiciary, and lead to a rollback of the rights and freedoms of the American people.

At the beginning of this Congress the new Senate Democratic Leader reached out to the White House and offered an olive branch and cooperation. His good efforts have likewise been spurned by the White House, which remains intent on seeking confrontation over reconciliation.

Just last week the Senator from Colorado sent a letter to the President urging that we join in common cause on these matters and suggesting that the President make a show of good faith by ratcheting down the conflict by withdrawing those divisive judicial nominations on which the Senate has previously withheld its consent. He offered President Bush some wise counsel noting that "the decision to re-nominate these individuals will undoubtedly create the animosity and divisiveness between the President and the United States Senate as an institution that is not helpful to our Nation and will sidetrack our collective efforts to work on other crucial matters." It was a sensible suggestion. It, too, has been rejected out of hand by a White House that seeks absolute authority and seeks to undermine the checks and balances that have served for 200 years to protect our rights and our democracy.

Unlike the many anonymous Republican holds and pocket filibusters that kept scores of President Clinton's qualified judicial nominees from moving forward, the concerns Democrats have about President Bush's controversial nominees are no secret. I made our "blue slips" public when Republicans never would. We have debated these divisive nominees in this Committee and at length on the Senate floor. That is much fairer than Republicans accorded President Clinton's moderate and qualified nominees who were defeated through secret holds of as few as a single anonymous Republican Senator.

It is a commonplace of American jurisprudence that no one is above the law. Yet Senate Republicans first abused the Senate's rules and practices to stymie more than 60 of President Clinton's judicial nominees. Then, once a Republican President was elected, they turned on their heels to bend, break and override every rule and traditional Senate practice that has served to protect the minority.

If the American people are to have confidence in our system of laws, they must also have confidence in the process by which federal judges are chosen as fair arbiters and as trustees of their rights. Ramming controversial nominees through the Senate by brute force, through hook or crook, is no way to consider judges. That shows no respect for the rule of law. We are not a rubber stamp. We should not dispense conveyor-belt consideration. This is not the candy factory that ran out of control in that famous "I Love Lucy" episode. This is the Senate Judiciary Committee.

The consequences of our decisions are too important to the rights of Americans, to the preservation of their civil rights and civil liberties and to the constitutional protections of our children and grandchildren to be exercised cavalierly. This is no time to turn back the clock on women's rights and human rights and environmental protections. Given the compliant Republican majority in Congress, the only check on arrogant abuses of power by this Administration has been an independent judiciary. The Supreme Court has called this Administration's policies to task.

Once the judiciary is filled with partisans beholden to the Administration and willing to reinterpret the Constitution in line with the Administration's demands, who will be left to protect American values and the American people?

These are lifetime appointments we are responsible for considering. Being a member of the Federalist Society does not entitle one to a lifetime appointment on the federal bench. Yet this Administration has chosen to nominate more people affiliated with the Federalist Society than African Americans, Hispanics and all minorities combined. Nor are federal judgeships part of a spoils system to be used as rewards for those who have supported the political agenda of this Administration. Our judiciary is the envy of the world because it is independent and fair and made up of men and women of the highest integrity.

I can not help but note the irony given President Bush's recent eloquent speech on the fundamental requirements of a democratic society when he met with President Putin of Russia. Where is his commitment to those principles in his demands and the Republican demands for absolute power? I remind Republicans of the President's own words when he acknowledged that democracy relies on the sharing of power, on checks and balances, on an independent court system, on the protection of minority rights, and on safeguarding human rights and human dignity.

The President recently promised the American people in a radio address in this country that he would serve all Americans and would "work to promote the unity of our great nation." I wish the President and more Senate Republicans would work to fulfill that promise. His renomination of controversial judicial nominees already considered by the Senate is inconsistent with that promise and undercuts the fundamental principles that protect our democracy. It is unprecedented.

Senate Republicans' insistence on deploying the nuclear option is an affront that will further undermine unity and fundamental safeguards of the rights and freedoms of Americans. The confrontational approach of this Administration is unnecessary and unwise. Senate Republicans' insistence that this President be given carte blanche in his efforts to pack the federal courts and that the Senate become a rubberstamp and give up its distinctive protection of minority rights is shortsighted at best. It is unfortunate that the Senate Republican leadership is acting as an arm of the Administration rather than on behalf of the Senate and providing the checks and balances on which our democracy and our freedoms depend.

As Senator Reid and Senator Salazar have recently suggested, if the Bush Administration would work with us, we could reach consensus on nominees to fill the current judicial vacancies. There are currently 25 judicial vacancies without nominees, including six for circuit courts around the country. Of these two dozen vacancies without a nominee, the President has already missed his own self-imposed deadline on at least 10 because he has failed to nominate within 180 days of the vacancy.

In addition there are another eight to 12 vacancies we have been notified will soon be occurring. For example, before the end of this month, there will be another vacancy in Alabama and another in Florida, in May there will be another in Kentucky, in June there will be another in Georgia and another in Puerto Rico. Obviously, there are also more than a dozen vacancies on which we could be working together to find consensus rather than continuing to consider the divisive nominees previously considered but renominated. I wish the Republican Administration and the Republican Leadership in the Senate would work with us to find consensus nominees, experienced, qualified, fair men and women who could garner virtually unanimous support.

The only new judicial nomination received all year has been Brian Edward Sandoval, a nominee to the District Court in Nevada, who could serve as a model for how we can work together. This is a nominee with the support of both of his home-state Senators, one Republican and the other the Senate Democratic Leader. Once his background check is reviewed and his paperwork is complete, I hope we will move expeditiously on that model nominee.

When we had a vacancy on the Second Circuit from Vermont, I joined with the Republican Governor and Senator Jeffords in recommending and supporting Peter Hall who was confirmed expeditiously. This is how we could and should fill judicial vacancies. Unfortunately, this Administration too often chooses not to follow the path of consensus but, instead, seeks to serve the interests of a narrow partisan wing of their political party over the interests of the American people.

One final point will demonstrate Democratic cooperation in the face of Republican partisanship. Among this President's renominations there are two noncontroversial judicial nominations on which we should be able to make immediate progress. I speak of the President's nomination of Paul Crotty to the District Court for the Southern District of New York and the nomination of Michael Seabright to the District Court of Hawaii. All Democrats on the Committee have been prepared to vote favorably on these nominations for some time. We were prepared to report them last year but they were not listed by the then-Chairman on a Committee agenda. Let there be no misunderstanding: All delay in the consideration of these judicial nominees is attributable to Republican intransigence, what could fairly be called obstruction. I know of no substantive basis for Republican objection to either of these nominees, but they continue to be stalled by anonymous Republican holds. As far as Senate Democrats are concerned these nominees can be added to the agenda today, reported favorably today and confirmed as soon as Senate Rules allow. They can be sworn in and sitting by St. Patrick's Day. They would be the first two judges confirmed this year and would join the ranks of 204 lifetime judicial appointments nominated by this President that the Senate has already confirmed.