

Statement of

The Honorable Patrick Leahy

United States Senator
Vermont
February 24, 2010

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Chairman, Senate Judiciary Committee,
Nominations Hearing
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Today, we will hear from five of President Obama's well-qualified judicial nominees, all of whom have the support of the Senators from their home states who know them best. The nominations of Brian Jackson and Elizabeth Foote to fill Federal district court vacancies in Louisiana have the support of Senator Landrieu, a Democrat, and Senator Vitter, a Republican. The nomination of Judge Josephine Tucker to fill a vacancy in the Central District of California has the support of Senator Feinstein, a senior member of this Committee, and Senator Boxer. The nomination of Judge Mark Goldsmith to the Eastern District of Michigan has the support of Senators Levin and Stabenow. And the nomination of Marc Treadwell to the Middle District of Georgia has the support of Georgia's Senators, Senator Isakson and Senator Chambliss, both Republicans.

I trust that these nominees will be treated well by the Committee and will receive the prompt consideration they deserve. The Senate Judiciary Committee has favorably reported 29 of President Obama's Federal circuit and district court nominees to the Senate for final consideration and confirmation. An additional six judicial nominees appeared before the Committee on February 11 and are on the Committee's agenda tomorrow. When those outstanding nominees are reported, the number of Federal circuit and district court nominees reported to the full Senate will total 35.

By this date during President Bush's first term, the Senate had confirmed 37 Federal circuit and district court nominations. That was a tumultuous period in which Senate Democrats worked hard to make progress with a staunchly partisan Republican President. That included the period of the 9/11 attacks and the anthrax attacks upon the Senate. In spite of all the obstacles, by February 24, 2002, the Senate had moved forward to help confirm 37 of President Bush's judicial nominees.

Although a comparable number of President Obama's judicial nominees have been available for Senate consideration and confirmation, the Senate has confirmed only 15 Federal circuit and district court nominees so far during President Obama's time in office. That is just 40 percent as many. Nearly as many judicial nominations are now pending on the Executive Calendar--14--as have been confirmed so far this Congress.

Another way to state the comparison is to look at it the other way, and understand that we had confirmed 15 of President Bush's judicial nominees by November 6, 2001. That comparison shows that, despite the fact that President Obama began sending judicial nominations to the

Senate two months earlier than President Bush, after President Obama's 13 months in office the Senate is already three and one-half months behind where we were during the Bush administration. Meanwhile, judicial vacancies have skyrocketed to more than 100. Although I am frustrated with the Republican obstructionism and delay we see on the Senate floor, I am pleased that we are able to consider five well-qualified nominees today on a timely basis.

President Obama nominated Brian A. Jackson to serve on the U.S. District Court for the Middle District of Louisiana. Mr. Jackson is a partner at New Orleans law firm Liskow & Lewis. Previously, he worked as an Assistant U.S. Attorney in both the Eastern and the Middle Districts of Louisiana, and he also served the Middle District as Interim U.S. Attorney. In addition, Mr. Jackson dedicated a number of years to the Department of Justice and to the U.S. Immigration and Naturalization Service. He earned his B.S. from Xavier University of Louisiana, his J.D. from Southern University, where he was editor-in-chief of the law review, and his LL.M. from my alma mater, Georgetown University Law Center. If confirmed, Mr. Jackson will be the second African American judge to serve on the district court in the Middle District of Louisiana.

Elizabeth E. Foote is nominated to be a Federal district judge in the Western District of Louisiana. For the last 30 years, Ms. Foote has worked in private practice at The Smith Foote Law Firm in Alexandria, Louisiana. She was also an associate at another Alexandria law firm, and she served as a law clerk to Chief Judge William Culpepper of the Louisiana Third Circuit Court of Appeals. Ms. Foote earned her B.A. with honors from Louisiana State University, her M.A. from Duke University, and her J.D. from Louisiana State University's Paul M. Hebert Law Center.

Judge Josephine S. Tucker is nominated to the U.S. District Court for the Central District of California. Currently a trial judge on California's Orange County Superior Court, she previously practiced labor and employment law in Morrison & Foerster's San Francisco and Irving, California offices. Judge Tucker clerked for Judge John R. Gibson on the Eighth Circuit. She earned her B.A., summa cum laude, from William Jewell College in Liberty, Missouri and her J.D. from Harvard Law School in 1986.

President Obama nominated Judge Mark Goldsmith to serve as a Federal district court judge in the Eastern District of Michigan. Judge Goldsmith is currently a judge for Michigan's Oakland County Circuit Court, and he previously practiced law for 17 years at Honigman, Miller, Schwartz, and Cohn in Detroit. He also worked as an Oakland County magistrate judge and as a solo practitioner. Judge Goldsmith earned his B.A., Phi Beta Kappa and with high distinction, from the University of Michigan, and he received his J.D., cum laude, from Harvard Law School.

Marc T. Treadwell is nominated to the U.S. District Court for the Middle District of Georgia. Currently a partner at Macon, Georgia's Adams, Jordan & Treadwell, he has been a civil litigator in Georgia for 29 years. He received his B.A. from Valdosta State University, and he earned his law degree, cum laude, from Mercer University's Walter F. George School of Law.

President Obama deserves praise for working closely with home state Senators, whether Democratic or Republican, to identify and select well-qualified nominees to fill vacancies on the

Federal bench. Last year, President Obama sent 33 Federal circuit and district court nominations to the Senate, but the Senate confirmed only 12 of them, the fewest judicial nominees confirmed in the first year of a Presidency in more than 50 years. Among the frustrations is that Senate Republicans have chosen to delay and obstruct even nominees chosen after consultation with Republican home state Senators. President Obama has worked closely with Senate Republicans, but they have still chosen to treat his nominees badly.

Senate Republicans unsuccessfully filibustered the nomination of Judge David Hamilton of Indiana to the Seventh Circuit, despite support for his nomination from the senior Republican in the Senate, Dick Lugar of Indiana. Republicans delayed for months Senate consideration of Judge Beverly Martin of Georgia to the Eleventh Circuit despite the endorsement of both her Republican home state Senators. When Republicans finally agreed to consider her nomination on January 20, she was confirmed unanimously. Whether Jeffrey Viken or Roberto Lange of South Dakota, who were supported by Senator Thune, or Charlene Edwards Honeywell of Florida, who was supported by Senators Martinez and LeMieux, virtually all of President Obama's nominees have been prevented prompt Senate action by Republican objections.

I noted when the Senate considered the nominations of Judge Christina Reiss of Vermont and Mr. Abdul Kallon of Alabama relatively promptly that they should serve as the model for Senate action. Sadly, they are the exception rather than the model. They show what the Senate could do, but does not. Time and again, noncontroversial nominees are delayed. When the Senate does finally consider them, they are confirmed overwhelmingly.

Of the 15 Federal circuit and district court judges confirmed, 12 have been confirmed unanimously. That is right. Republicans have only voted against three of President Obama's nominees to the Federal circuit and district courts. One of those, Judge Gerry Lynch of the Second Circuit, garnered only three negative votes and 94 votes in favor. Judge Andre Davis of Maryland was stalled for months and then confirmed with 72 votes in favor and only 16 against. Judge David Hamilton was filibustered in a failed effort to prevent an up or down vote.

So why all the obstruction and delays? It is part of a partisan pattern. Even when they cannot say "no," Republicans nonetheless demand that the Senate go slow. The practice is continuing. There have already been 16 filibusters of President Obama's nominees. So far during President Obama's 13 months in office, Senate Republicans have engaged in more filibusters than there have been Federal circuit and district nominees considered by the Senate. And that comparison does not include the many other nominees who were delayed or are being denied up or down votes by Senate Republicans refusing to agree to time agreements to consider even noncontroversial nominees.

During the first two years of President Bush's time in office, the Democratic Senate majority proceeded to confirm 100 of his judicial nominees. I know; I remember. I chaired the Senate Judiciary Committee for 17 months during that period and oversaw the hearings and confirmations of all 100. By contrast, Senate Republicans have allowed only 15 of President Obama's Federal circuit and district court nominees to be acted upon by the Senate during his 13 months in office.

With four months to go, the Senate has a lot of ground to recover. There is an easy place to start. The Senate can virtually double its total by considering the 14 judicial nominees currently on the Senate Executive Calendar after being favorably reported by the Senate Judiciary Committee.

As matters stand today, judicial vacancies have spiked again, as they did due to Republican obstruction in the 1990s. These vacancies are again 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. While it has been nearly 20 years since we enacted a Federal judgeship bill, judicial vacancies are nearing record levels, with 102 current vacancies and another 21 already announced. If we had proceeded on the judgeship bill recommended by the Judicial Conference to address the growing burden on our Federal judiciary in order to provide the resources the courts need -- as we did in 1984 and 1990 when Republican Presidents were in office -- current vacancies would stand over 160 today and would be headed toward 180. That is the true measure of how far behind we have fallen.

So I urge Senate Republicans to reconsider their strategy. I hope Republicans on the Committee will allow prompt consideration of the five well-qualified nominees before us today as well as the six judicial nominees on the Committee's agenda this week. I urge Senate Republicans to work with us to provide final consideration without further delay to the 14 judicial nominees on the Senate Executive Calendar awaiting final action. We can make progress if we work together.

I welcome all of the nominees and their families to the Committee today.

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