

Statement of
The Honorable Patrick Leahy

United States Senator
Vermont
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Statement Of Senator Patrick Leahy (D-Vt.),
Chairman, Senate Judiciary Committee,
Hearing On Judicial And Executive Nominations
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Today we will hear from seven well-qualified nominees, four for lifetime appointments to Federal district courts, two for high-level positions in the executive branch, and one to chair the United States Sentencing Commission. I thank Senator Whitehouse for agreeing to chair this important hearing today, and for working with me to move the hearing to this morning. I also thank our Ranking Member, Senator Sessions, for working with me to schedule this hearing. I know that he has a tight schedule this week, and I appreciate his flexibility in accommodating the change in schedule that will allow us to hear from these nominees who have come to town with their families to appear before the Committee today.

It is critical that we continue to make progress considering judicial nominations. There are now 108 vacancies on the Federal courts around the country, including 50 vacancies deemed judicial emergencies by the Administrative Office of the U.S. Courts. More than one out of every eight Federal judgeships is vacant, a crisis that seriously impacts Americans' access to justice. Further, there are 20 future vacancies already announced. The Senate has not acted on the request by the Judicial Conference of the United States to authorize 56 additional judgeships, which will allow the Federal judicial to do its work. Accordingly, the Federal judiciary is currently more than 180 judges short of those needed.

Just yesterday we received a letter from Ninth Circuit Chief Judge Alex Kozinski, an appointee of President Reagan, and the other members of the Judicial Council of the Ninth Circuit, who wrote "to emphasize [the] desperate need for judges." The Ninth Circuit is the Nation's largest Federal circuit. Judge Kozinski and the Judicial Council, including the chief judges of the district courts in that circuit, wrote that "[c]ourts cannot do their work if authorized judicial positions remain vacant" and urge "that the Senate act on judicial nominees without delay."

This letter echoes other recent warnings we have received about the cost of skyrocketing vacancies from individuals and organizations like the Federal Bar Association, the American Bar Association, the Chief Judge of the D.C. District Court, Supreme Court Justices, and even the President of the United States. President Obama wrote to the Majority and Minority Leaders of the Senate that the continuing inaction on judicial nominations "is undermining the ability of our courts to deliver justice to those in need." Justice Kennedy addressing the Ninth Circuit

Conference about the cost of judicial vacancies in California and around the country said that "if judicial excellence is cast upon a sea of congressional indifference, the rule of law is imperiled."

As Chairman of the Judiciary Committee, I have taken the same approach to considering the judicial nominees of a Democratic President as I did the nominees of a Republican President. During the 17 months I chaired the Judiciary Committee during President Bush's first two years, I scheduled 26 hearings for judicial nominees and the Judiciary Committee worked diligently to consider them, reporting 100 of them. The Committee today holds its 25th hearing for President Obama's Federal circuit and district court nominees. I have not altered my approach and neither have Senate Democrats.

However, even though we have been able to hold as many hearings as we did for President Bush's nominees, the Senate has fallen far short of the record of progress we established. By this date in President Bush's first term, a Democratic Senate had confirmed 99 of his circuit and district court nominees, reaching 100 in that Congress. In stark contrast, we have so far confirmed only 41 of President Obama's circuit and district court nominations. Last year the Senate confirmed only 12 Federal circuit and district court judges, the lowest total in 50 years. This year we have yet to confirm 30 Federal circuit and district judges.

The work we have done in Committee with the cooperation of Senator Sessions to consider President Obama's nominees has not been matched on the floor. Before the last recess, the Senate had ready for consideration and confirmation 23 judicial nominees of the President, all of whom had hearings before this Committee and all of whom had been reported favorably. Sixteen of these judicial nominees were reported unanimously. However, Republicans refused to allow us to consider and confirm any of those 23 nominations before recess despite the judicial vacancies crisis in our Federal courts. As a result, overall judicial vacancies that were reduced during the Bush years from 110 to 34 are now back up to 108.

In the aftermath of an election where there was talk on all sides about working together, we can do so right now, without further delay, and in the interests of the American people. I hope that as we continue to make progress in Committee considering and reporting judicial nominations the Republican leadership will change course so that we take action on these superbly qualified nominees and begin to address the growing vacancy crisis.

There is no reason the four judicial nominees appearing before the Committee today could not be considered by the Committee and the Senate before the 111th Congress adjourns for the year. Max Cogburn, nominated to the Western District of North Carolina has the support of both home state Senators, Senator Burr, a Republican, and Senator Hagan, a Democrat. Steve Jones, nominated to the Northern District of Georgia, has the support of both of Georgia's Republican Senators, Senator Chambliss and Senator Isakson. The two nominees for the District of Oregon, Marco Hernandez and Michael Simon, have the support of both of Oregon's Senators, Senator Wyden and Senator Merkley. They have all had impressive careers and are at the top of their profession--we should consider and confirm them without delay.

Likewise, there is no reason the Senate cannot consider without delay the other nominees before us. Michele Leonhart has served at the Drug Enforcement Agency for nearly 30 years, the last three as Acting Administrator, and is now nominated to be that agency's administrator. The

Honorable Patti Saris, a well-respected Federal district court judge for 17 years, has been nominated to chair the U.S. Sentencing Commission. Stacia Hylton has a 24-year career with the U.S. Marshals Service and has now been nominated to run it as Director.

I welcome all of the nominees and their families to the Committee today.

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