



September 28, 2004 (updated)

The Assault on Judicial Nominations in the 108th Congress

- In February 2003, Senate Democrats launched the first filibuster designed to permanently deny an up-or-down vote on a judicial nomination. The target was Miguel Estrada, a Honduran immigrant and Harvard Law School graduate nominated to serve on the overworked D.C. Circuit. **After two years, more than 100 hours of debate, and 7 cloture votes**, Mr. Estrada withdrew in the face of this continued obstruction. Democrats had claimed their first victim.
- The rationale for the filibuster was always weak, but it has only deteriorated over time. Some Democrats claimed they blocked a vote on Mr. Estrada because they wanted more information, but they now refuse to vote on four nominees to the Sixth Circuit because the Michigan Senators demand a right to name appellate court nominees on their own. **What began as a supposed desire for “more information” has devolved into blocking appeals court nominees for parochial purposes.** The result is that litigants in Ohio, Tennessee, Kentucky, and Michigan are suffering due to understaffed courts.
- During this Congress, there have been **20 cloture votes** on nominees Miguel Estrada, Priscilla Owen, Charles Pickering, Carolyn Kuhl, Janice Rogers Brown, William Pryor, Bill Myers, Henry Saad, Richard Griffin, and David McKeague — **more cloture votes on judicial nominations than in all previous Congresses combined.**
- **Another five filibusters have been threatened** against the pending appeals court nominations of Terry Boyle, Susan Neilson, William Haynes, Brett Kavanaugh, and Tom Griffith.
- Only 69% of President Bush’s nominees to the appeals courts have received up-or-down votes. If the filibustered nominees are never confirmed, this will be the **lowest confirmation rate for appeals courts judges for the first four years of any modern Presidency.**
- The pending judicial nominees have been waiting an average of more than 18 months for an up-or-down vote. **The appeals court nominees have been waiting more than 25 months.**
- The Majority Leader has devoted **more Senate time — well over 150 hours — to deliberate judicial nominations during the past two years than in any previous Congress.**
- The Majority Leader’s willingness to allow such extended debate has been met by more obstruction. Democrats have refused to follow another Senate custom — confirming all *unopposed* nominees by voice vote — and instead have consumed more than 50 hours of floor time on recorded roll call votes. That is **more Senate time spent voting on unanimously confirmed nominations than in all previous Congresses combined.**
- **Every single one of the nominations filibustered on the floor has bipartisan, majority support. Absent the filibusters, these nominees would be confirmed.**

The Nominees Being Blocked by Senate Democrats

The chart below lists the nominees currently pending before the Senate. Note that the Judicial Conference states that *15 of these nominations will fill “judicial emergencies.”*

Judicial Nominations Before the Senate

Appeals Court Nominees Pending on Floor — Being Actively Filibustered by Senate Democrats

| | |
|---------------------|---|
| Janice Rogers Brown | DC Cir. (nominated 7/25/03) |
| Richard Griffin | 6 th Cir. (nominated 6/26/02) (judicial emergency) |
| Carolyn Kuhl | 9 th Cir. (nominated 6/22/01) (judicial emergency) |
| David McKeague | 6 th Cir. (nominated 11/8/01) (judicial emergency) |
| William Myers | 9 th Cir. (nominated 5/15/03) (judicial emergency) |
| Priscilla Owen | 5 th Cir. (nominated 5/9/01) (judicial emergency) |
| Charles Pickering | 5 th Cir. (nominated 5/25/01) |
| William Pryor | 11 th Cir. (nominated 4/9/03) |
| Henry Saad | 6 th Cir. (nominated 11/8/01) (judicial emergency) |

Appeals Court Nominee Pending on Floor without Vote

| | |
|----------------|--|
| William Haynes | 4 th Cir. (nominated 9/23/03) (filibuster threatened) |
|----------------|--|

Judicial Nominations Pending in Committee

Appeals Court Nominees Pending in Committee WITH a Hearing but WITHOUT a Vote

| | |
|-----------------|---|
| Claude Allen | 4 th Cir. (nominated 4/28/03) (filibuster threatened) (judicial emergency) |
| Susan Neilson | 6 th Cir. (nominated 11/8/01) (filibuster threatened) (judicial emergency) |
| Brett Kavanaugh | DC Cir. (nominated 7/25/03) (filibuster threatened) (judicial emergency) |

District Court Nominees Pending in Committee WITH Hearing but WITHOUT Vote

| | |
|-----------------|---|
| Micaela Alvarez | SD TX (nominated 6/16/04; hearing 9/8/04) |
| Keith Starrett | SD MS (nominated 7/6/04; hearing 9/8/04) (judicial emergency) |

Appeals Court Nominees Pending in Committee WITHOUT Hearing

| | |
|-----------------|--|
| Thomas Griffith | DC Cir. (nominated 5/10/04) (filibuster threatened) |
| Terry Boyle | 4 th Cir. (nominated 5/9/01) (filibuster threatened) (judicial emergency) |

District Court Nominees Pending in Committee WITHOUT Hearing

| | |
|----------------------|--|
| Christopher Boyko | ND OH (nominated 7/22/04) |
| Robert Conrad | WD NC (nominated 4/28/03) |
| Sean Cox | ED MI (nominated 9/10/04) |
| Paul Crotty | SD NY (nominated 9/8/04) |
| Jim Dever | ED NC (nominated 5/22/02) (judicial emergency) |
| Thomas Ludington | ED MI (nominated 9/12/02) |
| Dan Ryan | ED MI (nominated 4/28/03) |
| J. Michael Seabright | D. HI (nominated 9/15/04) (judicial emergency) |
| Peter Sheridan | D. NJ (nominated 11/5/03) (judicial emergency) |

The facts above are based upon materials available from the Congressional Resource Service and in the Congressional Record. Additional information is available on request.