

U.S. SENATOR PATRICK LEAHY

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Statement Of Senator Patrick Leahy Nomination Of Victor Wolski To The United States Court Of Federal Claims July 9, 2003

I have concerns about the President's nominations to the United States Court of Federal Claims and the manner he has gone about making his selections. Although this Article I court is unknown to many people outside of Washington, its rulings have a national impact in a variety of areas. For example, the Court of Federal Claims has exclusive jurisdiction for almost all so-called "takings" cases that seek large monetary damages from the government. These cases directly affect the government's ability to protect the health and safety of citizens and our environment.

The first nominee we are considering today, Victor Wolski, was incidentally the last one nominated to this court. Some may wonder why the Senate majority has been pushing his confirmation ahead of the other less controversial nominees. I fear that Mr. Wolski was selected for this particular nomination to implement his ideological agenda from the bench. Perhaps that is why his nomination was also given priority over the others to this court.

Just a few years ago Mr. Wolski told the National Journal that every single job [he has] taken since college has been ideologically oriented, trying to further [his] principles." He has dedicated his brief legal career to expanding property rights and restricting the power of government to protect its citizens. I am seriously concerned that as a judge he will continue to "further his principles" from the bench by emphasizing what he views as "property rights" over environmental protection.

It is one thing for a President to appoint members of his Cabinet to carry out his political and ideological agenda but it should be different with respect to judicial appointments. This nomination is for a judicial position that requires fairness and impartiality. Mr. Wolski threatens to bring a proven anti-environmental record to this court and I have serious reservations about his ability to act as a fair and impartial arbiter. The President should not be able to tip the scales of justice by packing the courts with ideologues who are selected to implement his political agenda.

At his Committee hearing, Mr. Wolski's anti-environmental record and intemperate statements raised a great deal of concern. At the Judiciary Committee Executive Business meeting when this nomination was considered, some Members voted against reporting him out of Committee and some of us voted "present" in light to the manner that the Administration and the Republican majority had proceeded.

This Administration's approach to nominations to the Court of Federal Claims in a unilateral approach rather than building on the bipartisanship on which Republican Senators insisted when a Democrat was in the White House and which dates back to the creation of this court in

the early 1980s, under President Reagan.

I recall, for example, President Reagan's appointment of Judge John Wiese, a Democrat, to the newly-formed Claims Court in 1982. President Clinton followed this bipartisan example when he re-nominated Christine Miller, a Republican who was a Reagan appointee to the Court of Federal Claims. What was important was not just that they named people from another political party but that they did so after consultation.

In another instance, I recall that President Clinton had the power to remove Chief Judge Loren Smith from his leadership position and received intense lobbying to remove him from environmentalists who were troubled by the Chief Judge's record. Instead of exercising his unilateral power to name his own Chief Judge, President Clinton consulted with Senate Republicans and opted to let Loren Smith continue as Chief Judge as an accommodation to Chairman Hatch and other Republicans. In exchange, Chairman Hatch allowed several Clinton nominees to receive a hearing and a vote. Chairman Hatch also negotiated to have a former staffer of his included in President Clinton's slate of nominee to this court and established a bipartisan panel in 1997 and 1998 to help make recommendations to fill vacancies on the Court.

These examples of bipartisanship demonstrate that past Presidents of both parties have been involved in bipartisan consultations and the appointment of judges to the Court of Federal Claims from opposing parties.

In spite of this Administration's refusal to follow that bipartisan tradition, during the 107th Congress, when the Democrats were in the majority, we took the bipartisan action of moving the nomination of Larry Block, another staff member for Senator Hatch, to the Court of Federal Claims at the request of the Ranking Member. At that time, I noted that we would expect fairness and consideration in return, including true bipartisan consultation with respect to the remaining Court of Federal Claims nominations. Despite our accommodation to the Administration and to Senate Republicans on Mr. Block's nomination, the White House refused to consult with us.

Until a few months ago Judge Sarah Wilson was serving with distinction on the Court of Federal Claims as a recess appointment by President Clinton on whose nomination Senate Republicans had refused to act. Ms. Wilson is a well respected and talented lawyer who graduated from Columbia Law School, clerked for a federal judge, was a fellow with the Administrative Office of the Courts, and served in the Department of Justice and in a prior White House. Yet, the Administration and the Senate Republicans refused to consider her nomination for a full term on the court.

The many bipartisan discussions involving appointments to the Court of Federal Claims have helped the confirmation process for the Court of Federal Claims nominees. This cooperation has broken down, however. This Administration is acting unilaterally in complete disregard for tradition, bipartisanship and fairness. We all know that we work better when we work together in a bipartisan manner, when we honor traditions and rules that respect both sides of the aisle, when there is advising as well as consenting. It is unfortunate that this Administration refuses to honor those traditions and bipartisanship.

For several months, Members of the Judiciary Committee have been calling for hearings to investigate the caseload of this court and whether its caseload requires the confirmation of

additional judges. In the wake of the recent Washington Post editorial questioning the Court of Federal Claims and recent studies and conflicting comment that seemed prudent. Instead, the majority is insisting on proceeding at this time.

In light of all of these factors, I join the senior Senator from New York in opposing the nomination of Victor Wolski.

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