

**Statement of Senator Patrick Leahy
Chairman, Senate Judiciary Committee
On the Nomination of Stephanie Rose to the U.S. District Court for the
Southern District Of Iowa
September 10, 2012**

When the Senate recessed more than a month ago, 22 judicial nominees to fill vacancies in courtrooms around the country were left pending, awaiting a Senate vote. Today, Senate Republicans have agreed to vote on just one of those nominees. I want to commend Senator Harkin for working with Senator Grassley and the Majority Leader to get this vote on the nomination of Stephanie Rose of Iowa. I urge votes on the other nominees, as well, without further delay.

There are currently 78 Federal judicial vacancies. Judicial vacancies during the last few years have been at historically high levels and have remained near or above 80 for nearly the entire first term of the President. Nearly one out of every 11 Federal judgeships is currently vacant. Vacancies on the Federal courts are more than two and one half times as many as they were on this date during the first term of President Bush. One key reason for these numerous vacancies and for the extensive backlog of nominees is that Senate Republicans allowed votes on just one district court nominee per week for the last seven weeks before the August recess. This unnecessarily slow pace of consideration of judicial nominees has disserved the American people and should not continue.

The across-the-board obstruction and foot dragging from Senate Republicans since Day One of President Obama's tenure means that we are likely to complete his first term with more judicial vacancies than when he took office. The partisan obstruction from Senate Republicans has been particularly damaging with respect to Federal trial courts. In a sharp departure from the past, Senate Republicans have stalled Senate approval of district court nominees, including those Republican home state Senators support.

Before the American people elected Barack Obama as our President, district court nominees were generally confirmed within a couple of weeks of being reported by the Judiciary Committee. This was true of those nominated by Republican Presidents and Democratic Presidents. Deference was traditionally afforded to home state Senators and district court nominees supported by home state Senators were almost always confirmed unanimously. During the 18 months that I was Chairman of the Judiciary Committee in 2001 and 2002 we confirmed 83 of President Bush's district court nominees, and only one of them received any votes in opposition. Even though some Senate Democrats opposed the nominee, we nevertheless scheduled a vote for him just 11 days after he was reported by the Judiciary Committee.

Indeed, only five district court nominees received any votes in opposition in all eight years of the previous Republican presidency, and none was a party-line vote. Among those nominees was one so extreme that he had announced that "concern for rape victims is a red herring because conceptions from rape occur with approximately the same frequency as snowfall in Miami." That observation was much like the outrageous recent comments about rape by a Republican House member and Senate candidate.

In all, the Senate confirmed 264 of President Bush's district court nominees, and only five of them received any votes in opposition. Senate Democrats were willing to work with a very conservative Republican President to fill vacancies on our Federal trial courts. We recognized that filling vacancies on district courts is essential to ensuring that the American people have functioning courts to serve them and provide access to justice. We know that it is unacceptable for hardworking Americans who turn to their courts for justice to suffer unnecessary delays. When an injured plaintiff sues to help cover the cost of his or her medical expenses, that plaintiff should not have to wait three years before a judge hears the case. When two small business owners disagree over a contract, they should not have to wait years for a court to resolve their dispute.

In *The Atlantic* Andrew Cohen has written recently about the "Human Costs of Judicial Confirmation Delays." In that article, the Chief Judge of the Middle District of Pennsylvania describes the costs of vacancies on individuals in Pennsylvania and the pervasive and harmful delays they are suffering because there are not enough judges. I ask consent that this article appear in the Record at the conclusion of my remarks.

At this point in President Bush's first term, Senate Democrats had worked with Republicans to confirm 165 of his district court nominees. Despite the fact that President Obama has worked with home state Senators of both parties to select moderate, superbly-qualified judicial nominees, Senate Republicans have engaged in unprecedented obstruction of Federal trial court nominees for the last four years.

As Carl Tobias noted last month in a letter to the *New York Times*:

"Republican senators have created and applied practices that substantially depart from procedures employed in prior administrations, even as recently as that of President George W. Bush. The most important change is the refusal by the G.O.P. leadership to enter voting agreements on well-qualified, uncontroversial district court nominees, so they languish for months on the Senate floor."

Professor Tobias is correct, and the result is that at this point in his first term President Obama's district court nominees have had to wait nearly three times longer for a Senate vote and the Senate has confirmed more than three dozen fewer.

Senate Republicans have made a habit of delaying and opposing President Obama's district court nominees, voting against more than a quarter of them – 36 out of 127 to be precise. And they stall confirmations for months of noncontroversial nominees including those supported by home state Republican Senators who are eventually confirmed overwhelmingly.

This extreme partisanship has not just resulted in persistently high vacancies – Supreme Court Justice Anthony Kennedy recently observed that it is also "bad for the legal system" as a whole. He indicated: "It makes the judiciary look politicized when it is not, and it has to stop." District courts in particular should not be politicized. The 18 district court nominees currently pending before the Senate were not chosen based on some ideological litmus test. They were selected for their legal excellence, whether as practicing attorneys or sitting judges.

Recently, the Republican Senator from Pennsylvania signaled his newfound willingness to abandon the unprecedented delays and obstruction that his caucus has employed against President Obama's trial court nominees. I only wish he had done so two years ago. What Senate Republicans have been doing is wrong and hurts all Americans seeking justice in our Federal courts.

Today, the Senate will vote on the nomination of Stephanie Rose to fill a judicial vacancy on the U.S. District Court for the Southern District of Iowa. She was rated unanimously well qualified by the ABA Standing Committee on the Federal Judiciary, the highest possible rating. She has the bipartisan support of her home state Senators. I worked with Senator Harkin and Senator Grassley to ensure prompt Judiciary Committee consideration of her nomination, which was reported with a virtually unanimous voice vote by the Judiciary Committee nearly five months ago. The only objection came as a protest on another issue by Senator Lee.

Stephanie Rose currently serves as the first woman U.S. Attorney for the Northern District of Iowa, where she has been serving since 2009. Ms. Rose has devoted her entire career to public service, having served for 15 years as a Federal prosecutor and having been promoted to Deputy Criminal Chief in 2008. In her tenure as a Federal prosecutor, she has tried 33 cases to verdict. When confirmed, she will be the first woman to serve as a Federal judge in the Southern District of Iowa and only the second woman to serve on the Federal bench in Iowa's history.

With the elections approaching, the Senate will recess, again, in just a few weeks. When the Senate recessed in 2009, 10 judicial nominees were left without a final confirmation vote. When the Senate recessed in 2010, 19 judicial nominees were left pending without a final confirmation vote. When the Senate recessed last year, in 2011, 19 judicial nominees were left pending without a final vote. I urge Senate Republicans not to continue their practice of stalling qualified nominees from confirmation. I urge them to agree to schedule debate and votes on the 18 district court nominees from California, Connecticut, Florida, Illinois, Maryland, Michigan, New York, Oklahoma, Pennsylvania and Utah who, like Stephanie Rose, could be confirmed with strong bipartisan support and without further delay. A dozen of those nominees would fill judicial emergency vacancies.

Let us act on these nominations. There is no doubt that recent precedent shows we can do this even in September of a Presidential election year. In 2008, the final year of President Bush's presidency, Senate Democrats were willing to confirm 10 of his district court nominees in a single day, all by unanimous consent. It took only a few seconds. Earlier in that Republican presidency, and again with a Democratic Majority, the Senate confirmed 18 judicial nominees in just one day and vacancies went down to 60 throughout the country, on the way down to 28. If we confirm all of the district nominees ready for final Senate action today, we can similarly reduce vacancies back down to 60.

I hope that Senate Republicans will not extend their wrongheaded application of the "Thurmond Rule" and further stall confirmation of consensus, well-qualified district court nominees. Given our overburdened Federal courts and the need to provide all Americans with prompt justice, the

Senate should be working in a bipartisan fashion to confirm these nominees without further delay.

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