

Statement of

The Honorable Patrick Leahy

United States Senator

Vermont

June 17, 2008

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Chairman, Senate Judiciary Committee

Hearing on "Responding to the Growing Need for Federal Judgeships: The Federal Judgeship Act of 2008"

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Today Republicans added addressing the needs of the Federal judiciary to the now long list of hearings they have objected to in the last week. Republicans objected to the Judiciary Committee's investigation into the use of coercive interrogation techniques. Republicans objected to the impact of Supreme Court decisions on the daily lives of all Americans. And today, the Republican minority has objected to a hearing requested by Judiciary Committee Republicans to examine legislation about the need for additional Federal judgeships.

It would appear to an objective observer that Republicans believe they were elected to the United States Senate to thwart the oversight and legislative efforts of this body. This now all too familiar pattern is childish and serves no good purpose.

I wondered last week, as the Republican minority objected to an important hearing on Supreme Court decisions, just whose side our Republican colleagues are on. Instead of turning their attention to issues affecting the daily lives of the people who have sent them to Washington, they appear more interested in embroiling this chamber in petty, partisan politics. This behavior marks another afternoon of silence behind the witness table in the Senate Judiciary Committee, and another lost opportunity to address issues concerning the American people.

At the May 15, 2008, Judiciary Committee markup several distinguished Republican members of the Committee made the following statements in favor of holding the hearing:

Senator Sessions: My comments on the judges' bill, as a member and Ranking on the Court Subcommittee, we did have hearings several years ago but not recently."

Senator Kyl: "So what I would like to do, Mr. Chairman, is just recommend that you take our colleagues up on the suggestion that we have a hearing to validate the requirements."

Senator Coburn: "If we're going to fix it, let's fix it right. Let's have a great hearing. Let's bring the GAO in, let's bring the Conference in, and let's find out to do it right."

Senator Grassley: "That is the purpose of a hearing, and that is why it is very important that we give this adequate study."

Last month, the Judiciary Committee voted overwhelmingly in favor of reporting the bipartisan Federal Judgeship Act of 2008. This legislation contained the full recommendations of the Judicial Conference of the United States. At our Committee mark-up, one Senator requested that we hold a hearing so that the minority could have an opportunity to present their view and an alternative to the Judicial Conference's formula for determining when a new judgeship is needed. I granted that request, and Senator Feinstein agreed to preside during today's hearing.

The bipartisan judgeship bill that I introduced with Senator Hatch, Senator Feinstein and others would create nearly 60 new Federal judgeships in order to address the increasing workload of the Federal judiciary. The bill is based on the 2007 biennial recommendations of the Judicial Conference of the United States, and its detailed analysis of Federal caseloads.

The Judicial Conference's most recent recommendations were based on an extensive process which begins with an assessment of district and circuit workloads. At the circuit court level, case filings per authorized judgeship are considered in conjunction with local circumstances that may have an impact on judgeship needs. In the district courts, cases are weighted to reflect the estimated time expenditure for each type of case. Workload factors such as the amount of assistance from senior and magistrate judges, unusual caseload complexity, and temporary caseload increases or decreases are also factored into the formula that resulted in our bipartisan bill.

Historically, new judgeships are authorized when judicial vacancies are at low levels. The last time that a comprehensive judgeship bill was enacted in 1990, Congress authorized 72 new Article III judgeships. At that time, there were only 27 district court vacancies and 7 circuit court vacancies. Today, with Federal district court vacancies at 33, and circuit court vacancies at 11, and poised to drop to even lower numbers, the Federal judiciary is approaching the same low vacancy percentage as 18 years ago.

It has been nearly two decades since the last comprehensive judgeship bill was enacted. Since then, weighted filings in the district and circuit courts have risen well above acceptable standards in the targeted districts and states, and in some cases have approached record caseloads. The need for new judgeships is urgent because Federal courts must have adequate judicial resources in order to ensure that all Americans receive justice in a timely manner. And now is the best time for Congress to authorize new judgeships when no one knows what party will have the power to appoint them.

We will include in the Committee record a letter from 14 Federal judges who serve on the from the Judicial Conference's Committee on Judicial Resources. This letter urges us to take up and pass this legislation. I hope we can respond to the urgent resource needs of our co-equal branch of government without further delay. I thank the witnesses for providing their testimony to the Committee today, and I am disappointed we will not hear from them directly. The Committee will keep the hearing record open for one week, and I look forward to reading the responses to questions submitted to the witnesses. I regret that partisan politics have preempted the Committee's hearing on this important and pressing matter.

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