

**Statement of Senator Patrick Leahy (D-Vt.),
Ranking Member, Senate Judiciary Committee,
On The Need For Transparency In Considering A Supreme Court Nominee
March 3, 2016**

The Judiciary Committee was scheduled to meet this morning for the first time since the untimely passing of Justice Antonin Scalia. It was an important meeting to have. There is clearly a disagreement about how to move forward on filling the Supreme Court vacancy and it is time that we have an open conversation about it. The American people deserve to hear us discuss and debate the Committee's next steps in fulfilling our constitutional duty. Unfortunately, last night, the Chairman decided to postpone this meeting rather than have it in public. Now we must wait another week before the Committee can sit down together in front of the American people to discuss an issue that is so important.

The move to postpone today's meeting is troubling given that last week's meeting – a meeting that should have happened with the participation of all the Committee's members, in a room open to the public - was also postponed. Instead, last week the Committee's Republicans chose to meet behind closed doors, without any Democrats so they could hatch a partisan plan to obstruct any effort to consider the next nominee to the Supreme Court.

There was no consultation with any Democrat serving on Committee. There was no public discussion of any kind. Instead, 11 Republican Senators unilaterally decided that the Senate would abdicate its responsibility and they would block all 100 of us from fulfilling our constitutional obligation of advice and consent.

Supreme Court nominations are a unique priority for the Judiciary Committee. Since I have served in the Senate, the Judiciary Committee has always held hearings on Supreme Court nominees and always reported them to the full Senate for consideration.

When I took over as Chairman of the Judiciary Committee in 2001, George W. Bush was President. I did not agree with much that his administration was already doing and I was not sure if I would approve of any Supreme Court nominations he might have the opportunity to make. But even with those reservations, I wrote a letter with Senator Hatch – who was then the Ranking Member – memorializing an agreement we reached about how the Judiciary Committee would consider Supreme Court nominees. In that letter, we wrote, “The Judiciary Committee’s traditional practice has been to report Supreme Court nominees to the Senate once the Committee has completed its considerations. This has been true even in cases where Supreme Court nominees were opposed by a majority of the Judiciary Committee.” The Republican leader at the time – Senator Lott – then read our letter into the Congressional Record to ensure that it was available for all Americans to see. It showed the long understanding of the Senate Judiciary Committee’s commitment to an open, fair process, even when the majority does not agree with the opposing party’s president.

The priority the Judiciary Committee has afforded Supreme Court nominees is exemplified by its consideration of two of the most contentious nominations to the Court: Robert Bork and Clarence Thomas. In both instances, then-Chairman Biden moved the nominations to the full

Senate, even though a majority of this Committee did not support the nominations. In Robert Bork's case, a committee vote to report his nomination out favorably failed by a vote of 5-9. The Committee then voted to report his nomination with an **unfavorable recommendation** and he was reported out unfavorably by a vote of 9-5 so that the full Senate could consider him.

In Clarence Thomas's case, the Committee vote to report his nomination out favorably failed by a vote of 7-7. The Committee then voted to report his nomination **without recommendation** and he was reported to the full Senate by a vote of 13-1.

Even when a majority of Committee members have opposed a nominee, as was the case with Robert Bork and Clarence Thomas, we have not denied the full Senate --- or the American people -- the opportunity to debate and consider a Supreme Court nominee.

The Judiciary Committee has a strong tradition of transparency. I believe the American people have a right to see and hear what we are doing. And they have a right to weigh in on the decisions we make. Nowhere does transparency matter more than a lifetime appointment to the highest court in our land. There is no place for backroom deals for something so important. Public confirmation hearings are a vital part of our democracy. And it is not just about us.

Public hearings are how Americans meet the nominee. Public hearings allow every American the opportunity to watch and listen to this person whose decisions may have a lasting impact on their lives. Ultimately, what Republican members of this Committee unilaterally decided last week was to reject the longstanding tradition of public hearings. And in doing so, they are denying Americans the chance to participate in the consideration of a nominee.

The Judiciary Committee is one of the busiest in the Senate and it considers some of the most consequential issues affecting millions of Americans. When we commit ourselves to what brought us here — to work together for our constituents — we can achieve great things. That is what happened three years ago when the Senate passed comprehensive immigration reform. After six hearings and three weeks of markups, each of the 18 Senators serving on the Committee participated in the process to draft that legislation. Not all of us supported the bill, but all of us had the opportunity to debate and amend it. Even the staunchest opponents of the legislation, including some in this chamber right now, praised the Judiciary Committee's transparent and fair process for consideration of that bill. A Vermont editorial at the time called our Committee proceedings a "lesson in democracy." I think it is time for a refresher course.

The legal issues before the Supreme Court are significant, and its importance in our constitutional democracy cannot be overstated. Nor can the responsibility of the Judiciary Committee to fairly consider a nominee to serve on the highest court in the land. So it is with deep concern that I come to the floor today to urge Senator Grassley and all members of the Judiciary Committee to renew their commitment to transparency and regular order. I ask that you withhold your judgment until you can review the record of whoever the President nominates. And I ask you to give the next nominee to the Supreme Court a fair hearing as we have done for the last 100 years. The American people expect us to do our jobs.

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