

Statement of

The Honorable Patrick Leahy

United States Senator
Vermont
January 20, 2010

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 five of President Obama's well-qualified nominees, four for lifetime appointments on the Federal bench and one for an important position in the executive branch. The nomination of Nancy D. Freudenthal to a seat on the the District of Wyoming has the support of both of Wyoming's Republican Senators, Senator Enzi and Senator Barrasso. The nomination of Judge D. Price Marshall, Jr., to fill a vacancy on the Eastern District of Arkansas has the support of Senators Lincoln and Pryor. The nominations of Judge Benita Pearson and Judge Timothy Black to fill Ohio vacancies on Federal district courts have the support of Senator Voinovich, a Republican, and Senator Brown, a Democrat. I trust that these nominees will be treated well by the Committee, and will receive the prompt consideration they deserve.

With the cooperation of Senator Sessions, the Judiciary Committee considered nominations in regular order during the first session of this Congress, and I expect that we will continue on that path during the second session. I wish I could say the same for the Senate's consideration of nominations reported by this Committee.

The Senate this morning at last considered the long-stalled nomination of Judge Beverly Martin of Georgia to the U.S. Court of Appeals for the Eleventh Circuit. Even though Judge Martin is a well-respected district court judge with the strong support of both of her home state Republican Senators, and even though this Committee reported her nomination promptly and without a single dissenting vote, her nomination was stalled on the Senate Executive Calendar for over four months. After four months of delay, Senate Republicans today spoke in glowing terms about her, and she was confirmed unanimously. No Republican accounted for the delay.

The delays in considering Judge Martin's nomination, along with delays for seven other judicial nominations currently on the Senate's Executive Calendar, are the result of a Republican strategy to stall, delay, and obstruct that began last year and led to the lowest number of judicial confirmations in more than 50 years. Despite the fact that President Obama began sending judicial nominees to the Senate two months earlier than President Bush, only 12 of his judicial nominations to Federal circuit and district courts were confirmed last year. Not since 1953--a year in which President Eisenhower only made nine nominations, all of which were confirmed--have fewer judicial nominees been confirmed in the first year of a Presidency. The number of

confirmations last year fell below even the 17 confirmations the Senate Republican majority allowed during the 1996 session.

We confirmed more than twice as many judges during President Bush's first tumultuous year. In the second half of 2001, a Democratic Senate majority proceeded to confirm 28 judges. In the 17 months that I chaired the Senate Judiciary Committee during President Bush's first term, the Senate confirmed 100 of his judicial nominees. Yet Republicans have refused to agree to the consideration of President Obama's qualified, noncontroversial nominees for weeks and months. This has led to an historic backlog on the Senate Executive Calendar.

At the end of President Bush's first year in office, only four judicial nominations were left on the Senate Executive Calendar, all of which were confirmed soon after the Senate returned in 2002. At the end of President Clinton's first year, just one judicial nominee was left on the Senate Executive Calendar. At the end of President George H.W. Bush's first year, a Democratic Senate Majority left just two judicial nominations pending on the Senate Executive Calendar. At the end of the first year of President Reagan's first term--a year in which the Senate confirmed 41 of his Federal circuit and district court nominees--not a single judicial nomination was left on the Senate Executive Calendar. This past December, Senate Republicans left 10 of President Obama's judicial nominees without Senate action, and insisted on returning two of them to the President so that they would have to be renominated.

Judicial vacancies have now skyrocketed to over 100, undoing years of hard work. During President Bush's last year in office, we had reduced judicial vacancies to as low as 34, even though it was a presidential election year. When President Bush left office, we had reduced vacancies in nine of the 13 Federal circuits. As matters stand today, judicial vacancies have spiked and are being left unfilled. We started 2010 with the highest number of vacancies on Article III courts since 1994, when the vacancies created by the last comprehensive judgeship bill were still being filled. That is the true measure of how far behind we have fallen. This is wrong. The American people deserve better. The cost of Republican Senators' obstruction will be felt by ordinary Americans seeking justice in our overburdened Federal courts.

While President Obama has moved beyond the judicial nominations battles of the past and reached out to work with Republicans and make mainstream nominations, Senate Republicans continue their tactics of delay. The lack of Senate action last year is attributable to Senate Republicans and no one else. President Obama has reached across the aisle to consult with Republican Senators. He has made quality nominations. The nominations before the Committee today are another example of that.

Nancy D. Freudenthal is nominated to be a U.S. District Judge for the District of Wyoming. She is a litigation partner at the law firm of Davis & Cannon in Cheyenne, Wyoming, where she has practiced for nearly 15 years. She also worked for nearly a decade as an intergovernmental affairs attorney in the Wyoming Governor's office, and she has chaired both the Wyoming Tax Commission and the Wyoming Board of Equalization. Ms. Freudenthal is currently the First Lady of Wyoming. In that capacity, she leads a nationwide collaboration of gubernatorial spouses who are working together in a nonpartisan effort to stop underage drinking. She received both her B.A., Phi Beta Kappa, and her J.D., Order of the Coif, from the University of Wyoming. If confirmed, Ms. Freudenthal will be the first woman to serve as a Federal judge in Wyoming.

President Obama has nominated Judge D. Price Marshall, Jr. to serve on the U.S. District Court for the Eastern District of Arkansas. He has served as a judge on the Arkansas Court of Appeals for three years, and before that he practiced law for 15 years at the Jonesboro, Arkansas firm of Barrett & Deacon. Judge Marshall received his B.A., cum laude, from Arkansas State University, where he is currently an adjunct professor. He received his M.S. from the London School of Economics and his J.D., cum laude, from Harvard Law School.

Judge Benita Pearson has been nominated to sit on the U.S. District Court for the Northern District of Ohio. Currently a magistrate judge on that court, she formerly spent eight years as a federal prosecutor in Cleveland. She also worked for three years as a lawyer in private practice at two Cleveland law firms. She earned her B.S. from Georgetown University and her J.D. from Cleveland State University's Cleveland-Marshall College of Law, where she is currently an adjunct professor. If confirmed, Judge Pearson will be the first African American woman to serve as a Federal judge in Ohio.

Judge Timothy Black is nominated to be a U.S. District Judge for the Southern District of Ohio. He has served that district as a magistrate judge for nearly six years. Previously, he was a municipal court judge in Hamilton County, Ohio, and before that he was a civil litigator with the firm of Graydon Head & Ritchey in Cincinnati. Before and during law school, Judge Black worked as an English teacher. He received his B.A., cum laude, from Harvard University and his J.D. from the Salmon P. Chase College of Law at Northern Kentucky University, where he was an editor of the law review.

President Obama has nominated Dr. James Lynch to be the Director for the Bureau of Justice Statistics within the U.S. Department of Justice. Currently a professor at John Jay College of Criminal Justice of the City University of New York, Dr. Lynch has been involved in most of the major efforts to build and improve our national statistics on crime and criminal justice systems over the past three decades. Previously, he was a professor at American University and a research associate with the now-defunct Bureau of Social Science Research, Inc. He earned his B.A., Phi Beta Kappa, from Wesleyan University, and his M.A. and Ph.D. from the University of Chicago.

I welcome all of the nominees and their families to the Committee today, and I hope they will receive prompt and fair consideration.

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