

Statement of

The Honorable Patrick Leahy

United States Senator
Vermont
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On The Nomination of William Pryor
Senate Judiciary Committee, Executive Business Meeting
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In the last Congress, I explained why I voted against the nomination of William Pryor to the U.S. Court of Appeals for the Eleventh Circuit - in Committee and in two unsuccessful cloture attempts. The President disregarded the advice given to him by the Senators opposing this nomination, and he installed Mr. Pryor as a recess-appointed judge on the Eleventh Circuit where he will serve until the end of this year. I know some will try to point to the few cases he has worked on during his time auditioning on the Circuit Court as evidence that he should be confirmed, but nothing Judge Pryor has done in the intervening period has changed my view that, based on his entire career and record, if he were to receive life tenure on the federal bench, he would put ideology above the law. I cannot support him.

The Senate has now confirmed 208 out of the President's 218 nominees: 95 percent. We could fill even more of the vacancies left if President would only heed the Constitution's call for the "advise and consent" of the Senate and consult with us to come up with consensus nominees for the 30 vacancies awaiting a nomination today. The year is one-third completed and the President has sent to the Senate only one new nominee all year while 30 other vacancies sit without a nominee. Apparently this White House wants the Republican majority to complete the destruction of minority rights on the Senate floor before proceeding to name its selections with a free hand.

Instead of resolving problems, the President and the Republican leadership have escalated the rhetoric surrounding this issue dramatically. A few weeks ago, the Majority Leader participated in a telecast smearing opponents of the most extreme judicial nominees as "against people of faith." Speaker after speaker accused Democrats of opposing nominees because of their faith. These are baseless and despicable accusations. Republican leaders should denounce this slander, but they have not. This follows upon the former Republican Chairman injecting religion into the confirmation hearing for this nominee with direct questions about the nominee's religious affiliation and devotion that had never previously been asked of a nominee. Both the current Chairman and I objected at that time. I agree with the Constitution and respect the constitutional prohibition against a "religious test" for federal office.

I do not oppose William Pryor because of his faith. I oppose the nomination of William Pryor to the Eleventh Circuit because of his extreme ideas about what the Constitution says about federalism, criminal justice and the death penalty, violence against women, the Americans with Disabilities Act, and the government's ability to protect the environment on behalf of the American people.

There are an abundance of substantive and compelling reasons why William Pryor should not be given a lifetime appointment to be a federal circuit judge. Opposition to Judge Pryor's nomination is shared by a wide spectrum. I would like to put in the record the many newspaper editorials and letters of opposition.

A leading proponent of what he refers to as the "federalism revolution," Judge Pryor seeks to revitalize state power at the expense of federal protections, seeking opportunities to attack federal laws and programs designed to guarantee civil rights protections. He has urged that federal laws on behalf of the disabled, the aged, women, minorities, and the environment all be limited. In a New York Times Magazine article about the so-called "Constitution-in-Exile"

movement, one of the leaders of this revolution, Michael Greve, was quoted as saying, "Bill Pryor is the key to this puzzle; there's nobody like him."

Judge Pryor has argued that the federal courts should cut back on the protections of important and well-supported federal laws including the Age Discrimination in Employment Act, the Americans with Disabilities Act, the Civil Rights Act of 1964, the Clean Water Act, the Violence Against Women Act, and the Family and Medical Leave Act. He has repudiated decades of legal precedents that permitted individuals to sue states to prevent violations of federal civil rights regulations. Judge Pryor's aggressive involvement in this "federalist revolution" and his goal-oriented, activism leads to concern that, if confirmed to a lifetime appointment, he would use his position to advance his "cause."

Judge Pryor's passion is not some obscure legal theory but a legal crusade that has driven his actions since he was a student and something that guided his actions as a lawyer. His speeches and testimony before Congress demonstrate just how rooted his views are, how much he seeks to effect a fundamental change in the country, and how far outside the mainstream his views are.

He has been candid about the fact that his view of federalism is different from the current operation of the federal government - and that he is on a mission to change the government to fit his vision. His goal is to continue to limit Congress's authority to enact laws under the Fourteenth Amendment and the Commerce Clause - laws that protect women, ethnic and racial minorities, senior citizens, the disabled, and the environment - in the name of sovereign immunity. Is there any question that he would pursue his agenda as a lifetime appointment on the Eleventh Circuit Court of Appeals - reversing progress and affecting the lives of millions of Americans for decades to come?

In testimony before Congress, he has urged repeal of Section 5 of the Voting Rights Act - the centerpiece of that landmark statute - because, he says, it "is an affront to federalism and an expensive burden that has far outlived its usefulness."

His strong views against providing counsel and fair procedures for death row inmates have led Judge Pryor to doomsday predictions about the relatively modest reforms in the Innocence Protection Act to create a system to ensure competent counsel in death penalty cases.

He has advocated that counsel need not be provided to indigent defendants charged with an offense that carries a sentence of imprisonment if the offense is classified as a misdemeanor.

Judge Pryor is overwhelmingly hostile to a woman's right to choose, and he has expressed his opposition to fair treatment of all people regardless of their sexual orientation.

On all of these issues -- the environment, voting rights, women's rights, gay rights, federalism, and more -- William Pryor's record of activism and advocacy is clear. That is his right as an American citizen, but it does not make him qualified to be a judge.

Some have suggested that Judge Pryor's opinions on the Eleventh Circuit strengthen his case for a lifetime appointment to that court. I have examined these five opinions on which they rely and others in which Pryor has participated. They were all unanimous 3-0 decisions taking positions which have widespread support. They hardly distinguish Judge Pryor. Moreover, his limited tenure on the court while his nomination is pending raises the question whether he is restraining himself for the short term. Judge Pryor's time on the Eleventh Circuit brings out the very problem with recess appointments of controversial judges. The Constitution sets out that Article III judges receive lifetime appointments precisely so that they can be independent. Judge Pryor, in contrast, cannot be independent during the pendency of his recess appointment because he is dependent on the Senate for confirmation to a lifetime position. He is, in essence, auditioning for the job.

Accordingly, the opinions he writes while temporarily on the court are not much of a predictor for what he would do if he did receive a lifetime appointment and became truly independent. What is a good predictor for what he would do as a permanent Eleventh Circuit judge? Quite simply, his actions and statements in the many years of his professional life before he was appointed to the bench provide the real insight. And these actions and statements paint a clear and consistent picture of a judicial activist.

I oppose giving Judge Pryor a lifetime appointment to the Eleventh Circuit where he can impose his radical activist vision on the many people whose lives and disputes come before him.