

Statement of

# **The Honorable Patrick Leahy**

United States Senator  
Vermont  
May 10, 2007

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Chairman, Senate Judiciary Committee,  
On Judicial Confirmation Hearing  
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Today, the Committee will hear from three more nominees for lifetime appointments to the federal courts - Leslie Southwick to the United States Court of Appeals for the Fifth Circuit, Janet Neff to the District Court for the Western District of Michigan, and Liam O'Grady to the District Court for the Eastern District of Virginia. I thank Senator Whitehouse for agreeing to chair this important hearing.

All three of these nominees have the support of their home-state Senators. I appreciate Senators Cochran, Warner, Levin, Lott, Stabenow appearing and submitting statements on these nominees and I commend Senator Webb for working so quickly upon his arrival in the Senate to review the nomination from Virginia.

In my view, it is unfortunate that Judge Neff is here before us once, again, rather than already on the bench in the Western District of Michigan helping to ease the inexcusable backlog of cases in that district. That backlog is being borne by dedicated but severely overburdened senior judges.

Judge Neff, along with two other nominees for longstanding vacancies in the Western District of Michigan, was reported out of Committee last fall, but was left pending on the Senate's Executive Calendar when some on the other side of aisle blocked her nomination. All three Western District of Michigan nominations are for vacancies that are judicial emergency vacancies - three in one federal district.

The Senators from Michigan had worked with the White House on the President's nomination of three nominees to fill those emergency vacancies. Those nominees were considered and reported by this Committee last Congress. Working with then-Chairman Specter, the Democratic Members of the Committee cooperated to expedite their consideration. On September 19th, we held a confirmation hearing for those three nominees on an expedited basis, and they were favorably reported to the Senate on September 29th.

Regrettably, rather than consider these and other judicial nominations toward the end of the last session, they stalled. After the last working session of the last Congress in October, I learned that several Republicans were objecting to Senate votes on some of President Bush's judicial nominees. According to press accounts, Senator Brownback had placed a hold on Judge Neff's nomination, even though he raised no objection to her nomination at her hearing, which he

chaired, and later when she was unanimously reported out of Judiciary Committee. Later, without going through the Committee, Senator Brownback sent questions to Judge Neff about her attendance at a commitment ceremony held by some family friends several years ago in Massachusetts. Senator Brownback spoke of these matters and his concerns on one of the Sunday morning talk shows.

I wondered at the end of the last Congress whether it could really be that Judge Neff's attendance at a commitment ceremony of a family friend failed some Republican litmus test of ideological purity, that her lifetime of achievement and qualifications were to be ignored, and that her nomination was to be pocket filibustered by Republicans.

When this Congress began and the President sent over his first set of nominees, he inexplicably failed to re-nominate Judge Neff or the other two Western District of Michigan nominees. Those three nominees were not re-nominated until March 19th of this year. I then hoped to move forward without a hearing, since they had a hearing late last year. As I had with the other re-nominations I wrote each Member of the Committee asking whether they were prepared to move forward or would request a hearing. No Member requested a hearing on any of the other district court nominees re-nominated who had previously had a hearing and who had been considered and favorably reported by the Committee. With respect to Judge Neff, Senator Brownback requested another hearing. That is his right. That is why she is appearing, again, today.

The approach to nominations we saw from the President and Republicans in the Senate, of using nominations to score political points rather than filling vacancies and administering justice, has led to a dire situation in the Western District of Michigan. Judge Robert Holmes Bell, Chief Judge of the Western District, wrote to me and to others about the situation in that district, where several judges on senior status -- one over 90 years old -- continue to carry heavy caseloads to ensure that justice is administered in that district. Judge Bell is the only active judge. If not for Republican objections, three vacancies would have been filled many months ago.

The Committee today also considers the nomination of Leslie Southwick to the Fifth Circuit. With this nomination, I understand the disappointment of members of the African-American and civil rights communities that this Administration continues to renege on a reported commitment to appoint an African American to the Mississippi federal bench. In six years, President Bush has nominated only 19 African-American judges to the federal bench, compared to 53 African-American judges appointed by President Clinton in his first six years in office.

With an ever-growing pool of outstanding African-American lawyers in Mississippi, the State with the highest percentage of African Americans in the country, it is not as if there is a dearth of qualified candidates. Nonetheless, President Bush has now submitted 10 nominees to the federal bench in Mississippi, seven at the district level and three to the United States Court of Appeals for the Fifth Circuit, and none of these nominees has been African American. Our nation's diversity is one of its greatest strengths, and I am disappointed that the President has missed yet another opportunity to reflect this great strength in our federal courts.

A review of Judge Southwick's decisions on the Mississippi Court of Appeals has also revealed decisions on workplace racial discrimination and same-sex custody that raise questions in the minds of many. Today's hearing gives Judge Southwick an opportunity to address those concerns.

In 1999, the first year of the last Congress of the Clinton Administration, a year situated much like this, the Republican majority refused to hold a single hearing or consider a single judicial nominee until well into June. I know how much Republicans like to point to historical precedent for how we should now proceed with this President's judicial nominees.

I have not followed that path of total resistance. Instead, we have already held a number of confirmation hearings for judicial nominees. The Committee has already reported 21 judicial nominees favorably to the Senate and 18 judicial nominees have been confirmed. That is more judicial nominees and includes more Circuit Court nominees than were confirmed during the entire 1996 session when a Republican majority was stalling and began to pocket filibuster President Clinton's moderate and qualified judicial nominees. I do not intend to follow their model and do not intend to pocket filibuster more than 60 of this President's judicial nominees as they did with President Clinton's.

The Senate has confirmed 20 Circuit Court nominations and 118 total judicial nominations, while I have served as Chairman of the Judiciary Committee for a total of less than 22 months. It is an overlooked fact that during the more than six years of the Bush Presidency, more Circuit judges, more District judges and more total judges have been confirmed, in less time, while I served as Judiciary Chairman than during the tenures of either of the two Republican Chairmen working with Republican Senate majorities.

The Administrative Office of the U.S. Courts lists 47 judicial vacancies, yet the President has sent us only 24 nominations for these vacancies. Twenty-three of these vacancies - almost half - have no nominee. Of the 15 vacancies deemed by the Administrative Office to be judicial emergencies, the President has yet to send us nominees for six of them. That means more than a third of the judicial emergency vacancies are without a nominee.

With the cooperation of the President and with the cooperation of the Committee and the Senate, we can continue to make progress.

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