

**Statement of Senator Patrick Leahy (D-Vt.),
Ranking Member, Senate Judiciary Committee,
On Judicial Nominations
May 18, 2016**

Just this week, the Supreme Court's eight justices were unable to come to a final decision on two important cases affecting millions of Americans. In lower courts throughout the country, too many Americans are experiencing delays because of the Republicans' refusal to confirm judicial nominees. Today's hearing includes one of those long pending nominees who, once confirmed, will fill the longest vacancy in the Federal judiciary. Donald Schott of Wisconsin is nominated to fill a vacancy on the Seventh Circuit Court of Appeals. Mr. Schott has the bipartisan support of his home state senators from Wisconsin, and he should receive a prompt vote in Committee and soon be considered by the full Senate.

In addition to Mr. Schott, there are six other circuit nominees who should receive a hearing soon. This includes Lucy Koh of California to the Ninth Circuit and Jennifer Puhl of North Dakota to the Eighth Circuit. Both of these nominees have the support of their home state Senators and are prepared to move forward. Judge Koh currently serves on the Federal district court in California and has the endorsement of several Republicans and conservative leaders. She has letters of support from former 10th Circuit judge Michael McConnell; former California Governor Arnold Schwarzenegger; former high-level Bush administration Justice Department appointee Viet Dinh; and others. There is no good reason for any further delay in holding a hearing on either of these nominees.

There are also four district nominees on today's hearing for Federal district court vacancies in California, Indiana, and Louisiana. In addition, there remains 30 other judicial nominees waiting for a hearing. With the 80 judicial vacancies that currently exist, Republicans should not be touting their record of hearings or confirmations – but instead getting to work to ensure that our Federal judiciary is fully functioning.

Chairman Grassley has noted that with this hearing, he will have had as many hearings for judicial nominees as I held back in 2007 and 2008 during the last two years of the Bush administration. First, we have only had 3 hearings for 13 nominees this year. In the last year of the Bush administration, I had already held 7 hearings for 20 nominees at this same point. Further, I will note that in the last two years, I held hearings on eight circuit court nominees by this time, and all eight of those nominees were subsequently confirmed – by a Democratically-controlled Senate. One of those nominees, John Tinder of Indiana on the Seventh Circuit, has now taken senior status, and the nominee to replace him, Myra Selby, is waiting for a hearing. Ms. Selby is a former justice on the Indiana Supreme Court, where she had the distinction of being the first woman and first African American to serve on that court. She has all the qualifications necessary to serve on that court. She deserves a hearing.

Despite the high number of judicial vacancies across the country, Senator Grassley has indicated that Republicans will shut down the judicial nominations process in July, and has repeatedly referred to the Thurmond Rule as his justification for shutting down the process then. And he continues to characterize it as the “Thurmond-Leahy” Rule. But he fails to recognize that in

2008, when I was Chairman of the Judiciary Committee with a Republican President, I held hearings in the Committee for judicial nominees as late as September 23, 2008. And later that same month on September 26, 2008, the Democratically-controlled Senate confirmed 10 of President Bush's judicial nominees in one day. If Senator Grassley wants to cite my record, he should not mischaracterize it. He should follow it and continue to process nominees throughout September of this election year.

Because of Republican obstruction, judicial vacancies have nearly doubled from 43 to 80 since Republicans took over the majority. At this same point in the Bush presidency, Democrats had reduced vacancies to just 46. And now, after allowing vacancies to dramatically rise, Senate Republicans now want to shut down the process, even though the judicial nominees pending are not controversial and would fill urgently needed judgeships. This is wrong.

As Senators, it is our job to provide advice and consent to ensure that the Federal judiciary is fully functioning. The Majority Leader and the Chairman of the Judiciary Committee continue to argue that "President Obama's judicial nominees are being treated fairly." I have documented countless times before why this is false and the harm that has been caused by Republicans' unfair treatment of President Obama's nominees. Regardless, Senate Republicans must understand that their job is not to calculate incomplete comparisons of former Presidents and then put their pencils down. We work for the American people. Senators do not get to stop doing their work during election years. This is especially the case right now, when we should be addressing the high number of judicial vacancies across the country.

This is especially true when it comes to the Supreme Court. Today, there is a glaring omission from this confirmation hearing. It has been 63 days since President Obama nominated Chief Judge Merrick Garland to serve on the U.S. Supreme Court, yet Republicans refuse to allow him the chance to speak before this Committee and the American people at a confirmation hearing.

Although Senate Republicans refuse to do their jobs, Senate Democrats will continue to do theirs. Last week, my staff and I continued our review of Chief Judge Garland's record after he submitted an updated questionnaire to the Committee that included more than 2,000 pages of material related to his qualifications and legal record. And today, we will convene a public meeting with individuals who know Chief Judge Garland well to speak about his character and his qualifications to serve on the Court.

I had expected that by now the Senate Judiciary Committee would have held a hearing on Chief Judge Garland's nomination, just as we have done for every Supreme Court nominee in the last four decades I have served in the Senate. Chairman Grassley, however, has so far refused to schedule a public hearing for Chief Judge Garland. This is the first time in the 100 years since the Judiciary began holding public hearings for Supreme Court nominees that the Senate has denied a nominee a hearing.

Senate Democrats will continue to do what is right and work for the American people. And the American people – by a 2-1 margin – are with us. They are also demanding that Chief Judge Garland, a widely respected nominee with the most Federal judicial experience in history,

receive a fair, public hearing and a vote. I urge Republicans to listen to the American people and to do their jobs.

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