



May 7, 2008

Summary of Judicial Nominations In the 110th Congress

Historically, the Senate has confirmed a significant number of judicial nominees in the final two years of a President's term.¹ In 1999 and 2000, the last two years of President Clinton's presidency, a Republican Senate confirmed 15 circuit and 57 district court judges. In the 110th Congress, the Senate has confirmed only 7 circuit and 38 district court nominees of President Bush to date. This delay is not only unfair to individual nominees but is also unfair to current litigants whose cases may be delayed due to judicial vacancies and to current judges who are required to manage larger caseloads. The President and the Senate have an obligation to ensure that the nation's courts are fully staffed by quality men and women who are devoted to impartial justice.

Overview of Judicial Nominations as of May 6, 2008

- **46** – The number of judicial vacancies.²
- **31** – The number of judicial nominations pending in the Senate, including 10 court of appeals nominees and 21 district court nominees.
- **15** – The number of vacancies for which the President has not submitted a nomination, including 2 vacancies on the courts of appeals and 13 vacancies on the district courts.
- **17** – The number of judicial emergencies in the federal court system, as defined by the non-partisan Judicial Conference.³
- **45** – The number of judicial nominations confirmed during the 110th Congress, including 7 court of appeals judges and 38 district court judges.

¹ During the last two years of the last five presidents' terms, the Senate confirmed an average of 24 circuit and 94 district court judges. For President Carter, the Senate confirmed 56 circuit and 154 district court nominees; for President Reagan, 17 circuit and 66 district court nominees; and the first President Bush, 20 circuit and 100 district court nominees.

² http://www.uscourts.gov/cfapps/webnovada/CF_FB_301/index.cfm?fuseaction=Reports.ViewSummary

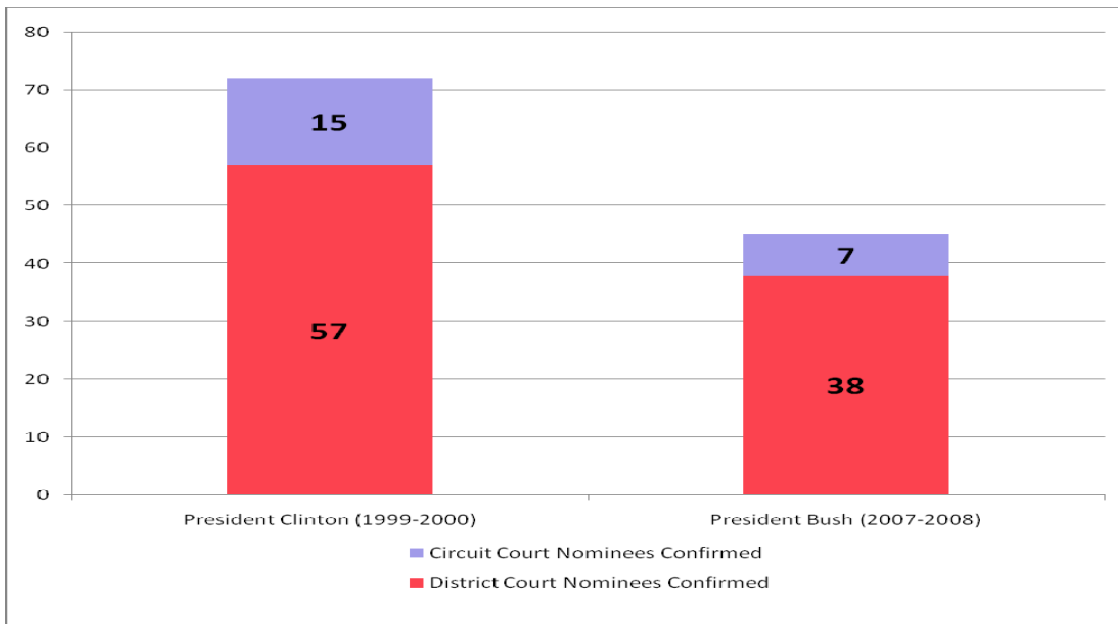
³ The Judicial Conference labels a vacancy a "judicial emergency" when filings are excessive and/or when a vacancy has existed for more than 18 months. For detailed information, see http://www.uscourts.gov/cfapps/webnovada/CF_FB_301/index.cfm?fuseaction=Reports.ViewEmergencies.

Historic Judiciary Confirmation Rates

The progress with respect to confirmation of judicial nominations in the 110th Congress, particularly circuit court nominations, is troubling. The Senate has fallen far behind in confirming judicial nominations this Congress.

Comparisons between the 110th Congress and the 106th Congress demonstrate the disparate treatment currently being afforded President Bush's nominees in his last 2 years in office than was afforded to President Clinton's nominees during his last 2 years in office. In 1999 and 2000, President Clinton nominated and a Republican Senate confirmed 15 circuit court and 57 district court nominees. By comparison, nearly 16 full months into the 110th Congress, the Senate has confirmed only 7 of President Bush's circuit court nominees and 38 of his district court nominees. The following chart demonstrates the decline in the number of judges confirmed by the Senate during the final 2 years of the Clinton presidency compared to the Bush presidency.

Nominees Confirmed in Last Two Years of a President's Term



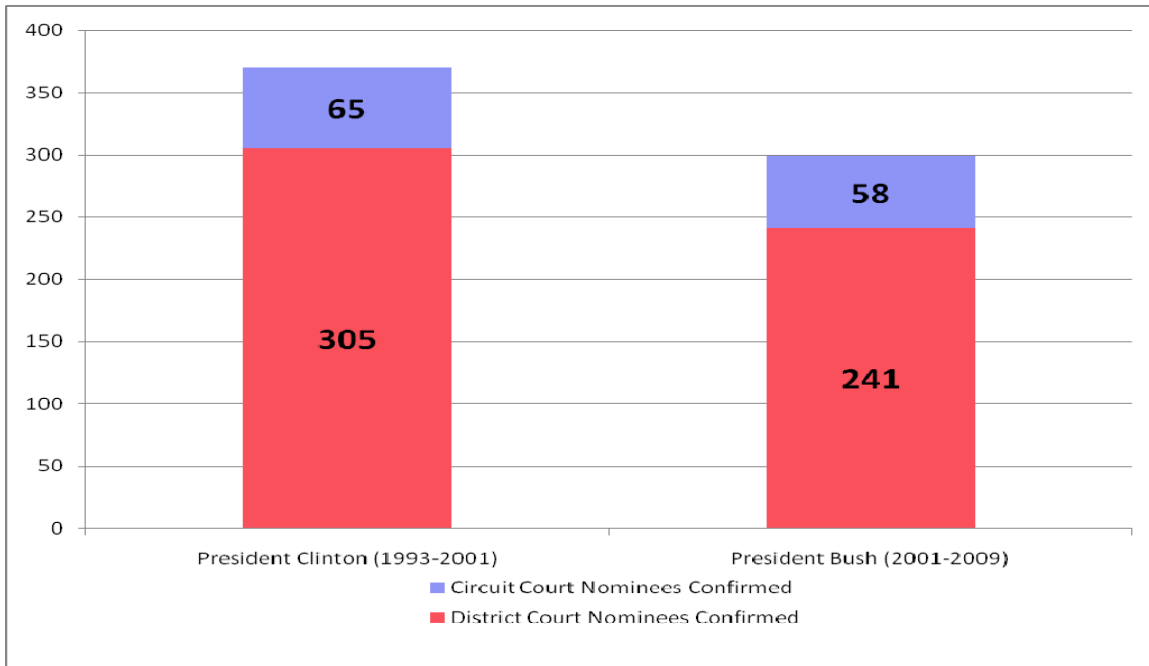
As Senator Hatch noted in a Senate floor speech, the reason for the delay lies primarily with the Judiciary Committee because the committee “has simply not been holding hearings for nominees to the U.S. Court of Appeals.”⁴ In 1999 and 2000, 15 of President Clinton’s circuit court nominees had confirmation hearings compared to only 5 hearings for President Bush’s nominees in 2007 and 2008. In the previous 15 Congresses, the Judiciary Committee held an *average* of 23 confirmation hearings for circuit court nominees.

⁴ Senator Orrin G. Hatch, *Congressional Record*, April 16, 2008, S3045.

In fact, between September 25, 2007 and February 21, 2008 (149 days) the Judiciary Committee did not hold a single hearing on a circuit court nomination.⁵ Furthermore, when the Senate confirmed Catharine Haynes to the Fifth Circuit on April 10, 2008, the Senate reached a dubious landmark. That date marked the latest start for judicial confirmations in a presidential election year in the last 160 years.⁶ In all previous presidential election years, dating back to 1848, the Senate confirmed the first federal judge by the end of February.

In order for the Senate to keep pace with the confirmation rate of President Clinton’s nominees, the Senate would have to confirm 8 more circuit court nominees of President Bush and 19 more district court nominees in 2008. Should the Senate achieve these numbers, President Bush would still remain far behind President Clinton in total confirmations during their respective times in office. The Senate confirmed 65 circuit court judges and 305 district judges nominated by President Clinton. To date, the Senate has confirmed only 58 of President Bush’s circuit court nominees and 241 of his district court nominees. The following chart demonstrates the number of vacancies filled during the entirety of the Clinton and Bush presidencies.

Total Nominees Confirmed During Clinton and Bush Presidencies⁷



⁵ The September 25, 2007 committee hearing included consideration of the nomination of John Daniel Tinder, a nominee for the Seventh Circuit. The February 21, 2008 hearing included consideration of the nomination of Catharine Haynes, a nominee for the Fifth Circuit.

⁶ Senator Orrin G. Hatch, *Congressional Record*, April 16, 2008, S3045.

⁷ Congressional Research Service (CRS), “Nominations to Article III Lower Courts by President George W. Bush During the 110th Congress,” CRS Report for Congress RL33953, May 2, 2008.

Pending Circuit Court Nominees⁸

	NOMINEE	DATE VACANT	NOMINATION DATE (PREV. NOM)	ABA RATING ⁹	FBI BACKGROUND CHECK	BLUE SLIP	SENATE ACTION
1	Peter Keisler (MD, DC Circuit)	9/29/05	1/9/07 (6/29/06)	Unanimously Well Qualified	6/30/06	N/A	Hearing 8/1/06 No further action
2	Gene Pratter (PA, 3 rd Circuit)	10/23/06	11/15/07	Unanimously Well Qualified	12/3/07	No	No Action
3	*Robert Conrad, Jr. (NC, 4 th Circuit)	7/31/94	7/17/07	Unanimously Well Qualified	8/8/07	Yes	No Action
4	Steve Matthews (SC, 4 th Circuit)	7/1/07	9/6/2007	Sub Maj Q / Min Not Q	12/5/07	Yes	No Action
5	*Raymond Kethledge (MI, 6 th Circuit)	1/1/00	3/19/07 (6/28/06)	Sub Maj WQ / Min Q	6/30/06	Yes	Hearing Scheduled 5/7/08
6	*Helene White (MI, 6 th Circuit)	1/25/06	4/15/08	Awaiting Rating	4/25/08	Yes	Hearing Scheduled 5/7/08
7	*Rod Rosenstein (MD, 4 th Circuit)	8/31/00	11/15/07	Unanimously Well Qualified	1/14/08	No	No Action
8	*Shalom Stone (NJ, 3 rd Circuit)	1/31/06	7/17/07	Sub Maj Q / Min WQ	7/30/07	No	No Action
9	*William E. Smith (RI, 1 st Circuit)	12/31/06	12/06/07	Sub Maj WQ/ Min. Q	1/14/08	No	No Action
10	*G. Steven Agee (VA, 4 th Circuit)	5/10/06	3/13/08	Unanimously Well Qualified (1 abstention)	3/20/08	Yes	Hearing held 5/1/08, on Mark- up on 5/8/08
11	Awaiting Nominee (4 th Circuit)	7/17/07	N/A	N/A	N/A	N/A	No Action
12	*Awaiting nominee (9 th Circuit)	12/31/04	N/A	N/A	N/A	N/A	No Action

*Indicates judicial emergency.

⁸ Source: Senate Judiciary Committee, Minority Staff. Information current as of May 6, 2008.

⁹ The American Bar Association rating is determined by an ABA panel. "Sub Maj WQ/Min Q" means a majority of the panel found the nominee "well qualified" and the remainder "qualified." "Sub Maj Q/Min WQ" means the majority of the panel found the nominee "qualified" and the remainder "well qualified."

Conclusion

The United States Senate still has considerable work to do in order to confirm circuit and district court nominees during the remainder of President Bush's term. Many vacancies are considered emergencies. Those seats need to be filled in order to ensure the proper administration of justice. The next step in the process for many nominees would be a hearing before the Judiciary Committee. The committee and then the Senate should move quickly to confirm those nominations currently pending.