



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)
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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.