

Statement of

The Honorable Patrick Leahy

United States Senator

Vermont

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Chairman, Senate Judiciary Committee,

On Judicial Nominations Hearing

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Today, the Committee holds its sixth hearing this year to consider President Bush's nominations for lifetime appointments to the Federal bench. It is the eighth nominations hearing this year, and the 20th nominations hearing this Congress. We will hear from four more judicial nominees-- Paul Gardephe and Cathy Seibel for the Southern District of New York, Kiyo Matsumoto for the Eastern District of New York and Glenn Suddaby for the Northern District of New York.

All four of these nominees have the support of the New York Senators, who worked with the White House to identify a slate of consensus nominees. I thank Senators Schumer and Clinton for their consideration of these nominees. I also thank Senator Schumer for chairing today's hearing.

I noted the sudden concern of the Minority Leader last week over district court nominations. Perhaps he did not have a chance to see my statement from earlier in the week in which I said that with Republican cooperation, we have the opportunity this work period to confirm five nominees already reported favorably by the Judiciary Committee. Of course, we continue to make progress. Just yesterday, the Senate confirmed three of this President's district court nominees to the Federal bench.

Sadly, we have not seen much in the way of Republican cooperation. Instead, anonymous Republicans are stomping their feet, objecting to hearing after hearing and objecting to Senate passage of measure after measure intended to help the American people. Yesterday, Republicans objected to Senator Feinstein completing a hearing on coercive interrogation techniques and the recent Inspector General report on the role of the FBI. It was a good hearing and an important hearing. It was conducted fairly and led to important testimony and helpful analysis. It would have been cut short had not the Majority

Leader taken action and extended the lunch recess of the Senate briefly so that we could complete it. As he did, the Senate Majority Leader observed:

"By refusing to allow the Judiciary Committee to hold a hearing on interrogation techniques, Bush-McCain Republicans have today found yet another way to cover for this Administration's disregard for the rule of law. This marks the second time in less than one week that Republicans have needlessly wasted the Senate's time, and is the latest in a disturbing trend of Republicans looking the other way from the Administration's use of intolerable interrogation techniques. I call on Senator McCain to condemn his colleagues' efforts to stop the Senate from investigating torture."

His reference last week was to the childish prank by which the Republican leader refused to allow the global climate change bill to be considered without first forcing the Senate clerks to read it aloud, word for word for hours and hours and thereby effectively shut down the Senate from action on it. Then, when it came time to vote whether to move to consideration of the bill, the Republican caucus voted to prevent progress on it.

This morning the now all too familiar pattern was repeated. The Judiciary Committee was holding a hearing on the impact on real people - on all Americans - of Supreme Court decisions that have stripped protections for American consumers and workers. The hearing began with the Ranking Republican Member noting how important it is that we discuss these issues, and he was right. In recent decisions, the Supreme Court has misconstrued our laws, ignored the intent of Congress, and ultimately prevented state court juries from providing redress for misconduct that has harmed ordinary Americans. Then an anonymous Republican, without warning, objected to the hearing being completed and prematurely shut it down in the middle of Senator Whitehouse's questions. As Senator Whitehouse properly observed, it was a shame given that the women who had traveled to Washington to testify had already been victimized by insurers, medical device manufacturers and the courts and were then today cut short by an anonymous Senate Republican. Republicans in the Senate earlier this year blocked Senate action on a bill to remedy one of these egregious Supreme Court decisions, that involving Lilly Ledbetter, and now they will not even listen to ordinary Americans who have been hurt.

These "objections" are selective in that Republicans are shutting down hearings on topics on which they apparently do not want the facts to become known. Republicans were apparently perhaps concerned this morning that Americans will understand that "activist judges" include those conservative Supreme Court Justices who are misconstruing laws intended to protect American consumers. The Chamber of Commerce witness had finished when our Republican colleague preemptively insisted that the microphones be turned off the microphones while ordinary Americans were trying to tell us about the injustice they have endured.

It is sad and ironic that Republicans are acting as they are since we are poised to make more progress of filling judicial vacancies. There are three more nominations on the Committee's agenda for our business meeting tomorrow, including the nominations of Judge Helene White and Ray Kethledge to the Sixth Circuit, and the nomination of Stephen Murphy to the Eastern District of Michigan. This hearing includes four more of President Bush's judicial nominees to the vacancies in New York.

As I said last week, with cooperation from across the aisle, the Senate is prepared to confirm four circuit court judges and 11 district court judges before the July 4 recess, bringing the total confirmed this year to 15 lifetime appointments. That compares most favorably to the 17 district court judges confirmed during the entire 1996 session, a session in which the Republican Senate majority refused to confirm a single one of President Clinton's circuit court nominations.

I recall Senator Specter's frustration when he was Chairman with a Republican Majority at the end of the last Congress, and Republican holds prevented the confirmation of 14 district court nominations. Democrats on the Judiciary Committee had worked hard to expedite the nominations at the end of the last Congress. At the time, Senator Specter noted the serious impact that judicial vacancies can have on the Federal judiciary. That is why, in stark contrast to Republicans who increased vacancies during President Clinton's tenure in anticipation of a Republican president, the Democratic Senate majority has worked steadily and steadfastly to lower vacancies and make progress.

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 149 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 Republican presidency.

Although Senate Republicans suggest otherwise, we continue to make progress on judicial nominations. On June 1, 2000, when a Republican Senate majority was considering the judicial nominees of a Democratic President in a presidential election year, there were 66 judicial vacancies. Twenty were circuit court vacancies, and 46 were district court vacancies. Those vacancies were the result of years of Republican pocket filibusters of judicial nominations. Today, there are just 44 total vacancies. If we can continue to make progress this month, the current vacancies could be reduced to fewer than 40, with only nine circuit court vacancies.

When Republicans were busy pocket filibustering Clinton nominees, Federal judicial vacancies grew to more than 100, with more than 30 circuit vacancies, and it has been the Democratic Senate majority that worked hard to reduce these vacancies, first when I became Chairman in the summer of 2001, and

again in this Congress. We have gone from more than 110 vacancies to less than 45. With respect to Federal circuit court vacancies, we have reversed course from the days during which the Republican Senate majority more than doubled circuit vacancies. Circuit vacancies have not been this low since 1996, when the Republican tactics to slow judicial confirmations began in earnest.

Disputes over a handful of controversial judicial nominations have wasted valuable time that could be spent on the real priorities of every American. I have sought, instead, to make progress where we can. The result is the significant reduction in judicial vacancies.

Despite this progress, the heated partisan rhetoric and petulance 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 Americans now facing increasing burdens from the soaring price of gas, high food prices, rising unemployment and a home mortgage foreclosure and credit crisis, with the challenges of global climate change, the wars in Iraq and Afghanistan, and terrorism, 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 reduce vacancies to the lowest levels in decades.

I would rather see us work with the President and make progress where we can than waste precious time fighting about controversial nominations. I would also rather see the Senate focus on addressing the real priorities of the country rather than trying to create partisan advantage. Today's hearing for four more judicial nominations represents the progress we can make when we work together.

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