

Statement of

The Honorable Patrick Leahy

United States Senator
Vermont
September 20, 2007

Statement of Senator Patrick Leahy
Chairman, Senate Judiciary Committee,
Executive Business Meeting
September 20, 2007

Today, the Committee is considering the "Security from Political Interference in Justice Act of 2007," S.1845. This bill was introduced by Senator Whitehouse to begin to correct what he has termed the "expanding portal" between the White House and the Department of Justice regarding communications about ongoing Department investigations. At our last meeting, Senator Whitehouse agreed to again hold over this bill, beyond the routine week, to accommodate Senator Kyl's request. I recall that the Justice Department had come forward with 11th hour objections to the legislation.

I commend Senator Whitehouse for working during the intervening time with Senator Hatch and others to further refine the bill's language. As soon as we have the requisite quorum I intend to recognize Senator Whitehouse to introduce the amendment he has circulated so that we can proceed to report his bill. I am pleased that Senator Hatch, again, supports the kinds of checks on communications between the White House and the Justice Department he advocated during the Clinton Administration.

The "Security from Political Interference in Justice Act of 2007," is another important step towards repairing the damage that has been done to the Department of Justice over recent years. This oversight bill should help restore some of the better practices at the Department to limit the political influence of the White House by providing additional information to Congress about communications between the White House and the Department as a check on untoward influence.

It was during our hearings on the unprecedented mass firings of U.S. Attorneys that Senator Whitehouse first sounded the alarm about the dramatically expanded number of White House and Department officials permitted by the last Attorney General to communicate regarding civil and criminal investigations. We do not have to merely imagine the threat to the independence of law enforcement arising from those communications. Our investigation revealed instances in which the Department had been reduced to a political arm of the White House, with respected prosecutors fired, bad cases filed, and hiring done for partisan purposes.

I trust we will be able to report S.1845 this morning.

Next, I will turn to the Chairman of the Antitrust, Competition Policy and Consumer Rights Subcommittee, Senator Kohl, to begin our consideration after a week's holdover of the Railroad Antitrust Enforcement Act. I understand Senator Kohl has an amendment, but that is the only amendment that has been circulated. Accordingly, I hope that we will be able to complete our consideration of that bill this morning and vote to report it, as well.

Then, if there is no objection, we can consider the media shield legislation. Senator Lugar and Senator Dodd have been leaders in seeking to enact such a measure. Senator Specter has worked extremely hard while he chaired this Committee and this year on media shield legislation with Senator Schumer. Today, I think all of us, Senators Lugar, Dodd, Specter, Schumer and Leahy are prepared to endorse a measure that with the support of the Committee can be reported to the Senate and, we hope, considered and passed by the Senate this year. Unless there is a request

for a hold, I believe that the substitute is the only amendment circulated to the Free Flow of Information Act in accordance with our Committee rules and procedures and we could vote to report that today, as well.

The final measure on our legislative agenda is a bipartisan bill introduced by Senators Durbin and Coburn, the Chairman and Ranking Member of our new Subcommittee on Human Rights and the Law. They have circulated an amendment to the Trafficking in Persons Accountability Act. Unless there is a request to hold that matter over, we could vote to report that measure today, as well.

In terms of nominations, we have two on the agenda today. We have the nominations of Judge Jennifer Walker Elrod of Texas for a lifetime appointment to the Fifth Circuit and that of Patrick Shen to be Special Counsel for Immigration Related Unfair Employment Practices at the Department of Justice.

With the cooperation of the Committee, we can make significant progress this morning on all these items.

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Statement of Chairman Patrick Leahy
Committee on the Judiciary
On the Railroad Antitrust Enforcement Act
Executive Business Meeting
September 20, 2007

The Committee today considers S. 772, the Railroad Antitrust Enforcement Act of 2007. This bill was introduced by Senator Kohl who, as Chairman of the Antitrust Subcommittee, has been a strong and vigorous proponent of effective antitrust enforcement. This legislation has bipartisan support and is cosponsored by Senators Feingold, Coleman, Vitter, Rockefeller, Harkin, and Dorgan. I am also a cosponsor.

Our antitrust laws, at times referred to as the "Magna Carta of free enterprise," are the beacon of good competition policy. Competition is good for consumers and good for our economy. If the price of transporting goods, such as grain and coal, by rail is inflated as a result of anticompetitive conduct by the rail industry, the American consumer suffers in the form of higher energy and food prices, among others.

Senator Kohl's legislation, consistent with the recent recommendations of the Antitrust Modernization Commission, would simply apply the antitrust laws to the rail industry.

I have worked with Senator Kohl on an amendment, which I hope we can adopt and then report the bill favorably today.

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Statement of Senator Patrick Leahy
Chairman, Senate Judiciary Committee,
On the Nomination of Jennifer Walker Elrod to the Fifth Circuit
Executive Business Meeting
September 20, 2007

Today we consider the nomination of Jennifer Walker Elrod for a lifetime appointment to the Court of Appeals for the Fifth Circuit, one of the Nation's powerful federal appeals courts.

The progress we have made this year in considering and confirming judicial nominations is often lost amid the partisan sniping over this President's most controversial nominations.

This session of Congress, the Committee has already reported out 33 lifetime appointments to the federal courts and the Senate has already confirmed 29 of them. That is seven more confirmed by the middle of September this year than were confirmed in all of 2005 when the Senate, with a Republican majority, was considering the nominees of this Republican President. It is 12 more confirmations than were achieved during the entire 1996 session when Republicans stalled consideration of President Clinton's nominations.

We have confirmed three circuit court nominees so far this year. That is the same as the number of President Clinton's circuit court nominations confirmed by this time in 1999 with a Republican-led Senate and three more than the Republican-led Senate confirmed in the entire 1996 session. That was the session in which not a single circuit court nominee was confirmed. Judge Elrod's nomination, if reported out today, would be the fifth circuit court nomination reported out by the Committee.

The Senate has confirmed 20 circuit court nominations and 129 federal judicial nominees while I have presided in my two years as Judiciary Chairman. During the Bush Presidency, more circuit judges, more district judges -- more total judges -- have been confirmed during the first 24 months that I served as Judiciary Chairman than during the 2-year tenures of either of the two Republican Chairmen working with Republican Senate majorities.

I do not intend to pocket filibuster more than 60 of this President's judicial nominees, as the Republican majority did with President Clinton's judicial nominees. Indeed, although I did not support the nomination, I scheduled a hearing and Committee consideration for Judge Southwick before this Committee. I do not recall that happening when the Senate was controlled by Republicans and a Democratic President occupied the White House.

Today, we consider a nominee to the Fifth Circuit. During the Clinton Administration several outstanding nominees to the Fifth Circuit were pocket filibustered. They included Judge Jorge Rangel of Texas, Enrique Moreno of Texas and Alston Johnson of Louisiana. They were pocket filibustered without a hearing or Committee consideration. Next year the Thurmond rule will kick in until after a new President is inaugurated. I find it inexplicable that this White House chose not to work with Democratic and Republican home state Senators on several recent nominations.

The Administrative Office of the U.S. Courts lists 47 judicial vacancies. The President has sent us only 24 nominations for these remaining vacancies. Twenty-three of them - almost half - have no nominee. Of the 19 vacancies deemed by the Administrative Office to be judicial emergencies, the President has yet to send us nominees for eight of them, more than a third. Of the 16 circuit court vacancies, six -- more than a third -- are without a nominee. If the President had worked with the Senators from Michigan, Rhode Island, Maryland, California, New Jersey, and Virginia, we could be in a position to make even more progress. I would rather see us work together in the selection of nominees so that we can confirm judges rather than fight about them.

Of the 23 vacancies without any nominee, the President has violated the timeline he set for himself at least 15 times - 15 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 date itself. We conservatively estimate that he also violated his own rule 11 times in connection with the nominations he has made. That would mean that with respect to the 47 vacancies, the President is out of compliance with his own rule more than half of the time.

We have helped reduce 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.

This Committee and this Senate has made progress towards filling longstanding judicial vacancies. I intend to do what I can to ensure that the federal judiciary remains independent and able to provide justice to all Americans.

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