

Statement of  
**The Honorable Patrick Leahy**

United States Senator  
Vermont  
December 1, 2009

Statement Of Senator Patrick Leahy (D-Vt.),  
Chairman, Senate Judiciary Committee  
Hearing On The Nomination Of O. Rogeriee Thompson  
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Today the Senate Judiciary Committee hears from Justice O. Rogeriee Thompson. Justice Thompson is a respected judge in Rhode Island who has been nominated by President Obama to the United States Court of Appeals for the First Circuit. She has the support of both of her highly-respected home state Senators.

In 1988, Justice Thompson became the first African-American woman judge in the history of the Rhode Island state courts. Now, more than 20 years later, if approved by the Senate, she will become the first African-American judge, and only the second woman, to serve on the First Circuit. Justice Thompson has talked about the incredible story of her lineage and the historical barriers that her family has overcome. She continues in this great tradition.

She has twice been appointed by Republican governors. At her 1997 swearing-in ceremony, becoming the first African-American woman judge to sit on the state's highest trial court, Justice Thompson told the crowd, "I accept [this] place in history with pride and with honor, but . . . the fact that I am the only one means we have work yet to do [in] broadening the scope of the bench."

This nomination can be considered and confirmed before the end of the year. Recently the Senate showed what it can do when we work in good faith. It should not take weeks for the Judiciary Committee to report nominations, and additional weeks and months before Republicans allow nominations to be considered by the Senate. We have shown what we can do. The Senate took final action on the nominations of Judge Christina Reiss of Vermont and Judge Abdul Kallon of Alabama just 17 days after their hearing. That prompt action by the Senate demonstrates what can be done when we work together. Following the model we established for Judges Reiss and Kallon, the Senate should be able to consider and confirm the nomination of Justice Thompson by the third week in December and certainly before the end of this session of Congress.

Indeed, the Senate should also be able to confirm all eight of the judicial nominations currently on the Senate Executive Calendar awaiting final action by the Senate, and the additional five judicial listed for Committee votes this week. Acting on these nominations, we can reach a total of 23 Federal circuit and district court confirmations this year. That is short of the total of 28

nominations that a Democratic Senate majority worked to confirm in President Bush's first year in office, 2001, but better than the nine confirmations achieved in the first 11 months of this year.

This year we have witnessed unprecedented delays in the consideration of qualified and noncontroversial nominations. We have had to waste weeks seeking time agreements in order to consider nominations that were then confirmed unanimously. We have seen nominees strongly supported by their home state Senators delayed for months and unsuccessfully filibustered. I have been concerned that these actions by the Republican leadership signal their return to their practices in the 1990s, which resulted in more than doubling circuit court vacancies and led to the pocket filibuster of more than 60 of President Clinton's nominees. The crisis they created led to public criticism of their actions by Chief Justice Rehnquist during those years.

I hope that instead of withholding consent and threatening filibusters of President Obama's judicial nominees, Senate Republicans will treat the nominees of President Obama fairly. I made sure that we treated President Bush's nominees more fairly than President Clinton's nominees had been treated. In the 17 months that I served as chairman of this Committee during President Bush's first term, the Senate confirmed 100 of his judicial nominations.

During the month of December in 2001, a Democratic-led Senate confirmed 10 of President Bush's judicial nominees to get to a total of 28 that year. We will have to exceed that number this month in order to get to 20 confirmations, or better, to a possible total of 23 this year. I fear that, instead, this year's total will be the lowest in modern history. If Senate Republicans continue their delaying tactics, the total could be as low as that in 1996 when a Republican Senate majority would only allow 17 judicial confirmations all session.

Today, with the scheduled consideration of a judicial nomination at Noon, the Senate will finally move to double-digit confirmations of Federal circuit and district court judges--it will be our tenth confirmation this year. Although there have been nearly 110 judicial vacancies this year on our Federal circuit and district courts around the country, only 10 vacancies have been filled. That is wrong. The American people deserve better.

It has not been for lack of qualified nominees. As I have noted, there are eight nominations awaiting Senate action on the Executive Calendar, and another five who have had their confirmation hearings and are awaiting approval by the Judiciary Committee. The Senate should do better, and could, if Senate Republicans would remove their holds and stop delaying.

During President Bush's last year in office, we reduced judicial vacancies to as low as 34, even though it was a presidential election year. Judicial vacancies have now spiked. There are currently 98 vacancies on our Federal circuit and district courts, and 23 more have already been announced. This is approaching record levels. I know we can do better. The American people deserve better. Justice should not be delayed or denied to any American because of overburdened courts and the lack of Federal judges.

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