

Statement of
The Honorable Patrick Leahy

United States Senator
Vermont
March 10, 2010

Statement Of Senator Patrick Leahy (D-Vt.),
Chairman, Senate Judiciary Committee,
Nominations Hearing
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Today, we will hear from three of President Obama's well-qualified judicial nominees, all of whom have the support of their home-state Senators, who know them best. The nominations of Gary Feinerman and Justice Sharon Coleman to fill vacancies in the Northern District of Illinois have the support of Senator Durbin, a senior member of this Committee, and Senator Burris. And the nomination of William Martinez to the District of Colorado has the support of Colorado's Senators, Senator Udall and Senator Bennet.

In addition to the three district court nominees we have before us today, this Committee planned to hear from a circuit court nominee, Judge Robert Chatigny, who is nominated to the Second Circuit. Earlier this week, Senator Sessions asked me to postpone Judge Chatigny's hearing, and I accommodated his request. I hope that Republican Senators will respond to this accommodation by treating Judge Chatigny fairly and moving his nomination expeditiously once he comes before us.

I hope the nominations of all of the candidates before the Committee today move expeditiously. It is time to increase the pace of our consideration of the President's nominees. This Committee has favorably reported 34 of President Obama's Federal circuit and district court nominees to the Senate for final consideration and confirmation. An additional five judicial nominees appeared before the Committee on February 24 and are on our agenda tomorrow, along with Judge Jane Magnus-Stinson, a nominee to the U.S. District Court for the Southern District of Indiana, whose nomination was held over last week. When those outstanding nominees are reported, the number of Federal circuit and district court nominees waiting for a vote by the full Senate will total 23. By this date during President Bush's first term, the Senate had confirmed 39 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. It included the period of the 9/11 attacks and the anthrax attacks upon the Senate.

Although a comparable number of President Obama's judicial nominees have been available for Senate consideration and confirmation, the Senate has confirmed only 17 Federal circuit and district court nominees so far during President Obama's time in office. That is less than half as many. Exactly the same number of judicial nominations are now pending on the Executive Calendar--17--as have been confirmed so far this Congress.

The Senate moved quickly to confirm 17 of President Bush's judicial nominees by November 8,

2001. 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 four months behind where we were during the Bush administration.

Meanwhile, judicial vacancies have skyrocketed to more than 100, undoing years of hard work. When I chaired this Committee during President Bush's last year in office, we 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.

More than 30 of the vacancies on our Federal courts today are classified as "emergencies." This is a sad reality. During the Bush administration, we worked hard and reduced judicial emergencies by more than half. Those vacancies have now increased dramatically, encumbering judges across the country with too-heavy dockets and preventing ordinary Americans from seeking justice in our overburdened Federal courts. This is wrong.

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. Yet Senate Republicans 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. 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.

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 denied 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 17 Federal circuit and district court judges confirmed, 14 have been confirmed unanimously. That is right. There have been only a handful of votes cast against just 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. 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 17 filibusters of President Obama's nominees. That is the same number of Federal circuit and district nominees the Senate has confirmed during the entirety of the Obama administration. And that comparison does not include the many other nominees who were delayed or who are being denied up or down votes by Senate Republicans refusing to agree to time agreements to consider even noncontroversial nominees.

I urge Senate Republicans to reconsider their strategy. I hope Republicans on the Committee will allow prompt consideration of the three 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 17 judicial nominees on the Senate Executive Calendar awaiting final action. We can make progress if we work together.

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 three highly qualified nominees today on a timely basis.

Gary Feinerman is nominated to serve on the Federal district court in the Northern District of Illinois. Currently a partner in the Chicago office of Sidley Austin, Mr. Feinerman previously was the Solicitor General of Illinois, and he also was a partner at Chicago law firm Mayer, Brown, Rowe & Maw. He worked in the Justice Department's Office of Policy Development, and he served as a law clerk to Supreme Court Justice Anthony Kennedy and to Seventh Circuit Judge Joel Flaum. Mr. Feinerman received his B.A., summa cum laude, from Yale College, and he earned his J.D., Order of the Coif, from Stanford Law School.

President Obama nominated Justice Sharon Johnson Coleman to serve on the U.S. District Court for the Northern District of Illinois. She currently sits on the Illinois Appellate Court in Chicago, and she previously was a judge on the Circuit Court of Cook County, Illinois. Justice Coleman also served as Deputy State's Attorney and Bureau Chief for the Public Interest Bureau of the Cook County State's Attorney's Office, as an Assistant U.S. Attorney in the Northern District of Illinois, and as an Assistant State's Attorney in Cook County. She earned her B.A. with honors from Northern Illinois University and her J.D. from Washington University School of Law.

William Martínez is nominated serve as a district court judge in the District of Colorado. A partner in Denver's McNamara, Roseman, Martínez and Kazmierski, Mr. Martinez previously was the Regional Attorney in the Denver District Office of the U.S. Equal Opportunity Commission, an associate with Pendleton and Sabian in Denver, and a staff attorney for the Legal Assistance Foundation in Chicago. The first in his family to attend college, Mr. Martinez received his B.S. and his B.A. from the University of Illinois and his J.D. from the University of Chicago Law School.

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

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