

**Statement of Senator Patrick Leahy (D-Vt.),
Ranking Member, Senate Judiciary Committee,
On Judicial Nominations
April 20, 2016**

Today, this Committee is holding its first nominations hearing since January. Since that time, judicial vacancies have risen across the Nation and nominations to fill empty judgeships have piled up in this Committee. In addition to the five judicial nominees on this hearing, there are 27 other judicial nominees that are waiting for a hearing – including Chief Judge Garland to fill the vacancy on the Supreme Court.

If we followed the timing that the last 14 Supreme Court nominees received, we should be noticing a hearing today for Chief Judge Garland's confirmation hearing for next week. But Republicans on this Committee met behind closed doors before Chief Judge Garland was even nominated to decide they would not allow any Supreme Court nominee this year the same fair process we have provided nominees for the last 100 years. And while Chief Judge Garland's nomination has languished, so have nominations to district and circuit court vacancies throughout the country.

The nominees awaiting hearings who were not called today include three circuit court nominees whose home state Senators support their nominations. Donald Schott of Wisconsin was nominated to serve on the Seventh Circuit on January 12 to fill the longest vacancy in the Federal Judiciary, which has remained unfilled for more than six years. Senator Baldwin recently wrote a letter to Chairman Grassley urging a hearing for Mr. Schott, and I join her request. Senator Johnson, the Republican home state Senator, returned his blue slip and supports the Chairman moving forward with this nomination. Given the pressing need to fill the vacancy and the bipartisan support of home state Senators, there is no good reason that Mr. Schott was left off this hearing. In addition to Mr. Schott, we also have the nominations of Jennifer Puhl of North Dakota to the Eighth Circuit, and Lucy Koh of California to the Ninth Circuit. Both Ms. Puhl and Ms. Koh have the support of their home state Senators, and the Committee should do its job to hold hearings on them.

According to the Congressional Research Service (CRS), one would have to go back more than 60 years to 1953 to find the last Congressional session in which the Senate did not hold hearings for at least one circuit nominee. Notably, the reason the Senate did not hold a circuit court nominations hearing that session is because there was no circuit nominee to consider. That is certainly not the case here. This is another example of Republicans failing to do their jobs to staff our Federal courts.

We are far behind where we need to be to consider judicial nominees for our Federal courts. And yet the Chairman has announced that he will stop processing nominees in July. I will note that I held two nominations hearings for 10 judicial nominees in September 2008, the last year of President Bush's presidency. There is no excuse to stop doing our jobs.

I have also heard the Chairman suggest that he has somehow treated President Obama's judicial nominees fairly because the number of judges confirmed over the last seven years of his

presidency is nearing the number confirmed under President Bush. Far from being an indication of fair treatment, the number of judges confirmed during President Obama's administration is because of Democratic efforts and in spite of Senate Republicans' systematic attempts to filibuster and block the President's nominees.

The total number of judges confirmed must be understood in the context of the vacancies and needs of the Federal courts. There are currently 79 judicial vacancies, and it is Republican obstruction that has caused this high level of vacancies. When Senate Republicans took over the majority last year, there were just 43 judicial vacancies, but their obstruction has resulted in an increase in vacancies of more than 75 percent. Moreover, the number of judicial vacancies deemed to be "emergencies" by the Administrative Office of the U.S. Courts because caseloads in those courts are unmanageably high has more than doubled under Republican Senate leadership – from 12 when Republicans took over last year to 28 today.

We can reduce the judicial vacancies in those states if Republican leadership would allow timely votes on the 20 pending judicial nominees on the Executive Calendar. All of those nominees were reported out of the Judiciary Committee by voice vote. There should not be any further delay in confirming them.

And of course we must consider the President's nominee to fill the vacancy on our Nation's highest court. In just the last few weeks, the Supreme Court has deadlocked three times and has been unable to serve its highest constitutional function. Yet Republicans refuse to do their jobs and even give Chief Judge Garland a public hearing. Refusing to consider this nominee is not only unprecedented, it is also irresponsible and a threat to a functioning democracy.

Since public confirmation hearings of Supreme Court nominees began in 1916, the Senate has never denied a Supreme Court nominee a hearing and a vote. And based on the Senate's precedent for decades, the Senate Judiciary Committee should hold a hearing for Chief Judge Garland next week. A public hearing would allow Americans to engage in the process of considering the nomination and hear directly from Chief Judge Garland. Instead, Republicans have outsourced their job to political interest groups whose only goal is to raise millions of dollars to launch a smear campaign against the nominee's admirable record of public service. At the same time, Republican Senators are denying Chief Judge Garland a chance to defend himself at a public hearing. It is wrong, it is harmful, and it is unfair.

Some Senators claim that their unprecedented obstruction against Chief Judge Garland is based on "principle, not the person." But it is not principled to attack Chief Judge Garland's sterling career and then refuse to allow him the chance to respond at a public hearing.

Some Republican Senators have agreed to meet with Chief Judge Garland, but that is not fulfilling our constitutional responsibility. This is a person who has spent almost three decades in public service and has more Federal judicial experience than any Supreme Court nominee in American history. Chief Judge Garland has an exceptional legal mind and a deep respect for the Constitution. His commitment to public service is inspiring – from his days at the Justice Department working as a prosecutor on the ground in the aftermath of the Oklahoma City

bombing to his nearly two decades as a Federal appellate judge. He deserves a hearing and a vote without further delay.

Today's district court hearing is long overdue. There is much more this Committee and the entire Senate must do to fill vacancies on our district and circuit courts, and the Supreme Court. We should be holding a confirmation hearing for Chief Judge Garland next week. The nominees before us today, and those who are ready to appear before this Committee for a confirmation hearing, also deserve a fair review and consideration by the Senate. Anything short of that means we are not doing our jobs. The people of Vermont elected me to serve a six year term, and I plan to work every single day for them and for all Americans who are looking for leadership in Washington.

#####