

Statement of

The Honorable Patrick Leahy

United States Senator
Vermont
May 7, 2008

Statement of Chairman Patrick Leahy
Senate Judiciary Committee
Hearing on Judicial Nominations
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I have been speaking during the last several weeks about the progress we have made and are making in repairing the terrible damage done to the confirmation process and about our progress in reducing judicial vacancies.

The American people do not want judicial nominations rooted in partisan politics. They want federal judges who understand the importance of an independent judiciary. Our independent courts are a source of America's strength, endurance and stability. Our judicial system has been the envy of the world. The American people expect the Federal courts to be impartial forums where justice is dispensed without favor to the right or the left or to any political party or faction. The only lifetime appointments in our government, these nominations matter a great deal. The Federal judiciary is the one arm of our government that should never be political or politicized, regardless of who sits in the White House.

Today we witness a demonstration of the progress about which I have been speaking and for which I have been working. Today's hearing moves us closer to confirming President Bush's nominations to the last two vacancies on the Sixth Circuit Court of Appeals. This completes the task I began when I became Chairman in the summer of 2001, when the Sixth Circuit was in turmoil and nominations had been road blocked for years. At that point there were four vacancies on the Sixth Circuit. When I scheduled a hearing and vote for Judge Julia Smith Gibbons, and then for Judge John Marshall Rogers, we were able to break an impasse that had lasted for five years. Confirmation of Judge White and Mr. Kethledge would complete the process by filling the two remaining vacancies on the Sixth Circuit.

I continue in this Congress, and I will continue with a new President in the next Congress, to work with Senators from both sides of the aisle to ensure that the Federal judiciary remains independent, and able to provide justice to all Americans, without fear or favor.

The Michigan vacancies on the Sixth Circuit have proven a great challenge. I want to commend Senator Levin and Senator Stabenow for working to end the impasse. I have urged the President to work with the Michigan Senators and, after seven years, he finally has. Last month our extensive efforts culminated in a significant development that can lead to filling the last two vacancies on the Sixth Circuit, both vacant so long they have been classified as judicial emergencies.

This accomplishment stands in sharp contrast to the actions of Senate Republicans who refused to consider any of the highly-qualified nominations to the Sixth Circuit Court of Appeals during the last three years of the Clinton administration. Those nominees included Judge White; Kathleen McCree Lewis, an accomplished attorney and the daughter of former Solicitor General of the United States and former Sixth Circuit Judge Wade McCree; and Professor Kent Markus, who was supported by his home state Senators, both Republicans.

Accordingly, I am delighted to welcome Judge Helene White to the Committee. Judge White has served on the Michigan Court of Appeals during the past 15 years, having been elected by the people of Michigan in 1992. Before that she served for a dozen years on the Wayne County Circuit Court, a court of general trial jurisdiction, the

Common Pleas Court for the City of Detroit and the 36th District Court of Michigan. She is described on the Bush White House website as "an experienced and highly qualified judge, who is known for her intellect, work ethic, and demeanor." I could not agree more. In addition, she has been active as a member of the legal community and of community organizations including COTS (Coalition on Temporary Shelter), JVS (Jewish vocational services), and the Metropolitan Detroit Young Women's Christian Association.

She was first nominated by President Clinton to a vacancy on the Sixth Circuit in January 1997, more than 11 years ago, but the Republican-led Senate refused to act on her nomination. She waited in vain for 1,454 days for a hearing, before President Bush withdrew her nomination in March 2001. Hers was one of the scores of qualified judicial nominees pocket filibustered. Last month, President Bush reconsidered, and renominated her.

Our second Sixth Circuit nominee is Raymond M. Kethledge. Mr. Kethledge is a young man who has spent eight years in legal practice in Michigan beginning as a associate in the litigation department of Honigan Miller Schwartz and Cohn, later as a partner at the boutique litigation firm of Feeney Kellett Weinner and Bush and, since the summer of 2003, as a founding member of his own firm, that of Bush Seyferth Kethledge and Paige. He also spent a year as an in-house counsel at Ford Motor Company in their general counsel's office. I am glad to see that he has performed pro bono legal services, something I have always thought lawyers should do.

Our third nomination for consideration today is the President's recent nomination of Stephen Joseph Murphy III to be a United States District Judge for the Eastern District of Michigan. That vacancy is also classified as a judicial emergency.

When on April 15 he announced the renomination of Judge White, I commended the President. Since then I have sought to expedite consideration of these Michigan nominees in recognition of the breakthrough represented by the agreement reached between the President and the Michigan Senators. The Michigan Senators have always been interested in a bipartisan solution to judicial vacancies on the Sixth Circuit and had previously proposed a bipartisan commission as a way to reach consensus in Michigan. Today, I thank and commend the Senators from Michigan and, again, thank the President for finally working with them and us.

In light of that cooperation, we have taken extraordinary steps to expedite this hearing. I thank all members of the Committee for their cooperation. I recently received a letter from Senator McConnell and Senator Specter in which they note the importance of our receiving updated ABA peer reviews for these new nominations. I agree that those are important. The ABA Standing Committee has been working diligently to provide reviews on the recent nomination of Justice Steven Agee to the Fourth Circuit as well as other nominations. They have been very helpful, and we appreciate their efforts. Given the ABA ratings we have received in connection with the prior nominations of Judge White and Mr. Murphy, I expect the new ratings will not present a concern about qualifications. As I have assured Senators McConnell and Specter, I will seek to ensure that we proceed in an orderly fashion, that all Senators have a fair opportunity to question the nominees and that we have all the materials we need in order fairly to consider these nominations.

I am sure there are some who prefer partisan fights designed to energize a political base during an election year, but I do not. The Republican Senate majority during the last five years of the Clinton administration more than doubled vacancies on our nation's circuit courts, as they rose from 12 to 26. Those circuit vacancies grew to 32 during the transition to the Bush administration. We have been able to reverse that trend and reduce circuit vacancies by almost two-thirds. Today there are fewer circuit court vacancies than at any time since the 1996 session. In fact, our work has led to a reduction in vacancies in nearly every circuit. We are heading toward reducing circuit court vacancies to single digits for the first time in decades. With these nominations, we are also poised to add the Sixth Circuit to the other five circuits without a single vacancy, thanks to our efforts.

I am determined to prioritize progress, not politics, and focus the Committee on those nominations on which we can make progress and, in particular, on those in which the White House has finally begun to work with the Senate. The alternative is to risk becoming embroiled in contentious debates for months and thereby foreclose the opportunity to make progress where we can. Last year a controversial Bush judicial nomination took five and one-half months of debate after a hearing before Senate action was possible. We also saw what happened during the last several months of the last Congress. There were many hearings on many controversial nominations. That resulted in a great deal of effort and conflict, but not in as many confirmations as might have been achieved. I prefer to make progress where we can and to work together to do so.

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