

Statement of  
**The Honorable Patrick Leahy**

United States Senator  
United States Senate  
December 13, 2011

Today, as the Judiciary Committee holds its final confirmation hearing of 2011, 21 judicial nominations reported favorably by the Committee remain pending on the Senate Calendar awaiting a confirmation vote. The Senate could act today to fulfill our constitutional duty to ensure that the Federal courts across the country have the judges they need to provide justice for the American people by voting on these 21 nominations. Seventeen of these stalled nominees were reported by the Committee unanimously, with the support of every Democrat and every Republican on the Committee.

There is no good reason to further delay for months votes on these nominations, all of which had hearings like the one we are holding today, and many of which were reported last summer and early in the fall. At a time when nearly one in 10 Federal judgeships remains vacant, further delays are not only unnecessary, they are damaging. Judicial vacancies have remained at or above 80 for over two and a half years. Leaving them artificially high hurts the millions of Americans who live in those districts and circuits and rely on our Federal courts.

I thank Senator Whitehouse for chairing today's important hearing on the nomination of Paul Watford of California, President Obama's highly-qualified nominee to fill one of four judicial emergency vacancies on the Ninth Circuit. We are holding today's hearing to try to make progress in addressing the serious needs of that circuit, the busiest in the country. Frankly, I offered to include the other Ninth Circuit nomination now pending before the Committee at this hearing, that of Justice Andrew Hurwitz of Arizona to that court. Despite the support of Senator Kyl, Committee Republicans are not ready to proceed on that nomination.

I do trust that the hold up on Ninth Circuit nominees will be ended and that Senate Republicans will allow the Senate to move forward with a final vote on the nominations of Judge Morgan Christen of Alaska, reported by the Committee in September, and of Judge Jacqueline Nguyen of California, reported by the Committee earlier this month, to the Ninth Circuit before the Senate completes its work for the year. Judge Nguyen is nominated to fill the judicial emergency vacancy that remains open after the Republican filibuster of Goodwin Liu. I have repeatedly urged the Senate to take up and consider these nominations, yet Republicans have refused.

I have thanked Senator Grassley numerous times for working with me throughout the year so that the Committee could make progress on nominations, and I have tried to accommodate him. I accommodated his request that this be the only confirmation hearing during this work period. As a result of those accommodations, the Committee has held only 19 confirmation hearings this year for 79 of President Obama's nominees, 71 of them judicial nominees. In contrast, during the third year of the Bush administration, the Republican chairman proceeded to hold 29

nominations hearings for 109 of President Bush's nominees, over 90 of them judicial nominees. That year, the Republican chairman held nine nominations hearings after the August recess and before adjourning in November. We will end the year holding only seven hearings after the August recess, although the Senate will have been in session an extra month this year, and several of those hearings have been with a less than full slate of nominees, including today's hearing.

I am disappointed that even after delaying this hearing from last week at Senator Grassley's request we are proceeding on only one nomination rather than a full hearing to include five judicial nominations, including nominees to fill district court vacancies in Arkansas, Illinois, and Maryland. The reason we are not proceeding on those nominations is that the Republicans have yet to review the materials available to them on those nominees.

Throughout the year and now I would have preferred if more nominations had been available to be included in hearings at considered by the Committee. In addition to the judicial nominees on which the other side is not prepared to proceed, there are executive branch nominees to the Privacy and Civil Liberties Oversight Board, a Deputy Administrator of the Drug Enforcement Administration, a U.S. Parole Commissioner and two members of the Foreign Claims Settlement Commission who are not ready for Committee and Senate consideration because the Republicans have not reviewed their files.

Paul Watford has been nominated to fill one of four judicial emergency vacancies on the Ninth Circuit. At a time when judges on the Ninth Circuit, a Circuit serving more than 61 million Americans, are handling double the caseload of the other Federal circuit courts, the Senate should be moving forward to consider these nominations and to fill these vacancies. The Chief Judge of the Ninth Circuit, Judge Alex Kozinski, a Reagan appointee, along with the members of the Judicial Council of the Ninth Circuit, have written to the Senate emphasizing the Ninth Circuit's "desperate need for judges," urging the Senate to "act on judicial nominees without delay," and concluding "we fear that the public will suffer unless our vacancies are filled very promptly."

The judicial emergency vacancies on the Ninth Circuit are harming litigants by creating unnecessary and costly delays. The Administrative Office of U.S. Courts reports that it takes nearly five months longer for the Ninth Circuit to issue an opinion after an appeal is filed, compared to all other circuits. The Ninth Circuit's backlog of pending cases far exceeds other Federal courts. As of March 2011, the Ninth Circuit had 13,913 cases pending before it. The second closest - the Sixth Circuit - has 5,231 cases pending before the court.

If caseloads were really a concern of Republican Senators as they contended when they filibustered the nomination last week of Caitlin Halligan to the D.C. Circuit they would not be delaying consideration of four Ninth Circuit nominees the President has sent to us, three of them to fill emergency vacancies.

Mr. Watford's credentials are outstanding. He is currently a partner specializing in appellate litigation at the law firm Munger, Tolles & Olson in Los Angeles. He previously served as a Federal prosecutor in Los Angeles, handling a range of prosecutions and specializing in major

frauds. Over his 17-year legal career, he has authored or edited briefs in nearly 20 cases before the United States Supreme Court, as well as numerous cases before the Ninth Circuit and other Federal appellate courts. He has worked on criminal and civil matters, representing plaintiffs and defendants. He clerked for Justice Ruth Bader Ginsburg of the United States Supreme Court and Judge Alex Kozinski, a conservative appointee of President Ronald Reagan, on the Ninth Circuit. The ABA's Standing Committee has rated Mr. Watford "unanimously well qualified," the highest rating available from its non-partisan peer review.

Mr. Watford's nomination was greeted by support from legal professionals from across the political spectrum. Daniel Collins, a partner at Munger Tolles who clerked for Justice Scalia and who served in the Bush administration as Associate Deputy Attorney General, has said that Paul Watford is "incredibly intelligent and has solid integrity and great judgment." Conservative law professor Orin Kerr called Mr. Watford, "extremely bright, a moderate, and very much a 018lawyer's lawyer," concluding in his online post, "I hope he will be confirmed." The former president of the Los Angeles Chapter of the Federalist Society has said that Mr. Watford "has the respect of anyone who has come into contact with him. He is exceptionally bright and well qualified."

I look forward to Committee consideration of Mr. Watford's nomination when the Senate returns in January. I hope that before the Senate completes its work for the year this month, it makes long overdue progress considering the 21 judicial nominations already considered by the Committee and now stalled before the Senate awaiting consent from the Senate Republican leadership for final consideration.

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