

Statement of
The Honorable Patrick Leahy

United States Senator
Vermont
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STATEMENT OF SENATOR PATRICK LEAHY
CHAIRMAN, SENATE JUDICIARY COMMITTEE
OPENING STATEMENT
EXECUTIVE BUSINESS MEETING
APRIL 3, 2008

We have a full agenda but need to complete our work by 11 in order to accommodate several members who will attend the Martin Luther King Jr. tribute in the Capitol. First I would like to complete our consideration of the item we began discussing early last month and which now dovetails with Senate consideration of measures to help meet the housing and credit crisis that is hurting so many Americans. Currently pending before the Committee is Senator Specter's substitute amendment to Senator Durbin's bill, S.2136, the Helping Families Save Their Homes in Bankruptcy Act.

At the conclusion of my opening remarks I will recognize Senator Specter. At our last meeting, I interrupted the discussion of the Durbin bill and the Specter amendment. I did so in order to obtain Committee approval to report seven presidential nominations to the Senate, including the Associate Attorney General nomination and four more judicial nominees.

I apologize for that. I was trying to get the Associate Attorney General confirmed before the Easter recess. Instead, he was held up by a Republican objection. This week we were able to clear away that objection and Associate Attorney General O'Connor was confirmed.

After discussion of the alternative that has been offered by Senator Specter and any other amendments in order, we should proceed to vote on S.2136, as amended.

I would then like to proceed through the other important legislative items on our agenda that have been carried over from last month. I understand there will be a request to hold over the new item on the agenda, Senator Kohl's bill on state court interpreters, S.702.

I understand that there is only one amendment to Senator Grassley's bill and that we can complete action on that this morning.

We have a bipartisan resolution designating April as National 9-1-1 Education Month.

We also have two more presidential nominees to consider, an important circuit court nominee and a U.S. Attorney nominee for Texas. I have worked with Senator Cornyn to hold a hearing on this nomination and to place it on our agenda and it is my intention to get to it before we have to adjourn this morning. I have asked Democratic Members not to exercise their right to hold it

over but to allow action on it today. That is what I intend to complete this morning with the cooperation of the Committee.

Earlier this week, the Senate passed the Ryan Haight Online Pharmacy Consumer Protection Act, S.980. Senator Feinstein has led us in this effort from our hearing last May, consideration of the bill by this Committee last September, and finally Senate passage on Tuesday. I congratulate her.

With that brief opening, I turn to the Ranking Member.

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STATEMENT OF SENATOR PATRICK LEAHY,
CHAIRMAN, SENATE JUDICIARY COMMITTEE,
ON JUDICIAL NOMINATIONS
APRIL 3, 2008

We continue today to make progress by considering the nomination of Catharina Haynes to a lifetime appointment to fill the last vacancy on the Fifth Circuit, one of the Nation's influential appeals courts.

If this nomination is reported favorably by the Committee and then confirmed by the Senate, we will have confirmed more circuit court nominees this session than in the entire 1996 session of Congress, when the Republican majority refused to act on a single circuit nominee.

During our February recess, I chaired our third nominations hearing of the year. At that time, the Committee considered three judicial nominations, including that of Catharina Haynes of Texas to be a Circuit Judge on the Fifth Circuit. I knew that this nomination was important to Senator Cornyn, so I moved forward with that hearing. Instead of receiving thanks for making the effort to hold a confirmation hearing during the recess, I have actually been criticized by Republicans for doing so.

In February, the Judiciary Committee held two hearings for seven judicial nominees, including the Haynes nomination, but Republican Members of the Judiciary Committee effectively boycotted our business meetings and obstructed our ability to report judicial nominations and high-ranking Justice Department nominations.

Last month, I commended the Ranking Member of this Committee for acknowledging the years of Republican pocket filibusters of more than 60 of President Clinton's judicial nominations as excess. I have long said that what would help the process is a sincere and full acknowledgement by those Republican Senators who obstructed President Clinton's moderate and well qualified judicial nominees of their excesses and mistakes. That has yet to occur. I repeat, that has yet to occur.

I do not hold the senior Senator from Pennsylvania responsible for those activities. He was not chairing the Committee or a member of the Republican leadership or even one of the more active participants in that effort. In fact, except for his vote to defeat the nomination of Ronnie White of

Missouri, for which he subsequently apologized, I cannot think of another judicial nominee he opposed.

As Chairman of the Judiciary Committee I have worked hard to turn the other cheek and greatly improve on the sorry treatment accorded nominees when Republicans controlled consideration of President Clinton's nominees. During the 17 months I was Chairman during President Bush' first term, we acted faster and more favorably on more of this President's judicial nominees than under either of the Republican Chairmen who succeeded me. During those 17 months, the Senate confirmed 100 judicial nominations. In fact, during the 2-year chairmanship of my friend from Pennsylvania, the Senate confirmed just 54 judicial nominations.

When I assumed the chairmanship last year, the Committee and the Senate continued to make progress with the confirmation of 40 more lifetime appointments to our federal courts. That is more than were confirmed during any of the three preceding years under Republican leadership and more than were confirmed in 1996, 1997, 1999, and 2000, when a Republican-led Senate was considering President Clinton's nominations. Thus, as Chairman, I have worked to help the Senate act to confirm 140 lifetime appointments in only three years, as compared to 158 during more than four years of Republican control.

In fact, with this afternoon's hearing, the Committee will have held hearings for 11 nominees in the eight weeks the Congress has been in session this year.

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.

The Republican Senate chose to stall consideration of circuit nominees and maintain vacancies during the Clinton administration in anticipation of a Republican presidency. Vacancies rose to over 100. Circuit vacancies doubled during the Clinton years.

In those years, Senator Hatch justified the slow progress by pointing to the judicial vacancy rate. When the vacancy rate stood at 7.2 percent, Senator Hatch declared that "there is and has been no judicial vacancy crisis" and that this was a "rather low percentage of vacancies that shows the judiciary is not suffering from an overwhelming number of vacancies." Because of Republican inaction, the vacancy rate continued to rise, reaching nearly 10 percent at the end of President Clinton's term. The number of circuit court vacancies rose to 32 with retirements of Republican appointed circuit judges immediately after President Bush took office.

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. Then, as soon as a Republican President was elected they sought to turn the tables and take full advantage of the vacancies they prevented from being filled during the Clinton presidency. They have been extraordinarily successful over

the past dozen years. Currently, more than 60 percent of active judges on the federal circuit courts were appointed by Republican presidents and more than 35 percent have been appointed by this President. Another way to look at their success is to observe that the Senate has already confirmed three-quarters of this President's circuit court nominees, compared to only half of President Clinton's.

There is perhaps no better examples of Democratic efforts to treat President Bush's nominations more fairly than President Clinton's were treated than the court to which Judge Haynes has been nominated, the Fifth Circuit, 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 was given, nor listed on a Committee agenda for a vote. The fact is 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.

In stark contrast, 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 Republicans Senators refused to help to fill.

We continue to make progress on nominations. Four district court nominations are pending on the Senate's Executive Calendar. This afternoon, the Committee will hold its fifth confirmation hearing this year.

If the White House would work with us and with home-state Senators, we could be making even more progress. An important example is the recent nomination of Steven Agee to a Virginia seat in the Fourth Circuit. It is regrettable that Justice Agee's nomination was sent to the Senate only after months of delay when the White House insisted on sending to the Senate the nomination of Duncan Getchell. That nomination did not have the support of either of the Virginia Senators and was 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.

Two weeks ago, I wrote to the President that I expected the Judiciary Committee and the Senate to proceed promptly to consider and confirm Justice Agee's nomination with the support of Senator Warner and Senator Webb. 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.

Senate Democrats should not act the way Republicans did by pocket filibustering more than 60 of President Clinton's nominees, and we have not. 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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