

**Received(Date):** 2 MAY 2002 08:56:27

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Free Congress Foundation's  
Notable News Now  
May 2, 2002

The Free Congress Commentary  
Will Pat Leahy Ever Do the Right Thing?  
By John Nowacki

Last week, Senate Judiciary Committee Chairman Patrick Leahy finally permitted a hearing for one nominee to the U.S. Court of Appeals for the Sixth Circuit. That's a start, but it's not nearly enough.

The Sixth Circuit is a court with a real vacancy crisis. Eight of its 16

judgeships are vacant, despite President Bush having nominated seven individuals to fill those vacancies. Two of those nominees, Ohio Supreme Court Justice Deborah Cook and former Ohio Solicitor General Jeffrey Sutton, have been waiting 357 days just to receive a hearing. Three others have waited since November 8, and a fourth has been waiting since December 19.

There's simply no justification for Leahy having taken so many months to do anything about this half-empty court.

He's certainly not stalling because of questions about their qualifications.

Their American Bar Association reviews - what Leahy calls "the gold standard by which judicial candidates are judged" - rate them qualified or well-qualified.

For most of them, it isn't a question of home state Senator support, either.

The Ohio and Kentucky nominees - and the Tennessee nominee who finally received a hearing - all have the backing of their home state Senators.

Leahy's blockade is really about two things: payback from Michigan's Senators and the Democrats' political litmus test.

In a letter written to Leahy last August, Michigan Senators Carl Levin and Debbie Stabenow asked that the Judiciary Committee chairman refuse to act on

all of President Bush's nominations to the Sixth Circuit until two former Clinton nominees have their situation "resolved."

They've insisted that Bush re-nominate and the Senate confirm Helene White -- Levin's cousin-in-law -- and Kathleen McCree Lewis, neither of whom were confirmed when they were actually nominees. "Fairness demands that these two women be granted expeditious consideration by the White House and Senate," they wrote to Leahy. "We urge you to determine who held up their nominations in prior years."

The Levin - Stabenow position is interesting, given that Bush actually did re-nominate two unconfirmed Clinton nominees, one when he nominated Cook and

Sutton nearly a year ago, and another in January. Bill Clinton never re-nominated any of the more than 50 Bush nominees left unconfirmed at the end of 1992. And no one expected him to. Demanding that Bush to repeat for

the third and fourth time what was unprecedented when he first did it is even more unreasonable.

Leahy didn't comment publicly on whether he'd oblige the Michigan Democrats, but his months of refusing to hold hearings -- not just for the three Michigan nominees, but for those from other Sixth Circuit states, too - were a fairly clear answer.

Even with one hearing for the seven Sixth Circuit nominees, the prospects for resolving the court's vacancy crisis are bleak. While Leahy allowed a



hearing for the Tennessee nominee, and might permit one for the Kentucky nominee, the Michigan nominees remain hostages to their home state Senators' unreasonable demands.

Then there are the Ohio nominees - Cook and Sutton. Both are qualified and capable nominees, Both have taken legal positions that followed the law while yielding results liberals dislike. And both were nominated by a Republican to a court with six serving Democrat appointees and two serving Republican appointees, a balance that some in the Senate would refer to as "perfect moderation." Having run afoul of the Democrats' political litmus test, their chances don't look any better than those of the Michigan nominees.

Last week, Leahy acknowledged that a former chief judge of the Sixth Circuit said the court was "hurting badly" with four vacancies, and that the situation had been "exacerbated further" by additional vacancies since the Democrats took over the Senate. In his own words, from another time under another President: "Those who delay or prevent the filling of [vacancies] must understand that they are delaying or preventing the administration of justice."

Senator Leahy knows how to solve this problem. The question is when he'll feel guilty enough to do something about it.

John Nowacki is Director of Legal Policy at the Free Congress Foundation.

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