

Statement of

The Honorable Patrick Leahy

United States Senator
Vermont
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Statement Of Senator Patrick Leahy (D-Vt.),
Chairman, Senate Judiciary Committee,
Hearing On Judicial Nominations
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Today, we will hear from four nominees for lifetime appointments to the Federal bench in California and it is appropriate that the hearing be chaired by Senator Feinstein. I thank Senator Feinstein and Boxer for their strong support of these nominations.

This is an historic hearing and an historic day. This is the first time that three Asian Pacific American nominees have appeared before the Committee at the same time. Indeed, three Asian Pacific American judicial nominees have never been confirmed in the same year. Of the approximately 875 judges on the Federal bench, only eight are Asian Pacific American. That is less than one percent. The progress we make today is long overdue.

I am glad that President Obama is following through on his commitment to nominate men and women to the Federal bench who reflect the diversity of America. Diversity on the bench helps ensure that the words "equal justice under law," inscribed in Vermont marble over the entrance to the Supreme Court, are a reality, and that justice is rendered fairly and impartially. With his nominations the President took a major step forward and with today's hearing, we are moving closer to that crucial goal. Today is an important milestone not only for the Asian Pacific American community, but for all Americans.

Judge Jacqueline Nguyen and Dolly Gee have been nominated to the district court for the Central District of California. If confirmed, these outstanding nominees will be the first Asian Pacific American women to serve as district court judges in the State of California. Judge Nguyen will become the first Vietnamese American district court judge in the United States, and Ms. Gee will be the first female Chinese American district court judge in the Nation. More than 10 years after her first nomination to the Central District of California in May 1999, I am pleased that Ms. Gee finally will receive a hearing before this Committee.

President Obama has also nominated Judge Edward Chen to serve as district court judge for the Northern District of California. If he is confirmed, he will become the first Asian Pacific American district court judge in the 150- year history of the Northern District of California. Judge Chen is already the first Asian Pacific American to serve in that district as a magistrate judge.

Today we will also hear from Judge Richard Seeborg, another Northern District of California magistrate judge, whose excellent work makes him a qualified nominee.

All of the nominees before the Committee today are qualified for these important responsibilities. The California Senators who recommended them know this to be true as does the President who nominated them. The American Bar Association's Standing Committee on the Federal Judiciary has rated them all as qualified, and three of them unanimously as "well qualified," their highest rating.

I want to thank the Committee's Ranking Member, Senator Sessions, for his cooperation in scheduling and preparing for this hearing. I have accommodated the Ranking Member and the Republican members of the Committee by holding confirmation hearings no more frequently than every two weeks. I look forward to working with them to continue our consideration of judicial nominations steadily, so that we can fill vacancies and ensure that justice is not delayed, or denied, to any American because of overburdened courts.

I hope our progress in the Committee will soon be mirrored in the Senate. Over the past few months, we have seen an unprecedented delay in the consideration of qualified and noncontroversial nominations. We have had to overcome filibusters and spend months seeking time agreements in order to move nominations which, in the past, were regularly considered without delay.

I am concerned that the action of the Republican leadership signals an intent to return to the practices of the 1990s that more than doubled circuit court vacancies and led to the pocket filibuster of more than 60 of President Clinton's nominees. The crisis they created led to public criticism of their actions by Chief Justice Rehnquist during those years.

I hope that instead of withholding consents and threatening filibusters of President Obama's judicial nominees both sides of the aisle will join together to treat the nominees of President Obama fairly. I made sure that we treated President Bush's nominees more fairly than President Clinton's nominees had been treated. In the 17 months that I served as chairman of this Committee during President Bush's first term, the Senate confirmed 100 of his judicial nominations. By this time in President Bush's first term we had confirmed six of his nominations to federal circuit and district courts. Nine months into President Obama's first term, the Senate has confirmed only one of his lower court nominees, despite the fact that President Obama made his first nomination nearly two months earlier than did President Bush. We can do better. The American people deserve better.

After months of delay, the Senate last week finally confirmed Judge Gerard Lynch to serve on the Second Circuit. Despite the fact that Judge Lynch's nomination was noncontroversial, despite the fact that it was reported out of Committee unanimously and with glowing words from Ranking Member Sessions, it still took more than three months after his nomination was reported by this Committee for the Senate to confirm him. When we finally voted, we confirmed Judge Lynch by an overwhelming vote of 94 to three. There was simply no reason for that kind of delay.

Nine nominations reported by the Judiciary Committee remain pending on the Senate's Executive Calendar, seven of them from before the last recess. Five of the stalled nominees -

Dawn Johnsen to be the Assistant Attorney General for the Office of Legal Counsel, Judge William K. Sessions to chair the U.S. Sentencing Commission, Tom Perez to be the Assistant Attorney General for the Civil Rights Division, Mary Smith to be the Assistant Attorney General for the Tax Division, and Christopher Schroeder to be the Assistant Attorney General for the Office of Legal Policy - should be confirmed without further delay to fill important positions in Executive Branch. Despite the fact that this Committee reported some of these nominations as long as six months ago, they have yet to receive a vote on the Senate floor.

Judicial nominations have not fared any better. President Obama made his first judicial nomination in March when he chose David Hamilton for the Seventh Circuit. The nomination has been on the Executive Calendar since early June, despite the support of the most senior of Senate Republicans, Senator Lugar. The nomination of Judge Andre Davis to the Fourth Circuit was reported by the committee on June 4 by a vote of 16 to three but has yet to receive Senate consideration.

It is imperative that we move quickly to fill the growing number of vacancies throughout the Federal courts. There are currently 94 vacant seats on the Federal bench, including 20 on the circuit courts. In addition, 26 future vacancies have already been announced. That means that Federal judicial vacancies will soon number 120 unless we begin to move judicial nominations in regular order. I urge President Obama to send qualified nominees to the Senate as quickly as possible so that we can begin to address this alarming spike in vacancies. And I urge Republican Senators to work with us to confirm qualified nominees without unnecessary delay.

I am pleased to welcome the nominees and their families to the Committee today, and I look forward to considering these nominations.

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