

Statement of

# **The Honorable Patrick Leahy**

United States Senator  
United States Senate  
February 29, 2012

Today we welcome three of President Obama's superbly qualified judicial nominees to the Committee. I thank Senator Franken for chairing this important hearing and I thank our Ranking Member, Senator Grassley, for continuing to work with me to schedule these hearings.

However, as I noted in my statement for the first confirmation hearing of the year, the Committee is now proceeding less efficiently than I would like. I have accommodated Senator Grassley's preferred schedule now for several months, holding a hearing for only one nominee in all of December and moving our last hearing back a week at his request. Regrettably today's hearing is another with less than a full slate of nominees. This is true of both of our February hearings because the minority did not review background paperwork of the nominees I wanted to include. With vacancies on Federal courts across the country remaining extremely high, as they have throughout the term of the Obama administration, we cannot afford to slow down our consideration of nominations in this manner.

We remain well behind the pace set by the Senate during President Bush's first term. By the end of President Bush's first term, the Senate had confirmed 205 district and circuit nominees. To date now in the fourth year of President Obama's first term, the Senate has confirmed only 129 district and circuit nominees. By this date in 2004, the Senate had confirmed 170 district and circuit nominees. Today the total is more than 40 confirmations shy of the mark. During President Bush's first term the Senate confirmed the 130th nominee to our circuit and district courts in early June of his third year in office. Here we are approaching the spring of President Obama's fourth year, nearly nine months later, and we still have not reached that milestone. That is why the judicial vacancy rate remains nearly double what it was at this point in the Bush administration.

Senate Republicans continue to use a strategy of across-the-board delays that has led to a shamefully high number of judicial vacancies. In 2009, the Senate was able to confirm only 12 Federal circuit and district court judges, the lowest total in 50 years. In 2010, the Senate was able to confirm 48 Federal circuit and district judges. That has led to the lowest confirmation total for the first two years of a new presidency in 35 years. As a result, judicial vacancies rose again over 110 and stayed near 90 for the longest period of historically high vacancies in 35 years.

Still today, nearly one out of every 10 Federal judgeships is vacant. Judicial emergency vacancies remain unfilled because of Republicans' refusal to consider and confirm consensus nominations that were on the calendar to fill those vacancies at the end of last year. Fourteen of the 19 nominees currently ready for final Senate action have been stalled since last year despite significant bipartisan support. There has been no explanation. There is no excuse.

I had hoped that the New Year would bring greater cooperation from Republican Senators. That has not been the case. Instead, we have lost opportunities with hearings that have not had a full slate of nominees and Republican refusal to consent to Senate votes on nominees this Committee reviewed and reported with the support of every member of the Committee.

In January I urged that the Committee expedite consideration of Arizona Supreme Court Justice Andrew Hurwitz to the U.S. Court of Appeals for the Ninth Circuit. Despite the strong support of this home state Senators, Senator Kyl and Senator McCain, that has not happened. Instead, Justice Hurwitz, who had been nominated to fill one of four judicial emergency vacancies on the Ninth Circuit, is yet to be reported by the Committee. The Ninth Circuit serves more than 61 million Americans, and handles double the caseload of the other Federal circuit courts. The Chief Judge of the Ninth Circuit, Judge Alex Kozinski, a Reagan appointee, along with the members of the Judicial Council of the Ninth Circuit, have written to the Senate emphasizing the Ninth Circuit's "desperate need for judges," urging the Senate to "act on judicial nominees without delay," and concluding that they "fear that the public will suffer unless our vacancies are filled very promptly." Their pleas have been for naught, as well.

The Committee needs to pick up the pace. We have been able to report only four of the nine nominees considered at previous hearings. The Senate has an even worse backlog. Fourteen judicial nominees remain pending from last year creating a bottleneck and delay for the nominees we need to consider this year to make real progress.

I thank Senators Durbin, Schumer, Feinstein, Klobuchar, Franken and Coons for their powerful statements on judicial nominations to the Senate and the American people last Tuesday. I know that the Majority Leader is working hard to make real progress. With cooperation from the minority, the Senate should be able to vote to confirm all of the judicial nominees being delayed and fill longstanding judicial vacancies affecting 130 million Americans.

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