

Statement of

# **The Honorable Patrick Leahy**

United States Senator  
Vermont  
February 21, 2008

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Chairman, Senate Judiciary Committee,  
Judicial Confirmation Hearing  
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Today the Committee is holding another hearing on judicial nominations. This is the second such hearing within two weeks.

The Committee is pleased to welcome the senior Senator from Virginia who is joining us today. Senator Warner has always appreciated the importance of the judiciary and the significance of judicial nominees. I was pleased to work with Senator Warner when his support for Roger Gregory helped the Senate finally to confirm the first African American to serve on the Fourth Circuit. Indeed, Judge Gregory was the first judicial nominee confirmed during my chairmanship in 2001.

Today, we will hear from Catharina Haynes, who has been nominated from Texas for a judgeship on the Court of Appeals for the Fifth Circuit. I know that Senator Cornyn is very interested in seeing her nomination proceed. We will also hear from Stanley Thomas Anderson, whose nomination to the United States District Court for the Western District of Tennessee is one that Senator Alexander raised with me. Our final nomination is that of John A. Mendez for appointment to the United States District Court for the Eastern District of California. Each of these nominations has the support of the home-state Senators.

Recently, the President and several Republican Senators held a partisan, political rally with judicial and executive nominees at the White House. I was surprised to see Judge Haynes at that photo opportunity, especially since I had already announced her hearing for today.

The facts are that during the last seven years, despite the efforts of the Bush administration to pack the federal courts and tilt them sharply to the right, this Committee and the Senate have worked hard to consider judicial nominations. The fact that we are proceeding today, during a congressional recess, is yet another indication of our efforts.

Last year the Senate confirmed 40 judicial nominees. That topped the total achieved in any of the three preceding years under Republican leadership. It was also more judges than were confirmed in 1996, 1997, 1999, or 2000, when a Republican-led Senate was considering President Clinton's nominations. Indeed, in the almost three years that I have chaired the Committee, the Senate has confirmed 140 of President Bush's lifetime appointments to our federal courts. That compares

favorably to the total of 158 confirmations during the more than four years of Republican leadership of the Senate during this presidency.

I said that we would treat this President's nominees more fairly than Republicans treated President Clinton's, and we have. We have not pocket filibustered more than 60 of this President's judicial nominees, as had been done to President Clinton's nominees. We have not opposed them in secret or anonymously. On the contrary, during my chairmanship the views of home-state Senators, as reflected in the blue slips submitted to the Committee, were made public for the first time. We have considered nominations openly and on the record. We have proceeded with consideration of nominations I opposed, which is something that never happened under previous Republican leadership.

Today, we consider a nominee to the Fifth Circuit, a court to which 12 of the 16 active judges have been appointed by Republican Presidents. Republican efforts to stack this court included stalling consideration of several of President Clinton's outstanding nominees. Judge Jorge Rangel of Texas, Enrique Moreno of Texas, and Alston Johnson of Louisiana were never accorded the kind of hearing that Ms. Haynes is having today. Despite the fact that those on the other side of the aisle refused to proceed on any nominations to Fifth Circuit during President Clinton's entire second term, we are proceeding today.

In stark contrast to the practice of the earlier Republican leadership, when President Clinton's outstanding Fifth Circuit nominees were stalled without a hearing, I have held hearings on all six of the Fifth Circuit nominees of this President during my chairmanship, and the Committee has voted on all of the previous five. Vacancies on the Fifth Circuit are at an all-time low. Indeed, the vacancy for which Ms. Haynes has been nominated is the only one that exists on the Circuit. Contrast this with the situation during the Clinton years when the Chief Judge of the Circuit declared a Fifth Circuit emergency because of multiple vacancies that Republican Senators refused to help to fill.

The Republican Senate chose to stall consideration of Circuit nominees and maintain vacancies during the Clinton administration. That Republican inaction increased the Circuit vacancies to 26 at the end of President Clinton's second term, and they rose to a high of 32 with the additional resignations during the change of administrations. By contrast, we have helped reduce Circuit court vacancies across the country to as low as 13 in 2007.

If the White House would work with us and with home-state Senators, we could have made even more progress. It is unfortunate that valuable time has been wasted on nominations such as the recently withdrawn nomination of Duncan Getchell to one of Virginia's two vacancies on the Fourth Circuit. President Bush chose to ignore the bipartisan recommendations from Senator Warner and Senator Webb in making that nomination. We lost a year because of that ill-advised effort. Now that the nomination has finally been withdrawn, I wish that the White House would work with Senators Warner and Webb to name well-qualified, consensus nominees they both support so that we could move forward to fill those Virginia vacancies to the Fourth Circuit before the Thurmond Rule comes into force.

I would rather see us work with the President on the selection of nominees that the Senate can proceed to confirm than waste precious time fighting about controversial nominees who he selects in order to score political points.

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