

Statement of

The Honorable Patrick Leahy

United States Senator
Vermont
June 16, 2011

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Chairman, Senate Judiciary Committee
Executive Business Meeting
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I hope that today we are finally able to report the bill that Senator Grassley and I joined together to introduce before the Memorial Day recess in response to the President's request that we provide an extension of Director Mueller's term for up to two additional years at this critical time. This is a matter on which we have worked with Senator Feinstein, as well, and discussed with other members of this Committee.

More than one month ago, the President requested that Congress authorize a limited extension of Robert Mueller's service as the Director of the FBI. President Obama spoke of "the ongoing threats facing the United States, as well as the leadership transitions at other agencies." He asked us "to join together in extending [Director Mueller's] leadership for the sake of our nation's safety and security." With the tenth anniversary of the September 11, 2001, attacks approaching, and in the face of continuing threats in the wake of the President's recent, successful operation against Osama bin Laden, I hope that we will all join together for the good of the country and all Americans.

The bipartisan bill on the Committee's agenda today provides for a limited exception to the statutory term of service of the FBI Director. It would allow Bob Mueller to continue his service for up to two additional years, at the request of the President. This extension is intended to be a one-time exception and not a permanent extension or modification of the statutory design.

The fact that it was requested by the President and will take effect only because the President has decided to ask Director Mueller to stay on removes any implication that this legislation somehow offends the Appointments Clause of the Constitution. It does not. There is no effort here by Congress to usurp the President's appointing authority. What we propose is constitutional and consistent with the powers previously exercised by Congress. We are extending a term of a presidential appointment.

The Office of Legal Counsel at the Justice Department has issued a number of opinions concluding that this type of legislation to extend the term of an executive office is not a "legislative appointment." In this case, the legislation was requested by the President and involves an officer who was appointed by President Bush after the advice and consent of the Senate. It is an extension of a term of service, not an appointment, and the President retains full

authority to remove the FBI Director at will. Under similar circumstances, the Office of Legal Counsel has concluded in opinions dating back 60 years that other term extension statutes presented "no constitutional difficulties," and I am confident that is true of this bill, as well. This is a view shared by top lawyers at the FBI and other components of the Justice Department.

The President could have nominated a new director of the FBI, someone who could serve for 10 years, long after President Obama's own time in office. Instead, in the interest of continuity and stability on his national security team, the President is asking Congress to extend the term of service of a proven leader for a brief period, given the extenuating circumstances facing our country. This is the President's request, and it is a reasonable one.

I hope that today we can act on the bill without any more unnecessary delays. The Senate will then need to consider it, and then the House will need to consider and pass it before the President has the opportunity to sign it. All of this needs to take place before the August recess, indeed by August 3. There is no time to waste. We need to move forward in our efforts to keep America safe.

I trust that today we can also complete Committee action on Senator Klobuchar's bill to protect copyrights by strengthening criminal penalties for online streaming for profit of copyrighted works. I will work with the lead sponsors to address concerns we have heard from the cable and satellite industries before the bill moves to the floor.

I would like us to also move forward on the bill to clarify the jurisdiction of U.S. courts over Government contractors working overseas. And, of course, I hope that we can make progress on the President's nominations.

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