Statement Of Senator Patrick Leahy (D-Vt.),
Chairman, Senate Judiciary Committee,
On the Federal Judgeship Act of 2013
September 10, 2013

Today the Judiciary Committee's Subcommittee on Bankruptcy and the Courts holds a hearing to evaluate the judgeship needs of Federal courts across the country. I thank Chairman Coons for his work on this long-overdue legislation and for holding this important hearing.

The last time Congress passed a comprehensive judgeships bill was 1990, when 85 new judgeships were created. Once those new judgeships were added, there were 295,000 Americans per Federal judge. Today there are 362,000 Americans per Federal judge, because our population has grown by almost 70 million in the past 23 years. In July, I joined with Senator Coons to introduce S. 1385, The Federal Judgeship Act of 2013, which is an important step to help our Federal courts meet the increased caseload burdens that come with a larger population. It would also help reduce the current burden on our Federal courts if the Senate would move more quickly to fill the 92 existing Article III judicial vacancies, especially the 9 for which the Judiciary Committee has already reported nominees.

The Coons-Leahy bill reflects the current judgeship recommendations of the Judicial Conference of the United States, whose presiding officer is Chief Justice John Roberts. The Judicial Conference submits these recommendations to Congress every two years, after conducting a comprehensive review of the workload needs in Federal district and appellate courts. The recommendations can include both additional judgeships and requests that an existing or future vacancy not be filled if the Judicial Conference determines that there is a greater need to focus limited resources in courts with higher caseloads. This bill is a serious effort to meet the demands on our Federal courts from a growing population.

I hope Senators from both sides of the aisle support the Coons-Leahy bill. It does not benefit anyone if litigants have their cases delayed for months and months because our Federal courts are understaffed. When an injured plaintiff sues to help cover the cost of his or her medical expenses, or when two small business owners disagree over a contract, they should not have to wait years for a court to resolve their dispute. Americans are rightfully proud of our legal system and its promise of access to justice and speedy trials. This promise is embedded in our Constitution. When overburdened courts make it hard to keep this promise, the Senate should work in a bipartisan manner to help. The Senate has done just that in previous years.

Senator Hatch was a cosponsor of a similar bill that I introduced in 2008 that would have created 66 new judgeships. I have supported judgeship bills during both Republican and Democratic administrations, including those that became law during the Jimmy Carter, Ronald Reagan, and George H.W. Bush administrations. The Coons-Leahy bill, like those that became law in 1978, 1984, and 1990, would promote the rule of law that individuals and businesses, large and small, depend on.

While I would prefer that this hearing, and the Senate's efforts, focus on what should be the nonpartisan matter of making sure the Federal Judiciary has the resources it needs, I have also

authorized this hearing to allow the Republican Senators who have introduced another bill, S. 699, the Court Efficiency Act of 2013—which would strip the D.C. Circuit of 3 of its 11 judgeships—to make their case. I see this judgeship stripping legislation as a hyper-partisan effort whose sole basis, unfortunately, is the long-standing Republican effort to ensure that only Republican presidents are permitted to have their nominees confirmed to that court. Their bill, if enacted into law, would take effect immediately rather than after the next Presidential election, with the aim of denying President Obama the opportunity to have his nominees to the D.C. Circuit confirmed—an opportunity the sponsors of S. 699 did not seek to deny President Bush.

Of the last 19 judges confirmed to the D.C. Circuit, 15 were nominated by Republican presidents while just 4 were nominated by Democratic presidents.

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. However, when Bill Clinton, a Democratic president, nominated Merrick Garland to the twelfth seat, Senate Republicans suddenly "realized" that the twelfth seat was unnecessary and should not be filled. Republican Senators held a hearing in 1995 to make their new-found argument.

In 1997, after two years of needless delay, Judge Garland was ultimately confirmed to the eleventh seat on the D.C. Circuit. When President Clinton made two more nominations to the D.C. Circuit, Senate Republicans did not even allow the nominees a hearing. They blocked and pocket-filibustered outstanding nominees, not because of caseload data or hearing testimony, but just because they could.

In 2002, following the confirmation of John Roberts to the D.C. Circuit, the court's caseload, measured by pending appeals per active judge, was reduced to its lowest level in the past 20 years. Nonetheless, the Senate proceeded to confirm three additional 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. Not a single Senate Republican raised any concern about whether those judges were truly needed. They were a Republican president's nominees, so apparently that question was not relevant.

Now that it is a Democratic president making nominations to those same seats, Senate Republicans have dusted off their old arguments against filling vacancies on the D.C. Circuit. 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. Instead of opposing President Obama's nominees to the D.C. Circuit on their individual merit, some Senate Republicans are attempting to simply eliminate three of the D.C. Circuit's judgeships with the introduction of S. 699. Congress already acted in 2008 to move the twelfth seat on the D.C. Circuit to the Ninth Circuit through an amendment sponsored by Senator Kyl and Senator Feinstein. This Republican bill, S. 699, would eliminate one Federal judgeship altogether, while moving one to the Second Circuit and another to the Eleventh Circuit, even though neither circuit has actually requested additional judgeships. This would reduce the D.C. Circuit to only eight judgeships.

It is disappointing that all eight Republican Senators on this Committee are supporters of this judgeship stripping bill, even though they have voted a combined 42 times to confirm Republican presidents' nominees to the same seats they now seek to remove.

I hope that we can lay aside this misguided effort and focus on meeting the actual needs of our Federal courts. The Federal Judgeships Act of 2013 is based on the serious recommendations of the Judicial Conference and would create much-needed judgeships across the country. I appreciate Senator Coons' leadership on this bill, and I hope that more Senators will work with us to ensure that our courts are able to provide speedy justice to all Americans.

I thank the witnesses for appearing before the Committee today, and I look forward to their testimony.

# # # # #