

Statement of  
**The Honorable Patrick Leahy**

United States Senator  
Vermont  
April 3, 2008

Statement of Senator Patrick Leahy  
Chairman, Senate Judiciary Committee,  
On Judicial and Executive Nominations Hearing  
April 3, 2008

The Senate has just returned this week from its Easter recess, yet already the Judiciary Committee is holding its fifth confirmation hearing of the year. I thank Senator Kohl for agreeing to chair this hearing.

Today, the Committee will hear from four more nominees for lifetime appointments to the Federal bench -- Mark S. Davis and David J. Novak for the Eastern District of Virginia, David Gregory Kays for the Western District of Missouri, and Stephen N. Limbaugh, Jr. for the Eastern District of Missouri. Each of these nominations has the support of their home-state Senators. Last month, Senator Warner spoke to me about holding a hearing for the two nominees from Virginia and I am happy to honor his request today. Likewise, Senator Bond approached me about the two nominees from his state, and they are both included at this hearing today.

We will also hear from Elisebeth C. Cook, nominated to be Assistant Attorney General for the Office of Legal Policy at the Department of Justice. Consideration of this nomination continues the work we have done to rebuild the Department, which was decimated last year by resignations in the wake of the U.S. Attorneys scandal.

Two of the nominees today are from Virginia, and were nominated with the support of Senator Warner, a Republican, and Senator Webb, a Democrat. I am glad the President chose in this instance to heed their recommendations, rather than follow the path he opted for when he nominated Duncan Getchell to the Fourth Circuit over their objections. That decision caused months of delay, before the Getchell nomination was finally withdrawn after the Virginia Senators objected publicly. In fact, the delay in filling that vacancy has lasted years because this President insisted on sending forward highly controversial nominations like William Haynes, Claude Allen, and Duncan Getchell.

The recent nomination of Justice Agee, who was recommended by Senators Warner and Webb, is an overdue development that should allow us to make progress in fixing some of the problems that have long plagued the Fourth Circuit. Indeed, the history of filling vacancies on the Fourth Circuit has been a difficult one since the years when Senator Helms blocked numerous qualified nominees from North Carolina and even from Virginia. Republicans would not cooperate in

elevating any of the outstanding African-American nominees to the Fourth Circuit throughout President Clinton's two terms.

As I wrote to the President over the last recess, I expect the Judiciary Committee and the Senate will proceed promptly to consider and confirm Justice Agee's nomination with the support of Senator Warner and Senator Webb, just as we proceeded last year to confirm the nomination of Judge Randy Smith to the Ninth Circuit, once the President had withdrawn his nomination for a California seat and resubmitted it for a vacancy from Idaho. I urged the President to use the Agee nomination as a model for working with home-state Senators and Senators from both sides of the aisle. Time is running short.

Of course, the Republicans never mention the President's role in making provocative picks when engaging in their tired political rhetoric on nominations. They also never talk about the progress we have made. 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 that Republicans led the Committee during this presidency.

Although Senate Republicans suggest otherwise, we continue to make progress on judicial nominations. I was here in 1999 when the Republican Chairman of the Judiciary Committee would not hold a hearing for a single judicial nominee until June. In contrast, under my leadership, we have now held three hearings on 11 nominees so far this year.

We are poised to make even more progress. We reported out the nomination of Catharina Haynes to the last seat on the Fifth Circuit at our business meeting this morning. And, as I mentioned earlier, I expect us to move expeditiously to consider the Agee nomination to the Fourth Circuit now that the President has nominated someone for a Virginia vacancy who is supported by Senator Warner and Senator Webb.

We also continue to make progress on executive nominations. In the past months, I have made rebuilding the leadership at the Department of Justice a priority. Indeed, this is our eighth hearing since September on nominations to restock the leadership ranks at the Department of Justice after they were depleted during the scandals of the Gonzales era. We have already confirmed the Attorney General, the Deputy Attorney General, and the Associate Attorney General, the top three spots at the Department. We would have done so sooner but for Republican delays in refusing to cooperate and make a quorum in February, and an anonymous Republican hold before the Easter recess.

Despite this progress, the heated partisan rhetoric from the other side of the aisle might lead one to believe that judicial nominations are the most pressing problem facing the country. It is not. With a massive subprime mortgage crisis that has left so many Americans in dire straights, fearful of losing their homes, the Republican efforts to create an issue over judicial nominees is misplaced. In fact, I have worked hard to make progress and have treated this President's nominees more fairly than Republicans treated those of President Clinton. We have worked hard

to lower vacancies to the lowest levels in decades, even reducing circuit vacancies to half what they were when President Bush took office.

This administration is apparently more worried about the jobs of a handful of controversial nominees, many without the necessary support of their home-state Senators, than increasing unemployment rates, rising gas prices, and escalating national debt. It would seem one of the few numbers going down as the President winds down his tenure is that of judicial vacancies. I would rather see us work with the President on the selection of nominees the Senate can proceed to confirm than waste precious time fighting about controversial nominees he selects to score political points. I would also rather see the Senate focus on addressing the real priorities of the country rather than catering only to an extreme wing of the Republican base with controversial nominees.

# # # # #