

Statement of

The Honorable Patrick Leahy

United States Senator
Vermont
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Chairman, Senate Judiciary Committee
On Judicial Nominations
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The Judiciary Committee today welcomes four of President Obama's outstanding nominees for appointments to the Federal bench. We will hear from Judge Bernice Donald of Tennessee, who has been nominated to the Sixth Circuit; two nominees to seats on the Southern District of New York, J. Paul Oetken and Paul A. Engelmayer; and Ramona Villagomez Manglona, who has been nominated to a 10-year term on the District Court for the Northern Mariana Islands.

I thank Senator Schumer for chairing this hearing and for his work to fill vacancies on the courts in New York. We had hoped to have an additional judicial nominee on this hearing today, but without blue slips from several Republican Senators, we were not able to include several nominees who are otherwise ready for hearings. I will continue to do as I have always done and respect the customary deference given to home state Senators by waiting to proceed on nominations from their states until both Senators have returned blue slips. This is meant to ensure that the home state Senators who know the needs of the courts in their state best are consulted and have the opportunity to make sure that the nominees are qualified. As Chairman, unlike certain of my Republican predecessors, I have not proceeded to hold a hearing on a single nominee without both blue slips having been returned. I hope that in return, that fairness is not abused simply to delay our ability to make progress filling vacancies.

I also repeat my thanks to our Ranking Republican on the Judiciary Committee, Senator Grassley, for his cooperation this year in helping us move nominations through the Committee process. Today is our fourth hearing this Congress. We have tried to hold hearings every two weeks the Senate is in session and I have tried to accommodate Senator Grassley by delaying from time to time the scheduling of nominees for hearings and Committee consideration.

I have worked to have the Senate return to regular order this year in the wake of the extraordinary refusal to consider nominations after last year's midterm election. So far the Senate has considered a dozen of the many judicial nominations reported by the Committee last year but returned to the President without final Senate action. We have several more yet to consider. These are nominations that could and should have been confirmed last year.

There are currently 10 judicial nominees waiting for final Senate consideration having been reviewed and reported favorably by the Judiciary Committee. They are nominees to fill two

judicial emergency vacancies in New York, a judicial emergency vacancy on the Second Circuit, a judicial emergency vacancy in California and vacancies on the Federal and D.C. Circuit, a vacancy in Oregon, and two vacancies in Virginia. I have urged the Senate leadership to proceed to debate and vote on them before the upcoming recess. We should be working to clear the calendar before the recess and not unnecessarily extend these vacancies. That is what a return to regular order entails.

Tomorrow I hope we will be able to report favorably another judicial nomination, that of Ed Chen to a judicial emergency vacancy in the Northern District of California. This will be the fourth time the Committee has reported the nomination of Judge Chen, who for nearly a decade has been a well-respected magistrate judge on the court to which he has been nominated. I hope we will be able finally to see the Senate debate and vote on his nomination. I also expect we will be able to report for the second time the nomination of Jim Cole to be Deputy Attorney General, the second highest ranking position at the Justice Department. The Senate was prevented last Congress from considering his nomination for over five months. The President proceeded to recess appoint him and renominate him to ensure that the Justice Department has the leadership it needs.

Federal judicial vacancies around the country still number too many, and they have persisted for too long. That is why Chief Justice Roberts, Attorney General Holder, White House Counsel Bob Bauer and many others--including the President of the United States--have spoken out and urged the Senate to act. Judicial vacancies first topped 90 in August 2009 and have remained above that level ever since, with more than 100 vacancies for most of that time. The unnecessary delays we have seen for the last two years in the consideration of judicial nominations mean that Federal judges are overburdened and the persistent vacancies threaten the ability of Americans to get a fair hearing in court. This is unacceptable.

Our failure to make progress filling vacancies during the first two years of President Obama's term stands in stark contrast to the progress we made during President Bush's first two years. When I became Chairman of the Judiciary Committee midway through President Bush's first tumultuous year in office, I worked hard to make sure Senate Democrats did not perpetuate the "judge wars" as tit-for-tat. During the first two years of President Bush's first term, the Democratically-controlled Senate confirmed 100 of his judicial nominations. Regrettably, this progress has not been duplicated, and the progress we made over the eight years from 2001 to 2009 to reduce judicial vacancies from 110 to a low of 34 has been reversed.

Even though President Obama started sending judicial nominations to the Senate two months earlier than President Bush, only 60 of his judicial nominations were allowed to be considered and confirmed during his first two years. Only 12 have been confirmed so far this Congress. Another 10 are ready for final Senate action. Nationally, Federal judicial vacancies continue to hover close to 100.

From his first judicial nomination over two years ago, President Obama has worked with Democratic and Republican home state Senators to identify superbly qualified, consensus nominations. The first nominee appearing before the Committee today, Judge Bernice Donald, continues this practice. Both of Tennessee's Republican Senators, Lamar Alexander and Bob Corker, have returned blue slips. The senior Senator from Tennessee, Senator Alexander, a

member of Republican leadership, is here today to introduce Judge Donald to the Committee. I welcome him back.

For 16 years Judge Donald has been a district judge on the Western District of Tennessee, before that serving for seven years as a judge on the U.S. Bankruptcy Court for that district. She has also been a county judge in Shelby County, Tennessee, an Adjunct Professor at University of Memphis School of Law and Southwest Tennessee Community College, an Assistant Public Defender, a staff attorney with Memphis Area Legal Services and a sole practitioner.

Judge Donald's story has been a great American story. The sixth of 10 children raised on a sharecropper's farm in Mississippi, Judge Donald was one of the first students to integrate her high school and went on to earn her undergraduate and law degrees from the University of Memphis. Judge Donald was the first African-American woman elected to serve as a judge in Tennessee, the first in the Nation to serve as a Federal bankruptcy judge, and the first to be appointed to serve on the Federal district court in Tennessee. If confirmed, Judge Donald will be the first African-American woman to serve on the Sixth Circuit.

Both of the nominees to the Southern District of New York have the support of New York's two Senators, Senator Schumer and Senator Gillibrand. Both are superbly qualified.

Paul Oetken is currently Senior Vice President and Associate General Counsel at Cablevision Systems Corporation. Prior to that, Mr. Oetken was in private practice at Debevoise & Plimpton in New York and Jenner & Block in Washington, D.C., and served as an Associate Counsel to President Clinton and an Attorney-Advisor in the Office of Legal Counsel at the Justice Department. Born in Louisville, Kentucky, Mr. Oetken graduated with honors from the University of Iowa and received his law degree from Yale Law School. He then served as a law clerk at all three levels of the Federal judiciary, to Judge Louis F. Oberdorfer of the District Court for the District of Columbia, to Judge Richard D. Cudahy of the Seventh Circuit Court of Appeals, and to Supreme Court Justice Harry A. Blackmun.

Paul A. Engelmayer, currently a partner in the New York office of WilmerHale, previously served as an Assistant U.S. Attorney for the Southern District of New York and as an Assistant to the Solicitor General of the United States. Born in New York, New York, Mr. Engelmayer received his undergraduate and law degrees with honors from Harvard. After graduating from law school, Mr. Engelmayer served as a law clerk to Judge Patricia Wald of U.S. Court of Appeals for the District of Columbia Circuit and then to Supreme Court Justice Thurgood Marshall.

Judge Manglona, currently an Associate Judge on the CNMI Superior Court also served as a Justice Pro Tempore on the Guam Supreme Court and a Judge Pro Tempore on the Guam Superior Court. Judge Manglona spent five years in the CNMI Office of the Attorney General in several capacities, including a year as Attorney General, and as a law clerk to several judges on the CNMI Superior Court. Born in Saipan, Northern Mariana Islands, Judge Manglona earned her B.A. from the University of California, Berkeley and her J.D. from the University of New Mexico. If confirmed, Judge Manglona would be the first indigenous person to serve as a U.S. District Court Judge in the Commonwealth of the Northern Mariana Islands.

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

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