

Statement of

# The Honorable Patrick Leahy

United States Senator  
Vermont  
June 28, 2006

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Ranking Member, Senate Judiciary Committee

Hearing on Judicial Nominations

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Today, the Committee will consider two candidates for lifetime appointments to the federal courts of appeals. Bobby E. Shepherd has been nominated for a seat on the United States Court of Appeals for the Eighth Circuit, and Kimberly Ann Moore has been nominated for a seat on the United States Court of Appeals for the Federal Circuit.

Judge Shepherd is a United States Magistrate Judge and former Arkansas state Circuit-Chancery Judge who has the support of both home state Democratic Senators. Professor Moore, a former clerk to the Chief Judge of the Federal Circuit, has been nominated to a seat on that specialized court, which has nationwide jurisdiction in a variety of subject areas including international trade, government contracts, patents, trademarks, certain money claims against the United States government, federal personnel, and veterans' benefits. I look forward to hearing from both of these nominees today and I hope that they are the kind of consensus nominees who can easily be confirmed.

I am pleased that we continue to make progress in filling the many vacancies that remain on our Nation's federal courts. Judicial vacancies remain at just under 50, and more than half of these vacancies have no nominee. I urge the White House to work with Senators from both parties to select nominees who can be expeditiously considered and confirmed.

The Judiciary Committee and the Senate could continue to be productive if the President and his allies on the right would pick judges instead of political fights. I have praised the Republican Senate leadership this past month for wisely passing over the controversial nominations of William Gerry Myers III, Terrence W. Boyle and Norman Randy Smith to turn to well-qualified nominees that could be easily confirmed. The Republican leadership was right to have avoided such controversial nominations that were only reported on a party-line vote.

However, I am concerned that again the Republican leadership is heeding the clarion call of the far right-wing to pick a fight over the nomination of Judge Boyle to the U.S. Court of Appeals for the Fourth Circuit. Nearly two months ago, we learned from news reports that, as a sitting United States District Judge and while a circuit court nominee, Judge Boyle ruled on multiple cases involving corporations in which he held investments. In at least one instance, he is alleged to have bought General Electric stock while presiding over a lawsuit in which General Electric was accused of illegally denying disability benefits to a long-time employee. Two months later, he ruled in favor of GE and denied the employee's claim for long term and pension disability benefits. Publicly available documents, including court docket sheets and Judge Boyle's financial disclosure forms, appear to support the public reports that Judge Boyle ruled in multiple cases in which he held stock in one party.

These matters used to be investigated in a bipartisan way. In fact, after these developments were reported in the media, the seven Democratic members in the group that helped avert the Republican "nuclear option" wrote a letter asking for a new hearing to look into the conflict of interest allegations. I regret that the Republican leadership is

apparently determined not to allow a bipartisan investigation to be completed and determined not to hold the follow-up hearing. Instead, they have sent Judge Boyle a letter asking for him to comment.

As I have said several times with respect to this troubled nomination, the President should heed the call of North Carolina Police Benevolent Association, the North Carolina Troopers' Association, the Police Benevolent Associations from South Carolina and Virginia, the National Association of Police Organizations, the Professional Fire Fighters and Paramedics of North Carolina, as well as the advice of Senator John Edwards, and withdraw his ill-advised nomination of Judge Terrence Boyle. Law enforcement officers from North Carolina and law enforcement officers from across the country oppose the nomination. Civil rights groups oppose the nomination. Those knowledgeable and respectful of judicial ethics oppose this nomination. This nomination has been pending on the calendar in the Republican-controlled Senate since June of last year when it was forced out of the Committee on a party-line vote. It should be withdrawn.

If this nomination is not withdrawn, and the Republican leadership is determined to move forward with this nomination in response to right-wing pressure groups, issues arising from Judge Boyle's many alleged conflicts of interest can be best addressed in a hearing, where Senators can ask questions of the nominee, listen to his answers, and assess the credibility of his explanations regarding the conflicts. That is our process. There is no reason to depart from it now.

I hope that after the answers of Judge Shepherd and Professor Moore to questions I will be convinced that they are the kind of nominees who understand that the role of the judge is to act as a check and balance to protect the rights and liberties of all Americans. I welcome the nominees and their friends and families to the Committee today.