

**Statement Of Senator Patrick Leahy (D-Vt.),  
Chairman, Committee On The Judiciary,  
On Committee Consideration Of The Free Flow Of Information Act, S. 987  
Executive Business Meeting  
August 1, 2013**

First on today's agenda are four judicial nominees. All were held over last week so we should be able to report them to the floor today before turning to our consideration of the Free Flow of Information Act. We have:

- Patricia Millett, to be United States Circuit Judge for the District of Columbia Circuit;
- Gregory Woods, to be United States District Judge for the Southern District of New York;
- Elizabeth A. Wolford, to be United States District Judge for the Western District of New York; and
- Debra M. Brown, to be United States District Judge for the Northern District of Mississippi.

Ms. Millet is nominated to one of three vacancies on the District of Columbia Circuit. She has distinguished herself as an appellate advocate who served in the Office of the Solicitor General under both President Clinton and President Bush. She has argued 32 cases before the Supreme Court, and another 36 before Federal courts of appeal. She is also no stranger to this Committee, having testified here in 2008 at the request of Committee Republicans.

Earlier this month, the Senate voted unanimously to confirm Wyoming Attorney General Gregory Phillips to the Tenth Circuit. With his confirmation, the number of pending appeals per active judge on that court dropped from 150 to 135. The D.C. Circuit currently has 182 pending appeals per active judge. Despite that higher caseload, some Senate Republicans argue that the D.C. Circuit's caseload is too low, and that three of its judgeships should be eliminated. Most of these Senators voted to confirm Attorney General Phillips, even though his confirmation means that the Tenth Circuit will now have the lowest caseload in the country, just as earlier this year they supported the confirmation of Jane Kelly to the Eighth Circuit, which gave that court the lowest caseload in the country. I hope those Senators will reconsider their double-standard and not play politics with an independent branch of government.

After reporting these highly qualified judicial nominees, the Committee will begin considering legislation to establish a qualified privilege for journalists to protect their sources and the public's "right to know." I was proud to chair this Committee in 2007 when the Committee favorably reported bipartisan media shield legislation for the first time. I led the Committee when we favorably reported media shield legislation again in December 2009. Today, we begin its consideration of this important legislation for a third time. I hope the third time is a charm, and that this is the year that the Senate moves forward with enacting media shield legislation into law.

I commend Senators Schumer and Graham for their work on this bill. They incorporated several of my suggestions for improvement into their substitute amendment to safeguard the privacy

protections contained in the Electronic Communications Privacy Act (ECPA) for members of the press. I hope we can adopt their substitute amendment today before we begin considerations of other amendments.

A free and vibrant press is essential to a free society. That is why I have worked hard to enact a meaningful media shield law for so many years. All of us - whether Republican, Democrat or Independent - have an interest in enacting a balanced and meaningful media shield bill to ensure a free flow of information to the American people. Forty-nine States and the District of Columbia currently have codified or common law protections for confidential source information. But, even with these State law protections, it is clear that Congress must act on media shield legislation.

In recent years -- during both the Bush and Obama administrations -- scores of reporters have also been questioned by Federal prosecutors about their sources, notes and reports and even jailed for refusing to reveal confidential sources. Earlier this month, the United States Court of Appeals for the Fourth Circuit held in a split decision that there is no reporter's privilege in a criminal leak case involving *New York Times* reporter James Risen. I am concerned that this dangerous trend is having a chilling effect on the press and on the public's right to know.

I hope we can make progress on this legislation today after we vote on the judicial nominees.

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