

Statement of

# The Honorable Patrick Leahy

United States Senator  
Vermont  
July 19, 2007

Opening Statement of Senator Patrick Leahy  
Chairman, Judiciary Committee  
Hearing on Judicial Nominations  
July 19, 2007

Today the Committee holds another hearing with another circuit court nominee, another district court nominee from Mississippi and one from Washington State.

Before the 4th of July recess, the Senate had this year already confirmed THREE circuit court nominees. That is three more that were confirmed by that time in 1999 with a Republican-led Senate and three more than the Republican-led Senate confirmed in the entire 1996 session.

The Senate has confirmed 20 Circuit Court nominations and 125 total federal judicial nominees while I have presided as Judiciary Chairman, in less than two full years. It is a little known fact that during 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 longer tenures of either of the two Republican Chairmen working with Republican Senate majorities.

This week the President sent us four new circuit court nominations. Like last year, the President has been slow to send us new nominations, sending these just before the August recess. Before this week, of the 15 circuit court vacancies, the President had sent us nominations for only five of them. I also wish that the President sought the advice and not merely the after-the-fact consent of home state senators in making these nominations. It appears the Senators from New Jersey were not consulted about the new nomination to the Third Circuit for their state. This is a break from the practice that has worked in the past of cooperation and consultation that has led to success and a sign that the White House is returning to its tired playbook of picking unnecessary fights over nominations rather than filling vacancies.

Congressional Republicans also seem to be following that playbook. They seem to love to shut down the Government and seem intent on manufacturing excuses to do so. In 1995 it was Newt Gingrich, who did not like his treatment on Air Force One. When they were in the Senate majority a few years ago -- and while surreptitiously stealing our computer files-- it was Senate Republicans who insisted on a 40-hour debate on this President's court packing schemes. Now, despite our progress and our efforts to work to fill judicial vacancies, some in the Senate Republican leadership seem to be at it, again.

It is Republicans who held up this President's nomination of Judge Neff since last year and stalled Senate action on a dozen judicial nominations. Indeed, it was Republicans who were the ones who voted against confirming President Bush's judicial nominees last week. Already this year we have proceeded to confirm more judges than were confirmed in all of 2005 when Republicans ran the Senate. We have also already surpassed the confirmation total for the entire 1996 session when a Republican-led Senate confirmed 17 district court nominees and not a single circuit nominee.

The Administrative Office of the U.S. Courts lists 48 judicial vacancies. The President has sent us only 26 nominations for these 48 remaining vacancies. Twenty-two of these remaining vacancies - almost half - have no nominee. Of the 14 vacancies deemed by the Administrative Office to be judicial emergencies, the President has yet to send us nominees for seven of them, exactly half. Of the 15 circuit court vacancies, almost half are without a

nominee. If the President had worked with the Senators from Michigan, Rhode Island, Maryland, California and New Jersey, we could be in position to make even more progress. And of the 22 vacancies without any nominee, the President has violated the timeline he set for himself at least 12 times--12 have been vacant without so much as a nominee for more than 180 days. The number of violations may in fact be much higher since the President said he would nominate within 180 days of receiving notice that there would be a vacancy or intended retirement rather than from the vacancy itself. We conservatively estimate that he also violated his own rule 12 times in connection with the nominations he has made. That would mean that with respect to the 48 vacancies, the President is out of compliance with his own rule at least 24 times.

As it is, we have helped cut the circuit vacancies from a high mark of 32 in the early days of this Administration, to as few as 13. Contrast that with the Republican-led Senate's lack of action on President Clinton's moderate and qualified nominees that resulted in increasing circuit vacancies during the Clinton years from 17 to 26. During those years, the Republican-led Senate engaged in strenuous and successful efforts under the radar to keep circuit judgeships vacant in anticipation of a Republican President. More than 60 percent of current circuit court judges were appointed by Republican Presidents, with the current President having appointed more than 30 percent of the active circuit judges already.

Senate Republicans know the difficulties with four of the President's current circuit nominees. If they were candid they would concede that they are having difficulties themselves trying to work with this White House on filling judicial vacancies with acceptable nominees.

I continue to try to work with this White House and to make progress. Next year the Thurmond rule will kick in until after a new president is inaugurated. That is why I have urged the White House to work with Senators of both parties and to fill the 5th Circuit vacancy from Mississippi with the nomination of the Honorable Henry Wingate. Judge Wingate would be the first African American from Mississippi to serve on the 5th Circuit. He is the Chief Judge of the District Court for the Southern District of Mississippi. He was appointed to the federal bench in Mississippi by President Ronald Reagan. He has served with honor and distinction for more than 20 years, since we helped confirm him in 1985. He has served as the Chief Judge of the District Court since 2003. He was a naval officer and is a member of the Naval Reserve. He was an assistant attorney general, an assistant district attorney, an assistant U.S. attorney, a professor and a trial lawyer.

I cannot imagine why an experienced judge appointed by Ronald Reagan would be unacceptable to this White House. But if for some reason he is, I will work with the White House, the Senators from Mississippi, the Senate's Majority and Republican leader and our Ranking Member, the senior Senator from Pennsylvania to identify another worthy candidate. For all our efforts, for my efforts to treat Judge Southwick fairly, all we hear from the other side is complaining. And we read that some are itching to pick a fight over the nomination. Last week the press was full of stories of meetings with right-wing groups and the partisan benefits to be gained by Republicans picking such a fight. This is not a partisan fight that needs to be waged. We can work together to fill this 5th Circuit vacancy. I hope the President and Senate Republicans will work with us.

There are five more judicial nominations on the agenda for Judiciary Committee consideration this week. They will increase to 30 the number of judicial nominees the Committee has reported this year and when confirmed will bring the confirmations while I served as chairman to 130.

I look forward to hearing from the nominees being considered today, as well. I thank Senator Cardin for agreeing to chair today's hearing.

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