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## Senate

### Statement of Senator Dianne Feinstein

*On the Nomination of William Pryor to be U.S. Circuit Court Judge*

Mrs. FEINSTEIN. Mr. President, thank you very much. I thank the chairman of the committee and I thank the ranking member.

I have served on this committee for 10 years. I love this committee. The Presiding Officer serves on this committee. It is a challenging committee. It is particularly challenging for me because I am a nonlawyer. I have had a great opportunity to work across the aisle on any number of different proposals with the chairman of the committee, with the Senator from Arizona, Mr. Kyl, with Senator Lindsey Graham, with others. I have enjoyed it. There has always been a spirit of collegiality.

However, that spirit of collegiality is at a crossroads. Something very ugly has been injected. It has to do with this nominee, and it has to do with circumstances around this nominee. I will spend a few moments discussing them. This kind of thing that has been going on has to stop.

Last week, the Democratic members of the committee were accused by outside groups, and even some of our colleagues on the committee, of applying an anti-Catholic religious litmus test on the nomination of William Pryor. These charges are false. They are baseless. They are offensive. And they are beneath the dignity of a Senate committee tasked with making very important decisions on the future of the Federal judiciary.

We have heard a lot about the ad. I never thought I would see an ad like this. It is a rather insidious ad. I will not show it, but I will describe it. It is two courtroom doors. Atop it says "Judicial Chambers." On the doorknob hangs a sign that says "Catholics Need Not Apply." When I saw this ad, I thought we were going back decades. When I saw this ad, I thought: Uh-oh, if there is one thing I know -- and I have watched cities polarized, I have seen assassinations result from the

polarization -- I know what happens when people seek to divide. One of the easiest ways to divide is to use race or religion in an adverse manner.

That is what this ad sought to do. It sought to divide.

Then I watched C-SPAN the other night. I saw clergy discussing the ad. I saw them beginning to believe that religious litmus tests were being used by the Judiciary Committee. Now, in fact, that has never been the case.

Senator Schumer pointed out during Mr. Pryor's markup in the committee that this kind of thing is becoming somewhat of a pattern. Once it becomes a pattern, no one really knows where it goes.

We have not opposed a lot of nominees. The ranking member has made that clear: 140 nominations have gone through. Just today we had a hearing in the morning. I introduced two California judges who were going

through in a 4-month period of time, new judges produced because the chairman and the ranking member agreed there was a very heavy caseload in San Diego and there should be a number of new judges. They were nominated in May. Already these judges have had their hearing. So good things do happen. However, each time we have opposed a nominee, there has been bias used as a rationale for those who do not agree with us, to purport that bias is part of our rationale. It happened with an anti-Hispanic charge with Miguel Estrada, an anti-woman charge with Priscilla Owen, an anti-Baptist charge with Charles Pickering, and now with William Pryor an anti-Catholic charge.

You have no idea what happens when this begins to circulate throughout the electorate. People do not know exactly what goes on. It is a dastardly thing to do. In a sense it is scurrilous, because it caters to the basic insecurity of all of us who share a religion that may be different from someone else's. So it has a truly insidious quality to it.

To call us anti-woman -- I don't have to tell you how bizarre it is for me to be called anti-woman. And to say we have set a religious litmus test is really equally false.

Many of us have concerns about nominees sent to the Senate who feel so very strongly, and sometimes

stridently, and often intemperately about certain political beliefs and who make intemperate statements about those beliefs. So we raise questions about whether those nominees can be truly impartial, particularly when the law conflicts with those beliefs.

It is true that abortion rights can often be at the center of these questions. As a result, accusations have been leveled that any time reproductive choice becomes an issue, it acts as a litmus test against those whose religion causes them to be anti-choice. But pro-choice Democrats on this committee have voted for many nominees who are anti-choice and who believe that abortion should be illegal, some of whom may even have been Catholic. I do not know because I have never inquired.

So this truly is not about religion. This is about confirming judges who can be impartial and fair in the administration of justice. I think when a nominee such as William Pryor makes inflammatory statements and evidences such strongly held beliefs on a whole variety of core issues, it is hard for many of us to accept that he can set aside those beliefs and act as an impartial judge -- particularly because he is very young,<sup>41</sup>; particularly because this is a lifetime appointment; and particularly because we have seen so many people who have received lifetime appointments then go on and

do just what they want, regardless of what they said. So it is of some concern to us.

I hope these accusations will stop. I hope we can focus on the merits of each nominee, not on baseless allegations against Members of the Senate who are trying to do their constitutional duties.

I am very concerned because, to date, not a single Member on the other side has said they believe these ads are baseless, have said they know we do not practice this kind of decisionmaking. No one has disavowed these ads.

So I call on the committee to disavow these ads. I call on the administration to disavow these ads. And I call on them to set the record straight.

There was a time in our history when the phrase "Catholics need not apply" was used to keep countless qualified Americans from pursuing the American dream. The same can be said for "no Jews need apply" and "no Irish need apply." And, much like Justice Sandra Day O'Connor, when she first looked for her first job and I first looked for my first job, really "women need not apply." In fact, I lost my first job to a man who was less qualified than I, but I was a woman and I had a small child and at that time that was not much coin of the realm to get a job. So I was beaten out many times by men who were less qualified -- had less

academic experience, less graduate experience, et cetera.

These were dark times in American history and many of us in this body remember those times. But every one of us should be absolutely committed to preventing those days from ever recurring. What this is a sign of is that those days are beginning to occur again.

I hope we do not see political cheap-shot artists bringing painful phrases back for the purposes of intimidating Senators and stacking Federal courts. We should be above that in this debate. This is the Senate, as the distinguished Senator from Nevada has said, and our constitutional duty should not be marred by false allegations or intimidating political tactics. Our Nation's history in fighting bigotry of all kinds must continue. I urge my colleagues very sincerely to condemn these tactics and move on to debating the merits of controversial nominees.

Now a second event at the Pryor markup also disturbed me greatly and was especially troubling because we faced a repeated refusal to acknowledge the clear application of a longstanding committee rule on ending debate. Without the violation of the rule, Mr. Pryor would still be before the Judiciary Committee, as I deeply believe he should be.

The Judiciary Committee rules contain a clause known as Rule

4 that prevents closing off debate on a nominee unless at least one member of the minority agrees to do so.

It isn't used a lot but it has been used before when I have been on the committee.

During debate on the Pryor nomination, the Ranking Member attempted to invoke this rule because members of the minority did not believe that an ongoing investigation into Mr. Pryor's nomination had been given sufficient time.

Serious allegations were made about Mr. Pryor's truthfulness to the committee during the hearing, and staff had been looking into those allegations. Put simply, the job has not been completed.

But, as Chairman Hatch did earlier this Congress with regard to the nomination of Deborah Cook and John Roberts, he chose to ignore this rule and force through a vote over the objections of every member of the minority on the committee.

We thought the issue had been resolved during discussions over what happened last time, but apparently we were wrong.

The rule contains the following language:

*“The Chairman shall entertain a non-debatable motion to bring a matter before the Committee to a vote. If there is objection to bringing the*

*matter to a vote without further debate, a rollcall vote of the Committee shall be taken, and debate shall be terminated if the motion to bring the matter to a vote without further debate passes with ten votes in the affirmative, one of which must be cast by the Minority.”*

That is a reading on its face. It stands on its face. It is what it is.

Over the last few decades, it has clearly meant that unless one member of the minority agrees to cut off debate and move straight to a vote, no vote can occur. This is one of the only protections the minority party has in the Judiciary Committee. Without it, there might never be debate at all. A chairman could convene a markup, demand a vote, and the entire process would take 2 minutes. This is not how a deliberative body should function, and more importantly, it is contrary to the rules. Either the rules are observed or we have chaos on the committee. If we do not like the rules, we should change the rules. But we should follow the rules.

As I understand it, this rule was first instituted in 1979. Senator Kennedy was chairman of the committee at the time. It has been followed ever since.

Senator Hatch, our current chairman, has also followed the rule. I make no bones

about the fact that I am very fond of the chairman, but he has been going through some kind of a change lately, and I don't quite know what it is.

During the markup of Bill Lann Lee to be the Assistant Attorney General for the civil rights division, there was some fear that Republicans, who had the votes to defeat the nomination would move directly to a vote and prevent any debate on the issue at the markup. Democrats, on the other hand, wanted the chance to explain their position, and maybe even try to change some minds on the other side.

During that markup, then, there was significant discussion about what Rule IV, the rule about cutting off debate, really means. At one point, it is interesting to note, Chairman Hatch himself commented that:

*“At the appropriate time, I will move to proceed to a vote on the Lee nomination. I assume there will be no objection. It seems to me he deserves a vote. People deserve to know where we stand on this issue. Then we will, pursuant to Rule IV, vote on whether to bring the Lee nomination to a vote. In order to vote on the nomination, we need at least one Democrat to vote to do so.”*

That is precisely what we are discussing, Mr. President. The situation then was the same as the situation regarding Mr. Pryor. *In order to vote on the*

*nomination, we need at least one Democrat to vote to do so.* But we never even had the chance to vote on cutting off debate.

I don't need to lecture this body that we are a nation of laws. We know that. We expect these laws to be obeyed. This is a Senate of rules. Our rule book is 1,600 pages long. There is no greater expert on rules than the senior Senator from the great State of West Virginia. Rules have always been observed. Some of them are complicated. This happens to be pretty simple, and we all understand it.

I want to spend a moment on the materials that have been before us that are being investigated. The materials in question came to the Judiciary Committee just 2 or 3 weeks ago.

Those materials raise real questions about whether Mr. Pryor misled the Committee about his activities on behalf of the Republican Attorneys General Association, a fund-raising organization that I believe raises serious concerns about conflicts of interest.

For instance, questions have been raised about whether Mr. Pryor raised money from tobacco companies, while at the same time arguing against pursuing those companies through litigation. I don't know whether this allegation is true or not true. None of us

do. But we should look into it and we should be able to match his statements to the Committee with the facts.

There are other areas where the documents given to the Committee suggest that Mr. Pryor may not have been completely forthcoming at his hearing.

Mr. President, we will never get past the partisan bad-feelings that are increasingly apparent in the Judiciary Committee if we cannot even rely on having our rules followed.

On the merits, this is a nominee who has been before us for just a few months.

I mentioned the investigation. I mentioned rule 4. But let me go into a couple of the merits from our side and our point of view.

As I have said, an investigation into some documents that came to this Committee just a few weeks ago is ongoing. Those materials raise real questions about whether Mr. Pryor misled the Committee about his activities on behalf of the Republican Attorneys General Association, a fund-raising organization that I believe raises serious concerns about conflicts of interest.

Aside from the fund-raising issue, Mr. Pryor has been activist, politically strident, Attorney General. He has NOT shown the temperance or

even-handedness necessary for a judge.

He used his position as Attorney General to limit the scope of crucial civil rights laws like the Violence Against Women's Act (VAWA), the Age Discrimination In Employment Act, the American with Disabilities Act, the Fair Labor Standards Act, and the Family Medical Leave Act.

**Mr. Pryor doesn't believe that the Federal government should be involved in "education or street crime."**

Mr. Pryor calls Roe v. Wade "the worst abomination of constitutional law in our history." He has written that he could "never forget January 22, 1973, the day seven members of our highest court ripped out the life of millions of unborn children." That is a quote. It is a very strong statement.

He has lobbied for the repeal of section V of the Voting Rights Act.

After the Bush v. Gore decision, Pryor made the astounding statement, "*I'm probably the only one who wanted [the decision] 5-4 ... I wanted Governor Bush to have a full appreciation of the judiciary and judicial selection so we can have no more appointments like Justice Souter.*"

This is a sitting attorney general taking on a Justice of the U.S. Supreme Court by name. I

have never heard of that before. Of course, there is always a first time. It was also an attack on a Justice who was well known as being more moderate than he was expected to be and who does not simply toe a party line.

So is Mr. Pryor saying he would want only those judges who remain completely faithful to the ideology of those who choose them? Is he saying that Justice Souter is simply not conservative enough? I think he is.

Mr. Pryor has taken positions so extreme that they are at odds with the rest of the Nation's attorneys general. For example, he was the only attorney general to argue against a key provision in the Violence Against Women Act on federalism grounds.

So there is a reason we feel strongly about it.

My experience is that in appointing someone to the trial bench when that individual has never been a judge is probably a good idea, even if they are an attorney general. One can make some judgments about people who hold political office and who are strong advocates as to whether in fact they can separate themselves from their ideology, whatever that ideology may be. I believe people can do this. I voted for Jeffrey Sutton because I had that belief. In this case, I am not so sure because the rhetoric is so strident and so

very intemperate.

The Senator from Alabama, who is present on the floor, believes he can, and there are people who believe he can. But I think the jury is out because there is a venture into an attack on a sitting U.S. Supreme Court Justice, there is a characterization of a landmark Supreme Court case as "an abomination," and other things as well. There is an attack on many significant -- significant to those of us on this side of the aisle -- pieces of Federal legislation.

Truly, this is a nomination that deserves and merits debate -- an open debate. But I would like the debate to take place with the observation of the rules of the committee and after the investigation that is ongoing is finished.

I hope the Senator from North Dakota's importuning to leadership is taken. We don't need to have a cloture vote at this time on this nominee. That cloture vote can come after the results of the investigation are finished -- certainly after the Energy bill -- because I think if a cloture vote is taken, these arguments I have made on the merits of the case are really going to be dispositive as far as votes on our side are concerned.

I thank the Chair. I yield the floor. I thank very much the chairman of the committee.