

Statement of

# **The Honorable Patrick Leahy**

United States Senator  
United States Senate  
February 9, 2012

Today, the Committee can move forward with four judicial nominees from the confirmation hearing we held last month. Three would fill judicial emergency vacancies in Illinois and Maryland. All have the support of their home state Senators whether Democratic or Republican. I hope that the Committee will be allowed to proceed without unnecessary delay so that we can move these four highly-qualified and capable nominees along to fill some of the 86 judicial vacancies that continue to plague our courts, Federal justice system, and the American people.

Also on today's agenda we have an important transparency measure. Senator Durbin and the ranking member have asked to proceed on their bipartisan bill to televise United States Supreme Court proceedings. It is cosponsored by Senators Klobuchar, Cornyn, Blumenthal and Schumer. This is an issue that Senator Specter championed when he served on this Committee as Chairman and ranking member. The Committee has reported similar legislation to the Senate five times.

We have the power to use technology to allow greater access to public proceedings of the Government so that all Americans can witness the quality of justice in this country. Doing so would deepen Americans' understanding of the work of the Supreme Court and allow all Americans to see the continuing importance of the Constitution. This is especially important at a time when decisions by the Supreme Court are greatly affecting the daily lives of hardworking Americans.

Next month, the Supreme Court will begin several days of oral arguments on challenges to the Affordable Care Act. This important case will decide whether the people's elected officials have the power under our Constitution to enact legislation regulating the health insurance market, to make health care more affordable, to hold insurers more accountable, to expand coverage to all Americans, and to make our health care system more sustainable.

The Supreme Court's decision will impact all Americans and so it is no surprise that there is tremendous public interest in witnessing these historic arguments. Although Supreme Court proceedings are technically open to the public, I am concerned that only a few dozen members of the general public, who can take time off work to stand in line overnight, will be allowed to witness the proceedings. The Court does not even provide live audio streaming of its public proceedings to provide real-time public access. The American public is keenly interested in whether requiring all Americans to be insured, which was a Republican idea, will be upheld. Despite our public and private outreach to the Supreme Court, there is, as yet, no indication that those proceedings will be made widely available to the American public on the days of argument.

I have long favored openness in our Government. That is why I am such a strong supporter of the

Freedom of Information Act. Our democracy works best when Americans have ready access to their Government. At our most recent hearings on Supreme Court nominees, we made arrangements to accommodate thousands of individual spectators in our hearing room. In addition, the hearings were broadcast live and we also streamed the proceedings on our website. These technologies welcomed the American people into the Senate's examination of the nominee and the role that our Constitution continues to play in our democracy.

The Senate has been televising its proceedings for more than 25 years. State courts, including state supreme courts, have been televising their proceedings for years. I know that some Justices are not fans of televising their proceedings. I understand that they do not want to be made fun of through an unflattering video clip or to be quoted out of context. But that happens to the rest of us in public service all the time. It is not particularly pleasant, but it is part of our democracy. We try to counter misstatements by making sure the record is available to fair-minded people so that they are not left to rely on distortions.

Last October, the Senate Judiciary Committee held a hearing to consider the role of judges under the Constitution and we were joined by Justice Scalia and Justice Breyer. I appreciate their willing participation at that public hearing and thought the discussion informative and useful. The response from the public was extremely positive. In the course of our hearing, Senator Blumenthal asked the Justices why they did not open their Supreme Court proceedings through telecasting and "give the public the benefit of seeing it firsthand." In the discussion that followed Justice Breyer, who I admire and respect greatly and who has done so much in his books *Making Our Democracy Work* and *Active Liberty* to educate us all about the process of judging, responded. He said that there may come a time when everything is viewed visually and that "it will just seem weird" not to broadcast the arguments.

I think that time has come. When so many cell phones are equipped with a video camera and with the advent of YouTube and ubiquitousness of the Internet, there is very little that is not able to be viewed. It is time for the Supreme Court to open its arguments to the American people-- not just those members of the Supreme Court bar who have seats reserved in the hearing room.

Supreme Court Justices are public officials whose decisions directly affect the lives of Americans. They give speeches and do book tours. Some even attend fundraisers. Frankly, how anyone who voted in the name of the First Amendment to distort our election process by allowing unlimited attack ads by Super PACs can complain that their own public proceedings should not be accessible to the American people is beyond me.

Four days ago more than 111 million Americans watched the Super Bowl. No one would have tolerated that game being recorded and broadcast days later or its plays being transcribed and released at the end of the week. The outcome of the Supreme Court argument next month goes to the heart of our democracy and will affect Americans more than the outcome of any football game. Now is the time for the Supreme Court's public proceedings to become truly accessible to the millions of Americans who will be affected by its rulings.

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