

Statement of
The Honorable Patrick Leahy

United States Senator
Vermont
December 8, 2010

Statement Of Senator Patrick Leahy (D-Vt.)
Chairman, Senate Judiciary Committee
Opening Statement
Executive Business Meeting
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This meeting is being held at the request of our Republican ranking member. He required it in order to consider four judicial nominees and two Sentencing Commission nominees Republicans insisted be carried over from last week's meeting.

Ironically, these are nominees who participated in our November 17 hearing at which the Senator from Alabama was left holding the gavel, in order to ensure that all his questions were answered by the nominees. The hearing extended beyond the normal time, and resumed, with the Senator from Alabama chairing, for an additional afternoon session. In addition to that courtesy, I allowed Senators to propound additional written questions until close of business on Wednesday, November 24, the evening before Thanksgiving. The nominees were diligent in working through the Thanksgiving holiday and weekend to make sure the Committee received their written responses on Sunday. I then provided the requisite notice so that we could consider them last Wednesday.

Rather than commend President Obama for nominating someone who had previously been nominated by President Bush, and rather than expedite consideration of the nomination of Marco Hernandez to the District of Oregon, the ranking member insisted that the Committee delay consideration and risk it falling by the wayside in the waning days of this Congress.

In holding over the nominations of district court nominees to North Carolina, Oregon and Georgia, the ranking member repeated his claim that in 2008 Democrats had refused to proceed on the nomination of Marco Hernandez. Let me set the record straight on the contention of the Senator from Alabama.

That was a presidential election year. The Committee did not receive Mr. Hernandez's rating from the American Bar Association rating until the second half of September, months after his nomination. The only hearing held after that was devoted to other nominees. Had Mr. Hernandez been nominated sooner and had his paperwork been completed at the time he was nominated, he may well have been included in an earlier hearing. As it was, that last hearing was held to accommodate the ranking Republican member at the time, and included three nominees from his home state. The hearing was also held to accommodate another Republican member of the

Committee from Kansas, and included a nominee from his home state. I also included a nominee from Virginia strongly supported by the senior Senator from that state, also a Republican. That Mr. Hernandez was not a priority of the Senate Republicans at the end of the 2008 session of Congress is not something that the Senator from Alabama should be seeking to blame on Democrats.

Indeed, during the last two years of the Bush administration the Senate confirmed 68 of President Bush's judicial nominees. That 68 in the last two years of that administration is 40 percent more than the confirmations that Republican obstruction has permitted during these first two years of President Obama's term, despite the fact that the first two years is typically a time when nominations move much more expeditiously than in the seventh and eighth years of a presidency. We proceeded to continue to reduce judicial vacancies during even the last two years of the Bush administration, down to 34 throughout the entire country at one point. Republicans have allowed only 41 Federal circuit and district court confirmations during the 23 months of the Obama administration and their obstruction has resulted in judicial vacancies having doubled to 110. In the 17 months I chaired the Judiciary Committee during President Bush's first two years, the Senate confirmed 100 of his judicial nominees and reduced judicial vacancies from 109 to 60.

When we report these four additional judicial nominations, the Committee will have reported 80 judicial nominations favorably to the Senate. Regrettably, Republican objections have prevented the confirmation of all but 41 of those qualified and capable nominees. That has led to a judicial vacancies crisis that now includes 110 judicial vacancies.

I was encouraged, however, that last week the ranking Republican on this Committee, the Senator from Alabama, indicated that the many judicial nominees that have been stalled for months and months without Senate action will be confirmed before we adjourn. He is in position to know. As the Republican leader on this Committee, he works directly with the Republican leadership that has been stalling judicial confirmations. To quote the ranking Republican at our last meeting on December 1 about these judicial nominees, "the truth is except for a few nominees, the overwhelming majority have moved with bipartisan unanimous support and will be confirmed on the floor." He went on to predict that "a number will clear before the session is over." These months and months of delay have been bad enough and costly for our courts, the American people and the administration of justice. I hope and trust that the reassurance of the Senator from Alabama that the Republican across the board blockage of judicial confirmation is coming to an end is true. In light of the fact that "the overwhelming majority" of nominees "have moved with bipartisan unanimous support," there is no reason the judicial nominees stalled on the Senate calendar should not be considered and confirmed before the Senate adjourns this month. I thank the ranking member for that assurance.

I am glad we are considering Mr. Hernandez, and I support his nomination. I hope we will get cooperation today and be able to report the Cogburn, Hernandez, Simon, Jones, Saris and Friedrich nominations without further delay.

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