

Statement of

# **The Honorable Patrick Leahy**

United States Senator  
Vermont  
October 21, 2009

Statement Of Senator Patrick Leahy (D-Vt.),  
Chairman, Senate Judiciary Committee,  
Hearing On Executive And Judicial Nominations  
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Today, we will hear from two more of President Obama's well-qualified nominees, one for a lifetime appointment on the Federal bench, and one for an important position in the executive branch. I thank Senator Klobuchar for chairing this hearing. I look forward to hearing from the Senators from Tennessee and appreciate their support for Jane Branstetter Stranch, who has been nominated to fill a vacancy on the Sixth Circuit. I hope that with their support, she will receive better treatment than that accorded this President's other judicial nominees.

Our Committee will now have held hearings for 15 of President Obama's nominations to fill district and circuit court vacancies. We have reported 13 of these nominations favorably. The nomination of Judge Keenan is on the Committee's agenda for consideration this week. To date, only three of these nominations have been given an up or down vote by the full Senate, and that third confirmation only took place moments ago.

It is October 21. By this date in the administration of George W. Bush, we had confirmed eight lower court judges. By this juncture in the administration of Bill Clinton, we had confirmed eight lower court nominations. The Senate has confirmed just three lower court nominees this year--less than half of those considered by this date during President Bush's tumultuous first year in office, and less than half of those confirmed by this date during President Clinton's first year--despite the fact that President Obama sent nominees with bipartisan support to the Senate two months earlier than did President Bush.

The first of those lower court confirmations took place on September 17, months after the nomination of Judge Gerard Lynch had been reported out of Committee with no dissent. Finally, after months of needless delay, the Senate confirmed Judge Lynch to serve on the Second Circuit by an overwhelming vote of 94 to three. That filled just one of the five vacancies this year on the Second Circuit. Its bench remains nearly one-quarter empty with four vacancies among its 13-member bench.

Judge Viken, the first of just two district court judges the Senate has been allowed to vote on this year, was confirmed on September 29, by a unanimous 99-0 vote. Minutes ago, the Senate voted to confirm Roberto Lange, who was reported by the Committee on October 1. It took three weeks to proceed to Judge Lange's nomination despite the fact that he, like Judge Viken, had the

support of both his home state Senators, one a respected Democratic Senator and the other a Republican Senator who is a member of the Republican Senate leadership.

South Dakota has had its two vacancies filled this year, but vacancies in 35 other states remain unfilled, and the Senate's constitutional responsibilities are going unfulfilled. There was - there is - no reason for the Republican minority to impose these unnecessary and needless delays to judicial confirmations. There are 10 other judicial nominations on the Senate Executive Calendar awaiting action and being stalled by Republican holds. All 10 were reported favorably by the Senate Judiciary Committee. Two were reported in June and have been waiting for more than four months for Senate consideration.

In a recent column, Professor Carl Tobias wrote:

"President Obama has implemented several measures that should foster prompt appointments. First, he practiced bipartisanship to halt the detrimental cycle of accusations, countercharges and non-stop paybacks. Moreover, the White House has promoted consultation by seeking advice on designees from Democratic and GOP Senate members, especially home state senators, before official nominations. Obama has also submitted consensus nominees, who have even temperaments and are very smart, ethical, diligent and independent."

When I served as chairman of the Senate Judiciary Committee during President Bush's first term, I did my best to stop the downward spiral that had affected judicial confirmations. Throughout my chairmanship I made sure to treat President Bush's judicial nominees better than the Republicans had treated President Clinton's. During the 17 months I chaired the Judiciary Committee during President Bush's first term, we confirmed 100 of his judicial nominees. At the end of his presidency, although Republicans had chaired the Judiciary Committee for more than half his tenure, more of his judicial nominees were confirmed when I was the chairman than in the more than four years when Republicans were in charge.

In spite of President Obama's efforts, however, Senate Republicans began this year threatening to filibuster every judicial nominee of the new President. They have followed through by dragging out, delaying, obstructing and stalling the process. The result is that 10 months into President's Obama's first term, the Senate has confirmed only three of his nominations for circuit and district courts while judicial vacancies skyrocket around the country. The delays in considering judicial nominations pose a serious problem in light of the alarming spike in judicial vacancies on our Federal courts. There are now 95 vacancies on Federal circuit and district courts and another 24 future vacancies already announced. These vacancies are at near record levels. Justice should not be delayed or denied to any American because of overburdened courts. We can do better. The American people deserve better.

Professor Tobias' observations about the Second Circuit hold true throughout the country, and accurately reflect this President's efforts to work cooperatively with respect to judicial nominations. President Obama made his first judicial nomination, that of Judge David Hamilton to the Seventh Circuit, in March, but it has been stalled on the Executive Calendar since early June, despite the support of the senior Republican in the Senate, 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 be considered by the Senate. The nomination of Judge Beverly

Baldwin Martin to the Eleventh Circuit has the support of both of Georgia's Senators, both Republicans, and was reported unanimously from the Committee by voice vote on September 10, but has yet to be considered or scheduled for consideration by the Senate. The nomination of Joseph Greenaway to the Third Circuit has the support of both Pennsylvania Senators, and was reported unanimously from the Committee by voice vote on October 1, but has yet to be considered or scheduled for consideration by the Senate. All of these nominees are well-respected judges. All will be confirmed, I believe, if only Republicans would consent to their consideration by the Senate. Instead, the President's good efforts are being snubbed and these nominees stalled for no good purpose.

The Senate can and must do a better job of restoring our tradition of regularly considering qualified, noncontroversial nominees to fill vacancies on the Federal bench without needless and harmful delays. This is a tradition followed with Republican Presidents and Democratic Presidents.

In addition, four nominations to be Assistant Attorneys General at the Department of Justice remain on the Executive Calendar, three of them for many months. Republican Senators have also prevented us from moving to consider the nomination of respected Federal Judge William Sessions of Vermont to be Chairman of the United States Sentencing Commission for over five months, even though he was twice confirmed as a member of that Commission. The Majority Leader has been forced to file a cloture motion in order to end the obstruction of that nomination.

Four out of a total of 11 divisions at the Department of Justice remain without Senate-confirmed presidential nominees because of Republican holds and delays--the Office of Legal Counsel, the Tax Division, the Office of Legal Policy, and the Environment and Natural Resources Division. Earlier this month, with the hard work of Senator Cardin, we were finally able to move forward to confirm Tom Perez to head the Civil Rights Division at the Justice Department. His nomination was stalled for four months, despite the fact that he was approved 17 to two by the Judiciary Committee. At the last minute, Senate Republicans abandoned an ill-fated effort to filibuster the nomination, and asked that the cloture vote be vitiated. He was finally confirmed with more than 70 votes in the Senate.

I hope that, instead of withholding consents and threatening filibusters of President Obama's nominees, the other side of the aisle will join us in treating them fairly. We should not have to fight for months to schedule consideration of the President's judicial nominations and nominations for critical posts in the executive branch.

Today we will hear from Jane Branstetter Stranch, who has been nominated to a seat on the Sixth Circuit. In her 31-year legal career at Nashville law firm Branstetter, Stranch & Jennings, Ms. Stranch has focused on issues related to labor and employment law and has developed an active appellate practice before the court to which she has now been nominated. Ms. Stranch is a leader in her community with impressive academic credentials, earning her J.D., Order of the Coif, and her B.A., summa cum laude and Phi Beta Kappa, from Vanderbilt University.

We will also hear from Professor Benjamin Tucker, President Obama's nominee to be the Deputy Director for State, Local, and Tribal Affairs at the Office of National Drug Control Policy. Professor Tucker has 40 years of experience in the criminal justice field. He began his career as a

beat cop in the New York Police Department when he was just 19-years-old. Since then, Professor Tucker has served as a high-ranking official in the New York City government, worked in the Justice Department's Office of Community Oriented Policing Services to implement the 1994 crime bill, and led efforts to increase school safety in New York City's public schools. He is currently a professor of criminal justice at New York City's Pace University. While serving as a police officer, Professor Tucker earned his B.S. in criminal justice from the John Jay College of Criminal Justice at City University of New York and his J.D. from Fordham University School of Law.

I look forward to hearing from the nominees today and welcome them and their families to the Committee.

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