

Ranking Member Arlen Specter
Statement for the Record
Judicial Nominations Hearing - February 21, 2008

I want to thank Chairman Leahy for scheduling this judicial nominations hearing and Senator Warner for serving as Ranking Member. Since this hearing was scheduled during recess and without prior consultation with the Republican members of the Committee, it was impossible for the Republican members of the Committee to rearrange their schedules and attend today's hearing. Three Committee members were in the Middle East and the others were performing important work in their home states. I was prepared to cancel my previously scheduled work in Pennsylvania to attend this hearing until Senator Warner, who was in Washington, graciously agreed to attend.

While this hearing is a step in the right direction, I am still concerned that the confirmation process is not proceeding in a satisfactory manner, especially with respect to circuit court judges. Prior to this hearing, the Committee had not held a hearing for a circuit court nomination since September 25, 2007, nearly five months ago. And, the Committee only held hearings for four circuit court nominees in all of last year.

There are currently 10 nominations to the circuit courts pending in Committee, three of which are ripe for hearings, including Judge Haynes, and a fourth should be ready shortly. A fifth nominee, former Acting Attorney General

Peter Keisler, is ready for a Committee vote and has been waiting for over a year and a half to get such a vote. Two of the nominees ready for hearings are nominated to the Fourth Circuit Court of Appeals. The Fourth Circuit, in particular, is in great need of new judges since one-third of the positions on that court are vacant. Despite the urgency to fill these vacancies, two Fourth Circuit nominees who are ready for hearings have been waiting for an exceptionally long time, one for over 200 days and another for over 150 days.

The importance of confirming circuit court nominees cannot be overstated. It is one of the Senate's most important functions. For the past quarter century, the number of circuit court confirmations in the final Congress of a presidency has averaged at 24, and the number of district court confirmations has averaged at 94. A Republican Senate confirmed 15 circuit court judges and 57 district court judges in President Clinton's final two years. Thus far in this Congress, the Senate has confirmed only 6 of President Bush's circuit court nominees and 34 district court nominees. Merely to keep pace with President Clinton's confirmation numbers in his final two years, the Senate must confirm 9 more circuit court nominees and 23 more district court nominees this year.

President Bush is even farther behind President Clinton in total confirmations when contrasting their entire terms, since President Clinton confirmed 65 circuit court and 305 district court judges while President Bush has

so far confirmed only 57 circuit and 237 district court judges. At this point, if things don't change in our confirmation process in the Senate, the President's court appointments, to both circuit and district courts, will be an historic low for a two term President in modern times.

Although the circuit court nominees get the most attention, the district court nominations are also very important. Most federal litigation occurs at the district level, and thus, the workload of these judges is often very heavy. I am pleased that Judge Mendez and Judge Anderson were listed on today's hearing agenda, but I would also like to mention several other district court nominees who have been waiting an extraordinarily long time for a hearing in the Committee. One of these nominees, Tom Farr, nominated to the Eastern District of North Carolina, has been waiting well over a year for a hearing. He is unanimously well qualified, is nominated to fill a judicial emergency, and has the strong support of both of his home state senators. Two other nominees are from Senator Warner's home state of Virginia and have been waiting since November for their hearings. We have a busy agenda, but I have spoken with Chairman Leahy, and he has reiterated his belief that nominees with home state support should receive committee process in due course. I am hopeful that all of these nominees will receive hearings in the very near future, and I look forward to working with the Chairman to ensure that the President's nominees receive prompt consideration by the Committee.