

Statement of

The Honorable Patrick Leahy

United States Senator
Vermont
July 13, 2010

Statement Of Senator Patrick Leahy (D-Vt.),
Chairman, Senate Judiciary Committee,
On The Nomination Of Solicitor General Elena Kagan
To Be An Associate Justice Of The Supreme Court Of The United States
July 13, 2010

Today we meet to consider the President's nomination to fill the vacancy on the Supreme Court created by the retirement of Justice John Paul Stevens. Justice Stevens was the first Supreme Court nomination on which I voted when I came to the Senate. He provided extraordinary service to the country.

Our hearing on the nomination of Elena Kagan was held two weeks ago. During that hearing, Solicitor General Kagan answered questions more fully than other recent nominees. She engaged with Senators about the role of the courts and the meaning of our Constitution. Her intelligence, grounding in the law, and good humor were evident to all.

Senators agreed with some of her answers and were not satisfied with others. That is no surprise. Whether a nominee agrees with each of us on particular issues or particular cases is not the test for considering nominations to the Court. Based on my review of Solicitor General Kagan's record and her answers to the Committee, I understand that she and I will not always agree. I did not agree with every decision by Justice Stevens or Justice Souter or Justice O'Connor, but I have great respect for their judgment and judicial independence. I have never regretted my vote in favor of those Justices, each nominated by a Republican President.

The 100 of us who serve in the United States Senate stand in the shoes of more than 300 million Americans as we discharge our constitutional duty with respect to this nomination. In reviewing Elena Kagan's record and in listening carefully to her answers to the more than 500 questions posed at our hearing, I looked to see whether Solicitor General Kagan would fairly apply the law and use common sense. I looked to see whether as a Justice she would appreciate the proper role of the courts in our democracy, and whether she would make decisions in light of the fundamental purposes of the law. I tried to determine whether she understands why the law matters, whether she would have the good sense to appreciate the significance of the facts in the cases in front of her, and consider the consequences of the Court's decisions in the lives of Americans. Would she be the kind of independent Justice who would keep faith with each of the words inscribed in Vermont marble over the front doors to the Supreme Court -- "Equal Justice Under Law"?

Those are the standards I have applied to every Supreme Court nomination, including the six Justices nominated by Republican Presidents that I have supported, and the three nominated by Democratic Presidents.

Solicitor General Kagan demonstrated an impressive knowledge of the law and fidelity to it. She spoke of judicial restraint, her respect for our democratic institutions, and her commitment to the Constitution and the rule of law. She made clear that she will base her approach to deciding cases on the law and the Constitution, not politics or an ideological agenda.

Solicitor General Kagan also demonstrated a traditional view about deference to Congress and judicial precedent, a view that conservatives used to embrace, and some still do. She indicated that she will not be the kind of Justice who would substitute her personal preferences and overrule congressional efforts to protect hardworking Americans pursuant to our constitutional role. Solicitor General Kagan made us one pledge, that she will do her "best to consider every case impartially, modestly, with commitment to principle, and in accordance with law."

I will cast my vote in support of Solicitor General Kagan's nomination. I believe she will ably fill the seat occupied for decades by Justice Stevens with dignity and honor. It is my hope that when the Supreme Court next convenes, three women will be serving together among the nine Justices. I wish Justice O'Connor were still serving, as well.

I hope that we will not see needless delay today. After the hearing, I granted a Republican request for extended time to ask additional written questions. Republicans proceeded to propound more than 200 questions and subparts. Responses were received last week. It has been 13 days since the nominee completed her testimony. When Democrats were in the minority on this Committee, we agreed to vote on the nomination of Chief Justice Roberts just seven days after his testimony concluded. We voted on the nomination of Justice Alito 12 days after he concluded his testimony. A number of Senators have already announced their votes. Accordingly, I hope we will not be forced to needlessly delay Committee action.

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Statement Of Senator Patrick Leahy (D-Vt.),
Chairman, Senate Judiciary Committee,
On The Nomination Of James Cole To Be Deputy Attorney General
July 13, 2010

I hope we can send the President's nomination of Jim Cole to be the Deputy Attorney General to the Senate today. We held his hearing back on June 15, four weeks ago. The Deputy Attorney General is the number two position at the Justice Department. It is vital to our national security and Federal law enforcement that this position be filled promptly and without unnecessary delay.

Jim Cole is an experienced prosecutor with a well-deserved reputation for fairness, integrity and toughness. He served as a career prosecutor within the Department of Justice for a dozen years, prosecuting complex and high-profile corruption cases, and helping to manage the Public

Integrity Section of the Justice Department. As he clearly demonstrated during his confirmation hearing, he understands very well the issues of crime and national security that are at the center of the Deputy Attorney General's job.

This nomination has received strong endorsements from Republican and Democratic public officials and high-ranking veterans of the Justice Department. Former Senator Jack Danforth described him as tough, independent, judicious and a first-rate manager. Senator Danforth, a Republican, worked with him for more than 15 years and described him as someone without an ideological or political agenda.

I urge all members of this Committee to allow this nomination to be considered without additional delay. This should not be an occasion for partisanship. The responsibilities of the Deputy Attorney General are too important to the safety and security of all Americans. In addition to overseeing the day-to-day management of the Department of Justice and all of its law enforcement and national security responsibilities, the Deputy Attorney General assumes the responsibilities of the Attorney General in the Attorney General's absence. This is a critical position.

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Statement Of Senator Patrick Leahy (D-Vt.),
Chairman, Senate Judiciary Committee,
On The SPEECH Act
(Amendment # COE10745 to H.R. 2765)
July 13, 2010

Today, I am offering the full text of the Leahy-Sessions SPEECH Act as a substitute amendment to H.R. 2765. Senator Sessions and I introduced this legislation last month with Senators Specter and Schumer. I thank all of them for working together on this important issue. I have also worked with Senator Kyl and appreciate his willingness to move forward.

The SPEECH Act ensures that American journalists, authors and publishers are protected from foreign libel lawsuits that chill their First Amendment rights. The bill is supported by the Reporters Committee for Freedom of the Press, the Vermont Library Association, the American Library Association, the Association of American Publishers, as well as by renowned First Amendment lawyer Floyd Abrams, former Attorney General Michael Mukasey, and the former Director of the Central Intelligence Agency, James Woolsey. I will include a number of letters in support in the record.

The First Amendment is a cornerstone of American democracy. Freedom of speech and the press enable vigorous debate over issues of national importance, and enable an exchange of ideas that shapes our political process. Authors, reporters and publishers are primary sources of this information, and their ability to disseminate their writings is critical to our democracy.

Too frequently, foreign plaintiffs bring libel lawsuits against Americans in countries with significantly weaker free speech protections than our own. This is undermining Americans'

constitutional rights, and preventing access to important reporting and other writings both in the United States and around the world. Two years ago, the United Nations' Human Rights Committee observed that this "discourage[s] critical media reporting on matters of serious public interest, adversely affect[s] the ability of scholars and journalists to publish their work," and "affect[s] freedom of expression worldwide on matters of valid public interest." This problem has become known as libel tourism.

The SPEECH Act would prevent an American court from enforcing a foreign libel judgment that is inconsistent with the First Amendment or our due process requirements. It also provides a declaratory judgment remedy so that American writers or publishers can clear their names, even where the foreign party has not attempted to enforce the judgment in the United States.

Representative Cohen has been a leader on this issue in the House. We can make real progress today by reporting this bill, which should then pass the Senate. I hope that the House will accept it and send it to the President so that he may sign it into law.

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