

Statement of

# The Honorable Patrick Leahy

United States Senator  
Vermont  
September 25, 2007

Statement of Senator Patrick Leahy,  
Chairman, Senate Judiciary Committee,  
On Judicial Confirmation Hearing  
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Today, the Committee holds yet another hearing with another circuit court nominee and another district court nominee. We will hear from two more nominees for lifetime appointments to the federal courts - John Daniel Tinder to the U.S. Court of Appeals for the Seventh Circuit and Robert M. Dow, Jr. to the U.S. District Court for the Northern District of Illinois.

Both of these nominees have the support of their home-state Senators. I thank Senators Lugar, Bayh, and Obama for their consideration of these nominees, and I thank Senator Durbin for agreeing to chair this important hearing.

The tremendous progress we have made this year in considering and confirming judicial nominations is sometimes lost amid the partisan sniping over a handful of controversial nominations.

This session of Congress, the Committee has reported out 34 lifetime appointments to the federal courts and the Senate has already confirmed 29 of them. That is eight more confirmed by the middle of September this year than were confirmed in all of 2005 when the Senate, with a Republican Chairman and 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.

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

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 was disappointed that this White House chose not to work with Democratic and Republican home-state senators in connection with the recent nomination of Duncan Getchell to the Court of Appeals for the Fourth Circuit. Senators Warner and Webb from Virginia worked together to interview candidates and sent a slate of five highly-qualified nominees to the White House. President Bush chose to ignore their recommendations in making his nomination, showing his intent to pick a political fight instead of a judge to fill an important vacancy.

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 18 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 position to make even more progress.

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.

We will continue moving forward efficiently as long as the President sends us qualified, consensus nominees and we are able to work together. I look forward to hearing from the nominees before us today.

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