

Statement of

The Honorable Patrick Leahy

United States Senator
Vermont
September 15, 2010

Statement Of Senator Patrick Leahy (D-Vt.),
Chairman, Senate Judiciary Committee,
Hearing On Judicial Nominations
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Today we welcome to the Committee six of President Obama's highly qualified nominees to fill some of the growing number of vacancies on the federal bench. I thank Senator Durbin for chairing this important hearing today which includes two nominees from his home state of Illinois. I also thank our Ranking Member, Senator Sessions, for his cooperation and that of his staff in working with us to continue to make progress with the confirmation hearing today and with additional hearings later this month.

Each of the nominees before us today has strong support. Senator Dodd and Senator Lieberman support the nomination of Susan Carney of Connecticut to the Second Circuit. Amy Totenberg, nominated to the Northern District of Georgia, has the support of her home state Senators, both Republicans, Senator Chambliss and Senator Isakson. Of course Senator Durbin, along with Senator Burris, strongly support the two nominees to the Central District of Illinois, Justice Sue Myerscough and Judge James Shaddid, who are appearing before the Committee today. I note that Justice Myerscough is finally getting a hearing before the Committee, 15 years after she was first nominated to the Federal bench. Congressman Aaron Schock, the Republican Congressman who represents the home district of both nominees, has also come over from the House to introduce the nominees today.

We also welcome to the Committee today Congresswoman Eleanor Holmes Norton of the District of Columbia, who is here to introduce the two nominees to the D.C. district court James Boasberg and Amy Jackson. We have two more nominations to fill vacancies on that court pending on the Committee's agenda this week. I hope we can report those nominations favorably tomorrow.

These nominations demonstrate how President Obama continues to work with Senators from both sides of the aisle to identify qualified nominees to fill vacancies on the Federal bench. In light of the broad bipartisan support we have seen for most of judicial nominations it is surprising and extremely disappointing that Republican obstruction in the Senate has led to so few confirmations and to the growing judicial vacancy crisis in this country.

I hope that in light of the skyrocketing vacancies on the Federal courts, we can proceed without delay to consider the nominees before us today as well as the many still pending on the Senate's

Executive Calendar. The cooperation of Senator Sessions has led us to make consistent progress in Committee holding confirmation hearings and reporting nominations promptly to the Senate floor. Regrettably, we have not seen similar cooperation by the Senate's Republican leadership which instead has insisted on months of delay before agreeing to vote on judicial nominations that are confirmed unanimously and refused to consider many others. This serves no good purpose. This obstruction is wrong. I have called for it to end, but the Republican Senate leadership persists in their practice.

One recent example is the nomination of Jane Stranch of Tennessee to the Sixth Circuit. Last year, Senator Sessions and I worked to have the nomination reported by the Committee in a prompt manner. Ms. Stranch had the support of her home state Senators, both Republicans, and was reported by this Committee with strong bipartisan support. Yet it still took nearly 10 months before her nomination came to a vote because of obstruction by the Senate Republican leadership. Early this week, we were finally able to consider her nomination and it was confirmed again with broad bipartisan support. There is no excuse for the Senate not to now be allowed to turn to the many other judicial nominations that remain stalled on the Executive Calendar, nearly all of whom were reported unanimously by this Committee.

Several recent newspaper articles have discussed the judicial vacancy crisis that has been created by the Republican strategy of slow-walking the Senate's consideration of noncontroversial nominations. These include many nominees who, when they finally get a vote after waiting months and months and months, get a unanimous vote. These include nominees who have the strong support of Republican home state Senators, yet still have required cloture votes to proceed. These include district court nominations, which are traditionally considered without delays, and they have never been targeted for obstruction by Democrats or Republicans when they have been supported by their home State Senators. Yet, last year, the Senate was allowed to confirm only 12 Federal circuit and district court judges all year. That was the lowest total in more than 50 years. So far this year, we have confirmed only 29 more and achieved what one recent news story noted is the lowest number of confirmations in more than 40 years.

As I noted earlier this week during the Senate's consideration of the Stranch nomination, Justice Anthony Kennedy--a Justice nominated by a Republican President-- spoke last month at the Ninth Circuit conference about the cost of skyrocketing judicial vacancies not only in California but throughout the country. He said, "It's important for the public to understand that the excellence of the federal judiciary is at risk." He further noted that, "If judicial excellence is cast upon a sea of congressional indifference, the rule of law is imperiled." I hope all Senators will heed Justice Kennedy's serious warning because he is absolutely correct. We should not let partisan calculations stand in the way of doing our job for the American people.

We have fallen well off the pace we set for nominations in 2001 and 2002. By this date in 2002, a Democratic Majority in the Senate had confirmed 77 of the circuit and district court nominations of President Bush, a Republican President. The Democrats had been in charge for only 13 months and we already confirmed 77. In stark contrast, to date we have confirmed only 41 of President Obama's circuit and district court nominations. I had hoped to make progress before the recess, but Republicans permitted us to confirm only four noncontroversial nominations as the Senate wrapped up, objecting to an even greater number of nominations

favorably reported by this Committee--five--and sending them back to the President. As a result, 16 judicial nominations remain stalled on the Executive Calendar today, all of which could easily be considered and confirmed.

The Senate has taken more than five times as long to consider President Obama's circuit court nominations reported by the Committee than we did to consider President Bush's during his first 2 years in office and it has taken three times as long to consider his district court nominations, nominations that are almost never controversial. It is not fair to the bipartisan work of this Committee for the Senate Republican Leadership to continually obstruct and delay nominations. It is not fair to the nominees. They can't go forward with their lives while this is pending. They have a law practice. Everything is on hold for month after month after month. But most of all, it is not fair to the American people who rely on the federal courts to provide Justice and are harmed by the backlogs created by having one in eight federal judgeships vacant.

I hope that we do better with the highly qualified judicial nominees before us today.

Susan Carney of Connecticut has been nominated to fill one of three vacancies on the Second Circuit. After working for 17 years in private practice, she served as Associate General Counsel of the Peace Corps and is currently the Deputy General Counsel of Yale University. Ms. Carney graduated cum laude from Harvard College and earned her J.D. magna cum laude from Harvard Law School.

President Obama nominated Amy Mil Totenberg to sit on the Northern District Court of Georgia. Ms. Totenberg is currently in private practice in Atlanta and also serves as a Special Master for the U.S. District Court for the District of Maryland and as a Court Monitor, and has served as a Court-Appointed Mediator for the U.S. District Court for the District of Columbia. Previously, Ms. Totenberg was general counsel to the Atlanta Board of Education, a part-time municipal court judge, and a partner at The Law Project. She graduated magna cum laude from Harvard College and earned her J.D. from Harvard Law School. If confirmed by the Senate, she would fill one of four vacancies on the district court in the Northern District of Georgia.

Justice Sue Myerscough has been nominated to the Central District of Illinois. She currently serves on the Fourth District Appellate Court of Illinois and previously served on the Seventh Judicial Circuit of Illinois. She is also an adjunct associate professor in the Department of Medical Humanities at the Southern Illinois University School of Medicine. Prior to becoming a judge, she worked in private practice for six years. Justice Myerscough earned her undergraduate degree, with honors, and her law degree from Southern Illinois University.

Judge James Shadid has also been nominated to the Central District of Illinois. He is a judge on the Tenth Judicial Circuit of Illinois and was previously a sole practitioner, a part-time commissioner on the Illinois Court of Claims, and a part-time Assistant Public Defender in the Peoria County Public Defender's Office. Judge Shadid was briefly a law partner in private practice and early in his career he also worked part-time at the Office of the Attorney General of Illinois. When he was appointed to serve as a state judge, Judge Shadid became the first Arab-American judge in Illinois. If confirmed, he will be the only federal Arab-American judge in the state, and one of only a handful of Arab-American federal judges in the country. Judge Shadid graduated from Bradley University and John Marshall Law School.

Amy Berman Jackson has been nominated for a seat on the District Court for the District of Columbia. She is a partner in private practice and previously served six years as an Assistant U.S. Attorney for the District of Columbia, in the district to which she has now been nominated to the bench. Ms. Jackson graduated, cum laude, from Harvard College and cum laude from Harvard Law School.

Judge James E. "Jeb" Boasberg is nominated to the U.S. District Court for the District of Columbia. He was appointed to his current seat as a judge on the District of Columbia Superior Court by President George W. Bush in 2002. Judge Boasberg has also worked as a Federal prosecutor and in private practice. He graduated, magna cum laude, from Yale College, earned a graduate degree from Oxford University and received his law degree from Yale Law School.

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

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