U.S. SENATOR PATRICK LEAHY

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Statement Of Senator Patrick Leahy
Judicial Nominations Hearing
May 7, 2003

Today, we welcome Consuelo Maria Callahan, nominated to the Ninth Circuit Court of Appeals, Michael Chertoff, nominated to the Third Circuit Court of Appeals, and L. Scott Coogler for the U.S. District Court for the Northern District of Alabama.

This is already the ninth hearing the Republican majority has held for judicial nominees this year. As of today, the Committee will now have held hearings for 37 judicial nominees overall and 10 circuit court nominees. This is in sharp contrast to the way President Clinton's nominees were treated by the Republican majority.

I recall that, during the entire year of 1996, when vacancies were higher and growing, this Committee held only six hearings and those hearings included only five circuit court nominees. Thus, the Republicans have now considered twice as many circuit court nominees in one-third the amount of time they considered President Clinton's nominees. In 1997, the ninth judicial nominations hearing was not held until November of that year. During the entire year of 1999, only seven hearings were held on judicial nominees and, during the entire year of 2000, only eight judicial nominations hearings were held. This year, with a Republican in the White House, the Senate Republican majority has gone from second gear -- the restrained pace it had said was required for Clinton nominees -- to overdrive for the most controversial of President Bush's nominees.

This year, in spite of the lack of cooperation by the Administration and the overbearing exercise of power by the majority, we have cooperated with Committee action and voted on 26 judicial nominees during the first three months of this year. We have proceeded in the Senate to vote on the confirmations of 23 judicial nominees this year, including four controversial nominees to the circuit courts, which makes 123 of this President's judges confirmed overall. That compares most favorably to how Republicans treated President Clinton's nominees. In the 1996 session, for example, the Senate did not confirm a single circuit judge all year and confirmed only 17 judges that entire year. In 1999, the third year of the last presidential term, and in 1997, the Senate did not reach the level we have already attained of 23 confirmations until October.

A good way to see how much faster this Chairman processes nominations for a Republican president is to compare this year's pace to a comparable year in the last Democratic administration. On this day in 1997, when Bill Clinton was President, the Republican-controlled Judiciary Committee was just holding its second judicial nominations hearing of the year compared to the ninth hearing that we are in today -- and was considering its first two circuit court nominees of the year. This Chairman has moved five times more quickly for President Bush's circuit court nominees than for President Clinton's, and vacancies in the courts are nearly

half of what they were in 1997. Even more noteworthy, by this point in 1999, the third year of President Clinton's term, the Committee had not held or scheduled a single judicial nominations hearing. In fact, no hearing for a judicial nominee was held until June of that year.

We often hear from the other side of the aisle that there is a "vacancy crisis," but this is simply not true. The number of vacancies has gone down from the 110 we inherited at the beginning of the Bush Administration to 47 – the lowest level it has been in 13 years. While I was Chairman I was able to cut it from 110 to 60, despite dozens of new vacancies that occurred during that time. I recall that Senator Hatch said in September of 1997 that 103 vacancies (during the Clinton Administration) did not constitute a "vacancy crisis." He also repeatedly stated that 67 vacancies meant "full employment" on the federal courts. Why now do Republican Senators consider 47 vacancies, nearly the rate of attrition, to be a "crisis?"

Considering how low the vacancy rate is, I cannot understand why the Chairman is now forcing us to rush to judgment on these nominees. The rush to consider judicial nominees as if they are on an assembly line thwarts thorough and fair consideration of each nominee. As the Chairman said in 1998, there is a good deal of background research that must be done by the Judiciary Committee before we can send a nominee to the floor. If the Committee fails to do its groundwork, it fails the Senate and prevents this body from fulfilling its constitutional duty. The rapid and rushed speed with which we are now moving undermines the Senate – and, despite Republican claims to the contrary, seems to be solely based on political considerations. The majority is willing – and anxious – to let the Republican in the White House pack the courts with nominees who will reshape the courts along their ideological lines.

Despite my concerns about the lightning pace at which the Chairman is now proceeding, I welcome Judge Callahan and Mr. Chertoff, who come to us with the support of their home-state Senators, for whom I have great respect. Both of these nominees are being given hearings within just a few months of their nominations. Judge Callahan was nominated on February 12, 2003, and hers is a hearing I have requested the Chairman expedite. As I have noted throughout the last two years, the Senate is able to move expeditiously when we have consensus, mainstream nominees to consider. Unfortunately, far too many of this President's nominees have records that raise serious concerns about whether they will be fair judges to all parties on all issues.

Judge Callahan is a well-respected nominee who has years of experience serving on the bench in the state of California. Unlike the divisive nomination of Carolyn Kuhl to the same court, both home-state Senators returned their blue slips and support a hearing for Judge Callahan. Rather than disregarding time-honored rules and Senate practices, I urge my friends on the other side of the aisle to help us fill more judicial vacancies more quickly by bringing those nominations that have bipartisan support to the front of the line for Committee hearings and floor votes. And, I invite the President to nominate more mainstream individuals like Judge Callahan. Her proven record and bipartisan support make it easier for us to uphold our constitutional duty of advise and consent. I look forward to learning more about her record as an appellate judge for the state of California.

Judge Callahan is another Latina nominee that Democrats have supported and worked to consider fairly and promptly. The Democrats have supported, and the Senate has confirmed,

President Bush's nominations of Jose Martinez to a District Court in Florida, Jose Linares to a District Court in New Jersey, Christina Armijo to a District Court in New Mexico, James Otero to a District Court in California, and Alia Ludlum, Philip Martinez, and Randy Crane to District Courts in Texas. In addition, last week the Senate confirmed Judge Prado to the Fifth Circuit Court of Appeals. Another Hispanic judicial nominee, Cecilia Altonaga to a District Court in Florida, was just confirmed yesterday with the support of all Democrats. I urge her consideration without further delay, as well.

Today, we also welcome Michael Chertoff. Mr. Chertoff has served as Assistant Attorney General for the Criminal Division at the Department of Justice since being confirmed by the Senate in May 2001. He previously served as the U. S. Attorney in New Jersey from 1990 to April 1994, and as a partner in the well-known firm of Latham and Watkins. In spite of Mr. Chertoff's role as the lead counsel to the Republicans in the Whitewater investigation, an extremely partisan effort, we confirmed him to head the Criminal Division. I look forward to hearing from him on a number of issues.

Despite the apparent qualifications of these two nominees, I regret that the Chairman has decided to proceed with a hearing with two circuit court nominees. For the second time in just a few months, the Chairman has decided to depart from longstanding Committee precedent and hold a hearing with more than one circuit court nominee. At the end of January, the Chairman held the most unusual hearing with three controversial circuit court nominees – Jeffrey Sutton, Deborah Cook and John Roberts. And it has taken several months of negotiations to ensure that each nominee in that hearing received the undivided attention that a lifetime nomination to the circuit court deserves. In fact, Mr. Roberts appeared before the Committee again just last Wednesday so that his record could be complete.

Now, the Republican majority is proceeding with a second hearing with more than one circuit court nominee – again denying each nominee the undivided attention that a lifetime nomination to the circuit court deserves and undermining the Senate's constitutional duty to advice and consent. Although I had requested that we expedite a hearing for Judge Callahan given her bipartisan support, it was not at the expense of a thorough hearing on either nominee. It is unfortunate that we will not have time to focus on the many important topics raised by each of these nominations.

The Republican majority has shown a corrosive and raw-edged willingness to change, bend and even break the rules that have long governed our proceedings and those that they followed when the judicial nominees involved were a Democratic president's choices, instead of a Republican president's choices.

When there was a Democratic president in the White House, his judicial nominees were delayed and deferred by the Republican majority. Now that there is a Republican President, it seems that there is no past practice that will not be violated, no rule that will not be broken or rewritten or reinterpreted in aid of this Administration's ideological court-packing scheme. The Senate has an important role in the confirmation process, and it is not to rubberstamp unexamined nominees on a high-speed assembly line.

Today, we will also hear from district court nominee L. Scott Coogler to the U.S. District Court for the Northern District of Alabama. He is currently an Alabama state court judge and has the support of both of his home-state Senators. I look forward to hearing his testimony.

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