

**Prepared Statement by Senator Chuck Grassley of Iowa
Chairman, Senate Judiciary Committee
Hearing on Nominations
June 14, 2018**

Good morning. Today we intend to vote on 3 judicial nominees and important legislation. At the minority's request, we will hold over for one week the nominees to the Privacy and Civil Liberties Oversight Board.

Today, along with several other nominees, we're voting on the nomination of Georgia Supreme Court Justice Britt Grant to the 11th Circuit. Justice Grant is a well-respected judge and public servant. Since joining the bench, she has a clear record of being fair and impartial. In five different cases, she's ruled for criminal defendants when she found their sentences did not match the law. In each case, she ordered the lower court to correct the errors. Regardless of whether it is a criminal defendant or the State of Georgia, every individual is equal under the law when they come to Justice Grant's courtroom.

She also previously served as Georgia's Solicitor General and clerked for the DC Circuit. I have confidence she'll make an excellent appellate judge, and I look forward to supporting her nomination.

Also on today's agenda and ready for a vote is Oklahoma Supreme Court Justice Patrick Wyrick. Before his appointment to the Oklahoma Supreme Court, Justice Wyrick served as Oklahoma's first Solicitor General where he argued, and won, a case before the United States Supreme Court. He also clerked for a federal judge on the same court to which Justice Wyrick is now nominated.

Yesterday, my Democratic colleagues sent me a letter asking that I delay the vote on Justice Wyrick because the American Bar Association has not yet issued its rating for him. The ABA has had plenty of time to perform its evaluation. I've said before that I won't allow outside groups to dictate the Committee's schedule.

Moreover, I'm skeptical of the usefulness of ABA ratings. Members on the other side have voted on a party-line against numerous nominees who received well-qualified ratings from the ABA, including Andy Oldham, John Nalbandian, James Ho, Don Willett, and Kyle Duncan. Democrats have voted against a number of well qualified women and minority candidates.

It seems that the ABA's ratings are used only as a political weapon by the minority. Well-qualified ratings are ignored when the Democrats already oppose a nominee, but non-ratings or not-qualified ratings are used against clearly qualified nominees, such as newly appointed 8th Circuit Judge Steven Gras.

Each member of this Committee has had the opportunity to vet Justice Wyrick and has enough information to form their own opinion on his qualifications. I think it's clear that—regardless of

the ABA's opinion—Justice Wyrick is highly qualified to serve on the district court. He has the support of his colleagues on the Oklahoma Supreme Court, from current and former state solicitors general who worked with Justice Wyrick when he held that office, and many members of the Oklahoma legal community. Accordingly, we will be holding a vote on his nomination today.

In addition to the nominations, we will be voting on S.2837, *the Preventing Drug Diversion Act*. Last week, this committee voted to approve a manager's amendment and an amendment by Senator Lee. However, because we did not have quorum, we did not successfully report this bill to the floor. I hope that today, all members of the committee will remain so that we can have the necessary quorum to vote on all of our agenda.

Five other opioid-related bills have already been reported to the floor, and with this bill, we will have successfully worked together in a bipartisan way to move important legislation out of the Senate Judiciary Committee.

I'm glad we are considering S. 974, the *CREATES Act*. I'd really like to thank Senator Leahy, Senator Klobuchar, and Senator Lee for working on this bill with me from the very beginning. This bill targets abuses that undermine free-market competition and the integrity of the Hatch-Waxman Act process. It allows for disputes over drug samples to be litigated under a clear and narrowly-tailored legal pathway in federal court. The *CREATES Act* will actually send more parties to the bargaining table instead of the courtroom by improving and streamlining existing litigation options.

The Congressional Budget Office estimates that the *CREATES Act* would save federal programs approximately \$3.8 billion by increasing generic drug competition and associated cost savings. Savings to consumers and private insurers likely would be far greater.

The *CREATES Act* is a conservative, market-based solution. I wouldn't support legislation that encourages frivolous lawsuits, jeopardizes patient safety, or undermines intellectual property rights. The only remedy available to the generic is injunctive relief and specified damages, which is within the discretion of the judge based on what is necessary to deter future misconduct. This isn't a trial lawyers' windfall. Moreover, this bill was drafted not to punish branded drug manufacturers acting in good faith, but to establish an effective deterrent for improper behavior.

My co-sponsors and I have worked closely with the FDA and the Federal Trade Commission (FTC) to ensure that the legislation is effective at reducing prescription drug prices.

The *CREATES Act* is also consistent with the goals of Secretary of Health and Human Services Alex Azar and FDA Commissioner Scott Gottlieb, to fight abuses in the system and address the high cost of prescription drugs.

We've received wide outside support for the bill ranging from FreedomWorks to Public Citizen. Alden Abbott, acting general counsel for the FTC and former senior legal fellow at the

Heritage Foundation, described the *CREATES Act* as “a ‘win-win’ for free market drug market competition and for American consumers.”

Without objection, I’d like to put letters in the record from groups in support of the legislation.

I’m going to offer a manager’s amendment which makes several technical changes based on feedback from the FDA and FTC, as well as concerns raised by BIO and PhRMA. Among other things, the amendment adds a definition for commercially reasonable, market based terms, verifies that a sale of samples in accordance with the bill will not be a violation of REMS, clarifies the limitation of liability language, and ensures that any shared system REMS waivers maintain the same level of safety.

The *KIWI Act* will be held over again for one week while the bill’s sponsors continue to resolve outstanding issues.