

Statement of  
**The Honorable Patrick Leahy**

United States Senator  
Vermont  
September 30, 2009

Statement Of Senator Patrick Leahy (D-Vt.),  
Chairman, Senate Judiciary Committee

Hearing On "Responding To The Growing Need For Federal Judgeships: The Federal Judgeship Act Of 2009"

Subcommittee On Administrative Oversight And The Courts

September 30, 2009

Chief Justice John Roberts has referred to our independent judiciary as a trust that every generation is called upon to preserve. Our independent judiciary is one of the crown jewels of our system of Government. We must make sure it has the resources necessary to fulfill its crucial responsibilities.

Today, the Subcommittee on Administrative Oversight and the Courts holds an important hearing on long-overdue comprehensive legislation designed to address the immediate need for additional Federal judgeships in courts with the highest workloads in the country. I thank Chairman Whitehouse for chairing this hearing and for his commitment to our justice system.

I trust that Chairman Whitehouse will have better cooperation that we had last year when I scheduled a similar hearing at the request of Republican Senators only to have it forestalled when they then raised an objection to proceeding with the hearing that they had requested.

Earlier this month, I joined Senators Whitehouse, Feinstein, Schumer, Klobuchar, Kaufman, Franken and others to introduce the Federal Judgeship Act of 2009, S.1653. This comprehensive bill would create 63 new Federal judgeships in order to address the increasing workload of the Federal judiciary. I am confident that this increase in judgeships would improve the administration of justice for litigants across the country.

The Federal Judgeship Act of 2009 is based on recommendations made this year by the Judicial Conference of the United States, and the Conference's detailed analysis of Federal caseloads. The Judicial Conference's most recent recommendations were the result of an extensive process, beginning with an assessment of district and circuit workloads. At the circuit court level, case filings per authorized judgeship are considered in conjunction with local circumstances that may have an impact on judgeship needs. In the district courts, cases are weighted to reflect the estimated time expenditure for each type of case. Workload factors such as the amount of assistance from senior and magistrate judges, unusual caseload complexity, and temporary

caseload increases or decreases are also factored into the formula that resulted in the Judicial Conference's recommendations and our bill.

Last Congress, I joined Senator Hatch and 20 other Senators from both sides of the aisle to introduce similar legislation. A bipartisan majority of the Judiciary Committee voted to report the bill to the Senate last year. Unfortunately, the Senate did not act on the bill before the end of the last Congress.

When I reintroduced this bill earlier this month, I was disappointed that not a single Republican Senator would join as a cosponsor. Indeed, not one of the 18 Republican Senators whose states would benefit from an additional judgeship yet supports the bill.

It has been nearly two decades since the last comprehensive judgeship bill was enacted. Since then, weighted filings in the district and circuit courts have increased to well above acceptable standards and in some cases have approached record caseloads. The need for new judgeships is urgent because Federal courts must have adequate judicial resources in order to ensure that all Americans receive justice in a timely manner.

I understand that some partisans have decided to obstruct President Obama's appointment of judges and will object to creating any new judgeship while he is our President. Such partisanship ignores the immediate need for judges in districts in our Federal judiciary.

When we passed the last comprehensive judgeship act in 1990, we knew the President who would be nominating those judges. He was a Republican. The same is true of the bill that preceded that one when we worked in a bipartisan manner in 1984. In 1984 the Democratic minority in the Senate cooperated when we added 85 new judgeships. In 1990, the Senate Democratic majority led the effort and we added an additional 85 new judgeships. We have worked together in the past - on a bipartisan basis - to pass comprehensive judgeships bills. I urge Senate Republicans to put aside their partisanship and do what is best for the Federal judiciary and the American people by passing this long-overdue bill without further delay.

I am also unmoved by the partisanship now leading to demands that the effective date for the legislation be set three years from now. The bill is based on the Judicial Conference recommendation of current needs, not a projection of needs three years from now. The need is current, and our action and its effect should be as well. Indeed, for nearly 20 years, an immediate or nearly immediate effective date has been the precedent for comprehensive judgeships bills whether the President was a Republican or a Democrat.

This is not like the circumstance last year when the judgeship bill was being considered during a presidential election year. In an effort to take partisanship out of the equation, that bill would have been effective upon the inauguration of the new President. That is no precedent for adding partisanship into the equation and insisting on a requirement that for the next four years the problem fester so that we can enact a measure based on out of date analysis and needs. It makes no sense for Americans to wait four more years for their rights to be protected. It already takes long enough for judicial nominees to be nominated and then considered by the Senate. Adding another four year delay is ill advised. With an immediate effective date, courts will be better

equipped to swiftly and effectively respond to the resource problems that threaten the administration of justice and better protect Americans' precious rights and liberties.

With today's hearing, we seek to further progress in our efforts to respond to the urgent resource needs of the Federal courts and the American people.

#####