

**Statement Of Senator Patrick Leahy (D-Vt.),
Chairman, Senate Judiciary Committee,
On The Nomination Of Mary Geiger Lewis To The U.S. District Court For The District Of
South Carolina
June 18, 2012**

Last week, Senate Republicans announced that they would be shutting down and blocking the confirmation process for qualified and consensus circuit court nominees for the rest of the year. That is unfortunate and does nothing to help the American people or our courts, which continue to be overburdened while consensus nominees for vacancies that could be filled are being stalled. I have often spoken during the last three years of the foot dragging and obstruction by Senate Republicans with respect to this President's judicial nominations.

Just last week we saw the Majority Leader file the 28th cloture petition to end another filibuster against another qualified judicial nominee. Last week it was a nominee from Arizona supported by Senator Kyl and Senator McCain. By their announcement, the Senate Republican leadership is saying that it will not agree to proceeding with debate and a vote on any of the four circuit court nominees voted on by the Senate Judiciary Committee. They include a nominee from Maine strongly supported by both Republican Senators from Maine, and a nominee from Oklahoma supported by the Republican Senators from that state, as well as a nominee from New Jersey and one for the Federal Circuit who was approved by all of the Republican Senators on the Judiciary Committee, except for an unrelated protest vote.

This plan to shut down the confirmation process is consistent with what the partisan Senate Republican leadership did in 1996, when it would not allow any circuit nominees to be confirmed, and again at the end of President Clinton's presidency, and can be contrasted with how Democrats acted in 1992, 2004 and 2008. This is really a challenge to the Senators who have said that they will not support these filibusters and this kind of obstruction.

It is hard to see how this new application of the Thurmond Rule is really anything more than another name for the stalling tactics we have seen for months and years. I have yet to hear any good reason why we should not continue to vote on well-qualified, consensus nominees, just as we did up until September of the last two presidential election years. I have yet to hear a good explanation as to why we cannot work to solve the problem of high vacancies for the American people. I will continue to work with the Senate leadership to try to confirm as many of President Obama's qualified judicial nominees as possible to fill the many judicial vacancies that burden our courts and the American people across the country.

I was heartened to see that the senior Senator from Maine has said that she will continue to work with the bipartisan Senate leadership in an effort to bring his the Maine nominee to the First Circuit before the Senate for a confirmation vote. I trust that the many Republican Senators who joined Senator Kyl and Senator McCain in opposing the filibuster of Justice Hurwitz will now join to oppose the filibusters of William Kayatta of Maine, Judge Robert Bachrach of Oklahoma, Judge Shwartz of New Jersey, and Richard Taranto for the Federal Circuit. I would hope that the Senators from South Carolina, whose state's nominee we consider today, will aid this effort just as we have worked with them throughout the process to ensure that they were consulted by the

President and that they consented to proceeding with this nominee from their home state. I hope that they will show that courtesy to other Senators.

Senate Republicans were talking about shutting down the confirmation process from the beginning of this year, as I chronicled in my statement on February 7 on their obstruction and delay. They slow walked nominees who should have been confirmed last year into May of this year. And now, one month later, they announce that they are closing the gates on progress. The article by John Stanton in Roll Call on June 14 blew the whistle on their plan. The banner headline notes the “GOP . . . Judge Blockade” but it is not just beginning. It began from the moment the President was elected.

This pattern of obstruction from Senate Republicans has been as transparent as the Senate Republican leader’s statement that “the single most important thing [Senate Republicans] want to achieve is for President Obama to be a one-term president.” Just as they obstruct his qualified judicial nominees, they reject virtually every effort this President has made to improve the economy and to create jobs. They are the party of “no”—no help for the American people, no to jobs, no to economic recovery, no to police, firefighters and teachers, no to students needing help paying for education, no to consumer protection, no to assisting state and local governments, no to the highway bill and no to any more judges. Never mind that the American people rely on our courts for justice and that the courts are overburdened with vacancies and that we have 17 judicial nominees voted out of the Judiciary Committee waiting for Senate confirmation.

The idea that Senate Republicans would oppose a proposal, bill or nomination simply because it comes from this President is sadly no surprise. Republicans objected to extending the payroll tax cut even though they ultimately supported it. Republicans have also come to reject ideas and proposals that originated from their own party simply because this President supports them. This was the case with the individual mandate for healthcare, which was a Republican idea. So it should come as no surprise that Republicans have been obstructing President Obama’s judicial nominees since the President first took office.

Regrettably, the obstruction of judicial nominations is just one of many examples of Republicans saying no, or simply going slow. I know Vermonters cannot wait while politics trump sound policy efforts here in Washington. It is time for a reality check.

While our economy has shown some signs of progress since the economic collapse a few years ago, there is no doubt that domestic job growth has not been as strong as we had hoped. Too many Vermonters are still looking for work, so we need to continue looking for ways to spur job growth and economic investment in this country. Unfortunately, efforts in Congress to increase jobs, reduce unemployment, and support hardworking American families struggling to keep food on the table and roofs over their heads meet with partisan obstruction, too.

While Congress delays, the clock is ticking down for the millions of Americans struggling to afford college, and those struggling to pay back student loan debt after they graduate. In less than two weeks, student loan interest rates will double, threatening to make student loan debt an almost insurmountable obstacle to accessing a college education. Meanwhile, Senate Republicans continue to filibuster commonsense legislation to address this looming deadline.

In less than two weeks, millions of jobs will be put on hold when critical transportation programs, including funding for the Highway Trust Fund, expire. Failing to pass a long term transportation bill jeopardizes thousands of construction and development projects, impacting millions of jobs around the country. The programs supported by impacts every one of our states – which means more jobs lost in an already weak economy. The Senate has passed a bill to bring certainty to this fund for two years. We are still waiting for the House Republican leadership to act on that legislation.

In a little over one month, important legislation to extend the National Flood Insurance Program will expire. The failure to reauthorize this important program puts at risk the sale of thousands of homes at a time when our housing market is still trying to recover. The program expired in 2008, and subsists now on a series of short term extensions. A five-year extension is pending before Congress; Senate Republicans have delayed consideration of that important legislation, too.

Meanwhile, in this election year, Republicans in Congress are more intent on extending the Bush-era tax cuts that contributed to the financial crisis facing us today than in working together to move forward with reasonable policies to bolster economic growth and development. Extending to the wealthiest Americans a lower tax rate will not lead to job creation. These tax cuts have not led to job creation. Meanwhile, businesses continue to shutter their doors, costing communities jobs and economic development.

This Congress has shown what it can do when it casts partisan politics aside, and comes to consensus on meaningful job creating – and job preservation – legislation. The Leahy-Smith America Invents Act is among the best examples of laws enacted in this Congress to promote our American economy and create American jobs. Regrettably, it is one of only a few job-creating bills enacted this Congress.

The outlook this Congress need not be gloom and doom. Working together, we can enact meaningful legislation to close the loopholes that incentivize companies to ship jobs overseas. We can bolster the middle class, rather than the wealthiest one percent of Americans, but promoting job creation through small business development. We can ensure that students graduating from school are not saddled with student loans, the interest rates on which are simply too high to afford. We can do all this, today.

So I am disheartened to hear Republican leaders in Congress say that we are simply done legislating for the year. The reality check is that Vermonters and other Americans cannot wait. President Obama has signaled his commitment to moving forward with job creating legislation to get Americans back to work and to protect America's leadership in the global marketplace. Let us put the politics aside, and focus on the right policy and on the needs of the American people. Let us act on behalf of the people who sent us here. It is past time for the games to end and the work to begin.

Shutting down judicial confirmations makes no sense when the judicial vacancy rate remains almost twice what it was at this point in the first term of President Bush. Senate Republicans

were successful in keeping it near or above 80 for three years. Nearly one out of every 11 Federal courts is currently vacant. As a current report from the nonpartisan Congressional Research Service confirms, not a single one of the last three presidents has had judicial vacancies increase after their first term. President Obama will likely be the first given partisan obstruction. The same recent CRS report notes that the median time circuit nominees have had to wait before a Senate vote has skyrocketed from 18 days for President Bush's nominees to 132 days for President Obama's. This is the result of Republican foot dragging and obstruction. Last year Senate Republicans again refused to act on 19 judicial nominees and delayed consideration of those nominations an extra year.

Three of the five circuit court judges finally confirmed this year after months of unnecessary delays and a filibuster should have been confirmed last year. The other two circuit court nominees confirmed this year were both subjected to stalling and a partisan filibuster by Senate Republicans. So when I hear some Senate Republicans say they are invoking the Thurmond Rule and have decided they are not going to allow President Obama's judicial nominees to be considered, I wonder how the American people can tell the difference. There are longstanding vacancies with nominees ready to fill them that Republicans are delaying unnecessarily for months. How do we tell the difference between the Republican obstruction --that was signaled when they filibustered President Obama's very first circuit court nominee, a nomination supported by the senior Republican in the Senate and the nominee's home state Senator-- and this new application of the Thurmond Rule?

Last week we needed to overcome a filibuster to confirm Justice Andrew Hurwitz of Arizona to the Ninth Circuit despite the strong support of his home state Senators, Republicans Jon Kyl and John McCain. Last month the Majority Leader had to file cloture to secure an up-or-down vote on Paul Watford of California to the Ninth Circuit despite his sterling credentials and bipartisan support. The year started with the Majority Leader having to file for cloture to get an up-or-down vote on Judge Adalberto Jordan of Florida to the Eleventh Circuit even though he was strongly supported by his Republican home state Senator. Every single one of these nominees for whom the Majority Leader was forced to file cloture was rated unanimously well qualified by the nonpartisan ABA Standing Committee on the Federal Judiciary, the highest possible rating. And every one of them was nominated to fill a judicial emergency vacancy.

Did Republicans secretly invoke the Thurmond Rule before this year even started, when they departed from the Senate's traditional practice and would not consent to confirm 19 judicial nominees that were on the calendar at the end of last year? Up until last month, we were considering nominees that could and should have been confirmed last year. Given that we have only confirmed eight judicial nominees that were reported by the Committee this year -- and only two of them circuit court nominees -- it seems oddly premature to declare an artificial cut-off of confirmations when our work this year has only just begun. Among those now being blockaded are nominees waiting since March of this year. So my delaying last year's nominees until May, Senate Republicans effectively prevented consideration of the Shwartz, Taranto and Kayatta nominations for months after being voted out of the Judiciary Committee. The Senate Republican leadership is not shutting off circuit nominees just after June 12, they are blocking nominees ready for consideration since early March of this year.

In 2004, a Presidential election year, the Senate confirmed five circuit court nominees of a Republican President that had been reported by the Committee that year. This year we have confirmed only two circuit court nominees that have been reported by the Committee this year, and both were filibustered. By this date in 2004 the Senate had already confirmed 32 of President Bush's circuit court nominees, and we confirmed another three that year for a total of 35 circuit court nominees in his first term. So far, the Senate has only been allowed to consider and confirm 30 of President Obama's circuit court nominees – five fewer, 17 percent fewer— while higher numbers of vacancies remain, and yet the Senate Republican leadership wants to artificially shut off nominations with no good reason.

There is no reason that the Senate could not vote on consensus circuit court nominees thoroughly vetted, considered and voted on by the Judiciary Committee. There is no reason the Senate cannot vote on the nomination of William Kayatta of Maine to the First Circuit, a nominee strongly supported by both of Maine's Republican Senators and reported nearly unanimously by the Committee two months ago. There is no reason the Senate cannot vote on the nomination of Judge Robert Bacharach of Oklahoma to the Tenth Circuit, who was supported by Senator Coburn during Committee consideration. Senator Coburn said that Judge Bacharach would make a great nominee for a Republican president. So why is the Republican leadership playing politics with his nomination?

There is also no reason the Senate cannot vote on Richard Taranto's nomination to the Federal Circuit. He was reported almost unanimously by voice vote nearly three months ago, and was supported by conservatives such as Robert Bork and Paul Clement. The Federal Circuit has never been controversial before. The one circuit court nominee who was reported out of Committee with a split roll call vote – Judge Shwartz of New Jersey – should not have been controversial, as seen by the bipartisan support she has received from New Jersey's Republican Governor Chris Christie.

Every circuit court nominee that Senate Republicans currently refuse to consent to vote on have been rated unanimously "well qualified" by the nonpartisan ABA Standing Committee on the Federal Judiciary, the highest possible rating. These are not controversial nominees. They are qualified and should be considered as consensus nominees and confirmed. By invoking the Thurmond Rule, Senate Republicans are blocking consent to vote on superbly qualified circuit court nominees with strong bipartisan support. This is a new and damaging application of the Thurmond Rule.

Senate tradition has been that in Presidential election years, nominees receive a vote unless they do not have bipartisan support. In the past five presidential election years, Senate Democrats have never denied an up or down vote to any circuit court nominee of a Republican president who received bipartisan support in the Judiciary Committee. In fact, during the last 20 years, only four circuit nominees reported with bipartisan support have been denied an up-or-down vote by the Senate and all four were nominated by President Clinton and blocked by Senate Republicans. While Senate Democrats have been willing to work with Republican presidents to confirm circuit court nominees with bipartisan support, Senate Republicans have repeatedly obstructed the nominees of Democratic presidents. In the previous five presidential election years, a total of 13 circuit court nominees have been confirmed after June 1. Not surprisingly, 12

of the 13 were Republican nominees. Clearly, this is not tit-for-tat as some contend but, rather, a one way street in favor of Republican presidents' nominees.

The precedent for this decision by Senate Republican Leadership to shutdown the confirmation process for well-qualified consensus nominees is their prior actions obstructing the President Clinton's nominees. Senator Schumer held a Judiciary Committee hearing in May 2002 to shed light on the harmful and damaging practice of stalling and obstructing of qualified, consensus nominees that had occurred during the last years of the Clinton administration. Of course, there was the nomination of Bonnie Campbell of Iowa to the Eighth Circuit. Ms. Campbell was the first woman ever elected to be Attorney General of Iowa. She was also once named by Time Magazine as one of the 25 most influential people in America. She served as President Clinton's head of the Office on Violence Against Women. Despite having the support of her home state Senators, Senator Grassley and Senator Harkin, she never received a Committee vote after her hearing.

How ironic that last week the junior Senator from Utah tried to claim credit for progress this year by comparing confirmations to the 1996 session. The Senate Republican majority that year stalled most of President Clinton's nominees and would not allow the confirmation of any circuit court nominees. That is not a record to be proud of but a record that led to Chief Justice Rehnquist criticizing the Senate Republicans for their obstruction. This should not be a race to the bottom but that seems to be the intent of Senate Republicans.

By contrast, if we look at the last two presidential election years, we will see we were able to bring the number of judicial vacancies down to the lowest levels in the past 20 years. In 2004 at end of President Bush's first term, vacancies were reduced to 28 not the 75 at which they are today. In 2008, in the last year of President Bush's second term, we again worked to fill vacancies and got them down to 34, less than half of what they are today. In 2004, 25 nominees were confirmed between June and the presidential election, and in 2008, 22 nominees were confirmed between June and the presidential election.

The nonpartisan Congressional Research Service recently released a report confirming that judicial nominees continue to be confirmed in presidential election years, except it seems when there is a Democratic President. In five of the last eight presidential election years, the Senate has confirmed at least 22 circuit and district court nominees after May 31. The notable exceptions were during the last years of President Clinton's two terms in 1996 and 2000 when Senate Republicans would not allow confirmations to continue. Otherwise, it has been the rule rather than the exception. So, for example, the Senate confirmed 32 in 1980; 28 in 1984; 31 in 1992; 28 in 2004 at the end of President George W. Bush's first term; and 22 after May 31 in 2008 at the end of President Bush's second term.

We have heard lots of excuses from Senate Republicans, who have tried to shift the blame for the judicial vacancy crisis to the President-- much as they try to blame him for the debt of European countries and other matters. They claim that the President has not made enough nominations. With last week's announcement that Senate Republicans refuse to confirm any more circuit court nominees, that excuse melts away. There are nominees ready to be confirmed and the reason

they are not being considered is Republican obstruction. This is wrong. I wish they would not put politics ahead of the needs of the American people.

The across-the-board obstruction of President Obama's nominees is not the product of a Thurmond Rule to limit confirmation at the end of presidential election years to nominees with bipartisan support. Rather this is a continuation of obstruction that began as soon as this President was elected. Senate Republicans insisted that filibusters of President Bush's judicial nominees were unconstitutional, yet they reversed course and filibustered President Obama's very first judicial nomination, that of Judge David Hamilton of Indiana, a widely-respected 15-year veteran of the Federal bench nominated to the Seventh Circuit and who had the support of his home state Senator, the longest-serving Republican in the Senate. Senate Republicans filibustered the nomination of Judge Barbara Keenan of Virginia to the Fourth Circuit before she was confirmed 99-0, and the nomination of Judge Denny Chin of New York to the Second Circuit was filibustered before he was confirmed 98-0 after four months of needless delays.

At a time when judicial vacancies remained historically high for three years, with 30 more vacancies and 30 fewer confirmations than at this point in President Bush's first term, I would hope the Senate Republican leadership would reconsider and work with us on filling these longstanding judicial vacancies to help the American people. We have well-qualified, consensus nominees with bipartisan support who can fill these vacancies. It is only partisan politics and continued tactics of obstruction that stand in the way.

Is it any wonder why Congress is so unpopular? I take no comfort in the rise in the congressional approval rating -- it is from 9 percent to 17 percent. This is this kind of obstruction that turns off the American people. Stop the senseless obstruction -- whether you call it the Thurmond rule or not-- and start helping the American people by easing the burden on them and the courts around the country.

Today, the Senate will vote on the nomination of Mary Geiger Lewis to fill a judicial vacancy in the U.S. District Court for the District of South Carolina. Ms. Lewis has the support of her Republican home state Senator Lindsey Graham. Her nomination was voted on and got bipartisan support in the Judiciary Committee over three months ago. I thank the Majority Leader for his work in securing a vote on this nomination.

Mary Lewis has worked in private practice for over 25 years at the law firm Lewis & Babcock LLP, and has tried approximately 15 cases to verdict or final judgment. Born in Columbia, South Carolina, she earned her J.D. from the University of South Carolina and served as a law clerk to Judge Owens Taylor Cobb in the South Carolina Judicial Department. The ABA Standing Committee on the Federal Judiciary unanimously rated Ms. Lewis "qualified" to serve on the district court. I support Ms. Lewis and hope she will be confirmed.

I also hope that Senate Republicans will reconsider their wrongheaded move to shut down the confirmation of consensus, well-qualified circuit court nominees. Given our overburdened Federal courts and the need to provide all Americans with prompt justice, we should all be working in a bipartisan fashion to confirm these nominees.

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