

**Statement of Senator Patrick Leahy (D-Vt.),
Ranking Member, Senate Judiciary Committee,
On Judicial Nominations
September 7, 2016**

The Judiciary Committee today welcomes five judicial nominees to fill emergency vacancies in Texas. One of these seats has been vacant for over three years, so this hearing is long overdue.

In all, there are currently 10 district court vacancies in Texas, and another two at the circuit level. Each one of those 12 vacancies has been deemed an emergency. In fact, more than one-third of all judicial emergency vacancies are in Texas. While the national vacancy rate has doubled from 5 percent to 10 percent since Republicans took over the majority last year, the vacancy rate for Federal district courts in Texas is twice as high at an alarming 20 percent.

I have been concerned about these long-standing vacancies in Texas for many years. Four years ago, when there were only half as many vacancies in Texas as there are today, I noted that the caseloads in Texas had prompted a retired Federal judge in Hawaii to move to Texas to help the overburdened judges. At that time, I urged the senior Senator from Texas to move swiftly to recommend nominees to President Obama to fill these vacancies. When the junior Senator from Texas joined this Committee in January 2013, I wrote to him with the same message. Later in 2013, Senator Coons and I introduced a judgeships bill that would have created an additional eight permanent district judgeships in Texas.

Given this history, it is not surprising to read the headlines like the one in the legal publication *Law360*, “Judicial Nomination Logjam Strangles Texas Docket.” The article notes that Texans “wait in silence, sometimes for years, for shorthanded judges to orchestrate hundreds more cases than they were meant to handle.” A recent column in the *Dallas Morning News* made the same point, and called on the Texas Senators “to make sure Texas’ courts are fully staffed” because “Texans deserve a fully functioning judiciary.” I agree, and I ask unanimous consent that both articles be included in this hearing Record.

With the support of the Republican Whip, I see no reason why we cannot do our jobs and move swiftly on confirming these five nominees and dramatically reduce the vacancy rate on Texas’s district courts. When I was chairman in the 2008 election year, this Committee held two hearings in September for 10 of President George W. Bush’s judicial nominees. Several of those nominees had been nominated just two months prior in July 2008. All 10 of those nominees were confirmed in one day that same month.

The Committee’s work on circuit and district nominations must not stop today. I hope this Committee will hold second judicial nominations hearing this month, just as I convened two during the month of September in 2008. There are seven nominees with the support of their home state Senators for whom the Committee has received all necessary materials. These seven include three nominees for the Western District of Washington, a court where 43 percent of the seats are vacant; three nominees to district courts in Florida who have the bipartisan support of their home state Senators; and one nominee to the District of Colorado, whose home state Senators, one Democrat and one Republican, have written to the Chairman urging that she be

listed on a committee hearing. We should also have a hearing for the nominee to the U.S. District Court for the District of Columbia. There is no good reason to allow any of these vacancies to remain open. There is no good reason we cannot do for these nominees this September what I did for President Bush's judicial nominees eight years ago.

No discussion of the Committee's duty to consider judicial nominees would be complete without mention of the unprecedented refusal of the Committee to consider the nomination of Chief Judge Merrick Garland to serve on the Supreme Court of the United States. Because of Senate Republicans' unprecedented obstruction of Chief Judge Garland, our highest Court cannot carry out its constitutional role as the final arbiter of the law. So far this year, the diminished Court was unable to issue a final decision on the merits in a total of seven cases. In another death penalty appeal – a matter of life and death – the Court also deadlocked. And just last month, the Court deadlocked on consideration of an election law case that will impact the constitutional rights of millions of voters ahead of this year's election. Republicans have before them a nominee who has been praised by their own members as a brilliant and impartial judge with unwavering fidelity to the rule of law, yet they continue to block any consideration of his nomination.

I urge Republicans to listen to the American people and to do their jobs. By a 2-1 margin – the American people are demanding that Chief Judge Garland, a widely respected nominee with the most Federal judicial experience of any Supreme Court nominee in history, receive a fair and public hearing. This Committee should continue its work this month to hold hearings for Chief Judge Garland as well as the other judicial nominees pending. And I hope that we can move as quickly as possible to vote in Committee on the Texas nominees welcomed here today and to confirm them this month.

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