

**Statement Of Senator Patrick Leahy (D-Vt.)**  
**Chairman, Senate Judiciary Committee**  
**On Judicial Nominations**  
**September 11, 2013**

Today the Judiciary Committee welcomes five exceptional judicial nominees, and I thank Senator Whitehouse for chairing this important hearing. The Committee will hear first from Judge Robert Wilkins, who is nominated to fill one of the three current vacancies on the D.C. Circuit.

Judge Wilkins has had a distinguished career. He has earned a unanimous rating of “well qualified” from the ABA Standing Committee on the Federal Judiciary to serve on the D.C. Circuit, its highest possible rating. In December 2010, he was confirmed by the Senate on a voice vote to be a judge on the United States District Court for the District of Columbia. As a district judge, he has presided over hundreds of civil and criminal cases. He has also issued significant decisions in many relevant areas of the law, including in the fields of administrative and constitutional law.

Prior to serving on the bench, Judge Wilkins had an exceptional career. Judge Wilkins was a partner for nearly ten years at Venable, where he litigated numerous cases at the trial court level and managed several matters before the various Federal Circuit Courts of Appeal. Judge Wilkins also spent more than ten years at the Public Defender Service for the District of Columbia, where he rose to become the Chief of Special Litigation. A graduate of Harvard Law School, Judge Wilkins has had an outstanding career to date, and I welcome him to the Committee this morning.

Yesterday, Senator Coons chaired a hearing before the Subcommittee on Bankruptcy and the Courts to consider the Coons-Leahy Federal Judgeship Act of 2013. At that hearing, Senate Republicans once again advanced the hypocritical argument that the D.C. Circuit does not need any more judges. My statement for that hearing makes clear how disingenuous that argument truly is.

The history shows that these arguments have nothing to do with caseload and everything to do with the political party of the president nominating. In 1984 Senate Republicans had no problem voting to create a twelfth seat on the D.C. Circuit, and then voting to confirm President Reagan’s and President George H.W. Bush’s nominees to that seat. When Bill Clinton, a Democratic president, nominated Merrick Garland to the twelfth seat, Senate Republicans suddenly had an epiphany that the twelfth seat was unnecessary and should not be filled.

Later, Senate Republicans continued to oppose the confirmation of Judge Garland even for his nomination to fill the eleventh seat. It is quite astonishing that Senate Republicans continue to recycle these arguments every time a Democratic President is in office. Now they say that only eight seats are needed and that President Obama should not be permitted to fill the ninth, tenth and eleventh seats because of so called “caseload concerns.” This is a clear double standard.

The D.C. Circuit's lowest caseload levels in the past 20 years occurred in 2002 and 2003. In 2002, the Ranking Member, who had opposed President Clinton's nominee to the eleventh seat at a time when the caseload had been higher, said at a hearing that the D.C. Circuit needed "possibly 11 active judges." Of course, in 2002 it was a Republican president who was making nominations to that court, and so Senate Republicans abandoned their hollow caseload arguments to press for confirmation of multiple Bush nominees to the D.C. Circuit.

Following the confirmation of John Roberts, which was supported by every Senate Democrat, the D.C. Circuit's caseload, measured by pending appeals per active judge, was reduced to its lowest level in the past 20 years. The Senate then confirmed three more of President Bush's nominees to the D.C. Circuit: Janice Rogers Brown, Thomas Griffith and Brett Kavanaugh. These nominees filled the tenth, eleventh, and again the tenth seats, and not a single Senate Republican raised any concern about whether those judges were truly needed. But now that it is a Democratic president making nominations to those same seats, there are "caseload" concerns. They say one thing when President Clinton is in office, flip when the president is a Republican, and flop when the American people elect President Obama. Not content with merely opposing President Obama's nominees to the D.C. Circuit, some have introduced a bill to eliminate three of the D.C. Circuit's judgeships.

This effort to manipulate the size of an important court in order to achieve political goals is simply wrong. Just as President Roosevelt's court-packing scheme was rejected in 1937 by the Judiciary Committee and the Senate, the Senate should reject this attempt to politicize the D.C. Circuit. The filibuster threats against President Obama's well-qualified nominees are purely political, and they are unworthy of this chamber. Let us give Judge Wilkins the proper respect and consideration that he deserves, based on his outstanding credentials. I hope that we can also work together to consider the nominations of Patricia Millett and Nina Pillard, on the merits of each nominee.

Today, the Committee also welcomes Timothy Brooks, nominated to the Western District of Arkansas, James Donato and Beth Freeman, who are both nominated to judicial emergency vacancies in the Northern District of California, and Pedro Hernandez, who is nominated to a judicial emergency vacancy in the District of Puerto Rico. I look forward to continued bipartisan cooperation on the consideration of these district court nominees, and I hope that Judge Wilkins receives fair treatment as a nominee to the D.C. Circuit.

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